

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of

LABCO CHEMICAL COMPANY

AFFIDAVIT OF MAILING

For a Redetermination of a Deficiency or :  
a Revision of a Determination or a Refund :  
of Unincorporated Business :  
Taxes under Article ~~(S)~~ 23 of the :  
Tax Law for the Year(s) ~~XXXXXX~~ :  
1970, 1971 and 1972.

State of New York  
County of Albany

Marsina Donnini

, 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 24 day of August, 1977, she served the within

Notice of Decision by (certified) mail upon Labco

Chemical Company ~~(representative of)~~ the petitioner in the within proceeding,  
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed  
as follows: Labco Chemical Company  
762 Burke Avenue  
Bronx, New York 10467

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)~~  
~~XXXXXX~~ 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

24th day of August, 1977.

Marsina Donnini

Janet Mack

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of

LABCO CHEMICAL COMPANY

AFFIDAVIT OF MAILING

For a Redetermination of a Deficiency or :  
a Revision of a Determination or a Refund :  
of Unincorporated Business :  
Taxes under Article ~~(8)~~ 23 of the :  
Tax Law for the Year(s) ~~XXXXXX~~ :  
1970, 1971 and 1972.

State of New York  
County of Albany

Marsina Donnini, 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 24 day of August, 1977, she served the within Notice of Decision by (certified) mail upon Jonas Gutter (representative of) the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows: Mr. Jonas Gutter  
98 Cutter Mill Road  
Great Neck, New York 11021

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

24th day of August, 1977.

Marsina Donnini

Janet Mack



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

JAMES H. TULLY JR., PRESIDENT  
MILTON KOERNER  
THOMAS H. LYNCH

August 24, 1977

**Labco Chemical Company**  
**762 Burke Avenue**  
**Bronx, New York 10467**

**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) **722** 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 the Deputy Commissioner and Counsel to the New York State Department of Taxation and Finance, Albany, New York 12227. Said inquiries will be referred to the proper authority for reply.

Sincerely,

**Joseph Chyrywaty**  
**Hearing Examiner**

cc: Petitioner's Representative  
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition	:	
of	:	
LABCO CHEMICAL COMPANY	:	DECISION
for Redetermination of a Deficiency or	:	
for Refund of Unincorporated Business	:	
Taxes under Article 23 of the Tax Law	:	
for the Years 1970, 1971 and 1972.	:	

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Petitioner, Labco Chemical Company, located at 762 Burke Avenue, Bronx, New York 10467, has filed a petition for redetermination of a deficiency or for refund of unincorporated business taxes under Article 23 of the Tax Law for the years 1970, 1971 and 1972. (File No. 13268).

A small claims hearing was held before William Valcarcel, Small Claims Hearing Officer, on September 13, 1976 at 9:15 A.M. at the offices of the State Tax Commission, Two World Trade Center, New York, New York. The petitioner appeared by Mr. Jonas Gutter. The Income Tax Bureau appeared by Peter Crotty, Esq., (Louis Senft, Esq. of counsel).

ISSUE

Whether gross sales are fully allocable to New York State for purposes of computing the formula basis method of determining income pursuant to section 707(c) of the Tax Law and 20 NYCRR 207.4.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. Petitioner, Labco Chemical Company, filed unincorporated business tax returns for the years 1970, 1971 and 1972, on which the petitioner reported gross receipts attributable to business carried on within New York State of \$3,296.96, \$6,102.99 and \$8,553.00, respectively. Total gross receipts earned both within and without New York State was \$74,550.42 in 1970, \$85,828.25 in 1971 and \$94,627.67 in 1972. Gross receipts earned within and without New York State was the only factor used in the formula basis method to determine the business allocation percentage.

2. On November 26, 1974, the Income Tax Bureau issued a Notice of Deficiency against the petitioner for the years 1970 and 1971 and another Notice of Deficiency for the year 1972 based upon adjustments which held all of petitioner's business receipts to be allocable to New York State sources and which added a tangible personal property factor in determining petitioner's business income allocable to New York State under the formula basis prescribed by section 707(c) of the Tax Law. Petitioner conceded the tangible personal property factor added to the formula, but disagreed that all gross receipts for the years in question were allocable to New York State sources.

3. Petitioner, Labco Chemical Company, is a partnership with Bernard and Madeline Haller of 2343 Wallace Avenue, Bronx, New York, as the sole partners. Madeline Haller is an inactive partner, and the wife of Bernard Haller.

4. Labco Chemical Company is in the business of selling chemical detergents to commercial and industrial businesses.

5. Petitioner's official business address is 762 Burke Avenue, Bronx, New York. This address is actually a telephone answering service whereby messages are taken and mail is received, including payments from customers, located both within and without New York State.

6. Petitioner asserts that a free repair service is offered to customers who purchase their products, and that the answering service is used solely for receiving service calls, and never for the placement of orders. All payments were personally picked up by Mr. Bernard Haller and deposited in New York banks.

7. Labco Chemical Company utilized public warehouses in New Jersey for the storage and shipment of their product.

8. All sales were conducted on a person to person basis between Mr. Bernard Haller and the client. Upon receiving a sales order, Mr. Bernard Haller would visit the warehouse in New Jersey and give them delivery instructions for the shipment of merchandise to his various customers, both within and without New York State.

9. Labco Chemical Company filed unincorporated business tax partnership returns for New Jersey whereby they indicated gross receipts attributed to that state as \$71,253.49 in 1970, \$79,725.26 in 1971 and \$86,074.67 in 1972. The balance of their gross receipts as reflected on the petitioner's books, were attributed to New York sources, as sales consummated within New York State.

10. Labco Chemical Company did not employ other salesmen, or agents other than the individuals at the New Jersey warehouses who delivered the merchandise.

11. Labco Chemical Company provided their clients with stickers, which instructed them to call the warehouses in New Jersey for the ordering of detergents in the event that they ran out of the product prior to Mr. Haller's next visit. It also instructed them to call the answering service if they required service repairs.

12. That although the New York address is a telephone answering and correspondence service, the regularity, continuity, permanency and nature of the activities at that location is such as to constitute a regular place of business within New York State in accordance with the meaning and intent of section 707 of the Tax Law and 20 NYCRR 207.2.

13. That the gross receipts of \$3,296.96, \$6,102.99 and \$8,553.00 for the years 1970, 1971 and 1972 respectively, allocated to New York, included all sales negotiated or consummated within New York State in accordance with the meaning and intent of section 707(c)(3) of the Tax Law and 20 NYCRR 207.4(3).

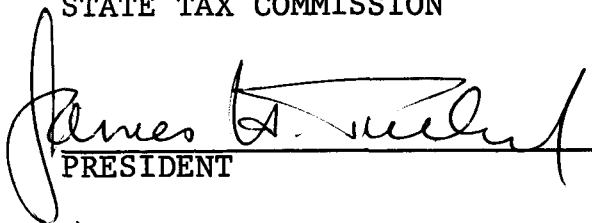
14. That the petition of Labco Chemical Company is granted to the extent that the gross sales percentage used in the formula basis of allocating income, be adjusted in accordance with paragraph thirteen of this decision.

15. That the Income Tax Bureau is hereby directed to accordingly modify the notices of deficiency issued August 26, 1974; and that except as so granted, the petition is in all other respects denied.

DATED: Albany, New York

August 24, 1977

STATE TAX COMMISSION

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER



TA-26 (4-76) 25M

STATE OF NEW YORK

Department of Taxation and Finance

TAX APPEALS BUREAU

STATE CAMPUS

ALBANY, N. Y. 12227

**CERTIFIED**

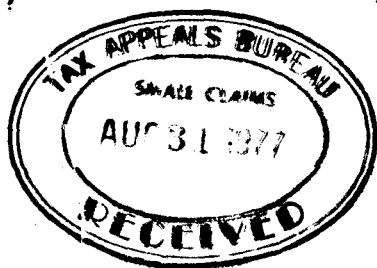
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**MAIL**

~~Labco Chemical Company  
762 Burke Avenue  
Bronx, New York 10467~~

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9/1/77

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

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LABCO CHEMICAL CO.

AFFIDAVIT OF MAILING

For a Redetermination of a Deficiency or :  
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State of New York  
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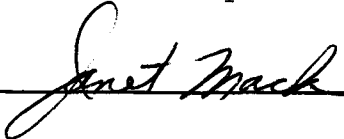
John Huhn , being duly sworn, deposes and says that  
~~she~~ is an employee of the Department of Taxation and Finance, over 18 years of  
age, and that on the 12th day of September , 1977 , ~~she~~ served the within  
Notice of Decision by (certified) mail upon Labco Chemical  
Co. ~~(representative of)~~ the petitioner in the within proceeding,  
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed  
as follows: Labco Chemical Co.  
511 Main Street  
Fort Lee, New Jersey 07024

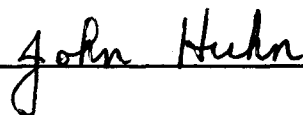
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That deponent further says that the said addressee is the ~~(representative~~  
~~of the)~~ petitioner herein and that the address set forth on said wrapper is the  
last known address of the ~~(representative of the)~~ petitioner.

Sworn to before me this

12th day of September , 19 77.

  
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