

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

TSB-A-82(10)C  
Corporation Tax  
July 20, 1982

STATE OF NEW YORK  
STATE TAX COMMISSION

ADVISORY OPINION

PETITION NO. C810622E

On June 22, 1981, a Petition for Advisory Opinion was issued from Union Camp Corporation, 1600 Valley Road, Wayne, New Jersey 07470.

The issue raised is the proper valuation of Petitioner's timber land for purposes of computing the property factor to be used in determining Petitioner's business allocation percentage under Article 9-A of the Tax Law. Petitioner contends that appraisals made by company employees should be utilized. Petitioner is presently under audit, and the Audit Division of the Department of Taxation and Finance proposes to base its evaluation on net book value.

Section 210.3(a)(1) of the Tax Law provides for the computation of a property factor, to be utilized in allocating a taxpayer's entire net income within and without the State, based on a comparison of the "average value of the taxpayer's real and tangible personal property" situated within the State to the value of all of the taxpayer's property "wherever situated." Section 4-3.1 of the Franchise Tax Regulations provides that the term "value" as used in the foregoing statutory provision means "fair market value." Such regulation goes on to provide that:

"(b) The average fair market value of real property and tangible personal property owned by the taxpayer is determined in accordance with the provisions of sections 3-4.5 and 3-4.6 of this Title. This applies to property both within and without New York State and is the same method as is used to determine the amount of the taxpayer's capital. The Tax Commission may require a taxpayer to use a different method of valuation if it finds that the method used by the taxpayer does not properly reflect the property values." 20 NYCRR 4-3.1(b).

Section 3-4.5 of the Franchise Tax Regulations, referred to above, defines the term "fair market value" as follows:

"(a) The fair market value of any asset owned by the taxpayer is the price at which a willing seller, not compelled to sell, will sell and a willing purchaser, not compelled to buy, will buy." 20 NYCRR 3-4.5(a).

Neither the Tax Law nor the Franchise Tax Regulations provides for any single method for determining the fair market value of an asset. The determination of the value of property is a question of fact, and such value may be arrived at by any of various methods no one of which is necessarily conclusive. Thus, the value may be arrived at based on original purchase price, net book

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value, actual sales of the subject or similar property, capitalization of income, the use of expert opinion, or any appropriate combination of the foregoing and any other factors relevant in a particular case. In the present instance Petitioner contends that its appraisers can provide an accurate estimate of the fair market value of the property in question, while the Audit Division has contended that net book value provides a more correct basis. Inasmuch as the question of which of these is the more appropriate figure is one of fact, it is not susceptible of resolution in an Advisory Opinion. Therefore, no determination is here made as to whether one of these methods is the more appropriate one. It is determined here merely that neither expert appraisal nor net book value would be an inherently inappropriate basis for valuation. Thus, if an assessment is issued based on the utilization of net book value Petitioner would be afforded an opportunity to contest the utility of such method in arriving at a factually correct figure by filing a petition for redetermination of a deficiency, pursuant to the provisions of Article 27 of the Tax Law.

DATED: July 20, 1982

LOUIS ETLINGER  
Deputy Director  
Technical Services Bureau