STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of Petition	:
of	:
<u>GENERAL FOODS CORPORATION</u>	:
for redetermination of deficiency of franchise tax under Article 9-A of the tax law for the fiscal year ended March 29, 1969.	: : :

General Foods Corporation having filed petition for redetermination of deficiency of franchise tax under Article 9-A of the tax law for the fiscal year ended March 29, 1969, and a hearing having been held in connection therewith at the office of the State Tax Commission at the State Campus, Albany, New York, on October 17, 1972 before John J. Genevich, Hearing Officer of the Department of Taxation and Finance, at which hearing the taxpayer was represented by R. C. Schaub, Assistant Tax Director, and L. C. Crego, Manager, State Income Taxes of General Foods Corporation, and the record having been duly examined and considered by the State Tax Commission,

It is hereby found:

(1) General Foods Corporation was incorporated in Delaware on February 11, 1922 and began doing business in New York State on February 17, 1922. It is engaged in the manufacture and sale of food and household products. Its general administration office is located in White Plains, New York.

(2) On December 31, 1957, General Foods Corporation acquired substantially all the assets of the S.O.S. Company, Chicago, Illinois, in exchange for stock and cash. The assets so acquired included the S.O.S. trademarks, trade names and goodwill associated with the well-known "S.O.S." soap-impregnated scouring pads and "Tuffy" plastic dishwashing aids. The S.O.S.

unit was sold by General Foods Corporation on September 3, 1968 in compliance with a divestitude order issued by the Federal Trade Commission.

(3) In arriving at entire net income on its franchise tax return for the fiscal year ended March 29, 1969, the taxpayer eliminated gain of $34,326,798 from sale of the S.O.S. operation. Of such sum, $29,988,225 represented gain on sale of intangibles such as goodwill, trademarks and trade names. The Corporation Tax Bureau invited the taxpayer to submit a revised business allocation percentage including the capital gain in the denominator of the receipts factor and increasing the denominator of the property factor to reflect the actual market value of the physical assets of the S.O.S. operation based on the sales price. This reduced the business allocation percentage from 14.0944% as reported on the return to 14.0039%.

(4) The Corporation Tax Bureau issued a statement of audit adjustment dated March 31, 1969 and subsequent notice of deficiency restoring the S.O.S. gain to entire net income and using the reduced business allocation percentage, as follows:

Business income reported on return	$167,012,009.00
Plus gain on disposal of S.O.S. operation	34,326,798.00
Adjusted business income	201,338,807.00
Amended business allocation percentage	14.0039
Allocated business income	28,195,285.00
Allocated investment income per return	14,051.00
Total allocated income	28,209,336.00
Plus gain on qualified New York property	27,444.00
Less optional depreciation	1,742,723.00
Adjusted taxable income	26,494,057.00
Tax at 7%	1,854,584.00
Plus subsidiary capital tax	1,897.95
Total tax	1,856,481.95
Less investment tax credit	2,240.71
Tax due	1,854,241.24
Tax reported on return	1,528,325.17
Deficiency	$ 325,916.07

(5) There was a tie-in between the S.O.S. operation and the other General Foods activities in the areas of general administration, advertising, legal assistance, engineering, sharing of warehouse space, common pension and employee benefits

plans and transfer of personnel. The general administrative office in White Plains, New York, defended the acquisition and retention of the S.O.S. operation in the ensuing controversy with the Federal Trade Commission, and negotiated its sale after losing the contest in the courts.

(6) The taxpayer has consistently, from the date of acquisition of the S.O.S. operation, reported the same income on New York franchise tax returns as reported for Federal purposes, and has used the three factor formula called for in the statute. The taxpayer has consistently deducted depreciation and other expenses attributable to the S.O.S. operation in arriving at entire net income, and included the property, receipts and wages pertaining thereto in the business allocation formula.

(7) The taxpayer did not incur any franchise tax liability to the State of Illinois by reason of the gain derived from the sale of the S.O.S. operation, since the Illinois tax for that year was not based on income.

(8) Section 208.9 of Article 9-A of the tax law provides, in part:

> "The term 'entire net income' means total net income from all sources, which shall be presumably the same as the entire taxable income which the taxpayer is required to report to the United States treasury department, * * * except as hereinafter provided, and subject to any modification required * * *."

None of the exceptions or modifications in Section 208.9 provide for exclusion of the type of gain herein involved.

(9) Section 210.8 of Article 9-A of the tax law provides, in part:

> "If it shall appear to the tax commission that any business or investment allocation percentage determined as hereinabove provided does not properly reflect the activity, business, income or capital of a taxpayer within the state, the tax commission shall be authorized in its discretion, in the case of a business allocation percentage, to adjust it by (a) excluding one or more of the factors therein, (b) including one or more other factors, * * *, (c) exclusing one or more assets, * * *, or (d) any other similar or different method calculated to effect a fair and proper allocation of the income and capital reasonably attributable to the state, * * *."

The State Tax Commission hereby

DECIDES:

(A) There is no inequity in requiring inclusion of the gain on sale of the S.O.S. operation in the tax base since General Foods Corporation has consistently, from date of acquisition on December 31, 1957 to date of disposition on September 3, 1968, included the receipts and expenses attributable to such operation in arriving at entire net income, and included the property, receipts and wages pertaining thereto in the statutory three factor business allocation formula. Moreover, the business allocation percentage arrived at by use of such formula was equitably adjusted in (3) above by including the gain in the denominator of the receipts factor, and increasing the denominator of the property factor to reflect the actual market value of the physical assets of the S.O.S. operation based on the sales price. It is also noted that the gain had no extraordinary effect on its Illinois franchise tax liability, and in fact had no effect at all on such tax.

(B) The notice of deficiency is affirmed together with interest in accordance with Section 1034 of Article 27 of the tax law.

Dated: Albany, New York

this 18th day of June 1973.

STATE TAX COMMISSION

President

Commissioner

Commissioner