

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition

of

TRANSCONTINENTAL LEASING CORPORATION

DECISION

for Redetermination of a Deficiency or for
Refund of Corporation Franchise Tax under
Article 9-A of the Tax Law for the Fiscal
Years Ending July 31, 1977 and July 31, 1978.

Petitioner, Transcontinental Leasing Corporation, 571 Lyell Avenue,
Rochester, New York 14606, filed a petition for redetermination of a deficiency
or for refund of corporation franchise tax under Article 9-A of the Tax Law for
the fiscal years ending July 31, 1977 and July 31, 1978 (File No. 35443).

On October 19, 1984, petitioner's representative, Peter L. Faber, Esq.,
executed on petitioner's behalf a waiver of formal hearing. On November 5,
1984, petitioner's representative and the representative of the Audit Division,
John P. Dugan, Esq. (Anna Colello, Esq., of counsel), executed a stipulation of
facts and further agreed that the decision of the Tax Commission was to be
based solely upon said stipulation with the accompanying exhibits, and the
memoranda of law filed by the parties on or before January 11, 1985.

ISSUE

Whether the Audit Division properly determined that petitioner's business
allocation percentage was one hundred percent on the basis that petitioner did
not maintain a regular place of business outside of New York State for the
fiscal years ending July 31, 1977 and July 31, 1978.

FINDINGS OF FACT

Petitioner and the Department of Taxation and Finance stipulated to the following facts, numbered "1" through "13".

1. Petitioner Transcontinental Leasing Corporation's ("TLC") legal address and headquarters at the time of the submission of the Stipulation of Facts was 571 Lyell Avenue, Rochester, New York 14606.

2. Petitioner was incorporated on October 28, 1963 under the laws of the State of New York and is a wholly-owned subsidiary of OPIC, a holding corporation with executive offices at 571 Lyell Avenue, Rochester, New York 14606.

3. For the taxable years ending July 31, 1977 and July 31, 1978, petitioner's predominant business activity was to purchase, register, outfit, lease and dispose of automobiles and propane tank trucks. Petitioner's sole customer in its vehicle leasing operations was Suburban Propane Gas Company ("SPG"), an unaffiliated company with its principal place of business at Route 10, P.O. Box 206, Whippany, New Jersey 07981.

4. For the years at issue, petitioner maintained an office at SPG's Whippany, New Jersey premises and conducted all of its vehicle leasing activities there. SPG made this office available to petitioner on a rent-free basis.

5. For the years at issue, the only office or place of business used by petitioner was the Whippany office. Management services were performed for petitioner by OPIC at OPIC's New York office, for which petitioner paid OPIC a management fee.

6. Petitioner listed the Whippany, New Jersey office as its address on vehicle registration certificates filed in New Jersey, Pennsylvania and Florida, on New Jersey motor vehicle dealer sales and use tax reports, on Federal use

tax returns on highway motor vehicles and on invoices for vehicles purchased by petitioner.

7. Three employees of SPG served as non-salaried agents of petitioner and performed petitioner's leasing activities at the Whippany office under the instruction of the petitioner. The agents were chosen by petitioner's board of directors and were specifically authorized by the board to execute leases for, purchase, outfit and transfer vehicles owned by petitioner. All vehicle purchase orders, modification orders and ownership documents of petitioner were executed by these agents at the Whippany office.

8. During the years at issue, petitioner leased approximately fourteen hundred vehicles to SPG from the Whippany office and conducted no vehicle leasing activity in New York State.

9. All trucks leased out of the Whippany office were clearly marked as petitioner's property. At all times, petitioner possessed legal title to the trucks and retained the legal risks of ownership.

10. Damage suits against petitioner were served on petitioner's agents at the Whippany office.

11. For the years at issue, petitioner paid corporation taxes in New Jersey, Connecticut and Florida in the following amounts based on leased assets it owned in those states:

	<u>1977</u>	<u>1978</u>
New Jersey Corporation	\$346 (negative net income)	\$10,887
Business Tax		
Connecticut Corporation	\$ 50 (negative net income)	\$ 4,318
Business Tax		
Florida Corporation	\$ 0 (negative net income)	\$ 3,478
Income Tax		

12. On its New York State corporation franchise tax returns for the

14.6771 percent and 14.2902 percent, respectively, of its entire net income to New York State sources. This amount included rental income from vehicles leased to SPG which were located within the State, rental income from the lease of tangible personal property (not vehicles) in the State and capital gain on the sale of vehicles located in New York for the taxable year ending July 31, 1978. Petitioner allocated 85.3229 percent for the taxable year ending July 31, 1977 and 85.7098 percent for the taxable year ending July 31, 1978 to out-of-state sources. The propriety of these allocations is not disputed if petitioner is deemed to have maintained a regular place of business outside the State for the taxable years at issue.

13. On August 7, 1981, the Audit Division issued notices of deficiency for the taxable year ending July 31, 1977 asserting a deficiency of corporation franchise tax in the amount of \$10,023.00, plus interest of \$3,245.55, for a total amount due of \$13,268.55 and for the taxable year ending July 31, 1978 asserting a deficiency of corporation franchise tax in the amount of \$66,539.00, plus interest of \$15,890.18, for a total amount due of \$82,429.18. If it is determined that petitioner did not maintain a regular place of business outside the State during the years at issue, these entire amounts, together with such additional interest as may be lawfully owing, are due and owing. If it is determined that petitioner did maintain a regular place of business outside the State during the years at issue, the petitioner owes no additional tax or interest and the notices of deficiency referred to herein must be cancelled in full.

14. Petitioner was authorized to do business in New Jersey on June 25, 1964.

CONCLUSIONS OF LAW

A. That during the taxable years at issue, section 210.3(a)(4) of the Tax Law provided in part:

"...that for taxable years beginning before January first, nineteen hundred seventy-eight, if the taxpayer does not have a regular place of business outside the state other than a statutory office, the business allocation percentage shall be one hundred percent;".

B. That 20 NYCRR 4-2.2(b), which was in effect during the taxable years at issue, provided in part:

"A regular place of business is any bona fide office (other than a statutory office), factory, warehouse or other space which is regularly used by the taxpayer in carrying on its business...".

C. That the factors usually considered in determining whether there is a regular place of business outside New York State are whether the taxpayer had full-time employees, maintained an office, paid taxes and was licensed to do business in the other jurisdiction (Matter of Psychological Corporation v. Tax Commission of the State of New York, 99 A.D.2d 905, 906).

D. That the parties herein stipulated that the space provided by SPG to petitioner in Whippany, New Jersey was, for the years at issue, the only office or place of business used by petitioner and was the place from which petitioner conducted all of its vehicle leasing activities. As such, it constituted a regular place of business outside New York State, thereby entitling it to allocate its business income both within and without the State. Petitioner filed New Jersey corporation business tax returns and paid tax to the State of New Jersey for the years at issue. Petitioner has been authorized to do business in New Jersey since 1964. Although petitioner did not have full-time employees in New Jersey, it had no full-time employees in any state. All of petitioner's leasing activities were conducted at the Whippany, New Jersey

authorized by petitioner's corporate resolutions to perform these leasing activities (Findings of Fact "4", "7", "11" and "14", supra).

E. That the petition of Transcontinental Leasing Corporation is hereby granted and the notices of deficiency issued August 7, 1981 are cancelled in full.

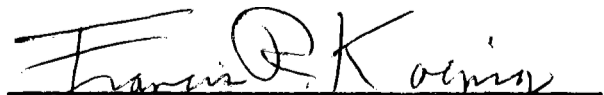
DATED: Albany, New York

STATE TAX COMMISSION

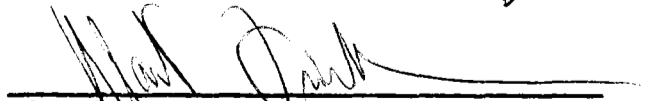
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PRESIDENT



COMMISSIONER



COMMISSIONER