

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

TSB-A-81 (2) C  
Corporation Tax  
July 1, 1981

STATE OF NEW YORK  
STATE TAX COMMISSION

ADVISORY OPINION

PETITION NO. C810420B

On April 20, 1981, a Petition for Advisory Opinion was received from Lone Star Industries, Inc., One Greenwich Plaza, Greenwich, Connecticut 06830.

At issue is whether Lone Star Industries, Inc., and its wholly-owned subsidiary, New York Trap Rock Corporation, will be permitted to continue to make reports on a combined basis for purposes of the New York State Franchise Tax on Business Corporations, in view of a planned reorganization.

Lone Star Industries, Inc. (hereinafter "Lone Star"), a Delaware corporation taxable in New York, is primarily engaged in producing cement, concrete and construction aggregates for the building industry. New York Trap Rock Corporation (hereinafter "NYTR"), also a Delaware corporation taxable in New York, is a wholly-owned subsidiary of Lone Star engaged in quarrying and crushing aggregates.

In the past, Lone Star and NYTR have acted as a unitary business in supplying the needs of customers in the northeastern United States, with NYTR supplying aggregates to many of the same vendees to whom Lone Star supplies cement. In recognition of this fact, the related lines of business of the two companies, the substantial intercorporate transactions involved, and other factors, permission was received in 1972 to file Business Corporation Franchise Tax reports on a combined basis.

At the present time, Lone Star proposes to reorganize its operations in the northeast region of the United States so as to bring within its divisional structure certain activities carried out in the past by NYTR, with the result that the two companies will be more closely unified in the conduct of their business and have more intercorporate transactions than previously.

Under this new arrangement NYTR will sell 100% of its products to Lone Star. NYTR's sales personnel will be transferred to Lone Star and henceforth will sell to customers the entire range of Lone Star products.

Section 211.4 of the Tax Law, in pertinent part, grants the Tax Commission discretion to permit or require the filing of a report on a combined basis by a corporation which owns or controls either directly or indirectly substantially all the capital stock of one or more corporations.

Section 6-2.2(b) of the Business Corporation Franchise Tax Regulations (20 NYCRR 6-2.2(b)) provides, in pertinent part, that the term "substantially all" means ownership or control of 80% or more of the voting stock.

Section 6-2.3(a) of the Business Corporation Franchise Tax Regulations (20 NYCRR 62.3(a)) provides, in pertinent part, that in deciding whether to permit or require corporations to file a combined report, two broad pre-requisites must be satisfied, as follows:

- "(1) The corporations are in substance parts of a unitary business conducted by the entire group of corporations, and
- (2) there are substantial intercorporate transactions among the corporations."

The same regulation, in Section 6-2.3(b), provides that, "In deciding whether each corporation is a part of a unitary business, the Tax Commission will consider whether the activities in which the corporation engages are related to the activities of the other corporations in the group, such as:

- (1) manufacturing or acquiring goods or property for other corporations in the group; or
- (2) selling goods acquired from other corporations in the group; or . . ." 20 NYCRR 6-2.3(b).

Section 6-2.3(c) of such Regulations provides, in pertinent part, that in determining whether the substantial intercorporate transaction requirement is met, the Tax Commission will consider only transactions directly connected with the business conducted by the taxpayer such as are described in the preceding quoted portions of the Business Corporation Franchise Tax Regulations. Service functions such as accounting, legal and personnel will not be considered.

Since Lone Star owns all of the capital stock of NYTR, since Lone Star will continue to produce cement, concrete and construction aggregates for use in the building industry and NYTR will continue to engage in quarrying and crushing aggregates for use in the building industry, since NYTR will sell 100% of its products to Lone Star, which will sell to customers the entire range of NYTR's products, Petitioner will meet the requirements of the regulations concerning percentage of stock ownership, unitary business and substantial intercorporate activities.

However, the granting of permission to file on a combined basis is discretionary and is dependent upon the actual facts and circumstances of each case. Permission to file a combined return may not be granted in advance and may only be granted after consummation of the planned reorganization of functions and upon proper written application containing all of the information required pursuant to section 6-2.4 of the Business Corporation Franchise Tax Regulations. (20 NYCRR 6-2.4).

DATED: June 30, 1981

s/LOUIS ETLINGER  
Deputy Director  
Technical Services Bureau