

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

DOC #4081, Effective July 2, 1986

Pursuant to RSA 541-A:1, I-b, 541-A:2, I (d) and Rev 104.04, New Hampshire Code of Administrative Rules, "T" Bank,, New Hampshire (hereinafter referred to as "Savings Bank"), a New Hampshire- chartered mutual savings bank with a principal business address of ... Street, ... , New Hampshire , (EIN: ...) has requested a Declaratory Ruling of the Department of Revenue Administration.

The taxpayer requests a ruling to the effect that the proposed conversion of the "Savings Bank" from a New Hampshire-chartered mutual savings bank to a New Hampshire-chartered guaranty stock savings bank, (hereinafter referred to as "Converted Savings Bank"), and the simultaneous issuance and sale of 100% of the common stock of the "Converted Savings Bank" to a newly incorporated New Hampshire-chartered bank holding company (hereinafter referred to as "Holding Company"), formed pursuant to the Bank Holding Company Act of 1956, as amended, in exchange for up to 50% of the net proceeds of the sale of the Holding Company's common stock pursuant to the Conversion, will constitute a non-taxable reorganization under New Hampshire law.

Shares will be offered in an underwritten public offering, in general accordance with Section 502.02(i) 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 have requested a declaratory ruling as to the following matters:

1. Provided that the conversion of the "Savings Bank" for a New Hampshire-chartered mutual savings bank to a New Hampshire-chartered guaranty savings bank, as described above, is deemed by the Internal Revenue Service to constitute a reorganization within the meaning of Section 368 (a) (1) (F) of the Code, and the "Savings Bank" and the "Converted Savings Bank" are deemed to each 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 "Savings Bank" or the "Converted Savings Bank" as a result of such conversion (RSA 77-A:1, III (a)).
2. Provided that the conversion of the "Savings Bank" from a New Hampshire-chartered mutual savings bank to a New Hampshire-chartered guaranty savings bank is deemed by the Internal Revenue Service to constitute a reorganization within the meaning of Section 368 (a) (1) (F) of the Code, and provided further that the Revenue Service determines pursuant to Section 354 (a) of the Code that no gain or loss will be recognized by the Eligible Account Holders upon the issuance to them of savings accounts in the "Converted Savings Bank" in the same dollar amount as their savings accounts in the "Savings Bank" plus interests in the liquidation account of the "Converted Savings Bank", in exchange for their savings accounts in the "Savings Bank", no gross or taxable business profits under the New Hampshire Business Profits Tax (RSA 77-A) will be recognized to any Eligible Act Holder that is a business organization under RSA 77-A:1, by virtue of said exchange.
3. Provided that Code Section 356 (a) (1) applies with respect to the non-transferrable 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.

4. The conversion of the "Savings Bank" will not result in taxable income to the depositors of the "Savings Bank" and the "Converted Savings Bank" under the provisions of the New Hampshire Interest and Dividends Tax.

5. Upon the acquisition of the assets and liabilities of the "Savings Bank" by the "Converted Savings Bank", the "Converted Savings Bank", as a continuation of the "Savings Bank", shall be liable for the franchise tax imposed by RSA 84-16-a through 84:16-c, inclusive, and liable for capital stock taxes pursuant to RSA 84-16-d, provided, however, that the tax due under 84:16-d will be deducted from the tax due under 84:16-c.

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 "a party to a reorganization" within the meaning of Section 368 (b) of the Internal Revenue Code, no gross or taxable business profits would be recognized for purposes of Chapter 77-A, the New Hampshire Business Profits Tax, by "Savings Bank" and "Converted Savings Bank."

2. 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 interest in "Savings Bank" for identical savings deposits in "Converted Savings Bank" plus their respective interest 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.

3. 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."

4. 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 extend 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.

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 "T" Bank 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 a "Holding Company".

Arthur G. Danie, Assistant Commissioner