

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

TSB-A-82(6)C  
Corporation Tax  
April 12, 1982

STATE OF NEW YORK  
STATE TAX COMMISSION

ADVISORY OPINION

PETITION NO. C811201A

On December 1, 1981 a Petition for Advisory Opinion was received from Bitterman's Automotive Center, Inc., 7631 Transit Rd., East Amherst, New York 14051.

The issue raised herein is whether the franchise tax on certain oil companies imposed under section 182-a of the Tax Law is applicable to a corporation which sells such products as lubricating oils and grease. It is determined herein that the sale of these products does not render Petitioner subject to such tax.

Section 182-a of the Tax Law imposes a franchise tax on certain oil companies. The term "oil company" is defined, in section 182-a.2(a), as follows:

"The term "oil company" means 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, extracting, producing, refining, manufacturing, or compounding petroleum."

As originally enacted, by Chapter 481 of the Laws of 1981, this provision included as "oil companies" every corporation "engaged in the business of . . . selling petroleum . . . ." with an exception for certain corporations which sold sixty million gallons or less of petroleum during its preceding taxable year. Such exception was removed by Chapter 482 of the Laws of 1981. However, the subject provision was amended again, by Chapter 1043 of the Laws of 1981, so as to wholly exclude from the criteria for "oil companies" the sale of petroleum.

The term "petroleum" is defined in two locations within section 182-a. In section 182-a.2(a) it is defined as including, but not limited to, ". . . gasoline, aviation fuel, kerosene, diesel motor fuel, benzol, distillate fuels, residual oil, crude oil or any similar product." This definition was contained in the original enactment of section 182-a by Chapter 481 of the Laws of 1981. A second definition was added to section 182-a of the Tax Law by Chapter 1043 of the Laws of 1981, in a new paragraph (e), which reads as follows:

"The term "petroleum" shall mean crude oil, plant condensate, gasoline, aviation fuel, kerosene, diesel motor fuel, benzol, petrochemical feed-stocks, distillate fuels, residual oil, and liquified or liquefiable gases such as butane, ethylene, or propane."

TSB-A-82(6)C  
Corporation Tax  
April 12, 1982

Where the legislature enacts two contrary statutory provisions, it is a canon of statutory interpretation that the later version controls. Mck. Statutes, §§391-399. With respect to the present instance, it has been determined that both definitions exclude lubricating oils and grease from the definition of petroleum for purposes of section 182-a of the Tax Law. Technical Services Bureau Memorandum TSB-M-81(5.4)C(Revised).

It follows from the foregoing that Petitioner is not rendered subject to the tax imposed under section 182-a of the Tax Law by reason of its described activities, inasmuch as the retail sale of lubricating oils and grease does not constitute "extracting, producing, refining, manufacturing or compounding petroleum."

DATED: April 1, 1982

s/GABRIEL DI CERBO  
Deputy Director  
Technical Services Bureau