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Just when it appeared as though acquisitions of banks by credit unions were poised to become the "new normal," a recent decision by the Colorado State Banking Board has slowed if not stopped that train when it denied a Colorado state bank's application to consummate a proposed asset sale to a credit union.

Cache Bank & Trust, a Colorado-chartered bank headquartered in Greeley, Colorado, applied to the State of Colorado to sell its assets to Boulder-based Elevations CU, utilizing an asset purchase structure that has been the primary legal vehicle for these types of transactions nationally.

However, state banks in Colorado are only allowed to sell assets to other banks and the proposed sale of assets to the credit union was not permitted by applicable Colorado law.

Asset sales have been the preferred route for credit union "acquisitions" of banks, particularly insofar as there is no legal authorization for banks to merge with and into credit unions. Asset sales followed by dissolution of the banking charter tend to be complex and expensive transactions, and bankers argue correctly that the tax advantages enjoyed by credit unions make bidding between credit unions and banks for assets or charters of existing banks unfair. In addition, the elimination of a tax-paying bank in favor of a tax-exempt credit union has an adverse impact on public revenue.

That battle has raged for a long time, and shows no likelihood of abating unless – and – until banks and credit unions are placed on a level playing field in terms of business and tax issues. There is virtually no question that the tax advantage provides a very significant competitive disadvantage to banks bidding on acquisitions of other bank assets and/or charters.

Given the history and resources allocated to efforts of credit unions to “acquire” banks, and given the ongoing significant tax advantages enjoyed by the credit union as an industry, it is highly unlikely that banks have heard the last of this.

In fact, the Colorado decision followed fairly closely on the heels of the announcement of the largest bank/credit union transaction to date in the proposed Tampa-based Suncoast Credit Union agreement to purchase Apollo Bank of Miami. According to sources, that transaction represented the 16th such transaction announced in 2018, compared with nine such transactions announced in 2018.

With larger credit unions looking more and more like banks in their size and product offerings, and with the continuing dilution of the “common bond” concept that gave rise to credit unions and a basis for their special tax treatment, credit unions will very likely continue to explore opportunities to further penetrate the “banking” market through transactions such as this.

Bankers would do well to keep a close eye on this phenomena, especially as it has the potential to continue to provide advantages to credit unions for further expansion based on an unfair tax advantage to the business and opportunities of credit unions under the tax code and expands upon what in fact constitutes the “common bond” concept that at one time formed the basis for the very formation and operation of credit unions.