

STATE OF NEW YORK
STATE TAX COMMISSION

_____ :
In the Matter of the Petition :
of :
Filmways International, Ltd. :
: **AFFIDAVIT OF MAILING**
for Redetermination of a Deficiency or a Revision :
of a Determination or a Refund of :
Corporation Franchise Tax :
under Article 9-A of the Tax Law :
for the Period 8/31/70 & 3/31/71. :

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 13th day of February, 1980, he served the within notice of Decision by certified mail upon Filmways International, Ltd., the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Filmways International, Ltd.
540 Madison Ave.
New York, NY 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 petitioner herein and that the address set forth on said wrapper is the last known address of the petitioner.

Sworn to before me this
13th day of February, 1980.

Jeanne Krapp

J. Vredenburg

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of :
Filmways International, Ltd. :
for Redetermination of a Deficiency or a Revision :
of a Determination or a Refund of :
Corporation Franchise Tax :
under Article 9-A of the Tax Law :
for the Period 8/31/70 & 3/31/71. :

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 13th day of February, 1980, he served the within notice of Decision by certified mail upon David Z. Rosensweig the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Mr. David Z. Rosensweig
Katz, Leavy, Rosensweig & Sindle
437 Madison Ave.
New York, NY 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
13th day of February, 1980.

Joanne Knapp

J. Vredenburg

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

February 13, 1980

Filmways International, Ltd.
540 Madison Ave.
New York, NY 10022

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:

NYS Dept. Taxation and Finance
Deputy Commissioner and Counsel
Albany, New York 12227
Phone # (518) 457-6240

Very truly yours,

STATE TAX COMMISSION

cc: Petitioner's Representative
David Z. Rosensweig
Katz, Leavy, Rosensweig & Sindle
437 Madison Ave.
New York, NY 10022
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
FILMWAYS INTERNATIONAL LTD. : 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 Fiscal Year Ended August 31, :
1970 and the Period Ended March 31, 1971. :
:

Petitioner, Filmways International Ltd., 540 Madison Avenue, New York, New York 10022, filed a petition for redetermination of a deficiency or for refund of franchise tax on business corporations under Article 9-A of the Tax Law for the fiscal year ended August 31, 1970 and the period ended March 31, 1971 (File No. 11672).

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 October 4, 1977 at 1:15 P.M. Petitioner appeared by David Z. Rosensweig, Esq. The Audit Division appeared by Peter Crotty, Esq. (Andrew Haber, Esq., of counsel).

ISSUE

Whether petitioner had a regular place of business outside of the State other than a statutory office.

FINDINGS OF FACT

1. On March 15, 1973 the Corporation Tax Bureau issued two statements of audit adjustment to Filmways International, Ltd. detailing a tax deficiency for the fiscal year ended August 31, 1970 and the period ended March 31, 1971, based on the Corporation Tax Bureau's belief that Filmways International, Ltd. had failed to adequately document its claim for business allocation.

2. On May 15, 1973 the Corporation Tax Bureau issued two notices of deficiency to Filmways International, Ltd. substantially conforming to the previous statements of audit adjustment. One notice of deficiency was for a tax deficiency for the fiscal year ended August 31, 1970 in the amount of \$6,994.99, plus interest of \$1,049.25, for a total of \$8,044.24. The other notice of deficiency was for a tax deficiency for the period ended March 31, 1971 in the amount of \$311.20, plus interest of \$35.79, for a total of \$346.99.

3. On October 30, 1974, petitioner, Filmways International, Ltd. submitted a bank check in the amount of \$9,341.04 payable to the "NYS Franchise Tax Commissioner."

4. Petitioner, during the tax period in issue, was a wholly-owned subsidiary of Filmways, Inc. Petitioner was in the business of selling the right to show or telecast motion pictures and television series (usually the productions of Filmways, Inc.) for use mainly in overseas markets.

5. Petitioner had one paid employee, its president, Mr. Manny Reiner. Mr. Reiner was a New York resident and had his office in New York at the offices of Filmways, Inc. Mr. Reiner functioned primarily as a salesman, travelling extensively overseas to negotiate and enter into distribution agreements.

6. After making an agreement Mr. Reiner would advise his New York office of the sale. The New York office then prepared a standard form contract for execution and received all payments due thereunder.

7. Then Filmways TV Productions, Inc., a subsidiary of Filmways, Inc., at its offices in California performed all assembly and distribution functions. This included ordering prints of licensed products from the copyright proprietor or its assignee, shipping the prints overseas, servicing any claims from the licensee concerning such prints and receiving and storing the prints from the

licensee after the license had expired. The California location also dubbed in foreign language when petitioner was required to supply material in a language other than the original.

8. The work performed in New York was done for petitioner by Filmways, Inc. personnel, while the work performed in California was done for petitioner by Filmways TV Productions, Inc. personnel. Also, petitioner did not pay rent for its office located in New York and any space it used in California.

9. Petitioner did not own any inventory in New York or California.

CONCLUSIONS OF LAW

A. That Filmways International, Ltd.'s business was the sale or marketing of motion pictures and television series.

B. That Filmways International, Ltd. did not have a bona fide office or other space outside New York which it regularly used to carry on its business as specified under the provisions of section 210.3(a)(4) of the Tax Law prior to its amendment effective January 1, 1978. Therefore, it did not have a regular place of business outside of New York.

C. That 20 NYCRR 4.11, which was effective prior to January 1, 1976, provided as follows:

"Regular Place of Business -- a. If the taxpayer did not have a regular place of business outside New York during the period covered by the report, its business allocation percentage is 100%; in other words, the taxpayer may not allocate any of its business income or capital outside New York.

b. A regular place of business is any bona fide office (other than a statutory office), factory, warehouse, or other space which is regularly used by the taxpayer in carrying on its business. Where as a regular course of business, property of the taxpayer is stored by it in a public warehouse until it is shipped to customers, such warehouse is considered a regular place of business of the taxpayer and, where as a regular course of business, raw material or partially finished goods of a taxpayer are delivered to an independent contractor to be converted, processed, finished or improved, and the finished goods remain in the possession of the independent contractor until shipped to customers, the plant of such independent contractor is considered a regular place of business of the taxpayer. Where as a regular course of business a taxpayer, engaged in omnibus operations, uses a terminal, garage, repair shop, ticket office or any similar

space under an agreement whereby it contributes to the cost of maintaining such facilities or furnishes similar facilities of its own in exchange therefor, such space is considered a regular place of business of the taxpayer. However, a taxpayer does not have a regular place of business solely by contracting for the sale of tickets by an independent contractor on a commission basis.

c. A taxpayer does not have a regular place of business outside the state solely by consigning goods to an independent factor outside the state for sale at the consignee's discretion."

D. That petitioner, Filmways International, Ltd., during the fiscal year ended August 31, 1970 and the period ended March 31, 1971, did not have a bona fide office, factory, warehouse or other space which was regularly used by petitioner in carrying on its business outside of New York State and therefore, petitioner did not have a regular place of business outside the State and thus must allocate one hundred percent of its business income to New York State.

E. That the Audit Division is directed to review the notices of deficiency issued May 15, 1973 and recalculate the interest to October 30, 1974 and refund any overpayment made.


F. That the petition of Filmways International, Ltd. is denied except to the extent provided in Conclusion of Law "C". Except to the extent provided in Conclusion of Law "C", the notices of deficiency issued May 15, 1973 are sustained.

DATED: Albany, New York

FEB 13 1980

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER

COMMISSIONER