

STATE OF NEW YORK

THE STATE TAX COMMISSION

In the Matter of the Applications :
of :
NIPPON OIL (DELAWARE) LTD. :
for revision or refund of franchise :
taxes under Article 9-A of the Tax :
Law for the calendar years 1961 to :
1963, inclusive. :

Nippon Oil (Delaware) Ltd., the taxpayer herein, having filed applications for revision or refund of franchise taxes for the calendar years 1961 to 1963, inclusive, 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 December 13, 1967 before John J. Genevich, Hearing Officer of the Department of Taxation and Finance, at which hearing T. Aoyama, Vice President, and A. Kato, Assistant Treasurer, of the taxpayer, appeared personally and testified, together with H. B. Kursrok, Esq., of Counsel, and the record having been duly examined and considered by the State Tax Commission,

It is hereby found:

(1) That the taxpayer was incorporated in Delaware on January 29, 1960 and has been authorized in New York State since March 2, 1960;

(2) That on the basis of reports filed and an examination made by the tax commission's field auditors, taxes were recomputed as follows:

	<u>1961</u>	<u>1962</u>	<u>1963</u>
Entire net income	\$65,274.83	\$86,292.58	\$102,926.05
Business allocation percentage	51.64	51.79	51.78
Allocated entire net income	33,707.92	44,690.93	53,295.11
Tax at 5 $\frac{1}{2}$ %	\$ 1,853.94	\$ 2,458.00	\$ 2,931.23

In computing the receipts factor of the business allocation percentage, 50% of the receipts representing shipments of goods from locations outside New York to points outside New York was allocated to New York.

(3) That the foregoing taxes were recomputed on July 23, 1965 and applications for revision or refund were filed on January 21, 1966;

(4) That the taxpayer is engaged in the business of selling petroleum products and is a wholly owned subsidiary of Nippon Oil Company, Limited, an alien corporation located in Japan; that the taxpayer has an agreement with such parent corporation whereby, in return for service fees, the latter acts as its sole agent for receiving and storing products of the taxpayer in a warehouse in Japan, and soliciting, accepting and filling orders of Japanese customers from such warehouse; that the taxpayer leases an office in New York staffed by a vice president and assistant treasurer and three employees; that the New York office deposits remittances, maintains the books and records such as general ledger, cash book, auxiliary ledger and stock ledgers, and arranges for local sales of petroleum products to ships docked in New York harbor; that the only personnel to whom the taxpayer pays salaries are located in the New York office; that the office in Tokyo, Japan, at which orders are received and accepted, is not maintained by the taxpayer but by the parent corporation, its agent;

(5) That Section 210.3(a)(4) of Article 9-A of the Tax Law 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."

(6) That the term "regular place of business" is defined in section 4.11(b) of 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."

(7) That Section 210.3(a)(2)(D) of Article 9-A of the Tax Law reads as follows:

"sales of its tangible personal property not located at the time of the receipt of or appropriation to the orders at any permanent or continuous place of business maintained by the taxpayer without the state, where the orders were received or accepted within the state and where shipment is made between points outside the state, but only to the extent of fifty per centum of the receipts from the sales referred to in this clause. For purposes of this clause and clause B an order shall be deemed received or accepted within the state if it has been received or accepted by an employee, agent, agency or independent contractor chiefly situated at, connected with, by contract or otherwise, or sent out from a permanent or continuous place of business of the taxpayer within the state."

(8) That Section 4.16 d of Ruling of the State Tax Commission dated March 15, 1962 reads as follows:

"A permanent or continuous place of business maintained by the taxpayer outside New York is any bona fide office (other than a statutory office), factory, warehouse, or other space outside New York, at which the taxpayer is doing business in its own name in a regular and systematic manner, and which is continuously maintained, occupied and used by the taxpayer in carrying on its business through its regular employees regularly in attendance."

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

DETERMINED:

(A) That the warehouse in Japan, in which the taxpayer's products are stored, constitutes a regular place of business, which qualifies the taxpayer for an allocation of its business income, but does not constitute a permanent or continuous place of business;

(B) That the only permanent or continuous place of business of the taxpayer is located in New York;

(C) That the orders in Japan are received and accepted by the parent corporation, its agent, which is deemed chiefly connected with the permanent or continuous place of business of the taxpayer in New York, and allocation of the receipts in question is in accordance with Section 210.3(a)(2)(D) of Article 9-A of the Tax Law;

(D) That the taxes as shown at Item (2) above are affirmed as assessed;

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

Dated at Albany, New York

this 8th day of April 1969.

THE STATE TAX COMMISSION

/s/

JOSEPH H. MURPHY

COMMISSIONER

/s/

A. BRUCE MANLEY

COMMISSIONER

/s/

MILTON KOERNER

COMMISSIONER

Mr. Edward Rook

Mr. Nigel Wright

Nippon Oil (Delaware) Ltd.

This is one of the pending corporation tax cases transferred to this office by the Law Bureau, on March 25, 1969.

I have reviewed the determination prepared by the Corporation Tax Bureau and I am in agreement with it.

/s/

NIGEL G. WRIGHT
NIGEL WRIGHT
Hearing Officer

March 31, 1969

NW:pw

ER

April 19, 1944

Dear Mr. [Name]

I have your letter of April 15, 1944, regarding the [subject] and am sorry that I cannot give you a more definite answer at this time. The [subject] is being reviewed by the [department] and I will be sure to advise you as soon as a final decision has been reached.

Sincerely,
[Name]
[Title]

Very truly yours,

[Name]

DEPARTMENT OF TAXATION AND FINANCE

MEMORANDUM

RECEIVED
MAR 26 1968
L.A. 10244

TO: Mr. Best OFFICE
FROM: Mr. Doran DATE March 26, 1968
SUBJECT: Nippon Oil (Delaware) Ltd.

Attached is the file and a proposed determination which affirms the taxes for the calendar years 1961, 1962 and 1963 under Article 9-A as assessed.

After your review, please send the file to the Tax Commission for consideration.



Director

Attachment