

In the Matter of the Petition

of

LAMPERT COMMUNICATIONS, INC.

AFFIDAVIT OF MAILING

For a Redetermination of a Deficiency or :
a Revision of a Determination or a Refund :
of Franchise tax on Corporations :
Taxes under Article (s) 9-A of the :
Tax Law for the Year (s) or Period(s) 1974.:

State of New York
County of Albany

Carmen Mottolese, being duly sworn, deposes and says that she is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 29th day of September, 1976, she served the within Notice of Decision by (certified) mail upon Lampert Communications, Inc. (representative of) the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows: Lampert Communications, Inc.
770 Lexington Avenue
New York, New York 10021

and by depositing same enclosed in a postpaid properly addressed wrapper in a (post office or official depository) under the exclusive care and custody of the United States Postal Service within the State of New York.

That deponent further says that the said addressee is the (representative of) the petitioner herein and that the address set forth on said wrapper is the last known address of the (representative of the) petitioner.

Sworn to before me this
29th day of September, 1976.

Carmen Mottolese

Janet Busch

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

LAMPERT COMMUNICATIONS, INC.

AFFIDAVIT OF MAILING

For a Redetermination of a Deficiency or
a Revision of a Determination or a Refund
of Franchise tax on Corporations
Taxes under Article 9-A of the
Tax Law for the Year(s) or Period(s) 1974.

State of New York
County of Albany

Carmen Mottolese, being duly sworn, deposes and says that she is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 29th day of September, 1976, she served the within Notice of Decision by (certified) mail upon Martin Halpern & Jonah Blumenfrucht, C.P.A.'s Representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows: Martin Halpern & Jonah Blumenfrucht, C.P.A.'s
c/o Laventhol & Horwath
919 Third Avenue
New York, New York 10022
and by depositing same enclosed in a postpaid properly addressed wrapper in a (post office or official depository) under the exclusive care and custody of the United States Postal Service within the State of New York.

That deponent further says that the said addressee is the (representative of the) petitioner herein and that the address set forth on said wrapper is the last known address of the (representative of the) petitioner.

Sworn to before me this

29th day of September, 1976.

Carmen Mottolese

Janet Mack



STATE OF NEW YORK
DEPARTMENT OF TAXATION AND FINANCE

STATE TAX COMMISSION

TAX APPEALS BUREAU
STATE CAMPUS
ALBANY, N.Y. 12227

ADDRESS YOUR REPLY TO

September 29, 1976

TELEPHONE: (518) 457-3850

Lampert Communications, Inc.
770 Lexington Avenue
New York, New York 10021

Gentlemen:

Please take notice of the **DECISION**
of the State Tax Commission enclosed herewith.

Please take further notice that pursuant to
Section ~~(b)~~ 1090 of the Tax Law, any
proceeding in court to review an adverse deci-
sion must be commenced within 4 months
from the date of this notice.

Inquiries concerning the computation of tax
due or refund allowed in accordance with this
decision or concerning any other matter relative
hereto may be addressed to the undersigned. They
will be referred to the proper party for reply.

Very truly yours,

Paul E. Coburn
Paul E. Coburn
Supervising Tax
Hearing Officer

Enc.

cc: Petitioner's Representative:

Taxing Bureau's Representative:

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition

of

LAMPERT COMMUNICATIONS, INC.

DECISION

for Redetermination of a Deficiency or for
Refund of Franchise Tax on Business
Corporations under Article 9-A of the
Tax Law for the Year 1974.

Petitioner, Lampert Communications, Inc., with offices at
770 Lexington Avenue, New York, New York 10021, has filed a petition
for redetermination of a denial of its claim for refund of corporation franchise
tax paid under Article 9-A of the Tax Law for the year 1974. (File No. 11676).

A formal hearing was held before Edward L. Johnson, Hearing Officer,
at the offices of the State Tax Commission, Two World Trade Center,
New York, New York, on July 14, 1976, at 1:15 P.M. Petitioner appeared
by Martin Helpern and Jonah Blumenfrucht, CPA's. The Corporation Tax
Bureau appeared by Peter Crotty, Esq., (Alexander Weiss, Esq. of counsel).

ISSUE

Whether the compensation paid employees who were not elected or
appointed as officers of the corporation was properly includable in computing
the third alternative corporate tax under the Tax Law, section 210, Subd. 1(a)(3).

FINDINGS OF FACT

1. Petitioner, Lampert Communications, Inc., (hereinafter Lampert), timely filed its New York State Corporation Franchise Tax Report under Article 9-A of the Tax Law for the year 1974 and paid the computed tax of \$4,348.00.

2. On May 30, 1975, petitioner, Lampert, filed a claim for credit or refund of corporation tax paid, stating that in computing the tax due under the income-plus-compensation method, the petitioner had erroneously included salaries paid to certain individuals who were not actually officers. Recomputations were submitted, eliminating \$116,050.00 paid to four persons whom petitioner had included as vice-presidents. Petitioner, Lampert, requested a refund of \$3,133.00, the claimed tax overpayment.

3. On August 8, 1975, the Corporation Tax Bureau sent petitioner, Lampert, a notice of disallowance of its claim.

4. Petitioner, Lampert, filed a petition, dated September 17, 1975, for redetermination of a deficiency or for refund of tax.

5. The four "vice-presidents" whose compensation petitioner, Lampert, sought to exclude in its recomputation of the corporation tax for 1974, were account representatives. Petitioner, Lampert, was an advertising agency. These account representatives were compensated on a commission basis with drawing accounts. They were known in the industry as vice-presidents so as to enhance their prestige with potential customers. Neither the Board of Directors,

nor the executives of petitioner, Lampert, appointed or elected these "vice-presidents" as corporate officers. Their use of stationery and business cards with the title "vice-president" was open and notorious, and was a practice permitted and approved by petitioner, Lampert.

6. Petitioner, Lampert, designated the "vice-presidents" as officers in reporting the compensation to officers on Schedule E of the U.S. Corporation Income Tax Return, Form 1120, for the tax year 1974. Petitioner, Lampert, asserted that these individuals had no general duties or responsibilities within the company but were merely account representatives using a title which was standard in the advertising industry.

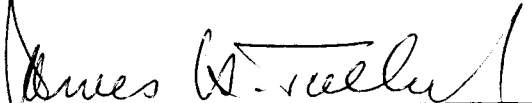
CONCLUSIONS OF LAW

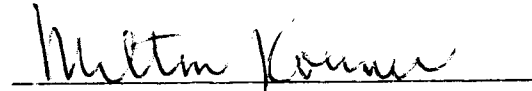
A. That an elected or appointed officer includes any officer, irrespective of title, who is charged with and performs any of the regular functions of any such officer. 20 NYCRR 3.20(c). A regular function of the vice-president of a business corporation is to hold himself out as a vice-president. Here, this holding out is not only approved by the corporation, but admittedly enhances its business expectancies. Persons held out by the corporation as officers in the conduct of business for the corporation may become de facto officers whether de jure or not. 19 Am. Jur. 2d - Corporation #1100. The compensation paid the "vice-presidents" by petitioner, Lampert, was properly includable in the computation of the corporation tax under sec. 210 subd. 1(a)(3) of the Tax Law.


B. That the petition of petitioner, Lampert Communications, Inc., is in all respects denied. The denial of petitioner, Lampert's claim for a refund of corporation tax paid for 1974 is sustained.

DATED: Albany, New York
September 29, 1976

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER