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Fast-Track Regulation Agency Background Document

Agency name	Virginia Department of Taxation
Virginia Administrative Code (VAC) citation(s)	23VAC10-330-20; 23VAC10-330-30
Regulation title(s)	Bank Franchise Tax
Action title	Amend Bank Franchise Regulation to Conform to Law Changes and Existing Policy.
Date this document prepared	April 13, 2017

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 17 (2014) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

Brief summary

Please provide a brief summary (preferably no more than 2 or 3 paragraphs) of the proposed new regulation, proposed amendments to the existing regulation, or the regulation proposed to be repealed. Alert the reader to all substantive matters or changes. If applicable, generally describe the existing regulation.

This regulatory action will amend Bank Franchise Tax Regulation sections 23VAC10-330-20, relating to the computation of net capital, and 23VAC10-330-30, relating to deductions from gross capital. This action is necessary to reflect legislative changes affecting the calculation of gross capital and deductions. Some existing regulatory language is unnecessary because it refers to tax forms that the Department no longer uses. Therefore, this regulatory action will repeal language that is outdated and will update other language to conform to legislative changes and current tax policy. The amendment of this regulation does not reflect a change in existing tax policy and will have no impact on the administration of the tax.

Acronyms and Definitions

Please define all acronyms used in the Agency Background Document. Also, please define any technical terms that are used in the document that are not also defined in the “Definition” section of the regulations.

The following acronyms are used in this Agency Background Document. Every technical term used in this document is defined in the regulation.

P.D.: means Public Document

Statement of final agency action

Please provide a statement of the final action taken by the agency including: 1) the date the action was taken; 2) the name of the agency taking the action; and 3) the title of the regulation.

The Tax Commissioner approved the amendment of the Bank Franchise Tax Regulation sections 23VAC10-330-20 and 23VAC10-330-30 on March 30, 2017.

Legal basis

Please identify the state and/or federal legal authority to promulgate this proposed regulation, including: 1) the most relevant citations to the Code of Virginia or General Assembly chapter number(s), if applicable; and 2) promulgating entity, i.e., agency, board, or person. Your citation should include a specific provision authorizing the promulgating entity to regulate this specific subject or program, as well as a reference to the agency/board/person’s overall regulatory authority.

Code of Virginia § 58.1-203 provides that the “Tax Commissioner shall have the power to issue regulations relating to the interpretation and enforcement of the laws of this Commonwealth governing taxes administered by the Department.” The authority for the current regulatory action is discretionary.

Purpose

Please explain the need for the new or amended regulation. Describe the rationale or justification of the proposed regulatory action. Describe the specific reasons the regulation is essential to protect the health, safety or welfare of citizens. Discuss the goals of the proposal and the problems the proposal is intended to solve.

This regulatory action is needed to amend two sections of the Bank Franchise Tax Regulation, 23VAC10-330-20 and 23VAC10-330-30, that do not conform to legislative changes and current tax policy. Some of the language in these sections can be repealed because it refers to tax forms that the Department no longer uses. Other language will be updated so that it conforms to legislative changes and current tax policy. Amendment of these sections does not reflect any change in existing tax policy and will have no impact on the administration of the tax. As this regulatory action does not reflect a change in existing departmental policy, it will have no effect on the health, safety and welfare of citizens.

Rationale for using fast-track process

Please explain the rationale for using the fast-track process in promulgating this regulation. Why do you expect this rulemaking to be noncontroversial?

The fast-track process is intended for proposed regulations that are expected to be noncontroversial. As the regulation will be amended to reflect current law, and will not make any changes to the Department's current policy regarding the Bank Franchise Tax, this action is not expected to be controversial. Current law and tax policy form the basis for the proposed changes to this regulation.

Substance

Please briefly identify and explain the new substantive provisions, the substantive changes to existing sections, or both. A more detailed discussion is provided in the "Detail of changes" section below.

This regulatory action will amend Bank Franchise Tax Regulation sections, 23VAC10-330-20 and 23VAC10-330-30, relating to the computation of net capital and deductions from gross capital. Some language is outdated because it has not been amended to conform to the following legislation enacted by the General Assembly:

- Senate Bill 1017 (1999 *Acts of Assembly*, Chapter 84): This legislation replaced a deduction for any reserve for loan losses with an addback to gross capital in the amount of one half of any reserve for loan losses net of applicable deferred tax.
- Senate Bill 174 (2002 *Acts of Assembly*, Chapter 667): This legislation created a deduction equal to ninety percent of goodwill created in connection with any acquisition or merger occurring on or after July 1, 2001, and provided that "goodwill" must be determined using generally accepted accounting principles.
- House Bill 5018 (2004 Special Session I *Acts of Assembly*, Chapter 3): This legislation created a deduction for any portion of the amount added to federal taxable income pursuant to subdivision B 9 of § 58.1-402 of the *Code of Virginia* by a corporation that is for interest expenses and costs paid to the bank for a loan or other obligation made by the bank to such corporation, provided that certain conditions are met.

Some language is also outdated because it refers to a schedule, Schedule A of Form 64, that the Department no longer uses. Therefore, this regulatory action will repeal language that is outdated and will update other language to conform to legislative changes and current tax policy. Amending this section does not reflect any change in existing tax policy and will have no impact on the administration of tax. Because of this, the amendment of this section is not expected to be controversial.

Issues

Please identify the issues associated with the proposed regulatory action, including: 1) the primary advantages and disadvantages to the public, such as individual private citizens or businesses, of implementing the new or amended provisions; 2) the primary advantages and disadvantages to the agency or the Commonwealth; and 3) other pertinent matters of interest to the regulated community, government officials, and the public. If there are no disadvantages to the public or the Commonwealth, please indicate.

This regulatory action will ease voluntary taxpayer compliance and the Department's administration of the state tax laws by amending regulation sections that do not conform to legislative changes and current policy. Amending of this regulatory section will result in no disadvantage to the public or the Commonwealth.

Requirements more restrictive than federal

Please identify and describe any requirement of the proposal which is more restrictive than applicable federal requirements. Include a rationale for the need for the more restrictive requirements. If there are no applicable federal requirements or no requirements that exceed applicable federal requirements, include a statement to that effect.

As this proposal repeals unnecessary language in a regulation and conforms other language to current tax law and policy, it contains no requirement that is more restrictive than applicable federal requirements.

Localities particularly affected

Please identify any locality particularly affected by the proposed regulation. Locality particularly affected means any locality which bears any identified disproportionate material impact which would not be experienced by other localities.

The Bank Franchise Tax is a state franchise tax on the net capital of banks and trust companies. The state tax rate is statutorily set at one percent of net capital. The *Code of Virginia* allows cities, counties, and towns to impose a bank franchise tax at a rate of up to 80 percent of the state rate. See P.D. 99-36. A credit against the state tax is allowed for these local taxes. Therefore, banks pay a total Bank Franchise Tax of one percent of net capital, with the revenue collected from the tax effectively being split 80 percent to localities and 20 percent to the state.

As this proposal repeals unnecessary language in a regulation and conforms other language to current tax law and policy, no localities are particularly affected by this regulatory action.

Regulatory flexibility analysis

Pursuant to § 2.2-4007.1B of the Code of Virginia, please describe the agency's analysis of alternative regulatory methods, consistent with health, safety, environmental, and economic welfare, that will accomplish the objectives of applicable law while minimizing the adverse impact on small business. Alternative regulatory methods include, at a minimum: 1) the establishment of less stringent compliance or reporting requirements; 2) the establishment of less stringent schedules or deadlines for compliance or reporting requirements; 3) the consolidation or simplification of compliance or reporting requirements; 4) the establishment of performance standards for small businesses to replace design or operational standards required in the proposed regulation; and 5) the exemption of small businesses from all or any part of the requirements contained in the proposed regulation.

As these regulation sections amend a regulatory section so that it conforms to existing law and tax policy, this amendment is necessary. The only alternative to this amendment would be to leave in place a regulation section that contradicts existing law and tax policy.

Economic impact

Please identify the anticipated economic impact of the proposed new regulations or amendments to the existing regulation. When describing a particular economic impact, please specify which new requirement or change in requirement creates the anticipated economic impact.

<p>Projected cost to the state to implement and enforce the proposed regulation, including: a) fund source / fund detail; and b) a delineation of one-time versus on-going expenditures</p>	<p>As this section of the Bank Franchise Tax Regulation will be amended to bring it in conformity with current law and tax policy, there are no costs related to its amendment.</p>
<p>Projected cost of the new regulations or changes to existing regulations on localities.</p>	<p>As this section of the Bank Franchise Tax Regulation will be amended to bring it in conformity with current law and tax policy, there are no costs related to its amendment.</p>
<p>Description of the individuals, businesses, or other entities likely to be affected by the new regulations or changes to existing regulations.</p>	<p>As this section of the Bank Franchise Tax Regulation will be amended to bring it in conformity with current law and tax policy, no one will be affected by its amendment.</p>
<p>Agency’s best estimate of the number of such entities that will be affected. Please include an estimate of the number of small businesses affected. Small business means a business entity, including its affiliates, that: a) is independently owned and operated and; b) employs fewer than 500 full-time employees or has gross annual sales of less than \$6 million.</p>	<p>As this section of the Bank Franchise Tax Regulation will be amended to bring it in conformity with current law and tax policy, no one will be affected by its amendment.</p>
<p>All projected costs of the new regulations or changes to existing regulations for affected individuals, businesses, or other entities. Please be specific and include all costs including: a) the projected reporting, recordkeeping, and other administrative costs required for compliance by small businesses; and b) specify any costs related to the development of real estate for commercial or residential purposes that are a consequence of the proposed regulatory changes or new regulations.</p>	<p>As this section of the Bank Franchise Tax Regulation will be amended to bring it in conformity with current law and tax policy, no one will be affected by its amendment.</p>
<p>Beneficial impact the regulation is designed to produce.</p>	<p>As this section of the Bank Franchise Tax Regulation will be amended to bring it in conformity with current law and tax policy, its amendment will ensure uniform application of the tax laws to taxpayers. In addition, business taxpayers will be better equipped to predict the tax consequences of transactions and avoid unanticipated tax assessments as the result of audits.</p>

Alternatives

Please describe any viable alternatives to the proposal considered and the rationale used by the agency to select the least burdensome or intrusive alternative that meets the essential purpose of the action. Also, include discussion of less intrusive or less costly alternatives for small businesses, as defined in § 2.2-4007.1 of the Code of Virginia, of achieving the purpose of the regulation.

The only alternative would be to keep the regulation section unchanged. By keeping the regulation section unchanged, the Department would continue to have a regulation section that is not in conformity with current law and tax policy.

Public participation notice

If an objection to the use of the fast-track process is received within the 30-day public comment period from 10 or more persons, any member of the applicable standing committee of either house of the General Assembly or of the Joint Commission on Administrative Rules, the agency shall: 1) file notice of the objections with the Registrar of Regulations for publication in the Virginia Register; and 2) proceed with the normal promulgation process with the initial publication of the fast-track regulation serving as the Notice of Intended Regulatory Action.

Periodic review and small business impact review report of findings

If this fast-track is the result of a periodic review/small business impact review, use this form to report the agency's findings. Please (1) summarize all comments received during the public comment period following the publication of the Notice of Periodic Review and (2) indicate whether the regulation meets the criteria set out in Executive Order 17 (2014), e.g., is necessary for the protection of public health, safety, and welfare, and is clearly written and easily understandable. In addition, as required by 2.2-4007.1 E and F, please include a discussion of the agency's consideration of: (1) the continued need for the regulation; (2) the nature of complaints or comments received concerning the regulation from the public; (3) the complexity of the regulation; (4) the extent to which the regulation overlaps, duplicates, or conflicts with federal or state law or regulation; and (5) the length of time since the regulation has been evaluated or the degree to which technology, economic conditions, or other factors have changed in the area affected by the regulation.

Commenter	Comment	Agency response

This fast-track is not a result of a periodic review/small business impact review.

Family impact

Please assess the impact of this regulatory action on the institution of the family and family stability including to what extent the regulatory action will: 1) strengthen or erode the authority and rights of parents in the education, nurturing, and supervision of their children; 2) encourage or discourage economic self-sufficiency, self-pride, and the assumption of responsibility for oneself, one's spouse, and one's children and/or elderly parents; 3) strengthen or erode the marital commitment; and 4) increase or decrease disposable family income.

As the regulation section will be amended to conform to current law and tax policy, its amendment will have no impact on the institution of the family and family stability.

Detail of changes

Please list all changes that are being proposed and the consequences of the proposed changes; explain the new requirements and what they mean rather than merely quoting the proposed text of the regulation. If the proposed regulation is a new chapter, describe the intent of the language and the expected impact. Please describe the difference between existing regulation(s) and/or agency practice(s) and what is being proposed in this regulatory action. If the proposed regulation is intended to replace an emergency regulation, please follow the instructions in the text following the three chart templates below.

For changes to existing regulation(s), please use the following chart:

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change, intent, rationale, and likely impact of proposed requirements
23VAC10-330-20	Not applicable	The regulation sets forth the computation of net capital.	This action will amend the regulatory calculation of "net capital," which does not conform to the following legislation enacted by the General Assembly: <ul style="list-style-type: none"> • Senate Bill 1017 (1999 Acts of Assembly, Chapter 84): This legislation replaced a deduction for any reserve for loan losses with an addback to gross capital in the amount of one half of any reserve for loan losses net of applicable deferred tax. • Senate Bill 174 (2002 Acts of Assembly, Chapter 667): This legislation created a deduction equal to ninety percent of goodwill created in connection with any acquisition or merger occurring on or after July 1, 2001, and provided that "goodwill" must be determined using generally accepted accounting principles.
23VAC10-330-20	Not applicable	The regulation sets forth the computation of net capital.	This action will amend this regulation section to eliminate a reference to a schedule that the Department no longer uses, Schedule A of Form 64.

23VAC10-330-30	Not applicable	The regulation sets forth the deductions from gross capital.	<p>This action will amend the regulatory explanation of deductions from gross capital, which does not conform to the following legislation enacted by the General Assembly:</p> <ul style="list-style-type: none"> House Bill 5018 (2004 Special Session I <i>Acts of Assembly</i>, Chapter 3): This legislation created a deduction for any portion of the amount added to federal taxable income pursuant to subdivision B 9 of § 58.1-402 of the <i>Code of Virginia</i> by a corporation that is for interest expenses and costs paid to the bank for a loan or other obligation made by the bank to such corporation, provided that certain conditions are met.
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If an existing regulation or regulations (or parts thereof) are being repealed and replaced by one or more new regulations, please use the following chart:

Current chapter-section number	Proposed new chapter-section number, if applicable	Current requirement	Proposed change, intent, rationale, and likely impact of proposed requirements

If a new regulation is being promulgated, that is not replacing an existing regulation, please use this chart:

Section number	Proposed requirements	Other regulations and law that apply	Intent and likely impact of proposed requirements

If the proposed regulation is intended to replace an emergency regulation, and the proposed regulation is identical to the emergency regulation, please choose and fill out the appropriate chart template from the choices above. In this case “current section number” or “current chapter-section number” would refer to the **pre-emergency** regulation.

If the proposed regulation is intended to replace an emergency regulation, and the proposed regulation includes changes since the emergency regulation, please create two charts: 1) a chart describing changes from the **pre-emergency** regulation to the proposed regulation as described in the paragraph above, and 2) a chart describing changes from the **emergency** regulation to the proposed regulation. For the second chart please use the following title: “Changes from the

Emergency Regulation.” In this case “current section number” or “current chapter-section number” would refer to the **emergency** regulation.