

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

TSB-A-83(9)C
Corporation Tax
May 9, 1984

STATE OF NEW YORK
STATE TAX COMMISSION

ADVISORY OPINION

PETITION NO. C830603A

On June 3, 1983, a Petition for Advisory Opinion was received from Aluminum Company of Canada, Ltd., Box 6090, Montreal, Quebec, Canada H3C 3H2.

At issue is whether Petitioner, a foreign corporation, would become subject to tax under Article 9-A of the Tax Law if it were to ship certain materials to New York for processing, where metals reclaimed from such materials were returned directly to the foreign corporation.

Petitioner is a manufacturer of primary aluminum. Petitioner's manufacturing process yields a by-product commonly called dross, which contains aluminum. A portion of this aluminum can be economically reclaimed from the dross. Petitioner proposes to ship such dross to a processor in New York who will reclaim the aluminum for an agreed upon fee, and ship such reclaimed metal back to Petitioner. The portion of the dross which cannot be reclaimed is a waste product and will be disposed of by the processor. Title to the dross, and subsequently the reclaimed metal, will remain with Petitioner. The processor is not related to Petitioner.

Section 209.1 of the Tax Law imposes a franchise tax on foreign (including alien) corporations for the privilege of, among other things, owning property within this state. However, there are situations where the ownership of property in New York is not sufficient in magnitude to subject a foreign corporation to tax. For example, the Business Corporation Franchise Tax Regulations provides that a foreign corporation whose income is derived from interstate commerce is not subject to tax if its New York activities do not exceed those prescribed by Public Law 86-272, even where the corporation has samples or automobiles in New York, used exclusively for solicitation. 20 NYCRR 1-3.4(a)(9). Similarly, it has been held that a foreign corporation which ships raw materials or partially finished goods to an unrelated contractor in this state, by whom the goods are processed or finished, is not taxable solely because of the ownership of such property in New York, assuming that the contractor returns the goods to the foreign corporation or ships them to another contractor outside the state. American Association of Advertising Agencies, Inc., State Tax Commission Advisory Opinion, TSB-H-80(32)C.

Accordingly, inasmuch as the ownership of property in New York in the manner described herein is similarly minimal, it would not, by itself, subject Petitioner to the Franchise Tax on Business Corporations imposed under Article 9-A of the Tax Law.

DATED: August 12, 1983

s/FRANK J. PUCCIA
Director
Technical Services Bureau