

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

TSB-A-85 (4)C
Corporation Tax
April 29, 1985

STATE OF NEW YORK
STATE TAX COMMISSION

ADVISORY OPINION

PETITION NO.C840827A

On August 27, 1984, a Petition for Advisory Opinion was received from Metropolitan Ambulance and First Aid Corp., 1214 East 15th Street, Brooklyn, New York 11230.

The issue raised is whether the corporation is properly taxable as a business corporation under Article 9-A of the Tax Law and, thus, entitled to elect S Corporation status under section 660 of the Tax Law for the years ending December 31, 1982 and December 31, 1983 or, instead, is subject to taxation as a transportation corporation under sections 183 and 184 of Article 9 of the Tax Law and, therefore, not entitled to elect S corporation status.

Petitioner provides medical transportation services to its customers. It transports them from their homes or from nursing homes to hospitals or from one hospital to another hospital. Petitioner states that all of the customers transported are in need of medical assistance and that it provides not only transportation services but also emergency medical care including administration of oxygen, splinting and bandaging, control of bleeding, assistance in child birth and cardio-pulmonary resuscitation while customers are in route to hospitals. Petitioner further states that New York State regulations, licensing procedures and certification requirements govern the Petitioner in providing its services.

Sections 183 and 184 of the Tax Law impose franchise taxes on corporations principally engaged in a transportation or transmission business (with exceptions not here relevant).

Article 9-A of the Tax Law imposes a franchise tax on general business corporations. Section 209.4 of the Tax Law provides that a corporation subject to tax under sections 183 and 184 of the Tax Law is not subject to tax under Article 9-A of the Tax Law.

Section 660 of the Tax Law allows an election of S corporation status only if the taxpayer is a corporation subject to tax under Article 9-A of the Tax Law.

It has been held that a corporation principally engaged in the business of providing vehicles with drivers is conducting a transportation business within the meaning of sections 183 and 184 of the Tax Law. (Peter J. Curran Funeral Service Co. v. Graves, 1939, 257 App. Div 888, 12 N.Y.S. 2d 153).

Petitioner provides two services to its customers. It provides a transportation service to individuals in need of transportation to hospitals. It also provides emergency medical services to some customers. However, the medical services provided are provided only in conjunction with the transportation service and only as an ancillary to the transportation service. Accordingly, Petitioner is principally engaged in providing a transportation service and is, therefore, subject to tax under sections 183 and 184 of the Tax Law as a transportation corporation. Petitioner is, thus, not subject to tax under Article 9-A of the Tax Law and may not elect S corporation status under section 660 of the Tax Law.

DATED: April 29, 1985

FRANK J. PUCCIA
Director
Technical Services Bureau

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