

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

TSB-A-85 (3)C
Corporation Tax
April 29, 1985

STATE OF NEW YORK
STATE TAX COMMISSION

ADVISORY OPINION

PETITION NO. C830714A

On July 14, 1983, a Petition for Advisory Opinion was received from Micro Leasing, Inc., 62 Lime Kiln Road, Suffern, New York 10901.

At issue is whether Petitioner is taxable as a transportation company under sections 183 and 184 of Article 9 of the Tax Law, or as a general business corporation under Article 9-A of the Tax Law.

The facts in this case cannot be determined by this office with any degree of certainty. Petitioner owns tractors and trailers, all of which it leases to Sheehan Carriers, Inc., a related corporation which is engaged in a transportation business. Petitioner has stated that it exercises no control over the use of the leased equipment. However, it has also stated that all operating and management activities of Sheehan Carriers, Inc. are actually conducted by the Petitioner in the name of Sheehan Carriers, Inc.

Additionally, Petitioner has stated that it does not provide drivers with its trucks. However, in other documents, Petitioner has stated that it does supply drivers with its trucks. Petitioner also has stated that it pays the wages of the employees of Sheehan Carriers, Inc. but does so only in its capacity as the agent for Sheehan Carriers, Inc. However, Petitioner also has stated that deductions for employees' wages taken by the Petitioner on its federal return represent wages paid by the Petitioner to "drivers (who are) leased with the trucks".

Sections 183 and 184 of the Tax Law impose franchise taxes on every corporation formed for or principally engaged in a transportation or transmission business.

Article 9-A of the Tax Law imposes a franchise tax on general business corporations. However, section 209.4 of Article 9-A provides that the tax imposed under Article 9-A shall not be imposed on a corporation engaged in a transportation business and subject to tax under sections 183 and 184 of the Tax Law.

It has been held in McAllister Brothers, Inc. v. Bates (1947) 272 App. Div. 511, 72 NYS 2d 532, that a corporation which leases out its vessels to a related corporation whereby it parted with the supervision and control of the vessels it owned, retaining only the title to the vessels and whereby its only business activity was the collection of the rentals for the vessel was not a transportation corporation subject to tax under sections 183 and 184 of the Tax Law but was instead subject to tax under Article 9-A of the Tax Law.

Accordingly, if Petitioner is principally engaged in the business of owning tractors and trailers which it leases to Sheehan Carriers, Inc. whereby it has relinquished supervision and control of such vehicles and whereby it does not supply drivers for such vehicles, then Petitioner is not engaged in a transportation business and is not subject to the taxes imposed under sections 183 and 184 of the Tax Law but is, instead, subject to tax under Article 9-A of the Tax Law.

However, if in addition to leasing the vehicles in question, Petitioner provides drivers for such vehicles and is actively engaged in the operation and management of Sheehan Carriers, Inc., it must be concluded that Petitioner is principally engaged in a transportation business and is subject to the taxes imposed under sections 183 and 184 of the Tax Law.

DATED: April 29, 1985

FRANK J. PUCCIA
Director
Technical Services Bureau

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