

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

TSB-A-86 (13) C
Corporation Tax
June 20, 1986

STATE OF NEW YORK
STATE TAX COMMISSION

ADVISORY OPINION

PETITION NO. C860327B

On March 27, 1986, a Petition for Advisory Opinion was received from Hudson Armored Car & Courier Service, Inc., P.O. Box 5253, Poughkeepsie, New York 12602.

The issue raised is whether, for taxable years ended May 31, 1983, May 31, 1984 and May 31, 1985, Department of Taxation & Finance personnel conducting an examination of the franchise tax returns of Petitioner filed pursuant to Article 9-A of the Tax Law are obligated to consider evidence offered by Petitioner tending to show that it was not principally engaged in activity which would subject it to the franchise tax imposed by sections 183 and 184 of Article 9 of the Tax Law.

Whether Petitioner is taxable under sections 183 and 184 of Article 9 or under Article 9-A of the Tax Law depends upon the activities in which Petitioner is principally engaged. This issue is inherently a question of fact which must be resolved by due consideration of all available pertinent information.

Section 1096(b)(1) of the Tax Law, relating to powers of the Tax Commission states, in part:

"The tax commission for the purpose of ascertaining the correctness of any return, . . . shall have power to examine or to cause to have examined, by any agent or representative designated by it for that purpose, any books, papers, records or memoranda bearing upon the matters required to be included in the return . . ."

It follows that during the course of an examination of Petitioner's franchise tax returns for the taxable years at issue, Petitioner is required to furnish and Department personnel are required to consider all evidence pertinent to the proper determination of Petitioner's tax liability.

DATED: June 20, 1986

s/FRANK J. PUCCIA
Director
Technical Services Bureau

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