

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :  
of :  
Metropolitan Life Insurance Co. :

AFFIDAVIT OF MAILING

for Redetermination of a Deficiency or a Revision :  
of a Determination or a Refund of Franchise Tax on :  
Insurance Corporations under Articles 9 and 27 of :  
the Tax Law for the Quarterly Periods Ended June 30, :  
1954 through March 31, 1956; June 30, 1958 through :  
September 30, 1968; and March 31, 1969 through :  
September 30, 1971. :

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 17th day of March, 1982, he served the within notice of Decision by certified mail upon Metropolitan Life Insurance Co., the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Metropolitan Life Insurance Co.  
One Madison Ave.  
New York, NY 10010

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  
17th day of March, 1982.

*Carroll A. Hagedorn*

*J. Vredenburg*

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition :  
of :  
Metropolitan Life Insurance Co. :

AFFIDAVIT OF MAILING

for Redetermination of a Deficiency or a Revision :  
of a Determination or a Refund of Franchise Tax :  
on Insurance Corporations under Articles 9 and 27 :  
of the Tax Law for the Quarterly Periods Ended :  
June 30, 1954 through March 31, 1956; June 30, :  
1958 through September 30, 1968; and March 31, :  
1969 through September 30, 1971. :

State of New York  
County of Albany

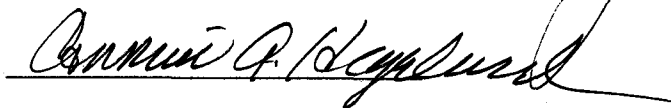
Jay Vredenburg, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 17th day of March, 1982, he served the within notice of Decision by certified mail upon Laurence Goldfein the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

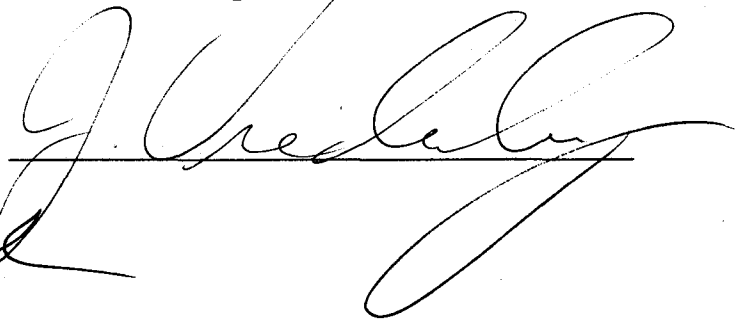
Laurence Goldfein  
Roberts & Holland  
30 Rockefeller Plaza  
New York, NY 10020

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  
17th day of March, 1982.





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

March 17, 1982

Metropolitan Life Insurance Co.  
One Madison Ave.  
New York, NY 10010

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  
Laurence Goldfein  
Roberts & Holland  
30 Rockefeller Plaza  
New York, NY 10020  
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition	:	
of	:	
METROPOLITAN LIFE INSURANCE COMPANY	:	DECISION
for Redetermination of a Deficiency or for	:	
Refund of Franchise Tax on Insurance Corpora-	:	
tions under Articles 9 and 27 of the Tax Law	:	
for the Quarterly Periods Ended June 30, 1954	:	
through March 31, 1956; June 30, 1958 through	:	
September 30, 1968; and March 31, 1969 through	:	
September 30, 1971.	:	

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Petitioner, Metropolitan Life Insurance Company, One Madison Avenue, New York, New York 10010, filed petitions for redetermination of deficiencies or for refund of franchise tax on insurance corporations under Articles 9 and 27 of the Tax Law for the quarterly periods ended June 30, 1954 through March 31, 1956; June 30, 1958 through September 30, 1968; and March 31, 1969 through September 30, 1971 (File No. 29476).

In a letter dated April 13, 1981, petitioner by its attorneys, Roberts & Holland, Esqs. (Laurence Goldfein, Esq., of counsel) waived a formal hearing and consented to submission of this matter to the State Tax Commission.

ISSUES

I. Whether petitioner is entitled to refunds of taxes paid, as well as cancellation of deficiencies computed, upon its contributions to group life and accident and health insurance plans for its employees and agents.

II. Whether petitioner is entitled to refunds of taxes paid on the portion of the cost of life, accident and sickness insurance benefits borne by its employees and agents.

III. Whether petitioner is entitled to refunds of taxes computed and paid upon terminal dividends.

FINDINGS OF FACT

1. Petitioner, Metropolitan Life Insurance Company ("Metropolitan"), timely filed quarterly calendar reports remitting payments for the franchise taxes due for the privilege of doing business in New York in the calendar quarters ending June 30, 1954 through September 30, 1955. Included in these remittances were the taxes measured by Metropolitan's contributions to the group life, and accident and health insurance plans for its employees and agents ("employer contributions").

2. On or about September 4, 1956, Metropolitan filed an Application for Revision or Refund of Franchise Tax, seeking refund or credit of taxes calculated and paid on such employer contributions. A similar application was filed on or about December 17, 1956, for the quarters ended December 31, 1955 and March 31, 1956.

3. Following review of Metropolitan's quarterly reports for the periods ended June 30, 1958 through September 30, 1968 and March 31, 1969 through September 30, 1971, the Audit Division issued notices of assessment or notices of deficiency setting forth additional tax due for all of such periods. Metropolitan timely filed applications for revision or petitions in opposition to such notices, on the ground that employer contributions were not includable in the basis for the franchise tax imposed by section 187 of Article 9.

4. On January 9, 1958, the Board of Conferees of the Corporation Tax Bureau recommended that the taxes as originally reported and paid for the periods June 30, 1954 through March 31, 1956 be corrected, showing a refund was due petitioner for each such quarterly report for employer contributions to

their employees' welfare plans for a total proposed credit of \$100,248.67.

This recommendation was submitted to the State Comptroller for review.

5. The Comptroller declined to act on the aforesaid refund recommendation. Thereupon, by letter dated August 8, 1958, Counsel to the Audit Division presented this question to the Attorney General. An Opinion was issued by the Attorney General on February 17, 1960, ruling that such employer contributions were subject to tax.

6. Subsequent to the decision of the Court of Appeals in Mutual Life Insurance Co. v. State Tax Commission [32 N.Y.2d 348 (1973)], the Audit Division advised petitioner, by letter dated July 26, 1974 and signed by J.J. Genevich, Principal Corporation Tax Examiner:

"Based on the Court of Appeals decision in the Mutual Life Insurance Company case..., credit will be issued for the quarters ended 6/30/54 through 3/31/56... and the Notices of Assessment and Notices of Deficiencies for the quarters ended 6/30/58 through 9/30/71... will be cancelled."

7. On or about August 19, 1974, Metropolitan filed amendments to its applications for revision or refund for the periods ended June 30, 1954 through March 31, 1956, adding to the original claims regarding employer contributions separate claims for refund of the taxes computed on the portion of the cost of life, accident and sickness insurance benefits borne by its employees and agents ("employee contributions"). On or about September 24, 1973, Metropolitan had filed similar amendments to its applications for revision or petitions for all the remaining periods at issue.

8. In October, 1974 the Audit Division recommended issuance of refunds for taxes paid grounded on employee contributions to their welfare plans and transmitted the file to the Comptroller for review.

9. On or about April 15, 1975, Metropolitan received the refunds requested in its amended petitions for the periods ended June 30, 1970 through September 30, 1971.

10. As to the remaining quarterly periods at issue, the Comptroller held these employee contribution refund claims in abeyance and has never issued the employee contribution refunds recommended by the Audit Division.

11. Metropolitan thereafter made a direct request to the Comptroller for refunds for taxes grounded on employee contributions to their welfare plans. On May 7, 1976 Counsel to the Comptroller informed Metropolitan that the refunds would not be issued, on procedural grounds. Subsequently, on July 1, 1977, Counsel to the Comptroller denied Metropolitan's requests for refunds for employee contributions to the welfare plans.

12. On or about August 15, 1978, Metropolitan filed further amendments to its applications and petitions for the captioned periods, asserting an additional request for refund grounded on tax overpayments derived from failure to deduct terminal dividends from the taxable base for each period.<sup>1</sup> (Terminal dividends are extra dividends paid under Insurance Law section 216.1 upon the termination of life insurance policies by death, maturity or surrender.) None of these requested refunds has been granted.

#### CONCLUSIONS OF LAW

A. That as to Metropolitan's contributions to the cost of life, accident and sickness insurance benefits for its employees and agents, refunds have

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<sup>1</sup> Metropolitan stated in its second amended applications for the periods ended June 30, 1954 through March 31, 1956 that it received refunds based upon employer contributions for said periods on or about October 23, 1974.

been issued for taxes calculated and paid on such contributions for the periods ended June 30, 1954 through March 31, 1956; as to the remaining periods, for each of which a notice of assessment or notice of deficiency was issued to petitioner by the Audit Division, all such notices have been cancelled. Nothing further need be determined or decided with regard to the first issue raised.

B. That section 1087(e) of Article 27, effective for taxable years or periods ending on or after December 31, 1964, provides that, with certain exceptions, "no credit or refund shall be allowed or made... after the expiration of the applicable period of limitation specified in this article, unless a claim for credit or refund is filed by the taxpayer within such period." The "applicable period of limitation" is prescribed by subdivisions (a) and (f) of such section:

"Claim for credit or refund of an overpayment of tax under article nine, nine-a, nine-b or nine-c shall be filed by the taxpayer within three years from the time the return was filed or two years from the time the tax was paid, whichever of such periods expires the later...". Section 1087(a).

"If a notice of deficiency for a taxable year has been mailed to the taxpayer under section one thousand eighty-one and if the taxpayer files a timely petition with the tax commission under section one thousand eighty-nine, it may determine that the taxpayer has made an overpayment for such year...". Section 1087(f).

Metropolitan filed timely applications or petitions for the quarterly periods ended December 31, 1964 through September 30, 1968 and March 31, 1969 through September 30, 1971, in which it failed to assert claims for refund as to tax payments made in respect to employee contributions. The time for filing claims for refund pursuant to section 1087(a) and for filing a petition pursuant to section 1089(b) on such ground has passed. The question becomes



whether Metropolitan's late amendments to its applications and petitions are permissible under the rule of United States v. Andrews, 302 U.S. 517 (1937).

"Where a claim which the Commissioner could have rejected as too general, and as omitting to specify the matters needing investigation, has not misled him but has been the basis of an investigation which disclosed facts necessary to his action in making a refund, an amendment which merely makes more definite the matters already within his knowledge, or which, in the course of his investigation, he would naturally have ascertained, is permissible. On the other hand, a claim which demands relief upon one asserted fact situation, and asks an investigation of the elements appropriate to the requested relief, cannot be amended to discard that basis and invoke action requiring examination of other matters not germane to the first claim." *Id.* at 524.

See also Commissioner v. Dallas's Estate, 110 F. 2d 743 (2d Cir. 1940).

The applications and petitions for the periods ended December 31, 1964 through September 30, 1968 and March 31, 1969 through September 30, 1971 as originally filed referred to Metropolitan's contributions to the cost of life, accident and sickness insurance benefits for its employees and agents. The amendments which set forth claims for refund for the periods ended December 31, 1964 through September 30, 1968 and March 31, 1969 through March 31, 1970 based upon employee contributions were so integrally related to the original ground for refund as to be considered timely made, and such claims are granted.

Mutual Life Insurance Co. v. State Tax Commission, *supra*.

C. That Metropolitan's applications for revision for the periods ended June 30, 1954 through March 31, 1956 and June 30, 1958 through September 30, 1964 are governed by Article 9 of the Tax Law. Subdivision (1) of section 198 provides in pertinent part:

"If an application for revision of an account be filed with the tax commission by any corporation against whom an account is stated within two years from the time such account shall have been audited and stated..., the tax commission shall grant a hearing thereon, and if it shall

be made to appear upon any such hearing by evidence submitted to it that any such account or payment included taxes or other charges which could not have been lawfully demanded, or that payment has been illegally made or exacted of any taxes or other charges, or if it appears that the tax as originally assessed was less than should have been exacted, the tax commission shall resettle the same according to law and the facts by increasing or diminishing the taxes and other charges, and adjust the accounts accordingly..."

The above-quoted language is substantially similar to the concluding lines of the first unnumbered paragraph of section 374. It has been held that the filing of an application under section 374 is merely the method prescribed to secure the hearing and that new matter, including a claim for refund, may be introduced at such hearing for the first time. Matter of City Bank Farmers Trust Co. v. Graves, 259 A.D. 68 (3d Dept.), affd. 287 N.Y. 547 (1941).

The amendments to the applications for the periods ended June 30, 1954 through March 31, 1956 and June 30, 1958 through September 30, 1964 were permissible under Article 9 and may be considered on their merits. Those claims based upon employee contributions to benefit plans are granted. Mutual Life Insurance Co., *supra*.

D. That insurance companies were allowed as a deduction from the tax imposed under former section 187:

"[d]ividends on such direct business, including unused or unabsorbed portions of premium deposits paid or credited to policyholders, but not including deferred dividends paid in cash to policyholders on maturing policies, nor cash surrender values." (Emphasis supplied.)

Terminal dividends, or premium overcharges returned to policyholders or their beneficiaries as dividends upon the termination of certain life insurance policies, are not "deferred dividends paid in cash to policyholders on maturing policies" and therefore were deductible by Metropolitan in computing its franchise taxes. In accordance with the Letter Ruling of the Insurance

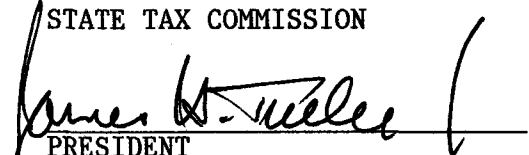
Department dated July 1, 1980, and the agreement and stipulation between petitioner and the Audit Division, petitioner's refund claims relating to terminal dividends are hereby granted.

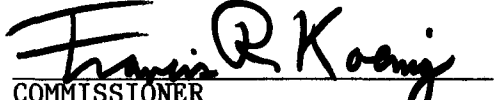
E. That the petitions of Metropolitan Life Insurance Company are granted and the notices of assessment and notices of deficiency are cancelled in full.


DATED: Albany, New York

MAR 17 1982

STATE TAX COMMISSION

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER