

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

TSB-A-82(13)C
Corporation Tax
September 21, 1982

STATE OF NEW YORK
STATE TAX COMMISSION

ADVISORY OPINION

PETITION NO. C810716A

On July 16, 1981 a Petition for Advisory Opinion was received from Lloyds Bank California, 612 Flower Street, Los Angeles, California 90017.

At issue is whether a banking corporation organized under the laws of California would be subject to either the Franchise Tax on Business Corporations imposed under Article 9-A of the Tax Law or the Franchise Tax on Banking Corporations imposed under Article 32 of the Tax Law, as a result of maintaining a representative within the State and of establishing a loan production office in New York City.

Petitioner is a banking corporation chartered and organized under the laws of California. Petitioner's principal place of business and chief executive offices are located in Los Angeles, California.

Petitioner has stationed a representative in New York City and anticipates establishing an office in New York for loan production' purposes. The Petitioner's representative is primarily responsible for developing secured and unsecured loans, developing leasing business, and selling other related business services. In the future, the personnel staffing the representative office will originate loans, assemble credit information, make property inspections and appraisals, and perform other services incident to securing loans. All loans and leases, however, will be approved in California, all funds will be disbursed from California and all payments will be due in California.

Section 1451(a) of the Tax Law, contained in Article 32, provides, in pertinent part, for the imposition of a tax on every banking corporation "exercising its franchise or doing business in this state in a corporate or organized capacity . . .".

Section 1452(a)(2) of the Tax Law defines the term "banking corporation," in pertinent part, to include "every corporation or association organized under the laws of any other state or country which is doing a banking business in this state "

Section 1452(b) of the Tax Law, in pertinent part, defines the term "banking business" to mean "such business as a corporation or association may be created to do under articles three, three-b, five, five-a, six, seven and ten of the banking law, or any business which a corporation or association is authorized by such articles to do."

Section 200 of the Banking Law, contained in Article 5 thereof, requires that foreign banks be licensed by the Superintendent of Banks before they may transact any banking business in New York, with certain exceptions not germane to the present matter. Supervisory Policy CB 121 of the Banking Department describes two activities of foreign and other banks which would not constitute

the doing of the business of banking. These are the maintenance of a representative and the operation of a loan production office. The term "loan production office" is defined in section 121.2(a) of the aforementioned Supervisory Policy, as follows: "A loan production office is not a branch office of a bank. Such an office may not approve loans; may not disburse funds; and may not accept deposits or loan repayments. The activities of a loan production office shall be limited to the solicitation of loans on behalf of the bank (or a branch thereof) and, in connection therewith, the assembly of credit information, the making of property inspections and appraisals, the securing of title information, the preparation of applications for such loans (including making recommendations with respect to action thereon), the solicitation of investors to purchase loans from the bank, the search for such investors to contract with the bank for the servicing of such loans, and engaging in other similar agent-type activities (not to be confused with agency-type activities as defined by article V of the Banking Law)."

Section 121.2(b) of the Supervisory Policy defines the term "representative," as follows: "A representative does not function as the branch office of a bank but is any representative or service-type division or subsidiary engaged in non-banking functions of a parent banking organization. The activities of a representative may include but are not limited to: the solicitation of new business, research, servicing home office needs, and acting as a liaison between the home office and its customers in New York State. The representative shall be subject to all the restraints set forth in section 121.2(a) on loan production offices."

Petitioner's representative's operations, consisting of developing secured and unsecured loans, developing leasing business and selling related business services, appear to fall within the description of non-banking functions contained in section 121.2(b) of the Banking Department's Supervisory Policy CB 121.

The activities of the proposed loan production office, including the origination of loans (viz., the solicitation of loans), the assembling of credit information, the making of property inspections and appraisals, as well as the performance of other services incident to the securing of loans, appear to be within the ambit of those functions described in section 121.2(a) of Supervisory Policy CB 121.

Accordingly, if Petitioner's sole activities in New York consist of the maintenance of a representative and the operation of a loan production office, within the meaning of Supervisory Policy CB 121, and assuming that Petitioner is not otherwise required to obtain a license pursuant to section 200 of the Banking Law, Petitioner would not be subject to the Franchise Tax on Banking Corporations imposed under Article 32 of the Tax Law.

Article 9-A of the Tax Law imposes the Franchise Tax on Business Corporations, applicable to foreign corporations which do business, employ capital, own or lease property in New York in a corporate or organized capacity, or maintain an office in New York. Subdivision 4 of Section 209 of the Tax Law, contained in Article 9-A, provides that corporations liable to tax under Article 32

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of the Tax Law are not subject to tax under Article 9-A. It has been held that a corporation is to be treated as a single entity for purposes of determining whether it is liable to tax under former section 182 or under Article 9-A of the Tax Law. (Former Section 182 imposed a franchise tax on real estate corporations). Matter of Central Park Plaza Corp. v. Bates, 278 App. Div. 607, aff'd 303 N.Y. 694. Recognizing this principle, the State Tax Commission has not sought to treat a foreign banking corporation as taxable under Article 9-A based upon the particular activities conducted in this state only. Accordingly, Petitioner's liability for tax has been effectively ruled upon herein by application of the provisions of Article 32 of the Tax Law. See Letter of Counsel, November 14, 1973.

DATED: September 20, 1982

s/LOUIS ETLINGER
Deputy Director
Technical Services Bureau