

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
Chemical New York Corporation : AFFIDAVIT OF MAILING

for Redetermination of a Deficiency or a Revision :
of a Determination or a Refund of Corporation Tax :
under Article 32 of the Tax Law for the Years 1975 :
and 1976. :

State of New York
County of Albany

Connie Hagelund, being duly sworn, deposes and says that she is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 2nd day of September, 1983, she served the within notice of Decision by certified mail upon Chemical New York Corporation, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:


Chemical New York Corporation
20 Pine Street
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
2nd day of September, 1983.





AUTHORIZED TO ADMINISTER
OATHS PURSUANT TO TAX LAW
SECTION 174

STATE OF NEW YORK

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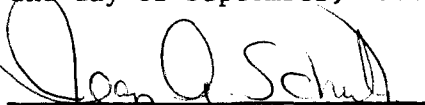
Connie Hagelund, being duly sworn, deposes and says that she is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 2nd day of September, 1983, she served the within notice of Decision by certified mail upon Richard J. Hiegel the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Richard J. Hiegel
Cravath, Swaine & Moore
One Chase Manhattan Plaza
New York, NY 10005

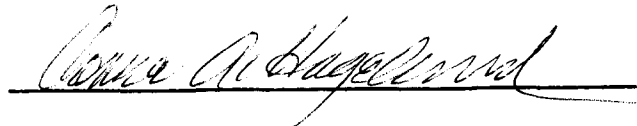
and by depositing same enclosed in a postpaid properly addressed wrapper in a (post office or official depository) under the exclusive care and custody of the United States Postal Service within the State of New York.

That deponent further says that the said addressee is the 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
2nd day of September, 1983.



AUTHORIZED TO ADMINISTER
OATHS PURSUANT TO TAX LAW
SECTION 174



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

September 2, 1983

Chemical New York Corporation
20 Pine Street
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 & 1468 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
Richard J. Hiegel
Cravath, Swaine & Moore
One Chase Manhattan Plaza
New York, NY 10005
Taxing Bureau's Representative

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition
of
CHEMICAL NEW YORK CORPORATION
for Redetermination of a Deficiency or for
Refund of Corporation Tax under Article 32
of the Tax Law for the Years 1975 and 1976.

DECISION

Petitioner, Chemical New York Corporation, 55 Water Street, New York, New York 10041, filed a petition for redetermination of a deficiency or for refund of corporation tax under Article 32 of the Tax Law for the years 1975 and 1976 (File No. 34044).

A formal hearing was held before Robert F. Mulligan, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York on September 15, 1982 at 1:15 P.M., with final briefs to be submitted by December 20, 1982. Petitioner appeared by Cravath, Swaine & Moore (Richard J. Hiegel, Esq., of counsel). The Audit Division appeared by Paul B. Coburn, Esq. (Irwin Levy, Esq., of counsel).

ISSUE

Whether petitioner is liable for a penalty for failure to timely file a corporation tax return for 1975, due to an invalid extension of time.

FINDINGS OF FACT

1. On March 15, 1976, petitioner, Chemical New York Corporation, filed an "Application for 3 Month Extension for Filing Tax Return" for the calendar year 1975. The application indicated petitioner's net estimated tax, including surcharge, to be \$7,524,428.37 and stated that this amount, plus the first

installment for calendar 1976, \$1,447,005.46, were offset by three payments of estimated tax, including carryover credit. Accordingly, no payments were remitted with the application. Subsequently, petitioner requested an additional three month extension to September 15, 1976. On September 15, 1976, petitioner filed its return for 1975 showing a tax of \$10,419,800.42 plus the first installment for 1976 of \$1,447,005.46, for a total of \$11,866,805.88, less prepayments of \$8,973,253.83, for a balance due of \$2,893,552.05. Petitioner paid this amount plus interest from March 15 to September 15.

2. On March 18, 1977, the Audit Division issued a Statement of Audit Adjustment, asserting interest of \$2,108.80 for underestimation of tax for the period July 15, 1975 through March 15, 1976, penalty for underpayment of tax for the period March 15, 1976 through September 15, 1976 (\$2,893,552.05 at 25½ percent) of \$737,855.77, plus interest of \$122,975.96 for the period March 15, 1976 through September 15, 1976. The adjustment was made "for failure to properly estimate the final tax on "your July CT-400 card, penalty for failure to timely file a final return due to an invalid extension and interest on the payment with your final report." Petitioner paid interest of \$122,975.96, but contested the other charges. A Notice of Deficiency was subsequently issued and the amounts asserted above (less interest paid) were collected from petitioner by withholding a portion of a franchise tax refund due to it for the calendar year 1976. Petitioner subsequently filed claims for credit or refund in the amount of \$778,526.40, plus interest, based upon the Audit Division's actions.¹

3. Petitioner is a bank holding company incorporated in Delaware. It files a New York State tax return under Article 32 of the Tax Law with its

¹ The interest of \$2,108.80 was not treated at the hearing and is apparently not at issue.

subsidiaries, one of which is Chemical Bank. Because of the size and complexity of petitioner's operations, it has followed the practice of requesting extensions of time to file its federal and New York State and New York City tax returns until the September 15th following whichever calendar year is involved. It generally bases the first three required declaration payments on the prior year's tax liability, with the fourth payment (which is usually made after the close of the taxable year, when petitioner has a better understanding of its liability) bringing it up to 100 percent.

The payments made for 1975 were apparently as follows:

March 15, 1975	\$2,065,000	25% of estimated 1974
July 15, 1975	\$2,065,000	25% of estimated 1974
October 15, 1975	\$2,600,000	to bring amount up to 75% of actual 1974
January 15, 1976	<u>\$2,241,434</u>	to bring amount up to 100% of actual 1974
Total	<u>\$8,971,434</u>	

4. As noted in Finding of Fact "1", on March 15, 1976, petitioner estimated its tax liability for 1975 to be \$7,524,428.37 and requested an extension. Since petitioner had already paid \$8,971,434.00,² the balance of \$1,447,006.00 was attributed by petitioner to the first quarter of 1976. The estimated figure of \$7.5 million³ was reviewed by Price Waterhouse, petitioner's auditors, and appears in petitioner's annual report for 1975. The same figure was reported on form 10K filed with the Securities and Exchange Commission and was reported to banking regulatory authorities.

5. As stated in Finding of Fact "1", on September 15, 1976, petitioner filed its tax return for 1975 showing a tax liability of \$10.4 million. The

² The record is not clear as to why this figure differs from the figure of \$8,973,253.83 reported on the return (Finding of Fact 1).

³ Amounts will hereafter be rounded to nearest 1/10th of a million.

difference of \$2.9 million between what had been estimated in March and what was reported in September was due to the fact that Chemical Bank deferred a \$45 million bad debt deduction from 1975 to 1976 which, although partially offset by deductions for purchased interest income of \$25.8 million in connection with the acquisition of Security National Bank and about \$.6 million in miscellaneous items, resulted in net additional taxable income of approximately \$18.6 million for 1975.

6. Subsequent to petitioner's filing of its application for extension, the following events took place:

- a) In July 1976, Chemical Bank made a taxable exchange of New York State Municipal Assistance Corporation securities recognizing a loss of approximately \$45 million.
- b) In August 1976, Price Waterhouse completed review of the tax basis of the assets received or acquired from Security National Bank resulting in a reduction of purchased interest income of \$11 million for 1976.
- c) It became apparent during 1976 that 1976 would be a depressed earnings year because of loan write-offs and other factors.

These events caused petitioner to project a net operating loss for 1976. Since federal law had been changed effective in 1976 to allow banking corporations a ten year carryback of a net operating loss, petitioner decided that it would defer part of its 1975 bad debt deduction to 1976, thus producing a substantial net operating loss carryback to 1966 for federal income tax purposes. Because of federal conformity, the bad debt deduction was also deferred for New York State tax purposes.

CONCLUSIONS OF LAW

A. That section 1462(c) of the Tax Law authorizes the State Tax Commission to grant a reasonable extension of time for filing returns whenever good cause exists. It also provides for an automatic three month extension for the filing

of annual returns if the taxpayer (i) applies therefor on or before the regular due date (March 15th in the case of a calendar year taxpayer, such as petitioner) and (ii) pays "the amount properly estimated as its tax". Section 1463(b) of the Tax Law provides that the automatic extension is properly estimated if it is either:

"(i) not less than ninety percent of the tax as finally determined, or (ii) not less than the tax shown on the taxpayer's return for the preceding taxable year, if such preceding year was a taxable year of twelve months; provided, however, that with respect to applications for extension of time...for taxable years ending after (December 31, 1974), an amount so paid shall be deemed properly estimated...if it is not less than the tax shown on the taxpayer's return for the preceding taxable year computed as if the rate of such tax for such preceding taxable year was the rate of tax imposed for taxable years ending after (December 31, 1974), computed with regard to any proration allowable for any such year..."

The amount that petitioner herein paid with its application for extension was less than ninety percent of its tax as finally determined and less than the tax shown on its return for the previous year. Accordingly, the automatic extension was invalid and petitioner's return was not timely.

B. That section 1085(a)(1) of the Tax Law imposes an addition to tax for failure to file a return (at the rate of 5% per month or fraction thereof during which the failure continues, but not exceeding 25% in the aggregate); and section 1085(a)(2) imposes an addition to tax for failure to pay the amount shown as tax on a return (at the rate of $\frac{1}{2}$ % per month or fraction thereof, but not exceeding 25% in the aggregate). Neither penalty is imposed, however, if it is shown that the failure was due to reasonable cause and not due to willful neglect.

While the penalty imposed against petitioner was not denominated as having been issued under any particular section of the Tax Law in the Statement of

Audit Adjustment, such penalty was obviously asserted under section 1085(a)(1)-failure to file a return and section 1085(a)(2)-failure to pay tax shown due on the return. Accordingly, the issue herein amounts to whether petitioner had reasonable cause for its failure to file its return and to pay the tax.


We find that in view of the circumstances set forth in the Findings of Fact, supra, petitioner did have reasonable cause for its failure to file its return and to pay the tax. It is also noted that if petitioner had filed a return based on the information available to it on March 15, 1976 and had filed an amended return in September, 1976, showing a refund due, no penalty would have been asserted.⁴


C. That the petition of Chemical New York Corporation is granted and a refund based on the cancellation of penalties imposed under sections 1085(a)(1) and 1085(a)(2) of the Tax Law is granted.


DATED: Albany, New York

STATE TAX COMMISSION

SEP 02 1983


PRESIDENT


COMMISSIONER


COMMISSIONER

⁴ Although there was no regulation in effect during 1975 defining "reasonable cause", a current regulation, 20 NYCRR 9-1.5(a)(6), which was promulgated March 11, 1981, provides that reasonable cause includes, inter alia:

"any other cause for delinquency which appears to a person of ordinary prudence and intelligence as a reasonable cause for delay in filing a return and which clearly indicates an absence of gross negligence or willful intent to disobey the taxing statutes. Past performance should be taken into account. Ignorance of the law, however, will not be considered reasonable cause."