

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

TDA INDUSTRIES, INC.

AFFIDAVIT OF MAILING

For a Redetermination of a Deficiency or :
a Revision of a Determination or a Refund :
of Stock Transfer :
Taxes under Article ~~XX~~ 12 of the :
Tax Law, ~~for the Year(s) or Period(s)~~ :

State of New York
County of Albany

Catherine Steele, being duly sworn, deposes and says that
she is an employee of the Department of Taxation and Finance, over 18 years of
age, and that on the 20th day of August, 1976, she served the within
Notice of Decision by ~~XXXXXX~~ mail upon TDA Industries, Inc.

~~(representative of the)~~ the petitioner in the within proceeding,
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows: TDA Industries, Inc.
122 East 42nd Street
New York, New York 10017

and by depositing same enclosed in a postpaid properly addressed wrapper in a
(post office or official depository) 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)~~
~~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

20th day of August, 1976.

Catherine Steele

Janet Mack

STATE OF NEW YORK
STATE TAX COMMISSION

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Tax Law. ~~For the Year(s) or Period(s)~~ :

State of New York
County of Albany

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she is an employee of the Department of Taxation and Finance, over 18 years of
age, and that on the 20th day of August, 1976, she served the within
Notice of Decision by ~~(certified)~~ mail upon David I. Ferber, Esq.

(representative of) the petitioner in the within proceeding,

by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed

as follows: David I. Ferber, Esq.
Kantor, Shaw & Davidoff, P.C.
200 Park Avenue

New York, New York 10017

and by depositing same enclosed in a postpaid properly addressed wrapper in a
(post office or official depository) 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

20th day of August, 1976.

Catherine Steele

Janet Mack



STATE OF NEW YORK
DEPARTMENT OF TAXATION AND FINANCE

TAX APPEALS BUREAU
STATE CAMPUS
ALBANY, N.Y. 12227

STATE TAX COMMISSION

ADDRESS YOUR REPLY TO

August 20, 1976

TELEPHONE: (518) **457-3850**

TDA Industries, Inc.
122 East 42nd Street
New York, New York 10017

Gentlemen:

Please take notice of the **DECISION**
of the State Tax Commission enclosed herewith.

Please take further notice that pursuant to
Section ~~(a)~~ **279(a)** of the Tax Law, any
proceeding in court to review an adverse deci-
sion must be commenced within **90 days**
from the date of this notice.

Inquiries concerning the computation of tax
due or refund allowed in accordance with this
decision or concerning any other matter relative
hereto may be addressed to the undersigned. They
will be referred to the proper party for reply.

Very truly yours,

Paul B. Coburn
Supervising Tax
Hearing Officer

Enc.

cc: Petitioner's Representative:

Taxing Bureau's Representative:

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Application	:	
of	:	
TDA INDUSTRIES, INC.	:	DECISION
for a Hearing to Review a Determination of	:	
Stock Transfer Taxes due or a Determination	:	
Denying a Claim for Refund of Such Taxes	:	
under Article 12 of the Tax Law.	:	

TDA Industries, Inc., 122 East 42nd Street, New York, New York, filed an application under Section 280 of the Tax Law for a hearing to review a determination denying a claim for refund of stock transfer taxes paid under Article 12 of the Tax Law.

Said claim for refund was asserted on March 24, 1973, for taxes paid between October 10, 1971 and December 6, 1971, and is in the amount of \$9,751.52. Said claim was denied on October 11, 1973, and a hearing was demanded on October 18, 1973.

A hearing was duly held on November 18, 1975, at 1:00 P.M., at the offices of the State Tax Commission, Two World Trade Center, New York City, before Nigel G. Wright, Hearing Officer. The applicant appeared by Kantor, Shaw & Davidoff, P.C. (David I. Ferber, Esq., of counsel). The Miscellaneous Tax Bureau appeared

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by Peter J. Crotty, Esq., (Alexander Weiss, Esq., of counsel).

The record of said hearing has been duly examined and considered.

ISSUES

I. Whether certain sales were made in New York State by nonresidents so as to qualify for the reduced rates for nonresidents under Section 270-a subd. 1 of the Tax Law.

II. Whether certain other sales constitute a single taxable sale, so as to qualify for reduced rates under Section 270-a subd. 2 of the Tax Law.

FINDINGS OF FACT

1. TDA Industries, Inc., has its principal office at 122 East 42nd Street, New York, New York.

2. As of November 10, 1971, a group of shareholders of TDA Industries, Inc., sold a total of 703,943 shares of TDA in a secondary offering which had been registered with the Securities and Exchange Commission effective on that day. This was done through the agency of duPont Glore Forgan, Incorporated on a best efforts basis.

3. Stock transfer taxes totaling \$17,598.58 were paid by TDA Industries, Inc. by remittance to its transfer agent.

4. The records of duPont Glore Forgan, Inc., indicate that

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a distribution was made of 782,000 shares of TDA Industries, Inc. in 3,749 transactions occurring at their offices in every state and in foreign nations. In this distribution 99,400 shares were distributed in New York State in 188 transactions. No further detail is given in the records of the firm offered in evidence.

5. The claim for refund was filed with respect to 28 of the shareholders who claimed to be nonresidents. The claims of those who assert a single taxable sale are by five persons selling a total of 524,680 shares and claiming a total refund of \$9,367.00. Twelve of the shareholders have filed declarations of nonresidence on forms provided by the Miscellaneous Tax Bureau. These forms were executed in 1975. The number of shares attributable to these twelve shareholders is 51,826 shares and the amount of refund claimed is \$259.12.

CONCLUSIONS OF LAW

A. That the tax rates applicable to nonresidents do not apply. There is no way to determine from this record whether the shares sold in New York State were shares owned by nonresidents. Furthermore the sales, when made, were not accompanied by documents setting forth the facts to show such nonresidence as required in Section 270-a subd. 1(c).

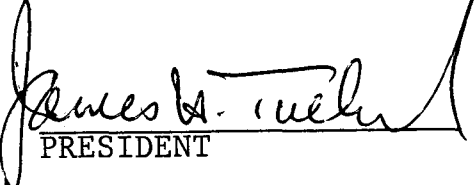
(4)

B. That the tax rates applicable to single taxable sales do not apply. The applicant computes the amount of his claim on the basis that all shares sold by each individual shareholder were sold in one transaction. Such has not been shown to be the case. There is no evidence in the record to show the amount of shares in each transaction which took place in New York State and no way to trace such transactions to any individual shareholder.

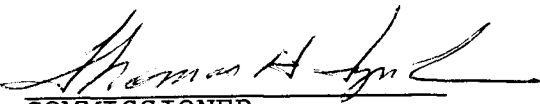
C. That the claims for refund were properly denied.

DATED: Albany, New York
August 20, 1976

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER