

Clearinghouse Rule 95-119

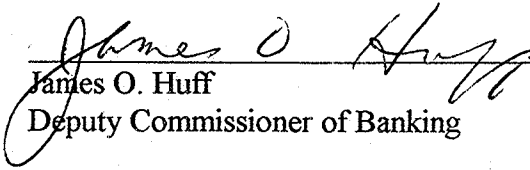
STATE OF WISCONSIN)
)SS
OFFICE OF COMMISSIONER OF BANKING)

I, James O. Huff, Deputy Commissioner of Banking of the Office of Commissioner of Banking and custodian of the official records, certify that the annexed rules, relating to leasing of personal property, were duly approved and adopted by this office.

I further certify that this copy has been compared by me with the original on file in this office and that it is a true copy of the original, and of the whole original.



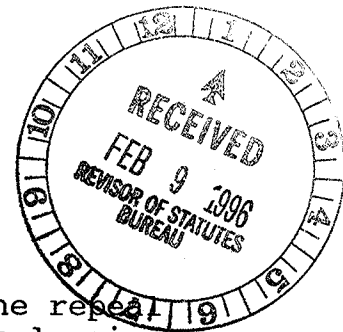
IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the official seal of the Office of Commissioner of Banking at 101 E. Wilson St. in the city of Madison, this 9th day of February, 1996


James O. Huff
Deputy Commissioner of Banking



95-119
4-1-96

ORDER OF THE OFFICE OF COMMISSIONER OF BANKING



An order to repeal of Bkg. 3.05 (4) and (5); and the repeal and recreation of Bkg. 3.05 (1), (2), and (3), relating to leasing of personal property.

Analysis Prepared by the Office of Commissioner of Banking:

Statutory authority: s. 220.04(8), Stats.

Statutes interpreted: s. 221.04(1)(f), Stats.

Under s. 220.04(8), Stats., the commissioner of banking with the approval of the banking review board may authorize state banks to exercise any right, power or privilege permitted national banks under federal law, regulation or interpretation.

National banks are empowered to engage in lease transactions under two lines of authority.

First, 12 USC 24 (10), specifically allows national banks to invest in tangible personal property for lease financing transactions on a net lease basis, but such investment may not exceed 10% of the assets of the bank. 12 CFR 23 limits the initial term for leases made under this authority to not less than 90 days. There are no related provisions in Wisconsin statutes or regulations.

Second, 12 USC 24 (7), generally authorizes national banks to lease personal property as an incidental power necessary to carry on the business of banking. A limitation is that the estimated residual value of the leased property may not exceed 25% of the original cost. Related provisions are found in Bkg. 3.05. Significantly, however, 12 CFR 23 allows national banks to enter into lease transactions where the estimated residual value exceeds 25% if guaranteed by the manufacturer, lessee or an unaffiliated third party. There are no provisions in Wisconsin statutes or regulations allowing state banks to enter into lease transactions where the estimated residual value exceeds 25%.

The purpose of recreating Bkg. 3.05 is to give state banks parity with national banks in lease financing transactions.

Pursuant to the authority vested in the Commissioner of Banking by ss. 220.04(8) and 227.11(2)(a), Stats., the Commissioner of Banking hereby repeals and recreates rules interpreting s. 221.04(1)(f), Stats., as follows:

SECTION 1. Bkg. 3.05(1) is repealed and recreated to read:

Bkg. 3.05(1) GENERAL AUTHORITY. (a) A bank may engage in lease financing transactions by complying with this subsection and either sub. (2) relating to leases on a net lease basis or sub. (3) relating to leases on a net, full-payout lease basis.

(b) A bank may enter into a lease financing transaction only if it can reasonably expect to realize a return of its full investment in the leased property, plus the estimated cost of financing the property over the term of the lease from:

1. Rentals;
2. Estimated tax benefits; and
3. The estimated residual value of the property, at the expiration of the term of the lease.

(c) "Net lease" means a lease under which the bank will not, directly or indirectly, provide or be obligated to provide for:

1. The servicing, repair or maintenance of the leased property during the lease term;
2. The purchasing of parts and accessories for the leased property. However, improvements and additions to the leased

property may be leased to the lessee upon its request in accordance with any applicable requirements for maximum estimated residual value;

3. The loan of replacement or substitute property while the leased property is being serviced;

4. The purchasing of insurance for the lessee, except where the lessee has failed in its contractual obligation to purchase or maintain the required insurance; or

5. The renewal of any license or registration for the property unless such action by the bank is necessary to protect its interest as owner or financier of the property.

(d) If, in good faith, a bank determines that there has been an unanticipated change in conditions which threatens its financial position by significantly increasing its exposure to loss, the bank may:

1. As the owner and lessor under a net lease or a net, full-payout lease, take reasonable and appropriate action to salvage or protect the value of the property or its interests arising under the lease; or

2. As the assignee of a lessor's interest in a lease, become the owner and lessor of the leased property pursuant to its

contractual right, or take any reasonable and appropriate action to salvage or protect the value of the property or its interest arising under the lease.

(e) The limitations contained in sub. (1)(c) do not prohibit a bank from:

1. Including any provisions in a lease, or from making any additional agreements, to protect its financial position or investment in the circumstances set forth in sub. (1)(d); or

2. Arranging for any of the services listed in sub. (1)(c) to be provided by a third party to a lessee, at the expense of the lessee, with respect to property leased by the lessee.

(f) A bank may acquire specific property to be leased only after the bank has entered into either:

1. A legally binding written agreement which indemnifies the bank against loss in connection with its acquisition of the property; or

2. A legally binding written commitment to lease the property on terms which comply with the provisions of this subsection and either sub. (2) or sub. (3).

(g) At the expiration of the lease, including any renewal or

extensions with the same lessee, or in the event of a default on a lease agreement prior to the expiration of the lease term, all of the bank's interest in the property shall either be liquidated or re-leased in conformance with this subsection and either sub. (2) or sub. (3), as soon as practicable, but in no event later than 2 years from the expiration of the lease. Property which the bank retains in anticipation of re-lease must be revalued at the lower of current fair market value or book value prior to any subsequent lease.

(h) On the return of leased property at the expiration of a conforming lease term, or on the default of a lessee, a short-term bridge or interim lease is permissible if it otherwise conforms with the net lease requirements of sub. (1)(c). Such leases need not comply with sub. (2) or sub. (3) and may be used pending the sale of off-lease property, or its re-lease as a conforming long-term financing transaction.

(i) Where a bank enters into leases pursuant to both sub. (2) and sub. (3), the bank must segregate the records it maintains with respect to each type of lease.

(j) Nothing in this section shall be construed to be in conflict with the duties, liabilities and standards imposed by the Consumer Leasing Act of 1976, 15 USC 1667 et. seq., or the Wisconsin Consumer Act, chs. 421 to 427, Stats.

(k) Leases permissible under this section are subject to the limitations on obligations under s. 221.29, Stats.

SECTION 2. Bkg. 3.05(2) is repealed and recreated to read:

(2) AUTHORITY TO LEASE PERSONAL PROPERTY ON A NET LEASE BASIS.

(a) Subject to the limitations of this subsection and sub. (1), and provided that the aggregate book value of all tangible personal property held for lease under this subsection does not exceed 10% of the consolidated assets of the bank, a bank may:

1. Invest in tangible personal property, including, without limitation, vehicles, manufactured homes, machinery, equipment or furniture for lease financing transactions on a net lease basis; or
2. Become the owner and lessor of such tangible personal property by purchasing the property from another lessor in connection with its purchase of the related lease.

(b) Lease financing transactions entered into under this subsection shall have an initial lease term of not less than 90 days. However, such period shall not be applicable to the acquisition of property subject to an existing lease with a remaining maturity of less than 90 days, provided that at its inception such lease complied with the provisions of this subsection and sub. (1).

SECTION 3. Bkg. 3.05(3) is repealed and recreated to read:

(3) AUTHORITY TO LEASE PERSONAL PROPERTY ON A NET, FULL-PAYOUT LEASE BASIS. (a) Subject to the limitations of this subsection and sub. (1), and provided the lease is a net, full-payout lease representing a noncancelable obligation of the lessee, notwithstanding the possible early termination of that lease, a bank may:

1. Become the legal or beneficial owner and lessor of specific personal property or otherwise acquire such property; or
2. Become the owner and lessor of personal property by purchasing the property from another lessor in connection with its purchase of the related lease; and
3. Incur obligations incidental to its position as the legal or beneficial owner and lessor of the leased property.

(b) Any unguaranteed portion of the estimated residual value relied upon by the bank to yield a full return on a net, full-payout lease shall not exceed 25% of the original cost of the property to the lessor. The amount of any estimated value guaranteed by a manufacturer, lessee or a third party which is not an affiliate of the bank may exceed 25% of the original cost of the

property where the bank has determined, and can provide, full supporting documentation that the guarantor has the resources to meet the guarantee.

(c) Calculations of estimated residual value of net, full-payout leases of personal property to federal, state or local government entities may be based on reasonably anticipated future transactions or renewals.

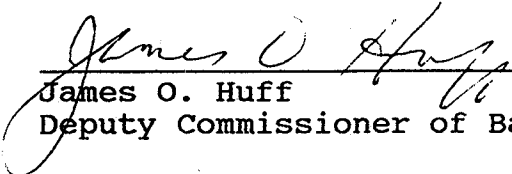
(d) In all net, full-payout leases, both the estimated residual value of the property and that portion of the estimated residual value relied upon by the lessor to satisfy the requirements of a full-payout lease must be reasonable in light of the nature of the leased property and all relevant circumstances so that realization of the lessor's full investment plus the cost of financing the property primarily depends on the creditworthiness of the lessee and any guarantor of the residual value, and not on the residual market value of the leased item.

SECTION 4. Bkg. 3.05(4) and (5) are repealed.

The rules and repeals contained in this order shall take effect as provided in s. 227.22(2)(intro.), Stats.

Dated: February 9, 1996

OFFICE OF COMMISSIONER OF BANKING



James O. Huff
Deputy Commissioner of Banking

FISCAL ESTIMATE
DOA-2048 N(R10/94)

- ORIGINAL
- UPDATED
- CORRECTED
- SUPPLEMENTAL

LRB or Bill No /Adm. Rule No.

CR-95-119

Amendment No. if Applicable

Subject

LEASING OF PERSONAL PROPERTY

Fiscal Effect

State: No State Fiscal Effect

Check columns below only if bill makes a direct appropriation or affects a sum sufficient appropriation.

Increase Costs - May be possible to Absorb Within Agency's Budget Yes No

Increase Existing Appropriation

Increase Existing Revenues

Decrease Existing Appropriation

Decrease Existing Revenues

Create New Appropriation

Decrease Costs

Local: No local government costs

1. Increase Costs

Permissive Mandatory

3. Increase Revenues

Permissive Mandatory

5. Types of Local Governmental Units Affected:

Towns Villages Cities

2. Decrease Costs

Permissive Mandatory

4. Decrease Revenues

Permissive Mandatory

Counties Others _____

School Districts WTCS Districts

Fund Sources Affected

- GPR
- FED
- PRO
- PRS
- SEG
- SEG-S

Affected Ch. 20 Appropriations

Assumptions Used in Arriving at Fiscal Estimate

THE RULE HAS NO STATE FISCAL EFFECT.

THE RULE HAS NO LOCAL GOVERNMENT COSTS.

Long-Range Fiscal Implications

NONE

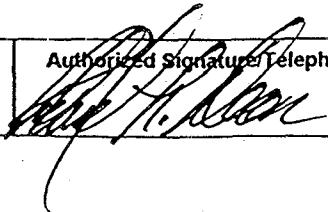
Agency/Prepared by: (Name & Phone No.)

Authorized Signature/ Telephone No.

Date

OCB/MICHAEL J. MACH

266-0451



266-1621

6/30/95

Tommy G. Thompson
Governor



Richard L. Dean
Commissioner

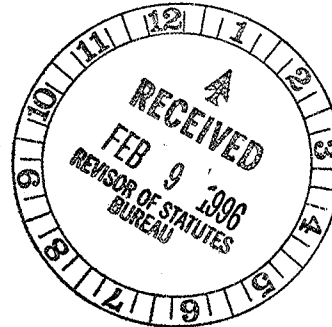
James O. Huff
Deputy Commissioner

State of Wisconsin • Office of Commissioner of Banking

101 East Wilson Street • 5th Floor • PO Box 7876 • Madison, Wisconsin 53707-7876 • (608) 266-1621 • FAX (608) 267-6889

February 9, 1996

Bruce Munson
Revisor of Statutes
131 W. Wilson St., 9th Floor
Madison, WI 53702



Douglas J. LaFollette
Secretary of State
30 W. Mifflin St., 9th Floor
Madison, WI 53702

Gentlemen:

Pursuant to s. 227.20(1), Stats., enclosed is a certified copy of an administrative rule adopted by the Office of Commissioner of Banking. This rule is Clearinghouse Rule 95-119, relating to leasing of personal property.

Sincerely,

A handwritten signature in cursive script that reads "Michael J. Mach".

Michael J. Mach
Administrator
Division of Supervision and Regulation

enc.: