STATE TAX COMMISSION
STATE OF NEW YORK

ADVISORY OPINION PETITION NO. C861203A

On December 3, 1986, a Petition for Advisory Opinion was received from Goulds Pumps, Inc., 240 Fall Street, Seneca Falls, New York 13148.

The issue raised is the proper treatment to be accorded to contributions to a tax credit employee stock ownership plan for purposes of computing New York State entire net income under Article 9-A of the Tax Law.

Petitioner states that it maintains an employee stock ownership plan, as defined in section 41(c) of the Internal Revenue Code, to which it annually contributes Petitioner's stock in an amount equal to ½ of 1% of the compensation of all employees covered by the plan. A federal tax credit is allowed equal to the amount of the contribution. This contribution, which is reflected on the books of the company as an employee benefit expense, must be added to "book income" in arriving at federal taxable income. Thus, it is not deductible for federal income tax purposes.

Section 280C of the Internal Revenue Code disallows a deduction for wages paid in an amount equal to a corporation's targeted jobs credit under section 51(a) of the Internal Revenue Code. However, section 208.9(a)(7) of the Tax Law provides that entire net income shall not include that portion of wages and salaries paid or incurred for the taxable year for which a deduction is not allowed pursuant to the provisions of section 280C of the Internal Revenue Code.

Petitioner contends that since the federal income tax treatment of contributions to an employee stock ownership plan is virtually identical to that accorded wages qualifying for the targeted jobs credit, it would appear that in computing entire net income, pursuant to section 208.9 of the Tax Law, an adjustment similar to section 208.9(a)(7) should be allowed to enable the taxpayer to subtract from its federal taxable income the amount of the contribution to the employee stock ownership plan that was not deducted for federal income tax purposes.

Section 208.9 of the Tax Law defines entire net income as "total net income from all sources, which shall be presumably the same as the entire taxable income which the taxpayer is required to report to the United States treasury department ... except as hereinafter provided ...."

When computing entire net income, the starting point is federal taxable income. After determining federal taxable income, it must be modified as required by section 208.9(a) and (b) of the Tax Law. The modification contained in section 208.9(a)(7) specifically provides for a subtraction of the portion of wages and salaries paid or incurred for which a deduction is not allowed pursuant to section 280C of the Internal Revenue Code.

Section 41(c) of the Internal Revenue Code, rather than section 280C, contains the provision that disallows a deduction for federal income tax purposes for the amount of the contribution to the employee stock ownership plan. Accordingly, section 208.9(a)(7) of the Tax Law cannot be applied to allow a subtraction modification for such a contribution.

In addition, section 208.9 of the Tax Law does not provide for a modification that allows for a subtraction from federal taxable income for the amount of a contribution to an employee stock ownership plan.

Therefore, when computing entire net income, pursuant to section 208.9 of the Tax Law, Petitioner may not adjust federal taxable income by subtracting from it the amount of the contribution to the employee stock ownership plan that is not allowed as a deduction for federal income tax purposes pursuant to section 41(c) of the Internal Revenue Code.

DATED: March 11, 1987

s/FRANK J. PUCCIA
Director
Technical Services Bureau

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