

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of :
Alpha Computer Service Corp. :
for Redetermination of a Deficiency or a Revision :
of a Determination or a Refund of :
Corporation Franchise Tax :
under Article 9A of the Tax Law :
for the years 1972 & 1973. :

AFFIDAVIT OF MAILING

State of New York
County of Albany

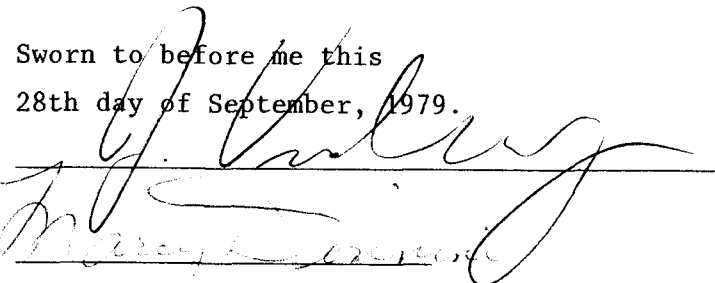
Jay Vredenburg, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 28th day of September, 1979, he served the within notice of Decision by certified mail upon Alpha Computer Service Corp., the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Alpha Computer Service Corp.
226 W. 37th St.
New York, NY 10018

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 petitioner herein and that the address set forth on said wrapper is the last known address of the petitioner.

Sworn to before me this
28th day of September, 1979.



A handwritten signature in cursive script, appearing to read 'Jay Vredenburg', is written over a horizontal line. Below the line, there is a faint, illegible stamp or text.

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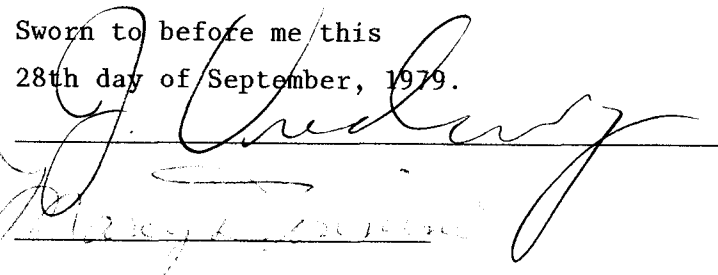
Jay Vredenburg, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 28th day of September, 1979, he served the within notice of Decision by certified mail upon Marvin M. David the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Marvin M. David
230 Park Ave.
New York, NY 10017

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
28th day of September, 1979.



Jay Vredenburg

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

JOHN J. SOLLECITO
DIRECTOR

Telephone: (518) 457-1723

September 28, 1979

Alpha Computer Service Corp.
226 W. 37th St.
New York, NY 10018

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,



cc: Petitioner's Representative
Marvin M. David
230 Park Ave.
New York, NY 10017
Taxing Bureau's Representative

of fact in support of whatever decision it deemed proper, based on evidence previously presented.

ISSUE

Whether petitioner Alpha Computer Service Corporation and its subsidiaries, petitioners Alpha Broadcasting Company, Inc. and Salamanca Broadcasting Company, Inc., should be permitted to file combined franchise tax returns for the fiscal years ended April 30, 1972 and April 30, 1973.

FINDINGS OF FACT

1. Petitioner Alpha Computer Service Corporation ("Alpha Computer") was incorporated under the laws of the State of New York on April 28, 1967. Its principal business activity was the operation of a data processing service bureau. Although Alpha Computer was initially successful, the bankruptcy of several industry leaders caused its management to become concerned about the future of such service bureaus in general, and it decided to diversify by acquiring radio stations.

2. Alpha Computer formed a wholly-owned domestic subsidiary, Salamanca Broadcasting Company, Inc. ("Salamanca"), incorporated under the laws of the State of New York on December 9, 1969. Salamanca's principal business activity was the ownership and operation of a radio station in Salamanca, New York.

3. Alpha Computer also formed a wholly-owned foreign subsidiary, Alpha Broadcasting Company, Inc. ("Alpha Broadcasting"), incorporated under the laws of the Commonwealth of Pennsylvania on February 4, 1971,

and which began doing business in New York State on July 12, 1971. Alpha Broadcasting's principal business activity was the ownership and operation of a radio station in Williamsport, Pennsylvania. Alpha Computer guaranteed a \$113,600.00 chattel mortgage given in connection with the purchase of this station.

4. Alpha Computer had 13 data processing clients in 1969; however, many of the clients subsequently acquired their own computer systems and by December of 1972, Alpha Computer retained only two data processing accounts.

5. Alpha Computer's income from operations for the years at issue was derived from data processing for companies other than Alpha Broadcasting and Salamanca; however, approximately 70% of Alpha Computer's data processing work was performed in the broadcast industry. One of its clients, Music Performance Trust Fund, accounted for approximately 83% of Alpha Computer's net sales for the fiscal year ended April 30, 1972.

6. The operating income of Alpha Broadcasting and Salamanca for the years at issue was from the sale of air time.

7. Alpha Computer provided all of many services for Alpha Broadcasting and Salamanca, such as the following:

- a. General and sales administration.
- b. Accounting.
- c. Federal Communications Commission compliance, including the maintenance and filing of logs.
- d. Collections.
- e. Programming music format.
- f. Audience measurement surveys.
- g. Purchasing of promotional giveaway merchandise.
- h. Preparation of payroll tax and unemployment insurance returns.

It also provided a substantial portion of other services rendered for its said subsidiaries, such as correspondence and broadcast engineering management.

Alpha Computer did not charge its subsidiaries for any of the above-described services.

8. There appears to have been some interchange of personnel and equipment (such as the exchange of music library, mobile units, parts, etc.) between Alpha Broadcasting and Salamanca, but the degree of such interchange has not been clearly established.

9. Alpha Computer filed consolidated United States corporation income tax returns for the fiscal years ended April 30, 1972 and April 30, 1973 with Alpha Broadcasting and Salamanca. It also filed combined New York State franchise tax returns for said years, without receiving prior permission. The Corporation Tax Bureau disallowed the combined returns and computed the tax liability on an individual basis. Notices of deficiency were issued in the following amounts:

<u>Taxpayer</u>	<u>Fiscal Year Ended April 30, 1972</u>	<u>Fiscal Year Ended April 30, 1973</u>
Alpha Computer	\$9,084.62	\$3,859.00
Salamanca	36.59	12.00

No additional tax was found to be due from Alpha Broadcasting, since it was liable only for the minimum tax of \$125.00 on an individual basis for each year. Such minimum tax was paid with the combined returns.

10. Alpha Computer reported gross receipts from services in the amount of \$409,301.00 for the fiscal year ended April 30, 1972 and

\$397,112.00 for the fiscal year ended April 30, 1973, all received from outsiders.

The corporations reported entire net income or loss as follows:

<u>Taxpayer</u>	<u>Fiscal Year Ended April 30, 1972</u>	<u>Fiscal Year Ended April 30, 1973</u>
Alpha Computer	\$104,179.00	\$ 48,341.00
Alpha Broadcasting	(118,257.00)	(28,735.00)
Salamanca	(86,364.00)	(58,495.00)

CONCLUSIONS OF LAW

A. Section 211.4 of the Tax Law authorizes the Tax Commission, in its discretion, to require or permit a domestic parent corporation (e.g., Alpha Computer Service Corporation) and its wholly-owned domestic subsidiary (e.g., Salamanca Broadcasting Company, Inc.) to make a report on a combined basis. This authorization also applies to foreign corporations doing business in New York (e.g., Alpha Broadcasting Co., Inc.). However, no combined report covering a foreign corporation not doing business in New York may be required, unless the Tax Commission deems it necessary (because of intercompany transactions or some agreement, understanding, arrangement, or transaction which distorts income or capital) in order to properly reflect tax liabilities.

B. During the periods at issue, the State Tax Commission provided (by regulation) that in determining whether the tax would be computed on a combined basis, it would consider various factors, including the following:

- (1) Whether the corporations were engaged in the same or related lines of business;
- (2) Whether any of the corporations were in substance merely departments of a unitary business conducted by the entire group;

- (3) Whether the products of any of the corporations were sold to or used by any of the other corporations;
- (4) Whether any of the corporations performed services for, or loaned money to, or otherwise financed or assisted in the operations of any of the other corporations;
- (5) Whether there were other substantial intercompany transactions among the constituent corporations.

(former 20 NYCRR 5.28(b))

The essential elements of these factors have been carried over into the current regulations which were effective for taxable years beginning on or after January 1, 1976 and which provide, in pertinent part:

In deciding whether to permit or require combined reports, the following two (2) broad factors must be met:

- (1) The corporations are in substance parts of a unitary business conducted by the entire group of corporations, and
- (2) There are substantial intercorporate transactions among the corporations.

(20 NYCRR 6-2.3(a) (Emphasis supplied))

The mandatory language of the current regulations takes cognizance of those elements which the Tax Commission has consistently deemed to be the key factors in determining whether combination should be permitted or required, i.e., the unitary nature of the business conducted by the corporations, and whether there were substantial intercorporate transactions among the corporations. (See: Petition of Annel Holding Corp., et al. State Tax Commission, August 2, 1973, Determination confirmed, Annel Holding Corp. v. Procaccino, 77 Misc. 2d 886 (Sup. Ct.

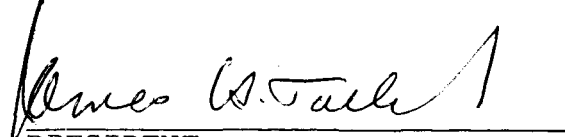
Albany County, 1974); Petition of N. K. Winston Corporation, et al.
State Tax Commission, August 21, 1974.)

Petitioners herein have not only failed to show that they were each, in substance, part of a unitary business, but have also failed to show that there were substantial intercorporate transactions between them. Accordingly, permission to file on a combined basis is denied.

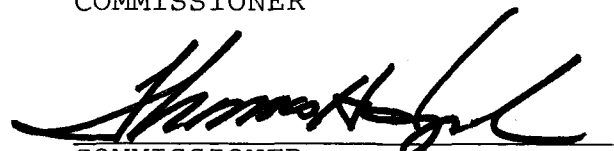
C. That the notices of deficiency issued against Alpha Computer Service Corporation and Salamanca Broadcasting Company, Inc. for the fiscal years of each corporation ended April 30, 1972 and April 30, 1973 are sustained and the petitions are denied.

DATED: Albany, New York
SEP 28 1974

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER



New York State Department of
TAXATION and FINANCE
TAX APPEALS BUREAU

TO.....Paul.Coburn.....

Please file.

ALPHA COMPUTER SERVICE CORP.

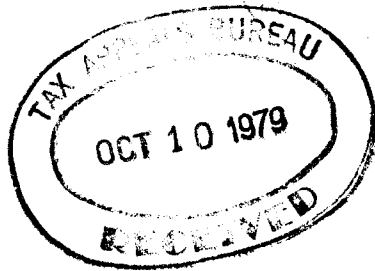
October 22, 1979

M-75 (5/76)

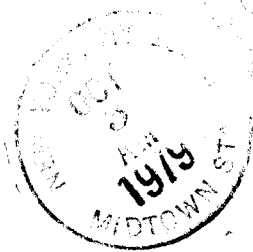
From Robert F. Mulligan

TA-26 (4-76) 25M

STATE OF NEW YORK
Department of Taxation and Finance
TAX APPEALS BUREAU
STATE CAMPUS
ALBANY, N. Y. 12227



Alpha Computer Service Corp.
226 W. 37th St.
New York, NY 10018



JAMES H. TULLY JR., PRESIDENT
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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,



cc: Petitioner's Representative
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Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petitions :
of :
ALPHA COMPUTER SERVICE CORPORATION, :
ALPHA BROADCASTING COMPANY, INC. and :
SALAMANCA BROADCASTING COMPANY, INC. :
for Redetermination of Deficiencies or :
for Refunds of Franchise Tax on Business :
Corporations under Article 9A of the Tax :
Law for the Fiscal Years ended April 30, :
1972 and April 30, 1973. :
:

DECISION

Petitioners, Alpha Computer Service Corporation, Alpha Broadcasting Company, Inc. and Salamanca Broadcasting Company, Inc., filed petitions for redetermination of deficiencies or for refunds of franchise tax on business corporations under Article 9A of the Tax Law for the fiscal years ended April 30, 1972 and April 30, 1973 (File No. 01927).

A formal hearing was held before John J. Genevich, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on August 12, 1974 at 10:00 A.M. Petitioners appeared by Marvin M. David, Esq.

A decision affirming the deficiencies was issued by the State Tax Commission on May 16, 1975, but was annulled by the Supreme Court, Appellate Division, Third Department. Upon appeal to the Court of Appeals, the judgment of the Appellate Division was modified by remitting the matter to the State Tax Commission with instructions to make findings

of fact in support of whatever decision it deemed proper, based on evidence previously presented.

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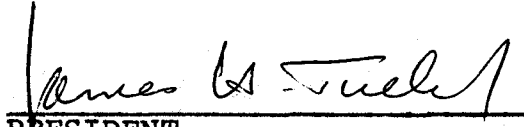
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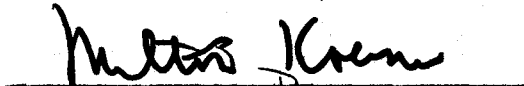
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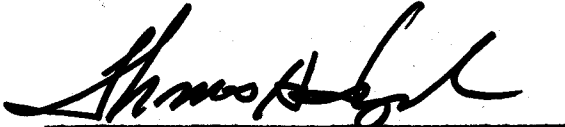
DATED: Albany, New York

STATE TAX COMMISSION

SEP 28 1979


PRESIDENT


COMMISSIONER


COMMISSIONER