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August 5, 1999

Mutual Bank =

State X =

Stock Bank =

Stock Holding Company =

Mutual Holding Company =

Dear

This is in reply to a letter dated April 28, 1999, in which rulings are requested as to the federal income tax consequences of a proposed transaction. The facts submitted for consideration are substantially as set forth below.

Mutual Bank is a State X chartered mutual savings bank engaged in banking and banking related businesses. As a mutual entity, Mutual Bank has no authorized capital stock. Instead, holders of Mutual Bank deposit accounts have liquidation and voting

PLR-108387-99

rights in Mutual Bank.

For what have been represented to be valid business purposes, Mutual Bank's Board of Directors has decided that Mutual Bank should be converted into Stock Bank and become a wholly owned subsidiary of Stock Holding Company and that Stock Holding Company should become a majority owned subsidiary of Mutual Holding Company. Accordingly, Mutual Bank proposes the following transaction:

- (i) Mutual Bank will organize a State X chartered savings bank holding company (Mutual Holding Company), which will initially be organized in stock form and initially exist as Mutual Bank's wholly owned subsidiary.
- (ii) Mutual Holding Company will organize two wholly-owned subsidiaries: a State X capital stock corporation (Stock Holding Company), that will subsequently hold 100 percent of Stock Bank's common stock, and an interim State X stock savings bank (Interim).
- (iii) The following events will occur simultaneously: Mutual Bank will exchange its charter for a State X stock savings bank charter (becoming Stock Bank). Mutual Holding Company will cancel its outstanding stock and exchange its charter for a State X mutual savings bank holding company charter (becoming Mutual Holding Company, a mutual institution owned by the members of Mutual Bank immediately before this transaction). Interim will merge with and into Stock Bank with Stock Bank surviving as a wholly owned subsidiary of Mutual Holding Company. As a result, Stock Bank, formerly Mutual Bank, will be the wholly owned subsidiary of Mutual Holding Company, a mutual entity in which the former members of Mutual Bank will hold ownerships interests comparable to those they previously held in Mutual Bank.
- (iv) Mutual Holding Company then will contribute 100 percent of the stock of Stock Bank to Stock Holding Company, its wholly owned subsidiary.
- (v) As soon as practicable thereafter, Stock Holding Company will offer for sale up to 49.9 percent of its common stock, with priority subscription rights granted, in descending order, to certain depositors in the former Mutual Bank, to certain employee stock benefit plans of Mutual Bank, to other members of Mutual Bank, and to certain members of the general public.

As a result of these steps, Stock Bank will be a wholly owned subsidiary of Stock Holding Company, which will be (until step (v) in the transaction occurs) a wholly-owned subsidiary of Mutual Holding Company. As a mutual entity, Mutual Holding Company will not have any authorized capital stock. The depositors of Mutual Bank (and later,

PLR-108387-99

Stock Bank) will hold all of the liquidation and voting rights (to the extent provided for by law or regulation) in Mutual Holding Company as long as they maintain deposit accounts in Stock Bank.

You propose that the transactions described in step (iii) above be treated as, in substance, the conversion of Mutual Bank to stock form followed by contribution of Mutual/now Stock Bank by its owners to Mutual Holding Company in exchange for mutual ownership interests in Mutual Holding Company, followed by the contribution of Mutual/now Stock Bank by Mutual Holding Company to Stock Holding Company. You further propose that the conversion of Mutual Bank to stock form be treated as a reorganization described in § 368 (a)(1)(F) of the Internal Revenue Code and that the contribution of Mutual/now Stock Bank by its owners to Mutual Holding Company in exchange for mutual ownership interests in Mutual Holding Company be treated as a transfer of property solely in exchange for stock described in § 351(a).

Section 3.01(27) of Rev. Proc. 99-3, 1999-1 I.R.B. 103, 107, provides that the Internal Revenue Service will not rule on the qualification of a transaction as a reorganization under § 368(a)(1)(F). Additionally, section 3.01(22) of Rev. Proc. 99-3, 1999-1 I.R.B. at 105, provides that the Service will not rule on the application of § 351 to an exchange of stock for stock in the formation of a holding company. Although Rev. Proc. 99-3 provides a general no-rule policy concerning §§ 368(a)(1)(F) and 351, the Service has discretion to rule on significant subissues that must be resolved to determine whether a transaction qualifies under either of these sections. The Service will only rule on such subissues if they are significant and not clearly and adequately addressed by a statute, regulations, decision of the Supreme Court, tax treaty, revenue ruling, revenue procedure, notice, or other authority published in the Internal Revenue Bulletin.

You have represented that, to the best of your knowledge and belief, and but for the resolution of your requested rulings below, the conversion of Mutual Bank to Stock Bank (as described in step (iii) above) constitutes a reorganization described in § 368(a)(1)(F) and that a contribution of Mutual/now Stock Bank by its owners to Mutual Holding Company in exchange for mutual ownership interests in Mutual Holding Company constitutes a transfer described in § 351(a) of property in exchange for stock.

With respect to the conversion of Mutual Bank from a state chartered mutual savings bank to a state chartered stock savings bank (as described in step (iii) above), you have requested two subissues rulings. One is that the requirement of § 1.368-1(b) of the Income Tax Regulations that there be a continuity of interest on the part of the owners of the enterprise prior to the reorganization is satisfied by the constructive exchange of the members' mutual ownership interests in Mutual Bank for stock interest in Stock Bank, notwithstanding the members' constructive exchange of that stock for mutual ownership interests in Mutual Holding Company immediately thereafter. The other is that neither the transaction described in step (iii) above, involving, in substance,

PLR-108387-99

the contribution of Mutual/now Stock Bank by its owners to Mutual Holding Company in exchange for mutual ownership interests in Mutual Holding Company, nor the contribution by Mutual Holding Company of Stock Bank to Stock Holding Company described in step (iv) above, nor the stock offering of Stock Holding Company will prevent Mutual Bank's exchange of its charter for that of a State X chartered stock savings bank from qualifying as a reorganization under § 368(a)(1)(F).

With respect to the remainder of the transaction described in steps (iii), (iv), and (v) above, you have requested two subissues rulings. One is that the merger of Interim with and into Stock Bank, in which the depositors transfer the stock of Stock Bank constructively received in the conversion of Mutual Bank into Stock Bank to Mutual Holding Company in exchange for mutual ownership interests therein will be treated as the contribution of Mutual/now Stock Bank by its owners to Mutual Holding Company in exchange for mutual ownership interests in Mutual Holding Company. The other is that the mutual ownership interests in the Mutual Holding Company will be treated as stock within the meaning of § 351(a).

Accordingly, based on the information and representations set forth above and in your submission, we hold as follows:

- (1) The requirements of § 1.368-1(b) that there be a continuity of interest on the part of the owners of the enterprise prior to the reorganization is satisfied by the constructive exchange of the Mutual Bank members' mutual ownership interests in Mutual Bank for stock interests in Stock Bank, notwithstanding the members' constructive exchange of that stock for mutual ownership interests in Mutual Holding Company immediately thereafter. See Rev. Rul. 80-105, 1980-1 C.B. 78; Rev. Rul. 69-646, 1969-2 C.B. 54.
- (2) Neither the transaction described in step (iii) above, involving, in substance, the contribution of Mutual/now Stock Bank by its owners to Mutual Holding Company in exchange for mutual ownership interests in Mutual Holding Company (see Ruling (3) below), nor the contribution by Mutual Holding Company to Stock Bank to Stock Holding Company described in step (v) above, nor the stock offering of Stock Holding Company will prevent Mutual Bank's exchange of its charter for that of a State X chartered stock savings bank from qualifying as a reorganization under § 368(a)(1)(F). See Rev. Rul. 96-29, 1996-1 C.B. 50; Rev. Rul. 69-516, 1969-2 C.B. 56.
- (3) The transaction described in step (iii) above will be treated as involving, in substance, a contribution of Mutual/now Stock Bank by its owners to Mutual Holding Company in exchange for mutual ownership interests in Mutual Holding Company. See Rev. Rul. 90-95, 1990-2 C.B. 67; Rev. Rul. 67-448, 1967-2 C.B. 144.
- (4) The mutual ownership interests in the Mutual Holding Company will be treated

PLR-108387-99

as stock within the meaning of § 351(a). See Rev. Rul. 69-3, 1969-1 C.B. 103.

A determination as to whether the conversion of Mutual Bank to stock form qualifies under § 368(a)(1)(F) and whether the exchange of Stock Bank shares for mutual ownership interests in Mutual Holding Company is described in § 351 will be made by the District Director's office upon audit of the federal income tax returns of Mutual Bank, Stock Bank, Stock Holding Company, and Mutual Holding Company.

We express no opinion about the tax treatment of the transactions under other provisions of the Code and regulations or about the tax treatment of any conditions existing at the time of, or effects resulting from, the transactions that are not specifically covered by the above rulings.

This ruling is directed only to the taxpayer that requested it. Section 6110(k)(3) provides that it may not be used or cited as precedent.

Each affected taxpayer must attach a copy of this letter to the federal income tax return for the taxable year in which the transaction covered by this ruling letter is consummated.

Pursuant to the power of attorney on file in this office, we are sending the original copy of this letter to your authorized representative.

Sincerely,

Assistant Chief Counsel (Corporate)

By: Filiz Serbes

Filiz A. Serbes

Assistant to the Chief, Branch 5