

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition
of
Video Projects Co., Inc.

:

:

: 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 Years 1972 - 1974 :

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 1st day of May, 1981, he served the within notice of Decision by certified mail upon Video Projects Co., Inc., the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Video Projects Co., Inc.
1559 Jericho Tpk.
New Hyde Park, NY 11040

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
1st day of May, 1981.

Annie A. Hyslop

J. Vredenburg

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of :
Video Projects Co., Inc. :

: 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 Years 1972 - 1974 :

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 1st day of May, 1981, he served the within notice of Decision by certified mail upon Felix Barondess, the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Felix Barondess
342 Madison Avenue
New York, NY 13402

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
1st day of May, 1981.

Annie A. Heyland

J. Vredenburg

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

May 1, 1981

Video Projects Co., Inc.
1559 Jericho Tpk.
New Hyde Park, NY 11040

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
Felix Barondess
342 Madison Avenue
New York, NY 13402

Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition
of
VIDEO PROJECTS CO., INC.
for Redetermination of a Deficiency or
for Refund of Corporation Franchise Tax
under Article 9-A of the Tax Law for the
Years 1972, 1973 and 1974.

DECISION

Petitioner, Video Projects Co., Inc., 1559 Jericho Turnpike, New Hyde Park, New York 11040, 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, 1973 and 1974 (File No. 17661).

A formal hearing was held before Frank A. Romano, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on June 20, 1978 at 3:50 P.M. Petitioner appeared by Felix Barondess, CPA. The Audit Division appeared by Peter Crotty, Esq. (Irving Atkins, Esq., of counsel).

ISSUE

Whether the business allocation percentage claimed by petitioner, Video Projects Co., Inc., should be allowed by reason of said petitioner's contention that the situs of video equipment leased to racetracks outside New York State constitutes "other space" regularly used by said petitioner in the carrying on of its business.

FINDINGS OF FACT

1. Petitioner, Video Projects Co., Inc., (hereinafter sometimes called "Video Projects"), filed New York State Corporation Franchise Tax Reports under Article 9-A of the Tax Law for the years in question, listing its address as 1559 Jericho Turnpike, New Hyde Park, New York 11040.

2. Video Projects filed an amended New York State Corporation Franchise Tax Report for the period June 1, 1971 to May 31, 1972 recomputing its business allocation percentage on the ground that the location or situs of closed circuit television systems leased to racetracks outside New York State constituted "other space" regularly used by said petitioner in the carrying on of its business. Accordingly, Video Projects filed a claim for credit or refund of corporation tax paid for the period ended May 31, 1972 in the amount of \$3,515.15. This claim was denied by the Corporation Tax Bureau on or about January 7, 1976.

3. On September 10, 1976, the Audit Division issued statements of audit adjustment, against Video Projects, imposing additional tax on the ground that the business allocation percentages claimed on its reports were disallowed because petitioner did not maintain a regular place of business outside of New York State. The deficiency asserted against Video Projects was computed as follows: (i) for the period ended May 31, 1973 (No. C760910271C), additional tax of \$1,178.48, plus interest of \$265.16, making a total of \$1,443.64; and (ii) for the period ended May 31, 1974 (No. C760910272C), additional tax of \$374.32, plus interest of \$57.27, making a total of \$431.59. Accordingly, notices of deficiency were issued against Video Projects in accordance with the aforesaid statements of adjustment.

4. Video Projects timely filed a perfected petition for redetermination of the deficiency or for refund of corporation franchise taxes under Article 9-A of the Tax Law for the periods in question challenging the correctness of the allocation formula employed by the Audit Division on the grounds that (i) the situs of the closed circuit television systems at racetracks located outside New York State constituted "other space" used by it for carrying on

its business in accordance with 20 NYCRR 4-2.2(b) (Note: for taxable year beginning prior to January 1, 1976, this regulation was embodied in section 4.11(b) of Ruling of State Tax Commission dated March 14, 1962); and (ii) such allocation formula created a burden upon interstate trade.

5. Video Projects is a New York corporation engaged in the leasing of closed circuit television systems to racetracks within and without New York State. Albert Ajar and William Ajar are its President/Treasurer and Vice-President/Secretary, respectively, and each owned fifty (50%) percent of its share of stock.

6. During the period in question, Video Projects, as lessor, entered into written lease agreements with various racetracks, as lessees, in California, New Jersey and Pennsylvania whereby certain closed circuit television equipment was installed and situated in the control room of the racetrack where it remained during the term of the lease or its renewal, if applicable. The leases were substantially similar, containing the following provisions: identification of equipment; term; rental (generally computed on a per diem charge); costs of delivery and return of equipment, insurance and installation, all to be borne by the lessee; Video Projects retained title to the equipment but the lessee was responsible for and charged with its safekeeping during use and storage; Video Projects could cancel the lease and recover the equipment in the event of the lessee's default or bankruptcy or if the equipment was deemed to be in danger of loss or abuse; upon termination of the lease, the equipment would be returned to Video Projects in New York State less reasonable wear and tear; service and maintenance was to be furnished by Techni-Vision Operations, Inc. as per separate agreement with the lessee; Video Projects retained the right to lease the equipment to other racetracks during the lessee's off-season; and the lessee could not assign the lease without the

prior written consent of Video Projects. There was no option granted to the lessees to purchase the equipment installed at their respective racetracks.

7. Techni-Vision Operations, Inc. was a New York corporation, the shares of stock of which were owned equally by Albert and William Ajar. Its primary function was to service the equipment installed by Video Projects at racetracks outside of New York State. (Albert and William Ajar each owned fifty (50%) percent of Technical Operations, Inc., a New York corporation which serviced equipment installed by Video Projects within New York State.) Techni-Vision Operations, Inc. hired local employees at each of the racetracks located outside New York State, making deductions and paying payroll taxes in accordance with the laws of the State and locality where the racetracks were located.

8. During the periods in question, Video Projects registered as "doing business" in the States where the racetracks were located and filed corporate income tax returns in such States, paying tax on the income reported thereon.

CONCLUSIONS OF LAW

A. That the constitutionality of the laws of the State of New York is presumed at the administrative level and the New York State Tax Commission does not have jurisdiction to declare such laws or their application unconstitutional. Accordingly, such laws are deemed to be constitutional to the extent that tax liability is sought to be imposed upon petitioner, Video Projects Co., Inc. Tully v. Griffins, Inc., 429 U.S. 68.

B. That, pursuant to section 209 of the Tax Law, the State of New York provides for a franchise tax upon both domestic and foreign corporations.

C. That, pursuant to section 210 of the Tax Law, the State of New York provides for allocation of income upon which such franchise tax is payable.

D. That, pursuant to the statute and regulation effective for the years at issue, section 210.3(a)(4)¹ and 20 NYCRR 4.11(a), respectively, where the taxpayer does not have a regular place of business outside the State of New York other than a statutory office, the business percentage allocated to New York State shall be one hundred percent.

E. That, pursuant to section 4.11(b) of Ruling of State Tax Commission dated March 14, 1962 and the current regulation, 20 NYCRR 4-2.2(b), a "regular place of business" is defined as "any bona fide office (other than a statutory office), factory, warehouse, or other space which is regularly used by the taxpayer in carrying on its business".

F. That the burden of overcoming the deficiency asserted by the Audit Division herein is upon petitioner, Video Projects Co., Inc., and any claimed exemption must be clearly and plainly established. Matter of Liberman v. Gallman, 41 N.Y.2d 774, 777 (1977).

G. That petitioner, Video Projects Co., Inc., failed to sustain its burden of establishing that it was doing business in any State other than New York. Petitioner was engaged solely in New York State in the business of leasing closed circuit television systems to racetracks located both within and without New York State and the income derived therefrom should be allocated entirely to this State. Matter of Clairmont Mills v. State Tax Commission, 11 A.D.2d 368, 206 N.Y.S.2d 621 (3rd Dept. 1960); Matter of L.C.L. Corporation v. State Tax Commission, 8 A.D.2d 658, 184 N.Y.S.2d 940 (3rd Dept. 1959), appeal denied, 7 N.Y.2d 709 (1960).

¹ Subparagraph 4 was amended by Chapter 69, Laws of 1978 to allow a business allocation without requiring the corporation to have a regular place of business outside New York State.

H. That the petition of Video Projects Co., Inc. is denied in all respects and the notices of deficiency issued against said petitioner in accordance with the aforesaid statements of audit adjustment are sustained.

DATED: Albany, New York

MAY 01 1981

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER



New York State Department of
TAXATION and FINANCE
TAX APPEALS BUREAU

TO *STC* DATE *May 20, 1987*

*Representative's copy returned, no
better address.*

TA 26. (9-79)

STATE OF NEW YORK

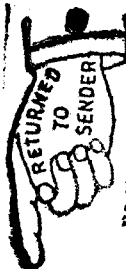
State Tax Commission

TAX APPEALS BUREAU

STATE CAMPUS

ALBANY, N. Y. 12227

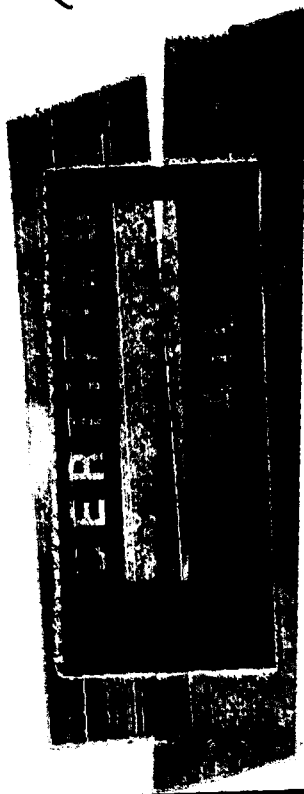
Felix Baronness
324 Madison Avenue
New York, NY 10017

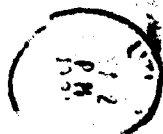
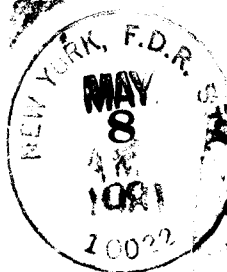


NO SUCH NUMBER
NEW YORK, N. Y. 10017

*Return Address
Post 5-12-8*

10017





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

May 1, 1981

Video Projects Co., Inc.
1559 Jericho Tpk.
New Hyde Park, NY 11040

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

Very truly yours,

STATE TAX COMMISSION

cc: Petitioner's Representative
Felix Barondess
342 Madison Avenue
New York, NY 13402

Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition
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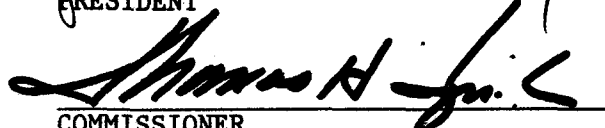
H. That the petition of Video Projects Co., Inc. is denied in all respects and the notices of deficiency issued against said petitioner in accordance with the aforesaid statements of audit adjustment are sustained.

DATED: Albany, New York

MAY 01 1981

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER