

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

TSB-A-90 (26)C
Corporation Tax
December 24, 1990

STATE OF NEW YORK
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. C900201B

On February 1, 1990, a Petition for Advisory Opinion was received from Bank Hapoalim B.M., 75 Rockefeller Plaza, New York, New York 10019.

The issue raised by Petitioner, Bank Hapoalim B.M., is whether, for purposes of Article 32 of the Tax Law, interbranch items of a New York international banking facility (hereinafter "NIBF") are included in total assets when computing the asset based alternative minimum tax.

Petitioner is a bank organized under the laws of Israel and conducts a banking business in New York through its branches in New York City. Petitioner has also established an IBF in New York. The New York IBF's activities include interbranch transactions between such IBF and foreign branches of Petitioner and other IBF's of Petitioner.

For taxable year 1987, Petitioner accounted for the operations of the New York IBF by using the IBF modification method contained in section 1453(f) of the Tax Law. Under such modification, a taxpayer is entitled to modify its entire net income by deducting the adjusted eligible net income of the New York IBF.

For taxable years 1985 and 1986, Petitioner accounted for the operations of the New York IBF by using the IBF formula allocation method contained in section 1454(b)(2) of the Tax Law. Under such method, the taxpayer, in lieu of the IBF modification method, elects to treat its New York IBF as a non-New York branch for entire net income and alternative entire net income allocation purposes, by treating the payroll, receipts and deposits properly attributable to the production of eligible gross income of the New York IBF as payroll, receipts and deposits arising outside New York State.

Section 1455(b)(1)(v)(A) of the Tax Law defines "taxable assets" as follows:

The term "taxable assets" shall mean the average value of total assets reduced by any amount of money or other property received from or attributable to amounts received from the federal deposit insurance corporation pursuant to subsection (c) of section thirteen of the federal deposit insurance act, as amended, or the federal savings and loan insurance corporation pursuant to paragraph one, two, three or four of subsection (f) of section four hundred six of the federal national housing act, as amended, and, for taxpayers whose total assets are comprised of twenty percent or more of interbank placements, further reduced by an amount not to exceed five hundred million dollars. Total assets are those assets which are properly reflected on a balance sheet the income or expenses of which are properly reflected (or would have been properly reflected if not fully depreciated or

expensed or depreciated or expensed to a nominal amount) in the computation of alternative entire net income for the taxable year or in the computation of the eligible net income of the taxpayer's international banking facility for the taxable year.

Section 1453-A of the Tax Law defines 'alternative entire net income' as follows:

(a) Alternative entire net income means entire net income as determined pursuant to section fourteen hundred fifty-three, except that the deductions described in paragraphs eleven and twelve of subsection (e) of section fourteen hundred fifty-three shall not be allowed.

(b) Any election made pursuant to paragraph two of subsection (b) of section fourteen hundred fifty-four with respect to the modification provided for in subsection (f) of section fourteen hundred fifty-three shall be deemed to have been made for purposes of computing alternative entire net income.

Section 1454(b)(2)(B) provides that when a taxpayer elects to account for the operations of its New York IBF by using the IBF formula allocation method, transactions between the taxpayer's IBF and its foreign branches are not considered when computing the entire net income allocation percentage.

Section 1453(f)(1) of the Tax Law defines "eligible net income" of a New York IBF as the amount remaining after subtracting from the eligible gross income the applicable expenses. Eligible gross income and the applicable expenses of the New York IBF include interbranch transactions between the IBF and foreign branches of the taxpayer.

Section 18-5.2(d) of the Franchise Tax on Banking Corporations Regulations provides that for purposes of determining total assets, the term "balance sheet" means the balance sheet of the taxpayer prepared from the books and records of the taxpayer in accordance with generally accepted accounting principles and used for purposes of preparing the taxpayer's financial statements."

Pursuant to section 1455(b)(1)(v)(A) of the Tax Law and section 18-5.2(d) of the Franchise Tax on Banking Corporations Regulations, two criteria must be met when determining total assets for purposes of the asset based alternative minimum tax. Total assets are (1) those assets properly reflected on the balance sheet that is prepared from the books and records of the taxpayer in accordance with generally accepted accounting principles and used for purposes of preparing the taxpayer's financial statements and (2) limited to such assets, the income or expenses of which are properly reflected (or would have been properly reflected if not fully depreciated or expensed or depreciated or expensed to a nominal amount) in either the computation of alternative entire net income for the taxable year or in the computation of the eligible net income of the taxpayer's IBF for the taxable year. That is, in the case of a bank organized outside the United States, total assets

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are those assets properly reflected on the balance sheet that are effectively connected with the conduct of a trade or business in the United States and limited to such assets, the income or expenses of which are properly reflected in either the computation of its alternative entire net income or the computation of its eligible net income of its IBF.

Therefore, for all years at issue, interbranch items of the New York IBF are not to be included in Petitioner's determination of total assets for purposes of computing the asset based alternative minimum tax.

DATED: December 24, 1990

s/PAUL B. COBURN
Deputy Director
Taxpayer Services Division

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