

## *Ruling 92-09*

Vermont Department of Taxes

Date: August 31, 1992

Written By: Mary L. Bachman, Attorney for the Department

Approved By: Joyce Errecart, Commissioner of Taxes

On behalf of your client, you have requested a ruling on the applicability of Vermont's investment and holding company statute, 32 V.S.A. § 5837. This ruling relies on the information contained in your letter of August 19, 1991 and conveyed during our conversation of October 21, 1991, and October 29, 1991.

Your client is the sole shareholder of an existing S corporation, [Corporation]. He is considering a plan to either relocate [Corporation] to Vermont or create a new S corporation and locate it in Vermont. [Corporation] has elected Subchapter S treatment for federal income tax purposes. [Corporation] has no affiliates and has no pre-S corporation earnings and profits. If the proposed new corporation is created, it will make the same election. [Name] is, and expects to remain, a resident of [State].

32 V.S.A. § 5837 limits to \$150 the Vermont corporate tax liability of corporations "whose activities are confined to the maintenance and management of their intangible investments and the collection and distribution of the income from such investments or from tangible property physically located outside this state." Intangible investments include investments in "stocks, bonds, notes and other debt obligations (including debt obligations of affiliated corporations), patents, patent applications, copy-rights, trademarks, trade names and similar types of intangible assets."

Vermont taxes S corporations on the taxable income of the corporation which is distributed to, or is undistributed, but allocable under the laws of the United States to, nonresident shareholders. 32 V.S.A. § 5811(18).

You request a ruling as to whether section 5837 which limits the tax liability of holding and investment companies applies to a corporation which has elected S corporation status under the federal Internal Revenue Code.

Although the tax imposed on S corporations is imposed on taxable income distributed or allocable to nonresident shareholders, it is a tax on the corporation and not the shareholders. Section 5837 extends favorable tax treatment at the corporate level to corporations whose activities fall within the scope of those permitted. The holding company law does not expressly limit its favorable treatment to C corporations. Its focus is the activities, not the form, of corporations. Since section 5837 is the more recent and

more specific enactment, it follows that it operates to limit the Vermont corporate income tax of a holding company regardless of whether it is a C corporation or an S corporation for federal tax purposes.

This ruling is issued solely to your firm and is limited to the facts presented as affected by current statutes and regulations. Other taxpayers may refer to this ruling to determine the Department's general approach, but the Department will not be bound by this ruling in the case of any other taxpayer or in the case of any change in the relevant statute or regulations.