

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

TSB-A-81 (4) C
Corporation Tax
July 23, 1981

STATE OF NEW YORK
STATE TAX COMMISSION

ADVISORY OPINION

PETITION NO. C810213A

On February 13, 1981, a Petition for Advisory Opinion was received from Texas Eastern Cryogenics, Inc., P.O. Box 2521, Houston, Texas 77001.

The issue is whether, for the purpose of the franchise tax on business corporations measured by business capital and investment capital, imposed under section 210.1(a)(2) of the Tax Law, contained in Article 9-A, the fair market value of an asset or the depreciated cost of such asset, as indicated on the books of the taxpayer, is to be used in computing the value of business capital.

Prior to 1973, Petitioner's principal asset consisted of certain property and equipment, located in Staten Island, New York, used for liquifying and storing natural gas received from an interstate gas pipeline system. The facility also included equipment which vaporized and returned the gas to the pipeline system. In 1972 the facility was shut down for repairs. On February 10, 1973, during the course of the repairs, a fire broke out in the storage tank and virtually destroyed it, rendering the tank wholly unusable. Because the property is of a single purpose design in that it can only be used in liquidation, storage and vaporization of natural gas, the destruction of the tank made the entire facility unusable.

Since 1973 Petitioner has planned to rebuild the facility and return it to service, but has not been able to obtain the necessary governmental permits for reconstruction. Petitioner states that its inability to obtain such permits has caused the New York City Tax Commission to recognize that the likelihood of obtaining such approval is speculative and, accordingly, to reduce substantially the assessed value of the facility for New York City real property tax purposes.

Section 210.1(a) of the Tax Law provides for the various methods of computing the corporation franchise tax. Section 210.1(a)(2) provides, in pertinent part, for a tax computed at 1.78 mills on each dollar of the taxpayer's total business and investment capital or the portion thereof allocated within New York State.

Section 210.2 of the Tax Law provides, in pertinent part, that the amount of business capital shall be determined by taking the average fair market value of the gross assets included therein, less certain liabilities.

Section 3-4.5 of the Corporation Franchise Tax Regulations describes the fair market value of any asset owned by a taxpayer as "the price at which a willing seller, not compelled to sell, will sell and a willing purchaser, not compelled to buy, will buy."

Pursuant to Section 210.1(a)(2) of the Tax Law, the fair market value of the facility in question herein must be used in computing the value of Petitioner's business capital. The depreciated cost of the facility, as indicated on the books of the taxpayer, may be used only if such depreciated cost accurately represents the fair market value of the facility.

No specific finding as to the fair market value of the asset in question is made in this Advisory Opinion, inasmuch as such a finding of fact is beyond the purview of Advisory Opinions. However, it is to be noted that the depreciated cost of the facility, as indicated on the books of the taxpayer, to the extent that it reflects neither the damage to the facility caused by the fire nor the fact that the likelihood of the necessary permits' being obtained and of the facility's being rebuilt is at best speculative, does not appear to represent an accurate measure of the fair market value of the facility. It is also to be noted that the assessment of the New York City Tax Commission is in no manner binding upon the New York State Tax Commission in this matter. However, if such valuation of the land can be shown to be accurate, it may be utilized, in conjunction with a determination as to the scrap or salvage value of the remaining structures of the facility, in order to arrive at the proper amount to be used in computing business capital.

DATED: July 21, 1981

s/LOUIS ETLINGER
Deputy Director
Technical Services Bureau