

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition :  
of :  
Nassau Insurance Co. :  
for Redetermination of a Deficiency or a Revision :  
of a Determination or a Refund of Corporation Tax :  
under Article 27 & 33 of the Tax Law for the Years :  
1977 & 1978. :  
\_\_\_\_\_ :

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 27th day of May, 1983, he served the within notice of Decision by certified mail upon Nassau Insurance Co., the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Nassau Insurance Co.  
80-15 164th St.  
Jamaica, NY 11432

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.

David Parchuck

Quinn P. Hayden

AUTHORIZED TO ADMINISTER  
OATHS PURSUANT TO TAX LAW  
SECTION 174

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition :  
of :  
Nassau Insurance Co. :  
AFFIDAVIT OF MAILING  
for Redetermination of a Deficiency or a Revision :  
of a Determination or a Refund of Corporation Tax :  
under Article 27 & 33 of the Tax Law for the :  
Years 1977 & 1978. :  
\_\_\_\_\_ :

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 Morris Haas the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Morris Haas  
Wolf, Hass, Weil, Cohen & Singer  
80-15 164th Street  
Jamaica, NY 11432

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

James A. Highland

AUTHORIZED TO ADMINISTER  
OATHS PURSUANT TO TAX LAW  
SECTION 174

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

May 27, 1983

Nassau Insurance Co.  
80-15 164th St.  
Jamaica, NY 11432

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 & 1519 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  
Morris Haas  
Wolf, Hass, Weil, Cohen & Singer  
80-15 164th Street  
Jamaica, NY 11432  
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition :  
of :  
NASSAU INSURANCE COMPANY : DECISION  
for Redetermination of a Deficiency or for :  
Refund of Corporation Franchise Tax under :  
Articles 27 and 33 of the Tax Law for the Years :  
1977 and 1978. :

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Petitioner Nassau Insurance Company, 80-15 164th Street, Jamaica, New York 11432, filed a petition for redetermination of a deficiency or for refund of corporation franchise tax under articles 27 and 33 of the Tax Law for the years 1977 and 1978 (File No. 33374).

A formal hearing was held before Daniel J. Ranalli, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on November 29, 1982 at 2:45 P.M. Petitioner appeared by Wolff, Hass, Weil, Cohen & Singer (Morris Hass, Esq. of counsel). The Audit Division appeared by Paul B. Coburn, Esq. (Angelo A. Scopellito, Esq., of counsel).

ISSUE

Whether petitioner's late filing of its returns and late payment of its corporation franchise taxes for the years 1977 and 1978 should be subject to penalties under section 1085(a) of the Tax Law.

FINDINGS OF FACT

1. On September 26, 1978, petitioner, Nassau Insurance Company ("Nassau") filed its Franchise Tax Return for Insurance Corporations for the year 1977. Said return was due on March 15, 1978. On June 12, 1979, petitioner filed its franchise tax return for the year 1978. Said return was due on March 15, 1979.

2. On July 15, 1980, the Audit Division issued a Notice and Demand for Payment of Corporation Tax Due against petitioner for interest of \$4,273.30 and penalty of \$24,635.45 for a total due of \$28,908.75 for the year 1977. On the same date the Audit Division issued a second notice against petitioner for interest of \$3,223.56 and penalty of \$13,144.05 for the year 1978. The basis for the notices was the fact that petitioner had filed its 1977 return six months late and its 1978 return three months late without applying for an extension.

3. On September 10, 1980 petitioner sent two checks to the Tax Compliance Bureau, one in the amount of \$4,273.30 and the other in the amount of \$3,223.56 in payment of the interest due from the aforementioned notices. Petitioner did not make payment of the penalties due on said notices.

4. Petitioner was a small insurance corporation employing approximately 40 to 50 persons during the period in issue. The sole stockholder of Nassau was Venice Holding Company ("Venice").

5. Venice retained the services of the same certified public accountant for about twelve years. In his capacity as Venice's accountant, this individual was available to give tax advice to Nassau's accountant, who was young and inexperienced in tax matters during the years at issue. The officers of Nassau had advised their accountant to consult with Venice's accountant on any tax matters which were unfamiliar to him.

6. In 1977 Venice's accountant was exploring the possibility of filing a State combined return with Nassau. He decided to request an extension of time to file and he so advised Nassau's accountant. Venice's accountant also erroneously advised Nassau's accountant that he thought a request for extension for Venice would include Nassau and that he, Venice's accountant, would take

care of it. Petitioner's accountant relied on this advice and did not request a separate extension for Nassau.

7. In applying for an extension for 1977, Venice's accountant made no reference to petitioner either by name or in the estimate of tax due. Moreover, he failed to include petitioner's prepayment of estimated tax due for 1977, although he did include Venice's prepayment.

8. Venice's accountant later decided not to file State combined returns for 1977 and advised Nassau to proceed with the filing of its returns. Petitioner filed its return on September 26, 1978 which was eleven days past the extension period which Venice had obtained for itself.

9. In 1978 Venice again requested and obtained extensions of time to file and erroneously advised Nassau that it was included in the Venice extension. Again in applying for an extension for 1978, Venice's accountant made no reference to petitioner and failed to remit petitioner's prepayment of estimated tax due for 1978 but included Venice's prepayment. Nassau followed the advice of Venice's accountant's advice and filed within the extension period obtained by Venice. Petitioner was not aware of any errors until it received the notices from the Audit Division in 1980.

10. There is no indication in the record that petitioner had a history of late filing of its corporate tax returns.

#### CONCLUSIONS OF LAW

A. That pursuant to section 1085(a) of the Tax Law, there shall be added to the amount of tax due an additional sum for the failure to timely file a Corporation Franchise Tax return and for failure to pay the tax due thereon, unless it is shown that such failure is due to reasonable cause and not due to willful neglect.

B. That regulation 20 NYCRR 9-1.5(c), in effect during the period in issue, provided that reasonable cause may include reliance on advice of a competent advisor such as an attorney or accountant.

C. That subdivision 1 of section 211 of the Tax Law allows an automatic extension of three months for the filing of the corporate tax report if the taxpayer timely "files with the tax commission an application for extension in such form as said commission may prescribe by regulation and pays on or before the date of such filing the amount properly estimated as its tax."

D. That 20 NYCRR 6-4.4(a) provides that failure to meet the requirements of filing for an extension and paying properly estimated tax "will make the application invalid and any report filed after the due date will be treated as a late filed report." Under 20 NYCRR 7-1.3, estimated tax will be deemed properly estimated if the prepayments equal the tax shown on the taxpayer's report for the preceeding taxable year or 90 percent of the tax as finally determined.

E. That inasmuch as petitioner failed to prepay properly estimated tax for both 1977 and 1978, even if petitioner had reasonably relied on the advice of Venice's accountant in obtaining an extension, such extension would have been invalid as to petitioner for both 1977 and 1978 for failure to comply with the requirements of subdivision 1 of section 211 of the Tax Law and 20 NYCRR 6-4.4(a). If Venice's accountant had actually intended to include petitioner as part of Venice's extension, he would have made a prepayment of estimated tax for petitioner as he did for Venice. Moreover, in 1977 petitioner filed its return even beyond the extension date Venice had obtained. Since any extension of time for filing would have been invalid as to petitioner for both years and since, in 1977, petitioner filed even beyond Venice's extension period, petitioner

may not be absolved from late filing of its return by reason of relying on the advice of an accountant.


F. That the petition of Nassau Insurance Company is denied and the notices and demands for payment of corporation tax due issued July 15, 1980 are sustained.

DATED: Albany, New York

STATE TAX COMMISSION

MAY 27 1983

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER