

COPY TO [unclear] 1971
LIT. [unclear]

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of Petitions :

of :

ANDREA LA SALA & SONS, INC. :

FRAKEN BUILDERS, INC. :

for redetermination of deficiencies :

of franchise tax under Article 9-A :

of the tax law for 1967 to 1970, :

inclusive. :

The taxpayers herein having filed petitions for redetermination of deficiencies under Article 9-A of the tax law for 1967 to 1970, inclusive, and a hearing having been held at the office of the State Tax Commission, 2 World Trade Center, New York City, at which hearing I. Greenbaum, certified public accountant, appeared and the record having been duly examined and considered by the State Tax Commission,

It is hereby found:

(1) Andrea La Sala & Sons, Inc. ("La Sala") and its wholly owned subsidiary, Fraken Builders, Inc. ("Fraken"), filed combined returns for 1967 to 1970, inclusive, without receiving prior approval. The Corporation Tax Bureau denied permission to file on a combined basis and asserted added taxes and partially offsetting credits as follows:

<u>Andrea La Sala & Sons, Inc.</u>		
<u>Year</u>	<u>Added Tax</u>	<u>Credit</u>
1967	\$4,529.74	
1968		\$3,406.66
1969	566.82	3,233.17
1970		2,471.91

Fraken Builders, Inc.

<u>Year</u>	<u>Added Tax</u>
1967	\$1,288.26
1968	3,337.91
1968	1,070.92
1969	3,164.42
1969	1,056.45
1970	3,988.65

(2) The parent corporation, La Sala, had been engaged in the masonry subcontracting business. It discontinued such activity during 1968 and became primarily a holding company thereafter, holding the stock of Fraken. The latter was organized for the purpose of owning and operating an apartment house project, the mortgage on which was insured by the Federal Housing Administration ("FHA"). La Sala was the contractor on the FHA project and began construction in 1965.

La Sala reported its income or loss on a completed contract basis for tax purposes. In 1967 it reported income of \$115,504.92 based primarily on completion of a subcontract for George F. Driscoll Company on a project called Lindsay Park Houses. Fraken reported a loss of \$142,919.76 from its rental operation of the FHA project.

In 1968 La Sala reported a loss of \$874.58 based primarily on completion of the \$3,447,216.28 contract for construction of the Fraken FHA project. Fraken reported a loss of \$97,318.71 from its rental operation.

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

"In the discretion of the tax commission, any taxpayer, which owns or controls . . . 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 other such corporations . . . "

The State Tax Commission hereby

DECIDES:

(A) La Sala is entitled to a combined basis beginning with 1968. That was the year of reporting of the completed contract for construction of the Fraken FHA project, and its loss for that year was primarily due to intercompany transactions with its subsidiary. Thereafter, it was primarily engaged in the holding of the stock of its subsidiary.

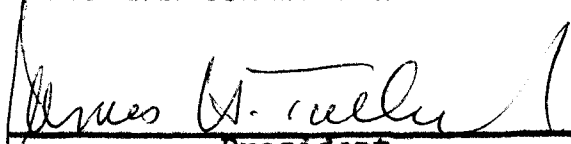
For 1967, the tax liability of the two corporations is more properly reflected on an individual basis since the profit or loss of each was primarily due to its own operations, instead of being due to intercompany transactions. La Sala's profit in 1967 resulted from completion of a subcontract entirely unrelated to the Fraken project. 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 result.

(B) The added tax of \$4,529.74 for 1967 against La Sala and the credit to Fraken of \$1,288.26 for the same year are affirmed, together with interest in accordance with Section 1084 of the tax law. The added taxes and credits for the other years against both corporations are cancelled.


Dated: Albany, New York

this 14th Day of August 1975.

STATE TAX COMMISSION



President



Commissioner



Commissioner