

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

TSB-A-93 (2) C
Corporation Tax
January 11, 1993

STATE OF NEW YORK
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. C921021A

A Petition for Advisory Opinion was received from Edgewood Industries, Inc., 3 Forest Lane, Scarsdale, New York 10583.

The issue raised by Petitioner, Edgewood Industries, Inc., is whether it is subject to the metropolitan transportation business (hereinafter "MTB") tax surcharge for taxable year June 1, 1991 to May 31, 1992.

Petitioner is in the computer leasing business. Petitioner maintains an office in the metropolitan commuter transportation district (hereinafter "MCTD") but all of its leasing business takes place in New Jersey.

Petitioner's business consists of equipment sales and leasing all of which occurs in New Jersey. Petitioner's activities in the MCTD are limited to solicitation of orders for sale or lease of tangible personal property. The orders are sent outside the MCTD to New Jersey for approval or rejection and, if approved, are filled by shipment or delivery from points outside the MCTD to points outside the MCTD.

Section 209-B.1 of Article 9-A of the Tax Law, provides that the MTB tax surcharge is imposed on every corporation, other than a New York S corporation, subject to tax under section 209 of the Tax Law for the privilege of exercising its corporate franchise, or of doing business, or of employing capital, or of owning or leasing property in a corporate or organized capacity, or of maintaining an office in the MCTD for all or any part of its taxable year.

Section 209-B.6 of the Tax Law provides that the term MCTD is defined pursuant to section 1262 of the Public Authorities Law. Such section 1262 provides that the MCTD includes the counties of New York, Bronx, Queens, Kings, Richmond, Dutchess, Nassau, Orange, Putnam, Rockland, Suffolk and Westchester.

Pursuant to Public Law 86-272 (15 USCA § 381-384) a foreign corporation is not subject to the tax imposed by section 209-B of Article 9-A of the Tax Law if its activities within the MCTD are limited to the solicitation of orders by the corporation's representatives or independent contractors for sales of tangible personal property, which orders are sent outside the MCTD for approval or rejection, and which if approved, are filled by shipment or delivery from a point outside the MCTD.

However, herein Petitioner's maintenance of an office within the MCTD is an activity that exceeds the mere solicitation of orders and therefore, Petitioner is not exempt from the MTB tax surcharge by virtue of Public Law 86-272.

Accordingly, for taxable year June 1, 1991 to May 31, 1992, Petitioner is subject to the MTB tax surcharge pursuant to section 209-B of the Tax Law.

DATED: January 11, 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.