

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

TSB-A-91(21)C  
Corporation Tax

STATE OF NEW YORK  
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. C910715A

On July 15, 1991, a Petition for Advisory Opinion was received from Blenheim Franchise Shows, Inc., 1133 Louisiana Ave., Suite 210. Winter Park. Florida 32789.

The issue raised by Petitioner, Blenheim Franchise Shows, Inc., is whether it is doing business in New York State and therefore is subject to franchise tax under Article 9-A of the Tax Law.

Petitioner was organized for the purpose of producing small franchise shows and its income is derived from the fees charged to the exhibitors. Petitioner's only office is located in Winter Park, Florida, where it is managed and controlled.

All of Petitioner's solicitation, service, contractual obligations, etc. are provided from Petitioner's office in Florida by its employees and contractors. Petitioner does not have employees anywhere else in the United States.

When Petitioner organizes the shows, it rents space in convention centers or hotels, advertises through three medias, and hires local temporaries. Usually one Petitioner representative is present at each show. A show usually consists of two open days plus one day to set up.

In 1990, Petitioner produced 43 small franchise expos. Only one show was held in New York State. It was held in the City of Buffalo. Petitioner received a license from the City of Buffalo to rent space in the Buffalo Convention Center in October 1990 for one set-up day and two open days. The receipts from the Buffalo show represented a little over one percent of Petitioner's revenues.

Petitioner does not otherwise employ capital, or own or lease property in New York State nor does it maintain an office in New York State.

Section 209.1 of Article 9-A of the Tax Law imposes the business corporation franchise tax on every foreign corporation, unless specifically exempt, for the privilege of doing business, or of employing capital, or of owning or leasing property in New York State in a corporate or organized capacity, or of maintaining an office in New York State.

Section 1-3.2(b) of the Business Corporation Franchise Tax Regulations (hereinafter "Article 9-A Regulations") provides that:

(1) [t]he term doing business is used in a comprehensive sense and includes all activities which occupy the t/me or labor of men for profit. Regardless of the nature of its activities, every corporation organized for profit and carrying out any of the purposes of its organization is deemed to be doing business for the purposes of the

tax. In determining whether a corporation is doing business, it is immaterial whether its activities actually result in a profit or a loss.

(2) Whether a corporation is doing business in New York State is determined by the facts in each case. Consideration is given to such factors as:

(i) the nature, continuity, frequency, and regularity of the activities of the corporation in New York State, compared with the nature, continuity, frequency, and regularity of its activities elsewhere;

(ii) the purposes for which the corporation was organized, compared with its activities in New York State;

(iii) the location of its offices and other places of business;

(iv) the income of the corporation and the portion thereof derived from activities in New York State;

(v) the employment in New York State of agents, officers and employees; and

(vi) the location of the actual seat of management or control of the corporation. 20 NYCRR 1-3.2(b)

Section 1-3.2(c) of the Article 9-A Regulations provides that:

[t]he term employing capital is used in a comprehensive sense. Any of a large variety of uses, which may overlap other activities, may give rise to taxable status. In general, the use of assets in maintaining or aiding the corporate enterprise or activity in New York State will make the corporation subject to tax. Employing capital includes such activities as:

(1) maintaining stockpiles of raw materials or inventories; or

(2) owning materials and equipment assembled or construction. 20 NYCRR 1-3.2(c)

Section 1-3.2(d) of the Article 9-A Regulations provides that:

[t]he owning or leasing of real or personal property within New York State constitutes an activity which subjects a foreign corporation to tax. Property owned by or held for the taxpayer in New York State, whether or not used in the taxpayer's business, is sufficient to make the corporation subject to tax. Property held, stored or warehoused in New York State creates taxable status. Property held as a nominee for the benefit of others creates taxable status. . . 20 NYCRR 1-3.2(d).

It has been held that where a foreign corporation has no office or assets located in New York and no employees based in New York, the corporation was doing business in New York and was not exempt pursuant to Public Law 86-272 when it sent employees into New York to install automated management systems for movie theatres by connecting the hardware, loading the software, testing the system and training the customers to use the system. Theatron Data Systems, Inc., Adv Op Comm T & F, April 16, 1990, TSB-A-90(10)C.

Also, a foreign corporation was held to be doing business in New York when its employees taught software development seminars conducted in New York even though the corporation did not employ capital or own or lease property in New York and did not maintain an office in New York, Project Technology Inc., Adv Op Comm T & F, November 6, 1989, TSB-A-89(13)C.

Where a foreign corporation's only presence in New York is the temporary employees placed by the foreign corporation whereby such employees provided clerical and technical services using the client's equipment and supplies at the client's facilities under the client's supervision, it was held that the foreign corporation was doing business in New York. Quantum Resources Corporation, Adv Op Comm T & F, January 18, 1991, TSB-A-91(2)C.

Herein, Petitioner is not employing capital in New York, does not own or lease property in New York and does not maintain an office in New York. However, giving due consideration to the factors set forth in section 1-3.2(b)(2) of the Article 9-A Regulations, and viewing Petitioner's activities as set forth above, such activities in New York State constitute "doing business" within the meaning of section 209.1 of the Tax Law.

When a corporation is doing business in New York State pursuant to section 209.1 of the Tax Law, such corporation is subject to tax under Article 9-A of the Tax Law.

Accordingly, pursuant to section 209.1 of the Tax Law and section 1-3.2(b) of the Article 9-A Regulations, Petitioner is subject to the franchise tax imposed under Article 9-A of the Tax Law for all taxable years Petitioner does business in New York State.

DATED: October 25, 1991

s/PAUL B. COBURN  
Deputy Director  
Taxpayer Services Division

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