Corp. Tax Determination

N.Y.

TFP, Inc.

STATE OF NEW YORK

DEPARTMENT OF TAXATION AND FINANCE

BOARD OF CONFEREES - CORPORATION TAX BUREAU

In the Matter of the Applications of

TFP, INC.

for revision of franchise taxes under Article 9-A of the Tax Law for the fiscal years ended April 30, 1960, 1961 and 1962.

Supplemental Report
Hearing Case #3216

The taxes were audited and/or recomputed on October 4, 1963.

The taxes were in the following amounts:

	4/30/60	4/30/61	4/30/62
Entire Net Income	$21,651.39	$127,585.43	$55,012.77
Tax at 5½%	1,190.83	7,017.20	3,025.98

The question involved is whether the taxpayer was entitled to exclude from its taxable income, interest which it had received from sister subsidiaries.

Informal hearing was held May 7, 1965. See Board of Conferees' report attached for further details. In such report it was concluded the taxpayer, whose taxes had been computed on an individual basis, was not entitled to the exclusion of such interest and the taxpayer was so advised.

The taxpayer disagreed with the conclusions reached and was accorded a supplemental informal hearing pursuant to a request made in a telephone conversation on April 19, 1966 between Jack B. Polish, Counsel, and William F. Sullivan, Conferee.

The supplemental informal hearing was held May 20, 1966 before D. H. Gilhooly, Conferee. The taxpayer was represented by Joseph Archer, its tax manager, and Jack B. Polish, Assistant Secretary and Counsel for the taxpayer.

The taxpayer, during the years involved, was a wholly-owned subsidiary of The Buckeye Corporation, which parent corporation was a New York taxpayer. Sister subsidiaries of the taxpayer were Flamingo Telefilm Sales,Inc., Caravel Films,Inc. and Pyramid Productions,Inc., which corporation in turn owned 100% of the stock of Pyramid Distributors, Inc.

According to the testimony and statement of facts submitted at the informal hearing, all of the above corporations were engaged in some aspect of the television business. The parent company, The Buckeye Corporation, utilized the taxpayer corporation as a conduit and/or a record keeper for the loaning of money to its affiliates. If one of the affiliates had excess of cash and another was short of cash, the money moved through the taxpayer from one affiliate to the other and if there were surplus monies such surplus would then be transferred to the parent company, Buckeye. It is the taxpayer's contention that the taxpayer was merely an agent for Buckeye and should not have reported any income. For Federal purposes the taxpayer was included in a consolidated return with its parent and its other affiliates and, since the interest between companies would wash itself on a consolidated Federal return, the use of the taxpayer as a conduit or record keeper for the loaning of money

to its affiliates did not affect its Federal consolidated income.

The taxpayer has filed amended returns for New York based on amended Federal returns which were filed with the U. S. Treasury Department to reflect the agency treatment of interest. Since the filing of such amended Federal returns does not affect the Federal consolidated income, because they are of an offsetting nature, the U. S. Treasury Department will probably never take any action on these returns. However, it is believed that such amended returns are probably not timely filed with the U. S. Treasury Department since they were not filed within three years from the time the original returns were filed. The taxpayer for the fiscal years ended April 30, 1963 and subsequent years reported to the U. S. Treasury Department on an agency basis when they originally filed with the Federal Government so that this question, for subsequent years, does not arise.

Since TFP,INC. was created solely as a conduit and/or record keeper for the loaning of money by its parent to the parents affiliates, it is recommended that an equitable solution would be to permit The Buckeye Corp. to file a report on a combined basis with its wholly-owned subsidiary, TFP, Inc., for the fiscal years ended April 30, 1960, 1961 and 1962. The tax calculation on a combined basis is approximately the same as if taxes had been computed on the basis of the individual Federal Amended returns, which it is believed were not timely filed. Accordingly, the Board recommends the following combined tax which will be fixed against the parent company. The individual taxes of TFP, Inc. will be revised to $25.00 for each of the years because of their inclusion in the combined returns.

Combined Taxes Assessed The Buckeye Corp.

Year Ended	Original Tax	Combined Tax	Increase or Decrease in Tax
4/30/60	$2,527.45	$2,526.76	(69 cents)
4/30/61	434.84	1,953.32	$1,518.48
4/30/62	25.00	25.00	No change

Correction of Taxes of TFP,INC. to a Minimum Tax Because of Inclusion in Combined Return (Sec. 3.41 State Tax Ruling 3/15/62)

Year Ended	Original Tax	Minimum Tax	Decrease in Tax
4/30/60	$1,190.83	$25.00	$1,165.83
4/30/61	7,017.20	25.00	6,992.20
4/30/62	3,025.98	25.00	3,000.98

There will be no net refund to the taxpayer since the original individual taxes assessed TFP,Inc. had not been paid in full. The signature of a Tax Commissioner will be required on Forms CT 122 for only TFP, Inc. for the year ended April 30, 1961.

/s/ W. F. SULLIVAN
Chairman

/s/ JOHN J. GENEVICH

/s/ DONALD H. GILHOOLY

DG:MB
2/16/67

Approved
E. A. DORAN

Approved JAMES R. MACDUFF 3-1-67
WALTER MACLYN CONLON 3 MAR. '67

STATE OF NEW YORK

DEPARTMENT OF TAXATION AND FINANCE

BOARD OF CONFEREES - CORPORATION TAX BUREAU

In the Matter of the Applications of TFP, INC. for revision of franchise taxes under Article 9A of the Tax Law for the fiscal years ended April 30, 1960, 1961 and 1962.	Hearing Case No. 3216

The taxes were audited and stated or recomputed on October 4, 1963.

Applications for revision were filed on May 8, 1964.

Question involved: The proper amount of entire net income for franchise tax purposes.

The taxes were fixed as follows:

	4/30/60	4/30/61	4/30/62
Entire Net Income	$21,651.39	$127,585.43	$55,017.77
Tax at 5½%	1,190.83	7,017.20	3,025.98

An informal hearing was held in New York City on May 7, 1965 before William F. Sullivan, conferee, with the taxpayer being represented by LeRoy Wardwell, vice president, Joseph Archer, Tax Manager, and Bruce M. Taten, CPA. of Wasserman & Taten, 501 Fifth Avenue, New York, N.Y.

The testimony and other information in the file indicate the following:

For each of the years involved, the taxpayer reported in gross income, interest received on indebtedness from subsidiaries of a corporate stockholder. 90% of interest was added back to net income by the subsidiaries, but the subsidiaries and the parent corporation had net losses for the years involved. Double taxation is not involved.

Also, for each of the years involved, the taxpayer added back to net income 90% of interest on indebtedness owed to subsidiaries of a corporate stockholder.

In computing its entire net income, the taxpayer deducted 90% of the interest income received from subsidiaries of a corporate shareholder, which was not allowed as a deduction on those returns.

The taxpayer's contentions are as follows:

1. They feel the provisions of the statute which determine that all income received from a related company as

described in the statute is taxable, whereas the same item of interest for the most part is not deductible to the parent corporation is arbitrary. unreasonable and unfair.

2. The items of interest which are set forth on the returns were established on the books as a matter of convenience for management's accounting information and were, in fact, never paid.

3. The position of reflecting interest, as was done on the returns, was ceased during the fiscal year ended 1962 and did not continue thereafter. The taxpayer believes this point is relevant because it indicates clearly the aribitrariness as to item 2.

Section 208.9 of the Tax Law, which defines "entire net income" provides that entire net income shall be determined without the deduction of 90% of interest on indebtedness owed to a stockholder, including subsidiaries of a corporate stockholder.

Accordingly, the corporations which paid the interest to the taxpayer were correct in excluding from their deductions 90% of the interest.

However, there is no provision in the definition of entire net income which permits the taxpayer to eliminate from its entire net income any portion of the interest income which was received from the related corporation.

Based on the foregoing, this Board recommends that the applications for revision be denied.

/s/ WILLIAM F. SULLIVAN
Chairman

/s/ DONALD GILHOOLY

WFS:MB
June 8, 1965

Approved
H. J. CONNORS
6/9/65