



State of Alabama Department of Revenue

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ALABAMA DEPARTMENT OF REVENUE REVENUE RULING 94-012

This document may not be used or cited as precedent. Code of Alabama 1975, §40-2A-5(a).

TO: Bank

FROM: Commissioner of Revenue
Alabama Department of Revenue

DATE: March 9, 1995

RE: Alabama tax treatment of a proposed new subsidiary, Leasing, of Bank of Alabama, N.A., which will engage in the business of leasing tangible personal property and making loans to business customers.

ISSUES AND FACTS

The facts as represented by Requestor are as follows:

Bank ("Bank") proposes to form a new subsidiary, Leasing, which will engage in the business of leasing tangible personal property and making loans to business customers.

Bank has determined that it is probably desirable from a business standpoint to carry on the proposed business activities in the areas of secured property leasing and loans to business customers as a separate subsidiary corporation. Leasing will be organized by Bank as a new Alabama corporation to engage in these activities. It is anticipated that business activities would consist of both leasing and loan activities.

Bank will organize Leasing as a wholly owned subsidiary under Alabama law and contribute certain existing leasing activities and loans to the company. Leasing will operate as a separate and independent corporation with its own board of directors and officers duly elected in accordance with Alabama law.

It is anticipated that Leasing will engage in the proposed business activities in the State of Alabama and in other states to be determined from time to time by the officers and directors of the company. The proposed business of Leasing will consist of leasing of tangible personal property and making loans to customers.

It has further been represented to the Department that Leasing's loan activities will relate to its leasing activities.

The issues are as follows:

(1) Whether the proposed business activities of Leasing, which will consist of the leasing of tangible personal property and making loans to business customers, will qualify Leasing as a financial institution under Code of Alabama 1975, §40-16-1(1), and

(2) Assuming Leasing qualifies as a financial institution, whether Leasing, as a financial institution, will be eligible to join in the filing of a qualified corporate consolidated return for Bank and its qualified affiliates pursuant to §40-16-3.

LAW AND ANALYSIS

Section 40-16-1(1), provides that the term "financial institution" shall include any "institution or person employing moneyed capital coming into competition with the business of national banks." Ala. Reg. 810-9-1-.01(1) provides: "[a] 'financial institution' is a national banking association or any personal entity which by employing monied capital as its principal business activity comes into competition with the business of national banks." This regulation also provides under subsection (a) that "'[f]inancial institution' also means those common parent corporations which are registered bank holding companies, as defined by the Bank Holding Company Act of 1956, as amended, and which are eligible to elect to file a consolidated Financial Institution Excise Tax Return as specified in Section 40-16-3."

The purpose of §40-16-1(1), et. seq., imposing an excise tax for the privilege of conducting a financial business employing moneyed capital coming into competition with the business of national banks, is to prevent national banks from claiming undue discrimination, and to that end financial institutions are included whose business is of such a character that it comes into competition with that of national banks. State v. Nat'l Credit Co., 236 Ala. 224, 181 So. 769 (1938). "Moneyed capital" within the meaning of §40-16-1(1) includes "only that which is employed in such a way as to bring it into substantial competition with the business of national banks." See First Nat'l Bank of Hartford, Wisconsin v. City of Hartford, 47 S.Ct. 462 (1927). Substantial competition is used in the sense that the competition is substantial as opposed to inconsequential when compared to that of national banks. See State v. Nat'l Credit Co., 181 So. at 771. Additionally, it is relevant to consider whether the particular moneyed capital and competition at issue are moneyed capital and competition within the meaning and spirit of the restriction. See Ward v. First Nat'l Bank of Hartford, 225 Ala. 10, 142 So. 93 (1932).

The leasing of tangible personal property is not a traditional banking activity, and the Department has found no case holding that the leasing of tangible personal property is a banking activity. The making of loans to business customers is a banking activity. See State v. Nat'l Credit Co., 181 So. at 771.

It appears from the facts of this case that Leasing's principal business activity will be the leasing of tangible personal property and it appears from the facts of this case that the loans made to customers by Leasing will be related to its leasing of tangible personal property, a nonbanking business activity. Accordingly, Leasing will not qualify as a financial institution under the Alabama Financial Institutions Excise Tax Statute and regulations.

Since Leasing will not qualify as a financial institution under §40-16-1(1), it will not be eligible to join in the filing of the qualified corporate group consolidated return of Bank and its qualified affiliates under §40-16-3.

HOLDING

Based on the particular facts of this case, the proposed business activities of Leasing, which will consist principally of the leasing of tangible personal property, a nonbanking activity, will not qualify Leasing as a financial institution under §40-16-1(1) & Reg. 810-9-1-.01(1).

Since Leasing will not qualify as a financial institution under §40-16-1(1), it will not be eligible to join in the filing of a qualified corporate consolidated return for Bank and its qualified affiliates under §40-16-3.

RALPH P. EAGERTON, JR.

RPE:BA:e15a