

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
T. L. Diamond and Co., Inc. :
and The Meadowbrook Corporation : 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 Fiscal Years Ending 10/31/73 & 10/31/74. :

State of New York
County of Albany

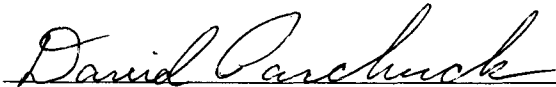
David Parchuck, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 27th day of May, 1983, he served the within notice of Decision by certified mail upon T. L. Diamond and Co., Inc. and The Meadowbrook Corporation, the petitioners in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:


T. L. Diamond and Co., Inc.
and The Meadowbrook Corporation
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 petitioner herein and that the address set forth on said wrapper is the last known address of the petitioner.

Sworn to before me this
27th day of May, 1983.





AUTHORIZED TO ADMINISTER
OATHS PURSUANT TO TAX LAW
SECTION 174

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
T. L. Diamond and Co., Inc. :
and The Meadowbrook Corporation :
AFFIDAVIT OF MAILING :
for Redetermination of a Deficiency or a Revision :
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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 27th day of May, 1983, he served the within notice of Decision by certified mail upon Leonard Rodney the representative of the petitioners in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Leonard Rodney
Rosenbluth, Rosenbluth & Rodney
342 Madison Avenue
New York, NY 10017

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
27th day of May, 1983.

David Parchuck

Annice A. Haglund

AUTHORIZED TO ADMINISTER
OATHS PURSUANT TO TAX LAW
SECTION 174

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

May 27, 1983

T. L. Diamond and Co., Inc.
and The Meadowbrook Corporation
30 Rockefeller Plaza
New York, NY 10020

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
Leonard Rodney
Rosenbluth, Rosenbluth & Rodney
342 Madison Avenue
New York, NY 10017
Taxing Bureau's Representative

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition
of
T. L. DIAMOND & CO., INC. and
THE MEADOWBROOK CORP.
for Redetermination of a Deficiency or for
Refund of Franchise Tax on Business Corporations
under Article 9-A of the Tax Law for the Fiscal
Years Ended October 31, 1973 and October 31,
1974.

DECISION

Petitioners, T. L. Diamond & Co., Inc. and The Meadowbrook Corp., 30 Rockefeller Plaza, New York, New York 10020, 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 fiscal years ended October 31, 1973 and October 31, 1974 (File No. 24999).

A formal hearing was held before Doris E. Steinhardt, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on September 16, 1982 at 1:40 P.M., with all briefs to be submitted by November 11, 1982. Petitioners appeared by Rosenbluth, Rosenbluth & Rodney, Esqs. (Leonard Rodney, Esq., of counsel). The Audit Division appeared by Paul B. Coburn, Esq. (Irwin A. Levy, Esq., of counsel).

ISSUES

I. Whether, in 1977, the Audit Division properly denied petitioners permission to file amended franchise tax reports on a combined basis for the fiscal years 1973 and 1974.

II. If so, whether subdivision 4 of section 211 of the Tax Law as applied to petitioners violates their rights to equal protection under the

laws, as guaranteed by the United States Constitution and the New York Constitution.

FINDINGS OF FACT

1. For the fiscal years ended October 31, 1973 and October 31, 1974, petitioner T. L. Diamond & Co., Inc. ("Diamond") filed franchise tax reports on a separate basis, computing and remitting tax upon its net income allocated to this state.

2. On or about July 8, 1977, Diamond and petitioner The Meadowbrook Corp. ("Meadowbrook") filed an amended franchise tax report for the fiscal year ended October 31, 1973, recomputing the tax liability for that year on a combined basis, and a Claim for Credit or Refund of Corporation Tax Paid, seeking a refund in the amount of \$38,519.00. On or about December 29, 1977, petitioners filed an amended franchise tax report for the fiscal year ended October 31, 1974, similarly recomputing the tax on a combined basis, and a claim for refund in the amount of \$67,910.00.

3. On August 22, 1977, the Audit Division denied petitioners' claims in all respects, offering the following explanation:

"Combined reports are discretionary with the Tax Commission and are not permitted on a retroactive basis except for 'unusual circumstances'. ... By 'unusual circumstances', we mean any circumstance which would have ruled out the possibility of filing combined reports at the time the reports were due."

4. Diamond, a corporation organized under the laws of New York, is engaged in the business of trading ferrous and nonferrous metals.

5. Meadowbrook, a West Virginia corporation located in Spelter, West Virginia, is a wholly-owned subsidiary of Diamond which is engaged in the business of processing zinc residues into zinc dross and slab zinc. Prior to its acquisition by Diamond in 1971 or 1972, Meadowbrook operated under the name

Matthiessen and Hegeler and was a major customer of Diamond, purchasing thousands of tons of raw material on a regular basis. At that time, Meadowbrook began to experience severe financial difficulties, and it was decided that Diamond would acquire the corporation because it was an important customer and was heavily indebted to Diamond.

6. Theodore L. Diamond is the sole officer of Diamond and the president of Meadowbrook. The only other officer of Meadowbrook is the secretary, Milton Asch.

7. During the time under consideration, Meadowbrook employed approximately 100 persons, as chemists, foremen, laborers, clerks, shippers and handlers.

8. Meadowbrook purchased all its metallic raw materials from the parent corporation, which purchases in turn represented approximately 40 percent of all the parent's sales during the years in question.

9. Diamond solicits all sales of Meadowbrook's products, bills Meadowbrook's customers and receives all remittances. Diamond maintains Meadowbrook's books of account and hires and compensates Meadowbrook's supervisory personnel.

10. Each month Diamond charges the intercompany account with Meadowbrook for raw materials sold to it and for administrative services rendered. This intercompany account generally totals one-half million dollars but at times has been well over one million dollars.

11. Petitioners filed consolidated federal income tax returns for the fiscal years 1973 and 1974.

12. When Diamond submitted its New York franchise tax reports for fiscal years 1973 and 1974, neither its president nor its accountants were aware that it might be permitted to file on a combined basis with Meadowbrook. Petitioners subsequently engaged new accountants, who filed the amended reports and refund

claims and sought the permission of the Tax Commission to file combined reports in fiscal year 1975 and thenceforward. The Commission granted petitioners leave to so file.

CONCLUSIONS OF LAW

A. That subdivision 4 of section 211 of the Tax Law, in pertinent part, provides:

"In the discretion of the tax commission, any taxpayer, ...substantially all the capital stock of which is owned or controlled either directly or indirectly by one or more other corporations..., may be required or permitted to make a report on a combined basis covering any such other corporations and setting forth such information as the tax commission may require; provided, however, ...that no combined report covering any corporation not a taxpayer shall be required unless the tax commission deems such a report necessary, because of intercompany transactions or some agreement, understanding, arrangement or transaction referred to in subdivision five of this section, in order properly to reflect the tax liability under this article."

After the stock ownership or control requirement has been met, as is clearly the case here, the Commission, in determining whether to permit or require combined reports, considered the following factors: (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; and (5) whether there were other substantial intercompany transactions among the constituent corporations. Former 20 NYCRR 5.28(b). Compare 20 NYCRR 6-2.3, effective for taxable years commencing on or after January 1, 1976.

B. That at the time Diamond filed its separate report for the fiscal years ended October 31, 1973 and October 31, 1974, it was well aware of those

circumstances which would warrant seeking permission from the Commission to file on a combined basis for said periods, and which indeed formed the basis of its request to file on a combined basis for fiscal year ended October 31, 1975. These circumstances existed from the time Diamond acquired Meadowbrook. That petitioners were unaware of the applicable statutes and regulations is insufficient reason to allow filing retroactively; it is axiomatic that ignorance of the law excuses no one.

There existed no unusual circumstances which would give rise to a need on the part of petitioners for an extended period to determine whether permission should be requested for the filing of a combined return. Matter of Carter-Wallace, Inc., State Tax Comm., June 5, 1981; Matter of Walker Engraving Corporation, State Tax Comm., June 6, 1971.

C. That the Tax Commission has no jurisdiction to pass upon the constitutionality of the laws of this state.

D. That the petition of T. L. Diamond & Co., Inc. and The Meadowbrook Corp. is hereby denied.


DATED: Albany, New York

STATE TAX COMMISSION

MAY 27 1983


PRESIDENT


COMMISSIONER


COMMISSIONER