STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition of Warner-Lambert 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 Years 1973 - 1975.	

State of New York
County of Albany

Connie Hagelund, being duly sworn, deposes and says that she is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 15th day of July, 1983, she served the within notice of Decision by certified mail upon Warner-Lambert Company, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Warner-Lambert Company
c/o Charles E. Tanner
201 Tabor Rd.
Morris Plains, NJ 07950

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
15th day of July, 1983.

Connie A. Hagelund

Kathy Pfaffenbach

AUTHORIZED TO ADMINISTER
OATHS PURSUANT TO TAX LAW
SECTION 174

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

July 15, 1983

Warner-Lambert Company
c/o Charles E. Tanner
201 Tabor Rd.
Morris Plains, NJ 07950

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 Law 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
Building #9 State Campus
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 WARNER-LAMBERT COMPANY for Redetermination of a Deficiency or for Refund of Franchise Tax on Business Corporations under Article 9-A of the Tax Law for the Years 1973 through 1975.	DECISION

Petitioner, Warner-Lambert Company, 201 Tabor Road, Morris Plains, New Jersey 07950, filed a petition for redetermination of a deficiency or for refund of franchise tax on business corporations under Article 9-A of the Tax Law for the years 1973 through 1975 (File Nos. 25189 and 25190).

A formal hearing was held before Robert F. Mulligan, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on June 23, 1982 at 1:15 P.M. Petitioner appeared by Charles Tanner, Director of Taxes. The Audit Division appeared by Paul B. Coburn, Esq. (Barry M. Bresler, Esq., of counsel).

ISSUE

Whether petitioner should be required to file a combined New York State Corporation Franchise Tax Report with its wholly-owned subsidiary, Richard Hudnut.

FINDINGS OF FACT

1. Petitioner, Warner-Lambert Company, is a multi-national corporation organized under the laws of the State of Delaware with headquarters at Morris Plains, New Jersey. It is engaged in the manufacture and sale of various consumer goods, such as drugs, cosmetics, optical supplies, razors, toiletries, candies and chewing gum.

2. Petitioner and its wholly-owned subsidiary, Richard Hudnut ("Hudnut")[1], filed separate New York State corporation franchise tax reports for the calendar years 1973, 1974 and 1975. Hudnut reported and paid the minimum tax for each year.

3. After a field audit of petitioner's books and records, the Audit Division timely issued the following notices of deficiency of corporation franchise tax to petitioner:

Year	Tax Deficiency
1973	$112,469.83
1974	63,745.85
1975	9,227.11

Petitioner subsequently filed a petition protesting only those portions of the deficiencies which pertain to one issue: the determination by the auditors that petitioner is required to file a combined corporation franchise tax report with Hudnut.

4. Hudnut is a New York corporation which began doing business in New York in 1909. It was acquired by petitioner in about 1937. Prior to the years at issue, the petitioner manufactured products such as cosmetics and toiletries for Hudnut; the products were sold by Hudnut, which was basically a marketing organization. Hudnut disbanded its marketing staff prior to the years at issue.

5. During the years at issue and for sometime prior thereto, Hudnut was basically a holding company. It owned foreign subsidiaries and held various trademarks on cosmetics and toiletries. Hudnut licensed petitioner and other corporations to manufacture and sell selected cosmetics and toiletries.

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[1] It appears from the record that the name of the subsidiary does not include the word "incorporated", "corporation", "limited", or "company", or any abbreviation of such words.

Hudnut's income during the period at issue was primarily composed of licensing or royalty fees[2], about 60 to 70 percent of which were received from petitioner and 30 to 40 percent of which were received from a combination of related and non-related corporations. In transactions involving petitioner and related corporations, Hudnut would be credited for the fees after offsetting amounts due from petitioner for the use of intangibles. Payments made from non-related corporations were received by Hudnut directly.

6. During the years at issue, petitioner owned 100 percent of the capital stock of Hudnut. Hudnut had no employees; its officers and directors were officers and directors of petitioner. Petitioner did not charge Hudnut for rent, utilities, administrative staff, or legal or accounting services. Although petitioner did provide some services to Hudnut, such services were minimal, e.g., preparation of tax returns, etc.

7. Since its qualification in New Jersey in or about 1957, Hudnut has been paying a tax based on 100 percent of income to the State of New Jersey. Petitioner contends that by New York requiring Hudnut to be combined with petitioner, more than 100 percent of Hudnut's income would be taxed.

CONCLUSIONS OF LAW

A. That section 211.4 of the Tax Law authorizes the Tax Commission, in its discretion to require or permit a parent corporation (e.g. Warner-Lambert

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[2] The United States corporation income tax return for 1974 indicates that Hudnut had a long-term capital gain from the sale of trademarks of $2,018,308.00. The United States returns for the years at issue also disclosed that Hudnut reported interest income of $2,406.00 in 1973, $51.00 in 1974 and $37,273.00 in 1975. The capital gain income and the interest income were not addressed at the hearing.

Company) and its wholly owned subsidiary (e.g. Hudnut) to make a corporation franchise tax report on a combined basis.[3]

B. During the periods at issue, the Tax Commission provided, by regulation, that in determining whether the tax would be computed on a combined basis, it would consider various factors, including the following:

(1) Whether the corporations were engaged in the same or related lines of business;

(2) Whether any of the corporations were in substance merely departments of a unitary business conducted by the entire group;

(3) Whether the products of any of the corporations were sold to or used by any of the other corporations;

(4) Whether any of the corporations performed services for, or loaned money to or otherwise financed or assisted in the operations of, any of the other corporations;

(5) Whether there were other substantial intercompany transactions among the constituent corporations.

[former 20 NYCRR 5.28(b)]

The essential elements of these factors have been carried over into the current regulations which were effective for taxable years beginning on or after January 1, 1976 and which provide, in pertinent part:

"In deciding whether to permit or require combined reports the following two (2) broad factors must be met:

(1) the corporations are in substance parts of a unitary business conducted by the entire group of corporations, and

(2) there are substantial intercorporate transactions among the corporations."

[20 NYCRR 6-2.3(a)]

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[3] No combined report covering a foreign corporation not doing business in New York may be required, however, unless the Tax Commission deems it necessary (because of intercompany transactions or some agreement, understanding, arrangement or transaction which distorts income or capital) in order to properly reflect tax liabilities. In the instant case, Hudnut is a domestic corporation, while petitioner is a foreign corporation doing business in New York.

C. That it is clear from the facts of this case that there were substantial intercorporate transactions between petitioner and Hudnut and that the two corporations were parts of the same unitary business. In fact, all of the criteria set forth in the former 20 NYCRR 5.28(b) (supra) may be found to have existed between petitioner and Hudnut. Accordingly, petitioner and Hudhut were properly required by the Audit Division to make a corporation franchise tax report on a combined basis.

To allow petitioner and Hudnut to file separately would distort the amount of tax properly due to New York State. For example, certain expenses deducted by petitioner were incurred for the benefit of Hudnut; since no charges were made by petitioner to Hudnut for these services, the net effect was that petitioner's income was reduced and Hudnut's was increased. Also, the license fees paid by petitioner to Hudnut were deductible by petitioner and constituted income to Hudnut consequently reducing petitioner's income and increasing Hudnut's income. Separate reporting results in distortion because Hudnut's increased income was paid to petitioner in the form of dividends which were not includible in petitioner's New York income since they were attributable to subsidiary capital (section 208.9(a)(1) of the Tax Law).

D. That the petition of Warner-Lambert Company is denied and the notices of deficiency are sustained.

DATED: Albany, New York

JUL 15 1983

STATE TAX COMMISSION

PRESIDENT

COMMISSIONER

COMMISSIONER