L 9 (6-65)

Corp. Tax Determinations
A-Z

BUREAU OF LAW

MEMORANDUM Rochester Gas and Electric Corporation

TO: Commissioners Murphy, Palestin, Macduff

FROM: E. H. Best, Counsel

SUBJECT: Proposed Determinations:
Rochester Gas and Electric Corporation
F. J. Garvey Carting and Storage, Inc.
Boss-Linco Lines, Inc.

The issue raised herein is whether or not the distribution by the taxpayer of capital stock or exchange of stock under a plan of recapitalization of the taxpayer, resulting in either instance, in a transfer of amounts from earned surplus to capital, constitutes a dividend for franchise tax purposes under Section 186 of the Tax Law, (Rochester Gas and Electric Corporation), or Section 183 thereof, (F. J. Garvey Carting and Storage, Inc. and Boss-Linco Lines, Inc.)

During the periods under review, Rochester Gas and Electric Corporation and F. J. Garvey Carting and Storage, Inc. declared and issued stock dividends of shares of common stock and transferred sums of money from surplus to capital in connection with such issues. However, with respect to Boss-Linco Lines, Inc., the transfer of earned surplus to capital resulted from an exchange of stock under a plan of recapitalization of a total value of $22,400 into other stock of a total value of $317,500, the difference being transferred from earned surplus to capital.

I am of the opinion that distribution of stock dividends on the basis of a transfer of earned surplus to capital are dividends for franchise tax purposes under Sections 182, 183 and 186 of the Tax Law, in accordance with the opinions expressed by me in letters to the taxpayer's attorneys dated March 22, 1963, and February 9, 1965, copies of which letters are hereto attached. I am further of the opinion that the transfer from earned surplus to capital with respect to the plan of recapitalization in the matter of Boss-Linco Lines, Inc. also constitutes a dividend for franchise tax purposes. Accordingly, I am in agreement with the proposed determinations sustaining the imposition of additional franchise taxes.

Kindly return the files after disposition.

/s/ E. H. BEST

COUNSEL

HB:lb
December 7, 1965

Corp. Tax Determinations
A-Z
Rochester Gas and Electric Corporation

STATE OF NEW YORK

THE STATE TAX COMMISSION

In the Matter of the Applications

of

ROCHESTER GAS AND ELECTRIC CORPORATION

for revision or refund of franchise taxes under Article 9, Section 186, of the Tax Law for the years ended October 31, 1960, October 31, 1961 and October 31, 1962.

Rochester Gas and Electric Corporation, the taxpayer herein, having filed applications for revision or refund of franchise taxes under Article 9, Section 186, of the Tax Law, and the facts having been stipulated and agreed by Stipulation of Facts, dated October 26, 1968, executed by Edward H. Best, Counsel, for the New York State Tax Commission, and by Jerome R. Hellerstein, Counsel, for the taxpayer, which Stipulation of Facts is attached hereto and made a part of this determination, and the parties having waived the right to present any further evidence at a hearing under Section 198 of the Tax Law,

Upon all of the stipulated facts and agreements, it is hereby determined:

(A) That the distribution by the taxpayer of its own common stock, on the basis of a transfer of earned surplus to capital, during the years ended October 31, 1960, October 31, 1961 and October 31, 1962, are dividends for franchise tax purposes under Section 186 of the Tax Law;

(B) That the taxes for the years ended October 31, 1960 and October 31, 1962 are affirmed as assessed; that $4,125.00 of the tax for the year ended October 31, 1961 is abated as agreed to in 3(c) of the Stipulation of Facts;

(C) That the aforesaid taxes do not include taxes or other charges which are not legally due.

Dated: Albany, New York

this 28th day of February 1966.

THE STATE TAX COMMISSION

/s/ JOSEPH H. MURPHY
COMMISSIONER

/s/ IRA J. PALESTIN
COMMISSIONER

/s/ JAMES R. MACDUFF
COMMISSIONER