

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

TSB-H-81(18)C
Corporation Tax
March 5, 1981

STATE OF NEW YORK
STATE TAX COMMISSION

ADVISORY OPINION

PETITION NO. C810112C

On January 12, 1981, a Petition for Advisory Opinion was received from Glen Oaks Sales Co., Inc., 16 East 34th Street, New York, New York 10016.

Petitioner inquires as to the proper method of allocating receipts for commissions on sales, made within and without New York State, under the Franchise Tax on Business Corporations imposed under Article 9-A of the Tax Law.

Petitioner states that it is a New York Corporation which is a selling agent for a Delaware corporation doing business in the State of Texas. Petitioner employs resident salesmen in various states in the United States and in addition maintains sales offices in California and Illinois. None of the salesmen are required to nor do they come to the New York office of Petitioner. All orders are mailed to the New York office. Contact with the salesmen is maintained by telephone or at various trade shows throughout the United States. The salesmen are supervised by district managers who also live outside New York State. All employees are paid from the administrative office in New York. Petitioner seeks to allocate income from sales commissions according to the state where earned.

Section 210.3 of the Tax Law, contained in Article 9-A, provides for an allocation of a taxpayer's entire net income within and without New York. A taxpayer's business income is allocated to New York by multiplying the same by a business allocation percentage. One of the factors making up this business allocation percentage is the ratio, expressed as a percentage, of the taxpayer's receipts attributable to New York to its receipts from all sources. The Franchise Tax Regulations provide rules for determining which receipts are so attributable to New York and which are not. Sales commissions are treated as receipts from compensation for services, to which the following applies:

"(a) The receipts from services performed in New York State are allocable to New York State. All receipts from such services are allocated to New York State whether the services were performed by employees, agents or subcontractors of the taxpayer, or by any other persons. It is immaterial where such receipts are payable or where they are actually received.

(b) Commissions received by a taxpayer are allocated to New York State if the services for which the commissions were paid were performed in New York State. If the services for which the commissions were paid were performed by the taxpayer or by salesmen attached to or working out of a New York State office of the taxpayer, the taxpayer's services will be deemed to have been performed in New York State." 20 NYCRR 4-4.3

Accordingly, receipts from commissions where the services for which the commissions were paid were performed in New York are attributable to New York. Where such services were performed by Petitioner's salesman other than in New York the commission income may not, as Petitioner suggests, simply be attributed to the state where the services were performed. Rather, such commission income would be attributable to New York in those instances where the salesman

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performing the service giving rise to the income was "attached to or working out of a New York State office of the taxpayer." Based on Petitioner's statement of facts, its receipts from commissions are attributable to New York except for commissions on sales made by salesmen working out of or attached to Petitioner's offices in California or Illinois.

DATED: March 3, 1981

s/LOUIS ETLINGER
Deputy Director
Technical Services Bureau