

DEPARTMENT OF TAXATION AND FINANCE

BOARD OF COMMISSIONERS - CORPORATION TAX BUREAU

**In the Matter of the Applications
and Petition**

of

A. J. ORLANDO EQUIPMENT CORP.

**for revision or refund of franchise
tax under Article 9-A of the Tax Law
for the fiscal years ended September
30, 1961, September 30, 1962, September
30, 1963, September 30, 1964, and
redetermination of deficiency for the
fiscal year ended September 30, 1965.**

Application No. 3450

Petition No. 168

**Assessments and a notice of deficiency were issued as follows
by the Audit Unit, allocating all business income and capital to New York
on the basis that the taxpayer did not have a regular place of business
outside the state:**

	<u>9/30/61</u>	<u>9/30/62</u>
Business capital	\$460,484.58	\$520,443.30
Tax at one mill	460.48	520.44
Tax per return	25.00	25.00
Added tax	435.48	495.44

	<u>9/30/63</u>	<u>9/30/64</u>	<u>9/30/65</u>
Entire net income	\$42,113.85	\$10,250.75	\$75,804.29
Tax at 5½%	2,316.26	563.79	4,169.23
Tax per return	25.00	25.00	25.00
Added tax	2,291.26	538.79	4,144.23

**Timely applications for revision or refund and petition for
redetermination of deficiency were filed and an informal hearing was held
in New York City on May 11, 1967 before J. J. Genevich.**

**The taxpayer is a domestic corporation and holds title to heavy
construction machinery which is rented to A. J. Orlando Contracting Co., Inc.
and subcontractors of the latter. Both corporations are owned by the same
interests. During the five years involved, A. J. Orlando Contracting Co.,
Inc. did work entirely outside New York and taxpayer's machinery was at
all times outside the state. Taxpayer contends it had a regular place of
business at the same site where work was being performed since at the
construction shack the officers of the taxpayer would purchase additional
machinery, arrange for repairs and arrange for leasing of the machinery,
when available, to subcontractors. It could be argued that taxpayer did
have a regular place of business at the construction shack. However,
since the machinery was principally leased to its affiliated company,
it was deemed best to attempt to settle this matter on a combined basis
as it is a unitary business. Although the accounting periods of the
two corporations differ, the taxpayer being on a September 30 fiscal
and the affiliate having a June 30 fiscal, we have in the past allowed
combined returns for different fiscal year taxpayers, in order to produce
a proper result.**

Based on the foregoing, it is recommended that a combined basis be approved, resulting in a minimum tax due from each corporation. The reductions are as follows:

	<u>9/30/61</u>	<u>9/30/62</u>	<u>9/30/63</u>	<u>9/30/64</u>	<u>9/30/65</u>
Minimum Tax	\$ 25.00	\$ 25.00	\$ 25.00	\$ 25.00	\$ 25.00
Tax assessed	460.48	520.44	2,316.26	563.79	4,169.23
Reduction	435.48	495.44	2,291.26	538.79	4,144.23

No cash refund is involved since both corporations remitted only the minimum tax of \$25.00 for each year.

The taxpayer also filed an application for revision or refund for the fiscal year ended September 30, 1960. During that year it had engaged in a joint venture construction contract in New York and after completion thereof became solely a leasing company and removed the machinery to Connecticut to be leased to the affiliated company. Final Federal income of \$123,576.11 was taxed 100% to New York on the basis that taxpayer had no regular place of business outside the state. Taxpayer withdrew his protest for that year and has paid the full tax of \$3,922.02 plus interest of \$804.01, computed at the rate of 6% per annum. Statutory penalty at the rate of 1% per month aggregates \$1,686.47. In view of taxpayer's good faith in paying the tax and interest, it is recommended that the difference of \$882.46 between statutory penalty of \$1,686.47 and simple interest of \$804.01 be abated.

/s/

W. F. SULLIVAN
Chairman

/s/

J. J. GENEVICH

JJG:MB
1/24/69

Approved
E. A. DORAN

Approved
A. B. MANLEY 1/29/69