

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

TSB-A-81 (1) C  
Corporation Tax  
July 1, 1981

STATE OF NEW YORK  
STATE TAX COMMISSION

ADVISORY OPINION

PETITION NO. C801112A

On November 12, 1980 a Petition for Advisory Opinion was received from Martin Marietta Corporation, 6801 Rockledge Drive, Bethesda, Maryland 20034.

The issue raised is the proper method for computing the gain or loss on the disposition of assets acquired in 1968, and upon which New York optional depreciation was claimed.

In 1968, Petitioner purchased various assets for its plants located in Haverstraw and Tarrytown, New York, at a cost of \$3,075,256. On its 1968 franchise tax report, Petitioner elected to claim optional depreciation with respect to this property, pursuant to Section 210.3(e)(1) of the Tax Law. The total amount of allowable optional depreciation, based upon the allocated cost of the property, was \$75,569, and such amount was claimed in full in 1968. In subsequent years, a total of \$2,968,694, representing federal depreciation, was added back in the computation of New York entire net income.

In 1978 the Haverstraw and Tarrytown, New York plants were sold, realizing a gain for federal purposes of \$2,115,261 on the entire transaction, which is being reported on the installment basis. Petitioner allocated none of the proceeds of the sale to the property on which optional depreciation was claimed. However, no information was furnished establishing a basis for such allocation.

Section 210.3(e)(6) of the Tax Law provides, in pertinent part, that in computing the gain or loss upon the sale or disposition of property upon which optional depreciation had been claimed, the basis of the property sold or disposed of shall be adjusted to reflect the deduction allowed with respect to such property under Section 210.3(e)(1). The Franchise Tax Regulations provide, in this regard, as follows: "To determine the basis of the property, in computing the gain or loss for purposes of article 9-A the sum of the amounts allowed as depreciation under this section for all taxable years from the year of acquisition to and including the year of the sale or other disposition is subtracted from the original federal cost or other basis." 20 NYCRR §4-8.6(d).

As the cost of the property in question, acquired in 1968, was \$3,075,256, and as only \$75,569 was allowed as a deduction for optional depreciation, the New York basis for the property, as of the date of the sale, was \$2,999,687. The sales price of such property is a portion of the total sales price of the New York plants. The sales price may be determined by applying to the total sales price of the New York plants, the ratio of the fair market value of the property on which optional depreciation was claimed to the fair market value of all the property sold.

DATED: June 30, 1981

s/LOUIS ETLINGER  
Deputy Director  
Technical Services Bureau