

STATE OF NEW YORK  
STATE TAX COMMISSION

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In the Matter of the Petition :  
                  of :  
LA FLOR DE MAYO EXPRESS INC. :  
for redetermination of deficiencies :  
of franchise tax under Section 183 :  
of Article 9 of the tax law for the :  
privilege years begun January 1, :  
1970, January 1, 1971 and January 1, :  
1972. :  
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The taxpayer herein having filed petition for redetermination of deficiencies of franchise tax under Section 183 of Article 9 of the tax law for the privilege years begun January 1, 1970, January 1, 1971 and January 1, 1972, and a hearing having been held at the office of the State Tax Commission, State Campus, Albany, New York, at which hearing F. Hernandez, president, and S. Messing, accountant, appeared and the record having been duly examined and considered by the State Tax Commission,

It is hereby found:

(1) The taxpayer was incorporated in New York State on July 28, 1959 and is engaged in the trucking business. It filed annual franchise tax returns on form CT-40 for the privilege years begun January 1, 1970, January 1, 1971 and January 1, 1972 (based on the calendar years 1969, 1970 and 1971 respectively), showing a zero profit for each year. The taxpayer filed Federal income tax returns on form 1120S as a small business corporation under Subchapter S of Chapter One of the Internal Revenue Code. The latter returns reflected officers' compensation and taxable income as follows:

Form 1120S	1969	1970	1971
Officers' compensation, page 1, item 12	\$ 31,200.00	\$ 31,800.00	\$ 33,508.40
Taxable income, page 1, item 28	105,500.04	116,465.83	123,776.89

The above taxable income was distributed as dividends to the stockholders per Schedule K of form 1120S which indicated as follows:

Form 1120S, Schedule K	1969	1970	1971
1. Taxable income	\$105,500.04	\$116,465.83	\$123,776.89
2. Less: Money distributed as dividends out of earnings and profits of the taxable year	<u>105,500.04</u>	<u>116,465.83</u>	<u>123,776.89</u>
3. Corporation's undistributed taxable income	- 0 -	- 0 -	- 0 -

(2) The Corporation Tax Bureau issued statements of audit adjustment dated February 15, 1973 and notices of deficiency computing tax liability based on the dividend rate paid as follows:

Privilege year begun January 1, 1970  
(based on calendar year 1969)

Distribution of earnings	\$ 105,500.04
Capital Stock	6,000.00
Dividend rate (105,500.04 divided by 6,000.00)	1758.334%
Capital stock	6,000.00
Tax at 571.459 mills	3,428.75
Tax per report	50.00
Deficiency	3,378.75

Privilege year begun January 1, 1971  
(based on calendar year 1970)

Distribution of earnings	\$ 116,465.83
Capital stock	6,000.00
Dividend rate (116,465.83 divided by 6,000.00)	1941.1%
Capital stock	6,000.00
Tax at 630.875 mills	3,785.14
Tax per report	50.00
Deficiency	3,735.14

Privilege year begun January 1, 1972  
(based on calendar year 1971)

Distribution of earnings	\$ 123,776.89
Capital stock	6,000.00
Dividend rate (123,776.89 divided by 6,000.00)	2062.948%
Capital stock	6,000.00
Tax at 773.606 mills	4,641.63
Tax per report	73.10
Deficiency	4,568.53

(3) On March 15, 1973, the taxpayer filed amended franchise tax returns on form CT-40 indicating officers' compensation and net profit as follows:

<u>Amended CT-40</u>	<u>1969</u>	<u>1970</u>	<u>1971</u>
Officers' compensation	\$ 95,200.57	\$129,001.20	\$114,996.60
Net profit	41,499.47	19,264.63	42,288.69

The taxpayer did not file amended returns on form 1120S with the Federal government for 1969, 1970 and 1971.

(4) Section 183 of the tax law provides for a tax on issued capital stock measured by the dividend rate paid, if such rate is six percent or more.

The State Tax Commission hereby

DECIDES:

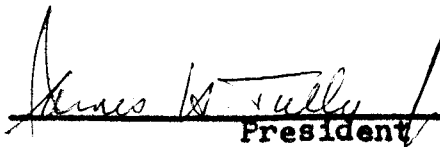
(A) Since the taxable income for each year indicated in (1) was distributed to the stockholders as dividends for Federal income tax purposes, the same amounts should be treated as dividends paid for purpose of computing the tax under Section 183 of the tax law.

(B) The notices of deficiency set forth in (2) are affirmed together with interest in accordance with Section 1084 of Article 27 of the tax law.


Dated: Albany, New York

this 3rd Day of July 1975.

STATE TAX COMMISSION

  
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President

  
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Commissioner

  
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Commissioner