

New York State Department of Taxation and Finance
Taxpayer Services Division
Technical Services Bureau

TSB-A-82(17)C
Corporation Tax
May 9, 1984

STATE OF NEW YORK
STATE TAX COMMISSION

ADVISORY OPINION

PETITION NO. C821013A

On October 13, 1982 a Petition for Advisory Opinion was received from Conrad P. Homier, C.P.A., 60 Cutter Mill Road, Great Neck, New York 11021.

At issue is whether a New York corporation which expects to purchase and import gasoline and diesel fuel into New York State on a regular basis would be subject to tax as an oil company under Section 182-a of the Tax Law. Such corporation has made an election under Subchapter S of the Internal Revenue Code and is exempt from the tax imposed under Article 9-A of the Tax Law by reason of section 209.8 thereof.

The corporation will take title to the gasoline and diesel fuel (to be sold other than for residential purposes) in the state where it is purchased. The fuel will be shipped into New York State by common carriers. The petroleum products will then be unloaded into terminals within New York State, and subsequently shipped to the corporation's customers within New York.

Section 182-a(1) of the Tax Law, in pertinent part, imposes an annual tax upon every oil company for, among other things, exercising its corporate franchise (viz., existing as a New York corporation), equal to three quarters of one percent of gross receipts from sales of petroleum.

Section 182-a(2) of the Tax Law, in pertinent part, defines the term "oil company" to mean "every corporation, formed for or engaged in the business of importing . . . into this state for sale in this state . . . petroleum."

The meaning of the term "importing" has been clarified in a Technical Services Bureau memorandum, TSB-M-81(5.1)C(Revised), as follows:

"For the purposes of this section, a corporation is engaged in the business of importing petroleum into New York State if it owns petroleum outside New York State and ships or causes it to be shipped to a point within New York State for sale in New York State."

The corporation in question will be (1) exercising its corporate franchise, and (2) engaging in the business of importing petroleum into New York for sale in New York. Accordingly, such corporation will be subject to the tax imposed under section 182-a of the Tax Law. The fact that the corporation is entitled to "Subchapter S treatment" for New York purposes, and is thus exempt from the franchise tax imposed under Article 9-A of the Tax Law, has no bearing on the matter whatsoever. The statement in Technical Services Bureau Memorandum TSB-M-81(5.3)C(Revised),

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referred to by Petitioner, to the effect that "the following sellers of petroleum are not taxable under this section [viz., section 182-a]: . . . a corporation not taxable under Article 9-A," is incorrect. A correct construction of the statute would exclude any foreign corporation which does not do business, employ capital, own or lease property in New York in a corporate or organized capacity or maintain an office in New York, for all or any part of its taxable year. A foreign corporation which does satisfy one or more of these jurisdictional criteria, and any New York corporation, which is an "oil company," would be subject to tax under section 182-a irrespective of its subjection to Article 9-A or its exemption therefrom by reason of section 209.8 of the Tax Law.

DATED: December 1, 1982

s/FRANK J. PUCCIA
Director
Technical Services Bureau