

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition :  
of :  
Yankee Accessory Corp. : 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 Ending 9/30/75-9/30/77. :

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State of New York  
County of Albany

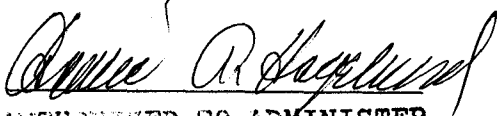
David Parchuck, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 22nd day of April, 1983, he served the within notice of Decision by certified mail upon Yankee Accessory Corp., the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Yankee Accessory Corp.  
2910 Campbell Ave.  
Schenectady, NY 12301

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 April, 1983.

  
AUTHORIZED TO ADMINISTER  
OATHS PURSUANT TO TAX LAW  
SECTION 174

  
\_\_\_\_\_  
David Parchuck

STATE OF NEW YORK

STATE TAX COMMISSION

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Yankee Accessory Corp. : AFFIDAVIT OF MAILING

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Franchise Tax under Article 9A of the Tax Law for :  
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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 22nd day of April, 1983, he served the within notice of Decision by certified mail upon Richard V. D'Alessandro the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Richard V. D'Alessandro  
111 Washington Ave.  
Albany, NY 12210

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 April, 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

April 22, 1983

Yankee Accessory Corp.  
2910 Campbell Ave.  
Schenectady, NY 12301

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  
Richard V. D'Alessandro  
111 Washington Ave.  
Albany, NY 12210  
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition	:	
of	:	
YANKEE ACCESSORY CORP.	:	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 Ending September 30, 1975, September 30,	:	
1976 and September 30, 1977.	:	

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Petitioner, Yankee Accessory Corp., 2910 Campbell Avenue, Schenectady, New York 12301, 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 ending September 30, 1975, September 30, 1976 and September 30, 1977 (File No. 28764).

A formal hearing was held before Doris E. Steinhardt, Hearing Officer, at the offices of the State Tax Commission, State Office Campus, Albany, New York, on August 12, 1982 at 10:45 A.M. Petitioner appeared by Richard V. D'Alessandro, Esq. The Audit Division appeared by Paul B. Coburn, Esq. (Barry M. Bresler, Esq., of counsel).

ISSUE

Whether petitioner maintained a regular place of business outside New York during the fiscal years ending September 30, 1976 and September 30, 1977 so as to be entitled to allocate its business income and capital.

FINDINGS OF FACT

1. Petitioner, Yankee Accessory Corp. ("Yankee"), timely filed a franchise tax report (the "short form", CT-4) for the short taxable period September 3, 1975, the date petitioner was organized and commenced business in New York,

through September 30, 1975. On December 6, 1979, the Audit Division issued to Yankee a Statement of Tax Reduction or Overpayment, reflecting a credit for the period ending September 30, 1975 in the amount of \$25.11.

On its franchise tax report (the "long form", CT-3) for the fiscal year ending September 30, 1976, petitioner computed a business allocation percentage of 64.37 percent and allocated to this state business income in the amount of \$31,579.92. On its franchise tax report (Form CT-3) for the fiscal year ending September 30, 1977, petitioner calculated a business allocation percentage of 68.3 percent and allocated to this state business capital in the amount of \$302,615.00. The Audit Division disallowed petitioner's elections to allocate. On December 6, 1979, the Audit Division issued to petitioner a Notice of Deficiency, asserting additional franchise tax due under Article 9-A of the Tax Law for the fiscal year ending September 30, 1976 in the amount of \$1,972.41, plus interest (the Audit Division applied against this asserted deficiency the credit from the period ending September 30, 1975); and on January 18, 1980, the Audit Division issued to petitioner a Notice of Deficiency, asserting additional franchise tax due for the fiscal year ending September 30, 1977 in the amount of \$250.01, plus interest.

2. In the years involved in this proceeding, petitioner engaged in the sale and distribution of motorcycles, parts and accessories; sales were made within and without the State of New York.

3. Due to unavoidable business conditions, petitioner's president, John A. Taylor, was unable to attend the hearing in this matter. (All of Yankee's business is presently conducted in California.) Petitioner's representative offered into evidence Mr. Taylor's affidavit, wherein he made the following statements, among others:

(a) that during the period at issue, Yankee maintained offices and warehouses in Schenectady, New York and at 13712 Alma Avenue, Gardena, California;

(b) that Yankee's California offices were managed by two employees, Charles Young and Willard Hockie, who performed the sales, warehousing and distribution of petitioner's products;

(c) that substantial sales and distribution of Yankee's products outside of New York were of products imported directly to Yankee's California offices, without any activity within or connected with New York; and

(d) that during this period, Yankee was licensed to do business in California, where it also paid California taxes.

4. On or about September 27, 1976, petitioner's Full Bore West Division made application to the City of Gardena, California, for a business license, for the purpose of distributing the Full Bore motorcycle accessory line to regional dealers. The address given for the proposed business was 13712 Alma Avenue, Gardena. It was stated in the application that Ossa West, another Yankee division, would also conduct business at that address.

5. Ossa Sales Corporation<sup>1</sup> stored motorcycles at Redway Truck and Warehouse Co., located at 2888 El Presidio, Carson, California, and paid tax in the amount of \$238.46 to the County of Los Angeles upon unsecured property situated in said county for the period July 1, 1977 through June 30, 1978.

Ossa West stored motorcycles and motorcycle accessories at 13712 Alma Avenue, Gardena, California, and paid tax in the amount of \$1,346.48 to Los Angeles County upon unsecured property located in said county for the period July 1, 1977 through June 30, 1978. On or about March 30, 1977, Ossa West also filed with Los Angeles County a Business Property Statement, enumerating the property it owned within the county as of March 1, 1977:

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<sup>1</sup> The documents in evidence do not disclose when (or if) petitioner's Full Bore West Division changed its name or began doing business under the name "Ossa Sales Corporation".

	<u>COST</u>
Inventory	\$75,811
Supplies	1,500
Machinery and equipment for industry, profession or trade	3,125
Office furniture and equipment	1,250
Leasehold and/or building improvements	1,500

6. Petitioner's calculation of its business allocation on Schedule G of its franchise tax reports for the fiscal years ending September 30, 1976 and September 30, 1977 is summarized below.

(a) Business allocation for the fiscal year ending September 30, 1976

	<u>New York</u>	<u>Everywhere</u>
(1) Property factor		
Real estate rented	\$146,576	\$ 167,576
Inventories owned	205,213	243,673
Total	<u>\$351,789</u>	<u>\$ 411,249</u>
Percentage in New York		85.54%
(2) Receipts factor		
Receipts in regular course of business from sales of tangible personal property where shipments made to points within N.Y.	\$ 66,641	xxx
Receipts in regular course of business from all sales of tangible personal property	xxx	\$1,400,868
Other business receipts	43,241	51,819
Total	<u>\$109,882</u>	<u>\$1,452,687</u>
Percentage in New York		7.56%
(3) Wage factor		
Wages, salaries and other compensation of employees	\$ 59,211	\$ 59,211
Percentage in New York		100%
BUSINESS ALLOCATION PERCENTAGE		64.37%

(b) Business allocation for the fiscal year ending September 30, 1977

	<u>New York</u>	<u>Everywhere</u>
(1) Property factor		
Real estate rented	\$ 58,952	\$ 133,712
Inventories owned	218,797	226,231
Other tangible personal property owned	13,257	13,844
Total	<u>\$291,006</u>	<u>\$ 373,787</u>
Percentage in New York	77.9%	
(2) Receipts factor		
Receipts in regular course of business from sales of tangible personal property where shipments made to points within N.Y.	\$315,146	xxx
Receipts in regular course of business from all sales of tangible personal property	xxx	\$ 671,791
Royalties	60,417	60,417 <sup>2</sup>
Other business receipts	79,439	75,626 <sup>2</sup>
Total	<u>\$445,002</u>	<u>\$ 807,834</u>
Percentage in New York	55.1%	
(3) Wage factor		
Wages, salaries and other compensation of employees	\$ 75,678	\$ 105,409
Percentage in New York	71.8%	
BUSINESS ALLOCATION PERCENTAGE	68.3%	

CONCLUSIONS OF LAW

A. That the affidavit of petitioner's president contains statements material to the issue at hand. Inasmuch as the Audit Division has been deprived of an opportunity to confront and cross-examine Mr. Taylor, this Commission can predicate no finding of fact solely on the matters contained in the affidavit; only those statements supported by other documentation can be considered in reaching a decision.

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<sup>2</sup> Petitioner apparently neglected to include its other New York business receipts in the total amount of other business receipts.



B. That during the fiscal years at issue, Tax Law section 210.3(a)(4) required that any corporation, which did not maintain a regular place of business outside New York, allocate all its business income and capital to this state. The regulations promulgated under said provision defined a regular place of business, in relevant part, as:

"any bona fide office (other than a statutory office), factory, warehouse or other space which is regularly used by the taxpayer in carrying on its business. If, for example, in the regular course of its business, a taxpayer: (1) stores property in a public warehouse until it is shipped to its customers, the public warehouse is considered a regular place of business...". 20 NYCRR 4-2.2(b), applicable to taxable years commencing on or after January 1, 1976, repealed April 1, 1981, which was substantially identical to Former 20 NYCRR 4.11(b), applicable to taxable years commencing prior to January 1, 1976.

C. That regarding the fiscal year ending September 30, 1976, the evidence presented wholly fails to establish that petitioner had a regular place of business in California.

D. That regarding the fiscal year ending September 30, 1977, the evidence establishes that petitioner was licensed to do business in California, stored inventory in a public warehouse and in its own warehouse in California, paid tax upon its tangible personal property situated in Los Angeles County and paid wages to employees working outside New York. The warehouses constituted "a regular place of business" of petitioner in the State of California, so as to entitle it to allocate its business capital, within the language of the above-quoted regulation.

E. That the petition of Yankee Accessory Corp. is granted to the extent indicated in Conclusion of Law "D"; that the Notice of Deficiency issued on

January 18, 1980 is hereby cancelled; and that the Notice of Deficiency issued on December 6, 1979 is sustained in all respects.

DATED: Albany, New York

STATE TAX COMMISSION

APR 22 1983

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER

TA 26 (9-79)

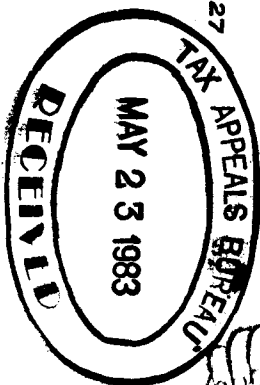
STATE OF NEW YORK

State Tax Commission

TAX APPEALS BUREAU

STATE CAMPUS

ALBANY, N. Y. 12227



*UNRECEIVED*

Yankee Accessory Corp.  
2910 Campbell Ave.  
Schenectady, NY 12301

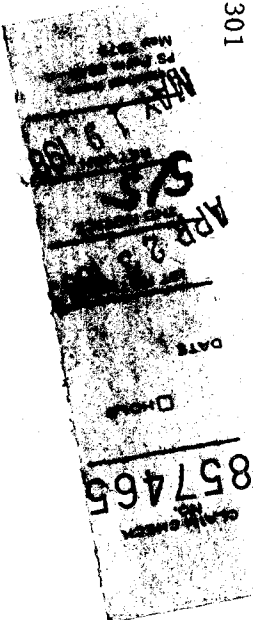
*Box 36*

*12301*

**CERTIFIED**

**P 389 758 830**

**MAIL**



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

April 22, 1983

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Phone # (518) 457-2070

Very truly yours,

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cc: Petitioner's Representative  
Richard V. D'Alessandro  
111 Washington Ave.  
Albany, NY 12210  
Taxing Bureau's Representative

STATE OF NEW YORK

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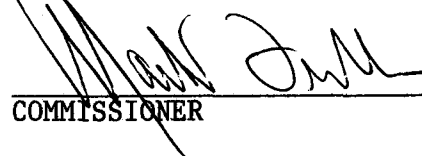
DATED: Albany, New York

STATE TAX COMMISSION

APR 22 1983

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER