

**In The Matter of the Petition of "R" Bank & "T" Bank  
for a Declaratory Ruling**

**DOC #2838, Effective August 24, 1984**

Pursuant to RSA 541-A:1, IV, 541-A:2, I(d), and Rev 104.04, New Hampshire Code of Administrative Rules, "R bank" (hereinafter referred to as "Bank"), "S bank" , (hereinafter referred to as "New Bank") and "T bank" .. (hereinafter referred to as "Holding Company"), having their principal offices at ....., New Hampshire have petitioned the Department of Revenue Administration for a declaratory ruling with respect to the New Hampshire tax consequences of the statutory triangular merger of Bank with and into New Bank, a subsidiary of Holding Company. Through its attorney and counsel, the Petitioners represent the following:

Parties to the Reorganization.

Bank. "R bank" ("Bank") is a national banking association chartered under the laws of the United States of America with its principal place of business at ....., County of ..... State of New Hampshire. Bank is organized with authorized capital of \$ ....., divided into 260,000 shares of common stock, each of \$ ..... par value, of which 255,800 shares, in the capital amount of \$ ..... are currently issued and outstanding. The Bank has a surplus of \$ ..... and undivided profits, including capital reserves, of \$..... as of December 31, 1983. The capital stock of Bank is publicly owned and was held by approximately # stockholders as of April 1, 19--. The largest block of stock of Bank, consisting of 108,000 shares, or % of all stock currently issued and outstanding, is owned by the Holding Company. Bank has no subsidiaries, and its federal tax identification number is .....

Holding Company. "T bank" ("Holding Company") is a publicly-held business corporation organized and existing pursuant to Chapter 293-A, New Hampshire Revised Statutes Annotated (RSA), with its principal place of business at ....., County of ....., State of New Hampshire. Holding Company is a bank holding company under the relevant provisions of New Hampshire law and the federal Bank Holding Company Act of 1956, as amended, and is also the owner of all of the outstanding stock of a guaranty (stock) savings bank chartered under the laws of the State of New Hampshire. The authorized capital of Holding Company is \$ ..... , divided into 6,000,000 shares of common stock, each of \$ ..... par value, of which 4,025,000 shares are currently issued and outstanding, and 1,500,000 shares of serial preferred stock, of which no shares are currently issued and outstanding. Holding Company has no subsidiaries other than New Bank and the guaranty (stock) savings bank. Its federal tax identification number is .....

New Bank. "S bank" ("New Bank") will be a new national banking association chartered under the laws of the United States of America with its principal place of business at ....., County of ....., State of New Hampshire. New Bank has not yet been chartered, but a charter application will shortly be filed with the United States Comptroller of the Currency incidental to the reorganization process. New Bank has not yet been assigned a federal tax identification number. New Bank will be organized on an interim basis with authorized capital of \$ ..... divided into 40,000 shares of common stock, each of \$ ..... par value, all of which will be issued and outstanding and held by Holding Company as of the consummation of the proposed reorganization. New Bank also will have a capital surplus of \$ ..... and no undivided profits as of that date. New Bank will have no subsidiaries.

In order to permit Holding Company to acquire the remainder of the outstanding stock of bank not already owned by it in exchange for voting stock of Holding Company, the following transactions have been proposed, as set forth in the Acquisition Agreement and Merger Agreement (hereinafter sometimes collectively referred to as the "Agreements") among Bank, New Bank, and Holding Company enclosed herewith and by this reference made a part hereof.

Merger. Bank will be merged with and into New Bank in accordance with the provisions of 12 USC Sections 215a and 1828(c), and other applicable state and federal laws. New Bank will be the surviving corporation and will acquire all of the assets and assume all of the existing liabilities of Bank. Pursuant to Section 6(a) of the Merger Agreement, incidental to the merger New Bank will be recapitalized with a new capital structure similar to the present capital structure of Bank, discussed above. Thus, subsequent to the merger Holding Company will be the owner of shares of common stock of New Bank, each of \$. . . . par value.

Exchange and Conversion of Bank Stock. Other than the # shares of Bank stock presently owned by Holding Company (which are to be immediately cancelled pursuant to the reorganization), each outstanding share of such stock, other than those held by shareholders of Bank exercising their appraisal rights pursuant to 12 USC 215a (b)-(c), will be exchanged for an converted into # shares of the capital stock of Holding Company, except to the extent that such exchange and conversion would require the issuance of fractional shares of Holding Company stock, as set forth below.

Pursuant to the provisions of 12 USC 215a (b)-(c) and Section 7 of the Merger Agreement, any stockholder of Bank voting against the merger transaction and giving due notice of his dissent from the plan of merger as set forth in the Agreements shall be entitled to receive the value of the shares of common stock of Bank held by him upon approval of the merger by the Comptroller of the Currency and upon written request made to New Bank no later than thirty (30) days after the effective date of the merger.

Pursuant to the provisions of federal law cited above, the value of the shares of such dissenting shareholders shall be ascertained as of the effective date of the merger by appraisal made by a committee of three persons composed of one person selected by the vote of the holders of a majority of the shares of the stock of the Bank held by the dissenting shareholders, one selected by the directors of New Bank, and one selected by the two so chosen.

In connection with the exchange and conversion of shares of Bank stock outlined above, no fractional shares of stock of Holding Company will be issued. Bank shareholders will receive cash in lieu thereof at a rate equivalent to the closing price per share for Holding Company stock on the effective date of the merger or on the last day of trading immediately prior thereto, if the former is not a trading day, all as set forth in Section 6(d) of the Merger Agreement.

Coincident with the consummation of the merger, New Bank as the surviving corporation shall take the name of Bank. The provisions of the Articles of Association and Bylaws, the location of the main office, the membership of the Board of Directors and the capital structure of New Bank shall be essentially identical to those of Bank immediately prior to the effective date of the merger transaction, as set forth in Section 4 of the Merger Agreement.

Bank, New Bank, and Holding Company hereby make the following further representations in connection with the proposed transaction.

The fair market value of the stock of Holding Company to be received by shareholders of Bank will in each instance be approximately equal to the fair market value of the Bank stock to be surrendered in exchange therefor.

Taking into account any shareholders of Bank who exercise their appraisal rights pursuant to the Merger Agreement and 12 USC 215a and the value of Bank shares surrendered and exchanged for cash in lieu of fractional shares of Holding Company stock, the management of Bank has no knowledge of any plan or intention on the part of Bank's shareholders to sell or to otherwise dispose of such an amount of the stock of Bank, or the stock of Holding Company to be received by them pursuant to the proposed transaction, as would reduce their holdings of Holding Company stock in the aggregate to a number of shares having an aggregate value of less than 50% of the total value of Bank stock outstanding as of the effective date of the

proposed transaction. For the purposes of this representation, dissenting shareholders of Bank, if any, will be considered to have received Holding Company Stock and disposed of it.

Taking into account expenses of the proposed transaction and the amount to be paid to any shareholders of Bank electing to exercise their appraisal rights pursuant to the Merger Agreement and 12 USC 215a, New Bank will acquire at least 90% of the fair market value of the net assets and at least 70% of the fair market value of the gross assets of Bank. For the purposes of the representation, amounts used by Bank to pay any reorganization expenses, and to pay dissenters, will be considered as assets held by Bank immediately before the transfer.

The liabilities of Bank to be assumed by New Bank pursuant to the proposed transaction were incurred by Bank in the ordinary course of its business and are associated with the assets to be transferred to New Bank pursuant to the proposed transaction. Holding Company will not assume any of such liabilities nor those of New Bank, nor will any of the Bank stock to be acquired by Holding Company in the exchange be subject to any liabilities.

The Holding Company intends to operate New Bank as its subsidiary and has no plan or intention to liquidate New Bank, to sell any of the stock of New Bank held by it, to cause New Bank to sell or otherwise dispose of any assets acquired from Bank other than in the ordinary course of business, or to dispose of any of its own assets other than in the ordinary course of business.

No two parties to the proposed transaction are investment companies as described in Section 368 (a) (2) (F) (iii) and (iv) of the Internal Revenue Code of 1954.

There is no intercorporate debt existing between Bank and Holding Company or between Bank and New Bank which was issued, acquired, settled, or will be settled, at a discount.

Bank, New Bank, Holding Company and the shareholders of Bank will each pay any expenses incurred by them respectively in connection with the proposed transaction.

The business of New Bank shall be that of a national banking association and shall be conducted by New Bank under the name "R bank" located at ..... and at the legally established branches of New Bank. The business operations of Bank will thus be continued on an unchanged basis by New Bank.

Shareholders of Bank who elect to dissent from the proposed transaction will be entitled to exercise any appraisal rights which they may have in accordance with 12 USC 2151 (b)-(c) and Section 7 of the Merger Agreement, as outlined above

The payment by Holding Company of cash to Bank shareholders in lieu of fractional shares of Holding Company stock is solely for the purpose of avoiding the expense and inconvenience to Holding Company of issuing fractional shares and does not represent separately bargained for consideration. No Bank shareholder will receive cash in lieu of more than one (1) share of Bank Stock, and the total consideration which will be cash in lieu of fractional shares will be one percent (1%) or less of the total consideration to be received by all Bank shareholders in the transaction.

The fair market value of the assets of Bank to be transferred to New Bank will be greater than the sum of the liabilities of Bank to be assumed by New Bank plus the amount of liabilities to which the assets to be transferred are subject.

No dividends will be paid by Bank prior to the consummation of the transaction, other than regular periodic dividends consistent in amount and in effect with prior dividend distributions.

No New Bank Stock will be used as consideration in the merger.

Holding Company has no plan or intention to redeem or otherwise reacquire its stock to be issued in the proposed transaction.

- The Holding Company's predecessor in ownership of its present stock interest in the Bank, the guaranty (stock) savings bank, was chartered by the State of New Hampshire in 18 -- as a mutual savings bank. Subsequent to the chartering of Bank in 18-- during the 17 year period from 18- through 18-- the Savings Bank accumulated 900 shares of Bank stock, as detailed in the following table:

Year No. of Shares Acquired

- 18-- 46 shares
- 18-- 200 shares
- 18-- 131 shares
- 18-- 10 shares
- 18-- 60 shares
- 18-- 181 shares
- 18-- 16 shares
- 18-- 45 shares
- 18-- 50 shares
- 18-- 15 shares
- 18-- 20 shares
- 18-- 40 shares
- 18-- 26 shares
- 18-- 30 shares
- 18-- 30 shares
- Total: 900 shares

Although the Bank's records are not completely clear on this point, it appears that the consideration for the stock issued to the guaranty (stock) savings bank was capital provided by the Savings Bank to Bank for the purpose of permitting Bank to extend loans.

The stock ownership of the guaranty (stock) savings bank in Bank remained unchanged from 18- through April, 19-, at which time a % stock dividend was declared, increasing the Savings Bank's stock ownership from 900 to 2700 shares. In June, 19- a % stock dividend was declared, increasing the number of shares owned by the Savings Bank from 2700 to 5400. Finally, in August, 19- a # stock split resulted in the guaranty (stock) savings bank becoming the owner of 108,000 shares of Bank stock, the number of shares of stock owned by the Holding Company at the present time. It should be noted that the 19- and 19- stock dividends and the 19- stock split did not change the relative proportion of total Bank stock outstanding owned by the Savings Bank, but only the absolute number of issued and outstanding shares owned from time to time by the Savings Bank.

In the fall of 19 the guaranty (stock) savings bank, previously a mutual savings bank, was reorganized as a guaranty (stock) savings bank subsidiary of the Holding Company, involving a two-phase subscription and public offering of Holding Company's stock pursuant to a Plan of Conversion which, the Service has ruled privately, constituted a non-taxable reorganization under Section 368 (a)(1) (F) of the Internal Revenue Code. Pursuant to the Plan of Conversion the equity interest in Bank previously owned by the guaranty (stock) savings bank was transferred to the Holding Company. While the undersigned was not involved as counsel to the guaranty (stock) savings bank or Holding Company in connection with that transaction, it is our understanding that the transfer qualified as a tax-free transaction, either as a part of the overall reorganization transaction, or in its own right as an in-kind distribution of a qualifying dividend from a subsidiary to its parent, pursuant to Code Section 243 (a)(3) and 243 (b).

In connection with the transaction described above and with reference to the facts and

circumstances herein, the Petitioners respectfully request that declaratory rulings be issued as to the following matters:

1. Provided that the statutory triangular merger of Bank with and into New Bank as a subsidiary of Holding Company is deemed by the Internal Revenue Service to qualify as a reorganization within the meaning of Section 368(a) of the Internal Revenue Code of 1954, as amended ("Code"), and Bank, New Bank and Holding Company 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 will be realized or recognized by Bank, New Bank or the Holding Company as a result of such merger pursuant to the provisions of the New Hampshire Business Profits Tax. New Hampshire RSA 77-A:1 (III) (a).
2. The merger will not result in taxable income to the shareholders of Bank, New Bank or the Holding Company pursuant to the provisions of the New Hampshire Income Tax imposed by New Hampshire RSA Chapter 77, except if and to the extent that dividends become payable to holders of the stock of the Holding Company, other than in new stock of the Holding Company, New Hampshire RSA 77:4 (I) and (II).

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 as the amount shown or which would be shown on a separate United States 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 merger of Bank with and into New Bank as a subsidiary of Holding Company qualifies as a reorganization within the meaning of Sec. 368 (a) of the Internal Revenue Code of 1954, as amended and Bank, New Bank and Holding Company are each deemed to be a "party to a reorganization" within the meaning of Sec. 368 (b) of the Code, no gross or taxable business profits would be recognized for purposes of Chapter 77-A, the New Hampshire Business Profits Tax Law, by "Bank" "New Bank", and "Holding Company".
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 deposits in all banks, building and loan associations, trust companies and national banks located in New Hampshire and Vermont, is taxable. The RSA's further provide that dividends, other than stock dividends paid in new stock of the issuing company are taxable. Thus, any interest or dividend income accruing to depositors or shareholders of Bank, New Bank or Holding Company as a result of the proposed statutory triangular merger will constitute income exempt from taxation under RSA 77, except for dividends paid to stockholders of Holding Company.

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), and the New Hampshire Taxation of Incomes (RSA Chapter 77) with respect to the statutory triangular merger of "R bank", "S bank", and "T bank".

Arthur G. Danie, Assistant Commissioner