

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

TSB-A-88 (1)C
Corporation Tax
January 21, 1988

STATE OF NEW YORK
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. C871105A

On November 5, 1987, a Petition for Advisory Opinion was received from The Permanent Savings Bank, 800 Main Street, Niagara Falls, New York 14302.

At issue is the tax treatment under Article 32 of the Tax Law of a proposed reorganization of Petitioner where, for federal income tax purposes:

1. The change in the form of operation of Petitioner from a state mutual savings bank to a state stock savings bank will constitute a reorganization within the meaning of section 368(a)(1)(F) of the Internal Revenue Code of 1986 (hereinafter IRC), and no gain or loss will be recognized to Petitioner as a result of such conversion (Rev. Rul. 80-105, 1980-1C.B. 78). Petitioner and the converted bank will each be a "party to a reorganization" within the meaning of section 368(b) of the IRC.

2. No gain or loss will be recognized to the converted bank on the receipt of money in exchange for the units (comprised of one share of common stock and one warrant) (section 1032(a) of the IRC).

3. The assets of Petitioner will have the same basis in the hands of the converted bank as in the hands of Petitioner immediately prior to the conversion (section 362(b) of the IRC).

4. The holding period of the assets of Petitioner to be received by the converted bank will include the period during which the assets were held by Petitioner prior to the conversion (section 1223(2) of the IRC).

5. No gain or loss will be recognized by the deposit account holders upon the issuance to them of deposit accounts in the converted bank in the same dollar amount as their deposit accounts in Petitioner plus, in the case of eligible account holders, interests in the liquidation account of the converted bank in exchange for their deposit accounts in the bank (section 354(a) of the IRC).

6. No gain or loss will be recognized by the eligible account holders upon the distribution to them of the nontransferable subscription rights to purchase units in the converted bank consisting of rights to acquire for a single specified price, one share of common stock and one stock purchase warrant (section 305(a) of the IRC and Rev. Rul. 56-572, 1956-2 C.B. 182).

7. The basis of the deposit accounts in the converted bank received by the account holders of Petitioner will be the same as the basis of their deposit accounts in Petitioner surrendered in exchange therefor (section 358(a)(1) of the IRC). The basis of the interests in the liquidation account of the converted bank received by the eligible account holders will be zero. The basis of the nontransferable subscription rights will be zero (sections 1.307-1 and 1.307-2 of the Treasury Regulations). The basis for the units issued by converted bank to its shareholders will be the

purchase price thereof (section 1012 of the IRC). The holding period for the units acquired through the exercise of subscription rights will commence upon the exercise of the subscription (section 1223(6) of the IRC).

8. The basis for the common stock and the warrants will be the portion of the purchase price of the units allocated to each according to the relative market values on the date the units are purchased. (Rev. Rul. 56-572, 1956-2 C.B. 182).

9. Assuming the nontransferable subscription rights to purchase units in the converted bank have no ascertainable market value, no taxable income will be realized by the eligible account holders, or other members as a result of the exercise of the nontransferable subscription rights (Rev. Rul. 56-572, 1956-2 C.B. 182).

10. For purposes of section 381 of the IRC, the converted bank will be treated as if there had been no reorganization. Accordingly, the taxable year of Petitioner will not end on the effective date of the conversion, and the tax attributes of Petitioner will be taken into account by the converted bank as if there had been no reorganization (section 1.381(b)-(1)(a)(2) of the Treasury Regulations). The part of the taxable year of Petitioner before the conversion will be included in the taxable year of the converted bank after the conversion (Rev. Rul. 57-276, 1957-1 C.B. 126).

11. Pursuant to the provisions of section 381(c)(4) of the IRC and section 1.381(c)(4)-1(a)(1)(ii) of the Treasury Regulations, the converted bank will succeed to and take into account, immediately after the reorganization the dollar amounts of those accounts of Petitioner which represent bad debt reserves in respect of which Petitioner has taken a bad debt deduction for taxable years ending on or before the date of the transfer. The bad debt reserves will not be required to be restored to gross income of Petitioner for the taxable year of the transfer, and such bad debt reserves will have the same character in the hands of the converted bank as they would have had in the hands of Petitioner if no distribution or transfer had occurred.

12. Regardless of book entries made for the creation of the liquidation account, the conversion will not diminish the accumulated earnings and profits of the converted bank available for the subsequent distribution of dividends within the meaning of section 316 of the IRC (section 1.312-11(b) and (c) of the Treasury Regulations). The creation of the liquidation account on the records of the converted bank will have no effect on its taxable income, deductions for addition to reserves for bad debts under section 593 of the IRC, or distributions to shareholders under section 593(e) of the IRC. (Rev. Rul. 68-475, 1968-2 C.B. 259).

Petitioner is a state chartered savings bank organized in mutual form. Petitioner contemplates converting to a New York State chartered stock savings bank. The Board of Directors will continue the policies and business operations of Petitioner under the New York State stock charter on the

same basis as before the conversion. All pending actions and other judicial proceedings to which Petitioner is a party will not abate or be discontinued by reason of the conversion but will continue in the same manner as if the conversion had not taken place. Each account holder will have a deposit account in the converted bank in the same dollar amount and upon the same terms and conditions (except as to liquidation rights) as prior to the conversion. For federal income tax purposes, Petitioner will continue to file all tax returns under existing identification numbers and upon the same reporting dates or reporting periods as is required of Petitioner prior to the conversion.

Pursuant to section 86.4(c) of the General Regulations of the Banking Board of the New York State Banking Department, at the time the conversion from mutual to stock-form becomes effective, the converting institution shall cease to be a mutual institution and shall simultaneously become a stock-form institution, and all the property of the mutual institution shall remain as the property of the stock-form institution. All of the rights, powers, franchises, debts, liabilities, obligations and duties of the mutual institution shall continue as such in the stock-form institution and all deposits therein shall remain as deposits of equal value and character of such stock-form institution. The corporate existence of the converting mutual institution shall not terminate, and such converted stock-form institution shall be a continuation of the mutual form institution which existed immediately before the filing of the amended organization certificate.

Section 1455(a) of the Tax Law provides that the basic tax is 9 percent of the taxpayer's entire net income, or portion thereof allocated to New York State, for the taxable year or part thereof.

Entire net income is defined in section 1453(a) of the Tax Law as "total net income from all sources which shall be the same as the entire taxable income (but not alternative minimum taxable income) ... which the taxpayer is required to report to the United States treasury department, ... subject to the modifications and adjustments hereinafter provided."

Section 1453(b) through (k) 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, provide for the modifications and adjustments required by section 1453(a). However, there is no modification or adjustment for a transaction treated as a reorganization pursuant to section 368(a)(1)(F) of the IRC. Therefore, for New York State franchise tax purposes, such reorganization would be treated the same as it is treated for federal income tax purposes.

Section 1462(a) of the Tax Law states, in part:

"Every taxpayer . . . shall annually on or before the fifteenth day of the third month following the close of each of its taxable years transmit to the tax commission a return . . . and every taxpayer which ceases to exercise its franchise or to be subject to the tax imposed by this article shall transmit to the tax commission a return on the

date of such cessation or at such other time as the tax commission may require covering each year or period for which no return was thereto-fore filed."

Pursuant to section 1462(a) of the Tax Law, a taxpayer's taxable year does not change when converting from a mutual institution to a stock-form institution if such taxpayer does not cease to exercise its franchise or cease to be subject to tax under Article 32 of the Tax Law.

Herein, Petitioner's entire net income is computed by starting with federal taxable income and making the modifications and adjustments required by section 1453 of the Tax Law. Since there is no modification or adjustment for a reorganization under section 368(a)(1)(F) of the IRC, such reorganization would, for purposes of section 1453 of Article 32, be treated the same as it was treated for federal income tax purposes.

Accordingly, if Petitioner's change in form from a New York State chartered mutual savings bank to a New York State chartered stock savings bank is a tax-free reorganization under section 368(a)(1)(F) of the IRC such reorganization would be a tax-free reorganization for New York State franchise tax purposes under Article 32. Pursuant to section 86.4(c) of the General Regulations of the Banking Board of the New York State Banking Department, Petitioner would not cease to exercise its New York State franchise and the taxable year of Petitioner would not end on the effective date of the conversion from a New York State mutual savings bank to a New York State stock-form savings bank. Therefore, the part of the taxable year of Petitioner before such conversion would be included in the taxable year of the converted bank following such conversion.

DATED: January 21, 1988

s/FRANK J. PUCCIA
Director
Technical Services Bureau

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