

STATE OF NEW YORK

STATE TAX COMMISSION

_____ :
In the Matter of the Petition :
of :
Chain Store Properties, Inc. (Minnesota) :
for Redetermination of a Deficiency or Revision :
of a Determination or Refund of Corporation Tax :
under Article 9A of the Tax Law for the Years 1977 :
- 1980. :
_____ :

AFFIDAVIT OF MAILING

State of New York :

ss.:

County of Albany :

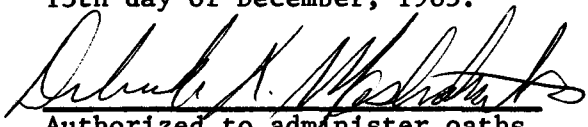
Connie A. Hagelund, being duly sworn, deposes and says that she is an employee of the State Tax Commission, that she is over 18 years of age, and that on the 13th day of December, 1985, she served the within notice of Decision by certified mail upon Chain Store Properties, Inc. (Minnesota), the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Chain Store Properties, Inc. (Minnesota)
708 Third Ave., 15th Floor
New York, NY 10017

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
13th day of December, 1985.



Authorized to administer oaths
pursuant to Tax Law section 174



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

December 13, 1985

Chain Store Properties, Inc. (Minnesota)
708 Third Ave., 15th Floor
New York, NY 10017

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: Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
CHAIN STORE PROPERTIES, INC. (MINNESOTA) : DECISION
for Redetermination of a Deficiency or for :
Refund of Corporation Franchise Tax under :
Article 27 of the Tax Law for the Years 1977 :
through 1980. :

Petitioner, Chain Store Properties, Inc. (Minnesota), 708 Third Avenue, New York, New York 10017, filed a petition for redetermination of a deficiency or for refund of corporation franchise tax under Article 27 of the Tax Law for the years 1977 through 1980 (File No. 47840).

A hearing was held before Daniel J. Ranalli, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on August 8, 1985 at 9:15 A.M. Petitioner appeared by Thelma Kleeman. The Audit Division appeared by John P. Dugan, Esq. (Lawrence A. Newman, Esq., of counsel).

ISSUE

Whether petitioner's failure to file returns and pay corporation franchise tax for the years in issue should be subject to penalties under section 1085(a) of the Tax Law.

FINDINGS OF FACT

1. Petitioner, Chain Store Properties, Inc. (Minnesota) is a subsidiary of Merchants' National Properties, Inc. Until on or about December 1, 1977, petitioner did not do business in New York State. On or about that date, petitioner acquired a six percent interest in a joint venture which owned

property in three states: Corpus Christi, Texas, Orlando, Florida and Yonkers, New York. Despite the acquisition of a partial interest in New York property, petitioner did not file New York State corporation franchise tax reports. All other property owned by petitioner was outside New York State.

2. On audit, the auditor pointed out to petitioner's representatives and employees that its interest in the New York property subjected it to corporation franchise tax. Statements of audit adjustment including \$6,796.00 in penalties¹ were issued for the years 1977 through 1980. Petitioner immediately paid all tax and interest due and filed a return for 1981.

3. Petitioner filed a petition requesting that the penalties be abated. Petitioner's bookkeeper, who did its tax work, overlooked the fact that petitioner's small interest in property subjected it to New York tax when preparing petitioner's tax returns. She explained that she was unaware of the New York property interest until the auditor pointed it out to her and that she had no intent to evade the payment of tax to New York.

CONCLUSIONS OF LAW

A. That pursuant to section 1085(a) of the Tax Law, there shall be added to the amount of tax due an additional sum for the failure to timely file a corporation franchise tax return and for failure to pay the tax due thereon, unless it is shown that such failure is due to reasonable cause and not due to willful neglect.

B. That 20 NYCRR 9-1.5(f) provides that reasonable cause may include:

1 It is not clear from the record which penalties were imposed but presumably they were the penalties for failure to file a return under section 1085(a)(1) of the Tax Law and failure to pay the tax shown on the return under section 1085(a)(2).

"any other cause for delinquency which appears to a person of ordinary prudence and intelligence as a reasonable cause for delay in filing a return and which clearly indicates an absence of gross negligence or willful intent to disobey the taxing statutes. Past performance should be taken into account. Ignorance of the law, however, will not be considered reasonable cause."

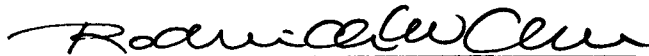
C. That petitioner's minimal nexus with New York State (six percent of a one third interest in property) led to an oversight which resulted in failure to file returns and pay tax. It was not ignorance of the law and clearly there was no gross negligence or willful intent to evade taxation, as evidenced by petitioner's prompt payment of tax and interest and filing of a 1981 return.

D. That the petition of Chain Store Properties, Inc. (Minnesota) is granted and penalties imposed for the years 1977 through 1980 are cancelled.

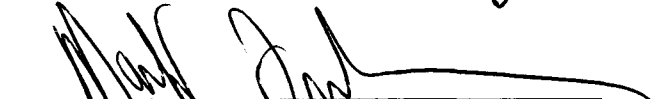
DATED: Albany, New York

STATE TAX COMMISSION

DEC 13 1985


PRESIDENT


COMMISSIONER


COMMISSIONER