STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

MICRO COMPUTER CORPORATION

AFFIDAVIT OF MAILING

For a Redetermination of a Deficiency or a Revision of a Determination or a Refund of Corporation franchise Taxes under Article(s) 9-A of the Tax Law for the Year(s) ~~or Period(s)~~ Ended June 30, 1971, June 30, 1972 and June 30, 1973

State of New York
County of Albany

Marsina Donnini, 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 16 day of August, 1977, she served the within Notice of Decision by (certified) mail upon Micro Computer Corporation (~~representative of~~) the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows: Micro Computer Corporation
1357 Monroe Avenue
Rochester, New York 14613

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
16 day of August, 1977.

Marsina Donnini

Janet Mack

TA-3 (2/76)

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

MICRO COMPUTER CORPORATION

For a Redetermination of a Deficiency or a Revision of a Determination or a Refund of Corporation franchise Taxes under Article ~~(s)~~ 9-A of the Tax Law for the Year(s) ~~xx Period(s)~~ Ended June 30, 1971, June 30, 1972 and June 30, 1973

AFFIDAVIT OF MAILING

State of New York
County of Albany

Marsina Donnini, 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 16 day of August, 1977, she served the within Notice of Decision by (certified) mail upon a Bernard A. Frank, Esq. (representative of) the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows: Bernard A. Frank, Esq.
Frank & Garrity
Suite 850, Crossroads Office Bldg.
2 Main Street, East
Rochester, New York 14614
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
16 day of August, 19 77

Marsina Donnini

Janet Mack

TA-3 (2/76)

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

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

August 16, 1977

Micro Computer Corporation
1357 Monroe Avenue
Rochester, New York 14613

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(s) **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,

Paul B. Coburn
Supervising Tax
Hearing Officer

cc: Petitioner's Representative

Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
MICRO COMPUTER CORPORATION	:	DECISION
for Redetermination of a Deficiency or for Refund of Corporation Franchise Tax under Article 9-A of the Tax Law for the Years Ended June 30, 1971, June 30, 1972 and June 30, 1973.	:	

Petitioner, Micro Computer Corporation, 1357 Monroe Avenue, Rochester, New York 14613, filed a petition for redetermination of a deficiency or for refund of corporation franchise tax, under Article 9A of the Tax Law for the years ending June 30, 1971, June 30, 1972 and June 30, 1973. (File No. 13975).

A formal hearing was held before Julius E. Braun, Hearing Officer, at the offices of the State Tax Commission, One Marine Midland Plaza, Rochester, New York, on November 17, 1976 at 10:45 A.M. Petitioner appeared by Bernard A. Frank, Esq. The Corporation Tax Bureau appeared by Peter Crotty, Esq. (Richard M. Kaufman, Esq., of counsel).

ISSUE

Whether petitioner, Micro Computer Corporation, was entitled to a business allocation percentage on its income for the fiscal periods ending June 30, 1971, June 30, 1972 and June 30, 1973.

FINDINGS OF FACT

1. Petitioner, Micro Computer Corporation, timely filed a Corporation Franchise Tax Report for the fiscal year ending June 30, 1971. The Corporation Tax Bureau issued no audit adjustment against Micro Computer Corporation for this fiscal period.

2. Micro Computer Corporation timely filed a Corporation Franchise Tax Report for the fiscal year ending June 30, 1972. On December 17, 1973, the Corporation issued a Statement of Audit Adjustment disallowing the claim for a business allocation because petitioner did not have a place of business outside of New York State for franchise tax purposes. A deficiency of $593.00 was imposed.

3. Petitioner, Micro Computer Corporation, timely filed a Corporation Franchise Tax Report for the fiscal year ending June 30, 1973. On December 16, 1974, the Corporation Tax Bureau issued a Statement of Audit Adjustment disallowing the claim for a business allocation, because petitioner did not have a place of business outside of New York State for franchise tax purposes. A deficiency of $5,915.00 was imposed.

4. On June 2, 1975, petitioner, Micro Computer Corporation, filed a Petition for Redetermination of Deficiency or for Refund of Tax for the taxable periods ending June 30, 1971, June 30, 1972 and June 30, 1973.

5. During the periods in issue, petitioner, Micro Computer Corporation, was in the business of leasing 360-40 and 360-30 IBM computers, which were located and leased to the Parker Hanifin Corporation in Cleveland, Ohio. Franchise tax on this equipment was paid to the State of Ohio. Micro Computer Corporation had no employees in Ohio. It paid agents when they were necessary. The Franchise Tax Reports for the periods in issue indicate that no rent was paid as per schedule "G".

CONCLUSIONS OF LAW

A. That the rental by petitioner, Micro Computer Corporation, of equipment outside of New York State did not constitute a regular place of business outside of New York State for franchise tax purposes, in accordance with the meaning and intent of section 210 subd. 3(a)(4) of the Tax Law and former 20 NYCRR 4.11(b). Therefore, petitioner is not entitled to a business allocation for the fiscal periods ending June 30, 1972 and June 30, 1973.

B. That because no audit adjustment was had against petitioner, Micro Computer Corporation, for the fiscal period ending June 30, 1971, it is not necessary to consider same.

C. That the petition of Micro Computer Corporation is denied and the statements of audit adjustments issued December 17, 1973 and December 16, 1974 are sustained.

DATED: Albany, New York
August 16, 1977

STATE TAX COMMISSION

PRESIDENT

COMMISSIONER

COMMISSIONER