

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
Park Swift Parking Corp. :

: 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 Years 1970- 1974. :

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 14th day of August, 1981, he served the within notice of Decision by certified mail upon Park Swift Parking Corp., the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Park Swift Parking Corp.
405 Lexington 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 petitioner herein and that the address set forth on said wrapper is the last known address of the petitioner.

Sworn to before me this
14th day of August, 1981.

Cornie A. Haglund

Jay Vredenburg

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of :
Park Swift Parking Corp. :
: 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 Years 1970- 1974. :

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 14th day of August, 1981, he served the within notice of Decision by certified mail upon Robert B. Gluckman the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Robert B. Gluckman
Underweiser & Underweiser
250 Park Avenue
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
14th day of August, 1981.

Annice A. Haglund

J. Vredenburg

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

August 14, 1981

Park Swift Parking Corp.
405 Lexington Ave.
New York, NY 10017

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
Robert B. Gluckman
Underweiser & Underweiser
250 Park Avenue
New York, NY 10017
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition
of
PARK SWIFT PARKING CORPORATION
for Redetermination of a Deficiency or for
Refund of Corporation Franchise Taxes under
Article 9-A of the Tax Law for the Years 1970
through 1974.

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DECISION
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Petitioner, Park Swift Parking Corporation, 405 Lexington Avenue, New York, New York 10017, filed a petition for redetermination of a deficiency or for refund of corporation franchise taxes under Article 9-A of the Tax Law for the years 1970 through 1974 (File No. 16232).

A continued formal hearing was held before William J. Dean, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on May 31, 1979 at 9:15 A.M. Petitioner, Park Swift Parking Corporation, appeared by Underweiser & Underweiser, Esqs. (Robert B. Gluckman, Esq., of counsel). The Audit Division appeared by Peter Crotty, Esq. (William Fox, Esq., of counsel). Prior formal hearings on this matter had been held on November 16, 1977, March 16, 1978, and July 18, 1978.

ISSUES

I. Whether petitioner is subject to the requirement of Tax Law, Article 9-A, relating to a franchise tax on corporations being annually due on the basis of the corporation's entire net income.

II. Whether, if petitioner is subject to the requirement of Tax Law, Article 9-A, petitioner is entitled to deduct certain "indirect expenses" incurred in the years 1970 through 1974 to arrive at its entire net income.

FINDINGS OF FACT

1. Petitioner, Park Swift Parking Corporation, a New York corporation, filed "New York State Corporation Franchise Tax Report Article 9-A, Tax Law," returns for the period ending June 30 for the years 1970 through 1974. On each return petitioner was described as being "dormant" and paid only the minimum tax.

2. The Corporation Tax Bureau issued statements of audit adjustment to petitioner for the following periods and in the following amounts:

<u>Period Ended</u>	<u>Tax Deficiency Claimed</u>
6/30/70	\$87,136.87
6/30/71	86,039.50
6/30/72	84,586.00
6/30/73	83,461.00
6/30/74	76,349.00

On March 15, 1976, the Audit Division issued notices of deficiency against petitioner in the above amounts, plus interest and additional charges.

3. Petitioner operated about twenty parking lots and parking garages (the lots and garages herein referred to as "parking lots") in New York City. Money collected from parking lots was deposited into petitioner's bank account. From this account petitioner drew checks to pay direct operating expenses such as labor, telephone, electricity, elevator maintenance and insurance.

4. The premises where each parking lot was located was owned by one of these five partnerships: Plaza Management, Wellington Associates, Sutton Associates, Great South Bay Company or Imperial Realty. The partners for Plaza Management, Wellington Associates and Sutton Associates were Sol Goldman and Alex DiLorenzo, Jr. Each had a 50 percent interest in each of these partnerships. Mr. DeLorenzo, Sol Goldman and Irving Goldman were partners in Great South Bay Company and Imperial Realty Company. In Great South Bay

Company, Mr. DiLorenzo and Sol Goldman each had a 37½ percent interest and Irving Goldman had a 25 percent interest. In Imperial Realty Company, Mr. DiLorenzo had a 50 percent interest and Sol Goldman and Irving Goldman each had a 25 percent interest.

5. After paying direct expenses, petitioner made periodic payments of the net remaining amount to the appropriate partnership. The individual partners, in turn, reported their share of the net income received from the partnerships on their individual tax returns.

6. The partnerships, as of the 2nd day of June 1969, had entered into an "Agency Agreement" with petitioner. The "Agency Agreement" provided as follows:

"Know all men by these presents that the undersigned, Imperial Realty Co., a partnership, Plaza Management Co., a partnership, Sutton Associates, a partnership, and Wellington Associates, a partnership, all of the County, City and State of New York, do hereby make, constitute and appoint Park Swift Parking Corp. of 405 Lexington Avenue, New York, New York, their true and lawful agent in connection with the operation of all those certain garages and parking lots now owned or hereafter to be owned by the undersigned, with full power and authority to represent the undersigned at any time prior to the revocation hereof..."

Great South Bay Co. also executed the agreement.

7. Petitioner did not have a separate office of its own but used the offices of Messrs. DiLorenzo, Sol Goldman and Irving Goldman in the Chrysler Building at 405 Lexington Avenue. Petitioner's books were maintained at this office.

8. Petitioner, in its own name, entered into labor agreements with Local 819, International Brotherhood of Teamsters and Local 363, International Brotherhood of Teamsters. A dispute between petitioner and the Garage Employees Union Local No. 272, International Brotherhood of Teamsters, Local 272 Welfare Fund and Local 272 Labor Management Pension Fund relating to

welfare and pension funds went to arbitration and resulted in an award in May, 1974.

9. On petitioner's franchise tax returns for the periods ending June 30, 1973 and June 30, 1974, Sol Goldman is listed as President and Mr. DiLorenzo as Secretary. Sol Goldman signed both returns.

10. At the time petitioner's books were examined by the Corporation Tax Bureau, certain direct expenses, such as labor and insurance, were deducted from petitioner's gross income to arrive at petitioner's net income for purposes of Article 9-A of the Tax Law. No deductions were allowed, however, for "indirect expenses" such as rent, administration, accounting and legal costs, and executive salaries. As to these costs, petitioner was unable to produce documentation to substantiate the expenses.

11. Mr. Jack Lerner, who for forty years has owned and operated parking lots in New York City and has served as a parking lot consultant, testified as an expert witness on petitioner's behalf at the formal hearing that based on his experience, in a typical situation involving parking lots in New York City, approximately 55 percent of the gross income from a parking lot goes to the landlord as rent; approximately 8 percent of the gross income goes for general administrative expenses normally and reasonably attributable to the operation of a parking lot; approximately 2 percent of the gross income goes for accounting and legal expenses; and that a reasonable and customary executive salary would be approximately 5 percent of the gross income.

CONCLUSIONS OF LAW

A. That petitioner is a domestic corporation. Section 209.1 of the Tax Law provides, in applicable part, that "every domestic...corporation...shall

annually pay a franchise tax, upon the basis of its entire net income...". The income derived from the operation of the parking facilities is part of the petitioner's net income and as such forms a part of the basis for the tax.

B. That although petitioner would be entitled to deductions for expenses attributable to rent, general and administrative expenses, legal and accounting expenses, and executive salaries, petitioner was unable to produce documentation to substantiate these indirect expenses. The testimony of petitioner's expert witness as to the normal and usual expenses of the industry does not constitute adequate proof as to this petitioner's indirect expenses. Petitioner has failed to meet the burden of proof imposed on it by section 1089(e) of the Tax Law in establishing its right to deductions for these expenses.

C. That the petition of Park Swift Parking Corporation is denied and the Notice of Deficiency dated March 15, 1976 is sustained.

DATED: Albany, New York

AUG 14 1981

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER

TA 26 (9-79)

STATE OF NEW YORK
State Tax Commission
TAX APPEALS BUREAU
STATE CAMPUS
ALBANY, N. Y. 12227

TAX APPEALS BUREAU
SEP 8 1981
RECEIVED

BIA
9-8-81

NEW YORK, N.Y. 10017



- Mailed, left no address
 - No such number
 - Moved, not forwardable
 - Addressee unknown
- NEW YORK, N.Y. 10017

Park Swift Parking Corp.
405 Lexington Ave.
New York, NY 10017

FORWARDED

229 E 49 St
New York, NY 10017

[Handwritten scribble]

8/21/81
100 E 49 St
New York, NY 10017



REQUEST FOR BETTER ADDRESS

F.D.C.

Requested by <i>J. Vedenling</i>	Unit Tax Appeals Bureau Room 107 - Bldg. #9 State Campus Albany, New York 12227	Date of Request <i>9-8-81</i>
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Please find most recent address of taxpayer described below; return to person named above.

Social Security Number <i>13-2568806 C</i>	Date of Petition <i>76-03-29</i>
Name <i>Park Swift Parking Corp.</i>	
Address <i>405 - Lexington Ave. New York City, N.Y. 10017</i>	

Results of search by Files

<input type="checkbox"/> New address:	
<input type="checkbox"/> Same as above, no better address	
<input checked="" type="checkbox"/> Other:	<i>080 079 P/S - 84</i>

Searched by <i>SL</i>	Section <i>MI</i>	Date of Search <i>9-16-81</i>
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PERMANENT RECORD

FOR INSERTION IN TAXPAYER'S FOLDER

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

August 14, 1981

Park Swift Parking Corp.
405 Lexington Ave.
New York, NY 10017

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Albany, New York 12227
Phone # (518) 457-6240

Very truly yours,

STATE TAX COMMISSION

cc: Petitioner's Representative
Robert B. Gluckman
Underweiser & Underweiser
250 Park Avenue
New York, NY 10017
Taxing Bureau's Representative

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition
of
PARK SWIFT PARKING CORPORATION
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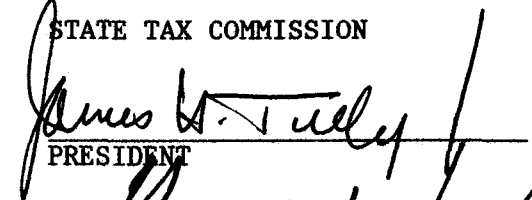


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DATED: Albany, New York

AUG 14 1981

STATE TAX COMMISSION

PRESIDENT

COMMISSIONER

COMMISSIONER