

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

TSB-H-81(13)C
Corporation Tax
March 5, 1981

STATE OF NEW YORK
STATE TAX COMMISSION

ADVISORY OPINION

PETITION NO. C800828A

On August 28, 1980, a Petition for Advisory Opinion was received from the Chase Manhattan Corporation, 1 Chase Manhattan Plaza, New York, New York 10081.

The issue raised in the petition is whether a newly formed financial services subsidiary of Chase Manhattan Corporation may be included in a consolidated return filed by Chase Manhattan Corporation under Article 32 of the Tax Law.

The Chase Manhattan Corporation (hereinafter CMC), incorporated in Delaware, is qualified to do business in New York. CMC is a bank holding company and is the parent corporation of a group of banking corporations, of which the Chase Manhattan Bank, N. A. (hereinafter CMB) is the principal subsidiary. CMC files a consolidated return with these subsidiaries under authority of Section 1462(f) of the Tax Law.

The newly formed and wholly-owned subsidiary (hereinafter FSC) will be incorporated in Delaware and qualified to do business in New York. It will have its principal office in New York. FSC will hold all of the voting stock of several companies to be formed by it to engage in a financial services business and will have offices and staff in New York which will manage, oversee and provide administrative services to such subsidiaries.

Subsidiaries of FSC will include a finance company established under the laws of Delaware operating through branches in one or more states and finance corporations commonly known as "industrial banks" which will be chartered or licensed by the respective bank department of the State in which each is incorporated. The subsidiaries will make and acquire, for their own account or for the account of others, secured and unsecured loans and other extensions of credit. Such subsidiaries will also provide other financially-related services to their customers. The industrial bank and industrial loan company subsidiaries will also issue investment certificates which are the functional equivalent of time deposit accounts offered by New York State banks and national banks and all of the subsidiaries will borrow or otherwise obtain funds for their lending activities.

Since only "banking corporations" subject to tax under Article 32 may be included in a consolidated return with an affiliated corporation subject to tax under Article 32, pursuant to section 1462(f) of the Tax Law, the preliminary question to be decided is whether the newly formed financial services subsidiary is a "banking corporation" as defined by Section 1452 of the Tax Law.

Section 1452(a)(8) of the Tax Law includes within the definition of "banking corporation" any corporation "... eighty percent or more of whose voting stock is beneficially owned by a corporation or corporations subject to article three-a of the banking law or registered under the federal bank holding company act of nineteen hundred fifty-six, as amended, and which makes a consolidated return under the provisions of subdivision (f) of section fourteen hundred sixty-two, or by a corporation or corporations subject to article three of the banking law or by a national banking association or associations, provided the corporation whose voting stock is so owned is principally engaged in business which might be lawfully conducted by a corporation subject to article three of the banking law or a national banking association."

Petitioner notes that while "...a New York bank or a national banking association headquartered in New York may conduct the proposed lending activities in New York, they cannot conduct such activities in other states or hold shares of subsidiaries conducting such activities in other states "The statutory provision quoted above was derived from section 219-p of the Tax Law, contained in Article 9-B thereof, which has been superseded by Article 32. The legislative history of section 219-p supports the view that consolidation is permissible where the subsidiary is engaged in business activities which a New York state bank or national banking association whose main office is in New York could engage in. Therefore, since such a New York bank or national banking association admittedly could not engage in the very activity in which FSC engages, FSC does not constitute a banking corporation within the meaning of section 1452 of the Tax Law. The purpose of the statutory language at issue is to permit operations subsidiaries to be subjected to Article 32 of the Tax Law if their activities could just as well have been performed by a New York bank or national banking association subject to tax under Article 32. That is to say, it is the subsidiary's activities themselves, and not the category within which such activities could be included, which is determinative. See L. 1969,c. 1090; 1969 New York State Legislative Annual 450.

Accordingly, inasmuch as FSC does not come within the definition of "banking corporation" contained in section 1452(a)(8) of the Tax Law, it may not be included on a consolidated return filed by CMC.

DATED: January 19, 1981

s/LOUIS ETLINGER
Deputy Director
Technical Services Bureau