

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition

of

LAIDLAW, ADAMS & PECK, INC.

DECISION

for Redetermination of a Deficiency or for
Refund of Corporation Franchise Tax under
Article 9-A of the Tax Law for the Year 1979.

Petitioner, Laidlaw, Adams & Peck, Inc., 40 Rector Street, New York, New York 10006, filed a petition for redetermination of a deficiency or for refund of corporation franchise tax under Article 9-A of the Tax Law for the year 1979 (File No. 40026).

A formal hearing was held before Daniel J. Ranalli, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on July 24, 1984 at 10:45 A.M., with all briefs to be submitted by September 28, 1984. Petitioner appeared by Frederick S. Todman & Co. (Lester Cooper, C.P.A.). The Audit Division appeared by John P. Dugan, Esq. (Thomas Sacca, Esq., of counsel).

ISSUE

Whether the Audit Division properly disallowed petitioner's exclusion from entire net income of the refund of New York City franchise tax for stock transfer tax paid in market making transactions.

FINDINGS OF FACT

1. On August 27, 1982, as the result of a field audit, the Audit Division issued a Notice of Deficiency pursuant to Article 9-A of the Tax Law against petitioner, Laidlaw, Adams & Peck, Inc., in the amount of \$6,818.00, plus

interest of \$2,024.00, for a total due of \$8,842.00 for the fiscal year ended December 31, 1979.

2. Petitioner is engaged in the stock brokerage business. In 1978, petitioner paid \$105,808.00 in stock transfer taxes to New York State and New York City. One half of this amount, or \$52,904.00, was paid to each entity. Petitioner deducted the full \$105,808.00 on its federal corporation tax return and added back the \$105,808.00 to its taxable income in the computation of entire net income for New York State corporation franchise tax purposes for the fiscal year ended December 31, 1978. Petitioner, in similar fashion, added back the \$105,808.00 to its income in computing its taxable net income for New York City corporation tax purposes.

3. In 1979, petitioner applied for and received franchise tax refunds of \$52,904.00 each from New York State and New York City for stock transfer tax paid in market making transactions. Petitioner included the \$105,808.00 total in its federal taxable income for the year ended December 31, 1979 and deducted 100 percent of the refunds received from both its New York State and New York City net income.

4. The Audit Division disallowed 50 percent of the refund deduction maintaining that, although 100 percent of stock transfer taxes paid and taken as a deduction for federal purposes must be added back to New York State income in determining entire net income, only the State portion of the refunds received may be excluded from federal taxable income in determining New York State entire net income. The Audit Division's position is that the New York City portion of the stock transfer tax refund may not be excluded in determining New York State entire net income since the applicable statute allows an exclusion of only the State refund.

5. Petitioner argues that the inclusion in income of a refund of New York City franchise tax for stock transfer tax which was paid and included as income in the prior year as an add back to federal taxable income results in double taxation of the 50 percent not allowed to be excluded. Petitioner maintains that, since 100 percent of stock transfer taxes paid were included in 1978 entire net income, 100 percent of the refund should be excluded from 1979 entire net income.

CONCLUSIONS OF LAW

A. That section 208.9(a)(5) of the Tax Law provides that entire net income shall not include

"any refund or credit of a tax imposed under this article, for which tax no exclusion or deduction was allowed in determining the taxpayer's entire net income under this article for any prior year." (Emphasis added.)

B. That section 208.9(b)(4-a)(A) of the Tax Law provides that entire net income shall be determined without the exclusion, deduction **or** credit of

"the entire amount allowable as an exclusion or deduction for stock transfer taxes imposed by article twelve of this chapter in determining the entire taxable income which the taxpayer is required to report to the United States treasury department but only to the extent that such taxes are incurred and paid in market making transactions,..."

Section 2.0.8(b)(4-a)(A) of Title R, Chapter 46 of the Administrative Code of the City of New York contains identical language with respect to exclusion of stock transfer taxes.

C. That there is no question but that 100 percent of stock transfer taxes paid and taken as a deduction for federal purposes must be added back to New York State income in determining entire net income. However, with respect to exclusion of refunds, section 208.9(a)(5) of the Tax Law specifically provides for exclusion of only those refunds **or credits of tax imposed under Article**


petitioner were derived from Article 9-A, only that portion could be excluded from federal taxable income in determining New York State entire net income. The Audit Division properly disallowed 50 percent of the exclusion claimed for refunds of franchise tax for stock transfer tax paid since one half of the refund was derived from the New York City Administrative Code, not Article 9-A, and therefore not excludable under section 208.9(a)(5) of the Tax Law.

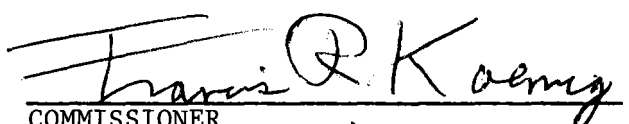
D. That the petition of Laidlaw, Adams & Peck, Inc., is denied and the Notice of Deficiency issued August 27, 1982 is sustained.


DATED: Albany, New York

STATE TAX COMMISSION

MAY 12 1986


PRESIDENT


COMMISSIONER


COMMISSIONER