

**New York State Department of Taxation and Finance  
Office of Counsel  
Advisory Opinion Unit**

TSB-A-11(7)C  
Corporation Tax  
April 7, 2011

STATE OF NEW YORK  
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. C110112B

On January 12, 2011, the Department of Taxation and Finance received a Petition for Advisory Opinion from [REDACTED]. Petitioner asks:

1. Whether interest payable on a refund claim for overpaid corporate franchise tax for taxable year ended December 31, 2006 is limited by Section 1087(c) or any other provision of the Tax Law where Petitioner filed its refund claim on the same day it filed its amended Federal tax return; and
2. How interest payable on a refund claim for taxable year ended December 31, 2006 should be computed where the Petitioner receives payment of an amount less than overpaid tax and interest accrued under Section 1096(e) of the Tax Law to the date of partial payment.

We conclude that interest should have been paid on Petitioner's refund claim beginning on the date that Petitioner filed its New York amended return.

**Facts**

On May 13, 2008, Petitioner amended its 2006 Federal corporation tax return to reflect its distributive share of losses from two partnerships in which it had minority interests. This change reduced Federal taxable income, and a refund of tax was requested. The refund claim did not involve a net operating loss carryback or a capital loss carryback. On the same date, Petitioner filed amended returns to claim a corporate franchise tax refund and MTA surcharge refund from New York State. The reduction in tax shown on the amended returns arose solely as a result of the adjustment to Federal taxable income. The amounts are as follows:

Reduction in corporate franchise tax:	\$1,414,498
Reduction in MTA surcharge:	<u>288,558</u>
Total refund	\$1,703,056

On June 9, 2008, the Income/Franchise Desk Audit Bureau of the Department of Taxation and Finance notified Petitioner that its 2006 returns and the claims for refund were being audited and requests were made for information to support the claims. Petitioner responded to all requests.

On November 4, 2008, the Income/Franchise Desk Audit Bureau sent a denial of Petitioner's refund claims by certified mail. The denial stated that evidence of acceptance by the Internal Revenue Service of the change in Federal taxable income was required before the refund claims could be given further consideration. In the absence of a response from the Internal Revenue Service on its federal refund claim, Petitioner filed a complaint in the United States Court of Federal Claims on December 17, 2008, seeking judicial review of the claim.

Petitioner orally notified the Income/Franchise Desk Audit Bureau on September 28, 2010 of an agreement between Petitioner and the Tax Division of the U.S. Department of Justice for entry of judgment in favor of Petitioner. On or about October 1, 2010, Petitioner sent by fax to the Audit Bureau a copy of the stipulation of judgment in the Court of Federal Claims and IRS Form 4549-A indicating Federal acceptance of the Petitioner's adjustments to Federal taxable income. The Audit Bureau acknowledged receipt of the documentation by a letter dated October 18, 2010, and confirmed the timeliness of the submission with respect to the refund claims.

A refund check was issued to the Petitioner on December 20, 2010 which did not include statutory interest because the check was sent within 90 days of the Petitioner's submission of the documentation evidencing Federal acceptance of the adjustments to federal taxable income. Petitioner requests that statutory interest be added to the refund, calculated from the date the amended return was filed.

### **Analysis**

Petitioner complied with the reporting requirements of section 211.3 of the Tax Law by filing New York amended returns with its refund claims within 90 days of filing an amended Federal return. Therefore, section 1087(c) of the Tax Law, which requires compliance with section 211.3 of the Tax Law for interest purposes, does not prevent the Petitioner from receiving statutory interest on its refund claims. Also, the refund was not paid within three months of the claims for refund on the amended returns so as to prohibit the payment of overpayment interest (section 1088[c][1] of the Tax Law). Petitioner should have received interest on its refund beginning on May 13, 2008, the day it filed the amended returns with its claims for refund in accordance with section 1088(a)(3) of the Tax Law.

DATED: April 7, 2011

/S/  
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DANIEL SMIRLOCK  
Deputy Commissioner and Counsel

NOTE: An Advisory Opinion is issued at the request of a person or entity. It is limited to the facts set forth therein and is binding on the Department only with respect to the person or entity to whom it is issued and only if the person or entity fully and accurately describes all relevant facts. An Advisory Opinion is based on the law, regulations, and Department policies in effect as of the date the opinion is issued or for the specific time period at issue in the Opinion.