

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

TSB-A-94 (9) C
Corporation Tax
May 26, 1994

STATE OF NEW YORK
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. C940224C

On February 24, 1994, a Petition for Advisory Opinion was received from McNaughton Affiliates Inc., 463 7th Avenue, New York, New York 10018.

The issue raised by Petitioner, McNaughton Affiliates Inc., is whether goods originating in New Jersey, sent to New York for processing and then returned to New Jersey are considered "in transit" inventory.

Petitioner is a manufacturer of ladies sportswear. Petitioner's piece goods are stored in New Jersey and are cut in New Jersey. The cut goods are sent for sewing to various contractors, both within and without New York State. After the work is completed by the contractors the finished goods are returned to a New Jersey warehouse. Title to the goods remains with Petitioner throughout. The finished goods are shipped by Petitioner to its customers from the New Jersey warehouse.

Section 210.3(a)(1) of the Tax Law provides that the property factor of the business allocation percentage is computed by ascertaining the percentage which the average value of the taxpayer's real and tangible personal property, whether owned or rented to it, within the State during the period covered by its report bears to the average value of all the taxpayer's real and tangible personal property, whether owned or rented to it, wherever situated during such period.

With respect to the situs of tangible personal property for purposes of the property factor, section 4-3.1(c) of the Business Corporation Franchise Tax Regulations states:

Tangible personal property of the taxpayer is considered to be within New York State if and so long as it is physically situated or located here, even though it may be stored in a bonded warehouse. Property of the taxpayer held in New York State by an agent, consignee or factor is considered to be situated or located within New York State. Property in transit between locations of the taxpayer is considered to be at its destination for purposes of the property factor. Property in transit between a buyer and a seller which is included by a taxpayer in the denominator of its property factor in accordance with its regular accounting practices is included in the numerator of its property factor if its destination is New York State. (emphasis added)

The common meaning of the words "in transit" is "on the way or passage; while passing from one person or place to another. In the course of transportation." (Black's Law Dictionary 823 [6th ed 1990]).

Accordingly, property is "in transit" for purposes of section 4-3.1 of the Regulations when it is being transported from one location to another and during such time is considered to be at its destination. Herein, Petitioner's cut goods are "in transit" when they are being transported from

New Jersey to the various contractors for completion. During such time, the cut goods are considered to be at the location of the contractor for purposes of the property factor. The goods continue to be located at the contractor's location until they are returned to New Jersey as finished goods. The finished goods are "in transit" when they are being transported from the contractor's location to the New Jersey warehouse. During such time, the finished goods are considered to be at the New Jersey warehouse. When determining whether tangible personal property has a situs in New York State, the condition of the property, whether finished, partially finished or not worked on at all, the purpose for which it is at its location, and the length of time it is at that location is immaterial.

DATED: May 26, 1994

s/PAUL B. COBURN
Deputy Director
Taxpayer Services Division

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