

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition
of
Sussex Hall Inc.

:

:

: 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 Year 1972 & 1973 :

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 5th day of June, 1981, he served the within notice of Decision by certified mail upon Sussex Hall Inc., the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Sussex Hall Inc.
2611 West 2nd St.
Brooklyn, NY 11223

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
5th day of June, 1981.

Conni R. Haglund

J. Vredenburg

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of :
Sussex Hall Inc. :

: 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 Year 1972,1973

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 5th day of June, 1981, he served the within notice of Decision by certified mail upon Nelson J. Greenberg the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

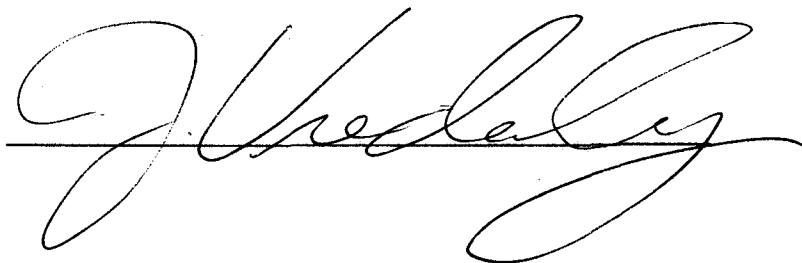
Mr. Nelson J. Greenberg
Spahr, Lachner, Berk & Naimer
3000 Marcus Ave.
Lake Success, NY 11040

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
5th day of June, 1981.

Carmie P. Hagedorn



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

June 5, 1981

Sussex Hall Inc.
2611 West 2nd St.
Brooklyn, NY 11223

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
Nelson J. Greenberg
Spahr, Lachner, Berk & Naimer
3000 Marcus Ave.
Lake Success, NY 11040
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
SUSSEX HALL, INC.	:	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	:	
1972 and 1973.	:	

Petitioner, Sussex Hall, Inc., 2611 West Second Street, Brooklyn, New York 11223, 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 years 1972 and 1973 (File No. 17795).

A formal hearing was held before Edward L. Johnson, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on August 24, 1978 at 9:15 A.M. Petitioner appeared by Spahr, Lachner, Berk & Naimer, CPA's (Nelson J. Greenberg, CPA). The Audit Division appeared by Peter Crotty, Esq. (William Fox, Esq., of counsel).

ISSUE

Whether a portion of interest paid by petitioner upon the refinancing of a mortgage was properly deemed interest indirectly attributable to subsidiary capital and as such, includible in entire net income.

FINDINGS OF FACT

1. On December 15, 1975, the Audit Division issued to petitioner, Sussex Hall, Inc., notices of deficiency asserting additional franchise taxes due for 1972 and 1973, scheduled as follows:

5. The average amounts of advances to subsidiaries made by petitioner in 1972 and 1973 were \$857,529.00 and \$791,979.00, respectively.

6. In the normal course of business of a real estate company, such as petitioner, it is customary to refinance mortgages from time to time, as the mortgage market permits.

CONCLUSIONS OF LAW

A. That section 208.9(b)(6) of the Tax Law provides that entire net income of the corporate taxpayer shall be determined without the deduction or exclusion of:

"in the discretion of the tax commission, any amount of interest directly or indirectly and any other amount directly attributable as a carrying charge or otherwise to subsidiary capital or to income, gains or losses from subsidiary capital."

This disallowance prevents the taxpayer from reaping a double benefit, since section 209.9(a)(1) allows the corporation to exclude income from subsidiary capital.

B. That subdivision 4 of section 208 furnishes the definition of subsidiary capital:

"The term 'subsidiary capital' means investments in the stock of subsidiaries and any indebtedness from subsidiaries, exclusive of accounts receivable acquired in the ordinary course of trade or business for services rendered or for sales of property held primarily for sale to customers, whether or not evidenced by written instrument, on which interest is not claimed and deducted by the subsidiary for purposes of taxation under articles nine-a, nine-b, nine-c...". (Emphasis added.)

C. That the average amounts of advances to subsidiaries for the years at issue exceeded, by substantial sums, the notes payable by petitioner for loans to its subsidiaries for those years. It is thus entirely reasonable to conclude that some of the proceeds received through the refinancing of petitioner's mortgage to the Lincoln Savings Bank of Brooklyn were utilized to acquire or retain subsidiary capital. Consequently, a proportionate part of the interest

paid by petitioner on the refinancing is indirectly attributable to subsidiary capital, in the proportion that petitioner's investments in and advances to subsidiaries bear to its total assets. Matter of World Wide Volkswagen Corp., State Tax Commission, April 30, 1974; Matter of Norton Co., State Tax Commission, May 18, 1973; Matter of Texaco, Inc., State Tax Commission, December 22, 1971.

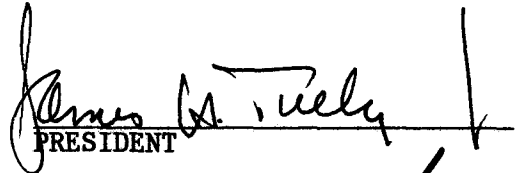
D. That in calculating the appropriate amount of interest expense indirectly attributable to subsidiary capital, account must be taken of: the original amount of the mortgage to the Lincoln Savings Bank, less amortization, and the interest payable thereon; and the indebtedness, and interest payable thereon, incurred by petitioner for the purpose of making loans to its subsidiaries.

E. That the petition of Sussex Hall, Inc. is granted to the extent indicated in Conclusion of Law "D"; that the notices of deficiency issued December 15, 1975, are to be modified accordingly; and that except as so modified, the deficiencies are in all other respects sustained.

DATED: Albany, New York

JUN 5 1981

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER