

In The Matter of the Petition of "M" and "N"
for a Declaratory Ruling

DOC #2479, Effective August 19, 1983

Pursuant to RSA 541-A:1, I-b, 541-A:2, I (d) and Rev 104.04, New Hampshire Code of Administrative Rules, "M" , a mutual savings bank (hereinafter referred to as "Savings Bank") having its principal office at "X" , New Hampshire EIN # , and "N" , a New Hampshire business corporation (hereinafter referred to as "Holding Company") having its principal place of business at "X" , New Hampshire, EIN # ----- , have petitioned the Department of Revenue Administration for a declaratory ruling with respect to the New Hampshire tax consequences of the conversion of "M" , ("Savings Bank") from a state-chartered mutual savings bank to (hereinafter referred to as "Converted Savings Bank"), a state-chartered capital stock or guaranty savings bank, as part of a transaction in which "Converted Savings Bank" will become a wholly-owned subsidiary of "Holding Company", newly formed under New Hampshire law for the purpose, and will transfer to "Holding Company" as an incident to the conversion, its stock interest in "P" , (hereinafter referred to as "National Bank") with which it has been historically affiliated. Through its attorney and counsel, the Petitioners represent the following:

The purpose of the Plan of Conversion, submitted with the petition for a declaratory ruling is to accomplish: (a) the conversion of "Savings Bank" from a state-chartered mutual savings bank to a state-chartered stock savings bank (known in New Hampshire as a guaranty savings bank), all of the stock in which will be held by "Holding Company" to be formed for the purpose, and (b) the sale of stock of "Holding Company" in a subscription offering to eligible categories of depositors of "Savings Bank" and thereafter the remaining shares will be offered in an underwritten public offering, in general accordance with Section 506.01 of the conversion rules of the Board of Trust Company Incorporation (BTCI) which provides that a mutual savings bank may convert to the stock form as part of a transaction in which a holding company is organized to acquire upon issuance all of the capital stock of the converted savings bank as does its Federal counterpart, 12 CFR Sec. 563 b. 9.

Accordingly, to that end, a transaction has been proposed, as set forth in the Plan of Conversion, 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 with reference to the facts and circumstances set forth herein, the Petitioners request a declaratory ruling as to the following matters:

1. Provided that the conversion of Savings Bank from a state-chartered mutual savings bank to a state-chartered capital 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 Internal Revenue Code, and that Savings Bank and Converted Savings 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 under the New Hampshire Business Profits Tax (RSA 77-A) will be recognized to either Savings Bank or Converted Savings Bank as a result of the proposed conversion (RSA 77-A:1, III (a)).

2. Provided that the conversion of Savings 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 Internal Revenue 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 Savings Bank upon the receipt by them of savings deposits in Converted Savings Bank (in the same dollar amount as their savings deposits in Savings Bank) plus their respective interests in the Liquidation Account of Converted Savings Bank, in exchange for their savings deposits and

proprietary interests in Savings Bank, no gross or taxable business profits under the New Hampshire Business Profits Tax (RSA 77-A) will be recognized to any of said savings depositors of Savings Bank that are business organizations under RSA 77-A:1, I by virtue of said exchange.

3. Provided that the non-transferable subscription rights to purchase Holding Company shares that are received in the conversion by eligible savings depositors of Savings Bank in the subscription offering have no market value, so that no gain or loss is recognized to such savings depositors under Section 356 (a) (1) of the Internal Revenue Code, no gross or taxable business profits under the New Hampshire Business Profits Tax (RSA 77-A) will be recognized to any of the said savings depositors of Savings Bank that are business organizations under RSA 77-A:1, I by reason of the receipt of such subscription rights.

4. The proposed conversion of Savings Bank to a stock savings bank will not result in taxable income to the depositors of Savings Bank and Converted Savings Bank under the provisions of the New Hampshire Interest and Dividends Tax (RSA 77).

5. Upon the acquisition of the banking assets and liabilities of Savings Bank by Converted Savings Bank, Converted Savings Bank, as a continuation of original entity, will continue to be liable for the franchise tax imposed pursuant to New Hampshire RSA 84:16-a through 16-c. In addition, Converted Savings Bank will be liable pursuant to RSA 84:16-d for additional capital stock taxes; provided, however, that pursuant to RSA 84:16-c, Converted Savings 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.

6. The proposed distribution by Converted Savings Bank to its sole stockholder, Holding Company, immediately following the conversion, of Savings Bank's x % stock interest in National Bank, as a dividend in kind, will not constitute a taxable dividend to Holding Company under the provisions of the New Hampshire Interest and Dividends Tax (RSA 77:4, II).

7. Under the Business Profits Tax (RSA 77-A), the amount which Holding Company will include in its gross business profits by reason of the distribution to it by its wholly-owned subsidiary, Converted Savings Bank, of Bank's x % stock interest in National Bank as a dividend in kind, will be determined by application of the provisions of Section 301 (b) (1) (B) of the Internal Revenue Code, and will be measured by the adjusted basis of such National Bank stock in the hands of Converted Savings Bank immediately before the distribution (such basis being less than the fair market value of said National Bank stock).

8. Holding Company, as the parent of an affiliated group pursuant to the provisions of Chapter 6 of the Internal Revenue Code, including its wholly-owned subsidiary, Converted Savings Bank, although not entitled to file a consolidated return for the group for purposes of the Business Profits Tax, will be entitled to a deduction from its gross business profits, in determining its taxable business profits under RSA 77-A, of so much of such gross business profits as are derived from said dividend in kind (National Bank stock) paid to it by said subsidiary, provided the gross business profits of said subsidiary have already been subject to taxation under RSA 77-A during the same taxable year.

9. Any dividends that become payable to the shareholders of Holding Company following the conversion, other than stock dividends paid in new stock of the Holding Company, will constitute taxable income under the Interest and Dividends Tax (RSA 77:4, II).

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 and special deductions. If it is determined by the Internal Revenue Service, and conditional upon such determination, that the conversion

of "Savings Bank" from a state-chartered mutual savings bank to "Converted Savings Bank" a state-chartered capital stock savings bank qualifies as a reorganization within the meaning of Section 368 (a) (1) (F) of the Internal Revenue Code and that "Savings Bank" and "Converted Savings Bank" are deemed to be "a party to a reorganization" within the meaning of Section 368 (b) of the Internal Revenue Code, no gross or taxable bulkiness profits would be recognized for purposes of Chapter 77-A, the New Hampshire Business Profits Tax, by "Savings Bank" and "Converted Savings Bank".

If it is determined by the Internal Revenue Service that "Savings Bank" and "Converted Savings Bank" are parties to an "F" type reorganization, and conditional upon such determination, and it is further determined by the Internal Revenue Service that (i) the provisions of Sec. 354 (a) of the Internal Revenue Code are applicable in the case of exchange by savings depositors of "Savings Bank" of their savings deposits and proprietary interests in "Savings Bank" for identical savings deposits in "Converted Savings Bank" plus their respective interests in the Liquidation Account of "Converted Savings Bank", and (ii) the provisions of Sec. 356 (a) (1) of the Internal Revenue Code are applicable in the case of the non-transferable subscription rights to purchase "Holding Company" shares that are received by eligible savings depositors in the conversion of "Savings Bank", no gross business profits or taxable business profits under the New Hampshire Business Profits Tax (RSA Ch. 77-A) will be recognized to savings depositors of "Savings Bank" that are deemed to be "business organizations" within the meaning of RSA 77-A:1, I by virtue of said exchange, or by reason of the receipt of such non-transferable subscription rights provided such rights have no market value.

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 banks, building and loan associations, trust companies and national banks located in the State of New Hampshire and Vermont, is taxable. Thus, any interest or dividend income accruing to depositors or shareholders of "Savings Bank" or "Converted Savings Bank" as a result of the proposed reorganization will constitute income exempt from taxation under Chapter RSA 77, except for dividends paid to stockholders of the "Holding Company".

3. N.H. Chapter 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 the State of New Hampshire, and of every federal savings and loan association organized to do business in the State of New Hampshire 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 or special deposits; provided, however, that the tax due under section 16-d will be deducted to the extent of any tax due under section 16-c. "Converted Savings Bank", upon its acquisition of the banking assets and assumption of the liabilities of "Savings Bank", will become liable for the franchise taxes imposed under RSA 84:16-c and RSA 84:16-d assessed as indicated herein.

4. N.H. Chapter RSA 77:4, II exempts dividends received from New Hampshire state banks, trust companies, building and loan associations, or national banks from the New Hampshire Interest and Dividends tax, therefore, the distribution of the x% stock interest in "National Bank" from "Converted Savings Bank" to "Holding Company" shall not constitute a taxable dividend to "Holding Company" under the provisions of the New Hampshire Interest and Dividends Tax.

5. The business profits tax law defines a corporation's gross business profits as the amount shown or which would be shown on a separate federal corporation return as taxable income before net operating loss and special deductions. Since under federal tax law, a corporation

filing a separate income tax return would include the distribution of stock in its income as a dividend under Sec. 301 of the Internal Revenue Code (1954) as amended. The amount of the distribution to be included is to be determined under Sec.301 (b) (1) (B) and Sec.301, (c) (1) of the Code.

The adjusted basis of the property distributed shall be determined in conformity with IRC regulation 1.301-1 (e). Assuming that "Converted Savings Bank" has earnings and profits in excess of the adjusted basis of its National Bank stock, "Holding Company" would include the adjusted bases of the distributed stock as dividend income in its gross business profits.

RSA 77-A:4, V permits a parent corporation to deduct the dividends received from its subsidiaries provided that the gross business profits of the dividend paying subsidiary have been subject to taxation under RSA 77-A during the same taxable period. Assuming that "Converted Savings Bank" has sufficient current earnings, and that the earnings have been subject to RSA 77-A in the year of the distribution, "Holding Company" will be entitled to a deduction from its gross business profits under RSA 77-A:4, V.

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" from a state-chartered mutual savings bank to a state-chartered capital stock or guaranty savings bank, such bank becoming a wholly-owned subsidiary of "N".

Lloyd M. Price, Commissioner