

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

TSB-A-81 (8) C
Corporation Tax
December 8, 1981

STATE OF NEW YORK
STATE TAX COMMISSION

ADVISORY OPINION

PETITION NO. C810417A

On April 17, 1981, a Petition for Advisory Opinion was received from Corroon and Black Corporation, Wall Street Plaza, New York, New York 10005.

The issue raised by Petitioner is whether it may compute the eligible business facilities credit, provided for under Article 9-A of the Tax Law, on a combined basis with two of its subsidiaries.

Petitioner is a corporation subject to the Franchise Tax on Business Corporations imposed under Article 9-A of the Tax Law. Petitioner has two subsidiaries, both subject to tax under Article 9-A. These are Corroon and Black Company of New York, Inc. (hereinafter "C & B NY"), which is engaged in business in New York as an insurance broker, and G. L. Hodson & Son, Inc. (hereinafter "Hodson"), which is a reinsurance broker. Petitioner has received a certificate of eligibility relating to its owning or operating an eligible business facility with respect to the year 1980, while C & B NY has received initial approval for such a certificate of eligibility. Hodson, however, has received neither a certificate of eligibility nor initial approval therefor.

Section 210.11 of the Tax Law provides for a credit against tax available to "a taxpayer owning or operating an eligible business facility." The responsibility for determining whether a given facility qualifies as an eligible business facility, and whether a business concern which owns or operates such a facility qualifies for a credit under the Tax Law, lies with the New York State Job Incentive Board. Commerce Law, Art. 4-A. Where such a determination is made before or during a year of such ownership or operation, and where that determination is favorable to the applicant, the Job Incentive Board will grant initial approval of the application for a certificate of eligibility. Subsequent to the close of the year with respect to which initial approval has been granted, and upon satisfactory verification of an affidavit of compliance and any other information which the Board deems pertinent, the Job Incentive Board will issue a certificate of eligibility which not only establishes the applicant's eligibility for the credit but also certifies the amounts of eligible property values and applicable wages, salaries and other personal service compensation to be utilized in computing the credit with respect to the taxable period involved. Commerce Law, §120; Tax Law, §210.11(b)(1) and (2); N.Y.C.R.R. §102.

Inasmuch as Hodson has not been certified by the Job Incentive Board as eligible for the credit provided for under Section 210.11 of the Tax Law it may not apply such credit against its franchise tax. Inasmuch as Petitioner has been so certified, and upon C & B NY's being so certified, each may apply such credit against its franchise tax. However, each must compute its credit separately based on the figures set forth in its separate certificate of eligibility. Except where two or more taxpayers are required or permitted to file their franchise tax returns on a combined basis, there is no provision for computing the eligible business facilities credit on a combined basis.

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In the present instance, the State Tax Commission has not mandated such combined filing nor has it granted permission therefor, with respect to the year 1980 or any subsequent year.

DATED: September 24, 1981

s/LOUIS ETLINGER
Deputy Director
Technical Services Bureau