

In The Matter of the Petition of "M" Bank

"N" Bank

"O" Company

for a Declaratory Ruling

DOC #2025, Effective April 28, 1982

Pursuant to RSA 541-A:B and Rev 104.04, New Hampshire Code of Administrative Rules, the "M" Bank (hereinafter referred to as "Bank"), chartered as the no place Savings Bank in 1868, "N" Bank (hereinafter referred to as "New Bank"), a new commercial bank and trust company chartered under the laws of the State of New Hampshire, and "O" Company (hereinafter referred to as "Holding Company"), a business corporation organized under Chapter 294, New Hampshire Revised Statutes Annotated (RSA), have petitioned the Department of Revenue Administration for a declaratory ruling with respect to the New Hampshire tax consequences of the reorganization of the "Bank", as the "New Bank", employing the capital stock of the latter bank's parent corporation, "Holding Company". Through its attorneys-in-fact and counsel, the Petitioners represent the following:

The purpose of the Plan of Reorganization, submitted with the petition for declaratory ruling, is to accomplish; (a) the conversion of "Bank" from a mutual savings bank to a commercial stock bank subsidiary of a bank holding company, and (b) the sale of stock of "Holding Company" to "Bank" depositors and other classes of potential subscribers, in general accordance with the procedures established by the Federal Home Loan Bank Board (FNBB) for conversions of mutual savings and loan associations to stock form, as set forth in 12 CFR Chapter 563 b. Accordingly, to that end, a transaction has been proposed, as set forth in the Plan of Reorganization and related Voting Trust Agreement and Plan of Distribution involving "Bank", "New Bank", and "Holding Company", a copy of which has been attached to this Petition for Declaratory Ruling and made a part thereof.

In connection with the transaction described in the Petition and related documents appended thereto, the Petitioners request that declaratory rulings be issued as to the following matters:

1. Provided that the reorganization of the "M" Bank as the "N" Bank, a state chartered commercial stock bank, subsidiary of "O" Company, is deemed by the Internal Revenue Service to qualify as a reorganization within the meaning of Section 368 (a) (1) (A), 368 (a) (1) (C), and (a) (2) (D), and/or 368 (a) (1) (F) of the Internal Revenue Code of 1954, as amended, ("Code") and "Bank", "New Bank", and the "Holding Company" are each deemed to be a "party to a reorganization" within the meaning of Section 368 (b) of the "Code", no gross or taxable business profits will be recognized by "Bank", "New Bank" or the "Holding Company", pursuant to the provisions of the New Hampshire Business Profits Tax (RSA Chapter 77-A) N. H. RSA 77-A:1 (III) (a).
2. The proposed reorganization will not result in taxable income to the shareholders and depositors of "Bank" and "New Bank" or to the holders of the voting trust certificates of the "Holding Company" pursuant to the provisions of the Taxation of Incomes imposed by New Hampshire RSA Chapter 77, except if and to the extent that dividends become payable to holders of the stock and/or voting trust certificates of the "Holding Company", other than in new stock of the "Holding Company", New Hampshire RSA 77:4 (1) and (II).
3. Upon the acquisition of the banking assets and liabilities of "Bank" by "New Bank", "New Bank" will continue to be liable for the franchise tax imposed pursuant to New Hampshire RSA 84:16-a. through c. In addition, "New Bank" will be liable pursuant to RSA 84:16-d for additional franchise taxes; provided, however, that pursuant to RSA 84:16-c, "New Bank" will be entitled to a credit against any tax imposed under that section in an amount equal to the additional tax imposed under Section 16-d.

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

1. N. H. RSA 77-A: 1 (III) (a) defines "gross business profits" in the case of a corporation as the amount shown or which would be shown on a separate federal corporation income tax return as taxable income before net operating loss deduction and special deductions. If it is determined, and conditional upon such determination, that "Bank", "New Bank" and the "Holding Company" and "parties to a reorganization" within the meaning of Internal Revenue Code Section 368 (b), the non-recognition of gain or loss provisions of Internal Revenue Code Section 361 would apply and no gross or taxable business profits would be recognized for purposes of Chapter 77-A, the New Hampshire Business Profits Tax, by "Bank", "New Bank", and the "Holding Company".

2. N. H. RSA 77:4 (I) and (II) provide, in part, that interest from all sources, except interest from notes or bonds of the State of New Hampshire or any political subdivision thereof, or interest from notes or bonds which are direct obligations of the United States, or interest from savings on deposits in all bank, building and loan associations, trust companies and national banks located in the states of New Hampshire and Vermont, is taxable. All dividends except stock dividends paid in new stock of a corporation, association or trust, issuing them, or dividends paid by banks, trust companies, building and loan associations, or national banks located in the State of New Hampshire are taxable. Thus, any income accruing to depositors or shareholders of "Bank" or "New Bank" or to the holders of voting trust certificates of the "Holding Company", as a result of the proposed reorganization, will constitute income exempt from taxation under RSA 77, except for dividends paid to stockholders or voting trust certificate holders of the "Holding Company".

3. N. H. RSA 84:16-c provides that every savings bank, trust company, loan and trust company, loan and banking company, building and loan association, co-operative bank, or other similar bank organized under the laws of this state and of every federal savings and loan association organized to do business in this state shall pay annually a franchise tax equal to one percent of the amount by which the total amount of interest, dividends and divided profits paid or credited by it on its savings deposits, savings shares, savings share accounts, or other similar evidences of savings in the twelve months preceding April first exceeds ten thousand dollars. RSA 84:16-d provides that every banking corporation whose ownership is represented by stock shall in addition pay a tax equal in amount to one percent annually upon its capital stock and special deposits provided, however, that the tax due under Sec. 16-d will be deducted to the extent of any tax due under Sec. 16-c. Thus, "New Bank", upon its acquisition of the banking assets and assumption of the liabilities of "Bank" will become liable for the franchise taxes imposed under RSA 84:16-c, and RSA 84:16-d assessed as indicated herein.

Wherefore, under the specific circumstances represented, the Department of Revenue Administration hereby rules as to the application of the New Hampshire Business Profits Tax (RSA Chapter 77-A), the New Hampshire Taxation of Incomes (RSA Chapter 77) and the New Hampshire Taxation of Banks (RSA Chapter 84) with respect to the reorganization of "M" Bank of no place, New Hampshire as the "N" Bank, a state-chartered commercial stock bank, of no place, New Hampshire, employing the capital stock of the latter bank's parent corporation, "O" Company of no place, New Hampshire.

Lloyd M. Price, Commissioner