

Merk & Co., Inc.

STATE OF NEW YORK

DEPARTMENT OF TAXATION AND FINANCE

BOARD OF CONFERES - CORPORATION TAX BUREAU

In the Matter of the Petition of

MERCK & CO., INC.

Petition No. 93

for redetermination of deficiency of franchise tax under Article 9-A of the Tax Law for the calendar years 1964 and 1965.

Based on a field audit examination conducted by our New York Office, taxes were computed as follows:

	<u>1962</u>	<u>1963</u>
Business Income	\$41,456,769.01	\$43,816,026.92
Business Allocation	3.7998%	3.7768%
Allocated Income	1,575,274.31	1,654,843.70
Tax at 5 1/2%	86,640.09	91,016.40
Tax per report	84,827.80	89,158.12
Added Tax	\$ 1,812.29	\$ 1,858.28

  

	<u>1964</u>	<u>1965</u>
Business Income	\$51,912,800.55	\$71,201,996.70
Business Allocation	4.0138%	4.0662%
Allocated Income	2,083,675.99	2,895,215.59
Tax at 5 1/2%	114,602.18	159,236.86
Tax per report	112,165.23	156,030.31
Added Tax	\$ 2,436.95	\$ 3,206.55

Taxpayer agreed with the minor adjustments made by the field examiner in the property and receipts factors, but argued it was not subject to tax since January 24, 1962 when its warehouse at Buffalo, N.Y. was closed down.

On April 27, 1967 an informal conference was held in the Albany office. The bureau was represented by Director E. A. Doran and J. J. Genevich; the taxpayer by E. C. Sagurton, Corporate Tax Director, and D. F. Lundy, Manager of Domestic Taxes.

The taxpayer claims that since January 24, 1962 its New York activities are wholly in foreign commerce. An International Division headquarters is maintained here with a personnel staff of about 350. The various specific activities carried on by the International Division were discussed, such as those dealing with management and planning, investments in foreign subsidiaries, legal and financial services, transmittal of research information abroad, negotiating for licensing of patents to foreign users, gathering information as to inventions, discoveries and practices of others, quality control, technical and engineering assistance and design, etc. Taxpayer was informed that we believe some of the activities were local in nature and separate and distinct from the mere solicitation of orders in foreign commerce.

It was brought out that some of the personnel attached to the International Division spent a substantial portion of their working time outside the state. Taxpayer was advised of the provision in the Ruling, Section 4.25(d), permitting salaries of employees to be allocated within

and without the state, in the discretion of the Tax Commission, if services were performed outside the state. Taxpayer said it would look into such aspect and requested that we reconsider our position as to the taxability of the corporation. It stated additional details would be submitted as to the activities carried on in New York.

Nothing further was heard from the taxpayer and bills were forwarded under date of July 12, 1967 sustaining the recommendations of the field examiner. Taxpayer requested another conference in the Albany office, which was held on September 7, 1967, with the same personnel being present. We advised the taxpayer there was no basis for changing our previously expressed belief that the corporation was conducting some activities of a local nature which rendered it subject to tax.

The taxpayer then filed a timely petition for redetermination of deficiency for the calendar years 1964 and 1965, and requested a stay of collection on the 1962 and 1963 assessments, advising that it was in the process of computing a revised wage factor in accordance with Ruling Section 4.25(d).

Under date of November 3, 1967 the taxpayer forwarded the revised wage figures for the calendar years 1962 through 1965, based on allocating within and without New York State, wages of personnel who rendered services within and without the state. It is recommended that such method of allocation be accepted, pursuant to Section 4.25(d) of Ruling of the State Tax Commission dated March 15, 1962, in order to produce a proper result.

The revised tax liability would be:

	<u>1962</u>	<u>1963</u>
Business Income	\$41,456,769.01	\$43,816,026.92
Business Allocation	3.3768%	3.3645%
Allocated Income	1,399,787.81	1,474,190.23
Tax at 5½%	76,988.33	81,080.46
Tax previously Computed	86,640.09	91,016.40
Reduction in Tax	\$ 9,651.76	\$ 9,935.94
	<u>1964</u>	<u>1965</u>
Business Income	\$51,912,800.55	\$71,201,996.70
Business Allocation	3.5602%	3.5697%
Allocated Income	1,848,199.53	2,541,697.68
Tax at 5½%	101,650.97	139,793.37
Tax previously computed	114,602.18	159,236.86
Reduction in Tax	\$ 12,951.21	\$ 19,443.49

/s/ W. F. SULLIVAN  
Chairman

/s/ D. H. GILHOOLY

/s/ J. J. GENEVICH

Approved  
E. A. DORAN

A. B. MANLEY  
1/15/68

JJG:MB  
11/28/67