

BUREAU OF LAW
MEMORANDUM*Copy for the Commissioner of Taxation*
A-Z
Fire Devices, Inc.

TO: Commissioners Murphy, Macduff and Conlon

FROM: E. H. Best, Counsel

SUBJECT: FIRE DEVICES, INC. (NEW YORK)

The issue in this matter is whether or not the taxpayer had a regular place of business outside of New York State.

Fire Devices, Inc. is in the business of wholesaling thermostats which are manufactured by a company in Pennsylvania. The taxpayer maintains no inventories of its merchandise. Its executive office is located in New York City. Promotion, distribution and sales are done by a partnership in Connecticut. The taxpayer's agreement with the Connecticut partnership, C. L. Harriman & Co., provides:

"PARTNERSHIP agrees to keep and maintain at its own expense an office in Connecticut, in the name of FIRE DEVICES, at a location satisfactory to FIRE DEVICES, and to employ in said office at least one girl or other employee during the hours of 9:00 A.M. to 5:00 P.M. on weekdays, who shall maintain said books and records in a manner satisfactory to FIRE DEVICES.

"PARTNERSHIP agrees to make weekly written reports to FIRE DEVICES satisfactory to the President of FIRE DEVICES, covering the activities of PARTNERSHIP and such company affairs as may be required to keep FIRE DEVICES fully informed of PARTNERSHIP's activities in behalf of FIRE DEVICES.

"PARTNERSHIP agrees to keep and maintain in behalf of FIRE DEVICES, sales records, purchasing records and books of account at the office in Connecticut, to effect the collection of accounts receivable, to deposit the funds collected in behalf of FIRE DEVICES promptly in a bank designated by FIRE DEVICES."

The taxpayer contended that it maintained a selling office in Connecticut but paid no rent outside of New York. The taxpayer's name appears on the door of the space occupied by the Connecticut partnership and also on the building directory. The President of the taxpayer, who lives in Connecticut, visits the office of the Connecticut partnership occasionally.

It is the opinion of the hearing officer that the taxpayer does not have a regular place of business outside of the State.

20 NYCRR 4.1(b) provides that a corporation is entitled to allocate part of its business income and capital outside New York only if it has a regular place of business outside of the State. Otherwise, 100% of its business income and capital must be allocated to New York.

The term "regular place of business" is defined in 20 NYCRR 4.11(b) as "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".

I am in agreement with the finding of the hearing officer that the taxpayer did not have a regular place of business outside of New York State and accordingly, it is not entitled to a business allocation. The mere designation of the office of the Connecticut partnership as the office of the taxpayer does not constitute a bona fide office.

Please sign three copies of the determination and return the entire file, together with such signed copies, to the Law Bureau for further disposition.

/s/

E. H. BEST

Counsel

FVD:ac

Encs. OK MS *15*

July 6, 1967

7-25-67

STATE OF NEW YORK

THE STATE TAX COMMISSION

In the Matter of the Application

of

FIRE DEVICES, INC. (NEW YORK)

For revision or refund of franchise
tax assessed under Article 9-A of
the Tax Law for the privilege year
ended December 31, 1963.

Fire Devices, Inc. (New York), the taxpayer herein,
having filed application for revision or refund for the
privilege year ended December 31, 1963 under Article 9-A
of the Tax Law, and a hearing having been held in connection
therewith at the office of the State Tax Commission in New
York City on June 14, 1966 before John J. Genevich, Hearing
Officer, at which hearing A. S. Gini, treasurer of the
taxpayer, appeared personally and testified, together with
Sherman Heller, certified public accountant, and the record
having been duly examined and considered by the State Tax
Commission,

It is hereby found:

- (1) That the taxpayer was incorporated under the
laws of New York State on December 28, 1950;
- (2) That it filed a report for the calendar year
1963 allocating 31.018% of its business income to New York;
- (3) That on the basis of information submitted,
the tax was recomputed allocating all business income to
New York, as follows:

Privilege Year ended December 31, 1963

Business Income	\$30,021.00
Business Allocation Percentage	100%
New York Base	30,021.00
Rate of Tax	5½%
Tax	\$ 1,651.16

(4) That the tax was recomputed on February 12, 1965 and application for revision or refund was filed on March 9, 1965;

(5) That the taxpayer is engaged in the business of selling thermostats which are manufactured by a company in Pennsylvania; that it maintains no inventories; that its executive office is located in New York; that it has an agreement with the partnership of C. L. Harriman & Co. whereby said partnership, in return for commissions, manages the affairs of the taxpayer, such as selling, purchasing, billing and maintaining the books and records, except for the general ledger; that such activities are carried on by the partnership from an office it maintains at its own expense located at 167 Parker-Harding Plaza, Westport, Connecticut; that the total proceeds of the sales are deposited by the partnership directly by mail to the credit of the taxpayer in a bank in New York City;

(6) That subparagraph 4 of subdivision 3(a) of section 210 of Article 9-A of the Tax Law expressly provides that "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 per cent."

(7) That the term "regular place of business" is defined in section 4.11(b) of the Ruling of the State Tax Commission dated March 15, 1962 as "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."

Upon the foregoing findings and upon all of the evidence presented, it is hereby

DETERMINED:

(A) That the office at 167 Parker-Harding Plaza, Westport, Connecticut, is the office of the partnership of C. L. Harriman & Co., and not the office of the taxpayer;

(B) That, accordingly, the taxpayer does not have a regular place of business outside New York;

(C) That the tax as set forth in item (3) above is affirmed as assessed;

(D) That the aforesaid tax does not include taxes or other charges which are not legally due.

Dated at Albany, New York

this 10th day of August 1967.

THE STATE TAX COMMISSION

/s/

JOSEPH H. MURPHY
COMMISSIONER

/s/

JAMES R. MACDUFF
COMMISSIONER

/s/

WALTER MACLYN CONLON
COMMISSIONER