

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

TSB-A-94 (17) C
Corporation Tax
December 23, 1994

STATE OF NEW YORK
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. C940812A

On August 12, 1994, a Petition for Advisory Opinion was received from Farm Credit Leasing Services Corporation, 5500 Wayzata Blvd - #1600, Minneapolis, Minnesota 55416-1252.

The issue raised by Petitioner, Farm Credit Leasing Services Corporation, is whether it is exempt from franchise tax under Articles 9-A and 32 of the Tax Law.

Petitioner is a Federally chartered organization based in Minneapolis, currently doing business in New York State. Petitioner is organized pursuant to the provisions of the Farm Credit Act of 1971, as amended (12 USCS 2001 et seq)("Act") and is an instrumentality of the United States. Petitioner's charter was issued by the Governor of the Farm Credit Administration on August 23, 1983. The Farm Credit Administration is an independent agency in the executive branch of the United States Government.

Petitioner was organized by certain Farm Credit Banks under Title IV, part E (formerly Part D) of the Act (12 USCS 2211) as a service organization of the Farm Credit System to provide leasing services to those entities eligible to borrow from the Farm Credit System Banks and associations.

Petitioner states that section 4.27 of the Act (12 USCS 2213) provides that corporations such as Petitioner shall be subject to the same regulations and examination by the Farm Credit Administration as are the organizing bank or banks. Further, section 4.28 of the Act (12 USCS 2214) provides that state and other laws apply to such corporations' activities to the same extent such laws would apply to its organizing banks, provided that, to the extent sections 1.21; 2.8; and 3.13 of the Act (12 USCS 2023; 2098; and 2134) may exempt banks of the Farm Credit System from taxation, such exemptions, other than with respect to franchise taxes, shall not extend to corporations such as Petitioner.

Section 2211 of Title 12 of the United States Code Service ("USCS") provides:

[a]ny bank of the Farm Credit System, or two or more of such banks acting together, may organize a corporation ... for the purpose of performing functions and services for or on behalf of the organizing bank or banks that the bank or banks may perform pursuant to this Act The organizing bank or banks shall apply for a Federal charter for the corporation by forwarding to the Farm Credit Administration a statement of the need for the corporation and proposed articles specifying in general terms the objectives for which the corporation is formed, the powers to be exercised by it in carrying out the functions and services, and the territory it is to serve Upon the

approval of articles by the Farm Credit Administration and the issuance of a charter, such corporation shall become as of such date a federally chartered body corporate and an instrumentality of the United States.

Section 2214 of Title 12 of the USCS provides:

[s]tate and other laws shall apply to corporations organized pursuant to this part [12 2211 et seq] to the same extent such laws would apply to the organizing banks engaged in the same activity in the same jurisdiction. Provided, however, that to the extent that sections 1.15, 2.16, and 3.13 of this Act [12 USCS 2023, 2098 and 2134] may exempt banks or associations of the Farm Credit System from taxation, such exemptions, other than with respect to franchise taxes, shall not extend to corporations organized pursuant to this part.[12 USCS2211 et seq].

Section 2023 of Title 12 of the USCS provides:

[t]he Farm Credit Banks and the capital, reserves, and surplus thereof, and the income derived therefrom, shall be exempt from Federal, State, municipal, and local taxation, except taxes on real estate held by a Farm Credit Bank to the same extent, according to its value, as other similar property held by other persons is taxed. The mortgages held by the Farm Credit Banks and the notes, bonds, debentures, and other obligations issued by the banks shall be considered and held to be instrumentalities of the United States and, as such, they and the income therefrom shall be exempt from all Federal, State, municipal, and local taxation, other than Federal income tax liability of the holder thereof under the Public Debt Act of 1941 (31 USC 3124).

Herein, Petitioner is a corporation organized under section 2211 of Title 12 of the USCS. Pursuant to section 2214 of Title 12 of the USCS, Petitioner is exempt from franchise taxes because its organizing banks (Farm Credit Banks) are exempt from taxation under section 2023 of Title 12 of the USCS (except for taxes on real estate).

Section 209.1 of Article 9-A of the Tax Law imposes the business corporation franchise tax on every foreign corporation, unless specifically exempt, for the privilege of doing business, or of employing capital, or of owning or leasing property in New York State in a corporate or organized capacity, or of maintaining an office in New York State.

Section 1451 Article 32 of the Tax Law imposes an annual franchise tax on every banking corporation for the privilege of exercising its franchise or doing business in New York State in a corporate or organized capacity during the taxable year.

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Accordingly, pursuant to section 2214 of Title 12 of the USCS, Petitioner is exempt from the franchise taxes imposed under Articles 9-A and 32 of the Tax Law.

DATED: December 23, 1994

s/PAUL B. COBURN
Deputy Director
Taxpayer Services Division

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