

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
North Shore Instrument Corp. :
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 F/Y/E 9/30/78 & 9/30/79. :

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 North Shore Instrument Corp., the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

North Shore Instrument Corp.
c/o Nathan S. Brody
123 Grove Ave.
Cedarhurst, NY 11516

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

James A. Hayward

AUTHORIZED TO ADMINISTER
OATHS PURSUANT TO TAX LAW
SECTION 174

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
North Shore Instrument Corp. :
AFFIDAVIT OF MAILING
for Redetermination of a Deficiency or a Revision :
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Franchise Tax under Article 9A of the Tax Law for :
the F/Y/E 9/30/78 & 9/30/79. :

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 Nathan S. Brody the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Nathan S. Brody
123 Grove Ave.
Cedarhurst, NY 11516

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 P. Hays

AUTHORIZED TO ADMINISTER
OATHS PURSUANT TO TAX LAW
SECTION 174

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

May 27, 1983

North Shore Instrument Corp.
c/o Nathan S. Brody
123 Grove Ave.
Cedarhurst, NY 11516

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
Nathan S. Brody
123 Grove Ave.
Cedarhurst, NY 11516
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition
of
NORTH SHORE INSTRUMENT CORP.
for Redetermination of a Deficiency or for
Refund of Corporation Franchise Tax under
Article 9-A of the Tax Law for the Fiscal Years
Ending September 30, 1978 and September 30,
1979.

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DECISION

Petitioner, North Shore Instrument Corp., c/o Nathan S. Brody, 123 Grove Avenue, Cedarhurst, New York 11516, 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 fiscal years ending September 30, 1978 and September 30, 1979 (File No. 29094).

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 September 14, 1982 at 1:30 P.M. Petitioner appeared by Nathan S. Brody, CPA. The Audit Division appeared by Paul B. Coburn, Esq. (Irwin Levy, Esq., of counsel).

ISSUE

Whether petitioner was liable for Corporation Franchise Tax after it had notified the Department of Taxation and Finance that it was no longer doing business, but where it had not filed an application for consent to dissolution with the State Tax Commission and a certificate of dissolution with the Secretary of State.

FINDINGS OF FACT

1. On September 1, 1977 petitioner, North Shore Instrument Corp., filed a Corporation Franchise Tax Report for the taxable period beginning October 1, 1976 and ending September 30, 1977. Petitioner had marked a box on the front of the return indicating that this was its cessation return because it had dissolved. Petitioner had also printed, in red, the words "Final Return" at the top of the return. Attached to the return was a letter from Charles Rapp, President, stating that the corporation had wound up its affairs and was dissolving and that it understood that it would no longer be liable for franchise taxes after September 30, 1977. Also attached to the return was a resolution of petitioner's board of directors and stockholders to dissolve the corporation.

2. The aforesaid return indicated that petitioner was entitled to a refund of \$623.00. On February 15, 1980 the Audit Division issued a Statement of Tax Reduction or Overpayment approving a refund to petitioner of \$623.00, plus \$57.37 interest, less \$250.00 for each of the years ending September 30, 1978 and September 30, 1979, for a net refund of \$180.37. The \$500.00 withheld was applied to the minimum tax due for each of the years in issue.

3. On April 17, 1980 petitioner filed a petition claiming that it was entitled to a refund of the \$500.00. The basis of petitioner's claim was that it had notified the Department of Taxation and Finance that it was going out of business in 1977 and that petitioner should not be held liable for the taxes for the intervening years when the Department had taken two years to notify petitioner that additional taxes were due for those years because petitioner had not yet properly dissolved.

4. At no time during the years in issue did petitioner file an application for consent to dissolution with the State Tax Commission or a certificate of dissolution with the Secretary of State.

CONCLUSIONS OF LAW

A. That section 1004 of the Business Corporations Law provides that the Department of State will not file a certificate of dissolution unless the consent of the State Tax Commission to the dissolution is attached thereto. Upon such filing the corporation is dissolved.

B. That section 197 of the Tax Law provides that:

"where an application for consent to dissolution, as provided in section 1004 of the Business Corporations Law, is filed with the tax commission prior to the commencement of any tax year or period by a corporation subject to tax under articles nine or nine-a..., such corporation shall not be liable for any tax imposed by said articles for such following year or period..., provided that the certificate of dissolution for such corporation is duly filed in the office of the secretary of state within sixty days after the commencement of such tax year and such corporation does not conduct business in such tax year or period."

C. That, inasmuch as petitioner had failed to comply with the requirements of either of the aforementioned statutes during the years in issue, it had not yet been properly dissolved and continued to be liable for the corporation franchise tax.

D. That "everyone is presumed to know the Tax Law" (Mabie v. Fuller, 255 N.Y. 194, 201). While the Department of Taxation and Finance may, as a convenience to taxpayers, provide advice with respect to the Tax Law, the ultimate responsibility for timely and proper filing of documents lies with the individual taxpayer. The fact that the Audit Division took over two years to audit petitioner's return did not excuse petitioner from filing the necessary dissolution forms with the proper agencies.

E. That the petition of North Shore Instrument Corp. is denied and the Statement of Tax Reduction or Overpayment issued February 15, 1980 is sustained.

DATED: Albany, New York

MAY 27 1983

STATE TAX COMMISSION

~~ACTING~~

Richard W. Chen
PRESIDENT

Francis R. Koenig
COMMISSIONER

[Signature]
COMMISSIONER