

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
The Greenwich Mills Company	:	
for Redetermination of a Deficiency or Revision	:	AFFIDAVIT OF MAILING
of a Determination or Refund of Corporation	:	
Franchise Tax under Articles 9A & 27 of the Tax	:	
Law for the Years 1977 - 1979.	:	

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 April, 1985, he served the within notice of Decision by certified mail upon The Greenwich Mills Company, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

The Greenwich Mills Company  
520 Secaucus Rd.  
Secaucus, NJ 07094

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  
29th day of April, 1985.

Daniel Parchuck

Daniel A. Depaul  
Authorized to administer oaths  
pursuant to Tax Law section 174



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

April 29, 1985

The Greenwich Mills Company  
520 Secaucus Rd.  
Secaucus, NJ 07094

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  
David G. Fusfeld  
Healy & Fusfeld  
277 North Ave.  
New Rochelle, NY 10801  
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition	:	
	:	
of	:	
	:	
THE GREENWICH MILLS COMPANY	:	DECISION
	:	
for Redetermination of a Deficiency or for	:	
Refund of Corporation Franchise Tax under	:	
Articles 9-A and 27 of the Tax Law for the	:	
Years 1977, 1978 and 1979.	:	

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Petitioner, The Greenwich Mills Company, 520 Secaucus Road, Secaucus, New Jersey 07094, filed a petition for redetermination of a deficiency or for refund of corporation franchise tax under Articles 9-A and 27 of the Tax Law for the years 1977, 1978 and 1979 (File No. 35883).

A formal hearing was held before Dennis M. Galliher, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on March 19, 1984 at 1:15 P.M., with all briefs to be submitted by August 6, 1984. Petitioner appeared by Healy & Fusfeld, Esqs. (David G. Fusfeld, Esq., of counsel). The Audit Division appeared by John P. Dugan, Esq. (Irwin Levy, Esq., of counsel).

#### ISSUE

Whether petitioner is liable for interest on deficiencies in tax attributable to its failure to file franchise tax reports on a combined basis with three subsidiaries.

#### FINDINGS OF FACT

1. On September 11, 1981, the Audit Division issued, as the result of a field audit, three notices of deficiency to petitioner, The Greenwich Mills Company, asserting additional tax and interest due as follows:

<u>Year</u>	<u>Tax</u>	<u>Interest</u>	<u>Additional Charge</u>	<u>Total</u>
1977	\$45,561.00	\$13,810.91	0	\$59,371.91
1978	16,877.00	3,681.38	0	20,558.38
1979	25,047.00	3,334.51	0	28,381.51

2. Petitioner was incorporated in the State of New York on February 24, 1912 and began doing business in New York on the same date. Petitioner is a processor and wholesaler of coffee.

3. The above-noted deficiencies were generated by the determination, upon audit of petitioner, that petitioner should have filed its New York franchise tax reports for the years 1977, 1978 and 1979 on a combined basis, with its wholly-owned subsidiaries, LaTouraine Coffee Company, Hill Stephens Company and Tea Pack Company, Inc.

4. Prior to the determination that combined filing would be required, petitioner and the three named subsidiaries each filed separate corporation franchise tax reports for the years at issue and made payment of the taxes due thereon.

5. Petitioner does not contest the requirement of combined filing with the three named subsidiaries, and the tax resulting from such combination (as asserted by the notices of deficiency) has been paid and is not at issue. However, petitioner does protest the Audit Division's imposition of interest on such deficiencies from the original due dates for the filing of franchise tax reports for each of the years at issue on the premise that it could not, by law, have filed such reports on a combined basis until the State Tax Commission had authorized such filing.

6. Petitioner did not request permission to file combined reports with the three named subsidiaries for any of the years at issue.

CONCLUSIONS OF LAW

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

"In the discretion of the tax commission, any taxpayer, which owns or controls either directly or indirectly substantially all the capital stock of one or more other corporations, or substantially all the capital stock of which is owned or controlled either directly or indirectly by one or more other corporations or by interests which own or control either directly or indirectly substantially all the capital stock of 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..."

B. That at the times petitioner's reports for the subject years were due to be filed, petitioner was in the best position to determine whether or not combined reports or separate reports more accurately reflected its business activity in and its tax liability to New York State. Petitioner chose to file separate reports and pay the tax due thereon, rather than to request permission to file combined reports. By its choice not to seek permission to file combined reports, petitioner ran the risk of a subsequent determination, upon audit examination, that combined reports should have been filed, that the proper amount of tax was not paid when petitioner's reports were originally filed, that notices of deficiency would be issued, and that interest would be imposed from the original due date for filing.

C. That not only should petitioner have recognized the need to file combined reports with its three subsidiaries, but it should also have made a written request for permission to file on a combined basis with the State Tax Commission not later than 30 days after the close of the taxable year ended December 31, 1977 [20 NYCRR 6-2.4(a)]. Petitioner does not contest the determination that combined filing more properly reflects its tax liability for the subject years, nor is the resultant increase in its tax liability disputed.

There is no authority in the Tax Law for cancelling interest on taxes due; accordingly, interest on additional tax from the due date for filing is clearly proper.

D. That the petition of The Greenwich Mills Company is hereby denied.

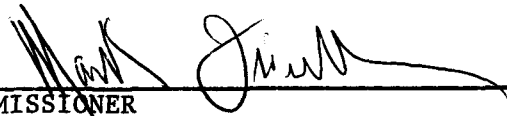
DATED: Albany, New York

STATE TAX COMMISSION

APR 29 1985

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER