

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

TSB-A-84 (2) C
Corporation Tax
May 10, 1984

STATE OF NEW YORK
STATE TAX COMMISSION

ADVISORY OPINION

PETITION NO. C820924A

On September 24, 1982 a Petition for Advisory Opinion was received from Leonard Koval, CPA, of Spahr, Lacher, Berk and Naimer, 3000 Marcus Avenue, Lake Success, New York 11042.

Petitioner inquires as to whether corporations included in a Federal consolidated return, but filing separate New York State Franchise Tax reports, would include in their separate franchise tax reports their respective "shares" of the Federal taxable income of the group, or the income they would have reported had they filed separate Federal tax returns.

Section 210.1(a) of the Tax Law provides for two computations of the franchise tax based in whole or part on entire net income. Section 208.9 defines "entire net income" as "total net income from all sources, which shall be presumably the same as the entire taxable income which the taxpayer is required to report to the United States treasury department . . .", with certain modifications not here germane. The Federal taxable income referred to in the preceding statutory provision is defined as "taxable income as defined in section 63 of the Internal Revenue Code." 20 NYCRR 3-2.2(b). That is, the Federal taxable income of a corporate taxpayer is computed separately for purposes of filing a separate New York return, irrespective of its participation in the filing of a consolidated Federal return. Thus, for example, such a corporation would be required to compute its capital loss and net operating loss deductions as if it were filing a separate Federal return. 20 NYCRR 3-7.1(a); 3-8.1(a). Similar considerations would apply with respect to charitable contribution deductions. These would be subject to the limits applicable to each corporation considered separately.

DATED: March 16, 1984

s/FRANK J. PUCCIA
Director
Technical Services Bureau

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