

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

TSB-A-95 (5) C  
Corporation Tax  
March 29, 1995

STATE OF NEW YORK  
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. C941220B

On December 20, 1994, a Petition for Advisory Opinion was received from Insight Management, Inc., 20 William Street, P.O. 9135, Wellesley, Massachusetts 02181.

The issue raised by Petitioner, Insight Management, Inc., is whether having a New York sales office that signs up new clients would generate receipts from "services performed in New York State" for purposes of line 10, Form CT-3-S-ATT or Form CT-3-ATT, of the receipts factor of the business allocation percentage under Article 9-A of the Tax Law.

Petitioner, a Massachusetts corporation, is an investment consulting company performing all of its services in Wellesley, Massachusetts. Petitioner is currently examining the possibility of opening a sales office in New York City. This office would be used only to sign up new clients. All investment consulting will be performed in Massachusetts. All financial transactions would be conducted with financial institutions located in Massachusetts.

Section 660(a) of the Tax Law states that:

[i]f a corporation which is an S corporation for federal income tax purposes is subject to tax under article nine-a of [the Tax Law], the shareholders of the corporation may elect in the manner set forth in subsection (b) of this section to take into account, to the extent provided for in this article, the S corporation items of income, loss, deduction and reductions for taxes described in paragraphs two and three of subsection (f) of section thirteen hundred sixty-six of the internal revenue code which are taken into account for federal income tax purposes for the taxable year. No election under this subsection shall be effective unless all shareholders of the corporation have so elected.

Section 209.1 of the Tax Law imposes the business corporation franchise tax on every foreign corporation, unless specifically exempt, for the privilege of doing business, or employing capital, or of owning or leasing property in New York State in a corporate or organized capacity, or of maintaining an office in New York State.

Section 210.3(a)(2)(B) of the Tax Law provides that, for purposes of computing the receipts factor of the business allocation percentage, receipts from services performed are allocated to New York State when such services are performed within New York State.

Section 4-4.3 of the Business Corporation Franchise Tax Regulations (Article 9-A Regulations) provides that:

(a) The receipts from services performed in New York State are allocable to New York State. All receipts from such services are allocated to New York State, whether the services were performed by employees, agents or subcontractors of the taxpayer, or by any other persons. It is immaterial where such receipts are payable or where they are actually received.

...

(f)(1) Where a lump sum is received by the taxpayer in payment of services performed within and without New York State, the portion of the sum attributable to services performed within New York State is determined on the basis of the relative values of, or amounts of time spent in performance of, such services within and without New York State, or by some other reasonable method. Full details must be submitted with the taxpayer's report.

In Alan Langer, CPA, Adv Op Comm T & F, May 20, 1992, TSB-A-92(9)C, a corporation had wholesale and retail offices which "booked" trips and tours. The corporation's purchasing agents and administrative personnel were located outside New York State and the "booking agent" or sales agent was located in New York State. It was held that it is the booking agent's efforts in making the sale that generated the corporation's receipts from services. The corporation's activities through the efforts of the purchasing agents in packaging the tours and arranging pricing with the various vendors; the marketing efforts; the computer operation and the activities of the administrative personnel, all of which were conducted outside New York State, did not generate any income. The generation of income is based on the booking agent's efforts in New York State in selling, to a customer, a trip or tour "packaged" by the purchasing agent. No revenue is generated until a customer buys a ticket or tour package at the booking agent's New York location. Therefore, since the booking agents are in New York State, 100% of the corporation's receipts from services rendered are attributable to New York State. It was noted that the corporation's activities outside New York State, that is, the efforts of its purchasing agents and its administrative personnel, and the marketing efforts and the computer operation would be reflected in the property and payroll factors of the business allocation percentage.

Pursuant to section 210.3(a)(2)(B) of the Tax Law and section 4-4.3 of the Article 9-A Regulations, the amount of receipts from investment consulting services for services performed in New York State, that is to be included in the numerator of the receipts factor of the business allocation percentage, will depend on what activities are performed in New York. As determined in Alan Langer, CPA, supra, the generation of income is based on the efforts of Petitioner in earning such income. Herein, Petitioner's receipts from investment consulting services is generated from Petitioner's performance of its investment consulting and the conduct of the related financial transactions, not from the mere signing up of new clients.

Therefore, if the only activity performed in New York State is the signing up of new clients, with all the investment consulting services being performed outside of New York and the conduct of all related financial transactions outside New York, the activity in New York State of merely signing up new clients will not generate any income from services performed in New York State.

TSB-A-95 (5) C  
Corporation Tax  
March 29, 1995

However, if the activities performed in New York State exceed the mere signing up of new clients, such as, meeting with Petitioner's clients to consult with such clients or to relate to such clients the results of Petitioner's investment consulting services and related financial transactions, such activities in New York State will generate income from services performed in New York State. Pursuant to section 4-4.3(f) of the Article 9-A Regulations, the portion of the receipts from investment consulting services attributable to services performed within New York State is determined on the basis of the relative values of, or amounts of time spent in performance of, such services within and without New York State, or by some other reasonable method.

In any event, the operation of a New York City sales office would be reflected in the property and payroll factors of the business allocation percentage under Article 9-A of the Tax Law.

It should be noted that, if Petitioner wants to be treated as a New York S corporation, Petitioner must make the election pursuant to section 660 of the Tax Law.

DATED: March 29, 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.