

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

TSB-A-84 (10) C
Corporation Tax
August 10, 1984

STATE OF NEW YORK
STATE TAX COMMISSION

ADVISORY OPINION

PETITION NO. C831208A

On December 8, 1983 a Petition for Advisory Opinion was received from Gulf Homes, Inc. 524 Broadway, Massapequa, New York 11758.

At issue is whether Petitioner's activities within New York State prior to August 1, 1980, at which time it opened a sales office in New York, would subject it to tax under Article 9-A of the Tax Law (Franchise Tax on Business Corporations).

Petitioner, a Florida real estate development corporation with its principal offices in Florida, is a builder of homes in that state. Commencing in 1978, and prior to opening a sales office in Massapequa, New York, Petitioner solicited business in New York by regularly advertising in New York newspapers. The advertisements contained, among other things, the New York telephone number of the Long Island home of one of Petitioner's two officers, which officer was also an employee of the corporation. The officer's wife or daughter relayed any messages to the officer who, in fact, spent most of his time in Florida.

When the officer returned to New York, he arranged to meet those people who had responded to the ads. The meetings were held either at the officer's Long Island home, the customer's home, or some other mutually arranged location in the metropolitan New York - New Jersey area. Although contracts for the construction of homes were mailed to the homes of prospective buyers in New York, all contracts were approved, accepted, finalized and consummated in the State of Florida, where all necessary financing and mortgage arrangements were made and where all closings occurred.

Section 209.1 of the Tax Law, in pertinent part, imposes a tax on a foreign corporation which is doing business, employing capital, owning or leasing property or maintaining an office in New York. The Franchise Tax Regulations, which expound on the nature of the activities constituting maintenance of an office, provide that "[a]n office is any area, enclosure, or facility which is used in the regular course-of-the corporate business. A salesman's home . . . , may constitute an office." 20 NYCRR §1-3.2(e). This concept is further elucidated in the following:

"A corporation will be considered to be maintaining an office in New York State if the space is held out to the public as an office or place of business of the taxpayer. For example, a salesman uses his house for business. A telephone, listed in the corporation's name, is maintained at the salesman's house. The salesman makes telephone contacts from the house or receives calls and orders at the house. The residence will be treated as an office of the corporation, and the corporation will be taxable." 20 NYCRR §1-3.4(b)(9)(vi).

In the present case, Petitioner held the officer's New York residence out as a place of business by including the telephone number in the New York advertisements. Further, the officer actually used his residence in the regular course of Petitioner's business, there receiving and initiating telephone messages and, further, using the home for meetings with prospective customers. The officer was, therefore, using his Long Island home for the business purposes of Petitioner. Since such usage constituted maintenance of an office, within the meaning and intent of Section 209.1 of the Tax Law, Petitioner was subject to tax under Article 9-A of the Tax Law with respect to the period at issue.

DATED: August 3, 1984

s/FRANK J. PUCCIA
Director
Technical Services Bureau

NOTE: The opinions expressed in Advisory Opinions
are limited to the facts set forth therein.