STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of Petitions

of

A. E. BRUGGEMANN & CO., INC.

for redetermination of deficiencies of franchise tax under Article 9-A of the tax law for fiscal years ended October 31, 1966 through October 31, 1968.

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A. E. Bruggemann & Co.,Inc. having filed petitions for redetermination of deficiencies of franchise tax under Article 9-A of the tax law for fiscal years ended October 31, 1966 through October 31, 1968, and a hearing having been held in connection therewith on June 10, 1971 at the office of the State Tax Commission, 80 Centre Street, New York City, before John J. Genevich, Hearing Officer of the Department of Taxation and Finance, at which hearing Morris Kaplan, Esq., of Counsel, Ralph Borod, Certified Public Accountant, and John C. Bruggemann, Vice President of the taxpayer, appeared personally and testified and the record having been duly examined and considered by the State Tax Commission,

It is hereby found:

(1) A. E. Bruggemann & Co.,Inc. was incorporated under the laws of New York on February 5, 1952.

(2) Franchise tax reports were filed for fiscal years ended October 31, 1966 through October 31, 1968 and taxpayer's entire net income was allocated within and without New York using the statutory three-factor formula.

(3) A field audit examination disclosed that the corporation operated two separate divisions during fiscal years ended October 31, 1966 through October 31, 1968, as follows:

(a) The oil brokerage division which was principally engaged in selling on a commission basis from an office at 717 Fifth Avenue in New York . This business was conducted by A. E. Bruggemann, President, A. J. Krasinski, salesman, and two clerical employees.

(b) The car wash division which operated at River Street in Hackensack, New Jersey, under the supervision of J. C. Bruggemann, Vice President, and J. J. Bruggemann. Five to seven laborers were employed at the car wash.

(4) The oil brokerage business was conducted entirely within New York, while the car wash was located and operated entirely in New Jersey.

(5) Based on field auditor's recommendations, separate accounting was used in computing business income allocated to New York, and notices of deficiency were issued in which the loss from the operation of the car wash was eliminated from entire net income and the business allocation was adjusted to 100%, since the oil brokerage division was entirely within New York.

(6) Timely petitions for redetermination of these deficiencies were filed claiming that the statutory three-factor formula should be applied to business income. The petitions also requested that investment income be allocated at the investment allocation percentage and figures were furnished to establish an investment allocation of 27.62% for the fiscal year ended October 31, 1966, 51.10% for the fiscal year ended October 31, 1967, and 1.77% for the fiscal year ended October 31, 1968.

(7) Applying the investment allocation percentage to investment income and using separate accounting for business income results in deficiencies as follows:

	10/31/66	10/31/67	10/31/68
Entire net income	$149,230.33	$132,989.18	$168,276.36
Less investment income	2,600.82	6,641.38	19,469.97
Business income	146,629.51	126,347.80	148,806.39
Less loss of Car Wash Division	34,276.24	37,872.38	49,074.14
Income from Oil Brokerage Division	180,905.75	164,220.18	197,880.53
Investment income allocated to N.Y.	718.35	3,393.75	344.62
Total New York income	181,624.10	167,613.93	198,225.15
Tax at 5½%	9,989.33	9,218.77	
Tax at 6-3/4%			13,380.20
Tax reported	5,210.66	4,464.44	7,211.79
Deficiency	4,778.67	4,754.33	6,168.41

(8) Section 210.8 of Article 9-A of the tax law reads in part:

> "If it shall appear to the tax commission that any business or investment allocation percentage determined as hereinabove provided does not properly reflect the activity, business, income or capital of a taxpayer within the state, the tax commission shall be authorized in its discretion, in the case of a business allocation percentage, to adjust it by (a) excluding one or more of the factors therein, (b) including one or more other factors, such as expenses, purchases, contract values (minus subcontract values), (c) excluding one or more assets in computing such allocation percentage, provided the income therefrom is also excluded in determining entire net income, or (d) any other similar or different method calculated to effect a fair and proper allocation of the income and capital reasonably attributable to the state, * * *."

The State Tax Commission hereby

DECIDES:

(A) The statutory three-factor formula does not properly reflect the activities, business, income or capital of the taxpayer within the state and therefore the Tax Commission is authorized to use some other method to effect a fair and proper allocation of the income and capital reasonably attributable to this state.

(B) The deficiencies in (7) of the above findings, using separate accounting, are a fair and proper computation of income reasonably attributable to this state.

(C) Such deficiencies are hereby affirmed together with interest due in accordance with Section 1084 of the tax law.

Dated: Albany, New York

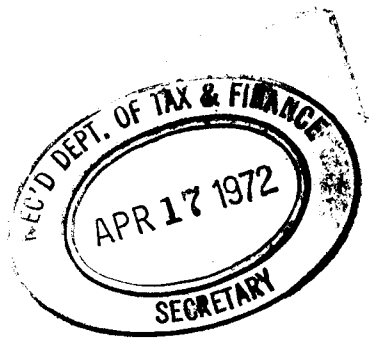
this 22nd day of December, 1971

STATE TAX COMMISSION

President

Commissioner

Commissioner



April 17, 1972

The Honorable Louis J. Lefkowitz
Attorney General
State Capitol
Albany, New York 12224

Re: A. E. Bruggemann & Co., Inc. vs.
State Tax Commission

Dear Mr. Lefkowitz:

Enclosed herein please find Notice of Petition and Petition of the taxpayer scheduling the matter at a Special Term, Part I of the Supreme Court for the County of Albany, for May 26, 1972. A Bond for Costs is also enclosed.

The entire file in the above matter will be forwarded under seperate cover as expeditiously as possible.

Sincerely yours,

SAUL HECKELMAN
Director

JS:lk
Enc.