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

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Corporation Tax
February 24, 1995

STATE OF NEW YORK
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION PETITION NO. C941031A

On October 31, 1994, a Petition for Advisory Opinion was received from Pasquale & Bowers, 90 Presidential Plaza, Suite 210, Syracuse, New York 13202.

The issue raised by Petitioner, Pasquale & Bowers, is whether the gross receipts generated by a New York State "Shortline" railroad corporation on the transportation of freight solely within New York State as a connecting carrier, for a trip whose origin is outside New York State or whose destination is outside New York State, is includible in gross earnings under section 184 of the Tax Law.

The corporation is incorporated under the laws of New York State. The origin and destination points of the entire trip (including the other railroads) are never both within New York State. The corporation provides connecting services to other railroads in which this corporations's trip is solely within New York State. The corporation has 100% of its property and payroll within New York State.

For example, XYZ corporation, a New York State railroad corporation, owns 25 miles of track (the "Shortline"), all within New York State and located between Points B and C. Forty percent of XYZ's gross earnings is from transportation of freight that originates outside of New York at Point A, travels through Point B and terminates within New York State at Point C. Another 40% of its gross earnings is from the transportation of freight that originates within New York State at Point B, travels through Point C and terminates outside New York State at Point D. The final 20% of its gross earnings is from the transportation of freight that originates outside of New York State at Point A, travels through Points B and C in New York State and terminates outside of New York State at Point D. XYZ does not own the railroad track between Points A and B or the railroad track between Points C and D. All of XYZ's payroll is allocated to New York State.

Section 184.1 of the Tax Law imposes an additional franchise tax on:

> ...Every corporation principally engaged in the conduct of surface railroad..upon its gross earnings from all sources within this state, excluding earnings derived from business of an interstate or foreign character. Provided, however, with respect to railroad ... business ... where the gross earnings from such transportation business both originating and terminating within this state and traversing both this state and another state ... such earnings shall be allocated to this state in the same ratio that the mileage within the state bears to the total mileage of such business.

In People ex rel New York Cent. & Hudson Riv. R.R. Co. v Miller, 94 App Div 587 (1904), the taxpayer carried, wholly within New York State, express freights which were shipped from points within New York State for delivery without the State or from points without New York State for delivery within the State. The Court held that the taxpayer's business was of an interstate character and that it was not subject to the franchise tax under section 184 of the Tax Law because of the exclusion for business of an interstate character.

A comparable situation involving the shipment of grain and other products through the City of Buffalo was presented in People ex rel Connecting Term. R.R. Co. v Miller, 178 NY 194 (1904). The Court of Appeals held that the operations in question were a "mere link" in the transportation of various goods in interstate commerce and that, as such, they were not subject to the franchise tax under section 184 of the Tax Law.

In Matter of M & G Convoy, Inc., v State Tax Commission, 55 AD2d 204 (1976), a New York corporation was engaged in transporting vehicles to dealers in the northeastern part of the United States. The corporation maintained three terminals in New York State to which vehicles were brought from out of State and then reloaded on the corporation's convoys and transported to dealers in New York and throughout the Northeast. The Court held that the receipts from convoy movements originating at one of the New York terminals and terminating within New York State are not subject to the franchise tax imposed under section 184 of the Tax Law since the convoy movements in question were part of the interstate flow of traffic and the receipts therefor fall within the statutory exclusion for business of an interstate character. The Court stated that in reading New York Cent. & Hudson Riv. R.R. Co., supra, and Connecting Term. R.R. Co., supra,

> it is the long-settled law of this State not to tax operations such as petitioner's under section 184 of the Tax Law. Moreover, that constitutional restraints upon the taxation of interstate commerce by the State were lifted subsequent to those decisions (see Western Live Stock v Bureau of Revenue, 303 US 250) does not alter our result here because the statutory exclusion remains and the Legislature's numerous re-enactments thereof in recent years without change serve clearly to establish the continued validity of said exclusion as it has previously been interpreted and construed by the courts.

Accordingly, pursuant to section 184 of the Tax Law and New York Cent. & Hudson Riv. R.R. Co., supra, Connecting Term. R.R. Co., supra and M & G Convoy, Inc., supra, the gross receipts generated by a New York State "Shortline" railroad corporation on the transportation of freight, that transports solely within New York State as a connecting carrier, for a trip whose origin is other than New York State via a different railroad corporation and/or whose final destination is outside of New York State via a different railroad corporation, is not includible

in gross earnings from all sources within this State under section 184 of the Tax Law because such gross receipts are derived from business of an interstate character.

DATED: February 24, 1995

s/PAUL B. COBURN
Deputy Director
Taxpayer Services Division

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