

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

TSB-A-96 (25) C  
Corporation Tax  
November 7, 1996

STATE OF NEW YORK  
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. C960607B

On June 7, 1996, a Petition for Advisory Opinion was received from Deloitte & Touche LLP, Attn: Russell W. Banigan, Two World Financial Center, South Tower, 8th Floor, New York, New York 10281-1426.

The issue raised by Petitioner, Deloitte & Touche LLP, is whether, for purposes of computing the receipts factor of the business allocation percentage under Article 9-A of the Tax Law, the sales of Corporation B's securities are sourced to the locations from which the Corporation A account executives sold the securities.

Petitioner submits the following facts as the basis for this Advisory Opinion.

Corporation A and Corporation B are dealers of marketable securities. Both entities are members of the same federal consolidated return group and the same combined report group under Article 9-A of the Tax Law. Corporation A has property and payroll in several states (including New York), while Corporation B has property and payroll only in New York State.

Corporation A has a multistate network of account executives which market its financial products and those of its affiliates. A substantial portion of Corporation B's securities are sold through Corporation A's multistate network of account executives. Corporation B is charged for the compensation paid to Corporation A's account executives for selling Corporation B's securities. In addition, Corporation B is charged for a portion of Corporation A's branch office selling expenses (advertising, occupancy, telecommunications, clerical compensation, supplies, etc.)

Section 4-4.6(a) of the Business Corporation Franchise Tax Regulations ("Article 9-A Regulations") provides that receipts from the sale of intangible personal property included in business capital, held by the taxpayer as a dealer for sale to customers in the regular course of its business, are business receipts and are allocated to New York State if the sales were made in New York State or through a New York State office of the taxpayer.

Section 4-1.2 of the Article 9-A Regulations provides that "[i]n the case of combined reports, allocation is made on the basis of combined accounts from which intercorporate items including intercorporate receipts are eliminated."

Section 4-4.7 of the Article 9-A Regulations provides that the "receipts factor on a combined report is computed as though the corporations included in the report were one corporation. All intercorporate business receipts are eliminated in computing the combined business receipts factor. Intercorporate receipts are receipts by any corporation included in the combined report from any other corporation included in the combined report. As to when combined reports will be required or permitted, see Subpart 6-2 of this Title."

In this case, it is assumed that Corporation A and Corporation B are permitted or required to file a combined report pursuant to Subpart 6-2 of the Article 9-A Regulations.

Pursuant to sections 4-1.2 and 4-4.7 of the Article 9-A Regulations, the combined activities of the combined group are used in computing the receipts factor of the business allocation percentage on a combined report. The factor is computed as though the corporations included in the combined report were one corporation. Intercorporate dividends and all other intercorporate transactions between the corporations included in the combined report are eliminated.

Accordingly, where Corporation A and Corporation B file a combined report pursuant to Subpart 6-2 of the Article 9-A Regulations, section 4-4.7 of the Article 9-A Regulations provides that the activities of both Corporation A and Corporation B are considered when sourcing the receipts from the sale of Corporation B's securities that are sold through Corporation A's account executives. Pursuant to section 4-4.6(a) of the Article 9-A Regulations, the receipts from the sale of Corporation B's securities that are held by Corporation B as a dealer of marketable securities for sale to customers in the regular course of its business and included in business capital, are sourced in New York State if the sales were made in New York or through a New York office of either Corporation B or Corporation A.

DATED: November 7, 1996

/s/  
John W. Bartlett  
Deputy Director  
Technical Services Bureau

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