

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
Babcock Poultry Farms, Inc. :
AFFIDAVIT OF MAILING
for Redetermination of a Deficiency or a Revision :
of a Determination or a Refund of Corporation :
Franchise Tax under Article 9-A of the Tax Law :
for the Fiscal Years Ended 9/30/72 & 9/30/73. :

State of New York
County of Albany

Jay Vredenburg, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 25th day of September, 1981, he served the within notice of Decision by certified mail upon Babcock Poultry Farms, Inc., the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Babcock Poultry Farms, Inc.
P.O. Box 280
Ithaca, NY 14850

and by depositing same enclosed in a postpaid properly addressed wrapper in a (post office or official depository) under the exclusive care and custody of the United States Postal Service within the State of New York.

That deponent further says that the said addressee is the petitioner herein and that the address set forth on said wrapper is the last known address of the petitioner.

Sworn to before me this
25th day of September, 1981.

Cornie A. Hagelund

[Signature]

STATE OF NEW YORK
STATE TAX COMMISSION
ALBANY, NEW YORK 12227

September 25, 1981

Babcock Poultry Farms, Inc.
P.O. Box 280
Ithaca, NY 14850

Gentlemen:

Please take notice of the Decision of the State Tax Commission enclosed herewith.

You have now exhausted your right of review at the administrative level. Pursuant to section(s) 1090 of the Tax Law, any proceeding in court to review an adverse decision by the State Tax Commission can only be instituted under Article 78 of the Civil Practice Laws and Rules, and must be commenced in the Supreme Court of the State of New York, Albany County, within 4 months from the date of this notice.

Inquiries concerning the computation of tax due or refund allowed in accordance with this decision may be addressed to:

NYS Dept. Taxation and Finance
Deputy Commissioner and Counsel
Albany, New York 12227
Phone # (518) 457-6240

Very truly yours,

STATE TAX COMMISSION

cc: Petitioner's Representative

Taxing Bureau's Representative

NEW YORK STATE

STATE TAX COMMISSION

In the Matter of the Petition :
of :
BABCOCK POULTRY FARMS, INC. : DECISION
for Redetermination of a Deficiency or :
for Refund of Corporation Franchise :
Taxes under Article 9-A of the Tax Law :
for the fiscal Years Ended September 30, :
1972 and September 30, 1973. :

Babcock Poultry Farms, Inc., P.O. Box 280, Ithaca, New York 14850, filed a petition for redetermination of a deficiency or for refund of corporation franchise taxes under Article 9-A of the Tax Law for the fiscal years ended September 30, 1972 and September 30, 1973 (File No. 16229).

A formal hearing was held before Julius E. Braun, Hearing Officer, at the offices of the State Tax Commission, State Office Building, Binghamton, New York, on May 8, 1979 at 1:00 P.M. Petitioner appeared by William E. Ryan, Jr., Vice-President and Treasurer. The Audit Division appeared by Peter Crotty, Esq. (Paul A. Lefebvre, Esq., of counsel).

ISSUE

Whether petitioner had a regular place of business outside of New York State and could thus allocate its income under section 210.3 of the Tax Law.

FINDINGS OF FACT

1. Petitioner, Babcock Poultry Farms, Inc., timely filed the proper New York State Corporation Franchise Tax Reports (Form CT-3) for the fiscal years ending September 30, 1972 and September 30, 1973, and also timely filed an amended report for the fiscal year ending September 30, 1972.

2. On March 12, 1975, the Corporation Tax Bureau issued a Statement of Audit Adjustments against petitioner in which the business allocation percentage was disallowed because of a lack of a regular place of business outside the State. Also, certain tax credits were disallowed on the basis that the equipment involved was not used directly in the manufacturing process. Accordingly, on May 15, 1975 notices of deficiency were issued for the period ending September 30, 1972 in the amount of \$2,241.00 plus interest of \$411.45 for a total of \$2,652.45 and for the period ending September 30, 1973 in the amount of \$7,455.00 plus interest of \$828.25 for a total of \$8,283.25.

3. During the periods at issue, petitioner, a New York corporation, was in the business of breeding poultry and selling poultry throughout the world. The poultry were bred in Ithaca, New York. The sales and clearing house activities for customers in Europe, the Middle East and Africa were handled by an employee in the Netherlands. This employee, who was paid \$18,000.00 per year, was also paid \$110.00 per month as rent for a room in his house that was used as an office. A secretary was hired at \$2,500.00 per year to handle the books and to be available when the salesman was absent. The office was located in a newly constructed house bought by petitioner's salesman.

The office in the salesman's home made a better impression on customers than a city office. It was a practical consideration and cost was half as much as for a city office. The salesman worked exclusively for petitioner. The office had the usual equipment including desks, chairs, electric typewriter, calculator, dictaphone and copying apparatus. Stationery of petitioner listed the office address. Sales in Europe, The Middle East and Africa totaled five million dollars. Sales were four million dollars in the United States. Prior to 1972, petitioner maintained an office in Arkansas, and after 1973 maintained

an office in Pennsylvania. Petitioner had other sales personnel outside New York State and in Mexico. Allocation of wages and salaries was considered in petitioner's franchise tax reports.

4. Petitioner conceded that the disallowance of tax credits by the Audit Division was correct.

CONCLUSIONS OF LAW

A. That section 4.12(a) and (b) of the State Tax Commission Regulations in force during the periods at issue herein (Ruling of State Tax Commission, March 14, 1962) provided:

"4.12 Computation of Business Allocation Percentage.

- a. If the taxpayer had a regular place of business outside New York during the period covered by the report, its business allocation percentage is generally computed on the basis of its:
 - (1) real and tangible personal property (including real property rented to it) within and without New York (sections 4.13, 4.14),
 - (2) business receipts within and without New York (section 4.15), and
 - (3) payrolls within and without New York (section 4.25).
- b. The business allocation percentage is computed by adding together the percentages of the taxpayer's real and tangible personal property, business receipts and payrolls within New York during the period covered by the report, and dividing the total of such percentages by three. However, if one of the factors (property, receipts or payrolls) is missing, the other two percentages are added and the sum is divided by two, and if two of the factors are missing, the remaining percentage is the business allocation percentage. (A factor is not missing merely because its numerator is zero, but it is missing if both its numerator and its denominator are zero.)"

B. That section 4.11(b) of the Regulations in force during the periods at issue herein defined (in pertinent part) regular place of business as follows:

"4.11 Regular Place of Business.

* * *

- b. 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."

C. That petitioner had a space outside of New York State regularly used in carrying on its business, i.e., in the Netherlands.

D. That the petition of Babcock Poultry Farms, Inc. is granted to the extent that petitioner may apply a business allocation percentage under section 210.3 of the Tax Law. The Audit Division is hereby directed to modify the Notices of Deficiency issued on March 12, 1975; and that, except as so granted, the petition is in all other respects denied.

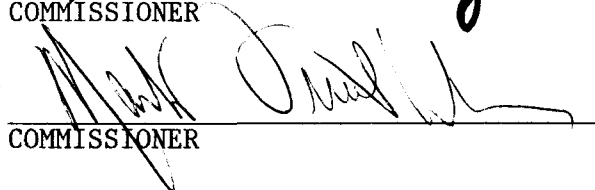
DATED: Albany, New York

SEP 25 1981

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER