

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
Howard Johnson Company :
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 1973 & 1974. :

AFFIDAVIT OF MAILING

State of New York
County of Albany

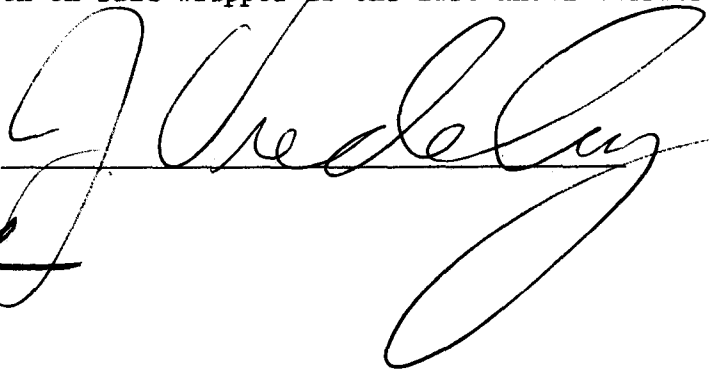
Jay Vredenburg, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 22nd day of October, 1982, he served the within notice of Decision by certified mail upon Howard Johnson Company, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:


Howard Johnson Company
250 Granite St.
Braintree, MA 02184

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
22nd day of October, 1982.




NOTICED TO ADMINISTER
OATHS PURSUANT TO TAX LAW
SECTION 174

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
Howard Johnson Company :
AFFIDAVIT OF MAILING
for Redetermination of a Deficiency or a Revision :
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State of New York
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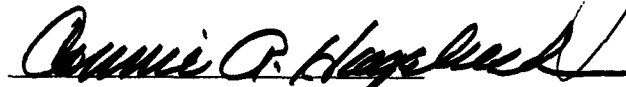
Jay Vredenburg, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 22nd day of October, 1982, he served the within notice of Decision by certified mail upon Robert G. King the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Robert G. King
Howard Johnson Company
250 Granite St.
Braintree, MA 02184

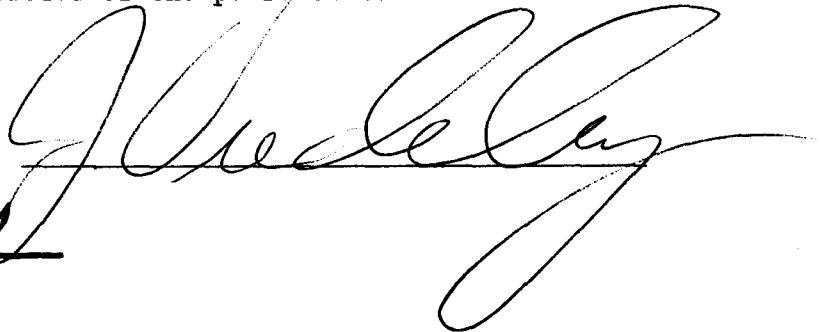
and by depositing same enclosed in a postpaid properly addressed wrapper in a (post office or official depository) under the exclusive care and custody of the United States Postal Service within the State of New York.

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
22nd day of October, 1982.



AUTHORIZED TO ADMINISTER
OATHS PURSUANT TO TAX LAW
SECTION 174



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

October 22, 1982

Howard Johnson Company
250 Granite St.
Braintree, MA 02184

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
Robert G. King
Howard Johnson Company
250 Granite St.
Braintree, MA 02184
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition
of
HOWARD JOHNSON COMPANY
for Redetermination of a Deficiency or for
Refund of Corporate Franchise Tax under
Article 9-A of the Tax Law for the Years
1973 and 1974.

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DECISION

Petitioner, Howard Johnson Company, 250 Granite Street, Braintree, Massachusetts 02184, filed a petition for redetermination of a deficiency or for refund of corporate franchise tax under Article 9-A of the Tax Law for the years 1973 and 1974 (File No. 29092).

Howard Johnson Company has requested the State Tax Commission to issue a decision in this matter without a formal hearing.

The State Tax Commission hereby issues the following decision based upon the record as it is presently constituted.

ISSUE

Whether or not income from short-term notes constitutes income from investment capital.

FINDINGS OF FACT

1. Petitioner, Howard Johnson Company was incorporated in the State of Maryland on March 10, 1961. It began business in New York State in 1961. It has been and is engaged in the business of operating restaurants and motor lodges.

2. Petitioner filed reports of franchise tax imposed on business corporations under Article 9-A of the Tax Law for the years 1973 and 1974 on which it reported no investment income.

3. Petitioner subsequently filed amended franchise tax reports for 1973 and 1974 on which it reported investment income of \$4,033,460.00 and \$4,159,230.00, respectively.

4. Petitioner filed a timely claim for refund of franchise taxes for 1973. The Audit Division approved part of the refund, but also denied said refund to the extent of \$4,953.00. The reduction was due to the fact that the Division disallowed the treatment of certain commercial paper as investment capital, thereby increasing petitioner's investment allocation percentage and changing the interest earned on said commercial paper from investment income to business income.

5. Petitioner filed a timely claim for refund of franchise taxes for 1974. The Audit Division approved part of the refund, but also denied said refund to the extent of \$10,485.00. The reduction was due to the fact that the Division disallowed the treatment of certain commercial paper as investment capital, thereby increasing petitioner's investment allocation percentage and changing the interest earned on said commercial paper from investment income to business income. (In addition, the Division claimed that petitioner failed to allocate to New York certain preferred stock of American Telephone and Telegraph Company. This adjustment, however, does not appear to be at issue.)

6. Petitioner timely filed a petition with respect to the disallowance of the commercial paper as investment capital.

7. The commercial paper was reported on schedules attached to petitioner's corporation franchise tax reports as follows:

COMMERCIAL PAPER
HOWARD JOHNSON COMPANY
1973

	MARKET	FACE	DATE		DAYS OWNED IN 1973
	VALUE		PUR.	SOLD	
Schenley	492908	500000	11/02/72	02/05/73	36
Schenley	492833	500000	11/02/72	02/06/73	37
Virginia Electric & Power	497580	500000	11/30/72	01/03/73	3
Lone Star	497500	500000	01/04/72	02/05/73	32
Weyerhaeuser	497422	500000	01/04/72	02/06/73	33
Del Monte	497500	500000	01/04/72	02/05/73	32
Weyerhaeuser	497344	500000	01/04/72	02/07/73	34
Weyerhaeuser	996094	1000000	01/05/72	01/30/73	25
Del Monte	499347	500000	01/02/72	01/10/73	8
S.S. Kresge Company	997708	1000000	01/11/72	01/26/73	15
Weyerhaeuser	994556	1000000	02/26/72	03/30/73	32
Johns Manville	994556	1000000	02/26/72	03/30/73	32
Pot. Elec. Power	997500	1000000	05/31/72	06/12/73	12
Lone Star Gas	997500	1000000	05/31/72	06/12/73	12
Weyerhaeuser	1987500	2000000	05/30/72	06/29/73	30
GMAC	500000	500000	12/28/72	12/31/73	3
Chrysler Fin. Corp.	1000000	1000000	09/11/73	06/07/74	112
Houston Medical Center	2799000	2800000	10/03/73	06/22/74	89

COMMERCIAL PAPER
HOWARD JOHNSON COMPANY
1974

	FAIR MARKET	FACE	DATE		DAYS OWNED IN 1974
	VALUE		PUR.	SOLD	
Chrysler Fin. Corp.	1000000	1000000	09/11/73	06/07/74	158
Houston Medical Center	2799000	2800000	10/03/73	06/28/74	179
Schenley	973792	1000000	01/03/74	04/15/74	102
Wheeling Leasing	1953236	2000000	01/07/74	04/08/74	91
McGraw-Edison	972625	1000000	01/08/74	04/26/74	108
Wheeling Leasing	966250	1000000	01/09/74	05/24/74	135
J.C. Penney Fin. Co.	2127660	2000000	01/28/74	10/25/74	270
Sears Roebuck Acceptance Co.	2127660	2000000	01/28/74	10/25/74	270
Montgomery Ward Credit	1063830	1000000	01/28/74	10/25/74	270
CIT Finance Co.	1063578	1000000	01/29/74	10/25/74	269
Montgomery Ward Credit	1063578	1000000	02/05/74	11/01/74	269
Manufacturers Hanover Co.	1000286	1000000	04/22/74	04/23/74	1

CONCLUSIONS OF LAW

A. That the term "investment income" means income from investment capital.
(Section 208.6 Tax Law).

B. That the term "investment capital" is defined in section 208.5 of the
Tax Law as follows:

"The term 'investment capital' means investments in stocks,
bonds and other securities, corporate and governmental, not held for
sale to customers in the regular course of business..."

C. That section 3.31(c) of the Ruling of State Tax Commission with Respect
to the Franchise Tax on Business Corporations issued March 14, 1962 (effective
for the years at issue) provides that the term "other securities" does not
include corporate obligations not commonly known as securities, such as real
property or chattel mortgages, contracts of sale, purchase money obligations,
short-term notes, bills of lading, bills of exchange and other commercial
instruments.

D. That the commercial paper referred to in Finding of Fact No. 7 is
comprised of short-term notes and does not constitute "other securities" within
the meaning and intent of subdivision 5, section 208 of the Tax Law. (Inter-
national Harvester Company v. State Tax Commission, 58 A.D.2d 125.)

E. That the petition of Howard Johnson Company for the years 1973 and
1974 is hereby denied.

DATED: Albany, New York

OCT 22 1982

STATE TAX COMMISSION

ACTING

PRESIDENT

COMMISSION

COMMISSIONER