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STATE OF WISCONSIN
TAX APPEALS COMMISSION

STATE OF WISCONSIN
DEPARTMENT OF REVENUE
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LEGAL DIVISION

NATIONAL PRESTO INDUSTRIES, INC.,
Petitioner,
vs.
WISCONSIN DEPARTMENT OF REVENUE,
Respondent.

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DOCKET NO. I-4970 *Commission Order 2/5/79*
DECISION AND ORDER
(Drafted by Commissioner Timken)

The above-entitled matter was presented to this Commission for decision upon facts and exhibits contained in a written stipulation entered into by and between the petitioner, National Presto Industries, Inc., by its attorneys, Foley & Lardner, by Ronald L. Walter, and the respondent, Wisconsin Department of Revenue, by its attorney, Irving F. Shapiro; and being fully advised in the premises, having considered the entire record herein, this Commission hereby finds and decides as follows:

FINDINGS OF FACT

As and for its Findings of Fact in the above-entitled matter, this Commission adopts the following facts as stipulated to by the parties, deleting only references to exhibits:

1. Petitioner was incorporated under the laws of Wisconsin on November 10, 1915. The taxable years involved in this litigation are the fiscal years of Petitioner ending December 31, 1967, December 31, 1968, December 31, 1969, December 31, 1970, December 31, 1971 and

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December 31, 1972. During this period the headquarters of petitioner was located in Eau Claire, Wisconsin, and its principal business was the sale of small appliances and the manufacture of munitions.

2. Petitioner timely filed a Wisconsin franchise and income tax form 4 for each of the years in issue, and paid Wisconsin income taxes for each of such years in the following amounts:

<u>Period Ended</u>	<u>Wisconsin Income Tax Paid</u>
December 31, 1967	\$ 685,849.80
December 31, 1968	957,424.18
December 31, 1969	1,000,609.77
December 31, 1970	780,830.63
December 31, 1971	716,137.02
December 31, 1972	879,744.88

3. Included in income for each of the above years were profits derived by petitioner from defense contracts entered into with the United States Army.

4. On May 21, 1976, the Renegotiation Board issued six orders, for each of the calendar years ended December 31, 1967 through December 31, 1972, in which the Renegotiation Board determined that petitioner realized excessive profits within the meaning of the Renegotiation Act of 1951 on the aforementioned defense contracts with the United States Army totalling \$25,300,000 as follows:

<u>1967</u>	<u>1968</u>	<u>1969</u>
\$2,500,000	\$5,800,000	\$5,100,000
<u>1970</u>	<u>1971</u>	<u>1972</u>
\$3,900,000	\$4,000,000	\$4,000,000

5. By letter dated July 2, 1976, petitioner transmitted to the Department of the Army the sum of \$11,076,995.15, being the total amount demanded, less appropriate federal income tax credits as determined by the Internal Revenue Service.

6. On July 26, 1976, petitioner filed a petition with the United States Court of Claims, No. 301-76. In said action the petitioner requests the Court of Claims "to determine that none of the profits received or accrued by plaintiff (petitioner) during renegotiable fiscal years 1967, 1968, 1969, 1970, 1971, and 1972 constitute 'excessive profits' within the meaning of the Renegotiation Act."

7. The United States Court of Claims has not yet rendered any decision with respect to the action referred to in paragraph 6.

8. On August 17, 1976, petitioner filed a letter dated August 16, 1976 enclosing Forms 4X, Amended Wisconsin Corporation Franchise or Income Tax Return for each of the years 1967 through 1972, claiming refund of Wisconsin taxes as follows:

<u>Fiscal Year</u>	<u>Overpayment Shown On Line 16 Of Form 4X</u>
December 31, 1967	\$ 158,927.66
December 31, 1968	353,073.37
December 31, 1969	305,235.01
December 31, 1970	264,047.91
December 31, 1971	277,942.59
December 31, 1972	<u>284,400.02</u>
	\$1,643,626.56

In each instance the petitioner alleged as the basis for the overpayment of Wisconsin income tax the repayment to the United States Army resulting from the assessment by the Renegotiation Board of excessive profits. There is no dispute between petitioner and respondent as to the computation of the claimed refund amounts of Wisconsin taxes.

9. Under date of July 21, 1977, the respondent denied petitioner's claims for refund.

10. Under date of August 1, 1977, petitioner requested a redetermination of said denial.

11. Under date of September 1, 1977, respondent issued a Notice of Action denying the petition for redetermination.

WISCONSIN STATUTES INVOLVED

Section 71.10 Filing returns; payment of tax; tax refunds and credits; non resident contractor's surety bond; withholding statements and wage reports.

"(11) If the renegotiation or price redetermination of any corporation defense contract or subcontract by the government of the United States or any agency thereof or the voluntary adjustment of prices, costs or profits on any such contract or subcontract results in a reduction of income, the amount of any repayment or credit pursuant to such renegotiation, price redetermination or adjustment, including any federal income taxes credited as a part thereof, shall be allowed as a deduction from the corporate taxable income of the year in which said income was reported for taxation. Any federal income tax previously paid upon any income so repaid or credited shall be disallowed as a deduction from income of the year in which such tax was originally deducted, to the extent that such tax constituted an allowable deduction for said year. Any corporate taxpayer affected by such

renegotiation, price redetermination or voluntary adjustment may within one year after the final determination thereof file a claim for refund and secure the same without interest, and the department of taxation shall make appropriate adjustments on account of said tax deductions without interest, notwithstanding the limitations of sub. (10) or other applicable statutes."

CONCLUSIONS OF LAW

1. A "final determination" of the renegotiation here in issue is a prerequisite to the allowance of a claim for refund within the intent and meaning of Section 71.10(11) of the Wisconsin Statutes.

2. The Renegotiation Board Orders here involved did not constitute a "final determination" of the renegotiation within the intent and meaning of Section 71.10(11) of the Wisconsin Statutes.

Authority: Carpenter Steel Co. vs. Wisconsin Department of Taxation, Dane County Circuit Court, June 7, 1960, Reversing 4 WBTA 465.

Therefore,

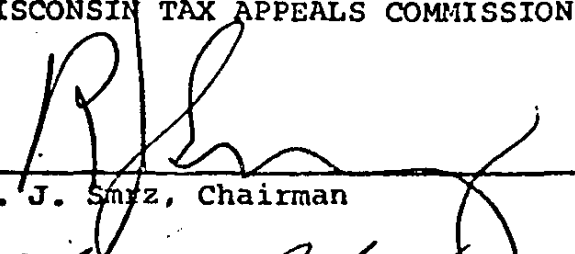
IT IS ORDERED

That the respondent's action on the petitioner's petition for redetermination be and the same is hereby affirmed.

Dated at Madison, Wisconsin

this 18th day of January, 1979.

WISCONSIN TAX APPEALS COMMISSION


R. J. Smrz, Chairman


Thomas R. Timken, Commissioner


John P. Morris, Commissioner

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