

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

TSB-A-82 (15) C
Corporation Tax
October 14, 1982

STATE OF NEW YORK
STATE TAX COMMISSION

ADVISORY OPINION

PETITION NO. C820830A

On August 30, 1982 a Petition for Advisory Opinion was received from The Ore and Chemical Corporation, 605 Third Avenue, New York, New York 10158.

The issue raised is whether interest paid by a second tier subsidiary to its "grandparent" corporation would be required to be added to Federal entire taxable income by the subsidiary in computing its entire net income under section 208.9(b)(5) of the Tax Law, contained in Article 9-A thereof.

Petitioner presents the following statement of facts: Corporation S is incorporated in the State of Delaware and is wholly owned by a foreign corporation (P) which is incorporated in Germany. P is in the business of mining, trading, engineering and investment. S is a holding company for P's U.S. investments. S holds 90% of T's stock, and a third corporation (X) holds the remaining 10% of T's stock. T has outstanding loans from P. T pays interest on the out-standing balance. The interest paid by T to P is at an arm's length rate.

Section 208.9(b)(5) of the Tax Law provides, in pertinent part, that in arriving at entire net income for franchise tax purposes, an addition to federal entire taxable income must be made in the amount of interest paid on indebtedness directly or indirectly owned to any stockholder or shareholder owning more than five per cent of the taxpayer's issued capital stock, or to a subsidiary of such corporate stockholder or shareholder.

Inasmuch as T's interest payments to P are not payments to an entity described in section 208.9(b)(5) the amount of such payments is not required to be added to Federal entire taxable income pursuant to Tax Law, § 208.9(b)(5). Hooker Chemical & Plastics Corp., Advisory Opinion of the State Tax Commission, June 1, 1981, TSB-H-81(37)C.

DATED: October 12, 1982

s/LOUIS ETLINGER
Deputy Director
Technical Services Bureau

ROBERT W. BOUCHARD, ACTING COMMISSIONER

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