In the Matter of the Petition

of

AFFIDAVIT OF MAILING

KENNETH S. BATTYE and AMELIA R. BATTYE For a Redetermination of a Deficiency or : a Revision of a Determination or a Refund of Personal Income : Taxes under Article (s) 22 of the Tax Law for the Year(s) XXXX Revised (S) : 1961 and 1962.

State of New York County of Albany

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 (xepresentative of xee) petitioner herein and that the address set forth on said wrapper is the last known address of the (xepresentative xot xee) petitioner.

Sworn to before me this

1st day of October , 1976

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TA-3 (2/76)

In the Matter of the Petition

of

KENNETH S. BATTYE and AMELIA R. BATTYE

AFFIDAVIT OF MAILING

State of New York County of Albany

Catherine Steele

, 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 1st day of October , 1976, she served the within

Howard O. Colgan, Jr., Esq.

Notice of Decision by (certified) mail upon Robert Franklin, Esq.

Horace Newman, Esq. (representative of) the petitioner in the within proceeding,

by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed

Howard O. Colgan, Jr., Robert Franklin & Horace Newman, Esqs.

as follows: Milbank, Tweed, Hadley & McCloy

1 Chase Manhattan Plaza 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 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

1st day of October , 1976

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TA-3 (2/76)



STATE OF NEW YORK DEPARTMENT OF TAXATION AND FINANCE

TAX APPEALS BUREAU

STATE CAMPUS ALBANY, N.Y. 12227 ADDRESS YOUR REPLY TO

October 1, 1976

TEL EDUONE: (E18) 457-3850

Mr. & Mrs. Kenneth S. Battye 22 Light Street Baltimore, Maryland

Dear Mr. & Mrs. Battye:

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

Please take further notice that pursuant to Section 690 of the Tax Law, any proceeding in court to review an adverse decision must be commenced within 4 months from the date of this notice.

Inquiries concerning the computation of tax due or refund allowed in accordance with this decision or concerning any other matter relative hereto may be addressed to the undersigned. They will be referred to the proper party for reply.

Very truly yours

Poul B. Coburn

Supervising Tax

Hearing Officer

cc: Petitioner's Representative:

Taxing Bureau's Representative:

Enc.

STATE TAX COMMISSION

In the Matter of the Petition

of

KENNETH S. BATTYE and AMELIA R. BATTYE

DECISION

for Redetermination of a Deficiency or for : Refund of Personal Income Tax under Article 22 of the Tax Law for the Years 1961 : and 1962.

Petitioners, Kenneth S. Battye and Amelia R. Battye, residing at 22 Light Street, Baltimore 2, Maryland, filed a petition for redetermination of a deficiency issued under date of April 13, 1965, in personal income tax for the years 1961 and 1962 in the amount of \$802.98, plus interest of \$121.06, for a total of \$924.04.

A hearing was duly held on May 19, 1970, at the offices of the State Tax Commission, 80 Centre Street, New York City, before Lawrence Newman, Hearing Officer. Howard O. Colgan, Jr., Esq., Robert Franklin, Esq., and Horace Newman, Esq., all of Milbank, Tweed, Hadley and McCloy represented the petitioners. Edward H. Best, Esq., appearing by Solomon Sies, Esq., represented the Income Tax Bureau.

The record of said hearing has been duly examined and considered.

ISSUE

The issue in this case is the proper method of allocating primary or underwriting profits by petitioner, Kenneth S. Battye's partnership, John C. Legg & Company, an underwriter and dealer in securities, when as part of a public offering the partnership as member of an underwriting syndicate managed by a New York based underwriter enters into an

underwriting commitment for the purchase of securities of an issuing corporation, and the resulting effect of such allocation on petitioners, Kenneth S. Battye's and Amelia R. Battye's personal income tax liability.

FINDINGS OF FACT

- 1. Petitioners, Kenneth S. Battye and Amelia R. Battye, filed New York State nonresident income tax returns for the years 1961 and 1962.
- 2. On April 13, 1965, the Income Tax Bureau issued a Notice of Deficiency against petitioners, Kenneth S. Battye and Amelia R. Battye, for the years 1961 and 1962. Said Notice of Deficiency was based on petitioner, Kenneth S. Battye's share, as a partner, of partnership income from primary or underwriting profits earned by John C. Legg & Company during the years in issue. Since the disposition of Kenneth S. Battye's and Amelia R. Battye's petition is contingent on the State Tax Commission's determination in the Petition of John C. Legg & Company, the "Findings of Fact" in said decision are hereby adopted.

CONCLUSIONS OF LAW

A. That the "Conclusions of Law" stated in the State Tax Commission's decision in the Petition of John C. Legg & Company, a copy of which is attached hereto, are hereby adopted.

- B. That petitioners, Kenneth S. Battye and Amelia R. Battye, are liable for personal income tax due on petitioner, Kenneth S. Battye's proportionate share of the partnership, John C. Legg & Company's primary or underwriting profits allocated to New York State for the years 1961 and 1962, in the State Tax Commission decision in the Petition of John C. Legg & Company.
- C. That the deficiency is hereby affirmed and the petition accordingly denied.

DATED: Albany, New York

October 1, 1976

STATE TAX COMMISSION

PRESIDENT

COMMISSIONED

COMMISSIONER