

New York State Department of Taxation and Finance
Office of Counsel
Advisory Opinion Unit

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Corporation Tax
March 11, 2011

STATE OF NEW YORK
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION PETITION NO. C101229B

A petition received by the Department requests an advisory opinion as to whether the sale of assets by [REDACTED], (“Petitioner”) should be treated as business receipts and included in the denominator of the receipts factor of Petitioner’s business allocation percentage (“BAP”) under Tax Law Article 9-A. We conclude that Petitioner’s receipts from the sale of the assets are not business receipts and therefore are not included in its BAP.

Facts

Petitioner, a Rhode Island S Corporation, was a family-owned industrial service company in the business of distributing sealing and filtration products and pumps from its warehouse in Rhode Island. Petitioner did not manufacture any products but merely purchased products in large quantities and resold them at wholesale to third-party customers. Petitioner’s shareholders were all residents of Rhode Island. On January 7, 2007, pursuant to an asset purchase agreement, Petitioner sold all its assets, including its entire inventory, to an unrelated private equity group, [REDACTED]. After the sale, Petitioner no longer actively operated its business.

Petitioner, a New York taxpayer, filed its final CT-3-S, New York State S Corporation franchise tax return, and treated the amounts from the sale of inventory as business income. Petitioner also included those amounts in the denominator of its business receipts factor for purposes of calculating its New York State BAP. The shareholders of Petitioner filed non-resident individual income tax returns and used the BAP calculated by Petitioner to determine their New York source income attributable to the S corporation.

Analysis

In determining the New York source income of a nonresident shareholder of a New York S corporation, only the portion derived from or connected with New York sources of such shareholder’s pro rata share of items of S corporation income, loss, and deduction entering into his or her federal adjusted gross income is included. Tax Law § 632(a)(2). The determination of the source of S corporation items is made at the corporation level using the allocation methods that apply to the S corporation under Article 9-A or Article 32 of the Tax Law. *New York Tax Treatment of S Corporations and Their Shareholders*, Publication 35 (3/00) at 24-25.

In determining a taxpayer’s entire net income under Tax Law Article 9-A, business income is sourced to New York State using a BAP. In general, the BAP consists entirely of the receipts factor, Tax Law § 210.3(a)(10)(A)(ii). The portion of the business income sourced to

