

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

TSB-H-81(1)C
Corporation Tax
January 8, 1981

STATE OF NEW YORK
STATE TAX COMMISSION

ADVISORY OPINION

PETITION NO. C800418A

On April 18, 1980, a Petition for Advisory Opinion was received from United California Bank International, 630 Fifth Avenue, New York, New York 10020. On May 8, 1980 an amended petition was received from the Petitioner.

The issue raised in the amended petition is the proper method of apportionment of interest expense between Petitioner's New York home office and branch offices which Petitioner proposes to form outside this State.

United California Bank International is a corporation formed and operated as an "Edge Act" banking corporation under regulations of the Federal Reserve Board and is a 100% owned subsidiary of United California Bank. At present the sole business location of United California Bank International is 630 Fifth Avenue, New York, New York 10020. Since inception United California Bank International has reported its entire taxable income as being attributable to New York.

A recent amendment to the Federal Reserve Regulations allows "Edge Act" banking subsidiaries to have branches in more than one state. The Regulations do not require an increase in capital when new branches are formed.

United California Bank International intends to form branches in Florida, Texas and Illinois. Upon the formation of branches in other states the Corporation will be doing business in these states and will be required to divide its income for purposes of state taxes based on net income.

Section 35.3 of the Regulations pertaining to the taxation of banks provides that a corporation or association carrying on business at branches or agencies both within and without the State, which keeps accounts of the income of each branch or agency which in the opinion of the State Tax Commission actually reflect the net income from business carried on within the State of each branch or agency, is required to report its income on the basis of the books maintained. 20 NYCRR35.3

In the event that the books do not properly disclose the net income of each branch or agency, net income from business carried on within the State is computed by deducting from gross income from business carried on by branches and agencies within the State a proportionate part of expenses from business carried on by branches and agencies within and without the State. Such proportion is the ratio of gross receipts from business carried on by branches and agencies within the state to gross receipts from business carried on by branches and agencies within and without the state.

If cash is transferred to the branches based on an allocation of capital, the books and accounts would attribute capital to each office and tax returns filed on a separate accounting basis would, in effect, allocate the taxpayer's interest expense between the offices. Assuming that the books and accounts actually reflect the business carried on within and without the state, such tax

returns would be acceptable. If they do not, net income from business carried on within the state must be computed by the method outlined in the paragraph above.

DATED: October 6, 1980

s/LOUIS ETLINGER
Deputy Director
Technical Services Bureau