

**In The Matter of the Petition of "Y" Savings Bank**

**and "Z" Financial Corporation**

**for a Declaratory Ruling**

**DOC #4156, Effective October 31, 1986**

Pursuant to RSA 541-A:1, I-b; 541-A:2, I (c); and REV PART 209 of the Code of Administrative Rules, "Y" Savings Bank (the "Bank"), a mutual savings bank having its principal office at ..... New Hampshire (EIN .....), and "Z" Financial Corporation (the "Holding Company"), a New Hampshire business corporation having its principal place of business at ..... (EIN .....), have petitioned the Department of Revenue Administration for a declaratory ruling stating that:

(1) Provided that the conversion of Bank from a New Hampshire- chartered mutual savings bank to a New Hampshire-chartered guaranty savings bank ("Converted Bank") is deemed by the Internal Revenue Service to constitute a reorganization within the meaning of Section 368 (a) (1) (F) of the Code, and Bank and Converted Bank are deemed to each 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 (RSA 77-A) will be recognized to Bank or Converted Bank as a result of such conversion [RSA 77-A:1, III (a)].

(2) Provided that the conversion of Bank from a New Hampshire-chartered mutual savings bank to a New Hampshire-chartered guaranty savings bank is deemed by the Internal Revenue Service to constitute a reorganization within the meaning of 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 by the Eligible Account Holders upon the issuance to them of savings accounts in Converted Bank in the same dollar amount as their savings accounts in Bank plus interests in the Liquidation Account of Converted Bank, in exchange for their savings accounts in Bank, no gross or taxable business profits under the New Hampshire Business Profits Tax (RSA 77-A) will be recognized to any Eligible Account Holder that is a business organization under RSA 77-A:1, by virtue of said exchange.

(3) Provided that Code Section 356 (a) (1) applies with respect to the non-transferable subscription rights to purchase Conversion Stock received by Eligible Account Holders in the Conversion and provided further that such rights have no market value, so that no gain or loss is recognized to such Eligible Account Holders under Section 356 (a) (1) of the Code, no gross business profits tax (RSA 77-A) will be recognized to Eligible Account Holders that are deemed to be "business organizations" within the meaning of RSA 77-A:1 by reason of the receipt of such rights.

(4) The conversion of the Bank will not result in taxable income to the depositors of Bank and Converted Bank under the provisions of the New Hampshire Interest and Dividends Tax.

(5) Upon the acquisition of the assets and liabilities of Bank by Converted Bank, Converted Bank, as a continuation of Bank shall be liable for the franchise tax imposed by RSA 84:16-a through 84:16-c, inclusive, and liable for capital stock taxes pursuant to RSA 84:16-d, provided, however, that the tax due under 84:16-d will be deducted from the tax due under 84:16-c.

The petitioner presents the following facts:

1. Bank

Bank (.....) was chartered as a mutual savings bank, in .... Its principal office is located at ....., New Hampshire. It operates with a main office and two branch offices in ....., New Hampshire. At March 31, 1986 Bank had assets of approximately \$ "x" and deposits of \$ "y". At that date, Bank's net worth was approximately \$ "z" million.

As a mutual institution, Bank has no capital stock. The corporate powers of Bank are vested exclusively in a group of .... corporators who are successors to the original incorporators of Bank. Management of Bank is directed by a Board of ..... Trustees elected by the Corporators. In the unlikely event of Bank's complete liquidation while in a solvent condition, each savings depositor would be entitled to receive his pro-rata share of any assets remaining after payment of the claims of all creditors (including the claims of all depositors to the withdrawal values of their accounts).

## 2. Holding Company

Holding Company (EIN ..... ) was incorporated under New Hampshire law in .... Its purposes are to engage in the business of a bank holding company, and generally to carry on any activity permitted by the New Hampshire Business Corporation Act. The authorized capital stock of Holding Company consists of "x" million ..... shares of common stock, par value of \$1.00 per share and ... "y" ... million ..... shares of preferred stock, par value of \$1.00 per share. Holding Company has no assets or liabilities and has not conducted any business.

## 3. The Proposed Conversion Transaction

The Board of Trustees of Bank have adopted a Plan of Conversion ("Plan") pursuant to which Bank will be converted from a New Hampshire-chartered mutual savings bank to a New Hampshire-chartered guaranty savings bank, all of the stock in which will be held by Holding Company.

## 4. Legal Basis for Conversion

The proposed conversion will be accomplished in accordance with Section 506.01 of the conversion rules of the Board of Trust Company Incorporation (The "BTCI") which provides as follows:

A savings bank may convert to the stock form pursuant to Chapter 500 as part of a transaction in which a holding company is organized to acquire upon issuance all the capital stock of the converted savings bank.

Under the conversion rules of the BTCI, the Plan must be submitted to and approved by the BTCI. The Plan is also subject to the approval of the corporators of Bank by an affirmative vote of at least a majority of the total number of votes eligible to be cast at a special meeting of the corporators called for such purpose.

## 5. The Plan of Conversion in General

Generally, the Plan provides that Bank will convert from a mutual savings bank to a guaranty savings bank (in accordance with the regulations of the BTCI; the Holding Company will offer stock ("Conversion Stock") for sale in a subscription offering to eligible categories of depositors of Bank and thereafter the remaining shares will be offered in an underwritten public offering; and approximately ..... percent (.... ) of the net proceeds from the sale of the Conversion Stock will be used by the Holding Company to purchase all of the capital stock of Bank. The purchase price at which Conversion Stock will be sold will be based upon the estimated pro forma market value of the Holding Company and Bank on a consolidated basis determined by an independent firm experienced and skilled in the valuation and appraisal of thrift institutions.

## 6. Business Purpose of Conversion

As stated in the Plan, the Board of Trustees of Bank believes that conversion to the guaranty form provides a means by which Bank can increase the scope of its banking and be permitted to engage in non-banking operations to provide more complete services to its existing and future customers. It will enable Bank to meet more effectively the increasing competition of other banks and bank holding companies in the State of New Hampshire.

## 7. Effects of Conversion

Bank as a guaranty savings bank ("Converted Bank") will be a continuation of the mutual entity, not a new entity, and the Plan so states. Section 505.07 of the conversion regulations of the BTCI provides that:

The corporate existence of a mutual savings bank converting to a guaranty savings bank shall be deemed to be a continuation of the entity so converted.

The name of the converted institution will continue to be ..... "Y" ..... Savings Bank. Converted Bank will automatically succeed to all the properties, rights, interests, duties and obligations of present Bank. While the conversion is being accomplished, the normal business of Bank of accepting deposits and making loans will be continued without interruption. Following conversion, the existing Board of Trustees of Bank will continue as Trustees of Converted Bank. As before, Converted Bank will be regulated by the New Hampshire Department of Banking and, as Bank will continue to be insured by the Federal Deposit Insurance Corporation up to the maximum amount provided by law. Each holder of a savings account in Bank prior to the conversion will continue to hold an account with an identical balance in Converted Bank. The conversion will not affect the loans of borrowers under their individual contractual arrangements with the Bank. Following conversion, the voting rights of the incorporators will terminate and all voting power in Bank will be held exclusively by its stockholder, Holding Company.

The conversion regulations of the BTCI state that no application for conversion will be approved if the conversion would result in a taxable reorganization of the applicant under the Internal Revenue Code of 1954, as amended (the "Code").

## 8. Offering of Conversion Stock

The aggregate purchase price at which all shares of Conversion Stock will be offered and sold will be equal to the consolidated pro forma market value of the Holding Company and Bank, based on an independent appraisal. All such shares will be issued and sold at a uniform price per share.

The plan calls for a 2-phase stock offering. In the first phase, Holding Company will issue, without payment therefor, nontransferable rights to subscribe for Conversion' Stock to two preference categories of depositors of Bank. The first preference category ("Eligible Account Holders") will consist of all persons who had a deposit with a balance of \$50 or more on June 30, 1985 ("Eligibility Record Date"). In the event that Bank's application for approval of conversion has not been approved within 12 months from the date the Bank's Board of Trustees adopted the Plan, a second preference category will be reserved for those eligible persons holding qualified deposits on a Supplemental Eligibility Record Date.

The period of time within which subscription rights must be exercised will be approximately 20 days following the date of the mailing of the order forms to Eligible Account Holders and Supplemental Eligible Account Holders (if applicable).

Under the Plan, any shares remaining unsubscribed for after the closing of the subscription offering will be offered to the public in an underwritten public offering. The public offering is to commence as soon as practicable after the end of the subscription offering.

After the independent appraiser determines the estimated pro forma market value of Holding Company, on a consolidated basis, Bank and Holding Company will establish the number of shares of common stock to be issued and sold and establish a price range per share. Stock will then be offered in the subscription offering at a price within the estimated range, with a means, the refund given to subscribers if the final price is lower. By this price per share ultimately paid by subscribers in the subscription offering and by purchasers in the public offering will be the same.

## 9. Purchase Limitations

Under the Plan, the following purchase limitations apply to all shares of Conversion Stock to be issued in the conversion except for purchases by the underwriters for the public offering.

A. No less than 25 shares may be purchased by any person subscribing to any shares in the conversion.

B. No person (including any associate or group of persons affiliated with each other or otherwise acting in concert with such person) may purchase more than 1% of the Conversion Stock.

C. Bank's Board of Trustees and officers and their associates as a group may not purchase in the aggregate more than 31% of the Conversion Stock under the Plan.

Conversion Stock is to be purchased by Eligible Account Holders and Supplemental Eligible Account Holders, if any, on their own behalf and without a present intention for prompt resale, but will be freely transferable without restrictions. Conversion Stock purchased by trustees and officers of Bank, may not be sold for a period of one year following the conversion except in the event of the death of the person to whom such shares were initially sold under the terms of the Plan.

The Plan provides that Bank and Holding Company will not be required to offer subscription rights to any person who resides in a foreign country or who resides in a state of the United States with respect to which the following apply: (a) a small number of persons otherwise eligible to subscribe for shares under the Plan reside in such state; (b) the granting of subscription rights or offer or sale of shares of Conversion Stock to such persons would require Holding Company, the Bank or the officers or directors thereof under the securities laws of such state to register as a broker, dealer or agent or to register or otherwise qualify its securities for sale in such state, and (c) such registration or qualification would be impractical for reasons of cost or otherwise.

Depositors under the Plan who are not afforded a right to subscribe for the Conversion Stock under the Plan will not receive cash or property in lieu of subscription rights.

## 10. Liquidation Account

Pursuant to conversion regulations of the BTC1, Bank will establish under the Plan, a "Liquidation Account" which will be equal in amount to Bank's net worth as shown on its latest statement of financial condition to be included in the latest prospectus used in the Conversion. The Liquidation Account will be for the purpose of granting Eligible Account Holders (and if applicable, Supplemental Eligible Account Holders) who continue to maintain accounts in the Converted Bank, an absolute right priority over Holding Company as holder of the common stock of the Converted Bank to the extent of the interest of each Eligible Account Holder or Supplemental Eligible Account Holder as hereinafter described.

Establishment of the Liquidation Account will not operate to restrict the use or application by Converted Bank of any of its net worth, except that net worth accounts of Converted Bank shall not be reduced voluntarily to less than the required dollar amount of the Liquidation Account.

An interest in the Liquidation Account will never be increased. It will be decreased generally to reflect subsequent withdrawals from a depositor's account that reduce the account balance below what it was at the time of the conversion.

11. Bank's depositors will pay the expenses of the conversion which are solely attributable to them, if any. Bank will pay its own expenses of the conversion and will not pay any expenses solely attributable to the stockholders or to Holding Company.

12. Following the conversion, Converted Bank will continue to engage in its business in the same manner as prior to the conversion, and it has no plan or intention to sell or otherwise dispose of any of its assets other than in the ordinary course of business.

13. The fair market value of the Converted Bank's withdrawable deposits plus the interests in the Liquidation Account to be received under the Plan will, in each instance, be approximately equal to the fair market value of Bank's deposits and any proprietary interests surrendered in exchange therefor.

14. Immediately following consummation of the Conversion, Converted Bank will possess the same assets and liabilities as it held immediately prior to the proposed transaction, plus the applicable proceeds from the sale of the Bank's common stock.

15. There will be no purchase price advantage to account-holders purchasing shares with subscription rights over persons purchasing shares in the public offering because all purchasers will pay the same price for the stock.

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 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 or 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 (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 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 "Y" Savings Bank from a mutual savings bank to a stockholder-owned guaranteed savings bank owned by "Z" Financial Corporation.

Everett V. Taylor, Commissioner