

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
Kings Point Industries, Inc. :
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 4/30/67 & 4/30/68. :
_____ :

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 6th day of May, 1983, he served the within notice of Decision by certified mail upon Kings Point Industries, Inc., the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Kings Point Industries, Inc.
171 Great Neck Rd.
Great Neck, NY 11021

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
6th day of May, 1983.

David Parchuck

Annice A. Hegeland

AUTHORIZED TO ADMINISTER
OATHS PURSUANT TO TAX LAW
SECTION 174

STATE OF NEW YORK

STATE TAX COMMISSION

_____ :
In the Matter of the Petition :
of :
Kings Point Industries, 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 Fiscal Years Ending 4/30/67 & 4/30/68. :
_____ :

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 6th day of May, 1983, he served the within notice of Decision by certified mail upon Frederic Z. Konigsberg the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Frederic Z. Konigsberg
350 Old Country Rd.
Garden City, NY 11530

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
6th day of May, 1983.

David Parchuck

William A. [Signature]

AUTHORIZED TO ADMINISTER
OATHS PURSUANT TO TAX LAW
SECTION 174

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

May 6, 1983

Kings Point Industries, Inc.
171 Great Neck Rd.
Great Neck, NY 11021

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
Frederic Z. Konigsberg
350 Old Country Rd.
Garden City, NY 11530
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
KINGS POINT INDUSTRIES, 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 Fiscal :
Years Ended April 30, 1967 and April 30, 1968.

Petitioner, Kings Point Industries, Inc., 171 Great Neck Road, Great Neck, New York 11021, 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 April 30, 1967 and April 30, 1968 (File No. 26090).

Petitioner and the Audit Division entered into a Stipulation of Facts, which is incorporated into and made a part of this decision. The Stipulation was executed by Barry M. Bresler, Esq. on behalf of the Audit Division on July 9, 1981 and by Frederic Z. Konigsberg, Esq. on behalf of petitioner on July 14, 1981.

On February 22, 1982, petitioner waived the right to a formal hearing and consented to submission of this matter to the State Tax Commission.

ISSUE

Whether the reductions in petitioner's New York entire net income should be based upon \$525,000.00 for fiscal year 1967 and \$300,000.00 for fiscal year 1968, the stipulated amounts of excessive profits, or \$385,081.00 for fiscal year 1967 and \$130,920.00 for fiscal year 1968, the amounts upon which the credit under Internal Revenue Code section 1481 was based.

FINDINGS OF FACT

1. In the matter of Kings Point Industries, Inc. v. United States, an order of the United States Court of Claims dated December 17, 1976 was entered, holding that petitioner (with other related corporations) had realized excessive profits in its fiscal years 1967 and 1968 in the amounts of \$600,000.00 and \$400,000.00, respectively, subject to adjustments for appropriate tax credits. The aforesaid order was based upon a stipulation between petitioner and the United States government, that for the purposes of determining the credit under Internal Revenue Code section 1481, excessive profits were to be considered \$525,000.00 and \$300,000.00 for its fiscal years 1967 and 1968, respectively.

2. On or about March 29, 1977, petitioner submitted to the Audit Division two Claims for Credit or Refund of Corporation Tax Paid for its fiscal years 1967 and 1968. The claim for refund for fiscal year 1967 sought to reduce entire net income by 42.61 percent (petitioner's business allocation percentage) of \$525,000.00, or \$223,702.50; the claim for fiscal year 1968 sought to reduce entire net income by 43.64 percent of \$300,000.00, or \$130,920.00.

If petitioner's claim for refund for its fiscal year 1967 had been allowed as filed, petitioner would have been entitled to a refund in the sum of \$12,303.64, plus statutory interest. If petitioner's claim for fiscal year 1968 had been allowed as filed, petitioner would have been entitled to a refund in the sum of \$7,855.20, plus statutory interest.

3. On or about August 15, 1978, the Audit Division granted petitioner refunds for its fiscal years 1967 and 1968 in the respective amounts of \$9,024.56 and \$5,935.68, plus statutory interest. The Audit Division's determination of the refunds due petitioner was based on the reduction of petitioner's entire net income in the amount of \$385,081.00 for 1967 and in the amount of \$226,691.00

for 1968. The incomes for each year were then allocated based upon petitioner's allocation percentage for each of said years.

4. If petitioner's claim herein is sustained, it will be entitled to an additional refund of \$3,279.08, plus statutory interest, for its fiscal year 1967 and \$1,919.52, plus statutory interest, for its fiscal year 1968.

CONCLUSIONS OF LAW

A. That as the result of renegotiation of petitioner's contracts with the federal government, and in accordance with the stipulation between petitioner and the federal government and the subsequent order of the Court of Claims, petitioner received or accrued excessive profits in its fiscal years 1967 and 1968 in the respective amounts of \$525,000.00 and \$300,000.00, for purposes of computing the credit under Internal Revenue Code section 1481. Since these amounts were subject to repayment by petitioner to the United States, the contract price received or accrued for such prior taxable years must be reduced by the excessive profits eliminated. Section 1481(a)(1). The amount repaid may not be taken as a deduction in the year paid or incurred. Section 1481(a)(3).

Petitioner is entitled to a credit against the excessive profits eliminated equal to "the amount by which the tax for the prior taxable year under this subtitle is decreased by reason of the application of paragraph (1) of subsection (a)...". Section 1481(b)(1). Thus, petitioner need repay only the net amount: the excessive profits (payable to the agency with which petitioner contracted) less the tax decrease resulting from elimination of the excessive profits from income (the "refund" owed to petitioner by the Internal Revenue Service).

In computing the excessive profits eliminated for purposes of the section 1481 credit, petitioner has available an adjustment for taxes, measured by income (other than federal taxes), attributable to the portion of the profits

which are not excessive.¹ 50 U.S.C. Appx. §1213(f). The figures of \$385,081.00 for fiscal year 1967 and \$226,691.00 for fiscal year 1968 utilized by the Internal Revenue Service in determining the credit allowed under Code section 1481 represented the excessive profits (in accordance with the stipulation and order) less state and local taxes (New York State, New York City and North Carolina) on the non-excessive profits.

B. That entire net income for purposes of Article 9-A of the Tax Law is defined as "total net income from all sources, which shall be presumably the same as the entire taxable income which the taxpayer is required to report to the United States treasury department...", subject to the modifications required by sections 210.3(d) and (e). Tax Law section 208.9. The modification with particular relevance to this proceeding is the add-back to federal taxable income of the taxes imposed by Article 9-A. Section 208.9(b)(4). Petitioner's entire net income for fiscal years 1967 and 1968 encompassed this add-back of New York franchise taxes.

C. That neither the Audit Division's nor petitioner's treatment of excessive profits was correct.

The Audit Division improperly reduced petitioner's entire net income by amounts which represented the excessive profits for the fiscal year less New York State, New York City and North Carolina taxes on non-excessive profits for that year. The Audit Division effectively compelled petitioner to add back to entire net income New York franchise taxes on total (pre-renegotiation) profits and New York franchise taxes on non-excessive profits. The same sum has been twice added back.

¹ No recognition is given to state and local income taxes as an item of cost in determining excessive profits.

With regard to the New York City and North Carolina taxes, petitioner's deductions thereof in its returns as filed for fiscal years 1967 and 1968 were excessive insofar as the taxes were calculated upon total (pre-renegotiation) profits. These expenses were thus overstated. In order to properly compensate for this overstatement, the figure by which entire net income is to be reduced must itself be decreased: by the difference between New York City and North Carolina taxes as originally calculated and deducted and the amounts of such taxes on non-excessive profits.

However, it is impossible to make either correction because petitioner has failed to come forward with the necessary information: (1) New York franchise taxes on excessive profits; and (2) New York City and North Carolina taxes on non-excessive profits. All that the Audit Division and this Commission had available was the combined figure for New York State, New York City and North Carolina taxes on non-excessive profits. Petitioner has failed to sustain the burden of proving it is entitled to refunds in excess of those granted on August 15, 1978. Tax Law section 1089(e).

D. That the petition of Kings Point Industries, Inc. is hereby denied in all respects.

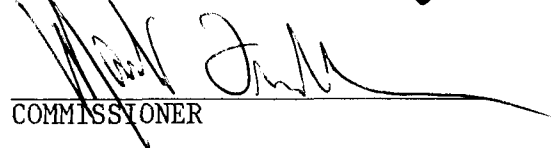
DATED: Albany, New York

MAY 06 1983

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER

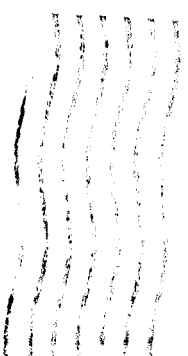

COMMISSIONER

TA 26 (9-79)

STATE OF NEW YORK
State Tax Commission
TAX APPEALS BUREAU
STATE CAMPUS
ALBANY, N. Y. 12227

ADP MK

FLUSHING, N. Y.
PM
9 MAY
1983



Frederic Z. Konigsberg
350 Old Country Rd.
Garden City, NY 11530

CERTIFIED

P 389 758 881

MAIL

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

May 6, 1983

Kings Point Industries, Inc.
171 Great Neck Rd.
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Very truly yours,

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cc: Petitioner's Representative
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Garden City, NY 11530
Taxing Bureau's Representative

STATE OF NEW YORK

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D. That the petition of Kings Point Industries, Inc. is hereby denied in all respects.


DATED: Albany, New York

MAY 06 1983

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER