STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :

of

Fuchs Realty Corp. :

AFFIDAVIT OF MAILING

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 1963-1967. :

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 November, 1980, he served the within notice of Decision by certified mail upon Fuchs Realty Corp., the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Fuchs Realty Corp.
c/o Steven Fuchs
Knoll Top Rd.
Stony Brook, NY 11790

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 November, 1980.

Deborah A Bank

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

November 28, 1980

Fuchs Realty Corp.
c/o Steven Fuchs
Knoll Top Rd.
Stony Brook, NY 11790

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

Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
FUCHS REALTY CORP.	:	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 Years 1963 through 1967.	:	

Petitioner, Fuchs Realty Corp., c/o Steven Fuchs, Knoll Top Road, Stony Brook, New York 11790, filed a petition for redetermination of a deficiency of franchise tax on business corporations under Article 9-A of the Tax Law for the years 1963 through 1967 (File No. 14400).

A formal hearing was held before, Archibald F. Robertson, Jr., Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on June 24, 1977 at 10:45 A.M. Petitioner appeared by Steven Fuchs. The Audit Division appeared by Peter Crotty, Esq. (Francis Cosgrove, Esq., of counsel).

ISSUES

I. Whether certain corporate deductions taken by petitioner on its corporation franchise tax reports for the years 1963 through 1967, were deductions for personal expenses incurred by petitioner's president, George Fuchs, Sr., and not deductions for corporate expenses incurred by petitioner; such deductions, therefore, being improper and petitioner being liable under section 209(1) of the Tax Law for additional corporation franchise tax for the years 1963 through 1967.

II. Whether, upon an affirmative answer to Issue I, petitioner is liable for fraud penalties under section 217(1) of the Tax Law for 1963, and under section 1085(e) for the years 1964 through 1970 on improper deductions taken in 1963 through 1967.

FINDINGS OF FACT

1. On September 5, 1975, the Corporation Tax Bureau issued notices of deficiency against petitioner, Fuchs Realty Corp. as follows:

Year	Tax Deficiency	Interest	Penalty	Total
1963	$ 192.50	$ 132.52	$ 96.25	$ 421.27
1964	109.45	68.79	54.73	232.97
1965	202.87	115.31	101.44	419.62
1966	295.45	150.21	147.73	593.39
1967	168.16	75.40	84.08	327.64

The deficiencies in tax were due to the disallowance of assertedly fraudulent deductions. The penalties imposed were fraud penalties under section 1085(e) of the Tax Law.

2. During the period at issue, petitioner, Fuchs Realty Corporation (hereinafter "Fuchs Realty"), was a real estate corporation located in Stony Brook, New York. George Fuchs, Sr. was the president, chief operating officer and major stockholder of petitioner during the period herein involved.

3. In 1963 petitioner recorded a $3,500.00 repair and maintenance expense on its books incurred by it for paving work allegedly performed by Lyon-Reboli Paving Contractors, Inc. In 1964, 1965 and 1967, petitioner recorded expenses of $1,990.00, $2,140.00 and $4,982.00 respectively, as having been incurred for paving work allegedly performed on its behalf by Lyon-Reboli Paving Contractors, Inc.

4. Lyon-Reboli Paving Contractors, Inc. did no paving work for petitioner during the period herein involved, nor did it perform any other service for petitioner in that time. On September 5, 1975, the Corporation Tax Bureau issued notices of deficiency to petitioner for a total of $1,994.89, for the periods ended December 31, of 1963, 1964, 1965, 1966 and 1967.

5. Petitioner issued a $3,500.00 check payable to "Lyon-Reboli" on August 3, 1964, for the paving work allegedly performed in 1963 by Lyon-Reboli Paving Contractors, Inc. This check was never received by Lyon-Reboli Paving Contractors, Inc. George Fuchs, Sr. endorsed the check (in the name of "Lyon-Reboli") over to Smithtown Dodge, a car business owned by Mr. Fuchs' son, George Fuchs, Jr. The check was deposited in a bank account of Smithtown Dodge and credited as money owed to George Fuchs, Sr.

6. Petitioner issued another $3,500.00 check on August 8, 1966 to "Lyon-Reboli" for paving work allegedly performed by Lyon-Reboli Paving Contractors, Inc. in 1964 and 1965. The check also was never received by Lyon-Rebloi Paving Contractors, Inc. George Fuchs, Sr. endorsed the check as "Lyon-Reboli" over to George Fuchs Corporation, a company owned by George Fuchs, Jr. The check was deposited in the bank account of George Fuchs Corporation.

7. On October 19, 1966, petitioner issued a $5,000.00 check to Lyon-Reboli Asphalt, Inc. to eliminate the $630.00 balance of money allegedly owed to Lyon-Reboli Paving Contractor, Inc., for work performed for petitioner in 1965. The $4,370.00 remainding was charged as a cash operating expense for 1966. The check was received by Lyon-Reboli Asphalt, Inc. and recorded on its books as a loan from George Fuchs, Sr., for which a note was due.

8. Petitioner issued a $4,986.00 check on March 6, 1968 to "Lyon-Reboli" for work allegedly performed by Lyon-Reboli Paving Contractors, Inc. in 1967.

9. George Fuchs, Sr. asserted that he was an officer of both Lyon-Reboli Paving Contractors, Inc., and Lyon-Reboli Asphalt, Inc. during the period herein involved, authorized to sign corporate checks. Mr. Lyon and Mr. Reboli denied all knowledge of the checks drawn payable to "Lyon-Reboli" by petitioner, and denied as well ever giving George Fuchs, Sr. permission to endorse and dispose of such checks.

10. George Fuchs, Sr. has asserted that the checks described in Findings of Fact 5 through 8 were handled in the manner stated in said Findings as part of a method devised by his accountant for paying Mr. Fuchs monies owed to him by petitioner, Fuchs Realty.

11. Findings of Fact 3 through 9 establish that petitioner wrongfully recorded maintenance and repair expenses on its books which were never incurred. Said findings further establish that checks issued allegedly to pay these non-existent expenses were misdirected to the use of George Fuchs, Sr. The State has also shown that George Fuchs, Sr. had full knowledge of the fraudulent nature of the above series of transactions and was intimately involved in their execution.

12. Petitioner issued Fuchs Realty corporate checks in 1965 to pay for landscaping and painting expenses incurred by George Fuchs, Sr. on his Stony Brook, New York, residence. Petitioner also issued checks in that year to pay for personal gifts and reimbursements made by Mr. Fuchs in 1965. Petitioner issued as well a corporate check to pay for gasoline poured into the gas tank of Mr. Fuch's private car during 1965. All these payments were deducted by petitioner as corporate expenses for utilities and as corporate repair and maintenance.

13. Petitioner issued Fuchs Realty corporate checks in 1966 to pay for certain utility and oil expenses incurred by George Fuchs, Sr. on his Stony Brook residence. Checks for gas placed in Mr. Fuchs' car and for personal gifts made by him in 1966 were also issued by petitioner and deducted as corporate expenses.

14. Petitioner issued Fuchs Realty corporate checks in 1967 to pay for oil and plumbing expenses incurred by George Fuchs, Sr. on his Stony Brook residence. Petitioner also issued checks to pay for personal gifts made by George Fuchs, Sr. in 1967. All these checks were deducted by petitioner as corporate expenses.

15. Petitioner paid no rent to George Fuchs, Sr. for the storage of its books and records at his Stony Brook residence, nor did it pay rent to Mr. Fuchs on any other basis during the period herein involved. George Fuchs, Sr. asserted that payments (described in Findings of Fact 12, 13 and 14) made by petitioner in relation to the upkeep of his Stony Brook residence were made in accordance with "mental allocations" on his part of monies due him in lieu of rent.

16. George Fuchs, Sr. asserted that checks described in Findings of Fact 12, 13 and 14 relating to personal gifts and reimbursements made by him during 1965, 1966 and 1967 were actually payments for services rendered by the recipients of those gifts and reimbursements to petitioner, Fuchs Realty. No evidence was adduced to show that any such services were in fact rendered to petitioner.

17. Findings of Fact 12 through 16 establish that the corporate checks described in said Findings were issued (regardless of the assertions of George Fuchs, Sr.) for the payment of personal expenses incurred by Mr. Fuchs. Those Findings also establish that George Fuchs, Sr. had full knowledge of the personal nature of these expenses and was intimately involved in arranging for their payment by petitioner, Fuchs Realty.

18. Petitioner's president, George Fuchs, Sr., was indicated for and pleaded guilty to a count of filing a false and fraudulent corporate franchise tax report on behalf of petitioner for the year 1965, with intent to evade payment of corporate franchise tax under Articles 9-A and 27 of the Tax Law.

CONCLUSIONS OF LAW

A. That the corporate deductions described in Findings of Fact 5 through 8 and 12 through 14, taken by petitioner on its corporation franchise tax reports for the years 1963 through 1967, were deductions for personal expenses incurred by petitioner's president, and not proper deductions for corporate expenses incurred by petitioner; therefore, petitioner is liable for additional corporation franchise tax under section 209.1 of the Tax Law for the years 1963 through 1967.

B. That petitioner's improper deductions for the years 1963 through 1967 were fraudulently taken; therefore, petitioner is liable for a fraud penalty for 1963 under section 217(1) of the Tax Law and for fraud penalties for the years 1964 through 1967 under section 1085(e) of the Tax Law. Accordingly, the petition of Fuchs Realty Corp. is denied.

DATED: Albany, New York

NOV 28 1980

STATE TAX COMMISSION

James H. Tuck

PRESIDENT

Thomas H. Lee

COMMISSIONER

Francis R. Koenig

COMMISSIONER

NOV 8 1980