

23 VAC 10-330. BANK FRANCHISE TAX

~~23 VAC 10-330-1. Definitions.~~

~~The following words, terms and phrases are defined herein for the tax imposed by Title 58.1, Chapter 12 only:~~

~~1. Bank. "Bank" means any incorporated bank, banking association or trust company organized by or under the authority of the laws of this Commonwealth or any bank or banking association organized under the authority of the laws of the United States which (1) conducts a banking business in this Commonwealth or (2) maintains an office in this Commonwealth for the conduct of a banking business or (3) has a charter which designates any place within this Commonwealth as the place of its principal office regardless of whether or not the bank or banking association is authorized to transact business as a trust company. The term "bank" includes any joint stock land bank or any other bank organized by or under the authority of the laws of the United States which is conducting a banking business in the Commonwealth. Effective July 1, 1983, the Virginia General Assembly added Chapter 14, Title 6.1. to the Code of Virginia which authorizes bank holding companies from outside Virginia to acquire and own "financial service center banks," upon certain conditions, for the purpose of conducting multi-state credit card operations in Virginia. Such financial service center banks are required by Virginia law to be chartered as Virginia banks and are included in the term bank, subject to the Virginia bank franchise tax. The term "bank" does not include (1) corporations organized under the laws of other states, (2) corporations organized not as banks under the laws of this Commonwealth, and (3) natural persons and partnerships.~~

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~~Example 1: Bank A, an out-of-state bank, has no office in Virginia, but makes loans to residents and businesses in Virginia secured by property located in Virginia.~~

~~The mere lending of money to residents or businesses in Virginia secured by property located in Virginia does not constitute the conduct of a banking business in this Commonwealth and since Bank A has no other activities in Virginia it is not considered a bank for franchise tax purposes.~~

~~Example 2: Bank B, an out-of-state bank, opens an office in Virginia which accepts loan applications. The operations of the loan origination office are limited to the acceptance of loan applications and offering limited assistance in completing the application. The applications are approved or rejected at its out-of-state banking office. Unless the activities are conducted by a bank organized and operated under the authority of the State Corporation Commission, Bureau of Financial Institutions, as a bank, such limited activities do not constitute the conduct of a banking business for purposes of bank franchise tax. However, income earned from sources within Virginia is subject to Virginia income tax if not derived from the conduct of a banking business.~~

~~Example 3: Corporation D is a stockbroker with offices in many states, including Virginia. Corporation D offers the following services to its customers: a money market mutual fund with check writing privileges, unsecured loans and loans secured by marketable securities. Corporation D is not a bank because it is not organized as a bank under the laws of Virginia or the United States.~~

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~~2. Bank holding company. "Bank holding company" means any corporation organized under the laws of this State and doing business in this State which is a bank holding company under the provisions of the Federal Bank Holding Company Act of 1956, 12 U.S.C.A. §1841 et seq. as amended.~~

~~23 VAC 10-330-2. Bank capital assessable.~~

~~A. Generally. Every bank or trust company shall pay an annual franchise tax. The tax shall be measured by the bank or trust company's net capital as defined in Regulation 630-15-1205.~~

~~B. Bank franchise tax in lieu of certain other taxes. The bank franchise tax shall be in lieu of all other taxes whatsoever for State, county or local purposes except: (1) real estate and tangible personal property taxes enumerated in §58.1-1203 and 23VAC10-330-3, (2) retail sales and use taxes under Chapter 6 of Title 58.1, (3) recordation taxes under §58.1-800 et seq., (4) motor vehicle sales and use taxes under Chapter 24 of Title 58.1, (5) watercraft sales and use taxes under Chapter 14 of Title 58.1, (6) aircraft sales and use taxes under Chapter 13 of Title 58.1, (7) utility taxes properly assessable upon users of such services, and (8) local license taxes in connection with the sale of tangible personal property sold by banks in connection with promotions or otherwise.~~

~~23 VAC 10-330-3. Real and leased tangible personal property of banks to be assessed as other real and personal property.~~

~~A. Real estate. The real estate of banks shall be assessed on the land books with other real estate and taxed in the same manner as such other real estate.~~

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~~B. Tangible personal property. The tangible personal property of banks which is leased for a consideration to customers or other lessees shall be assessed for local property taxation in the same manner as any other tangible personal property held for lease by any other lessor.~~

~~Example 1. Bank C is the lessor of a fleet of automobiles to Corporation B. The leased automobiles shall be assessed in the name of the bank for local property taxation as any other property held for lease by any other lessor.~~

~~Example 2. Bank D rents safe deposit boxes as part of its service to customers. The charges for safe deposit boxes are fees of the bank for security services provided by the bank and not rental of tangible personal property.~~

~~23 VAC 10-330-4 to 23 VAC 10-330-9. [Reserved]~~

~~23 VAC 10-330-10. Rate of tax.~~

~~The bank franchise tax is levied upon the net capital of each bank and no deduction is allowed for shares of a bank's stock which are owned by exempt institutions. The tax rate is \$1.00 per each \$100 of net capital.~~

~~23 VAC 10-330-40. Filing of return and payment of tax.~~

~~A. Filing of return. On or before March 1 of each year, each bank is required to file a bank franchise tax return with the commissioner of the revenue, or comparable assessing officer, of the locality where the bank's principal office is located. The return must measure net capital of the bank as of January 1 of the current year. The return must be filed in duplicate. The commissioner of the revenue, or comparable assessing~~

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~~officer, will certify a copy of the bank's return with schedules and timely submit the certified copy to the Department of Taxation. In addition, each bank having branch banks in jurisdictions other than where the principal office is located must file with each locality schedules showing: (i) the tax on net capital attributable to each political subdivision where a branch bank is located; (ii) the real estate as assessed for the prior year.~~

~~B. Filing of real estate deduction schedule and local taxes apportionment schedule. The bank shall file a copy of the real estate deduction schedule and the local taxes apportionment schedule with the appropriate assessing officer of each political subdivision imposing a tax on the filing bank.~~

~~C. Payment of tax. On or before June 1 of each year, every bank will pay into the State Treasury the state taxes assessed under Chapter 12, Title 58.1 of the Code of Virginia. In addition, on or before June 1 of each year, every bank will pay into the office of the treasurer, or other official of the local political subdivisions, all taxes assessed by such political subdivision as local bank franchise taxes.~~

~~23 VAC 10-330-50. City or town tax.~~

~~A. Generally. Any Virginia city, or any incorporated town, which has a bank located therein, may, by ordinance, impose a bank franchise tax on the banks located in such locality. The tax shall not exceed 80% of the state bank franchise tax rate.~~

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~~B. Apportionment of city or town tax. If a bank located in a city, or incorporated town, has offices located outside the corporate limits of such locality, the bank franchise tax shall be apportioned as provided in 23 VAC 10-330-70.~~

~~23 VAC 10-330-60. County tax.~~

~~A. Generally. Any Virginia county which has a bank located in the county and outside any incorporated town therein, may, by ordinance, impose a bank franchise tax on the banks located in such county. The tax shall not exceed 80% of the state bank franchise tax rate.~~

~~B. Apportionment of county tax. If a bank located in a county, has offices located outside such county or within the corporate limits of any town within such county, the bank franchise tax shall be apportioned as provided in 23 VAC 10-330-70.~~

~~23 VAC 10-330-70. Branch banks.~~

~~A. Generally. If any bank has offices located in two or more political subdivisions, including cities, towns and counties, the bank franchise tax which may be imposed by the political subdivision shall be imposed upon the proportion of the taxable value of net capital deemed in such political subdivision.~~

~~B. Computation of the proportion of the taxable value of net capital. The proportion of net taxable capital shall be the proportion of total deposits of such branch or offices located inside the taxing subdivision to total deposits of the bank as of December 31 of the preceding year. This proportion shall be applied to the taxable value of net capital computed under 23 VAC 10-330-10.~~

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~~C. Branch offices in towns and counties. For purposes of this regulation and computations related thereto, a branch bank located within an incorporated town shall not be deemed to be located within the county where such town is located.~~

~~23 VAC 10-330-80. Record of deposits through branches required.~~

~~A. Generally. Each bank, which as of January 1 of any tax year has branches located in any political subdivision other than the political subdivision where the bank's principal office is located, shall maintain a record of the deposits through each such branch as of the beginning of the tax year.~~

~~B. Reporting record of branch deposits. Each bank shall submit to the commissioner of the revenue, with the bank franchise tax return, a report of the branch deposits as required herein.~~

~~23 VAC 10-330-90. Credit against state tax for amounts paid cities, towns and counties.~~

~~Banks paying the Virginia city, town and county bank franchise tax shall credit such payment against the state tax assessed against it for the same year. The credit shall be allowed by the Department of Taxation upon the bank's presentation of the authenticated receipts of the treasurer or other collecting officer of the city, town or county where such taxes were paid or other evidence of payment. In no event shall the credit exceed the total city, town or county taxes paid.~~

~~23 VAC 10-330-100. Auditing of returns.~~

~~The Department of Taxation may audit the bank franchise tax returns. If the department makes any corrections or adjustments in the return, it shall notify the bank concerned.~~

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~~The department shall also notify every political subdivision imposing a tax upon the bank for which the bank claimed a credit against the state bank franchise tax.~~

~~23 VAC 10-330-110. Banks in liquidation.~~

~~A. Generally. Any bank winding up its affairs under §§6.1-100 and 6.1-102 of the Code of Virginia or the comparable sections of the National Banking Act, shall be required to file a bank franchise tax return annually during liquidation; however, no tax shall be paid except as provided in this regulation.~~

~~B. Filing of returns for banks in liquidation. Persons having custody or control of the assets of a bank winding up its affairs as provided in this regulation, must file a return of such bank's net capital as of January 1 of each year the bank is liquidating.~~

~~If any surplus remains after payment of all creditors and depositors, the liquidating officer shall pay the appropriate tax for each year prior to any distribution of such surplus.~~

~~C. Late filing penalty not applicable. If the tax required of liquidating banks is paid late, but in accordance with subsection B above, the tax on such bank shall not be subject to penalty.~~

~~23 VAC 10-330-120. Penalty upon bank for failure to comply with chapter.~~

~~A. Generally. Any bank failing to file a return or pay the full amount of tax due thereon by its due date shall be subject to a penalty of 5.0% of the unpaid tax due.~~

~~B. Waiver of penalty; interest due. If the Tax Commissioner is satisfied that the bank's failure to file the bank franchise tax return or pay the state tax required, is due to~~

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~~providential or other good cause, the return and tax due will be accepted without penalty. The tax due and paid on such late return shall be subject to interest computed in accordance with §58.1-15 of the Code of Virginia.~~

~~23 VAC 10-330-130. State banks and national banks treated the same in matter of taxation.~~

~~For purposes of this chapter, state banks shall be treated the same as national banks and if any court of competent jurisdiction holds that national banks, as a class, are exempt from any Virginia state or local tax, then the same exemption will be applied to state banks.~~

FORMS

~~Bank Franchise Tax, Form 64.~~

~~Valuation Reserve for Marketable Securities, Form 64-Schedule A.~~

~~Other Liabilities, Form 64-Schedule B.~~

~~Assessed Value of Real Estate, Form 64-Schedule C.~~

~~Book Value of Tangible Personal Property Otherwise Taxed in this State, Form 64-Schedule D.~~

~~Computation of Capital Attributed to United States Obligations, Form 64-Schedule E.~~

~~Retained Earnings and Surplus of Subsidiaries, Form 64-Schedule F.~~

~~Reserve for Loan Losses, Form 64-Schedule G.~~

~~City, Town, or County Taxes, Form 64-Schedule H.~~

~~Notice of Assessment of Bank Franchise Tax, Form 65 (eff. 12/85).~~