

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of Petition

of

WALKER ENGRAVING CORPORATION

for redetermination of deficiency
or for refund of franchise taxes
under Article 9-A of the tax law
for the years 1965, 1966 and 1967.

Walker Engraving Corporation having filed a petition for redetermination of deficiency or for refund of franchise tax under Article 9-A of the tax law for 1965, 1966 and 1967, and a hearing having been held in connection therewith at the office of the State Tax Commission at 80 Centre Street in New York City before John J. Genevich, Hearing Officer of the Department of Taxation and Finance, at which hearing Seymour Wissner, Certified Public Accountant, of Herman J. Dobkin & Co., appeared personally and testified, and the record having been duly examined and considered by the State Tax Commission,

It is hereby found:

(1) Walker Engraving Corporation and its wholly-owned subsidiary, Walker Offset Engraving Corporation, were incorporated under the laws of New York State, the former on February 25, 1955 and the latter on November 8, 1963.

(2) Walker Engraving Corporation filed reports for 1965, 1966 and 1967 on an individual basis on March 15, 1966, June 19, 1967 and March 4, 1968, respectively; Walker Offset Engraving Corporation filed reports for 1965, 1966 and 1967 on an individual basis on March 14, 1966, June 19, 1967 and March 4, 1968, respectively.

(3) In letter dated March 5, 1969, Walker Engraving Corporation requested permission to file retroactive combined

returns for 1965, 1966 and 1967 on behalf of itself and Walker Offset Engraving Corporation.

(4) On March 13, 1969, the Corporation Tax Bureau denied permission to file such retroactive combined returns and taxpayer filed a timely petition on April 28, 1969.

(5) On July 16, 1969 Walker Engraving Corporation filed an amended return for 1966 increasing its entire net income from \$16,924.19 to \$127,127.42. The additional tax due on an individual basis is computed as follows:

Entire net income	\$127,127.42
Tax at 5½%	6,992.00
Tax originally paid	2,616.03
Additional tax due	\$ 4,375.97

(6) On December 10, 1969 Walker Engraving Corporation filed reports of federal changes for 1965, 1966 and 1967.

(7) The tax liability on a combined basis, as compared to individual basis, including federal changes, is as follows:

	<u>1965</u>	<u>1966</u>	<u>1967</u>
Tax on combined basis	\$17,032.36	\$5,436.28	\$3,128.73
Tax on individual basis	<u>21,229.60</u>	<u>7,858.06</u>	<u>3,134.99</u>
Reduction in tax	\$ 4,197.24	\$2,421.78	\$ 6.26

(8) Section 211.4 of the tax law reads, in part:

"In the discretion of the tax commission, any taxpayer, which owns or controls either directly or indirectly substantially all the capital stock of one or more other corporations * * * may be required or permitted to make a report on a combined basis covering any such other corporations * * *."

(9) Reg. 1.1502-75(a)(1) of the Internal Revenue Code reads, in part:

"* * * If a group wishes to exercise its privilege of filing a consolidated return, such consolidated return must be filed not later than the last day prescribed by law (including extensions of time) for the filing of the common parent's return. * * *."

Based upon the foregoing findings and all of the evidence presented, the State Tax Commission hereby

DECIDES:

(A) As set forth in Section 211.4, quoted above, the filing of combined returns is not a statutory right of the taxpayer. The detailed facts necessary to determine whether a combined basis should be permitted are available to the taxpayer at the time annual franchise tax reports are due. Except under unusual circumstances the taxpayer, therefore has no need of an extended period to determine whether permission should be requested for the filing of a combined return. In fact, under Federal Reg. 1.1502-75(a)(1), quoted above, the taxpayer must elect whether or not to file consolidated returns prior to the due date of the federal return. For this reason, and in order not to adversely affect state revenues retroactively, except in extraordinary circumstances it is the policy of the State Tax Commission that a request for permission to file on a combined basis will be considered only for returns for current and future years. In this case, request was made on March 5, 1969, up to three years after the filing of returns for the years involved. The filing of combined returns for 1965, 1966 and 1967 would result in an unwarranted retroactive tax decrease. Accordingly, permission to file on such basis for those years is denied.

(B) Based on the amended return filed for 1966, an additional tax of \$4,375.97 is due as set forth at (5) above, plus interest as provided for in Section 1084 of the tax law.

Dated: Albany, New York

this 6th day of June 1971.

STATE TAX COMMISSION

Thomas Gallivan
President

Alfred M. Manley
Commissioner

Arthur Krieger
Commissioner