

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

TSB-A-85 (19) C
Corporation Tax
October 10, 1985

STATE OF NEW YORK
STATE TAX COMMISSION

ADVISORY OPINION

PETITION NO. C840921A

On September 21, 1984, a Petition for Advisory Opinion was received from Preferred Air Freight, Inc., 2414 Morris Avenue, Union, New Jersey 07083.

The issue raised is whether Petitioner is subject to taxation as a transportation corporation under Sections 183 and 184 of the Tax Law or as a business corporation under Article 9-A of the Tax Law.

Petitioner, a New Jersey corporation, is engaged in business as a freight forwarder. It owns no transportation equipment but purchases the services of cargo airlines and truckers. Petitioner contends that the allocation factors set forth for "aviation corporations" do not apply directly to freight forwarders not owning airlines. Petitioner maintains that it should not be subject to tax as a transportation corporation under Sections 183 and 184 of the Tax Law.

Section 209.4 of the Tax Law states, in part:

"Corporations liable to tax under Sections 183 to 186, inclusive, . . . shall not be subject to tax under this article."

Sections 183 and 184 impose franchise taxes on transportation corporations:

"formed for or principally engaged in the conduct of aviation, . . . trucking, . . . or formed for or principally engaged in the conduct of two or more of such businesses...."

A freight forwarder may, depending upon the nature of its activities, be considered a "transportation corporation" for purposes of Sections 183 and 184 of the Tax Law. In People ex rel. N.Y. & A.L. Co. v. Cantor, 239 N.Y. 64, a corporation engaged in a general lighterage and forwarding business without engaging in the transportation of freight as a common carrier was classified as a transportation corporation within the meaning and intent of Section 184. The Court thus construed the statute to include as a transportation corporation taxable under Sections 183 and 184 not only a corporation owning and managing the means of transportation but also a corporation which provides services directly connected with such transportation.

The relationship between the freight forwarder and the shipper must be examined in determining whether a forwarder is subject to Sections 183 and 184 of the Tax Law as a "transportation corporation" or to Article 9-A of the Tax Law as a general business corporation.

A freight forwarder acting as principal in the transportation of property assumes control of and full responsibility for the property being shipped. The forwarder issues the bill of lading and pays all transportation charges made by the carriers. Its activities are similar to those of a common carrier except that it does not own the means used to transport the property. This type of freight forwarder is a transportation corporation subject to Section 183 and 184 of the Tax Law.

Conversely, a freight forwarder acting as an agent of the shipper assumes no responsibility for the property being shipped. The shipper issues the bill of lading and pays the transportation charges made by the carriers. The forwarder is paid only to perform the service of arranging for the transportation of the property. A forwarder acting as an agent is subject to Article 9-A of the Tax Law.

If Petitioner is acting as an agent, as described herein, it is subject to Article 9-A of the Tax Law. However, if Petitioner is acting as principal, it is subject to Sections 183 and 184 of the Tax Law. The method of allocation to be used will be determined in accordance with Section 184.4(f) of the Tax Law.

Section 184.4(f) of the Tax Law states, in part:

"With respect to other types of transportation and transmission corporations. . . the tax commission shall prescribe methods of allocation or apportionment which fairly and equitably reflect gross earnings from all sources within this State."

The method of allocation to be prescribed by the Tax Commission cannot be determined within the scope of an Advisory Opinion. An Advisory Opinion merely sets forth the applicability of pertinent statutory and regulatory provisions to "a specified set of facts." Tax Law, section 171, subd. twenty-fourth; 20 NYCRR 901.1(a). Inasmuch as the method of allocation to be used arises within the content of an Audit, the necessary factual determinations must be made within such context.

DATED: October 8, 1985

s/FRANK J. PUCCIA
Director
Technical Services Bureau

NOTE: The opinions expressed in Advisory Opinions
are limited to the facts set forth herein.