

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition :  
of :  
Amexi Leasing Corporation :  
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 Years 1970 & 1971. :  
\_\_\_\_\_

State of New York  
County of Albany

Connie Hagelund, being duly sworn, deposes and says that she is an employee of the State Tax Commission, over 18 years of age, and that on the 7th day of October, 1983, she served the within notice of Decision by certified mail upon Amexi Leasing Corporation, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Amexi Leasing Corporation  
26 Broadway  
New York, NY 10004

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  
7th day of October, 1983.

Susan Powell

Connie Hagelund

AUTHORIZED TO ADMINISTER  
OATHS PURSUANT TO TAX LAW  
SECTION 174

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition :  
of :  
Amexi Leasing Corporation :  
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 Years 1970 & 1971. :  
\_\_\_\_\_ :

State of New York  
County of Albany

Connie Hagelund, being duly sworn, deposes and says that she is an employee of the State Tax Commission, over 18 years of age, and that on the 7th day of October, 1983, she served the within notice of Decision by certified mail upon Joseph F. McDonald the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Joseph F. McDonald  
Lord, Day and Lord  
25 Broadway  
New York, NY 10004

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  
7th day of October, 1983.

Susan Powell

Connie Hagelund

AUTHORIZED TO ADMINISTER  
OATHS PURSUANT TO TAX LAW  
SECTION 174

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

October 7, 1983

Amexi Leasing Corporation  
26 Broadway  
New York, NY 10004

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 Law 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  
Building #9 State Campus  
Albany, New York 12227  
Phone # (518) 457-2070

Very truly yours,

STATE TAX COMMISSION

cc: Petitioner's Representative  
Joseph F. McDonald  
Lord, Day and Lord  
25 Broadway  
New York, NY 10004  
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition	:	
of	:	
AMEXI LEASING CORPORATION	:	DECISION
for Redetermination of a Deficiency or for	:	
Refund of Franchise Tax on Business Corporations:	:	
under Article 9-A of the Tax Law for the Years	:	
1970 and 1971.	:	

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Petitioner, Amexi Leasing Corporation, 26 Broadway, New York, New York 10004, 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 years 1970 and 1971 (File No. 23164).

A formal hearing was held before Doris Steinhardt, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on May 20, 1981 at 9:15 A.M. Petitioner appeared by Lord, Day & Lord, Esqs. (Joseph F. McDonald, Esq., of counsel). The Audit Division appeared by Ralph J. Vecchio, Esq. (Angelo Scopellito, Esq., of counsel).

#### ISSUES

I. Whether petitioner was a corporation formed for or principally engaged in the conduct of a transportation business, subject to the taxes imposed under sections 183 and 184 of the Tax Law, and thus exempt from taxation under Article 9-A.

II. Whether the deficiency asserted against petitioner for the year 1970 was barred by the statute of limitations prescribed by section 1083 of the Tax Law.

III. If petitioner is subject to taxation under Article 9-A, rather than Article 9, whether the Audit Division improperly denied petitioner an allocation of its business income.

FINDINGS OF FACT

1. Petitioner, Amexi Leasing Corporation ("Amexi"), filed franchise tax reports under section 183, Franchise Tax on Capital Stock, and under section 184, Franchise Tax on Gross Earnings, of Article 9 of the Tax Law for the years at issue. On its reports under section 183, petitioner stated the nature of its business as "management of marine transportation equipment used in foreign commerce".

2. Petitioner sought and was granted a three-month extension within which to file its 1970 reports. On July 13, 1971, petitioner was granted an additional extension to September 15, 1971.

3. Petitioner's 1970 reports under sections 183 and 184 were signed by its Assistant Treasurer, James A. Kilby, on September 13, 1971. On September 14, 1971, Mr. Kilby prepared a cover letter to accompany the returns and requested Amexi's accounting department to issue a check payable to the New York State Corporation Tax Bureau in the sum of \$4,877.42. Pursuant to Mr. Kilby's request, the check was issued, under date September 15, 1971. On September 15, 1971, Mr. Kilby personally deposited in the mail the 1970 reports, the transmittal letter and the check. According to the stamp of the Corporation Tax Bureau, it received the reports on September 23, 1971.

4. On September 18, 1974, Robert A. Soloway, Secretary of Amexi, executed a consent extending the period of limitation for assessment of tax under Articles 9, 9-A, 9-B and 9-C for the year 1970 to and including September 30, 1975. In a letter which accompanied the consent, Mr. Soloway asserted that the

waiver was ineffectual since the reports had been filed on September 13, 1971. Mr. Soloway executed further consents on August 13, 1975 and September 30, 1976, with regard to which he took a similar position.

5. On February 15, 1978, the Audit Division issued to Amexi two notices of deficiency asserting taxes due under Article 9-A for the years at issue, on the ground that Amexi was not a transportation corporation subject to taxation under Article 9, but a business corporation subject to taxation under Article 9-A. The amounts of the deficiencies were scheduled as follows:

	<u>1970</u>	<u>1971</u>	<u>Total</u>
Tax	\$48,085.58	\$119,687.00	\$167,772.58
Interest	19,955.52	42,488.89	62,444.41
Credit Applied	207.00	--	207.00
Balance	\$67,834.10	\$162,175.89	\$230,009.99

6. Amexi is a New York corporation which was organized on March 15, 1962. All of its capital stock is owned by American Export Industries, Inc., now Aeicor, Inc. ("AEI"). It was formed, among other things:

"To construct, purchase, charter, lease, acquire, own, equip, maintain, manage, repair, use, navigate and operate boats, ships, vessels, barges, rafts and water-craft of all kinds, and any articles, materials, machinery, equipment and property used therefor or in connection therewith.

"To engage in and transact a transportation, shipping and forwarding business, to transport persons and property by water, land and air, to engage in and transact a storage business, to act as shipping agent for others, to carry on the business of a customs house broker, to promote, arrange and conduct tours, and to carry on an insurance brokerage business."

7. Until 1969, Amexi's activities consisted chiefly of holding, storing and leasing truck trailers for the benefit of another AEI subsidiary, American Export Isbrandtsen Lines, Inc., later American Export Lines, Inc., now Farrell Lines ("Lines"). In 1969, Amexi assumed the management of cargo containers for Lines. Lines has been engaged for many years in a general interstate and

foreign shipping business and has filed New York franchise tax reports as a transportation company under Article 9 of the Tax Law.

8. Amexi entered into a lease with Lines for the furnishing and management of cargo containers to be used in Lines' interstate and foreign shipping operation. Amexi attempted to, but was unsuccessful in, developing a container leasing business with third-party shipping companies. During 1970, approximately 3 percent of Amexi's gross receipts was derived from unaffiliated companies.

9. A shipping or cargo container is a locked aluminum box of a standard size (20 or 40 feet long) which fits into the hold or on the deck of a "containerized" ship. Vessels are specially designed and constructed to accommodate containers and cannot transport cargo without them.

Many containers were transferred by Lines to Amexi when petitioner entered this line of business. In addition, Amexi leased and purchased other containers.

10. Through a bill of lading system, a Lines customer could ship goods interstate or between the United States and a foreign country and receive one bill for transportation services rendered by AEI and its subsidiaries.

11. Besides owning and leasing the containers, Amexi managed their worldwide movement. This function consisted of tracking the movement, analyzing traffic patterns and shipping orders, and repositioning empty containers to ensure availability for shipment. The containers were leased and Amexi was paid only when the containers were actually being used by Lines; Amexi bore the responsibility for and cost of repositioning empty containers.

12. Amexi was also responsible for inspecting the containers to ensure they were watertight and sealed. During early 1970, Amexi employees performed whatever patching and repair work was required, at facilities situated in

Hoboken and Port Newark, New Jersey. Thereafter, AEI purchased a subsidiary to carry out the repair work; on occasion, repairs were contracted out to third parties.

Amexi added a surcharge to the general leasing charge for costs of inspection, repair and maintenance.

13. Lines did not file sales tax returns nor pay sales tax with respect to its leasing of containers, on the ground that the containers were an integral part of the vessel and therefore exempt from sales tax by virtue of section 1115(a)(8) of the Tax Law.

14. Petitioner sought the opinion of its attorneys as to whether it was subject to tax as a transportation company under sections 183 and 184, and as such, exempt from the franchise tax imposed by Article 9-A. By letter dated December 3, 1971, Mr. Joseph McDonald advised petitioner that it was a transportation company within the meaning of sections 183 and 184.

15. By the end of 1971, Amexi's container operations ceased and the operations were returned to Lines.

16. Petitioner argues that assuming it incorrectly filed reports under Article 9, the deficiencies as asserted were nonetheless incorrect because the Audit Division denied petitioner an allocation of business income.

17. Amexi maintained an office at 26 Broadway, New York, in the same building as its parent corporation and many other AEI subsidiaries.

The AEI corporate family also established an office at 20 Just Road, Fairfield, New Jersey, at which were located a centralized accounting department and computer center for AEI's subsidiaries, including Amexi. AEI itself did not do business in New Jersey.



Amexi utilized the computer facilities in tracking container movement. Its accounting and billing functions were performed at the Fairfield office, and Amexi paid franchise taxes to the State of New Jersey.

18. At the insistence of the Audit Division, and without thoroughly reviewing its records or consulting with its attorneys, Amexi prepared "preliminary draft returns" under Article 9-A for the years at issue. Petitioner computed tax, applied prepayments and determined its liability under Article 9-A as follows:

<u>YEAR</u>	<u>TAX</u>	<u>PREPAYMENTS</u>	<u>BALANCE</u>
1970	\$ 800.00 (capital)	\$7,662.42	(\$ 6,862.42)
1971	29,615.00 (net income)	8,264.00	21,351.00

CONCLUSIONS OF LAW

A. That for the privilege of exercising its corporate franchise, of doing business, of employing capital, or of owning or leasing property in this state in a corporate or organized capacity, or of maintaining an office in this state, every domestic or foreign corporation (except those corporations subject to tax under sections 183 through 186 and such other corporations as are specified in section 209.4) must pay an annual franchise tax to this state. Article 9-A, section 209.1.

B. That sections 183 and 184 of Article 9 impose a franchise tax and an additional franchise tax, respectively, upon corporations and associations formed for or principally engaged in the conduct of aviation, railroad, canal, steamboat, ferry, express, navigation, pipe line, transfer, baggage express, omnibus, trucking, taxicab, telegraph, telephone, palace car or sleeping car business or formed for or principally engaged in the conduct of two or more of such businesses, and other domestic corporations or associations principally engaged in the conduct of a transportation or transmission business.

C. That the term "transportation business" has been held to apply to corporations engaged in the operation or maintenance of devices used for the transportation of freight, substances or persons (Matter of Newton Creek Towing Co. v. Law, 205 A.D. 209 (3d Dept.), *affd.* mem. 237 N.Y. 578; People ex rel. Curran Funeral Service Co., Inc. v. Graves, 257 A.D. 888 (3d Dept.); Op. of Counsel, Dept. of Taxation and Finance, August 26, 1957), and also to corporations which provide services directly connected with such transportation (People ex rel. N.Y. & Albany Lighterage Co. v. Cantor, 239 N.Y. 64).

D. That petitioner owned, leased, managed, tracked and repositioned shipping containers, the sole function of which was to hold goods for transport by containerized vessels. These activities were so integrally related to the transportation business that petitioner may be considered a transportation company within the intendment of sections 183 and 184.

Petitioner's business was not the passive ownership of personal property. Petitioner did not become "merely the owner of personal property leased to another for a consideration, the same as the owner of either a mill or a department store who leases his property to a corporation over which he has no control or supervision and no voice in the operating activity of either corporation." Matter of McAllister Bros., Inc. v. Bates, 272 A.D. 511, 516 (3d Dept.). In the latter case, the Appellate Division confirmed this Commission's determination pertaining to the tax assessed against petitioner under Article 9-A.

E. That in view of the foregoing, it is unnecessary to pass upon the second and third issues raised.

F. That the petition of Amexi Leasing Corporation is hereby granted and the notices of deficiency issued on February 15, 1978 are cancelled in full.

DATED: Albany, New York

STATE TAX COMMISSION

OCT 07 1983

*Richard W. Chan*  
PRESIDENT

*Francis R. Koenig*  
COMMISSIONER

*Mark J. Smith*  
COMMISSIONER

TA 26 (9-79)

STATE OF NEW YORK

Commission

S BUREAU

CLAIM CHECK

12227

☐ HOLD

DATE

1ST NOTICE

2ND NOTICE

RETURN

Postage and  
Fees Paid  
Oct. 1983

**CERTIFIED**

470 316 047

**MAIL**

RECEIVED

Amexi Leasing Corporation  
26 Broadway  
New York, NY 10004

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

October 7, 1983

Amexi Leasing Corporation  
26 Broadway  
New York, NY 10004

Gentlemen:

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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  
Building #9 State Campus  
Albany, New York 12227  
Phone #(518) 457-2070

Very truly yours,

STATE TAX COMMISSION

cc: Petitioner's Representative  
Joseph F. McDonald  
Lord, Day and Lord  
25 Broadway  
New York, NY 10004  
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition  
of  
AMEXI LEASING CORPORATION  
for Redetermination of a Deficiency or for  
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1970 and 1971.

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DECISION

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waiver was ineffectual since the reports had been filed on September 13, 1971. Mr. Soloway executed further consents on August 13, 1975 and September 30, 1976, with regard to which he took a similar position.

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6. Amexi is a New York corporation which was organized on March 15, 1962. All of its capital stock is owned by American Export Industries, Inc., now Aeicor, Inc. ("AEI"). It was formed, among other things:

"To construct, purchase, charter, lease, acquire, own, equip, maintain, manage, repair, use, navigate and operate boats, ships, vessels, barges, rafts and water-craft of all kinds, and any articles, materials, machinery, equipment and property used therefor or in connection therewith.

"To engage in and transact a transportation, shipping and forwarding business, to transport persons and property by water, land and air, to engage in and transact a storage business, to act as shipping agent for others, to carry on the business of a customs house broker, to promote, arrange and conduct tours, and to carry on an insurance brokerage business."

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1970	\$ 800.00 (capital)	\$7,662.42	(\$ 6,862.42)
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CONCLUSIONS OF LAW

A. That for the privilege of exercising its corporate franchise, of doing business, of employing capital, or of owning or leasing property in this state in a corporate or organized capacity, or of maintaining an office in this state, every domestic or foreign corporation (except those corporations subject to tax under sections 183 through 186 and such other corporations as are specified in section 209.4) must pay an annual franchise tax to this state. Article 9-A, section 209.1.

B. That sections 183 and 184 of Article 9 impose a franchise tax and an additional franchise tax, respectively, upon corporations and associations formed for or principally engaged in the conduct of aviation, railroad, canal, steamboat, ferry, express, navigation, pipe line, transfer, baggage express, omnibus, trucking, taxicab, telegraph, telephone, palace car or sleeping car business or formed for or principally engaged in the conduct of two or more of such businesses, and other domestic corporations or associations principally engaged in the conduct of a transportation or transmission business.

C. That the term "transportation business" has been held to apply to corporations engaged in the operation or maintenance of devices used for the transportation of freight, substances or persons (Matter of Newton Creek Towing Co. v. Law, 205 A.D. 209 (3d Dept.), *affd.* mem. 237 N.Y. 578; People ex rel. Curran Funeral Service Co., Inc. v. Graves, 257 A.D. 888 (3d Dept.); Op. of Counsel, Dept. of Taxation and Finance, August 26, 1957), and also to corporations which provide services directly connected with such transportation (People ex rel. N.Y. & Albany Lighterage Co. v. Cantor, 239 N.Y. 64).

D. That petitioner owned, leased, managed, tracked and repositioned shipping containers, the sole function of which was to hold goods for transport by containerized vessels. These activities were so integrally related to the transportation business that petitioner may be considered a transportation company within the intendment of sections 183 and 184.

Petitioner's business was not the passive ownership of personal property. Petitioner did not become "merely the owner of personal property leased to another for a consideration, the same as the owner of either a mill or a department store who leases his property to a corporation over which he has no control or supervision and no voice in the operating activity of either corporation." Matter of McAllister Bros., Inc. v. Bates, 272 A.D. 511, 516 (3d Dept.). In the latter case, the Appellate Division confirmed this Commission's determination pertaining to the tax assessed against petitioner under Article 9-A.

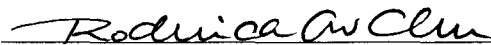
E. That in view of the foregoing, it is unnecessary to pass upon the second and third issues raised.

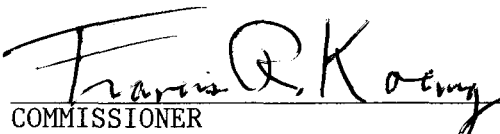
F. That the petition of Amexi Leasing Corporation is hereby granted and the notices of deficiency issued on February 15, 1978 are cancelled in full.

DATED: Albany, New York

STATE TAX COMMISSION

OCT 07 1983

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER