STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of Petition

of

FEDDERS CORPORATION

for refund of franchise tax under Article 9-A of the tax law for the fiscal year ended August 31, 1969.

Fedders Corporation having filed a petition for refund of franchise tax under Article 9-A of the tax law for the fiscal year ended August 31, 1969 and a hearing having been held on June 8, 1972 before John J. Genevich, Hearing Officer of the Department of Taxation and Finance, at the office of the State Tax Commission, 80 Centre Street, New York City, at which hearing Anthony Feranda, Director of Taxes of Fedders Corporation, Charles Chadwell, Operations Manager of Fedders Financial Corporation, Richard Osserman, Esq., of Counsel, and Harvey B. Wishman, Certified Public Accountant, appeared personally and testified on behalf of the taxpayer, and the record having been duly examined and considered by the State Tax Commission,

It is hereby found:

(1) Fedders Corporation, incorporated in New York on April 21, 1913, requested permission on December 11, 1959 to file a combined return including the operations of its wholly owned subsidiary, Fedders Financial Corporation, which was incorporated in New York on June 4, 1959. Permission was granted and combined returns were filed for the fiscal years ended August 31, 1959 through August 31, 1968.

(2) The parent and subsidiary filed individual returns for the fiscal year ended August 31, 1969. The return for Fedders

Corporation reported a tax liability of $122,335.02, and the return for Fedders Financial Corporation reflected a minimum tax of $100. The Corporation Tax Bureau requested that a combined return be filed for the fiscal year ended August 31, 1969, as in prior years. Fedders Corporation submitted such return on September 23, 1970, indicating a combined tax liability of $127,041.21, together with a check of $6,043.96. This resulted in an overpayment of $1,094.34 since the remittance should have been $4,949.62, representing $4,706.19 additional tax plus $243.43 interest at 6% per annum for period November 15, 1969 to September 23, 1970. The taxpayer then filed a petition for refund claiming that tax liability should be computed on an individual basis.

(3) Fedders Corporation manufactures air conditioners, stoves, refrigerators and all types of appliances. Its products are sold to independent distributors. Fedders Financial Corporation is engaged in the credit finance field and reported gross interest income of $2,203,856 for the taxable year at issue. Of this amount, $560,919 was received from its parent through the purchase by Fedders Financial Corporation, at a discount, of distributors' receivables from Fedders Corporation. These receivables covered merchandise sold by Fedders Corporation to its distributors. When the receivables matured, payment was made directly to Fedders Financial Corporation by Fedders Corporation. Fedders Financial Corporation earned the balance of its interest income by "floor planning" inventories of retailers who buy from distributors. The retailer arranges with the distributor that the receivable for the inventory item that is to be shipped to him be sold by the distributor to Fedders Financial Corporation, which purchases the receivable at a discount. Practically all such receivables acquired by Fedders Financial Corporation covered merchandise

sold by Fedders Corporation. The retailer makes payment directly to Fedders Financial Corporation when it sells the item of inventory.

(4) Payroll and withholding tax returns are filed in the name of Fedders Corporation only. The payroll for both corporations is prepared through the use of the computer of Fedders Corporation, which bills the subsidiary for the salaries paid for its personnel. Common policies of insurance cover both corporations, the subsidiary being billed by the parent for its share of premiums. Employees of both corporations are covered by the same pension, health and hospital benefit plans, with the subsidiary paying its share of the costs. The parent and subsidiary have some common officers who receive their entire compensation from the parent.

(5) Section 211.4 of Article 9-A of the tax law reads in part:

> "In the discretion of the tax commission, any taxpayer, which owns or controls either directly or indirectly substantially all the capital stock of one or more other corporations x x x may be required or permitted to make a report on a combined basis covering any such other corporations x x x."

(6) Section 5.28b of Ruling of the State Tax Commission under Article 9-A, issued on March 14, 1962, states:

> "In any case where the test of stock ownership or control set forth above is met, a combined report may be permitted or required by the State Tax Commission, in its discretion. In determining whether, in a case where the test of stock ownership or control is met, the tax will be computed on the basis of a combined report, the State Tax Commission will consider various factors, including the following: (1) whether the corporations are engaged in the same or related lines of business; (2) whether any of the corporations are in substance merely departments of a unitary business conducted by the entire group; (3) whether the products of any of the corporations are sold to or used by any of the other corporations; (4) whether any of the corporations perform services for, or lend money to, or otherwise finance or assist in the operations of any of the other corporations; (5) whether there are other substantial intercompany transactions among the constituent corporations."

Upon the foregoing findings and all the evidence presented, the State Tax Commission hereby

DECIDES:

(A) Fedders Corporation should continue to file returns on a combined basis, including the operations of Fedders Financial Corporation, in order to produce a more proper tax result. A portion of the interest income of Fedders Financial Corporation is received from its parent through the discounting of distributors' receivables, and almost the entire remaining balance of its interest income is generated by financing of retailers' inventories of products sold by its parent through distributors. The subsidiary is, in essence, the financing department of the parent. The two corporations constitute a unitary business, the income consisting of both profits on sales and financial income resulting from sales. Interrelated elements are also present in the areas of insurance, pension, health and hospital benefit plans, payroll preparation and some common officers.

(B) The combined tax of $127,041.21 is affirmed, and refund should be made of the $1,094.34 overpayment indicated at (2) above plus interest in accordance with Section 1084 of the tax law.

Dated: Albany, New York
this 13th day of February 1973.

STATE TAX COMMISSION

Norman Gallman
President

Bruce Brauley
Commissioner

Milton Koerner
Commissioner