

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

TSB-H-81(17)C  
Corporation Tax  
March 5, 1981

STATE OF NEW YORK  
STATE TAX COMMISSION

ADVISORY OPINION

PETITION NO. C801110A

On November 21, 1980, a Petition for Advisory Opinion was received from Security Mutual Life Insurance Company of New York, Court House Square, Binghamton, New York 13902.

The issue raised in the Petition is whether certain real property, acquired by the Petitioner through mortgage foreclosure on defaulted loans, is required to be included in the denominator of the property percentage for purposes of the eligible business facility credit provided for under Section 1511(d) of the Tax Law.

Petitioner is a domestic insurance corporation subject to the Franchise Taxes on Insurance Corporations imposed under Article 33 of the Tax Law. Petitioner is in the process of constructing and improving depreciable real property included in an eligible business facility which will be made the basis of a claim for the eligible business facility credit provided for under Section 1511(d) of the Tax Law.

The eligible business facility credit is computed by multiplying the tax otherwise due by the average of the property and wage percentages. The property percentage is computed, in accordance with Section 1511(d)(2)(A) of the Tax Law, by "... ascertaining the percentage which the total of eligible property values during the taxable year, as defined in paragraph four of this subdivision and as certified by the New York state job incentive board, bears to the average value, of all real and tangible personal property connected with the insurance corporation and located within the state, during such year. For the purposes of this subparagraph only, real and tangible personal property connected with the insurance corporation shall include not only such property owned by the insurance corporation but also property rented to it, and the value of rented property shall be deemed to be eight times the net annual rental rate, that is, the annual rental rate paid by the insurance corporation less any annual rental rate received by it from subrentals."

Property in this State acquired by an insurance corporation through mortgage foreclosure on defaulted loans is part of "real and tangible personal property connected with the insurance corporation and located within the state" and therefore must be included in the denominator of the property percentage. This conclusion is mandated by the plain language of the statute.

DATED: February 18, 1981

s/LOUIS ETLINGER  
Deputy Director  
Technical Services Bureau