

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

TSB-A-92 (9) C  
Corporation Tax  
May 20, 1992

STATE OF NEW YORK  
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. C920306A

On March 6, 1992, a Petition for Advisory Opinion was received from Alan Langer, CPA, c/o Richard A. Eisner & Company, 575 Madison Avenue, New York, New York 10022-2511.

The issue raised by Petitioner, Alan Langer, is how to determine the percentage of gross receipts from services rendered by a company that "books" trips and tours that is attributable to New York when computing the numerator of the receipts factor for purposes of the business allocation percentage under Article 9-A of the Tax Law.

Taxpayer A's offices consist of wholesale and retail locations, open to the general public, which "book" trips and tours. Its main location, which is outside New York, functions as follows: its purchasing agents, who deal with hotels and carriers, package the tours and arrange pricing with the various vendors; all marketing efforts are directed therefrom; its main computer, which processes all hotel and carrier booking, is physically located there; and all administrative personnel are there. In effect, the "booking agent" in New York merely calls up the computer outside of New York to advise the clients as to options for the trip, and then records the "sale" through that system. Thus, the "service" provided in New York is merely to access the information gathered by employees located outside of New York and pass that on to the consumer.

Section 4-4.3 of the Business Corporation Franchise Tax Regulations provides:

(a) The receipts from services performed in New York State are allocable to New York State. All receipts from such services are allocated to New York State, whether the services were performed by employees, agents or subcontractors of the taxpayer, or by any other persons. It is immaterial where such receipts are payable or where they are actually received.

(b) Commissions received by a taxpayer are allocated to New York State if the services for which the commissions were paid were performed in New York State. If the services for which the commissions were paid were performed for the taxpayer by salesmen attached to or working out of a New York State office of the taxpayer, the services will be deemed to have been performed in New York State.

Herein, Taxpayer A's purchasing agents and administrative personnel are located outside New York State and the "booking agent" or sales agent is located in New York State. Taxpayer A's activities through the efforts of the purchasing agents in packaging the tours and arranging pricing

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with the various vendors; the marketing efforts; the computer operation and the activities of the administrative personnel, all of which are conducted outside New York State, do not generate any income. The generation of income is based on the booking agent's efforts in New York State in selling, to a customer, a trip or tour "packaged" by the purchasing agent. No revenue is generated until a customer buys a ticket or tour package at the booking agent's New York location. It is the booking agent's efforts in making the sale that generates Taxpayer A's receipts from services.

Accordingly, since the booking agents are located in New York State, 100% of Taxpayer A's receipts from services rendered would be attributable to New York State pursuant to section 4-4.3 of the Regulations and would be included in the numerator of the receipts factor of the business allocation percentage under Article 9-A of the Tax Law.

It should be noted that Taxpayer A's activities outside New York State, that is, the efforts of its purchasing agents and its administrative personnel, and the marketing efforts and the computer operation would be reflected in the property and payroll factors of the business allocation percentage under Article 9-A of the Tax Law.

DATED: May 20, 1992

s/PAUL B. COBURN  
Deputy Director  
Taxpayer Services Division

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