

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

TSB-A-85 (9)C
Corporation Tax
June 18, 1985

STATE OF NEW YORK
STATE TAX COMMISSION

ADVISORY OPINION

PETITION NO. C840604A

On June 4, 1984 a Petition for Advisory Opinion was received from East River Savings Bank, 26 Cortlandt Street, New York, New York 10007.

At issue is the tax treatment under Article 32 of the Tax Law of a proposed reorganization of Petitioner where, for federal income tax purposes:

1. The change in the form of operation of Petitioner from a state mutual savings bank to a state stock savings bank will constitute a reorganization within the meaning of section 368(a)(1)(F) of the Internal Revenue Code of 1954 (hereinafter IRC), and no gain or loss will be recognized by Petitioner or the converted bank as a result of such conversion (Rev. Rul. 80-105, 1980-1C.B. 78). Petitioner and the converted bank will each be "a party to a reorganization" within the meaning of section 368(b) of the IRC.
2. No gain or loss will be recognized by the converted bank upon the receipt of the assets and liabilities of Petitioner pursuant to the conversion or upon the receipt of money or property in exchange for shares of its common and preferred stock (sections 361(a) and 1032(a) of the IRC).
3. The assets of Petitioner will have the same basis in the hands of the converted bank as in the hands of Petitioner immediately prior to the conversion (section 362(b) of the IRC).
4. The holding period of the assets of Petitioner to be received by the converted bank will include the period during which those assets were held by Petitioner prior to the conversion (section 1223(2) of the IRC).
5. No gain or loss will be recognized by the eligible account holders and other account holders of Petitioner upon the constructive issuance to them of withdrawable time or savings accounts in the converted bank in a dollar amount equal to the withdrawal value of their time or savings accounts in Petitioner constructively surrendered in exchange therefor, and no gain or loss will be recognized by the eligible account holders of Petitioner upon the constructive issuance to them of interests in the liquidation account of the converted bank constructively exchanged for their time or savings account and proprietary interests in Petitioner (section 354(a) of the IRC).
6. The basis of the time or savings accounts in converted bank constructively received by the eligible account holders and other account holders of Petitioner will be, in each instance, the same as the basis of their time or savings accounts in Petitioner constructively surrendered in exchange therefor (section 358(a)(1) of the IRC). The basis of the interests in the liquidation account of the converted bank to be received by the eligible account holders will be zero (sections 1.307-1 and 1.307-2 of the Treasury Regulations).

7. For purposes of section 381 of the IRC, the converted bank will be treated as if there had been no reorganization. The taxable year of Petitioner will not end on the effective date of the conversion and, accordingly, the part of the taxable year of Petitioner before the conversion will be included in the taxable year of the converted bank following the conversion (Rev. Rul. 57-276, 1957-1 C.B. 126). The earnings and profits and other tax attributes of Petitioner will be taken into account by the converted bank following the proposed transactions as if there had been no reorganization (section 1.381(b)-1(a)(2) of the Treasury Regulations).

8. Pursuant to the provisions of section 381(c)(4) of the IRC and section 1.381(c)(4)-1(a)(1)(ii) of the Treasury Regulations, the converted bank will succeed to and take into account the dollar amount of those accounts of Petitioner which represent bad debts reserves for which Petitioner has taken a bad debt deduction for taxable years ending on or before the date of the conversion. The bad debt reserves of Petitioner will not be required to be restored to the gross income of Petitioner or included in the gross income of the converted bank as a result of the proposed transactions and such bad debt reserves will have the same character in the hands of the converted bank as they would have had in the hands of Petitioner if no conversion had occurred.

9. Regardless of any book entries made to create the liquidation account, the conversion will not reduce the earnings and profits of the converted bank which are available for the distribution of dividends within the meaning of section 316 of the IRC (section 1.312-11(b) and (c) of the Treasury Regulations).

10. The creation of the liquidation account on the records of the converted bank will not affect its taxable income, its deductions under section 593 of the IRC for additions to its reserve for bad debts, or the tax consequences under section 593(e) of the IRC of any distributions to its shareholders.

Petitioner is a New York State chartered mutual savings bank. Petitioner contemplates converting from a mutual savings bank to a New York State stock savings bank. Pursuant to section 86.4(c) of the General Regulations of the Banking Board of the New York State Banking Department, at the time the conversion from mutual to stock-form becomes effective, the converting institution shall cease to be a mutual institution and shall simultaneously become a stock-form institution, and all the property of the mutual institution shall remain as the property of the stock-form institution. All of the rights, powers, franchises, debts, liabilities, obligations and duties of the mutual institution shall continue as such in the stock-form institution and all deposits therein shall remain as deposits of equal value and character of such stock-form institution. The corporate existence of the converting mutual institution shall not terminate, and such converted stock-form institution shall be a continuation of the mutual form institution which existed immediately before the filing of the amended organization certificate.

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

Entire net income is defined in section 1453(a) of Article 32 of the Tax Law as follows:

"Entire net income means 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 hereinafter provided."

Section 1453(b) through (h) of Article 32 of the Tax Law provides for the modifications required by section 1453(a). However, there is no modification for a transaction treated as a reorganization pursuant to section 368(a)(1)(F) of the IRC.

The only regulations promulgated, to date, in accordance with section 1453 of Article 32 of the Tax Law pertain to the modification for the international banking facilities which is not herein at issue.

The regulations promulgated in accordance with Articles 9-B and 9-C of the Tax Law, the predecessor to Article 32 of the Tax Law, apply only to the extent that such regulations conform with the provisions of such Article 32 and only in the absence of regulations promulgated in accordance with such Article 32. In a letter to Commerce Clearing House, Inc., dated February 26, 1973, the Director of the Corporation Tax Bureau made the following statement:

"Inasmuch as the provisions of Article 32 conform with Articles 9-B and 9-C, except in areas of privilege period and Federal conformity, regulations issued under Articles 9-B and 9-C remain applicable except when they are in conflict with the provisions of Article 32. Federal taxable income is the starting point in computing entire net income and therefore Federal regulations applicable to such computation will be followed."

Section 1462(a) of Article 32 of the Tax Law states, in part:

"Every taxpayer . . . shall annually on or before the fifteenth day of the third month following the close of each of its taxable years transmit to the tax commission a return . . . and every taxpayer which ceases to exercise its franchise or to be subject to the tax imposed by this article shall transmit to the tax commission a return on the date of such cessation or at such other time as the tax commission may require covering each year or period for which no return was theretofore filed."

Pursuant to section 1453 of Article 32 of the Tax Law, entire net income is computed by starting with federal taxable income and making the modifications required by such section. Since there is no modification for a reorganization under section 368(a)(1)(F) of the IRC, such reorganization would, for purposes of section 1453 of Article 32 of the Tax Law, be treated the same as it was treated for federal income tax purposes. For purposes of Article 32 of the Tax Law, a taxpayer's taxable year does not change when converting from a mutual institution to a stock-form institution if such taxpayer does not cease to exercise its franchise or cease to be subject to tax under Article 32 of the Tax Law.

Accordingly, if Petitioner's change in form from a New York State chartered mutual savings bank to a New York State chartered stock savings bank is a tax-free reorganization under section 368(a)(1)(F) of the IRC, such reorganization would be a tax-free reorganization for New York State franchise tax purposes under Article 32 of the Tax Law. Also, pursuant to section 86.4(c) of the General Regulations of the Banking Board of the New York State Banking Department, Petitioner would not cease to exercise its franchise and the taxable year of Petitioner would not end on the effective date of the conversion and, accordingly, the part of the taxable year of Petitioner before the conversion would be included in the taxable year of the converted bank following the conversion.

DATED: June 11, 1985

FRANK J. PUCCIA
Director
Technical Services Bureau

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