

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition

of

DRESSER INDUSTRIES, 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 Years :
Ended October 31, 1972, October 31, 1973 and
October 31, 1978.

Petitioner, Dresser Industries, Inc., P.O. Box 718, Dallas, Texas 75221,
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
October 31, 1972, October 31, 1973 and October 31, 1978 (File No. 39293).

On February 18, 1986, petitioner waived its right to a hearing and requested
that a decision be rendered based on the entire record contained in the file.
After due consideration, the State Tax Commission renders the following decision.

ISSUES

I. Whether additional charges, imposed for failure to report federal
audit changes on form CT-3360 with all information required by that form,
should be abated.

II. Whether the Audit Division properly denied petitioner's claim for
refund pending the outcome of a federal audit.

FINDINGS OF FACT

1. On June 30, 1982, the Audit Division issued to petitioner, Dresser
Industries, Inc. ("Dresser"), a Notice of Deficiency asserting tax due under
Article 9-A of the Tax Law in the amount of \$2,068.00 plus interest of \$1,396.00
and additional charges of \$517.00 for a total due of \$4,021.00.

year ended October 31, 1972. On the same date, the Audit Division issued a second notice for the fiscal year ended October 31, 1973, asserting a tax due of \$33,915.00 plus interest of \$24,500.00 and penalty of \$8,479.00 for a total due of \$66,894.00. Dresser has paid the tax and interest asserted but objects to the imposition of the additional charges.

2. By letter dated August 17, 1981, Dresser informed the Audit Division of federal audit changes for the fiscal years ended October 31, 1972 and October 31, 1973. The report was made within 90 days of a final determination of the Internal Revenue Service and consisted of a cover letter and a schedule summarizing the adjustments made. Dresser did not calculate the New York State tax and interest due as a result of the federal changes, and accordingly, it did not remit payment. For the fiscal years under consideration, the Audit Division imposed additional charges because of Dresser's failure to report the federal changes on form CT-3360, Report Of Change **In** Taxable Income By **U.S.** Treasury Department, to calculate tax and interest due and to accompany the report of changes with payment of the amounts due.

3. Dresser reported federal audit changes for the fiscal years ended October 31, 1964, October 31, 1965 and October 31, 1966 by letter. In a letter dated October 21, 1977, the Audit Division advised Dresser that "[a]ll federal final determinations are required to be reported on CT-3360 and the tax and interest thereon to be computed and paid with the report." In response, Dresser submitted a completed form CT-3360 for each of the three years involved on which it calculated the additional tax due plus interest; Dresser also remitted payment for the total amount due for all three years.

4. For each of the fiscal years ended October 31, 1967 through October 31, 1971, Dresser submitted a form CT-3360 on which it reported changes **in** taxable

income by the United States Treasury Department. A schedule similar to the one submitted for the years in issue accompanied the form CT-3360. For each year, Dresser calculated the deficiency and interest due or overassessment and credit due as appropriate. Where a deficiency and interest were calculated, payment accompanied the reports. All reports were made within 90 days of a determination of the Internal Revenue Service.

5. By letter dated January 26, 1981, Dresser made a claim for refund of taxes in the amount of \$1,843.00 for the fiscal year ended October 31, 1978. The letter was accompanied by a copy of Dresser's Amended U.S. Corporation Income Tax Return, Form 1120X, with attached schedules. The schedules explained that Dresser Industries, Inc., and consolidated subsidiaries reported a long-term capital gain of \$381,374.61 on their consolidated U.S. Corporation Income Tax Return for the fiscal year ended October 31, 1978. The gain resulted from the condemnation of land owned wholly by Dresser and the consequent sale of the land for a total of \$600,000.00. Subsequently, Dresser converted the sales proceeds into similar property and reduced the cost basis of the newly acquired property by \$381,374.61, decreasing its federal taxable income for 1978 by a like amount.

6. Upon completion of a general verification field audit of the fiscal years ended October 31, 1978 through October 31, 1980, the Audit Division denied Dresser's claim for refund pending the receipt of evidence that the Internal Revenue Service actually refunded the overpayment based on Dresser's federal return. Dresser concedes that the federal refund is being held until the Internal Revenue Service completes a full audit which is currently in progress.

CONCLUSIONS OF LAW

A. That section 211, subdivision 1 of the Tax Law imposes a duty upon every taxpayer required to file a report under article nine-a of the Tax Law to transmit whatever reports, facts and information which the tax commission may require for the administration of that article. Moreover, if the amount of taxable income as reported by the taxpayer to the Internal Revenue Service (the "Service") has been changed or corrected by the Service, section 211, subdivision 3 of the Tax Law requires the taxpayer to report the change or correction to the Tax Commission within 90 days after the final determination of such change or correction. Under the authority delegated to it by the statute, the State Tax Commission promulgated a regulation on August 31, 1976 which provides that "[a] change in Federal taxable income must be reported on form CT-3360" (20 NYCRR 6-3.1[b]). That form requires the taxpayer to calculate additional tax due as a result of the federal change plus interest and remit payment for the total amount.

B. That an additional charge shall be imposed where the taxpayer has failed to file a return under article nine-a, unless it is shown that such failure is due to reasonable cause and not to willful neglect (Tax Law §1085[a][1]). Dresser was fully aware of the existence of form CT-3360 and the requirement that it be used to report federal changes having been **so** informed by the Audit Division in its letter of October 21, 1977. Furthermore, Dresser complied with the requirement for a period of time. Under these circumstances, Dresser's submission of a letter and schedule explaining the federal audit changes did not constitute a sufficient filing under section 211, subdivision 3 of the Tax Law. Even if the submission of a schedule of information might be deemed sufficient to meet the reporting requirements of section 211, Dresser's submission

would still be inadequate inasmuch as it failed to calculate the deficiency plus interest thus failing to provide all information required by the State Tax Commission.

C. That section 208.9 of the Tax Law provides that:

"9. The term 'entire net income' means total net income from all sources, which shall be presumably the same as the entire taxable income which the taxpayer is required to report to the United States treasury department..."

D. That although there is no explicit statutory prohibition precluding a refund of State tax pending approval of a refund of federal tax, the Audit Division's denial of Dresser's claim pending a final determination of the United States Treasury Department *is* consistent with New York's use of federal taxable income as a starting point for computing the franchise tax on business corporations.

E. That section 1087, subdivision (c) of the Tax Law provides as follows:

"(c) Notice of change or correction of federal income. --If a taxpayer is required by subdivision three of section two hundred eleven, ... to file a report or amended return in respect of (1) a decrease or increase in federal taxable income... which is treated in the same manner as if it were an overpayment for federal income tax purposes, claim for credit or refund of any resulting overpayment of tax shall be filed by the taxpayer within two years from the time such report or amended return was required to be filed with the tax commission. If the report or amended return required by subdivision three of section two hundred eleven, ... is not filed within the ninety day period therein specified, interest on any resulting refund or credit shall cease to accrue after such ninetieth day."

It is clear from the above-quoted provision that the filing of an amended return as required by section 211.3 of the Tax Law does not in itself constitute a claim for refund. Furthermore, when section 211.3 and section 1087(c) of the Tax Law are read in conjunction, it is apparent that a claim for refund based upon a change in federal income is dependent upon a final determination of the


United States Treasury Department. This is the only reading which is consistent with the overall statutory scheme of article nine-a.

F. That the petition of Dresser Industries, Inc. is denied; the notices of deficiency issued on June 30, 1982 are sustained; and the refund for the fiscal year ended October 31, 1978 is denied, pending the final federal determination.

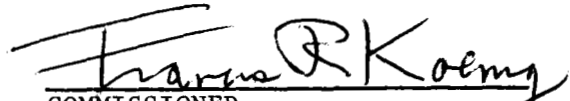
DATED: Albany, New York

STATE TAX COMMISSION

JUN 12 1986



PRESIDENT



COMMISSIONER



COMMISSIONER