

STATE OF NEW YORK
DEPARTMENT OF TAXATION AND FINANCE
BOARD OF CONFEREES - CORPORATION TAX BUREAU

In the Matter of the Applications of :
HERCULES, INCORPORATED :
(Formerly Hercules Powder Company) : Hearing Case No. 5951
: for revision or refund of franchise
taxes under Article 9-A of the Tax :
Law for the calendar years 1959, :
1960, 1961 and 1962. :

The taxes for the calendar years 1959 and 1960 were reaudited and the taxes for the calendar years 1961 and 1962 were recomputed on June 3, 1966 as follows:

	<u>12/31/59</u>	<u>12/31/60</u>	<u>12/31/61</u>	<u>12/31/62</u>
Entire Net Income	\$45,829,304.00	\$51,501,816.00	\$57,436,195.00	\$62,213,979.00
Business Allocation %	2.49602	6.406677	6.654508	5.24162
New York Base	1,143,909.00	3,299,555.00	3,822,096.00	3,261,020.00
Tax at 5½%	62,915.00	181,475.53	210,215.28	179,356.10
Subsidiary Cap. Tax	0.00	60.00	60.00	0.00
Total Tax	\$ 62,915.00	\$ 181,535.53	\$ 210,275.28	\$ 179,356.10

The above assessments were based on a field examination conducted by our New York office. The taxpayer disagreed with the adjustment eliminating from the receipts factor reimbursements from the Federal government for operation of government-owned ordnance plants. This adjustment represented the greatest portion of the added taxes, which aggregate \$47,725.65.

Timely applications for revision or refund were filed on July 13, 1966.

Taxpayer contends the added taxes cannot be lawfully demanded since the period of assessment has expired.

The information on file indicates that the regular statutory periods of assessment were as follows:

<u>Year</u>	<u>Date of Filing of Return</u>	<u>Regular Statutory Assessment Expiration Date</u>
1959	May 15, 1960	May 15, 1965
1960	May 11, 1961	May 15, 1966
1961	May 15, 1962	May 15, 1965
1962	March 18, 1963	March 18, 1966

The New York office received an audit extension waiver from the Taxpayer on April 26, 1965 extending the period of assessment for the calendar years 1959 and 1961 to May 15, 1966 (inclusion of the calendar year 1960 on the waiver was superfluous since the regular statutory period expired on May 15, 1966 as indicated above).

On January 31, 1966 Mr. Getz directed that the assessments be billed out as indicated by his notation on copy of Albany letter dated January 10, 1966. Initiation of the billing procedure was timely but, either through inadvertence or oversight, the bills were not mailed until June 3, 1966.

The Board recommends that the assessments be cancelled since they weren't timely issued and cannot be legally enforced.

The CT 122's enclosed indicate credits in cancellation as follows:

	<u>12/31/59</u>	<u>12/31/60</u>	<u>12/31/61</u>	<u>12/31/62</u>
Credit	\$ 865.62	\$22,819.89	\$13,877.13	\$10,163.01

W. F. Sullivan
Chairman

J. J. Emerich

JJG:MB
July 27, 1966

Approved
E. A. Dancy

Approved
8-3-66
Approved - tubed -
handwritten
9/9/66