

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
A.L.U. Textile Combining Corp. :

: AFFIDAVIT OF MAILING

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 Year 1971.

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 14th day of August, 1981, he served the within notice of Decision by certified mail upon A.L.U. Textile Combining Corp., the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

A.L.U. Textile Combining Corp.
208 Clinton St.
Hoboken, NJ 07030

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
14th day of August, 1981.

Cennie P. Hageland

J. Vredenburg

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of :
A.L.U. Textile Combining Corp. :
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 Year 1971. :

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 14th day of August, 1981, he served the within notice of Decision by certified mail upon Michael A. Slater the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Michael A. Slater
Slater & Slater
100 Merrick Rd.
Rockville Centre, NY 11570

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
14th day of August, 1981.

Annie P. Hagelund

Jay Vredenburg

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
American London Uneeda Shrinkers Corp. :
: AFFIDAVIT OF MAILING
for Redetermination of a Deficiency or a Revision :
of a Determination or a Refund of Corporation :
Franchise Tax under Article 9-A of the Tax Law for :
the Year 1972.

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 14th day of August, 1981, he served the within notice of Decision by certified mail upon American London Uneeda Shrinkers Corp., the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

American London Uneeda Shrinkers Corp.
318 W. 39th St.
New York, NY 10018

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
14th day of August, 1981.

Carrie A. Hageland

J. Vredenburg

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
American London Uneeda Shrinkers Corp.	:	AFFIDAVIT OF MAILING
	:	
for Redetermination of a Deficiency or a Revision	:	
of a Determination or a Refund of Corporation	:	
Franchise Tax under Article 9-A of the Tax Law	:	
for the Year 1972.	:	

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 14th day of August, 1981, he served the within notice of Decision by certified mail upon Michael A. Slater the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Michael A. Slater
Slater & Slater
100 Merrick Rd.
Rockville Centre, NY 11570

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
14th day of August, 1981.

Annice P. Hagelund

[Signature]

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
Am-Lon Knitgoods Finishing Corp. :
AFFIDAVIT OF MAILING :
for Redetermination of a Deficiency or a Revision :
of a Determination or a Refund of Corporation :
Franchise Tax under Article 9-A of the Tax Law for :
the Years 1970 & 1971. :

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 14th day of August, 1981, he served the within notice of Decision by certified mail upon Am-Lon Knitgoods Finishing Corp., the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Am-Lon Knitgoods Finishing Corp.
318 West 39th St.
New York, NY 10018

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
14th day of August, 1981.

Constance P. Hayward

John R. Kelly

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
Am-Lon Knitgoods Finishing Corp.	:	
	:	AFFIDAVIT OF MAILING
for Redetermination of a Deficiency or a Revision	:	
of a Determination or a Refund of Corporation	:	
Franchise Tax under Article 9-A of the Tax Law	:	
for the Years 1970 & 1971.	:	

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 14th day of August, 1981, he served the within notice of Decision by certified mail upon Michael A. Slater the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Michael A. Slater
Slater & Slater
100 Merrick Rd.
Rockville Centre, NY 11570

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
14th day of August, 1981.

Annice A. Hagelund

J. Vredenburg

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

August 14, 1981

A.L.U. Textile Combining Corp.
208 Clinton St.
Hoboken, NJ 07030

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
Michael A. Slater
Slater & Slater
100 Merrick Rd.
Rockville Centre, NY 11570
Taxing Bureau's Representative

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

August 14, 1981

American London Uneeda Shrinkers Corp.
318 W. 39th St.
New York, NY 10018

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
Michael A. Slater
Slater & Slater
100 Merrick Rd.
Rockville Centre, NY 11570
Taxing Bureau's Representative

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

August 14, 1981

Am-Lon Knitgoods Finishing Corp.
318 West 39th St.
New York, NY 10018

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
Michael A. Slater
Slater & Slater
100 Merrick Rd.
Rockville Centre, NY 11570
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition
of
A.L.U. TEXTILE COMBINING CORP.
for Redetermination of a Deficiency or
for Refund of Franchise Tax on Business
Corporations under Article 9-A of the
Tax Law for the Year 1971.

In the Matter of the Petition
of
AMERICAN LONDON UNEEDA SHRINKERS CORP.
for Redetermination of a Deficiency or
for Refund of Franchise Tax on Business
Corporations under Article 9-A of the
Tax Law for the Year 1972.

In the Matter of the Petition
of
AM-LON KNITGOODS FINISHING CORP.
for Redetermination of a Deficiency or
for Refund of Franchise Tax on Business
Corporations under Article 9-A of the
Tax Law for the Years 1970 and 1971.

DECISION

Petitioner A.L.U. Textile Combining Corporation, 208 Clinton Street,
Hoboken, New Jersey 07030, filed a petition for redetermination of a deficiency
or for refund of franchise tax on business corporations under Article 9-A of
the Tax Law for the year 1971 (File No. 14391).

Petitioner American London Uneeda Shrinkers Corporation, 318 West 39th
Street, New York, New York 10018, filed a petition for redetermination of a

deficiency or for refund of franchise tax on business corporations under Article 9-A of the Tax Law for the year 1972 (File No. 14392).

Petitioner Am-Lon Knitgoods Finishing Corporation, 318 West 39th Street, New York, New York 10018, filed a petition for redetermination of a deficiency or for refund of franchise tax on business corporations under Article 9-A of the Tax Law for the years 1970 and 1971 (File No. 14393).

A consolidated formal hearing was held before Archibald F. Robertson, Jr., Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York on June 20, 1977 at 9:35 A.M. Petitioners appeared by Slater & Slater (Michael Slater, CPA). The Audit Division appeared by Peter Crotty, Esq. (Louis Senft, Aliza Schwadron and Abraham Schwartz, Esqs., of counsel).

ISSUES

I. Whether petitioner American London Uneeda Shrinkers Corp. and its subsidiaries, petitioners A.L.U. Textile Combining Corp. and Am-Lon Knitgoods Finishing Corp., should be permitted to file combined franchise tax reports for the years 1970 through 1972.

II. Whether petitioners were required to obtain the prior approval of the New York State Tax Commission for the filing of combined franchise tax reports.

FINDINGS OF FACT

1. (a) On September 15, 1975, the Audit Division issued to petitioner A.L.U. Textile Combining Corp. ("ALU"), a statement of audit adjustment and a notice of deficiency, asserting additional franchise tax due under Article 9-A for the year 1971 in the amount \$125.00, with interest thereon. The statement of audit adjustment explained that the filing of a report on a combined basis by ALU and its parent and sister corporations had been disallowed.

(b) On September 15, 1975, the Audit Division issued to petitioner American London Uneeda Shrinkers Corp. ("American London"), a statement of audit adjustment and a notice of deficiency, asserting additional franchise tax due under Article 9-A for the year 1972 in the amount \$1,353.41, plus interest thereon. (A credit in the amount \$580.55, from a prior year, was applied to reduce the total due.) The deficiency was asserted on two grounds: an erroneous refund made to American London, and disallowance of American London's filing on a combined basis with its subsidiaries.

(c) On September 15, 1975, the Audit Division issued to petitioner Am-Lon Knitgoods Finishing Corp. ("Am-Lon"), two statements of audit adjustment and two notices of deficiency, asserting additional franchise tax due under Article 9-A for the years 1970 and 1971 in the respective amounts \$11,420.00 and \$77.41, with interest thereon. The deficiency for 1970 was asserted due to disallowance of Am-Lon's filing on a combined basis with its parent and sister corporations. The deficiency for 1971 was asserted for the aforementioned reason and also because of an adjustment made to a loss carryback deduction.

2. During the period herein involved, petitioners were identically-owned and family-operated corporations, organized under New York law and engaged in textile refinishing. Each had a separate area of technical expertise, and services performed by one could not be performed by the others. ALU did textile bonding (fusing foam or tricot to the original fabric); American London, woolen shrinking; and Am-Lon, knitgoods finishing (shrinking). These processes, each of which required different types of machinery, were performed by petitioners on textiles owned by their customers, who primarily were engaged in the dress, coat and suit trades.

3. Historically, the business grew as follows: as a technology (e.g., knitgoods finishing) developed and a customer need therefor was expressed, the corporate ownership formed a new company and purchased the requisite machinery (in this instance, knitgoods shrinking equipment). The principal, if not sole, reason for the existence of three separate corporations was to provide limited liability with respect to the machinery, in the event of creditor attack.

4. Petitioners maintained a single, joint office headquarters at 315 West 39th Street, New York, New York. The office staff served the needs of all three corporations under the administration of Mr. Charles Lerner, president of each. ALU, while it shared the New York headquarters with the other petitioners, conducted the operational portion of its textile business in Hoboken, New Jersey.

5. Petitioners did not allocate officers' salaries according to work performed for each individual corporation during the period herein involved. Salaries were paid without regard for which corporation the services were performed.

6. Petitioners each individually leased trucks from the same leasing corporation to satisfy their separate transportation needs. However, the use of these trucks and trucking personnel was intertwined among petitioners, regardless of separate leasing arrangements. For instance, if Am-Lon required a particular type of truck already leased by American London, the truck (together with the requisite personnel) would be provided by American London, without any charge-back to Am-Lon.

7. Petitioners each had separate leasing arrangements as to working space and facilities. Again, as with the trucking situation, these leasing arrangements were not strictly adhered to during the period herein involved.

Each petitioner used whatever space it required, even if it meant encroaching on the space of another. There was no charge-back for this type of spatial encroachment.

8. Petitioners separately cross-guaranteed loans made to each corporation. Without these cross-guarantees, the difficulties in arranging adequate financing for the period herein involved might have proved insurmountable. In addition, petitioners made loans to each other whenever the need arose and the capability existed. There was no charge-back on these arrangements.

9. Each petitioner generally had its own customers. On occasion, however, a customer's textiles required both shrinking and bonding; that is, the customer needed the services of more than one of the petitioner corporations. The petitioner responsible for the initial processing billed the customer almost immediately upon receipt of the goods, performed its part and then forwarded the textiles to the appropriate petitioner for completion.

10. According to petitioners' financial records and admissions, intercorporate transfers (consisting of intercompany billings) were verifiable at a level of approximately five percent. But due to the intermingling of activities, facilities and monies, the accounting task of isolating the affairs of each corporation was extremely difficult.

11. Petitioners filed a combined tax report for the period herein involved, without seeking or receiving the prior approval of the State Tax Commission.

CONCLUSIONS OF LAW

A. That subdivision 4 of section 211 of the Tax Law authorizes the Tax Commission, in its discretion, to require or permit a domestic parent corpo-

ration and its wholly-owned domestic subsidiary to make a report on a combined basis. This authorization also applies to foreign corporations doing business in New York. However, no combined report covering a foreign corporation not doing business in New York may be required, unless the Tax Commission deems such a report necessary, because of intercompany transactions or some agreement, understanding, arrangement or transaction which distorts income or capital, in order to properly reflect tax liabilities.

B. That during the periods at issue, the 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)

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. Matter 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 Co. 1974); Matter of N. K. Winston Corp. et al., State Tax Commission, August 21, 1974; Matter of Alpha Computer Service Corporation et al., State Tax Commission, September 28, 1979; Matter of Montauk Improvement, Inc. and Montauk Country Club, Inc., State Tax Commission, September 28, 1979. These factors must be given particular emphasis, although all five factors of former 20 NYCRR 5.28(b) must be considered.

C. That the facts as shown by petitioners demonstrate they were engaged in related lines of business, they functioned as departments of a unitary business conducted by the group, and they performed services for and rendered financial assistance to each other. Aside from such services and financial assistance, petitioners did not establish that there were "substantial inter-company transactions" among them. They have thus failed to satisfy two of the factors enumerated in former 20 NYCRR 5.28(b), including the intercompany transactions factor, which the Commission deems crucial. Combined filing by petitioners was properly disallowed by the Audit Division.

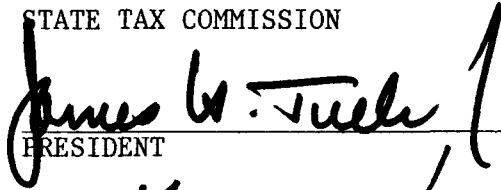
D. That in view of the foregoing, it is unnecessary to determine whether petitioners were required to seek the prior approval of the State Tax Commission for the filing of combined reports.

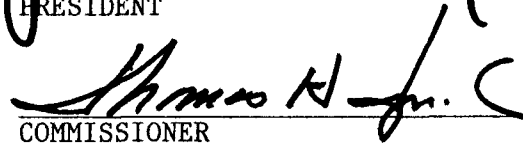
E. That the petitions of A.L.U. Textile Combining Corp., American London Uneeda Shrinkers Corp. and Am-Lon Knitgoods Finishing Corp. are denied, and the notices of deficiency issued September 15, 1975 are sustained in full.

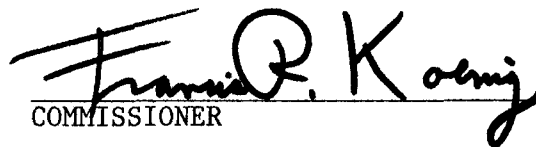
DATED: Albany, New York

AUG 14 1981

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER

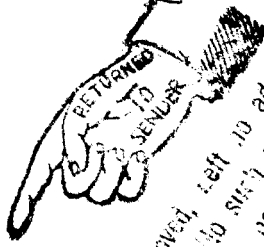

COMMISSIONER

TA 26 (9-79)

STATE OF NEW YORK
State Tax Commission
TAX APPEALS BUREAU

STATE CAMPUS

ALBANY, N. Y. 12227

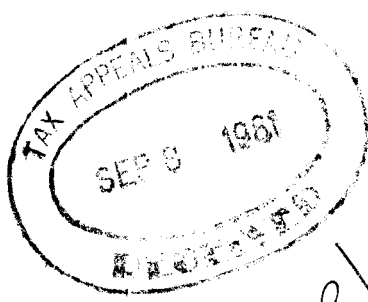


- ☐ Moved, left no address
☐ No such number
☒ Moved, not forwardable
☒ addressee unknown
NEW YORK, N.Y. 10018

FWD G order

EX

American London Uneeda Shrinkers Corp.
318 W. 39th St.
New York, NY 10018



B/A

9-8-81

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

August 14, 1981

American London Uneeda Shrinkers Corp.
318 W. 39th St.
New York, NY 10018

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
Michael A. Slater
Slater & Slater
100 Merrick Rd.
Rockville Centre, NY 11570
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition
of
A.L.U. TEXTILE COMBINING CORP.
for Redetermination of a Deficiency or
for Refund of Franchise Tax on Business
Corporations under Article 9-A of the
Tax Law for the Year 1971.

In the Matter of the Petition
of
AMERICAN LONDON UNEEDA SHRINKERS CORP.
for Redetermination of a Deficiency or
for Refund of Franchise Tax on Business
Corporations under Article 9-A of the
Tax Law for the Year 1972.

In the Matter of the Petition
of
AM-LON KNITGOODS FINISHING CORP.
for Redetermination of a Deficiency or
for Refund of Franchise Tax on Business
Corporations under Article 9-A of the
Tax Law for the Years 1970 and 1971.

DECISION

Petitioner A.L.U. Textile Combining Corporation, 208 Clinton Street,
Hoboken, New Jersey 07030, filed a petition for redetermination of a deficiency
or for refund of franchise tax on business corporations under Article 9-A of
the Tax Law for the year 1971 (File No. 14391).

Petitioner American London Uneeda Shrinkers Corporation, 318 West 39th
Street, New York, New York 10018, filed a petition for redetermination of a

deficiency or for refund of franchise tax on business corporations under Article 9-A of the Tax Law for the year 1972 (File No. 14392).

Petitioner Am-Lon Knitgoods Finishing Corporation, 318 West 39th Street, New York, New York 10018, filed a petition for redetermination of a deficiency or for refund of franchise tax on business corporations under Article 9-A of the Tax Law for the years 1970 and 1971 (File No. 14393).

A consolidated formal hearing was held before Archibald F. Robertson, Jr., Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York on June 20, 1977 at 9:35 A.M. Petitioners appeared by Slater & Slater (Michael Slater, CPA). The Audit Division appeared by Peter Crotty, Esq. (Louis Senft, Aliza Schwadron and Abraham Schwartz, Esqs., of counsel).

ISSUES

I. Whether petitioner American London Uneeda Shrinkers Corp. and its subsidiaries, petitioners A.L.U. Textile Combining Corp. and Am-Lon Knitgoods Finishing Corp., should be permitted to file combined franchise tax reports for the years 1970 through 1972.

II. Whether petitioners were required to obtain the prior approval of the New York State Tax Commission for the filing of combined franchise tax reports.

FINDINGS OF FACT

1. (a) On September 15, 1975, the Audit Division issued to petitioner A.L.U. Textile Combining Corp. ("ALU"), a statement of audit adjustment and a notice of deficiency, asserting additional franchise tax due under Article 9-A for the year 1971 in the amount \$125.00, with interest thereon. The statement of audit adjustment explained that the filing of a report on a combined basis by ALU and its parent and sister corporations had been disallowed.

(b) On September 15, 1975, the Audit Division issued to petitioner American London Uneeda Shrinkers Corp. ("American London"), a statement of audit adjustment and a notice of deficiency, asserting additional franchise tax due under Article 9-A for the year 1972 in the amount \$1,353.41, plus interest thereon. (A credit in the amount \$580.55, from a prior year, was applied to reduce the total due.) The deficiency was asserted on two grounds: an erroneous refund made to American London, and disallowance of American London's filing on a combined basis with its subsidiaries.

(c) On September 15, 1975, the Audit Division issued to petitioner Am-Lon Knitgoods Finishing Corp. ("Am-Lon"), two statements of audit adjustment and two notices of deficiency, asserting additional franchise tax due under Article 9-A for the years 1970 and 1971 in the respective amounts \$11,420.00 and \$77.41, with interest thereon. The deficiency for 1970 was asserted due to disallowance of Am-Lon's filing on a combined basis with its parent and sister corporations. The deficiency for 1971 was asserted for the aforementioned reason and also because of an adjustment made to a loss carryback deduction.

2. During the period herein involved, petitioners were identically-owned and family-operated corporations, organized under New York law and engaged in textile refinishing. Each had a separate area of technical expertise, and services performed by one could not be performed by the others. ALU did textile bonding (fusing foam or tricot to the original fabric); American London, woolen shrinking; and Am-Lon, knitgoods finishing (shrinking). These processes, each of which required different types of machinery, were performed by petitioners on textiles owned by their customers, who primarily were engaged in the dress, coat and suit trades.

3. Historically, the business grew as follows: as a technology (e.g., knitgoods finishing) developed and a customer need therefor was expressed, the corporate ownership formed a new company and purchased the requisite machinery (in this instance, knitgoods shrinking equipment). The principal, if not sole, reason for the existence of three separate corporations was to provide limited liability with respect to the machinery, in the event of creditor attack.

4. Petitioners maintained a single, joint office headquarters at 315 West 39th Street, New York, New York. The office staff served the needs of all three corporations under the administration of Mr. Charles Lerner, president of each. ALU, while it shared the New York headquarters with the other petitioners, conducted the operational portion of its textile business in Hoboken, New Jersey.

5. Petitioners did not allocate officers' salaries according to work performed for each individual corporation during the period herein involved. Salaries were paid without regard for which corporation the services were performed.

6. Petitioners each individually leased trucks from the same leasing corporation to satisfy their separate transportation needs. However, the use of these trucks and trucking personnel was intertwined among petitioners, regardless of separate leasing arrangements. For instance, if Am-Lon required a particular type of truck already leased by American London, the truck (together with the requisite personnel) would be provided by American London, without any charge-back to Am-Lon.

7. Petitioners each had separate leasing arrangements as to working space and facilities. Again, as with the trucking situation, these leasing arrangements were not strictly adhered to during the period herein involved.

Each petitioner used whatever space it required, even if it meant encroaching on the space of another. There was no charge-back for this type of spatial encroachment.

8. Petitioners separately cross-guaranteed loans made to each corporation. Without these cross-guarantees, the difficulties in arranging adequate financing for the period herein involved might have proved insurmountable. In addition, petitioners made loans to each other whenever the need arose and the capability existed. There was no charge-back on these arrangements.

9. Each petitioner generally had its own customers. On occasion, however, a customer's textiles required both shrinking and bonding; that is, the customer needed the services of more than one of the petitioner corporations. The petitioner responsible for the initial processing billed the customer almost immediately upon receipt of the goods, performed its part and then forwarded the textiles to the appropriate petitioner for completion.

10. According to petitioners' financial records and admissions, intercorporate transfers (consisting of intercompany billings) were verifiable at a level of approximately five percent. But due to the intermingling of activities, facilities and monies, the accounting task of isolating the affairs of each corporation was extremely difficult.

11. Petitioners filed a combined tax report for the period herein involved, without seeking or receiving the prior approval of the State Tax Commission.

CONCLUSIONS OF LAW

A. That subdivision 4 of section 211 of the Tax Law authorizes the Tax Commission, in its discretion, to require or permit a domestic parent corpo-

ration and its wholly-owned domestic subsidiary to make a report on a combined basis. This authorization also applies to foreign corporations doing business in New York. However, no combined report covering a foreign corporation not doing business in New York may be required, unless the Tax Commission deems such a report necessary, because of intercompany transactions or some agreement, understanding, arrangement or transaction which distorts income or capital, in order to properly reflect tax liabilities.

B. That during the periods at issue, the 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)

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. Matter 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 Co. 1974); Matter of N. K. Winston Corp. et al., State Tax Commission, August 21, 1974; Matter of Alpha Computer Service Corporation et al., State Tax Commission, September 28, 1979; Matter of Montauk Improvement, Inc. and Montauk Country Club, Inc., State Tax Commission, September 28, 1979. These factors must be given particular emphasis, although all five factors of former 20 NYCRR 5.28(b) must be considered.

C. That the facts as shown by petitioners demonstrate they were engaged in related lines of business, they functioned as departments of a unitary business conducted by the group, and they performed services for and rendered financial assistance to each other. Aside from such services and financial assistance, petitioners did not establish that there were "substantial inter-company transactions" among them. They have thus failed to satisfy two of the factors enumerated in former 20 NYCRR 5.28(b), including the intercompany transactions factor, which the Commission deems crucial. Combined filing by petitioners was properly disallowed by the Audit Division.

D. That in view of the foregoing, it is unnecessary to determine whether petitioners were required to seek the prior approval of the State Tax Commission for the filing of combined reports.

E. That the petitions of A.L.U. Textile Combining Corp., American London Uneeda Shrinkers Corp. and Am-Lon Knitgoods Finishing Corp. are denied, and the notices of deficiency issued September 15, 1975 are sustained in full.


DATED: Albany, New York

AUG 14 1981

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER

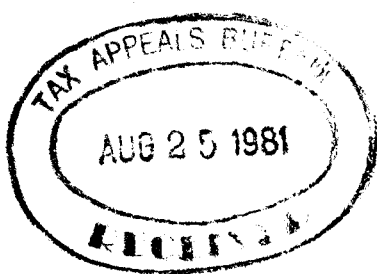
TA 26 (9-79)

STATE OF NEW YORK
State Tax Commission
TAX APPEALS BUREAU

STATE CAMPUS

ALBANY, N.Y. 12227

☒ Moved, not forwardable
NEW YORK, N.Y. 10018
☐ address unknown
☐ address number



FWDC Order
EX

Am-Lon Knitgoods Finishing Corp.
318 West 39th St.
New York, NY 10018

B1A
9-8-81

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

August 14, 1981

Am-Lon Knitgoods Finishing Corp.
318 West 39th St.
New York, NY 10018

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
Michael A. Slater
Slater & Slater
100 Merrick Rd.
Rockville Centre, NY 11570
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition

of

A.L.U. TEXTILE COMBINING CORP.

for Redetermination of a Deficiency or
for Refund of Franchise Tax on Business
Corporations under Article 9-A of the
Tax Law for the Year 1971.

In the Matter of the Petition

of

AMERICAN LONDON UNEEDA SHRINKERS CORP.

for Redetermination of a Deficiency or
for Refund of Franchise Tax on Business
Corporations under Article 9-A of the
Tax Law for the Year 1972.

DECISION

In the Matter of the Petition

of

AM-LON KNITGOODS FINISHING CORP.

for Redetermination of a Deficiency or
for Refund of Franchise Tax on Business
Corporations under Article 9-A of the
Tax Law for the Years 1970 and 1971.

Petitioner A.L.U. Textile Combining Corporation, 208 Clinton Street,
Hoboken, New Jersey 07030, filed a petition for redetermination of a deficiency
or for refund of franchise tax on business corporations under Article 9-A of
the Tax Law for the year 1971 (File No. 14391).

Petitioner American London Uneeda Shrinkers Corporation, 318 West 39th
Street, New York, New York 10018, filed a petition for redetermination of a

deficiency or for refund of franchise tax on business corporations under Article 9-A of the Tax Law for the year 1972 (File No. 14392).

Petitioner Am-Lon Knitgoods Finishing Corporation, 318 West 39th Street, New York, New York 10018, filed a petition for redetermination of a deficiency or for refund of franchise tax on business corporations under Article 9-A of the Tax Law for the years 1970 and 1971 (File No. 14393).

A consolidated formal hearing was held before Archibald F. Robertson, Jr., Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York on June 20, 1977 at 9:35 A.M. Petitioners appeared by Slater & Slater (Michael Slater, CPA). The Audit Division appeared by Peter Crotty, Esq. (Louis Senft, Aliza Schwadron and Abraham Schwartz, Esqs., of counsel).

ISSUES

I. Whether petitioner American London Uneeda Shrinkers Corp. and its subsidiaries, petitioners A.L.U. Textile Combining Corp. and Am-Lon Knitgoods Finishing Corp., should be permitted to file combined franchise tax reports for the years 1970 through 1972.

II. Whether petitioners were required to obtain the prior approval of the New York State Tax Commission for the filing of combined franchise tax reports.

FINDINGS OF FACT

1. (a) On September 15, 1975, the Audit Division issued to petitioner A.L.U. Textile Combining Corp. ("ALU"), a statement of audit adjustment and a notice of deficiency, asserting additional franchise tax due under Article 9-A for the year 1971 in the amount \$125.00, with interest thereon. The statement of audit adjustment explained that the filing of a report on a combined basis by ALU and its parent and sister corporations had been disallowed.

(b) On September 15, 1975, the Audit Division issued to petitioner American London Uneeda Shrinkers Corp. ("American London"), a statement of audit adjustment and a notice of deficiency, asserting additional franchise tax due under Article 9-A for the year 1972 in the amount \$1,353.41, plus interest thereon. (A credit in the amount \$580.55, from a prior year, was applied to reduce the total due.) The deficiency was asserted on two grounds: an erroneous refund made to American London, and disallowance of American London's filing on a combined basis with its subsidiaries.

(c) On September 15, 1975, the Audit Division issued to petitioner Am-Lon Knitgoods Finishing Corp. ("Am-Lon"), two statements of audit adjustment and two notices of deficiency, asserting additional franchise tax due under Article 9-A for the years 1970 and 1971 in the respective amounts \$11,420.00 and \$77.41, with interest thereon. The deficiency for 1970 was asserted due to disallowance of Am-Lon's filing on a combined basis with its parent and sister corporations. The deficiency for 1971 was asserted for the aforementioned reason and also because of an adjustment made to a loss carryback deduction.

2. During the period herein involved, petitioners were identically-owned and family-operated corporations, organized under New York law and engaged in textile refinishing. Each had a separate area of technical expertise, and services performed by one could not be performed by the others. ALU did textile bonding (fusing foam or tricot to the original fabric); American London, woolen shrinking; and Am-Lon, knitgoods finishing (shrinking). These processes, each of which required different types of machinery, were performed by petitioners on textiles owned by their customers, who primarily were engaged in the dress, coat and suit trades.

3. Historically, the business grew as follows: as a technology (e.g., knitgoods finishing) developed and a customer need therefor was expressed, the corporate ownership formed a new company and purchased the requisite machinery (in this instance, knitgoods shrinking equipment). The principal, if not sole, reason for the existence of three separate corporations was to provide limited liability with respect to the machinery, in the event of creditor attack.

4. Petitioners maintained a single, joint office headquarters at 315 West 39th Street, New York, New York. The office staff served the needs of all three corporations under the administration of Mr. Charles Lerner, president of each. ALU, while it shared the New York headquarters with the other petitioners, conducted the operational portion of its textile business in Hoboken, New Jersey.

5. Petitioners did not allocate officers' salaries according to work performed for each individual corporation during the period herein involved. Salaries were paid without regard for which corporation the services were performed.

6. Petitioners each individually leased trucks from the same leasing corporation to satisfy their separate transportation needs. However, the use of these trucks and trucking personnel was intertwined among petitioners, regardless of separate leasing arrangements. For instance, if Am-Lon required a particular type of truck already leased by American London, the truck (together with the requisite personnel) would be provided by American London, without any charge-back to Am-Lon.

7. Petitioners each had separate leasing arrangements as to working space and facilities. Again, as with the trucking situation, these leasing arrangements were not strictly adhered to during the period herein involved.

Each petitioner used whatever space it required, even if it meant encroaching on the space of another. There was no charge-back for this type of spatial encroachment.

8. Petitioners separately cross-guaranteed loans made to each corporation. Without these cross-guarantees, the difficulties in arranging adequate financing for the period herein involved might have proved insurmountable. In addition, petitioners made loans to each other whenever the need arose and the capability existed. There was no charge-back on these arrangements.

9. Each petitioner generally had its own customers. On occasion, however, a customer's textiles required both shrinking and bonding; that is, the customer needed the services of more than one of the petitioner corporations. The petitioner responsible for the initial processing billed the customer almost immediately upon receipt of the goods, performed its part and then forwarded the textiles to the appropriate petitioner for completion.

10. According to petitioners' financial records and admissions, intercorporate transfers (consisting of intercompany billings) were verifiable at a level of approximately five percent. But due to the intermingling of activities, facilities and monies, the accounting task of isolating the affairs of each corporation was extremely difficult.

11. Petitioners filed a combined tax report for the period herein involved, without seeking or receiving the prior approval of the State Tax Commission.

CONCLUSIONS OF LAW

A. That subdivision 4 of section 211 of the Tax Law authorizes the Tax Commission, in its discretion, to require or permit a domestic parent corpo-

ration and its wholly-owned domestic subsidiary to make a report on a combined basis. This authorization also applies to foreign corporations doing business in New York. However, no combined report covering a foreign corporation not doing business in New York may be required, unless the Tax Commission deems such a report necessary, because of intercompany transactions or some agreement, understanding, arrangement or transaction which distorts income or capital, in order to properly reflect tax liabilities.

B. That during the periods at issue, the 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)

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. Matter 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 Co. 1974); Matter of N. K. Winston Corp. et al., State Tax Commission, August 21, 1974; Matter of Alpha Computer Service Corporation et al., State Tax Commission, September 28, 1979; Matter of Montauk Improvement, Inc. and Montauk Country Club, Inc., State Tax Commission, September 28, 1979. These factors must be given particular emphasis, although all five factors of former 20 NYCRR 5.28(b) must be considered.

C. That the facts as shown by petitioners demonstrate they were engaged in related lines of business, they functioned as departments of a unitary business conducted by the group, and they performed services for and rendered financial assistance to each other. Aside from such services and financial assistance, petitioners did not establish that there were "substantial inter-company transactions" among them. They have thus failed to satisfy two of the factors enumerated in former 20 NYCRR 5.28(b), including the intercompany transactions factor, which the Commission deems crucial. Combined filing by petitioners was properly disallowed by the Audit Division.

D. That in view of the foregoing, it is unnecessary to determine whether petitioners were required to seek the prior approval of the State Tax Commission for the filing of combined reports.

E. That the petitions of A.L.U. Textile Combining Corp., American London Uneeda Shrinkers Corp. and Am-Lon Knitgoods Finishing Corp. are denied, and the notices of deficiency issued September 15, 1975 are sustained in full.

DATED: Albany, New York

AUG 14 1981

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER