

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

TSB-H-80(14)C
Corporation Tax
March 5, 1981

STATE OF NEW YORK
STATE TAX COMMISSION

ADVISORY OPINION

PETITION NO. C801113B

On November 13, 1980, a Petition for Advisory Opinion was received from Golden Pacific National Bank, 241 Canal Street, New York, New York 10013.

The issue raised by the Petitioner is whether or not a National Bank may file a consolidated return under Article 32 of the Tax Law with a wholly-owned subsidiary that is engaged in the business of leasing equipment located within and without New York State.

Golden Pacific National Bank is a national banking association organized and existing under the laws of the United States. The main office and a branch office are located in New York City. As a part of its banking business, the bank recently entered into equipment lease transactions. To protect itself from any liabilities which might arise from the equipment leasing business, the bank is considering organizing a wholly owned subsidiary corporation under New York Law which will conduct the bank's equipment leasing business. The equipment leasing subsidiary would be operated under guidelines set forth in Section 7.3400 of Title 12, Code of Federal Regulations.

Section 1462(f) of the Tax Law provides that "Corporations which are affiliated may, if authorized, and shall, if required, by the commission, under regulations prescribed by the commission, make a consolidated return for the purpose of this article "The applicable regulations of the Tax Commission provide that two corporations or associations are said to be affiliated if one owns 95 per cent or more of the outstanding voting stock of the other corporation or association and that such affiliated corporations, taxable under Article 32 of the Tax Law, may, if authorized by the Tax Commission, file consolidated returns. Application for such permission must be made to the Tax Commission at least 30 days prior to the due date for such return. The application is required to set forth in full the facts relating to the organization of each corporation and the manner of control exercised by the parent corporation over its subsidiary or subsidiaries and any other facts indicating that such corporations might be entitled to file a consolidated return. 20 NYCRR 37.5.

Section 1452(a)(8) of the Tax Law provides that "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 "constitutes a "banking corporation" subject to tax under Article 32 of the Tax Law for the privilege of exercising its franchise or doing business in New York.

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Inasmuch as the proposed subsidiary will be entirely owned by Petitioner and will conduct a business which the Petitioner itself could conduct, the two corporations satisfy the pre-requisites for filing consolidated returns. However, the appropriate permission must be applied for and received from the Tax Commission subsequent to the creation of the proposed subsidiary, in accordance with the regulation provision discussed above.

DATED: February 11, 1981

s/LOUIS ETLINGER
Deputy Director
Technical Services Bureau