

STATE OF NEW YORK
STATE TAX COMMISSION

ADVISORY OPINION

PETITION NO. C821021A

On October 21, 1982 a Petition for Advisory Opinion was received from Mr. Daneli, Ltd., 1359 Broadway, New York, N.Y. 10018.

The issue presented is whether reimbursements for certain payments made on behalf of an affiliated corporation are includible in the business receipts factor utilized in computing Petitioner's business allocation percentage for purposes of the Franchise Tax on Business Corporations imposed under Article 9-A of the Tax Law.

Petitioner is a clothing manufacturer. Its products are sold to retail stores throughout the country and to Pateli Fashions, Inc., a related corporation ("Affiliate") at cost. Affiliate, in turn, sells its products to retail stores throughout the country. Both Petitioner and Affiliate sell the same product, but with different labels, for marketing purposes.

Petitioner describes its operation as follows. The two corporations share a single office. Manufacturing, selling, shipping and administrative expenses are attributable to both organizations. Both Petitioner and Affiliate utilize the same employees, space and services in an identical manner. Expenses are initially paid by the corporation billed, regardless of which corporation actually incurred the expense. For all intents and purposes, the two corporations act as one. Consequently, the expenses incurred during the course of the year are apportioned between the two corporations. The apportionment of the expenses is based on the percentage of each corporation's sales compared with the total sales of the two corporations. Each corporation's proportionate percentage of combined sales is applied to the expenses. The corporation which has paid more than its proportionate share of combined operating expenses is reimbursed by the other corporation. Petitioner states that in order to simplify its bookkeeping procedures, such reimbursement is shown as "other income" on corporate tax returns, and is entitled "Expenses Allocated to Affiliate". Petitioner states that this method of showing the reimbursement for the expenditures as an income item is simpler than that which would be involved in adjusting each expense item separately.

Section 210.3(a)(2) of the Tax Law sets forth the method for computing the receipts factor utilized in computing a corporation's business allocation percentage. The receipts includible are these categorized in the statute as being derived from sales of tangible personal property, services, or rentals, and other business receipts.

Section 4-4.1 of the Franchise Tax Regulations provides for the computation of the receipt factor of the business allocation percentage by "dividing the sum of the New York State business receipts by the taxpayer's total business receipts within and without New York State during such period." The term "business receipt" is defined as "gross income received in the regular course of the taxpayer's

business " 20 NYCRR 4-4.1(a) Thus, for example, receipts from the sale of capital assets do not constitute business receipts, and are not included in the receipts factor. 20 NYCRR 4-4.6(e)

In Matter of Becton, Dickinson and Company, State Tax Commission, August 4, 1982, TSB-H-82(19)C, it was held that income from short-term commercial paper and certificates of deposit did not constitute "business receipts" includible under section 210.3(a)(2) of the Tax Law because not arising from the regular course of operation of the business. In the present matter the receipts at issue do not arise directly from the regular course of Petitioner's business. Cf., Matter of Aerojet-General Corporation, State Tax Commission, July 7, 1980, T-SB-H-80(24)C. The payments at issue herein do not, thus, constitute business receipts of the type envisaged by Tax Law, §210.3(a)(2) and 20 NYCRR 4-4.1(a). Indeed, Petitioner could quite properly have recorded them in the form of reductions of each individual expense account. They are more nearly akin to a return of principal in a loan transaction than to receipts derived from the operation of a business enterprise for profit. Accordingly, Petitioner's receipts constituting reimbursed expenses, as described herein, are not includible in the computation of the receipts factor of the business allocation percentage as provided for in Section 210.3(a)(2) of the Tax Law. Excluded from the treatment prescribed in this opinion, it should be noted, would be receipts from sales of goods or services (e.g., management fees) by one of the two corporations to the other.

DATED: October 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.