

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

TSB-H-80 (32)C
Corporation Tax
November 14, 1980

STATE OF NEW YORK
STATE TAX COMMISSION

ADVISORY OPINION

PETITION NO. C800820A

On August 20, 1980, a Petition for Advisory Opinion was received from American Association of Advertising Agencies, Inc. (AAAA), 200 Park Avenue, New York, New York 10017.

Advertising agencies located in New York perform services for non-New York customers, some of which customers are not otherwise subject to New York's Franchise Tax on Business Corporations imposed under Article 9-A of the Tax Law. In performing such services the advertising agency may purchase, as agent for its customer, various materials used in the performance of such services. These materials, for example photoengraving plates and drawings, become the property of the non-New York customer. The issue raised in the Petition is whether the ownership of such materials within this state by a foreign corporation would subject the corporation to the Franchise Tax.

Section 209.1 of the Tax Law imposes a franchise tax on foreign corporations for the privilege of, among other things, owning property within this state. However, there are situations where the ownership of property in the state is not sufficient in magnitude to subject a corporation to tax. For example, the Business Corporation Franchise Tax Regulations provide that a foreign corporation whose income is derived from interstate commerce is not subject to tax if its New York activities do not exceed those prescribed by Public Law 86-272, even where the corporation has samples or automobiles in the state used exclusively for solicitation. 20 NYCRR 1-3.4(a)(9). Similarly, it has been held that a foreign corporation which ships raw materials or partially finished goods to an unrelated contractor in this state, by whom the goods are processed or finished, is not taxable solely because of the ownership of such property in New York, assuming that the contractor returns the goods to the foreign corporation or ships them to another contractor outside the state.

Petitioner is advised that the ownership of property in New York by a foreign corporation in the manner described by Petitioner is similarly minimal and would not in itself subject such corporation to the Franchise Tax on Business Corporations imposed under Article 9-A of the Tax Law.

Dated: November 7, 1980

s/LOUIS ETLINGER
Deputy Director
Technical Services Bureau