

STATE OF NEW YORK

STATE TAX COMMISSION

---

In the Matter of the Petition :  
of  
Roslyn Productions, Inc.  
and The Manhattan Island Recording Co., Inc. : AFFIDAVIT OF MAILING

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 Years Ended 6/30/79 & 6/30/80.

---

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 15th day of February, 1985, he served the within notice of Decision by certified mail upon Roslyn Productions, Inc., and The Manhattan Island Recording Co., Inc. the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Roslyn Productions, Inc.  
and The Manhattan Island Recording Co., Inc.  
34 Glenwood Road  
Roslyn Harbor, NY 11576

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  
15th day of February, 1985.

David Parchuck

James A. Spillane

Authorized to administer oaths  
pursuant to Tax Law section 174

STATE OF NEW YORK

STATE TAX COMMISSION

---

In the Matter of the Petition	:	
of	:	
Roslyn Productions, Inc.	:	
and The Manhattan Island Recording Co., Inc	:	AFFIDAVIT OF MAILING
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 Years Ended 6/30/79 & 6/30/80.	:	

---

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 15th day of February, 1985, he served the within notice of Decision by certified mail upon Howard L. Boris, the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Howard L. Boris  
97-77 Queens Blvd.  
Rego Park, NY 11374

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  
15th day of February, 1985.

David Parchuck

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

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

February 15, 1985

Roslyn Productions, Inc.  
and The Manhattan Island Recording Co., Inc.  
34 Glenwood Road  
Roslyn Harbor, NY 11576

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  
Howard L. Boris  
97-77 Queens Blvd.  
Rego Park, NY 11374  
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

---

In the Matter of the Petition	:	
	:	
of	:	
	:	
ROSLYN PRODUCTIONS, INC.	:	DECISION
and THE MANHATTAN ISLAND RECORDING CO., INC.	:	
for Redetermination of a Deficiency or for	:	
Refund of Franchise Tax on Business Corporations	:	
under Article 9-A of the Tax Law for the Fiscal	:	
Years Ended June 30, 1979 and June 30, 1980.	:	

---

Petitioners, Roslyn Productions, Inc. and The Manhattan Island Recording Co., Inc., 34 Glenwood Road, Roslyn Harbor, New York 11576, 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 fiscal years ended June 30, 1979 and June 30, 1980 (File Nos. 35230 and 35231).

A formal hearing was held before Doris E. Steinhardt, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on May 21, 1984 at 1:40 P.M., with all briefs submitted by September 12, 1984. Petitioners appeared by Howard L. Boris, P.C. (Paul P. Bozzo, Esq., of counsel). The Audit Division appeared by John P. Dugan, Esq. (Patricia L. Brumbaugh, Esq., of counsel).

#### ISSUE

Whether petitioners may be permitted to file combined franchise tax reports for the fiscal years ended June 30, 1979 and June 30, 1980.

#### FINDINGS OF FACT

1. On June 29, 1979, Roslyn Productions, Inc. ("Roslyn") and The Manhattan Island Recording Co., Inc. ("Manhattan"), by their independent certified public accountant, sought permission to file franchise tax reports on a combined basis

for the fiscal year ending June 30, 1979 and thereafter. After a series of correspondence between the Audit Division and petitioners' accountant, the Audit Division denied its permission to file combined reports because substantial intercorporate transactions allegedly did not exist between petitioners.

2. For the fiscal years ended June 30, 1979 and June 30, 1980, Roslyn filed combined reports encompassing its wholly-owned subsidiary, Manhattan. In addition, Manhattan filed reports remitting therewith the minimum tax of \$250.00, as required.

3. On July 13, 1981, the Audit Division issued to Roslyn a Notice of Deficiency, asserting additional franchise tax due under Article 9-A of the Tax Law for the fiscal year ended June 30, 1979 in the amount of \$24,680.84, plus interest. On the same date, the Audit Division issued to Manhattan a Notice of Deficiency, asserting additional franchise tax due for the fiscal year ended June 30, 1980 in the amount of \$5,565.54, plus interest. The asserted deficiencies arose from the Audit Division's recalculation of tax on a separate basis for each corporation.

4. Manhattan was incorporated under the laws of this state on July 7, 1977 and is engaged in the business of advertising, promoting, distributing and selling phonograph records. It is one of a group of corporations which comprise the Entertainment, Television and Music Group. From time to time, the principals of Manhattan (Martin Bandier, Charles Koppelman and Samuel Lefrak and members of his family) formed other corporations for the purpose of acquiring rights to particular recordings and/or producing, distributing and selling particular recordings. These separate entities were incorporated by reason of the request of a third party or in order to isolate the risk of loss for a particular venture.

5. Sometime prior to December, 1978, one Alexander de Faria e Castro associated with the firm NCA Gesellschaft zur Verwertung von Urheberrechten mbH ("NCA") approached the principals of Manhattan regarding the production and distribution of two record albums. NCA owned the rights to produce two master phonograph recordings embodying performances by Samantha Sang (the "Master Recordings"). On December 4, 1978, Manhattan and NCA entered into a Distribution Agreement by the terms of which Manhattan agreed to promote, advertise, distribute, sell, license, package, repackage and edit the Master Recordings. The agreement entitled NCA to royalties in respect of sales of albums and tapes derived from the Master Recordings in accordance with a formula established by the agreement. Manhattan was entitled to the balance of the gross sales receipts remaining after payment of: all disbursements in connection with manufacturing, distribution, packaging and delivery; advertising and promotional costs; and royalties.

6. On December 13, 1978, Roslyn was incorporated under the laws of this state for the specific purpose of producing the two Samantha Sang Master Recordings. Upon the organization of Roslyn, the shareholders of Manhattan transferred all their shares in Manhattan to Roslyn and received in exchange all of the shares of Roslyn; Manhattan thereby became the wholly-owned subsidiary of Roslyn. Roslyn was formed as a separate entity for two reasons: NCA's request that the production company be free of entanglements with any other artist or transaction; and in the words of Mr. Bandier, "to limit the liability and protect against any unforeseen events."

7. On December 13, 1978, Roslyn and NCA entered into a Production Service Agreement, under which Roslyn was to perform all services necessary for NCA to produce the Master Recordings. Such services included, but were not limited

to: "furnishing studio, recording and rerecording facilities, materials and services for the production of each Master Recording including, without limitation, sound, mixing, editing, re-editing and music; engaging persons to render services for the production of each Master Recording, including, without limitation, producers, arrangers and musicians and technical personnel; and, providing other production services for the production of each Master Recording." Under the terms of the agreement, the "approved budget" was \$660,000.00 which amount was to be employed in meeting all production costs. "Any savings in connection with the Approved Budget [was to] inure entirely for the benefit of [Roslyn] as an additional fee for its services...". Roslyn had no employees of its own; it utilized the services of its officers (who are also officers of Manhattan) and the studios and facilities of independent contractors to produce the Master Recordings.

8. On December 13, 1978, at the insistence of NCA, Manhattan executed a Completion Guarantee. In consideration of the sum of \$66,000.00 which NCA paid or caused to be paid to Manhattan, Manhattan guaranteed completion and delivery of the two Master Recordings (which were the subject of the above-described Production Service Agreement between Roslyn and NCA) on or before March 31, 1979. It was in fact Roslyn which remitted the sum of \$66,000.00 to Manhattan presumably out of the approved budget under the Production Service Agreement.

9. During the fiscal years in question, Roslyn did not perform any functions other than those in connection with the Production Service Agreement. During the fiscal years in question, Manhattan performed few, if any, promotional activities other than those in relation to the Samantha Sang Master Recordings.

10. Relevant portions of the income statements prepared for Roslyn and Manhattan for the fiscal years ended June 30, 1979 and June 30, 1980 are set forth below.

(a) fiscal year ended June 30, 1979

<u>INCOME</u>	<u>ROSLYN</u>	<u>MANHATTAN</u>
Production Services:		
NCA GmbH	\$660,000	
United Artists	150,000	\$ 375,000
Completion Guarantee	--	66,000
Management Services	--	1,027,500
Royalty Income	--	150,000
Interest Income	21,989	--
Other	784	705
	<u>\$832,773</u>	<u>\$1,619,205</u>
 <u>EXPENSES</u>		
Production Expenses:		
Artist/Album costs	314,295	65,772
Executive producers' fees	150,000	
Completion guarantee	66,000	
Royalty Expenses		375,000
Legal/Accounting fees	17,387	26,071
Travel and Entertainment		222,961
Promotion Costs		142,165
Administrative Expenses	4,607	1,054,514
	<u>\$552,289</u>	<u>\$1,886,483</u>
 Net Profit/(Loss)	<u>\$280,484</u>	<u>(\$267,278)</u>

Manhattan's royalty expense in the amount of \$375,000.00 was the payment required under its Distribution Agreement with NCA.

(b) fiscal year ended June 30, 1980

<u>INCOME</u>	<u>ROSLYN</u>	<u>MANHATTAN</u>
Management Services		\$ 977,963
Royalty Income		300,000
Interest Income	\$3,375	
Miscellaneous		1,021
	<u>\$3,375</u>	<u>\$1,278,984</u>



EXPENSES

Production Expenses	\$3,528	\$ 9,232
Royalty Expenses		(14,470)
Legal/Accounting Fees		33,985
Travel and Entertainment		280,754
Promotion Costs		89,916
Administrative Expenses		871,417
	<u>\$3,528</u>	<u>\$1,270,834</u>
Net Profit/(Loss)	<u>(\$153)</u>	<u>\$8,150</u>

CONCLUSIONS OF LAW

A. That section 211.4 of the Tax Law authorizes the Tax Commission, in its discretion, to require or to permit a parent corporation and its wholly-owned subsidiaries to file a franchise tax report on a combined basis (with certain provisos not applicable to the circumstances presented here). During the fiscal years under consideration, the Commission provided by regulation (20 NYCRR 6-2.3[a]) that in determining whether to require or allow combined reporting, two broad criteria must be met: (1) the corporations must constitute in substance parts of one, unitary business; and (2) there must exist substantial intercorporate transactions among the corporations. Ultimately, the determination rests upon "whether, under all of the circumstances of the intercompany relationship, combined reporting fulfills the statutory purpose of avoiding distortion of, and more realistically portraying true income [citation omitted]." Matter of Coleco Industries, Inc. v. State Tax Comm., 92 A.D.2d 1008, 1009, affd. mem., 59 N.Y.2d 994.

B. That during the fiscal years 1979 and 1980, the corporate purposes and activities of petitioners were completely integrated and interdependent. The singular reason for Roslyn's incorporation was to produce the two Samantha Sang Master Recordings, which recordings Manhattan was obligated under its contract with NCA to promote, distribute and sell. Manhattan's promotional endeavors

would have been rendered meaningless in the absence of Roslyn's production of the Master Recordings, and vice versa. In effect, the income from the transaction was earned by Manhattan, and Roslyn functioned merely as Manhattan's "alter ego". To treat the corporations as separate entities for franchise tax purposes would thus materially distort the income of each. (See Matter of Glick Construction Corp. v. N.Y.S. Tax Comm., 95 A.D.2d 129.)

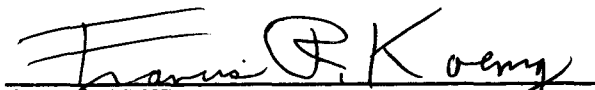
C. That the petition of Roslyn Productions, Inc. and The Manhattan Island Recording Co., Inc. is granted, and the notices of deficiency issued on July 13, 1981 are cancelled.


DATED: Albany, New York

STATE TAX COMMISSION

FEB 15 1985

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER