

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
Hyde Park Chemical Corp. :
: AFFIDAVIT OF MAILING
for Redetermination of a Deficiency or a Revision :
of a Determination or a Refund of :
Corporation Franchise Tax :
under Article 9A of the Tax Law :
for the Year 1972

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 10th day of April, 1981, he served the within notice of Decision by certified mail upon Hyde Park Chemical Corp., the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Hyde Park Chemical Corp.
170 DuPont St.
Plainview, NY 11803

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
10th day of April, 1981.

Carmie A. Hagedorn

J. Vredenburg

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of :
Hyde Park Chemical Corp. :
: AFFIDAVIT OF MAILING
for Redetermination of a Deficiency or a Revision :
of a Determination or a Refund of :
Corporation Franchise Tax :
under Article 9A of the Tax Law :
for the Year 1972 :

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 10th day of April, 1981, he served the within notice of Decision by certified mail upon Ira B. Stechel the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Mr. Ira B. Stechel
Burns, Jackson, Miller, Summit & Spitzer
445 Park Ave., 12th Fl.
New York, NY 10022

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 representative of the petitioner herein and that the address set forth on said wrapper is the last known address of the representative of the petitioner.

Sworn to before me this
10th day of April, 1981.

Carroll A. Hagedorn

J. Vredenburg

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

April 10, 1981

Hyde Park Chemical Corp.
170 DuPont St.
Plainview, NY 11803

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
Ira B. Stechel
Burns, Jackson, Miller, Summit & Spitzer
445 Park Ave., 12th Fl.
New York, NY 10022
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
HYDE PARK CHEMICAL CORP. : DECISION
for Redetermination of a Deficiency or :
for Refund of Franchise Tax on Business :
Corporations under Article 9A of the :
Tax Law for the Year 1972. :

Petitioner, Hyde Park Chemical Corp., 170 DuPont Street, Plainview, New York 11803, filed a petition for redetermination of a deficiency or for refund of franchise tax on business corporations under Article 9A of the Tax Law for the year 1972 (File No. 16740).

A formal hearing was held before William J. Dean, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on March 26, 1980 at 1:15 P.M. Petitioner appeared by Burns, Jackson, Miller, Summit & Spitzer, Esqs. (Ira B. Stechel, Esq., of counsel). The Audit Division appeared by Peter Crotty, Esq. (Barry N. Bresler, Esq., of counsel).

ISSUE

Whether petitioner had a regular place of business outside New York State entitling petitioner to allocate its business income under the provisions of section 210 of the Tax Law.

FINDINGS OF FACT

1. Petitioner timely filed a New York State Corporation Franchise Tax Report Article 9A, Tax Law, for 1972. On this report, petitioner allocated certain of its business income to sources outside New York State.

2. On February 27, 1976, the Audit Division issued to petitioner a Statement of Audit Adjustment imposing a tax deficiency of \$10,673.00, plus

interest of \$2,368.07, for a total of \$13,041.07. The statement was issued on the ground that petitioner had failed to substantiate that it had a regular place of business outside of New York State entitling it to allocate its income under section 210 of the Tax Law.

3. Sometime after 1975 petitioner filed a claim for Credit or Refund of Corporation Tax Paid for the period ending December 31, 1972. The claim for refund related to the carryback to 1972 of a net operating loss sustained by petitioner in 1975. Petitioner claimed a refund of \$18,213.00. The Audit Division reduced the claim to \$12,155.00. The basis for the reduction was that petitioner was not entitled to allocate its income to sources outside New York State. The reduced refund amount was paid to petitioner.

4. Petitioner sells many chemical products, among them weed and insect killer as well as various sealers. The chemicals forming the bases for these products are produced by manufacturers in New Jersey, Illinois, Wisconsin, California and New York. Petitioner did not provide any manufacturer with chemicals and had no ownership interest in any of the manufacturers. The manufacturers had customers other than petitioner. All of petitioner's employees worked out of its Plainview, New York office. Most of petitioner's sales were made from the Plainview office by telephone. People who had responded and indicated an interest by returning a reply card included in petitioner's mailings would be contacted by petitioner by telephone from the Plainview office.

5. Petitioner provided labels to each of the manufacturers, and in some cases, plastic bottles and instructional materials for customers concerning the products. As to certain of petitioner's products, Federal law prohibited shipment in interstate commerce without such label.

6. Acting on petitioner's instructions, the manufacturer might ship a product directly from its premises to the customer; ship a product to petitioner's warehouse for later reshipping by petitioner; or hold a product in the manufacturer's warehouse to be used for drop shipments.

7. Petitioner assumed liability for inventory held on its behalf by the various manufacturers. Petitioner's customers did not know who manufactured the chemicals. The shipping documents would list petitioner and give as petitioner's address the address of the manufacturer. Customers at times directed their correspondence to petitioner at these manufacturer addresses.

8. In 1972, petitioner was not registered as doing business in any state other than New York. Petitioner, during this same period, paid no franchise tax in any other state. Because of the nature of its products, petitioner was required to register under environmental or other regulatory laws in the states where it sold its products.

CONCLUSIONS OF LAW

A. That section 210.3(a)(4) of the Tax Law, prior to its amendment effective January 1, 1978, provided, in part:

"...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 percent;"

B. That 20 NYCRR 4.11, which was effective prior to January 1, 1976, provided as follows:

"Regular Place of Business -- a. If the taxpayer did not have a regular place of business outside New York during the period covered by the report, its business allocation percentage is 100%; in other words, the taxpayer may not allocate any of its business income or capital outside New York.

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. 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. Where as a regular course of business a taxpayer, engaged in omnibus operations, uses a terminal, garage, repair shop, ticket office or any similar space under an agreement whereby it contributes to the cost of maintaining such facilities or furnishes similar facilities of its own in exchange therefor, such space is considered a regular place of business of the taxpayer. However, a taxpayer does not have a regular place of business solely by contracting for the sale of tickets by an independent contractor on a commission basis.

c. A taxpayer does not have a regular place of business outside the state solely by consigning goods to an independent factor outside the state for sale at the consignee's discretion."

C. That petitioner did not have a bona fide office, factory, warehouse or other space outside New York which was regularly used by petitioner in carrying on its business. All of petitioner's employees worked out of its Plainview, New York office. The various manufacturers petitioner dealt with were independent contractors.

D. That petitioner did not store its property in a public warehouse until shipped to customers.

E. That in the regular course of business, no raw material or partially finished goods were delivered to an independent contractor to be finished or improved. Petitioner delivered to the manufacturer, not raw material or partially finished goods, but merely labels, and in some cases, instructional materials and plastic bottles which served as containers for the chemicals.

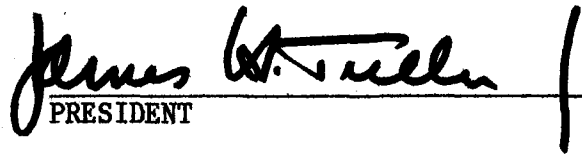
F. That for the reason stated in Conclusions of Law "C", "D" and "E", petitioner did not have a regular place of business outside the State and must allocate one hundred percent of its business income to New York State pursuant to section 210.3(a)(4) of the Tax Law in effect for the tax year in question.


G. That the petition of Hyde Park Chemical Corp. is denied and the Notice of Deficiency dated February 27, 1976 is sustained.

DATED: Albany, New York

STATE TAX COMMISSION

APR 10 1981


PRESIDENT


COMMISSIONER


COMMISSIONER