

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

TSB-H-81(16)C  
Corporation Tax  
March 5, 1981

STATE OF NEW YORK  
STATE TAX COMMISSION

ADVISORY OPINION

PETITION NO. C810121A

On January 21, 1981 a Petition for Advisory Opinion was received from Philanthropy Management, Inc., 2 West 45 Street, New York, N.Y. 10036.

The question raised in the Petition concerns Petitioner's right to allocate business income within and without the State, under the Franchise Tax on Business Corporations imposed under Article 9-A of the Tax Law.

Petitioner is a corporation taxable under Article 9-A of the Tax Law, which is engaged in the business of "fund raising". Its major customers are universities located throughout the United States. Office space is rented in New York City and used to see out of town clients. The principal officers of the corporation travel to the universities and spend little time in New York. In addition, the corporation hires project directors and solicitation staffs located at the universities. The corporation occasionally uses the services of a university's own staff.

Section 210.3(a)(4) of the Tax Law, contained in Article 9-A, gives every corporation taxable under Article 9-A the right to allocate business income within and without the state. Prior to a 1978 amendment to that provision a corporation was permitted such allocation only if it had a regular place of business (other than a statutory office) located outside of New York. The present method of allocating business income is prescribed in section 210.3(a) of the Tax Law and Subparts 4-2 through 4-5 of the Business Corporation Franchise Tax Regulations.

Section 4-4.3(f)(1) of the Franchise Tax Regulations provides that "where a lump sum is received by the taxpayer in payment of services performed within and without New York State, the portion of the sum attributable to services performed within New York State is determined on the basis of the relative values of or amounts of time spent in performance of such services within and without New York State, or by some other reasonable method. Full details must be submitted with the taxpayer's report." 20 NYCRR 4-4.3(f)(1). Thus, income for services performed is allocated to the place where the services were performed, and this rule would be applicable to Petitioner in accordance with the facts of the performance of each contract.

DATED: February 18, 1981

s/LOUIS ETLINGER  
Deputy Director  
Technical Services Bureau