

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

TSB-H-81(12)C  
Corporation Tax  
March 5, 1981

STATE OF NEW YORK  
STATE TAX COMMISSION

ADVISORY OPINION

PETITION NO. C800827A

On August 27, 1980 a Petition for Advisory Opinion was received from Noga Holding (USA), Inc., c/o Joseph Bernstein, Rosenman, Colin, Freund, Lewis and Cohen, 575 Madison Avenue, New York, New York 10022.

The issue raised is whether Petitioner's proposed activities will render it subject to the Franchise Tax on Business Corporations imposed under Article 9-A of the Tax Law.

Petitioner describes its proposed activities as follows: "Noga Holding (USA), Inc., ("Noga"), a Delaware corporation wholly owned by a non-U.S. corporation, owns 100% of the stock of two other Delaware corporations, Noga Commodities (Overseas) Inc. and Noga Realty Inc., both of which are engaged in business in New York City and have their principal offices in New York City. Noga does not and will not engage in any active business in New York City other than the holding of the stock of its subsidiaries. Noga does not plan to make loans to its subsidiaries or to guarantee loans obtained by its subsidiaries. Noga plans to qualify to do business in New York under the relevant corporate statutes, if it is required to do so.

"Noga presently has five directors, one of which is also Secretary of the company and a resident of New York City. The other four directors of Noga are nonresident aliens residing in a foreign country. The officers of Noga consist of a President, who is one of the nonresident alien directors, and the New York resident Secretary. Both officers function in a non-paying capacity. The Secretary-Director is an attorney associated with the law firm which represents Noga, and this individual was elected as Secretary solely to facilitate corporate documentation. Noga currently has no Vice-President or Treasurer and has no salaried employees.

"Noga plans to maintain bank accounts in New York City and will have all of its tax returns and administrative matters taken care of in New York City by its New York lawyers and accountants and by administrative personnel employed by Noga's subsidiaries. For this reason, Noga will keep all of its books and records in New York City. Finally, Noga will maintain an office in New York City at the address of one of its subsidiaries, Noga Commodities (Overseas) Inc., which is located at One World Trade Center, New York, New York. No rent will be paid by Noga to its subsidiary in connection with the use of such office, which will be maintained by Noga principally as a mailing address."

Article 9-A of the Tax Law imposes a tax on foreign corporations for, "...the privilege of...doing business, or of employing capital, or of owning or leasing property in this state in a corporate or organized capacity, or of maintaining an office in this state ...." Tax Law, §209.1. The Franchise Tax Regulations, noting that the term "doing business" is used in the statute in a comprehensive sense provides that "...every corporation organized for profit and carrying out any of the purposes of its organization is deemed to be 'doing business' for the purposes of the tax" imposed under Article 9-A. 20 NYCRR §1-3.2(b)(1).

JAMES H. TULLY., COMMISSIONER

LOUIS M. JACOBSON, DEPUTY COMMISSIONER

FRANK J. PUCCIA, DIRECTOR

TP-8 (4/80)

Whether it is doing business in New York is a matter to be determined on a case by case basis, giving consideration to the following factors:

- "(i) the nature, continuity, frequency, and regularity of the activities of the corporation in New York State, compared with the nature, continuity, frequency, and regularity of its activities elsewhere;
- (ii) the purposes for which the corporation was organized, compared with its activities in New York State;
- (iii) the location of its offices and other places of business;
- (iv) the income of the corporation and the portion thereof derived from activities in New York State;
- (v) the employment in New York State of agents, officers, and employees; and
- (vi) the location of the actual seat of management or control of the corporation" 20 NYCRR §1-3.2(b)(2)

The same Regulation define the term office as "...any area, enclosure, or facility which is used in the regular course of the corporate business." 20 NYCRR §1-3.2(e)

The activities described by Petitioner would render it subject to the Franchise Tax on Business Corporations imposed under Article 9-A of the Tax Law. First, Petitioner by its own admission maintains an office in New York. The fact that the office is neither owned nor rented, and that it is used only for limited purposes, does not render it something other than an office within the meaning of the Tax Law. Second, Petitioner's activities in New York constitute the doing of business. The facts stated in the Petition indicate that Petitioner is a passive holding company whose business activities, limited as they may be, are conducted largely, if not wholly, in New York. Indicative of its doing business is the fact that one of Petitioner's two officers is located in New York, that it is in New York that Petitioner keeps its books and records and that such matters as the preparation of tax returns, administrative matter and corporate documentation are handled in New York.

Accordingly, inasmuch as the activities described by Petitioner would constitute the maintenance of an office in New York and the doing of business in New York, the performance of such activities would render Petitioner subject to the Franchise Tax on Business Corporations imposed under Article 9-A of the Tax Law.

DATED: January 16, 1981

s/LOUIS ETLINGER  
Deputy Director  
Technical Services Bureau