

In The Matter of the Petition of "Z"

for a Declaratory Ruling

DOC #1094, Effective January 29, 1978

Pursuant to RSA 541-A:8, "Z" , a foreign corporation incorporated under the laws of the State of flat "a" , has petitioned the Department of Revenue Administration for a declaratory ruling with regard to the potential applicability of the New Hampshire Business Profits Tax (RSA Chapter 77-A) to income derived by it both from foreign sources and from a wholly-owned New Hampshire subsidiary, given its proposed limited activity within the State. Through its attorneys, "Z" represents the following:

1. "Z" , a wholly-owned subsidiary of "X" a "b" corporation, is itself a "a" corporation which owns all or a majority of the outstanding capital stock of several foreign insurance corporations, as well as a majority of the outstanding capital stock of one New Hampshire insurance corporation.
2. The registered office of "Z" is located at,,
3. "Z" currently has three directors, all of whom are residents of the
4. "Z" currently has four officers, three of whom are residents of the of ".....", and one of whom, the corporate secretary, is a resident of New Hampshire.
5. "Z" proposes to have its corporate secretary maintain the corporate books and records of "Z" in New Hampshire.
6. "Z" will continue to maintain its corporate bank account in a foreign state, and all transactions involving receipt and disbursement of corporate funds will take place In that foreign state.
7. "Z" will employ no person in the State of New Hampshire, nor will it own or lease any real or personal property in New Hampshire.
8. The annual meeting of stockholders of "Z" as well as meetings of its board of directors will not be held in New Hampshire.
9. Stock certificates held by "Z" evidencing ownership of intangible property will not be maintained in New Hampshire.
10. "Z" will not engage in the conduct of any insurance or other business in the State of New Hampshire.
11. The active and effective management of "Z" will continue to be carried out by the directors and officers of the corporation outside the State of New Hampshire.
12. "Z" may use, New Hampshire as an address of convenience on occasion, and may from time to time receive mail in New Hampshire.

In view of the foregoing representations, and specifically based upon them, the Department of Revenue Administration finds that "Z" is a bona fide foreign corporation whose proposed limited presence in the State of New Hampshire would not result in the derivation of any economic benefit to it from the employment of either property or labor within the State. The proposed passive activity by "Z" within the State of New Hampshire would not justify a finding that income received by "Z" from foreign sources, or from its wholly-owned New Hampshire subsidiary, was reasonably attributable in any measurable degree to business activity carried on within this State. In short, the proposed activity would provide an insufficient commercial nexus between the corporate activities of "Z" and the State of New Hampshire Business Profits Tax (RSA Chapter 77-A) would not apply to income of "Z" which is derived from its subsidiaries or its foreign activity.

Lloyd M. Price, Commissioner