

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

TSB-A-93 (17) C  
Corporation Tax  
October 12, 1993

STATE OF NEW YORK  
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. C930422A

On April 22, 1993, a Petition for Advisory Opinion was received from Basil J. Cook Enterprises, Inc., PO Box 480, Route #37, Hogansburg, New York 13655.

The issues raised by Petitioner, Basil J. Cook Enterprises, Inc., are whether Petitioner whose business is performed entirely on a recognized Indian Reservation and is owned by tribal member stockholders is exempt from New York State business corporation franchise tax, and if a New York State corporation doing business on a recognized Indian Reservation, is subject to "Computation of Business Allocation Percentage for Minimum Taxable Income Base"

Petitioner manages a bingo operation located on the St. Regis Mohawk Indian Reservation An northern New York State. Petitioner conducts all of its business on the St. Regis Mohawk Indian Reservation and is incorporated as a New York State corporation. All stockholders are members of the St. Regis Mohawk Indian Tribe. Petitioner contends that if the shareholders of this corporation were partners in a partnership or were a sole proprietorship conducting all its business on the reservation, they would not be subject to New York State personal income tax, and Petitioner questions whether the New York corporation should be treated differently.

It is true that, pursuant to federal Indian law, tribe members residing on a reservation may earn income on that reservation without incurring any liability for State personal income taxes. See, Oklahoma Tax Comm'n v Sac & Fox Nation, \_\_\_ US \_\_\_ (dec. May 17, 1993), and McClanahan v Arizona State Tax Comm'n, 411 US 164 (1973).

However, even if it is assumed that all of the shareholders of Petitioner are resident members of the St. Regis Mohawk Nation, the instant situation does not involve income earned by resident tribe members on a reservation. The entity earning the income in question is not a member of the St. Regis Mohawk Nation residing on that Nation's reservation. It is a New York **domestic corporation** that (unlike a resident Indian tribe member) is subject to New York State's general civil jurisdiction.

Federal Indian treaties and laws do not prohibit states from imposing taxes on income earned by non-Indians and non-members located on the reservation or other lands of a tribe or nation. (411 US 145 (1973) Mescalero Apache Tribe v Jones)

Section 1-2.3(a) of the Business Corporation Franchise Tax Regulations (hereinafter "Regulations") defines a corporation as an entity created as such under the laws of the United States, any state, territory or possession thereof, the District of Columbia, or any foreign country, or any political subdivision of any of the foregoing, which provides a medium for the conducting of

business and the sharing of its gains. Section 1-2.3(a)(1) of the Regulations defines the term **domestic corporation** as a corporation incorporated by or under the laws of New York State.

Section 209.1 of the Tax Law imposes, annually, a franchise tax on every corporation for the privilege of exercising its corporate franchise, or 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.

As a domestic corporation, Petitioner is subject to all New York State Laws generally applicable to domestic corporations, including the New York State business corporation franchise tax imposed under Article 9-A of the Tax Law.

Petitioner also asks whether it is subject to the "Computation of Business Allocation Percentage for Minimum Taxable Income Base". Section 210.1 of the Tax Law provides that the tax imposed by section 209.1 of the Tax Law shall be the sum of (1) the highest of the amounts prescribed in paragraphs (a) [entire net income base], (b) [capital base], (c) [minimum taxable bases] and (d) [fixed dollar minimum] of section 210.1 and (2) the amount prescribed in paragraph (e) [subsidiary capital base] of section 210.1. A taxpayer's entire net income base means the portion of the taxpayer's entire net income allocated within New York State. A taxpayer's minimum taxable income base means the portion of the taxpayer's minimum taxable income allocated within New York State. The business allocation percentage is computed pursuant to section 210.3(a) of the Tax Law, and the business allocation percentage for minimum taxable income base is computed pursuant to section 210.3-a of the Tax Law. The portion of the St. Regis Mohawk Indian Reservation that is located in the United States (as opposed to the Canadian portion) is physically located within New York State, and such portion must be treated as "within New York" for purposes of computing the business allocation percentage and the business allocation percentage for minimum taxable income.

DATED: October 12, 1993

s/PAUL B. COBURN  
Deputy Director  
Taxpayer Services Division

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