STATE OF NEW YORK

DIVISION OF TAX APPEALS

In the Matter of the Petitions :

of :

FARM CREDIT OF WESTERN NEW YORK, ACA :

:

for Redetermination of a Deficiency or for Refund of Franchise Tax on Banking Corporations Under Article 32 of the Tax Law for the Years 1990, 1991, 1992 and 1993. :

:

In the Matter of the Petition :

of :

FIRST PIONEER FARM CREDIT, ACA, F/K/A SOUTHERN NEW ENGLAND FARM CREDIT, ACA :

for Redetermination of a Deficiency or for Refund of Franchise Tax on Banking Corporations Under Article 32 of the Tax Law for the Year 1992. :

In the Matter of the Petition :

of :

YANKEE FARM CREDIT, ACA, F/K/A CHAMPLAIN VALLEY FARM CREDIT, ACA :

:

for Redetermination of a Deficiency or for Refund of Franchise Tax on Banking Corporations Under Article 32 of the Tax Law for the Years 1992 and 1993. :

DETERMINATION
DTA NOS. 816576, 816604, 816605 AND 816606

Petitioner, Farm Credit of Western New York, ACA, 3080 W. Main Street, Batavia, New York 14020, filed petitions for redetermination of a deficiency or for refund of franchise tax on banking corporations under Article 32 of the Tax Law for the years 1990, 1991, 1992 and 1993.

Petitioner, First Pioneer Farm Credit, ACA, f/k/a Southern New England Farm Credit, ACA, 174 South Road, Enfield, Connecticut 06082-4414, filed a petition for redetermination of a deficiency or for refund of franchise tax on banking corporations under Article 32 of the Tax Law for the year 1992.

Petitioner, Yankee Farm Credit, ACA, f/k/a Champlain Valley Farm Credit, ACA, 439 Essex Road, Williston, Vermont 05495, filed a petition for redetermination of a deficiency or for refund of franchise tax on banking corporations under Article 32 of the Tax Law for the years 1992 and 1993.

On January 26, 1999, petitioners by their representative, Arthur R. Rosen, Esq., and the Division of Taxation by Terrence M. Boyle, Esq. (James P. Connolly, Esq., of counsel) waived a hearing and agreed to submit these cases for determination, with all documents and briefs to be submitted by the parties by July 26, 1999, which date began the six-month period for the issuance of this determination. Petitioners appeared by McDermott, Will & Emery (Richard A. Hanson, Esq., and Arthur R. Rosen, Esq., of counsel). The Division of Taxation appeared by Terrence M. Boyle, Esq. (Kathleen D. Chase, Esq., and James P. Connolly, Esq., of counsel). After review of the evidence and arguments presented, Frank W. Barrie, Administrative Law Judge, renders the following determination.

ISSUE

Whether income earned by agricultural credit associations from their short-term and intermediate-term lending activities is exempt from the imposition of New York franchise tax on banking corporations.

FINDINGS OF FACT

1. Petitioners, Farm Credit of Western New York, ACA, Southern New England Farm Credit, ACA (the predecessor to petitioner, First Pioneer Farm Credit, ACA), and Champlain Valley Farm Credit, ACA (the predecessor to petitioner, Yankee Farm Credit, ACA), each received charters dated December 29, 1988, effective January 1, 1989, from the Farm Credit Administration. By their charters, these agricultural credit associations were authorized by the Farm Credit Administration "to exercise all powers conferred on [an agricultural credit association] under the [Farm Credit Act of 1971, as amended] and the regulations of the Farm Credit Administration" within a designated geographic area.

2. The territory designated in the charter from the Farm Credit Administration to Farm Credit of Western New York, ACA consisted of the following counties in western New York: Genesee, Erie, Livingston, Wyoming, Monroe, Wayne, Orleans, Niagara, Ontario, Cayuga, Yates, Seneca, Allegany, Steuben, Cattaraugus, and Chautauqua.

3. The territory designated in the charter from the Farm Credit Administration to Southern New England Farm Credit, ACA, the predecessor to petitioner, First Pioneer Farm Credit, ACA, consisted of eight counties in the State of Connecticut, fourteen counties in the State of Massachusetts, six counties in the state of New Hampshire, all of the State of Rhode Island, and in New York, the five counties comprising New York City as well as Nassau and Suffolk counties. By an amendment, undated but effective January 1, 1995, made by the Farm

Credit Administration to the charter and articles of incorporation of Southern New England Farm Credit, ACA, this agricultural credit association was renamed First Pioneer Farm Credit, ACA, and its territory was extended to cover the entire states of Connecticut, Massachusetts, New Jersey, and Rhode Island, six counties in New Hampshire, and the following counties in New York: Albany, Bronx, Columbia, Dutchess, Kings, Nassau, New York, Orange, Putnam, Queens, Rensselaer, Richmond, Rockland, Saratoga, Suffolk, Sullivan, Warren, Washington, Westchester, and Greene County (except for the Town of Halcott), the eastern portion of Schenectady County which includes the towns of Niskayuna and Glenville and City of Schenectady, and Ulster County except for the towns of Shandaken and Hardenburgh.

4. The territory designated in the charter from the Farm Credit Administration to Champlain Valley Farm Credit, ACA, the predecessor to petitioner, Yankee Farm Credit, ACA, consisted of seven counties and a portion of an eighth county in Vermont, and the following two counties in New York: Clinton and Essex. By an amendment, dated November 23, 1994 and effective January 1, 1995, made by the Farm Credit Administration to the charter and articles of incorporation of Champlain Valley Farm Credit, ACA, this agricultural credit association was renamed Yankee Farm Credit, ACA, and its territory was extended to cover the entire State of Vermont and four counties in New Hampshire as well as the two northern New York counties of Clinton and Essex.

5. Each petitioner is an agricultural credit association, an entity resulting from the merger of a federal land bank association into a production credit association pursuant to the Agricultural Credit Act of 1987, which amended the Farm Credit Act of 1971. Petitioner Farm Credit of Western New York, ACA, resulted from the 1989 merger of the Federal Land Bank Association of Western New York into the Farmers Production Credit Association of Western New York;

Southern New England Farm Credit, ACA, the predecessor to petitioner First Pioneer Farm Credit, ACA, resulted from the 1989 merger of the Southern New England Federal Land Bank Association into the Southern New England Production Credit Association; and Champlain Valley Farm Credit, ACA, the predecessor to petitioner Yankee Farm Credit, ACA, resulted from the 1989 merger of the Federal Land Bank Association of Champlain Valley into the Farmers Production Credit Association of Champlain Valley.

6. Federal land bank associations, such as the Federal Land Bank Association of Western New York, the Federal Land Bank Association of Champlain Valley and the Southern New England Federal Land Bank Association, originated and serviced *long-term mortgage loans* made by the Springfield [Massachusetts] Federal Land Bank, one of 12 federal land banks across the United States. Federal land bank associations were not direct lenders. They did not pay franchise tax to New York nor did they pay United States corporation income tax.

7. In contrast, production credit associations, such as the Farmers Production Credit Association of Western New York, the Farmers Production Credit Association of Champlain Valley and the Southern New England Production Credit Association, were direct lenders to qualified borrowers providing *short-term and intermediate-term credit*. To obtain the funds to make loans, production credit associations borrowed funds from a Federal Intermediate Credit Bank. The production credit associations paid franchise tax to New York and also paid United States corporation income tax.

8. Petitioners had substantial interest income, before deductions, from their lending activities during the years at issue as follows:

	1990	1991	1992	1993

Farm Credit of Western New York, ACA	$35,576,380	$34,649,451	$27,647,253	$27,991,523
First Pioneer Farm Credit, ACA[1]	_____	_____	25,317,775	_____
Yankee Farm Credit, ACA[2]	_____	_____	8,634,652	8,301,520

9. In their original tax filings with New York and the United States, petitioners, as agricultural credit associations, paid New York franchise tax on banking corporations as well as United States corporation income tax on their interest income derived from both (i) long-term mortgage activities and (ii) short-term and intermediate-term lending activities. As noted in Findings of Fact "3" and "4", First Pioneer Farm Credit, ACA and Yankee Farm Credit, ACA, respectively, covered areas outside of New York as well as areas in New York. As a result, only a portion of their income was reported as allocable to New York. Southern New England Farm Credit, ACA, the predecessor to petitioner, First Pioneer Farm Credit, ACA, utilized an allocation percentage of 9.2711% in 1992, and Champlain Valley Farm Credit, ACA, the predecessor to Yankee Farm Credit, ACA, utilized an allocation percentage of 20.0134% in 1992 and of 19.1786% in 1993.

Petitioners' Refund Claims

10. Petitioner, Farm Credit of Western New York, ACA, filed refund claims for 1990, 1991, 1992, and 1993, dated July 6, 1995, August 15, 1995, July 22, 1996, and March 17, 1997,

[1] As noted in Finding of Fact "3", effective January 1, 1995, Southern New England Farm Credit, ACA was renamed First Pioneer Farm Credit, ACA. The tax returns at issue for 1992 were filed under the earlier name, but the current name of the agricultural credit association is used above.

[2] As noted in Finding of Fact "4", effective January 1, 1995, Champlain Valley Farm Credit, ACA was renamed Yankee Farm Credit, ACA. The tax returns at issue for 1992 and 1993 were filed under the earlier name, but the current name of the agricultural credit association is used above.

respectively, seeking a credit or refund of a *portion* of the New York banking corporation franchise taxes paid in its original tax filings. This petitioner sought refunds in the amounts of $178,610.00, $266,545.00, $331,014.00, and $362,726.00 for 1990, 1991, 1992, and 1993, respectively, based upon corresponding federal refund claims filed for the same years. These refund claims were based on the contention that income derived from *long-term mortgage activities* was exempt from federal income taxation, and, in turn, New York franchise tax on banking corporations since the starting point for calculating entire net income for New York franchise tax purposes is, pursuant to Tax Law § 1453(a), the entire taxable income petitioner "is required to report to the United States treasury department." Such income was not taxable in prior years, when it had been earned by the Federal Land Bank Association of Western New York. As successor to this land bank association, Farm Credit of Western New York, ACA maintained that its income from such similar lending activities was also exempt from taxation. On its amended United States corporation income tax returns for each of the four years at issue, petitioner subtracted its income from long-term mortgage activities from total income originally reported as follows:

	Total income[3] as originally reported	Decrease to total income	Corrected total income
1990	$37,418,523.00[4]	($18,672,710.00)	$18,745,813.00
1991	36,190,458.00	(17,580,266.00)	18,610,192.00

[3] In addition to interest income from lending activities, both long-term mortgage activities and short-term and intermediate-term lending activities, petitioner Farm Credit of Western New York, ACA had income from farm business services, loan fees, and credit life insurance.

[4] On the original 1990 federal return marked in evidence, total income was shown as $37,293,862 not $37,418,523.00 as indicated in the refund claim for 1990. There is no explanation in the record for the difference of $124,661.00.

1992	29,807,511.00	(14,146,198.00)	15,661,313.00
1993	29,889,027.00	(13,645,097.00)	16,243,930.00

11. The Division of Taxation ("Division") granted the partial refund claims of Farm Credit of Western New York, ACA for the years 1990 and 1991 based on proof that the underlying federal refund claims had been granted. However, the Division denied the partial refund claims for the years 1992 and 1993 on the grounds that this petitioner had failed to show that the underlying federal refund claims for the two later years had been granted. Petitioner Farm Credit of Western New York, ACA, has withdrawn its partial refund claims for 1992 and 1993 as having been filed prematurely since the federal refund claims for 1992 and 1993 have not been finally resolved.

12. Southern New England Farm Credit, ACA, the predecessor to petitioner, First Pioneer Farm Credit, ACA, filed an amended New York franchise tax return for banking corporations for 1992 dated February 10, 1996. The amended return sought a refund in the total amount of $40,631.00, representing a *portion* of the New York banking corporation franchise taxes paid with its original tax filing for 1992. This New York refund claim corresponded to a federal refund claim based on the contention that income derived from *long-term mortgage activities* was exempt from federal income taxation. Similar income was not taxable in prior years, when it had been earned by the Southern New England Federal Land Bank Association.

As successor to this land bank association, Southern New England Farm Credit, ACA maintained that its income from similar lending activities was also exempt from federal income taxation. On its amended United States corporation income tax return for 1992, this agricultural credit association subtracted such income of $12,499,355.00 from its total income originally reported of $26,369,338.00, resulting in corrected total income of $13,869,983.00. However, First Pioneer

Farm Credit, ACA, has withdrawn the partial refund claim of its predecessor because the corresponding federal refund claim for 1992 has not been finally resolved.

13. Champlain Valley Farm Credit, ACA, the predecessor to petitioner, Yankee Farm Credit, ACA, filed amended New York franchise tax returns for banking corporations dated March 15, 1996 and March 14, 1997 for 1992 and 1993, respectively. The amended returns sought refunds of $27,130.00 and $21,196.00, representing a *portion* of the New York banking corporation franchise taxes paid with its original tax filings for 1992 and 1993, respectively. The refund claims corresponded to federal refund claims based on the contention that income derived from *long-term mortgage activities* was exempt from federal income taxation. Similar income was not taxable in prior years, when it had been earned by the Federal Land Bank Association of Champlain Valley. As successor to this land bank association, Champlain Valley Farm Credit, ACA maintained that its income from such similar lending activities was also exempt from federal income taxation. On its amended United States corporation income tax returns for 1992 and 1993,[5] this agricultural credit association subtracted such income from total income previously reported as follows:

	Total income as originally reported	Decrease to total income	Corrected total income
1992	$8,993,571.00	($4,255,977.00)	$4,737,594.00
1993	8,697,122.00	(4,158,581.00)	4,538,541.00

14. The Division granted the partial refund claim of the predecessor to Yankee Farm Credit, ACA for the year 1992 based on proof that the underlying federal refund claim had been

[5] The amended United State corporation income tax return for 1993 was not made a part of the record. The numbers shown for this year were determined from reviewing the original and amended *New York* returns filed for 1993.

granted, apart from some minor adjustments not at issue. However, Yankee Farm Credit, ACA has withdrawn the partial refund claim of its predecessor for 1993 as having been prematurely filed because the corresponding federal refund claim for 1993 has not been finally resolved.

Petitioners' Additional Refund Claims

15. Petitioner, Farm Credit of Western New York, ACA, timely filed additional refund claims for 1990, 1991, 1992, and 1993, dated August 3, 1995, September 6, 1995, July 22, 1996, and March 17, 1997, respectively, seeking a credit or refund of the balance of New York banking corporation franchise taxes paid in its original tax filings, which were not the subject of its refund claims for partial refund detailed in Finding of Fact "10". This petitioner sought additional refunds in the amounts of $118,705.00, $296,124.00, $209,776.00, and $348,887.00 for 1990, 1991, 1992, and 1993, respectively, on the basis that it is an instrumentality of the United States government and is therefore exempt, under the Supremacy Clause of the United States Constitution, from the imposition of a tax by a state or local government other than real property taxes.

16. Southern New England Farm Credit, ACA, the predecessor to petitioner, First Pioneer Farm Credit, ACA, filed a second amended New York franchise tax return for banking corporations for 1992 dated March 14, 1996. This second amended return timely sought a refund of the balance of New York banking corporation franchise taxes paid in its original tax filing for 1992, which was not the subject of its refund claim for partial refund detailed in Finding of Fact "12". This petitioner sought an additional refund in the amount of $60,927.00 for 1992 on the basis that it is an instrumentality of the United States government and is therefore exempt, under the Supremacy Clause of the United States Constitution, from the imposition of a tax by a state or local government other than real property taxes.

17. Champlain Valley Farm Credit, ACA, the predecessor to petitioner, Yankee Farm Credit, ACA, filed additional refund claims for 1992 and 1993, dated March 15, 1996 and March 14, 1997, respectively, seeking a credit or refund of the balance of New York banking corporation franchise taxes paid in its original tax filings, which were not the subject of its refund claims for partial refund detailed in Finding of Fact "13". This petitioner sought additional refunds in the amounts of $42,280.00 and $34,615.00 for 1992 and 1993, respectively, on the basis that it is an instrumentality of the United States government and is therefore exempt, under the Supremacy Clause of the United States Constitution, from the imposition of a tax by a state or local government other than real property taxes. By letters dated July 12, 1996 and July 11, 1997, the Division denied these two additional refund claims of Champlain Valley Farm Credit, ACA, the predecessor to petitioner, Yankee Farm Credit, ACA, for 1992 and 1993, respectively.

18. The record does not include any testimonial evidence or affidavits from individuals with personal knowledge concerning the nature and activity of the three petitioners. However, the record for review does include copies of the bylaws for the Agricultural Credit Association of Western New York,[6] Southern New England Agricultural Credit Association, the predecessor to petitioner First Pioneer Farm Credit, ACA, and Champlain Valley Farm Credit, ACA, the predecessor to petitioner Yankee Farm Credit, ACA, which provide some evidence of petitioners' nature and activities.

19. All three sets of bylaws appear to be comparable and address the nature of agricultural credit associations. Article II of each of the bylaws describes the respective entity's "Legal Status; Authorities" as follows:

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[6] The record does not explain why petitioner, Farm Credit of Western New York, ACA, is referred to as the Agricultural Credit Association of Western New York in these bylaws.

> This Association is a cooperative credit institution, which is owned by its Members and is federally chartered pursuant to the Act. Subject to the Act and Regulations, and under the supervision of the FCB [the Farm Credit Bank of Springfield], the Association in its chartered territory possesses and may exercise all lending, participation and similar authorities granted by statute or regulation, as such statutes and regulations may be amended from time to time, to a Production Credit Association or, with respect to long-term real estate loans, a Farm Credit Bank.[7] Without limiting the foregoing, these authorities include authority to:
>
> (A) Make, guarantee or participate with other lenders in short and intermediate-term loans and other similar financial assistance to:
>
> 1. bona fide farmers and ranchers and producers or harvesters of aquatic products, for agricultural or aquatic purposes and other requirements of such borrowers as specified in the Act;
>
> 2. rural residents for housing financing in rural areas; and
>
> 3. persons furnishing to farmers and ranchers farm-related services directly related to their on-farm operating needs; and
>
> (B) Make or participate with other lenders in long-term real estate mortgage loans in rural areas, as defined by FCA [the Farm Credit Administration], or to producers or harvesters of aquatic products, and make continuing commitments to make such loans under specified circumstances, for a term of not less than 5 nor more than 40 years; and
>
> (C) Provide technical assistance to borrowers, applicants, and members, and make available to them, at their option, such financially related services appropriate to their on-farm and aquatic operations as is determined feasible by the FCB [Farm Credit Bank of Springfield] board of directors under applicable Regulations [Farm Credit Administration or Farm Credit System Assistance Board regulations or directives applicable to and binding on this agricultural credit association].

20. Each of the petitioners is owned by its respective members, defined in all three sets of bylaws as "a holder of one or more shares of Class A, Class B, Class C, Class D Stock, or Class A or Class B Participation Certificates in this Association." Article VIII of each of the bylaws

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[7] As noted in Finding of Fact "5", each of the petitioners is an entity resulting from the merger of a federal land bank association into a production credit association. The record does not explain why the terminology "Farm Credit Bank" is used in the bylaws instead of "land bank association".

details the "Capitalization" of the respective agricultural credit associations in a lengthy and complex section of the respective bylaws consisting of approximately ten pages. Furthermore, although similar, each Article VIII of the respective bylaws for the three agricultural credit associations is not exactly the same. For purposes of this determination, Article VIII of the bylaws for the Agricultural Credit Association of Western New York will be detailed further as representative. In section 810 of Article VIII of these bylaws, six types of stock and participation certificates that may be issued by the Agricultural Credit Association of Western New York are described: Class B Common Stock, Class C Common (Nonvoting) Stock, Class D Preferred (Nonvoting) Stock, Class B Participation Certificates (Nonvoting), Assistance Preferred Stock, and Other Classes and Issues. A review of these categories of stock and participation certificates reveals that only one, Class B Common Stock, has voting rights on matters presented for membership vote, including the election of members of the agricultural credit association's board of directors. Class B Common Stock may be issued, according to section 810.1 of the bylaws:

> only to a bona fide farmer, or rancher or producer or harvester of aquatic products who is a borrower or about to become a borrower from this Association . . . whether for long term or short term credit.

The amount of Class B Common Stock that a borrower acquires is governed by section 810.7 of the bylaws as follows:

> As a condition prerequisite to borrowing from this Association, each and every borrower who is eligible to hold Class B stock . . . shall, at the time the loan is made, acquire such Class B Stock . . . in such amount as the Association Board may from time to time determine pursuant to the Association Capitalization Plan, or regulatory or other requirements. *The amount of stock . . . required to be purchased under this section shall be at least the lesser of $1000 or 2% of the amount of the loan, and not more than 10% of the amount of the loan. At its option, however, the Association may, subject to statutory and regulatory requirements, require a borrower whose loan is closed for resale into the*

> *secondary market within 90 days of closing to satisfy the purchase requirements of this section through the purchase of one share of Class B Stock* . . . . (Emphasis in original.)

21. The extent to which shareholders of agricultural credit associations are entitled to receive dividends is difficult to determine from the bylaws, which have not been explained by anyone with personal knowledge. Included in Article VIII of each of the bylaws is the same section 860.1 which details a complicated formula for the application of earnings as follows:

> At the end of each fiscal year, the Association shall apply its earnings (including patronage allocations and refunds from the FCB [Farm Credit Bank of Springfield]) for such fiscal year as follows and in the order listed:
>
> (1) To cover operating expense, including additions to loan valuation reserves as provided by law;
>
> (2) To restore the amount of any impairment of capital stock and participation certificates as prescribed in Section 840.2 hereof;
>
> (3) To restore the amount of any impairment of the equity reserve;
>
> (4) To restore the amount of any impairment of allocated surplus;
>
> (5) To restore the amount of any impairment of paid-in surplus;
>
> (6) To create and maintain an unallocated surplus account as provided in Section 870 hereof;
>
> (7) To pay dividends on capital stock of the Association if authorized pursuant to Section 890 hereof;
>
> (8) To pay patronage distributions if authorized pursuant to Section 895 hereof;
>
> (9) To transfer any remaining earnings to the reserved surplus account.

22. The payment of dividends, which is listed seventh above, must be authorized by the board of directors of the respective agricultural credit association pursuant to Section 890 of the applicable bylaws, which sets forth a complex provision which limits and qualifies the payment

of dividends. The three sets of bylaws have varying sections 890. Section 890 of the bylaws for the Agricultural Credit Association of Western New York, as an example, provides in relevant part as follows:

> 890 Dividends
>
> 890.1 . . . [D]ividends may be declared and paid on all classes of common stock and participation certificates, or on one or more classes of preferred stock, as the Association Board, in its discretion, may from time to time determine by resolution . . . . *In no event shall annual dividends on stock or participation certificates exceed 8% of par value or face value.* (Emphasis in original.)

The bylaws for Southern New England Farm Credit, ACA, the predecessor to petitioner, First Pioneer Farm Credit, ACA, and for Champlain Valley Farm Credit, ACA, the predecessor to Yankee Farm Credit, ACA, similarly give their respective boards of directors discretion to declare and pay dividends. However, the record does not disclose why their bylaws do not specify a similar 8% limitation, as noted above for the Agricultural Credit Association of Western New York.

23. In lieu of the payment of dividends, in the discretion of the boards of directors of the respective agricultural credit association, "patronage distributions" may be authorized pursuant to section 895 of the respective bylaws. Section 895 of the bylaws of the Agricultural Credit Association of Western New York, as an example, provides in relevant part as follows:

> 895 Patronage Distributions
>
> 895.1 Subject to the Act and Regulations thereunder, the Association Capitalization Plan, and provided further that at the time of the declaration thereof no class of stock or participation certificates shall be impaired, patronage refunds may be declared from net earnings at the end of the fiscal year and paid to such persons and in such amounts as the Association Board may from time to time determine by resolution.
>
> 895.2 Prior to the beginning of any fiscal year, the Association Board, by adoption of a resolution, may obligate the Association to distribute to borrowers

> on a patronage basis all or any portion of available net earnings for such fiscal year or for that and subsequent fiscal years. *Net earnings not distributed as either patronage or stock dividends shall be credited to reserve or surplus accounts. When amounts in such reserves or surplus accounts are no longer reasonably required, they shall be allocated on a patronage basis to the extent practicable.* (Emphasis in original.)

24. The record does not disclose to what extent, if any, dividends or patronage distributions were paid to shareholders of any of the petitioners during the years at issue.

25. A schedule[8] included in the bylaws for the Agricultural Credit Association of Western New York shows the following values for stock, participation certificates and surplus:

	December 31, 1987[9]	December 31, 1986	December 31, 1985
Class A Capital Stock	$ 340,870.00	$ 422,185.00	$ 868,355.00
Class B Capital Stock	8,570,325.00	8,954,515.00	9,996,865.00
Participation Certificates	96,990.00	108,010.00	121,390.00
Unallocated surplus	12,358,610.00	12,822,928.00	13,880,400.00

26. Each of the petitioners, Farm Credit of Western New York, ACA, First Pioneer Farm Credit, ACA, and Yankee Farm Credit, ACA, entered into a separate and distinct stipulation of facts, dated January 26, 1999 respectively by petitioners' representative and undated by the Division's representative. Relevant portions have been incorporated into these findings of fact.

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[8] Similar schedules were not included in the bylaws for the other two agricultural credit associations which were marked as exhibits.

[9] Although the values shown are for years prior to the years at issue, the record does not have such information for the years at issue. This information for prior years is relevant to the extent that it establishes that Class B common stock, which as noted in Finding of Fact "20" is the only class of stock with voting rights and may be issued only to borrowers, accounts for the major portion of the agricultural credit association's capitalization. In addition, this schedule shows that the agricultural credit association maintained a substantial surplus from year to year and in an amount approximately 50% greater than the value of Class B capital stock. It has been assumed that the terminology of "capital stock," used in this exhibit attached to the bylaws, is interchangeable with "common stock," which is the terminology used in the bylaws.

27. The Division of Taxation has proposed 41 findings of fact, which track verbatim the 42 separately numbered paragraphs of the three stipulations noted in Finding of Fact "26", except for the paragraph numbered "6" of the stipulation between First Pioneer Farm Credit, ACA and the Division, which appears to have been inadvertently omitted. The 41 proposed findings of fact are accepted and incorporated into this determination.

SUMMARY OF THE PARTIES' POSITIONS

28. Petitioners argue that although agricultural credit associations "are not statutorily designated 'Federal Instrumentalities' . . . [they were] created through the merger of two statutorily designated Federal Instrumentalities, namely Federal Land Bank Associations and Production Credit Associations" and therefore should be treated as federal instrumentalities (Petitioners' brief, p. 5). Petitioners rely upon the decision of the State of Indiana Tax Court in ***Farm Credit Services of Mid-America, ACA v. Indiana Department of State Revenue*** (677 NE2d 645 [Ind Tax Ct 1997], ***transfer denied*** 690 NE2d 1186), which rejected the argument of the Indiana Department of State Revenue that agricultural credit associations were not federal instrumentalities. The Indiana Tax Court reasoned as follows:

> The [Indiana Department of State Revenue] would have the [Indiana Tax Court] read Congress's silence on the question of the taxation of [agricultural credit associations] to mean that Congress intended to subject all voluntarily merged associations (and banks) to state and local taxation. Such an interpretation leads to the absurd conclusion that Congress wanted to protect farm credit institutions from state and local taxes, but that as soon as two or more such lenders could reduce costs or increase efficiency by merging, they should lose their status as federal instrumentalities. The far more likely inference from this silence is that Congress simply assumed that the merging of two or more instrumentalities would produce an instrumentality (***Farm Credit Services of Mid-America, ACA v. Indiana Department of State Revenue, supra***, at 648-649)

Petitioners maintain that since they are federal instrumentalities, under the Supremacy Clause of Article VI of the United States Constitution, New York franchise tax on banking corporations

may not be imposed on their income generated in New York "absent a congressional waiver of immunity" (Petitioners' brief, p. 8). According to petitioners, this rule, which bars state taxation of federal instrumentalities absent congressional waiver, has been followed by an unbroken line of U.S. Supreme Court decisions beginning with the Court's decision in 1819 in ***M'Culloch v. Maryland*** (17 US [4 Wheat] 316, 4 L Ed 579). Since Congress has not waived their immunity as federal instrumentalities from state taxation, petitioners contend that their refund claims must be granted.

29. The Division counters that petitioners are not designated federal instrumentalities by statute and therefore are subject to taxation by New York. According to the Division, "exemptions from tax must be unambiguous and proved by clear and convincing evidence" (Division's brief, p. 14). Further, the Division maintains that the Supremacy Clause of Article VI of the United States Constitution, which bars a tax directly upon the United States, would be applicable to petitioners only if they are "so intimately intertwined with the federal government as to stand in its shoes" (Division's brief, p. 14). The Division emphasizes that the United States does not own any stock in petitioners: "[Agricultural credit associations], like their predecessor [production credit associations], are in the business of making commercial loans, and all their stock is owned by private entities" (Division's brief, p. 15). In the alternative, the Division argues that even if Congress had designated agricultural credit associations as federal instrumentalities, they "would be taxable because the [production credit associations] which merge with [federal land bank associations] to form [agricultural credit associations] are taxable, and it is clear from their activities that [agricultural credit associations] are essentially [production credit associations] with expanded powers" (Division's brief, p. 16). The Division reasons that the merger of a federal land bank association and a production credit association

resulted in a surviving entity known as an agricultural credit association, which "is a [production credit association] with expanded powers as a direct lender of long-term real-estate loans as well as continuing authority as a direct lender of short and intermediate term loans" (Division's brief, p. 33). The Division's argument is based on the fact that a federal land bank association was not a direct lender while a production credit association has been a direct lender since 1968. Since agricultural credit associations are also direct lenders, they are more in the nature of production credit associations.

The Division also relies on certain letter rulings of the Internal Revenue Service, such as IRS Letter Ruling 9652001 which the Division appended to its brief, for the proposition that a new corporation, which succeeds to the rights and powers of an old corporation, is not entitled to the old one's special statutory exemptions, including an exemption from taxation. As a result, the letter ruling concluded that the "Farm Credit statutes [did] not provide for a tax exemption on an [agricultural credit association's] income from its long-term mortgage lending activities."

The Division rejects the reasoning of the Indiana Tax Court in ***Farm Credit Services of Mid-America, ACA v. Indiana Department of State Revenue (supra)***, because agricultural credit associations are not federal instrumentalities that function "virtually as an arm of the government", the standard used by the United States Supreme Court in ***Department of Employment v. United States*** (385 US 355, 17 L Ed 2d 414), the Court's 1966 decision that the Red Cross was a federal instrumentality. According to the Division, by creating agricultural credit associations Congress intended "to step back from federal involvement in the Farm Credit System" (Division's brief, p. 18). In conclusion, the Division maintains that "the legislative history of the Farm Credit System clearly demonstrates Congressional intent to waive immunity from state taxation with respect to privately owned agricultural associations with direct lending

powers, even where such institutions have been expressly designated federal instrumentalities" (Division's brief, p. 40).

30. In their reply brief, petitioners counter that production credit associations are federal instrumentalities which have been exempt from state taxation since 1985 as confirmed by ***Farm Credit Services of Central Arkansas v. Arkansas*** (No. LR-C-94-394 [ED Ark, 1995], ***affd*** 76 F3d 961 [8th Cir 1996], ***revd on jurisdictional grounds***,[10] 520 US 821, 117 S Ct 1776, 138 L Ed 2d 34). The reasoning of the Eastern District of Arkansas Federal District Court and Eighth Circuit United States Court of Appeals was subsequently followed in the Arkansas state court proceeding of ***Farm Credit Services of Central Arkansas v. Arkansas*** (No. 94-4931 [Ark Chancery, 1998], 338 Ark 322, 994 SW2d 453).

Petitioners reject the Division's position on the legislative history of various Farm Credit Act amendments and contend that the Division failed to appreciate that such legislative history "relates solely to the *Federal income taxation* of Agricultural Credit Associations" (emphasis in original). (Petitioners' reply brief, p. 12.)

CONCLUSIONS OF LAW

A. Tax Law § 1451 imposes franchise tax on a banking corporation "[f]or the privilege of exercising its franchise or doing business in [New York State] in a corporate or organized capacity."

B. Tax Law § 1452 provides the following detailed definition of "banking corporation," in relevant part:

(a) For the purpose of this article, a banking corporation means:

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[10] The United States Supreme Court held that the Tax Injunction Act barred the plaintiff, a production credit association from suing in federal court for an injunction against state taxation without the United States as a co-plaintiff ***(cf., Trieu v. Urbach***, 1999 WL 461316 [SDNY]).

> (1) Every corporation or association organized under the laws of this state which is authorized to do a banking business, or which is doing a banking business;
>
> (2) every corporation or association organized under the laws of any other state or country which is doing a banking business;
>
> (3) every national banking association organized under the authority of the United States which is doing a banking business;
>
> (4) every federal savings bank which is doing a banking business;
>
> (5) every federal savings and loan association which is doing a banking business;
>
> (6) a production credit association organized under the federal farm credit act . . ., which is doing a banking business and all of whose stock held by the federal production credit corporation has been retired;[11]
>
> (7) every other corporation or association organized under the authority of the United States which is doing a banking business;
>
> (8) the mortgage facilities corporation . . .;
>
> (9) any corporation sixty-five percent or more of whose voting stock is owned or controlled . . . by a corporation . . . subject to article three-a of the banking law, or registered under the federal bank holding company act . . . or registered as a savings and loan holding company . . . or by a corporation . . . described in any of the foregoing paragraphs of this subsection . . . .

C. Petitioners each conducted a substantial banking business in New York during the years at issue. As noted in Finding of Fact "10", petitioner Farm Credit of Western New York, ACA had income in New York from its long-term mortgage activities of approximately $18.6 million in 1990, $17.6 million in 1991, $14.1 million in 1992 and $13.6 million in 1993. Its income from its short-term and intermediate-term lending activities consisted of approximately $18.7 million in 1990, $18.6 million in 1991, $15.6 million in 1992, and $16.2 million in 1993. As noted in Finding of Fact "12", Southern New England Farm Credit, ACA, the predecessor to

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[11] As noted by Judge Loken in his dissent in ***Farm Credit Services of Central Arkansas, PCA v. State of Arkansas***, (76 F3d 961 [8th Cir. 1996], ***revd on other grds***, 520 US 821, 117 SCt 1776, 138 L Ed 2d 34 [1997], "[b]y 1968, all production credit associations were owned entirely by their borrower-members."

petitioner First Pioneer Farm Credit, ACA had income in New York in 1992 from its long-term mortgage activities of approximately $12.5 million and from its short-term and intermediate-term lending activities of approximately $13.9 million. As noted in Finding of Fact "13", Champlain Valley Farm Credit, ACA, the predecessor to petitioner Yankee Farm Credit, ACA had income in New York in 1992 from its long-term mortgage activities of approximately $4.3 million and from its short-term and intermediate-term lending activities of approximately $4.7 million. Its income in New York in 1993 from its long-term mortgage activities was approximately $4.2 million and from its short-term and intermediate-term lending activities was approximately $4.5 million.

D. In years past, the income from short-term and intermediate-term lending activities earned by production credit associations was subject to the New York franchise tax on banking corporations. As noted in Finding of Fact "5", each of the petitioners is an entity resulting from the merger of a federal land bank association into a production credit association pursuant to the Agricultural Credit Act of 1987, which amended the Farm Credit Act of 1971: (1) Petitioner Farm Credit of Western New York, ACA resulted from the 1989 merger of the Federal Land Bank Association of Western New York into the Farmers Production Credit Association of Western New York; (2) Southern New England Farm Credit, ACA, the predecessor to petitioner First Pioneer Farm Credit, ACA, resulted from the 1989 merger of the Southern New England Federal Land Bank Association into the Southern New England Production Credit Association; and (3) Champlain Valley Farm Credit, ACA, the predecessor to petitioner Yankee Farm Credit, ACA, resulted from the 1989 merger of the Federal Land Bank Association of Champlain Valley into the Farmers Production Credit Association of Champlain Valley. These predecessor production credit associations, i.e., Farmers Production Credit Association of Western New

York, Southern New England Production Credit Association and Farmers Production Credit Association of Champlain Valley, constituted "banking corporations" subject to New York franchise tax under Tax Law § 1452(a)(6), which specifically includes "a production credit association organized under the federal farm credit act" in the statutory definition of "banking corporation." Further, New York could properly tax the New York income earned from the short-term and intermediate-term lending activities conducted by these production credit associations because production credit associations had no exemption from state and local taxation under the federal farm credit act after the stock held in them by the United States had been retired.[12] In contrast, federal land bank associations, such as Federal Land Bank Association of Western New York, Southern New England Federal Land Bank Association, and Federal Land Bank Association of Champlain Valley, which were merged into Farmers Production Credit Association of Western New York, Southern New England Production Credit Association and Farmers Production Credit Association of Champlain Valley, respectively, had an explicit and detailed statutory exemption from state and local taxation under the federal farm credit act under 12 USC § 2098, which provides as follows:

> Each Federal land bank association and the capital, reserves, and surplus thereof, and the income derived therefrom, shall be exempt from Federal, State, municipal, and local taxation, except taxes on real estate held by a Federal land bank association to the same extent, according to its value, as other similar property held by other persons is taxed. The mortgages held by the Federal land bank associations and the notes, bonds, debentures, and other obligations issued by the associations shall be considered and held to be instrumentalities of the United States, and, as such, they and the income therefrom shall be exempt from all Federal, State, municipal, and local taxation, other than Federal income tax liability of the holder thereof under the Public Debt Act of 1941 (31 USC § 3124).

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[12] As noted in footnote "11", by 1968, all production credit associations were owned entirely by their borrower-members.

E. The merger of a federal land bank association into a production credit association was authorized under 12 USC § 2279c-1(a), which provides as follows:

> *In general*. Two or more associations within the same district, whether or not organized under the same title of this Act,[13] may merge into a single entity (hereinafter in this title referred to as a 'merged association') if the plan of merger is approved by-
>
> (1) the Farm Credit Administration Board;
> (2) the boards of directors of the associations;
> (3) a majority of the shareholders of each association voting, in person or by proxy, at a duly authorized stockholders' meeting; and
> (4) the Farm Credit Bank.

Petitioners, as agricultural credit associations, represent "merged associations" with the following statutory powers, as provided at 12 USC § 2279c-1(b):

> *Powers, obligations, and consolidation*. (1) Powers and obligations. Except as otherwise provided by this title [12 USC §§ 2279 et seq.], a merged association shall-
>
> (A) possess all powers granted under this Act to the associations forming the merged association; and
> (B) be subject to all of the obligations imposed under this Act on the associations forming the merged association.

Consequently, each petitioner possesses all powers granted and obligations imposed under the Farm Credit Act of 1971 to the associations forming the merged association, namely the powers granted to and obligations imposed on production credit associations and land bank associations. Therefore, it is concluded that agricultural credit associations have the same tax exemptions and obligations which were granted to or imposed on the associations forming them.

F. As noted in paragraph "29", the Division of Taxation has relied on certain letter rulings of the Internal Revenue Service, such as IRS Letter Ruling 9652001, which maintained the harsh

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[13] The "same title of this Act" is a reference to any of titles I-VIII of the Farm Credit Act of 1971.

position that *all* income earned by agricultural credit associations, such as petitioners, even including income from long-term mortgage lending activities, was subject to federal income taxation. Pursuant to Tax Law § 1453, the starting point for determining entire net income of a banking corporation subject to New York franchise tax is entire net income which the taxpayer is required to report to the United States treasury department. Based upon these IRS letter rulings, petitioners' entire net income for New York tax purposes would therefore include not only income from short-term and intermediate-term lending activities but also income from long-term mortgage lending activities. However, as noted in Findings of Fact "11" and "14", the Division of Taxation has granted partial refund claims of Farm Credit of Western New York, ACA for 1990 and 1991 and of Champlain Valley Farm Credit, ACA, the predecessor to Yankee Farm Credit , ACA for 1992 because they provided proof that the underlying federal refund claims had been granted by the Internal Revenue Service. The partial refund claims of Farm Credit of Western New York, ACA for 1992 and 1993, of First Pioneer Farm Credit for 1992, and of Champlain Valley Farm Credit, ACA, the predecessor to Yankee Farm Credit, ACA for 1993, as noted in Findings of Fact "11", "12", and "14", respectively, have been withdrawn by the respective petitioners because the corresponding federal refund claims have not been finally resolved. Nonetheless, it may be concluded that these federal refund claims are based on petitioners' position that income from long-term mortgage lending activities was not subject to federal income tax and are the same type of refund claims which, for other years, have been granted by the IRS. In other words, the Internal Revenue Service has backed away from the harsh position it took in the letter rulings cited by the Division, and it appears that petitioners are merely awaiting ministerial action on the part of the IRS in order to resolve the remaining federal refund claims. As a result, it is difficult to understand why the Division continues to rely

upon these IRS letter rulings. Moreover, based upon the explicit and detailed statutory exemption from taxation granted to federal land bank associations, as noted in Conclusion of Law "D", the position taken by the IRS in the letter rulings relied upon by the Division is untenable (***see, United States of America v. Farm Credit Services of Fargo, ACA***, No. A3-97-29 [D No Dak 1998] [wherein the United States District Court for the District of North Dakota, Southeastern Division, held that the income earned by an agricultural credit association attributable to long-term real estate mortgage loan activities was exempt from federal income tax]). Pursuant to 12 USC § 2279c-1(b), as noted in Conclusion of Law "E", petitioners succeeded to the powers and obligations of federal land bank associations, and consequently they have succeeded to the statutory exemption from taxation granted to federal land bank associations on income derived from long-term mortgage lending activities.

G. Similarly, whether the income earned by agricultural credit associations from short-term and intermediate-term lending activities is exempt from the imposition of New York franchise tax on banking corporations may also be resolved by a close examination of the statutory language of the Farm Credit Act of 1971, as amended. As noted in the Summary of the Parties' Positions, the arguments of petitioners and the Division of Taxation assume that Congress was silent on the tax treatment of agricultural credit associations. This assumption is rejected. Rather, by giving a fair and practical construction to the statutory language of the Farm Credit Act of 1971, as amended, in accord with the intent of Congress, this matter may be resolved (***cf., 1605 Book Center v. Tax Appeals Tribunal***, 83 NY2d 240, 609 NYS2d 144).

H. As noted in Conclusion of Law "E", petitioners possess the powers granted to and obligations imposed on production credit associations in addition to the powers granted to and obligations imposed on land bank associations. In contrast with the broad exemption from

taxation allotted by Congress to land bank associations, as detailed in Conclusion of Law "D", the Farm Credit Act of 1971, as amended, specifies a limited tax exemption for production credit associations at 12 USC § 2077, which provides as follows:

> Each production credit association and its obligations are instrumentalities of the United States and as such any and all notes, debentures, and other obligations issued by such associations shall be exempt, both as to principal and interest, from all taxation (except surtaxes, estate, inheritance, and gift taxes) now or hereafter imposed by the United States or any State, territorial, or local taxing authority , except that interest on such obligations shall be subject to Federal income taxation in the hands of the holder.

Judge Loken, in his dissent in ***Farm Credit Services of Central Arkansas, PCA v. State of Arkansas (supra)***, carefully traced the intent of Congress concerning the extent to which production credit associations should be subject to tax as follows:

> [Production credit associations were] first created by Congress in the Farm Credit Act of 1933 to provide short-to-intermediate-term loans directly to farmers and ranchers. See Publ. L. No. 73-98, § 20, 48 Stat. 257, 259-60 (1933). PCAs were initially capitalized and owned entirely by the Federal government, but Congress hoped ('expected' might be too strong a word given Depression-era economic conditions) that PCA excess earnings would be used to retire the government's stock, resulting in 'local institutions in which farmers are participants and owners and through which necessary credit may be provided on a safe business basis and at reasonable cost.' S. Rep. No. 124, 73d Cong., 1st Sess. 2 (1933). Congress reflected that hope in the express but limited tax exemption granted PCAs in the 1933 Act:
>
> 'Production Credit Associations . . . and their obligations, shall be deemed to be instrumentalities of the United States, and as such, any and all notes, debentures, bonds, and other such obligations issued by [PCAs] shall be exempt both as to principal and interest from all taxation . . . imposed by the United States or by any State, Territorial, or local taxing authority. [PCAs], their property, their franchises, capital, reserves, surplus, and other funds, and their income, shall be exempt from all taxation now or hereafter imposed by the United States or by any State, Territorial, or local taxing authority; except that any real property and any tangible personal property . . . shall be subject to Federal, State, Territorial, and local taxation to the same extent as other similar property is taxed. *The exemption provided herein shall not apply with respect to any [PCA] or its property or income after the stock held in it by the [United States] has been retired . . . .'* Pub. L. No. 73-98, § 63, 48 Stat. at 267 [emphasis added by Judge Loken]. This is a very different exemption than Congress granted the earlier farm credit

institutions, [federal land banks and federal intermediate credit banks]. Congress did not explain why it linked the [production credit associations'] tax exemption to government ownership, and why it did not also impose that limitation on [federal land banks and federal intermediate credit banks] [footnote omitted].

By the early 1960s, many [production credit associations] were privately owned, and States began assessing various taxes, relying upon the last sentence of the above-quoted statute. Some [production credit associations] resisted, claiming implied immunity as Federal instrumentalities. To my knowledge, every state appellate court to consider the question rejected the [production credit associations'] position, concluding that the Federal statute was express consent for state taxation of privately-owned [production credit associations]. [Citations omitted.]

By 1968 all [production credit associations] were owned entirely by their borrower-members. *See* H.R. Rep. No. 593, 92d Cong., 1st Sess. (1971), *reprinted in* 1971 U.S.C.C.A.N. 2091, 2098[14].When Congress substantially rewrote these statutes in the Farm Credit Act of 1971, it left unchanged the differing exemptions granted to various System lenders. *See* Pub. L. No. 92-181, §§ 1.21, 2.8, 2.17[15], 3.13, 85 Stat. 583, 590,597, 602, 608-09 (1971); H.R. Rep. No. 593, 1971 U.S.C.C.A.N. at 2107-13. [Footnote omitted.] . . . .

Congress again overhauled the farm credit statutes in 1985, responding to a crisis in the agricultural sector that threatened to bankrupt the System. [Citation omitted.] Congress made the Farm Credit Administration a more independent regulator, led by a three-member board instead of a Governor. To conform the statute to this new agency configuration, prior references to the Governor needed to be deleted, including one that had been added to the last sentence of the [production credit associations'] tax exemption provision, § 2.17 of the 1971 Act.

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[14] Judge Loken referenced page 2098 of the House Report (Agriculture Committee) No. 92-593 dated October 27, 1971, which in relevant part, states as follows:

"The 441 production credit associations throughout the United States were chartered by the Farm Credit Administration and operate under the provisions of the Farm Credit Act of 1933, as amended. Initially, the associations were largely capitalized by the United States. Now, however, all Government capital has been retired and they are completely owned by their members. Each association has a prescribed territory, usually ranging from one county up to as much as one or more States within which it makes loans to farmers and ranchers. The associations operate under the local supervision of the Federal intermediate credit banks for the district. Loan maturities usually are not more than one year, but loans may be made for terms up to seven years. . . . As of June 30, 1970, the net worth of all production credit associations totaled $809.3 million, with $520.8 being member-owned capital and $288.5 being earned net worth."

[15] The House Report (Agriculture Committee) No. 92-593 dated October 27, 1971 described section 2.17 of the Farm Credit Act of 1971 as follows:

"Section 2.17.- The tax status of production credit associations under existing law is reenacted without change, bringing those provisions under the production credit association part of the bill instead of being combined with banks for cooperatives tax status under present law."

> However, rather than simply delete this reference to the Governor, Congress deleted the last two sentences of § 2.17. See Pub. L. No. 99-205, § 205(e)(16), 99 Stat. 1678, 1705 (1985). What remained, with minor subsequent changes [footnote omitted] was the statutory tax exemption for [production credit association] obligations . . . now codified at 21 U.S.C. § 2077.
>
> This 1985 amendment deleted the express exemption that had been granted to a [production credit association] and its income for so long as the [production credit association] was Government-owned. The relevant Committee Report described this as merely a technical change. See H.R. Rep. No. 425 at 28-29, 1985 U.S.C.C.A.N. at 2615. Although more than the reference to the Governor was deleted, [there] is a logical explanation since there were *no* publicly-owned [production credit associations] in 1985 eligible to enjoy the deleted exemption. [Emphasis in original.]

I. Based upon this careful tracing of the intent of Congress concerning the taxation of production credit associations, along with a fair and practical construction of the relevant statutory language, it is concluded that petitioners' income from short-term and intermediate-term lending activities may be subject to New York franchise tax on banking corporations. The critical point is that the exemption from taxation provided by Congress to production credit associations was plainly circumscribed as noted in Conclusion of Law "H". Although the current statutory language describing the limited tax exemption for production credit associations at 12 USC § 2077 does not specify that the income of production credit associations may be subject to state taxation, the review of the legislative history delineated above clearly supports such conclusion. Any other interpretation would run counter to the intent of Congress. Accordingly, since petitioners, as agricultural credit associations, possess the powers granted to and obligations imposed on production credit associations, they are properly subject to New York franchise tax on banking corporations as were their respective predecessor production credit associations, i.e., Farmers Production Credit Association of Western New

York, Southern New England Production Credit Association and Farmers Production Credit Association of Champlain Valley.

J. Petitioners have relied upon decisions from the states of Indiana, Arkansas, and Louisiana.[16] However, these decisions all concluded that Congress was silent on the tax treatment of agricultural credit associations, which is contrary to the analysis detailed above. Consequently, with due respect to the courts of these other jurisdictions, it is nonetheless concluded that petitioners' income earned from short-term and intermediate-term loan activities may be subject to the New York franchise tax on banking corporations. Furthermore, the parties' arguments, which are based on the incorrect assumption that Congress was silent on the tax treatment of agricultural credit associations, are mooted.

K. The two petitions of Farm Credit of Western New York, ACA, the petition of First Pioneer Farm Credit, ACA, f/k/a Southern New England Farm Credit, ACA, and the petition of Yankee Farm Credit, ACA, f/k/a Champlain Valley Farm Credit, ACA, as amended as a result of (i) the Division of Taxation having granted the partial refund claims of Farm Credit of Western New York, ACA for 1990 and 1991 and of Champlain Valley Farm Credit, ACA, the predecessor to Yankee Farm Credit, ACA for 1992, and (ii) the withdrawal of the partial refund claims of Farm Credit of Western New York, ACA for 1992 and 1993, of Southern New England Farm Credit, ACA, the predecessor to petitioner, First Pioneer Farm Credit, for 1992 and of Champlain Valley Farm Credit, ACA, the predecessor to Yankee Farm Credit, ACA, for 1993, are denied, and the additional refund claims of petitioner, Farm Credit of Western New

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[16] Citations to the decisions from Indiana and Arkansas are in paragraphs "28" and "30", which summarize petitioners' position. After the briefs were submitted, by a letter dated November 15, 1999, petitioners' representative cited an additional decision from the Louisiana Court of Appeals in ***Northwest Louisiana Production Credit Association v. State of Louisiana*** dated November 5, 1999 and another decision from the Kansas Board of Tax Appeals in ***Matter of Farm Credit Services of Central Kansas, et al.*** dated October 25, 1999.

York, ACA for 1990, 1991, 1992, and 1993, dated August 3, 1995, September 6, 1995, July 22, 1996, and March 17, 1997, respectively, and the additional refund claim of Southern New England Farm Credit, ACA, the predecessor to petitioner, First Pioneer Farm Credit, ACA as asserted in a second amended New York franchise tax return for banking corporations for 1992 dated March 14, 1996, and the additional refund claims of Champlain Valley Farm Credit, ACA, the predecessor to petitioner, Yankee Farm Credit, ACA, dated March 15, 1996 and March 14, 1997, respectively, are denied.

DATED: Troy, New York
January 13, 2000

/s/ Frank W. Barrie
ADMINISTRATIVE LAW JUDGE