

**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, :
: Adv. Proc. No. 10-50795 (KJC)
:
ADVANTA CORP., :
Defendant. : **Related Docket No. 1**
-----X

AMENDED COMPLAINT

Plaintiff Advanta Bank Corp. (“Plaintiff” or “ABC”), by and through its undersigned attorneys, hereby files this Amended 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).

NATURE OF THIS ADVERSARY PROCEEDING

1. This adversary action seeks: (i) a declaration by this Court that Advanta's purported waiver of the Five-Year NOL Carryback (as defined below) treatment for 2009 consolidated net operating losses, and election of the Five-Year NOL Carryback treatment for 2008 consolidated net operating losses, violated Section 363(b) of the Bankruptcy Code and are therefore void; and (ii) a mandatory injunction compelling Advanta either to timely secure an extension from the IRS to file its 2009 Tax Return so as to preclude an irrevocable waiver of the Five-Year NOL Carryback; or, alternatively, to affirmatively elect to carry back 2009 consolidated net operating losses five years on the 2009 consolidated tax return.

JURISDICTION AND VENUE

2. This Court has subject matter jurisdiction of this adversary proceeding pursuant to 28 U.S.C. §§ 1334(b), as a civil proceeding which arises under §§ 105(a) and 363(b) of the United States Bankruptcy Code, 11 U.S.C. § 101 *et seq.* (the "Code"), which arises in and is related to the Chapter 11 case of the Debtor, and which involves the exclusive jurisdiction of this Court over all property, wherever located, of the Debtor and all property of the Debtor's estate and over the administration of the estate pursuant to 28 U.S.C. §§ 157(b)(2)(A), 1334(a) and 1334(e). This is a core proceeding within the meaning of 28 U.S.C. § 157(b).

3. Venue in this judicial district is proper pursuant to 28 U.S.C. § 1409(a).

PARTIES

4. Plaintiff ABC is a Utah industrial bank that has a principal place of business in Dresher, Pennsylvania. Plaintiff is a wholly-owned, non-debtor subsidiary of Defendant.

5. Defendant Advanta is a Delaware corporation with its principal place of business in Spring House, Pennsylvania.

FACTUAL BACKGROUND

A. The Debtor And Affiliated Chapter 11 Filings

6. Advanta and various of its affiliates filed voluntary petitions for relief under chapter 11 of the Bankruptcy Code on November 8, 2009. Advanta 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 operations.

B. The Consolidated Tax Group And 2009 NOLs

7. Advanta is the common parent of an affiliated group of corporations, including ABC, which files consolidated tax returns for federal income tax purposes (the “Consolidated Group”) pursuant to the terms of a tax sharing agreement dated as of May 1, 1995 (the “Tax Sharing Agreement”) that exists among the members of the Consolidated Group. A true and correct copy of the Tax Sharing Agreement is attached hereto as Exhibit A.

8. Revenue Procedure 2009-52, 4.01(2) provides that the Five-Year NOL Carryback 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. The Consolidated Group, including ABC, is therefore dependent on Advanta, as the Consolidated Group’s common parent, to not only file a tax return for the Consolidated Group, but to make an election with respect to the Five-Year NOL Carryback.

9. ABC’s preliminary estimates indicate that if Advanta makes the Five-Year NOL Carryback election, the potential tax refund that would be due from the Internal Revenue Service (“IRS”) is approximately \$54 million (the “Anticipated Refund”). Pursuant to the terms of the Tax Sharing Agreement, ABC would be entitled to all or a significant portion of the Anticipated Refund.

10. Unless Advanta made a timely request for an extension, the deadline for the filing of the Consolidated Group's 2009 consolidated federal income tax return (the "Tax Return") was Monday, March 15, 2010 (the "Tax Deadline"). In past years, Advanta's established practice has been to obtain an extension.

C. ABC's Efforts to Discern Advanta's Intentions

11. Beginning as early as December 2009, ABC attempted to engage Advanta in discussions related to the consolidated NOLs, but Advanta delayed any such discussions, stating that it was still trying to determine where it stood with respect thereto.

12. In the days leading up to the Tax Deadline, ABC sought information from Advanta as to whether it would be filing the Tax Return on or before the Tax Deadline, or whether it would seek an extension to file the Tax Return until September 15, 2010 (as it had previously suggested to ABC). Advanta rebuffed or ignored all such inquiries, stating only that its personnel were not authorized to discuss federal income tax matters with ABC, despite the fact that ABC is a wholly-owned subsidiary of Advanta and a member of the Consolidated Group.

13. Given the refusal of Advanta and its counsel to advise ABC even as to whether it intended to file the Tax Return by the Tax Deadline, ABC requested by letter dated March 10, 2010 that Advanta affirmatively elect the Five-Year NOL Carryback treatment. A true and correct copy of the March 10, 2010 letter is attached hereto as Exhibit B.

14. Following the March 10, 2010 letter, on several occasions through March 14, 2010, ABC's counsel attempted to reach Advanta's counsel to ascertain Advanta's intentions with respect to these issues, but these inquiries went unanswered as well.

15. On March 12, 2010, faced with nothing but silence from its corporate parent and its counsel and with the Tax Deadline looming three days away, ABC was left with no choice but to file its Emergency Motion of Advanta Bank Corp. for Entry of an Order Compelling Debtor Advanta Corp. to (I) Timely File a Request for an Extension of Time to File 2009 Consolidated Federal Income Tax Return; or, in the Alternative. (II) Elect to Carry Back 2009 Consolidated Net Operating Losses Five Years (“ABC Tax Motion”) [D.I. 323]. The ABC Tax Motion sought the entry of an Order requiring Advanta either to timely secure an extension to file the Tax Return or, if it planned to file the Tax Return by the Tax Deadline, to affirmatively elect to carry back the 2009 consolidated net operating losses five years.

16. On the morning of March 12, 2010, ABC’s counsel gave Advanta’s counsel advance notice, as a courtesy, that it was filing the ABC Tax Motion and seeking an emergency hearing on March 15, 2010, unless Advanta confirmed that it intended to request an extension. Like all of ABC’s previous and subsequent inquiries on tax matters, however, this request went unanswered and unacknowledged.

17. On March 14, 2010, ABC also filed the Complaint initiating this adversary proceeding [Adv. Pr. D.I. 1] and seeking relief identical to that sought in the ABC Tax Motion. At the same time, ABC filed its Emergency Motion of Plaintiff Advanta Bank Corp. for Temporary Restraining Order and Preliminary Injunctive Relief Against Defendant Advanta Corp. (the “TRO Motion”) [Adv. Pr. D.I. 3], seeking the issuance of a temporary restraining order and preliminary injunctive relief against Advanta. As with the ABC Tax Motion, ABC requested an emergency hearing for March 15, 2010 on the TRO Motion [Adv. Pr. D.I. 4].

18. Consequently, as of Sunday, March 14, 2010, ABC had sought both in the Debtor’s main bankruptcy case and in this adversary proceeding an emergency hearing before

this Court to decide whether Advanta should be compelled to either request an extension to file the Tax Return or, if it intended to file the Tax Return on or before the Tax Deadline, to elect the Five-Year NOL Carryback treatment.

D. Advanta’s Preemptive Strike on Sunday, March 14

19. On the morning of Monday, March 15, 2010, Advanta filed its objection to the ABC Tax Motion (the “Advanta Tax Objection”). In that Objection, for the first time, Advanta revealed that it had already filed the Tax Return, on the previous day, Sunday, “waiving the carryback of any portion of the consolidated group’s 2009 NOL, and that it filed an amended 2008 federal income tax return for its consolidated group electing the five-year carryback of its 2008 NOL.” Advanta Tax Objection, at ¶ 6.

20. Notably, Advanta could have declined to make the Five-Year NOL Carryback election in the Tax Return but avoided any purported effort to irrevocably and permanently waive the same. Instead, Advanta has stated in the Advanta Tax Objection that it determined it was appropriate and “beyond reproach or rebuttal” to cause the estate and ABC to lose the benefit of \$54 million in tax refunds by purporting to permanently and irrevocably waive its right to ever make the Five-Year NOL Carryback.

E. The Resulting Prejudice to ABC

21. Advanta’s failure and refusal to affirmatively elect the Five-Year NOL Carryback severely prejudices ABC.

22. Under IRC regulations, only Advanta, as the parent entity, can make the tax election. Although ABC is entitled to all or a substantial portion of the Anticipated Refund, ABC cannot make this election itself and is thus dependent on Advanta to do so. Indeed,

Advanta's failure to timely make the election on the consolidated 2009 Tax Return may extinguish any right of ABC to do so on its own behalf at a later date.

23. ABC is one of the largest unsecured creditors of Advanta and its estate, to whom the Debtor plainly owes fiduciary duties, both as a member of the Consolidated Group and as one of Advanta's largest unsecured creditors.

24. ABC may be entitled to all or a significant portion of the nearly \$54 million Anticipated Refund that the IRS will owe to the Consolidated Group if the Five-Year NOL Carryback election is made here. As such, the affirmative tax election by Advanta would greatly enhance ABC's liquidity and its balance sheet.

25. Advanta's failure to elect the Five-Year NOL Carryback on the 2009 Tax Return poses a grave and immediate threat to ABC's continued operations. ABC is currently under supervisory orders by the Federal Deposit Insurance Corporation (the "FDIC"), which has labeled its current status as "critically undercapitalized," the lowest step before prudential regulators may be required to terminate a financial institution's banking charter.

26. The timely resolution of the Five-Year NOL Carryback and ABC's interest in the Anticipated Refund is of critical importance. The potential termination of ABC's banking charter may be delayed - or quite possibly avoided altogether - if Advanta elects the five-year NOL carry back and ABC receives its portion of the Anticipated Refund.

F. The Resulting Prejudice to the Debtor's Estate

27. Strengthening ABC's financial condition is in the best interests of the Debtor, its estate and creditors as well. Advanta is currently in a liquidation mode, and ABC is one of its most valuable remaining assets. The termination of its banking charter or any other adverse regulatory action will impair or even extinguish Advanta's equity position in ABC.

28. The affirmative tax election and resulting refund will provide additional capital and liquidity to ABC, stave off potentially disastrous regulatory action and provide a potential recovery for the Debtor and its estate.

29. In any event, the fact that the Debtor believes that it may be entitled to retain the entirety of the Tax Refund and that at most ABC would hold a general unsecured claim under the Tax Sharing Agreement for its portion thereof (which ABC vigorously disputes), is all the more reason for Advanta to make the Five-Year NOL Carryback election.

FIRST CLAIM FOR RELIEF

Declaratory Judgment

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

31. Section 363(b) of the Bankruptcy Code provides, in relevant part, as follows: “The trustee, after notice and a hearing, may use, sell, or lease, other than in the ordinary course of business, property of the estate ...” 11 U.S.C. § 363(b).

32. There is an actual and substantial controversy within this Court’s jurisdiction as to whether Advanta acted outside the ordinary course of its business and without notice and a hearing as required by Code section 363(b) when it purported to waive the Five-Year NOL Carryback treatment for 2009 losses (resulting in the potential waiver of a \$54 million refund claim) and allegedly elected Five-Year NOL Carryback treatment for 2008 losses.

33. Any act by a debtor taken outside the ordinary course of its business and without notice and a hearing is null and void.

34. The Debtor’s purported waiver of the 2009 Five-Year NOL Carryback, and its alleged election to carry back 2008 NOLs five years, cannot be regarded as transactions in the ordinary course of its day-to-day business. The failure to elect the Five-Year NOL Carryback

treatment for 2009 NOLs purported to waive a \$54 million refund claim against the IRS. The failure to provide for notice of and a hearing on those significant decisions impermissibly skirts the mandates of section 363(b), the rights of creditors, and this Court's power to review transactions outside of the Debtor's ordinary course of business.

35. ABC is entitled to a judicial declaration that Advanta's purported waiver of the Five-Year NOL Carryback treatment for 2009 losses and alleged election of the Five-Year NOL Carryback treatment for 2008 losses were not authorized under section 363(b) of the bankruptcy Code and are therefore null and void.

SECOND CLAIM FOR RELIEF

Mandatory Injunction to File for an Extension

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

37. Advanta owes a fiduciary duty to ABC to timely file for an extension of the Tax Deadline to file the Tax Return to avoid any potential waiver of the ability to elect the Five-Year NOL Carryback and preserve the value of the Anticipated Refund.

38. It is in the best interests of the estate for Advanta to timely file for an extension of the Tax Deadline.

39. If Advanta is permitted to purportedly irrevocably waive the Five-Year NOL Carryback, ABC will have no adequate remedy at law and will be irreparably harmed.

40. Greater injury will be inflicted upon ABC by denying such relief than will be inflicted upon Advanta by granting relief.

41. An injunction should issue compelling Advanta to take the requisite action in order to timely file for an extension of the Tax Deadline.

THIRD CLAIM FOR RELIEF

Mandatory Injunction to Elect the Five-Year NOL Carryback

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

43. Advanta owes a fiduciary duty to ABC to affirmatively elect the Five-Year NOL Carryback described above.

44. It is in the best interests of the Debtor and its estate for Advanta to affirmatively elect the Five-Year NOL Carryback in connection with the 2009 Tax Return.

45. If Advanta fails to elect the Five-Year NOL Carryback, ABC will have no adequate remedy at law and will be irreparably harmed.

46. Greater injury will be inflicted upon ABC by denying such relief than will be inflicted upon Advanta by granting relief.

47. An injunction should issue compelling Advanta to make a timely and affirmative election for the Five-Year NOL Carryback in connection with the 2009 Tax Return.

WHEREFORE, Plaintiff Advanta Bank Corp. respectfully requests that the Court enter judgment in its favor and against Defendant Advanta Corp., as follows:

(i) declaring that Defendant Advanta Corp.'s purported waiver of the Five-Year NOL Carryback treatment for 2009 consolidated net operating losses, and its alleged election of the Five-Year NOL Carryback treatment for 2008 consolidated net operating losses, were actions taken outside the ordinary course of its business, in violation of 11 U.S.C. § 363(b), and are therefore null and void;

(ii) compelling Defendant Advanta Corp. to timely secure an extension from the IRS to file the 2009 Tax Return so as to preclude irrevocable waiver of the Five-Year NOL Carryback;

(iii) compelling Defendant Advanta Corp. to affirmatively elect to carry back 2009 consolidated net operating losses five years on the 2009 consolidated Tax Return.; and

(iv) granting all other just and proper relief.

Dated: March 19, 2010

PEPPER HAMILTON LLP

/s/ Michael J. Custer
Michael J. Custer
Suite 5100, Hercules Plaza
1313 Market Street
P.O. Box 1709
Wilmington, Delaware 19899-1709
Telephone: (302) 777-6500
Facsimile: (302) 421-8390
Email: cuserm@pepperlaw.com

-and-

Leon R. Barson
Bonnie MacDougal Kistler
3000 Two Logan Square
18th and Arch Streets
Philadelphia, PA 19103-2799
Telephone: (215) 981-4000
Facsimile: (215) 981-4750
Email: barsonl@pepperlaw.com
kistlerb@pepperlaw.com

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 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 A. Greenawalt
Richard A. Greenawalt, President

Attest: Gene S. Schneyer

Date: _____

Colonial National Financial Corp.

By: John L. Richards
John L. Richards, President

Attest: Julie Boyle
Julie Boyle

Date: 5/18/93

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