

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

TSB-A-83(6)C
Corporation Tax
May 9, 1984

STATE OF NEW YORK
STATE TAX COMMISSION

ADVISORY OPINION

PETITION NO. C820721A

On July 21, 1982 a Petition for Advisory Opinion was received from Seimax Gas Corp., P. O. Box 191, Monticello, New York 12701.

At issue is whether a corporation selling propane, where more than 50% of such propane is used for residential purposes, is an oil company as defined in Section 182-a of the Tax Law, and would be subject to the tax imposed by that section.

Section 182-a of the Tax Law imposes a franchise tax on certain oil companies. The term "oil company" is defined to include corporations engaged in the business of importing petroleum, including propane, into New York for sale in New York. Tax Law, § 182-a, 2(a) and (e). The statute provides for an exclusion from the definition of "oil company" with respect to any "corporation which is principally engaged in selling fuel oil (excluding diesel motor fuel) used for residential purposes . . ." Tax Law, § 182-a, 2(a).

Petitioner is engaged in the business of selling propane, some of which is imported into New York for sale in this State. However, more than fifty per cent of its sales are of propane for residential purposes. Therefore, if propane constitutes "fuel oil," Petitioner would not be an oil company within the meaning of section 182-a of the Tax Law and thus would not be subject to the tax imposed thereby. However, the term fuel oil does not include propane. This is made clear by the statute itself, which in paragraph (b) of section 182-a.2, draws a distinction between "fuel oil" and "liquefied or liquefiable gases," the latter phrase including such gases as butane, ethylene or propane. Accordingly, Petitioner is an oil company and is subject to the franchise tax imposed under section 182-a. It should be added that its receipts from the sale of propane, "except when sold in containers of less than one hundred pounds," for residential purposes should be excluded from the computation of its "gross receipts from sales of petroleum." Tax Law, § 182-a.2(b). It is to be noted, further, that the inclusion of the propane within the category of "Residential Fuel Oil" in the instructions for Form CT-182-a (Additional Franchise Tax Return For Oil Companies Taxable Under Article 9, Section 182-a) is for purposes of such exclusion, and is not applicable to the definition of "oil company."

DATED: February 11, 1983

s/FRANK J. PUCCIA
Director
Technical Services Bureau