

STATE OF NEW YORK

DIVISION OF TAX APPEALS

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In the Matter of the Petition  
of  
LEHIGH VALLEY INDUSTRIES, INC. DETERMINATION  
for Redetermination of a Deficiency or for  
Refund of Corporation Franchise Tax under  
Article 9-A of the Tax Law for the Years 1980  
and 1981.

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Petitioner, Lehigh Valley Industries, Inc., 345 Hudson Street, New York, New York 10014, 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 years 1980 and 1981 (File No. 57225).

A hearing was held before Arthur S. Bray, Hearing Officer, at the offices of the State Tax Commission, Building #9, W. A. Harriman State Office Building Campus, Albany, New York, on February 23, 1987 at 1:40 P.M., with all briefs to be submitted by April 13, 1987. Petitioner appeared by DeGraff, Foy, Conway, Holt-Harris & Mealey (James H. Tully, Jr., Esq. and Carol A. Hyde, Esq., of counsel). The Audit Division appeared by John P. Dugan, Esq. (Thomas C. Sacca, Esq., of counsel).

#### ISSUE

Whether petitioner is entitled to 1980 and 1981 net operating loss deductions based upon a net operating **loss** sustained in 1982.

#### FINDINGS OF FACT

1. Petitioner, Lehigh Valley Industries, Inc., filed a consolidated U.S. Corporation Income Tax Return for the year 1979. On an unconsolidated basis, petitioner reported a loss on its Federal return of \$19,378,289.00. Petitioner

also filed a State of New York Corporation Franchise Tax Report wherein it reported income of \$781,277.00.

2. Petitioner filed a consolidated U.S. Corporation Income Tax Return for the year 1980 wherein it reported, on an unconsolidated basis, income of \$1,905,005.00. On its New York franchise tax report for the same period, petitioner reported income of \$1,930,005.00.

3. Petitioner reported income of \$3,782,638.00, on an unconsolidated basis, on its consolidated U.S. Corporation Income Tax Return for the year 1981. For the same period, petitioner reported income to New York of \$3,839,638.00.

4. Petitioner filed a consolidated U.S. Corporation Income Tax Return for the year 1982 wherein it reported a loss of \$19,843,503.00 on an unconsolidated basis. Petitioner reported a loss of \$11,940,430.00 on its New York franchise tax report for the same period.

5. On July 21, 1983, petitioner filed claims for credit or refund of corporation tax paid for the years 1980 and 1981. The basis of the refund claims was that petitioner sought to carry back its New York loss during the year 1982 to the years 1980 and 1981.

6. The Audit Division disallowed petitioner's claims for refund on the ground that petitioner was not entitled to carry back its New York losses from the year 1982 to the years 1980 and 1981 since, for Federal purposes, if petitioner had filed on an unconsolidated basis, it would have carried forward its loss in 1979 to the years 1980 and 1981.

#### CONCLUSIONS OF LAW

A. That in Matter of The Employers' Fire Insurance Company (State Tax Commission, April 3, 1981, determination confirmed Matter of The Employers' Fire Insurance Company v. State Tax Commn., Supreme Ct, Albany County, November 12,

1981, Pitt, J.), the Commission noted, with regard to Tax Law §§ 1503(b)(4) and 208.9(f):

"That the allowance, by the aforementioned statutes, of net operating loss carryback and carryforward is intended to conform New York practices with Federal practices, and to assist new businesses and those with fluctuating incomes. See Telmar Communications Corp. v. Procaccino, 48 A.D.2d 189 (3d Dept. 1975); American Can Co. v. State Tax Commission, 37 A.D.2d 649 (3rd Dept. 1971); Governor's Memorandum, N.Y.S. Legislative Annual 1961, 461; Dept. of Taxation and Finance Memorandum to the Governor, S. Int. No. 2842, Pr. No. 4441, April 6, 1961 (L. 1961, Ch. 713 Bill Jacket)."

B. That on the basis of the foregoing policy, it has consistently been held by the State Tax Commission that a net operating loss is deductible for State purposes only in the same manner and amount as it is deducted on the taxpayer's Federal return for that year (or, when applicable, in that amount necessary to reduce Federal taxable income to zero) (e.g., Matter of The Employers' Fire Insurance Company, State Tax Commn., April 3, 1981, supra; Matter of Scan-Data Sales Corp., State Tax Commn., March 26, 1982).

C. That since petitioner's Federal taxable income did not encompass any deduction for a net operating loss carryback from 1982, petitioner is not entitled to any net operating loss carryback to 1980 and 1981 on account of the New York loss it sustained in 1982.

D. That the petition of Lehigh Valley Industries, Inc. is denied.

DATED: Albany, New York

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ADMINISTRATIVE LAW JUDGE