

**In The Matter of the Petition of "M" Company**

**for a Declaratory Ruling**

**DOC #1773, Effective June 12, 1981**

Pursuant to RSA 541-A:8, the "M" Company, a mortgage banking company and wholly owned subsidiary of "N" Corporation, a bank holding company, has petitioned the Department of Revenue Administration for a declaratory ruling with regard to the potential applicability of the New Hampshire Business Profits Tax Law (RSA Chapter 77-A), and specifically the applicability of RSA 77-A:1, I et seq., as amended effective August 24, 1979, given its proposed activity within the State. Through its Assistant Vice President and Counsel, and New Hampshire attorneys, "M" Company represents the following:

1. "M" Company intends to purchase mortgage loans which will have already been closed from banks operating in New Hampshire.
2. "M" Company is a non-New Hampshire corporation and is not registered as a foreign corporation qualified to do business in this State.
3. "M" Company intends to contract with independent contractors to service the mortgage loans purchased by "M" Company.
4. "M" Company does not intend to establish or maintain offices or personnel within the State of New Hampshire.

In view of the foregoing representations, and specifically based upon them, the Department of Revenue Administration finds the following:

1. The Business Profits Tax Law (RSA Chapter 77-A) is a direct tax on net income of business organizations whose activities have a minimal connection (nexus) with the State of New Hampshire. The jurisdictional standard is stated in RSA 77-A:1, I and consists of the employment of property or labor or both or the carrying on of any business activity within the state.
2. The Supreme Court of New Hampshire in *Concord Investment Corporation v. New Hampshire Tax Commission* (1974) 114 NH 105, 316 A2d 452 ruled that the word "property" as contained in RSA 77-A:1, I is not limited to tangible property, but as specifically set forth in the Report of the Citizen's Task Force, on which the statute is based, is intended to include intangible property. It further held that the employment of attorneys to handle legal and financial matters constituted the employment of labor within the State.
3. Intangible property, a term used chiefly in the law of taxation, means such property as has no intrinsic or marketable value, but is merely the representative or evidence of value, such as certificates of stock, bonds, promissory notes and franchises.
4. "M" Company, by its intended investment in mortgages on property in New Hampshire and its retention of independent contractors to service these mortgage loans will be employing property and labor and engaging in business activity within New Hampshire sufficient to create a "nexus" with this State and would be a "business organization" within the meaning of RSA 77-A:1, I.

Wherefore, under the specific circumstances represented, the Department of Revenue Administration hereby rules that the New Hampshire Business Profits Tax (RSA Chapter 77-A) would apply to the income of Company, which would be derived from its proposed activity within New Hampshire.

Lloyd M. Price, Commissioner