

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

TSB-A-96 (17) C
Corporation Tax
July 24, 1996

STATE OF NEW YORK
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. C960425B

On April 25, 1996, a Petition for Advisory Opinion was received from Ernst & Young LLP, 787 Seventh Avenue, New York 10019.

The issue raised by Petitioner, Ernst & Young LLP, is whether the activities of the corporation described below constitute "doing business" in New York State subjecting the corporation to the franchise tax imposed under Article 9-A of the Tax Law.

Petitioner submits the following facts as the basis for this Advisory Opinion.

XYZ corporation, a foreign corporation, enters New York State for the limited purpose of meeting with an accountant, banker, lawyer or securities underwriter in order to possibly engage that person, persons or firm to represent XYZ. Petitioner states that XYZ does not otherwise do business in New York State and does not maintain an office, employ capital, own or lease property, or do anything in New York State other than the activities stated. Petitioner states that XYZ does not in any way hold itself out to be doing business in New York State.

Section 209.1 of Article 9-A of the Tax Law imposes an annual franchise tax on domestic or foreign corporations for the privilege of exercising a corporate franchise, doing business, employing capital, owning or leasing property in a corporate or organized capacity, or maintaining an office in New York State for all or any part of each of its fiscal or calendar years.

Section 1-3.2(b) of the Business Corporation Franchise Tax Regulations ("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 time or labor of people 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;
- (ii) the purposes for which the corporation was organized;
- (iii) the location of its offices and other places of business;
- (iv) the employment in New York State of agents, officers and employees; and
- (v) the location of the actual seat of management or control of the corporation.

Section 1-3.3 of the Article 9-A Regulations states that:

[a] foreign corporation will not be deemed to be doing business, employing capital, owning or leasing property in a corporate or organized capacity or maintaining an office in New York State because of:

(a) the maintenance of cash balances with banks or trust companies in New York State;

(b) the ownership of shares of stock or securities kept in New York State in a safe deposit box, safe, vault or other receptacle rented for this purpose, or if pledged as collateral security, or if deposited in safekeeping or custody accounts with one or more banks or trust companies, or brokers who are members of a recognized security exchange;

(c) the taking of any action by any such bank or trust company or broker, which is incidental to the rendering of safekeeping or custodian service to such corporation;

(d) the maintenance of an office in this State by one or more officers or directors of the corporation who are not employees of the corporation if the corporation is not otherwise doing business or employing capital in New York State and does not own or lease property in New York State;

(e) the keeping of books or records of a corporation in New York State, if such books or records are not kept by employees of such corporation and such corporation does not otherwise do business, employ capital, own or lease property, or maintain an office in New York State; or

(f) any combination of the foregoing activities.

In this case, when XYZ comes into New York State for the limited purpose of meeting with a prospective accountant, banker, lawyer or securities underwriter, those meetings for that limited purpose do not constitute "doing business" in New York State as contemplated in section 209.1 of the Tax Law and section 1-3.2(b) of the Article 9-A Regulations. Accordingly, XYZ would not be subject to the franchise tax imposed under Article 9-A of the Tax Law.

DATED: July 24, 1996

/s/
John W. Bartlett
Deputy Director
Technical Services Bureau

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