

**IN THE MATTER OF THE PETITION OF**

**"A" Company**

**FOR A DECLARATORY RULING**

**Doc # 5597, Effective March 18, 1993**

Pursuant to RSA 541-A:1, IV, 541-A:2,I(d) and Rev. 209.01, et seq., "A" Company , (hereinafter Petitioner) P.O. Box ..., ..... Road, ....., petitioned the Department of Revenue Administration with respect to the Business Profits Tax, RSA 77-A, treatment of patronage dividends.

**Petitioner has requested the following determination:**

A. For purposes of computing the New Hampshire business profits tax liability, Petitioner should not be required to add back any of its Patronage Refunds taken as a deduction before line 28 of its Federal corporate income tax return.

**The Petitioner has made the following representations:**

1. The Petitioner in this matter is "A" Company .....
2. This Petition refers to New Hampshire RSA 77-A, Business Profits Tax, specifically, RSA 77-A:1, III(a) and RSA 77-A:1, IV.
3. Petitioner operates on a cooperative basis, and for Federal income tax purposes, is treated as a cooperative under Subchapter T of the Internal Revenue Code. As a cooperative, Petitioner manufactures xxxxxxxxxxxxxxxxxxxx and sells the xxxxxxx "at cost" to its members and participating patrons, who are franchised distributors of a particular brand of xxxx xxxxx products. In order to price the sale of the xxxxxxx "at cost," the members and participating patrons pay an initial price at the time the xxxxxxx are provided and they receive a refund (the Patronage Refund) to the extent the amount they paid exceeds Petitioner's cost for the year and amounts withheld by the organization in reasonable reserves.
4. For Federal income tax purposes, Patronage Refunds are taken as a deduction on line 26 of the Federal income tax return and are thus not included in the organization's taxable income shown on line 28 of the Federal income tax return.
5. Petitioner also does a small amount of business with third parties (nonpatrons), and this business is not done on an "at cost" basis. To the extent this nonpatronage business is profitable, Petitioner treats earnings from this business as corporate profits. These nonpatronage profits are taxed at the Federal level and would probably qualify as business profits for purposes of the New Hampshire Business Profits Tax. Earnings from nonpatronage business are not included in the Patronage Refund.
6. Petitioner proposes to begin manufacturing xxxxxxx in New Hampshire.

**In view of the foregoing representations and specifically based upon them, the Department of Revenue Administration finds the following:**

1. The business profits tax is imposed on the taxable business profits of all business organizations, except those specifically exempt from the tax. Taxable business profits is defined at RSA 77-A:1, VI, as "gross business profits adjusted by the additions and deductions

provided in RSA 77-A: 4 and then adjusted by the method of apportionment provided in RSA 77-A: 3."

2. Gross business profits is defined at RSA 77-A: 1, III:

(a) In the case of a corporation, except "S" corporations, or any other business organization required to make and file a United States corporation income tax return, or in the case of a corporation which does not make and file a separate United States corporation income tax return for itself because it is a member of an affiliated group pursuant to the provisions of chapter 6 of the United States Internal Revenue Code as defined in RSA 77-A: 1, XX, the amount of taxable income as would be determinable under the provisions of the United States Internal Revenue Code as defined in RSA 77-A: 1, XX before the application of any net operating loss deduction, special deductions shown on line 29 of the federal corporate income tax return, or any other special deductions allowable only to a certain class of corporate taxpayer . [Emphasis added]

3. The department finds that gross business profits in the case of a corporation is the equivalent of Federal line 28, adjusted by any special deductions which are allowable only to a certain class of corporate taxpayer.

4. In the instant case, the department finds that the patronage dividends do not constitute a special deduction; rather they represent a pricing adjustment. The actual cost of the xxxxxxxx is not determined until year end. However, each patron is required to make an initial payment based upon an estimated cost. When all costs have been identified for the year, any overpayment is refunded to the patron. To the extent that the patronage dividend is based only on the quantity or value of business done with each patron, and is determined by reference to the net earnings of the cooperative organization from business done with or for its patrons (in compliance with Federal Income Tax Regulation '1.1388-1), it is not added back in calculating New Hampshire gross business profits.

5. To the extent that Petitioner conducts business with third parties, the earnings from such nonpatrons are includable in gross business profits.

Stanley R. Arnold, Commissioner