

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of Petition

of

BIRGE COMPANY, INC.

for redetermination of deficiencies  
under Article 9-A of the tax law  
for the fiscal year ended April 30,  
1965, period May 1, 1965 to December  
31, 1965, and calendar years 1966  
and 1967.  
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Birge Company, Inc. having filed a petition for re-determination of deficiencies of franchise tax under Article 9-A of the tax law for the fiscal year ended April 30, 1965, period May 1, 1965 to December 31, 1965, and calendar years 1966 and 1967 and a hearing having been held in connection therewith at the office of the State Tax Commission at the State Campus, Albany, New York, on March 19, 1971 before John J. Genevich, Hearing Officer of the Department of Taxation and Finance, at which hearing the taxpayer was represented by Richard B. Heist, Secretary-Treasurer of the taxpayer, V. Dennis McDade, partner of Price, Waterhouse & Co., accountants for the taxpayer, and Edward M. Griffith, Jr., Esq. of the firm of Phillips, Lytle, Hitchcock, Blaine & Huber, Counsel for the taxpayer, and the record having been duly examined and considered by the State Tax Commission,

It is hereby found:

(1) The taxpayer was incorporated under the laws of New York on August 23, 1900, and is engaged in the manufacture and sale of wallcovering, consisting of wallpaper and wallcloth.

(2) On August 15, 1969 the Corporation Tax Bureau issued notices of deficiency allocating business income 100% to New York, and the taxpayer timely filed petition for redetermination. The deficiencies in issue amount to \$6,678.51 for the

fiscal year ended April 30, 1965, \$2,499.08 for the period May 1, 1965 to December 31, 1965, \$4,639.05 for 1966, and \$5,093.76 for 1967, plus interest for each year.

(3) The taxpayer's executive offices, plant and warehouse are located in New York. Sales are made to wholesale distributors by salesmen sent out from the New York office. All orders for wallcovering are shipped from New York. The taxpayer does not have any office, plant or warehouse outside New York.

(4) Birge Company, Inc. has available approximately 2500 different patterns and colors of wallcovering. Most retailers carry the lines of several manufacturers. The space requirements and the cost of maintaining a sufficient inventory to meet orders would be prohibitive. Therefore, sample books are used.

(5) Sample books are made from the actual wallcovering, so that the retail customer can feel and see the product. Approximately one-sixth of the taxpayer's production is used to make sample books. The wallcovering is shipped to an independent contractor in Joliet, Illinois, where it is cut and bound into sample books. These books are stored by the independent contractor until shipped to wholesale distributors on instruction from the taxpayer.

(6) The number of sample books to be sold to each wholesale distributor is determined by the taxpayer. Wallpaper sample books are sold at cost, that is, the value of the wallpaper used plus the service charge of the independent contractor. Wallcloth sample books are sold at substantially less than cost. The selling price of sample books is fixed by the taxpayer to

meet competition of other wallcovering manufacturers. The wholesale distributor sells the sample books to retailers at his cost.

(7) The excess of the cost of producing sample books over the selling price is charged off as selling expense in computing the taxpayer's income.

(8) Section 210.3(a)(4) states in part:

"provided, however, that if the taxpayer does not have a regular place of business outside this state other than a statutory office, the business allocation shall be one hundred per cent;"

(9) A regular place of business outside this state is defined by Section 4.11(b) of Ruling of State Tax Commission as follows:

"A regular place of business is any bona fide office (other than statutory office), factory, warehouse, or other space which is regularly used by the taxpayer in carrying on its business. Where as a regular course of business, property of the taxpayer is stored by it in a public warehouse until it is shipped to customers, such warehouse is considered a regular place of business of the taxpayer and, where as a regular course of business, raw material or partially finished goods of a taxpayer are delivered to an independent contractor to be converted, processed, finished or improved, and the finished goods remain in the possession of the independent contractor until shipped to customers, the plant of such independent contractor is considered a regular place of business of the taxpayer."

The State Tax Commission hereby

DECIDES:

(A) The taxpayer is in the business of manufacturing and selling wallcovering and not sample books. Sample books are furnished to retailers at cost or below cost to be used as a selling aid or catalogue to assist in the merchandising of wallcovering manufactured by the taxpayer.


(B) Finished goods, rather than raw materials or partially finished goods, are delivered to the independent contractor. The processing done by the independent contractor converts the finished goods into a selling aid which can no longer be used by the ultimate consumer. The place of business of the independent contractor does not constitute a regular place of business as defined in Section 4.11(b) of the Ruling of the State Tax Commission.

(C) Notices of deficiency issued on August 15, 1969 are affirmed together with interest in accordance with Section 1084 of Article 27 of the tax law.

Dated: Albany, New York

this 12th day of January 1972.

STATE TAX COMMISSION

  
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President

  
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Commissioner

  
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Commissioner