

IN THE MATTER OF THE PETITION OF

"M" BANK

FOR A DECLARATORY RULING

Doc. #3035, Effective 6-7-85

Pursuant to RSA 541-A:1, IV, RSA 541-A:2, I, (d) and Rev 104.04, New Hampshire Code of Administrative Rules, the "M" Bank, a national bank association having its principal place of business at , and..... "N" Fund, a common trust fund established by Bank to hold the assets of certain pension and profit-sharing plans ("Plans") qualifying for preferential tax treatment under section 401 (a) of the Internal Revenue Code of 1954, as amended ("IRC"), and certain individual retirement accounts ("IRA's") qualifying

under IRC 408, petition the Department of Revenue Administration for a declaratory ruling as to the New Hampshire Business Profits Tax ("BPT") consequences of the proposed transaction described below.

In order that "N" Fund may invest in New Hampshire real property on a confidential basis, it is proposed that a New Hampshire nominee trust ("Nominee") be established to hold title to this property solely for the benefit of "N" Fund. Three individuals would serve as trustees and could act only with "N" Fund consent. "Nominee" would be ignored, for federal tax purposes, as a mere instrumentality of its beneficiary. Since "N" Fund and "Nominee" is thus, in substance, the same entity, all references to "N" Fund hereinafter will constitute reference to both "N" Fund and "Nominee".

In connection with the transaction described in the Petition and related documents appended thereto, the Petitioner requests that a declaratory ruling be issued as to the following matter:

Inasmuch as "N" Fund is exempt from federal income taxation for purposes of RSA 77-A:1, (I), neither "N" Fund nor "Nominee" is subject to taxation under RSA 77-A:2.

RSA 77-A:1, (I) defines a "business organization" as any enterprise, whether corporation, partnership, proprietorship, association, business trust, real estate trust or any other form of organization, organized for gain or profit, carrying on business activity within the state, except such enterprises as are expressly made exempt from income taxation under the United States Internal Revenue Code (1 E54), as amended.

RSA 77-A:2 requires that a tax at the statutory rate be imposed upon the taxable business profits of every "business organization".

New Hampshire Administrative Rules Rev 301.03, (a) expressly states that those "business organizations" which are made exempt from taxation under Internal Revenue Code Section 501, shall be exempt from tax under RSA 77-A of the New Hampshire statutes.

"N" Fund, which through its nominee holds assets or certain pension and profit-sharing plans, qualified for preferential tax treatment under Section 401 (a) IRC, and certain individual retirement accounts qualified under Section 408 IRC, is exempt from taxation under IRC 501 (a) of the Internal Revenue Code (1954), as amended.

In view of the foregoing representation, and specifically based upon them, the Department of Revenue Administration finds that "N" Fund....., is not a business organization within the meaning of RSA 77-A:1, (I) , and; therefore, is not subject to the Business Profits Tax as assessed under RSA 77-A:2.

June 7, 1985

Everett V. Taylor, Commissioner