

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

TSB-A-87 (29) C
Corporation Tax
December 2, 1987

STATE OF NEW YORK
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. C870807A

On August 7, 1987, a Petition for Advisory Opinion was received from Consolidated Edison Company of New York, Inc., 4 Irving Place-Room 208, New York, New York 10003.

At issue is the proper computation of the gross receipts tax imposed by section 186-a of the Tax Law where reduced charges for electricity, gas, steam, and water, in an economic development zone, are mandated pursuant to subdivision 8 of section 186-a.

Subdivision 8 of section 186-a provides that any utility subject to tax under such section and subject to the supervision of the Department of Public Service, must provide, in addition to any other discount, a reduction of three percent in the rate charged for gas, electricity, steam or water sold, or gas, electric, steam or water service rendered, for ultimate consumption or use within an area designated as an economic development zone pursuant to Article 18-B of the General Municipal Law by a certified business, whether incorporated or unincorporated, which has been certified pursuant to Article 18-B of the General Municipal Law, and which has claimed the wages credit (section 210.19, section 606(k), section 1456(e) or section 1511(g) of the Tax Law) during the previous 15 months, as evidenced by a certificate issued by the Tax Commission to such business. For purposes of this rate reduction, retail enterprises, as defined in section 210.12(k) of Article 9-A of the Tax Law, are not entitled to such reduction. Ninety-seven percent of the aggregate of such reductions during the year may be applied as a credit against the tax imposed under section 186-a for that year. Technical Services Bureau Memorandum, TSB-M-86(13) Corporation Tax, dated November 24, 1986.

Petitioner's rates include both a basic commodity charge as well as an additional amount designed to reflect the various gross income taxes Petitioner is required to pay as a result of providing utility services. Petitioner interprets subdivision 8 of section 186-a as requiring it to reduce the final bill to an eligible customer by three percent. Petitioner would then add applicable sales taxes to the reduced final bill. The following example illustrates this approach.

Example

Assume a New York City commercial customer with an April, 1987 electric usage of 500 kilowatt hours. The customer's basic commodity charge for the month, including the fuel adjustment, would be \$69.85. To this would be added the tax factor discussed above to cover the State and City gross income taxes, including the applicable MTA surcharge, at a rate of 6.87%, for a total charge, before sales taxes, of \$74.65. This amount would be reduced by 3% (\$2.24) to \$72.41, to which the 8.25% sales tax would be added before rendering a bill to the customer. (Because Petitioner merely acts as the collector of the customer's sales tax obligation, these computations are irrelevant to the example and are not detailed.)

When computing its State and City gross income tax liability, Petitioner would record \$72.41 as the base on which to compute the tax. With respect to the 3% tax imposed by section 186-a, its liability in the example would be \$2.17. At the same time, it would be entitled to a credit of \$2.17 (97% of \$2.24), thus making Petitioner whole for the mandated three percent reduction in its rates.

Conclusion

Petitioner's procedure outlined in the above example conforms with the requirements of subdivision 8 of section 186-a and achieves a proper result. The credit provided under subdivision 8 of section 186-a equals the gross receipts tax imposed where the gross receipts are derived from sales or services rendered for ultimate consumption or use within an economic development zone. No opinion is rendered with regard to the computation of the New York City tax.

DATED: December 2, 1987

s/FRANK J. PUCCIA
Director
Technical Services Bureau

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