

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

TSB-A-87 (8) C  
Corporation Tax  
April 16, 1987

STATE OF NEW YORK  
STATE TAX COMMISSION

ADVISORY OPINION

PETITION NO. C870127A

On January 27, 1987, a Petition for Advisory Opinion was received from Peat, Marwick, Mitchell & Co., 345 Park Avenue, New York City, New York 10154.

The issue raised is whether a foreign national banking association that serves as a trustee for a New York State issuer of industrial development bonds but has no other activity or contacts with New York State is subject to the franchise tax imposed by Article 32 of the Tax Law.

The facts presented are as follows:

1. "Bank" is a national banking association whose headquarters and other facilities are located outside of New York State.
2. Bank does not operate an office, own or rent real or personal property, maintain any employees or have any contact with New York State with the exception of services as a trustee for New York State industrial development bonds as described in Paragraph 3.
3. A typical transaction in which the Bank provides trustee services is as follows:
  - A. Corporation X, located in New York State, plans to acquire equipment which will be used exclusively in New York State.
  - B. Corporation X issues a debt obligation in an amount sufficient to acquire the equipment which will be guaranteed by County Y (in New York State) per an industrial development bond. Corporation X then requests that the Bank serve as trustee for the indenture. The Bank does not engage in pre-issuance negotiations in New York State or elsewhere. These debt obligations would then be acquired by various bondholders such as private citizens or institutional investors.
  - C. The Bank will sign all operative documents including the indenture, at its out-of-state headquarters. The indenture and other operative documents will then be hand-delivered by a Bank employee to New York State where a cross-receipt will be signed.
  - D. The securities will be issued and authenticated at the Bank's out-of-state headquarters and hand-carried to New York State for delivery to the underwriter, as instructed by the issuer.

- E. County Y will be the legal owner of the equipment until the debt obligation is paid in full by Corporation X, at which time Corporation X will become the legal owner of the equipment. The Bank will not become the owner or take physical possession of the equipment at any time except in the unlikely event of a default. (Note: For purposes of this Petition, Petitioner stipulates that the Bank will not acquire any New York property through foreclosure or otherwise).
- F. In the absence of a default, the Bank's trustee duties will be limited to the receipt of wire transferred funds from Corporation X and the wire transfer of funds to the bondholders. All of the Bank's wire transfer and administrative activities will be conducted at the Bank's headquarters outside of New York State.
- G. Under Sec. 131.3 of the New York State Banking Law, the Bank must register with the New York State Banking Department prior to initiation of trusteeship. Separate trusteeship filings are required by the Banking Department for each trusteeship. "Blanket" registrations are not permitted. If legal service to the trustee must be made, service must first be made to the New York State Department of Banking who in turn will forward such service to the Bank's out-of-state registered office.
- H. Except as described in Paragraphs D and G, the only contact with New York State or activity within New York State may be a one-day trip to New York State by a Bank employee for the execution of the trust agreement.

Section 1451 of the Tax Law imposes, annually, a franchise tax on banking corporations for the privilege of doing business in New York State in a corporate or organized capacity.

Section 1452(a)(3) of the Tax Law provides that every national banking association organized under the authority of the United States which is doing a banking business, anywhere, is a banking corporation.

Section 16-2.7 of the Franchise Tax on Banking Corporations regulations defines "doing business" as follows:

(a) The term "doing business" is used in a comprehensive sense and includes all activities which occupy the time or labor of people for profit. Every corporation organized for profit and carrying out any of the purposes of its organization is deemed to be doing business for purposes of the tax. In determining whether a corporation is doing business, it is immaterial whether its activities actually result in a profit or a loss.

(b) Whether a corporation is doing business in New York State is determined by the facts in each case. Consideration is given to such factors as:

- (1) the nature, continuity, frequency and regularity of the activities of the corporation in New York State;
- (2) the purposes for which the corporation was organized;
- (3) the location of its offices and other places of business;
- (4) the employment in New York State of agents, officers and employees; and
- (5) the location of the actual seat of management or control of the corporation.

. . . .

(e) A corporation will not be deemed to be doing business in New York State if its activities in New York State are limited to such things as:

- (1) occasionally acquiring a security interest in real or personal property located in New York State without otherwise doing business;
- (2) occasionally acquiring title to property located in New York State through the foreclosure of a security interest without otherwise doing business . . . .

Based on the above definition of doing business, a national banking association that does not operate an office, does not own or rent real or personal property, does not maintain any employees or does not have any contact with New York State is not doing business in New York State. The activity of a national banking association as a trustee for New York State industrial development bonds where all of the services are provided outside New York State except for the signing of the trust agreement and the delivery of the securities to the underwriter in New York is not sufficient to constitute "doing business" in New York State.

Accordingly, Bank is a banking corporation pursuant to section 1452(a)(3) of the Tax Law. However, based on the facts presented, Bank is not doing business in New York State as contemplated by section 16-2.7 of the Franchise Tax on Banking Corporations regulations. Therefore, Bank is not subject to tax under section 1451 of the Tax Law.

DATED: April 16, 1987

s/FRANK J. PUCCIA  
Director  
Technical Services Bureau

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