



NEW YORK CITY LAW DEPARTMENT
OFFICE OF THE CORPORATION COUNSEL

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Press Release

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For Immediate Release

**NEW YORK CITY LAW DEPARTMENT VICTORIOUS IN BANKERS TRUST CASE
AS APPELLATE COURT UNANIMOUSLY REVERSES LOWER COURT'S DECISION**

COURT HOLDS THAT CITY IS NOT TIME-BARRED FROM ALLOCATING EXPENSES AMONG CONTROLLED CORPORATIONS WHEN ADJUSTING REFUND CLAIMS BASED UPON FEDERAL OR STATE AUDIT CHANGES.

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New York, November 22, 2002 -- In a unanimous decision on Wednesday, an intermediate appellate court reversed a lower court's decision declaring that the City must pay Bankers Trust a refund of \$6 million in bank tax for the years 1986, 1987 and 1993, plus interest.

The Appellate Division, First Department ruled that the City is not barred by the statute of limitations from offsetting Bankers Trust's refund claims, which were based upon New York State adjustments to its state bank tax returns, by allocating some of the deductions claimed by Bankers Trust on its city bank tax returns to its foreign subsidiaries.

These allocation adjustments increased Bankers Trust's worldwide net income. Although the City is precluded from making any changes to Bankers Trust's "allocation" during the extended statute of limitations period for auditing refund claims based upon reported IRS and New York State adjustments to its tax returns, the court ruled that the restriction applies only to Bankers Trust's "allocation percentage," the three-factor apportionment formula which determines the portion of Bankers Trust's business conducted within the City subject to tax. Since the City made no change to Bankers Trust's allocation percentage, the City's adjustments reallocating Bankers Trust's expenses were permissible under the Bank Tax.

"This decision is critical, because the issue often comes up when auditing IRS audit changes," noted Robert Firestone, a Senior Counsel in the Tax & Bankruptcy Litigation Division of the New York City Law Department and the lead attorney on the case.

"We are pleased with the court's determination upholding the Department of Finance's decision in the Banker's Trust case," said Martha E. Stark, Department of Finance Commissioner. "This sends an important message that taxpayers who request refunds after the statute of limitations has expired must also be willing to let the Department audit their returns."

The New York City Law Department is one of the oldest, largest and most dynamic law offices in the world, ranking among the top three largest law offices in New York City and the top three largest public law offices in the country. Tracing its roots back to the 1600's, the Department's 650-plus lawyers handle more than 100,000 cases and transactions each year in 17 separate legal divisions. The Corporation Counsel heads the Law Department and acts as legal counsel for the Mayor, elected officials, the City and all its agencies. The Department's attorneys represent the City on a vast array of civil litigation, legislative and legal issues and in the criminal prosecution of juveniles. Its web site can be accessed through the City government home page at www.nyc.gov or via direct link at www.nyc.gov/html/law/home.html.

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