

In The Matter of the Petition of

"M" Bank, A Mutual Savings Bank

and the "O" Bank

for a Declaratory Ruling

DOC #2581, Effective January 12, 1984

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 Mutual Savings Bank (hereinafter referred to as "Bank") and "O" Bank (hereinafter referred to as "Holding Company") a business corporation organized and existing pursuant to RSA 293-A with its principal place of business in, N. H., petition the Department of Revenue Administration for a declaratory ruling with respect to the New Hampshire tax consequences of the conversion of the "M" Bank, a Mutual Savings Bank, from mutual to stock form, as a subsidiary of "O" Bank of, New Hampshire. Through its attorneys-in-fact, the Petitioners represent the following:

The purpose of the Plan of Conversion is to accomplish (a) the conversion of a mutual savings bank to a "guaranty" (stock) savings bank subsidiary of Holding Company, and (b) the sale of stock of Holding Company to Bank depositors and other classes of potential subscribers, by a procedure similar to that established by the Federal Home Loan Bank Board ("FHLBB") for conversions of federally chartered mutual thrift institutions to stock forms. Pursuant to New Hampshire RSA 386:10 (II), these procedures and regulations have also been adopted by the New Hampshire General Court (Legislature) and Banking Commissioner for use with respect to conversion of state-chartered mutual savings banks to stock banks.

On September 14, 1983 the Board of Directors of Bank adopted a Plan of Conversion (hereinafter referred to as "Plan") whereby Bank will be converted to a guaranty (stock) savings bank (hereinafter sometimes referred to as "Stock Bank" to distinguish the same from the Bank prior to conversion) all of the stock of which will be held by Holding Company. The Plan states that the business purposes of the conversion are to (1) provide a larger capital base for future operations, enabling management to pursue more aggressively lending and investment opportunities and to expand the operations of the Bank; (2) permit future access to capital markets through the sale of Holding Company stock; (3) ensure the Bank's ability to raise its yield on assets to prevailing market rates through disposition, of outstanding low interest fixed-rate loans and the reinvestment of the sales proceeds and associated income tax savings in new loans at prevailing rates; (4) enhance-growth opportunities through mergers and acquisitions employing Holding Company stock; (5) permit diversification of operations through the Holding Company format; and (6) give depositors and employees an opportunity to participate in the earnings and growth of Bank and the Holding Company through stock ownership. Accordingly, to that end, a transaction has been proposed, as set forth in the Plan of Conversion involving "Bank", "Stock 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 conversion of the "M" Bank, a Mutual Savings Bank from mutual to stock form as a subsidiary of "O" Bank is deemed by the Internal Revenue Service to qualify as a reorganization within the meaning of Section 368 (a) of the Internal Revenue Code of 1954, as amended ("Code") and Bank and Stock Bank 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 realized or recognized by Bank, Stock Bank or Holding Company, as a result of such conversion, pursuant to the provisions of the New Hampshire Business Profits Tax, New Hampshire RSA 77-A:1 (III) (a).

2. The conversion will not result in taxable income to the shareholders and depositors of Bank and Stock Bank or to the shareholders of the Holding Company, pursuant to the provisions of

the New Hampshire Income Tax imposed by New Hampshire RSA Chapter 77, except if and to the extent that dividends become payable to the holders of stock of the Holding Company, other than in new stock of the Holding Company. New Hampshire RSA 77:4 (I) and (II).

3. Following the conversion, Stock Bank will continue to be liable for the franchise tax imposed pursuant to New Hampshire RSA 84:16-a through c. In addition, Stock Bank will be liable, pursuant to RSA 84:16-d, for additional franchise taxes; provided, however, that pursuant to RSA Chapter 84:16-c, Stock 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. New Hampshire RSA 77-A:1 (III) (a) defines "gross business profits" in the case of a corporation, except "S" corporations, as the amount shown or which would be shown on a separate federal corporation income tax return and taxable income before net operating loss and special deductions, thus, adhering to federal tax definitions and principles. If it is determined, and conditional upon such determination, that Bank and Stock Bank are deemed to be "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, Stock Bank or Holding Company.

2. New Hampshire 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 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 and Stock Bank or to the shareholders of Holding Company, as a result of the proposed conversion, will constitute income exempt from taxation under New Hampshire RSA Chapter 77, except for dividends paid to the shareholders of Holding Company, other than in new stock of the Holding Company.

3. New Hampshire 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 See 16-c. Thus, Stock Bank, upon its conversion from mutual to stock form will become liable for the franchise taxes imposed under RSA 84:16-a through c, and will be entitled to a credit against any tax imposed under Sec. 16-c in an amount equal to the additional tax imposed under Sec. 16-d.

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 conversion of the "M" Bank of, New Hampshire from mutual to stock form as a subsidiary of "O" Bank of, New Hampshire.

Lloyd M. Price, Commissioner