

STATE OF NEW YORK

Halloran & Kerr, Inc.

DEPARTMENT OF TAXATION AND FINANCE

BOARD OF COMMISSIONERS - CORPORATION TAX BUREAU

In the Matter of the Applications of

HALLORAN & KERR, INC.

for revision or refund of franchise taxes under Article 9-A of the Tax Law for the fiscal years ended March 31, 1963, 1964 and 1965.

Hearing Case No. 5871

The taxpayer filed returns and computed taxes, which were paid in full, as follows:

	1/31/63	1/31/64	1/31/65
Entire net income	\$46,468.88	\$199,687.88	\$211,888.18
Business allocation %	33.33%	33.33%	33.33%
New York Base	15,468.95	66,228.13	70,288.24
Tax at 5 1/2%	850.79	3,640.48	3,865.11

The business allocation % was computed in accordance with the regular 3 factor statutory formula. The corporation is a general contractor doing construction work in Pennsylvania. All receipts and wages were allocated outside New York during the three years involved. For the fiscal years ended 1/31/63 and 1/31/64 the property factor was 100% consisting of vacant land and a small amount of furniture and fixtures in New York. For the fiscal year ended March 31, 1965 the property factor was 68.33% made up of vacant land and equipment in New York and equipment in Pennsylvania.

Timely applications for revision or refund were filed on May 25, 1966.

The corporation contends that the statutory 3 factor formula does not properly reflect the taxpayer's activity, business or income in New York. Pennsylvania has determined that the taxpayer performed all its business in that state and has taxed 100% of the income. The vacant land in New York was not used in connection with construction activities and is being held for sale. The equipment stored in New York was not put to use after its arrival in New York and is still stored in New York as per taxpayer's letter of June 7, 1966. Prior thereto it had been used in construction work in Philadelphia.

There is no doubt that the vacant land in New York was not used as part of the unitary business of the taxpayer. With respect to the equipment stored in New York during the fiscal year ended 1/31/65, it was no longer employed after being shipped into New York and accordingly, from that time on, was not used as part of the unitary business.

Since the property in New York was not used as part of a unitary business we believe that the discretionary adjustment requested by the taxpayer is in order and it is recommended that the New York property be eliminated from the factor producing a business allocation percentage of zero.

The book value of the vacant land is \$10,000.00 and the assessed value is \$25,000.00 so a minimum tax of \$25.00 applies.

If the situation remains the same at the time of the sale of the New York real estate then New York would be entitled to tax the full capital gain.

It is recommended that refunds be issued as follows:

	<u>1/31/63</u>	<u>1/31/64</u>	<u>1/31/65</u>
Minimum tax	15.00	15.00	15.00
Tax paid	850.79	3,648.48	2,929.31
Refund due	835.79	3,623.48	2,904.31

/s/ WILLIAM F. SULLIVAN
Chairman

/s/ J. J. GENEVICH

Approved
E. A. DORAN

338:72
6/23/66

Approved
JAMES R. MACDUFF
6-30-66

IRA J. PALESTIN
7/6/66