

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition
of

Advest Company

(formerly Putnam, Coffin & Burr)

AFFIDAVIT OF MAILING

for Redetermination of a Deficiency or a Revision :
of a Determination or a Refund of :
Unincorporated Business Tax :
under Article 23 of the Tax Law :
for the Years 1967, 1968 & 1969. :

State of New York
County of Albany

Jay Vredenburg, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 23rd day of May, 1980, he served the within notice of Corrected Decision by certified mail upon Advest Company, (formerly Putnam, Coffin & Burr), the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

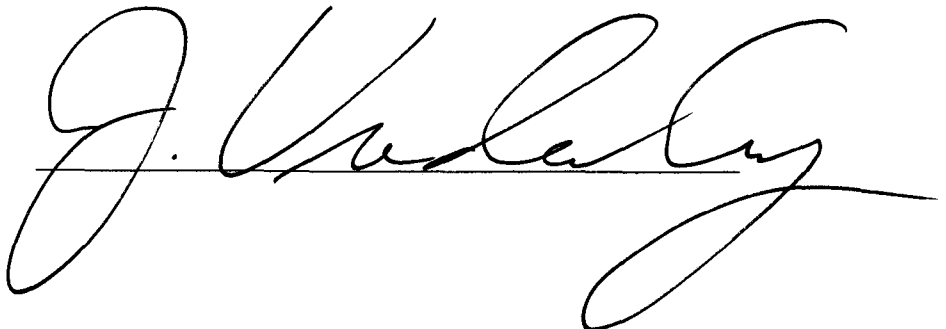
Advest Company
(formerly Putnam, Coffin & Burr)
6 Central Row
Hartford, CT 06103

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 petitioner herein and that the address set forth on said wrapper is the last known address of the petitioner.

Sworn to before me this
23rd day of May, 1980.

Joanne Knapp



STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of :
Advest Company :
(formerly Putnam, Coffin & Burr) : AFFIDAVIT OF MAILING
for Redetermination of a Deficiency or a Revision :
of a Determination or a Refund of :
Unincorporated Business Tax :
under Article 23 of the Tax Law :
for the Years 1967, 1968 & 1969. :

State of New York
County of Albany

Jay Vredenburg, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 23rd day of May, 1980, he served the within notice of Corrected Decision by certified mail upon Glen W. Berwick the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Mr. Glen W. Berwick
Peat, Marwick, Mitchell & Co.
100 Constitution Plaza
Hartford, CT 06103

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
23rd day of May, 1980.

Joanne Krapp

J. Vredenburg

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

May 23, 1980

Advest Company
(formerly Putnam, Coffin & Burr)
6 Central Row
Hartford, CT 06103

Gentlemen:

Please take notice of the Corrected 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:

NYS Dept. Taxation and Finance
Deputy Commissioner and Counsel
Albany, New York 12227
Phone # (518) 457-6240

Very truly yours,

STATE TAX COMMISSION

cc: Petitioner's Representative
Glen W. Berwick
Peat, Marwick, Mitchell & Co.
100 Constitution Plaza
Hartford, CT 06103
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
ADVEST CO.	:	CORRECTED
(FORMERLY PUTNAM, COFFIN & BURR)	:	DECISION
	:	
for Redetermination of a Deficiency or	:	
for Refund of Unincorporated Business	:	
Tax under Article 23 of the Tax Law	:	
for the Years 1967, 1968 and 1969.	:	

Advest Co., 6 Central Row, Hartford, Connecticut 06103, 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 1967, 1968 and 1969 (File Nos. 10900 and 10916).

A formal hearing was held before Solomon Sies, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on December 9, 1976 at 11:15 A.M. Petitioner appeared by Peat, Marwick, Mitchell & Co. (Glen W. Berwick, CPA). The Audit Division appeared by Peter Crotty, Esq. (Abraham Schwartz, Esq., of counsel).

ISSUE

Whether petitioner properly allocated income by using the three-factor formula established by section 707(c) of the Tax Law, or whether the Income Tax Bureau properly allocated petitioner's income by using the direct method of accounting determined from petitioner's books and records, as provided for by section 707(b) of the Tax Law.

FINDINGS OF FACT

1. On October 31, 1964, the stock brokerage firm of Putnam & Company of Hartford, Connecticut, merged with the brokerage firm of Coffin & Burr of Boston, Massachusetts and became known as Putnam, Coffin & Burr. During 1967, Putnam, Coffin & Burr merged with the stock brokerage firm of Doolittle & Co. and became known as Advest Co., the petitioner herein. The main office of the partnership was located at 6 Central Row, Hartford, Connecticut, with branch offices in Maine, Massachusetts, New Hampshire, New York and Connecticut.

2. Putnam, Coffin & Burr filed New York State partnership returns for the calendar years 1965 and 1966. Advest Co. filed New York State partnership returns for the years 1967, 1968 and 1969. Petitioner executed waivers extending the period within which to issue assessments of unincorporated business tax until April 15, 1975.

3. On May 31, 1974, the Income Tax Bureau issued a Statement of Audit Changes against the partnership of Putnam, Coffin & Burr for 1965 and 1966, imposing additional unincorporated business tax in the amount of \$2,622.33, with interest of \$1,325.38, for a total of \$3,947.71. Accordingly, it issued a Notice of Deficiency on January 27, 1975. On May 31, 1974, the Income Tax Bureau issued a Statement of Audit Changes against the partnership, Advest Co., for 1967, 1968 and 1969, imposing additional unincorporated business tax of \$57,007.78, with interest of \$18,901.64, for a total of \$75,909.42. Accordingly, it issued a Notice of Deficiency on January 27, 1975. The Notice of Deficiency for the years 1965 and 1966 is not being contested.

Advest Co. (formerly Putnam, Coffin & Burr) timely filed a petition for redetermination of deficiency or for refund of the deficiencies for 1967, 1968 and 1969.

4. During 1967, 1968 and 1969, petitioner maintained branch offices in the State of New York, in New York City, Buffalo, Lockport, Newburgh, Peekskill, Wellsville and Albany, in addition to its main office in Hartford, Connecticut and other branch offices in Connecticut, Massachusetts, Maine and New Hampshire.

5. The partnership's business included the purchase and sale (as agent for its customers) of securities listed on the various exchanges, including the New York Stock Exchange and the American Stock Exchange. In addition, petitioner acted as agent or principal in connection with the purchase and sale by its customers of "over-the-counter" or unlisted securities, bonds and mutual funds. The partnership also participated in underwriting securities.

6. The partnership had at least two partners who were assigned to the New York City office; one who represented the firm on the floor of the New York Stock Exchange and one who represented the firm on the floor of the American Stock Exchange.

7. The New York City office had a staff of about 75 to 80 people. It had a cashier's cage which was under the direction of the cashier in the Hartford headquarters. The New York City office also performed some clearing operations.

8. Petitioner's books and records were kept and maintained at its main office in Hartford, Connecticut. Records of the activities of the branch offices were also kept in the main office in Hartford. A "blotter" record was kept of branch offices in New York and elsewhere. The main office, through its computer, transmitted a print-out to the various branch offices, confirming daily transactions attributable to said branch offices.

9. Advest Co. allocated its income and expenses using the three-factor formula method established by section 707(c) of the Tax Law and 20 NYCRR 207.4.

10. The Income Tax Bureau allocated income of Advest Co. on an office-to-office or direct accounting method (as reflected by the books and records of the partnership), in accordance with section 707(b) of the Tax Law and regulation 20 NYCRR 287.1 of Article 16A of the Tax Law, and, subsequently, under regulation 20 NYCRR 207.3(c).

11. The books and records of petitioner disclosed income and expenses of its New York operations for the years in issue.

12. The Income Tax Bureau allocated to the New York office 50 percent of the expense of telephone, telegraph and wire tickers.

13. The Income Tax Bureau, during its audit of petitioner's books, allowed, as a direct expense of the New York office, a bookkeeping expense which was based on 5 percent of the commissions earned by the offices outside New York State. The propriety of this allowance is not at issue in this proceeding.

14. Petitioner contended that rental equipment, taxes and depreciation on property located within the State were not treated as direct expenses on audit, but submitted no proof during the hearing with respect thereto.

15. On July 24, 1979, petitioner, after receiving correspondence from the Audit Division, submitted worksheets similar to those prepared by the Bureau's field examiner in which it adjusted commission income derived from listed and unlisted (over-the-counter) securities on the basis of an allocation of 80/20. Petitioner was unable to substantiate said allocation and, as a result, was allowed an allocation of 72/28. The Audit Division recomputed petitioner's commission income using the ratio of 72/28, and submitted to petitioner a letter, along with a revised worksheet, showing a recomputation of New York gross income. Petitioner has not responded to said correspondence.

CONCLUSIONS OF LAW

A. That the use of the "direct accounting" method in determining the amount of net income attributable to New York was proper. The use of the three-factor formula established by section 707(c) of the Tax Law to allocate net business income or loss of Advest Co. is unwarranted when the portion allocable to this State can be determined from the books and records of the business. The "direct accounting" method is the preferred method (Piper, Jaffray and Hopwood v. State Tax Commission, 42 AD2d 381, 348 NYS2d 242; J. C. Bradford & Co. v. State Tax Commission, 62 AD2d 69, 403 NYS2d 813).

B. That although the use of the percentage allocation of commissions to New York was expressly authorized by the State Tax Commission in its regulations [20 NYCRR 207.5(c) (1) and (2) and 20 NYCRR 287.1], the application of the 60/40 ratio without support is erroneous (Matter of J. C. Bradford & Co. v. State Tax Commission, 62 AD2d 69, 403 NYS2d 813). The Audit Division is hereby directed to recompute petitioner's commission income from listed and unlisted (over-the-counter) securities by using a 72/28 ratio in lieu of the 60/40 ratio provided by 20 NYCRR 207.5(c) (1) and (2).

C. That direct expenses incurred and paid in the operation of the New York office were properly deducted since said expenses were attributable to business carried on solely in this State. Indirect expenses incurred by Advest Co., which expenses benefited all offices, including New York, were properly allocated on the basis of total New York income divided by total income of the partnership.

D. That the petition of Advest Co. for 1967 through 1969 is granted to the extent indicated in Conclusion of Law "B"; and that, except as so granted, the petition is in all other respects denied.

DATED: Albany, New York

MAY 23 1980

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER