

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
Inter-Ocean Industries, Inc. :

AFFIDAVIT OF MAILING

for Redetermination of a Deficiency or Revision :
of a Determination or Refund of Corporation :
Franchise Tax under Article 9A of the Tax Law for :
the Periods Ending 3/31/78 & 3/31/80. :

State of New York }

ss.:

County of Albany }

David Parchuck, being duly sworn, deposes and says that he is an employee of the State Tax Commission, that he is over 18 years of age, and that on the 9th day of November, 1984, he served the within notice of Decision by certified mail upon Inter-Ocean Industries, Inc., the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Inter-Ocean Industries, Inc.
1140 Avenue of the Americas
New York, NY 10036

and by depositing same enclosed in a postpaid properly addressed wrapper in a post office 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
9th day of November, 1984.

David Parchuck

James A. DeGallus
Authorized to administer oaths
pursuant to Tax Law section 174

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
Inter-Ocean Industries, Inc. :
AFFIDAVIT OF MAILING
for Redetermination of a Deficiency or Revision :
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Franchise Tax under Article 9A of the Tax Law for :
the Periods Ending 3/31/78 & 3/31/80. :
_____:

State of New York }
ss.:
County of Albany }

David Parchuck, being duly sworn, deposes and says that he is an employee of the State Tax Commission, that he is over 18 years of age, and that on the 9th day of November, 1984, he served the within notice of Decision by certified mail upon Seymour Ackerman, the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Seymour Ackerman
41 East 42nd Street
New York, NY 10017

and by depositing same enclosed in a postpaid properly addressed wrapper in a post office 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
9th day of November, 1984.

David Parchuck

James P. Hapland
Authorized to administer oaths
pursuant to Tax Law section 174

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

November 9, 1984

Inter-Ocean Industries, Inc.
1140 Avenue of the Americas
New York, NY 10036

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, a proceeding in court to review an adverse decision by the State Tax Commission may be instituted only 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
Seymour Ackerman
41 East 42nd Street
New York, NY 10017
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
INTER-OCEAN INDUSTRIES, INC.	:	DECISION
for Redetermination of a Deficiency or for	:	
Refund of Corporation Franchise Tax under	:	
Article 9-A of the Tax Law for the Periods	:	
Ending March 31, 1978 and March 31, 1980.	:	

Petitioner, Inter-Ocean Industries, Inc., 1140 Avenue of the Americas, New York City, New York 10036, filed a petition for redetermination of a deficiency or for refund of corporation franchise tax under Article 9-A of the Tax Law for the periods ending March 31, 1978 and March 31, 1980 (File No. 36549).

A formal hearing was held before Frank W. Barrie, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on May 9, 1984 at 1:15 P.M. Petitioner appeared by Seymour Ackerman, C.P.A. The Audit Division appeared by John P. Dugan, Esq. (Kevin Cahill, Esq., of counsel).

ISSUE

Whether petitioner maintained a regular place of business outside New York State for the fiscal year ending March 31, 1978 and could therefore allocate its income under Tax Law §210.3 for such period.

FINDINGS OF FACT

1. On December 22, 1981, the Audit Division issued two Notices of Deficiency against petitioner, Inter-Ocean Industries, Inc., alleging corporate franchise tax deficiencies under Article 9-A of the Tax Law of \$7,084.90, plus interest and \$2,856.50, plus interest for the periods ending March 31, 1978 and March 31, 1980, respectively. The Audit Division applied a tax credit for the period

ending March 31, 1979 against the alleged deficiency for the period ending March 31, 1978. Attached to each Notice of Deficiency was a Statement of Audit Adjustment which explained that each of the respective deficiencies was based upon a field audit and showed the tax determined per field audit and tax per report for each fiscal year.

2. Petitioner, on Form CT-3, New York State Corporation Franchise Tax Report which it filed for its fiscal year ending March 31, 1978, claimed a business allocation percentage of 33.8 percent based upon the following computation:

	<u>New York</u>	<u>Everywhere</u>
(i) Real estate rented	\$ 88,872	\$ 176,872
Inventories owned	20,000	1,858,351
Other tangible personal property owned	5,008	5,008
Total	<u>\$ 113,880</u>	<u>\$2,040,231</u>
Percentage in New York		5.5%
(ii) Receipts, in the regular course of business, from:		
Sales of tangible personal property where shipments are made to points within New York	\$1,076,766	
All Sales of tangible personal property		\$7,943,546
Other business Receipts	120,395	120,395
Total	<u>\$1,197,161</u>	<u>\$8,063,941</u>
Percentage in New York		14.8%
(iii) Percentage in New York of additional receipts factor		14.8%
(iv) Percentage in New York of wages, salaries and other compensation of employees		100.0%
Total of above four percentages		135.1%
Business allocation percentage, total of percentages divided by four		33.8%

3. Petitioner, on the Form CT-3 New York State Corporation Franchise Tax Report which it filed for its fiscal year ending March 31, 1980, claimed a business allocation percentage of 33.27% based upon the following computation:

	New York	Everywhere
(i) Real estate rented	\$ 120,224	\$ 232,224
Inventories owned	71,900	1,307,284
Other tangible personal property owned	14,116	14,116
Total	\$ 206,240	\$1,553,624

Percentage in New York 13.27%

- (ii) Receipts, in the regular course of business, from:

Sales of tangible personal property where shipments are made to points within New York	\$ 506,128	
All Sales of tangible personal property		\$9,131,741
Other business Receipts	443,519	443,519
Total	\$ 949,647	\$9,575,260

Percentage in New York 9.91%

- (iii) Percentage in New York of additional receipts factor 9.91%

- (iv) Percentage in New York of wages, salaries and other compensation of employees 100.00%

Total of above four percentages 133.09%

Business allocation percentage, total of percentages divided by four 33.27%

4. Petitioner reported entire net income of \$107,015 and \$253,247 for the fiscal years ending March 31, 1978 and March 31, 1980, respectively. After applying the respective business allocation percentages noted in Findings of Fact "2" and "3", supra, petitioner reported taxable net income of \$36,171 and \$84,255 and tax of \$3,617.10 and \$8,425.50 for the fiscal years ending March 31, 1978 and March 31 1980, respectively.

5. The Audit Division, contending that petitioner had no regular place of business outside New York during the fiscal year ending March 31, 1978, changed petitioner's business allocation percentage for such period to one hundred percent. For the fiscal year ending March 31, 1980, the Audit Division changed petitioner's business allocation percentage to 44.55% for the following reasons:

- (1) Warehouse fees claimed as capitalized rental expense were disallowed;

- (2) Merchandise stored by petitioner at the Brooklyn Navy Yard, a foreign trade zone facility, were improperly treated by petitioner as property located outside New York; and

- (3) Petitioner understated New York State receipts.

At the hearing herein, petitioner noted that it is only challenging the Audit Division's contention that it had no regular place of business outside New York during the fiscal year ending March 31, 1978.

6. During the periods at issue, petitioner, a New York corporation, was in the business of selling (Japanese made) Sony and Panasonic products to three or four major customers in each of several countries located in South America and Central America, including, in particular, Brazil, Paraguay, and Venezuela. According to Benjamin Fishoff, petitioner's president, petitioner shipped merchandise either directly from Japan to South America and Central America or to warehouses in foreign trade zones in New York and Florida for reshipment to its customers in South America and Central America. Petitioner also sold Sony and Panasonic electronic products to customers in the United States who purchased such merchandise for the alleged purpose of re-exporting the goods to their customers. (Sony and Panasonic prohibited petitioner from selling their products in the United States domestic market.)

7. Petitioner did not rent warehouse space in South America or Central America. Nor did it maintain sales offices outside New York. Benjamin Fishoff travelled several times a year to Central and South America to call on petitioner's customers. He testified, "I had several customers, three or four in each country who were the distributors of such expensive products as Sony, Panasonic, and I would go to the hotel and go to their office, bring along catalogs, and make a sale." Petitioner offered only vague evidence concerning the storage of its merchandise prior to delivery to its customers. It failed to introduce any

invoices or written agreements showing that it paid for the storage of its goods on a regular basis outside New York State.

CONCLUSIONS OF LAW

A. That Tax Law section 210.3(a)(4) provides in part:

"(T)hat for taxable years beginning before January first, nineteen hundred seventy-eight, 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 4-2.2(b) (1976) defines "regular place of business" as follows:

"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. If, for example, in the regular course of its business, a taxpayer:

(1) stores property in a public warehouse until it is shipped to its customers, the public warehouse is considered a regular place of business; or

(2) delivers raw materials or partially finished goods to an independent contractor to be converted, processed, finished or improved and the converted, processed, finished or improved 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 if the taxpayer retains title to the material or goods."

C. That the burden of proof is upon the petitioner to show that it had a regular place of business outside New York. Tax Law section 1089(e).

D. That petitioner did not sustain its burden of proof to show that it had a regular place of business outside New York during the period at issue. In particular, it failed to prove its claim that, in the regular course of its business, it stored its merchandise in warehouses located outside of New York State prior to delivery to its customers.

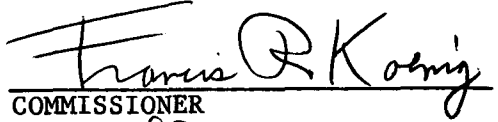
E. That the petition of Inter-Ocean Industries, Inc. is denied.

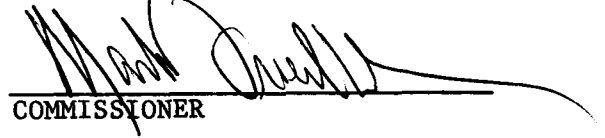
DATED: Albany, New York

STATE TAX COMMISSION

NOV 09 1984


PRESIDENT


COMMISSIONER


COMMISSIONER