

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

TSB-A-82(9)C
Corporation Tax
June 25, 1982

STATE OF NEW YORK
STATE TAX COMMISSION

ADVISORY OPINION

PETITION NO. C811218A

On December 18, 1981 a Petition for Advisory Opinion was received from Glide Corporation, 127-16 34th Avenue, Flushing, N.Y. 11368.

Petitioner, a corporation subject to the Franchise Tax on Business Corporations imposed under Article 9-A of the Tax Law, is "engaged solely in the transportation of students to and from school districts through the utilization of school buses." Petitioner inquires as to whether it may be required to compute its tax on the alternative basis provided for in section 210.1(a)(3) of the Tax Law.

Section 210.1(a) of the Tax Law, contained in Article 9-A thereof, sets forth four alternative methods of computing tax and provides for the utilization of whichever one yields the greatest result. The tax, accordingly, may be computed on the basis of (1) entire net income, (2) business and investment capital, or (3) a portion of entire net income plus salaries and certain compensation, or (4) may be set at \$250, "whichever is greater."

Section 208.9(a)(4) of the Tax Law excludes from entire net income "income and deductions with respect to amounts received from school districts" and from certain organizations "organized and operated exclusively for religious, charitable or educational purposes." Petitioner asks whether, assuming its entire net income, computed in accordance with the statutory provision just quoted, takes the form of a low or negative figure, it might be required to compute its tax on the basis of a portion of entire net income plus salaries and other compensation (the "third alternative"), as provided for in section 210.1(a)(3) of the Tax Law.

As provided in section 210.1(a) of the Tax Law, Petitioner is required tentatively to compute its tax by the four specified alternate methods, and must utilize that method which yields the greatest tax. If the third alternative yields the greatest figure, then such is the alternative which must be employed. However, the third alternative was enacted in order to prevent the diminution of state tax revenues by the payment of excessive officers' salaries, thereby reducing entire net income. 20 NYCRR 3-3.1(b). Since Section 208.9(a)(4) of the Tax Law already excludes from entire net income both income and deductions attributable to the operation of school buses, officers' salaries which are so attributable are not deductible in the computation of entire net income. Therefore, such officers' salaries would not be includible in the tax computation by the third alternative.

DATED: June 25, 1982

s/LOUIS ETLINGER
Deputy Director
Technical Services Bureau