

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
Benderson Development Co., Inc. :
and 1979 Seneca, Inc. :
: AFFIDAVIT OF MAILING
:
for Redetermination of Deficiencies or for Refunds :
of Corporation Franchise Tax under Articles 9A and :
27 of the Tax Law for the Fiscal Years Ended :
March 31, 1980 and January 31, 1980, respectively. :

State of New York }

ss.:

County of Albany }

David Parchuck, being duly sworn, deposes and says that he is an employee of the State Tax Commission, that he is over 18 years of age, and that on the 29th day of February, 1984, he served the within notice of Decision by certified mail upon Benderson Development Co., Inc. and 1979 Seneca, Inc., the petitioners in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Benderson Development Co., Inc.
and 1979 Seneca, Inc.
570 Delaware Ave.
Buffalo, NY 14202

and by depositing same enclosed in a postpaid properly addressed wrapper in a post office 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
29th day of February, 1984.

David Parchuck

James A. Hagedorn
Authorized to administer oaths
pursuant to Tax Law section 174

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

February 29, 1984

Benderson Development Co., Inc.
and 1979 Seneca, Inc.
570 Delaware Ave.
Buffalo, NY 14202

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, a proceeding in court to review an adverse decision by the State Tax Commission may be instituted only under Article 78 of the Civil Practice Law 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
Law Bureau - Litigation Unit
Building #9, State Campus
Albany, New York 12227
Phone # (518) 457-2070

Very truly yours,

STATE TAX COMMISSION

cc: Petitioner's Representative
Hyman B. Polakoff
760 Statler Bldg.
Buffalo, NY 14202
Taxing Bureau's Representative

STATE TAX COMMISSION

A consolidated formal hearing was held before Dennis M. Galliher, Hearing Officer, at the offices of the State Tax Commission, 65 Court Street, Buffalo, New York, on August 17, 1983 at 1:15 P.M. Petitioners appeared by Brock, Schecter & Polakoff, CPA's., (Hyman B. Polakoff, CPA). The Audit Division appeared by John P. Dugan, Esq., (Deborah Dwyer, Esq. of counsel).

ISSUE

Whether penalties asserted against each petitioner pursuant to section 1085(a) of the Tax Law for alleged late filing of a Corporation Franchise Tax Report may be waived.

FINDINGS OF FACT

1. On January 12, 1981, the Audit Division issued to petitioner Benderson Developement Co., Inc. ("Benderson"), a Notice and Demand for Payment of Corporation Tax Due for the fiscal year ended March 31, 1980, in the amount of

\$198,984.00, plus interest of \$4,472.11 and additional charge of \$20,817.76, for a total of \$224,273.87. This notice showed an amount paid of \$198,984.21, thus leaving interest and additional charge of \$25,289.66 unpaid and asserted as due.

2. On November 14, 1980, the Audit Division issued to petitioner 1979 Seneca, Inc. ("Seneca"), a Notice and Demand for Payment of Corporation Tax Due for the fiscal year ended January 31, 1980, in the amount of \$2,177.00, plus interest of \$18.64 and additional charge of \$85.40 for a total of \$2,281.04. This notice showed an amount paid of \$2,177.00, thus leaving interest and additional charge of \$104.04 unpaid and asserted as due.

3. As stated on each of the above notices, the asserted interest and additional charges were based on the alleged late filing of petitioners' corporation franchise tax reports (Forms CT-3) for their respective fiscal years ended March 31, 1980 and January 31, 1980, and late payment of the taxes shown as due thereon. The notices stated petitioner Benderson's report was due to be filed by June 15, 1980, but was not received by the Audit Division until December 17, 1980, and that petitioner Seneca's report was due to be filed by April 15, 1980, but was not received by the Audit Division until October 20, 1980.

4. The foregoing due dates for petitioners' corporation franchise tax reports, as reflected on the notices (June 15, 1980 for Benderson; April 15, 1980 for Seneca), were incorrect, since each petitioner had been granted an extension of time by the Audit Division due to the filing of Forms CT-5 ("Application for 3 Month Extension For Filing Tax Report"). Such extended due dates for filing thus became September 15, 1980 for Benderson, and July 15, 1980 for Seneca. The Audit Division calculated the asserted deficiencies at issue based

on interest at $8\frac{1}{2}$ percent per annum computed from each petitioners' original due date for the payment of tax (petitioners' original filing date), and on penalty (additional charge) for late filing of returns at 5 percent per month from each petitioners' extended due date for filing.

5. Benderson and Seneca are members of a group of related corporations and partnerships, and are both involved in the rental of real estate. One individual, Mr. Eugene Bellis, a certified public accountant, functions as controller for all of the related entities in the group, including petitioners. Additional in-house accounting personnel for the group consisted of approximately ten persons, none of whom were certified public accountants. Petitioners' in-house accounting staff, and more specifically Mr. Bellis, was generally responsible for filing and obtaining extensions of the time within which to file tax returns.

6. Applications to extend the time for filing returns beyond the aforementioned extended due dates were filed with the Internal Revenue Service ("I.R.S.") on behalf of each petitioner. However, no such additional requests for extension were filed with the Audit Division.

7. Petitioners' assert that the failure to secure additional extensions of the time within which to file their tax reports was due to an oversight by their personnel. In particular, petitioners note that an I.R.S. audit of the entire group was being conducted which occupied substantially all of Mr. Bellis' time and, further, that new personnel were being trained which resulted in confusion and oversight. Petitioners assert that they attempted to comply with the requirements for obtaining extensions to the best of their ability under difficult circumstances created by the ongoing audit and the training of new personnel.

CONCLUSIONS OF LAW

A. That pursuant to section 211.1 of the Tax Law and regulations thereunder, petitioner Benderson's tax report for the fiscal year ended March 31, 1980 was due to be filed on or before June 15, 1980, and petitioner Seneca's tax report for the fiscal year ended January 31, 1980 was due to be filed on or before April 15, 1980, unless on or before those dates petitioners filed applications for extensions of the time within which to file such reports and paid on or before such filing the amounts properly estimated as their tax (20 NYCRR 6-4.4). Petitioners did file applications by which the original due dates for their respective returns were extended for a period of three months.

B. That regulations of the State Tax Commission in pertinent part further provide:

"(c) On or before the expiration of the automatic three (3) month extension, the Tax Commission may grant additional three (3) month extensions of time for filing reports when good cause exists. Applications for additional three (3) month extensions must be made in writing before the expiration of the previous three month extension... The application must include the following information:

- (1) the taxpayer's complete name,
- (2) the taxpayer's employer identification number,
- (3) the taxpayer's file classification number, and
- (4) the reason for requesting the additional extension."

20 NYCRR 6-4.4(c) (emphasis added).

C. That petitioners did not properly secure any additional extension of the time within which to file their franchise tax reports beyond the extended due dates. In view of the procedure for obtaining additional extensions, as clearly specified in 20 NYCRR 6-4.4(c), the grounds advanced by petitioners in Finding of Fact "7" do not constitute reasonable cause sufficient to allow

waiver of the additional charges imposed for late filing (See Matter of Belmain Realty, Inc., State Tax Comm., January 10, 1983).


D. That the petitions of Benderson Development Co., Inc., and 1979 Seneca, Inc., are hereby denied, and the Notice and Demand issued to Benderson on January 12, 1981, and the Notice and Demand issued to Seneca on November 14, 1980, are sustained.

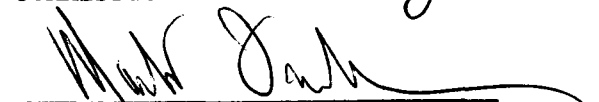
DATED: Albany, New York

FEB 29 1984

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER