

VIRGINIA ACTS OF ASSEMBLY -- 2023 SESSION

CHAPTER 50

An Act to amend and reenact §§ 58.1-1206, 58.1-1207, and 58.1-1212 of the Code of Virginia, relating to bank franchise tax.

[H 1896]

Approved March 17, 2023

Be it enacted by the General Assembly of Virginia:

1. That §§ 58.1-1206, 58.1-1207, and 58.1-1212 of the Code of Virginia are amended and reenacted as follows:

§ 58.1-1206. Deductions from gross capital.

A. There shall be deducted from the gross capital otherwise ascertainable under § 58.1-1205:

1. The assessed value of real estate if otherwise taxed in ~~this~~ *the* Commonwealth which is owned by such bank, or is used or occupied by such bank, if held in the name of a majority-owned subsidiary of the bank or of a bank holding company which owns a majority of the capital stock of such bank or of any wholly-owned subsidiary of the bank holding company which owns the majority of the capital stock of such bank and the assessed value, up to the amount of the unencumbered equity, of real estate in the nature of improvements which are owned by the bank, or used or occupied by the bank and held by a majority-owned subsidiary or a bank holding company or a wholly-owned subsidiary of a bank holding company, even if assessed in the name of some other person because of the ownership of the underlying land by such person. Real estate used or occupied by a subsidiary or originally conveyed as collateral for loans made by a subsidiary of the bank and reacquired upon foreclosure of mortgage loans will be deemed to be used or occupied by the bank. The deduction for assessed value of real estate shall be the most recent assessment made prior to January 1 of the current bank franchise tax year for real estate owned by the bank or affiliate on January 1 of the current year. *Any locality shall provide electronic access to banks for real estate assessment records for such real estate referenced by this section at their request.*

2. The book value of tangible personal property which shall be held for lease and is otherwise taxed which is owned by such bank or in the name of a majority-owned subsidiary of the bank. If the bank does not own all the stock of such subsidiary, it shall be entitled to deduct only such portion of the assessed value of the real estate and the value of such tangible personal property as the common stock it owns in such subsidiary bears to the whole issue of common stock of such corporation.

3. An amount which shall equal the same percentage of the gross capital account, defined as its capital, surplus and undivided profits as set forth in § 58.1-1205 at December 31 next preceding as the obligations of the United States bear to the total assets of the bank. Such percentage of U.S. obligations shall be determined as of the four most recent (or less in case of a new bank) Reports of Condition and the percentage obtained shall be averaged. For purposes of computing such percentage, total assets shall not include the goodwill described in subdivision 5. The obligations of the United States as used herein shall include all obligations of the United States exempt from taxation under 31 U.S.C. § 3124, of the United States Constitution or any other statute, or any instrumentality or agency of the United States which obligations shall be exempt from state or local taxation under the United States Constitution or any statute of the United States.

4. The amount of retained earnings and surplus of subsidiaries to the extent included in the gross capital of the bank. In addition, any portion of the amount added to federal taxable income pursuant to subdivision B 9 of § 58.1-402 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 shall be deducted from the gross capital of the bank provided that (i) at the time of payment of such portion to the bank, the bank was a related member of the corporation, and (ii) such portion has not otherwise been deducted from gross capital. For purposes of this subdivision, the terms "interest expenses and costs" and "related member" mean the same as those terms are defined in § 58.1-302.

5. Any amount equal to 90 percent of goodwill created in connection with any acquisition or merger occurring on or after July 1, 2001.

B. For purposes of this section, "goodwill" shall be determined using generally accepted accounting principles.

§ 58.1-1207. Filing of return and payment of tax.

A. Each bank as defined in § 58.1-1201 as of January 1 of each year shall prepare and file *electronically* with the commissioner of the revenue or comparable assessing officer of the county, city or town where the principal office of the bank is located on or before March 1, a return ~~in duplicate which~~ *that* shall set forth the tax on net capital as computed under this chapter. ~~The return shall be in a form prescribed by the Department of Taxation~~ *The Department of Taxation shall maintain a secure*

online portal to receive returns and other required submissions under this chapter in a manner prescribed by the Department for use by commissioners of the revenue or other assessing officers of any locality in accepting filed returns and certifying and transmitting returns to the Department. The commissioner of the revenue or comparable assessing officer shall certify a copy of the bank's return and schedules and shall forthwith transmit such certified copy to the Department of Taxation. Additionally, ~~a~~ *an electronic* copy of the real estate deduction schedules and the apportionment under § 58.1-1211 shall be filed with the appropriate assessing officer of each political subdivision imposing a tax on the filing bank. Such return shall set forth the tax on net capital owing to each such political subdivision as computed under this chapter and shall include the listing of the real estate, as assessed for the prior year, as well as a description of the total of the obligations of the United States and the average percentage thereof on the four dates prescribed in subdivision 3 of § 58.1-1206. Every bank, on or before June 1 of each year, shall pay into the state treasury the state taxes assessed under this chapter and into the treasurer's office or other official of the local political subdivisions all taxes assessed by such political subdivision.

B. In accordance with procedures established by the Tax Commissioner, any bank may elect an extension of time within which to file the tax return required under this chapter to the date 60 days after such due date. Such form shall be submitted to the Department of Taxation and the commissioner of the revenue or other assessing officer of any locality in which the bank is required to file.

§ 58.1-1212. Record of deposits through branches required.

Each bank in ~~this~~ *the* Commonwealth that has as of the beginning of any tax year a bank located in any county, incorporated town or city other than the county, incorporated town or city wherein such 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. Each bank shall also *electronically* submit to the commissioner of the revenue or other assessing officer of the locality wherein such principal office is located a report of such deposits with the return required under § 58.1-1207.

2. That the provisions of the first enactment of this act shall become effective on January 1, 2025.
3. That the Department of Taxation shall convene a work group to assess potential alternative methods for the filing and allocation of bank franchise tax revenues for consideration in the 2024 Session of the General Assembly. At a minimum, the work group shall evaluate proposals to allow banks to submit their bank franchise tax payments to the Commonwealth, the formula used to redistribute funds to local governments, the impact of the new method of collecting and distributing funds on counties, cities, and towns, the timeline for implementation of any proposed changes, and the cost to the Commonwealth and local governments of implementing these changes. The work group shall include representatives from the Virginia Bankers Association, Virginia Association of Counties, Virginia Municipal League, and Commissioners of the Revenue Association of Virginia and other relevant stakeholders. The work group shall report its findings and recommendations to the General Assembly by December 1, 2023.