

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
Buckley & Company, Inc. :
for Redetermination of a Deficiency or a Revision :
of a Determination or a Refund of Corporation Tax :
under Article 9A & 27 of the Tax Law for the Year :
1978. :
_____ :

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 11th day of June, 1982, he served the within notice of Decision by certified mail upon Buckley & Company, Inc., the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Buckley & Company, Inc.
Attn: Robert R. Buckley
1317 S. Juniper St.
Philadelphia, PA 19147

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
11th day of June, 1982.

Annice A. Haglund

Jay Vredenburg

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

June 11, 1982

Buckley & Company, Inc.
Attn: Robert R. Buckley
1317 S. Juniper St.
Philadelphia, PA 19147

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
Law Bureau - Litigation Unit
Albany, New York 12227
Phone # (518) 457-2070

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

BUCKLEY & COMPANY, INC.

DECISION

for Redetermination of a Deficiency or for
Refund of Corporation Franchise Tax under
Articles 9A and 27 of the Tax Law for the
Year 1978.

Petitioner, Buckley & Company, Inc., 1317 South Juniper Street,
Philadelphia, Pennsylvania, 19147, filed a petition for redetermination of a
deficiency or for refund of Corporation Franchise Tax under Articles 9A and
27 of the Tax Law for the year 1978 (File No. 33372).

Petitioner has waived a formal hearing and submits its case for decision
by the State Tax Commission based on the record as it exists. After due
consideration of the record, the Commission renders the following decision.

ISSUE

Whether the late filing of petitioner's 1978 tax report was due to
reasonable cause such that additional charges imposed against petitioner for
late filing may be abated.

FINDINGS OF FACT

1. Petitioner, Buckley & Company, Inc., ("Buckley") was incorporated
under the laws of Pennsylvania in November, 1928, and is a contractor operating
primarily in the Philadelphia, Pennsylvania area.

2. Buckley joined in many joint venture - partnership agreements. Among
these was included the ownership of a ten percent (10%) interest in Steers,

Spearin, Yonkers, Buckley ("Steers, Spearin"), a partnership doing business in New York State.

3. Buckley's Corporation Franchise Tax Report (Form CT-3) for the tax year 1978 was due to be filed on or before March 15, 1979. On March 14, 1979, Buckley filed an application for a three (3) month extension of the time within which to file its franchise tax report for tax year 1978. Buckley later requested that the time within which to file said report be extended to October 15, 1979.

4. On line one (1) of its application for extension (Form CT-5) dated March 14, 1979, Buckley's preceding year's tax (1977) was shown as \$599.00. However, Buckley's 1977 tax report (Form CT-3) showed a tax liability (at line 6) of \$9,363.00.

5. Buckley did file its Corporation Franchise Tax Report for tax year 1978 on October 19, 1979. Tax liability as shown on this report (at line 6) was \$7,766.00.

6. On January 23, 1980, the Audit Division issued to Buckley a Notice and Demand for Payment of Corporation Tax Due in the following amounts:

tax computed	\$ 7,766.00
interest	386.29
additional charge	<u>2,016.39</u>
total	\$10,168.68

The Notice showed \$9,651.00 as the amount already paid by Buckley, leaving an amount due of \$517.68.

7. On January 2, 1981, Buckley filed a Claim for Credit or Refund of Corporation Tax Paid (Form CT-8) seeking a refund of the above imposed additional charges totalling \$2,016.39. This claim for credit or refund was subsequently denied by the Audit Division on March 25, 1981.

8. On April 29, 1981, Buckley filed a petition contesting the above denial of its claim for credit or refund. Buckley does not contest the tax or interest shown as due on the Notice and Demand dated January 23, 1980, but only seeks abatement of the additional charges amounting to \$2,016.39.

9. By a letter dated September 16, 1981, Buckley, through its representatives Pannell Kerr Forster CPA's (Raymond N. Skadden, Partner), waived a formal hearing and submitted its case for decision by the State Tax Commission on the record as it exists.

10. Buckley asserts it maintained no books or records of Steers, Spearin, and hence could not ascertain the extent to which there was business income reportable by Buckley in New York State until such information was made available by Steers, Spearin. Buckley states it did not receive such information until well after the end of 1978, and therefore late filing of its 1978 return was due to reasonable cause.

11. The Audit Division argues, by contrast, that Buckley should have paid on March 15, 1978, either one hundred percent (100%) of its previous year's taxes (1977) or ninety percent (90%) of its taxes estimated to be due for 1978. Since this was not done, Buckley's extensions of time within which to file were not valid and the additional charges (\$2,016.39) imposed from March 15, 1978 were proper and should be upheld.

CONCLUSIONS OF LAW

A. That pursuant to section 211.1 of the Tax Law petitioner's 1978 tax report was due to be filed on or before March 15, 1979, unless on or before that date petitioner had filed an application for extension of time within

which to file its report and paid on or before such filing the amount properly estimated as its tax.

B. That Regulations of the State Tax Commission provide:

"Properly estimated tax. (Tax Law, 213, subd. 1) (a) A taxpayer applying for an automatic three month extension for filing its tax report must pay on or before the date its report is required to be filed, without regard to any extension of time, its properly estimated tax. The estimated tax paid, or balance thereof, will be deemed properly estimated if the tax paid is either:

- (1) not less than 90 percent of the tax as finally determined, or
- (2) not less than the tax shown on the taxpayer's report for the preceding taxable year, if such preceding year was a taxable year of 12 months." (20 NYCRR 7-1.3)

C. That since petitioner did not properly estimate and pay taxes on or before March 15, 1979 (the due date for filing its 1978 report) in accordance with the requirements of section 211.1 of the Tax Law and 20 NYCRR 7-1.3, petitioner did not have a valid extension of time within which to file its report.

D. That petitioner's 1978 report, due on March 15, 1979 but not filed until October 19, 1979 was filed late, and thus was subject to the additional charges imposed.

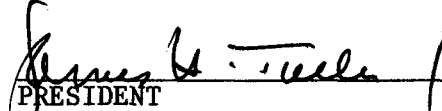
E. That in view of the availability of procedures such as the foregoing whereby petitioner could have availed itself of valid extensions of time within which to file its report, petitioner's late filing based on the unavailability of certain records and information was not due to reasonable cause such as would be grounds for abatement of the additional charges.

F. That the petition of Buckley & Company, Inc., is hereby denied and the disallowance of its claim for credit or refund is sustained.


DATED: Albany, New York

JUN 11 1982

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER