

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

TSB-A-87 (20) C
Corporation Tax
July 23, 1987

STATE OF NEW YORK
STATE TAX COMMISSION

ADVISORY OPINION

PETITION NO. C870515A

On May 15, 1987, a Petition for Advisory Opinion was received from Manufacturers Hanover Corporation, 270 Park Avenue, New York, New York 10017.

The issue raised is whether the last two clauses of section 1450(e) of Article 32 of the Tax Law, which concern the reduction of subsidiary capital by certain short-term liabilities of the parent corporation, are to be taken into account in applying the 17 percent and 60 percent deduction under section 1453(e)(11) of the Tax Law.

Petitioner is a bank holding company incorporated in Delaware and qualified to do business in New York. Petitioner is subject to Article 3-A of the New York State Banking Law and is the parent corporation of a group of banking corporations. Pursuant to section 1462(f) of the Tax Law, Petitioner also owns more than 50 percent of the voting stock in various other corporations which are not included in the Article 32 combined return group (hereinafter "noncombined subsidiaries").

In the course of its business operations, Petitioner issues several types of debt instruments (e.g., commercial paper, notes, debentures) to unrelated third parties which evidence its obligation to pay principal and interest. The debt instruments issued by Petitioner have various maturity dates which, for purposes of this Petition, will be classified as follows: (1) debt instruments payable by their terms on demand or within one year from the date issued, and (2) debt instruments payable by their terms beyond one year from the date issued.

Petitioner receives dividends and interest from its noncombined subsidiaries in the ordinary course of its business. Pursuant to Section 1453(e)(11) of the Tax Law, Petitioner deducts 17 percent of all interest income and 60 percent of all dividend income received from the noncombined subsidiaries in determining its entire net income (provided the noncombined subsidiary does not deduct the interest expense on its New York return).

Petitioner queries whether the modifications provided by section 1453(e)(11) of the Tax Law should be reduced because of expenses which are attributable to current liabilities attributable to subsidiary capital.

Section 1450(e) of the Tax Law provides, in pertinent part "...there shall be deducted from subsidiary capital any liabilities payable by their terms on demand or within one year from the date incurred, other than loans or advances outstanding for more than a year as of any date during the year covered by the return, which are attributable to subsidiary capital."

Section 1453(e) of the Tax Law states "There shall be allowed as a deduction in determining entire net income, to the extent not deductible in determining federal taxable income... (11)(i) seventeen percent of interest income from subsidiary capital, and (ii) sixty percent of dividend income, gains and losses from subsidiary capital".

There are no provisions under Article 32 of the Tax Law to add back any expenses which are attributable to any interest income, dividend income, gains or losses from subsidiary capital. In addition, Article 32 does not provide for any reduction in the amount on which the 17 percent or 60 percent modification contained in section 1453(e)(11) is computed.

Accordingly, when computing the modifications provided by section 1453(e)(11) of the Tax Law, Petitioner should not reduce the amount of interest income, dividend income, gains or losses from subsidiary capital by the amount of expenses which are attributable to current liabilities that are attributable to such subsidiary capital.

DATED: July 23, 1987

s/FRANK J. PUCCIA
Director
Technical Services Bureau

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