

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

TSB-A-82(11)C  
Corporation Tax  
July 29, 1982

STATE OF NEW YORK  
STATE TAX COMMISSION

ADVISORY OPINION

PETITION NO. C820330B

On March 30, 1982 a Petition for Advisory Opinion was received from Merit Oil Corporation, 44 West Lancaster Avenue, Ardmore, Pennsylvania 19003.

The issue raised herein is whether Petitioner is an oil company subject to the franchise tax on certain oil companies imposed under section 182-a of the Tax Law.

Petitioner is a gasoline distributor, as well as a management company. Petitioner states that it purchases substantially all of its gasoline from a supplier (hereinafter "Seller") which itself is subject to tax under section 182-a of the Tax Law. The contract between Petitioner and Seller provides for delivery F.O.B. at designated loading points in New Jersey for shipment into New York. Petitioner has contracted with barging companies and trucking companies to receive the gasoline in New Jersey for shipment into New York. The applicable contract provides that title to the gasoline delivered and all responsibility for any loss and/or damage passes from Seller to Petitioner when such gasoline passes the flange between Seller's delivery line and the vessel's permanent hose connections with respect to delivery into barges, and when such gasoline passes from Seller's truck loading fill pipe into the tank transport trucks with respect to deliveries into trucks. The gasoline is transported to terminals within New York and then distributed to gasoline stations affiliated with Petitioner, in New York, for retail sale at these locations.

Section 182-a of the Tax Law imposes a franchise tax on every oil company "for the privilege of exercising its corporate franchise, or of doing business, or of employing capital, or of owning or leasing property in . . . [New York] in a corporate or organized capacity, or of maintaining an office" in New York. Tax Law, §182-a.1. The term "oil company" is defined, in relevant part, as "every corporation formed for or engaged in the business of importing or causing to be imported (by a person other than a corporation subject to tax under this section) into this state for sale in this state . . . petroleum." Tax Law, §182-a.2(a). 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."

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Since Petitioner takes title to the gasoline in question in New Jersey and thereupon has it shipped to New York for sale in New York, Petitioner is engaged in importing petroleum into New York for sale therein, within the meaning of section 182-a of the Tax Law. Since Petitioner is engaged in the business of selling gasoline in New York it is "doing business" in New York, thus satisfying the jurisdictional criteria set forth in section 182-a.1 of the Tax Law. Accordingly, Petitioner is an "oil company" subject to tax under section 182-a of the Tax Law.

DATED: July 29, 1982

s/LOUIS ETLINGER  
Deputy Director  
Technical Services Bureau