

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition  
of  
Ati, Inc.

:

:

AFFIDAVIT OF MAILING

for Redetermination of a Deficiency or a Revision :  
of a Determination or a Refund of Stock Transfer  
Tax under Article 12 of the Tax Law for the Period :  
4/28/71.

State of New York  
County of Albany

Jay Vredenburg, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 4th day of August, 1982, he served the within notice of Decision by certified mail upon Ati, Inc., the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Ati, Inc.  
269 Old Gate Lane  
Milford, CT

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 petitioner herein and that the address set forth on said wrapper is the last known address of the petitioner.

Sworn to before me this  
4th day of August, 1982.

*Ernie R. Hagedorn*

*J. Vredenburg*

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition  
of  
Ati, Inc.

:

:

AFFIDAVIT OF MAILING

for Redetermination of a Deficiency or a Revision :  
of a Determination or a Refund of Stock Transfer  
Tax under Article 12 of the Tax Law for the Period:  
4/28/71.

State of New York  
County of Albany

Jay Vredenburg, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 4th day of August, 1982, he served the within notice of Decision by certified mail upon Stuart B. Newman the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Stuart B. Newman  
Feldesman & D'Atri  
122 East 42nd St.  
New York, NY 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  
4th day of August, 1982.

Camie R. Haglund

J. Vredenburg

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

August 4, 1982

Ati, Inc.  
269 Old Gate Lane  
Milford, CT

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) 279A of the Tax Law, any proceeding in court to review an adverse decision by the State Tax Commission can only be instituted under Article 78 of the Civil Practice Laws and Rules, and must be commenced in the Supreme Court of the State of New York, Albany County, within 90 Days 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  
Albany, New York 12227  
Phone # (518) 457-2070

Very truly yours,

STATE TAX COMMISSION

cc: Petitioner's Representative  
Stuart B. Newman  
Feldesman & D'Atri  
122 East 42nd St.  
New York, NY 10017  
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

---

In the Matter of the Application :  
of :  
ATI, INC. : DECISION  
for a Hearing to Review a Determination :  
of Stock Transfer Tax Due under Article :  
12 of the Tax Law for the Period :  
April 28, 1971. :

---

Applicant, ATI, Inc., 269 Old Gate Lane, Milford, Connecticut, filed an application to review a determination of stock transfer tax due under Article 12 of the Tax Law for the period April 28, 1971 (File No. 14332).

A formal hearing was held before Julius E. Braun, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on January 19, 1978 at 1:15 P.M. Applicant appeared by Feldesman & D'Atri (Stuart B. Newman, Esq., of counsel). The Miscellaneous Tax Bureau appeared by Peter Crotty, Esq. (Alexander Weiss, Esq., of counsel).

ISSUE

Whether the transfer of original-issue stock by applicant for shares of stock of a corporation which merged with applicant's subsidiary was subject to stock transfer tax.

FINDINGS OF FACT

1. On April 7, 1975, the Miscellaneous Tax Bureau issued a Notice of Determination of Tax Due against applicant, Aerosol Techniques Incorporated, now known as ATI, Inc., ("ATI") in the amount of \$2,075.00, plus penalty of \$520.00, for a total of \$2,595.00.

... to the ... of the ...

... the ... of the ...

... the ... of the ...

... the ... of the ...

... the ... of the ...

... the ... of the ...

... the ... of the ...

... the ... of the ...

2. On February 1, 1971, applicant entered into an Agreement and Plan of Merger with its subsidiary SCX Corp. ("SCX") and Chem-Spray Filling Corp. ("Chem-Spray"). The agreement provided that Chem-Spray would be acquired by ATI by means of a statutory merger, qualifying under Internal Revenue Code Section 368(a)(1)A, wherein Chem-Spray (a New Jersey corporation), would be acquired and merged with and into SCX (a New York corporation), as the survivor. Chem-Spray would thus cease to exist. Certificates of Merger were filed on April 28, 1971 in New York and New Jersey. As per the agreement, shareholders of Chem-Spray surrendered their stock certificates to the exchange agent, the Bank of New York (which was also the transfer agent for ATI stock), in exchange for originally-issued shares of applicant's common stock. According to said agreement, 166,000 shares of ATI common stock were to be issued over a four-year period to Chem-Spray's stockholders. However, because of subsequent agreements with two of the three former shareholders of Chem-Spray on the day of merger, only 33,200 shares of applicant's stock were issued in connection with the transaction. The balance was to be issued on four subsequent anniversary dates.

3. The Miscellaneous Tax Bureau contended that the original issuance of stock was impliedly from ATI to SCX and that there was an implied transfer from SCX to the shareholders of Chem-Spray.

#### CONCLUSIONS OF LAW

A. That the original issuance of stock was from Aerosol Techniques Incorporated to the shareholder of Chem-Spray. It cannot be implied that the original issuance was to SCX with a subsequent transfer from SCX to the shareholders of Chem-Spray.

B. That the tax imposed by Article 12 of the Tax Law does not apply to the original issuance of stock. Terminals & Transportation Corp. v State, 169 Misc. 703, aff'd. 257 AD 336. (See also: 20 NYCRR 440.1(h)); therefore, the original issuance of shares of stock of Aerosol Techniques, Inc. is not subject to the stock transfer tax.

C. That the application of ATI, Inc. is granted and the Notice of Determination of Tax Due against ATI, Inc. issued on April 7, 1975, is cancelled.

DATED: Albany, New York

AUG 04 1982

STATE TAX COMMISSION

ACTING

PRESIDENT

COMMISSIONER

COMMISSIONER

... ..  
... ..  
... ..  
... ..

... ..  
... ..  
... ..

... ..  
... ..

*[Handwritten signature]*

CHITOL

*[Handwritten signature]*

*[Handwritten signature]*



of the ...  
...  
...  
...  
...

...  
...  
...

*[Signature]*

TESTING

*[Signature]*

COAST GUARD

*[Signature]*

COAST GUARD