

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

TSB-A-85 (9.1) C
Corporation Tax
July 12, 1985

STATE OF NEW YORK
STATE TAX COMMISSION

MODIFIED ADVISORY OPINION PETITION NO. C840604A

On June 11, 1985 an Advisory Opinion was issued to East River Savings Bank, 26 Cortlandt Street, New York, New York 10007. Such Advisory Opinion is modified by appending thereto the following discussion of an issue not treated therein.

At issue is the tax treatment under Article 32 of the Tax Law regarding net operating loss carryovers when converting from a New York State mutual savings bank to a New York State stock savings bank in a tax-free reorganization under section 368(a)(1)(F) of the Internal Revenue Code. Petitioner states that for federal income tax purposes such conversion of Petitioner to the converted bank will not cause section 382(b) of the Internal Revenue Code to apply to reduce the net operating loss carryovers available to the converted bank.

Under Article 32 of the Tax Law, the basic tax is computed pursuant to section 1455(a) of the Tax Law which states that the basic tax is 12 percent of the taxpayer's entire net income, or portion thereof allocated to New York State, for the taxable year, of part thereof.

Section 1453(a) of the Tax Law defines entire net income as total net income from all sources which shall be the same as the entire taxable income which the taxpayer is required to report to the United States Treasury Department except as modified by section 1453 of the Tax Law. The modification provided in section 1453(b)(3) of the Tax Law states that any net operating loss deduction for the taxable year allowable for federal income tax purposes is not allowable when computing entire net income pursuant to section 1453 of the Tax Law. Thus, when computing entire net income, a taxpayer must add to the entire taxable income required to be reported for federal income tax purposes (federal taxable income) the amount of any net operating loss deduction that is allowable for federal income tax purposes.

Accordingly, since a net operating loss deduction is not allowable for New York State franchise tax purposes under Article 32 of the Tax Law pursuant to section 1453(b)(3) thereof, entire net income of Petitioner is not affected when a net operating loss deduction is allowable for federal income tax purposes. It is immaterial whether section 382(b) of the Internal Revenue Code regarding the net operating loss carryovers available to the converted bank for federal income tax purposes becomes operative as a result of the reorganization under section 368(a)(1)(F) of the Internal Revenue Code.

DATED: July 10, 1985

s/ANDREW F. MARCHESE
Chief of Advisory Opinions

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