

*Copy of Determinations*  
A-2  
*Turner Corporation*

In the Matter of the Applications  
and Petitions of

**TURNER CORPORATION**

for revision or refund or redetermin-  
ation of a deficiency under Article  
9-A of the Tax Law for the calendar  
years 1962, 1963, 1964 and 1965.

Hearing Case No. 6244

Petition No. 60

The taxpayer, a domestic corporation, filed franchise tax returns elim-  
inating capital gains from sales of land in Florida, on the basis of the  
decision in the Sheraton Buildings, Inc. case, as follows:

<u>Calendar Year</u>	<u>Capital Gain Eliminated</u>
1962	\$ 630,226.70
1963	786,337.52
1964	1,061,302.49
1965	1,099,033.55

The file was forwarded to the New York office for field audit to deter-  
mine if this was a unitary business so as to require the inclusion of the capital  
gains in entire net income. After the field auditor had finished his examin-  
ation, but before completion of his report, notification was received from the  
taxpayer that the real and tangible assets of the company located in Irvington,  
New York, would be sold in bulk on January 3, 1967. Based on information  
furnished by the field auditor, assessments were computed as follows, picking  
up the capital gains:

	<u>1962</u>	<u>1963</u>	<u>1964</u>	<u>1965</u>
Entire Net Income	\$650,069.15	\$955,068.13	\$1,415,932.11	\$709,174.10
Business Income	650,069.15	893,513.19	1,325,466.78	602,850.64
Business Allocation %	54.8902	56.5287	54.2100	46.7996
Allocated Business Income	356,824.26	505,091.39	718,535.54	282,131.69
Investment Income		61,554.94	90,465.33	106,323.46
Investment Allocation %		10.145	14.627	13.36
Allocated Investment Income		6,244.75	13,232.36	14,204.81
New York Base	356,824.26	511,336.14	731,767.90	296,336.50
Tax at 5½%	19,625.33	28,123.49	40,247.23	16,298.51
Tax paid	2,500.00	6,607.11	8,787.93	6,169.04
Added Tax	\$ 17,125.33	\$ 21,516.38	\$ 31,459.30	\$ 10,129.47

Because of the pending bulk sale, bills were forwarded to the taxpayer  
on December 30, 1966 and immediate warrant action was taken. The taxpayer  
protested the added taxes, but in order not to hold up the bulk sale submitted  
a \$84,670.29 certified check with the understanding that it would not be  
deposited until the matter has been finally resolved. The taxpayer then filed  
timely applications for revision or refund and petitions for redetermination  
for the calendar years 1962 to 1965.

A formal hearing was held in Albany on July 6, 1967 before William F.  
Sullivan and John J. Genevich. The taxpayer was represented by Robert E.  
Nickerson and Joseph F. Drake, Esqs., of the law firm of Nickerson, Weicker,  
Talcott & Cohen, 36 Sherwood Place, Greenwich, Connecticut, and Edward J. Lamm,  
President, William B. Douglass, Vice President, and Donald Delli Paoli, Treas-  
urer.

During the years involved the corporation operated a wholesale lumber business at Irvington, N.Y. (Irvington Division). In Florida it operated the Lee Tidewater Division which engaged in the sale of cypress lumber to wholesalers, manufacture of wooden boxes, citrus growing, cattle raising and rental of large tracts of land in Florida. The lands had originally been acquired many years ago (from 1901 on) by a Lee Tidewater Cypress Co. The taxpayer made loans to Lee Tidewater as a way of assuring itself of a supply of cypress lumber. The taxpayer took a minority interest in the company for some of its loans. By 1942 it owned 40%, in 1946 50%, and in 1956 100%.

On December 31, 1957 the taxpayer took over the assets of the subsidiary by merger. At such date the Lee Tidewater lands had been exhausted of timber but oil was discovered on some of the properties. It should be noted that the taxpayer acquired the lands after timbering operations had ceased.

The Irvington and Lee Tidewater divisions kept books of account separately reflecting each operation. During the years at issue the Lee Tidewater Division sold negligible amounts of cypress lumber to the Irvington Division, at arms-length prices:

<u>Year</u>	<u>Inter-Division Sales</u>
1962	\$39,557.00
1963	50,326.00
1964	62,735.77
1965	83,400.00

That lumber came from a parcel of land in Florida from which the cypress timber had been lumbered off, milled and stored by 1958.

The total sales by the Irvington Division to its customers were:

<u>Year</u>	<u>Irvington Division Sales</u>
1962	\$2,813,831.64
1963	3,341,883.13
1964	4,080,316.22
1965	4,877,887.86

Except for the small amount of sales indicated above, the two divisions operate separately. This is not a unitary business and allocation should be made on a separate accounting basis pursuant to recommendation 5 on page 16 of Memorandum of Messrs. Heckelman and Getz to the Tax Commission dated November 9, 1964;

"If a corporation is conducting two businesses, one in New York and one outside New York, and these two businesses are separate ones rather than a unitary one, the three-factor formula cannot be insisted on. The corporation's income should be allocated by separate accounting."

Accordingly, it is recommended that business income and capital be computed on a separate accounting basis and investment income and capital be allocated according to the investment allocation percentages:

	<u>1962</u>	<u>1963</u>	<u>1964</u>	<u>1965</u>
<b>N.Y. Business Capital</b>	<b>\$3,778,149.77</b>	<b>\$3,595,348.10</b>	<b>\$3,726,491.96</b>	<b>\$4,146,913.77</b>
<b>Total Investment</b>				
<b>Capital</b>		<b>3,247,409.25</b>	<b>3,076,582.13</b>	<b>2,163,229.00</b>
<b>Investment Alloc. %</b>		<b>10.145</b>	<b>14.627</b>	<b>13.36</b>
<b>Allocated Invest-</b>				
<b>ment Capital</b>		<b>329,449.67</b>	<b>450,011.67</b>	<b>289,007.39</b>
<b>Total N.Y. Capital</b>	<b>3,778,149.77</b>	<b>3,924,797.77</b>	<b>4,176,503.63</b>	<b>4,435,921.16</b>
<b>Tax at 1 Mill</b>	<b>3,778.15</b>	<b>3,924.80</b>	<b>4,176.50</b>	<b>4,435.92</b>
<b>Tax Previously</b>				
<b>Assessed</b>	<b>19,625.33</b>	<b>28,123.49</b>	<b>40,247.23</b>	<b>16,298.51</b>
<b>Credit</b>	<b>\$ 15,847.18</b>	<b>\$ 24,198.69</b>	<b>\$ 36,070.73</b>	<b>\$ 11,862.59</b>

/s/

W. F. SULLIVAN

Chairman

/s/

J. J. GENEVICH

JJG:MB  
10/27/67

Approved  
E. A. DORAN

APPROVED: WALTER MACLYN CONLON 29 NOV. '67