

In the Matter of the Petition

of

CARLL RIVER MARINE, INC.

AFFIDAVIT OF MAILING

For a Redetermination of a Deficiency or :  
a Revision of a Determination or a Refund :  
of Corporation Franchise :  
Taxes under Article (x) 9-A of the :  
Tax Law for the Year(s) ~~xxx Periode(s)~~ :  
1970 through 1974.

State of New York  
County of Albany

John Huhn, being duly sworn, deposes and says that  
~~he~~ is an employee of the Department of Taxation and Finance, over 18 years of  
age, and that on the 11th day of October, 1977, ~~he~~ served the within  
Notice of Decision by (certified) mail upon Carll River Marine, Inc.

~~(representative of)~~ the petitioner in the within proceeding,

by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed


as follows: Carll River Marine, Inc.  
218 Bayview Avenue  
Massapequa, New York 11758

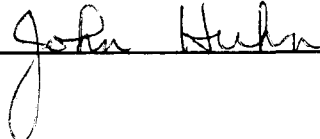
and by depositing same enclosed in a postpaid properly addressed wrapper in a  
(post office or official depository) under the exclusive care and custody of  
the United States Postal Service within the State of New York.

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

11th day of October, 1977.

  
\_\_\_\_\_

  
\_\_\_\_\_



STATE OF NEW YORK  
STATE TAX COMMISSION  
TAX APPEALS BUREAU  
ALBANY, NEW YORK 12227

JAMES H. TULLY JR., PRESIDENT  
MILTON KOERNER  
THOMAS H. LYNCH

**October 11, 1977**

**Carl River Marine, Inc.  
218 Bayview Avenue  
Massapequa, New York 11758**

**Gentlemen:**

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

You have now exhausted your right of review at the administrative level. Pursuant to section ~~(b)~~ **1090** of the Tax Law, any proceeding in court to review an adverse decision by the State Tax Commission can only be instituted under Article 78 of the Civil Practice Laws and Rules, and must be commenced in the Supreme Court of the State of New York, Albany County, within **4 months** from the date of this notice.

Inquiries concerning the computation of tax due or refund allowed in accordance with this decision may be addressed to the Deputy Commissioner and Counsel to the New York State Department of Taxation and Finance, Albany, New York 12227. Said inquiries will be referred to the proper authority for reply.

Sincerely,

**John J. Sollecito**  
**Director**

cc: ~~XXXXXXXXXXXXXXXXXXXX~~  
Petitioner's Representative

Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition :  
of :  
CARLL RIVER MARINE, INC. :  
for Redetermination of a Deficiency or : DECISION  
for Refund of Corporation Franchise Tax :  
under Article 9-A of the Tax Law :  
for the Years 1970 through 1974. :

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Petitioner, Carll River Marine, Inc., 218 Bayview Avenue, Massapequa, New York 11758, filed a petition for redetermination of a deficiency or for refund of corporation franchise tax under Article 9-A of the Tax Law for the years 1970 through 1974. (File No. 16525).

A formal hearing was held before Michael Alexander, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York on May 18, 1977 at 2:45 P.M. The petitioner appeared by its president, James H. Margeson. The Corporation Tax Bureau appeared by Peter Crotty, Esq. (Richard Kaufman, Esq., of counsel).

ISSUE

Whether petitioner, Carll River Marine, Inc., is entitled to a refund of corporation franchise taxes paid by it's president from his own funds, where the corporation was inactive, about to be dissolved, and may possibly have been the subject of dissolution by proclamation in the future.

FINDINGS OF FACT

1. Petitioner, Carll River Marine, Inc., by its president, James H. Margeson, filed New York State Corporation Franchise Tax reports for the calendar years ended December 31, 1970, 1971, 1972 and 1973 on January 1, 1975. A return for the calendar year ending December 31, 1974 was filed December 6, 1974.

2. Petitioner, by its president, James H. Margeson, filed claims for credit or refund of corporation franchise tax paid for the five calendar years described in Finding of Fact "1" above, on January 24, 1976. The amounts paid for which refund was requested were as follows: 1970, \$100.00 with interest of \$22.75 and penalty of \$25.00; for 1971 tax of \$125.00 with interest of \$16.75 and penalty of \$31.25; for 1972, tax of \$125.00 with interest of \$16.80 and an additional charge of \$31.25; for the year ended December 31, 1973 a tax of \$125.00 with interest of \$7.66 and an additional charge of \$31.25; for the year ended December 31, 1974, tax of \$125.00 was paid.

3. By letter of February 11, 1976 to James H. Margeson, the Director of the Corporation Tax Bureau denied petitioner's claims for refund.

4. Petitioner, Carll River Marine, Inc., was incorporated on September 17, 1970. The corporation never did business in New York, never employed personnel and never had capital or assets.

5. No franchise tax reports were filed prior to the reports described in Finding of Fact "1" above. These returns were filed based on the response to an inquiry by Mr. Margeson regarding the liability for corporation franchise taxes and the necessity of such payment of taxes due prior to dissolution of the corporation.

6. Subsequently, Mr. Margeson filed franchise reports and paid all the tax, interest, and penalty from his own personal assets for the corporate liability of petitioner, Carll River Marine, Inc.

7. The failure of the petitioner, Carll River Marine, Inc., to file franchise tax reports and pay the tax due thereon was due to reasonable cause and not willful neglect.

CONCLUSIONS OF LAW

A. That the franchise tax on business corporations imposed pursuant to Article 9-A of the Tax Law imposes such tax for, among other criteria, the privilege of exercising a corporate franchise.

B. That petitioner, Carll River Marine, Inc., was a corporation incorporated in New York State and had the privilege of exercising its corporate franchise.

C. That the tax imposed pursuant to Article 9-A for the taxable years in question was due New York State from the corporation, Carll River Marine, Inc.

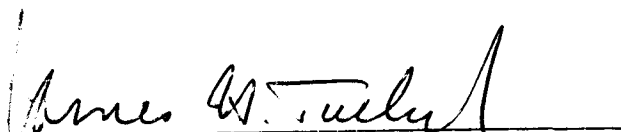
D. That where tax is properly due and paid no refund is due petitioner.

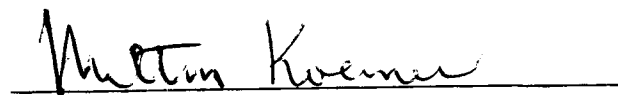
E. That the availability to the State Tax Commission of a dissolution by proclamation pursuant to section 217 of the Tax Law does not relieve a corporation from the tax due pursuant to Article 9-A of the Tax Law; that the dissolution of a corporation is at the discretion of the Tax Commission, which may exercise this discretion to penalize a corporation for a failure to file the required returns; and that such provision is not contained in the Tax Law for the avoidance of tax liabilities by a corporate taxpayer.

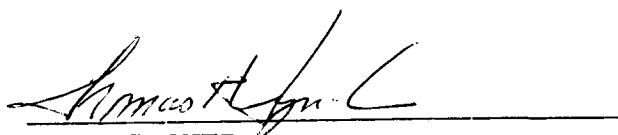
F. That the petition of Carll River Marine, Inc. by its president James H. Margeson, is granted to the extent that the penalty imposed for the taxable years in question is waived; and that except as so granted, the petition is in all other respects denied.

DATED: Albany, New York  
October 11, 1977

STATE TAX COMMISSION

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER