

In The Matter of the Petition of "M" Bank & Trust

for a Declaratory Ruling

DOC #4322, Effective October 7, 1987

Pursuant to RSA 541-A:1, I-b, 541-A:2, I, (c) and PART Rev 209 of the New Hampshire Code of Administrative Rules, "M" Bank and Trust Company, in organization, (the "Petitioner") having its current address c/o "m" has petitioned the Department of Revenue Administration for a Declaratory Ruling stating that the tax liability under N.H. RSA 84:16-d can be lowered by reducing the par value of the Petitioner's capital stock pursuant to RSA 392:25 and 26 while the taxpayer is organized but not doing business.

The Petitioner presents the following facts:

(1) On, 1987, The Board of Trust Company Incorporation of the State of New Hampshire issued its approval of the establishment of the Petitioner.

(2) On, 1987, the Secretary of State of the State of New Hampshire approved the establishment of Petitioner as an existing corporation with a capital stock of "x" thousand ("X",000) shares having a par value of "x" dollars ("X") per share.

(3) On, 1987, Petitioner received approval to obtain deposit insurance from the Federal Deposit Insurance Corporation subject to certain conditions, including receipt of paid in capital and surplus of not less than "x" million dollars (\$ "x",000,000) .

(4) Article V of Petitioner's Amended and Restated Articles of Agreement dated, 1987 provides that Petitioner's capital stock shall consist of "x" thousand ("x",000) shares having a par value of "x" dollars ("X") per share.

(5) None of Petitioner's stock has been issued yet, and no consideration for the stock has been paid.

(6) Petitioner wishes to lower the par value of its "x",000 shares of stock to "x" dollar ("X") per share and increase the capital or earned surplus to "x" dollars ("X").

Under the provisions of RSA 84:16-d the Petitioner is required to pay an "additional tax" equal to "one percent annually upon its capital stock". The statute reads;

84:16-d Additional Tax. Every such corporation as defined in section 16-a, except mutual savings banks, building and loan associations, cooperative banks, federal savings and loan associations and other similar mutual banking institutions, shall in addition pay at the same time to said department of revenue administration a further tax equal in amount to one percent annually upon its capital stock or special deposits; provided however that preferred capital stock or preferred special deposits of such corporations issued with the approval of the bank commissioner, or the comptroller of the currency under the provisions of an act of Congress approved March 9, 1933 entitled "An Act to Provide Relief in the Existing National Emergency in Banking and For Other Purposes" and amendments thereof shall be exempt therefrom.

Because the Petitioner is a corporation as defined in RSA 84:16-a, and is not an excepted institution listed in RSA 84:16-d it must remit to the Department of Revenue Administration the one percent tax specified in RSA 84:16-d. By reducing the par value of its stock from "\$x" to "\$x", the Petitioner correctly deduces that the tax due under RSA 84:16-d will fall proportionately with the fall in the par value. The Department of Revenue Administration indexes its enforcement of RSA 84:16-d to RSA 392, and in the particular instance of this ruling to sections 25 and 26 of that Chapter. By conforming to the rules and procedures of the Bank Commissioner the Petitioner will reduce the RSA 84:16-d assessment by reducing the par value of its stock.

Everett V. Taylor, Commissioner