

**New York State Department of Taxation and Finance  
Office of Counsel  
Advisory Opinion Unit**

TSB-A-12(2)C  
Corporation Tax  
March 2, 2012

STATE OF NEW YORK  
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. C110720A

The Department of Taxation and Finance received a Petition for Advisory Opinion from [REDACTED]. Petitioner, a corporation, is headquartered in the state of Washington and organizes and promotes worldwide travel programs. Petitioner asks how its receipts from educational travel programs should be apportioned to New York. Petitioner should source its receipts to New York when the tours are conducted in New York.

**Facts**

Petitioner offers educational travel programs (typically about one week in length) to students and other participants on an annual and ongoing basis. Programs are conducted in various locations around the country and the world, including New York. Petitioner has over 200 full-time employees, including approximately seven employees based at a satellite office located in the state of Virginia. The personnel based in the satellite office are program coordinators, program managers and support specialists involved in the development and operation of educational programs. Most of Petitioner's other personnel are located at its headquarters location in Washington. The employees at headquarters include program coordinators and program managers as well as management, administrative support personnel and others as described below.

Petitioner organizes educational travel programs, prepares materials for participants and provides training for program chaperones. Petitioner tailors programs for attending participants by conducting research and ensuring programs and materials are current and regularly updated. Petitioner also trains program presenters on a regular basis.

Petitioner's costs associated with its travel programs include costs described as "on the ground costs" for meals, housing, transportation, tickets, and various fees for program participants. Petitioner also incurs general and administrative costs for human resources, accounting, information technology and management, marketing and customer service. Marketing costs include designing promotional materials, direct-mailings, and online marketing to create interest in Petitioner's programs and identify program participants. Marketing activities are generally performed by Petitioner's employees based outside of New York; however, Petitioner does hold periodic informational meetings and seminars in all states. Petitioner also provides customer service before, during, and after program participation through its website or by phone. Most customer service activities are completed at the company's headquarters location.

Once participants decide to attend one of Petitioner's programs, there is a registration process which includes an application and approval process, the payment of program fees and expenses, and participants receipt of program materials. All of these activities are performed at the company's headquarters.

### Analysis

For taxable years beginning on or after January 1, 2007, the receipts factor alone is used to determine a taxpayer's business allocation percentage. Tax Law § 210.3(a)(10)(A)(ii). Section 210.3(a)(2) of the Tax Law provides that the receipts factor is determined by ascertaining the ratio of the taxpayer's New York receipts during the taxable year, which are receipts arising from various enumerated activities or transactions that are sourced to New York, to the total amount of the taxpayer's receipts for the period. Receipts generated from performing services are sourced according to where the services are performed. *see* Tax Law § 210(3)(a)(2)(B); 20 NYCRR § 4-4.3. This sourcing rule applies regardless of whether the taxpayer performs services through its employees, agents or subcontractors, or by any other persons. Also, it is immaterial where such receipts are payable or where they are actually received. *see* 20 NYCRR § 4-4.3. Where a lump sum payment is received by a taxpayer for payment of services performed within and without New York, the portion of the payment attributable to services performed within New York is based on the relative values of, or amounts of time spent in performance of such services within and without New York, or by some other reasonable method. Full details must be submitted with the Taxpayer's report. *see* 20 NYCRR § 4-4.3(d).

In this case, Petitioner's receipts are generated by providing educational tours to participants through-out the world, including New York. Receipts from Petitioner's activities are receipts from services and will be apportioned to New York based on where the tour services are performed. In this case, Petitioner conducts tours in New York. Therefore, Petitioner should source its receipts from the tour services to New York when the tours are conducted solely in New York. If a tour is conducted in both New York and elsewhere, the portion of the receipts sourced to New York may be based on the number of tour days in New York over the number of tour days everywhere, or by some other reasonable method. Petitioner must provide full details when it files its New York general business corporation franchise tax return.

DATED: March 2, 2012

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DEBORAH R. LIEBMAN  
Deputy Counsel

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. The information provided in this document does not cover every situation and is not intended to replace the law or change its meaning.