

Brown Equipment and Manufacturing Company, Inc.

STATE OF NEW YORK

DEPARTMENT OF TAXATION AND FINANCE

BOARD OF COMMISSIONERS - CORPORATION TAX BUREAU

In the Matter of the Application

of

BROWN EQUIPMENT & MANUFACTURING COMPANY, INC.

Hearing Case No. 2226

for revision of franchise tax under Article 9A of the Tax Law for the calendar year 1953.

The tax was audited and stated on April 7, 1961. Application for revision was filed on October 3, 1961.

Question involved: Taxpayer wants capital gain of \$457,646.68 from sale of its land and building, located in Westfield, Massachusetts, excluded from entire net income.

The tax was computed as follows:

Entire Net Income	\$463,808.28
Business allocation	29,402.50
New York Base	136,361.36
Tax at 5 1/2%	7,500.97
Penalty for underpayment	42.28
Total	\$ 7,543.25

A formal hearing was held in New York City on October 21, 1963 before William F. Sullivan, Hearing Officer, with the taxpayer being represented by Carl W. Vail, Treasurer, Harry J. Reicher, CPA., of 1776 Broadway, New York City, and Aaron M. Diamond, Esq., 310 Madison Avenue, New York City.

The testimony, field audit report and other information in the file indicate the following facts:

The taxpayer was incorporated in North Carolina on July 28, 1937, and began business in New York State on October 13, 1947.

The taxpayer was engaged in the leasing, manufacture, sale and servicing of trucking equipment. Taxpayer's plants and activities were as follows:

1. Springfield, Mass. - Manufacture and service.
2. Westfield, Mass. - Manufacture and service.
3. Baltimore, Maryland - Repair only.
4. Charlotte, No. Carolina - Manufacture and repair.
5. Syracuse, N.Y. - Repair only.

The taxpayer is owned 100% by Associated Transport, Inc.

In 1952, activities at Syracuse, N.Y. ceased completely although rent was paid for premises during 1953. In February 1953, all manufacturing of tractors and trailers stopped.

Title to the Westfield, Massachusetts, property passed on March 31, 1953.

The taxpayer then started purchasing International Harvester tractors and Fruehauf trailers, which were leased to its parent, Associated Transport, Inc.

In the original business allocation the taxpayer made an error in allocating all the tractors and trailers and the rentals thereof to New York State.

Article 415 of the 9-A Regulations reads, in part, as follows:

"The statute provides that where it appears to the State Tax Commission that the business allocation percentage, computed in the manner prescribed by subdivision 3(a) of Section 210, does not properly reflect the activity, business, income or capital of the taxpayer within New York, the State Tax Commission, in its discretion, may adjust such business allocation percentage by:

"(a) * * * * *

"(b) * * * * *

"(c) * * * * *

"(d) any other similar or different method calculated to effect a fair and proper allocation * * *."

To arrive at an equitable solution in this matter, this Board recommends a correction in tax, splitting the calendar year as follows:

1. Amended report submitted by the taxpayer for the period January 1, 1953 to March 31, 1953. This report includes the capital gain from the sale on March 31, 1953 of the factory in Westfield, Massachusetts, which was used as part of a unitary business conducted by the taxpayer.
2. Amended report submitted by the taxpayer for the period April 1, 1953 to December 31, 1953.

We believe that under Article 415(d), this is a "different method calculated to effect a fair and proper allocation of the income and capital reasonably attributable to the state" and follows the correction in tax approved by the Commission in the Ward Industries Corporation matter.

Period January 1, 1953 to March 31, 1953.

Net Income
 Business allocation
 New York Base
 Tax at 5 1/2%

\$443,574.00
 06.0919%
 30,370.68
 \$ 1,601.30

Period April 1, 1953 to December 31, 1953

Total Capital	\$4,311,520.00
Pro-rated on 9/12's basis (Section 210.2)	3,233,640.00
Business allocation	12.9000%
New York Base	417,169.00
Tax at 1 Mill	\$ 417.17

Composite Corrected Assessment

1/1/53 - 3/31/53	\$1,681.39
4/1/53 - 12/31/53	417.17
Total Corrected Tax	\$2,098.56
Original Tax	7,343.50
Reduction	\$5,444.94

/s/

WILLIAM F. SULLIVAN

Chairman

/s/

D. H. GILHOOLY

/s/

J. J. GENEVICH

WFS:MB
4/14/66

Approved
E. A. DORAN