

Internal Revenue Service

Department of the Treasury

Number: **200051006**

Release Date: 12/22/2000

Index Number: 0351.00-00, 0368.00-00,
0368.06-00

Washington, DC 20224

Person to Contact:

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Refer Reply To:

CC:CORP:4 PLR-108534-00

Date:

September 8, 2000

Mutual Bank =

Corporation A =

Bank =

MHC =

SHC =

State X =

Y =

Date B =

Date C =

This letter responds to your request of April 11, 2000 for rulings on certain federal income tax consequences of a proposed transaction. The information submitted in that request and later correspondence is summarized below.

The rulings contained in this letter are based upon the facts and representations submitted by the taxpayer and accompanied by a penalties of perjury statement executed by an appropriate party. This office has not verified any of the materials submitted in support of the request for a ruling. Verification of the information, representations, and other data may be required as part of the audit process.

Summary of Facts

Mutual Bank is a State X chartered mutual savings bank engaged in banking and banking related business in State X. As a mutual entity, Mutual Bank does not have authorized capital stock. Instead, holders of Mutual Bank deposit accounts (the "Depositors") have mutual ownership interests consisting of liquidation and voting rights in Mutual Bank.

Corporation A is a publicly held State X stock corporation that owns all of the stock of Bank, a State X chartered savings and loan association.

For what are represented to be valid business purposes, Mutual Bank's Board of Directors has decided that Mutual Bank should convert to a federally chartered mutual holding company structure. Within the mutual holding company group there will be a stock holding company that will offer shares to certain Depositors and others, as described below. In addition, for what are represented to be valid business purposes, Mutual Bank's and Corporation A's Boards of Directors have decided that Corporation A should merge with and into a corporation that will be a newly-formed affiliate of Mutual Bank.

Proposed Transactions

Mutual Bank proposes the following steps, all of which will be undertaken pursuant to a plan and will occur simultaneously or sequentially on approximately the same date:

(i) Mutual Bank will exchange its State X mutual savings bank charter for a federal mutual savings bank charter (the "First Conversion").

(ii) Mutual Bank will form a federally chartered mutual holding company ("MHC") and a federally-chartered stock holding corporation ("SHC") as wholly owned subsidiaries.

(iii) MHC will form a transitory federal stock savings bank ("Transitory") as a wholly owned subsidiary.

(iv) Mutual Bank will contribute the stock of SHC to MHC.

(v) Mutual Bank will exchange its federal mutual savings bank charter (received in the First Conversion) for a federal stock savings bank charter and will become "Stock Bank" (the "Second Conversion"). In the Second Conversion, the Depositors will constructively exchange their mutual ownership interests in Mutual Bank for shares of stock in Stock Bank.

(vi) Transitory will merge with and into Stock Bank, with Stock Bank surviving as a wholly owned subsidiary of MHC (the "Transitory Merger"). In the Transitory Merger, the Depositors will exchange the stock of Stock Bank constructively received in the Second Conversion, for mutual ownership interests in MHC (the "Exchange").

(vii) MHC will contribute the stock of Stock Bank to SHC (the "Contribution").

(viii) Corporation A will merge with and into SHC with SHC surviving (the "Merger"). In the Merger, the former shareholders of Corporation A will receive stock in SHC and cash.

(ix) SHC will offer for sale (the "Offering") shares of its common stock with priority subscription rights granted, in descending order, to certain Depositors of the former Mutual Bank, certain employee stock benefit plans of SHC, other Depositors, the directors, officers, and employees of the former Mutual Bank, and certain members of the general public (collectively, the "Offerees").

As a result of the transactions described above, Stock Bank will be a wholly owned subsidiary of SHC, which will be (until the transactions described above in steps (viii) and (ix)) a wholly owned subsidiary of MHC. Bank will become a wholly owned subsidiary of SHC in the Merger. In addition, MHC will not have authorized capital stock. Rather, mutual ownership interests in MHC will consist solely of distribution rights (including rights in liquidation) and voting rights. The Depositors will retain interests in MHC as long as they maintain their deposit accounts in Stock Bank. After the consummation of the transactions described above, MHC will own more than y percent of the outstanding stock of SHC.

You propose that the transactions in steps (i) through (vii) above be treated as the conversion of Mutual Bank to Stock Bank in two separately respected steps, followed by the transfer of Stock Bank by its owners to MHC in exchange for mutual ownership interests in MHC, followed by the transfer of Stock Bank by MHC to SHC. You further propose that: (a) the First Conversion and the Second Conversion each be treated as separate reorganizations described in § 368(a)(1)(F) of the Internal Revenue Code of 1986, as amended; (b) the Transitory Merger and the Exchange be treated as a transfer of property solely in exchange for stock described in § 351(a); and (c) the property transfers to SHC made in the Contribution, the Merger and the Offering be treated as transfers of property described in § 351(a).

Section 3.01(27) of Rev. Proc. 2000-3, 2000-1 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). Section 3.01(22) of Rev. Proc. 2000-3, 2000-1 I.R.B. 103, 104-105, 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. 2000-3 provides a general no-rule policy concerning §§ 368(a)(1)(F) and 351, it also provides that the Service has discretion to rule on significant subissues that must be resolved to determine whether a transaction qualifies under those 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.

Representations

(a) The First Conversion will not materially affect the Depositors' liquidating, voting, and other proprietary interests in Mutual Bank.

(b) To the best of the taxpayer's knowledge and belief:

(i) the First Conversion will qualify under § 368(a)(1)(F) if the Service rules as the taxpayer proposes on such conversion;

(ii) the Second Conversion will qualify under § 368(a)(1)(F) if the Service rules as the taxpayer proposes on such conversion;

(iii) the merger of Transitory with and into Stock Bank, with Stock Bank surviving, in connection with which the depositors of Stock Bank transfer the stock of Stock Bank (constructively received in the Second Conversion) to MHC in exchange for mutual ownership interests in MHC will qualify under § 351 if the Service rules as the taxpayer proposes on the subissue; and

(iv) the merger of Corporation A with and into SHC, in which SHC will issue stock and cash to Corporation A, combined in the same overall transaction with the issuance of SHC stock to MHC in exchange for the stock of Stock Bank and the issuance of SHC stock to certain depositors of Mutual Bank, certain SHC employee benefit plans, and the directors, officers, and employees of the former Mutual Bank for cash in a subscription offering and, if shares remain available, to the public in a community offering, all pursuant to a Plan of Restructuring adopted on Date B and most recently amended and restated on Date C, will qualify under § 351 if the Service rules as the taxpayer proposes on the subissue.

(c) Mutual Bank maintains a reserve for bad debts created under § 593 that is attributable to the taxable years beginning before January 1, 1988 (the "Pre-1988 Reserves of Mutual Bank")

(d) Upon consummation of the transactions described herein, the Pre-1988 Reserves of Mutual Bank will be reserves of Stock Bank.

(e) Bank maintains a reserve for bad debts created under § 593 that is attributable to taxable years beginning before January 1, 1988 (the "Pre-1988 Reserves of Bank").

(f) Upon consummation of the transactions described herein, the Pre-1988 Reserves of Bank will be reserves of Bank, which will have exchanged its State X capital stock savings and loan association charter for a federal stock savings bank charter prior to the Merger.

Rulings

Based solely on the information submitted and the representations set forth above, we rule as follows:

1. The requirement of § 1.368-1(b) and (e) of the Income Tax Regulations that there be a continuity of interest in a reorganization is satisfied in the First Conversion. Cf. Rev. Rul. 69-3, 1969-1 C.B. 103.
2. The requirement of § 1.368-1(b) and (e) that there be a continuity of interest in a reorganization is satisfied by the Depositors' constructive exchange of mutual ownership interests in Mutual Bank for stock in Stock Bank in the Second Conversion, notwithstanding the Exchange. See Rev. Rul. 80-105, 1980-1 C.B. 78.
3. Neither the Second Conversion, the Transitory Merger, the Exchange, the Contribution, the Offering, nor the Merger will prevent the First Conversion from qualifying as a reorganization under § 368(a)(1)(F). See § 1.368-1(e)(2); Rev. Rul. 96-29, 1996-1 C.B. 50; Rev. Rul. 69-516, 1969-2 C.B. 56.
4. Neither the First Conversion, the Transitory Merger, the Exchange, the Contribution, the Offering, nor the Merger will prevent the Second Conversion from qualifying as a reorganization under § 368(a)(1)(F). See § 1.368-1(e)(2); Rev. Rul. 96-29; Rev. Rul. 69-516.
5. The Transitory Merger, in which the Exchange occurs, will be treated as the Depositors' transfer of Stock Bank 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.
6. The mutual ownership interests in MHC received by the Depositors will be treated as a stock within the meaning of § 351(a). See Rev. Rul. 78-286, 1978-2 C.B. 145; Rev. Rul. 69-3.
7. The common stock of SHC constructively received by Corporation A (and constructively distributed to the shareholders of Corporation A) in the Merger will be aggregated with the common stock of SHC received by MHC in the Contribution and by the Offerees in step (ix) for the purpose of determining whether Corporation A, MHC, and the Offerees, are in "control" of SHC within the meaning of § 368(c).

We express no opinion regarding the following matters, which will be determined upon audit of the federal income tax returns of Mutual Bank, Corporation A, Stock Bank, SHC, and MHC: (a) whether the First Conversion and the Second Conversion qualify as reorganizations under § 368(a)(1)(F); (b) whether the Transitory Merger and

the Exchange qualify under § 351(a); (c) whether the Merger qualifies as a reorganization under § 368(a)(1)(A); and (d) whether the transactions described in steps (vii), (viii), and (ix) qualify under § 351(a).

In addition, we express no opinion on the tax treatment of the Proposed Transactions under other provisions of the Code and regulations, or the tax treatment of any conditions existing at the time of, or effects resulting from, the Proposed Transactions that are not specifically covered by the above rulings.

Procedural Matters

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

A copy of this ruling letter should be attached to the federal income tax return of each affected taxpayer for the taxable year in which the transactions covered by this letter are completed.

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,
Associate Chief Counsel (Corporate)
By: Stephen P. Fattman
Assistant to the Chief
Branch 4