

## Internal Revenue Service

Department of the Treasury

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Person to Contact:

Telephone Number:

Refer Reply To:

CC:DOM:CORP:5- PLR-112114-99

Date:

November 29, 1999

Re:

Mutual =

State X =

State Y =

Dear :

This is in reply to a letter dated July 9, 1999, in which rulings are requested as to the federal income tax consequences of a proposed transaction. Additional information was received in a letter dated September 20, 1999. The facts submitted are substantially as summarized below.

Mutual is a State X mutual savings bank which is insured and regulated by State X and the FDIC. Mutual has no authorized stock. Instead, the holders of Mutual's deposit accounts have liquidation and voting rights in Mutual.

For what have been represented to be valid business purposes, Mutual's board of Directors has decided to convert to a mutual holding company structure. Accordingly, Mutual Bank proposes the following transaction:

- (i) Mutual will organize a State X chartered mutual holding company ("MHC") which will initially be organized in stock form and initially exist as Mutual's

wholly-owned subsidiary.

- (ii) MHC will organize two wholly-owned subsidiaries: a State Y capital stock corporation ("Stock Holding Company") that will subsequently hold 100 percent of Stock Bank's stock, and an interim State Stock savings bank ("Interim").
- (iii) The following events will occur simultaneously: Mutual will exchange its charter for a State X stock savings bank charter (becoming Stock Bank). MHC will cancel its outstanding stock and exchange its charter for a State X mutual holding company charter, becoming MHC, a mutual institution owned by the former members of Mutual immediately before this transaction. Interim will merge with and into Stock Bank with Stock Bank surviving as a wholly owned subsidiary of MHC. As a result, Stock Bank, formerly Mutual, will be the wholly owned subsidiary of MHC, a mutual entity in which the former members of Mutual will hold ownership interests comparable to those they previously held in Mutual.
- (iv) MHC then will contribute 100 percent of the stock of Stock Bank to Stock Holding Company, its wholly owned company.
- (v) Simultaneously with the foregoing steps, Stock Holding Company will offer for sale 47 percent of its common stock, with priority subscription rights granted, in descending order, to certain depositors in the former Mutual, to certain employee stock benefit plans of Mutual, to other depositors, and to certain members of the general public.
- (vi) Stock Holding company will contribute an amount of Stock Holding Company stock equal to 2 percent of that outstanding to an applicant for tax exempt status under §501(c)(3).

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 transaction occurs) a wholly owned subsidiary of MHC. As a mutual entity, MHC will not have any authorized capital stock. The depositors of Mutual (and later Stock Bank) will hold all of the liquidation and voting rights (to the extent provided for by law or regulation) in MHC 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 to stock form followed by contribution of Mutual/now Stock Bank by its owners to MHC in exchange for mutual ownership interests in MHC, followed by the contribution of Mutual/now Stock Bank by MHC 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 MHC in exchange for mutual ownership interests in MHC 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, 108, provides that the Internal Revenue Service will not rule on the qualification of a transaction as a reorganization under §368(a)(1)(F). Additionally, §3.01(22) of Rev. Proc. 99-3 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, regulation, 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 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 MHC in exchange for mutual ownership interests in MHC constitutes a transfer described in §351(a) of property in exchange for stock.

With respect to the conversion of Mutual 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 for stock interest in Stock Bank, notwithstanding the members' constructive exchange of that stock for mutual ownership interests in MHC immediately thereafter. The other is that neither the transaction described in step (iii) above, involving, in substance, the contribution of Mutual/now Stock Bank by its owners to MHC in exchange for mutual ownership interests in MHC, nor the contribution of MHC of Stock Bank to Stock Holding Company described in step (iv) above, nor the stock offered of Stock Holding company will prevent Mutual'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), (v), and (vi) 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 into Stock Bank to MHC in exchange for mutual ownership interests therein will be treated as the contribution of Mutual/now Stock Bank by its owners to MHC in exchange for mutual ownership

interests in MHC. The other is that the mutual ownership interests in the MHC 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 members' mutual ownership interest in Mutual for stock interests in Stock Bank, notwithstanding the members' constructive exchange of that stock for mutual ownership interests in MHC 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 MHC in exchange for mutual ownership interests in MHC (see Ruling (3) below), nor the contribution by MHC of Stock Bank to Stock Holding Company described in step (iv) above, nor the stock offering of Stock Holding Company will prevent Mutual'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 MHC in exchange for mutual ownership interests in MHC. 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 MHC will be treated 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 to stock form qualifies under §368(a)(1)(F) and whether the exchange of stock Bank shares for mutual ownership interests in MHC is described in §351 will be made by the District Director's office upon audit of the federal income tax returns of Mutual, Stock Bank, Stock Holding Company, and MHC.

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.

A copy of this letter should be attached to the federal income tax returns of the taxpayers involved for the taxable year in which the transaction covered by this ruling letter is consummated.

In accordance with the power of attorney on file in this office a copy of this letter is being sent to the taxpayer.

Sincerely yours,  
Assistant Chief Counsel (Corporate)

By Debra Carlisle  
Debra Carlisle  
Chief, Branch 5