

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of Petition :
of :
DALE FUNDING CORPORATION :
for redetermination of deficiencies :
of franchise tax under Article 9-A of :
the tax law for 1969 and 1970. :

Dale Funding Corporation having filed a petition for redetermination of deficiencies of franchise tax under Article 9-A of the tax law for 1969 and 1970 and a hearing having been held in connection therewith at the office of the State Tax Commission, 80 Centre Street, New York City, at which hearing Bernard Wald, Esq., of 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) Combined returns were filed on behalf of Boro Investing Corporation and its wholly-owned subsidiary, Dale Funding Corporation, without receiving prior permission. After correspondence, the Corporation Tax Bureau denied permission to file on a combined basis and statements of audit adjustment dated August 15, 1972 were issued against Dale Funding Corporation as follows:

	<u>1969</u>	<u>1970</u>
Entire net income	\$71,375.66	\$82,819.42
Tax at 7%	4,996.30	5,797.36
Payment with form CT-5	700.00	100.00
Tax deficiency	4,296.30	5,697.36
Interest to 8/15/72	515.56	341.84
Additional charge	1,482.22	1,623.75
Total amount due	6,294.08	7,662.95

Notices of deficiency were issued on October 16, 1972. Boro Investing Corporation sustained losses for 1969 and 1970 and its tax for each year was based on capital. Credits were computed for Boro Investing Corporation for those two years which were

applied against the taxes due from Dale Fund Corporation.

(2) Boro Investing Corporation was organized in New York on March 29, 1954 and was engaged in the business of buying and selling residential homes in Brooklyn, N. Y. Upon sale of most of the real estate it took back second mortgages. In 1965 the officers of the corporation felt that the outlook for the real estate and second mortgage market was becoming unfavorable, and decided to become an F.H.A. (Federal Housing Administration) lending institution. Mortgages would thus be insured by the F.H.A. and could be more readily sold to banks. The F.H.A. refused to license Boro Investing Corporation because it did not have acceptable assets (acceptable assets meant a limited percentage of assets in second mortgages and real estate). Dale Funding Corporation was organized as a wholly-owned subsidiary with \$150,000.00 capital and acceptable assets (cash, first mortgages and a limited amount of second mortgages and real estate). The F.H.A. granted a license to Dale Funding Corporation.

(3) Section 211.4 of Article 9-A 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 corporation . . ."

The State Tax Commission hereby

DECIDES:

(A) Dale Funding Corporation and Boro Investing Corporation are engaged in their own respective operations, the results of which are more properly reflected on an individual basis. Combined returns are not permitted merely to allow one corporation to offset its entire net income by the loss of a related corporation. The losses incurred by Boro Investing Corporation are not a result of its intercompany transactions with Dale Funding Corporation, but are due to its own operations. It is the policy

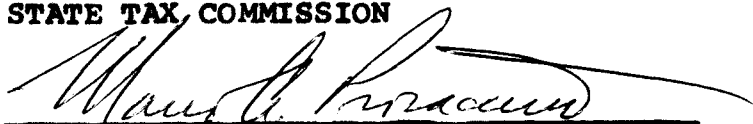
of the Tax Commission not to permit or require a combined return where taxation on an individual basis produces a more proper tax result.

(B) The notices of deficiency covering the statements of audit adjustment indicated in (1) above are affirmed as to the amount of tax, with interest to date of payment pursuant to Section 1084 of the tax law. The additional charge for each year is cancelled since the late filing of the proper individual reports on form CT-3 was due to reasonable cause and not to willful neglect.

Dated: Albany, New York

this 20th Day of June 1974.

STATE TAX COMMISSION



President



Commissioner



Commissioner