

**Internal Revenue Service**

Department of the Treasury

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Washington, DC 20224

Person to Contact:

Telephone Number:

Refer Reply To:

CC:DOM:CORP-PLR-132556-00

Date:

February 26, 2001

Mutual Bank =

State A =

Dear :

This letter responds to a letter dated December 19, 2000, requesting rulings about the federal income tax consequences of a proposed transaction. The information submitted for consideration is summarized below.

Mutual Bank is a federally chartered mutual savings bank engaged in banking and banking related business in State A. As a mutual entity, Mutual Bank does not have any authorized capital stock. Instead, the depositors have liquidation and voting rights (equity interests) in Mutual Bank.

For what have been represented to be valid business purposes, Mutual Bank's Board of Directors has decided to convert to a mutual holding company structure pursuant to the laws and regulations of State A. Accordingly, Mutual Bank proposes the following steps all of which will be undertaken pursuant to a plan and occur on approximately the same date:

- i. Mutual Bank will form an interim federal stock savings bank as a wholly-owned subsidiary ("Interim One").
- ii. Interim One will organize an interim federal stock savings bank as a wholly-owned subsidiary ("Interim Two").
- iii. Interim One will organize a stock corporation ("Stock Holding Company") as a wholly-owned subsidiary of Interim One.
- iv. Mutual Bank will exchange its charter for a federal stock savings bank charter ("Stock Bank").

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- v. Interim One will cancel its outstanding stock and exchange its charter for a federal mutual holding company charter (MHC).
- vi. Interim Two will merge with and into Stock Bank, with Stock Bank surviving, causing the Stock Bank to be a wholly-owned subsidiary of MHC.
- vii. The initially issued stock of the Stock Bank (which will be constructively received by former Mutual Bank members when Mutual Bank becomes Stock Bank pursuant to (iv)) will be constructively transferred to the MHC in exchange for membership interests in the MHC. Former members of the Mutual Bank will become members of the MHC.
- viii. MHC (formerly Interim One) will receive all of the stock of Stock Bank in exchange for its shares of Interim Two stock.
- ix. MHC will transfer all of the outstanding shares of Stock Bank to Stock Holding Company.

As a result of these steps, Stock Bank will be a wholly owned subsidiary of Stock Holding Company, which will be a wholly owned subsidiary of Mutual Holding Company. Mutual Holding Company will not have any authorized capital stock. The depositors of Stock Bank will hold all of the mutual interests (liquidation and voting rights) in Mutual Holding Company as long as they maintain deposit accounts in Stock Bank.

You propose that the transactions described above be treated as, in substance, the conversion of Mutual Bank to stock form followed by the 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. 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). Additionally, § 3.01(22) of Rev. Proc. 2000-3 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. 2000-3 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,

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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 Bank to Stock Bank (as described in step (iv) above) constitutes a reorganization described in § 368(a)(1)(F), 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 constitutes a transfer described in § 351(a) of property in exchange for stock.

With respect to the conversion of Mutual Bank from a federally chartered mutual savings bank to a federally chartered stock savings bank (as described in step (iv) above), you have requested two subissue rulings. One is that the requirements of § 1.368-1(b) and (e) 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 depositors' mutual ownership interests in Mutual Bank for stock in Stock Bank, notwithstanding the depositors' 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 (vii), 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, nor the contribution by Mutual Holding Company of Stock Bank to Stock Holding Company described in steps (ix) above, will prevent Mutual Bank's exchange of its charter for that of a State A chartered stock savings bank from qualifying as a reorganization under § 368(a)(1)(F).

With respect to the remainder of the transaction described in step (iv), above, you have requested two subissue 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, we hold as follows:

- (1) The requirements of § 1.368-1(b) and (e) 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 depositors' mutual ownership interests in Mutual Bank for stock in Stock Bank, notwithstanding the depositors' constructive exchange of that stock for mutual ownership interests in Mutual Holding Company immediately

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thereafter.

- (2) Neither the transaction described in steps (iv) through (vii), above, involving, in substance, the contribution of stock 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 of stock of Stock Bank to Stock Holding Company described in step (ix), above, will prevent Mutual Bank's exchange of its charter for that of a state chartered stock savings bank from qualifying as a reorganization under § 368(a)(1)(F).
- (3) The merger of Interim Two 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 for federal income tax purposes as the contribution of the stock 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 Mutual Holding Company will be treated as stock within the meaning of § 351(a). See Rev. Rul. 69-3, 1969-1 C.B. 103.

The rulings contained in this letter are based upon information and representations submitted by the taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. While this office has not verified any of the material submitted in support of the request for rulings, it is subject to verification on examination. A determination of whether the conversion of Mutual Bank to Stock Bank qualifies as a reorganization under § 368(a)(1)(F), and whether the exchange of Stock Bank shares for ownership interests in Mutual Holding Company is described in § 351, will be made upon audit of the federal income tax returns of Mutual Bank, Stock Bank, Mutual Holding Company, and Stock 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(s) requesting it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

A copy of this letter must be attached to any income tax return to which it is relevant.

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In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent to the taxpayer.

Sincerely,  
Jasper L. Cummings  
Associate Chief Counsel  
By: Lewis K Brickates  
Assistant to the Branch Chief