New York State Department of Taxation and Finance
Office of Tax Policy Analysis
Technical Services Division

TSB-A-06(2)C
Corporation Tax
June 27, 2006

STATE OF NEW YORK
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION PETITION NO. C050527B

On May 27, 2005, a Petition for Advisory Opinion was received from Deloitte Tax LLP, Two World Financial Center, New York, NY 10281-1414. Petitioner, Deloitte Tax LLP, provided additional information with respect to the Petition on December 22, 2005.

The issue raised by Petitioner is whether interest receipts received by Corporation X from affiliates outside the combined group, as described below, are excluded from the combined group's receipts factor of the business allocation percentage.

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

Corporation X is a holding company and corporate parent of an affiliated group of entities. Corporation X and some of its affiliates (referred to collectively as the "Combined Group") file a combined franchise tax return under Article 9-A of the Tax Law. The Combined Group's normal business activity is providing financial services to a diverse group of customers. Thousands of employees are engaged in the provision of these services.

Corporation X's activity, on a separate company basis, includes making loans to its affiliates. Some of Company X's loans are to affiliates that are excluded from the Combined Group because they are subject to tax under Article 32 of the Tax Law. Corporation X finances these related party loans principally through public debt offerings. Only a few individuals are engaged in administering and servicing the intercompany loans. Corporation X does not make any loans to unrelated third-parties. It is presumed for purposes of this Opinion that Corporation X's loans, on a separate company basis, are treated as business capital, and interest income from these loans is treated as business income.

A significant portion of Corporation X's receipts, on a separate company basis, comes from interest income on these intercompany loans. These receipts, however, are substantially offset by interest payments related to servicing the debt incurred to finance such intercompany lending. As a result, the aggregate profit margin associated with making such intercompany loans is insignificant, especially when compared to the aggregate profit margin on the Combined Group's normal business activity of providing financial services to third-party customers.

Applicable law and regulations

Section 210.8 of the Tax Law provides:

> If it shall appear to the [Commissioner of Taxation and Finance] that any business or investment allocation percentage or alternative business allocation percentage

determined as hereinabove provided does not properly reflect the activity, business, income or capital of a taxpayer within the state, the [Commissioner] shall be authorized in [his] discretion, in the case of a business allocation percentage or alternative business allocation percentage, to adjust it by (a) excluding one or more of the factors therein, (b) including one or more other factors, such as expenses, purchases, contract values (minus subcontract values), (c) excluding one or more assets in computing such allocation percentage, provided the income therefrom is also excluded in determining entire net income or minimum taxable income, or (d) any other similar or different method calculated to effect a fair and proper allocation of the income and capital reasonably attributable to the state, and in the case of an investment allocation percentage, to adjust it by excluding one or more assets in computing such percentage provided the income therefrom is also excluded in determining entire net income or minimum taxable income.

Section 211.4 of the Tax Law provides, in part:

(a) Combined reports permitted or required. In the discretion of the commissioner, any taxpayer, which owns or controls either directly or indirectly substantially all the capital stock of one or more other corporations, or substantially all the capital stock of which is owned or controlled either directly or indirectly by one or more other corporations or by interests which own or control either directly or indirectly substantially all the capital stock of one or more other corporations, may be required or permitted to make a report on a combined basis covering any such other corporations and setting forth such information as the commissioner may require, subject to the provisions of paragraphs one through five of this subdivision.

* * *

(b) Computation. (1) Tax. In the case of a combined report the tax shall be measured by the combined entire net income, combined minimum taxable income, combined pre-nineteen hundred ninety minimum taxable income or combined capital, of all the corporations included in the report; …

(2) Tax bases. In computing combined entire net income, combined minimum taxable income or combined pre-nineteen hundred ninety minimum taxable income intercorporate dividends shall be eliminated, in computing combined business and investment capital intercorporate stockholdings and intercorporate bills, notes and accounts receivable and payable and other intercorporate indebtedness shall be eliminated and in computing combined subsidiary capital intercorporate stockholdings shall be eliminated, …

Section 4-1.2 of the Regulations provides rules for allocation on combined reports, in part, as follows:

> In the case of combined reports, allocation is made on the basis of combined accounts from which intercorporate items (including intercorporate receipts) are eliminated ….

Section 4-4.7 of the Regulations provides rules for the receipts factor on combined reports as follows:

> The receipts factor on a combined report is computed as though the corporations included in the report were one corporation. All intercorporate business receipts are eliminated in computing the combined business receipts factor. Intercorporate receipts are receipts by any corporation included in the combined report from any other corporation included in the combined report. As to when combined reports will be required or permitted, see Subpart 6-2 of this Title.

Opinion

In this case, it is assumed that Corporation X and its affiliates included in the Combined Group are permitted or required to file a combined report pursuant to section 211.4 of the Tax Law.

Pursuant to sections 4-1.2 and 4-4.7 of the Regulations, allocation is made on the basis of combined accounts from which all intercorporate business receipts between the corporations included in the combined report are eliminated in computing the combined business receipts factor. However, loans made to and receipts from affiliates which are excluded from the combined report are not automatically eliminated.

Therefore, where Corporation X and its affiliates file a combined report pursuant to section 211.4 of the Tax Law, sections 4-1.2 and 4-4.7 of the Regulations provide that the activities of Corporation X and its affiliates with parties outside the combined group are considered when computing the combined business receipts factor. Accordingly, the interest receipts received by Corporation X from affiliates outside the Combined Group and treated by Corporation X as business income are included in the Combined Group's business receipts factor of the business allocation percentage.

It should be noted that section 210.8 of the Tax Law authorizes the Commissioner of Taxation and Finance to use other methods to more accurately reflect the taxpayer's business activity within New York State when it appears to the Commissioner that the business allocation percentage determined pursuant to section 210.3(a) of the Tax Law does not properly reflect the activity, business, income or capital of a taxpayer within New York State. If a different method is used, it must be calculated to effect a fair and proper allocation of the business income and business capital reasonably attributable to New York State. The determination of whether the business allocation percentage determined pursuant to section 210.3(a) of the Tax Law results in a fair allocation of Petitioner's business capital and business income to New York State is a

factual matter that is not susceptible of determination within the scope of an advisory opinion. (Tax Law, §171.Twenty-fourth; 20 NYCRR 2376.1(a).)

DATED: June 27, 2006

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