

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

TSB-A-88 (4)C
Corporation Tax
March 4, 1988

STATE OF NEW YORK
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. C870811A

On August 11, 1987, a Petition for Advisory Opinion was received from Overseas Telecommunications Commission (Australia), 50 Main Street, 12th Floor, White Plains, New York 10606.

The issue is whether Petitioner is exempt from the tax imposed by sections 183, 184 and 186-a of the Tax Law because it is a utility owned and operated as a commission of a foreign government.

Petitioner is a body corporate created in 1946 pursuant to the Overseas Telecommunications Act of the Commonwealth of Australia and its headquarters is located in Sydney, Australia. Petitioner is a business enterprise owned and operated by the Australian government under the auspices of Australia's Federal Minister for Communications. Petitioner's principal business activity is to provide international communications services from Australia, including telephone, text services, television, facsimile and maritime services. These services are provided through Petitioner's international cable, satellite and radio networks.

Petitioner has established a business liaison office in White Plains, New York. This office is presently staffed by Australian nationals on temporary assignment. These individuals enter the United States on A2 visas (official duty visas). Generally, A2 visas are granted only to employees of foreign governments.

The personnel in the United States perform representative functions such as providing liaison between the head office and customers and potential customers, liaison with United States carriers and other agencies such as INTELSAT (an international organization located in Washington, D.C. involved in promoting telecommunications on a global basis), collecting market intelligence and providing support for other Petitioner personnel visiting the United States. The personnel assigned to the White Plains office have no authority to conclude contracts. All formal proposals for communication services emanate from Sydney and all service agreements are concluded with Australian customers in Australia.

Petitioner does not provide any telecommunications services within New York State, either through their own lines or through leased lines.

Petitioner contends that an administrative policy exists in the Department of Tax and Finance which exempts foreign utility companies from taxation if the foreign utility is:

- (1) owned by a foreign government, and
- (2) operated as a division or commission of the foreign government.

Section 183 imposes a franchise tax and section 184 imposes an additional franchise tax on every foreign transportation and transmission corporation if its activities include one or more of the following:

- (i) doing business in New York State in a corporate or organized capacity or in a corporate form; or
- (ii) employing capital in New York State in a corporate or organized capacity or in a corporate form; or
- (iii) owning or leasing property in New York State in a corporate or organized capacity or in a corporate form; or
- (iv) maintaining an office in New York State.

Petitioner's maintenance of an office in New York State is sufficient activity in New York to subject it to tax under both section 183 and section 184. Neither section 183 nor section 184 provide that a foreign telecommunications company owned by a foreign government and operated as a division or commission of such foreign government is exempt from tax.

Section 186-a provides that a tax on the furnishing of utility services is imposed upon every utility doing business in New York State that is not subject to the supervision of the State Department of Public Service but does have a gross operating income in excess of \$500. Gross operating income includes receipts from sales of gas, electricity, steam, water, refrigeration, telephony or telegraphy, and from the furnishing of gas, electric, steam, water, refrigeration, telephone or telegraph service for ultimate consumption or use within New York State.

Based on the description of Petitioner's activities, it appears that Petitioner does not have any gross operating income and, therefore, is not subject to the tax imposed by section 186-a.

Accordingly, Petitioner must file returns and pay the tax due under both section 183 and section 184, but is not subject to tax under section 186-a.

DATED: March 4, 1988

s/FRANK J. PUCCIA
Director
Technical Services Bureau

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