
TITLE 5 BANKING
DELAWARE ADMINISTRATIVE CODE

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1100 Taxation

1106 Instructions for Preparation of Franchise Tax for Federal Savings Banks Not Headquartered in this State but Maintaining Branches in this State

5 Del.C. Ch. 11

Effective Date: February 11, 2017

1.0 This regulation applies only to federal savings banks not headquartered in this State but maintaining branches in this State. The estimated and final franchise tax reports that accompany this regulation are found in regulations 1107 and 1108, respectively.

20 DE Reg. 654 (02/01/17)

2.0 Definitions

“Net Operating Income Before Taxes” means the total net income calculated in accordance with Section 8.0 of this Regulation, with adjustments made for securities gains or losses and other appropriate adjustments.

3.0 Estimated Franchise Tax

- 3.1 A federal savings bank not headquartered in this State whose franchise tax liability for the current year is anticipated to exceed \$10,000 shall file an estimated franchise tax report with the State Bank Commissioner and pay estimated franchise tax.
- 3.2 Filing. The estimated franchise tax report shall be filed with the State Bank Commissioner on the first day of March of the current year.
- 3.3 Penalty for late filing. A late filing penalty shall be assessed against the taxpayer in the amount of \$25 for each day after the due date that the taxpayer fails to file the estimated franchise tax report required above in subsection 3.2, unless the State Bank Commissioner is satisfied that such failure was not willful.
- 3.4 Form. The estimated franchise tax report shall be in the form set out in Regulation No. 1107.
- 3.5 Calculation of estimated tax. The total estimated annual franchise tax shall be calculated as follows:
 - 3.5.1 The estimated net operating income before taxes of the branch or branches located in Delaware;
 - 3.5.2 Less the estimated interest income from obligations of volunteer fire companies;
 - 3.5.3 The appropriate rate of taxation set forth in 5 Del.C. §1105 shall be applied;
 - 3.5.4 The subtotal estimated annual franchise tax shall be adjusted for tax credits applicable pursuant to 5 Del.C. §1105, which are calculated in accordance with Regulation No. 1109;
 - 3.5.5 The subtotal estimated annual franchise tax shall be adjusted for Travelink tax credits calculated in accordance with Department of Transportation Travelink tax credit reporting requirements;
 - 3.5.6 The subtotal estimated annual franchise tax shall be adjusted for Historic Preservation Tax Credits calculated in accordance with 30 Del.C. §§1181 et seq. and the regulations thereunder. Claimed credits must be accompanied by a Certificate of Completion issued by the Delaware State Historic Preservation Office certifying that the credits have been properly earned, in accordance with 5 Del.C. §1105(g). If the credits have been transferred, sold or assigned to the taxpayer by another person, a Certificate of Transfer must also be attached, in accordance with 30 Del.C. §1814(c);
 - 3.5.7 The subtotal estimated annual franchise tax shall be adjusted for any other applicable tax credit(s) [attach supporting schedule identifying the tax credit(s)].
- 3.6 Payment of estimated tax. The estimated tax liability shall be due and payable as follows:
 - 3.6.1 40% due on or before June 1 of the current year;
 - 3.6.2 20% due on or before September 1 of the current year;
 - 3.6.3 20% due on or before December 1 of the current year.

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4.0 Final Franchise Tax

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- 4.1 Filing. The December 31 call report, verified by oath, setting forth the net operating income of the Delaware branch or branches of the federal savings bank not headquartered in this State and the final franchise tax report shall be filed with the Office of the State Bank Commissioner on or before January 30 each year.
- 4.2 Penalty for late filing. A late filing penalty shall be assessed against the taxpayer in the amount of \$25 for each day after the due date that the taxpayer fails to file the final franchise tax report required above in section 4.1, unless the State Bank Commissioner is satisfied that such failure was not willful.
- 4.3 Form. The final franchise tax report shall be in the form set out in Regulation No. 1108.
- 4.4 Calculation of final tax. The total final franchise tax shall be calculated as follows:
 - 4.4.1 The net operating income before taxes of the branch or branches located in Delaware;
 - 4.4.2 Less the interest income from obligations of volunteer fire companies;
 - 4.4.3 The appropriate rate of taxation set forth in 5 **Del.C.** §1105 shall be applied;
 - 4.4.4 The subtotal annual franchise tax shall be adjusted for tax credits applicable pursuant to 5 **Del.C.** §1105, which are calculated in accordance with Regulation No. 1109;
 - 4.4.5 The subtotal annual franchise tax shall be adjusted for Travelink tax credits calculated in accordance with Department of Transportation Travelink tax credit reporting requirements;
 - 4.4.6 The subtotal annual franchise tax shall be adjusted for Historic Preservation Tax Credits calculated in accordance with 30 **Del.C.** §§1811 et seq. and the regulations thereunder. Claimed credits must be accompanied by a Certificate of Completion issued by the Delaware State Historic Preservation Office certifying that the credits have been properly earned, in accordance with 5 **Del.C.** §1105(g). If the credits have been transferred, sold or assigned to the taxpayer by another person, a Certificate of Transfer must also be attached, in accordance with 30 **Del.C.** §1814(c);
 - 4.4.7 The subtotal annual franchise tax shall be adjusted for any other applicable tax credit(s) [attach supporting schedule identifying the tax credit(s)].

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5.0 Payment of Final Franchise Tax

- 5.1 Taxes owed for the previous calendar year are due and payable on or before March 1 of the following year. Checks or other forms of payment should be made payable to the State of Delaware and directed to the Office of the State Bank Commissioner.
- 5.2 The amount due and payable on or before March 1 for the previous calendar year shall be the final franchise tax, less any estimated tax payments made for the taxable year, plus any additional tax due to underpayment of estimated franchise tax or installment. If the final franchise tax is not paid by March 1, a penalty for late payment of the final franchise tax shall be assessed.

20 DE Reg. 654 (02/01/17)

6.0 Additional Tax Due to Underpayment of Estimated Franchise Tax or Installment

- 6.1 In the case of any underpayment of estimated franchise tax or installment of estimated franchise tax required by Chapter 11 of Title 5 of the **Delaware Code**, 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 the underpayment for the period of the underpayment. The amount of the underpayment shall be the excess of:
 - 6.1.1 The amount of the estimated franchise 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 were filed, 80 percent of the tax for such year, over;
 - 6.1.2 The amount, if any, of the estimated tax or installment paid on or before the last date prescribed for payment.
- 6.2 The period of the underpayment shall run from the date the estimated franchise 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.
- 6.3 Notwithstanding the above, the addition to the tax with respect to any underpayment of estimated franchise 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 for the payment thereof equals or exceeds the amount which would have been required to be paid

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on or before such date if the estimated tax were the tax shown on the final return of the federal savings bank not headquartered in this State for the preceding taxable year.

7.0 Penalty - Late Payment of Estimated Franchise Tax or Installment or Final Franchise Tax

- 7.1 In the case of a late payment of final franchise tax as required by Chapter 11 of Title 5 of the **Delaware Code**, there shall be added to the tax a penalty in an amount determined at the rate of 0.05 percent per day until required payment is made.

8.0 Separate Accounting by Delaware Branches

- 8.1 Books and Records. Each branch in this State of a federal savings bank not headquartered in this State must keep a separate set of books and records as if it were an entity separate from the rest of the federal savings bank that operates such Delaware branch. These books and records must reflect the following items attributable to the Delaware branch:
- 8.1.1 Assets and the credit equivalent amounts of offbalance sheet items used in computing the riskbased capital ratio under 12 C.F.R. part 567;
 - 8.1.2 Liabilities;
 - 8.1.3 Income and gain;
 - 8.1.4 Expense and loss.
- 8.2 Consolidation of Delaware Branches. If a federal savings bank not headquartered in this State operates more than one Delaware branch, it may treat all Delaware branches as a single separate entity for purposes of computing the assets, liabilities, income, gain, expense, and loss referred to above.
- 8.3 Determining Assets Attributable to a Delaware Branch
- 8.3.1 General Principle of Asset Attribution. The general principle will be to attribute assets to a Delaware branch if personnel at the Delaware branch actively and materially participate in the solicitation, investigation, negotiation, approval, or administration of an asset.
 - 8.3.2 Loans and Finance Leases. These assets will be attributed to a Delaware branch if personnel at the Delaware branch actively and materially participated in the solicitation, investigation, negotiation, final approval, or administration of a loan or financing lease. Loans include all types of loans, including credit and travel card accounts receivable.
 - 8.3.3 Stocks and Debt Securities. These assets will be attributed to a Delaware branch if personnel at the Delaware branch actively and materially participated in the acquisition of such assets.
 - 8.3.4 Foreign Exchange Contracts and Futures Options, Swaps, and Similar Assets. These assets will be attributed to a Delaware branch if personnel at the Delaware branch actively and materially participated in the solicitation, investigation, negotiation, acquisition, or administration of such assets.
 - 8.3.5 Patents, Copyrights, Trademarks, and Similar Intellectual Property. These assets will be attributed to a Delaware branch if personnel at the Delaware branch actively and materially participated in the licensing of such asset.
 - 8.3.6 Currency. U.S. and foreign currency will be attributed to a Delaware branch if physically stored at the Delaware branch.
 - 8.3.7 Tangible Personal and Real Property. These assets (including bullion and other precious metals) will be attributed to a Delaware branch if they are located at or are part of the physical facility of a Delaware branch.
 - 8.3.8 Other Business Assets. Other business assets will be attributed to a Delaware branch if personnel at the Delaware branch actively and materially participated in the acquisition of such assets.
 - 8.3.9 Credit Equivalent Amounts of Regulatory Off Balance Sheet Items Taken Into Account in Determining RiskBased Capital Ratio. These are the credit equivalent amounts of offbalance sheet items described in 12 C.F.R. part 567 not otherwise addressed above (e.g., guarantees, standby letters of credit, commercial letters of credit, risk participations, sale and repurchase agreements and asset sales with recourse if not already included on the balance sheet, forward agreements to purchase assets, securities lent (if the lending federal savings bank is exposed to risk of loss), bid and performance bonds, commitments, revolving underwriting facilities). These assets will be attributed to a Delaware branch if personnel at the Delaware branch actively and materially participated in the solicitation, investigation, negotiation, acquisition, or administration of such assets.

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8.4 Liabilities Attributable to a Delaware Branch.

- 8.4.1 The liabilities attributable to a Delaware branch shall be the deposits recorded on the books of the Delaware branch plus any other legally enforceable obligations of the Delaware branch recorded on the books of the Delaware branch or the federal savings bank not headquartered in this State.

8.5 Income of a Delaware Branch.

- 8.5.1 Income from Assets. Income and gain from assets (including fees from offbalance sheet items) attributed to a Delaware branch in accordance with the rules in subsection 8.3 above will be attributed to the Delaware branch.

- 8.5.2 Income from Fees. Fee income not attributed to a Delaware branch in accordance with subsection 8.5.1 above will be attributed to the Delaware branch depending on the type of fee income.

- 8.5.2.1 Fee income from letters of credit, travelers checks, and money orders will be attributed to the Delaware branch if the letters of credit, travelers checks, or money orders are issued by the Delaware branch, except to the extent that subsection 8.5.1 above requires otherwise.

- 8.5.2.2 Fee income from services (e.g., trustee and custodian fees) will be attributed to the Delaware branch if the services generating the fees are performed by personnel at the Delaware branch. If services are performed both within and without Delaware, the fees from such services must be allocated between Delaware and other states based on the relative value of the services or upon the time spent in rendering the services or on some other reasonable basis. The basis for allocation must be disclosed and applied consistently from period to period.

8.6 Determining the Expenses of a Delaware Branch.

- 8.6.1 Interest. The amount of interest expense of a Delaware branch shall be the actual interest booked by the Delaware branch, which should reflect market rates.

- 8.6.2 Direct Expenses of a Delaware Branch. Expenses or other deductions that can be specifically identified with the gross income, gains, losses, deductions, assets, liabilities or other activities of the Delaware branch are direct expenses of such Delaware branch. Examples of such expenses are payroll, rent, depreciation and amortization of assets attributed to the Delaware branch, some taxes, insurance, the cost of supplies and fees for services rendered to the Delaware branch.

- 8.6.3 Indirect Expenses of a Delaware Branch. Expenses or other deductions that cannot be specifically identified with the gross income, gains, losses, deductions, assets, liabilities, or other activities of a Delaware branch must be allocated between the Delaware branch and the rest of the federal savings bank operating the Delaware branch. If the federal savings bank makes such an allocation on any reasonable basis, and applies such basis consistently from period to period, the allocation likely will be respected. If the federal savings bank makes no such allocation, such expenses could be allocated on the basis of the ratio of assets of the Delaware branch to the assets of the entire federal savings bank or based on the ratio of gross income of the Delaware branch to gross income of the entire federal savings bank.

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