

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 :
 Franchise Tax under Article 9A & 27 of the Tax Law :
 for the Year 1979. :
 _____ :

AFFIDAVIT OF MAILING

State of New York
County of Albany

David Parchuck, 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 June, 1983, 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: Howard J. Hausen
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
17th day of June, 1983.

David Parchuck
Kathy Pfaffenbach

[Signature]

AUTHORIZED TO ADMINISTER
OATHS PURSUANT TO TAX LAW
SECTION 174

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

June 17, 1983

Buckley & Company, Inc.
ATTN: Howard J. Hausen
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 Law 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
Building #9 State Campus
Albany, New York 12227
Phone # (518) 457-2070

Very truly yours,

STATE TAX COMMISSION

cc: Petitioner's Representative

Taxing Bureau's Representative

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

3. Buckley's Corporation Franchise Tax Report (Form CT-3) for 1979 was due to be filed on or before March 15, 1980. On March 14, 1980, Buckley filed an application for a three (3) month extension of the time within which to file its franchise tax report for 1979.

4. On line one (1) of its application for extension (Form CT-5), Buckley's preceding year's tax (1978) was shown as \$7,766.00. Buckley remitted \$3,058.00 with its application for extension, resulting from Buckley's estimate of its 1979 taxes (\$4,000.00) plus twenty-five percent (25%) of such estimate as a first installment for 1980 (\$1,000.00), less prepayments (\$1,942.00).¹

5. Buckley filed its Corporation Franchise Tax Report for 1979 on September 16, 1979. Tax liability as shown on this report (at line 6) was \$41,228.00. Buckley remitted \$77,500.00 with this report, in payment of its 1979 tax plus a prepayment on its 1980 tax liability.

6. On February 17, 1981, the Audit Division issued to Buckley a Notice and Demand for Payment of Corporation Tax Due as follows:

Tax computed	\$ -0-
Interest	1,760.44
Additional charge	<u>10,513.14</u>
Total	\$12,273.58

7. By a letter dated March 25, 1981, the Audit Division advised Buckley that its request for extension (Form CT-5) was not valid in that the amount remitted by Buckley with its request was not equal to either (at least) ninety percent of Buckley's taxes as finally determined for 1979 or one hundred percent of its taxes for 1978. This letter further advised that the interest

¹ Accordingly, line 9 of Buckley's 1979 Franchise Tax Report (Form CT-3) reflected prepayments of \$5,000.00 (\$3,058.00 plus \$1,942.00).

and additional charges were assessed for late filing of Buckley's report and late payment of its taxes for 1979.

8. By a letter dated May 18, 1981, the Audit Division advised Buckley that \$40,272.00 (listed as an additional prepayment at line 7(b) of Buckley's 1979 report) had been erroneously carried forward to 1980 as a credit, and that such amount of credit for 1980 should be reduced to \$29,189.22. This adjustment results from reducing Buckley's 1979 credits (payments plus a carryover) by amounts due for 1979 (tax plus interest and additional charges), as follows:²

Paid with Report (CT-3)	\$77,500.00	
Paid with Application for Extension (CT-5)	3,058.00	
Carryover (total)	<u>1,942.00</u>	
Total Credits (1979)		\$82,500.00
Tax due per Report (CT-3)	\$41,228.00	
Interest (late payment)	1,589.64	
Additional Charge (late filing & late payment)	9,493.14	
First Installment (for 1980)	<u>1,000.00</u>	
Total Due (1979)		<u>53,310.78</u>
Carryover Credit (to 1980)		<u>\$29,189.22</u>

9. On April 29, 1981, Buckley filed a petition seeking a refund of the additional charges paid (\$9,493.14), stating thereon that disallowance (of a claim for refund) had been assured by telephone. Buckley does not contest the interest assessed and paid (\$1,589.64), and only seeks abatement and refund of the additional charges.

10. By a letter dated February 10, 1982, 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.

² Interest and additional charges (\$1,589.64 and \$9,993.14, respectively) totalling \$11,082.78, reflect a recomputation of such amounts as were originally shown to be due on the Notice and Demand dated February 17, 1981.

11. 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 1979, and that late filing of its 1979 return was thus due to reasonable cause. Buckley also notes its "...good faith by its voluntarily reporting this business activity in New York, even though (Buckley) was only indirectly involved". Finally, Buckley states the substantial prepayment included in its 1979 report was made in an effort to prevent a similar penalty in 1980.

CONCLUSIONS OF LAW

A. That pursuant to section 211.1 of the Tax Law, petitioner's 1979 tax report was due to be filed on or before March 15, 1980, 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, 1980 (the due date for filing its 1979 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 1979 report, due on March 15, 1980 but not filed until September 16, 1980, 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, including specifically the option of paying one hundred percent of the preceding year's tax, 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 (Matter of Buckley & Company, Inc., State Tax Commission, June 11, 1982; see also Matter of Berkshire Handkerchief Co., State Tax Comm., October 1, 1981).


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

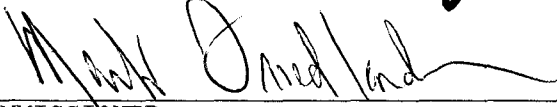
DATED: Albany, New York

STATE TAX COMMISSION

JUN 17 1983


PRESIDENT


COMMISSIONER


COMMISSIONER