

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of

C. V. Starr Investors, 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 Years 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 11th day of February, 1982, he served the within notice of by certified mail upon C. V. Starr Investors, Inc, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

C. V. Starr Investors, Inc
102 Maiden Lane
New York, NY 10005

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 February, 1982.

Annice A. Haglund

Jay Vredenburg

STATE OF NEW YORK
STATE TAX COMMISSION

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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 11th day of February, 1982, he served the within notice of by certified mail upon Ronald M. Blau, the representative of the petitioner in the within proceeding, enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

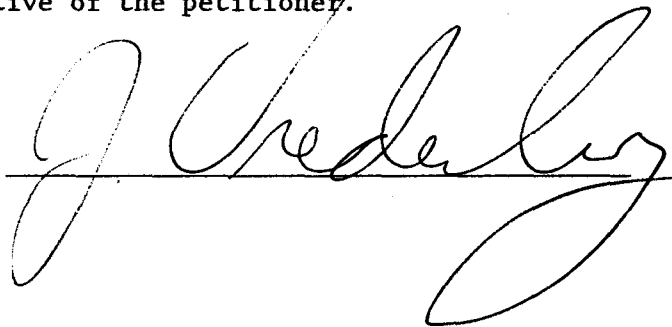
Ronald M. Blau
Gompers & Blau
160 Broadway
New York, NY 10038

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
11th day of February, 1982.





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

February 11, 1981

C. V. Starr Investors, Inc
102 Maiden Lane
New York, NY 10005

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
Ronald M. Blau
Gompers & Blau
160 Broadway
New York, NY 10038
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition

of

C. V. STARR INVESTORS, 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, C. V. Starr Investors, Inc., 102 Maiden Lane, New York, New York 10005, 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. 20190).

A formal hearing was held before Doris Steinhardt, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on May 19, 1981 at 1:15 P.M. Petitioner appeared by Gompers & Blau (Ronald Blau, CPA). The Audit Division appeared by Ralph J. Vecchio, Esq. (Irwin Levy, Esq., of counsel).

ISSUES

I. Whether the Audit Division properly denied petitioner permission to file combined franchise tax reports with its parent corporation, C. V. Starr & Co., Inc., for the reason that the corporations were engaged in unrelated lines of business.

II. Whether the Audit Division properly treated all income reported by petitioner as business income.

FINDINGS OF FACT

1. On February 2, 1976, the Audit Division issued to petitioner, C. V. Starr Investors, Inc. ("Investors") two statements of audit adjustment asserting additional franchise taxes due under Article 9-A of the Tax Law for the years 1972 and 1973, detailed as follows:

<u>YEAR</u>	<u>TAX</u>	<u>INTEREST</u>	<u>CREDIT APPLIED FROM PARENT CORPORATION</u>	<u>BALANCE</u>
1972	\$45,109.00	\$ 9,739.03	\$25,597.13	\$29,250.90
1973	<u>43,031.00</u>	<u>6,063.07</u>	<u>3,582.43</u>	<u>45,511.64</u>
	\$88,140.00	\$15,802.10	\$29,179.56	\$74,762.54

The deficiencies asserted had two bases: the Division's refusal to allow petitioner to file combined reports with its parent corporation, C. V. Starr & Co., Inc. ("C. V. Starr"); and treatment of all reported income as business income, since petitioner did not enumerate any investment capital at Schedule D of its reports.

2. Investors, incorporated under the laws of Delaware on November 4, 1965, is a wholly-owned subsidiary of C. V. Starr. It was inactive until December 27, 1971, on which date it was activated for the sole purpose of holding the investments of the parent corporation in certain limited partnerships (which had interests in real estate) and in a brokerage firm. Such investments had previously been held and managed by a department of the parent corporation. The same persons who had managed the investments and functioned as decision-makers continued to do so, but as officers of Investors.

3. C. V. Starr is, in essence, a service corporation. Most of its subsidiaries are engaged in insurance-related businesses, as risk takers, brokers or managers. The parent directs and guides the subsidiaries; its income is primarily the result of services rendered to and dividends received from its subsidiary corporations.

4. Investors, considered alone and not as part of the group comprised of its parent and sister companies, incurred a net operating loss in 1974 in the amount \$886,532.00. Petitioner argued that the overall tax effect of compelling it to file separate reports for 1972 through 1975 is de minimis: losses sustained in 1974 and 1975 would be available for carryback to the years at issue, thereby virtually eliminating the deficiencies asserted.

5. For 1972 petitioner reported investment income of \$179,625.00 and business income of \$307,304.00. Comparable figures for 1973 were \$67,058.00 and \$394,729.00, respectively. Petitioner did not enumerate its investment capital on Schedule D of its reports for those years.

6. All Investors' assets and liabilities were transferred to its parent on June 30, 1976.

CONCLUSIONS OF LAW

A. That subdivision 4 of section 211 of the Tax Law authorizes the Tax Commission, in its discretion, to require or permit a domestic parent corporation and its wholly-owned domestic subsidiary to make a report on a combined basis. This authorization also applies to foreign corporations doing business in New York. However, no combined report covering a foreign corporation not doing business in New York may be required, unless the Tax Commission deems such a report necessary, because of intercompany transactions or some agreement, understanding, arrangement or transaction which distorts income or capital, in order to properly reflect tax liabilities.

B. That during the periods at issue, the State Tax Commission provided by regulation, that in determining whether the tax would be computed on a combined basis, it would consider various factors, including the following:

- (1) Whether the corporations were engaged in the same or related lines of business;

- (2) Whether any of the corporations were in substance merely departments of a unitary business conducted by the entire group;
 - (3) Whether the products of any of the corporations were sold to or used by any of the other corporations;
 - (4) Whether any of the corporations performed services for, or loaned money to, or otherwise financed or assisted in the operations of any of the other corporations;
 - (5) Whether there were other substantial intercompany transactions among the constituent corporations.
- Former 20 NYCRR 5.28(b).

The essential elements of these factors have been carried over into the current regulations which were effective for taxable years beginning on or after January 1, 1976, and which provide, in pertinent part:

"In deciding whether to permit or require combined reports the following two (2) broad factors must be met:

- (1) the corporations are in substance parts of a unitary business conducted by the entire group of corporations, and
- (2) there are substantial intercorporate transactions among the corporations." 20 NYCRR 6-2.3(a).

The mandatory language of the current regulations takes cognizance of those elements which the Tax Commission has consistently deemed to be the key factors in determining whether combination should be permitted or required, i.e., the unitary nature of the business conducted by the corporations, and whether there were substantial intercorporate transactions among the corporations. Matter of Annel Holding Corp. et al., State Tax Commission, August 2, 1973, determination confirmed, Annel Holding Corp. v. Procaccino, 77 Misc. 2d 886 (Sup. Ct. Albany Co. 1974); Matter of N. K. Winston Corp. et al., State Tax Commission, August 21, 1974; Matter of Alpha Computer Service Corporation et al., State Tax Commission, September 28, 1979; Matter of Montauk Improvement, Inc. and Montauk Country Club, Inc., State Tax Commission, September 28, 1979.

These factors must be given particular emphasis, although all five factors of former 20 NYCRR 5.28(b) must be considered.

C. That the Audit Division, by its answer and arguments propounded at the hearing, limited the resolution of the combined report issue to the question whether petitioner and its parent corporation satisfied the first factor of the cited regulation. Petitioner did not present evidence relevant to the remaining four factors; indeed, it was never placed on notice that it would be expected to do so.

D. That failure to satisfy only one of the five factors, especially one not considered key to the determination, is insufficient ground to deny petitioner leave to file a combined report with its parent.

Further, petitioner's sole purpose and activity was the ownership and management of its parent corporation's investments, an important component of the insurance industry. The Audit Division thus improperly denied petitioner permission to file on a combined basis with C.V. Starr & Co., Inc. See Matter of American International Group, Inc. et al., State Tax Commission, July 3, 1981.

E. That subdivision 6 of section 208 defines investment income for purposes of Article 9-A as income from investment capital. Petitioner failed to describe the investment capital which constituted the source of the investment income reported. The Audit Division therefore appropriately treated all income reported as business income.

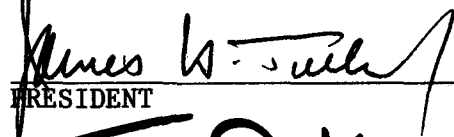
F. That the petition of C. V. Starr Investors, Inc. is granted to the extent indicated in Conclusion of Law "D"; that the deficiencies are to be


modified accordingly; and that except as so modified, the deficiencies are in all other respects sustained.

DATED: Albany, New York

FEB 11 1982

STATE TAX COMMISSION


RESIDENT


COMMISSIONER


COMMISSIONER