

**THE CITY OF NEW YORK
DEPARTMENT OF FINANCE**

NOTICE OF RULEMAKING

Pursuant to the power vested in me as Commissioner of Finance by sections 389(b) and 1043 of the New York City Charter and section 11-687(1) of the Administrative Code of the City of New York, I hereby promulgate the within amendments to the Rules Relating to the New York City Banking Corporation Tax which are necessary to carry out the powers and duties delegated to the Commissioner of Finance by chapter 6 of title 11 of the Administrative Code of the City of New York.

\S\Alfred C. Cerullo, III
Commissioner of Finance

Section 1. Subparagraph (iii)(A) of paragraph (2) of subdivision (b) of section 3-05 of Title 19 of the Compilation of the Rules of the City of New York Relating to the Banking Corporation Tax, promulgated November 27, 1985 and last amended September 10, 1990 is amended to read as follows:

(iii) (A) A banking corporation or bank holding company described in subparagraph (i)(A) of this paragraph of this section [which is seeking to] that meet the applicable requirements may be excluded from a combined return [must make a written request] in accordance with paragraph (b)(5) of this section.

§2. Subparagraph (iii) of paragraph (3) of subdivision (b) of section 3-05 of such rules is amended to read as follows:

(iii) Except for corporations described in §3-05(b)(2)(i)(A) any banking corporation or bank holding company described in subparagraph (i) of this paragraph and those described in §3-05(b)(6)(i) [must make a written request for permission to] that meets the applicable requirements may file a combined return with one or more corporations or bank holding companies or [to] be added to or excluded from a combined return in accordance with §3-05(b)(5).

§3. Paragraph (5) of subdivision (b) of section 3-05 of such rules is amended to read as follows:

(5) *Procedure for adding to, excluding from or filing a combined return.*

(i) (A) A banking corporation or bank holding company described in §3-05(b)(2)(i) [which is seeking] that meets the requirements for exclusion set forth in §3-05(b)(2)(ii) does not need to request prior permission to be excluded from a combined return [must submit a written request to that effect not later than 30 days after the close of the taxable year unless the request is based on adjustments made by the Internal Revenue Service for the taxable year which affect the requirements set forth in §3-05(b)(2)(ii), in which case the written request must be submitted within the time described in subparagraph (ii) of this paragraph. A return filed on a separate basis does not constitute a request to be excluded from a combined return]. To be excluded from a combined return, such entity must file a completed separate return. The first year such entity is excluded from the combined return, such entity must include the information required by subparagraph (iii) of this

paragraph (5) either on the return or attached thereto.

(B) A banking corporation or bank holding company described in §3-05(b)(3)(i) [and one described in] or §3-05(b)(6)(i), [which is requesting] that meets the applicable requirements set forth in §3-05(b)(3) does not need to request prior permission to file on a combined [return] basis with one or more banking corporations or bank holding companies or to be added to or excluded from a combined return [must submit a written request to that effect not later than 30 days after the close of the taxable year unless the request is based on adjustments made by the Internal Revenue Service for the taxable year which affect the requirements set forth in §3-05(b)(3)(ii)(B), in which case the written request must be submitted within the time described in subparagraph (ii) of this paragraph. A return filed on a combined basis does not constitute a request for permission to file a combined return or to be added to a combined return. A return filed on a separate basis does not constitute a request to be excluded from a combined return]. To file on a combined basis, such entity must be included in a completed combined return. The first year such entity files on a combined basis, and each year thereafter in which the composition of the group changes, the information required by subparagraph (iii) of this paragraph (5) must be submitted, either on the return or attached thereto.

(ii) RESERVED [In the case of a written request based on the adjustments described in subparagraph (i) of this paragraph made by the Internal Revenue Service for the taxable year, the written request must be submitted within the time the tax may be assessed pursuant to §11-674 of the Administrative Code, but before the additional period of limitation set forth in subparagraph (3) of paragraph (a) of subsection (3) of such section or paragraph (c) or (d) of such subsection (3)].

(iii) [A request described in subparagraph (i) of this paragraph must be addressed as follows:

The City of New York
Department of Finance
Combined Return Unit (Banks)
345 Adams Street
7th Floor
Brooklyn, NY 11201

The request must include] The first year the group files on a

combined basis and each year thereafter in which the composition of the group changes, the Commissioner requires the following information either on the combined return or attached thereto:

(A) the corporate organization chart [of the requesting corporation] setting forth the name of each banking corporation and bank holding company meeting the stock ownership requirements of §3-05(b)(3)(i) and the percentage of voting stock of each such corporation owned or controlled, directly or indirectly, by [the requesting corporation] any other such corporation and the name of each corporation or, other person in the case of a corporation described in §3-05(b)(3)(i)(B), which owns or controls, directly or indirectly, the voting stock of [the requesting corporation] each such corporation and the percentage of such stock so owned;

(B) for all of the bank holding companies, banking corporations and other corporations meeting the stock ownership requirements of §3-05(b)(3)(i) [which own or control, directly or indirectly, 65 percent or more of the voting stock of the requesting corporation or whose voting stock is 65 percent or more owned or controlled, directly or indirectly, by the requesting corporation or by the same interest as the requesting corporation]:

- (a) the exact name,
- (b) address (including zip code),
- (c) employer identification number,
- (d) date of incorporation,
- (e) state or country of incorporation,
- (f) the date began business in New York City, if applicable, and
- (g) in the case of a corporation described in §3-01(b)(5)(x) of these regulations, a description of the activities in which the corporation is principally engaged (as defined in such §3-01(b)(5)(x)) and the section of the law or regulations which establish that such activities are permissible activities within the contemplation of §3-01(b)(5)(x)(A)(a);

(C) a statement providing details as to why [only] the inclusion of those corporations [which are required to be] included in a combined return[, those corporations requesting permission to be included in a combined return] and the exclusion of those corporations [requesting permission to be] excluded from a combined return [will] properly reflect the tax liability of the group of corporations and of each corporation to be included in the group and of each corporation to be excluded from the group; and

(D) for [at least the first nine months of] the taxable year covered [in the request] by the combined return, using spread sheets if necessary, information that will clearly identify on a corporation-by-corporation basis, the nature and amount of each category of intercorporate transaction between each one of the corporations described in subparagraph (iii)(B) of this paragraph with each of the other corporations which reflects:

(a) the source and amount of gross receipts of each corporation described in subparagraph (iii)(B) of this paragraph and the portion derived from transactions with each of the other corporations,

(b) the source and amount of total services and other transactions of each corporation described in subparagraph (iii)(B) of this paragraph, and the portion related to transactions with each of the other corporations, and

(c) any other data that shows the degree of involvement of the corporations with each other.

(E) If the New York State Department of Taxation and Finance disallows the filing of a combined report or the inclusion of a corporation in, or the exclusion of a corporation from, a combined report for purposes of Article 9-A of the New York State Tax Law, the taxpayer must report such fact to the Commissioner of Finance within 30 days following such disallowance.

(iv) The [Commissioner of Finance's approval to file] filing of a combined return, [or to include] the inclusion of a corporation in or [exclude] the exclusion of a corporation from a combined return [following a request described in subparagraph

(i) of this paragraph, is tentative pending receipt of the final return, and] is subject to revision or [revocation] disallowance on audit. [If a combined return described in §3-05(b)(3) is submitted without the Commissioner of Finance's permission or if a corporation is included in a combined return without permission] In such event, the Commissioner of Finance may compute and assess the tax of each corporation not permitted to be included in a combined report [filing without permission] on a separate basis and[. If a corporation required pursuant to §3-05(b)(2) or permitted pursuant to §3-05(b)(3) to be included in a combined return is excluded therefrom without permission,] the Commissioner of Finance may recompute and assess the tax on the combined return by including therein [such] any improperly excluded corporation.

(v) A corporation [which is required or permitted to report] that properly reports on a combined basis must continue to file its returns on a combined basis until the facts affecting its combined reporting status materially change. A corporation [which is required or permitted to be] properly excluded from a combined return must continue to file its return on a separate basis until the facts materially change. For example, if a corporation which was 65 percent or more but less than 80 percent owned or controlled becomes 80 percent or more owned or controlled, or if a corporation which was 80 percent or more owned or controlled, becomes less than 80 percent owned or controlled, a material change has taken place. [If the facts materially change from the time when the corporation was required or permitted to file on a combined basis or was required or permitted to file on a separate basis, such corporation must notify the Commissioner of Finance of such change not later than 30 days after the close of its taxable year. The Commissioner of Finance will then notify such corporation whether it will be required or permitted to be included in the combined return or whether it will be required or permitted to file on a separate basis.]

(vi) Once a group of corporations [is permitted or required to file] properly files a combined return, it must notify the Commissioner of Finance of the subsequent acquisition of any corporation for which information is requested pursuant to subparagraph (iii)(B) of this paragraph. Such notification must be given [to the Commissioner of Finance in writing not later than 30 days after the close of] on the combined return for the taxable year in which such acquisition was made. The notification must contain all the information described in subparagraph (iii) of this paragraph.

§4. Paragraph (3) of subdivision (d) of section 3-05 of such rules is amended to read as follows:

(i) A taxpayer which ceases to do business in New York City in a corporate or organized capacity and thereby ceases to be subject to the banking corporation tax or any taxpayer which ceases to be subject to the banking corporation tax because of a change in the nature of its activities or because of a change in the ownership or control of its voting stock (See: §3-02(c) of these regulations - Cessation Periods), is required to file a return on or before the 15th day following the date of such cessation, date of such change or at such other time[s] as the Commissioner of Finance may require, covering [each year or] the period [for which no return was filed] from the close of its last calendar or fiscal year up to and including the date of such cessation or such change.

(ii) Notwithstanding subparagraph (i) of this paragraph (3), a [A] corporation [which is taxed on the basis of a combined return and which during the taxable year] need not file a separate report within 15 days of the date it ceases to be subject to the banking corporation tax (See: §3-02(c) of these regulations - Cessation Periods) [may in the discretion of the Commissioner of Finance be permitted to be included in the combined return for such taxable year. Such corporation shall file a separate return and pay a tax of not less than \$125 at the time of such cessation.] if:

(a) it is a member of a group taxed on the basis of a combined report for the period including the date of such cessation; and

(b) it is properly included in such combined report.

§5. Subparagraphs (i) and (ii) of paragraph (4) of subdivision (d) of section 3-05 of such rules are amended to read as follows:

(4) *Extension of time for filing returns.* (Administrative Code, §11-646(c).)

(i) An automatic six month extension for filing an annual return will be granted if the application for automatic extension (form NYC-6[F]B) is filed and a properly estimated tax is paid on or before the due date of the return for the taxable period for which the extension is requested. (See: §3-06(a)(3) of these regulations -- Properly estimated tax.) Failure to meet the requirements of this subparagraph (i) will make the

application invalid and any return filed after the due date will be treated as a late filed return.

(ii) An automatic six month extension for filing a combined return will be granted to a group of corporations authorized to file a combined return if the application for automatic extension (form NYC-6[F]B) is filed and a properly estimated tax is paid on or before the due date of the return for the taxable period for which the extension is requested. (See: §3-06(a)(3) of these regulations -- Properly estimated tax.) Failure to meet the requirements of this subparagraph (ii) will make the application invalid and any return filed after the due date will be treated as a late filed return. To obtain an automatic extension, an application must be filed by the corporation paying the tax for the combined group. The applicant must submit the following information:

(A) its complete name;

(B) its employer identification number;

(C) a list showing the name, employer identification number and taxable period of each of the other corporations properly included as part of the combined group; and

(D) a list showing the estimated tax for each corporation included in the combined group. The corporation paying the tax for the combined group must pay with the application the properly estimated combined tax plus \$125, as provided in §3-03(g)(2) of these regulations, for each of the taxpayers included in the combined group.

§6. Paragraph (4) of subdivision (d) of section 3-05 of such rules is amended to add a new subparagraph (v) to read as follows:

(v) Notwithstanding paragraph (3) of this subdivision, a corporation that ceases to be subject to the banking corporation tax shall receive an automatic six-month extension of time for filing an annual tax report (form NYC-1) only on the condition that form NYC-6FB (Application for Automatic Extension to File Final Return) is filed and a properly estimated tax is paid on or before the due date of the return for the taxable period for which the extension is requested.

§7. These amendments are effective for taxable years ending on or after December 31, 1997.

BASIS AND PURPOSE OF AMENDMENTS

These amendments affect the portion of the Rules Relating to the New York City Tax on Banking Corporations governing the permission process for filing combined returns. Under the proposed amendments, corporations will no longer be required to request permission to file combined returns within 30 days after the end of the taxable year. Corporations meeting the requirements for combined filing may file a combined return without advance permission, however, the filing of the combined return is subject to modification or disallowance on audit.

\S\Alfred C. Cerullo, III
Commissioner of Finance