



October 30, 2006
Pennsylvania Corporation Taxes
No. CRP-06-003
Nexus: Corporate Officers Working in Pennsylvania

ISSUE

Are taxpayers subject to Pennsylvania Corporate Net Income Tax and/or Capital Stock/Franchise Tax?

CONCLUSION

Taxpayers are subject to both taxes.

FACTS

Taxpayers are non-Pennsylvania corporations, which have business operations outside Pennsylvania. Taxpayers have no Pennsylvania customers. Taxpayers have managers located outside Pennsylvania who are responsible for day-to-day operations.

Taxpayers' corporate officers are located at an affiliate's building located in Pennsylvania. Such officers perform management functions for taxpayers and affiliated corporations. The officers' duties include involvement in the annual budgeting process, involvement in extraordinary issues, and overall management of taxpayers.

Taxpayers compensate their officers. Taxpayers have filed and remitted Pennsylvania payroll and unemployment taxes relating to wages paid to their officers.

DISCUSSION

In order to be subject to corporate taxes, a foreign corporation must perform certain activities in Pennsylvania in its own name or through any individual, association, business trust, corporation, joint venture, limited liability company, limited partnership, partnership or other entity. See, Sections 402 and 601 of the Tax Reform Code of 1971, 72 P.S. §§ 7402 and 7601.

Taxable activities include:

1. Doing business.
2. Carrying on activities, including solicitation.
3. Having capital or property employed or used.
4. Owning property.

The above phrases are not defined by statute or regulation. In addition, our courts have not provided clear definitions of these terms.

One court has made the following statement regarding the phrase "doing business", "to the extent that it has been defined it has been equated with an exercise of the corporate power within the state for the purposes for which the corporation was chartered." Please see Commonwealth v. Atlantic & Gulf Stevedores, Inc., 30 Pa. Cmwlt. 512, 520, 373 A.2d 1385, 1388 (1977).

Based on this interpretation of "doing business", our opinion is that these taxpayers are doing business in Pennsylvania. The operational aspect of these taxpayers' business is located outside Pennsylvania. However, corporate officers of these taxpayers who are located in Pennsylvania perform the overall management part of this business. Since management of such business is the exercise of a corporate power within Pennsylvania for the purposes for which these taxpayers were chartered, these taxpayers are "doing business" in Pennsylvania. Therefore, these taxpayers are subject to Pennsylvania Corporate Net Income Tax and Capital Stock/Franchise Tax.