

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

TSB-A-89 (4)C
Corporation Tax
March 2, 1989

STATE OF NEW YORK
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. C881121A

On November 21, 1988, a Petition for Advisory Opinion was received from Pennsylvania Farm Bureau Members' Service Corporation, 510 South 31st Street, Camp Hill, Pennsylvania 17011.

The issue raised is whether a foreign cooperative corporation, that is classified as a non-profit corporation pursuant to section 3(d) of the Cooperative Corporations Law and which is authorized to do business in New York State pursuant to section 1304 of the Not-For-Profit Corporation Law, is exempt from New York State franchise or other corporate taxes.

Petitioner is a foreign non-profit corporation, pursuant to section 3(d) of the Cooperative Corporations Law. Pursuant to section 1304 of the Not-For-Profit Corporation Law, Petitioner received authority to do business in New York State from the New York State Department of State. Such authority was sought to comply with the provisions of section 76 of the Cooperative Corporations Law.

Section 209 of Article 9A of the Tax Law impose a franchise tax upon every domestic or foreign corporation for 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." A cooperative corporation is not exempt from tax under Article 9-A merely because it is a cooperative corporation or merely because it is authorized to do business under The Not-For-Profit Corporation Law.

However, section 1-3.4(a) of the Business Corporation Franchise Tax Regulations provides that "[a] corporation which is subject to any of the following taxes is not subject to tax under article 9-A of the Tax Law:

...

(7) cooperative corporations subject to the annual fee imposed by section 77 of the Cooperative Corporations Law "

Section 77 of the Cooperative Corporations Law states that:

Each cooperative corporation organized, with or without capital stock, for the purpose of cooperative marketing of agricultural products or for the purpose of making loans to its members producing agricultural products or for the purpose of purchasing food products for sale to its members, such a purchasing cooperative corporation having gross receipts from such sales of less than two hundred thousand dollars in a calendar year,

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shall pay to the state tax commission an annual fee of ten dollars, in lieu of all franchise or license or corporation taxes. Such annual fee shall be paid for each calendar year on the fifteenth day of March next succeeding the close of such calendar year.

Petitioner states that it has complied with all of the provisions of section 76 of the Cooperative Corporations Law. However, Petitioner has not stated that it is a cooperative corporation as described in section 77 of the Cooperative Corporations Law.

Accordingly, if Petitioner has filed with the Department of Agriculture and Markets a certified copy of its articles of incorporation, by-laws and annual reports as provided by the Cooperative Corporations Law, and if Petitioner meets the conditions of section 77 of the Cooperative Corporations Law, that is, if Petitioner is a cooperative corporation organized for the purpose of cooperative marketing of agricultural products or for the purpose of making loans to its members producing agricultural products or for the purpose of purchasing food products for sale to its members, and Petitioner has gross receipts from such sales of less than \$200,000 in a calendar year, Petitioner shall remit an annual fee of ten dollars to the Department of Taxation and Finance.

If Petitioner is subject to the \$10 annual fee imposed by section 77 of the Cooperative Corporations Law, it is not subject to New York State franchise or other corporate taxes.

DATED: March 2, 1989

s/FRANK J. PUCCIA
Director
Technical Services

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