

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

TSB-A-86 (8) C
Corporation Tax
TSB-A-86 (5) I
Income Tax
April 10, 1986

STATE OF NEW YORK
STATE TAX COMMISSION

ADVISORY OPINION

PETITION NO. Z860219B

On February 19, 1986, a Petition for Advisory Opinion was received from The Rochester Community Savings Bank, 40 Franklin Street, Rochester, New York 14604.

At issue is the tax treatment under Articles 22 and 32 of the Tax Law of a proposed reorganization of Petitioner where, for Federal income tax purposes:

1. The change in the form of operation of Petitioner from a state mutual savings bank to a state stock savings bank will constitute a reorganization within the meaning of section 368(a)(1)(F) of the Internal Revenue Code of 1954, as amended (hereinafter "IRC"), and no gain or loss will be recognized by Petitioner or the converted bank as a result of such conversion (Rev. Rul. 80-105, 1980-1C.B. 78). Petitioner and the converted bank will each be "a party to a reorganization" within the meaning of section 368(b) of the IRC.

2. No gain or loss will be recognized by the converted bank upon the receipt of money in exchange for shares of its voting common stock (section 1032(a) of the IRC).

3. The assets of Petitioner will have the same basis in the hands of the converted bank as in the hands of Petitioner immediately prior to the conversion (section 362(b) of the IRC).

4. The holding period of the assets of Petitioner to be constructively received by the converted bank will include the period during which those assets were held by Petitioner prior to the conversion (section 1223(2) of the IRC).

5. No gain or loss will be recognized by the eligible account holders upon the issuance to them of deposit accounts in the converted bank in the same dollar amount as their deposit accounts in Petitioner, plus interests in the liquidation account of the converted bank, in exchange for their deposit accounts in Petitioner (section 354(a) of the IRC).

6. No gain or loss will be recognized to the eligible account holders upon the distribution to them of the nontransferable subscription rights to purchase shares of voting common stock in the converted bank (section 305(a) of the IRC).

7. No taxable income will be realized by the eligible account holders as a result of the exercise of the nontransferable subscription rights (Rev. Rul. 56-572, 1956-2 C.B. 182).

8. The basis of the deposit accounts in the converted bank received by the eligible account holders of Petitioner will be the same as the basis of their

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deposit accounts in Petitioner surrendered in exchange therefor (section 358(a)(1) of the IRC). The basis of the interests in the liquidation account of the converted bank received by the eligible account holders will be the same as the basis of the proprietary interest surrendered in exchange therefor. Consequently, the basis of each eligible account holder's interest in the liquidation account will be zero (Rev. Rul. 71-233, 1971-1 C.B. 113). The basis of the nontransferable subscription rights will be zero (sections 1.307-1 and 1.307-2 of the Treasury Regulations). The basis of the common stock of the converted bank to its shareholders will be the purchase price thereof (section 1012 of the IRC), and the holding period of the common stock acquired through the exercise of subscription rights shall commence upon the date of such exercise (section 1223(6) of the IRC).

9. For purposes of section 381 of the IRC, the converted bank will be treated as if there had been no reorganization. Accordingly, the taxable year of Petitioner will not end on the effective date of the conversion, and the tax attributes of Petitioner will be taken into account by the converted bank as if there had been no reorganization (section 1.381(b)-1(a)(2) of the Treasury Regulations). The part of the taxable year of Petitioner before the conversion will be includable in the taxable year of the converted bank following the conversion (Rev. Rul. 57-276, 1957-1C.B. 126).

10. Regardless of book entries made for the creation of the liquidation account, the conversion will not diminish the accumulated earnings and profits of the converted bank available for the subsequent distribution of dividends, if any, within the meaning of section 316 of the IRC (section 1.312-11(b) and (c) of the Treasury Regulations).

11. Assuming that the conversion and related sale of the converted bank's voting common stock are completed by November 30, 1986, neither the conversion of Petitioner to the converted bank nor the related sale of the converted bank's voting common stock will cause section 382(a) of the IRC to apply to reduce the net operating loss carryovers available to the converted bank.

12. The conversion of Petitioner to the converted bank will not cause section 382(b) of the IRC to apply to reduce the net operating loss carryovers available to the converted bank.

13. Pursuant to the provisions of section 381(c)(4) of the IRC and section 1.381(c)(4)-1(a)(1)(ii) of the Treasury Regulations, the converted bank will succeed to and take into account immediately after the conversion, the dollar amounts of those accounts of Petitioner which represent bad debt reserves in respect of which Petitioner has taken a bad debt deduction for taxable years ending on or before the date of the conversion. The bad debt reserves will not be required to be restored to the gross income of Petitioner for the taxable year of the conversion, and such bad debt reserves will have the same character in the hands of the converted bank as they would have had in the hands of Petitioner if no conversion had occurred.

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14. The creation of the liquidation account on the records of the converted bank will have no effect on its taxable income, deductions for addition to reserves for bad debts under section 593 of the IRC, or distributions to shareholders under section 593(e) of the IRC.

Petitioner is a New York State chartered mutual savings bank. Petitioner contemplates converting from a mutual savings bank to a New York State stock savings bank. 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.

Franchise Tax Consequences pursuant to Article 32 of the Tax Law

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 IRC. 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 IRC, 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 IRC 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.

Income Tax consequences pursuant to Article 22 of the Tax Law

Section 611(a) of the Tax Law provides:

"The New York taxable income of a resident individual shall be his New York adjusted gross income less his New York deduction and New York personal exemptions . . . as determined under this part."

Section 612(a) of the Tax Law provides:

"The New York adjusted gross income of a resident individual means his federal adjusted gross income as defined in the laws of the United States for the taxable year, with the modifications specified in this section."

Section 631(a) of the Tax Law provides:

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"The New York taxable income of a nonresident individual shall be his New York adjusted gross income less his New York deduction and New York personal exemptions...as determined under this part."

Section 632(a) of the Tax Law provides:

"The New York adjusted gross income of a nonresident individual shall be the sum of the following:

(1) The net amount of items of income, gain, loss and deduction entering into his federal adjusted gross income, as defined in the laws of the United States for the taxable year, derived from or connected with New York sources...

(2) The portion of the modifications described in subsections (b) and (c) of section six hundred twelve which relate to income derived from New York sources...

(3) The modification described in paragraph fourteen of subsection (b) of section six hundred twelve."

Section 612 of the Tax Law does not contain any modification which pertains to the effects of the reorganization of a savings bank on the eligible account holders thereof, as addressed in this advisory opinion.

Accordingly, if no gain or loss will be recognized for Federal income tax purposes by the eligible account holders upon the issuance to them of deposit accounts in the converted bank in the same dollar amount as their deposit accounts in Petitioner plus their interest in the liquidation account of the converted bank in exchange for their deposit accounts in Petitioner and if no gain or loss will be recognized for Federal income tax purposes by the eligible account holders upon the distribution to them of the nontransferable subscription rights to purchase shares of stock in the converted bank, then no gain or loss will be recognized for New York State income tax purposes by such eligible account holders because of such issuance and such distribution.

Furthermore, if no taxable income will be realized for Federal income tax purposes by eligible account holders as a result of the exercise of the nontransferable subscription rights, no taxable income will be realized for New York State income tax purposes by such eligible account holders because of the exercise of such nontransferable subscription rights.

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Finally, the account holders' basis for New York State income tax purposes of deposit accounts in the converted bank, of interest in the liquidation account of the converted bank, of nontransferable subscription rights and of common stock of the converted bank will be the same as such account holders' basis for Federal income tax purposes. Similarly, the shareholders' holding period for New York State income tax purposes will be the same as such shareholders' holding period for Federal income tax purposes.

DATED: April 10, 1986

s/FRANK J. PUCCIA
Director
Technical Services Bureau

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