

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition
of
Joy Manufacturing Co.

:
:
: AFFIDAVIT OF MAILING

for Redetermination of a Deficiency or a Revision :
of a Determination or a Refund of Franchise Tax on :
Business Corporations under Article 9-A of the Tax :
Law for the Fiscal Years Ended September 28, 1973; :
September 27, 1974; and September 26, 1975. :

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 14th day of December, 1982, he served the within notice of Decision by certified mail upon Joy Manufacturing Co., the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

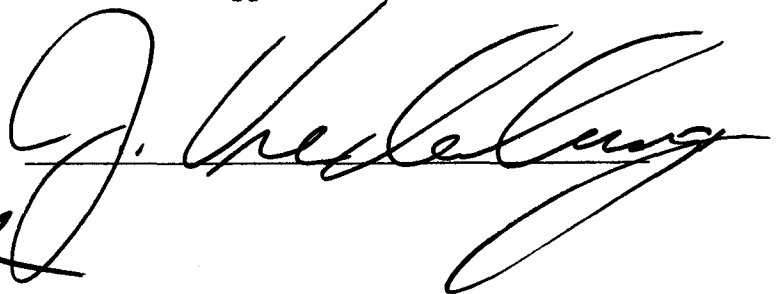
Joy Manufacturing Co.
Oliver Bldg.
Pittsburgh, PA 15222

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
14th day of December, 1982.





AUTHORIZED TO ADMINISTER
OATHS PURSUANT TO TAX LAW
SECTION 174

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

December 14, 1982

Joy Manufacturing Co.
Oliver Bldg.
Pittsburgh, PA 15222

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
Law Bureau - Litigation Unit
Albany, New York 12227
Phone # (518) 457-2070

Very truly yours,

STATE TAX COMMISSION

cc: Petitioner's Representative

Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition
of
Ozone Industries, Inc.

:
:
: AFFIDAVIT OF MAILING

for Redetermination of a Deficiency or a Revision :
of a Determination or a Refund of Franchise Tax on :
Business Corporations under Article 9-A of the Tax :
Law for the Fiscal Years Ended September 29, 1972; :
September 28, 1973; and September 27, 1974. :

State of New York
County of Albany

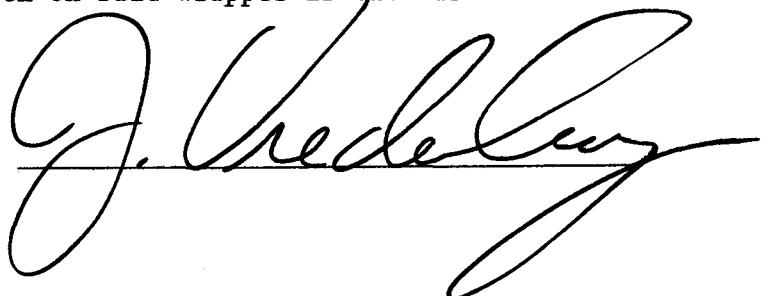
Jay Vredenburg, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 14th day of December, 1982, he served the within notice of Decision by certified mail upon Ozone Industries, Inc., the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Ozone Industries, Inc.
c/o Joy Manufacturing Co.
Oliver Bldg.
Pittsburgh, PA 15222

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
14th day of December, 1982.



AUTHORIZED TO ADMINISTER
OATHS PURSUANT TO TAX LAW
SECTION 174

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

December 14, 1982

Ozone Industries, Inc.
c/o Joy Manufacturing Co.
Oliver Bldg.
Pittsburgh, PA 15222

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
Law Bureau - Litigation Unit
Albany, New York 12227
Phone # (518) 457-2070

Very truly yours,

STATE TAX COMMISSION

cc: Petitioner's Representative

Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
JOY MANUFACTURING CO. :
for Redetermination of a Deficiency or for :
Refund of Franchise Tax on Business Corporations: :
under Article 9-A of the Tax Law for the Fiscal :
Years Ended September 28, 1973; September 27, :
1974; and September 26, 1975. :

DECISION

In the Matter of the Petition :
of :
OZONE INDUSTRIES, INC. :
for Redetermination of a Deficiency or for :
Refund of Franchise Tax on Business Corporations :
under Article 9-A of the Tax Law for the Fiscal :
Years Ended September 29, 1972; September 28, :
1973; and September 27, 1974. :

Petitioner, Joy Manufacturing Co., Henry Oliver Building, Pittsburgh, Pennsylvania 15222, filed a petition for redetermination of a deficiency or for refund of franchise tax on business corporations under Article 9-A of the Tax Law for the fiscal years ended September 28, 1973; September 27, 1974; and September 26, 1975 (File No. 23536).

Petitioner, Ozone Industries, Inc., Henry Oliver Building, Pittsburgh, Pennsylvania 15222, filed a petition for redetermination of a deficiency or for refund of franchise tax on business corporations under Article 9-A of the Tax Law for the fiscal years ended September 29, 1972; September 28, 1973; and September 27, 1974 (File No. 23537).

A consolidated formal hearing was held before Doris Steinhardt, Hearing Officer, at the offices of the State Tax Commission, State Office Building, 65 Court Street, Buffalo, New York, on July 7, 1981 at 9:15 A.M. Petitioners appeared by Anthony J. DePhillips, Manager of Income Tax Audits. The Audit Division appeared by Ralph J. Vecchio, Esq. (Patricia Brumbaugh, Esq., of counsel).

ISSUES

I. Whether petitioner Ozone Industries, Inc., a wholly-owned subsidiary of Joy Manufacturing Co., maintained a regular place of business outside this state during the fiscal years 1972, 1973 and 1974.

II. Whether a rented automobile used by an Ozone Industries, Inc. sales representative should enter into the computation of the property factor of the business allocation percentage.

FINDINGS OF FACT

1. On December 20, 1977, the Audit Division issued to petitioner Ozone Industries, Inc. ("Ozone") three notices of deficiency, asserting additional franchise taxes due under Article 9-A of the Tax Law for the fiscal years 1972, 1973 and 1974, scheduled as follows:

<u>PERIOD ENDED</u>	<u>TAX</u>	<u>INTEREST</u>	<u>TOTAL</u>
9/29/72	\$ 2,541.20	\$ 764.52	\$ 3,305.72
9/28/73	2,621.76	789.28	3,411.04
9/27/74	5,296.41	1,276.96	6,573.37
	<u>\$10,459.37</u>	<u>\$2,830.76</u>	<u>\$13,290.13</u>

The position of the Audit Division is that Ozone's office space in the business premises of an affiliated corporation and in the homes of sales representatives did not constitute regular places of business outside New York so as to entitle Ozone to an allocation of its business income and business capital.

On December 20, 1977, the Audit Division issued to petitioner Joy Manufacturing Co. ("Joy") three notices of deficiency, asserting additional franchise taxes due for the fiscal years 1973, 1974 and 1975, scheduled as follows:

<u>PERIOD ENDED</u>	<u>TAX</u>	<u>INTEREST</u>	<u>CREDIT APPLIED</u>	<u>BALANCE</u>
9/28/73	\$ 503.41	\$151.55	\$ 654.96	-0-
9/27/74	1,026.81	247.56	457.78	\$ 816.59
9/26/75	180.71	30.94	--	211.65
	<u>\$1,710.93</u>	<u>\$430.05</u>	<u>\$1,112.74</u>	<u>\$1,028.24</u>

Having disallowed a business allocation to Ozone, the Audit Division disallowed to Joy, the parent corporation, an allocation of its subsidiary capital.

2. Ozone, a wholly-owned subsidiary of Joy, is a manufacturer of hydraulic, pneumatic and electronic aircraft components for general aviation, military and commercial aircraft. Ozone obtained its business through contacts made by sales personnel, who visited aircraft manufacturers to obtain such data as aircraft models to be built and component parts and specifications therefor. This information was relayed to Ozone's headquarters in New York in order that bids could be prepared.

3. All manufacturing operations are conducted in New York and as aforesaid, are to customer specification. Ozone did not maintain inventories of components but shipped to customers upon completion. When components were delivered to a customer, an Ozone sales representative was on the premises to inspect and approve the parts. The sales representatives also handled any complaints or technical problems which might arise.

4. Mr. Saul Winner was employed by Ozone as a sales representative from April 7, 1969 to November 30, 1973. From the beginning of his employment to March 20, 1972, he worked out of an office located in the business premises of

Task Corporation ("Task"), an affiliated company in California, and serviced a territory which included California, Colorado, Nevada, Utah, Arizona and New Mexico. His office at Task's premises was not listed with the telephone company as an Ozone office.

From March 21, 1972 to November 30, 1973 Mr. Winner worked out of his home in Missouri, and his territory encompassed all the Central States, North and South Dakota, Minnesota and Wisconsin.

Mr. Winner used his personal automobile for business. His business telephone was listed in his own name. He was reimbursed by Ozone for those travel, telephone, entertainment and other business-related expenses, which he did not charge directly to the company by use of credit cards.

5. Mr. James Fitzpatrick was employed by Ozone as a sales representative from November 11, 1968 to May 31, 1972. His territory consisted of western and northern New York, western Pennsylvania, West Virginia, Kentucky, Indiana, Ohio and Michigan. During his tenure with Ozone he worked out of his homes: in Ohio from November 11, 1968 to October 1, 1969; in Pennsylvania from October 2, 1969 to June 28, 1971; and in Delaware from June 29, 1971 to May 31, 1972. Proximity to customers and potential customers was the reason for these relocations.

Mr. Fitzpatrick used a leased company car. He was reimbursed for other business expenses in a manner similar to Mr. Winner.

6. Other terms and conditions of these representatives' association with Ozone were as follows:

(a) Ozone required Winner and Fitzpatrick to submit weekly expense reports, sales contact reports and contact itineraries.

(b) Ozone provided group life insurance, comprehensive travel insurance, group extended coverage for hospitalization and medical-surgical care, major medical coverage and a retirement plan.

(c) Ozone withheld from their compensation all required payroll taxes.

(d) Mr. Winner was granted one week of vacation in 1969 and two weeks thereafter. Mr. Fitzpatrick had two weeks' vacation annually. Compensation for both representatives included nine paid holidays per year.

7. After Winner and Fitzpatrick left their employment with Ozone, Ozone had no sales representatives located outside New York.

8. Ozone's computation of its business allocation percentage did not reflect any leasing of real property outside New York, for example the office in Task's premises. The charge made by Task for such space (if indeed any rental was charged) was billed as a general expense for a Joy subsidiary.

9. Ozone filed tax returns and paid taxes in the states of Missouri, Ohio and California for the years 1972 through 1974.

10. Ozone employees maintained working areas in their homes and used their homes as a base from which to visit customers in their extensive territories. It is petitioners' position that this was the most efficient and practical way for Ozone to conduct its business and that the office space in Task's premises and in the employees' homes constituted regular places of business outside New York.

CONCLUSIONS OF LAW

A. That where a business corporation does not have a regular place of business outside New York other than a statutory office, its business allocation is required to be one hundred percent. Section 210.3(a)(4) of the Tax Law.

According to former 20 NYCRR 4.11(b), effective for the years in issue, "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."

B. That petitioners have failed to sustain the burden of proof, imposed by section 1089(e), to show that the office in Task's premises and the offices in employees' homes in Missouri, Ohio, California, Pennsylvania and Delaware qualified as regular places of business of petitioner Ozone, so as to entitle Ozone to a business allocation and so as to entitle petitioner Joy, the parent corporation, to an allocation of its subsidiary capital. Ozone did not hold itself out as conducting business in the aforementioned states, e.g., in telephone directory listings, business stationery and forms, or advertisements. Matter of Slacsar Publishing Company, Ltd., State Tax Comm., August 14, 1975. Ozone did not file corporation tax returns with the states of Pennsylvania and Delaware; and although it did so file with Missouri, Ohio and California, there is no evidence that it allocated income thereto, or paid more than the minimum tax required for qualification or authorization to do business therein.

C. That automobiles rented by Ozone for the use of its sales representatives do not enter into the computation of the property factor of the business allocation percentage. Only omnibuses, railroad cars and other similar rolling equipment may be allocated to New York, based upon the percentage of mileage within New York to total mileage, the percentage of time within New York to total time, or by another method approved by the Commission. Former 20 NYCRR 4.13(d).

D. That the petitions of Joy Manufacturing Co. and Ozone Industries, Inc. are hereby denied, and the notices of deficiency issued December 20, 1977 are in all respects sustained.

DATED: Albany, New York

DEC 14 1982

STATE TAX COMMISSION

ACTING PRESIDENT



COMMISSIONER



COMMISSIONER

