

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition :  
of  
The Village Green of Van Buren, Inc. :  
for Redetermination of a Deficiency or a Revision :  
of a Determination or a Refund of  
Corporation Franchise Tax :  
under Article 9A of the Tax Law  
for the Years 1972 & 1973. :

AFFIDAVIT OF MAILING

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 18th day of June, 1980, he served the within notice of Decision by certified mail upon The Village Green of Van Buren, Inc., the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

The Village Green of Van Buren, Inc.  
605 W. Genesee St.  
Syracuse, NY 13204

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  
18th day of June, 1980.

Joanne Knapp

J. Vredenburg

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition :  
of  
The Village Green of Van Buren, Inc. :  
AFFIDAVIT OF MAILING  
for Redetermination of a Deficiency or a Revision :  
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Corporation Franchise Tax :  
under Article 9A of the Tax Law  
for the Years 1972 & 1973. :

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 18th day of June, 1980, he served the within notice of Decision by certified mail upon Perry Balagur the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Mr. Perry Balagur  
605 W. Genesee St.  
Syracuse, NY 13204

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  
18th day of June, 1980.

Joanne Knapp

J. J. Vredenburg

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

June 18, 1980

The Village Green of Van Buren, Inc.  
605 W. Genesee St.  
Syracuse, NY 13204

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, 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 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  
Deputy Commissioner and Counsel  
Albany, New York 12227  
Phone # (518) 457-6240

Very truly yours,

STATE TAX COMMISSION

cc: Petitioner's Representative  
Perry Balagur  
605 W. Genesee St.  
Syracuse, NY 13204  
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition	:	
of	:	
THE VILLAGE GREEN OF VAN BUREN, INC.	:	DECISION
for Redetermination of a Deficiency or for	:	
Refund of Corporation Franchise Tax under	:	
Article 9-A of the Tax Law for the Years	:	
1972 and 1973.	:	

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Petitioner, The Village Green of Van Buren, Inc., 605 West Genesee Street, Syracuse, New York 13204, 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 years 1972 and 1973 (File No. 17229).

A formal hearing was held before Julius E. Braun, Hearing Officer, at the offices of the State Tax Commission, State Office Building, Syracuse, New York, on December 7, 1977 at 10:45 A.M. Petitioner appeared by Perry Balagur, Esq. The Audit Division appeared by Peter Crotty, Esq. (James J. Morris, Esq., of counsel).

ISSUE

Whether there are reasonable grounds on which to deny permission to two corporations, petitioner and PRG Enterprises, Inc., to file a combined franchise tax return that would clearly reflect income.

FINDINGS OF FACT

1. On March 30, 1976, the Audit Division issued a Statement of Audit Adjustment, disallowing a combined franchise tax report from petitioner, The Village Green of Van Buren, Inc., and PRG Enterprises, Inc. ("PRG"). As explained in a letter of July 11, 1975 to petitioner, the Division found that:

- a) the intercorporate transactions were not sufficient to warrant a combined basis,
- b) the income of each corporation was primarily the result of its non-intercorporate transactions and
- c) the taxation on a separate basis would most reasonably reflect the proper franchise tax due.

In accordance with said statement, a deficiency was found to be due of \$68.19, plus interest of \$12.43, for a total of \$80.62 for the period ending December 31, 1972, as well as \$2,180.11 in tax, plus interest of \$333.55, for a total of \$2,513.66 for the period ending December 31, 1973.

2. Petitioner timely filed "New York State Franchise Tax Report-Article 9A Tax Law", for the years ending December 31, 1972 and December 31, 1973. Said reports were combined with those of the parent corporation, PRG.

3. During the periods in issue, petitioner was a wholly-owned subsidiary of PRG, a real estate development company. Petitioner was set up as an aid in developing and disposing of development units and in renting PRG's apartments. Petitioner's responsibility was to secure the finances to build and run the so-called amenities to the development. These included the golf course, swimming pool, tennis courts, restaurant and clubhouse. Petitioner had the necessary equipment to take care of the lawns, roads and parking areas. Newspaper advertisements and descriptive brochures were distributed, which advertised the various amenities offered with the development.

4. Essentially, the main purpose of the formation of petitioner was to enable PRG to secure more capital, due to the fact that PRG had reached its limits. The golf course and the country club owned by PRG were turned over to petitioner, in the mortgage transaction to secure capital. The directors, officers and employees of both corporations were identical and employees of both were on the same payroll. Employees perform the same function for both corporations. The

separate records which were kept of both corporations were needed to get a complete audit and a consolidated statement was necessary for the whole project.

5. The membership in petitioner's country club did not depend on one's living in PRG's apartments or condominiums. However, dues for the club were less to those who occupied the apartments or condominiums.

6. Petitioner, The Village Green of Van Buren, Inc., and P.R.G. Enterprises, Inc. filed a consolidated federal tax return. Both have the same fiscal year. The profit and loss of both corporations is dependent on the sale and rental of units by P.R.G. Enterprises, Inc. The recreation facilities are the sales tool for P.R.G. Enterprises, Inc., while petitioner relies on homeowners to become members in order to aid in its operation. The floor plans of the rental units indicate the interrelation of the recreational facilities to the rental properties. Petitioner's facilities are used by the parent corporation for sales and promotional purposes. Newspaper advertisements reflect the dependence by P.R.G. Enterprises, Inc. in sales effort upon the facilities and services of petitioner. To get a complete audit of one corporation, the records of both corporations would be necessary. Funds were advanced by either corporation to the other.

#### CONCLUSIONS OF LAW

A. That section 211(4) of the Tax Law provides, in part, that the State Tax Commission, in its discretion, may require or permit "any taxpayer; which owns or controls either directly or indirectly substantially all the capital stock of one or more other corporations" to file its tax returns on a combined basis.

B. During the periods at issue, the State 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))

The essential elements of these factors have been carried over into the current regulations which were effective for taxable years beginning on or after January 1, 1976 and which provide, in pertinent 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."

(20 NYCRR 6-2.3(a) (Emphasis supplied)

The mandatory language of the current regulations takes cognizance of those elements which the Tax Commission has consistently deemed to be the key factors in determining whether combination should be permitted or required, i.e., the unitary nature of the business conducted by the corporations and whether there were substantial intercorporate transactions among the corporations.

(See: Petition of Annel Holding Corp., et al. State Tax Commission, August 2, 1973, Determination confirmed, Annel Holding Corp. v. Procaccino, 77 Misc. 2d 886 (Sup. Ct. Albany County, 1974); Petition of N. K. Winston Corporation, et al. State Tax Commission, August 21, 1974.)

The petitioner herein has not only failed to show that each, in substance, was part of a unitary business, but has also failed to show that there were substantial intercorporate transactions between them. Accordingly, permission to file on a combined basis is denied. (See Matter of Petition of Montauk Improvement Inc., et al, State Tax Commission, Sept. 28, 1979.)

C. That the petition of The Village Green is denied and the deficiencies issued for the periods ending December 31, 1972 and December 31, 1973 are sustained.

DATED: Albany, New York

JUN 18 1980

STATE TAX COMMISSION

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER