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

TSB-A-87 (33) C
Corporation Tax
December 18, 1987

STATE OF NEW YORK
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION PETITION NO: C871020A

On October 20, 1987, a Petition for Advisory Opinion was received from Konica Business Machines, U.S.A., Inc., 500 Day Hill Road, Windsor, Connecticut 06095.

The issue raised is whether, pursuant to section 208.9(b)(5) of Article 9-A of the Tax Law, interest paid by a corporation to a second-tier subsidiary (grandchild) of a greater than five percent shareholder is required to be added to federal entire taxable income by the corporation in computing its entire net income.

Konica Business Machines, U.S.A., Inc. ("Konica"), a wholly owned subsidiary of Konishiroku Photo Industry Co. ("Konishiroku"), incurred indebtedness and is currently paying interest to Konica Corporation-1 ("KCC-I"). KCC-1 is a wholly owned subsidiary of Fotomat Corporation which in turn is a wholly owned subsidiary of Konishiroku.

Konica contends that all of the interest paid by Konica to KCC-1 is deductible in arriving at Konica's New York taxable income because KCC-1 is neither a greater than five percent shareholder of Konica nor a subsidiary of a five percent shareholder.

For taxable years beginning before January 1, 1989, 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 90 percent of the interest paid on indebtedness directly or indirectly owed to any stockholder or shareholder owning more than five percent of the taxpayer's issued capital stock, or to a subsidiary of such corporate stockholder or shareholder.

For taxable years beginning on or after January 1, 1989, section 208.9(b)(5) is repealed.

Interest payments to a nephew corporation, KCC-1, the second-tier subsidiary of Konica's parent corporation, Konishiroku, are not payments to an entity described in section 208.9(b)(5).

Mitsui & Co. (USA), Inc., Advisory Opinion of the State Tax Commission, July 3, 1986, TSB-A-86(14)C. Therefore, 90 percent of the amount of such interest payments is not required to be added to Konica's federal entire taxable income when Konica computes its entire net income under section 208.9.

DATED: December 18, 1987

s/FRANK J. PUCCIA
Director
Technical Services Bureau

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