

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

TSB-A-87 (13) C
Corporation Tax
May 29, 1987

STATE OF NEW YORK
STATE TAX COMMISSION

ADVISORY OPINION

PETITION NO. C870205B

On February 5, 1987, a Petition for Advisory Opinion was received from W.A. Krueger Company, 7301 E. Helm Drive, Scottsdale, Arizona 85260.

The issue raised involves the correct method of allocation of income derived from a printing operation for purposes of the Franchise Tax on Business Corporations imposed under Article 9-A of the Tax Law.

Petitioner is a web offset printing operation with plants in Arizona, Wisconsin, Illinois, Mississippi and Arkansas and sales offices throughout the country including a sales office in the City of New York. Petitioner produces books, magazines, and commercial catalogs for its various customers on an F.O.B. point of manufacture basis. The finished products are shipped or mailed per instructions received from the customers. In the case of general mailings, the customer provides Petitioner with pre-addressed pressure-sensitive labels or magnetic tape detailing the addresses and Petitioner delivers the finished product to the Postal Service at its printing plant site.

In filing its New York State and New York City income tax returns, Petitioner has included in its sales factor numerator all books, magazines and commercial catalogs bulk-shipped directly to each customer's locations within the State of New York, whether or not the customer is a New York based "purchaser". Petitioner has also included in its sales factor numerator a census-based allocation of books, magazines and commercial catalogs which have been delivered to the Postal Service at its various points of manufacture for mailing to consumers other than Petitioner's customers.

Section 209 of Article 9-A of the Tax Law imposes a franchise tax on business corporations "[f]or the privilege of exercising its corporate franchise, or of doing business, or of employing capital, or of owning or leasing property in this state in a corporate or organized capacity, or of maintaining an office in this state. . . ." The tax is computed, pursuant to the provisions of section 210 of the Tax Law, in part, upon the highest of four alternatives. The first alternative is on the entire net income or the portion thereof allocated within the state. The portion of the entire net income of a taxpayer to be allocated within the state is determined by multiplying its business income by a business allocation percentage determined by a three factor formula consisting of tangible property, receipts and payroll. The receipts factor of the business allocation percentage is computed pursuant to the provisions of Business Corporation Franchise Tax regulation subpart 4-4.

Receipts from a printing operation such as Petitioner's (other than when a printer provides printing service on paper supplied by its customer) are allocated pursuant to the provisions of regulation section 4-4.2 That section provides:

RODERICK G. W. CHU, COMMISSIONER

GABRIEL B. DICERBO, DEPUTY COMMISSIONER

FRANK J. PUCCIA, DIRECTOR

4-4.2 Receipts from sale of tangible personal property. Receipts from sale of tangible personal property are allocable 100 percent to New York State where shipments are made to points in this State. Tangible personal property is considered to be shipped to a point in New York State if:

- (a) the property is shipped via common carrier or via taxpayer's truck to a point in New York State designated on the bill of lading or other shipping document, regardless of the F.O.B. point; or
- (b) the property is delivered to a purchaser at a point in New York State.

Example 1: A taxpayer has its factory in New York State. A customer located in New Jersey comes into New York State in its own truck or one rented by it and picks up its purchase at the taxpayer's factory. The receipts from such sale must be allocated to New York State.

Where books, magazines and catalogs are shipped by Petitioner to its customers or to designees of its customers in bulk via common carrier or through the mails as described above, the receipts from such sales are properly allocated to New York State and must be included in the numerator of Petitioner's receipts factor.

Accordingly, it is determined that as long as the census-based allocation used by Petitioner accurately reflects sales into New York State, Petitioner's method of allocation of receipts from books, magazines and catalogs as described above was correct.

DATED: May 29, 1987

s/FRANK J. PUCCIA
Director
Technical Services Bureau

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