

**New York State Department of Taxation and Finance  
Office of Counsel  
Advisory Opinion Unit**

TSB-A-08(3.1)C  
Corporation Tax  
July 2, 2014

STATE OF NEW YORK  
COMMISSIONER OF TAXATION AND FINANCE

MODIFIED ADVISORY OPINION    PETITION NO. C080122A

An Advisory Opinion was issued to [REDACTED] on April 29, 2008, with respect to Petition No. [REDACTED]. Petitioner asked whether it was subject to tax in New York State under Article 33 or Article 9-A of the Tax Law. That Advisory Opinion, published as TSB-A-08(3)C, is modified to conclude that, while Petitioner is subject to tax under Article 33, the limitation on tax in § 1505 (a)(2) does not apply and Petitioner's tax should be calculated under Tax Law § 1502.

**Facts**

The applicable facts are those stated in TSB-A-08(3)C.

**Analysis**

The Advisory Opinion issued in 2008 to Petitioner concluded that Petitioner would be subject to tax under Article 33 of the Tax Law, provided that the partnership in which it was a limited partner was not a portfolio investment partnership. This conclusion is correct. The Advisory Opinion also concluded that, because Petitioner did not have a certificate of authority from the Superintendent of Insurance to conduct an insurance business in New York, Petitioner did not have taxable premiums under § 1510 of the Tax Law and the limitation computed under § 1505 was zero. In 2012, the Department of Taxation and Finance issued a technical memorandum, TSB-M-12(4)C, to announce, in part, that the Department was changing its interpretation of the limitations in § 1505 as they applied to unauthorized life insurance companies. The TSB-M concluded that, since unauthorized life insurance corporations are not subject to the additional premiums tax imposed under § 1510(b)(1), the tax on these corporations is not limited by § 1505(a)(2). The Department determined that this was a better interpretation of the statutory provisions. Because this was a change from an earlier interpretation, contained in advisory opinions, the Department applied this change to taxable years beginning on or after January 1, 2012. However, under Tax Law § 171 (24<sup>th</sup>), an Advisory Opinion is binding on the Department with respect to the person to whom the opinion is rendered and may be modified prospectively only. Therefore, this modification of TSB-A-08(3)C is necessary to apply the Department's changed interpretation of the statute to the Petitioner. Commencing with the Petitioner's taxable year beginning after this modified Advisory Opinion is issued, Petitioner, as an unauthorized life insurance corporation subject to tax under Article 33 of the Tax Law, is

required to pay the tax on the highest of the four Article 33 tax bases, plus any applicable tax on allocated subsidiary capital computed pursuant to § 1502 of the Tax Law, and these taxes are not limited pursuant to § 1505 of the Tax Law.

DATED: July 2, 2014

/S/  
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DEBORAH R. LIEBMAN  
Deputy Counsel

NOTE: An Advisory Opinion is issued at the request of a person or entity. It is limited to the facts set forth therein and is binding on the Department only with respect to the person or entity to whom it is issued and only if the person or entity fully and accurately describes all relevant facts. An Advisory Opinion is based on the law, regulations, and Department policies in effect as of the date the Opinion is issued or for the specific time period at issue in the Opinion. The information provided in this document does not cover every situation and is not intended to replace the law or change its meaning.