

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

TSB-A-86 (11) C  
Corporation Tax  
June 6, 1986

STATE OF NEW YORK  
STATE TAX COMMISSION

ADVISORY OPINION

PETITION NO. C860106A

On January 6, 1986, a Petition for Advisory Opinion was received from Larsen Leasing, Ltd., 700 Larsen Lane, Bensenville, Illinois 60106.

The issue raised is whether Petitioner is subject to the franchise tax on transportation and transmission corporations imposed under sections 183 and 184 of Article 9 of the Tax Law.

Petitioner states that it is located in Illinois and is principally engaged in the business of leasing trucks without drivers. Petitioner also states that:

1. It transacts no business within New York State.
2. It has no office or business premises or telephone within New York State.
3. It is not incorporated in New York State.
4. It merely uses the highways of New York State for which it pays a highway use tax and is duly licensed to travel through New York State.

Sections 183 and 184 of the Tax Law impose franchise taxes on every foreign corporation, joint-stock company or association formed for or principally engaged in the conduct of a trucking business or formed for or principally engaged in the conduct of a transportation business for the privilege of doing business, or of employing capital, or of owning or leasing property in New York State in a corporate or organized capacity, or of maintaining an office in New York State.

It has been held that the leasing of vehicles with drivers is the conduct of a transportation business subjecting the corporation doing such a business to tax under sections 183 and 184 of the Tax Law (People ex rel. Peter J. Curran Funeral Service Co. v. Graves, 1939, 257 App. Div. 888, 12 N.Y.S. 2d 153).

It has also been held that if more than 50% of a corporation's receipts are from the leasing of trucks without drivers, such corporation is not principally engaged in the transportation business but is functioning as a truck leasing business and would be classified as a corporation subject to tax under Article 9-A of the Tax Law. Joseph Bucciero Contracting, Inc., Advisory Opinion of the State Tax Commission, July 23, 1981, TSB-A-81(5)C.

Since Petitioner is principally engaged in the leasing of trucks without drivers, it is not principally engaged in a transportation or trucking business. Therefore, Petitioner is not subject to the tax imposed under sections 183 and 184 of Article 9 of the Tax Law.

However, Petitioner could be subject to the franchise tax imposed under Article 9-A of the Tax Law.

Section 209.1 of Article 9-A of the Tax Law states that the tax is imposed on every foreign corporation for the privilege of doing business, or of employing capital, or of owning or leasing property in New York State in a corporate or organized capacity or of maintaining an office in New York State for all or any part of each of its fiscal or calendar years.

Pursuant to the provisions of subdivisions (c) and (d) of section 1-3.2 of the Business Corporation Franchise Tax regulations, the leasing of personal property within New York State constitutes an activity which subjects a foreign corporation to tax. The regulations specify by example that a foreign corporation that has no office or other place of business in New York State but leases automobiles to customers in New York State is subject to tax. 20 NYCRR 1-3.2(f)(5)

Accordingly, if Petitioner leases trucks without drivers to New York State customers, Petitioner is leasing property within New York State and, pursuant to Section 1-3.2 of the Business Corporation Franchise Tax regulations, Petitioner is subject to the franchise tax imposed by Article 9-A of the Tax Law. Otherwise, Petitioner is not subject to the franchise tax imposed under Article 9-A of the Tax Law.

DATED: June 6, 1986

s/FRANK J. PUCCIA  
Director  
Technical Services Bureau

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