

INTERPRETIVE LETTER 97-01 (JANUARY 21, 1997)

Please note that in accordance with a 2003 amendment to 12 CFR Section 7.1008, the prohibition against serving as an expert tax consultant was determined to be outdated and deleted. State chartered banks are authorized to provide tax planning services to the same extent as national banks pursuant to Section 5(11) of the Illinois Banking Act.

State Bank may provide tax preparation services to its customers or the public, but the Bank may not act as an expert tax consultant, and should take appropriate precautions to inform customers for the service of this fact.

This is in reply to your inquiry on behalf of your client * ("Bank") asking whether an Illinois state-chartered bank may provide tax preparation services. The Office of Banks and Real Estate ("Office") concludes that a state-chartered bank may provide tax preparation services as part of its general banking business.

The Bank proposes to assist customers in filling out income tax forms. Bank employees engaged in this activity would hold themselves out as income tax preparers, but not as experts or income tax consultants. The Bank employee who would sign as preparer is a licensed certified public accountant. The modified draft engagement letter that you provided establishes that:

- 1) accuracy and completeness of information submitted to the Bank is the customer's responsibility; the Bank need not verify this information and may rely upon the information in preparing the customer's tax return; and
- 2) the Bank's services are limited to preparation of the tax return and the Bank would not offer other services, such as interpreting tax laws, tax planning or advising in connection with an audit.

Sections 3 and 5 of the Illinois Banking Act ("Act"), 205 ILCS 5/3 and 5/5 (1994), respectively, establish the authority of state banks to conduct a general banking business and to engage in specifically enumerated powers. Section 5 does not explicitly grant authority for a state bank to offer tax preparation services. Therefore, if a state bank possesses the authority to provide tax preparation services, such service must be either part of the "general banking business" or, must be based upon parity with national banks as authorized by Section 5(11) of the Act, 205 ILCS 5/5(11) (1994).

General Banking Business

Section 3 of the Act provides that a state bank may be formed:

for the purpose of discount and deposit, buying and selling exchange and doing a general banking business, excepting the issuing of bills to circulate as money; and such banks shall have the power to loan money on personal and real estate security, and to accept and execute trusts upon obtaining a certificate of authority pursuant to the "Corporate Fiduciary Act", and shall be subject to all of the provisions of this Act.

205 ILCS 5/3 (1994) (emphasis added).

The term "general banking business" has evolved over the years, but has been interpreted to mean that a state bank possesses the authority to engage in activities that are convenient and useful in connection with its enumerated powers or that are incidental and germane to the enumerated powers. Corbett v. Devon Bank, 12 Ill. App. 3d 559, 572 (1973). Over the years, the Office has reviewed a number of potential activities to determine whether they are part of the "general banking business," and therefore permitted for state banks.¹ Applying the principles articulated in Corbett as well as previous interpretations of the Office, we conclude that tax preparation services are financial services that are incidental to an Illinois bank's statutory authority to carry on a "general banking business," and therefore are permissible activities pursuant to Section 3 of the Act.

Parity With National Banks

In addition to the Section 3 power to engage in the "general banking business," Section 5(11) of the Act provides additional and alternative authority for state-chartered banks to make the same investments and to offer the same services to customers that a national bank may make or offer. Section 5(11) states that:

A bank organized under this Act...shall, without specific mention thereof in the charter, have all the powers conferred by this Act and the following additional general corporate powers:

(11) Notwithstanding any other provisions of this Act, to do any act and to own, possess, and carry as assets property of the character, including stock, that is at the time authorized or permitted to national banks by an Act of Congress, but subject always to the same limitations and restrictions as are applicable to national banks by the pertinent federal law.

205 ILCS 5/5(11) (1994).

Illinois courts have interpreted Section 5(11) broadly. In Town & Country Bank of Quincy v. E. &

¹Interpretive Letter No. 83-001 (11-30-83; bank may act as futures commission merchant and establish subsidiary to act as futures commission merchant); Interpretive Letter No. 86-002 (10-24-86; bank may be limited partner in a Small Business Investment Corporation); Interpretive Letter No. 89-005 (3-29-89; bank may purchase certificates of deposit and government securities as agent for its customers and charge a fee for this service as part of its general banking business); Interpretive Letter No. 89-007 (6-18-89; bank may provide limited financial advisory services to unaffiliated parties in connection with mergers and acquisitions as part of its general banking business); Interpretive Letter No. 89-010 (8-31-89; bank may offer discount brokerage services through affiliation with a registered broker); Interpretive Letter No. 94-011 (6-15-94; offering debt cancellation agreements to its customers is incidental to bank's authority to loan money and carry on a general banking business); Interpretive Letter No. 94-013 (7-27-94; offering guaranteed asset protection plans to car loan customers, similar to debt cancellation agreements, is incidental to the general banking business).

D. Bancshares, Inc., et al., 172 Ill. App. 3d 1066 (4th Dist. 1988), the court described the purposes and effect of Section 5(11) as follows:

Section 5(11) of the Illinois Banking Act extends to State banks all of the powers which national banks enjoy under acts of Congress, court decisions interpreting the applicable Federal legislation, and regulations issued by the Comptroller of the Currency which interpret that legislation.

172 Ill. App. 3d 1066 at 1073.

The Office of the Comptroller of the Currency's interpretation on tax preparation by national banks states:

7.1008 Preparing income tax returns for customers or public.

A national bank may not serve as an expert tax consultant. However, a national bank may assist its customers in preparing their tax returns, either gratuitously or for a reasonable fee.

12 C.F.R. 7.1008 [61 FR 4849, 4863, Feb. 9, 1996].

Therefore, state banks have the authority to offer tax preparation services to their customers pursuant to Section 5(11) of the Act to the same extent that national banks do, subject to the same limitations that would apply to a national bank. After reviewing the draft engagement letter that the Bank proposes to provide customers for the tax preparation service, we also conclude that the Bank has taken appropriate care to establish clearly that the Bank is not serving as an expert tax consultant in preparing a customer's tax return.