

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

TSB-A-81 (7) C
Corporation Tax
December 3, 1981

STATE OF NEW YORK
STATE TAX COMMISSION

ADVISORY OPINION

PETITION NO. C811008B

On October 8, 1981, a Petition for Advisory Opinion was received from Natwest Holdings, Inc., c/o Charles S. Crompton, Jr., 100 West Tenth Street, Wilmington, Delaware 19801.

At issue is whether Petitioner will, if it re-locates its operations to New York and commences doing business therein, so as to become subject to Article 9-A of the Tax Law, be permitted to file a consolidated return, under Article 32 of the Tax Law, with a wholly owned subsidiary which is a commercial bank.

Article 32 of the Tax Law imposes the State's Franchise Tax on Banking Corporations. Section 1462(f) of the Tax Law provides, in relevant part, that: "The commission may, in its discretion, authorize bank holding companies as defined in article three-a of the banking law or the federal bank holding company act of nineteen hundred fifty-six, as amended, to make a consolidated return with affiliated corporations taxable under this article in which case the consolidated tax will be computed in accordance with the provisions of this article."

Petitioner states that it is a bank holding company as defined in the Federal Bank Holding Company Act of 1956, as amended. Petitioner also indicates its subsidiary is a commercial bank formed under Article 3 of the Banking Law. Such subsidiary is therefore a banking corporation, taxable under Article 32 of the Tax Law. Finally, Petitioner states that its subsidiary is 100% owned by Petitioner, thus satisfying the statute's requirement of affiliation. Petitioner and its subsidiary, National Bank of North America, assuming the former to have commenced doing business in New York, would accordingly meet all of the requirements for permission to file tax returns on a consolidated basis under Article 32 of the Tax Law. Such permission is normally granted only after the close of the taxable year with respect to which permission is requested, and must be applied for at least 30 days prior to the date when the return for such taxable year is due. 20 NYCRR 37.5. However, this Advisory Opinion constitutes a commitment to grant such permission, when applied for pursuant to 20 NYCRR 37.5, assuming the Petitioner's statement of facts to be accurate and to continue to apply throughout the taxable year.

DATED: December 1, 1981

s/LOUIS ETLINGER
Deputy Director
Technical Services Bureau