

INTERPRETIVE LETTER NO. 99-03 (October 6, 1999)

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amendment to 12 CFR Section 7.1008, the prohibition against serving as an expert tax consultant was determined to be outdated and deleted.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.

Bank may provide certain tax and accounting services that are incidental to the business of banking. Such services include accounting, gathering books and records for preparing tax returns, offering routine tax planning and advice, and dealing with the Internal Revenue Service as an enrolled agent on behalf of a tax customer for the public.

This is in reply to your correspondence dated September 7, 1999, in which you asked whether an Illinois state-chartered bank might provide tax and accounting services to the general public. Your letter indicated that * (the "Bank"), is owned by *. * also owns a subsidiary corporation, *, which currently provides tax and accounting services to the public. * proposes to eliminate * and to transfer the tax and accounting services operation to the trust department of the Bank. Based upon your representations, the Office of Banks and Real Estate (the "Agency") concludes that the Bank may perform such tax and accounting services as part of its general banking business.

Section 3 of the Illinois Banking Act, [205 ILCS 5/1 et. seq.] (the "Act") provides that state-chartered banks possess the authority to engage in activities that are convenient and useful in connection with their enumerated powers or are incidental and germane to the enumerated powers. See Corbett v. Devon Bank, 12 Ill. App. 3rd 559, 572 (1973). You have indicated that you are familiar with the Agency's Interpretive Letter 97-01, issued on January 21, 1997, which concluded that tax preparation services are incidental to an Illinois bank's statutory authority to conduct a "general banking business".

Your correspondence states the Bank's position that certain additional services are incidental to the Bank's authorized tax preparation business. The Bank's trust department is currently staffed by a certified public accountant and two additional individuals who are IRS enrolled agents. The Bank proposes to utilize these staff members to provide additional services with respect to a tax preparation business. These additional services include accounting and gathering books and records to prepare tax returns; routine tax planning and advice; and dealing with the Internal Revenue Service as an enrolled agent on the behalf of the tax customer. The proposed additional services do not include the preparation of certified audits, tax shelter advice or advise with respect to specialized or complex tax planning strategies.

The execution of trusts is a recognized power of state-chartered banks, pursuant to Section 3 of the Act. Each of the described additional services may be an authorized or required activity in conjunction with accepting or executing trust authority by a state-chartered bank. The additional services are therefore deemed to be incidental or germane to conducting trust execution, a particular aspect of the business of banking. The agency concludes that once activities are deemed to be incidental to a particular aspect of the business of banking they also become incidental to all other aspects of the general business of banking. Thus, the additional services are incidental to the tax preparation business.

Appropriate care should be taken, however, to insure that the services provided by the Bank's trust department are not misconstrued by the tax customers as constituting expert tax consultant services. You are also urged to consult with the Bank's federal regulator.

We trust that this responds to your inquiry. If you have additional questions or concerns, please do not hesitate to contact the Agency.