

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

[Docket No. 98-]

FEDERAL RESERVE SYSTEM

[Docket No. R-]

FEDERAL DEPOSIT INSURANCE CORPORATION

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

[Docket No.]

Interagency Policy Statement on Income Tax Allocation in a Holding Company Structure

AGENCIES: Office of the Comptroller of the Currency, Treasury; Board of Governors of the Federal Reserve System; Federal Deposit Insurance Corporation; and Office of Thrift Supervision, Treasury.

ACTION: Notice of Joint Statement of Policy.

SUMMARY: The Office of the Comptroller of the Currency (OCC), the Board of Governors of the Federal Reserve System (Board), the Federal Deposit Insurance Corporation (FDIC), and the Office of Thrift Supervision (OTS) (collectively, the Agencies) are adopting a uniform policy statement regarding intercompany tax allocation agreements for banking organizations and savings associations (institutions) that file an income tax return as members of a consolidated group. The intent of this uniform policy statement is to provide guidance to institutions regarding the allocation and payment of taxes among a holding company and its depository institution subsidiaries. In general, intercorporate tax settlements between an institution and its parent company should be conducted in a manner that is no less favorable to the institution than if it were a separate taxpayer. This policy statement is the result of the Agencies' ongoing effort to implement section 303 of the Riegle Community Development and Regulatory Improvement Act of 1994 (CDRI Act) (12 U.S.C. 4803(a)), which requires the Agencies to work jointly to make uniform their regulations and guidelines implementing common statutory or supervisory policies.

DATES: [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER.]

FOR FURTHER INFORMATION CONTACT:

OCC: Gene Green, Deputy Chief Accountant, (202/874-4933), or Tom Rees, Senior Accountant, (202/874-5411), Office of the Chief Accountant, Core Policy Division, Office of the Comptroller of the Currency, 250 E Street, S.W., Washington, D.C. 20219.

Board: Charles Holm, Manager, (202/452-3502), or Arthur Lindo, Supervisory Financial Analyst, (202/452-2695), Division of Banking Supervision and Regulation, Board of Governors of the Federal Reserve System, 20th and C Streets, N.W., Washington, D.C. 20551. For the hearing impaired only, Telecommunication Device for the Deaf (TDD), Diane Jenkins (202/452-3544).

FDIC: For supervisory issues, Robert F. Storch, Chief, (202/898-8906), or Carol L. Liquori, Examination Specialist, (202/898-7289), Accounting Section, Division of Supervision; for legal issues, Jamey Basham, Counsel, (202/898-7265), Legal Division, FDIC, 550 17th Street, N.W., Washington, D.C. 20429.

OTS: Timothy J. Stier, Chief Accountant, (202/906-5699), or Christine Smith, Capital and Accounting Policy Analyst, (202/906-5740), Accounting Policy Division, Office of Thrift Supervision, 1700 G Street, N.W., Washington, DC 20552.

SUPPLEMENTARY INFORMATION:

I. Background

Section 303(a)(3) of the of the CDRI Act directs the Agencies, consistent with the principles of safety and soundness, statutory law and policy, and the public interest, to work jointly to make uniform regulations and guidelines implementing common statutory or supervisory policies. Section 303(a)(1) of the CDRI Act also requires the Agencies to review their regulations and written policies and to streamline those regulations where possible.

In 1978, the FDIC, the OCC, and the Board each published a separate policy statement regarding the allocation and payment of income taxes by depository institutions which are

members of a group filing a consolidated income tax return. The OTS provides supervisory guidance on this subject in its Holding Company Handbook. As part of the ongoing effort to fulfill the section 303 mandate, the Agencies have reviewed, both internally and on an interagency basis, the present policy statements and the supervisory guidance that has developed over the years. As a result of this review, the Agencies identified minor inconsistencies in the policy statements and supervisory guidance. Although largely limited to differences in language and not to the substance of the policies and guidelines themselves, the Agencies determined that it would be beneficial to adopt a uniform policy statement regarding intercorporate tax allocation in a holding company structure.

II. Policy Statement

This joint policy statement reiterates and clarifies the position the Agencies will take as they carry out their supervisory responsibilities for institutions regarding the allocation and payment of income taxes by institutions that are members of a group filing a consolidated return.

The joint policy statement reaffirms that intercorporate tax settlements between an institution and the consolidated group should result in no less favorable treatment to the institution than if it had filed its income tax return as a separate entity. Accordingly, tax remittances from a subsidiary institution to its parent for its current tax expense should not exceed the amount the institution would have paid had it filed separately. The payments by the subsidiary to the parent generally should not be made before the subsidiary would have been obligated to pay the taxing authority had it filed as a separate entity. Similarly, an institution incurring a tax loss should receive a refund from its parent. The refund should be in an amount no less than the amount the institution would have received as a separate entity, regardless of whether the consolidated group

is receiving a refund. However, adjustments for statutory tax considerations which may arise in a consolidated return are permitted as long as the adjustments are made on a basis that is equitable and consistently applied among the holding company affiliates. Regardless of the method used to settle intercorporate income tax obligations, when depository institution members prepare regulatory reports, they must provide for current and deferred income taxes in amounts that would be reflected as if the institution had filed on a separate entity basis.

An institution should not pay its deferred tax liabilities or the deferred portion of its applicable income taxes to its parent since these are not liabilities required to be paid in the current reporting period. Similarly, transactions in which a parent “forgives” any portion of a subsidiary institution’s deferred tax liability should not be reflected in the institution’s regulatory reports. This is because a parent cannot relieve its subsidiary of this potential future obligation to the taxing authorities, since these authorities can collect some or all of a group liability from any of the group members if tax payments are not made when due.

Finally, the Agencies recommend that financial institution members of a consolidated group have a written, comprehensive tax allocation agreement to address intercorporate tax policies and procedures.

This joint policy statement revises and replaces the Board’s “Policy Statement on Intercorporate Income Tax Accounting Transactions of Bank Holding Companies and State Member Banks,” (43 FR 22782, May 26, 1978); the OCC’s “Statement of Policy on Income Tax Remittance to Holding Company Affiliates,” (Banking Circular No. 105, May 22, 1978); the FDIC’s Statement of Policy on “Income Tax Remittance by Banks to Holding Company Affiliates” (43 FR 22241, May 24, 1978); and the OTS’s “OTS Tax-Sharing Policy,” (Section 500, “Funds Distribution,” OTS Holding Companies Handbook). This joint policy statement

does not materially change any of the guidance previously issued by any of the Agencies.

The text of the joint policy statement follows:

Interagency Policy Statement on Income Tax Allocation in a Holding Company Structure

[This signature page relates to the joint policy statement “Interagency Policy Statement on Income Tax Allocation in a Holding Company Structure”]

Dated:

Julie L. Williams,

Acting Comptroller of the Currency.

[This signature page relates to the joint policy statement “Interagency Policy Statement on
Income Tax Allocation in a Holding Company Structure”]

By order of the Board of Governors of the Federal Reserve System .

Jennifer J. Johnson,

Secretary of the Board.

[This signature page relates to the joint policy statement “Interagency Policy Statement on
Income Tax Allocation in a Holding Company Structure”]

By order of the Board of Directors.

Dated at Washington, DC, this day of 1998.

Federal Deposit Insurance Corporation.

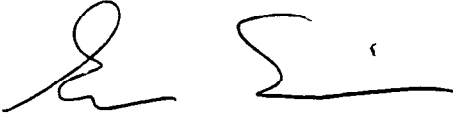
Robert E. Feldman,

Executive Secretary.

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[This signature page relates to the joint policy statement "Interagency Policy Statement on
Income Tax Allocation in a Holding Company Structure"]

Dated:



By the Office of Thrift Supervision.

Ellen Seidman,

Director.

[FR Doc. Filed]

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