

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

KUHN, LOEB & CO.

AFFIDAVIT OF MAILING

For a Redetermination of a Deficiency or
a Revision of a Determination or a Refund
of Unincorporated Business
Taxes under Article ~~(s)~~ 23 of the
Tax Law for the Year(s) ~~on Period(s)~~
1968, 1970, 1971 and 1972.

State of New York
County of Albany

Marsina Donnini, being duly sworn, deposes and says that
she is an employee of the Department of Taxation and Finance, over 18 years of
age, and that on the 26th day of August, 1977, she served the within
Notice of Decision by (certified) mail upon Kuhn, Loeb & Co.

(~~representative of~~) the petitioner in the within proceeding,
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows: Kuhn, Loeb & Co.
40 Wall Street
New York, New York 10005

and by depositing same enclosed in a postpaid properly addressed wrapper in a
(post office or official depository) under the exclusive care and custody of
the United States Postal Service within the State of New York.

That deponent further says that the said addressee is the (~~representative of~~
~~of the~~) petitioner herein and that the address set forth on said wrapper is the
last known address of the (~~representative of the~~) petitioner.

Sworn to before me this

26th day of August, 1977.

Marsina Donnini

Janet Mach

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

KUHN, LOEB & CO.

AFFIDAVIT OF MAILING

For a Redetermination of a Deficiency or :
a Revision of a Determination or a Refund :
of Unincorporated Business :
Taxes under Article (a) 23 of the :
Tax Law for the Year(s) ~~or Period(s)~~ 1968 :
1970, 1971 and 1972

State of New York
County of Albany

Marsina Donnini, being duly sworn, deposes and says that she is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 26th day of August, 1977, she served the within Notice of Decision by (certified) mail upon Edward W. Morris (representative of) the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows: Edward W. Morris
c/o Kuhn, Loeb & Co.
40 Wall Street
New York City, New York 10005
and by depositing same enclosed in a postpaid properly addressed wrapper in a (post office or official depository) under the exclusive care and custody of the United States Postal Service within the State of New York.

That deponent further says that the said addressee is the (representative of the) petitioner herein and that the address set forth on said wrapper is the last known address of the (representative of the) petitioner.

Sworn to before me this

26th day of August, 1977.

Marsina Donnini

Janet Macch



STATE OF NEW YORK
STATE TAX COMMISSION
TAX APPEALS BUREAU
ALBANY, NEW YORK 12227

August 26, 1977

JAMES H. TULLY JR., PRESIDENT
MILTON KOERNER
THOMAS H. LYNCH

Kuhn, Loeb & Co.
40 Wall Street
New York, New York 10005

GENTLEMEN:

Please take notice of the **DECISION**
of the State Tax Commission enclosed herewith.

You have now exhausted your right of review at the administrative level. Pursuant to section(s) **722** of the Tax Law, any proceeding in court to review an adverse decision by the State Tax Commission can only be instituted under Article 78 of the Civil Practice Laws and Rules, and must be commenced in the Supreme Court of the State of New York, Albany County, within **4 months** from the date of this notice.

Inquiries concerning the computation of tax due or refund allowed in accordance with this decision may be addressed to the Deputy Commissioner and Counsel to the New York State Department of Taxation and Finance, Albany, New York 12227. Said inquiries will be referred to the proper authority for reply.

Sincerely,

Paul B. Coburn
Supervising Tax
Hearing Officer

cc: Petitioner's Representative

Taxing Bureau's Representative

STATE TAX COMMISSION

In the Matter of the Petition :
of :
KUHN, LOEB & CO. :
for Redetermination of a Deficiency :
or for Refund of Unincorporated Business :
Tax under Article 23 of the Tax Law :
for the Years 1968, 1970, 1971 and 1972. :

Petitioner, Kuhn, Loeb & Co., 40 Wall Street, New York New York 10005, has filed a petition for a redetermination of deficiency or for refund of unincorporated business tax under Article 23 of the Tax Law for the years 1968, 1970, 1971 and 1972. (File No. 13931).

A formal hearing was held before William J. Dean, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on February 23, 1977, at 9:30 A.M. Petitioner appeared by Edward W. Morris, Esq., of Kuhn, Loeb & Co. The Income Tax Bureau appeared by Peter Crotty, Esq. (Louis Senft, Esq., of counsel).

ISSUE

Whether the distributive share of income received by petitioner from Kuhn, Loeb & Co. International and from Bondtrade was subject to the unincorporated business tax.

FINDINGS OF FACT

1. On April 12, 1974, the Income Tax Bureau issued a Notice of Deficiency to petitioner indicating a deficiency of \$6,446.46, plus interest, for the 1970 taxable year. A Statement of Audit Changes of the same date stated that \$6,446.46 in additional unincorporated business tax was due on the basis of \$117,208.44 of additional taxable income, constituting the distribution to petitioner by Kuhn, Loeb & Co. International (herein, "KLI"). (Petitioner's IT-204 return for 1970 indicates that income earned by KLI was, in fact, \$112,208.44, not \$117,208.44.)

2. On January 27, 1975, the Income Tax Bureau issued a Notice of Deficiency to petitioner, indicating a deficiency of \$9,168.79, plus interest, for the taxable years 1968, 1971 and 1972. A Statement of Audit Changes of the same date stated that \$9,168.79 in additional unincorporated business tax was due on the basis of \$76,504.00 of additional taxable income received by petitioner in 1968, deemed to be income received by petitioner from Bondtrade; \$37,452.85 of additional income received by petitioner in 1971, constituting a distribution to petitioner from KLI; and \$52,748.45 of additional income received by petitioner in 1972, constituting a distribution to petitioner from KLI.

3. Bondtrade was created pursuant to Belgian Law. It is a joint account agreement among various business entities formed for

the purpose of marketing international bonds. Bondtrade deals exclusively in bonds on the foreign market. Societe Generale de Banque, Belgium, acts as principal. Bondtrade is a separate and distinct entity from petitioner. Petitioner describes itself as a minor participant in Bondtrade. Petitioner is the only United States participant in Bondtrade.

4. KLI is a New York partnership, separate and distinct from petitioner. Its principal place of business is in London. Petitioner's partners are members of KLI's partnership. KLI's income is derived from underwritings, fees and interest. Petitioner states that KLI did no business in the United States except for selling some securities which were cleared through the New York Stock Exchange. With respect to these sales, commissions were allocated 50% to KLI and 50% to petitioner.

5. For the tax years 1968 and 1970-1972, petitioner received a distributive share of income from KLI. For the same tax years, petitioner testified that it received no distributive share of income from Bondtrade.

6. Petitioner concedes that part of the income from KLI may be subject to the unincorporated business tax.

7. Petitioner filed form IT-202-A with its partnership returns in 1968 and in 1970, 1971 and 1972. On its 1968, 1970 and 1971 returns, petitioner listed its principal place of business as New York, with a branch office in London. On its 1972 return, petitioner listed its principal place of business as New York, with branch offices in London and Chicago.

CONCLUSIONS OF LAW

A. That petitioner carries on business both within and without New York State, and so is entitled to an allocation of net income in computing its unincorporated business tax. Tax Law, §707(a).

B. That petitioner should not be taxed upon that portion of the distributive share of income received from KLI and Bondtrade which was earned outside of New York State. Cromwell v. Bates, 284 App. Div. 1001, 135 N.Y.S. 2d 534 (Appellate Division, Third Dept., 1954).


C. That income earned by KLI in the 1970 taxable year is \$112,208.44, not \$117,208.44, as stated in the Notice of Deficiency and Statement of Audit Changes dated April 12, 1974. Petitioner's tax liability, if any, as to the sum of \$112,208.44 should be determined in conformity with this Decision.

D. That the petition of Kuhn, Loeb & Co. is granted to the extent that the Income Tax Bureau is hereby directed to modify its notices of deficiency dated April 12, 1974, and January 27, 1975, to conform with this Decision.

DATED: Albany, New York
August 26, 1977

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER