

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

TSB-A-86 (10) C
Corporation Tax
June 3, 1986

STATE OF NEW YORK
STATE TAX COMMISSION

ADVISORY OPINION

PETITION NO. C860327A

On March 27, 1986, a Petition for Advisory Opinion was received from Skaneateles Savings Bank, 33 East Genesee Street, Skaneateles, New York 13152-0460.

At issue is whether the change in the form of operation of Petitioner from a New York State mutual savings bank to a New York State stock-form savings bank will constitute a tax-free reorganization for purposes of Article 32 of the Tax Law.

Petitioner, a New York State chartered mutual savings bank, contemplates converting from a mutual savings bank to a New York State stock savings bank. The conversion will merely be a change in the form of operation and as such will constitute a reorganization within the meaning of section 368(a)(1)(F) of the Internal Revenue Code of 1954, as amended, and no gain or loss will be recognized by Petitioner or the converted bank as a result of such conversion (Rev. Rul. 80-105, 1980-1 C.B. 78).

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 the Tax Law provides that the basic tax is 9 percent of the taxpayer's entire net income, or portion thereof allocated to New York State, for the taxable year or part thereof.

Entire net income is defined in section 1453(a) of the Tax Law 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 hereinafter provided."

Section 1453(b) through (i) of the Tax Law and sections 18-2.3, 18-2.4 and 18.2.5 of the Franchise Tax on Banking Corporations Regulations, promulgated thereunder on December 2, 1985, provide 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 Internal Revenue Code of 1954, as amended. Therefore, for New York State franchise tax purposes, such reorganization would be treated the same as it is treated for Federal income tax purposes.

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 the amount of any net operating loss deduction that is allowable for Federal income tax purposes to the entire taxable income required to be reported for Federal income tax purposes (Federal taxable income).

Section 1462(a) 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 1462 (a) 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 Internal Revenue Code of 1954, as amended, such reorganization would be a tax-free reorganization for New York State franchise tax purposes under Article 32 of the Tax Law. Also, since a net operating loss deduction is not allowable for New York State franchise tax purposes pursuant to section 1453(b)(3) thereof, the 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(a) or (b) of the Internal Revenue Code of 1954, as amended, regarding the net operating loss carryovers available to the converted bank for Federal income tax purposes becomes operative as a result of the reorganization. Finally, 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 3, 1986

s/FRANK J. PUCCIA
Director
Technical Services Bureau

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