Form/schedule	Recordkeeping	Learning about the law or the form	Preparing, copying, assembling and sending the form to the IRS
Schedule N (5471)	8 hr., 22 min	2 hr., 28 min	2 hr., 43 min.
Schedule O (5471)	10 hr., 45 min	24 min	35 min.

Frequency of Response: Annually.

Estimated Total Reporting/Recordkeeping Burden: 6,665,205 hours.

OMB Number: 1545–0954.

Form Number: IRS Form 1120–ND.

Type of Review: Extension.

Title: Return for Nuclear Decommissioning Funds and Certain Related Persons.

Description: A nuclear utility files Form 1120–ND to report the income and taxes of a fund set up by the public utility to provide cash for dismantling of the nuclear power plant. The IRS uses Form 1120–ND to determine if the fund income taxes are correctly computed and if a person related to the fund or the nuclear utility must pay taxes on self-dealing.

Respondents: Business or other for-profit.

Estimated Number of Respondents/Recordkeepers: 100.

Estimated Burden Hours Per Respondent/Recordkeeper:

Recordkeeping—23 hr., 12 min.
Learning about the law or the form—3 hr., 7 min.
Preparing the form—5 hr., 30 min.
Copying, assembling, and sending the form to the IRS—32 min.

Frequency of Response: Annually.

Estimated Total Reporting/Recordkeeping Burden: 3,235 hours.

OMB Number: 1545–1038.

Form Number: IRS Form 8703.

Type of Review: Extension.

Title: Annual Certification of a Residential Rental Project.

Description: Operators of qualified residential projects will use to certify annually that their projects meet the requirements of Internal Revenue Code (IRC) section 142(d). Operators are required to file this certification under section 142(d)(7).

Respondents: Business or other for-profit.

Estimated Number of Respondents/Recordkeepers: 6,000.

Estimated Burden Hours Per Respondent/Recordkeeper:

Recordkeeping—3 hr., 49 min.
Learning about the law or the form—1 hr., 17 min.
Preparing and sending the form to the IRS—1 hr., 24 min.

Frequency of Response: Annually.

Estimated Total Reporting/Recordkeeping Burden: 39,180 hours.

OMB Number: 1545–1189.

Form Number: IRS Form 8819.

Type of Review: Extension.

Title: Dollar Election Under Section 985.

Description: Form 8819 is filed by U.S. and foreign businesses to elect the U.S. dollar as their functional currency or as the functional currency of their controlled entities. The IRS uses Form 8819 to determine if the election is properly made.

Respondents: Business or other for-profit.

Estimated Number of Respondents/Recordkeepers: 1,500.

Estimated Burden Hours Per Respondent/Recordkeeper:

Recordkeeping—2 hr., 52 min.
Learning about the law or the form—1 hr., 17 min.
Preparing and sending the form to the IRS—1 hr., 23 min.

Frequency of Response: On occasion.

Estimated Total Reporting/Recordkeeping Burden: 8,340 hours.

Clearance Officer: Garrick Shear, Internal Revenue Service, Room 5244, 1111 Constitution Avenue, NW., Washington, DC 20224.

OMB Reviewer: Alexander T. Hunt (202) 395–7860, Office of Management and Budget, Room 10202, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports, Management Officer.

[FR Doc. 01–11822 Filed 5–9–01; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

[Docket No. 01–09]

Preemption Opinion

AGENCY: Office of the Comptroller of the Currency, Treasury.

ACTION: Notice.

SUMMARY: The Office of the Comptroller of the Currency (OCC) is publishing its response to a written request for the OCC's opinion of whether Federal law would preempt certain provisions of Ohio law that limit the ability of national banks to engage in the business of leasing automobiles. The OCC has determined that the state law provisions, as applied, would be preempted under Federal law.

FOR FURTHER INFORMATION CONTACT: MaryAnn Nash, Senior Attorney, or Mark Tenhundfeld, Assistant Director, Legislative and Regulatory Activities Division, (202) 874–5090.

SUPPLEMENTARY INFORMATION: The request for a preemption opinion was submitted by two national banks that engage in the business of motor vehicle leasing in Ohio (collectively, the Requester). As part of that business, the Requester disposes of vehicles that come off lease at the end of the lease term or as a result of early termination or the lessor's default. The Requester seeks to sell these vehicles directly to the public in order to obtain the highest price.

On November 12, 1993, the Registrar of the Ohio Bureau of Motor Vehicles (OBMV) issued a memorandum concluding that section 4517 of the Ohio Revised Code [1] prohibits the public sale of reclaimed leased vehicles. The memorandum interpreted Ohio law to permit direct sales to the public in the case of repossessed vehicles, but then concluded that vehicles reclaimed from a lessor for non-payment were not considered repossessed vehicles. As a result of this interpretation, reclaimed leased vehicles can only be sold at wholesale to persons licensed under section 4517 as ''dealers.''

The Requester has asked for the OCC's opinion on whether the National Bank Act would preempt section 4517 as interpreted by the OBMV. The National Bank Act authorizes national banks to engage in leasing activities consistent with the provisions of 12 CFR 23.[2] The Requester asserts that this authority includes the authority to dispose of reclaimed or off-lease vehicles in the manner that is economically most beneficial. The Requester further asserts that the OBMV's construction of Ohio

[1] Ohio Rev. Code Ann. § 4517.

[2] 12 U.S.C. 24 (Seventh) and 12 U.S.C. 24 (Tenth).

law impairs its ability to exercise its Federally authorized power.

Section 114 of the Riegle-Neal Interstate Banking and Branching Efficiency Act of 1994 generally requires the OCC to publish notice in the **Federal Register** requests for preemption opinions in one of the four specified areas: community reinvestment, consumer protection, fair lending, or the establishment of intrastate branches.[3] Section 114 also requires the OCC to publish any final opinion letter in which the OCC concludes that federal law preempts a state law in one of these four areas. Without expressly determining whether section 114 applied to this request, the OCC published a Notice of Request for Preemption Determination dated October 16, 2000. The OCC is publishing its response to the request as an appendix to this notice.

As is explained in greater detail in the response, the OCC agrees that national banks, as part of their authority to engage in the business of leasing automobiles under 12 U.S.C. 24 (Seventh) and 12 U.S.C. 24 (Tenth) may sell reclaimed or off-lease vehicles in the manner that is most economically beneficial. The OCC further agrees that the Ohio law, as interpreted by the OBMV, would be preempted, because it would frustrate the ability of national banks to operate their leasing businesses in an economically efficient manner consistent with safe and sound banking principles.

Dated: May 2, 2001.

John D. Hawke, Jr.,

Comptroller of the Currency.

Appendix

May 3, 2001.

Thomas A. Plant, Senior Vice President, Assistant General Counsel, National City Bank, 1900 East Ninth Street, Cleveland, Ohio 44114–3484.

Re: Request for Preemption Determination

Dear Mr. Plant:

This responds to your letter dated September 14, 2000, filed on behalf of National City Bank, Cleveland, Ohio and National City Bank of Indiana, Indianapolis, Indiana (the Banks). The Banks are wholly-owned subsidiaries of National City Corporation, a financial holding company headquartered in Cleveland, Ohio. In that letter, you request our opinion on whether Federal law would preempt certain provisions of Ohio law that limit the manner in which reclaimed leased vehicles may be sold. For the reasons discussed below, it is our opinion that Federal law would preempt those provisions.

[3] 12 U.S.C. 43.

Background

The Banks are engaged in the business of leasing automobiles. As part of the leasing business, the Banks dispose of vehicles that come off lease at the end of the lease term or as a result of early termination or the lessor's default. The Banks want to dispose of these vehicles in the manner they believe will result in the highest sales price in order to avoid or limit the losses taken on returned vehicles. The Banks assert that selling reclaimed automobiles directly to the public at auction typically yields the best price.[4]

On November 12, 1993, the Ohio Bureau of Motor Vehicles (the OBMV) issued a memorandum that effectively prohibited the public sale of reclaimed leased vehicles. The OBMV interpreted Ohio law to permit direct sales to the public only in the case of repossessed vehicles.[5] The memorandum specifically states that leased vehicles reclaimed from the lessor for non-payment are not considered repossessed vehicles. Since the issuance of that memorandum, the Banks have been required to sell their reclaimed or off-lease vehicles only at wholesale auctions to dealers licensed under Ohio law.

The Banks assert that the OBMV's construction of the Ohio law to prohibit public sales of reclaimed lease vehicles impairs their ability to exercise their leasing authority. The Banks have asked the OCC for its opinion on whether the National Bank Act preempts chapter 4517 of the Ohio Revised Code as interpreted by the OBMV.

On October 25, 2000, the OCC published a notice of your request in the **Federal Register** (Notice),[6] inviting interested parties to comment on whether federal law preempts the Ohio law. The OCC received seven comments in response to the Notice. Six commenters opined that Federal law preempts the type of state law in question. One commenter asserted that it does not. Each of the commenters who thought that federal law preempts the Ohio law cited the authority of national banks under 12 U.S.C. 24 (Seventh) to engage in leasing activities and noted that Federal law preempts state laws that purport to restrict an activity that is authorized by Federal law. Several commenters offered factual support for the assertion that selling reclaimed vehicles directly to the public generally yields a higher price.

The Ohio Department of Public Safety (OPDS) filed the only comment letter asserting that Federal law does not preempt the Ohio law. In that letter, the ODPS argued that there is no basis for preemption because the Ohio statute in question does not conflict with Federal law.

Analysis

Permissibility of the activity

It is well established that national banks are authorized to engage in the business of leasing automobiles. M&M Leasing Corporation v. Seattle First National Bank, 563 F. 2d 1377 (9th Cir. 1977). In M&M Leasing, the court determined that personal property leasing was a permissible activity for national banks because it was the functional equivalent of lending, an express power under the National Bank Act, 12 U.S.C. 24 (Seventh). Id. at 1382. In 1987, Congress specifically authorized national banks to lease personal property. 12 U.S.C. 24 (Tenth).[7] See also 12 CFR Part 23 (OCC regulation authorizing leasing for national banks and establishing requirements applicable to leasing activities conducted pursuant to 12 U.S.C. 24 (Seventh) and 12 U.S.C. 24 (Tenth)).

The authority to engage in the business of leasing includes the authority to dispose of leased property at the end of the lease. Courts have long recognized the ability of national banks to engage in the component activities of a permissible business. See Franklin Nat'l. Bank v. New York, 347 U.S. 373 (1954) (national banks may advertise bank services); Auten v. United States Nat'l. Bank, 174 U.S. 125 (1899) (national bank may borrow money); Arnold Tours, Inc. v. Camp, 472 F.2d 427 (1st Cir. 1972) (activity is permissible if it is convenient or useful to the business of banking). In these cases, the courts' holdings relied on whether the activity in question was ''useful'' to national banks in exercising their express powers.

In the situation you present, clearly the ability to dispose of reclaimed lease property is useful to banks engaging in leasing activities. Without the ability to dispose of

[4] The Banks state that selling reclaimed automobiles directly to the public nets the Banks on average $1500 more per vehicle than selling the vehicles at wholesale auctions, that is auctions in which only automobile dealers participate. Arguing in support of the Banks' position, one commenter suggested that this differential is supported by an analysis of prices in the November 2000 edition of the Black Book National Auto Research Official Used Car Market Guide Monthly.

[5] The OBMV memorandum appears to interpret section 4517 of the Ohio Revised Code. That section generally provides that no person shall—

Engage in the business of offering for sale, displaying for sale, or selling at retail or wholesale used motor vehicles or assume to engage in that business, unless the person is licensed as a dealer under sections 4517.01 to 4517.45 of the Revised Code, or is a salesperson licensed under those sections and employed by a licensed used motor vehicle dealer or licensed new motor vehicle dealer.''

Ohio Rev. Code Ann. § 4517.02(A)(2)(Anderson 1999).

The law provides an exception for ''mortgagees selling at retail only those motor vehicles that have come into their possession by a default in the terms of the mortgage contract.'' Ohio Rev. Code Ann. § 4517.02(A)(2)(Anderson 1999). Ohio law provides no similar exception for reclaimed leased vehicles.

[6] 65 FR 63916 (October 25, 2000) (the Notice). As stated in the Notice, section 114 of the Riegle-Neal Interstate Banking and Branching Efficiency Act of 1994 (Pub. L. 103–328, sec. 114, 108 Stat. 2338, 2366–68 (1994), codified at 12 U.S.C. 43) requires the OCC to publish notice in the **Federal Register** before issuing a final written opinion about the preemptive effect of Federal law in the areas of community reinvestment, consumer protection, fair lending, and the establishment of interstate branches. The OCC decided to publish the notice and invite comments on the issues raised in your letter without making a determination as to whether section 114 applies to your request.

[7] Your letter does not indicate on which source of authority the Banks rely in conducting the leasing activities in question.

reclaimed leased property, the banks could not conduct the leasing business. Thus, the issue presented by your letter is whether Federal law preempts a state law that restricts an essential aspect or component of an activity expressly authorized for a national bank.

Preemptive effect of Federal law

When the federal government acts within the sphere of authority conferred upon it by the Constitution, the Supreme Court has held that Federal law is paramount over, and thus preempts, state law. U.S. Const. art. VI, cl. 2 (the Supremacy Clause); Cohen v. Virginia, 19 U.S. (6 Wheat.) 264, 414 (1821) (Marshall, C.J.). Federal authority over national banks stems from several constitutional sources, including the Necessary and Proper Clause and the Commerce Clause of the United States Constitution. U.S. Const. art. I, § 8, cl.3, cl. 18; McCulloch v. Maryland, 17 U.S. (4 Wheat.) 316, 409 (1819).

The United States Supreme Court has identified several bases for Federal preemption of state law. First, Congress may enact a statute that preempts state law. E.g., Jones v. Rath Packing Co., 430 U.S. 519 (1977). Second, a Federal statute may create a scheme of Federal regulation ''so pervasive as to make reasonable the inference that Congress left no room for the States to supplement it.'' Rice v. Norman Williams Co., 458 U.S. 654, 659 (1982). Third, the state law may conflict with a Federal law. See, e.g., Franklin National Bank, supra; Davis v. Elmira Savings Bank, 161 U.S. 275 (1896).

In elaborating on the concept of conflict, the Supreme Court has recognized that conflict may exist even where compliance with both Federal and state law is possible. The Barnett court recognized that—

Federal law may be in ''irreconcilable conflict'' with state law. Rice v. Norman Williams Co., 458 U.S. 654, 659 (1982). Compliance with both statutes, for example, may be a ''physical impossibility,'' Florida Lime & Avocado Growers, Inc. v. Paul, 373 U.S. 132, 142–143 (1963); *or,* the state law may ''*stan[d] as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress.*'' Hines v. Davidowitz, 312 U.S. 52, 67 (1941).

Barnett Bank v. Nelson, 517 U.S. 25, 31 (1996) (emphasis added).

The Supreme Court has recognized that state law generally should not limit powers granted by Congress—

In using the word ''powers,'' the statute chooses a legal concept that, in the context of national bank legislation, has a history. That history is one of interpreting grants of both enumerated and incidental ''powers'' to national banks as grants of authority not normally limited by, but rather ordinarily preempting, contrary state law.

Barnett, 517 U.S. at 32. See also Bank One v. Guttau, 190 F.3d 844, 847 (8th Cir.1999).

In determining whether a state law stands as an obstacle to a national bank's exercise of a Federally authorized power, the Supreme Court has evaluated whether a state statute interferes with the ability of a national bank to exercise that power. The Barnett Court stated that—

In defining the pre-emptive scope of statutes and regulations granting a power to national banks, these cases [i.e., national bank preemption cases] take the view that normally Congress would not want States to forbid, or to impair significantly, the exercise of a power that Congress explicitly granted. To say this is not to deprive States of the power to regulate national banks, where * * * doing so does not prevent or significantly interfere with the national bank's exercise of its powers.

Barnett, 517 U.S. at 33.

The Court has held that Federal law preempts not only state laws that purport to prohibit a national bank from engaging in an activity permissible under Federal law but also state laws that condition the exercise by a national bank of a Federally authorized activity.

[W]here Congress has not expressly conditioned the grant of 'power' upon a grant of state permission, the Court has ordinarily found that no such condition applies. In Franklin Nat. Bank, the Court made this point explicit. It held that Congress did not intend to subject national banks' power to local restrictions because the federal power-granting statute there in question contained 'no indication that Congress[so] intended * * * as it has done by express language in several other instances.'

Barnett, 517 U.S. at 34 (citations omitted; emphasis in original).

Thus, a conflict between state law and Federal law need not be complete in order for Federal law to have preemptive effect. If a state law places limits on an unrestricted grant of authority under Federal law, the state law will be preempted.[8]

Application to Ohio law

In disposing of reclaimed property, national banks, like any other businesses, will endeavor to maximize their recovery on the property by disposing of it in the manner that will bring the highest return. In the case of national banks, the ordinary motivation to maximize return and minimize loss is reinforced by the legal obligation to operate in a safe and sound manner. National banks that engage in the business of automobile leasing are required by regulation to liquidate or re-lease such property as soon as practicable. 12 CFR 23.4(c). This requirement is contained in a section of the OCC's regulations designed ensure that national banks limit their exposure by conducting their leasing businesses in a safe and sound manner. See 12 CFR Part 23. A state law that prohibits a bank from disposing of off-lease property in the way that is most economically beneficial not only limits the bank's exercise of its Federally authorized power, but also increases the bank's loss exposure in a manner that is inconsistent with safe and sound banking principles.

While the Ohio law, as interpreted by the OBMV, does not prohibit a national bank from disposing of reclaimed vehicles, it does restrict national banks from disposing of leased vehicles in one of the usual and customary ways of doing so, namely, selling directly to the public. You have represented that the Banks' experience indicates that selling reclaimed vehicles directly to the public is the best way to recover vehicle costs. The OBMV has interpreted Ohio law to prohibit lessors from selling reclaimed vehicles at non-dealer auctions.

In our opinion, to the extent it is interpreted and applied in this manner, Ohio law frustrates the Banks' ability to operate their leasing businesses in an economically efficient manner consistent with safe and sound banking principles. Applying the standards set forth in Barnett, the state law significantly interferes with the Banks' exercise of their Federal powers. Therefore, it is our opinion that Federal law preempts the Ohio statute as interpreted by the OBMV.

Our conclusions are based on the facts and representations made in your letter. Any material change in facts or circumstances could affect the conclusions stated in this letter.

Sincerely,

Julie L. Williams,

First Senior Deputy Comptroller and Chief Counsel.

[FR Doc. 01–11744 Filed 5–9–01; 8:45 am]

BILLING CODE 4810–33–P

[8] See also OCC Interpretive Letter No. 866 (Oct. 8, 1999) (opining that state law requirements that preclude national banks from soliciting trust business from customers located in states other than where the bank's main office is located would be preempted); OCC Interpretive Letter No. 749 (Sept. 13, 1996) (opining that state law requiring national banks to be licensed by the state to sell annuities would be preempted); OCC Interpretive Letter 644 (March 24, 1994) (opining that state registration and fee requirements imposed on mortgage lenders would be preempted).

DEPARTMENT OF VETERANS AFFAIRS

Advisory Committee on Prosthetics and Special-Disabilities Programs; Notice of Meeting

The Department of Veterans Affairs (VA) gives notice under Public Law 92–463 that a meeting of the Advisory Committee on Prosthetics and Special-Disabilities Programs will be held Tuesday and Wednesday, May 22–23, 2001, at VA Headquarters, Room 230, 810 Vermont Avenue, NW., Washington, DC. The May 22 session will convene at 8 a.m. and adjourn at 4 p.m. and the May 23 session will convene at 8 a.m. and adjourn at 12 noon. The purpose of the Committee is to advise the Department on its prosthetic programs designed to provide state-of-the-art prosthetics and the associated rehabilitation research, development, and evaluation of such technology. The Committee also advises the Department on special disability programs which are defined as any program administered by the Secretary to serve veterans with spinal cord injury, blindness or vision impairment, loss of or loss of use of extremities, deafness or hearing impairment, or