

Technical Assistance Advisory
No. 93-002

RE: Taxability of Certain Investment Vehicles Under the West Virginia Personal Income Tax, West Virginia Corporation Net Income Tax and West Virginia Business Franchise Tax

This Technical Assistance Advisory 93-002 supersedes Technical Assistance Advisory 91-002, and includes certain obligations or securities and analyses of the taxability thereof not listed in Technical Assistance Advisory 91-002. Technical Assistance Advisory 91-002 is of no further effect.

NOTE: Technical Assistance Advisories are issued under W. Va. Code § 11-10-5r. They state the position of the Tax Commissioner on the tax consequences of a stated transaction or event under existing statutes, rules or policies. Technical Assistance Advisories must be released to the public after identifying characteristics or facts are omitted or modified to not disclose the name or identity of the taxpayer. A Technical Assistance Advisory has no precedential value except to the taxpayer requesting the advisory unless it is specifically stated otherwise in the Advisory. Any modification of an advisory may only be prospective. Technical Assistance Advisory 93-002 is declared to be of precedential value to other taxpayers.

PERSONAL INCOME TAX

The starting point for determining West Virginia Personal Income Tax liability is the taxpayer's federal adjusted gross income for the taxable year. West Virginia Code § 11-21-12.

Section 11-21-12(b) of the West Virginia Code specifies modifications which are to be made increasing federal adjusted gross income in determining West Virginia adjusted gross income for purposes of the West Virginia Personal Income Tax. Section 11-21-12(b)(1) of the West Virginia Code requires that an increasing

modification be made for "[i]nterest income on obligations of any state other than . . . [West Virginia] or of a political subdivision of any such other state unless created by compact or agreement to which . . . [West Virginia] is a party."

Section 11-21-12(b)(2) requires that an increasing modification be made for "[i]nterest or dividend income on obligations or securities of any authority, commission or instrumentality of the United States, which the laws of the United States exempt from federal income tax but not from state income taxes. . . ."

Section 11-21-12(b)(4) requires that an increasing modification be made for "[i]nterest on indebtedness incurred or continued to purchase or carry obligations or securities the income from which is exempt from tax under this article, to the extent deductible in determining federal adjusted gross income. . . ."

Section 11-21-12(b)(5) requires that an increasing modification be made for "[i]nterest on a depository institution tax-exempt savings certificate which is allowed as an exclusion from federal gross income under Section 128 of the Internal Revenue Code, for the federal taxable year. . . ."

Section 11-21-12(c) of the West Virginia Code, sets forth two relevant modifications reducing federal adjusted gross income for the purpose of determining West Virginia adjusted gross income. The modifications are for "[i]nterest income on obligations of the United States and its possessions to the extent includible in gross income for federal income tax purposes. . . ," and "[i]nterest or dividend income on obligations or securities of any authority, commission or instrumentality of the United States or of the state of West Virginia to the extent includible in gross income for federal income tax purposes but exempt from state income taxes under the laws of the United States or of the state of West Virginia, including federal interest or dividends paid to shareholders of a regulated investment company, under Section 852 of the Internal Revenue Code for taxable years ending after the thirtieth day of June, one thousand nine hundred eighty-seven. . . ."

Under this statutory configuration, interest income from obligations of the United States and its possessions and interest or dividend income on obligations or securities of any authority, commission or instrumentality of the United States or of the State of West Virginia, which is exempt from State income tax by federal or West Virginia law is exempt from the West Virginia Personal Income Tax.

Section 11-21-12(c)(2) of the West Virginia Code permits a decreasing modification in determining West Virginia adjusted gross income for "federal interest or dividends paid to shareholders of a

regulated investment company, under Section 852 of the Internal Revenue Code. . . ."

Note that this exemption is not for "exempt-interest dividends" paid by a regulated investment company under Section 852(b)(5)(A) of the Internal Revenue Code. That section provides federal income tax pass-through treatment only for interest on any state or local bond, in accordance with the terms of Section 103(a) of the Internal Revenue Code.

It is necessary under West Virginia law that the taxpayer determine what portion of income derived from a regulated investment company arises from exempt federal obligations (as hereinafter listed) held by the regulated investment company. That portion of the taxpayer's income from the regulated investment company will be a decreasing modification in determining West Virginia adjusted gross income. The "exempt-interest dividend" of the regulated investment company paid under Section 852(b)(5)(A) of the Internal Revenue Code must be added back, as an increasing modification, in determining West Virginia adjusted gross income, except for that portion of the "exempt-interest dividend" which was derived from interest on West Virginia State or local obligations. This increasing modification occurs under Section 11-21-12(b)(1) of the West Virginia Code for "[i]nterest income on obligations of any state other than . . . [West Virginia]."

No West Virginia Personal Income Tax exemption will be available for income derived from any fund or investment vehicle which does not constitute a regulated investment company under federal income tax law, or an entity which otherwise enjoys pass-through treatment for its constituent obligations under federal income tax law, even though the constituent obligations and securities of the fund or investment vehicle would entitle the taxpayer to the exemption if such obligations and securities were directly owned by the taxpayer.

Taxpayers seeking to assert the exemption for income derived from a purported regulated investment company must provide proof and document the fact that the purported regulated investment company qualifies as a regulated investment company under federal income tax law. Taxpayers seeking to assert the exemption for income derived from any fund or investment vehicle other than a regulated investment company shall be required to prove and document the availability of pass-through treatment for the fund or investment vehicle under federal income tax law.

CORPORATION NET INCOME TAX

Under the West Virginia Corporation Net Income Tax statute, the starting point for determining West Virginia taxable income is the federal taxable income of the corporate taxpayer. W. Va. Code § 11-24-6.

In determining West Virginia taxable income of a corporation, the corporation's federal taxable income must be modified by certain statutory adjustments.

Modifications increasing federal taxable income are set forth in Section 11-24-6(b) of the West Virginia Code. Relevant increasing modifications are as follows:

(1) Interest or dividends on obligations or securities of any state or of a political subdivision or authority thereof;

(2) Interest or dividends (less related expenses to the extent not deducted in determining federal taxable income) on obligations or securities of any authority, commission or instrumentality of the United States which the laws of the United States exempt from federal income tax but not from state income taxes. . . .

Section 11-24-6(f) of the West Virginia Code provides an allowance for certain government obligations and obligations secured by residential property as follows:

(f) Allowance for certain government obligations and obligations secured by residential property. - The West Virginia taxable income of a taxpayer subject to this article as adjusted in accordance with parts (b), (c), (d) and (e) of this section shall be further adjusted by multiplying such taxable income after such adjustment by parts (b), (c), (d) and (e) by a fraction equal to one minus a fraction:

(1) The numerator of which is the sum of the average of the monthly beginning and ending account balances during the taxable year (account balances to be determined at cost in the same manner that such obligations, investments and loans are reported on Schedule L of the Federal Form 1120) of the following:

(A) Obligations or securities of the United States, or of any agency, authority, commission or instrumentality of the United States and any other corporation or entity created under the authority of the United States

Congress for the purpose of implementing or furthering an objective of national policy;

(B) Obligations or securities of this State and any political subdivision or authority thereof;

(C) Investments or loans primarily secured by mortgages, or deeds of trust, on residential property located in this state and occupied by nontransients; and

(D) Loans primarily secured by a lien or security agreement on residential property in the form of a mobile home, modular home or double-wide, located in this state and occupied by nontransients.

(2) The denominator of which is the average of the monthly beginning and ending account balances of the total assets of the taxpayer which are shown on Schedule L of Federal Form 1120, which are filed by the taxpayer with the Internal Revenue Service.

This provision provides a mechanism for exempting a portion of corporate net income from tax which, relative to total West Virginia taxable income before the allowance, is proportional to the ratio of average "exempt classification" obligations and securities to average total assets. Annual averages are determined as averages of monthly beginning and ending balances.

In order to claim the West Virginia Corporation Net Income Tax exemption for "exempt classification" assets relating to the taxpayer's ownership of an interest in a regulated investment company, or other fund or investment vehicle entitled to pass-through treatment for its constituent obligations under federal income tax law, the taxpayer must use its average annual investment (calculated on the basis of its average monthly balances) in the regulated investment company, fund or investment vehicle multiplied by the actual annual average over the taxpayer's tax year of the quarterly percentages of the value of the total assets of the regulated investment company, fund or investment vehicle consisting of obligations described below as exempt for corporation net income tax purposes as the measure of the taxpayer's assets represented by investment in the regulated investment company, fund or investment vehicle which are "exempt classification" assets to be used in determining the fractional multiplier by which the exemption is asserted.

For purposes of the West Virginia Corporation Net Income Tax, the taxpayer should ignore "exempt-interest dividends" paid under Section 852(b)(5) of the Internal Revenue Code by a regulated investment company to the taxpayer. No West Virginia Corporation Net Income Tax exemption will be available for income derived from any fund or investment vehicle which does not constitute a regulated investment company under federal income tax law, or for income derived from any other fund or investment vehicle unless the fund or investment vehicle is entitled to pass-through treatment for its constituent obligations under federal income tax law, even though the constituent obligations and securities of the fund or investment vehicle would entitle the taxpayer to the exemption if such obligations and securities were directly owned by the taxpayer.

Taxpayers seeking to assert the exemption for "exempt classification" assets relating to the taxpayer's ownership of an interest in a purported regulated investment company must prove and document the fact that the purported regulated investment company qualifies as a regulated investment company under federal income tax law. Taxpayers seeking to assert the exemption for "exempt classification" assets relating to the taxpayer's ownership of an interest in any fund or investment vehicle other than a regulated investment company shall be required to prove and document the availability of pass-through treatment for the fund or investment vehicle under federal income tax law.

BUSINESS FRANCHISE TAX

Unlike the West Virginia Personal Income Tax and the West Virginia Corporation Net Income Tax, the West Virginia Business Franchise Tax is imposed, not on net income, but on the net worth (with certain adjustments) of a corporation or partnership. Section 11-23-4 of the West Virginia Code imposes the West Virginia Business Franchise Tax on the "capital" of a corporation or partnership. The tax is the greater of \$50.00 or .75% of the tax base, i.e., the "capital" of the taxpayer. The term "capital" is defined under Section 11-23-3(b)(2) of the West Virginia Code as follows:

(2) Capital. - The term "capital" of a taxpayer shall mean:

(A) Corporations. - In the case of a corporation, except an electing small business corporation, the average of the beginning and ending year balances of the sum of the following entries from Schedule L of Federal Form 1120, prepared following generally accepted accounting principles and as filed by the taxpayer with the Internal Revenue Service for the taxable year:

(i) The value of all common stock and preferred stock of the taxpayer;

(ii) The amount of paid-in or capital surplus;

(iii) The amount of retained earnings, appropriated and unappropriated;

(iv) Less the cost of treasury stock.

(B) S Corporations. - In the case of an electing small business corporation, the average of the beginning and ending year balances of the sum of the following entries from Schedule L of Federal Form 1120S, prepared following generally accepted accounting principles and as filed by the taxpayer with the Internal Revenue Service for the taxable year.

(i) The value of all common stock and preferred stock of the taxpayer;

(ii) The amount of paid-in or capital surplus;

(iii) Retained earnings, appropriated and unappropriated;

(iv) The amount of shareholders' undistributed taxable income;

(v) The amount of the accumulated adjustments account;

(vi) The amount of the other adjustments account;

(vii) Less the cost of treasury stock.

(C) Partnerships. - In the case of a partnership, the average of the beginning and ending year balances of the value of partner's capital accounts from Schedule L of Federal Form 1065, prepared following accepted accounting principles and as filed by the taxpayer with the Internal Revenue Service for the taxable year.

(D) Additional items in capital. - The term "capital" for purposes of this article shall include such adjustments thereto as the

tax commissioner deems necessary to properly reflect capital and such additional items from the accounts of the taxpayer as the tax commissioner may by regulation prescribe, which fairly represent the net equity of the taxpayer as defined in accordance with generally accepted accounting principles.

(E) Allowance for certain government obligations and obligations secured by residential property. - As to both corporations and partnerships, capital shall be multiplied by a fraction equal to one minus a fraction:

(i) The numerator of which is the average of the monthly beginning and ending account balances during the taxable year (account balances to be determined at cost in the same manner that such obligations, investments and loans are reported on Schedule L of the Federal Form 1120 or Federal Form 1065) of the following:

(I) Obligations and securities of the United States, or of any agency, authority, commission or instrumentality of the United States and any other corporation or entity created under the authority of the United States Congress for the purpose of implementing or furthering an objective of national policy;

(II) Obligations of this state and any political subdivision of this state;

(III) Investments or loans primarily secured by mortgages, or deeds of trust, on residential property located in this state and occupied by nontransients; and

(IV) Loans primarily secured by a lien or security agreement on residential property in the form of a mobile home, modular home or double-wide, located in this state and occupied by nontransients.

(ii) The denominator of which is the average of the monthly beginning and ending account balances of the total assets of the taxpayer as shown on Schedule L of Federal Form 1120, as filed by the taxpayer with the Internal Revenue Service or, in the case of partnerships,

Schedule L of Federal Form 1065, as filed by the taxpayer with the Internal Revenue Service.

The statute provides an allowance for certain exempt obligations and securities by providing a formula for the exclusion, from the measure of the capital of the taxpayer, of an amount which is proportional, relative to total "capital" before application of the allowance, to the ratio of average "exempt classification" obligations and securities to average total assets of the taxpayer, annual averages to be determined as averages of monthly beginning and ending balances.

In order to claim the West Virginia Business Franchise Tax exemption for "exempt classification" assets relating to the taxpayer's ownership of an interest in a regulated investment company which owns such "exempt classification" assets, for purposes of the business franchise tax, the taxpayer must use its average annual investment (calculated on the basis of its average monthly balances) in a regulated investment company, multiplied by the actual annual average over the taxpayer's tax year of the quarterly percentages of the value of the total assets of the regulated investment company consisting of obligations described below as exempt for business franchise tax purposes as the measure of the taxpayer's assets represented by investment in the regulated investment company which are "exempt classification" assets to be used in determining the fractional multiplier by which the exemption is asserted.

No West Virginia Business Franchise Tax exemption will be available for assets represented by an investment in any fund or investment vehicle which does not constitute a regulated investment company under federal income tax law, or for assets represented by an investment in any other fund or investment vehicle unless the fund or investment vehicle is entitled to pass-through treatment for its constituent obligations under federal income tax law, even though the constituent obligations and securities of the fund or investment vehicle would entitle the taxpayer to the exemption if such obligations and securities were directly owned by the taxpayer.

Taxpayers seeking to assert the exemption for "exempt classification" assets relating to the taxpayer's ownership of an interest in a purported regulated investment company must prove and document that the purported regulated investment company qualifies as a regulated investment company under federal income tax law. Taxpayers seeking to assert the exemption for "exempt classification" assets relating to the taxpayer's ownership of an interest in any fund or investment vehicle other than a regulated investment company shall be required to prove and document the availability of pass-through treatment for the fund or investment vehicle under federal income tax law.

Comparison of the personal income tax, corporation net income tax and business franchise tax provisions which exempt certain government obligations and securities, or income thereof, directly or indirectly from tax shows that the standard for exemption is somewhat more liberal for the corporation net income tax and the business franchise tax than for the personal income tax.

The exemptions for corporation net income tax and business franchise tax are based upon obligations and securities of the United States, or of any agency, authority, commission or instrumentality of the United States and any other corporation or entity created under the authority of the United States Congress for the purpose of implementing or furthering an objective of national policy; obligations or securities of this State and any political subdivision or authority thereof; investments or loans primarily secured by mortgages, or deeds of trust, on residential property located in this State and occupied by nontransients; and loans primarily secured by a lien or security agreement on residential property in the form of a mobile home, modular home or double-wide, located in this State and occupied by nontransients. The more limited exemption for personal income tax is for "interest income on obligations of the United States and its possessions . . . ," and "[i]nterest or dividend income on obligations or securities of any authority, commission or instrumentality of the United States . . . exempt from state income taxes under the laws of the United States. . . ."

The following list sets forth the tax status of certain obligations or securities as to the taxability of the income or dividends of each for purposes of the West Virginia Personal Income Tax or the inclusion of securities or obligations as "exempt classification" assets in the computation of the fractional multiplier by which the corporation net income tax and business franchise tax exemptions are determined.

ISSUING AUTHORITY OR TYPE OF OBLIGATION OR SECURITY	TREATMENT OF INCOME FOR PERSONAL INCOME TAX PURPOSES	TREATMENT OF OBLIGATIONS OR SECURITIES FOR CORPORATE NET INCOME TAX AND BUSINESS FRANCHISE TAX PURPOSES
Banks For Cooperatives (12 U.S.C. § 2134)		Exempt
Interest	Exempt	
Dividends	Taxable	
Central Bank For Cooperatives (12 U.S.C. § 2134)		Exempt
Interest	Exempt	
Dividends	Taxable	
Commodity Credit Corporation (15 U.S.C. § 713a-5)	Exempt	Exempt
Construction Loans Which Represent A Direct First Lien On Residential Property Located In West Virginia And Occupied By Nontransients	Taxable	Exempt
Farm Credit Finance Assistance Corp. (12 U.S.C. § 2278(b)(10)(b))	Exempt	Exempt
Farmer's Home Administration	Taxable	Exempt
Federal Assets Financing Trust Participation Certificates Series A Through D, Due In 1987 And 1988, (See FNMA Below)	Exempt	Exempt
Federal Assets Liquidation Trust Participation Certificates, Series B, Due In 1987, (See FNMA Below)	Exempt	Exempt
Federal Financing Bank (12 U.S.C. § 2290)	Exempt	Exempt
Federal Deposit Insurance Company (12 U.S.C. § 1825)	Exempt	Exempt
Federal Farm Credit Banks - Obligations Issued By Banks Of The Federal Farm Credit System, See Elsewhere In This List: Banks For Cooperatives Central Bank For Cooperatives Federal Intermediate Credit Banks Federal Land Banks Production Credit Associations Production Credit Corporations		
Federal Home Loan Banks (12 U.S.C. § 1433) . . .	Exempt	Exempt

ISSUING AUTHORITY OR TYPE OF OBLIGATION OR SECURITY	TREATMENT OF INCOME FOR PERSONAL INCOME TAX PURPOSES	TREATMENT OF OBLIGATIONS OR SECURITIES FOR CORPORATE NET INCOME TAX AND BUSINESS FRANCHISE TAX PURPOSES
Federal Home Loan Mortgage Corp. (Freddie Mac) .	Taxable	Exempt
Federal Housing Administration	Exempt	Exempt
Federal Intermediate Credit Banks (12 U.S.C. § 2079).	Exempt	Exempt
Federal Land Banks (12 U.S.C. § 2055).		Exempt
Dividends - Stock Issued Before 3/28/42 . .	Exempt	
Dividends - Stock Issued On Or After		
3/28/42	Taxable	
Bonds And Other Obligations	Exempt	
Federal Maritime Board and Maritime Administration.	Exempt	Exempt
Federal National Mortgage Association (FNMA) . . FNMA Mortgage Backed Securities - Obligations Primarily Secured By Mortgages, Or Deeds Of Trust On Residential Property Located In West Virginia And Occupied By Nontransients	Taxable	Exempt
Participation Certificates In The Federal Assets Financing Trust Series A Through D, Due In 1987 And 1988, And Participation Certificates In The Federal Assets Liquidation Trust, Series B, Due In 1987, Issued By The FNMA As Trustee, With GNMA As Current Trustee, Or Participations In Any Other Trust Established Under 12 U.S.C. § 1717(c) By The Farmer's Home Administration, The Department Of Education, The Department Of Housing And Urban Development, The Veterans' Administration, The Export-Import Bank Or The Small Business Administration, Or Other Instruments Issued Pursuant To 12 U.S.C. § 1717(c).		
(12 U.S.C. § 1717(c)) (Issuance And Exemption)		
(31 U.S.C. § 3124(a)) (Exemption)	Exempt	
Other FNMA Obligations.	Taxable	

ISSUING AUTHORITY OR TYPE OF OBLIGATION OR SECURITY	TREATMENT OF INCOME FOR PERSONAL INCOME TAX PURPOSES	TREATMENT OF OBLIGATIONS OR SECURITIES FOR CORPORATE NET INCOME TAX AND BUSINESS FRANCHISE TAX PURPOSES
Federal Reserve Banks		Exempt
Dividends - Stock Issued Before 3/28/42 . . .	Exempt	
Dividends - Stock Issued On Or After 3/28/42	Taxable	
Federal Savings And Loan Association		Exempt
Dividends On Shares Issued Before 3/28/42 . . .	Exempt	
Dividends On Shares Issued On Or After 3/28/42	Taxable	
Federal Saving And Loan Insurance Corporation (12 U.S.C. § 1725(e))	Exempt	Exempt
Financing Corporation (12 U.S.C. § 1441(a), 12 U.S.C. § 1441(e)(7), 12 U.S.C. § 1433 and 31 U.S.C. § 3124(b))	Exempt	Exempt
General Insurance Fund Including Debentures Issued Under The War Housing Insurance statutes, 12 U.S.C. § 1739(d), Debentures Issued To Acquire Rental Housing Projects, 12 U.S.C. § 1747g(g), And Armed Services Housing Mortgage Insurance Debentures, 12 U.S.C. § 1748b(f); Or Interest Thereon	Exempt	Exempt
GSA Public Building Trust Participation Certificates: Series A Through I, Inclusive; 31 U.S.C. § 3124(a).	Exempt	Exempt
Government National Mortgage Association (GNMA). Participation Certificates In The Federal Assets Financing Trust Series A Through D, Due In 1987 And 1988, And Participation Certificates In The Federal Assets Liquidation Trust, Series B, Due In 1987, With GNMA As Current Trustee, Or Participations In Any Other Trust Established Under 12 U.S.C § 1717(c) By The Farmer's Home Administration, The Dept. Of Education, The Dept. Of Housing And Urban Development, The Veterans' Administration, The Export-Import Bank Or The Small Business Administration, Or Other Instruments Issued Pursuant To 12 U.S.C. § 1717(c). (12 U.S.C. § 1717(c)) (Issuance And Exemption) (31 U.S.C. § 3124(a)) (Exemption)	Exempt	Exempt
Other GNMA Obligations.	Taxable	

<u>ISSUING AUTHORITY OR TYPE OF OBLIGATION OR SECURITY</u>	<u>TREATMENT OF INCOME FOR PERSONAL INCOME TAX PURPOSES</u>	<u>TREATMENT OF OBLIGATIONS OR SECURITIES FOR CORPORATE NET INCOME TAX AND BUSINESS FRANCHISE TAX PURPOSES</u>
Guam Bonds (Bonds Issued By The Government Of Guam 48 U.S.C. § 1423a)	Exempt	Exempt
Higher Education Assistance Foundation	Taxable	Taxable
Individual Retirement Bonds (Issued pursuant to the Employee Retirement Income Security Act of 1974)	Exempt	Not Applicable
Mortgage Backed Participation Certificates Directly Secured By Residential Property Located In West Virginia And Occupied By Nontransients	Taxable	Exempt
Municipal Bonds		
West Virginia	Exempt	Exempt
All Other States	Taxable	Taxable
National Consumer Cooperative Bank (12 U.S.C. § 3017(d))	Taxable	Exempt
National Farm Loan Association	Exempt	Exempt
Production Credit Association (12 U.S.C. § 2098) Interest Dividends	Exempt Taxable	Exempt
Production Credit Corporations Interest Dividends	Exempt Taxable	Exempt
Puerto Rican Bonds (48 U.S.C. § 745)	Exempt	Exempt
Repurchase Agreements	Taxable	Taxable
Resolution Funding Corporation (12 U.S.C. § 1441(b)(f)(8))	Exempt	Exempt
Student Loan Marketing Association (SLMA) (20 U.S.C. § 1087-2(L), 30 U.S.C. § 3124)	Exempt	Exempt
Tennessee Valley Authority Bonds (16 U.S.C. § 831n-4(d))	Exempt	Exempt
U.S. Housing Authority	Exempt	Exempt

<u>ISSUING AUTHORITY OR TYPE OF OBLIGATION OR SECURITY</u>	<u>TREATMENT OF INCOME FOR PERSONAL INCOME TAX PURPOSES</u>	<u>TREATMENT OF OBLIGATIONS OR SECURITIES FOR CORPORATE NET INCOME TAX AND BUSINESS FRANCHISE TAX PURPOSES</u>
U.S. Postal Service Obligations Issued Under 39 U.S.C. § 2005 (39 U.S.C. § 2005(d)(4)) .	Exempt	Exempt
U.S. Treasury (31 U.S.C. § 3124(a)).		Exempt
Treasury Bills.	Exempt	
Treasury Notes.	Exempt	
Treasury Bonds (Series E And H)	Exempt	
Virgin Island Bonds (48 U.S.C. § 1574(b)(ii)(A))	Exempt	Exempt

The conclusions reached in this Technical Assistance Advisory are based on application of current statutes and regulations to the material facts present by the Taxpayer for purposes of this Advisory. Should there be a material change in any of the facts or should material facts have been omitted, the conclusions reached may no longer apply. Additionally, the conclusions reached herein are based on application of current law and regulations. Should current law or regulations change or there be a material misapplication of current law or regulations, the conclusions reached herein may no longer apply.

James H. Paige III
 State Tax Commissioner

Issued: February 4, 1993