

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
Norcliff Thayer, 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 Years 1976 - 1979. :

State of New York
County of Albany

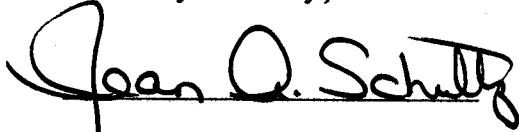
Connie Hagelund, being duly sworn, deposes and says that she is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 22nd day of July, 1983, she served the within notice of Decision by certified mail upon Norcliff Thayer, Inc., the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Norcliff Thayer, Inc.
303 South Broadway
Tarrytown, NY 10591

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
22nd day of July, 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 :
Norcliff Thayer, Inc. :

AFFIDAVIT OF MAILING

for Redetermination of a Deficiency or a Revision :
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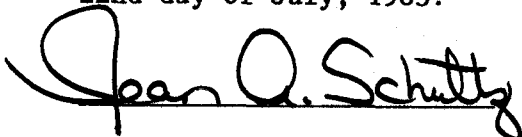
Connie Hagelund, being duly sworn, deposes and says that she is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 22nd day of July, 1983, she served the within notice of Decision by certified mail upon E. Maureen Olson the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

E. Maureen Olson
c/o Revlon, Inc.
767 Fifth Ave.
New York, NY 10153

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
22nd day of July, 1983.





AUTHORIZED TO ADMINISTER
OATHS PURSUANT TO TAX LAW
SECTION 174

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

July 22, 1983

Norcliff Thayer, Inc.
303 South Broadway
Tarrytown, NY 10591

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
E. Maureen Olson
c/o Revlon, Inc.
767 Fifth Ave.
New York, NY 10153
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:
	:
of	:
	:
NORCLIFF THAYER, INC.	:
	:
for Redetermination of a Deficiency or for	:
Refund of Corporation Franchise Tax under	:
Article 9-A of the Tax Law for the Years 1976	:
through 1979.	:

Petitioner, Norcliff Thayer, Inc., 303 South Broadway, Tarrytown, New York 10591, filed a petition for redetermination of a deficiency or for refund of corporation franchise tax under Article 9-A of the Tax Law for the years 1976 through 1979 (File No. 34052).

On January 4, 1983, petitioner filed a waiver of formal hearing and requested that this matter be decided by the State Tax Commission on the basis of the existing record. After due consideration, the State Tax Commission renders the following decision.

ISSUE

Whether subdivision 9(b)(5) of section 208 of the Tax Law required petitioner to add to federal taxable income, interest expense paid to a sister corporation, where petitioner owned no stock in said sister corporation.

FINDINGS OF FACT

1. On April 7, 1981, as the result of a field audit, the Audit Division issued four notices of deficiency pursuant to Article 9-A of the Tax Law against petitioner, Norcliff Thayer, Inc.:

<u>Year</u>	<u>Tax</u>	<u>Interest</u>	<u>Total Due</u>
1976	\$1,876.00	\$ 651.00	\$ 2,527.00
1977	1,781.00	467.00	2,248.00
1978	9,431.00	1,670.00	11,101.00
1979	5,383.00	496.00	5,879.00

2. In October, 1980, petitioner, by its assistant treasurer, had filed a consent extending the period of limitation of the assessment of tax due for the calendar year ended December 31, 1976 to November 9, 1981.

3. Petitioner was a wholesaler of drugs. During the years in issue, Revlon, Inc. ("Revlon") owned 100 percent of petitioner's stock and also 100 percent of the stock of USV Pharmaceutical ("USV"). Petitioner made interest payments both to Revlon and USV. On Schedule B of its New York State franchise tax reports for 1976 through 1979, petitioner, in determining its entire net income subject to the franchise tax, added to its federal taxable income 100 percent of the interest paid to Revlon, but failed to add any of the interest paid to USV.

4. On audit, the Audit Division determined that pursuant to subdivision 9(b)(5) of section 208 of the Tax Law, petitioner, in arriving at its entire net income, was required to add to its federal taxable income 90 percent of the interest paid to USV and adjusted petitioner's corporation tax due accordingly.

5. Petitioner argued that the Audit Division had incorrectly interpreted the aforementioned statute and that said statute would apply only if USV owned petitioner's stock either directly or through a subsidiary of USV. Petitioner maintained that since USV owned none of petitioner's stock, USV could not deduct any of the interest paid by petitioner as interest paid by a subsidiary. It is petitioner's position that denying an interest exclusion to it as the interest-paying subsidiary, while requiring the inclusion of interest income in

the entire net income of USV as the recipient subsidiary, violated the intent of the law.

CONCLUSIONS OF LAW

A. That subdivision 9(b)(5) of section 208 of the Tax Law provides, in effect, that in arriving at entire net income subject to the franchise tax, there is to be added to federal taxable income 90 percent of "interest on indebtedness directly or indirectly owed to any stockholder...(including subsidiaries of a corporate stockholder...), or members of the immediate family of an individual stockholder...".

B. That the purpose of the addition of the parenthetical phrase in the aforesaid statute which included corporate subsidiaries was to prevent avoidance of the tax by the device of distributing profits in the guise of interest to subsidiaries of a corporate taxpayer, thus correcting the inequality of treatment between corporations which pay interest on indebtedness to members of the immediate family of an individual stockholder, and a corporation which pays such interest to a corporate stockholder (N.Y. Legis. Ann., 1947, p. 240). A subsidiary of a corporate stockholder is, therefore, to be treated in the same manner as the immediate family of an individual stockholder.

The legislature did not intend that inclusion of such interest payments were to be contingent upon whether a sister corporation to whom such payments were made could or could not deduct such payments from its entire net income. Therefore, the Audit Division correctly adjusted petitioner's corporation tax due by including 90 percent of the interest payments made to USV in petitioner's entire net income.

C. That the petition of Norcliff Thayer, Inc. is denied and the notices of deficiency issued April 7, 1981 are sustained.

DATED: Albany, New York

STATE TAX COMMISSION

JUL 22 1983


PRESIDENT


COMMISSIONER


COMMISSIONER