

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

TSB-A-94 (53)S  
Sales Tax  
December 20, 1994

STATE OF NEW YORK  
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. S940624B

On June 24, 1994 a Petition for Advisory Opinion was received from The New York and New England Apple Institute, Inc., 32 Char Drive, Westfield, MA 01085-1468.

The issue raised by Petitioner, The New York and New England Apple Institute, Inc., is whether Petitioner has sufficient nexus with the State of New York to require Petitioner to collect sales tax on receipts from sales of merchandise which is shipped from Petitioner's Massachusetts location and delivered by either United Parcel Service or the U.S. Postal Service to customers located within New York State.

Petitioner is a nonprofit corporation that was organized under the general laws of the State of New York to promote apples throughout eastern New York State and New England.

Petitioner's offices are located in Westfield, Massachusetts and have been located in Massachusetts for over 25 years. Petitioner maintains no physical presence in the State of New York. The officers and board of directors are elected by the membership. The bylaws require that the secretary (a volunteer) of the corporation be a resident of New York in order that his address can be used in the event that it is necessary for legal process.

While Petitioner's primary purpose is to promote apples, Petitioner also sells various tangible property as an additional service to its members (i.e., signs like "Open for Business", "Fresh Cider", etc. as well as other merchandise for them to sell in their roadside markets).

Members' orders are received and processed at Petitioner's Massachusetts offices and are sent to members through UPS or in the U.S. Postal Service. Petitioner's total annual sales are under \$300,000 per year.

Section 526.15 of the Sales and Use Tax Regulations states, in part:

Resident.

(b) Others. (1) Any corporation incorporated under the laws of New York, and any corporation, association, partnership or other entity doing business in the State or maintaining a place of business in the State, ... is a resident.

In State of Wisconsin v J.C. Penney Company, 311 US 435, Miller Brothers Company v State of Maryland, 347 US 340, Scripto, Inc v Dale Carson, 4 L ed 2d 660, National Bellas Hess v Department of Revenue of the State of Illinois, 18 L ed 2d 505, National Geographic Society v California Board of Equalization, 51 L Ed 2d 631, and Quill Corporation v North Dakota,

119 L Ed 2d 91, the issues mainly dealt with whether out of state (foreign) corporations had the required minimum amount of contact within each state to create sufficient nexus to satisfy the Due Process and Commerce Clauses of the United States Constitution, thereby causing the corporations to be liable to collect a use tax on receipts from mail order sales to customers in each state where delivery of such mail order sales occurred either by common carrier or the US mail. There is no apparent case law authority regarding the issue as to whether a domestic corporation automatically has nexus for sales tax purposes in the state of its incorporation by virtue of such incorporation.

In the instant matter, Petitioner is a corporation organized under the laws of New York State. Since Petitioner is a domestic corporation and since Petitioner's bylaws require that Petitioner's volunteer secretary must be a resident of New York State in the event Petitioner requires use of the secretary's New York address for legal process purposes, Petitioner is considered to have nexus with New York State. Accordingly, Petitioner is required to collect State and local sales tax on sales of tangible personal property where delivery occurs within New York State regardless of method of delivery.

DATED: December 20, 1994

s/PAUL B. COBURN  
Deputy Director  
Taxpayer Services Division

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