



STATE OF DELAWARE
DEPARTMENT OF FINANCE
DIVISION OF REVENUE
DELAWARE STATE BUILDING
820 N. FRENCH STREET
WILMINGTON, DELAWARE 19801

State of Delaware
Division of Revenue
Tax Ruling 83-6

December 9, 1983

SUBJECT: Corporation Income Tax - Interrelation of Exemption from Tax Under §1902 (b) (8), §1902 (b) (9) and §1902 (b) (10), Title 30, Delaware Code.

Questions have been raised as to whether a corporation whose activities within Delaware are confined to the maintenance and management of its own intangible investments and which qualifies and is exempt from tax under §1902 (b) (8), may nevertheless lose its exemption if it also qualifies for and elects to be taxed as a Subchapter S corporation under Federal law. Section 1902 (b) (9) exempts from Delaware corporate tax a corporation which qualifies and elects to be taxed under Federal law as a Subchapter S corporation, with the proviso that the corporation will be subject to Delaware tax on that portion of its Federal taxable income which is equal to the percentage of stock owned by its non-resident shareholders, if any. It is the position of the Division of Revenue that the exemptions from corporate tax provided by §1902 (b) (8), (b) (9) and (b) (10) are mutually exclusive and entitled to independent application, so that if a corporation qualifies and is exempt from corporation tax under §1902 (b) (8), its exemption will not be affected and it will not be subject to tax by virtue of the separate provisions of §1902 (b) (9).

Similarly, under §1902 (b) (10), a corporation which qualifies for and elects to be treated as a Domestic International Sales Corporation for Federal tax purposes is exempt from Delaware corporation income tax. The Division of Revenue has held that a corporation which qualifies for exemption under §1902 (b) (8), will not lose its exemption if it acquires the stock of a DISC as an intangible investment. The statutory exemptions are to be independently applied, and there is no statutory basis for holding that the §1902 (b) (8) exemption is modified or overridden by the provisions of §1902 (b) (10).

Robert W. Chastant
Director of Revenue