

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition :  
of :  
Minigrip, Inc. :  
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 f/y/e 6/30/72-6/30/73. :

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 3rd day of October, 1980, he served the within notice of Decision by certified mail upon Minigrip, Inc., the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

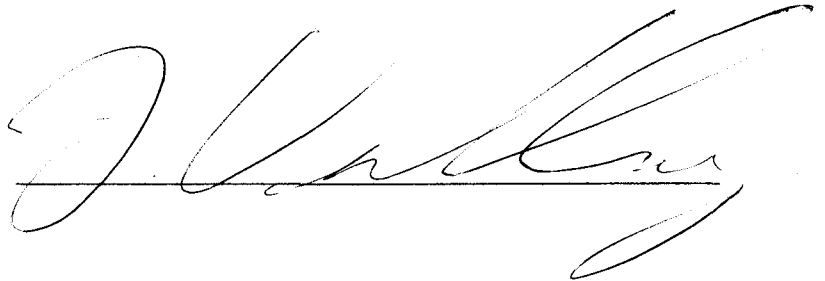
Minigrip, Inc.  
Rte. 303, P.O. Box 33  
Orangeburg, NY 10962

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  
3rd day of October, 1980.

Robert Bank



STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition :  
of :  
Minigrip, Inc. :  
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 f/y/e 6/30/72-6/30/73. :

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 3rd day of October, 1980, he served the within notice of Decision by certified mail upon Leonard B. Salwen the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

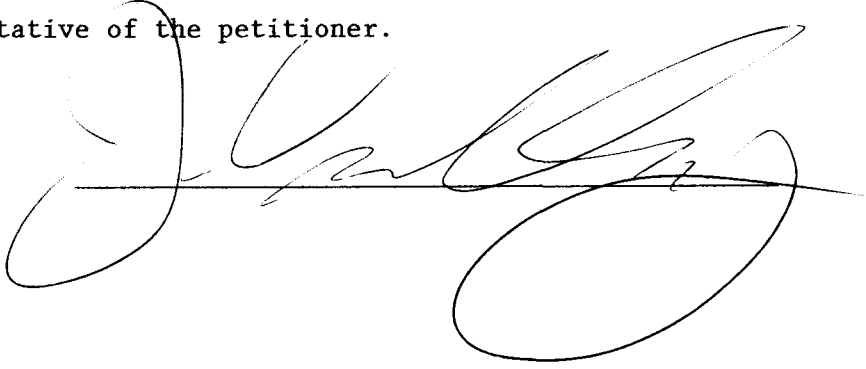
Mr. Leonard B. Salwen  
270 Madison Ave.  
New York, NY 10016

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  
3rd day of October, 1980.

Loebbe Prunk



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

October 3, 1980

Minigrip, Inc.  
Rte. 303, P.O. Box 33  
Orangeburg, NY 10962

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  
Leonard B. Salwen  
270 Madison Ave.  
New York, NY 10016  
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

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

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Petitioner, Minigrip, Inc., P.O. Box 33, Orangeburg, New York 10962, 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 fiscal years ended June 30, 1972 and June 30, 1973 (File No. 13976).

A formal hearing was held before Harry Issler, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on November 17, 1977 at 2:45 P.M. Petitioner appeared by Leonard B. Salwen. The Corporation Tax Bureau appeared by Peter Crotty, Esq. (Alexander Weiss, Esq., of counsel).

ISSUE

Whether petitioner maintained a regular place of business outside New York State for purposes of income allocation.

FINDINGS OF FACT

1. Petitioner, Minigrip, Inc., timely filed New York State corporation franchise tax returns for the fiscal years ending June 30, 1972 and June 30, 1973. Petitioner claimed a business allocation for both years in the original filing.

2. Statements of audit adjustment and notices of deficiency were issued against petitioner for those years, assessing a total tax due of \$21,697.67.

3. Petitioner timely filed petitions for redetermination of corporation franchise tax under Article 9-A of the Tax Law for the fiscal years ended June 30, 1972 and June 30, 1973.

4. Petitioner maintained two warehouses outside New York State, one being in California and another being in Texas.

5. Petitioner testified that some inventory was maintained at two locations outside New York State, one being in California and another being in Texas.

6. Taxpayer offered California corporation income tax returns for each of the petitioned years. In these returns, the only thing reported in the property factor for apportionment was inventory.

7. Petitioner testified that "discretion" as to the inventory rested with the petitioner in the person of the traffic manager, who worked out of the New York offices of the petitioner.

8. Petitioner had no employees outside New York State for the petitioned years.

9. Testimony was offered that the location that petitioner wished to consider a regular place of business, where the inventory was maintained, was the same address of the independent sales representative.

#### CONCLUSIONS OF LAW

A. That 20 NYCRR 4-2.2(c) states that a taxpayer is not considered to have a regular place of business outside New York State solely because it consigns goods to an independent contractor outside the State for sale at the consignee's discretion.

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B. That 20 NYCRR 4-2.2(b) states:

"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...."

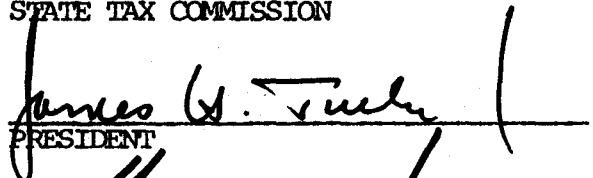
C. Petitioner has failed to establish that it maintained out-of-state warehouses for the years in question. The mere existence of inventory outside New York is insufficient for the purposes of establishing a regular place of business in accordance with the meaning and intent of section 210 subd. 3(a) (4) of the Tax Law.

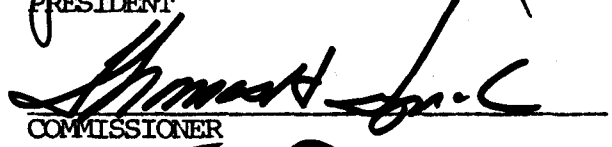
D. The notices of deficiency are hereby sustained in full.

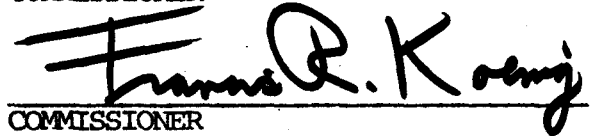
DATED: Albany, New York

OCT 03 1980

STATE TAX COMMISSION

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER

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*James H. [illegible]*  
*[illegible]*  
*[illegible]*

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