DEPARTMENT OF TAXATION
2012 Fiscal Impact Statement

1. Patron James P. "Jimmie" Massie, III

2. Bill Number HB 323

House of Origin:
X **Introduced**
_____ **Substitute**
_____ **Engrossed**

Second House:
_____ **In Committee**
_____ **Substitute**
_____ **Enrolled**

3. Committee House Finance

4. Title Bank franchise tax; apportionment

5. Summary/Purpose:

This bill would create a statutory method of apportionment for the bank franchise tax for banks that have offices located in Virginia and in one or more other states. Under this method of apportionment, the bank franchise tax would be apportioned based on the portion of total deposits of the bank in Virginia. To compute the amount of taxes apportioned to Virginia, the bank would be required to multiply the amount of bank franchise tax by a fraction, the numerator of which is the total deposits of the bank in Virginia, less any time certificates of deposit of $100,000 or more, and the denominator of which is the total deposits of the bank in all states, less any time certificates of deposit of $100,000 or more.

The effective date of this bill is not specified.

6. Budget amendment necessary: No.

7. No Fiscal Impact. (See Line 8.)

8. Fiscal implications:

Administrative Costs

The Department of Taxation ("the Department") considers implementation of this bill as routine, and does not require additional funding.

Revenue Impact

Because this bill preserves the status quo, this bill would have no revenue impact.

9. Specific agency or political subdivisions affected:

Department of Taxation
Localities

10. Technical amendment necessary: No.

11. Other comments:

Background

The Virginia bank franchise tax is imposed at a rate of 1 percent of the net capital of banks and trust companies. Cities, counties, and towns are permitted to impose a local bank franchise tax not to exceed 80 percent of the state rate. If a bank has offices located in more than one county, town, or city, the tax imposed by each locality is subject to statutory apportionment based on the ratio which the total deposits located in each locality bear to the bank's total deposits. The state bank franchise tax liability is then reduced by the amount of bank franchise tax paid directly to the counties, towns, and cities.

To the extent that they are subject to the bank franchise tax, banks and trust companies are exempt from the Virginia corporate income tax and the local business, professional, and occupational license tax. In addition, banks and trust companies that are subject to the bank franchise tax can exclude certain tangible personal property from personal property taxation.

Virginia bank franchise tax law does not currently provide a specific formula for apportioning the net capital of a bank that has offices located in Virginia and in one or more other states because it was enacted when banks were prohibited from opening branches across state lines. When federal law forced states to allow interstate branch banking, Virginia amended its banking laws in 1995 to allow it, but did not address the apportionment issue. Because the Bank Franchise Tax Act is silent on the apportionment issue, the Department administratively adopted an apportionment method in order to avoid the unconstitutional application of the tax to the entire capital of a multistate bank. Pursuant to Public Document 94-366, the Department allows multi-state banks to apportion net capital based on the ratio which the total deposits in Virginia bear to the bank's total deposits. If a bank does not have any deposits in Virginia, it may apportion income using an alternative method. In the absence of an alternative method, such banks would not be required to pay the bank franchise tax and would instead be subject to the corporate income tax and local business, professional, and occupational license tax.

Proposal

This bill would create a statutory method of apportionment for the bank franchise tax for banks that have offices located in Virginia and in one or more other states. Under this method of apportionment, the bank would be required to multiply the amount of bank franchise tax by a fraction, the numerator of which is the total deposits of the bank in Virginia, less any time certificates of deposit of $100,000 or more, and the denominator of which is the total deposits of the bank in all states, less any time certificates of deposit of $100,000 or more.

This proposal would create a method of apportionment that is consistent with the Department's current administrative method of apportioning net capital. However, several unintended consequences may result from this bill as currently drafted. Because the Bank Franchise Tax Act is silent on the issue, the Department has asserted the administrative authority to prescribe an apportionment method, including alternative methods if needed. Enactment of a law specifying only one method of apportionment would effectively eliminate the administrative authority to use any other methods. Because banks are only exempt from corporate income and BPOL taxes to the extent that they are subject to the bank franchise tax, banks that do not have deposits in Virginia could not apportion capital under the statutory method proposed by this bill. Accordingly, such entities would not be subject to the bank franchise tax and may be required to pay corporate income taxes and BPOL taxes.

The effective date of this bill is not specified.

cc : Secretary of Finance

Date: 1/21/2012 KLC
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