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Comptroller of the Currency  
Administrator of National Banks

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Washington, DC 20219

October 23, 2002

**Interpretive Letter #948**  
**December 2002**  
**12 USC 24(7)**

Ann Johnson  
Counsel  
Federal Deposit Insurance Corporation  
550 17<sup>th</sup> Street, N.W., 3<sup>rd</sup> Floor  
Washington, DC 20429

Dear Ms. Johnson:

This is in response to your query whether a national bank, pursuant to 12 U.S.C. § 24(Seventh), may purchase and sell transferable state tax credits. For the reasons discussed below, we conclude that a national bank may engage in such activity.

**Background**

In several telephone conversations with OCC staff, you asked whether a national bank (“Bank”) may purchase and sell transferable Missouri state tax credits.<sup>1</sup> The Bank would purchase the tax credits and then would either use the tax credits to reduce its own tax liability or sell the tax credits to individuals and businesses able to use the credits to reduce their tax liabilities. In most cases where the Bank purchases tax credits for resale, the Bank would do so with written purchase commitments in place from potential buyers. Moreover, you indicated that demand for these tax credits typically exceeds their supply during tax season and that, in the event that a purchaser fails to honor his commitment to purchase or the Bank purchases tax credits without having identified a buyer, Bank management believes the Bank would have no difficulty in finding a third party to complete a sale.

You further indicated that the purchase and transfer of Missouri state tax credits is a noncomplex and fairly rapid process. After the Bank and a third party execute a tax credit transfer agreement, the parties complete and execute the Missouri transfer request application and file the application, a copy of the purchase agreement, and the existing tax credit certificate with the State of Missouri. Once the transfer is approved, the State of Missouri issues a certificate to the new owner evidencing the purchaser’s right to claim the tax credits.

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<sup>1</sup> Some state tax credits can be transferred from one taxpayer to another once they have been awarded (“transferable” credits), while others can only be used by a taxpayer who retains an equity or ownership interest in the qualified project. The Bank proposes to purchase and re-sell only transferable credits.

## Discussion

The courts and the OCC have recognized that, when reduced to their essence, national banks serve as financial intermediaries for the public. In other words, the public looks to national banks to facilitate the flow of money and credit among different parts of the economy. *Auten v. U.S. Nat'l Bank of New York*, 174 U.S. 125 (1899); Interpretive Letter No. 929, *reprinted in* [Current Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 81,454 (Feb. 11, 2002); Interpretive Letter No. 494, *reprinted in* [1989-1990 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 83,083 (Dec. 20, 1989). Indeed, it has been long-recognized that “[t]he very object of banking is to aid the operation of the laws of commerce by serving as a channel for carrying money from place to place, as the rise and fall of supply and demand require.” *Auten*, 174 U.S. at 143.<sup>2</sup>

Moreover, the evolutionary nature of the business of banking and the necessity of national banks’ developing new products and services to keep up with the changing financial needs of the economy are now well established in case law. *See, e.g., M & M Leasing Corp. v. Seattle First National Bank*, 563 F.2d 1377, 1382 (9th Cir. 1977) (confirming the authority of national banks to lease motor vehicles stating: “we believe the powers of national banks must be construed so as to permit the use of new ways of conducting the very old business of banking”) *cert. denied*, 436 U.S. 956 (1978); *American Insurance Association v. Clarke*, 865 F.2d 278, 281 (rejecting “a narrow and artificially rigid view of both the business of banking and the [National Bank Act]” which would have prevented national banks from providing municipal bond insurance as a new form of a traditional banking product). The purchase and sale of transferable state tax credits fits within the powers of national banks because it is simply a new way of tailoring traditional financial intermediation services to meet the needs of bank customers.

The role of a bank intermediary takes many forms: borrowing from savers and lending to users, 12 U.S.C. § 24(Seventh); buying and selling tax lien certificates, Interpretive Letter No. 725, *reprinted in* [1995-1996 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 81-040 (May 10, 1996); and brokering financial instruments, Interpretive Letter No. 717, *reprinted in* [1995-1996 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 81-032 (Mar. 26, 1996). As the recognized intermediaries between other, non-bank participants in the financial markets, banks possess the expertise to effect transactions between parties and to manage their own intermediation position. Interpretive Letter No. 929, *supra*.

The traditional manner for national banks to carry out the function of channeling available funds from points of surplus to points of demand is to receive funds from one source and make them available to another source – as is the case when deposits are received and loans originated. The purchase and sale of transferable state tax credits moves funds from sources of supply to sources of demand. Tax credits offset a tax liability, dollar-for-dollar, and therefore are the functional equivalent of money. By purchasing and selling tax credits, a national bank is engaging in both a permissible role – that of financial intermediary – and a permissible activity –

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<sup>2</sup> *Accord* No-Objection Letter No. 90-1, *reprinted in* [1989-1990 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 83,095 (Feb. 16, 1990); Interpretive Letter No. 387, *reprinted in* [1988-1989 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 85,602 (Mar. 24, 1987).

facilitating the flow of money. Therefore, purchasing, holding, and subsequently reselling transferable state tax credits is a permissible activity for national banks under Section 24(Seventh).

**Conclusion**

For the reasons stated above we conclude that, pursuant to 12 U.S.C. § 24(Seventh), a national bank would have the legal authority to purchase and sell transferable state tax credits. If you have any questions, please contact Senior Attorney Steven Key at (202) 874-5300.

Sincerely,

**-signed-**

Julie L. Williams  
First Senior Deputy Comptroller and Chief Counsel