

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

TSB-A-13(3)C  
Corporation Tax  
February 28, 2013

STATE OF NEW YORK  
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. C110114A

The Department of Taxation and Finance received a Petition for Advisory Opinion from [REDACTED]. The issue is whether Petitioner's U.S. subsidiary, Holdco, an Article 9-A taxpayer as a result of the Gramm-Leach-Bliley Act transitional provisions of Article 32, will continue to be taxed under Article 9-A subsequent to the completion of a plan of reorganization (hereinafter the "Reorganization Plan"). We conclude that Holdco will continue to be taxed under Article 9-A of the Tax Law.

**Facts**

Petitioner is an alien bank doing business in the United States directly and through various other legal entities that are engaged in numerous financial businesses, including banking, broker-dealer, insurance and other financial services-related activities. The primary U.S. holding company ("Holdco") indirectly owned by Petitioner was formed on December 8, 2003 and registered for the first time as a bank holding company on December 22, 2003.<sup>1</sup> Holdco elected to be a financial holding company on December 29, 2003. Holdco is exercising its corporate franchise and doing business in New York.

In 2003, the parent company of Holdco at the time requested and received an advisory opinion from the New York State Department of Taxation and Finance confirming that Holdco was entitled under Tax Law section 1452(j)(2) to elect to be taxed as an Article 9-A taxpayer.<sup>2</sup> Further, this advisory opinion concluded that the Department could not require Holdco to file an Article 32 tax return on a combined basis pursuant to Tax Law section 1462(f)(2)(iv)(B). As a result, Holdco has historically filed general business corporation franchise tax returns in New York under Article 9-A since its formation.

During the tax year ended October 31, 2011, Holdco and other entities within Petitioner's affiliated group initiated its Reorganization Plan whereby Holdco acquired certain assets from other affiliated entities. As a result of such asset acquisitions, Holdco's business operations may be deemed to have changed from its business operations immediately prior to the Reorganization Plan. Additionally, subsequent to the completion of the Reorganization Plan, Holdco agreed to sell 100% of its ownership interest in its banking subsidiary

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<sup>1</sup> The term bank holding company, as used throughout this petition, is defined as set forth in the United States Bank Holding Company Act of 1956.

<sup>2</sup> See, RBC Holdings USA, Inc., TSB-A-04(1)C, Petition No. C031028A, February 26, 2004.

(hereinafter the “Bank”). Holdco’s sale of the Bank closed on March 2, 2012, at which time Holdco ceased to be a bank holding company.

### **Analysis**

The issue presented by the Petitioner is whether Holdco will continue to be taxed under Article 9-A subsequent to the completion of the Reorganization Plan.

Generally, while bank holding companies are classified as Article 9-A taxpayers under Tax Law section 1452(d), they are subject to tax under Article 32 by virtue of the combined reporting provisions of that article. However, one of the statutory components of the Gramm-Leach-Bliley transitional provisions, Tax Law section 1462(f)(2)(iv)(B), states that a bank holding company which first registers as a bank holding company and elects to be a financial holding company on or after January first, two thousand and before January first, two thousand fifteen, cannot be required to be included in a combined return under Article 32. In that instance, the classification stated in section 1452(d) applies and the bank holding company is subject to tax under Article 9-A. As previously noted, Holdco was organized on December 8, 2003, registered for the first time as a bank holding company on December 22, 2003 and subsequently elected to be a financial holding company on December 29, 2003. Accordingly, because of its bank holding company and financial holding company status, Holdco has been subject to taxation under Article 9-A pursuant to sections 1452(d) and 1462(f)(2)(iv)(B).

Under Petitioner’s Reorganization Plan, Holdco acquired certain assets from other affiliated entities. This acquisition of assets might have triggered the circumstances set forth under Tax Law section 1452(n)(3)(E).<sup>3</sup> Subdivision (n) of section 1452 specifies certain circumstances that, if they occur, would cause the revocation of an election of a corporation to be taxed under Article 9-A or Article 32. In this type of instance, when an election is revoked, the taxable status of the corporation would be determined under the remaining provisions of Article 9-A and Article 32. Because the restriction on combined reporting that applies to those bank holding companies that both first register as a bank holding company and then elect to be a financial holding company after January 1, 2000 would apply to Holdco, even if the requirements set forth in Tax Law section 1452(n)(3)(E) are triggered during the course of the Restructuring Plan that occurred in the tax year ended October 31, 2011, Holdco would still be classified as an Article 9-A corporation.

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<sup>3</sup> The circumstance described in Tax Law section 1453(n)(3)(E) is the acquisition by a corporation in a transaction or series of related transactions of assets having an average value or, tax basis if greater, in excess of 40% of the average value or, tax basis if greater, in excess of all of the assets of the corporation immediately prior to the acquisition and, as a result of such acquisition, the corporation is principally engaged in a business that is different from the business immediately prior to the acquisition and that different business is described in Tax Law section 1452(a)(9)(i), (ii) or (iii). We do not have sufficient facts to determine if the circumstances described in Tax Law section 1453(n)(3)(E) occurred.

Finally, because Holdco ceased to be a bank holding company after October 31, 2011 as a result of its sale of the Bank, it will continue to be taxed during its tax year ending October 31, 2012 under Article 9-A pursuant to the Gramm-Leach-Bliley transition provision applicable to that year, section 1452(m)(1), because it was properly taxed as an Article 9-A taxpayer for its prior tax year ended October 31, 2011.

DATED: February 28, 2013

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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. The information provided in this document does not cover every situation and is not intended to replace the law or change its meaning.