

**New York State Department of Taxation and Finance
Office of Tax Policy Analysis
Taxpayer Guidance Division**

TSB-A-07(4)C
Corporation Tax
August 27, 2007

STATE OF NEW YORK
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. C061127D

On November 27, 2006, a Petition for Advisory Opinion was received from CCA Construction International, Inc., 525 Washington Boulevard., Suite 2688, Jersey City, NJ 07310. Petitioner, CCA Construction International, Inc., provided additional information pertaining to the Petition on April 12, 2007.

The issue raised by Petitioner is whether it is exempt from the tax imposed on independently procured insurance from an unauthorized insurance company under Article 33-A of the Tax Law.

Petitioner submitted the following facts as the basis for this Advisory Opinion.

China Construction America Construction International Inc. (CCACI) and its subcontractors have received authorization from the United States Department of State to purchase goods and services tax-free for the sole purpose of constructing a residential building in New York for the Chinese Mission to the United Nations. Petitioner is a wholly owned subsidiary and, in relation to this construction project, a subcontractor of CCACI. Petitioner will incur premiums for the purchase of insurance related to this construction project.

Applicable law and regulations

Section 1551 of Article 33-A of the Tax Law provides:

Imposition of tax. There is hereby imposed on any person who purchases or renews a taxable insurance contract from an insurer not authorized to transact business in this state under a certificate of authority from the superintendent of insurance a tax at the rate of three and six-tenths percent of the premiums paid or to be paid, less returns thereon, for such insurance. Nothing in this article modifies or abrogates any provision of the insurance law.

Section 1553 of the Tax Law provides, in part:

Exemptions. This article shall not apply to:

* * *

(d) any foreign government;

Section 1101(a) of the New York State Insurance Law provides:

In this article: (1) "Insurance contract" means any agreement or other transaction whereby one party, the "insurer", is obligated to confer benefit of pecuniary value upon another party, the "insured" or "beneficiary", dependent upon the happening of a fortuitous event in which the insured or beneficiary has, or is expected to have at the time of such happening, a material interest which will be adversely affected by the happening of such event.

Opinion

The tax under Article 33-A of the Tax Law is imposed on any person who purchases or renews a taxable insurance contract from an insurer not authorized to transact business in New York State under a certificate of authority from the Superintendent of Insurance. The tax is on the premiums paid or to be paid, less returns thereon, for such insurance. In this case, it is assumed that Petitioner will purchase such an insurance contract.

Petitioner is a wholly owned subsidiary and, in relation to constructing a residential building in New York for the Chinese Mission to the United Nations, a subcontractor of China Construction America Construction International Inc. (CCACI). Petitioner, as a subcontractor of CCACI, has authorization from the United States Department of State to purchase goods and services tax-free for use solely in this construction project.

Section 1553 of Article 33-A of the Tax Law does not contain a specific exemption applicable to Petitioner's premiums. Although Petitioner has received authorization from the United States Department of State to purchase goods and services tax-free for use in this construction project, Petitioner is not purchasing goods and services. It is purchasing insurance which, pursuant to section 1101(a) of the Insurance Law, is a contractual right. A contractual right to insurance coverage is not a good or service. Accordingly, Petitioner is subject to the tax imposed on independently procured insurance under Article 33-A of the Tax Law for premiums incurred for the purchase of insurance for the sole purpose of constructing a residential building in New York for the Chinese Mission to the United Nations.

However, if it is established that Petitioner is an agency or instrumentality so closely connected to a foreign government that the two cannot realistically be viewed as separate entities, Petitioner would be considered to be a foreign government. See *United States v*

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New Mexico, 455 US 720,735 and *Arizona Dept. of Rev. v Blaze Const.*, 526 US 32, 35. In that case, Petitioner would not be subject to the tax imposed under Article 33-A of the Tax Law.

DATED: August 27, 2007

/s/
Jonathan Pessen
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Taxpayer Guidance Division

NOTE: An Advisory Opinion is issued at the request of a person or entity. It is limited to the facts set forth therein and is binding on the Department only with respect to the person or entity to whom it is issued and only if the person or entity fully and accurately describes all relevant facts. An Advisory Opinion is based on the law, regulations, and Department policies in effect as of the date the Opinion is issued or for the specific time period at issue in the Opinion.