Corp. Tax Determinations A-2
Martinall Industries, Inc.

STATE OF NEW YORK

DEPARTMENT OF TAXATION AND FINANCE

BOARD OF CONFEREES - CORPORATION TAX BUREAU

In the Matter of the Applications of MARTINALL INDUSTRIES, INC. for revision of franchise taxes and penalties under Article 9A of the Tax Law for the calendar years 1955 and 1958.	: : : :	Hearing Case No. 3409

The taxes in question are added taxes based on changes in net income by the U. S. Treasury Department and were audited and stated on December 27, 1963, as follows:

	1955	1958
Additional Income	$ 51,133.68	$816,750.27
Business Allocation %	43.3312%	61.1981%
Income Allocable N.Y.	22,156.86	499,835.65
Added Tax at 5½%	1,218.62	27,490.96
Penalty for late reporting of Federal Change	694.61	5,773.10
Total Tax and Penalty	$ 1,913.23	$ 33,264.06

Applications for revision were timely filed on August 10, 1964.

Informal hearing was held in New York City on December 10, 1964 before D. H. Gilhooly. The taxpayer was represented by Ira Solemon, its internal accountant, and its attorney, Donald Steinberg, 200 Park Avenue, New York, N.Y.

For the year 1955 the only question involved is whether the penalty of $694.61 assessed for such year should be modified or cancelled. The penalty was originally assessed on the assumption that the change in Federal net income was finally determined on April 29, 1958 and therefore wasnot timely reported on its next franchise tax report as required by the statute. A copy of letter dated June 19, 1962 from the U. S. Treasury Department indicates the net income was not finally determined until June 19, 1962. Accordingly, the corporation was not delinquent in reporting the Federal change in income. The Board recommends that the penalty be cancelled.

The principal question involved for the year 1958 is whether the taxpayer is entitled to a discretionary adjustment for the year 1958 under the provisions of Section 210.8 of Article 9A of the Tax Law. There is an additional question as to whether the penalty of $5,773.10 should be modified or cancelled.

The request for a discretionary adjustment arises from the fact that the corporation was required, as a result of a final determination of net income by the U. S. Treasury Department, to include in net income for the year 1958, $691,518 of Prior Years Deferred Income. Sometime in 1956 the taxpayer corporation sold its hosiery business to another non-affiliated

I approve James R. Macduff 1/15/65 Approved Ira J. Palestin 1/20/65

corporation. According to the testimony, as a result of the complicated nature of the sales transaction, there were claims and counterclaims between the purchaser and the seller as to the pricing of inventories, which eventually resulted in litigation. Accordingly, the reporting of the income from such transaction was allowed to be deferred by the U. S. Treasury Department, and was included as realized income in the year 1958 as a result of a Federal audit for such year, and was therefore included in the base of the added tax we assessed the corporation for 1958 based on the Federal audit.

The taxpayer contends that the allocation to New York of the deferred income of $691,518 by the 1958 business allocation of 61.1981% results in an unfair apportionment and that since the sale occurred in 1956, a fair and proper allocation would be accomplished by applying to such deferred income the 1956 business allocation percentage of 45.497%. This, of course, requires Commission approval under the provisions of Section 210.8 of Article 9A.

A somewhat similar request was approved by the Commission in the case of the Charter Corporation, which was a Connecticut corporation that sold its business located in Connecticut during the year 1959 and elected to report for Federal purposes the profit therefrom on an installment basis. The business allocation in the year of sale was 21.84%. For subsequent years the business allocation was 100%. In that matter the Tax Commission, under the provisions of Section 210.8 of Article 9A, in order to effect a fair and proper allocation, permitted the taxpayer to continue to use the 1959 business allocation of 21.84% in allocating to New York the profit received on the installment basis in the subsequent years.

The Board believes that the method of allocation requested by the taxpayer will result in a fair and proper allocation of income for the year 1958 and recommends such method for approval by the Commission. With respect to the penalty, the taxpayer concedes it did not timely report the Federal change in income, but that such failure to report was inadvertent. In view of the otherwise past good record of this corporation in timely reporting Federal changes, the Board recommends the penalty be modified to 6% per annum. The following corrected assessment will result:

Corrected Added Tax and Penalty-1958

		Allocation	Income Allocable to N.Y.
Additional Income per Added Tax	$816,750.27		
Less Income deferred from 1956	691,518.00	45.497% (1956)	$31[illegible]
	$125,232.27	61.1981%(1958)	7[illegible]
Total corrected Added Income Allocable to New York			$991,[illegible].71
Corrected Added Tax at 5½%			21,[illegible].28
Penalty at 6% per annum			[illegible]
Corrected Added Tax and Penalty			$ 24,[illegible].18
Original Added Tax and Penalty			33,[illegible]
Reduction			$ 8,[illegible]

/s/ WILLIAM F. SULLIVAN
Chairman

/s/ DONALD H. GILHOOLY

DG:MB
January 7, 1965