

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

TSB-H-81(27)C
Corporation Tax
May 5, 1981

STATE OF NEW YORK
STATE TAX COMMISSION

ADVISORY OPINION

PETITION NO. C810318B

On March 18, 1981, a Petition for Advisory Opinion was received from Geosource, Inc., 2700 South Post Oak Road, Suite 2000, Houston, Texas, 77056.

The issue raised is whether or not the Petitioner is subject to the New York State Franchise Tax on Business Corporations imposed under Article 9-A of the Tax Law.

Petitioner is a Delaware corporation having no office in New York. It neither owns nor rents property in New York. Its activities within the state are limited to the solicitation of orders for valves and truck parts by salesmen assigned to and working out of offices outside New York. All orders are placed, processed and shipped from outside the state.

Section 1-3.4(b)(9) of the Franchise Tax Regulations describes the exemption from tax applicable under Public Law 86-272 (15 U.S.C.A. §§381-384) as follows: "(i) A foreign corporation whose income is derived from interstate commerce is not subject to tax under article 9-A if the activities of the corporation in New York State are limited to either, or both of the following:

(A) the solicitation of orders by employees or representatives in New York State for sales of tangible personal property and the orders are sent outside New York State for approval or rejection; and, if approved, are filled by shipment or delivery from a point outside New York State, and

(B) the solicitation of orders by employees or representatives in New York State in the name of or for the benefit of a prospective customer of such corporation if the customer's orders to the corporation are sent outside the state for approval or rejection; and, if approved, are filled by shipment or delivery from a point outside New York State.

* * *

(iv) In order to be exempt by virtue of Public Law 86-272, the activities of employees must be limited to solicitation. The term "solicitation" is narrowly construed and is limited solely to offering tangible personal property for sale or pursuing offers for the purchase of tangible personal property. Some activities incidental to offering tangible personal property for sale or pursuing offers for the purchase of tangible personal property will nevertheless be considered solicitation and will not make the corporation taxable. Examples of such activities include:

(A) the use of samples in connection with solicitation;

(B) passing product inquiries and complaints to the corporation's home office;

(C) using autos furnished by the corporation;

(D) compensation for the use of space at the salesman's home solely for the salesman's convenience "20 NYCRR 1-3.4(b)(9).

JAMES H. TULLY., COMMISSIONER

LOUIS M. JACOBSON, DEPUTY COMMISSIONER

FRANK J. PUCCIA, DIRECTOR

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On the basis of the information presented, it is concluded that Petitioner is exempt from tax pursuant to Public Law 86-272 and Section 1-3.4(b)(9) of the Franchise Tax Regulations.

DATED: May 5, 1981

s/LOUIS ETLINGER
Deputy Director
Technical Services Bureau