

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition

of

STUDEBAKER-WORTHINGTON, INC.

DECISION

for Redetermination of a Deficiency **or** for
Refund of Corporation Franchise Tax under
Articles **9-A** and 27 of the Tax Law for the
Years 1979, 1980 and 1981.

Petitioner, Studebaker-Worthington, Inc., c/o Cooper Industries, Inc.,
P.O. Box 4446, Houston, Texas 77210, filed a petition for redetermination of a
deficiency **or** for refund of corporation franchise tax under Articles 9-A and 27
of the Tax Law for the years 1979, 1980 and 1981 (File No. 64560).

On March 6, 1987, petitioner waived its right to a hearing and requested
the State Tax Commission to render a decision based on the entire record
contained in the file, with all briefs to be submitted by April 24, 1987.
After due consideration, the State Tax Commission renders the following decision.

ISSUE

Whether penalties asserted against petitioner for failure to timely file
its corporation franchise tax reports should be abated.

FINDINGS OF FACT

1. Until September **of** 1979, petitioner, Studebaker-Worthington, Inc., **was**
a publicly traded corporation with its headquarters in the State of New Jersey.
Petitioner timely filed New York State corporation franchise tax reports for
the years 1972 through 1978.

2. On September 5, 1979, petitioner was acquired by Edison International, Inc. ("Edison"), which was a wholly owned subsidiary of McGraw-Edison Company ("McGraw"). McGraw's corporate headquarters were located in Illinois. In early 1981, petitioner was merged into Edison and ceased to exist as a separate corporate entity. In 1985, McGraw was acquired by Cooper Industries, Inc.

3. A routine field audit of petitioner revealed that it had failed to file corporation franchise tax reports for the fiscal years ended December 31, 1979, December 31, 1980 and January 5, 1981, when it ceased to exist as a corporate entity.

5. On March 18, 1985, petitioner, by its execution **of** a consent to field audit adjustment, conceded tax and interest due for the audit periods in the amount of \$454,872.00. Shortly thereafter, it remitted payment to the Audit Division in this amount. Payment was accompanied by a request for abatement of penalties.

6. On August 26, 1985, the Audit Division issued to petitioner three notices of deficiency pursuant to Articles **9-A** and **27** of the Tax Law asserting tax, interest and penalties for the years at issue as follows:

Year	Tax	<u>Interest</u>	<u>Penalty</u>
1979	\$118,467.00	\$82,404.00	\$29,617.00
1980	\$154,523.00	92,056 .00	38,631 .00
1981	3,258 .00	1,936.00	* 814.00

The notices also acknowledged payment of tax and interest for each period.

7. On September 25, 1985, following issuance of the notices, petitioner renewed its request for abatement **of** penalties.

8. For the period ended December **31**, 1979, McGraw had requested an extension of time to file corporation franchise tax reports for petitioner and accompanied the request with a payment of \$10,000.00. Subsequently, prepayments

10. Petitioner's request for abatement of penalties *is* based upon the ground that its failure to file its corporation franchise tax reports for 1979, 1980 and 1981 was due to reasonable cause and not to willful neglect. To support its contention, it has offered the following explanation:

"there were significant administrative problems associated with the integration of the Tax Departments of SWI [petitioner] and M-E [McGraw]. The M-E tax staff was primarily a compliance group of the Control Department. By virtue of the **SWI** tax staff taking the lead **on** handling the very difficult and sophisticated tax aspects of the acquisition of SWI by M-E, several key **SWI** tax administrators were hired by M-E to manage the M-E tax function. Due to the changeover of tax personnel resulting from the acquisition transaction as well as the problems in relocating the **SWI** tax administration from New Jersey to Illinois, the SWI state tax function was placed under extreme pressure."

11. Petitioner characterizes McGraw's request for an extension of time to file its 1979 return and prepayments totalling \$15,000.00 for 1979 and 1980 as evidence of its intention to file corporation franchise tax reports. It requested that its history of filing returns prior to 1979 be taken into account.

12. The Notice of Deficiency for 1979 indicates that \$2,228.00 of the total payment for that year was credited towards the penalty asserted. By its petition, petitioner requested a refund in that amount.

CONCLUSIONS OF LAW

A. That Tax Law §1085(a)(1) imposes an addition to tax for failure to file a return (at the rate of 5% per month **or** fraction thereof during which the failure continues, but not exceeding 25% in the aggregate), unless "such failure *is* due to reasonable cause and not due to willful neglect".

B. That 20 NYCRR 9-1.5, effective for taxable years Commencing **on or** after January 1, 1976, provides that grounds for reasonable cause must be

"(a) death **or** serious illness of the responsible officer **or** employee of the taxpayer, **or** his unavoidable absence from his usual place of business;

(b) destruction of the taxpayer's place of business **or** business records by fire **or** other casualty;

(c) reliance on advice of a competent advisor such as an attorney or accountant;

(d) timely prepared reports misplaced by a responsible employee and discovered after the due date."

The above-quoted regulation was amended, effective April 1, 1981, to delete ground "(c) ", reletter "(d)" to "(c)", and to add the following grounds:

"(d) inability to obtain and assemble essential information required for the preparation **of** a complete return despite reasonable efforts;

(e) pending petition to Tax Commission **or** formal hearing proceedings involving a question **or** issue affecting the computation of tax for the year of delinquency; and

(f) any other cause **for** delinquency which appears to a person of ordinary prudence and intelligence as a reasonable cause for delay in filing a return and which clearly indicates an absence of gross negligence **or** willful intent to disobey the taxing statutes. Past performance should be taken into account."

C. That each taxpayer has the obligation to prepare and file a timely return with payment. This duty is nondelegable. Thus, numerous cases have held that a taxpayer's reliance on its accountant **or** on other employees will not relieve it of its responsibility (**e.g.**, Sanderling, Inc. v. Commissioner, 571 F2d 174 [3rd Cir. 1978]; Logan Lumber Co. v. Commissioner, 365 F2d 846 [5th Cir 1966]; William H. Mauldin, 60 TC 749 [1973], 3 ALR2d 617, 619).

D. That "[a]ny layman with the barest modicum **of** business experience knows that there **is** a deadline for the filing of returns" (United States v. Kroll, 547 F2d 393, 396 [7th Cir]). The administrative confusion caused by corporate mergers and acquisitions did not relieve petitioner **of** its duty **to**

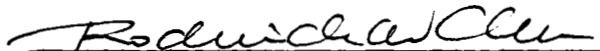
exercise ordinary business care and prudence. Accordingly, petitioner has not demonstrated reasonable cause for failure to file corporation franchise tax returns when due.

E. That the petition of Studebaker-Worthington, Inc. **is** denied, and the penalties imposed under section 1085(a)(1) of the Tax Law are sustained.

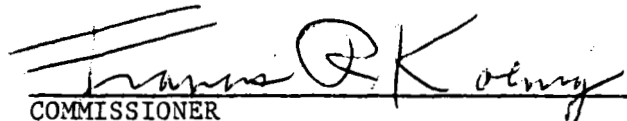
DATED: Albany, New York

STATE TAX COMMISSION


JUN 25 1987



PRESIDENT



COMMISSIONER



COMMISSIONER