

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of Petition

of

WARREN-CONNOLLY CO., INC.

for refund of franchise tax under  
Article 9-A of the tax law for  
the calendar year 1966  
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Warren-Connolly Co., Inc. having filed petition for refund of franchise tax under Article 9-A of the tax law for the calendar year 1966, and a hearing having been held in connection therewith at the office of the State Tax Commission, 80 Centre Street, New York City, on October 27, 1971, before John J. Genevich, Hearing Officer of the Department of Taxation and Finance, at which hearing Herbert R. Berk, Esquire, of Counsel, and Ted Levine, assistant tax manager of the taxpayer, appeared personally and testified and the record having been duly examined and considered by the State Tax Commission,

It is hereby found:

- (1) Warren-Connolly Co., Inc. was incorporated under the laws of New York State on July 26, 1935.
- (2) Federal income tax reports and New York State franchise tax reports were filed on a calendar year basis through 1967.
- (3) On July 1, 1968 its capital stock was acquired by Fedders Corporation and thenceforth it was required to be included in the consolidated federal report filed by Fedders Corporation and subsidiaries. This necessitated a change in its accounting year to August 31, to correspond with that of Fedders Corporation.

(4) Warren-Connolly Co., Inc. filed an individual federal report for the period January 1, 1968 to June 30, 1968. Its report for period July 1, 1968 to August 31, 1968 was included in the federal consolidated report for the fiscal year ended August 31, 1968 filed by Fedders Corporation and subsidiaries.

(5) Warren-Connolly Co., Inc. filed a New York State franchise tax report on an individual basis for the period January 1, 1968 to August 31, 1968.

(6) The taxpayer incurred a federal loss of \$305,737 during the fiscal year ended August 31, 1969. Such loss was offset against income of other corporations included in the federal consolidated report of Fedders Corporation and subsidiaries.

(7) Warren-Connolly Co., Inc. filed a New York State franchise tax report on an individual basis for the fiscal year ended August 31, 1969. It subsequently filed a claim for refund in which it carried the August 31, 1969 loss back to the calendar year 1966.

(8) Based on audit of the refund claim and franchise tax reports for the years involved, the Corporation Tax Bureau issued statements of audit adjustments on December 15, 1970, as follows:

Calendar Year 1967

Federal taxable income	\$ 64,666.00
Add franchise tax deducted	158.00
Add officers' salaries (after exemption)	107,900.00
Less net operating loss deduction	64,666.00
Balance	108,058.00
30%	32,417.40
Business allocation	95.35%
Allocated base	30,909.99
Tax at 5½%	1,700.05
Tax per report	3,399.55
Reduction in tax	\$ 1,699.50

Period January 1, 1968 to June 30, 1968

Federal taxable income	\$11,038.00
Add franchise tax deducted	2,568.00
Add officers' salaries (after exemption)	45,400.00
Less net operating loss deduction	11,038.00
Total	47,968.00
30%	14,390.40
Business allocation	94.98%
Allocated base	13,668.00
Tax at 7%	\$ 956.76

Period July 1, 1968 to August 31, 1968

Federal taxable income	\$33,064.00
Add franchise tax deducted	856.00
Add officers' salaries (after exemption)	15,133.00
Less net operating loss deduction	33,064.00
Total	15,989.00
30%	4,796.70
Business allocation	94.98%
Allocated base	4,555.91
Tax at 7%	318.91
Tax per report	3,159.80
Reduction in tax	\$ 2,840.89

(9) Timely petition for refund was filed claiming that the loss incurred in the fiscal year ended August 31, 1969 should have been allowed as a carryback to the calendar year 1966.

(10) Section 209.1 of Article 9-A of the tax law imposes a franchise tax on every domestic corporation for all or any part of each of its fiscal or calendar years upon the basis of its entire net income, or upon such other basis as may be applicable.

(11) Section 208.9 of Article 9-A of the tax law defines entire net income as,

"total net income from all sources, which shall be presumably the same as the entire taxable income which the taxpayer is required to report to the United States treasury department \* \* \* except as hereinafter provided, and subject to any modification required \* \* \*."

None of the exceptions or modifications in the above section provides for the use of a reporting period for franchise tax purposes which differs from the reporting period used for federal tax purposes.

(12) The general provisions of Section 172 of the Internal Revenue Code permit net operating losses to be carried back to the third preceding year, the second preceding year, the first preceding year and then forward to the next succeeding five years.

(13) Section 172-4(a)(2) of the federal regulations provides as follows:

"Periods of less than 12 months. A fractional part of a year \* \* \* is a preceding or a succeeding taxable year for the purpose of determining under Section 172 the first, second, etc., preceding or succeeding taxable year."

(14) A ruling of the State Tax Commission dated July 21, 1965 states, in part, as follows:

"In the case of a corporation filing as part of a group reporting on a consolidated basis for Federal income tax purposes but separately for New York franchise tax purposes, entire net income has been construed to mean the amount of taxable income a corporation would have been required to report for Federal income tax purposes if it were reporting separately for Federal purposes, subject to the applicable modifications provided for in Section 208."

"\* \* \*. Thus, where a corporation reports as part of a consolidated group for Federal income tax purposes but on a separate basis for New York State franchise tax purposes, its net operating loss and its net operating loss deduction under Article 9-A of the tax law shall be computed as if the corporation were filing on a separate basis for Federal purposes.

The State Tax Commission hereby

DECIDES:

(A) Where a federal report is filed for a fractional part of a year, a franchise tax report is required for the same period. Entire net income is federal taxable income as adjusted by Section 208.9 of Article 9-A of the tax law. Franchise tax reports are required to conform with reports filed with the Internal Revenue Service both as to reporting period and income.

(B) Since federal reports were filed for the period January 1, 1968 to June 30, 1968 and the period July 1, 1968 to August 31, 1968, franchise tax reports are required for both periods.

(C) Pursuant to (13) and (14) above, a loss incurred in the fiscal year ended August 31, 1969 is allowable as a carryback to the three preceding periods, the calendar year 1967, the period January 1, 1968 to June 30, 1968, and the period July 1, 1968 to August 31, 1968. No portion of the August 31, 1969 loss is allowable as a carryback to the calendar year 1966 since it is the fourth preceding period.

(D) The computations in (8) above properly reflect the tax due for the periods involved after allowing as a carryback a portion of the loss incurred in the fiscal year ended August 31, 1969. The unused loss must be carried forward. The petition for refund is hereby dismissed inasmuch as refunds have been made in accordance with such computations.

Dated: Albany, New York

this 24th day of May 1972.

STATE TAX COMMISSION

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President

*Charles Manley*  
\_\_\_\_\_  
Commissioner

*Melton Kvein*  
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Commissioner