

## **Amendments to Article 32 Concerning Doing Business in New York State, Allocation, and Requirements to File a Combined Return**

The franchise tax on banking corporations under Article 32 of the Tax Law is imposed on a banking corporation for the privilege of exercising its franchise or doing business in New York State in a corporate or organized capacity. Chapter 57 of the Laws of 2008 amended Article 32 to establish criteria for a banking corporation engaged in the business of credit card transactions to determine whether the banking corporation is doing business in New York State. Article 32 was also amended to clarify the allocation rules under section 1454(a)(2)(D) and to include provisions for when banking corporations that are considered to be doing business in New York State solely under the new criteria should be included in a combined return with other banking corporations or bank holding companies.

The new law, explained below, applies to taxable years beginning on or after January 1, 2008.

### **Criteria for doing business in New York State**

Section 1451(c) has been added to the Tax Law to provide criteria under which a banking corporation is doing business in this state in a corporate or organized capacity and, therefore, is subject to the franchise tax on banking corporations under Article 32. Under the new law, a banking corporation is doing business in New York State for a taxable year if it satisfies **any one** of the following criteria:

- (1) It has issued credit cards to 1,000 or more customers who have a mailing address within New York State as of the last day of its taxable year.
- (2) It has merchant customer contracts with merchants and the total number of locations covered by those contracts equals 1,000 or more locations in New York State to whom the banking corporation remitted payments for credit card transactions during the taxable year.
- (3) It has receipts of \$1,000,000 or more in the taxable year from its customers who have been issued credit cards by the banking corporation and have a mailing address within New York State.
- (4) It has receipts of \$1,000,000 or more in the taxable year arising from merchant customer contracts with merchants relating to locations in New York State.
- (5) For the taxable year, the sum of the number of customers described in criteria (1) plus the number of locations covered by its contracts described in criteria (2) equals 1,000 or more, or the total amount of its receipts described in criteria (3) and criteria (4) equals \$1,000,000 or more.

For purposes of the above:

- The term *credit card* includes bank, credit, travel, and entertainment cards.
- Receipts from processing credit card transactions for merchants include merchant discount fees received by the credit card bank.
- Taxable year means the taxpayer's taxable year for federal income tax purposes.

Note: A corporation subject to tax under Article 32 is subject to the MTA surcharge under Tax Law section 1455-B if it exercises its franchise or does business in the Metropolitan Commuter Transportation District (MCTD) in a corporate or organized capacity. Accordingly, a banking corporation is doing business in the MCTD if it satisfies any one of the criteria under Tax Law section 1451(c) with respect to customers with mailing addresses in the MCTD or merchants with locations in the MCTD. The MCTD includes New York City (the counties of New York (Manhattan), Bronx, Kings (Brooklyn), Queens, Richmond (Staten Island)), and the counties of Dutchess, Nassau, Orange, Putnam, Rockland, Suffolk, and Westchester.

### **Allocation rules**

Tax Law section 1454(a)(2)(D) provides allocation rules for receipts from certain bank activities. This section was amended to clarify when receipts from bank, credit, travel and entertainment card receivables are earned within the state. Under the new law,

- interest, and fees and penalties in the nature of interest, and
- service charges and fees

are earned within the state if the mailing address of the card holder in the taxpayer's records is in the state. Receipts from merchant discounts will continue to be earned within the state if the merchant is located within the state.

### **Requirements to file a combined return with other Article 32 corporations**

A banking corporation doing business in New York State solely because it meets one or more of the criteria in Tax Law section 1451(c) (hereinafter, credit card bank) will not be included in a combined return pursuant to Tax Law section 1462(f)(2)(i) with another banking corporation or bank holding company that is exercising its corporate franchise or doing business in this state unless the credit card bank or the Tax Department shows that a combined return is necessary to properly reflect the tax liability of the credit card bank, the banking corporation, or the bank holding company.

However, any banking corporation that meets one or more of the criteria in Tax Law section 1451(c) and that was included in a combined return for its last taxable year beginning before January 1, 2008, may continue to be included in a combined return for future taxable years. Once this banking corporation has been included in a combined return for any taxable year beginning on or after January 1, 2008, it must continue to be included in a combined return until it obtains the consent of the Tax Department to cease being included in a combined return because the combined return no longer properly reflects the tax liability under Article 32 of any of the corporations included in the combined return.

**Requirements to file a combined return with banking corporations that are not subject to tax under Article 32**

A credit card bank is required to be included in a combined return with any of the following corporations that provide services for or support to the credit card bank's operations:

- (1) any banking corporation not subject to tax under Article 32 if 65% or more of the voting stock of that corporation is owned or controlled, directly or indirectly, by the credit card bank;
- (2) any banking corporation or bank holding company not subject to tax under Article 32 that owns or controls, directly or indirectly, 65% or more of the voting stock of the credit card bank; or
- (3) any banking corporation not subject to tax under Article 32 if 65% or more of the voting stock of that corporation is owned or controlled, directly or indirectly, by the same corporation or corporations that own or control, directly or indirectly, 65% or more of the voting stock of the credit card bank.

However, if the credit card bank or the Tax Department shows that the inclusion of any of these corporations in the combined return fails to properly reflect the tax liability of the credit card bank, a combined return will not be required with those corporations.

Services for or support to the credit card bank's operations include such activities as billing, credit investigation and reporting, marketing, research, advertising, mailing, customer service, information technology, lending and financing services, and communication services but will not include accounting, legal, or personnel services.

**Estimated tax**

Since these provisions are effective for taxable years beginning on or after January 1, 2008, banking corporations that are doing business in New York State based on the new provisions may be subject to the requirements to file declarations of estimated tax and may have to begin making estimated tax payments for 2008.

NOTE: A TSB-M is an informational statement of changes to the law, regulations, or Department policies. It is accurate on the date issued. Subsequent changes in the law or regulations, judicial decisions, Tax Appeals Tribunal decisions, or changes in Department policies could affect the validity of the information presented in a TSB-M.