

**In the Matter of the Petition of "S" Bank and "T" Holding Company**

**for a Declaratory Ruling**

**DOC #4344, effective December 16, 1987**

Pursuant to RSA 541-A:1, IV, RSA 541-A:2, I (d), and PART Rev 209 New Hampshire Code of Administrative Rules, "S" Bank, a mutual savings bank chartered under the laws of the State of New Hampshire (the "Bank"), has petitioned the Department of Revenue Administration for a declaratory ruling concerning the New Hampshire tax consequences of the conversion of the Bank from a New Hampshire-chartered mutual savings bank to a New Hampshire-chartered stockholder-owned guaranty savings bank (the "Converted Bank") as part of a transaction in which the Converted Bank will become a wholly-owned subsidiary of "T" Holding Company (the "Holding Company").

The Bank has its principal office at ".....", New Hampshire, and its Taxpayer Identification Number is "xxxxxxxxxx." The Holding Company will be a newly formed New Hampshire corporation having its principal office at it ".....", New Hampshire, and it will apply for a Taxpayer Identification Number. The Bank was chartered as a mutual organization to engage in the savings bank business in New Hampshire in 1823. It operates through its principal office in ".....", New Hampshire, and three branch offices in ".....", ".....", and ".....", New Hampshire.

As a mutual savings bank, the Bank has no capital stock. Instead, the corporate powers of the Bank are vested exclusively in a group of individuals referred to as "Corporators" who are successors to the original incorporators of the Bank. The management of the Bank is directed by a Board of Trustees (the "Board") whose members are elected by the Corporators.

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, in the unlikely event of a complete liquidation of the Bank while in a solvent condition, each savings depositor is entitled to receive his or her share, equal to the proportion which his or her account balance bears to the aggregate account balances of all savings depositors, 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). The Bank's charter also permits payment of nonliquidating dividends to its depositors out of its undivided profits. All of these interests of a depositor in the Bank cease when his or her account with the Bank is closed.

Holding Company will be a newly formed New Hampshire corporation which will be created under New Hampshire law to engage in business as a bank holding company and generally to carry on any activity permitted by the New Hampshire Business Corporation Act. The Holding Company will be authorized to issue "xx" million shares of common stock, par value of \$. "yy" per share and "xx" million shares of preferred stock, par value of \$. "yy" per share.

I. The petitioner presents the following facts:

#### 1. Proposed Conversion Transaction:

The Board has approved the conversion of the Bank into the Converted Bank, all of the stock of which will be held by Holding Company, pursuant to a Plan of Conversion (the "Plan").

#### 2. Legal Basis for Conversion:

The conversion of the Bank into the Converted Bank (the "Conversion") will be accomplished pursuant to approval of the Board of Trust Company Incorporation in accordance with the applicable New Hampshire regulations, and by the affirmative vote of a majority of the total number of Corporators.

#### 3. Conversion Process:

In connection with the conversion, Holding Company will offer its stock sale in a subscription offering to eligible categories of depositors, trustees, officers, Corporators and employees of the Bank and a community offering to residents of local areas. Thereafter the remaining shares will be offered in an underwritten public offering. Approximately "xx"% of the net proceeds from the sale of the Holding Company stock will be used by Holding Company to purchase all of the capital stock of the Bank. The purchase price at which the Holding Company stock will be sold will be based upon the estimated pro forma market value of Holding Company and the Converted Bank on a consolidated basis determined by an independent firm experienced and skilled in the valuation and appraisal of thrift institutions.

#### 4. The Conversion is for a Business Purpose.

The Board believes that conversion of the Bank to a stockholder-owned bank owned by a holding company will encourage the growth and expansion of the Bank, raise additional capital, provide flexibility in future operations and acquisitions and permit diversification of activities. It will enable the Bank to provide more complete services to its existing and future customers, and to meet more effectively the increasing competition of other banks and bank holding companies in the State of New Hampshire.

#### 5. Effects of Conversion:

The Bank will convert into the Converted Bank which will automatically succeed to all the properties, rights, interest, duties and obligations of the Bank, and all of its stock will be held by Holding Company. The conversion will not interrupt the business of the Bank; its business will continue as usual. Following the conversion, the name of the Converted Bank will be the same as that of the Bank and the existing Board of the Bank will continue as directors of the Converted Bank. Each savings depositor in the Bank prior to conversion will continue to hold a deposit account or accounts in the Converted Bank with an identical balance, interest rate and terms (other than with respect to liquidation rights). The conversion will not affect the loans of borrowers under their individual contractual arrangements with the Bank. Following the conversion, the voting rights in the Converted Bank will be held exclusively by Holding Company, its stockholder.

#### 6. Offering of Holding Company Stock:

The aggregate purchase price at which all shares of Holding Company stock will be

sold will be equal to the consolidated pro forma market value of Holding Company and the Converted Bank, based upon an independent appraisal. All such shares will be issued and sold at a uniform price per share. Approximately "xx" percent of the net proceeds from the sale of the Holding Company stock will be used by Holding Company to purchase all of the stock of the Converted Bank.

The Holding Company stock will be offered initially to qualifying purchasers pursuant to nontransferable subscription rights. The nontransferable subscription rights will be offered without compensation therefor on the basis of preference categories established under the Plan. The first preference category ("Eligible Account Holders") will consist of all persons who held any deposit, investment certificate, NOW account or other deposit account in the Bank, with a value of "\$yy" or more on the date fixed for determining subscription rights (".....", 1987, the "Eligibility Record Date"). In the event that the Bank's application for approval of the conversion has not been approved within 12 months from the date the Board adopted the Plan, a second preference category will be established for those eligible account holders with a deposit of at least "\$yy" on a supplemental eligibility record date (the "Supplemental Eligible Account Holders"). To the extent that there are shares available after the Eligible Account Holders and the Supplemental Eligible Account Holders have exercised their rights, nontransferable subscription rights will be offered without compensation therefor to the final preference category consisting of Holding Company's Employee Stock ownership plan (the "ESOP") and trustees, officers, Corporators and employees of the Bank (the "Other Eligible Subscribers"). Under the Plan, any shares remaining unsubscribed for in the subscription offering will be offered to persons in the region in which the Bank does business in a "Community Offering" and thereafter to the public in an underwritten public offering. There are certain minimum and maximum limitations on the number of shares that may be purchased by members of each preference category, and no purchaser will be permitted to purchase more than "x%" of the common stock of Holding Company.

#### 7. Distribution and Liquidation Account:

At the time of the conversion, a distribution and 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 included in the prospectus for the conversion. The distribution and liquidation account will be for the purpose of providing each Eligible Account Holder (as defined above) who had a qualifying deposit in the Bank with 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 to Holding Company with respect to the common stock. An Eligible Account Holder may also be entitled to a pro rata share of dividends paid prior to liquidation, if any, from the distribution and liquidation account. An interest in the distribution and liquidation account will never be increased, but it will be decreased to reflect subsequent withdrawals from the depositor's account.

#### 8. Federal Income Tax Treatment:

The Bank will receive either an opinion of counsel or a ruling from the Internal Revenue Service to the effect that the conversion will constitute a reorganization within the meaning of Section 368(a)(1)(F) of the Internal Revenue Code of 1986 (the "Code") and will not be subject to federal income taxation.

## 9. Further Representations:

- a. The fair market value of the deposit accounts in the Converted Bank plus the interest in the distribution and liquidation account to be received under the Plan will, in each instance, be approximately equal to the fair market value of the deposit accounts and any residual interests in the Bank surrendered in exchange therefor.
- b. No amount of an individual's qualifying deposit accounts in the Bank as of the conversion date held by such depositor eligible under the Plan will be excluded from participating in the distribution and liquidation account. The fair market value of the nonqualifying deposits will be less than one percent of the total fair market value of all deposits of the Bank.
- c. Following the conversion, the 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.
- d. The Converted Bank and Holding Company have no plan or intention to redeem or otherwise acquire any of the shares of the stock to be issued by either in the proposed transaction.
- e. Immediately following consummation of the conversion, the Converted Bank will possess the same assets and liabilities as the Bank held immediately prior thereto, plus the proceeds from the sale of the Converted Bank common stock to Holding Company.
- f. At the time of the conversion, the fair market value of the assets of the Bank to be transferred to the Converted Bank will equal or exceed the amount of its liabilities plus the amount of the liabilities to which the assets are subject.
- g. The Bank's depositors will pay the expenses of the conversion solely attributable to them, if any. The Converted Bank will pay its own expenses of the conversion and will not pay any expenses solely attributable to the savings depositors or its shareholders. The expenses of Holding Company will be paid from the proceeds of the sale of Holding Company stock.
- h. No shares of Holding Company common stock will be issued to or purchased by depositors who are employees of the Bank in the conversion at a discount or as compensation. Compensation to be paid to such employee-depositors will be commensurate with amounts paid to third parties bargaining at arm's length for similar services.
- i. Holding Company has no plan or intention to sell or otherwise dispose of the stock of the Converted Bank to be received by it in the proposed transaction. There is no plan or intention for the Converted Bank to be liquidated or merged in to another corporation following consummation of the conversion.
- j. There will be no purchase price advantage to account holders purchasing shares in the subscription offering over persons purchasing shares in the public offering because all purchasers will pay the same price for Holding Company stock, and no other consideration will be given to account holders in lieu of the nontransferable

subscription rights or in lieu of an interest in the distribution and liquidation account.  
k. The exercise price of the subscription rights received by the Bank account holders to purchase Holding Company stock will be approximately equal to the fair market value of the stock of Holding Company at the time of the completion of the proposed conversion.

II. The Petitioner Has Requested That the Commissioner Issue a Declaratory Ruling Based on These Facts as to the Following Matters:

1. Provided that the conversion of the Bank from a New Hampshire-chartered mutual savings bank to a New Hampshire-chartered stock savings bank, as described above, constitutes a reorganization within the meaning of Section 368 (a)(1)(F) of the Code, and the Bank and Converted 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 the Bank or Converted Bank as a result of such conversion.

2. Provided that the Conversion of the Bank from a New Hampshire- chartered mutual savings bank to a New Hampshire-chartered stock savings bank, as described above, constitutes a reorganization within the meaning of Section 368 (a)(1)(F) of the Code, and provided further that, pursuant to Section 354(a) of the Code, no gain or loss will be recognized by the savings depositors of the Bank upon the receipt by them of savings accounts in the Converted Bank in the same dollar amount as their savings accounts in the Bank, plus interests in the distribution and liquidation account of the Converted Bank.. in exchange for their savings accounts and residual interests in the Bank, no gross or taxable business profits under the New Hampshire Business Profits Tax (RSA 77-A) will be recognized by reason of the exchange by any of the savings depositors of the Bank that are business organizations under RSA 77-A:1, I.

3. Provided that Section 356 (a)(1) of the Code applies with respect to the nontransferable subscription rights to purchase Holding Company stock received by Eligible Account Holders in the conversion and provided further that such rights have no fair 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 or taxable business profits under the New Hampshire Business Profits Tax (RSA 77-A) will be recognized by reason of the receipt of such subscription rights by any of the Eligible Account Holders of the Bank that are business organizations under RSA 77-A:1, I.

4. The conversion of the Bank into the Converted Bank will not result in taxable income to the depositors of the Bank and the Converted Bank under the provision of the New Hampshire Interest and Dividends Tax (RSA 77).

5. Upon the acquisition of the assets and the liabilities of the Bank by the Converted Bank, the Converted Bank, as a continuation of the Bank, will be liable for the franchise tax imposed by RSA 84:16-c. In addition, the Converted bank will be liable for capital stock taxes pursuant to RSA 84:1-d, provided, however, that the Converted Bank will be entitled to a credit against any tax imposed under RSA 84:16-c in an amount equal to the tax due under RSA 84:16-d.

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

#### A. Relative to the Business Profits Tax Issues (RSA 77-A).

It is standard form for this type of ruling request to raise three business profits tax issues: one related to the taxability of the conversion transaction itself to either the Bank or the Converted Bank, a second and third related to the taxability of business organization/depositors on the exchange of same dollar savings accounts in Bank for accounts in the Converted Bank and relative to these same business organization/depositors a question is usually posed relative to the taxability of the distribution of non-transferable, no-market-value subscription rights. This request asks these standard questions which the Department answers as it has answered all previous requests.

##### 1. No Business Profits Tax Incurred on the Conversion Transaction.

It is clear that when a reorganization produces no tax effect federally because of certain non-recognition provisions in the Internal Revenue Code, then the non-recognition impact flows through to the business profits tax. Thus, the Department of Revenue Administration rules: N.H. RSA 77-A:1 (111) (a) defines "gross business profits" in the case of a corporation as the amount of taxable income as would be determinable under the provisions of the United States Internal Revenue Code as defined in RSA 77-A:1, XX before the application of any net operating loss deduction, special deductions shown on line 29 of the federal corporate income tax return, or any other special deductions allowable only to a certain class of corporate taxpayer. If it is determined, and conditional upon such determination, that "Bank", and "Converted Bank" are "parties to a reorganization" within the meaning of Internal Revenue Code Section 368(b), then the non-recognition of gain or loss provisions of Internal Revenue Code Section 361 would apply and no gross or taxable business profits would be recognized for purposes of Chapter 77-A, the New Hampshire business profits tax, by "Bank" and "Converted Bank".

##### 2. No Business Profits Tax Incurred on Exchange of Depositor Rights in "Bank" for Rights in "Converted Bank".

The decision is conditioned on a determination that "Bank" and "Converted Bank" are parties to a reorganization. It is further conditioned on a determination that the provisions of Sec. 354(a) of the Internal Revenue Code are applicable in the case of an exchange by savings depositors of "Bank" of their savings deposits and proprietary interests in "Bank" for identical savings deposits in "Converted Bank." And it is additionally conditioned on a determination that 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 "Bank". Upon meeting these conditions the Department rules that 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 "Bank" that are deemed to be "business organizations" within the meaning of RSA 77-A:1, I by virtue of said exchange.

##### 3. No Business Profits Tax Incurred on Receipt of Non-Transferable Subscription Rights (to Purchase Conversion Stock) Where Such Rights Have No Market Value.

In Document Number 4081, July 2, 1986 The Department stated at page 3:

Provided that Code Section 356(a)(1) applies with respect to the non-ferrable 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 or taxable business profits under the New Hampshire 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.

The Department's reasoning has always been and continues to be that the starting point for taxation under RSA 77-A is found on the federal method. Because this reorganization has no impact on federal taxability, it does not impact on New Hampshire taxability.

#### B. Relative to the Interest and Dividends Tax Issues (RSA 77).

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 bank, building and loan associations, trust companies and national 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" or "Converted Bank" or to the holders of voting trust certificates of the "Holding Company", as a result of the proposed reorganization, will constitute income exempt from taxation under RSA 77, except for dividends paid to stockholders or voting trust certificate holders of the "Holding Company".

#### C. Relative to the Bank Tax Issues (RSA 84).

N.H. 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 acquisition of the banking assets and assumption of the liabilities of "Bank", will become liable for the franchise taxes imposed under RSA 84:16-c, and RSA 84:16-d assessed as indicated herein.

#### IV. Conclusion:

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 conversion of "S" Bank, a mutual savings bank chartered under the Laws of the State of New Hampshire to a New Hampshire chartered stock-owned guaranteed savings bank. No tax is due the State under RSA 77-A or RSA 77. The tax due under RSA 84 is payable by the "Converted Bank".

Everett V. Taylor, Commissioner