

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

TSB-A-84 (3) C
Corporation Tax
May 23, 1984

STATE OF NEW YORK
STATE TAX COMMISSION

ADVISORY OPINION

PETITION NO. C840410A

On April 10, 1984 a Petition for Advisory Opinion was received from Fleet Factors Corp., 1450 Broadway, New York, New York 10018.

The issue raised is whether interest paid by a second tier subsidiary to its "grandparent" corporation would be required to be added to Federal entire taxable income by the subsidiary in computing its entire net income under section 208.9(b)(5) of the Tax Law, contained in Article 9-A thereof.

Petitioner presents the following statement of facts: Fleet Financial Corporation, a Rhode Island corporation, is a holding company and owns 100% of Fleet Commercial Finance Corporation. Fleet Commercial Finance Corporation, a Rhode Island corporation, is a holding company with investment in commercial financing companies and owns 100% of Fleet Factors Corporation. Fleet Factors Corporation, a Rhode Island corporation, borrows funds from Fleet Financial Corporation on which it pays interest at an arm's length rate.

Section 208.9(b)(5) of the Tax Law provides, in pertinent part, that in arriving at entire net income for franchise tax purposes, an addition to Federal entire taxable income must be made in the amount of interest paid on indebtedness directly or indirectly owed to any stockholder or shareholder owning more than five per cent of the taxpayer's issued capital stock, or to a subsidiary of such corporate stockholder or shareholder.

Inasmuch as Petitioner's interest payments to Fleet Finance Corporation are not payments to an entity described in section 208.9(b)(5), the amount of such payments is not required to be added to Federal entire taxable income pursuant to Tax Law, § 208.9(b)(5). Hooker Chemical & Plastics Corp., State Tax Commission Advisory Opinion, June 1, 1981, TSB-H-81(37)C; The Ore and Chemical Corporation, State Tax Commission Advisory Opinion, October 12, 1982, TSB-A-82(15)C.

DATED: May 15, 1984

s/FRANK J. PUCCIA
Director
Technical Services Bureau

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