

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

TSB-A-85 (12) C
Corporation Tax
July 8, 1985

STATE OF NEW YORK
STATE TAX COMMISSION

ADVISORY OPINION

PETITION NO. C850419A

On April 19, 1985, a Petition for Advisory Opinion was received from Fleet Credit Corporation of New York, Inc. 111 Westminster Street, Providence, Rhode Island 02903.

The issue raised is whether interest paid by a second tier subsidiary to its "grandparent" corporation must be added to federal entire taxable income by the subsidiary for purposes of computing its entire net income under the Franchise Tax on Business Corporations imposed under Article 9-A of the Tax Law.

Petitioner, a Massachusetts corporation subject to Article 9-A of the Tax Law, is engaged in equipment leasing and financing. Petitioner is a wholly-owned subsidiary of Fleet Credit Corporation, a Rhode Island corporation also engaged in equipment leasing and financing. Fleet Credit Corporation is in turn wholly-owned by Fleet National Bank, a commercial banking business. Fleet National Bank is itself wholly-owned by Fleet Credit Group, Inc.

Petitioner borrows funds from its grandparent corporation, Fleet National Bank. The interest expense is determined by multiplying a portion of the borrowings by a fixed rate determined by reference to Fleet Financial Group's long term debt and by multiplying the balance of the borrowings by the Bank's variable cost of funds rate.

Section 208.9(b)(5) of the Tax Law provides 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 owed to any stockholder or shareholder owning more than five percent of the taxpayer's issued capital stock, or to a subsidiary of such corporate stockholder or shareholder.

Interest payments to a grandparent corporation are not considered payments to an entity described in section 208.9(b)(5) of the Tax Law. Hooker Chemical & Plastics Corp., Advisory Opinion of the State Tax Commission, June 1, 1981, TSB-H-81(37)C; The Ore and Chemical Corporation, State Tax Commission Advisory Opinion, October 12, 1982, TSB-A-82(15)C. The amount of such payments, therefore, is not required to be added to entire taxable income.

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Accordingly, interest paid by Petitioner to Fleet National Bank is not required to be added to Federal entire taxable income for purposes of Article 9-A of the Tax Law since such payments are not made to an entity described in section 208.9(b)(5) of the Tax Law.

DATED: July 1, 1985

s/FRANK J. PUCCIA
Director
Technical Services Bureau

NOTE: The opinions expressed in Advisory Opinions
are limited to the facts set forth herein.