

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of Petition :
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 of :
 :
MEDICAL PLASTICS INC. :
 :
for refund of franchise taxes under :
Article 9-A of the tax law for the :
calendar years 1969, 1970 and 1971. :
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Medical Plastics Inc. having filed petition for refund of franchise taxes under Article 9-A of the tax law for the calendar years 1969, 1970 and 1971, and a hearing having been held in connection therewith at the office of the State Tax Commission, 80 Centre Street, New York City, at which hearing M. Waldman, Esq. of Counsel, appeared personally and testified on behalf of the taxpayer, and the record having been duly examined and considered by the State Tax Commission,

It is hereby found:

(1) The corporation filed its franchise tax returns for 1969, 1970 and 1971 without allocating any income outside New York, and paid taxes of \$1,213.00, \$1,297.00 and \$2,570.00 respectively. Subsequently, claims for refund were filed asserting that the corporation had a regular place of business in Cranford, New Jersey so as to qualify for an allocation of its business income. The taxpayer requested refunds of \$404.33, \$432.33 and \$856.66 for 1969, 1970 and 1971 respectively. The Corporation Tax Bureau denied the claims for refund and a petition was filed.

(2) The taxpayer was incorporated in New York State on April 21, 1949, is engaged in the business of selling a patented medical device and maintains its office in New York State. The device is inserted in a patient's mouth during surgery to prevent choking and is manufactured at the plant of an independent contractor, Madan Plastics Inc. (hereafter called "Madan"), located

in Cranford, New Jersey. The entire production is sold to one distributor. The taxpayer maintains no inventories since the devices are manufactured only when a sales order is received. The mould for making of the device is owned by taxpayer, and is located at Madan's plant pursuant to an arrangement for manufacture of the device in accordance with taxpayer's instructions. Taxpayer, upon receiving an order from its distributor, instructs Madan to manufacture the devices and ship them directly to the distributor. The manufacturing process consists of inserting, into taxpayer's mould, polyethylene powder which is supplied by Madan. Such powder represents an insignificant portion of the total cost of the product. Heat is then applied to the mould resulting in production of the finished plastic product. From time to time, taxpayer's officers visit the plant in order to monitor the process and make necessary modifications.

The taxpayer did not file a franchise or income tax return with the State of New Jersey for 1969, 1970 or 1971.

(3) Section 210.3(a)(4) of the tax law reads in part:

"provided, however, 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;"

(4) Section 4.11b of Ruling of the State Tax Commission dated March 14, 1962 states 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. Where as a regular course of business, property of the taxpayer is stored by it in a public warehouse until it is shipped to customers, such warehouse is considered a regular place of business of the taxpayer and, where as a regular course of business, raw material or partially finished goods of a taxpayer are delivered to an independent contractor to be converted, processed, finished or improved, and the finished goods remain in the possession of the independent contractor until shipped to customers, the plant of such independent contractor is considered a regular place of business of the taxpayer."

The State Tax Commission hereby:

DECIDES:

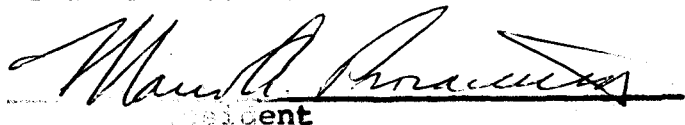
(A) The plant of the independent contractor, Madan Plastics Inc., in Cranford, New Jersey, does not qualify as a regular place of business of the taxpayer, since no raw material or partially finished goods of the taxpayer are shipped to that location for processing. The independent contractor furnishes all the material that makes up the finished product and is, in essence, a source of supply. The location of a supplier does not qualify as a regular place of business of the taxpayer.

(B) Since the taxpayer is not entitled to allocate its business income, the petition for refund for the calendar years 1969, 1970 and 1971 is denied.

Dated: Albany, New York

this 20th Day of June 1974.

STATE TAX COMMISSION



President



Commissioner



Commissioner