

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition :  
of :  
Schwartz Bros. Memorial Chapel Inc. :  
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 Years 1973 & 1974. :  
\_\_\_\_\_

AFFIDAVIT OF MAILING

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 6th day of July, 1984, he served the within notice of Decision by certified mail upon Schwartz Bros. Memorial Chapel Inc., the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Schwartz Bros. Memorial Chapel Inc.  
2501 Grand Ave.  
Des Moines, IA 50312

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  
6th day of July, 1984.

David Parchuck

Orville G. Hays  
Authorized to administer oaths  
pursuant to Tax Law section 174

STATE TAX COMMISSION

In the Matter of the Petition  
of  
Schwartz Bros. Memorial Chapel Inc.  
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 Years 1973 & 1974.

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

Robert W. Toan  
Baker & McKenzie  
375 Park Ave.  
New York, NY 10022

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.

David Parhusip

*Annexa C. H. H. H. H.*  
Authorized to administer oaths  
pursuant to Tax Law section 174

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

July 6, 1984

Schwartz Bros. Memorial Chapel Inc.  
2501 Grand Ave.  
Des Moines, IA 50312

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  
Robert W. Toan  
Baker & McKenzie  
375 Park Ave.  
New York, NY 10022  
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition	:	
	:	
of	:	
	:	
SCHWARTZ BROS. MEMORIAL CHAPEL, INC.	:	DECISION
	:	
for Redetermination of a Deficiency or for	:	
Refund of Corporation Franchise Tax under	:	
Article 9-A of the Tax Law for the Years	:	
1973 and 1974.	:	

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Petitioner, Schwartz Bros. Memorial Chapel, Inc., 2501 Grand Avenue, Des Moines, Iowa 50312, 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 March 31, 1973 and March 31, 1974 (File No. 24211).

A formal hearing was held before Nigel Wright, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on November 20, 1980. Petitioner appeared by Baker & McKenzie (Robert W. Toan and David Welles, Esqs. of counsel). The Audit Division appeared by Ralph J. Vecchio (Abraham Schwartz, Esq. of counsel).

#### ISSUES

Whether interest paid by petitioner and deductible by petitioner for Federal tax purposes to carry indebtedness attributable to the purchase of stock of a subsidiary can be deducted by it for purposes of the franchise tax on business corporations under Article 9-A of the Tax Law in whole or in part under the provisions of section 208, subdivision 9(b)(6) of the Tax Law.

#### FINDINGS OF FACT

1. a. A Statement of Audit Adjustment for the fiscal year ending March 31, 1973 bearing date of January 12, 1976 was issued showing a tax deficiency of

\$11,040.68, plus interest of \$2,126.43, for a total of \$13,167.11. This was issued, as it stated, upon a denial of a deduction for interest expense indirectly attributable to subsidiary capital of \$122,675.17.

b. A Statement of Audit Adjustment for the fiscal year ending March 31, 1974 bearing the date of January 12, 1976 was issued showing a tax deficiency of \$5,347.87, plus interest of \$628.91, for a total of \$5,976.78. This was due to a denial of a deduction for interest expense indirectly attributable to subsidiary capital of \$59,416.60.

2. A deficiency notice under date of March 23, 1976 was issued against petitioner for both years here in question. This is in the amount of \$16,388.55, plus interest and/or penalty of \$3,027.37.

3. Petitioner filed a petition to the State Tax Commission dated June 18, 1976.

4. a. A Statement of Audit Adjustment for the fiscal year ending March 31, 1973 bearing date of July 30, 1976 was issued showing a tax deficiency of \$30,804.12, plus interest of \$7,169.25, for a total of \$37,973.77. (Petitioner denies having received this statement.) This statement shows a denial of a deduction for interest expense directly (not merely indirectly) attributable to subsidiary capital of \$312,000.00 and a tax on subsidiary capital of \$2,724.21.

b. A Statement of Audit Adjustment for the fiscal year ending March 31, 1974 bearing date of July 30, 1976 was issued against petitioner showing a tax deficiency of \$17,429.27, plus interest of \$2,749.46, for a total of \$20,178.73. (Petitioner denies having received this statement.) This statement shows a denial of a deduction for interest expense directly (not merely indirectly) attributable to subsidiary capital of \$160,000.00 and a tax on subsidiary capital of \$3,028.89.

5. By a letter dated September 24, 1976 (after the petition to the commission had been filed), petitioner was notified of an increase in the deficiency for each year. (Petitioner admits receiving this letter.) The new deficiency for the fiscal year ending March 31, 1973 is \$30,804.12, plus interest through October 1, 1976 of \$7,600.91, for a total of \$38,405.03; and for the fiscal year ending March 31, 1974, it is \$15,989.27, plus interest of \$2,746.15, for a total of \$18,735.42.

6. The increased deficiency is based in part upon a denial of deduction for interest expense which is directly attributable to subsidiary capital (the original deficiency was based upon a finding that the interest expense involved was only indirectly related to the stock of the subsidiary). The disallowed deduction for 1973 is \$312,000.00 and for 1974 is \$144,000.00. The remainder of the increased deficiency is based upon the assertion of a tax measured by subsidiary capital for 1973 of \$2,724.21 and for 1974 of \$3,028.89.

7. a. Petitioner, Schwartz Bros. Memorial Chapel, Inc., is an Iowa corporation, which is a wholly-owned subsidiary of International Funeral Services, Inc., also an Iowa corporation created in 1970. Petitioner owns all the stock of Fairchild Sons, Inc., a New York corporation.

b. Petitioner was formed as a subsidiary of International Funeral Services, Inc. in 1970 under the name of Fairchild Sons Funeral Homes, Inc. At that time, it acquired from its parent all of the stock of Fairchild Sons, Inc., which the parent had purchased in that year. It also acquired from its parent the debt obligations related to the purchase. The name of petitioner was changed to its present name in 1972 after a merger.

8. Fairchild Sons, Inc. is a New York corporation which paid New York franchise taxes on entire net income. It did not allocate income to other

states. It did not pay any dividends or interest to its parent during the years in question.

9. Petitioner incurred interest expenses and deducted such expenses on its federal tax return for 1973 and 1974 in the respective amounts of \$312,268.00 and \$144,464.00.

10. Petitioner has conceded that "virtually all of the interest incurred was factually related to the actual situation of the Fairchild subsidiary" and that "the amounts of this interest were incurred on purchase money indebtedness with respect to this subsidiary corporation."

#### CONCLUSIONS OF LAW

A. That Tax Law section 208, subdivision 9 furnishes the definition for and method of computing entire net income; paragraph (a), subparagraph (1) thereof provides that entire net income shall not include "income, gains and losses from subsidiary capital...". Paragraph (b) sets forth those exclusions, deductions and credits which are not permitted in the determination of entire net income and provides, in pertinent part:

"Entire net income shall be determined without the exclusion, deduction or credit of:

\* \* \*

(6) in the discretion of the tax commission, any amount of interest directly or indirectly and any other amount directly attributable as a carrying charge or otherwise to subsidiary capital or to income, gains or losses from subsidiary capital."

The regulation in force for years prior to 1976 addressed the above two provisions as follows:

"After determining Federal taxable income, it must be adjusted as follows:

\* \* \*

Deduct from Federal taxable income:

(8) All dividends, interest and gains from subsidiary capital...which were taken into account in computing Federal taxable income (less, in the discretion of the State Tax Commission, any deductions allowed in computing Federal taxable income for (1) interest which was directly or indirectly attributable, and (2) any other amounts which were directly attributable, as a carrying charge or otherwise, to subsidiary capital or to income and gains therefrom), but not any other income from subsidiaries...". Former 20 NYCRR 3.11(b).

B. That the Commission does not choose to exercise the discretion accorded to it under Tax Law section 208.9(b)(6) to allow petitioner a deduction for the amount of interest indirectly attributed to subsidiary capital. The taxpayer's exclusion of income from subsidiary capital is not a prerequisite to the disallowance, in the same taxable year, of the interest deduction. To conclude otherwise would allow taxpayers, via the appropriate timing of distributions to parent corporations from subsidiaries, to avoid taxation on such distributions, while at the same time taking advantage of the interest deduction.

C. That the deficiencies based on the tax measured by subsidiary capital are confirmed. Petitioner admits that it had a subsidiary wholly taxable in New York State and it would appear that the deficiencies based on such tax are incontrovertible.

D. That the petition of Schwartz Bros. Memorial Chapel, Inc. is denied, and the Notice of Deficiency issued on March 23, 1976 and increased on September 24, 1976 is sustained.

DATED: Albany, New York

STATE TAX COMMISSION

JUL 06 1984

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER

TA 26 (9-79)

STATE OF NEW YORK

State Tax Commission

TAX APPEALS BUREAU

STATE CAMPUS

ALBANY, N. Y. 12227



Directory Searcher #8



Schwartz Bros. Memorial Chapel Inc.  
2501 Grand Ave.  
Des Moines, IA 50312

CERTIFIED

P 440 917 213

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

July 6, 1984

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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  
Robert W. Toan  
Baker & McKenzie  
375 Park Ave.  
New York, NY 10022  
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

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SCHWARTZ BROS. MEMORIAL CHAPEL, INC.	:	DECISION
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Refund of Corporation Franchise Tax under	:	
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ISSUES

Whether interest paid by petitioner and deductible by petitioner for Federal tax purposes to carry indebtedness attributable to the purchase of stock of a subsidiary can be deducted by it for purposes of the franchise tax on business corporations under Article 9-A of the Tax Law in whole or in part under the provisions of section 208, subdivision 9(b)(6) of the Tax Law.

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DATED: Albany, New York

STATE TAX COMMISSION

JUL 06 1984

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER