



## **MEMORANDUM ON DRAFT NEW YORK CITY TAX CONFORMITY LEGISLATION**

In recent days, a draft of legislation that would conform a number of provisions of the City business tax laws to the State Bank Tax (Article 32) and General Corporation Tax (Article 9-A) has been circulating. The New York Bankers Association strongly opposes all of the conformity items affecting the City Bank Tax other than the net operating loss (NOL) carry-forward provision, and the Association would support an amendment to the NOL that would provide a transitional rule to take into account the fact that banks and thrifts in the City, unlike other corporations, have not heretofore enjoyed an NOL. The New York Bankers Association is comprised of the commercial banks and thrift institutions doing business in New York State. Our 160 members have aggregate assets in excess of \$9 trillion and 250,000 New York employees.

The legislative draft (“draft legislation”) that is circulating contains a number of troubling increases in the City’s Bank Tax. These include a proposal to tax out-of-State credit card banks with minimal New York contacts, and a provision that would dramatically increase the taxation of Real Estate Investment Trusts (REITs) affiliated with article 32 taxpayers, both within New York City and outside New York State. These provisions would add millions of dollars to the cost of doing business in New York City at a time when the combined tax rate in the City is already the highest in the country. Moreover, they send a signal to the City’s commercial banks and thrift institutions that they are to be singled out for increased taxation when other taxpayers affected by the draft legislation would enjoy substantial tax relief. At a time when the banking industry is suffering through one of its worst economic crises, the draft legislation would pay for the cost of providing a tax break to non-banks through an increase in taxation on banks and thrifts.

Our Association believes that these proposals would impose a further substantial tax increase on the City’s banking industry. The industry already pays its fair share of taxes and is a fundamental driver of the City’s economy. Since last year, the City’s banking industry, to a greater extent

than New York industry as a whole, has suffered significant economic dislocation, and is poorly positioned to absorb additional tax increases. Moreover, several of these tax proposals would shift the economic basis for the taxation of New York banks from a tax plan that encouraged the location and maintenance of headquarters in the City, to a market-based system that treats New York as simply a place for banks to locate branches and trading floors. We therefore urge that the tax proposals affecting Article 32 taxpayers be rejected.

### **Banking is Not Undertaxed**

Since the enactment of the 1985 Bank Tax Act, banking's share of corporate taxes has increased from 5% to almost 16% State-wide and proportionately as much in the City. Last fiscal year, banks paid more than \$1 billion in State income taxes alone, and almost \$200 million more in the MTA surcharge. Even with the slowdown in the economy and bank earnings, the industry is projected to pay a total of almost \$1.1 billion this fiscal year. For the most recent full fiscal year (2007) for which the Department of Finance has posted figures, banks doing business in New York City paid more than \$1.4 billion in City income taxes, reflecting the higher tax rate in the City. This figure represented almost 20% of all business taxes collected by the City that year. In addition, payroll withholding taxes on over 200,000 employees in the City are more than \$2 billion annually and sales and use taxes exceed \$150 million per year. The total for all taxes paid by the banking industry approaches \$4 billion every single year. Further, the City's banks, like other employers, will need to absorb the new payroll tax of 1/3<sup>rd</sup> of 1% of total payroll, a very substantial additional drain on their resources. These numbers do not include the hundreds of millions of dollars and thousands of hours in charitable and civic contributions that banks make in their communities every year. By contrast to the 16% of corporate tax revenue generated by the State's banks, the industry employs approximately 3% of private, non-farm employees in the State and produces 5.7% of the State's gross domestic product. The City's numbers should be proportionate.

### **The Draft Legislation's Increases in the Bank Tax**

The draft legislation proposes a substantial increase in bank taxes. When the State enacted comparable increases in 2007 and 2008, they were scored at \$150 million annually for taxation of REITs and \$95 million from taxation

of out-of-State credit card banks. Based on the City's higher tax rates, tax increases at least as large could be anticipated from the draft legislation. If these numbers are accurate, the draft legislation would impose a tax increase in excess of 16% on the City's banks and thrifts.

### **New York Banks Would be Most Affected**

It is important to note, as well, that draft legislation that would effectively impose taxes on out-of-State credit card banks and out-of-State REITs/RICs proposals will still fall disproportionately on New York-based banking institutions. Institutions with a large proportion of their operations in New York City would find a large proportion of their revenues from out-of-State credit card banks and REITs subject to New York tax. Institutions with little or no operations in the State would find little of their revenue from out-of-State credit card banks or REITs subject to New York tax.

### **Why We Support the NOL Provision**

The one provision affecting Article 32 taxpayers that we support is establishment of a net operating loss carry-forward in the City's Bank Tax. Our Association believes that enactment of such a provision is necessary to provide equitable treatment to the City's commercial banks and thrift institutions, which are the only corporate taxpayers in New York City without such a provision. In addition, the federal government, the State of New York and neighboring states such as Connecticut, New Jersey and Pennsylvania all have in place net operating loss carry-over provisions, demonstrating their recognition of the fairness of allowing banks and thrifts to offset a portion of their profits with net losses incurred in prior years.

From a competitive standpoint, it is important that banks and thrifts be able to offset New York City's relatively high marginal tax rate (still 9% on banks and thrifts, even as it has been lowered to 7.1% by New York State and stands at 8.85% in the City for non-bank financial institutions). New York's commercial banks and thrift institutions must compete with investment houses that enjoy net operating loss carry-over treatment, allowing these competitors to shelter from tax a greater portion of earnings than can depository institutions.

Moreover, our Association believes that the cost to the City will be modest, even as accounting standards would provide near term relief to the bottom

lines of bank and thrifts affected by recent losses. In order to determine the potential cost in the current budget horizon, the Association surveyed its bank and thrift members that operate in New York City. With institutions responding that hold approximately 80% of the assets of banks and thrifts in the City, the survey indicated that there would be no revenue impact to New York City of the NOL in calendar year 2009, no revenue impact to New York City in calendar year 2010, and a revenue loss of \$2,000,000 in calendar year 2011. Our Association believes that such a modest loss is a small cost to the City for the dramatic signal that enacting an NOL in the middle of the type of revenue crisis currently facing the City would send to its commercial banks and thrift institutions. In addition, enactment of the NOL would provide an immediate, positive accounting impact on bank and thrift balance sheets, freeing up much needed capital to kick start the process of restoring employment and lending in the City. Moreover, it would reaffirm New York's status as the world financial headquarters.

For these reasons, the New York Bankers Association urges that New York City adopt a net operating loss carry-over provision, not linked to either the federal or State carry-over and effective for losses incurred beginning on January 1, 2009. We strongly oppose the increases in the Bank Tax represented by all of the other provisions affecting Article 32 taxpayers in the draft legislation. We have no position on the other provisions of the legislation affecting Article 9-A taxpayers.