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DIVISION OF REVENUE
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DIVISION OF REVENUE
TAX RULING 92-3

DECEMBER 7, 1992

SUBJECT: Definition of Affiliated Finance Company
CODE SECTION: 30 Del. C. § 6301

Questions have been raised regarding the definition of "affiliated finance company" contained in 30 Del. C. § 6301, and the Delaware Division of Revenue believes that guidance to help resolve such questions would enhance the efficient administration of the tax laws of this State.

Title 30, Chapter 63, sets forth a specialized scheme for the issuance of a license and the payment of tax by an "affiliated finance company." 30 Del. C. § 6301, the key definitional section of Chapter 63, states in its entirety:

As used in this chapter:

> (1) "Affiliated finance company" means a corporation substantially all of whose activity within this State is limited to the issuance of commercial paper or other debt obligations and use of the proceeds to make loans to 1 or more of its affiliated corporations or to purchase receivables from

1 or more of its affiliated corporations.

(2) "Affiliated corporations" means 2 or more corporations which are members of a controlled group of corporations as defined in § 1563 of the Internal Revenue Code of 1954 [26 U.S.C. § 1563].

It is the position of the Division of Revenue that, in each of the situations described in the following examples, Corporation X would not be an "affiliated finance company" within the meaning of § 6301.

Example 1: Corporation X receives a contribution to its capital from its sole shareholder, Corporation Y (hereinafter, the "Parent Company"). Corporation X lends the entire amount of such capital contribution to one of its "affiliated corporations" [as defined in § 6301(2)]. Corporation X is not an "affiliated finance company" because it does not meet the two-pronged test of § 6301(1). Corporation X's receipt of a capital contribution from the Parent Company does not constitute "the issuance of commercial paper or other debt obligations" within the meaning of § 6301(1).

Example 2: Substantially all of Corporation X's activity within Delaware is limited to the issuance of commercial paper and the use of the proceeds to make loans to the Parent Company and to Corporation Z, a wholly owned subsidiary of the Parent Company. Both the Parent Company and Corporation Z are "foreign" corporations within the meaning of Section 7701(a)(5) of the Internal Revenue Code of 1986, as amended (hereinafter, the "Internal Revenue Code"). Neither the Parent Company nor

Corporation Z is an "affiliated corporation" within the meaning of § 6301(2) because, under Section 1563(b)(2)(C) of the Internal Revenue Code, a foreign corporation is an "excluded member" of a controlled group of corporations. Thus, the loans by Corporation X to the Parent Company and Corporation Z do not result in Corporation X's classification as an "affiliated finance company."

Example 3: Corporation X borrows $10 million either (i) from the Parent Company or another corporation that is an "affiliated corporation" [within the meaning of § 6301(2)] with respect to Corporation X, or (ii) from an unrelated bank, insurance company or other third-party lender. In either case, Corporation X's obligation to repay the $10 million is evidenced by Corporation X's promissory, negotiable note payable to the order of the lender. Corporation X lends the entire $10 million to one or more of its "affiliated corporations," within the meaning of § 6301(2). Corporation X's execution and delivery of the promissory note to evidence its obligation to repay the $10 million do not constitute the "issuance" of commercial paper or other debt obligations. As used in § 6301(1), "issuance" does not include the private placement of a loan. Under the facts assumed in this Example 3, therefore, Corporation X is not classified as an "affiliated finance company."

Example 4: On as many as three separate occasions in a single calendar year, Corporation X issues bonds or debentures having maturities exceeding one year. Such bonds or debentures are issued for the purpose of funding specific acquisitions of other companies by corporations that are "affiliated corporations"

[within the meaning of § 6301(2)] with respect to Corporation X or funding, on an isolated and non-routine basis, other capital investments by such affiliated corporations. Immediately after each such bond or debenture issue, Corporation X lends the entire proceeds of the bonds or debentures, net of expenses, to such affiliated corporations. Chapter 63 applies to corporations that engage in transactions in the credit markets on such a regular and routine basis that they are actively engaged in the business of borrowing money. The issuance of long-term debt on an isolated and transaction-specific basis does not rise to the level of carrying on a trade or business in Delaware and should, therefore, be ignored in applying the "substantially all" formula of § 6301(1). Since the bonds or debentures issued by Corporation X during the year would not, if viewed independently, result in Corporation X being treated as carrying on an activity constituting a Delaware trade or business, the issuance of such bonds or debentures would be ignored in applying the § 6301(1) definition. Accordingly, under the facts assumed in this Example 4, Corporation X's issuances of bonds or debentures and its lending of the net proceeds thereof to affiliated corporations will not result in Corporation X being classified as an "affiliated finance company" for the year.

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