

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

TSB-H-81(3)C
Corporation Tax
January 8, 1981

STATE OF NEW YORK
STATE TAX COMMISSION

ADVISORY OPINION

PETITION NO. C800902B

On September 2, 1980, a Petition for Advisory Opinion was received from Victor Hasselblad, Inc., 10 Madison Avenue, Fairfield, New Jersey 07006.

The issue raised is whether a New York corporation whose sole activity in New York consists of the shipping of goods from its non-New York place of business to customers in New York may be required to pay more than the minimum tax due under Article 9-A of the Tax Law (Franchise Tax on Business Corporations).

The Petitioner, a New York corporation, was completely inactive from 1956, when it was formed, through 1979. In January, 1980 its Swedish parent, a manufacturer of cameras and photographic accessories, terminated an exclusive U.S. distributorship with an independent U.S. distributor. Petitioner then purchased the inventories of the terminated distributor and became the exclusive U.S. distributor for its Swedish parent. Petitioner qualified to do business in New Jersey and leased a building in Fairfield, New Jersey from which it conducts all of its business, including its administrative, sales, service and storage functions. Its only location outside New Jersey consists of a service branch in California. Petitioner has no office, sales representative, listing, or other connection in or with New York State. Petitioner sells Hasselblad cameras and accessories to dealers and retailers throughout the United States, including New York State. All orders are approved and processed through the New Jersey office and shipped directly to the customers from the New Jersey location.

Section 209.1 of the Tax Law imposes a franchise tax on every domestic business corporation for the privilege of exercising its corporate franchise. Section 210.1(a) of the Tax Law sets forth four methods of computing the basic tax and provides that the method which produces the largest tax shall be applicable. In addition there is a tax on subsidiary capital. Except with respect to the minimum tax of \$250, the computations of tax possibly applicable to Petitioner would involve (on either a mandated or elective basis) the application of a business allocation percentage. One of the factors constituting the business allocation percentage is based on receipts from sales of tangible personal property where shipments are made to points within New York. Thus, since Petitioner makes sales of cameras and accessories delivered to customers in New York its business allocation percentage is greater than zero and may result in a tax liability in excess of \$250. Whether this would be the case is dependent on (1) the magnitude of Petitioner's tax bases under section 210 of the Tax Law and (2) Petitioner's business allocation percentage.

Accordingly, by virtue of its sales to New York customers Petitioner may be liable, in accordance with the considerations cited above, for a tax under Article 9-A of the Tax Law in excess of \$250.

DATED: October 28, 1980

s/LOUIS ETLINGER
Deputy Director
Technical Services Bureau