

STATE OF NEW YORK
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. C000914C

On September 14, 2000, a Petition for Advisory Opinion was received from McDermott, Will & Emery, 50 Rockefeller Plaza, New York, New York 10020.

The issue raised by Petitioner, McDermott, Will & Emery, is whether the Commissioner of Taxation and Finance can require a bank holding company to file its return on a separate basis under Article 32 of the Tax Law, when the bank holding company elects to file a combined return for the taxable year that begins on or after January 1, 2000 and before January 1, 2001, pursuant to section 1462(f)(2)(iv) of the Tax Law.

Petitioner submits the following facts as the basis for this Advisory Opinion.

A bank holding company (“Taxpayer”) is, or will be, during its taxable year that begins on or after January 1, 2000 and before January 1, 2001 (i) exercising its corporate franchise or doing business in New York State, (ii) registered for the first time under the Federal Bank Holding Company Act, as amended, and (iii) electing to be a financial holding company, as that term is defined by section 1450(h) of the Tax Law. The Taxpayer will elect to file a combined return for the taxable year that begins on or after January 1, 2000 and before January 1, 2001, with one or more banking corporations of which the Taxpayer owns or controls 65 percent or more of the voting stock, directly or indirectly; and each such banking corporation is doing business in New York State in a corporate or organized capacity.

Discussion

Section 1462(f)(2)(iv) of the Tax Law, as added by Chapter 63 of the Laws of 2000, provides that:

(A) Notwithstanding any provision of this paragraph, any bank holding company which during a taxable year beginning on or after January first, two thousand and before January first, two thousand one (I) is exercising its corporate franchise or doing business in the state, and (II) registers for the first time during such taxable year under the federal bank holding company act, as amended, and also elects to be a financial holding company, may make a return on a combined basis without seeking the permission of the commissioner for such taxable year or for any subsequent taxable year beginning on or after January first, two thousand and before January first, two thousand one with any banking corporation sixty-five percent or more of whose voting stock is owned or controlled, directly or indirectly, by such

bank holding company, provided such banking corporation is exercising its corporate franchise or doing business in the state in a corporate or organized capacity.

(B) Notwithstanding any provision of this paragraph, the commissioner may not require a bank holding company which, during a taxable year beginning on or after January first, two thousand and before January first, two thousand one, registers for the first time during such taxable year under the federal bank holding company act, as amended, and also elects to be a financial holding company, to make a return on a combined basis for any taxable year beginning on or after January first, two thousand and before January first, two thousand one with a banking corporation sixty-five percent or more of whose voting stock is owned or controlled, directly or indirectly, by such bank holding company.

Section 1450(h) of the Tax Law, as added by Chapter 63 of the Laws of 2000, defines a “financial holding company” as “a corporation that, pursuant to subsection (l) of section 4 of the federal bank holding company act of nineteen hundred fifty-six, as amended, has filed with the federal reserve board a written declaration that the corporation elects to be a financial holding company and whose election has not been found to be ineffective by the federal reserve board.”

Accordingly, if Taxpayer meets the three conditions of section 1462(f)(2)(iv) of the Tax Law during a taxable year beginning on or after January 1, 2000 and before January 1, 2001, Taxpayer may make a return on a combined basis without seeking the permission of the Commissioner of Taxation and Finance for such taxable year or for any subsequent taxable year beginning on or after January 1, 2000 and before January 1, 2001, with any banking corporation 65 percent or more of whose voting stock is owned or controlled, directly or indirectly by Taxpayer, provided the banking corporation is exercising its corporate franchise or doing business in New York State in a corporate or organized capacity. The three conditions of section 1462(f)(2)(iv) that Taxpayer must meet during a taxable year beginning on or after January 1, 2000 and before January 1, 2001, in order to make a return on a combined basis for such taxable year without seeking permission are:

- (1) Taxpayer, during the taxable year, exercises its corporate franchise or does business in New York State,
- (2) Taxpayer, during the taxable year, registers to be a bank holding company for the first time under the Federal Bank Holding Company Act, as amended, and
- (3) Taxpayer, during the taxable year, elects to be a financial holding company, as defined under section 1450(h) of the Tax Law.

For the taxable year or years beginning on or after January 1, 2000 and before January 1, 2001, Taxpayer meets the three conditions of section 1462(f)(2)(iv) of the Tax Law and elects to file

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a return on a combined basis with a banking corporation that is exercising its corporate franchise or is doing business in New York State and 65 percent or more of whose voting stock is owned or controlled, directly or indirectly, by Taxpayer. In this situation, the Commissioner of Taxation and Finance cannot require Taxpayer to be excluded from the combined return and file its tax return on a separate basis for any taxable year or years beginning on or after January 1, 2000 and before January 1, 2001.

DATED: January 10, 2001

/s/
Jonathan Pessen
Tax Regulations Specialist III
Technical Services Division

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