

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

TSB-A-83(1)C
Corporation Tax
April 29, 1983

This memo supercedes TSB-A-83(1)C dated March 21, 1983 which should be destroyed.

STATE OF NEW YORK
STATE TAX COMMISSION

ADVISORY OPINION

PETITION NO. C820505B

On May 5, 1982 a Petition for Advisory Opinion was filed by C.I.T. Financial Corp. and Combined Subsidiaries, 650 Madison Avenue, New York, New York 10022.

The issue presented is whether C.I.T. Financial Corporation is required to include in subsidiary capital, on its 1972 franchise tax return filed under Article 9-A of the Tax Law, its shares in the National Bank of North America, of which it was a one-bank holding company during the year in question.

Prior to December 24, 1969 the various states were permitted to tax national banks located in such states in only one of four ways, apart from non-discriminatory real estate taxation. 12 USC §548. It was provided, thus, that:

The legislature of each State may determine and direct, subject to the provisions of this section, the manner and place of taxing all the shares of national banking associations located within its limits. The several States may (1) tax said shares, or (2) include dividends derived therefrom in the taxable income of an owner or holder thereof, or (3) tax such associations on their net income, or (4) according to or measured by their net income

During the period in which such statutory provision set forth the full extent of the states' taxing power over national banks, New York subjected national banks to a tax on their net income, under Article 9-C of the Tax Law. Having adopted one of the mutually exclusive tax options presented at the time in 12 USC §548, New York could not require the inclusion of the shares of a national bank in the subsidiary capital of its "one-bank holding company" for purposes of the tax on subsidiary capital imposed under Article 9-A of the Tax Law. See in this regard the opinions of the Counsel to the Department of Taxation and Finance issued on January 14, 1969 and March 4, 1969.

The Federal statutory provision here under discussion was amended by the Congress on December 24, 1969 (P.L. 91-156), and again by P.L. 92-213. As so amended, section 548 provides, with respect to the period between December 24, 1969 and January 1, 1973 (thus including the taxable year at issue herein), in relevant part, as follows:

"5. (a) In addition to the other methods of taxation authorized by the foregoing provisions of this section and subject to the limitations and restrictions specifically set forth in such provisions, a State or political subdivision thereof may impose any tax which is imposed generally on a nondiscriminatory basis throughout the jurisdiction of such State or political subdivision (other than a tax on intangible personal property) on a national bank having its principal office within such State in the manner and to the same extent as such tax is imposed on a bank organized and existing under the laws of such State."

However, such amendment provided, insofar as is applicable herein, that prior to January 1, 1973 ". . . no tax may be imposed on any class of banks by or under authority of any State legislation in effect prior to the enactment of this Act unless

- (1) the tax was imposed on that class of banks prior to the enactment of this Act, or
- (2) the imposition of the tax is authorized by affirmative action of the State legislature after the enactment of this Act."

As indicated above, the requirement set forth in the first clause of this provision is not satisfied with respect to the present matter. Further, between December 24, 1969 and January 1, 1973 the Legislature of the State of New York did not take any affirmative action to authorize the imposition of tax in the manner under discussion. Accordingly, with regard to taxable year 1972, Petitioner herein was not required to include in the measure of its subsidiary capital subject to tax under section 210.1(b) of the Tax Law its investment in its subsidiary national bank.

DATED: March 18, 1983

s/FRANK J. PUCCIA
Director
Technical Services Bureau