STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition of Thomas & Betts Corp.	:
	AFFIDAVIT OF MAILING
for Redetermination of a Deficiency or Revision of a Determination or Refund of Corporation Franchise Tax under Article 9-A of the Tax Law for the Years 1971-1976.	:

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 21st day of September, 1984, he served the within notice of Decision by certified mail upon Edward H. Hein, the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Edward H. Hein
Breed, Abbott & Morgan
Citicorp Ctr., 153 E. 53rd St.
New York, NY 10022

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
21st day of September, 1984.

David Parchuck

Authorized to administer oaths
pursuant to Tax Law section 174

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition of Thomas & Betts Corp.	AFFIDAVIT OF MAILING
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State of New York }
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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 21st day of September, 1984, he served the within notice of Decision by certified mail upon Thomas & Betts Corp., the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Thomas & Betts Corp.
Attn: Nick Paola
920 Route 202
Raritan, NJ 08869

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
21st day of September, 1984.

David Parchuck

Authorized to administer oaths
pursuant to Tax Law section 174

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

September 21, 1984

Thomas & Betts Corp.
Attn: Nick Paola
920 Route 202
Raritan, NJ 08869

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
Edward H. Hein
Breed, Abbott & Morgan
Citicorp Ctr., 153 E. 53rd St.
New York, NY 10022
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
THOMAS & BETTS CORPORATION	:	DECISION
for Redetermination of a Deficiency or for Refund of Corporation Franchise Tax under Article 9-A of the Tax Law for the Years 1971 through 1976.	:	

Petitioner, Thomas & Betts Corporation, 920 Route 202, Raritan, New Jersey 08869, 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 1971 through 1976 (File No. 22666).

A formal hearing was held before Robert F. Mulligan, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York on May 9, 1983 at 9:15 A.M., with all briefs to be submitted by September 14, 1983. Petitioner appeared by Breed, Abbott & Morgan, Esqs. (Edward H. Hein, Esq., of counsel). The Audit Division appeared by John P. Dugan, Esq. (Anne W. Murphy, Esq. of counsel).

ISSUES

I. Whether petitioner maintained an office in New York State within the meaning of section 209.1 of the Tax Law and is thus liable for corporate franchise tax.

II. Whether the State Tax Commission is bound by a resolution proposed by a Tax Appeals Bureau conferee, where the conferee was overruled by his superior.

FINDINGS OF FACT[1]

1. Petitioner, Thomas & Betts Corporation, is a New Jersey corporation with its principal office in Raritan, New Jersey. During the years in issue its principal office was located in Elizabeth, New Jersey.

2. From 1971 through 1976, petitioner filed New York State form CT-245 and thereon consistently disclaimed liability for New York State franchise taxes.

3. On February 5, 1978 the Audit Division issued to petitioner notices of deficiency of corporate franchise tax as follows: $30,425.00 for 1971, $37,879.00 for 1972, $43,047.00 for 1973, $41,828.00 for 1974, $45,258.00 for 1975 and $70,308.00 for 1976.

4. The asserted deficiencies are based on the findings of a field audit set forth in the New York State field audit report dated December 30, 1977 which correctly describes petitioner's activities, although the legal conclusions drawn therefrom are at issue in this proceeding.

5. Petitioner is engaged in the design, manufacture and marketing of electrical components which are ultimately used in the wiring process by businesses ranging in size from the largest multi-national conglomerates to one man electical contractors.

6. Petitioner does not sell directly to the ultimate users of its products but instead sells to electrical distributors.

7. During the years 1971 through 1976 petitioner employed approximately twelve salesmen assigned to solicit orders from electrical distributors located in New York State.

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[1] Findings of Fact No. 1 through 7 are based on a stipulation between the parties.

8. Petitioner's New Jersey tax returns for 1971 through 1975 show that in addition to its New Jersey places of business, petitioner had offices and warehouses in California, Georgia, Tennessee, Illinois, Nevada and Washington. The 1976 return shows the same, with the addition of Indiana as a state in which it had an office or warehouse. New York was not listed on any of the returns.

9. Petitioner is one of the largest corporations in the United States with both assets and annual sales in excess of $100,000,000.00 in 1976 and shareholders' equity of $92,920,000.00 at December 31, 1976; its stock is listed on the New York Stock Exchange, inter alia.

10. Of the twelve salesmen referred to in Finding of Fact "7", eight were engaged in full-time solicitation of orders in New York State and the other four performed the same function part-time in New York State. The crux of this case is whether the renting of space by petitioner's district sales manager for the Syracuse district constituted the maintenance of an office in New York State, thereby rendering petitioner subject to corporate franchise tax. The district sales manager, Richard D. Perry, was employed in that capacity from 1963 until 1979.

11. As district sales manager, Mr. Perry had primary responsibility for soliciting orders for petitioner's products from customers and potential customers located in or near Syracuse. In addition, he supervised the solicitation of orders by petitioner's salesmen in other cities in New York State including Buffalo, Rochester and Albany.

12. From 1963 until 1967, Mr. Perry performed his paperwork in a spare room in his residence, located in Chittenango, New York, approximately fifteen miles east of Syracuse. He worked there evenings, weekends, and

during the business day when not contacting customers. His wife, who was not employed or compensated by the petitioner, assisted Mr. Perry by typing letters and taking telephone messages from petitioner's New Jersey offices, other salesmen and customers. Mr. Perry employed an answering service to handle telephone messages when he and his wife were not at home. By 1967, the size of Mr. Perry's family had grown and he found it difficult to continue using his home to perform paperwork and receive calls.

13. In 1967, Mr. Perry rented a building in Fayetteville, New York about ten miles east of Syracuse. Petitioner contends that this location was chosen because it was convenient to Mr. Perry's home.

14. In May of 1971, the lease in Fayetteville terminated and Mr. Perry entered into a lease for space in a house located at 267 Genesee Street in Chittenango, New York, about one mile from his home. Mr. Perry requested and received reimbursement for the rent from petitioner. He renewed the lease annually from 1972 through 1976. The rent initially was $85 per month but was subsequently increased to $100.00 per month.

15. The lease permitted business use of a single 12' X 24' room, a closet and a bathroom on the first floor in the rear of the house. The room had a door to the outside, located at the side of the house. The front part of the first floor was used as a beauty parlor; the owner of the house occupied the second floor. There were no signs indicating that petitioner had any connection with the house except for a decal which Mr. Perry placed on the window of the side door.

16. A copy of the lease covering the period June 1, 1971 through May 31, 1972, which is in evidence, names Richard D. Perry as the tenant. Petitioner's name is not mentioned. The lease provides that Mr. Perry "...covenants and

agrees to use the rented premises as an office only for himself and it is hereby understood and agreed that the character of the acceptance of the demised premises is a special consideration and inducement for the granting of this lease by the lessor to the lessee."

17. A photograph of the leased premises shows a modest, rather drab looking two story frame house, circa 1925.

18. Mr. Perry used the room evenings and on weekends, just as he had used his home prior to renting the room. During the period 1971 through 1976 he was assisted by a "housewife" who came in about three hours a day to do the typing and filing that Mrs. Perry had previously done. The employee received an hourly wage which petitioner paid.

19. The room contained two desks, a typewriter, an adding machine, filing cabinets and a telephone listed in the white pages (but not the yellow pages) under petitioner's name.

20. Mr. Perry did not meet customers at the room because of its drab and cluttered appearance.

21. During the audit, petitioner's representatives, who contested that the Chittenango room was an office maintained by petitioner, proposed that an "equity" treatment of the receipts factor would better reflect its New York State activities and would be acceptable to petitioner. This treatment would be to eliminate those receipts which were not generated by the efforts of the New York State sales personnel, e.g. sales generated by national chains to petitioner's New Jersey offices where the orders were approved and shipment was made from New Jersey inventories. The field auditor recommended that "acceptance of this proposal is in the State's best interests". The additional tax under this treatment would have been $162,599.00. The auditor's supervisors, however,

rejected this alternative and determined that $327,890.00 in additional tax was due. Accordingly, the notices of deficiency referred to in Finding of Fact "3" were then issued.

22. Petitions for redetermination with respect to each of the asserted deficiencies were filed on or about March 15, 1978.

23. On October 12, 1978, a pre-hearing conference was held pursuant to section 601.4 of the State Tax Commission's Rules of Practice and Procedure (20 NYCRR section 602.4) at which both the petitioner and the Audit Division were represented.

24. Following the conference and submission at the request of the conferee of additional factual information, an analysis of additional legal authorities (a copy of which was simultaneously submitted to the Audit Division representative) the conferee proposed a resolution of the controversy.

25. The conferee's proposed resolution of the controversy was that there was no deficiency in tax.

26. The conferee having proposed a resolution of the controversy which petitioner found acceptable, the petition was withdrawn in writing by petitioner's representative on January 16, 1980.

27. By letter dated February 4, 1980 from John F. Koagel, Supervisor of Tax Conferences, petitioner was informed:

> "After review of (the conferee's) decision, it was determined that the decision was not correct and therefore, the Withdrawal of Petition and Discontinuance of Case signed on January 16, 1980, by Mr. Hein is being considered null and void. The case will be sent to the Formal Hearing Unit where a Formal Hearing will be scheduled and held at the Tax Appeals Bureau offices, Room 65-51, Two World Trade Center, New York, New York."

No further explanation or statement was furnished as to who made such "review" and overruled the conferee.

28. Petitioner's representative promptly objected in writing to the action communicated in Mr. Koagel's letter of February 4, 1980.

29. Petitioner submitted 21 proposed findings of fact of which all except findings number 8, 9 and 19 are accepted and have been incorporated into the facts stated herein. Proposed findings number 8 and 19 are conclusory. Proposed finding number 9 is not supported by the evidence. The Audit Division submitted nine proposed findings of fact, numbers 1, 3 and 9 of which are accepted without change and incorporated herein. Proposed finding number 2 is accepted and incorporated herein with the substitution of the word "room" for the word "office", number 4 is accepted and incorporated as restated by petitioner on page 2 of its reply memorandum, number 5 is accepted and incorporated with the addition of the words "but not the yellow pages" after the words "in the white pages". Numbers 6 and 7 are rejected as conclusory and number 8 is rejected as irrelevant and unnecessary to this decision.

CONCLUSIONS OF LAW

A. That the primary issue in this case is whether the renting of the Chittenango space by petitioner's district sales manager constituted maintaining an office in this State by petitioner within the meaning of section 209.1 of the Tax Law[2].

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[2] Although it is possible that petitioner may have engaged in activities which exceeded the "mere solicitation of orders" which affords protection from state taxation under 15 USC 381, the hearing was specifically confined to the question whether or not the Chittenango room constituted an office maintained in New York by petitioner. (Answer of Department of Taxation and Finance to perfected petition; also transcript, page 40). It is noted that when the original auditor was overruled by his superiors, the case was not referred back for further investigation. Thus, the Audit Division's case rises or falls based on the status of the Chittenango room.

Section 209.1 of the Tax Law imposes a franchise tax on every domestic or foreign corporation for the privilege of exercising its corporate franchise or of "doing business or of employing capital, or of owning or leasing property in this state in a corporate or organized capacity, or of maintaining an office in this state...".

The phrase "maintaining an office" was inserted in section 209.1 by Chapter 1072 of the Laws of 1969. The governor's memorandum with respect to this legislation explains its purpose as follows:

> "Unlike most states, New York has not regarded maintenance of administrative or sales offices or mere holding of stocks of goods or tangible property within the State as adequate to assert taxing jurisdiction. As a result, New York and out-of-state firms now paying taxes to New York are frequently confronted with competition from out-of-state corporations not required to pay such taxes.
> This measure will permit taxation of multistate corporations doing business or employing capital, owning or leasing property or maintaining an office in New York. These changes do not go beyond jurisdictional standards permissable under federal law and are compatible with the jurisdicational practices of most other states. The changes will eliminate an obvious inequity to firms now contributing a fair share to New York State government." (New York State Legislative Annual, 1969 at page 577-78).

Relevant Business Corporation Franchise Tax regulations provide as follows:

> "(e) Foreign corporation - maintaining an office. A foreign corporation which maintains an office in New York State is engaged in an activity which makes it subject to tax. An office is any area, enclosure, or facility which is used in the regular course of the corporate business. A salesman's home, a hotel room, or a trailer used on a construction job site may constitute an office." (20 NYCRR 1-3.2(e))

> "(vi) Maintaining an office, shop, warehouse, or stock of goods in New York State will make a corporation taxable. A corporation will be considered to be maintaining an office in New York State if the space is held out to the public as an office or place of business of the taxpayer. For

> example, a salesman uses his home for business. A telephone, listed in the corporation's name, is maintained at the salesman's house. The salesman makes telephone contacts from the house or receives calls and orders at the house. The residence will be treated as an office of the corporation, and the corporation will be taxable." (20 NYCRR 1-3.4(9)(vi))

Although the above regulations were not filed until August 31, 1976 and were not effective for taxable years beginning prior to January 1, 1976, they are interpretive of and codified the policy of the State Tax Commission and the Department of Taxation and Finance during all of the years at issue.

B. That the space rented by petitioner's district sales manager in Chittenango, New York, constituted an office maintained by petitioner in this state, within the meaning of section 209.1 of the tax law. The space was clearly used in the regular course of petitioner's corporate business and by virtue of the telephone listing, was held out to the public as an office or place of business of petitioner. (20 NYCRR 1-3.2(e) and 1-3.4(9)(vi), supra)

C. That section 601.4 of the State Tax Commission Rules of Practice and Procedure (20 NYCRR 601.4) provides for a pre-hearing conference under the aegis of the Tax Appeals Bureau. "The goal of the conferee will be to resolve the controversy between the parties, where possible, within the framework of the Tax Law, thereby eliminating the need for a hearing and a decision of the commission." (20 NYCRR 601.4(c)(1).)

Subdivisions (2) and (3) of 20 NYCRR 601.4(c) provide in relevant part:

> "(2) To accomplish the expeditious resolution of controversies, the commission empowers the conferee to propose any resolution he deems fair and equitable, to the petitioner, provided there is basis for such resolution in fact and in law. No resolution shall be proposed on the basis of expediency, hazards of litigation, nuisance value or other form of settlement, compromise or abatement where not authorized by law. ..."

> "(3) Where the conferee is able to propose a resolution of the controversy, and the petitioner finds such resolution acceptable, the petition will be withdrawn in writing and the parties will take whatever action is necessary, appropriate and consistent with the resolution. If the resolution entails a refund, approval of the Comptroller is necessary".

There is no valid basis for petitioner to expect the State Tax Commission to abdicate its responsibility and delegate unbridled settlement authority to its conferees. The regulations clearly make the conferee's authority to resolve cases contingent on any such resolution being based on fact and law (20 NYCRR 601.4(c)(4) supra); it follows, then, that the Commission must oversee each proposed resolution to insure that it is based on fact and law. It is the function of the Tax Appeals Bureau supervisory staff to assist the Commisison in this task and it was within the scope of the duties of the Supervisor of Tax Conferences to reject the conferee's proposal and forward the matter to hearing. Moreover, there is no need for every step of the conference review procedure to be set forth in the regulations.

Petitioner argues in its brief that:

> "None of the safeguards which the N.Y. State Administrative Procedure Act §301 et seq provides for parties before administrative agencies, such as reasonable notice, an opportunity to be heard, etc., was present. The 'review' was a gross travesty of due process."

The implication of this argument is that petitioner was entitled to a separate hearing for review of the actions of the Supervisor of Tax Conferences with respect to the resolution of the pre-hearing conference. This would mean that petitioner would be entitled to two hearings on virtually the same issues and facts, a redundant and unnecessary safeguard which would frustrate the purpose for which the pre-hearing conference was intended, i.e. eliminating the need for a hearing and decision by the commission (20 NYCRR 601.4(c)(1), supra).

D. That the petition of Thomas & Betts Corporation is denied and the Notice of Deficiency is sustained.

DATED: Albany, New York

SEP 21 1984

STATE TAX COMMISSION

PRESIDENT

COMMISSIONER

COMMISSIONER