

**IN THE MATTER OF THE PETITION OF**

**" X " BANK AND TRUST COMPANY**

**FOR A DECLARATORY RULING**

**Doc. #1569, eff 4-8-80**

Pursuant to RSA 541-A:8, " X " Bank and Trust Company, a foreign banking corporation incorporated under the laws of Maine, has petitioned the Department of Revenue Administration for a declaratory ruling with regard to the potential applicability of the New Hampshire Business Profits Tax Law (RSA Chapter 77-A: and specifically the applicability of RSA 77-A:1, I., et seq, as amended, effective August 24, 1979, given its proposed limited activity within the State. Through its Vice President and attorneys, " X " represents the following:

1. " X " proposes to make certain mortgage loans to finance construction in New Hampshire of multi-family housing projects, which mortgage loans will be paid out by permanent mortgage funding on the projects by the New Hampshire Housing Finance Agency.
2. " X " proposes to register as a foreign corporation to do business in New Hampshire as required under RSA 300.
3. " X " would send a mortgage loan officer (employee) accompanied by an attorney (non-employee) into New Hampshire for the purpose of closing the construction mortgage loan and executing necessary agreements in connection with the loan. The mortgage and other appropriate documents would be recorded in New Hampshire.
4. " X " would send an employee into New Hampshire once a month for verification of stages of completion.
5. Upon completion of a project, a mortgage officer of " X " with an attorney would attend a permanent mortgage closing at the Bedford, N.H. offices of the New Hampshire Housing Finance Agency, or other suitable or convenient location in New Hampshire.
6. " X " would disburse its construction mortgage funds in (a state) into a (a state) bank account of its borrower.

In view of the foregoing representations, and specifically based upon them, the Department of Revenue Administration finds the following:

1. " X's " proposed limited presence in the State of New Hampshire, notable the infrequent presence of an employee in New Hampshire whose service within this State is incidental to service without this State and the lack of any business location within this State, would not result in the derivation of economic benefit to it from the employment of property or labor within the State nor would it constitute the carrying on of business activity within New Hampshire sufficient to support a claim of "nexus" within the meaning of RSA 77-A:1, I., et seq., as amended, effective August 24, 1979.
2. The Business Profits Tax Law (RSA Chapter 77-A) is a direct tax on net income and as such is a tax applied to an activity with a substantial nexus with New Hampshire. "X's " only proposed connection with New Hampshire is the investment in a mortgage on property located in New Hampshire and the limited and infrequent presence of an employee or employees, whose base of operations is in the (a state) and are non-residents of New Hampshire, for the purpose of servicing on site inspection of property securing the mortgage loans, and closing

construction mortgage loans. This limited connection is construed as being "thin and inconsequential" and is, therefore, insufficient to support a claim of jurisdiction to tax or require the filing of a Business Profits Tax return by the petitioner.

Wherefore, under the specific circumstances represented, the Department of Revenue Administration hereby rules that the New Hampshire Business Profits Tax (RSA Chapter 77-A) would not apply to the income of " X " Bank and Trust Company which is derived from its limited activity in New Hampshire.

LLOYD M. PRICE, Commissioner