



STATE OF MICHIGAN
DEPARTMENT OF TREASURY
LANSING

GRETCHEN WHITMER
GOVERNOR

RACHAEL EUBANKS
STATE TREASURER

February 9, 2022

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Dear [REDACTED]:

Thank you for your letter requesting a Technical Advice Letter regarding whether a stand-alone mutual savings bank that converted to a mutual holding company would be considered to have undergone a change in “identity, form or place of organization” within the meaning of MCL 206.655(3)(a). You have requested the Michigan Department of Treasury (“Treasury”) provide you with a ruling on the findings expressed in your July 19, 2021, letter regarding the April 30, 2020, reorganization. Revenue Administrative Bulletin (RAB) 2016-20 describes procedures for issuing position statements of Treasury. Please consider this response a Technical Advice Letter that may be relied upon by the taxpayer requesting technical assistance.

Facts

In your letter, you present the following as relevant facts:

Prior to reorganization, [REDACTED] was a “stand-alone” federal savings bank (the “Mutual Bank”) and all voting rights and rights to the Mutual Bank’s equity in a liquidation was held by the Mutual Bank’s depositors. The Mutual Bank had no capital stock and no holding company.

In the reorganization, the Mutual Bank converted its charter to a mutual holding company charter and changed its name to [REDACTED] (the “Mutual Holding Company”). The Mutual Holding Company formed a new federally chartered stock savings bank eventually named [REDACTED] (the “Stock Bank”) operating under the taxpayer identification number (“FEIN”) of the former Mutual Bank. All depositors of the Mutual Bank became depositors of the Stock Bank. Substantially all the assets and liabilities and all the banking operations were transferred to the new Stock Bank.

The Mutual Holding Company also organized a wholly owed mid-tier stock holding company named [REDACTED] (the “Mid-Tier”), which also requested and

received a FEIN. The Mutual Holding Company then contributed the shares of the Stock Bank to the Mid-Tier.¹ No outside operating companies were involved in the reorganization. As a result, the single entity, the Mutual Bank, reorganized into the form of a two-tier mutual holding company structure with the bottom-tier subsidiary being the Stock Bank.

The structure for the reorganization is dictated by federal regulation, Rule 239.6 (12 C.F.R. §239.6) of the Federal Reserve System, and was approved by the Federal Reserve System Board of Governors. For purposes of the Corporate Income Tax Act (“CITA”), the resulting Mutual Holding Company, Mid-Tier Stock Holding Company and Stock Bank will operate as a unitary business group, (“UBG”).

For the period prior to the reorganization, the Mutual Holding Company filed a partial year return under MCL 206.655(2) (during which period it was the Mutual Bank), treating that portion of 2020 prior to the consummation of the reorganization as one tax year. A second partial year return was filed by the Mutual Holding Company under its FEIN for that portion of 2020 after consummation of the reorganization as another tax year. As a matter of federal law, the Mutual Bank’s existence continued in the form of the Mutual Holding Company.²

Issues

- 1) Whether the Reorganization, which was consummated in April 2020, was a “change in identity, form, or place of organization” of a single “financial institution” within the meaning of MCL Section 206.655(3)(a) which financial institution was in existence for the entire 2020 tax year.
- 2) Whether the Reorganization requires one or two Michigan CIT return filings for 2020.

Discussion

The facts indicate Mutual Bank will be reorganized into a UBG consisting of Mutual Holding Company, the Mid-Tier Stock Holding Company and Stock Bank. The Mid-Tier Holding Company will control 100 percent of the newly established Stock Bank. All three entities remaining after the reorganization each meet the definition of financial institution under MCL 206.651(g)(i) as does the resulting UBG of financial institutions under MCL 206.651(g)(iii).

Because the reorganization of the single Mutual Bank results in the organization of a UBG of financial institutions, it is proper for Treasury to analyze whether the reorganization qualifies as a change in identity, form, or place of organization of one financial institution under MCL 206.655(3)(a). Although not defined in the CITA, the terms, change in identity, form or place of organization are used in similar context under federal law.³ For example, Internal Revenue Code (“IRC”) 368 defines reorganization to include a mere change in identity, form, or place of

¹ Both the Stock Bank and the Mid-Tier Holding Company are wholly owned by the Mutual Holding Company. The shares of the Stock Bank and [REDACTED] were transferred to the Mid-Tier Holding Company. All other assets and liabilities and banking operations of the Mutual Bank were transferred to the Stock Bank. Thus, the Stock Bank is wholly owned by the Mid-Tier Holding Company which in turn is wholly owned by the Mutual Holding Company.

² Treasury’s conclusions are based solely on the facts as presented in the request. Should the facts deviate from those represented, Treasury’s conclusions could change.

³ MCL 206.601 authorizes Treasury to look to federal definitions for guidance when used in comparable context.

organization of one corporation, or a transfer by a corporation of all or part of its assets to another corporation. While federal guidance does not define these terms, the implication is that a reorganization indicates that a change in identify, form or transfer of assets has occurred. Black's Law Dictionary defines "identity" as:

Sameness in essential attributes; the condition of being the very same thing as has been described or asserted. 2. The selfsame nature of two or more things; esp., in patent law, the sameness in two devices of the function performed, the way it is performed, and the result achieved.... 3. The distinguishing personality or attributes of an individual. 4. More generally, the qualities and attitudes that a person or group of people have, differentiating them from others.

Further, "form" is defined as, "1. The outer shape, structure, or configuration of something, as distinguished from its substance or matter."⁴

Under the federal definition of reorganization, the approved reorganization by the Federal Reserve System Board of Governors, and a person's common understanding of the dictionary definitions of "identify" and "form," Treasury concludes that the change of the Mutual Bank to the Mutual Holding Company and transfer of stock to the Stock Holding Company and assets to the Stock Bank meets a change in identity or form. [REDACTED] has substantially the same assets, liabilities and performs the same financial services as the former [REDACTED] [REDACTED] but with a new name and structure. While the name and structure have changed because of the reorganization, the qualities and attributes of the bank remain essentially the same. As a result of this change, MCL 206.655(3)(a) requires that [REDACTED], the Stock Bank, be treated as having been in existence for the entire 2020 tax year and each tax year after the change.

Because you have represented that the entities after the reorganization are unitary,⁵ and MCL 206.651(g)(iii) recognizes a UBG of entities such as those that were organized in the described reorganization, are a financial institution, the UBG must file a tax return according to MCL 206.655. For tax years after December 31, 2018,⁶ the tax base of a UBG of financial institutions is the total equity capital of the top-tiered parent entity subject to deductions before allocation or apportionment. For tax years beginning on or before December 31, 2020, the tax base is averaged for a period of five years. The 2020 tax year is treated as a full tax year.⁷ Reading subsections (2) and (3) in harmony, both recognize that partial years are treated as a full year and the financial institution that changed in identity or form is treated as being in existence for the entire tax year. The equity capital of the top-tiered parent entity should reflect the investment in all the subsidiary entities in the tax base of the UBG. One tax return should be filed for the UBG's 2020 tax year in accordance with the provisions of MCL 206.655.

⁴ Black's Law Dictionary (11th ed. 2019).

⁵ MCL 206.611(6) defines UBG.

⁶ See 2018 PA 460.

⁷ See MCL 206.655(2).

Conclusions

The April 2020 reorganization was a “change in identity, form, or place of organization” of a single “financial institution” within the meaning of MCL Section 206.655(3)(a).

The reorganization of Mutual Bank resulted in the formation of a UBG of financial institutions that is recognized as being in existence for the entire 2020 tax year. The tax base of the UBG must be computed pursuant to the requirements of MCL 206.655. The total equity capital of the top-tiered parent entity will include the investment in the subsidiary members of the UBG of financial institutions.

If I can be of further assistance, please feel free to contact me at (517) 373-9600.

Sincerely,

/s/ Stewart Binke

Stewart Binke, Administrator
Tax Policy Division