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## HOUSE BILL NO. 2217

Offered January 15, 2015

A BILL to amend and reenact §§ 58.1-1201, 58.1-1202, 58.1-1204, 58.1-1205, 58.1-1208, 58.1-1209, 58.1-1210, and 58.1-1211 of the Code of Virginia and to amend the Code of Virginia by adding sections numbered 58.1-1211.1 and 58.1-1211.2, relating to the bank franchise tax.

Patron—Habeeb

Referred to Committee on Finance

**Be it enacted by the General Assembly of Virginia:**

1. That §§ 58.1-1201, 58.1-1202, 58.1-1204, 58.1-1205, 58.1-1208, 58.1-1209, 58.1-1210, and 58.1-1211 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding sections numbered 58.1-1211.1 and 58.1-1211.2 as follows:

**§ 58.1-1201. Definitions.**

As used in this chapter, unless the context clearly shows otherwise, the term or phrase:

"Affiliated banks" means two or more banks that are members of the same affiliated group as defined under Internal Revenue Code § 1504(a)(1).

"Bank" means any incorporated bank, banking association, savings bank that is a member of the Federal Reserve System, or trust company organized by or under the authority of the laws of the Commonwealth and any bank or banking association organized by or under the authority of the laws of the United States, doing business or having an office in the Commonwealth or having a charter which designates any place within the Commonwealth as the place of its principal office, and any bank which establishes and maintains a branch in this Commonwealth under Article 6 (§ 6.2-836 et seq.) of Title 6.2 or Article 7 (§ 6.2-849 et seq.) of Chapter 8 of Title 6.2, whether such bank or banking association is authorized to transact business as a trust company or not, and any joint stock land bank or any other bank organized by or under the authority of the laws of the United States upon which the Commonwealth is authorized to impose a tax. ~~The~~ Except as otherwise provided under this chapter, the term shall exclude all corporations organized under the laws of other states and doing business in the Commonwealth, corporations organized not as banks under the laws of the Commonwealth, and all natural persons and partnerships.

"Bank holding company" means any corporation that is organized under the laws of Virginia, is doing business in the Commonwealth, and is a bank holding company under the provisions of the Federal Bank Holding Company Act of 1956.

"Combined return" means a return filed by affiliated banks. For purposes of a combined return, the affiliated banks included on the return shall be treated as a single entity for purposes of computing the amount of Virginia bank franchise tax. The net capital of the affiliated banks shall be computed on a combined basis. The combined net capital shall be allocated to the Commonwealth by computing the apportionment of the affiliated banks on a combined basis.

"Core deposits" shall mean all deposits held by the bank on its books and records except brokered deposits, certificates of deposit greater than \$100,000, and deposits by an affiliated bank included on a combined return.

"Core deposits within the Commonwealth" shall include (i) all core deposits assigned to a branch location within the Commonwealth and (ii) all direct banking deposits from customers located within the Commonwealth. Customers shall be located within the Commonwealth if the customer's address associated with the deposit is within the Commonwealth.

"Direct banking deposits" means core deposits that are associated with an account that was not originated at a branch location. Direct banking deposits include, but are not limited to, (i) deposits associated with a main office and (ii) deposits associated with accounts that were originated using the Internet, the telephone, or other electronic means.

"Doing business" includes, but is not limited to, conducting one or more of the following activities: (i) employing capital in the Commonwealth; (ii) owning or leasing property of \$50,000 or more within the Commonwealth; (iii) maintaining an office or branch location within the Commonwealth; (iv) deriving receipts of \$500,000 or more from customers located within the Commonwealth; (v) incurring \$50,000 or more of payroll within the Commonwealth; or (vi) accepting \$500,000 or more of deposits from customers located within the Commonwealth. Customers shall be located within the Commonwealth if the customer's address is within the Commonwealth.

**§ 58.1-1202. Bank capital assessable.**

Every bank or trust company doing business in the Commonwealth shall pay an annual franchise tax

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59 measured by its net capital as defined in § 58.1-1205. Such tax shall be in lieu of all other taxes  
60 whatsoever for state, county or local purposes except the real estate and tangible personal property taxes  
61 enumerated in § 58.1-1203, retail sales and use taxes under Chapter 6 (§ 58.1-600 et seq.) of this title,  
62 recordation taxes under § 58.1-800 et seq., motor vehicle sales and use taxes under Chapter 24  
63 (§ 58.1-2400 et seq.) of this title, watercraft sales and use taxes under Chapter 14 (§ 58.1-1400 et seq.)  
64 of this title, aircraft sales and use taxes under Chapter 15 (§ 58.1-1500 et seq.) of this title, taxes  
65 properly assessable upon users of utility services, and local license taxes in connection with the sale of  
66 tangible personal property sold by banks in connection with promotions or otherwise.

67 *Affiliated banks may elect to file a combined return for purposes of the tax under this chapter.*

68 **§ 58.1-1204. Rate of tax.**

69 The franchise tax imposed under this chapter shall be at the rate of \$1 on each \$100 of net capital as  
70 hereinafter defined. There shall be no deduction in respect to shares owned by exempt institutions.

71 *A bank or affiliated banks doing business within and without the Commonwealth shall apportion net*  
72 *capital to the Commonwealth as set forth in Section 58.1-1211.1.*

73 **§ 58.1-1205. Computation of net capital.**

74 The net capital of any bank or affiliated banks shall be ascertained by adding together ~~its~~ *their*  
75 capital, surplus, undivided profits, and one half of any reserve for loan losses net of applicable deferred  
76 tax to obtain gross capital and deducting therefrom (i) the assessed value of real estate as provided in  
77 § 58.1-1206, (ii) the book value of tangible personal property under § 58.1-1206, (iii) the pro rata share  
78 of government obligations as set forth in § 58.1-1206, (iv) the capital accounts of any bank subsidiaries  
79 under § 58.1-1206, (v) the amount of any reserve for marketable securities valuation which is included  
80 in capital, surplus and undivided profits as defined hereinabove to the extent that such reserve reflects  
81 the difference between the book value and the market value of such marketable securities on December  
82 31 next preceding the date for filing the bank's return under § 58.1-1207, and (vi) the value of goodwill  
83 described under subdivision A 5 of § 58.1-1206.

84 **§ 58.1-1208. City tax.**

85 Any city in this Commonwealth in which is located any bank may, by ordinance, impose a tax not to  
86 exceed 80 percent of the state rate of taxation on each \$100 of the net capital of such bank located in  
87 such city. If such bank also has offices that are located outside the corporate limits of such city, the tax  
88 shall be apportioned as provided in § 58.1-1211.

89 *Affiliated banks that elect to file a combined return under Section 58.1-1202 shall compute their tax*  
90 *within any city on a combined return.*

91 **§ 58.1-1209. Town tax.**

92 Any incorporated town in this Commonwealth in which is located a bank may, by ordinance, impose  
93 a tax not to exceed 80 percent of the state rate of taxation for each \$100 of the net capital of a bank  
94 located in such town. If such bank also has offices that are located outside the corporate limits of such  
95 town, the tax shall be apportioned as provided in § 58.1-1211.

96 *Affiliated banks that elect to file a combined return under Section 58.1-1202 shall compute their tax*  
97 *within any town on a combined return.*

98 **§ 58.1-1210. County tax.**

99 Any county of this Commonwealth in which is located any bank outside any incorporated town  
100 therein may, by ordinance, impose a tax not to exceed 80 percent of the state rate of taxation for each  
101 \$100 of the net capital of the bank so located in such county outside the corporate limits of any town  
102 therein. If such bank also has offices that are located outside such county or within the corporate limits  
103 of any town therein, the tax shall be apportioned as provided in § 58.1-1211.

104 *Affiliated banks that elect to file a combined return under Section 58.1-1202 shall compute their tax*  
105 *within any county on a combined return.*

106 **§ 58.1-1211. Branch banks.**

107 If any bank has offices located in two or more political subdivisions, which includes cities, towns  
108 and counties, the tax which may be imposed by any subdivision under §§ 58.1-1208, 58.1-1209 or  
109 § 58.1-1210 shall be imposed upon only such proportion of the taxable value of the net capital under  
110 § 58.1-1204 as the total *core* deposits of such bank, or offices located inside the taxing subdivision,  
111 bears to total *core* deposits as of the end of the preceding year. For the purposes of this section, offices  
112 located within an incorporated town shall be deemed not within the county where such banks are  
113 located.

114 **§ 58.1-1211.1. Allocation to the Commonwealth.**

115 *Any bank or affiliated banks doing business within and without this Commonwealth shall allocate its*  
116 *net capital as computed under Section 58.1-1205 within and without the Commonwealth by multiplying*  
117 *its total net capital by a fraction, the numerator of which is the bank's total core deposits within the*  
118 *Commonwealth and the denominator of which is the bank's total core deposits everywhere.*

119 **§ 58.1-1211.2. Alternative Apportionment.**

120 *If the standard formula apportionment method under § 58.1-1211.1 does not fairly represent the*

121 *extent of a bank's tax base attributable to the Commonwealth, the bank may petition for, or the*  
122 *Department may require, in respect of all or any part of the bank's tax base, if reasonable, any of the*  
123 *following: a separate accounting, the exclusion of any one or more factors, the inclusion of one or more*  
124 *additional factors that fairly represent the taxpayer's tax base attributable to the Commonwealth, or the*  
125 *employment of any other method that will produce an equitable apportionment.*  
126 **2. That the provisions of this act shall become effective on January 1, 2016.**  
127 **3. That the Tax Commissioner shall develop and publish guidelines implementing the provisions of**  
128 **this act. The guidelines shall be exempt from the provisions of the Administrative Process Act**  
129 **(§ 2.2-4000 et seq.).**