

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of Petition :  
                  of :  
EMPIRE CARRIERS CORPORATION :  
for redetermination of deficiency :  
of tax under Section 183 of Article :  
9 of the tax law for the year begun :  
January 1, 1965 :  
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Empire Carriers Corporation having filed petition for redetermination of deficiency of tax under Section 183 of Article 9 of the tax law for the year begun January 1, 1965, and a hearing having been held in connection therewith at the office of the State Tax Commission at the State Campus, Albany, New York, on April 20, 1971 before John J. Genevich, Hearing Officer of the Department of Taxation and Finance, at which hearing Mortimer Berl, Esquire, of Chase & Marks, Counsel for the taxpayer, appeared personally and testified and the record having been duly examined and considered by the State Tax Commission,

It is hereby found:

(1) The taxpayer was incorporated under the laws of New York State on October 21, 1931 and is subject to the franchise tax on transportation and transmission corporations imposed by Section 183 of Article 9.

(2) It adopted a plan designed to capitalize part of its earnings. Pursuant thereto, in 1964 it declared and paid on its \$100,000 par value common stock, a \$1,000,000 dividend in preferred stock, charging the dividend to its earned surplus. The dividend comprised issuance of 10,000 shares of preferred stock with a par value of \$100 each.

(3) On October 15, 1965, notice of deficiency was issued as follows:

Cash dividend	\$ 20,000.00
Stock dividend	1,000,000.00
Total dividends	1,020,000.00
Par value common stock	100,000.00
Rate of dividend ( $\$1,020,000 \div \$100,000$ )	1020%
Rate of tax ( $\frac{1}{4}$ mill for each 1% of dividend)	255 mills
Tax due ( $\$100,000 \times 255$ Mills)	25,500.00
Tax computed	1,643.94
Deficiency	\$ 23,856.06

(4) The taxpayer filed timely petition for redetermination of deficiency.

(5) Section 183 of Article 9 states in part:

"But if the dividend paid on the par value of any kind of capital stock during any year ending with the thirty-first day of December amounts to six or more than six per centum, the tax on such kind of capital stock shall be at the rate of one-quarter of a mill for each one per centum of dividends paid and shall be computed upon the par value of such capital stock, \* \* \*."

The State Tax Commission hereby

DECIDES:

(A) The issuance of \$1,000,000 of preferred stock pursuant to a plan to capitalize part of the earnings of the corporation, where such issuance resulted in a transfer of \$1,000,000 of the taxpayer's earned surplus to the capital stock account, constitutes a dividend for purposes of computing the tax due under Section 183 of the tax law.

(B) The notice of deficiency issued on October 15, 1965 for the year begun January 1, 1965 is affirmed together with such interest as is due under Section 1084 of the tax law.

Dated: Albany, New York

this 18th day of February 1972.

STATE TAX COMMISSION

  
President

  
Commissioner

  
Commissioner