

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

TSB-A-97(22)C  
Corporation Tax

STATE OF NEW YORK  
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. C970616A

On June 16, 1997, a Petition for Advisory Opinion was received from Merrill Lynch & Co., Inc., Two World Financial Center, 7th Floor, Tax Dept., New York, New York 10080-0748.

The issue raised by Petitioner, Merrill Lynch & Co., Inc., 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 Merrill Lynch Government Securities Inc. ("GSI") securities are sourced to the locations from which Merrill Lynch Pierce Fenner & Smith Incorporated ("PFS") financial consultants sold the securities.

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

Both PFS and GSI are dealers of marketable securities. PFS has property and payroll in every state of the United States, while GSI has property and payroll only in New York State. Both PFS and GSI are subsidiaries of Petitioner and are included in a New York State combined report group with Petitioner.

PFS has a multistate network of financial consultants which market its financial products and those of its affiliates. A substantial portion of GSI's securities are sold through PFS's multistate network of financial consultants. GSI is charged for the compensation paid to PFS's financial consultants for selling GSI's securities. In addition, GSI is charged for a portion of PFS'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."

This issue was addressed in Deloitte & Touche LLP, Adv Op Comm T & F, November 7, 1996, TSB-A-96(25)C, which had a similar fact pattern. In that opinion, it was held that where Corporation A and Corporation B file a combined report, section 4-4.7 of the Article 9-A Regulations provides that the activities of both corporations are considered when sourcing the receipts from the sale of Corporation B's securities that are sold through Corporation A's account executives. Further, under section 4-4.6(a) of the Article 9-A Regulations, the receipts from the sale of Corporation B's securities 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.

In this case, it is assumed that PFS and GSI are permitted or required to file a combined report with Petitioner 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 PFS and GSI file a combined report with Petitioner 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 PFS and GSI are considered when sourcing the receipts from the sale of GSI's securities that are sold through PFS's financial consultants. Pursuant to section 4-4.6(a) of the Article 9-A Regulations, the receipts from the sale of GSI securities that are held by GSI 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 GSI or PFS. Otherwise, these receipts are not sourced in New York State.

DATED: August 12, 1997

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

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