

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

TSB-A-83(7)C  
Corporation Tax  
May 9, 1984

STATE OF NEW YORK  
STATE TAX COMMISSION

ADVISORY OPINION

PETITION NO. C820505C

On May 5, 1982 a Petition for Advisory Opinion was filed by CIT Financial Corporation and Combined Subsidiaries, 650 Madison Avenue, New York, New York 10022.

The issue raised is whether any part of Petitioner's income derived from finance agreements which are handled outside of New York, except that New York home office approval is required in certain instances, is required to be included in the numerator of the receipts factor used in computing the business allocation percentage under Article 9-A of the Tax Law.

Petitioner is a corporation engaged in the finance business, and is also a holding company for various subsidiaries most of which are engaged in the same or related finance activities. Petitioner and some of its subsidiaries file their franchise tax returns on a combined basis. Petitioner's home office is in New York. The financing operations are described by Petitioner, in brief, as follows:

"Each finance agreement must receive credit approval from the originating office. Transactions over a certain amount must then receive credit approval from a regional CIT office (none of which are located in New York State). If the amount of the transaction is still over a specified higher amount, the finance agreement must also be sent to the CIT home office in New York for a third level of credit approval. All other matters involving the finance agreement are handled by the office which initiated the agreement."

The numerator of the receipts factor includes "other business receipts" (viz., other than from sale of tangible personal property, the performance of services, and from rents and royalties and the like) "earned within the state." Tax Law § 210.3(a)(2)(D). The income here in question falls within such category of "other business receipts." Where the labor performed in order to establish and maintain a loan is performed, at more than a minimal level, in both New York and another state, then it can fairly be said that the interest income thereafter derived from such loan was "earned within" both New York and such other state. It is thereupon necessary to determine what portion of the income is attributable to New York, which is to say, what portion is to be included in the numerator of the receipts factor. In making such determination consideration should be given to such activities as solicitation, investigation, negotiation, approval and administration. It is to be noted, in regard to the present matter, that the activity of loan approval can be of negligible import, as where it is merely pro forma, or of the highest importance, depending upon the circumstances of any given loan transaction. Walter E. Heller & Co., State Tax Commission, September 19, 1980, TSB-H-80(29)C, is not necessarily controlling in the present matter. There, while loan approval from the Chicago office was required in certain cases, the Decision gives no indication as to the precise nature of the

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activities subsumed under the category of "approval" in such cases. It may be noted, further, that the present Advisory Opinion is in fact in conformity with such Decision, for it is there stated that "It is the situs where . . . the financing . . . [is] performed which is determinative of whether the receipts are includable in the numerator of the receipts factor . . . ."

The precise portion of the receipts at issue, if any, which are properly includible in the numerator of the receipts factor in the present matter is a question of fact not susceptible of determination in an Advisory Opinion. An Advisory Opinion merely sets forth the applicability of pertinent statutory and regulatory provisions to "a specified set of facts." Tax Law, § 171, subd. twenty-fourth; 20 NYCRR 901.1(a). Inasmuch as the question presented here arises within the context of an Audit, the necessary factual determination will be made within such context, in accordance with the principles outlined above.

DATED: March 8, 1983

s/FRANK J. PUCCIA  
Director  
Technical Services Bureau