

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

TSB-A-95 (13) C
Corporation Tax
August 4, 1995

STATE OF NEW YORK
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. Z950324A

On March 24, 1995, a Petition for Advisory Opinion was received from Peach Tree Bancard Corporation, 4701 Auvergne Avenue, Lisle, Illinois 60532.

The issue raised by Petitioner, Peach Tree Bancard Corporation, is how to determine the amount of credit card processing revenues that is to be included in the numerator of the receipts factor of the business allocation percentage under section 210.3(a)(2) of Article 9-A of the Tax Law.

Petitioner is subject to tax under Article 9-A of the Tax Law and is a non-bank credit card merchant servicer/processor with a large nationwide base of established and active merchants. It provides processing and settlement services on a fee basis for its credit card merchants for VISA, MasterCard, American Express and Diners Club. Petitioner is not a regulated financial institution nor is it subject to the New York State Banking Law.

Processing includes the transmission of credit card transaction data from the retail site to VISA, MasterCard, American Express and Diners Club which allows for the appropriate flow of funds from the cardholder's bank to the retail merchant's bank. Petitioner only provides credit card processing and settlement services for electronic transactions. It does not provide these services for paper transactions.

Petitioner also sells electronic data terminals and printers which facilitate point-of-sale transactions by merchants for goods and services and provides card verification.

Petitioner's headquarters are located outside of New York State (State A) and its credit card processing center is also located outside of New York State (State B). Petitioner's processing center handles only a small portion of its business. The remainder of the processing service is provided by an unrelated third party that is also located outside of New York State (State C). The services performed by Petitioner's customer service department are performed in State A and State B.

The services performed by Petitioner's settlement department and chargeback department are done in State A. The function of the settlement department is to resolve those accounts that are not accurately and appropriately processed electronically from the prior day's transactions. The duties are initiated by reconciliation reports from the third party processor on rejected transactions from the prior day's activities. The chargeback department is responsible for investigating chargebacks. Chargebacks arise when a cardholder disputes a specific transaction for which the merchant has already collected payment. If the merchant

does not provide the information requested by the chargeback department to resolve the disputed transaction within a specified period of time, the merchant is charged a fee.

Petitioner's salespersons solicit retail merchants interested in contracting with Petitioner for its credit card processing services and the sale of related equipment. The retail merchant fills out a merchant processing application and agreement which the salesperson reviews and then mails to State A for processing and credit approval along with a \$95 application fee. The credit approval function, which is an integral part of Petitioner's business, screens out illegitimate and high risk businesses and reviews discount rates assessed to merchants for the processing. While charges imposed on stolen cards are the liability of the card issuing bank, Petitioner has the risk of loss for customer chargebacks which they fail to resolve with the merchant.

Petitioner has approximately 300 employees located in State A and State B working in the chargeback department, customer service department, settlement department, credit department, security/fraud department and data center.

Petitioner's revenues are generated primarily from fee income payable under processing agreements with merchants. Petitioner's processing fees vary with the dollar value and number of transactions processed and are separately negotiated with each merchant. Merchants are typically charged a merchant discount fee that is based on a percentage of the dollar amount of each transaction processed. Merchants are required to obtain an authorization from the taxpayer for each transaction processed. An authorization fee is charged on a per transaction basis for each authorization requested. Some merchants may also be charged a flat fee per transaction and some merchants are also charged miscellaneous fees, including minimum monthly processing fee, statement fee plus an annual membership fee.

Petitioner's activities in New York State are limited to the solicitation of merchant contracts for credit card processing and the sale of electronic data terminals and printers which facilitate the processing of transactions.

Petitioner's receipts from the sale of electronic data terminals and printers to merchants located in New York State are included in the numerator of the receipts factor of Petitioner's business allocation percentage.

Petitioner's receipts at issue herein are Petitioner's credit card processing revenues that include discount, authorization fee, transaction fee, statement fee, chargeback fee and application fee income. Petitioner states that none of the services giving rise to such revenues are performed within New York State.

Section 210.3(a) of Article 9-A of the Tax Law provides that the business allocation percentage is determined, in part, by

- (2) ascertaining the percentage which the receipts of the taxpayer, computed on the cash or accrual basis according to the method of accounting used in the computation of its entire net income, arising during such period from

(A) sales of its tangible personal property where shipments are made to points within this state,

(B) services performed within the state, provided, however, that (i) in the case of a taxpayer engaged in the business of publishing newspapers or periodicals, receipts arising from sales of advertising contained in such newspapers and periodicals shall be deemed to arise from services performed within the state to the extent that such newspapers and periodicals are delivered to points within the state, (ii) receipts from an investment company arising from the sale of management, administration or distributions services to such investment company shall be deemed to arise from services performed within the state to the extent set forth in [section 210.3(a)(6) of the Tax Law] and (iii) in the case of taxpayers principally engaged in the activity of air freight forwarding acting as principal and like indirect air carriage receipts arising from such activity shall arise from services performed within the state as follows: one hundred percent of such receipts if both the pickup and delivery associated with such receipts are made in this state and fifty percent of such receipts if either the pickup or delivery associated with such receipts is made in this state,

(C) rentals from property situated, and royalties from the use of patents or copyrights, within the state, and receipts from the sales of rights for closed-circuit and cable television transmissions of an event ... taking place within the state as a result of the rendition of services by employees of the corporation, as athletes, entertainers or performing artists, but only to the extent that such receipts are attributable to such transmissions received or exhibited within the state and

(D) all other business receipts earned within the state, bear to the total amount of the taxpayer's receipts, similarly computed, arising during such period from all sales of its tangible personal property, services, rentals, royalties, receipts from the sales of rights for close-circuit and cable television transmissions and all other business transactions, whether within or without the state;

Section 4-4.3 of the Business Corporation Franchise Tax Regulations ("Article 9-A Regulations") provides that

(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

Petitioner's revenues from credit card processing are receipts from the performance of services. For purposes of the receipts factor under section 210.3(a)(2)(B) of the Tax Law and section 4-4.3 of the Article 9-A Regulations, receipts from the performance of services are generally allocated to New York State when such services are performed in New York State. Section 210.3(a)(2)(B) of Article 9-A of the Tax Law provides special methods for allocating receipts from the performance of services where (1) the receipts arise from sales of advertising contained in newspapers and periodicals in the case of a taxpayer engaged in the business of publishing newspapers and periodicals, (2) receipts from an investment company arise from the sale of management, administration or distribution services to such investment company and (3) in the case of taxpayers principally engaged in the activity of air freight forwarding acting as principal and like indirect air carriage the receipts arise from such activity. However, neither Article 9-A of the Tax Law nor the Article 9-A Regulations, promulgated thereunder, provide for a special method of determining the portion of receipts from credit card processing that is attributable to New York State sources for purposes of the receipts factor.

Under Article 32 of the Tax Law, which imposes a franchise tax on banking corporations, section 1454(a)(2)(G) of the Tax Law provides that, for purposes of computing the receipts factor of the allocation formula under Article 32 of the Tax Law, all receipts from the performance of services not described elsewhere in section 1454(a)(2) of the Tax Law are earned within New York State if the services are performed in New York State. This general rule for the allocation of receipts from the performance of services is similar to the general rule provided in section 210.3(a)(2)(B) of Article 9-A of the Tax Law. However, section 1454(a)(2)(D) of Article 32 of the Tax Law does provide specific methods for allocating receipts from credit card receivables which is different than the general rule for the allocation of receipts from the performance of services provided in section 1454(a)(2)(G) of the Tax Law.

Section 1454(a)(2)(D) of the Tax Law provides that for purposes of the receipts factor under Article 32 of the Tax Law:

- (i) Interest, and fees and penalties in the nature of interest, from bank, travel and entertainment card receivables are earned within the state if the card holder's domicile is in the state, and
- (ii) Service charges and fees from such cards are earned within the state if the card is serviced in the state; and
- (iii) Receipts from merchant discounts are earned within the state if the merchant is located within the state.

Unlike section 1454(a)(2) of Article 32 of the Tax Law, section 210.3(a)(2) of Article 9-A of the Tax Law does not provide a special allocation method for receipts from credit card processing. Therefore, pursuant to section 210.3(a)(2)(B) of the Tax Law and section 4-4.3 of the Article 9-A

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Regulations, the receipts from credit card processing are allocated to New York State where the services for such credit card processing are performed in New York State.

Accordingly, when Petitioner computes the receipts factor of the business allocation percentage under section 210.3(a) of Article 9-A of the Tax Law, the portion of Petitioner's receipts from credit card processing that is attributable to New York State is determined in accordance with section 210.3(a)(2)(B) of Article 9-A of the Tax Law section 4-4.3 of the Article 9-A Regulations, not section 1454(a)(2) of Article 32 of the Tax Law.

DATED: August 4, 1995

s/PAUL B. COBURN
Deputy Director
Taxpayer Services Division

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