

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
Alconox, Inc. :

AFFIDAVIT OF MAILING

for Redetermination of a Deficiency or Revision :
of a Determination or Refund of Corporation :
Franchise Tax under Article 9A of the Tax Law for :
the Fiscal Years Ended 6/30/77, 6/30/78 & 6/30/79. :

State of New York }

ss.:

County of Albany }

David Parchuck, being duly sworn, deposes and says that he is an employee of the State Tax Commission, that he is over 18 years of age, and that on the 9th day of August, 1984, he served the within notice of Decision by certified mail upon Alconox, Inc., the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Alconox, Inc.
215 Park Avenue South
New York, NY 10003

and by depositing same enclosed in a postpaid properly addressed wrapper in a post office 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
9th day of August, 1984.

David Parchuck

Annice O. Haglund
Authorized to administer oaths
pursuant to Tax Law section 174

STATE OF NEW YORK

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State of New York }
 } ss.:
County of Albany }

David Parchuck, being duly sworn, deposes and says that he is an employee of the State Tax Commission, that he is over 18 years of age, and that on the 9th day of August, 1984, he served the within notice of Decision by certified mail upon Allen Brayer, the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Allen Brayer
10 East 40th Street
New York, NY 10016

and by depositing same enclosed in a postpaid properly addressed wrapper in a post office 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
9th day of August, 1984.



Authorized to administer oaths
pursuant to Tax Law section 174

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

August 9, 1984

Alconox, Inc.
215 Park Avenue South
New York, NY 10003

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, a proceeding in court to review an adverse decision by the State Tax Commission may be instituted only 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
William Canton
1 East 57th Street
New York, NY 10022
AND
Allen Brayer
10 East 40th St.
New York, NY 10016

Taxing Bureau's Representative

II. Whether petitioner erroneously included certain storage expenses in its computation of the property factor when it calculated its business allocation percentage for the fiscal year ended June 30, 1979.

FINDINGS OF FACT

1. Petitioner, Alconox, Inc., owns a formula for the manufacture of synthetic detergent. During the periods in issue, petitioner had a contract with Fabric Chemical Corporation ("Fabric") to manufacture detergents using Alconox's formula.

2. Petitioner, filed a New York State Corporation Franchise Tax Report for the fiscal year ended June 30, 1977. On this report, petitioner reported 37 percent of its property factor, 7.06 percent of its receipts factor and 100 percent of its wage factor as allocable to New York, resulting in a business allocation percentage of 37.78 percent.

3. Petitioner filed a New York State Corporation Franchise Tax Report for the fiscal year ended June 30, 1978. Petitioner reported 39.16 percent of its property factor, 3.88 percent of its receipts factor and 100 percent of its wage factor as allocable to New York, resulting in a business allocation percentage of 36.73 percent.

4. Petitioner filed a New York State Corporation Franchise Tax report for the fiscal year ended June 30, 1979. Petitioner reported 34 percent of its property factor, 4.44 percent of its receipts factor and 100 percent of its wage factor as allocable to New York, resulting in a business allocation percentage of 35.72 percent.

5. Petitioner filed a State of New Jersey Corporation Business Tax Return for the fiscal years ended June 30, 1977, June 30, 1978 and June 30, 1979. Petitioner reported its allocations as follows:

<u>Year Ended</u>	<u>Real and Taxable Personal Property</u>	<u>Receipts</u>	<u>Wages</u>	<u>Allocation Factor to New Jersey</u>
June 30, 1977	96.36%	9.44%	0%	35.27%
June 30, 1978	95.72%	12.50%	0%	36.07%
June 30, 1979	96.11%	13.16%	0%	36.42%

6. On July 20, 1981, the Audit Division issued three notices of deficiency and statements of audit adjustment for, respectively, the fiscal years ended June 30, 1977, June 30, 1978 and June 30, 1979. The alleged deficiencies were issued as follows:

<u>Fiscal Year Ended</u>	<u>Tax Allegedly Due</u>	<u>Interest on Tax Allegedly Due</u>	<u>Total</u>
June 30, 1977	\$11,472.00	\$3,744.35	\$15,216.35
June 30, 1978	\$12,636.00	\$3,050.46	\$15,686.46
June 30, 1979	\$ 2,218.00	\$ 346.98	\$ 2,564.98

7. The alleged deficiencies for the 1977 and 1978 fiscal years were premised upon the Audit Division's conclusion that petitioner did not have a regular place of business outside of New York State. However, the amount of the alleged deficiency for the year 1978 was computed by giving petitioner the benefit of the job credit although it was not claimed.

8. The alleged deficiency for the year 1979 was premised upon a change in the reported property and receipts factors. With respect to the property factor, the Audit Division concluded that petitioner improperly included as "real estate rented everywhere" the fees for the storage of its finished goods on the premises of Fabric in New Jersey. The adjustment to the receipts factor was based upon an examination of sales invoices.

9. The form of business organization utilized by petitioner prior to 1954 is not completely clear from the record. However, it appears that in 1941, a Mr. Lewis Zisman approached a predecessor of petitioner with a detergent he had developed which, he claimed, would be very useful in the laboratory supply

field. It was a synthetic detergent which did not leave a film, as soaps did, on glass or metal. The detergent, which became known as "Alconox", was tested and it was found that it performed as claimed. Accordingly, Mr. Zisman and petitioner (or petitioner's predecessor) entered into a contract which provided that as long as petitioner sold a minimum of three thousand pounds of Alconox a month, petitioner would be able to market Alconox. Within a few months, petitioner was selling more than thirty thousand pounds of Alconox a month and the detergent had become a major product in the laboratory supply field.

10. The premises of petitioner (or petitioner's predecessor) were originally located on Cornelison Avenue, Jersey City, New Jersey. These are the same premises from which Fabric currently operates. Mr. Zisman was the petitioner's president and an officer of Fabric. During this early period, there were two other employees of petitioner who worked at the New Jersey location.

11. In 1955, petitioner incorporated in the State of New York and established an office in New York City in order to promote sales.

12. The contract between petitioner and Fabric provided that Fabric answer all technical inquiries and complaints. During the periods in issue, the technical inquiries and complaints were answered by Mr. Paul Jacobson, president of Fabric. Mr. Jacobson was not on petitioner's payroll. In practice, when Mr. Jacobson answered a technical question, he would sign the letter as petitioner's technical director. Petitioner's name and address in New York City were printed on the letterhead and Fabric's address was typed on the letter. If the inquiry involved a sales matter, Mr. Jacobson would respond by a letter with Fabric's letterhead and refer the inquiry to petitioner's New York office.

13. In accordance with the agreement between petitioner and Fabric, Fabric purchased the raw materials and manufactured the detergent. The employees of

Fabric then placed the detergent in boxes owned by petitioner. The boxes of materials were then stored at the premises of Fabric until shipped to customers.

14. Fabric periodically billed petitioner for the storage costs. The storage costs were reflected on Alconox's financial statements and on the corporation tax returns filed with the State of New Jersey.

15. Fabric had two buildings on its premises. In one building, approximately 17,000 square feet were set aside for storage of Alconox products. In the other building, approximately 300 square feet were set aside for petitioner's finished goods. Fabric did not specifically designate space for Alconox products. However, it was understood by the employees of Fabric that this space was to be used specifically for petitioner's finished goods. One of the boxes in which petitioner's goods were stored was inscribed with the words "Alconox Factory" and listed the address of Fabric. Another box used for shipping stated "Made in U.S.A. by Alconox, Inc., New York, New York".

16. On occasion, Mr. Lebowitz, who was an employee of petitioner, used Mr. Jacobson's office in New Jersey.

17. In accordance with the contract between petitioner and Fabric, Mr. Jacobson would evaluate competitors' products and attend trade shows as a representative of petitioner.

18. Petitioner's name is on the outside of Fabric's building.

CONCLUSIONS OF LAW

A. That section 210.3(a)(4) of the Tax Law, prior to its amendment effective for taxable years beginning after January 1, 1978, provided, in part:

"...that if the taxpayer does not have a regular place of business outside the state other than a statutory office, the business allocation percentage shall be one hundred per cent;"

B. That 20 NYCRR 4-2.2(b) provides, in part:

"A regular place of business is 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...".

C. That Mr. Jacobson's office, which petitioner used on occasion, did not constitute a bona fide office of petitioner. Similarly, the factory of Fabric did not constitute a bona fide office of petitioner.

D. That 20 NYCRR 4-3.2(c)(3) provides that the term "gross rents" does not include "amounts payable for storage, provided such amounts are payable for space not designated and not under the control of the taxpayer". Petitioner has not established that it had control of the space where its finished goods were stored at Fabric. Accordingly, petitioner may not be considered to have had a regular place of business in New Jersey through the rental of warehouse space at the premises of Fabric during the fiscal years ended June 30, 1977 and June 30, 1978. In addition, petitioner improperly included the storage fees paid to Fabric in calculating its "real estate rented everywhere" on its report for the fiscal year ended June 30, 1979.


E. That the petition of Alconox, Inc. is denied.

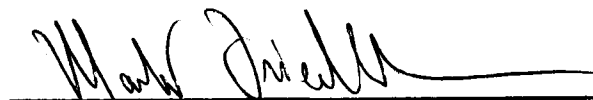
DATED: Albany, New York

STATE TAX COMMISSION

AUG 09 1984


PRESIDENT


COMMISSIONER


COMMISSIONER