

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

TSB-A-99(12)C  
Corporation Tax  
January 27, 1999

STATE OF NEW YORK  
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. C981106A

On November 6, 1998, a Petition for Advisory Opinion was received from Ernst & Young LLP, 787 Seventh Avenue, New York, New York 10019.

The issue raised by Petitioner, Ernst & Young LLP, is whether entire net income will be recognized by a corporation (1) under Article 32 of the Tax Law, as defined in section 1453 of the Tax Law, or (2) under Article 9-A of the Tax Law, as defined in section 208.9 of the Tax Law, as a result of either of the two transactions described below.

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

Corporation B is a commercial bank doing business in New York State. Corporation B currently files as a banking corporation pursuant to Article 32 of the Tax Law.

Corporation B owns all of the outstanding stock of a subsidiary ("Subsidiary"). Subsidiary is a non-New York taxpayer. Subsidiary does not file on a combined report basis with Corporation B in New York. Subsidiary's assets include, but are not limited to, investment securities and the stock of companies owned in whole or in part by Subsidiary. For federal income tax purposes, Subsidiary earns income in the form of interest, dividends and/or deemed dividend distributions (pursuant to Subpart F of the Internal Revenue Code ("IRC")). Subsidiary has accumulated earnings and profits which have never been subject to tax in New York State.

Under Alternative One, Subsidiary will be completely liquidated and will distribute all of its assets to Corporation B. This transaction will qualify as a tax-free liquidation for federal income tax purposes pursuant to sections 332 of the IRC (complete liquidation of a subsidiary) and 337 of the IRC (nonrecognition for property distributed to a parent in complete liquidation of a subsidiary).

Under Alternative Two, Subsidiary will be merged into Corporation B in a tax-free reorganization for federal income tax purposes pursuant to section 368(a)(1)(A) of the IRC (statutory merger or consolidation).

**Discussion**

Section 1453(a) of Article 32 of the Tax Law provides that entire net income means total net income from all sources which shall be the same as the entire taxable income (but not alternative minimum taxable income) which the taxpayer is required to report to the United States Treasury

Department subject to the modifications and adjustments provided in section 1453(b) through (o) of the Tax Law.

Section 18-2.2(b) of the Franchise Tax on Banking Corporations Regulations provides that federal taxable income means taxable income as defined in section 63 of the IRC, and is the starting point in computing entire net income. Section 1453(b) through (o) of the Tax Law does not contain a modification or adjustment for either a transaction which constitutes a tax-free liquidation under sections 332 and 337 of the IRC, or a transaction which constitutes a tax-free reorganization under section 368(a)(1)(A) of the IRC.

Section 208.9 of the Tax Law provides that entire net income means total net income from all sources which shall be presumably the same as the entire taxable income (but not alternative minimum taxable income) which the taxpayer is required to report to the United States Treasury Department subject to the modifications and adjustments provided in section 208.9(a) through (k) of the Tax Law, and section 210.3(d) and (e) of the Tax Law.

Section 3-2.2(b) of the Business Corporation Franchise Tax Regulations provides that federal taxable income is the starting point in computing entire net income, and generally, federal taxable income means taxable income as defined in section 63 of the IRC. Sections 208.9(a) through (k) and 210.3(d) and (e) of the Tax Law do not contain a modification or adjustment for either a transaction which constitutes a tax-free liquidation under sections 332 and 337 of the IRC, or a transaction which constitutes a tax-free reorganization under section 368(a)(1)(A) of the IRC.

### **Conclusions**

For purposes of Article 32 of the Tax Law, pursuant to section 1453(b) through (o) of the Tax Law, there is no modification or adjustment applicable to a transaction where, for federal income tax purposes a subsidiary is completely liquidated and all of the assets are distributed to its parent in a tax-free liquidation under sections 332 and 337 of the IRC, or where a subsidiary is merged into its parent in a tax-free reorganization under section 368 (a)(1)(A) of the IRC.

Therefore, for purposes of computing Corporation B's entire net income under section 1453 of the Tax Law, the transactions described in Alternative One and Alternative Two would be treated the same as they are treated for federal income tax purposes, and they would not require a modification or adjustment to federal taxable income, the starting point in computing such entire net income for Corporation B.

Since Corporation B is a commercial bank, it is subject to franchise tax under Article 32 of the Tax Law, rather than Article 9-A of the Tax Law. However, with respect to a parent corporation that is taxable under Article 9-A of the Tax Law, there is no modification or adjustment under sections 208.9(a) through (k) or 210.3(d) and (e) of the Tax Law that is applicable to a transaction

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where, for federal income tax purposes a subsidiary is completely liquidated and all of the assets are distributed to its parent in a tax-free liquidation under sections 332 and 337 of the IRC, or where a subsidiary is merged into its parent in a tax-free reorganization under 368(a)(1)(A) of the IRC.

Therefore, for purposes of computing a parent corporation's entire net income under section 208.9 of the Tax Law, the transactions described in Alternative One and Alternative Two would be treated the same as they are treated for federal income tax purposes, and they would not require a modification or adjustment to federal taxable income, the starting point in computing such entire net income for the parent corporation.

Note that this advisory opinion does not address any tax liability or filing requirements of the Subsidiary corporation.

DATED: January 27, 1999

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

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