

Revenue Ruling 56-128

January 1956

Subsidiary corporations engaged in the freight forwarding business, within the meaning of section 1002(a) (5) of Title 49 of the United States Code, and which derive at least 80 percent of their gross income, computed without regard to dividends and capital gains and losses, from the furnishing of such services qualify as regulated public utilities under section 1503(c) of the Internal Revenue Code of 1954.

Advice has been requested whether certain subsidiary corporations which are freight forwarders constitute regulated public utilities within the meaning of section 1503 (c) of the Internal Revenue Code of 1954.

Subsidiary corporations, X and Y, are freight forwarders. They utilize common carriers by railroad, motor vehicles, and water, or a combination thereof, in rendering their services to shippers. The rates charged by each subsidiary for the furnishing of such services have been established or approved by the United States Interstate Commerce Commission, and each holds a permit from that Commission to perform freight forwarding services, from which they derive 80 percent or more of their [*2] gross income, exclusive of dividends and capital gains and losses.

Section 1002(a) (5) of Title 49, United States Code, defines a freight forwarder as follows:

The term "freight forwarder" means any person which (otherwise than as a carrier subject to chapters 1, 8 or 12 of this title) holds itself out to the general public as a common carrier to transport or provide transportation of property, or any class or classes of property, for compensation, in interstate commerce, and which, in the ordinary and usual course of its undertaking, (A) assembles and consolidates or provides for assembling and consolidating shipments of such property, and performs or provides for the performance of break-bulk and distributing operations with respect to such consolidated shipments, and (B) assumes responsibility for the transportation of such property from point of receipt to point of destination, and (C) utilizes, for the whole or any part of the transportation of such shipments, the service of a carrier or carriers subject to chapters 1, 8, or 12 of this title.

Section 1503(c) (1) of the Internal Revenue Code of 1954 defines a regulated public utility, as far as is pertinent here, as follows:

(A) A [*3] corporation engaged in the furnishing or sale of-

* * *

(iii) transportation (not included in clause (ii) by motor vehicle-

if the rates for such furnishing or sale, as the case may be, have been established or approved by a State or political subdivision thereof, by an agency or instrumentality of the United States, by a public service or public utility commission or other similar body of the District of Columbia or of any State or political subdivision thereof, or by a foreign country or an agency or instrumentality or political subdivision thereof.

Section 1503(c) (2) of the Code provides that for the purpose of computing the tax on a consolidated return the term "regulated public utility" does not include a corporation which does not receive at least 80 percent of its income, computed without regard to dividends and capital gains and losses, from "regulated public utility" sources as defined in section 1503(c) (1) of the Code.

Accordingly, since the subsidiary corporations are engaged in the freight forwarding business within the meaning of section 1002(a) (5) of Title 49 of the United States Code and derive at least 80 percent of their gross income, computed without regard to dividends [*4] and capital gains and losses, from the furnishing of such services, it is held that they qualify as regulated public utilities under section 1503(c) of the Internal Revenue Code of 1954.