

**In The Matter of the Petition of "P" Bank
for a Declaratory Ruling**

DOC #3114, Effective September 16, 1985

Pursuant to RSA 541-A:1, IV, RSA 541-A:2, (d) and Rev 104.04 New Hampshire Code of Administrative Rules, "P" a Mutual Savings Bank (hereinafter referred to as "Bank") chartered under the laws of the State of New Hampshire petitions the Department of Revenue Administration for a declaratory ruling concerning the New Hampshire tax consequences of the conversion of the "Bank" to a stockholder-owned guaranty savings bank wholly owned by "Q" (hereinafter referred to as "Holding"), a business corporation to be organized under such laws for this purpose. The Bank was organized under the laws of the State of New Hampshire on (date). Its principal office is located at , and its taxpayer identification number is The Bank employs the accrual method of accounting and files Its federal income tax returns on an annual accounting period ending on June 30.

The Bank was formed as a mutual organization to engage in the savings bank business. It is a member of the Federal Deposit Insurance Corporation (hereinafter the "FDIC"). As a mutual savings bank, the Bank has no authorized capital stock. The proprietary interest in the Bank's reserves and undivided profits belongs to all of its savings depositors. A savings depositor in the Bank is entitled to interest on his account balance that is declared and paid by the Bank. In addition, each Bank depositor has an intangible ownership interest in the net proceeds on liquidation of the Bank equal to the proportion which his deposit balance bears to the aggregate deposit balances of all Bank depositors. However, liquidation of the Bank requires approval by the FDIC and the Bank Commissioner of the State of New Hampshire (the "Bank Commissioner"), who rarely, if ever, approves liquidation of a solvent savings bank. All of these interests of a Bank depositor cease when he closes his account with the Bank.

The savings depositors in the Bank have no voting rights. Instead, such rights are held by the members of the Bank, a group of individuals called "Corporators". The original Corporators were the individuals named in its charter. Since that time the Corporators have elected their own successors. Management and control of the Bank's business are vested in its Board of Trustees (the "Board"), whose members are elected by the Corporators.

Holding is a business corporation to be organized under N.H. RSA 293-A to effect the proposed transaction and to engage in business as a bank holding company. Holding's principal place of business will be the same as the Bank's. Holding will own all of the stock of the Bank (then called Converted Bank) upon completion of the mutual to stock conversion of the Bank as described below. As part of the conversion, Holding will issue shares of \$1.00 par value voting common stock to persons purchasing such shares through a subscription offering and a community and public offering, and in an offering to the Bank's qualified Employee Stock Ownership Plan ("ESOP") .

In order to encourage the growth and expansion of the Bank, raise additional capital, provide flexibility in future operations and acquisitions and permit diversification of activities, the Board has approved conversion of the Bank into a New Hampshire chartered stockholder-owned guaranty savings bank ("Converted Bank") pursuant to a plan of conversion substantially in the form of the plan enclosed herewith (the "Plan"). The conversion of the Bank into Converted Bank (the "Conversion") will be accomplished pursuant to approval of the Bank Commissioner in accordance with N.H. RSA 386:10, II and N.H. Admin. Rules Tru 500 et seq. New Hampshire Code of Administrative Rules, and by the affirmative vote of a majority of the total number of the Corporators.

Under the Plan, Converted Bank will issue share of \$1.00 dollar par value voting capital stock, all of which will be held by Holding. Holding will issue and offer for sale shares of Holding stock in a two step offering. The aggregate purchase price at which Holding shares will be offered and sold will be approximately equal to the estimated pro forma market value of the Bank as determined by an

independent appraisal. The conversion of the Bank from a mutual to a stock form and the issuance of newly issued shares of Converted Bank to Holding will be deemed effective concurrent with the closing of the sale of Holding stock, as described below.

The Plan further provides that all Holding shares will be issued and sold at a uniform price per share equal to the market value of such stock as determined by an independent appraisal as of the date of closing of the stock sale. The Holding stock will be offered initially to qualifying purchasers pursuant to nontransferable subscription rights. These rights will be offered without compensation therefor to persons ("Eligible Account Holders") who held qualifying deposits of \$50.00 or more ("Qualifying Deposits") on December 31, 1985 (the "Record Date"). Subject to shares being available after the subscription offering, the bank's ESOP will purchase not more than 10% of the total offering of the Holding stock, and all remaining shares will be offered for sale in a so-called "community offering" (i.e., to persons in the region in which the Bank is located) simultaneously with a general public offering.

After the Bank is converted to Converted Bank, all voting rights not attributable to its common stock will expire. A liquidation account (hereinafter the "Liquidation Account") will be established in an amount equal to the net worth of the Bank as set forth in its latest statement of financial condition contained in the final offering circular respecting the offering of Holding Stock. It is anticipated that such statement will be dated as of June 30, 1985. While the establishment of the Liquidation Account will not operate to restrict Converted Bank's use of its net worth, each Eligible Account Holder who had Qualifying Deposits on the Record Date will have a contingent creditor interest in a portion of the Liquidation Account balance. This interest will constitute a right to receive an amount representing the Eligible Account Holder's interest in such net worth of the Bank before any liquidation distribution can be made with respect to its common stock in the event of the liquidation of Converted Bank. An interest in the Liquidation Account will never be increased. It will, however, be decreased as of any June 30 after the Record Date to reflect withdrawals from the depositor's account that reduce the amount therein as of any such June 30 below the amount in such account as of the Record Date or any other June 30.

The net proceeds from the sale of all the shares of Holding stock will become the permanent capital of Holding. Holding will purchase 100% of the stock issued by Converted Bank in exchange for approximately 100% of the proceeds from the Holding stock offering (net of related expenses of the transaction).

Following the Conversion, voting rights in Converted Bank will rest exclusively in its sole shareholder, Holding. Voting rights in Holding will rest exclusively in the holders of its common stock.

The Conversion will not interrupt the business of the Bank, and business will continue as usual. Upon the Conversion, each depositor will receive without payment a deposit account or accounts in Converted Bank equivalent in amount, interest rate and terms (other than with respect to liquidation rights) to his account(s) in the Bank at the time of the Conversion. All loans of the Bank will remain unchanged and will retain the same characteristics after the Conversion. Converted Bank will continue its membership in, and its deposit accounts will continue to be insured up to the legal maximum by, the FDIC and Converted Bank will remain subject to the regulatory authority of the Bank Commissioner.

ADDITIONAL REPRESENTATIONS

The petitioner hereby makes the following additional representations:

(a) The Bank has requested rulings from the Internal Revenue Service by letter dated July 15, 1985, a copy of which is submitted with this petition, that the conversion of the Bank from a mutual savings bank to a guaranty stock savings bank will constitute a reorganization within the meaning of Section 368 (a)(1)(F) of the Internal Revenue Code of 1954, as amended (the "Code"), that no gain or loss will be recognized to the Bank, Converted Bank or Eligible Account Holders as a result of the Conversion, and that the Bank, Converted Bank and Holding will each be a "party to a reorganization" within the meaning of Section 368(b) of the Code.

(b) No amount of the deposits accounts of the Bank as of the Record Date eligible under the Plan will be excluded from participating in the Liquidation Account.

(c) The Bank's savings depositors will pay expenses of the Conversion solely attributable to them, if any. The Bank will pay its own expenses of the Conversion and will not pay any expenses solely attributable to the savings depositors or to the purchasers of Holding stock.

(d) Following the Conversion, Converted Bank will continue to engage in its business in substantially the same manner as engaged in by the Bank prior to the Conversion. Converted Bank has no plan or intention to sell or otherwise dispose of any of its assets other than in the ordinary course of its business.

(e) The fair market value of the deposit accounts in the Converted Bank plus the interests in the Liquidation Account to be received under the Plan will, in each instance, be equal to the fair market value of the deposit accounts plus the contingent interests in the capital of the Bank surrendered in exchange therefor.

(f) Neither Converted Bank nor Holding have any plan or intention to redeem or otherwise reacquire any of the stock to be issued by either corporation in the proposed transaction.

(g) Immediately following the consummation of the Conversion, Converted Bank will possess the same assets and liabilities as the Bank held immediately prior thereto, plus the proceeds from the sale of its common stock to Holding.

(h) No shares of the Holding stock will be issued to or purchased by depositor-employees in the Conversion at a discount or as compensation. Any shares of Holding stock which may be purchased by depositor-employees under any fringe benefit plan of the Bank will be for services actually rendered and will be commensurate with amounts paid to third parties bargaining at arm's length for similar services.

(i) At the time of the Conversion, the fair market value of the assets of the Bank, on a going concern basis, will equal or exceed the amount of its liabilities plus the amount of liabilities to which its assets are subject.

(j) The exercise price of the subscription rights received by Eligible Account Holders to purchase Holding stock will be approximately equal to the fair market value of the stock of Holding at the time of the completion of the proposed transaction.

(k) No other consideration will be given to account holders in lieu of subscription rights.

(l) There is no plan or intention for Holding to sell or otherwise dispose of the stock of Converted Bank received by it in the proposed transaction.

(m) To the best of the petitioner's knowledge, the issues which are the subject of this petition are not under examination by the Department of Revenue Administration (the "Department"), have not been examined and the statutory period of limitation on assessment has not expired in connection therewith, are not under consideration by the Department in connection with a return of a prior period, and are not pending in litigation.

The petitioner hereby requests that the Commissioner issue a declaratory ruling as to the following matters:

(1) Provided that the conversion of the Bank from a state-chartered mutual savings bank to a state-chartered stock savings bank is deemed by the Internal Revenue Service to qualify as a reorganization within the meaning of Section 368 (a)(1)(F) of the Code, and that the Bank, Converted Bank and Holding 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 under the New Hampshire Business Profits Tax N.H. RSA 77-A:1, 77-A:2, will be recognized to either the Bank or Converted Bank as a result of the Conversion.

(2) Provided that the conversion of the Bank from a state-chartered mutual savings bank to a state-chartered stock savings bank is deemed by the Internal Revenue Service to qualify as a reorganization under Section 368 (a)(1)(F) of the Code, and provided further that the Internal Revenue Service determines pursuant to Section 354 (a) of the Code that no gain or loss will be recognized to savings depositors of the Bank upon the receipt by them of savings deposits in Converted Bank (in the same dollar amount as their savings deposits in the Bank) plus their respective interests in the Liquidation Account of Converted Bank in exchange for their savings deposits and proprietary interests in the Bank, no gross or taxable business profits under the New Hampshire Business Profits Tax, N.H. RSA 77-A:1, 77-A:2, will be recognized by reason of the exchange by any of the savings depositors of the Bank that are business organizations under N.H. RSA 77-A:1, I.

(3) Provided that the nontransferable subscription rights to purchase Holding shares which are received in the Conversion by Eligible Account Holders in the subscription offering have no market value so that no gain or loss is recognized to such Eligible Account Holders under federal income tax laws upon receipt or exercise of such rights, no gross or taxable business profits under the New Hampshire Business Profits Tax, N.H. RSA 77-A:1, 77-A:2, will be recognized by virtue of the receipt or the exercise of the subscription rights by any of the Eligible Account Holders that are business organizations under N.H. RSA 77-A:1, I.

(4) The Conversion will not result in taxable income to the shareholders and depositors of the Bank and Converted Bank or to the shareholders of Holding pursuant to the provisions of the New Hampshire income tax imposed by N.H. RSA 77, except if and to the extent that dividends become payable to the holders of stock of Holding, other than in new stock of Holding. N.H. RSA 77:4, I, II.

(5) Upon the acquisition of the assets and liabilities of the Bank by Converted Bank, Converted Bank, as a continuation of an original entity, will continue to be liable for the franchise tax imposed pursuant to N.H. RSA 84:16-a through 16-c. In addition, Converted Bank will be liable pursuant to N.H. RSA 84:16-d for additional capital stock taxes, provided, however, that pursuant to N.H. RSA 84:16-c, Converted 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" corporation, or any other business organization required to make and file a United States corporation income tax return, or in the case of a corporation which does not make and file a separate United States corporation income tax return for Itself because it is a member of an affiliated group pursuant to the provisions of Chapter 6 of the United States Internal Revenue Code (1954) as amended, as the amount shown as, or which would be shown as taxable income before net operating loss deduction and special deductions on such return; thus, adhering to federal tax definitions and principles. If it is determined, and conditional upon such determination, that Bank, Converted Bank and Holding are each determined to be "parties to a reorganization" within the meaning of Internal Revenue Code Section 368 (b) no gross or taxable business profits or taxable business profits will be recognized to either Bank or Converted Bank as a result of the conversion, and provided further, that if the Internal Revenue Service determines, pursuant to Section 354 (a) of the Code, no gain or loss will be recognized to savings depositors of the Bank upon the receipt by them of savings deposits in Converted Bank plus their respective interests in the Liquidation Account of Converted Bank in exchange for their proprietary interests in the Bank, no gross or taxable business profits will be recognized under RSA 77-A:1, III (a) by reason of the exchange by any of the savings depositors of the Bank that are "business organizations" as defined in RSA 77-A:1, I. It is further ruled that no gross or taxable business profits will be recognized under RSA 77-A:1, III (a) by virtue of the receipt of the exercise of subscription rights by any of the Eligible Account Holders that are "business organizations" as defined in RSA 77-A:1,I.

2. New Hampshire RSA 77:4 (1) 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 Converted Bank or to the shareholders of Holding, 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, other than in new stock of Holding.

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 Sec. 16-c. Thus, Converted 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 requested, 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 Income, RSA Chapter 77, and the New Hampshire Taxation of Banks, RSA Chapter 84, with respect to the conversion of the "P" Savings from a mutual savings bank to a stockholder-owned guaranty savings bank owned by "Q".

Everett V. Taylor, Commissioner