

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

TSB-A-81 (6) C  
Corporation Tax  
November 25, 1981

STATE OF NEW YORK  
STATE TAX COMMISSION

ADVISORY OPINION

PETITION NO. C810924A

On September 24, 1981 a Petition for Advisory Opinion was received from Carroll McIntosh Metro Sales, Inc., 81-47 261st Street, Floral Park, New York 11004.

Petitioner inquires as to the proper method of allocating certain receipts in the nature of commissions on sales of tangible personal property, under Article 9-A of the Tax Law (Franchise Tax on Business Corporations).

Petitioner, whose sole office is in New York, is a manufacturer's representative for a New York State manufacturer of high fidelity equipment. Petitioner is paid commissions on sales of goods made to the manufacturer's customers. The goods are ultimately shipped to customers both within and without New York State.

Section 210.3 of the Tax Law, contained in Article 9-A, provides for the allocation of entire net income on a formulary basis. The formula employed utilizes a receipts factor the numerator of which is comprised of various types of receipts attributable ("allocated") to New York, and the denominator of which consists of the total amount of the taxpayer's receipts of the same types.

Section 4-4.3 of the Franchise Tax Regulations provides, in pertinent part, that:

"(a) The receipts from services performed in New York State are allocable to New York State. All receipts from such services are allocated to New York State, whether the services were performed by employees, agents or subcontractors of the taxpayer, or by any other persons. It is immaterial where such receipts are payable or where they are actually received.

(b) Commissions received by a taxpayer are allocated to New York State if the services for which the commissions were paid were performed in New York State. If the services for which the commissions were paid were performed by the taxpayer or by salesmen attached to or working out of a New York State office of the taxpayer, the taxpayer's services will be deemed to have been performed in New York State.

Example 2: A taxpayer is a New York State sales agent of a Pennsylvania manufacturer. A salesman working out of the New York State office of the taxpayer received an order in New Jersey. The order was forwarded to the Pennsylvania manufacturer which accepted it, filled it and shipped it direct to the customer. The taxpayer's commission is allocated to New York State..." 20 NYCRR 4-4.3.

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In this instance, the sole office of the Petitioner is in New York. Accordingly, all commissions earned by the taxpayer are allocable to New York, irrespective of the ultimate destination of the goods sold.

DATED: November 24, 1981

s/LOUIS ETLINGER  
Deputy Director  
Technical Services Bureau