

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

TSB-A-88 (20)C
Corporation Tax
September 16, 1988

STATE OF NEW YORK
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. C880707A

On July 7, 1988, a Petition for Advisory Opinion was received from Mound, Cotton & Wollan, 125 Maiden Lane, New York, New York 10038.

The issues raised are (1) whether a foreign life insurance company not licensed or otherwise qualified to do business in New York State can purchase, for investment purposes, mortgages secured by New York real estate without incurring an obligation to pay New York State franchise taxes, and (2) whether such company would be doing business in New York State if it engages in such activities.

A foreign life insurance company (hereinafter "Company") is licensed in approximately 40 states and does business in those states. However, it is not licensed or qualified to do business in New York State. The Company is considering the purchase of mortgages secured by New York real estate. The mortgages would be purchased through a large corporate broker licensed in New York State. Negotiations would take place both in and out of New York and the contracts could be signed either in or out of New York. In addition, an agent, either in or out of New York, would service the mortgages.

Section 1501(a) of Article 33 of the Tax Law imposes a franchise tax on every foreign insurance 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 its taxable year. An insurance corporation includes a corporation, association, joint stock company or association, person, society, aggregation or partnership, by whatever name known, doing an insurance business.

Section 1510 of the Tax Law imposes a franchise tax based on premiums. The tax is imposed on every foreign insurance corporation authorized to transact business in New York State under a certificate of authority from the Superintendent of Insurance for the privilege of carrying on business in a corporate or organized capacity in New York State.

Section 1505 of the Tax Law limits the amount of taxes imposed by providing that, notwithstanding the provisions of sections 1501 and 1510, the amount of taxes imposed under such sections shall not exceed an amount computed as if such taxes were determined solely under section 1510 at the reduced rate of 2.6%.

Herein, the Company is not authorized to transact business in New York State under a certificate of authority from the Superintendent of Insurance. Therefore, the company is not subject to the premiums tax under section 1510. As a result, the amount of tax that can be imposed under Article 33 is zero, because section 1505 provides that the amount of taxes that can be imposed under both section 1501 and 1510 is limited to the amount of tax computed solely under section 1510.

TSB-A-88 (20)C
Corporation Tax
September 16, 1988

Accordingly, with regard to Issue 1, the Company can purchase, for investment purposes, mortgages secured by New York real estate without incurring franchise tax liability under Article 33 of the Tax Law. In addition, pursuant to section 209.4 of the Tax Law, the Company would not be subject to the franchise tax under Article 9-A of the Tax Law because it is an insurance corporation subject to the franchise taxes under Article 33 of the Tax Law.

As a result of the determination in Issue 1, Issue 2 is moot.

DATED: September 16, 1988

s/FRANK J. PUCCIA
Director
Technical Services Bureau

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