

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

TSB-A-94 (13) C
Corporation Tax
August 29, 1994

STATE OF NEW YORK
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. C940330A

On March 30, 1994, a Petition for Advisory Opinion was received from Richard W. Genetelli, c/o Genetelli & Associates, 400 Madison Avenue, Suite 907, New York, New York 10017.

The issue raised by Petitioner, Richard W. Genetelli, is whether for purposes of Article 9-A of the Tax Law, a corporation that files a combined report with its subsidiary may deduct the interest expense incurred on the funds borrowed and used to acquire the stock of the subsidiary.

P corporation acquired all of the stock of S corporation. In order to finance the acquisition, P borrowed funds from an independent third-party. All of the borrowed funds were directly related to the acquisition of S. P incurs interest on the borrowed funds.

P and S meet all of the requirements for combined reporting in New York, and have been granted permission to file on such basis. There are no other affiliates of either P or S.

Section 208.9(a)(1) of the Tax Law provides that entire net income shall not include "income, gains and losses from subsidiary capital" Section 208.9(b) provides, in pertinent part:

Entire net income shall be determined without the exclusion, deduction or credit of:

...

(6) in the discretion of the [Commissioner of Taxation and Finance], any amount of interest directly or indirectly and any other amount directly or indirectly attributable as a carrying charge or otherwise to subsidiary capital or to income, gains or losses from subsidiary capital.

Subsidiary capital is defined in section 208.4(a) of the Tax Law as "investments in the stock of subsidiaries and any indebtedness from subsidiaries . . . whether or not evidenced by written instrument . . . provided, however, that, in the discretion of the commissioner of taxation and finance, there shall be deducted from subsidiary capital any liabilities which are directly or indirectly attributable to subsidiary capital".

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Section 3-6.6 of the Business Corporation Franchise Tax Regulations (hereinafter "Regulations") provides that "[i]n computing combined subsidiary capital, all investments in the stock of subsidiaries included in the combined report and any indebtedness from subsidiaries included in the combined report must be eliminated."

Section 6-3.2 of the Regulations provides that in all cases where a combined report is permitted, a combined franchise tax report must be submitted on form CT-3-A and a separate franchise tax report must be filed for each corporation in the combined group on form CT-3.

Accordingly, pursuant to section 6-3.2 of the Regulations, when P and S file on a combined basis, P and S must each file a separate franchise tax report in addition to the combined report. On P's separate report, P must make the modification contained in section 208.9(b)(6) of the Tax Law, that increases Federal taxable income by the amount of interest on indebtedness directly attributable to the acquisition of subsidiary S. However, when P and S compute combined entire net income on form CT-3A, the amount included on P's separate report as interest on indebtedness directly attributable to the acquisition of subsidiary S should be allowed as a deduction. This is proper because there is no subsidiary capital on the combined report to which to attribute the interest expense.

DATED: August 29, 1994

s/PAUL B. COBURN
Deputy Director
Taxpayer Services Division

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