



Department of Taxation and Finance

Important

Article 32 of the Tax Law was repealed, effective for tax years beginning on or after January 1, 2015, by Part A of Chapter 59 of the Laws of 2014. As a result, this TSB-M is obsolete and cannot be relied upon for tax years on or after that date insofar as the TSB-M addresses matters relating to Article 32.

For additional information concerning the Article 32 repeal, see [Transitional Filing Provisions for Taxpayers Affected By Corporate Tax Reform Legislation](#).

This TSB-M begins on page 2 below.

Whether a Banking Corporation Subject to Tax Under Article 32 of the Tax Law is Entitled to Deduct 22 ½% of the Interest Earned on Government Obligations It Holds as Inventory or It Holds in its Trading Accounts

Reproduced below is an official Opinion of Counsel, issued on May 6, 2004. The Opinion concerns the application of the 22 ½% deduction for interest earned on certain government obligations pursuant to section 1453(e)(12) of the Tax Law.

Opinion of Counsel Issued by Deputy Counsel John W. Bartlett on May 6, 2004

Section 1453(e)(12) of the Tax Law allows a banking corporation to claim a deduction in determining entire net income, to the extent not deductible in determining federal taxable income, for “twenty-two and one-half percent of interest income on obligations of New York state, or of any political subdivision thereof, or of the United States, other than obligations held for resale in connection with regular trading activities.”

From 1998 through 2000, the Counsel of the Department of Taxation and Finance issued letters which stated that, pursuant to Tax Law section 1453(e)(12), a banking corporation may claim the 22 ½% deduction for interest earned on certain government obligations which the banking corporation trades for its own account or which are held by the banking corporation to manage risks as part of its market making activities in swaps and other derivatives.

After further review of this issue, it is the Opinion of the Office of Counsel of the Department of Taxation and Finance that the conclusions previously expressed on this issue do not reflect a proper interpretation of the statute. A better reading of the statutory provision is that a banking corporation is not entitled to the 22 ½% deduction for interest earned on any government obligations it holds as inventory or it holds in its trading accounts. The government obligations held in both of these types of accounts are obligations “held for resale in connection with regular trading activities.”

Examples of government obligations, the interest income from which will not be eligible for the 22 ½% deduction, are government obligations held:

- in the trading accounts,
- in the inventory accounts,
- for the purpose of reselling for short-term profit,
- to hedge positions taken in the trading account, and
- to hedge against fluctuations in value of inventory.

Interest income from government obligations a banking corporation purchases to hold for

investment are eligible for the 22 ½% deduction.

Examples of government obligations, the interest income from which will be eligible for the 22 ½% deduction, are government obligations held:

- in the investment account,
- to satisfy the minimum capital requirements of a regulatory agency,
- to meet a regulatory agency's liquidity requirements, and
- to manage a banking corporation's overall risk in connection with the management of its assets and liabilities (general risk management).

The Department will apply the interpretation expressed in this Opinion to taxable years beginning on or after January 1, 2004.

/s/

John W. Bartlett
Deputy Counsel