

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

TSB-M-79(1)C (Rev)
Corporation Tax
October 19, 1979

Page 1 of TSB-M-79(1)C, dated February 15, 1979 has been revised. Remove and destroy page 1 of TSB-M-79(1)C, dated February 15, 1975, and replace it with page 1 of TSB-M-79(1)C (Rev), dated October 19, 1979. The new material has been underlined.

Subject: Banking Corporations

The following question has been raised concerning Article 32 (Franchise Tax on Banking Corporations) of the Tax Law.

Question:

What corporations would qualify as taxpayers pursuant to section 1452(a)(8) of the Tax Law?

Answer:

Section 1452(a)(8) of the Tax Law provides:

“ . . . any corporation eighty percent or more of whose voting stock is beneficially owned by a corporation or corporations subject to article three-a of the banking law or registered under the federal bank holding company act of nineteen hundred fifty-six, as amended, and which makes a consolidated return under the provisions of subdivision (f) of section fourteen hundred sixty-two, or by a corporation or corporations subject to article three of the banking law or by a national banking association or associations, provided the corporation whose voting stock is so owned is principally engaged in business which might be lawfully conducted by a corporation subject to article three of the banking law or a national banking association.”

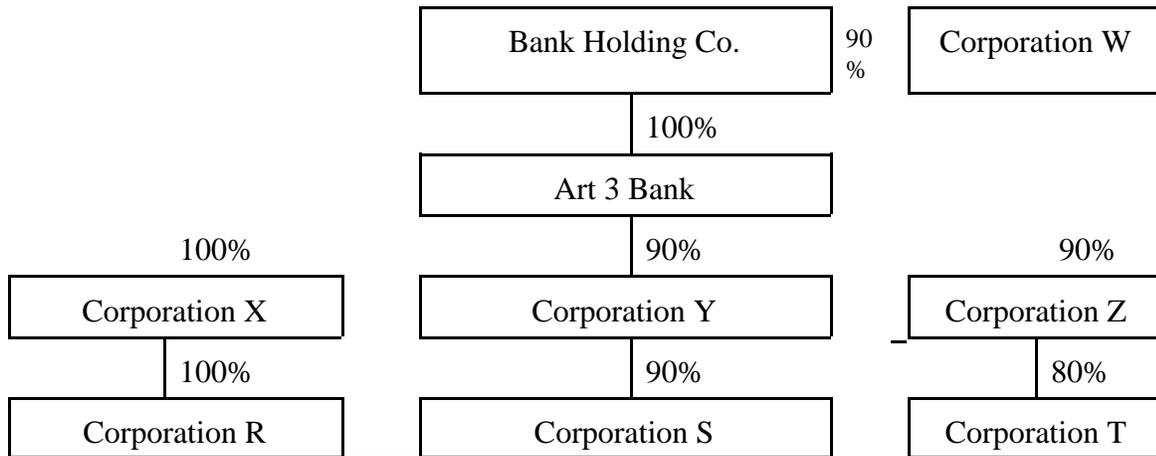
For purposes of section 1452(a)(8) of the Tax Law, a taxpayer is any corporation principally engaged in a business which might be lawfully conducted by a corporation subject to Article 3 of the New York State Banking Law or a national banking association, and either (1) 80% or more of whose voting stock, is beneficially owned by a corporation subject to Article 3-A of the New York State Banking Law or registered under the Federal Bank Holding Company Act of 1956, as amended, and files a consolidated return or (2) 80% or more of whose voting stock is beneficially owned by a corporation or corporations subject to Article 3 of the New York State Banking Law or a national banking association or associations having its principal office in New York State. Voting stock is beneficially owned when a corporation has actual or beneficial ownership of the voting stock of another corporation. The stockholder has actual ownership when it has the right to vote for the election of directors and the right to receive dividends. The stockholder has beneficial ownership when it owns indirectly and controls the voting stock of another corporation.

Where a corporation controls 80% or more of the voting stock of another corporation so that the controlled corporation is the mere agent, instrumentality or alter ego of the other, the controlling corporation will be held to be the beneficial owner of the controlled corporation.

The term "control" refers to all cases where one corporation or association possesses, directly or indirectly, the power to direct or cause the direction of the management and policies of another corporation or association, whether through the ownership of voting stock of such corporation or association or the ownership of voting stock of any corporation or association which possesses such power.

Eighty percent or more of the voting stock must be beneficially owned as shown by the following examples.

Example 1:



Corporations W, X, Y, Z, R, S and T are principally engaged in business which might be lawfully conducted by a corporation subject to article 3 of the New York State Banking Law or a national banking association.

Bank Holding Co. beneficially owns:

- 100% of Article 3 Bank
- 100% of X
- 100% of R
- 90% of W
- 90% of Y (100% of bank x 90% of Y)
- 90% of Z (100% of bank x 90% of Z)
- 81% of S (100% of Bank x 90% of Y x 90% of S)
- 72% of T (100% of Bank x 90% of Z x 80% of T)

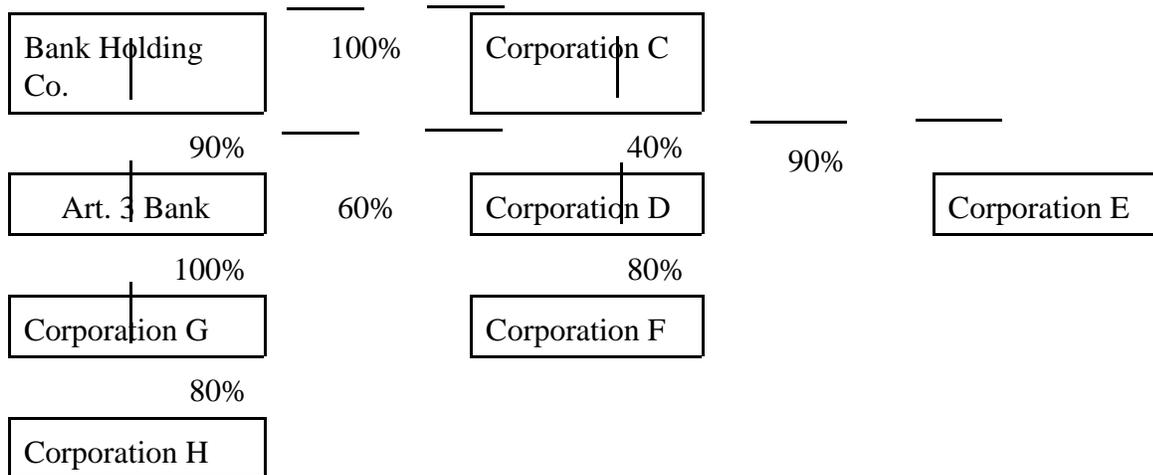
Article 3 Bank beneficially owns:

- 100% of X
- 100% of R (100% of X x 100% of R)
- 90% of Y
- 90% of Z
- 81% of S (90% of Y x 90% of S)
- 72% of T (90% of Z x 80% of T)
- 0% of W

The bank holding company is a taxpayer when it is included in a consolidated return pursuant to section 1462(f) of the Tax Law. When filing a consolidated return pursuant to section 1462(f) of the Tax Law with the bank holding company, corporations W, X, Y, Z, R and S qualify as taxpayers pursuant to section 1452(a)(8) of the Tax Law, but corporation T would not qualify as a taxpayer because it is not 80% or more beneficially owned by either the bank holding company or the bank.

When the bank holding company is not included in a consolidated return under section 1462(f) of the Tax Law, then corporations W and T would not qualify as taxpayers pursuant to section 1452(a)(8) of the Tax Law because neither corporation is 80% or more beneficially owned by the bank.

Example 2:



Corporations C, D, E, F, G and H are principally engaged in business which might be lawfully conducted by a corporation subject to article 3 of the New York State Banking Law or a national banking association.

Bank Holding Company beneficially owns:

100% of C
90% of Article 3 Bank
90% of G (90% of Bank x 100% of G)
94% of D (90% of Bank x 60% of D + 100% of C x 40% of D)
86% (rounded off) of E (90% of Bank x 60% of D x 90% of E + 100% of C x 40% of D x 90% of E)
75% (rounded off) of F (90% of Bank x 60% of D x 80% of F + 100% of C x 40% of D x 80% of F)
72% of H (90% of Bank x 100% of G x 80% of H)

Article 3 Bank beneficially owns:

100% of G
80% of H (100% of G x 80% of H)
60% of D
54% of E (60% of D x 90% of E)
48% of F (60% of D x 80% of F)
0% of C

The bank holding company is a taxpayer when it is included in a consolidated return pursuant to section 1462(f) of the Tax Law. When filing a consolidated return pursuant to section 1462(f) of the Tax Law with the bank holding company, corporations C, G, D, E and H would qualify as taxpayers pursuant to section 1452(a)(8) of the Tax Law, but corporation F would not qualify because it is not 80% or more beneficially owned by either the bank holding company or the bank.

When the bank holding company is not included in a consolidated return under section 1462(f) of the Tax Law, then corporations C, D, E and F would not qualify as taxpayers pursuant to section 1452(a)(8) of the Tax Law because these corporations are not 80% or more beneficially owned by the bank.

It should be noted, that there is no provision in section 1452(a)(8) of the Tax Law to include as a taxpayer a corporation whose voting stock is 80% or more beneficially owned by a savings bank, a state chartered savings and loan association, or a federally chartered savings and loan association.