

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

TSB-M-82(10)C
Corporation Tax
March 3, 1982

Chapter 484 of the Laws of 1981 provides that a taxpayer which is subject to tax under Article 9-A of the Tax Law and is also an oil company as defined in Section 182-a of Article 9 which:

- (1) owns or controls, either directly or indirectly, more than 50% of the capital stock of one or more corporations; or
- (2) more than 50% of the capital stock of such taxpayer is owned or controlled, either directly or indirectly, by one or more other corporations; or
- (3) more than 50% of the capital stock of such taxpayer and one or more other corporations are owned or controlled, either directly or indirectly, by the same interests,

shall be required by the Tax Commission to file an information report showing the entire net income and capital of each of those corporations, whether or not such corporations are taxpayers. The report must include a brief description of how each corporation operates, a detailed breakdown of any intercorporate transactions and a statement indicating which New York State corporation franchise tax or taxes each corporation is subject to, or would be subject to if it were a New York State taxpayer.

Section 182-a of Article 9 defines an oil company as a corporation which was formed for or engaged in the business of importing petroleum or causing it to be imported (by a person other than a corporation subject to tax under Section 182-a) into this state for sale in this state, extracting petroleum, producing petroleum, refining petroleum, manufacturing petroleum, or compounding petroleum. A corporation which is principally engaged in selling fuel oil (excluding diesel motor fuel) used for residential purposes is not considered to be an oil company.

The Article 9-A franchise tax imposed on every oil company that is conducting a unitary business with any other corporation connected to the oil company by the 50% stock ownership requirement, shall be computed in accordance with the requirements described in this TSB-M memorandum.

After the test of stock ownership or control is met, the following additional tests will be applied in determining whether a unitary business is being conducted:

(1) Unity Test

- (a) Unity of Operation - generally evidenced by same type of business, steps in a vertical process, centralized staff functions such as purchasing, financing, advertising, accounting, management, and any other such related staff function; and
- (b) Unity of Use - generally evidenced by centralized line functions such as executive force, the inter-company flow of goods and the general system of operation.

(2) Dependence or Contribution Test

A corporation is part of a unitary business if its operations are dependent upon, or contribute to the business conducted by the taxpayer or a member of the unitary group.

In general, the activities of the taxpayer and one or more other corporations will be considered a single unitary business if there is evidence that the corporations are integrated with, depend upon or contribute to each other and the operations of the taxpayer.

A business will be considered unitary if it meets either (1) the Unity Test or (2) the Dependence or Contribution Test.

Rules for computing the tax:

- (1) The oil company member of the unitary group shall compute and pay its Article 9-A franchise tax pursuant to section 210.1 of the Tax Law on a unitary basis.
- (2) Allocate unitary business income and capital by the use of a three factor formula -- property, receipts (double weighted), and wages.
- (3) Allocate unitary investment income and capital by the use of an investment allocation percentage. The investment allocation percentage shall be computed in accordance with Article 9-A.

- (4) All intercorporate amounts must be eliminated in computing the taxpayer's income, capital and business allocation percentage.
- (5) All intercompany dividends, except dividends from a DISC or former DISC not exempt from tax under Article 9-A, must be from entire net income.
- (6) Taxpayers are required to submit details of any currency conversion.
- (7) Each Article 9-A taxpayer included in the unitary report (other than the corporation paying the tax on a unitary basis) is required to pay the minimum tax.
- (8) The accounting period for and method on which the tax is to be computed must be the same as the taxpayer's period and method of accounting for federal income tax purposes. In the absence of an accounting period or method for federal income tax purposes, the tax must be computed in accordance with the period and method the taxpayer uses or would be required to use for federal income tax purposes.
- (9) In computing its tax on a unitary basis, an oil company shall include the income, gain, loss, deductions and capital only of those corporations which are subject to the tax imposed by Article 9-A of the Tax Law or would be subject to the tax imposed by Article 9-A if the corporation exercised its corporate franchise, did business, employed capital, owned or leased property in this State in a corporate or organized capacity, or maintained an office in this State during any part of the oil company's taxable year.
- (10) In case it shall appear to the Tax Commission that any agreement, understanding or arrangement exists between the taxpayer and any other corporation or any person or firm, whereby the activity, business, income or capital of the taxpayer within New York State is improperly or inaccurately reflected, the Tax Commission is authorized, pursuant to Tax Law section 211.5 and 20 NYCRR § 3-1.4, in its discretion to adjust items

of income, deductions and capital, and to eliminate assets in computing any allocation percentage provided any income directly traceable thereto is also excluded from entire net income, so as to equitably determine the tax.

- (11) Taxpayers will be required to submit such other information as the Tax Commission deems necessary.

Example Refining Corporation (an Article 9-A and Section 182-a, Article 9 taxpayer) owns 51% of the outstanding stock in each of four subsidiaries, Research Corporation (a foreign corporation not taxable in New York State), Drilling Corporation (an alien corporation, not taxable in New York State) Transport Corporation (Article 9 taxpayer) , and a Sales Corporation (Article 9-A taxpayer). Sales Corporation markets and sells petroleum products in the United States and abroad. Nearly all of the petroleum products are obtained from the Refining Corporation which acquires the crude oil from the Drilling Corporation. Transport Corporation operates pipeline facilities and a large fleet of ocean-going vessels used to transport the crude oil from the Drilling Corporation's storage facilities to the Refining Corporation's refineries. Research Corporation conducts research and development for both Refining and Sales Corporations. The Refining Corporation is required to file an information report showing the entire net income and capital of each corporation and to give a description of each corporation's activities. Since the corporations are conducting a unitary business, the Refining Corporation (Parent) is required to compute its Article 9-A franchise tax on a unitary basis pursuant to subdivision 4-a of section 211 of the Tax Law, including the entire net income and capital of each corporation except the Transport Corporation, allocated to New York as explained above. In addition, the Refining Corporation must compute and pay the tax due under section 182-a of Article 9. The Transport Corporation must compute and pay the tax in accordance with sections 183 and 184 of Article 9. The Sales Corporation must file a CT-3 report under Article 9-A and pay the minimum tax.