

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

TSB-A-96 (21) C  
Corporation Tax  
September 12, 1996

STATE OF NEW YORK  
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. C951218B

On December 18, 1995, a Petition for Advisory Opinion was received from KPMG Peat Marwick LLP, 345 Park Avenue, New York, New York 10154.

The issue raised by Petitioner, KPMG Peat Marwick LLP, is whether for purposes of section 1454 of Article 32 of the Tax Law funds received by a subsidiary of a bank from the issuance of commercial paper and placed with the bank, as described in Scenarios A and B, respectively, are considered to be deposits which are includible in the denominator (and possibly the numerator) of the deposits factor of the bank's entire net income allocation percentage.

Petitioner submits the following facts as the basis for this Advisory Opinion.

The Bank is a banking corporation subject to Article 32 of the Tax Law. The Bank's organization consists of a parent corporation engaged in the banking business not only in New York State but also in a few additional states, in the form of branch offices. The Bank has a wholly owned subsidiary ("CP") engaged solely in the business of issuing short-term commercial paper (i.e., of a maturity less than one and one-half years) and loaning the proceeds to its parent, the Bank. The Bank receives a portion of its funding from the funds received by CP from the issuance of commercial paper. CP loans such funds to the Bank in the regular course of CP's operations.

Financing decisions are made on behalf of CP by employees of the Bank, who are employed by its New York branch and are located in New York. The Bank charges an overall fee to CP for such services. The Bank's acceptance of the terms of the funding received from CP is effectively made by the employees of the Bank making the decisions related to the issuance of CP's commercial paper.

The actual document evidencing the placement of funds by CP with the Bank ("Placing Document") indicates the type and terms of indebtedness being created by the placement of funds by CP with the Bank, e.g., deposit, loan, etc., to whom the funds are lent, type and amount of currency, value date, maturity date, internal and external interest rates, as well as proper authorizing signatures. The Bank's receipt of funds is documented by a Taking Document which details the same information as the Placing Document except that it indicates from whom the funds are received rather than with whom the funds are placed.

Scenario A:

Both the Placing Document issued by CP and the Taking Document issued by the Bank indicate that the funds placed by CP with the Bank are "deposits".

Scenario B:

Both the Placing Document issued by CP and the Taking Document issued by the Bank indicate that the funds placed by CP with the Bank are "loans". That is, the forms show a check in the box labeled "loans".

Section 1454 of the Tax Law and section 19-7.1 of the Franchise Tax on Banking Corporations Regulations ("Article 32 Regulations") provide that the percentage of the taxpayer's deposits allocated to New York State is determined by dividing the average value of deposits maintained at branches of the taxpayer within New York State, during the period the taxpayer is entitled to allocate, by the average value of all deposits maintained at branches of the taxpayer both within and without New York State during the period the taxpayer is entitled to allocate.

Section 19-7.2 of the Article 32 Regulations defines the term "deposits" as follows:

(a) the unpaid balance of money or its equivalent received or held by a bank in the usual course of business, and for which it has given or is obligated to give credit, either conditionally or unconditionally, to a commercial, checking, savings, time or thrift account, or which is evidenced by its certificate of deposit, thrift certificate, investment certificate, certificate of indebtedness or other similar name, or a check or draft drawn against a deposit account and certified by the bank, or a letter of credit or a traveler's check on which the bank is primarily liable; provided that, without limiting the generality of the term "money or its equivalent", any such account or instrument must be regarded as evidencing the receipt of the equivalent of money when credited or issued in exchange for checks or drafts or for a promissory note upon which the person obtaining any such credit or instrument is primarily or secondarily liable, or for a charge against a deposit account, or in settlement of checks, drafts or other instruments forwarded to such bank for collection;

(b) trust funds received or held by such bank, whether held in the trust department or held or deposited in any other department of such bank;

(c) money received or held by a bank, or the credit given for money or its equivalent received or held by a bank, in the usual course of business for a special or specific purpose, regardless of the legal relationship thereby established, including without being limited to escrow funds, funds held as security for an obligation due to the bank or others (including funds held as dealers' reserves), or for securities loaned by the bank, funds deposited by a debtor to meet maturing obligations, funds

deposited as advance payment on subscriptions to United States Government securities, funds held for distribution or purchase of securities, funds held to meet its acceptances or letters of credit, and withheld taxes; provided that there shall not be included funds which are received by the bank for immediate application to the reduction of an indebtedness to the receiving bank, or under condition that the receipt thereof immediately reduces or extinguishes such an indebtedness;

(d) outstanding drafts (including advice or authorization to charge a bank's balance in another bank), cashier's checks, money orders, or other officers' checks issued in the usual course of business for any purpose, but not including those issued in payment for services, dividends, or purchases or other costs or expenses of the bank itself.

The definition of "deposit" for purposes of section 19-7.2 of the Article 32 Regulations is substantially similar to and is modeled after section 1813(1)(1)-(4) of the United States Code Service (section 3(1)(1)-(4) of the Federal Deposit Insurance Act), which defines the term "deposit" for purposes of the Federal Deposit Insurance Corporation ("FDIC"). After reviewing this definition, it appears that the receipt of funds by the parent bank from its wholly owned subsidiary which consists of the proceeds from the subsidiary's issuance of commercial paper does not constitute a "deposit" under section 1813(1)(1)-(4) of the United State Code Service for purposes of the FDIC.

Accordingly, in this case, the receipt of funds by the Bank from CP that consists of the proceeds from CP's issuance of commercial paper does not constitute a "deposit" as contemplated under section 19-7.2 of the Article 32 Regulations. These funds may not be included in either the numerator or denominator of the deposits factor of the Bank's entire net income allocation percentage. It is irrelevant whether the funds are labeled "deposits" or "loans" on the Placing and Taking Documents.

DATED: September 12, 1996

/s/  
John W. Bartlett  
Deputy Director  
Technical Services Bureau

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