

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

TSB-A-96 (9) C  
Corporation Tax  
March 25, 1996

STATE OF NEW YORK  
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. C951030A

On October 30, 1995, a Petition for Advisory Opinion was received from Hurry Wagon, Inc., 10 Cairn Street, Rochester, New York 14611.

The issue raised by Petitioner, Hurry Wagon, Inc., is whether it may include its independent operators' revenue mileage in determining revenue miles for purposes of the mileage allocation for transportation corporations under section 184 of the Tax Law.

Petitioner's principal business activity is overnight package delivery in an area which includes all of upstate New York and excludes Manhattan and Long Island. In pursuing its business activities, Petitioner has adopted a scheme involving nodes and spokes, similar to that adopted by national package carriers. Petitioner has divided upstate New York into regions, each serviced by a central node. Currently, the nodes are located in Albany, Syracuse, Buffalo and Forrestville, New York. Each node services all of its customers in its region.

Petitioner maintains a primary warehouse for the receipt and distribution of packages in Rochester, and small drop-off points in each of its regional nodes. Once a package reaches a regional node, shipment from the node to the ultimate user is accomplished through the use of independent operators. A few of Petitioner's independent operators travel out-of-state to pick-up and forward freight to a New York destination.

Section 184 of the Tax Law imposes an annual franchise tax on a domestic or foreign corporation formed for or principally engaged in the conduct of a transportation business for the privilege of exercising its corporate franchise, doing business, employing capital, owning or leasing property in a corporate or organized capacity or maintaining an office in New York State.

Section 184.4(a) of the Tax Law provides that:

[a] transportation ... corporation shall determine its gross earnings from transportation ... services within this state ... by multiplying its gross earnings from transportation ... within and without the state by a fraction, the numerator of which is the taxpayer's mileage within this state and the denominator of which is the taxpayer's mileage within and without this state during the period covered by the report or reports required by this chapter.

With respect to trucking corporations, "mileage" in the context of section 184.4(a) of the Tax Law means actual revenue miles for purposes of both the numerator and denominator of the allocation fraction. Nonrevenue miles, such as deadheading, are not included in either the numerator

or denominator of the allocation fraction. The allocation formula with respect to trucking corporations takes into account actual revenue producing activity both within and without New York State. (See, Technical Services Bureau Memorandum, March 12, 1982, TSB-M-82(9)C.)

In Hygrade Furniture Transport, Inc., Dec St Tax Comm, April 15, 1986, TSB-H-86(16)C, the petitioner contracted with furniture and department stores to deliver furniture sold to the stores' customers. The petitioner then entered into contracts with independent truckers to provide the transportation services for the delivery. Petitioner did not own any trucks or employ its own drivers. The stores paid the petitioner for the delivery service and the petitioner, in turn, paid a commission to the truckers. The Tax Commission held that since the petitioner entered into the contracts with the stores and agreed that it would provide the services and accepted responsibility for any damages it caused, the petitioner held itself out to the public as a provider of transportation services. The truckers were employed by the petitioner, not the stores, and therefore, the petitioner was providing the transportation delivery services for the stores, and not merely acting as a conduit through which the stores entered into contracts with the independent truckers. Therefore, it could not allocate its fees received from the stores between itself and the independent truckers.

Following the decision in Hygrade, supra, Petitioner argues that when allocating revenue miles for purposes of section 184.4(a) of the Tax Law, Petitioner should be allowed to include the revenue miles of its independent operators that provide a portion of Petitioner's transportation delivery services.

However, section 184.4(a) of the Tax Law, which provides for the allocation of gross earnings from transportation services, specifically states that a taxpayer shall multiply "its gross earnings from transportation ... within and without the state by a fraction, the numerator of which is the taxpayer's mileage within this state and the denominator of which is the taxpayer's mileage within and without this state .... " (Emphasis added.)

Accordingly, when Petitioner allocates its gross earnings from transportation services under section 184.4(a) of the Tax Law, it may include, in the numerator and denominator of the fraction, only its own revenue mileage within and without New York State. Petitioner may not include, as revenue miles, the revenue mileage of any independent operator that Petitioner has contracted with to assist Petitioner in its transportation delivery services.

It should be noted that section 184.4(e) of the Tax Law provides that when the Commissioner of Taxation and Finance decides that the method prescribed above does not fairly and equitably reflect gross earnings from all sources within New York State, the Commissioner shall prescribe a method of allocation or apportionment which fairly and equitably reflects gross earnings from all sources within New York State.

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However, an Advisory Opinion merely sets forth the applicability of pertinent statutory and regulatory provisions to "a specified set of facts." Tax Law, §171.24; 20 NYCRR 2376.1(a). It is not within the scope of an Advisory Opinion to determine questions of fact such as whether a discretionary adjustment under section 184.4(e) of the Tax Law should be granted.

DATED: March 25, 1996

s/DORIS S. BAUMAN  
Director  
Technical Services Bureau

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