

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
Becton, Dickinson & Company : AFFIDAVIT OF MAILING

for Redetermination of a Deficiency or a Revision :
of a Determination or a Refund of Corporation :
Franchise Tax under Article 9-A of the Tax Law for :
the Fiscal Years Ending 9/30/72 - 9/30/74.

State of New York
County of Albany

Jay Vredenburg, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 4th day of August, 1982, he served the within notice of Decision by certified mail upon Becton, Dickinson & Company, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Becton, Dickinson & Company
c/o Irwin Klepper - Vice President
Mack Centre Dr.
Paramus, NJ 07652

and by depositing same enclosed in a postpaid properly addressed wrapper in a (post office or official depository) under the exclusive care and custody of the United States Postal Service within the State of New York.

That deponent further says that the said addressee is the petitioner herein and that the address set forth on said wrapper is the last known address of the petitioner.

Sworn to before me this
4th day of August, 1982.

Comie A. Hagelund

J. Vredenburg

STATE OF NEW YORK
STATE TAX COMMISSION
ALBANY, NEW YORK 12227

August 4, 1982

Becton, Dickinson & Company
c/o Irwin Klepper - Vice President
Mack Centre Dr.
Paramus, NJ 07652

Gentlemen:

Please take notice of the Decision of the State Tax Commission enclosed herewith.

You have now exhausted your right of review at the administrative level. Pursuant to section(s) 1090 of the Tax Law, any proceeding in court to review an adverse decision by the State Tax Commission can only be instituted under Article 78 of the Civil Practice Laws and Rules, and must be commenced in the Supreme Court of the State of New York, Albany County, within 4 months from the date of this notice.

Inquiries concerning the computation of tax due or refund allowed in accordance with this decision may be addressed to:

NYS Dept. Taxation and Finance
Law Bureau - Litigation Unit
Albany, New York 12227
Phone # (518) 457-2070

Very truly yours,

STATE TAX COMMISSION

cc: Petitioner's Representative
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
BECTON, DICKINSON AND COMPANY : DECISION
for Redetermination of a Deficiency or for :
Refund of Corporation Franchise Tax under :
Article 9-A of the Tax Law for the Fiscal Years :
Ending September 30, 1972 through September 30, :
1974. :

Petitioner, Becton, Dickinson and Company, Mack Centre Drive, Paramus, New Jersey 07652, filed a petition for redetermination of a deficiency or for refund of corporation franchise tax under Article 9-A of the Tax Law for the fiscal years ending September 30, 1972 through September 30, 1974 (File No. 22765).

A formal hearing was held before Edward Goodell, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on June 25, 1979 at 10:45 A.M. Petitioner appeared by Irwin Klepper, Esq., Vice-President - Taxes. The Audit Division appeared by Peter Crotty, Esq. (Samuel Freund, Esq., of counsel).

ISSUE

Whether income derived from short-term commercial paper purchased by the petitioner and from certificates of deposit constitutes business receipts for purposes of the business allocation percentage.

FINDINGS OF FACT

1. On November 15, 1976, the Audit Division issued three Statements of Audit Adjustment together with Notices of Deficiency against the petitioner for the fiscal years ending September 30, 1972, September 30, 1973 and September 30,

1974, imposing additional franchise taxes against the petitioner in the following amounts: \$1,285.00 and interest thereon of \$301.98 for the fiscal year ending September 30, 1972; \$886.00 and interest thereon of \$193.81 for the fiscal year ending September 30, 1973; and \$27.00 and interest thereon of \$4.15 for the fiscal year ending September 30, 1974.

2. (a) The petitioner, Becton, Dickinson and Company, is a New Jersey corporation whose principal business activity during the period at issue was the manufacture and sale of medical supplies which can generally be described as high volume, low value disposable medical supplies such as disposable plastic glassware and blood-collecting systems.

(b) During the periods at issue, the petitioner was not engaged in the business of banking or in the business of buying and selling securities.

3. During the periods at issue the petitioner, in the exercise of proper cash management, invested excess funds amounting to many millions of dollars, the amount of which is not in dispute, in certificates of deposit of various commercial and savings banks and in the purchase, from other companies in need of funds, of short-term commercial paper, namely notes promising payment of a sum certain and having maturities of something less than a year.

4. During the periods at issue the petitioner derived many millions of dollars in income from interest paid to it on said certificates of deposit and short-term commercial paper, the amount of income so derived by the petitioner not being in dispute.

5. Said short-term commercial paper and certificates of deposit in which petitioner invested its excess funds as aforesaid were not purchasable or tradeable "on the market".

6. No part of the short-term commercial paper acquired by the petitioner as aforesaid represented accounts payable to it by its customers.

7. The Corporation Tax Bureau excluded from the gross receipts factor of the petitioner's business allocation percentage, the income that petitioner derived during the periods at issue from interest paid on the aforesaid certificates of deposit and short-term commercial paper, on the ground that petitioner was a manufacturer of products and not normally engaged in the business of buying and selling securities and, further, that "any income generated from management of cash is not in line" with its "normal business activity".

8. It is the petitioner's claim that the income it derived during the periods at issue from certificates of deposit and short-term commercial paper as aforesaid should have been included in the gross receipts factor of its business allocation percentage on the ground that it constituted business income and not investment income under the provisions of sections 208 and 210 of the Tax Law and the applicable regulations.

CONCLUSIONS OF LAW

A. That the Audit Division properly excluded from the gross receipts factor of petitioner's business allocation percentage the income derived by petitioner during the periods at issue from short-term commercial paper and certificates of deposit since such income does not constitute "business receipts" under Tax Law section 210.3(a)(2)(D).

B. That though the term "all other business receipts", which is used in Tax Law section 210.3(a)(2)(D), is not expressly defined in the statute, it is reasonable to assume that such receipts must relate to the operation of the business. See In the Matter of Aerojet-General Corporation, State Tax Commission,

July 7, 1980, which held that investment income does not constitute "business receipts".

C. That the regulations of the Department of Taxation and Finance take the approach that "all other business receipts" must relate to the operation of the business. See current regulations, 20 NYCRR section 4-4.1 through section 4-4.6 and previous regulations, Ruling of State Tax Commission, March 14, 1962, section 4.15 through section 4.23.

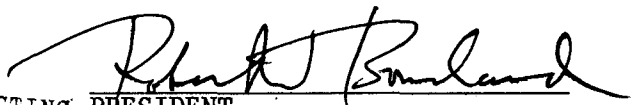
D. That International Harvester v. State Tax Commission, 58 A.D.2d 125, is not dispositive of this matter since the issue in that case was whether or not certain short-term notes were "other securities" for purposes of Tax Law section 208.5 with the result that income therefrom would be "investment income" rather than "business income". The issue in the matter at hand is whether income from certificates of deposit and short-term commercial paper constitutes "other business receipts" for purposes of computing the petitioner's business allocation percentage under Tax Law section 210.3(a)(2)(D).

E. That the petition of Becton, Dickinson and Company is denied and the three Notices of Deficiency issued November 15, 1976 are sustained.


DATED: Albany, New York

AUG 04 1982

STATE TAX COMMISSION


ACTING PRESIDENT


COMMISSIONER


COMMISSIONER