

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition :  
of :  
Seidman-Soling Builders, Inc. :  
for Redetermination of a Deficiency or Revision :  
of a Determination or Refund of Corporation :  
Franchise Tax under Article 9A of the Tax Law for :  
the Fiscal Year Ending June 30, 1973. :  
\_\_\_\_\_

AFFIDAVIT OF MAILING

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 9th day of March, 1984, he served the within notice of Decision by certified mail upon Seidman-Soling Builders, Inc., the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Seidman-Soling Builders, Inc.  
125 Prospect St.  
Stamford, CT 06901

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  
9th day of March, 1984.

David Parchuck

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

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :  
of :  
Seidman-Soling Builders, Inc. :  
for Redetermination of a Deficiency or Revision :  
of a Determination or Refund of Corporation :  
Franchise Tax under Article 9A of the Tax Law for :  
the Fiscal Year Ending June 30, 1973. :

AFFIDAVIT OF MAILING

State of New York }  
County of Albany } ss.:

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 9th day of March, 1984, he served the within notice of Decision by certified mail upon Nicholas J. Creme, the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Nicholas J. Creme  
Milgrim, Thomajan, Jacobs & Lee, Professional Corporation  
The Chrysler Bldg., 405 Lexington Ave.  
New York, NY 10017

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 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  
9th day of March, 1984.

David Parchuck

James R. Laguarda  
Authorized to administer oaths  
pursuant to Tax Law section 174

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

March 9, 1984

Seidman-Soling Builders, Inc.  
125 Prospect St.  
Stamford, CT 06901

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  
Nicholas J. Creme  
Milgrim, Thomajan, Jacobs & Lee, Professional Corporation  
The Chrysler Bldg., 405 Lexington Ave.  
New York, NY 10017  
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition	:	
	:	
of	:	
	:	
SEIDMAN-SOLING BUILDERS, INC.	:	DECISION
	:	
for Redetermination of a Deficiency or for	:	
Refund of Corporation Franchise Tax under	:	
Article 9-A of the Tax Law for the Fiscal Year	:	
Ending June 30, 1973.	:	

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Petitioner, Seidman-Soling Builders, Inc., 125 Prospect Street, Stamford, Connecticut 06901, 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 fiscal year ending June 30, 1973 (File No. 17431).

A formal hearing was held before David L. Evans, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York on September 21, 1979. Petitioner appeared by Milgrim, Thomajan, Jacobs & Lee, P.C. (Nicholas J. Creme, Esq., of counsel). The Audit Division appeared by Peter Crotty, Esq. (Samuel Freund, Esq., of counsel).

ISSUES

I. Whether the Audit Division properly required petitioner to include in its 1973 entire net income the final installment payment due on a 1968 sale of real property, which payment petitioners received and reported in 1974.

II. Whether the petitioner may be permitted to file combined tax reports (with its subsidiaries) retroactively under section 211.4 of the Tax Law.

FINDINGS OF FACT

1. On February 5, 1976, the Corporation Tax Bureau issued a Statement of Audit Adjustment to Seidman-Soling Builders, Inc., 125 Prospect Street, Stamford,

Connecticut 06901, asserting a tax deficiency of \$108,520.00 for the fiscal year ending June 30, 1973.

2. The Corporation Tax Bureau also issued a Statement of Tax Reduction the same day (February 5, 1976) for the corporation's fiscal year ending June 30, 1974 reflecting a \$4,408.00 credit.

3. The Audit Division issued a Notice of Deficiency to petitioner on May 21, 1976, in the amount of \$104,112.00 plus \$21,899.79 penalty and/or interest for a total due of \$126,011.79.

4. Petitioner was incorporated in New York on October 17, 1958 and began business in New York State in November of 1958. The principal business activity of the corporation involved real estate principally in New York i.e., "either building and [or] owning residential real estate."

5. On April 1, 1968, petitioner sold a certain parcel of property and building in New York City, realizing a profit of \$2,043,030.32. Attached to petitioner's U.S. Corporation Income Tax Return (Form 1120) for the fiscal year ending June 30, 1968 was a schedule entitled "Sec. 453 Computation of Gain on Installment Sale & Profit Realized" pursuant to which Seidman exercised a right of election to report the gain on the installment method. Since the aforesaid schedule reflects a profit of 99.56%, that factor was applied to the down-payment of \$300,000.00 which was translated as "profit realized" - \$298,680.00 for 1968. Sometime before June 30, 1974, the mortgagor pre-paid the balance of its installment obligation.

6. In 1974, when petitioner acquired property in Connecticut, it moved its offices from New York City to Connecticut. Petitioner reported a business allocation percentage of 4.442% on its June 30, 1974 report based on the fact that its regular place of business was outside New York State throughout the

year. The report also showed \$1,181,646.00 as the final gain on the installment sale.

7. The Audit Division ruled that the installment gain petitioner received in 1974 was to be recognized on petitioner's report for the fiscal year ending June 30, 1973 under the authority of subdivision 9(d) of section 208 of the Tax Law "without regard to the method of accounting employed by the taxpayer."

8. The petitioner contends that since its installment method of accounting was properly elected "and since that method clearly reflects Seidman-Soling's entire net income, invocation [by the taxing bureau] of New York Tax Law §208.9(d) is neither proper nor warranted."

9. Petitioner has also petitioned the Tax Commission for permission to retroactively file combined tax reports with its subsidiaries.

10. Among petitioner's affiliates are Pipers Hill, Inc.-a "children's school" according to Form 1122 attached to petitioner's United States Corporation Income Tax Return (Form 1120) for its fiscal year ending June 30, 1974.

It is noted that two other subsidiaries of petitioner-i.e.- Eastern Data, Inc. and L.M. Rosenthal Fund - have not been shown to be engaged in "real estate building" - petitioner's principal activity.

11. Petitioner has submitted Proposed Findings of Fact relating to the issues of the installment sale and petitioner's building activities. Proposed Findings of Fact 2, 5, 6, 8, 9, 13, 14 and 16 are accepted. Proposed Findings of Fact 1, 3, 7, 10, 11, 12 and 17 are rejected as being acceptable only in part. Petitioner has also submitted Proposed Findings of Fact relating to the issue of combined reporting of income. These Findings of Fact are rejected.

### CONCLUSIONS OF LAW

A. That section 208.9 of the Tax Law (which defines the term "entire net income") provides in part as follows:

"(d) The tax commission may, whenever necessary in order properly to reflect the entire net income of any taxpayer, determine the year or period in which any item of income or deduction shall be included, without regard to the method of accounting employed by the taxpayer;".

B. That the pertinent regulation in effect during the period at issue provided as follows:

"3.14... Year in Which Income or Deductions Included in Entire Net Income (Law Sec. 208.9(d)). In general, the method of accounting used in computing taxable income for Federal income tax purposes is used in computing entire net income. However, whenever the State Tax Commission deems it necessary in order properly to reflect entire net income of the taxpayer, it may determine the year or period in which any item of income or deduction shall be included, without regard to the method of accounting used by the taxpayer.

Example: A taxpayer has a building, installation or construction contract covering a period in excess of one year. The taxpayer keeps his books so as to reflect the total income derived from the contract in the taxable year in which the contract is finally completed, and reports its Federal taxable income accordingly. The State Tax Commission may require that income from the contract be apportioned over the entire contract period, on the basis of percentage of completion in each year, or some other appropriate basis."

(Ruling of State Tax Commission, March 14, 1962.)

The current regulation (effective for all taxable years beginning on or after January 1, 1976) is virtually identical to its predecessor except that two additional examples have been included. One of the examples, 20 NYCRR 3-2.7, Example 3, provides as follows:

"A foreign corporation sells its New York State real estate on an installment basis, and terminates its taxable status in New York State in a subsequent taxable year prior to the receipt of all its installment payments. The full profit or the remaining profit on the sale must be included in entire net income in the year it terminates its taxable status in New York State."

C. That in this case it was not necessary in order to properly reflect petitioner's entire net income to determine that the gain actually received in the fiscal year ending June 30, 1974 was received in the fiscal year ending June 30, 1973. The gain was correctly reported on the installment method and properly reflected entire net income as received. While it is not necessary that a taxpayer terminate its taxable status with New York State before the State Tax Commission may use section 208.9(d), it is an element to be considered. Petitioner did not terminate its taxable status with New York State; its move to Connecticut, however, resulted in a substantial reduction in its business allocation percentage. Rather than throwing the gain back to fiscal 1973, the Audit Division should have adjusted petitioner's business allocation percentage for fiscal 1974 by use of section 210.8 of the Tax Law to effect a fair and proper allocation of the income and capital reasonably attributable to New York. This could conceivably have resulted in 100 percent of the gain being attributed to New York. The Audit Division erred by simply placing the gain in a year when petitioner's business allocation percentage was 100 percent.

D. That petitioner's request that it be permitted to retroactively file combined reports with its subsidiaries is denied. The detailed facts necessary to determine whether permission for combined filing should be sought from the State Tax Commission are available to the taxpayer at the time annual franchise tax reports are due; and, except under unusual circumstances, the taxpayer has no need for an extended period to determine whether permission should be requested. Matter of Walker Engraving Corporation, State Tax Commission, June 6, 1971; Matter of Carter-Wallace, Inc., State Tax Commission, June 5, 1981.



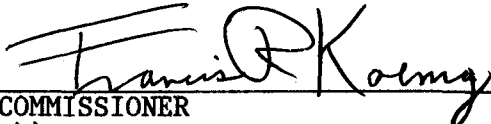
E. That the petition of Seidman-Soling Builders, Inc. is granted to the extent indicated in Conclusion of Law "C" and the Notice of Deficiency is to be modified accordingly.

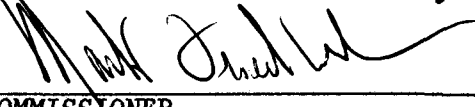
DATED: Albany, New York

MAR 09 1984

STATE TAX COMMISSION

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER

TA 26 (9-79)

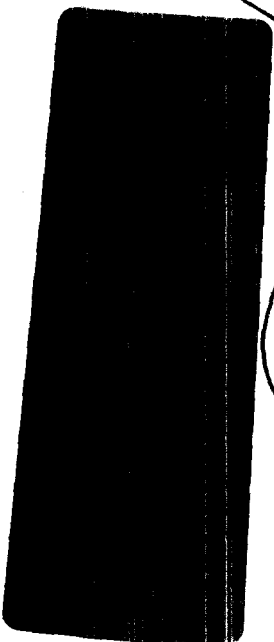
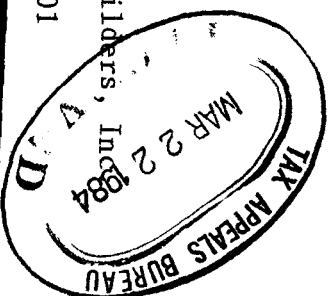
STATE OF NEW YORK  
State Tax Commission  
TAX APPEALS BUREAU  
STATE CAMPUS  
ALBANY, N. Y. 12227

CERTIFIED

P 470 315 276

MAIL

Seidman-Solinc Builders, Inc  
125 Prospect St.  
Stamford, CT 06901



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

March 9, 1984

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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  
Nicholas J. Creme  
Milgrim, Thomajan, Jacobs & Lee, Professional Corporation  
The Chrysler Bldg., 405 Lexington Ave.  
New York, NY 10017  
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STATE OF NEW YORK

STATE TAX COMMISSION

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E. That the petition of Seidman-Soling Builders, Inc. is granted to the extent indicated in Conclusion of Law "C" and the Notice of Deficiency is to be modified accordingly.

DATED: Albany, New York

MAR 09 1984

STATE TAX COMMISSION

*Richard A. Allen*  
PRESIDENT

*Francis P. Koehn*  
COMMISSIONER

*Mark J. Friedman*  
COMMISSIONER