Office of the Registrar of Regulations,
Legislative Council,
State of Delaware

CHAPTER 3
FORMERLY
SENATE BILL NO. 1

AN ACT TO AMEND TITLE 5 OF THE DELAWARE CODE RELATING TO THE BANK FRANCHISE TAX.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend §1101, Title 5 of the Delaware Code as follows:

§ 1101. Tax on net earnings.

(a) A franchise tax is hereby imposed on the "taxable income" of banking organizations and trust companies (computed on a basis that consolidates with the income of such banking organization or trust company for the tax year involved, the income of all subsidiary corporations of such banking organization or trust company in accordance with generally accepted accounting principles; provided, however, that the income of subsidiary corporations of out-of-state banks that operate resulting branches in this State shall be consolidated with the income of such resulting branches only if such subsidiaries make the election provided for in subsection (f) of this section). For the purposes of this chapter, "out-of-state bank" shall have the same meaning as in § 795 of this title. Also for the purposes of this chapter, "resulting branch" shall have the same meaning as in § 795 of this title and, in addition, shall also mean the branch offices in this State of out-of-state banks. The "taxable income" on which such tax is imposed shall be equal to the product of (1) and (2) as follows:

(1) Net operating income before taxes increased by the amount of securities gains before taxes and reduced by:

a. Securities losses before taxes;

b. That portion of net operating income before taxes, verifiable by documentary evidence, from any subsidiary or foreign branch established within the United States pursuant to § 771 of this title or other branch established within the United States but outside of this State pursuant to federal law or other applicable law of this State which is:

1. Otherwise subject to income taxation under Delaware law;

2. Derived from business activities carried on outside the State and subject to income taxation under the laws of another state, and that portion of net operating income before taxes from any such entity other than a Delaware-chartered banking organization or a national bank located in this State (as defined in § 801(5) of this title) which entity is a banking organization and which is subject to income taxation under the laws of another state; provided, however, that in the case of any subsidiary engaged in the sale, distribution or underwriting of, or dealing in, securities, the amount of income excluded pursuant to this sub-subparagraph b.2. shall in no event exceed 50 percent of such subsidiary's net operating income before taxes; or

3. Derived from business activities carried on outside the State, which subsidiary, foreign branch or other branch established outside of this State is subject to shares tax under the laws of another state; provided however, that in the case of any subsidiary engaged in the sale, distribution or underwriting of or dealing in securities, the amount of income excluded pursuant to this sub-subparagraph shall in no event exceed 50 percent of such subsidiary's net operating income before taxes;

c. Net operating income before taxes as shown on the books of account of any non-United States branch office established: (i) Pursuant to § 771 of this title in the case of a state banking organization; or (ii) pursuant to federal law in the case of a national bank; provided that in either case at least 80 percent of the gross income of such non-United States branch office constitutes "income from sources without the United States" as defined under § 862(a) of the Internal Revenue Code of 1986, as amended [26 U.S.C. § 862(a)], or any successor provisions thereto;

d. The gross income derived from international banking transactions (as defined in § 101 of this title) after subtracting therefrom any expenses or other deductions attributable thereto;

e. The gross income of an international banking facility (as defined in § 101 of this title) less any expenses or other deductions attributable thereto;

f. The interest income from obligations of volunteer fire companies; and

g. Any examination fee paid to the Office of the State Bank Commissioner pursuant to § 127(a) of this title.

(2) Multiplied by the factor .56.

For purposes of this subsection, a resulting branch in this State of an out-of-state bank or foreign bank, or a foreign bank branch, foreign bank limited purpose branch, foreign bank agency or a federal branch or agency (all as defined in § 101 of this title) shall be treated as if it were a corporation. The Commissioner shall prescribe such rules and regulations as may be deemed necessary in order that the tax liability of any resulting branch in this State of an out-of-state bank or foreign bank, or any foreign bank branch, foreign bank limited purpose branch, foreign bank agency or federal branch or agency under this subsection may be returned, determined, computed, assessed, collected and adjusted, in such manner as to clearly reflect the tax liability and the various factors necessary for the determination of such liability, and in order to prevent avoidance of such tax liability.

(b) A franchise tax is hereby imposed on the "taxable income" of federal savings banks not headquartered in this State but maintaining branches in this State, verifiable by documentary evidence. The "taxable income" on which tax is imposed shall be equal to the net operating income of the branch or branches located in Delaware before taxes

increased by the amount of securities gains before taxes and reduced by the amount of securities losses before taxes and by the interest income from obligations of volunteer fire companies.

(c) Whenever the phrase "international banking facility" is incorporated by reference in Title 30, it shall have the meaning of "international banking transaction" provided in § 101 of this title as the same may from time to time be amended.

(d) Whenever the phrase "international banking transaction" is incorporated by reference in Title 30, it also shall have the meaning of "international banking transaction" provided in § 101 of this title as the same may from time to time be amended.

(e) Any subsidiary corporation of a banking organization or trust company which subsidiary is not itself a banking organization or trust company may elect, in such manner as the State Bank Commissioner shall prescribe, to be taxed in accordance with Chapter 19 of Title 30. If such election is made, such electing subsidiary corporation shall not be considered a "subsidiary corporation" for purposes of subsection (a) of this section. Such election shall not be available to any corporation which is described in § 1901(2) or § 1902(b)(8) of Title 30 or any corporation engaged in the sale, distribution or underwriting of, or dealing in, securities.

(f) For purposes of subsection (a) of this section, any corporation other than a subsidiary engaged in activities authorized under § 761(a)(14) or § 1661(a)(14) of this title 80 percent of whose total combined voting power of all classes of stock entitled to vote is owned by an out-of-state bank that operates a resulting branch in this State or, directly or indirectly, by a bank holding company that also directly or indirectly owns all the stock of a Delaware chartered banking organization or trust company, a national bank located in this State or an out-of-state bank that operates a resulting branch in this State may elect, in such manner as the State Bank Commissioner shall prescribe, to be treated as a "subsidiary corporation" of a banking organization or trust company. Such election shall not be effective unless the electing corporation, together with its "affiliates" as that term is defined in subchapter V of Chapter 7 of this title, employs by the end of its taxable year following the taxable year in which the election is made at least 200 persons within this State. When applicable, the income of such electing corporation shall be consolidated with the taxable income of the resulting branch in this State of an out-of-state bank in accordance with generally accepted accounting principles.

(g) Notwithstanding any of the foregoing, the tax imposed under this section shall not be imposed upon any "taxable income" derived from acting as an insurer pursuant to § 761(a)(14) or § 1661(a)(14) of this title or from acting as an insurer pursuant to Title 18.

(h) For purposes of this chapter, an Edge Act Corporation as defined in § 101(4)c. of this title which is not "engaged in banking" as defined at 12 C.F.R. § 211.2(f), or any subsidiary thereof, may elect to be taxed in accordance with Chapter 19 of Title 30 in lieu of this chapter.

Section 2. Amend §1104, Title 5 of the Delaware Code as follows:

§ 1104. Date of payment and collection of tax; estimated tax.

(a) Taxes imposed under this chapter are due and payable on or before the 1st day of March in the year in which they are assessed, and after that date shall be collected by the State Bank Commissioner. Except that with respect to a banking organization, trust company or federal savings bank not headquartered in this State but maintaining branches in this State whose franchise tax liability for the current year is estimated to exceed $10,000, a tentative return covering estimated bank franchise tax liability for the current income year, to be in such form and containing such information as the State Bank Commissioner shall prescribe, shall be filed with the State Bank Commissioner on or before the 1st day of March of the current income year. Every banking organization (or out-of-state bank that operates a resulting branch in this State), trust company or federal savings bank not headquartered in this State but maintaining branches in this State failing to file the tentative return covering estimated bank franchise tax liability required by this subsection shall be subject to a penalty of $25 for each day that it continues in such failure, unless the Commissioner is satisfied that such failure was not wilful. Any penalty that may be imposed by the Commissioner hereunder shall be paid to the State Treasurer for deposit in the General Fund.

(b) The estimated tax liability as calculated per subsection (a) of this section shall be due and payable in installments of 40 percent of the estimated tax liability on June 1, 20 percent on September 1 and 20 percent on December 1 of the current taxable year with the balance to be paid on March 1 of the succeeding year.

(c)(1) In the case of any underpayment of estimated tax or installment of estimated tax required by this chapter, there shall be added to the tax for the taxable year an amount determined at the rate of 0.05 percent per day upon the amount of underpayment for the period of the underpayment.

(2) For purposes of paragraph (1) of this subsection, the amount of the underpayment shall be the excess of:

a. The amount of the estimated tax or installment payment which would be required to be made if the estimated tax were equal to 80 percent of the tax shown on the final return for the taxable year, or if no return was filed, 80 percent of the tax for such year, over

b. The amount, if any, of the estimated tax or the installment paid on or before the last date prescribed for payment.

(3) The period of the underpayment shall run from the date the estimated tax or installment was required to be paid to the earlier of the date when such estimated tax or installment is paid or the date of the final payment of tax for the year.

(4) Notwithstanding paragraphs (1)-(3) of this subsection, the addition to the tax with respect to any underpayment of estimated tax or any installment shall not be imposed if the total amount of all payments of estimated tax made on or before the last date prescribed for the payment thereof equals or exceeds the amount which would have been required to be paid on or before such date if the estimated tax were the tax shown on the final

return of the banking organization, trust company or federal savings bank not headquartered in this State but maintaining branches in this State for the preceding taxable year.

(d) In the case of a banking organization, trust company or federal savings bank not headquartered in this State but maintaining branches in this State which has been engaged in banking business of any kind in this State for less than the whole year, the amount of tax due, at the rates provided in this chapter, shall be prorated for that portion of the year during which the banking organization, trust company or federal savings bank not headquartered in this State but maintaining branches in this State was engaged in banking business of any kind within this State. Within 30 days of the cessation of all banking business of any kind within this State, the president, treasurer or other proper officer shall file a true statement, verified by oath, setting forth the net income of such banking organization, trust company or federal savings bank not headquartered in this State but maintaining branches in this State as defined in this chapter, and such other true statements, in such form as shall be specified by the Commissioner, verified by oath, setting forth the "taxable income" of such banking organization, trust company or federal savings bank not headquartered in this State but maintaining branches in this State as defined in this chapter.

(e) If any banking organization, trust company or federal savings bank not headquartered in this State but maintaining branches in this State shall fail to pay any tax due under this chapter on or before the due date, a penalty of 0.05 percent shall be assessed for each day that the same shall remain unpaid after such date.

Section 3. This Act shall be effective upon its enactment into law. The deleted provisions about the resulting branch imputed capital addback shall continue to apply to tax years ending before January 1, 2013, but shall not apply to tax years beginning after December 31, 2012.

Approved January 30, 2013