

New York State Department of Taxation and Finance
Taxpayer Services Division
Technical Services Bureau

TSB-A-81 (11) C
Corporation Tax
December 15, 1981

STATE OF NEW YORK
STATE TAX COMMISSION

ADVISORY OPINION

PETITION NO. C811106A

On November 6, 1981, a Petition for Advisory Opinion was received from the National Savings Bank of the City of Albany, 90 State Street, Albany, N.Y. 12207.

The issue raised is whether Petitioner may file a consolidated return, under Article 32 of the Tax Law, with a subsidiary which will be formed as a business corporation, incorporated in the State of Delaware or some other state, and which will be authorized to do business in the State of New York.

Petitioner is a New York State chartered Savings Bank, governed by Article 6 of the Banking Law. Petitioner states that it plans to form a subsidiary with an office in the State of New York, whose sole authority, purpose and business will be limited by its Certificate of Incorporation to buying mortgages from Petitioner and issuing mortgage-backed bonds thereon. The subsidiary's Certificate of Incorporation will provide that it cannot be changed in any respect, without the consent of the Trustee appointed for the benefit of the bondholders. The subsidiary will not be engaging in any other activities, and is stated to be, in concept and design, a financing subsidiary.

Section 1462(f) of the Tax Law, contained in Article 32 thereof, provides for the filing of consolidated returns by (1) affiliated banking corporations and (2) bank holding companies affiliated with corporations taxable under Article 32. In the present instance neither Petitioner nor its proposed subsidiary is or will be a bank holding company. Petitioner is a banking corporation, as that term is defined in Section 1452 of the Tax Law, but the proposed subsidiary would not be such a banking corporation. Section 1452(a)(8) provides for the classification of certain non-bank subsidiaries as banking corporations, for purposes of Article 32 of the Tax Law, but such provision relates only to subsidiaries of bank holding companies, national banks and corporations subject to Article 3 of the Banking Law (commercial banks).

Accordingly, Petitioner would not be permitted to file a consolidated return, under Article 32 of the Tax Law, with its proposed subsidiary.

DATED: December 14, 1981

s/LOUIS ETLINGER
Deputy Director
Technical Services Bureau