

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
Arnold Constable 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 Ended 1/31/74, :
1/31/76, 1/31/77 & 1/31/81. :

In the Matter of the Petition :
of :
No Name Stores, Inc. :

AFFIDAVIT OF MAILING

for Redetermination of a Deficiency or for Refund :
of Corporation Franchise Tax under Article 9-A of :
the Tax Law for the Fiscal Years Ended 1/31/76 :
through 1/31/80. :

In the Matter of the Petition :
of :
Setman Realty Corp. :

for Redetermination of a Deficiency or for Refund :
of Corporation Franchise Tax under Article 9-A of :
the Tax Law for the Fiscal Year Ended 1/31/76. :

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 29th day of May, 1985, he served the within notice of Decision by certified mail upon Setman Realty Corp., the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Setman Realty Corp.
240 W. 40th St.
New York, NY 10018

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.

Page 2

Affidavit of Mailing

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
29th day of May, 1985.

David Parshuck

James A. Hagelund
Authorized to administer oaths
pursuant to Tax Law section 174

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

May 29, 1985

Setman Realty Corp.
240 W. 40th St.
New York, NY 10018

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
Walter J. Lambert
Ernst & Whinney
153 E. 53rd St.
New York, NY 10022
Taxing Bureau's Representative

STATE OF NEW YORK

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David Parolnick

Conrad R. Haylund

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Walter J. Lambert
Ernst & Whinney
153 E. 53rd St.
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Barbara A. Haglund

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STATE TAX COMMISSION
ALBANY, NEW YORK 12227

May 29, 1985

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cc: Petitioner's Representative
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In the Matter of the Petition
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ARNOLD CONSTABLE CORP.
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Refund of Corporation Franchise Tax under
Article 9-A of the Tax Law for the Fiscal Years
Ended January 31, 1974, January 31, 1976,
January 31, 1977 and January 31, 1980.

In the Matter of the Petition
of
NO NAME STORES, INC.
for Redetermination of a Deficiency or for
Refund of Corporation Franchise Tax under
Article 9-A of the Tax Law for the Fiscal Years
Ended January 31, 1976 through January 31, 1980.

DECISION

In the Matter of the Petition
of
SETMAN REALTY CORP.
for Redetermination of a Deficiency or for
Refund of Corporation Franchise Tax under
Article 9-A of the Tax Law for the Fiscal Year
Ended January 31, 1976.

Petitioner Arnold Constable Corp., 240 West 40th Street, New York, New York 10018, 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 ended January 31, 1974, January 31, 1976, January 31, 1977 and January 31, 1980 (File Nos. 28098, 29272, 42086 and 44561).

Petitioner No Name Stores, Inc., 240 West 40th Street, New York, New York 10018, 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 ended January 31, 1976 through January 31, 1980 (File Nos. 28099, 28899, 32495, 42087 and 45985).

Petitioner Setman Realty Corp., 240 West 40th Street, New York, New York 10018, 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 year ended January 31, 1976 (File No. 28100).

A formal hearing was held before Arthur Bray, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on August 20, 1984 at 1:15 P.M., with all briefs to be submitted by October 22, 1984. Petitioners appeared by Ernst & Whinney (Walter J. Lambert, C.P.A.). The Audit Division appeared by John P. Dugan, Esq. (Irwin Levy, Esq., of counsel).

ISSUES

I. Whether the Audit Division properly required petitioners to file separate corporation franchise tax reports.

II. Whether the Audit Division properly computed interest attributable to subsidiary capital.

III. Whether the assessments issued to No Name Stores, Inc. for the fiscal years ended January 31, 1977 and January 31, 1978 should be cancelled on the ground that the Audit Division did not issue a Notice of Deficiency pertaining to said years.

FINDINGS OF FACT

1. For the fiscal years ended January 31, 1974, Arnold Constable Corp. ("Arnold Constable") filed a New York State franchise tax report on a combined basis with Setman Realty Corp. ("Setman") and 721 Fifth Avenue Corporation ("Fifth Avenue"). For the fiscal years ended January 31, 1976 and January 31, 1977, Arnold Constable filed New York State franchise tax reports on a combined basis with No Name Stores, Inc. ("No Name"), Setman and Fifth Avenue. For the fiscal year ended January 31, 1980, Arnold Constable filed a New York State franchise tax report on a combined basis with No Name.

2. During each of their respective periods in issue, No Name and Setman filed New York State franchise tax reports in a manner consistent with said corporations having been included on Arnold Constable's combined franchise tax report.

3. The Audit Division issued notices of deficiency to Arnold Constable as follows:

<u>Date Issued</u>	<u>Period Ended</u>	<u>Tax Asserted to be Due</u>	<u>Interest</u>	<u>Total</u>
12/2/77	1/31/74	\$ 1,587.00	\$ 435.61	\$ 2,022.61
9/27/79	1/31/76	8,913.00	2,611.51	11,524.51
12/21/79	1/31/77	7,838.00	1,805.16	9,643.16
5/10/83	1/31/80	68,886.00	27,506.18	96,392.18

4. The Audit Division issued notices of deficiency asserting deficiencies of corporation franchise tax to No Name as follows:

<u>Date Issued</u>	<u>Period Ended</u>	<u>Tax Asserted to be Due</u>	<u>Interest</u>	<u>Total</u>
9/27/79	1/31/76	\$ 8,980.00	\$ 2,631.14	\$11,611.14
1/8/81	1/31/79	2,463.00	170.19	2,633.19
5/10/83	1/31/80	659.00	263.14	922.14

5. The Audit Division issued notices and demands for payment of corporation tax due to No Name as follows:

<u>Date Issued</u>	<u>Period Ended</u>	<u>Tax Assessed</u>	<u>Interest</u>	<u>Penalty</u>	<u>Total</u>	<u>Amount Paid</u>	<u>Balance Due</u>
4/3/78	1/31/77	\$1,067.60	\$ 67.29	\$204.40	\$1,339.29	\$250.00	\$1,089.29
8/30/79	1/31/78	1,203.10	140.52	300.77	1,644.39	-0-	1,664.39

6. On September 27, 1979, the Audit Division issued a Notice of Deficiency to Setman for the period ended January 31, 1976 asserting a deficiency of corporation franchise tax in the amount of \$943.00, plus interest of \$276.29, for a total amount of \$1,219.29.

7. To the extent at issue herein, the Audit Division concluded that Setman should be eliminated from the combined reports filed by Arnold Constable because it was an inactive corporation. The Audit Division also determined that No Name should be eliminated from the combined reports filed by Arnold Constable because permission to file such combined report was never sought.¹

8. As a result of the foregoing, the tax on Arnold Constable, Setman and No Name was computed as if each entity filed separately.

9. The Audit Division also recomputed the amount of interest attributable to Arnold Constable's subsidiary capital. In performing this computation, the Audit Division utilized the average fair market value of the investment in the subsidiaries rather than the cost, because the Audit Division did not have information as to the cost of the subsidiary capital. Following the hearing, Arnold Constable submitted information with respect to the cost of said subsidiary capital.

¹ Fifth Avenue was also eliminated from combined reports filed by Arnold Constable because it was an inactive corporation. However, the elimination of Fifth Avenue from the combined report was not raised as an issue. Therefore, further discussion of this adjustment is considered unnecessary.

10. At the outset of the periods in issue, Arnold Constable was a corporation which engaged in retail clothing sales. It also sold jewelry and notions.

11. Arnold Constable owned all of the outstanding stock of several corporations which were real estate holding companies. To the extent addressed at the hearing, it was Arnold Constable's practice to conduct its retail operations from stores owned by its subsidiaries. Setman and Fifth Avenue were such corporations.

12. Setman was a real estate holding corporation which owned a store and an adjoining parking lot in Manhasset, New York. The store was occupied by Arnold Constable. In or about 1971 and 1972, the store in Manhasset, New York was closed and Setman sold the real estate. Thereafter, Setman ceased being an active corporation.

13. In 1972, Arnold Constable changed the nature of its business and began the operation of women's specialty shops which sold principally slacks, jeans and blouses. At this time, Arnold Constable still operated the main store owned by Fifth Avenue.

14. The image which Arnold Constable conveyed was not consistent with the market which Arnold Constable sought to attract through the operation of its women's specialty shops. Therefore, in April, 1975, Arnold Constable closed the store owned by Fifth Avenue. During the same month, Arnold Constable established a new corporation, known as No Name, and the operations of the new women's specialty shops were transferred to it.

15. From the time No Name began to operate, all of its purchases were from Arnold Constable. Further, after Arnold Constable's main store was closed, all of Arnold Constable's sales were to No Name.

16. The officers of No Name were also the officers of Arnold Constable. Arnold Constable did all of the buying and warehousing for No Name.

17. When petitioners began receiving the notices of deficiency, Arnold Constable applied to the Audit Division for permission to file a combined report with, among other entities, No Name. On March 19, 1981, the Audit Division granted Arnold Constable tentative permission to file a combined franchise tax report with No Name for the period ended January 31, 1981. The permission was granted subject to final approval when the franchise tax report for the period ended January 31, 1981 was examined.

CONCLUSIONS OF LAW

A. That subdivision 4 of section 211 of the Tax Law, in pertinent part, provides:

"In the discretion of the tax commission, any taxpayer, ...substantially all the capital stock of which is owned or controlled either directly or indirectly by one or more other corporations..., may be required or permitted to make a report on a combined basis covering any such other corporations and setting forth such information as the tax commission may require; provided, however, ...that no combined report covering any corporation not a taxpayer shall be required unless the tax commission deems such a report necessary, because of intercompany transactions or some agreement, understanding, arrangement or transaction referred to in subdivision five of this section, in order properly to reflect the tax liability under this article."

B. That prior to 1976, the Tax Commission provided, by regulation, that in determining whether the tax would be computed on a combined basis, it would consider various factors, including the following:

- (1) Whether the corporations were engaged in the same or related lines of business;
- (2) Whether any of the corporations were in substance merely departments of a unitary business conducted by the entire group;
- (3) Whether the products of any of the corporations were sold to or used by any of the other corporations;

(4) Whether any of the corporations performed services for, or loaned money to, or otherwise financed or assisted in the operations of any of the other corporations;

(5) Whether there were other substantial intercompany transactions among the constituent corporations. [Former 20 NYCRR 5.28(b).]

C. That 20 NYCRR 6-2.3(a), effective for taxable years commencing on or after January 1, 1976, provides, in part:

"In deciding whether to permit or require combined reports the following two (2) broad factors must be met:

(1) the corporations are in substance parts of a unitary business conducted by the entire group of corporations, and

(2) there are substantial intercorporate transactions among the corporations."

D. That since Setman was inactive during the periods ended January 31, 1974, January 31, 1976 and January 31, 1977, it is clear that Setman was not a part of a unitary business and that neither the requirements of 20 NYCRR 5.28(b) nor 20 NYCRR 6-2.3(a) were satisfied. Accordingly, the Audit Division properly concluded that Arnold Constable and Setman improperly filed a combined report for the periods ended January 31, 1974, January 31, 1976 and January 31, 1977.

E. That Arnold Constable and No Name substantially fulfilled the criteria set forth in regulations which were effective for taxable years commencing prior to January 1, 1976 for the report filed for the period ended January 31, 1976. The corporations were engaged in related lines of business, they were parts of a unitary business, the officers of both corporations were the same, Arnold Constable performed purchasing and warehouse functions for No Name, and there were substantial intercompany transactions between Arnold Constable and No Name. Thus, upon considering all of the facts and circumstances presented, permitting a combined reporting between Arnold Constable and No Name will

fulfill the statutory purpose of avoiding a distortion of income and realistically presenting true income (see Matter of Coleco Industries, Inc. v. State Tax Comm., 92 A.D.2d 1008, 1009, aff'd. 95 N.Y.2d 994).

F. That regulations of the State Tax Commission adopted during the periods at issue herein provides, in part:

"...A taxpayer must make a written request for permission to file a combined report. The request must be received by the Tax Commission not later than thirty (30) days after the close of its taxable year...". (20 NYCRR 6-2.4(a), effective for all taxable years beginning on or after January 1, 1976.)

G. That the Audit Division properly recomputed Arnold Constable's and No Name's franchise tax liabilities on a separate basis for the taxable years after January 1, 1976. The regulation presently in effect expressly requires that taxpayers request and obtain permission prior to filing on a combined basis. Petitioners Arnold Constable and No Name failed to follow the prescribed procedure. It is noted that filing on a combined basis is not considered a request to file a combined report (Matter of Barney Sampson Co., Ltd., et al., State Tax Commission, October 7, 1983).

H. That since information has been submitted with respect to the cost of Arnold Constable's investment in its subsidiaries, the Audit Division is directed to recompute the amount of interest indirectly attributable to subsidiary capital in the proportion that the investments in and advances to subsidiaries bear to total assets (see generally, Matter of Sussex Hall, Inc., State Tax Commission, June 5, 1981).

I. That 20 NYCRR 8-1.3(a) authorizes the issuance of an assessment in the situation in which a taxpayer computes its tax on the basis of a combined report without obtaining permission of the Tax Commission. Accordingly, it was

permissible for the Audit Division to issue notices and demands to No Name for the fiscal years ended January 31, 1977 and January 31, 1978.


J. That since no evidence or argument was presented with respect to the penalties asserted, the issues are deemed waived.

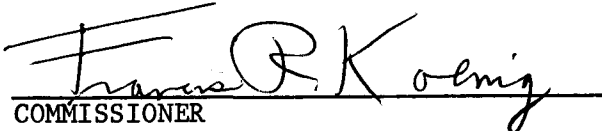
K. That the petitions of Arnold Constable Corporation and No Name Stores, Inc. are granted only to the extent of Conclusions of Law "E" and "H" and the Audit Division is directed to modify the notices of deficiency accordingly; the petitions are in all other respects denied and, except as noted in Conclusions of Law "E" and "H", the notices of deficiency are sustained.

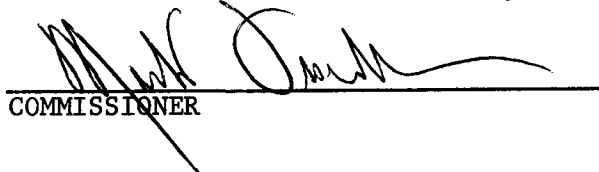
DATED: Albany, New York

STATE TAX COMMISSION

MAY 29 1985


PRESIDENT


COMMISSIONER


COMMISSIONER

TA 26 (9-79)

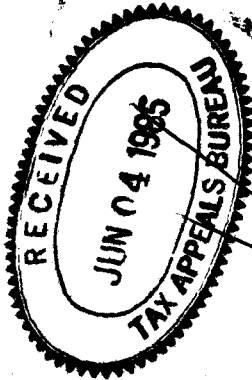
STATE OF NEW YORK

State Tax Commission

TAX APPEALS BUREAU

STATE CAMPUS

ALBANY, N. Y. 12227



Setman Realty Corp.

240 W. 40th St.

New York, NY 10018

[Handwritten signature]

1623 CARR. HTS. DL



ADDRESSEE UNKNOWN
NY NY 10018

CERTIFIED

P 693 169 921

MAIL

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

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2. During each of their respective periods in issue, No Name and Setman filed New York State franchise tax reports in a manner consistent with said corporations having been included on Arnold Constable's combined franchise tax report.

3. The Audit Division issued notices of deficiency to Arnold Constable as follows:

<u>Date Issued</u>	<u>Period Ended</u>	<u>Tax Asserted to be Due</u>	<u>Interest</u>	<u>Total</u>
12/2/77	1/31/74	\$ 1,587.00	\$ 435.61	\$ 2,022.61
9/27/79	1/31/76	8,913.00	2,611.51	11,524.51
12/21/79	1/31/77	7,838.00	1,805.16	9,643.16
5/10/83	1/31/80	68,886.00	27,506.18	96,392.18

4. The Audit Division issued notices of deficiency asserting deficiencies of corporation franchise tax to No Name as follows:

<u>Date Issued</u>	<u>Period Ended</u>	<u>Tax Asserted to be Due</u>	<u>Interest</u>	<u>Total</u>
9/27/79	1/31/76	\$ 8,980.00	\$ 2,631.14	\$11,611.14
1/8/81	1/31/79	2,463.00	170.19	2,633.19
5/10/83	1/31/80	659.00	263.14	922.14

5. The Audit Division issued notices and demands for payment of corporation tax due to No Name as follows:

<u>Date Issued</u>	<u>Period Ended</u>	<u>Tax Assessed</u>	<u>Interest</u>	<u>Penalty</u>	<u>Total</u>	<u>Amount Paid</u>	<u>Balance Due</u>
4/3/78	1/31/77	\$1,067.60	\$ 67.29	\$204.40	\$1,339.29	\$250.00	\$1,089.29
8/30/79	1/31/78	1,203.10	140.52	300.77	1,644.39	-0-	1,664.39

6. On September 27, 1979, the Audit Division issued a Notice of Deficiency to Setman for the period ended January 31, 1976 asserting a deficiency of corporation franchise tax in the amount of \$943.00, plus interest of \$276.29, for a total amount of \$1,219.29.

7. To the extent at issue herein, the Audit Division concluded that Setman should be eliminated from the combined reports filed by Arnold Constable because it was an inactive corporation. The Audit Division also determined that No Name should be eliminated from the combined reports filed by Arnold Constable because permission to file such combined report was never sought.¹

8. As a result of the foregoing, the tax on Arnold Constable, Setman and No Name was computed as if each entity filed separately.

9. The Audit Division also recomputed the amount of interest attributable to Arnold Constable's subsidiary capital. In performing this computation, the Audit Division utilized the average fair market value of the investment in the subsidiaries rather than the cost, because the Audit Division did not have information as to the cost of the subsidiary capital. Following the hearing, Arnold Constable submitted information with respect to the cost of said subsidiary capital.

¹ Fifth Avenue was also eliminated from combined reports filed by Arnold Constable because it was an inactive corporation. However, the elimination of Fifth Avenue from the combined report was not raised as an issue. Therefore, further discussion of this adjustment is considered unnecessary.

10. At the outset of the periods in issue, Arnold Constable was a corporation which engaged in retail clothing sales. It also sold jewelry and notions.

11. Arnold Constable owned all of the outstanding stock of several corporations which were real estate holding companies. To the extent addressed at the hearing, it was Arnold Constable's practice to conduct its retail operations from stores owned by its subsidiaries. Setman and Fifth Avenue were such corporations.

12. Setman was a real estate holding corporation which owned a store and an adjoining parking lot in Manhasset, New York. The store was occupied by Arnold Constable. In or about 1971 and 1972, the store in Manhasset, New York was closed and Setman sold the real estate. Thereafter, Setman ceased being an active corporation.

13. In 1972, Arnold Constable changed the nature of its business and began the operation of women's specialty shops which sold principally slacks, jeans and blouses. At this time, Arnold Constable still operated the main store owned by Fifth Avenue.

14. The image which Arnold Constable conveyed was not consistent with the market which Arnold Constable sought to attract through the operation of its women's specialty shops. Therefore, in April, 1975, Arnold Constable closed the store owned by Fifth Avenue. During the same month, Arnold Constable established a new corporation, known as No Name, and the operations of the new women's specialty shops were transferred to it.

15. From the time No Name began to operate, all of its purchases were from Arnold Constable. Further, after Arnold Constable's main store was closed, all of Arnold Constable's sales were to No Name.

16. The officers of No Name were also the officers of Arnold Constable. Arnold Constable did all of the buying and warehousing for No Name.

17. When petitioners began receiving the notices of deficiency, Arnold Constable applied to the Audit Division for permission to file a combined report with, among other entities, No Name. On March 19, 1981, the Audit Division granted Arnold Constable tentative permission to file a combined franchise tax report with No Name for the period ended January 31, 1981. The permission was granted subject to final approval when the franchise tax report for the period ended January 31, 1981 was examined.

CONCLUSIONS OF LAW

A. That subdivision 4 of section 211 of the Tax Law, in pertinent part, provides:

"In the discretion of the tax commission, any taxpayer, ...substantially all the capital stock of which is owned or controlled either directly or indirectly by one or more other corporations..., may be required or permitted to make a report on a combined basis covering any such other corporations and setting forth such information as the tax commission may require; provided, however, ...that no combined report covering any corporation not a taxpayer shall be required unless the tax commission deems such a report necessary, because of intercompany transactions or some agreement, understanding, arrangement or transaction referred to in subdivision five of this section, in order properly to reflect the tax liability under this article."

B. That prior to 1976, the Tax Commission provided, by regulation, that in determining whether the tax would be computed on a combined basis, it would consider various factors, including the following:

- (1) Whether the corporations were engaged in the same or related lines of business;
- (2) Whether any of the corporations were in substance merely departments of a unitary business conducted by the entire group;
- (3) Whether the products of any of the corporations were sold to or used by any of the other corporations;

(4) Whether any of the corporations performed services for, or loaned money to, or otherwise financed or assisted in the operations of any of the other corporations;

(5) Whether there were other substantial intercompany transactions among the constituent corporations. [Former 20 NYCRR 5.28(b).]

C. That 20 NYCRR 6-2.3(a), effective for taxable years commencing on or after January 1, 1976, provides, in part:

"In deciding whether to permit or require combined reports the following two (2) broad factors must be met:

(1) the corporations are in substance parts of a unitary business conducted by the entire group of corporations, and

(2) there are substantial intercorporate transactions among the corporations."

D. That since Setman was inactive during the periods ended January 31, 1974, January 31, 1976 and January 31, 1977, it is clear that Setman was not a part of a unitary business and that neither the requirements of 20 NYCRR 5.28(b) nor 20 NYCRR 6-2.3(a) were satisfied. Accordingly, the Audit Division properly concluded that Arnold Constable and Setman improperly filed a combined report for the periods ended January 31, 1974, January 31, 1976 and January 31, 1977.

E. That Arnold Constable and No Name substantially fulfilled the criteria set forth in regulations which were effective for taxable years commencing prior to January 1, 1976 for the report filed for the period ended January 31, 1976. The corporations were engaged in related lines of business, they were parts of a unitary business, the officers of both corporations were the same, Arnold Constable performed purchasing and warehouse functions for No Name, and there were substantial intercompany transactions between Arnold Constable and No Name. Thus, upon considering all of the facts and circumstances presented, permitting a combined reporting between Arnold Constable and No Name will

fulfill the statutory purpose of avoiding a distortion of income and realistically presenting true income (see Matter of Coleco Industries, Inc. v. State Tax Comm., 92 A.D.2d 1008, 1009, aff'd. 95 N.Y.2d 994).

F. That regulations of the State Tax Commission adopted during the periods at issue herein provides, in part:

"...A taxpayer must make a written request for permission to file a combined report. The request must be received by the Tax Commission not later than thirty (30) days after the close of its taxable year...". (20 NYCRR 6-2.4(a), effective for all taxable years beginning on or after January 1, 1976.)

G. That the Audit Division properly recomputed Arnold Constable's and No Name's franchise tax liabilities on a separate basis for the taxable years after January 1, 1976. The regulation presently in effect expressly requires that taxpayers request and obtain permission prior to filing on a combined basis. Petitioners Arnold Constable and No Name failed to follow the prescribed procedure. It is noted that filing on a combined basis is not considered a request to file a combined report (Matter of Barney Sampson Co., Ltd., et al., State Tax Commission, October 7, 1983).

H. That since information has been submitted with respect to the cost of Arnold Constable's investment in its subsidiaries, the Audit Division is directed to recompute the amount of interest indirectly attributable to subsidiary capital in the proportion that the investments in and advances to subsidiaries bear to total assets (see generally, Matter of Sussex Hall, Inc., State Tax Commission, June 5, 1981).

I. That 20 NYCRR 8-1.3(a) authorizes the issuance of an assessment in the situation in which a taxpayer computes its tax on the basis of a combined report without obtaining permission of the Tax Commission. Accordingly, it was

permissible for the Audit Division to issue notices and demands to No Name for the fiscal years ended January 31, 1977 and January 31, 1978.


J. That since no evidence or argument was presented with respect to the penalties asserted, the issues are deemed waived.

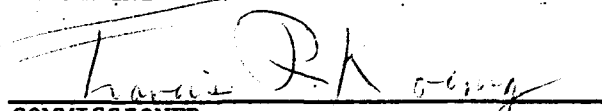
K. That the petitions of Arnold Constable Corporation and No Name Stores, Inc. are granted only to the extent of Conclusions of Law "E" and "H" and the Audit Division is directed to modify the notices of deficiency accordingly; the petitions are in all other respects denied and, except as noted in Conclusions of Law "E" and "H", the notices of deficiency are sustained.

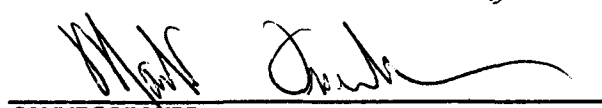
DATED: Albany, New York

STATE TAX COMMISSION

MAY 29 1985


PRESIDENT


COMMISSIONER


COMMISSIONER