

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

TSB-H-81 (37)C
Corporation Tax
June 18, 1981

STATE OF NEW YORK
STATE TAX COMMISSION

ADVISORY OPINION

PETITION NO. C810304A

On March 4, 1981, a Petition for Advisory Opinion was received from Hooker Chemical & Plastics Corp., 1980 South Post Oak, P.O. Box 868, Houston, Texas 77001.

The issue raised is whether Petitioner, in computing its entire net income under Article 9-A of the Tax Law, would be required to add back interest on indebtedness paid to its "grandparent" corporation, pursuant to Section 208.9(b)(5) of the Tax Law.

Petitioner, a New York taxpayer, is currently a wholly-owned subsidiary of Oxy Chemical Corporation (Oxy Chem), a California corporation not doing business in New York. Oxy Chem is a wholly-owned subsidiary of Hooker Chemical Corp. (Hooker), a California corporation which is also not doing business in New York.

Hooker has loaned funds to the Petitioner on which the Petitioner is required to pay interest. In order to increase debt capacity and avoid potential violations of existing debt covenants, Hooker will transfer the debt receivable from Petitioner to the capital of Oxy Chem by way of a capital contribution. Simultaneously, Oxy Chem will create a new wholly-owned subsidiary (Newco), to be a California corporation not doing business in New York. Upon the formation of Newco, Oxy Chem will contribute its stock in Petitioner to Newco as a capital contribution, and Newco will thereupon become the sole shareholder of Petitioner.

Petitioner inquires as to the applicability of section 208.9(b)(5) of the Tax Law to interest on indebtedness paid by Petitioner to Oxy Chem subsequent to Newco's having become the sole shareholder of Petitioner.

Section 208.9(b)(5) of the Tax Law provides, in pertinent part, that in arriving at entire net income for franchise tax purposes, an addition to federal taxable income must be made in the amount of interest paid on indebtedness directly or indirectly owed to any stockholder or shareholder owning more than five per cent of the taxpayer's issued capital stock, or to a subsidiary of such corporate stockholder or shareholder.

Accordingly, interest on indebtedness paid by Petitioner to Oxy Chem subsequent to Newco's having become the sole stockholder of Petitioner will not constitute interest "paid on indebtedness owed ... to any stockholder or shareholder owning more than five per cent of the ... [Petitioner's] issued capital stock, or to a subsidiary of such corporate stockholder or shareholder." Section 208.9(b)(5) of the Tax Law will therefore not be applicable thereto. That is, the interest paid by Petitioner to Oxy Chem will not be required to be added to Petitioner's federal taxable income in computing its entire net income for purposes of Article 9-A of the Tax Law.

DATED: June 1, 1981

s/LOUIS ETLINGER
Deputy Director
Technical Services

JAMES H. TULLY., COMMISSIONER

LOUIS M. JACOBSON, DEPUTY COMMISSIONER

FRANK J. PUCCIA, DIRECTOR