

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

TSB-A-89(6)C  
Corporation Tax  
May 16, 1989

STATE OF NEW YORK  
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. C890126A

On January 26, 1989, a Petition for Advisory Opinion was received from Banco Hispano Americano, 645 Fifth Avenue, New York, New York 10022.

The issue raised is whether interest payable on a refund claim filed for taxable year ended December 31, 1978 is limited by section 1087(c) of the Tax Law.

During 1981, Petitioner amended its 1978 federal income tax return to change the method used in computing the interest expense deduction. This change reduced taxable income and Petitioner requested a refund of tax. The refund claim did not involve a net operating loss carryback or a capital loss carryback. At the same time, refund claims were filed with New York State (Form CT-8) and New York City. Federal Form 4188 approving the federal refund was issued on November 9, 1981. A copy of this form was forwarded to New York City on June 2, 1983, but Petitioner has no record of a copy being sent to New York State. New York State has subsequently approved the refund but has only allowed interest on the refund to accrue up to a date 90 days after the date the federal Form 4188 was issued.

Petitioner states that it satisfied the requirements of section 211.3 of the Tax Law by filing Form CT-8 with New York State within 90 days of the filing of the federal amended return. Petitioner contends that since the amended return did not involve a net operating loss carryback or a capital loss carryback, the allowance of the federal claim as evidenced by the issuance of Form 4188 did not constitute a final determination as defined in section 211.3 or section 6-1.3 of the Business Corporation Franchise Tax Regulations.

Therefore, Petitioner contends that it was not required to notify New York State within 90 days of the receipt of federal Form 4188. Thus, Petitioner feels that section 1087(c) of the Tax Law should not act to limit the interest paid on the New York State refund claim.

Section 1087(c) of Article 27 of the Tax Law provides that

[i]f a taxpayer is required by subdivision three of section two hundred eleven, or by section two hundred nineteen-bb or by section two hundred nineteen-zz, to file a report or amended return in respect of ... a decrease ... in federal taxable income ... or federal tax ... which is treated in the same manner as if it were an overpayment for federal income tax purposes, claim for credit or refund of any resulting overpayment of tax shall be filed by the taxpayer within two years from the time such report or amended return was required to be filed with the [Commissioner of Taxation and Finance]. If the report or amended return required by subdivision three of section two hundred eleven, or by section two hundred nineteen-bb or by section two hundred nineteen-zz, is not filed within the ninety day period

therein specified, interest on any resulting refund or credit shall cease to accrue after such ninetieth day ....

Petitioner is a banking corporation and is subject to franchise tax under Article 32 of the Tax Law. Therefore, section 211.3 of Article 9-A of the Tax Law is not applicable to Petitioner. However, section 219-bb of Article 9-B and section 219-zz of Article 9-C, the predecessors to Article 32, are analogous to section 1462(e) of Article 32.

Section 1462(e) of Article 32 provides that

[i]f the amount of taxable income ... for any year of any taxpayer as returned to the United States treasury department is changed or corrected by the commissioner of internal revenue or other officer of the United States or other competent authority, such taxpayer shall report such change or corrected taxable income ... within ninety days after the final determination of such change or correction or as required by the [Commissioner of Taxation and Finance], and shall concede the accuracy of such determination or state wherein it is erroneous. Any taxpayer filing an amended return with such department shall also file within ninety days thereafter an amended return with the [Commissioner of Taxation and Finance] ....

Section 1468 of Article 32 provides that the provisions of Article 27 apply to Article 32 in the same manner and with the same force and effect as if the language of Article 27 has been incorporated in full into Article 32 and had expressly referred to Article 32 except to the extent that any such provision is either inconsistent with a provision of Article 32 or is not relevant to Article 32.

Therefore, section 1087(c) of Article 27 should be read as if section 1462(e) were included in the references to section 211.3, section 219-bb and section 219-zz.

Herein, Petitioner states that it filed an amended return for federal income tax purposes and at the same time filed a Claim for Credit or Refund of Corporation Tax Paid - Form CT-8 for New York State franchise tax purposes. The filing of the CT-8 fulfilled the requirement of section 1462(e) of Article 32 that when an amended return is filed for federal income tax purposes an amended report must be filed within 90 days for New York State franchise tax purposes. In addition, Form CT-8 (1/81) required the submission of federal Form 4188 only when the claim was based on a net operating loss carryback or a capital loss carryback.

Therefore, for purposes of section 1087(c) of the Tax Law, the limitation on interest accrual, attributable to the failure to file an amended report as required by section 1462(e) of Article 32, does not apply in this case.

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Accordingly, interest on the refund allowed for taxable year ended December 31, 1978 should accrue from the due date of the original report to the date the refund was issued.

DATED: May 16, 1989

s/FRANK J. PUCCIA  
Director  
Technical Services

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