

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

TSB-A-99(26)C
Corporation Tax
November 3, 1999

STATE OF NEW YORK
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. C990423A

On April 23, 1999, a Petition for Advisory Opinion was received from American Steamship Company, 500 Essjay Road, Williamsville, New York 14221.

The issue raised by Petitioner, American Steamship Company, is whether a gain on a residual sharing agreement related to the sale of an asset by a sister corporation is excluded from gross receipts for purposes of section 184 of Article 9 of the Tax Law.

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

Petitioner is located in Buffalo, New York and is a New York corporation engaged in a Great Lakes shipping business. GATX Capital corporation, a finance company, is located in San Francisco, California. Both Petitioner and GATX Capital are subsidiaries of GATX Corporation.

GATX Capital owned a Great Lakes vessel that was leased to and operated by Transtar Corporation, a Pennsylvania Corporation. GATX Capital sold its beneficial ownership interest in the vessel to Transtar Corporation. The sale of the vessel took place outside New York State, and was finalized in the second quarter of 1999. The vessel was located in the Great Lakes outside of New York.

In connection with the sale of the Great Lakes vessel owned by GATX Capital, Petitioner entered into a residual sharing agreement with GATX Capital. Under the agreement, Petitioner provided GATX Capital with information, via telephone from New York, relative to operating characteristics of Great Lakes vessels and the general market conditions in the Great Lakes industry to aid GATX Capital in determining the selling price of its vessel. In return for this activity, Petitioner will receive a 20 percent share of the sale proceeds in excess of GATX Capital's required residual value for the vessel. The income received as a result of the residual sharing agreement will be reflected as a component of Petitioner's gross earnings in 1999, and will be recorded as "gain on residual sharing agreement" on its financial statements.

Discussion

Section 184.1 of the Tax Law imposes a franchise tax on a taxpayer's gross earnings from all sources within New York State, excluding earnings derived from business of an interstate character.

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Gross earnings means all receipts arising from or growing out of the employment of capital, whether that capital is employed in the transportation and transmission business or otherwise. (People ex rel. NY Central & Hudson River R.R. Co. v Roberts, 32 App Div 113, affd, 157 NY 677)

In the Matter of ITT World Communications, Inc., Dec St Tax Commn, December 2, 1981, TSB-H-81(62)C, the petitioner was authorized to conduct business internationally in the area of record communications. It could send communications from a point within the United States to some other part of the world outside of the United States. Its three major lines of business were messages, the international counter part to the domestic telegram; telex; and leasing of communication circuits to customers. It was held, in part, that the fees received by the petitioner that represented charges for sending money and flower orders overseas in connection with an international transaction, were fees received for services that were rendered by the petitioner in New York, and constituted gross earnings subject to tax under section 184 of the Tax Law.

In this case, under the residual sharing agreement, Petitioner provided GATX Capital with information, via telephone from New York, relative to operating characteristics of Great Lakes vessels and the general market conditions in the Great Lakes industry to aid GATX Capital in determining the selling price of the vessel it was selling. In return, Petitioner will receive 20 percent of the sale proceeds in excess of GATX Capital's required residual value for the vessel. This receipt recorded on Petitioner's financial statements as "gain on residual sharing agreement" is Petitioner's compensation for the performance of services pursuant to the sharing agreement.

Since, with respect to the residual sharing agreement, Petitioner performed its services in New York State, Petitioner's receipt from the residual sharing agreement, like the fees from sending money and flower orders overseas in ITT World Comm, supra, constitutes gross earnings from sources within New York and is subject to tax under section 184 of the Tax Law.

DATED: November 3, 1999

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

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