STATE OF NEW YORK
STATE TAX COMMISSION

ADVISORY OPINION PETITION NO. C810813A

On August 13, 1981, a Petition for Advisory Opinion was received from Kason Industries, Inc., Colesville Road, Binghamton, New York 13902.

The issue raised is whether, for the year ended June 30, 1978, Petitioner's activities in Illinois constituted the maintenance of a regular place of business without the State of New York, within the meaning of section 210.3(a)(4) of the Tax Law, contained in Article 9-A thereof (Franchise Tax Business Corporations).

Petitioner is a New York corporation engaged in the manufacture and sale of commercial refrigeration hardware and store fixtures. During the taxable year ended June 30, 1978, the period at issue herein, the commercial refrigeration hardware was sold and distributed by Kason Midwest Corp, a subsidiary of Petitioner. Kason Midwest Corp. was located in Chicago, Illinois. The sale and distribution of the fixtureware product line was handled by a division of Petitioner, the Fixtureware Division. The Fixtureware Division consisted of three employees, for whom office space in Chicago was sub-let from Kason Midwest Corp. Such office space was used exclusively by the three aforementioned employees of Petitioner. Petitioner had a separate building directory listing and a separate telephone listing. There was no advertising in Illinois by the Fixtureware Division as such. Stationery used by Petitioner's employees in Chicago bore Petitioner's New York address. However, the business cards used by two of the three employees (the regional manager and the salesman) contained Petitioner's name along with the Chicago address. It is also to be noted that Petitioner has not filed an Illinois tax return for the year in question.

Petitioner's three employees located in Chicago included a regional manager, a salesman, and an individual who functioned as a designer/draftsperson and cost estimator. The activities carried on at this location included the receipt of directives from the Vice President of Sales in Binghamton, New York; the filing of copies of customer's invoices for material shipped; the filing of copies of correspondence to and from customers and the home office; the writing and preparation of orders to be forwarded to the home office for shipment to customers; and the receiving and initiating of calls to customers to set up appointments and the like. The regional manager spent approximately 50% of his time in the Chicago office, the remainder of his time being devoted to making sales calls. His office activities included approving orders (which were then forwarded to New York for filling), reviewing job plans and estimates, and corresponding with customers and the home office. The salesman spent 20 to 25% of his time in the office, the remainder of his time being spent in the field soliciting orders from customers. His activities in the office consisted of reviewing correspondence and meeting with the regional manager and the designer/draftsperson. The work of the designer/draftsperson and cost estimator was performed almost entirely in the office. Her function consisted of meeting with the salesman or potential customers, sketching layouts for store fixtures and displays relating to the merchandising of the product to be displayed, and assisting in the estimating of the prices for the fixtures. Final approval of the layouts and the prices was in the hands of the Regional Sales Manager.

Section 210.3 of the Tax Law, contained in Article 9-A, provides for the computation of a business allocation percentage used in allocating entire net income. Prior to 1978, section 210.3(a)(4) provided that ". . .if the taxpayer does not have a regular place of business outside the state other than a statutory office, the business allocation percentage shall be one hundred per cent. . ." This limitation was removed by the enactment of Chapter 69 of the Laws of 1978, effective with respect to taxable periods commencing on or after January 1, 1978. The year at issue herein commenced prior to January 1, 1978, and is thus subject to the above quoted stricture. The Franchise Tax Regulations in effect with respect to the period in question provided the following definition of the phrase "regular place of business:"

> A regular place of business is any bona fide office (other than a statutory office), factory, warehouse or other space which is regularly used by the taxpayer in carrying on its business.

Based on the facts presented by Petitioner, as set forth above, it is concluded that Petitioner's activities at the Chicago location constituted the maintenance of a regular place of business.

DATED: September 20, 1982

s/LOUIS ETLINGER
Deputy Director
Technical Services Bureau