

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

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:
In re: : Chapter 11
:
ADVANTA CORP., *et al.*,¹ : Case No. 09-13931 (KJC)
:
Debtors. : (Jointly Administered)
:
-----X
Advanta Bank Corp., :
Plaintiff, :
v. : Adv. Proc. No. _____ (KJC)
Advanta Corp., :
Defendant. :
-----X

COMPLAINT

Plaintiff Advanta Bank Corp. (“Plaintiff” or “ABC”), by and through its undersigned attorneys, hereby files this Complaint against Defendant Advanta Corp. (“Debtor” or “Advanta” or “Defendant”), and alleges as follows:

¹ The Debtors in these jointly administered chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number, are Advanta Corp. (2070), Advanta Investment Corp. (5627), Advanta Business Services Holding Corp. (4047), Advanta Business Services Corp. (3786), Advanta Shared Services Corp. (7074), Advanta Service Corp. (5625), Advanta Advertising Inc. (0186), Advantennis Corp. (2355), Advanta Mortgage Holding Company (5221), Advanta Auto Finance Corporation (6077), Advanta Mortgage Corp. USA (2654), Advanta Finance Corp. (8991), Advanta Ventures Inc. (5127), BizEquity Corp. (8960), Ideablob Corp. (0726), Advanta Credit Card Receivables Corp. (7955), Great Expectations International Inc. (0440), Great Expectations Franchise Corp. (3326), and Great Expectations Management Corp. (3328). Each of the Debtors (other than Advanta Credit Card Receivables Corp. and the Great Expectations entities) maintains its principal corporate office at Welsh &McKean Roads, P.O. Box 844, Spring House, Pennsylvania 19477-0844. Advanta Credit Card Receivables Corp. maintains its principal corporate office at 2215 B. Renaissance Drive, Suite 5, Las Vegas, Nevada 89119, and the Great Expectations entities maintain their principal corporate office at 1209 Orange Street, Wilmington, Delaware 1980I. In accordance with an order of this Court, the Debtors’ cases are being jointly administered pursuant to Rule 1015(b) of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”).

Summary Of Relief Requested

1. This adversary action is commenced to compel Defendant to either timely secure an extension from the IRS to file its 2009 Tax Return; or, alternatively, if Defendant chooses to file its 2009 Tax Return by this coming Monday, March 15, to affirmatively elect to carry back 2009 consolidated net operating losses five years

Jurisdiction, Venue And Statutory Predicates

2. This Court has jurisdiction pursuant to 28 U.S.C. §§ 157 and 1334.
3. Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409.
4. This is a core proceeding pursuant to 28 U.S.C. § 157(b).
5. The statutory predicates for the relief requested herein are §§ 105(a) and 363 of the Bankruptcy Code.

Parties

6. Plaintiff is a Utah industrial bank that has a principal place of business in Dresher, Pennsylvania.
7. Defendant is a Delaware corporation with its principal place of business in Spring House, Pennsylvania.

Factual Allegations

A. The Debtor And Affiliated Chapter 11 Filings

8. Defendant and various of its affiliates filed voluntary petitions for relief under chapter 11 of the Bankruptcy Code on November 8, 2009. Defendant announced on or about January 11, 2010 that it intended to pursue a liquidation of its remaining assets and an orderly wind-down of its business.

B. The Consolidated Tax Group And 2009 NOLs

9. Plaintiff is a non-debtor, wholly-owned subsidiary of Defendant.

10. Defendant is the common parent of an affiliated group of corporations, including Plaintiff, which files consolidated tax returns for federal income tax purposes (the “Consolidated Group”) pursuant to the terms of a tax sharing agreement (the “Tax Sharing Agreement”) that exists between and among the Consolidated Group. The Tax Sharing Agreement is dated as of May 1, 1995, and a true and correct copy of same has been affixed hereto as Exhibit A.

11. Upon information and belief, it is Plaintiff’s understanding that the Consolidated Group may report a consolidated net operating loss (“NOL”) for 2009 and that Defendant, as the Consolidated Group’s common parent, may elect to carry back such net operating loss to offset the Consolidated Group’s taxable income during the preceding five years.

12. Specifically, this five year NOL carry back is authorized under a recent amendment to the Internal Revenue Code (“IRC”). Prior to the amendment, IRC Section 172(b)(1)(A) provided that a net operating loss for any taxable year may be carried back to the two preceding tax years and carried forward to the 20 subsequent tax years. Newly enacted IRC Section 172(b)(1)(H) modifies the general two-year carry back rule and provides that taxpayers may elect to carry back 2008 or 2009 NOLs up to five years.

13. Notably, Revenue Procedure 2009-52, 4.01(2) provides that the five-year net operating loss carry back election must be made by the common parent of an affiliated group filing a consolidated return, and must be filed with the taxpayer’s original or amended federal income tax return for the taxable year of the applicable net operating loss on or before the due date, including extensions, for the return.

14. Plaintiff’s preliminary estimates indicate that the potential tax refund that may be due from the Internal Revenue Service (“IRS”) associated with such a tax election is approximately \$54 million (the “Anticipated Refund”) if Defendant makes the five-year NOL

carry back election. Moreover, Plaintiff believes that it may be entitled to a significant portion of the Anticipated Refund pursuant to and in accordance with the Consolidated Group's Tax Sharing Agreement. In addition, Plaintiff projects that its separate company tax loss for 2009 may exceed \$544 million (upon information, the Consolidated Group has reported a combined 2009 tax loss of approximately \$603 million).

15. The deadline for Defendant to file the 2009 consolidated federal income tax return (the "Tax Return") is this coming Monday, March 15, 2010. If Defendant is not going to file the Tax Return by March 15th, it must request an extension from the IRS.

16. Plaintiff has recently requested that Defendant affirmatively elect the five-year NOL carryback treatment. See Exhibit B, attached hereto and made a part hereof. Furthermore, Plaintiff has attempted, on a number of occasions, both through its business personnel and counsel, to ascertain Defendant's intentions in this regard. Regrettably, these inquiries have gone unanswered, and Defendant's business personnel have advised that they are not authorized to discuss federal income tax matters with Plaintiff, despite the fact that Plaintiff is a wholly-owned subsidiary of Defendant and a member of the Consolidated Group.

17. Accordingly, Plaintiff files the within Complaint for injunctive relief as against Defendant in order to compel the relief sought herein.

Specific Relief Requested

18. By this Complaint, Plaintiff seeks the entry of an Order requiring Defendant to either timely secure an extension from the IRS to file its 2009 Tax Return; or, alternatively, if Defendant chooses to file its 2009 Tax Return by this coming Monday, March 15, to affirmatively elect to carry back 2009 consolidated net operating losses five years.

Legal Argument

19. Upon information and belief, Defendant has refused to advise its wholly-owned subsidiary and a member of the Consolidated Group as to its intentions with respect to this important tax issue, presumably because it intends to file a consolidated federal tax return by this coming Monday's deadline without affirmatively making the five-year election that is so critical to ABC.

20. Should Defendant file the 2009 Tax Return without affirmatively electing the five-year NOL carry back, it is beyond cavil that Plaintiff will be severely prejudiced.

21. Under IRC regulations, only Defendant, as the parent entity, can make the tax election, despite the fact that Plaintiff is entitled to a substantial portion of the Anticipated Refund that will be owing as a consequence thereof. Because Plaintiff cannot make this election itself, it is dependent on Defendant to do so, and will suffer a significant financial detriment if Defendant does not. Indeed, the failure to make this tax election on the consolidated 2009 Tax Return may arguably extinguish Defendant's right to do so at a later date. (As heretofore noted, Defendant has failed to respond in any meaningful fashion regarding its plans with respect to the 2009 Tax Return, let alone offered a substantive justification as to why it would not elect the five-year NOL carry back.)

22. Plaintiff is one of the largest unsecured creditors of the Defendant Debtor and its estate, to whom Defendant plainly owes fiduciary duties, both as a member of the Consolidated Group and as one of the Defendant Debtor's largest unsecured creditors.²

² Advanta's schedules reflect unsecured claims in the aggregate amount of \$226,565,460, of which two groups of noteholders are allegedly owed approximately \$225,569,000 in the aggregate, leaving less than \$1 million in vendor and other unsecured debt. Advanta lists ABC as holding unliquidated, disputed and contingent claims in its schedules. ABC believes that it may hold a general unsecured claim in excess of \$170,000,000, based on certain assumptions considered reasonable and depending on the amount of tax refunds that ABC ultimately may receive.

23. The timely resolution of this matter is critically important to Plaintiff given the posture of Plaintiff's ongoing regulatory discussions with the FDIC. Plaintiff is under supervisory orders by the FDIC, and its current status is labeled by the FDIC as "critically undercapitalized", which is the lowest step before prudential regulators may be required to terminate a financial institution's banking charter. Because of this, the FDIC has expressed certain concerns regarding Plaintiff's current liquidity and capital position.

24. Defendant's failure to elect the five-year NOL carry back on the 2009 consolidated Tax Return poses a grave and immediate threat to Plaintiff's continued operations.

25. Plaintiff believes that it may be entitled to a significant portion of the nearly \$54 million Anticipated Refund that the IRS will owe to the Consolidated Group if the five-year NOL carry back election is made here. As such, the affirmative tax election by Defendant would significantly enhance Plaintiff's liquidity and its balance sheet, and will, in all likelihood, serve to alleviate the FDIC's concerns in large measure. Put another way, Plaintiff reasonably believes that a potential termination of Plaintiff's banking charter by prudential regulators may be delayed - or quite possibly avoided altogether - if the Defendant elects the five-year NOL carry back and Plaintiff receives its portion of the Anticipated Refund.

26. Strengthening Plaintiff is in the best interests of the Defendant Debtor, its estate and creditors as well. Defendant is currently in a liquidation mode, and Plaintiff is one of Debtor's most valuable remaining assets. Without the Anticipated Refund, Plaintiff's liquidity position is put in jeopardy, which may cause prudential regulators to take adverse action against Plaintiff. Any such action may impair or even extinguish Defendant's equity position in Plaintiff and convert it to a subordinated claim, notwithstanding the pendency of the Defendant Debtor's bankruptcy case. Thus, the Defendant's equity position in Plaintiff could be severely devalued

and its ability to receive distributions from ABC diminished, if not entirely eliminated, as a result thereof.

27. The affirmative tax election and resulting refunds would serve to provide additional capital and liquidity to Plaintiff, stave off potentially disastrous action by prudential recovery for the Debtor and its estate.

28. Section 105 of the Bankruptcy Code provides, in relevant part, that "[t]he court may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title." Accordingly, this Court has authority to enter judgment in favor of the Plaintiff ABC compelling the relief requested herein.

29. Sufficient grounds exist for the court to grant the relief requested herein. There is a substantial likelihood that Plaintiff will ultimately prevail on the merits in this action and be entitled to all or a substantial portion of the Anticipated Refund. There is a strong likelihood of irreparable harm if the Court does not grant the relief requested, as the Defendant may waive its ability to claim the Anticipated Refund, which will eliminate the Plaintiff's ability to recover the same. The harm to the Plaintiff therefore greatly outweighs any harm to the Defendant in requiring that it take action to preserve the Anticipated Refund. Finally, the relief sought herein would not disserve the public interest, and in fact would serve the public interest by improving the Plaintiff's equity position, allowing it to survive as a going concern, and thus increasing the value of an estate asset.

COUNT I

First Claim For Relief – Fiduciary Duty to File an Extension

30. Plaintiff repeats and realleges the allegations contained above in all prior paragraphs, as though fully set forth at length herein.

31. For the aforementioned reasons, Defendant Advanta has a fiduciary duty to timely file for an extension of the deadline to file the Tax Return to avoid any potential waiver of the ability to elect the five-year NOL carry back.

32. Defendant Advanta should be compelled to take the requisite action in order to timely file for an extension of the deadline to file the Tax Return.

COUNT II

Second Claim For Relief – Fiduciary Duty to Elect the Five-Year NOL Carry Back

33. Plaintiff repeats and realleges the allegations contained above in all prior paragraphs, as though fully set forth at length herein.

34. To the extent Defendant Advanta intends to file the Tax Return on or before March 15, 2010, it has a fiduciary duty to affirmatively make the five-year NOL tax election described above.

35. Defendant Advanta should be compelled to affirmatively make the five-year tax election in the Tax Return.

COUNT III

Third Claim For Relief – Injunctive Relief To File an Extension

36. Plaintiff repeats and realleges the allegations contained above in all prior paragraphs, as though fully set forth at length herein.

37. For the aforementioned reasons, Defendant Advanta is obligated to timely file for an extension of the deadline to file the Tax Return to avoid any potential waiver of the ability to elect the five-year NOL carry back.

38. Defendant Advanta should be compelled to take the requisite action in order to timely file for an extension of the deadline to file the Tax Return.

COUNT IV

Fourth Claim For Relief – Injunctive Relief To Elect the Five-Year NOL Carry Back

39. Plaintiff repeats and realleges the allegations contained above in all prior paragraphs, as though fully set forth at length herein.

40. To the extent Defendant Advanta intends to file the Tax Return on or before March 15, 2010, it is obligated to make the five-year NOL tax election described above.

41. Defendant Advanta should be compelled to affirmatively make the five-year tax election in the Tax Return.

WHEREFORE, Plaintiff respectfully requests that the Court enter judgment in favor of Plaintiff and against Defendant, compelling Defendant to: (i) immediately, and in no event later than March 15, 2010, file an extension with the IRS for an extension of the time file the 2009 Tax Return; or, alternatively, (ii) if Defendant timely files its 2009 Tax Return, to make the five-year NOL carry back election as described above, and for such other and further relief as is just and proper.

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Dated: March 14, 2010

PEPPER HAMILTON LLP

/s/ Michael J. Custer
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Counsel to Advanta Bank Corp.

EXHIBIT A

TAX SHARING AGREEMENT

This Fourth Amended and Restated Tax Sharing Agreement, made this 15th day of May, 1995 by and between Advanta Corp., a Delaware corporation, and its wholly owned (except for director qualifying shares, when appropriate) direct and indirect subsidiaries, which are defined in Section 14 as parties hereto ("Subsidiaries"), shall be as follows:

WHEREAS, Advanta Corp. (formerly TSO Financial Corp.) entered into a First Amended and Restated Tax Sharing Agreement on October 1, 1986, a Second Amended and Restated Tax Share Agreement on August 20, 1988 and a Third Amended and Restated Tax Sharing Agreement on October 11, 1989 with its then existing subsidiaries, and the parties thereto now desire to amend and restate the First Amended and Restated Tax Sharing Agreement, the Second Amended and Restated Tax Sharing Agreement and the Third Amended and Restated Tax Sharing Agreement; and

WHEREAS, Advanta Corp. and its subsidiaries are, for purposes of the Internal Revenue Code of 1954, as amended, members of an affiliated group ("Affiliated Group") of which Advanta Corp. is the parent company, and of which all other Advanta Corp. subsidiaries are the member companies ("Member"); and

WHEREAS, it has been determined that for the current year the Affiliated Group should file a consolidated income tax return, and similar determinations may be made with respect to future years; and

WHEREAS, it is the intention of the parties that if such consolidated returns are filed, each Member company should contribute its fair and equitable share to the taxes payable by the Affiliated Group or compensation for the reduction in the net operating loss deduction, capital loss deduction, or other tax benefit of the Affiliated Group resulting from the inclusion of the Member companies in the Affiliated Group, but that in any event, the filing of such consolidated returns shall be beneficial rather than disadvantageous to each Member company and that each Member company should not

disadvantageous to each Member company and that each Member company should not with respect to any year, or part thereof, for which it is a Member of the Affiliated Group be required to pay more in lieu of taxes or receive a payment in lieu of a refund less than it would have paid or received if the Member company had at all times computed and paid its tax liability on a separate return basis. It is intended that this will comply with the pro rata method as described in SFAS 109 and its interpretation and all consideration of regulatory accounting principles.

NOW, THEREFORE, in consideration of the mutual covenants and agreements contained herein, the parties hereto, intending to be legally bound hereby, agree as follows:

1. Computation of Separate Tax.

In any year or part thereof in which it is planned that the Affiliated Group and any other affiliated subsidiaries of Advanta Corp. which may hereinafter become parties to this Agreement should file a consolidated income tax return (either for federal or state taxes), on or before the date provided by law for payment of any federal or state tax or estimated federal or state tax by a Member, or as soon thereafter as the necessary computations have been completed (hereinafter called the "Adjustment Date") a computation shall be made of the accrued taxes or refund of tax properly reflected in the income statement, on a separate company basis, that should be reflected under generally accepted accounting principals. The amount so computed is hereinafter referred to as the "Separate Member Tax" or the "Separate Member Refund," as the case may be.

2. Payments by Member Companies to Advanta Corp.

(a) If on any Adjustment Date there is a Separate Member Tax and the tax payment then due from the Affiliated Group is in excess of the amount of the Separate Member Tax, then the Member shall pay to Advanta Corp. an amount equal to the Separate

Member Tax. No member shall pay to Advanta Corp. an amount in excess of the amount which would have been payable on a separate company basis.

(b) If on any Adjustment Date there is a Separate Member Tax which exceeds the payment then due from the Affiliated Group, the Member shall pay to Advanta Corp. an Adjustment Payment equal to such Affiliated Group payment then due together with 100% of the excess of the Separate Member Tax over the Affiliated Group payment then due, or if no such payment is then due 100% of the Separate Member Tax.

(c) Any tax which is due as a result of an alternative minimum tax calculation shall be paid by the Advanta Corp. to the extent that such tax exceeds the regular tax.

(d) The quarterly estimated income tax payments and the annual tax liability shall be remitted to Advanta Corp. on the due dates prescribed by the Internal Revenue Code of 1954, as amended.

3. Payments by Advanta Corp. to Members.

(a) If on any Adjustment Date there is a Separate Member Refund, and for the period for which such computation is made the Affiliated Group also files a refund claim in an amount equal to or greater than the Separate Member Refund, then promptly after the receipt of the refund payment from the taxing authority there shall be paid to the Member an Adjustment Payment equal to the Separate Member Refund, together with the allocable share of any interest received with respect thereto.

(b) If on any Adjustment Date there is a Separate Member Refund and the Affiliated Group also is entitled to a refund, but such refund is less than the Separate Member Refund, Advanta Corp. shall pay to such Member payment in an amount equal to the Separate Member Refund, together with an allocable share of any interest promptly upon receipt of the refund payment from the taxing authority.

(c) If on any Adjustment Date there is a Separate Member Refund but no Affiliated Group refund, Advanta Corp. shall pay to the Member the amount equal to the Separate Member Refund.

4. Separate Member Loss.

If on any Adjustment Date the separate return computation for a Member would show a loss but not a Separate Member Refund, Advanta Corp. shall pay to the Member an amount equal to the amount of the loss which results in a tax benefit, determined in a manner consistent with the allocation of tax due to taxable Members, from those losses on the consolidated return.

5. Aggregation of Indirect Subsidiaries.

For purposes of determining payments to be made under Section 2, 3 and 4, the separate company calculations described in Section 1 shall be aggregated so that each direct subsidiary of Advanta Corp., which itself has one or more subsidiaries, shall be affiliated with its direct and indirect subsidiaries as if each such direct subsidiary of Advanta Corp. filed a consolidated return.

6. Deferred Taxes.

No member shall pay to Advanta Corp. any portion of its deferred federal income tax liability.

7. Audit Results.

If, as a result of audit or otherwise, it is determined that there was an error in the computation of any Adjustment Payment, an appropriate repayment or additional

payment shall promptly be made, together with interest thereon at the prime rate on the date of such repayment or additional payment, regardless of whether at that date Advanta Corp. and the Members are still joining in consolidated returns filed by the Affiliated Group.

8. Effective Date.

Promptly upon execution hereof, a computation shall be made of the amounts, if any, owing by Advanta Corp. to the Members or the Members to Advanta Corp., as if this Agreement had been in effect since January 1, 1995.

9. Termination.

This Agreement shall terminate if:

- (a) the parties agree in writing to such termination.
- (b) the Member's membership in the Affiliated Group ceases or is terminated for any reason whatsoever.
- (c) the Affiliated Group fails to file a consolidated return for any taxable year.

Notwithstanding the termination of this Agreement, its provisions will remain in effect with respect to any period of time during the tax year in which termination occurs for which the income of the terminating party must be included in the consolidated return.

10. Assignment.

The respective rights and obligations of each of the parties to this Agreement may not be assigned by any party without the prior written consent of the other parties hereto.

11. Arbitration.

Any disputes arising out of the interpretation or implementation of the terms and conditions of this Agreement shall be submitted to binding arbitration.

12. Access.

All materials, including but not limited to tax returns, supporting schedules, workpapers, correspondence and other documents relating to consolidated income tax returns filed by the Affiliated Group shall be made available to any party of this Agreement during regular business hours. This Paragraph 11 shall survive the termination of this Agreement.

13. Nonviolation of Applicable Laws.

No Member shall pay an amount in excess of any limitation contained within this Tax Sharing Agreement or which would otherwise cause such payment to be in violation of any applicable statute, regulation or administrative ruling.

14. Parties.

Any corporation which is currently or which may in the future become an affiliated subsidiary of Advanta Corp. shall become a party to this Agreement when it becomes a member of the Affiliated Group.

This Agreement shall be effective on the date set forth above, upon execution of same.

Amendment

As between Advanta Corp. and Advanta Insurance Company, Advanta Life Insurance Company, Direct National Life Insurance Company and TSO National Life Insurance Company, the Fourth Amended and Restated Tax Sharing Agreement dated May 1, 1995, shall be amended as follows:

To add a new provision at the end of Paragraph 2(d) stating:

; provided however that Advanta Insurance Company, Advanta Life Insurance Company, Direct National Life Insurance Company, and TSO National Life Insurance Company shall be required to make their respective estimated income tax payments no later than 60 days after each Advanta Corp. estimated income tax payment is due.

This Amendment has been agreed to by the parties set forth below, effective as of September 1, 1995, on the dates so indicated.

Advanta Corp.

By: Richard A. Greenawalt
Richard A. Greenawalt, President

Attest: Gene S. Schneyer
Gene S. Schneyer, Secretary

Date: 12/11/95

Advanta Insurance Company
Advanta Life Insurance Company
Direct National Life Insurance Company
TSO National Life Insurance Company

By: Charles Podowski
Charles Podowski, President

Attest: Ronald J. Souders
Ronald Souders, Secretary

Date: 12/11/95

Amendment and Adoption

As between ADVANTA Corp. and Colonial National Financial Corp., the Tax Sharing agreement hereby being adopted dated October 11, 1989, shall be amended as follows:

Paragraph four (4) shall state:

If on any Adjustment Date the separate return computation for a Member would show a loss but not a Separate Member Refund, ADVANTA Corp. shall pay in a reasonable time after the Adjustment Date to the Member an amount equal to the amount of the loss which results in a tax benefit, determined in a manner consistent with the allocation of tax due to taxable Members, from those losses on the consolidated return.

The Agreement has been adopted by the parties set forth below, effective as of April 14, 1993, on the dates so indicated.

ADVANTA Corp.

By: Richard Greenawalt
Richard A. Greenawalt, President

Attest: _____
Gene S. Schneyer

Date: _____

Colonial National Financial Corp.

By: [Signature]
John L. Richards, President

Attest: Julie Boyle
Julie Boyle

Date: 5/18/93

(amended)

EXHIBIT B



RECEIVED MAR 12 2010

Advanta
Bank Corp.
MEMBER FDIC
11850 South Election Road
Draper, UT 84020

March 10, 2010

Dennis Alter
Bill Rosoff
Advanta Corp.
Welsh & McKean Roads
P.O. Box 844
Spring House, PA 19477-08444

Re: Election for 5-Year Carryback of Federal Net Operating Losses

Dear Dennis and Bill:

We continue to miss seeing you both and hope you are well. We were pleased to hear that Bill Wirthlin had a good discussion with Bill Rosoff on the issues. We understand and appreciate the issues you are facing. Given the differing and overlapping constituents we both face, we think regular communication is a good thing.

We wanted to let you know that the Board today decided to amend the Call Report consistent with the discussions in the meeting last Thursday that Jay attended. We also wanted to formally request that Advanta Corp. ("Advanta") (i) file its consolidated income tax return as soon as possible, (ii) immediately thereupon elect to carry its 2009 consolidated net operating loss back five years as permitted under new federal income tax rules, and (iii) immediately thereupon file an application for a tentative carryback adjustment of the tax for the prior tax years affected by the 5-year net operating loss carryback.

Since Advanta is the common parent of an affiliated group of corporations, including Advanta Bank Corp ("ABC"), it files a consolidated return for federal income tax purposes (the "Consolidated Group"). We understand that the Consolidated Group will report a consolidated net operating loss in 2009, and that Advanta, as the Consolidated Group's common parent, may elect to carry this 2009 net operating loss to the Consolidated Group's preceding five taxable years. Our preliminary estimates indicate that the potential refund from the Internal Revenue Service associated with such an election should be approximately \$54 million (the "Anticipated Refund"). ABC believes that it is entitled to a portion of the Anticipated Refund pursuant to and in accordance with the Consolidated Group's tax sharing agreement dated May 1, 1995 (the "TSA").

The timely resolution of this matter is critically important to ABC given ABC's capital status as described in the Report of Examination as of December 31, 2009, which you have been provided, and our decision today to amend the December 31st call report. If the FDIC is appointed receiver of ABC, that event may impair, or even extinguish, Advanta's equity position in ABC and convert any equity into a subordinated claim, notwithstanding the pendency of Advanta's Chapter 11 bankruptcy case. Thus, Advanta's equity position in ABC could be severely devalued and its ability to receive distributions from ABC diminished, if not entirely eliminated, as a consequence of such a course of action by the prudential regulators of ABC.

ABC has discussed with its prudential regulators the possibility that it may be entitled to a portion of the Anticipated Refund should Advanta elect the 5-year net operating loss carryback, and that it is ABC's position that its portion of the Anticipated Refund is material to ABC's viability. We reasonably believe that an extinguishment of your equity in ABC may be delayed – or quite possibly avoided altogether – if ABC is able to demonstrate to its prudential regulators that Advanta intends to expeditiously file a 5-year net operating loss carryback claim and that ABC will receive a portion of the Anticipated Refund in a manner consistent with the TSA. In view of this, the 5-year net operating loss carryback claim requested in this letter may have the effect of, among other things, preserving Advanta's equity position in ABC. We believe ABC has intrinsic franchise value due to the uniqueness of ABC's type of banking charter and the lack of de novo charters currently being approved by the prudential regulators.

Please understand that the 5-year net operating loss carryback claim is a limited opportunity provided for under recent changes to the tax law. Section 172(b)(1)(A) of the Internal Revenue Code of 1986, as amended ("IRC"), provides that a net operating loss for any taxable year may be carried back to the 2 preceding tax years and carried forward to the 20 subsequent tax years. Newly enacted IRC Section 172(b)(1)(H) modifies the general 2-year carryback rule and provides that taxpayers may elect to carry back 2008 or 2009 net operating losses up to five years. Revenue Procedure 2009-52, 4.01(2) provides that the 5-year net operating loss carryback election must be made by the common parent of an affiliated group filing a consolidated return. The 5-year carryback election must be filed with the taxpayer's original or amended federal income tax return for the taxable year of the applicable net operating loss on or before the due date, including extensions, for the return. IRC Section 6411 provides for certain "quick refund" procedures using Form 1139 whereby taxpayers may file and attach a tentative net operating loss carryback claim to their tax return or within 12 months of the end of the year in which the net operating losses arose.

Against this backdrop, ABC requests that Advanta (i) file its consolidated income tax return as soon as possible, (ii) immediately thereupon elect to carry its 2009 consolidated net operating loss back five years as permitted under new federal income tax rules, and (iii) immediately thereupon file an application for a tentative carryback adjustment of the tax for the prior tax years affected by the 5-year net operating loss. We firmly believe this course of action will be mutually beneficial to ABC and Advanta. To be sure, the recovery by ABC of a sizable portion of the Anticipated Refund will enhance its capital position and, in all likelihood, provide the prudential regulators with a greater degree of comfort in its oversight of ABC. This outcome most assuredly inures to the benefit of Advanta and its bankruptcy estate given its equity stake in ABC. I wish to acknowledge the assistance of Frank Mayer in providing the detail for this letter. Please feel free to contact me or Frank with any questions you might have. In the meantime, thank you for your prompt attention to this matter.

Very truly yours,



Calvin M. Boardman
Chairman of the Board of Directors

cc: ABC Board of Directors