

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

TSB-A-93 (18) C
Corporation Tax
October 18, 1993

STATE OF NEW YORK
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. C930621B

On June 21, 1993, a Petition for Advisory Opinion was received from Swanknit Inc., 100 No. Mohawk Street, Cohoes, New York 12047.

The issue raised by Petitioner, Swanknit Inc., is whether sales to a New York corporation where delivery is made to out-of-state destinations are considered to be out-of-state sales for purposes of the business allocation percentage under Article 9-A of the Tax Law.

Petitioner, a New York corporation, is located in Cohoes, New York. It manufactures children's clothing which it sells to various customers located throughout the United States. These sales are customarily shipped by common carrier F.O.B. Cohoes, New York.

Customer A, is located in New York City. It is a wholesaler who resells the merchandise to its own customers. Customer A requests Petitioner to ship the merchandise directly from Petitioner's factory to Customer A's customers. In almost every instance, those shipments are made to locations outside New York State.

Section 210.3(a)(2)(A) of the Tax Law provides that, for purposes of computing the receipts factor of the business allocation percentage, receipts from sales of tangible personal property are allocated to New York State where shipments are made to points within New York State.

Further, section 4-4.2 of the Business Corporation Franchise Tax Regulations states:

Receipts from sale of tangible personal property are allocable 100 percent to New York State where shipments are made to points in this State. Tangible personal property is considered to be shipped to a point in New York State if:

(a) the property is shipped via common carrier or via taxpayer's truck to a point in New York State designated on the bill of lading or other shipping document, regardless of the F.O.B. point; or

(b) the property is delivered to a purchaser at a point in New York State.

Example 1: A taxpayer has its factory in New York State. A customer located in New Jersey comes into New York State in its own truck or one rented by it and picks up its purchase at the taxpayer's factory. The receipts from such sale must be allocated to New York State.

In W.A. Krueger Company, Adv Op St Tax Comm, May 29, 1987, TSB-A-87(13)C, it was held that where books, magazines and catalogs are shipped by the petitioner to its customers located in New York State or to designees of its customers located in New York State, in bulk, via common carrier or through the mails, the receipts from such sales are properly allocated to New York State and must be included in the numerator of the petitioner's receipts factor.

Herein, Petitioner manufactures children's clothing which it sells to various customers throughout the United States. Petitioner ships such goods via common carrier to its customers or its customer's designees. Where such shipments are to points within New York State, the receipts from those sales are allocable to New York State and must be included in the numerator of the receipts factor for purposes of computing the business allocation percentage in accordance with Section 210.3(a)(2)(A) of the Tax Law and Section 4-4.2 of the Business Corporation Franchise Tax Regulations. Where shipments are to points without New York State, the receipts from those sales are not included in the numerator of the receipts factor. The denominator of the receipts factor must include the receipts from all Sales of tangible personal property.

DATED: October 18, 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.