

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition

of

IDEAL CORPORATION

:

DECISION

:

for Redetermination of a Deficiency or for
Refund of Corporation Franchise Tax under
Article 9-A of the Tax Law for the Fiscal Years
Ended June 30, 1972 and June **30**, 1973.

Petitioner, Ideal Corporation, 1000 Pennsylvania Avenue, Brooklyn, New York 11207, 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 years ended June 30, 1972 and June 30, 1973 (File No. 24281).

A 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 October 10, 1985 at 9:15 A.M., with all briefs to be submitted by March 28, 1986. Petitioner appeared by Gordon, Hurwitz, Butowsky, Weitzen, Shalov & Wein, Esqs. (Ellis L. Reemer, Esq. and June Brettler, Esq., of counsel). The Audit Division appeared by John P. Dugan, Esq. (William Fox, Esq., of counsel).

ISSUES

I. Whether petitioner's method of computing its eligible business facility credit during the fiscal years at issue, which method excluded inventory from the denominator of the fraction contained in the statutory formula for determining such credit, was proper.

II. Whether, assuming petitioner's method of computing its eligible business facility credit during the fiscal years at issue was improper, the

Audit Division may be estopped from disallowing such credit because of petitioner's reliance to its detriment upon representations made by the Job Incentive Board of the New York State Department of Commerce.

FINDINGS OF FACT

1. On October 15, 1976, the Audit Division issued to petitioner, Ideal Corporation, a separate Notice of Deficiency for each of petitioner's fiscal years ended June 30, 1972 and June 30, 1973, respectively, asserting additional tax and interest due under Article 9-A of the Tax Law in amounts as follows:

<u>Year Ended</u>	<u>Additional Tax Due</u>	<u>Interest</u>	<u>Total</u>
6/30/72	\$19,782.65	\$4,846.75	\$24,629.40
6/30/73	\$37,648.48	\$8,706.21	\$46,354.69

2. The additional tax and interest asserted due was the result of a field audit of petitioner's parent corporation, Parker-Hannifin Corporation. Of the \$57,431.13 in additional tax asserted due by the Audit Division, \$9,802.00 was based on an adjustment made by the auditor for fiscal year ended June 30, 1972 whereby 90 percent of the interest paid to petitioner's shareholders during that year was added back to petitioner's net income. Petitioner did not take issue with this adjustment.

3. The remaining \$47,629.13 in additional tax asserted due by the Audit Division was based upon a recalculation of petitioner's eligible business facility tax credit to reflect the Audit Division's inclusion of inventory in the denominator of the fraction of the statutory formula. It is this adjustment which petitioner raised as an issue.

4. During the period at issue, petitioner was a Delaware corporation engaged in the manufacture of automotive replacement parts such as hose clamps, signal flashers, thermostats, and also clamps for industrial use.¹

5. During the late 1960's, petitioner, having determined that it had outgrown its then-existing facilities in Brooklyn, New York, sought to expand and relocate. Petitioner became aware of the possibility of receiving certain tax benefits under the New York State Department of Commerce's Job Incentive Board program if petitioner relocated or expanded to an eligible area in New York State. Prior to making a determination as to its relocation and expansion, petitioner's representatives met with representatives of the Job Incentive Board ("JIB") to calculate the amount of potential tax credits for petitioner under the JIB program. In making such calculations, the JIB representatives did not include inventory in either the numerator or denominator of the statutory formula. The JIB representatives advised petitioner's representatives that the manner in which the potential tax credits were calculated was proper pursuant to section 210.11(b) of the Tax Law. Petitioner subsequently decided to relocate and expand its business in an eligible area in Brooklyn, New York. The tax advantage as understood by petitioner's representatives based upon discussions with JIB representatives was one among several factors considered by petitioner in its determination,

6. Petitioner was among the first participants in the JIB program and was in contact with JIB representatives at various times during the years at issue.

1 During the period at issue and until 1980, petitioner was a wholly-owned subsidiary of Parker-Hannifin Corporation. In 1980, petitioner ceased to exist as a separate corporation and became a division within

At no time did any JIB representative indicate to any representative of petitioner that inventory should have been included in the denominator of the statutory formula used to determine the amount of the credit.

7. In addition to the notices referred to in Finding of Fact "1", the Audit Division also issued to petitioner a Notice of Deficiency on March 28, 1979 asserting additional tax due under Article 9-A of the Tax Law for fiscal year ended June **30**, 1975. Petitioner filed its return for that fiscal year on April 9, 1976. This notice was also premised upon a recalculation of petitioner's eligible business facility tax credit in the manner set forth in Finding of Fact "3".

8. Petitioner did not file a petition with respect to the Notice of Deficiency issued to it on March 28, 1979.²

9. Petitioner contended that a proper interpretation of the statutory formula by which its credits were computed excluded inventory from the calculation. Petitioner further argued that subsequent amendments to the relevant statutes, which amendments explicitly exclude inventory from the statutory formula, merely clarified the statute as it existed during the period at issue. Finally, petitioner contended that even if its statutory interpretation was incorrect, its reliance upon the advice of the JIB estops the Audit Division from imposing and collecting the tax at issue herein, and that to allow the Audit Division to prevail in this matter would result in a "manifest injustice" to petitioner.

2 This failure to file a petition with respect to petitioner's fiscal year ended June **30**, 1975 was apparently overlooked by both petitioner and the Audit Division, for evidence regarding that year was introduced at the

10. It is undisputed that during the period at issue petitioner owned and operated an eligible business facility as defined in section 115 of the Commerce Law and was therefore allowed certain tax credits against its corporation franchise tax. The issue to be determined herein is the manner in which such credits are to be calculated.

CONCLUSIONS OF LAW

A. That section 210.11(b) of the Tax Law provides a formula by which the amount of credit for owning or operating an eligible business facility is determined. During the fiscal years at issue, said section provided as follows:

"(b) The amount of the credit allowable in any taxable year shall be the sum determined by multiplying the tax otherwise due by a percentage to be determined by:

(1) ascertaining the percentage which the total of eligible property values during the period covered by its report, as defined in paragraph (d) of this subdivision and as certified by the New York state job incentive board, bears to the average value of all the taxpayer's real and tangible personal property within the state during such period. For the purposes of this subparagraph only, the taxpayer's real and tangible personal property shall include not only such property owned by the taxpayer but also property rented to it, and the value of rented property shall be deemed to be eight times the net annual rental rate, that is, the annual rental rate paid by the taxpayer less any annual rental rate received by the taxpayer from subrentals.

(2) ascertaining the percentage which the total wages, salaries and other personal service compensation during such period, of employees, except general executive officers, serving in jobs created or retained in an eligible area by such business facility, as certified by the New York state job incentive board, bears to the total wages, salaries and other personal service compensation, during such period, of all the taxpayer's employees within the state except general executive officers.

(3) adding together the percentages so determined and dividing the result by two; provided, however, that if no wages, salaries or other personal service compensation were paid or incurred by the taxpayer during such period to employees within the state other than general executive officers, subparagraph two shall be disregarded and the amount of credit allowable shall be determined

B. That subdivision (b)(1) of section 210.11 was amended by L. 1976, Ch. 924, which amendment was effective **as** of July 27, 1976 (after the fiscal years herein at issue) and provided as follows:

"(b) The amount of the credit allowable in any taxable year shall be the sum determined by multiplying the tax otherwise due by a percentage to be determined by:

(1) ascertaining the percentage which the total of eligible property values during the period covered by its report, as defined in paragraph (d) of this subdivision, bears to the average value of all the taxpayer's real and tangible personal property except for inventory within the state during such period. For the purposes of this subparagraph only, the taxpayer's real and tangible personal property shall include not only such property owned by the taxpayer but also property rented to it, and the value of rented property shall be deemed to be eight times the net annual rental rate, that is, the annual rental rate paid by the taxpayer less any annual rental rate received by the taxpayer from subrentals." (Emphasis supplied.)

C. That the specific issue to be decided **is** whether inventory was to be included as part of the (average) value of "all the taxpayer's real and tangible personal property" in computing the credit at issue during years prior to the effective date of the above-noted amendment which specifically excluded inventory from such computation.

D. That this Commission has previously interpreted section 210.11(b) of the Tax Law, as in force during the years at issue, and reached the following conclusion:

"That prior to the effective date of the amendment, inventory was properly includable as part of the taxpayer's real and tangible personal property for purposes of computing the amount of allowable credit. Petitioner's assertion that the amendment merely clarified the existing state of the law (and the interpretation given by the Department of Commerce and adopted by petitioner **on** its returns during the years at issue) is rejected. Section 208.11 of Article 9-A of the Tax Law defines 'tangible personal property' to mean 'corporeal personal property, such as machinery, toos (sic), implements, goods, wares and merchandise, and does not mean money, deposits in banks, shares of stock, bonds, notes, credits or evidences of an

within this definition. Moreover, the legislature's aforementioned amendment to Tax Law section 210.11(b)(1) specifically excluded inventory from the computation, and there was no language contained in such amendment or any other indication given that such amendment was to be retroactive to prior years. The effect of the amendment was to enlarge the amount of the credit available. It is presumed that the legislature acts with a purpose, and that here the purpose was to expand the amount of the credit beyond that originally allowable, specifically by eliminating inventory from the calculation." Matter of Dinare Corp., State Tax Commission, December 31, 1984.

Petitioner has failed to convince this Commission that its prior interpretation of this statute was improper.

E. That with respect to petitioner's claim of estoppel, although petitioner relied to its detriment upon an erroneous interpretation of section 210.11(b) of the Tax Law by representatives of the Job Incentive Board of the New York State Department of Commerce, the long-standing rule against invoking estoppel against taxing authorities is nonetheless applicable in the instant situation. See Matter of Jamestown Lodge 1681 Loyal Order of Moose, Inc. (Catherwood), 31 A.D.2d 981 (3rd Dept. 1969). This Commission will not be bound by interpretation of the Tax Law made by representatives of the Job Incentive Board, and it was wholly unreasonable for the petitioner herein to rely on any such interpretations. Further, inasmuch as the error made by the JIB representatives involved an error of law, the estoppel doctrine is inapplicable in any case. See Schuster v. Commissioner, 312 F.2d 311 (9th Cir. 1962).


F. That inasmuch as petitioner has not filed a petition with respect to the Notice of Deficiency issued to it on March 28, 1979, this Commission lacks jurisdiction to make any determination with respect to said Notice of Deficiency (Tax Law §§ 1081(b), 1089(b) and 20 NYCRR 601.3(a)).


G. That the petition of Ideal Corporation is denied and the notices of deficiency dated October 15, 1976 are sustained.

DATED: Albany, New York

STATE TAX COMMISSION

JUN 19 1986


PRESIDENT


COMMISSIONER


COMMISSIONER