

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

TSB-A-86 (23) C
Corporation Tax
December 6, 1986

STATE OF NEW YORK
STATE TAX COMMISSION

ADVISORY OPINION

PETITION NO. C861002A

On October 2, 1986, a Petition for Advisory Opinion was received from Bank Negara Malaysia, P.O. Box 10922, Jalan Kuching, 50929 Kuala Lumpur, Malaysia.

The issue raised is whether Petitioner's tax liability for purposes of the New York State Franchise Tax on Banking Corporations, Article 32 of the Tax Law, will be limited to \$250 per year because Petitioner will not have any taxable income for federal income tax purposes.

Petitioner is a corporation formed under the laws of Malaysia by special act of the Malaysian legislature. It is wholly owned and controlled by the Malaysian government and has no issued and outstanding capital stock. All of the members of the board of directors of Petitioner are appointed by the constitutional head of Malaysia and approved by the Malaysian legislature. Petitioner is the central bank of Malaysia, and as such is the principal authority responsible for issuing currency and managing the banking system and monetary policy and reserves of Malaysia. Petitioner thus functions in a manner comparable to the Federal Reserve Bank of the United States. Its net earnings are credited to its own account or are distributed to the Malaysian government, with no portion of its income inuring to the benefit of any private person. In the event that Petitioner were dissolved, its assets would vest in the Malaysian government.

As a part of its duties in managing the monetary reserves of Malaysia, Petitioner invests in United States treasury bills, bonds and notes, and trades in spot contracts for foreign currencies and precious metals on recognized commodities markets. It does not now trade in forward or futures contracts for foreign currencies or precious metals, although it may do so in the future. In order to facilitate these transactions, Petitioner intends to open an office in New York City. The purpose of the New York office will be to gather information regarding the relevant financial markets, and to execute transactions as directed by Petitioner's head office in Malaysia. Petitioner will not engage in commercial banking functions in the United States.

The New York office will have discretionary authority to buy and sell currencies and precious metals on behalf of Petitioner, but only within the limits prescribed by its head office in Malaysia. Further, all transaction settlements will occur in Malaysia rather than in New York. The New York office will not, therefore, have control of any actual funds, nor will it maintain the accounting records of the transactions it undertakes. In essence, the New York office will act as an extended trading arm for Petitioner in Kuala Lumpur.

Petitioner has applied for a ruling from the Internal Revenue Service that the foreign currencies traded by Petitioner through its New York office will constitute commodities for purposes of Internal Revenue Code section 864(b)(2)(B). For purposes of this petition, Petitioner assumes that the foreign currencies will constitute commodities for purposes of Internal Revenue Code section 864(b)(2)(B). As a result, Petitioner contends that it will not be engaged in a trade or business in the United States, and therefore it will have no taxable income for federal income tax purposes. Petitioner contends that its entire net income, alternative entire net income and taxable assets for New York State franchise tax purposes will be zero, and that its New York State franchise tax liability will be the \$250 alternative minimum tax.

Section 1455 of the Tax Law provides that the basic tax is measured by the taxpayer's entire net income, or portion thereof allocated to New York State and that the alternative minimum tax is measured by the largest of three bases. The bases are: (1) the taxpayer's alternative entire net income or portion thereof allocated to New York State; (2) the taxpayer's taxable assets or portion thereof allocated to New York State; and (3) the minimum tax of \$250.

Section 1453(a) of the Tax Law defines entire net income 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).

Section 1453-A(a) of the Tax Law defines "alternative entire net income" as entire net income as determined pursuant to section 1453 of the Tax Law, except that certain deductions are not allowed.

Section 1455(b)(1)(v)(A) of the Tax Law defines "taxable assets" as the average total value of those assets which are properly reflected on a balance sheet the income or expenses of which are properly reflected in the computation of alternative entire net income for the taxable year or in the computation of the eligible net income of the taxpayer's international banking facility for the taxable year.

For purposes of section 1453(a) of the Tax Law, the starting point for computing a taxpayer's entire net income is its federal taxable income. The federal taxable income of a corporation organized outside the United States is its taxable income which is effectively connected with the conduct of a trade or business within the United States.

If a corporation is not engaged in a trade or business within the United States as defined in section 864(b) of the Internal Revenue Code, the corporation will not have effectively connected income as defined in section 864(c) of the Internal Revenue Code except as provided in section 882(d) or (e) of the Internal Revenue Code.

Where a taxpayer is not engaged in a trade or business in the United States and does not have effectively connected income for federal income tax purposes and the modifications pursuant to section 1453(b) through (i) of the Tax Law are not applicable, the taxpayer would not have any entire net income. In addition, such taxpayer would not have any alternative entire net income as defined in section 1453-A(a) of the Tax Law or taxable assets as defined in section 1455 (b) (1) (v) (A) of the Tax Law.

Accordingly, assuming that (1) Petitioner is not engaged in a trade or business within the United States, and (2) Petitioner does not have effectively connected income pursuant to section 864(c) of the Internal Revenue Code and (3) none of the modifications required by section 1453(b) through (i) of the Tax Law are applicable to Petitioner, entire net income, alternate entire net income and taxable assets would all be zero and the tax liability of Petitioner pursuant to section 1455 of the Tax Law would be the \$250 alternative minimum tax for each taxable year such assumptions are accurate.

DATED: December 4, 1986

s/FRANK J. PUCCIA
Director
Technical Services Bureau

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