

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

TSB-M-80 (3)
Corporation Tax
Income Tax
Miscellaneous Tax
Sales Tax
May 30, 1980

Advisory Opinions of the State Tax Commission

Chapter 714 of the Laws of 1979, effective January 1, 1980 provides for a new service to the taxpayer by creating the opportunity to request advisory opinions from the State Tax Commission on questions relating to any tax administered by the State Tax Commission.

Questions may arise in the course of an audit, during an examination of a tax return, with respect to a taxpayer's claim for a refund or credit, or for the purpose of tax planning. An advisory opinion may be sought in each of these instances.

An advisory opinion is a statement written on behalf of the Commission, setting forth the applicability of pertinent statutory and regulatory provisions to a specified set of facts and is binding upon the Commission only with respect to the person requesting the advisory opinion and the specific facts contained in the petition. The Tax Commission may modify a previously issued advisory opinion, but in such an instance the modification shall operate prospectively only.

Any person who is or may be subject to a tax or liability under the Tax Law or who claims exemption from such tax or liability, may file a Petition For An Advisory Opinion. This petition must be made on a properly completed form AD-1.8 and should set forth a specific set of facts relative to the request for an advisory opinion, as well as the exact issue or issues sought to be resolved.

A petition may be filed, without filing any power of attorney, by an individual on his own behalf; by a member of a partnership on behalf of the partnership; by an officer of a corporation on behalf of such corporation; by a spouse, parent or guardian of a minor on behalf of the minor; or by any person having a proper interest on behalf of an individual who is mentally incompetent or physically incapacitated. An employee of a corporation, filing a petition on behalf of the corporation, must have a power of attorney executed by an officer of such corporation. Also, any of the following may file a Petition For An Advisory Opinion on behalf of another individual or a business entity, if authorized by a power of attorney signed by the individual, partnership member, or corporate officer and submitted to the Commission before or with the filing of the petition:

- a) an attorney licensed to practice in New York State;
- b) a certified public accountant qualified to practice in New York State;
- c) a public accountant enrolled with the New York State Education Department under Article 149 of the Education Law;
- d) an attorney or accountant authorized to practice in any other state, who prepared a petitioner's return or claim for refund of tax paid for the year to which the petition relates;
- e) a person admitted to practice before the Internal Revenue Service or the Tax Court of the United States; and
- f) the petitioner's spouse, child or parent.

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No one other than the aforementioned may file a petition on behalf of another except by special permission received from the Commission. A request for such permission shall be made in writing to:

Secretary to the State Tax Commission
Department of Taxation and Finance
Building 9
State Campus
Albany, New York 12227

A Petition For An Advisory Opinion, once it has been properly completed, must be submitted to:

Audit Division
Advisory Opinion Unit
Building 9
State Campus
Albany, New York 12227

Advisory opinions will be mailed to the petitioner within ninety days of receipt of a completed Petition For An Advisory Opinion. This ninety day period may be extended by the Commission for a period of up to thirty additional days, in which case the petitioner will be notified of the extension and the reason therefor. The period within which an advisory opinion must be issued may also be extended by written agreement between the taxpayer and the Department. Any modification of the petition (for example, additional submissions by the petitioner) will begin anew the period within which an advisory opinion must be issued. No advisory opinion will be issued if the petitioner has filed a petition for a hearing pursuant to Part 601 of the Official Compilation of Codes, Rules and Regulations of the State of New York.

All issued advisory opinions will be published and made available to the public. They will be modified only to the extent that the petitioner's identification numbers will be deleted.

These advisory opinions issued by the Commission shall be available for public inspection. A request for a copy of a decision shall be made to:

Records Access Officer
Department of Taxation and Finance
Building 9
State Campus
Albany, New York 12227

Copies of advisory opinions will be furnished at the cost of 25 cents per page.

Regulations concerning Advisory Opinions of the State Tax Commission were promulgated on December 27, 1979.