

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

TSB-A-93 (19) C
Corporation Tax
October 18, 1993

STATE OF NEW YORK
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. C930707A

On July 7, 1993, a Petition for Advisory Opinion was received from Video Aid Corporation, c/o PO Box 630, Warwick, New York 10990.

The issue raised by Petitioner, Video Aid Corporation, is what is the proper method of determining the portion of its income from extended warranty contracts on tangible personal property that is taxable in New York State.

Petitioner, a subsidiary of VAC Corporation, is a Delaware corporation that has an office in New York State and employs workers in New York. Petitioner services extended warranty contracts on tangible personal property for customers throughout the United States. A customer in a state purchases from a retailer in that state an extended warranty contract on tangible personal property which guarantees that any repair on that property will be done at no cost to the customer. The retailer, in turn, contracts with Petitioner to service the warranty contract and therein relinquishes all responsibility of the warranty contract to Petitioner. If the property becomes defective, the customer reports it to Petitioner, not the retailer, who in turn contracts a service shop in that state to repair the property. The cost of the repair, both labor and parts, are paid by Petitioner. There is no cost to the consumer. Any renewal of the extended service warranty is done by Petitioner from its New York office.

Section 209.1 of the Tax Law imposes 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. Every corporation shall pay the franchise tax annually upon the basis of the corporation's entire net income base, or upon such other basis as may be applicable.

Section 210.1(a) of the Tax Law provides that the taxpayer's entire net income base means the portion of the taxpayer's entire net income allocated within New York State. Section 208.9 of the Tax Law defines "entire net income" as the total net income from all sources, which shall be presumably the same as the entire taxable income (but not alternative minimum taxable income) which the taxpayer is required to report to the United States Treasury Department, except as modified pursuant to such section 208.9 and 210.3(d) and (e) of the Tax Law.

Section 210.3 of the Tax Law provides that the portion of a taxpayer's entire net income to be allocated within New York State is determined by multiplying its business income by its business allocation percentage and multiplying its investment income by its investment allocation percentage. The business allocation percentage consists of three factors-- property, payroll, and receipts.

For purposes of section 210.3(a)(2) of the Tax Law, the receipts factor is determined by (1) ascertaining the taxpayer's business receipts within New York State during the period covered by the report and (2) dividing the sum of such receipts by the taxpayer's total business receipts within and without New York State during such period.

Section 4-4.1(b) of the Business Corporation Franchise Tax Regulations provides that:

All business receipts for the period covered by the report, computed on a cash or accrual basis according to the method of accounting used in the computation of its entire net income, must be taken into account. The following business receipts are allocable to New York State:

- (1) 100 percent of receipts from sales of tangible personal property where shipments are made to points within New York State;
- (2) 100 percent of receipts from services performed in New York State;
- (3) 100 percent of rentals from property situated in New York State;
- (4) 100 percent of royalties from the use of patents or copyrights in New York State;
- (5) all other business receipts earned in New York State.

Herein, Petitioner's receipts are from (1) its contract with a retailer to service an extended service warranty contract that the retailer sold to its customer and (2) from the renewal of such extended service warranty contract. These receipts fall within the category of "other business receipts" and are allocated within New York State when earned in New York State.

Since Petitioner's efforts attributable to the renewal of an extended service warranty contract are performed in New York State, therefore, the receipts from such contracts are earned in New York State pursuant to section 210.3(a)(2) of the Tax Law and section 4-4.1(b) of the Regulations thereunder, and must be included in the numerator of the receipts factor of the business allocation percentage.

In addition, where Petitioner's activities attributable to entering into a contract with a retailer, to service an extended service warranty contract that the retailer sold to its customer, are performed in New York State, Petitioner's receipts from such contract are earned in New York State pursuant to section 210.3(a)(2) of the Tax Law and section 4-4.1(b) of the Regulations thereunder, and must also be included in the numerator of the receipts factor of the business allocation percentage.

All business receipts must be included in the denominator of the receipts factor of the business allocation percentage.

DATED: October 18, 1993

s/PAUL B. COBURN
Deputy Director
Taxpayer Services Division

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