

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

TSB-A-94 (8) C  
Corporation Tax  
May 26, 1994

STATE OF NEW YORK  
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. C940225A

On February 25, 1994, a Petition for Advisory Opinion was received from Robert J. Buckley, Arthur Andersen & Co., 1345 Avenue of the Americas, New York, New York 10105.

The issue raised by Petitioner, Robert J. Buckley, is whether a subsidiary of a bank which is taxed under Article 9-A of the Tax Law, pursuant to the grandfather provision in section 16-2.5(j)(3) of the Franchise Tax on Banking Corporations Regulations (hereinafter "Article 32 Regulations"), revokes its Article 9-A status when the bank is sold by the FDIC (Federal Deposit Insurance Corporation) to investors through a stock sale, which is deemed an asset sale for Internal Revenue Code purposes.

Corporation X (hereinafter "Taxpayer") is the wholly-owned subsidiary of a banking corporation (hereinafter "Bank Parent"). The Bank Parent operates as a bank, and is taxed under Article 32 of the Tax Law. Taxpayer is taxed under Article 9-A of the Tax Law pursuant to a properly made election under section 16-2.5(j)(3) of the Article 32 Regulations. The Bank Parent was taken over by the FDIC in 1992 and its stock was sold in 1993 to a group of investors. The FDIC had taken control of the Bank Parent because the bank experienced financial difficulties. The 1993 stock sale of the Bank Parent was treated as a deemed asset acquisition under proposed section 1.597-5 of the Treasury Regulations.

The business operations of the Bank Parent and the Taxpayer were neither interrupted nor changed by the stock sale. The Employer Identification Numbers for the two companies remain the same; and the immediate ownership structure of the Taxpayer has not been altered. Petitioner states that the deemed asset sale per proposed section 1.597-5 of the Treasury Regulations, applicable to FDIC transfers, is a tax fiction without substance or economic effect.

Taxpayer continues to be obligated under contracts entered into before the stock sale. Taxpayer had no right to repudiate any of the previously entered contracts and Taxpayer remains liable for all supply contracts, obligations to debtors, lease agreements for branch properties, etc. Petitioner states that because no meaningful change took place after the stock sale, Taxpayer is the same entity which elected to remain taxable under Article 9-A of the Tax Law.

Taxpayer did not take any action to revoke the election to be taxed under Article 9-A of the Tax Law.

Section 16-2.5(j)(3) of the Article 32 Regulations provides:

Any corporation described in paragraph (1) of this subdivision which was subject to the tax imposed by article 9-A of the Tax Law for its taxable year ending during 1984 may, on or before the due date for filing its return (determined with regard to extensions of time for filing) for its taxable year ending during 1985,

make a one-time election to continue to be taxable under article 9-A. Such election shall continue to be in effect until revoked by the taxpayer. In no event shall such election or revocation be for a part of a taxable year. The election is made by the filing of a tax return pursuant to article 9-A of the Tax Law and the revocation is made by the filing of a tax return pursuant to article 32 of the Tax Law.

Herein, the Taxpayer made the election to be taxed under Article 9-A of the Tax Law. The subsequent takeover of the Bank Parent by the FDIC in 1992 and the sale of the Bank Parent's stock in 1993 does not affect the Taxpayer's election to be taxable under Article 9-A of the Tax Law. Accordingly, Taxpayer will continue to be subject to franchise tax under Article 9-A of the Tax Law until the election is revoked by the Taxpayer by the filing of a tax return pursuant to Article 32 of the Tax Law.

DATED: May 26, 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.