

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

MANNING AND NAPIER

AFFIDAVIT OF MAILING

For a Redetermination of a Deficiency or :
a Revision of a Determination or a Refund :
of Unincorporated Business :
Taxes under Article ~~(x)~~ 23 of the :
Tax Law for the Year(s) ~~or Period(s)~~ :
1971, 1972 and 1973.

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 16th day of August, 1977, she served the within
Notice of Decision by (certified) mail upon Manning and Napier

(~~representative of~~) the petitioner in the within proceeding,
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows: Manning and Napier
600 Security Tower Plaza
Rochester, New York 14604

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

16th day of August, 1977.

Marsina Donnini

Janet Mack

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

MANNING AND NAPIER

AFFIDAVIT OF MAILING

For a Redetermination of a Deficiency or :
a Revision of a Determination or a Refund :
of Unincorporated Business :
Taxes under Article (23) 23 of the :
Tax Law for the Year(s) ~~on Period(s)~~ :
1971, 1972 and 1973.

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 16th day of August, 1977, she served the within
Notice of Decision by (certified) mail upon Frederic L. Cook, CPA

(representative of) the petitioner in the within proceeding,
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows: Frederic L. Cook, CPA
600 Security Tower Plaza
Rochester, New York 14604

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

16th day of August, 1977

Marsina Donnini

Janet Mack



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

August 16, 1977

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

**Manning and Napier
600 Security Tower Plaza
Rochester, New York 14604**

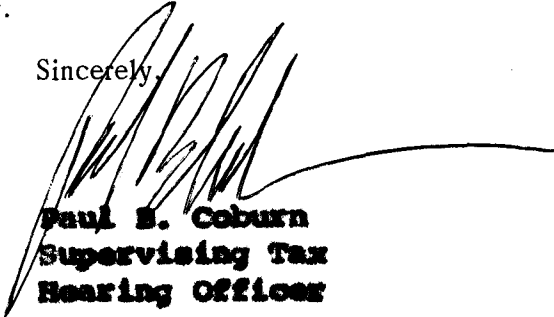
Gentlemen:

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 **(b) 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 E. Coburn
Supervising Tax
Hearing Officer**

cc: Petitioner's Representative

Taxing Bureau's Representative

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of :
MANNING AND NAPIER :
for Redetermination of a Deficiency or :
for Refund of Unincorporated Business :
Tax under Article 23 of the Tax Law :
for the Years 1971, 1972 and 1973. :

Petitioner, Manning and Napier, 600 Security Tower Plaza, Rochester, New York 14604, filed a petition for redetermination of a deficiency or for refund of unincorporated business tax under Article 23 of the Tax Law for the years 1971, 1972 and 1973. (File No. 16526).

A formal hearing was held before Julius E. Braun, Hearing Officer, at the offices of the State Tax Commission, One Marine Midland Plaza, Rochester, New York, on November 17, 1976 at 9:15 A.M. Petitioner appeared by William J. Napier. The Income Tax Bureau appeared by Peter Crotty, Esq. (Richard M. Kaufman, Esq., of counsel).

ISSUE

Whether the income of the partnership of Manning and Napier was derived from professional activities exempt from the unincorporated business tax for the years 1971, 1972 and 1973.

FINDINGS OF FACT

1. Petitioner, Manning and Napier, timely filed 1971, 1972 and 1973 New York State partnership returns. On January 29, 1975, petitioner filed amended New York State partnership returns for 1971, 1972 and 1973, requesting refunds of \$746.00, \$2,458.78 and \$3,446.00 on the ground that the unincorporated business tax was not applicable to the partnership. On August 26, 1976, the Income Tax Bureau disallowed their claim. On September 2, 1976, petitioners filed a petition for refund of the tax paid.

2. Petitioner, Manning and Napier, a partnership, was an investment advisor, giving advice on a fee basis under an Investment of Pension Funds, during the years in issue. William J. Napier received a Bachelor of Arts degree in economics from Dartmouth College, and also attended the New York University Graduate School of Business. He has passed exams for the National Association of Security Dealers Representative, National Security Dealers Principal Exam, and the Boston Stock Exchange. He has registered with the Attorney General and the Securities and Exchange Commission, with whom the partnership's fee schedule is submitted and filed. He has membership in the Financial Analyst Association, Rochester Financial Planners, and the Rochester Bond Club, of which he was a president. His specialty is the management of pension and

profit sharing plans and is thus subject to the Pension Reform Act Laws. He is, therefore, also a fiduciary which necessitates carrying fiduciary insurance for malpractice liability. William Manning, the other partner of petitioner's firm, also holds a B.A. from Dartmouth and attended the New York University Graduate School of Business. Total investments managed by the partnership were between fifteen and twenty million dollars. Their customers include the Plumbers Local Union, The Local Laborers Union, and the Local Sheetmetal Workers Union Pension and Profit Sharing Funds.

3. During the years in issue, petitioner, Manning and Napier's income as an investment advisor was derived from personal services rendered. Capital was not a material income producing factor.

CONCLUSIONS OF LAW

A. That the activities of petitioner, Manning and Napier, as an investment advisor, during 1971, 1972 and 1973, although requiring special knowledge and experience, did not constitute the practice of a profession exempt from the imposition of the unincorporated business tax, in accordance with the meaning and intent of section 703(c) of the Tax Law.

B. That the aforesaid activities of the petitioner, Manning and Napier, during the years in issue, constituted the carrying on of an unincorporated business. Thus, the income derived therefrom was subject to the unincorporated business tax in accordance with the meaning and intent of section 703 of the Tax Law.

- 4 -

C. That the petition of Manning and Napier is denied and the disallowance of their claim for refund by the Income Tax Bureau issued August 26, 1976 is sustained.

DATED: Albany, New York
August 16, 1977

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER