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SENATE BILL NO. 1182

Offered January 11, 2023

Prefiled January 10, 2023

A BILL to amend and reenact §§ 58.1-1204, 58.1-1206 through 58.1-1210, and 58.1-1212 of the Code of Virginia and to amend the Code of Virginia by adding in Chapter 12 of Title 58.1 a section numbered 58.1-1218, relating to bank franchise tax.

Patron—Ruff

Referred to Committee on Commerce and Labor

Be it enacted by the General Assembly of Virginia:

1. That §§ 58.1-1204, 58.1-1206 through 58.1-1210, and 58.1-1212 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding in Chapter 12 of Title 58.1 a section numbered 58.1-1218 as follows:

§ 58.1-1204. Rate of tax.

A. The franchise tax imposed under this chapter shall be at the rate of \$1 on each \$100 of net capital as hereinafter defined. The total tax liability per taxpayer under this chapter shall not exceed \$18 million annually. If at least five banks pay such maximum amount of franchise tax for three consecutive calendar years, beginning in 2017, as determined by the Department of Taxation, then such maximum amount shall increase to \$20 million beginning in the calendar year immediately following the third consecutive year. After two years at \$20 million, such maximum amount shall increase by three percent annually. There shall be no deduction in respect to shares owned by exempt institutions.

The Department of Taxation shall notify all bank and trust companies in the Commonwealth of the increase in the maximum annual tax liability no later than August 15 of the year immediately prior to the year of such increase.

B. All funds collected under subsection B of § 58.1-1207 shall be deposited into a special account of the Commonwealth. The Department of Taxation shall transfer 80 percent of all such funds into the Local Bank Franchise Tax Fund pursuant to § 58.1-1218.

§ 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

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59 which obligations shall be exempt from state or local taxation under the United States Constitution or
60 any statute of the United States.

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

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

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

73 **§ 58.1-1207. Filing of return and payment of tax.**

74 A. Each bank as defined in § 58.1-1201 as of January 1 of each year shall prepare and file with the
75 commissioner of the revenue or comparable assessing officer of the county, city or town where the
76 principal office of the bank is located on or before March 1, a return in duplicate ~~which~~ *that* shall set
77 forth the tax on net capital as computed under this chapter. The return shall be in a form prescribed by
78 the Department of Taxation. The commissioner of the revenue or comparable assessing officer shall
79 certify a copy of the bank's return and schedules and shall forthwith transmit such certified copy to the
80 Department of Taxation. Additionally, a copy of the real estate deduction schedules and the
81 apportionment under § 58.1-1211 shall be filed with the appropriate assessing officer of each political
82 subdivision imposing a tax on the filing bank. Such return shall set forth the tax on net capital owing to
83 each such political subdivision as computed under this chapter and shall include the listing of the real
84 estate, as assessed for the prior year, as well as a description of the total of the obligations of the United
85 States and the average percentage thereof on the four dates prescribed in subdivision 3 of § 58.1-1206.
86 Every bank, on or before June 1 of each year, shall pay into the state treasury the state taxes assessed
87 under this chapter and into the treasurer's office or other official of the local political subdivisions all
88 taxes assessed by such political subdivision.

89 *B. Notwithstanding any other provision of this chapter, each bank as of January 1 of each year with*
90 *at least \$40 billion of deposits in Virginia based on the June 30 Federal Deposit Insurance Corporation*
91 *deposit market share report of the preceding year may elect to prepare and file electronically with the*
92 *Department of Taxation on or before March 1 a return in duplicate that shall set forth the tax on net*
93 *capital as computed pursuant to this chapter. The return shall be in a form prescribed by the*
94 *Department of Taxation. Each bank that elects to change the basis of its filing pursuant to this*
95 *subsection shall provide notification to the Department of Taxation and the commissioner of the revenue*
96 *or comparable assessing officer of the county, city, or town where the bank filed in the immediate*
97 *previous year by January 1. Such notification shall be submitted on forms as prescribed by the*
98 *Department of Taxation. Additionally, a copy of the real estate deduction schedules shall be filed with*
99 *the Department. Every bank filing pursuant to this subsection shall, on or before June 1 of each year,*
100 *pay into the state treasury the state taxes assessed under this chapter. Any bank that elects to file*
101 *pursuant to this subsection shall not change its method of filing for at least 10 years unless granted*
102 *permission to change by the Tax Commissioner. Permission shall be granted if (i) the bank made an*
103 *acquisition of another bank subject to this chapter in the preceding year or (ii) the bank has less than*
104 *\$40 billion of deposits in Virginia based on the June 30 Federal Deposit Insurance Corporation deposit*
105 *market share report of the preceding year.*

106 *C. In accordance with procedures established by the Tax Commissioner, any bank making the*
107 *election under subsection B may also elect an extension of time within which to file the tax return*
108 *required under this chapter to the date 60 days after such due date, provided that the estimated tax due*
109 *is paid in accordance with the provisions of subsection D.*

110 *D. Any bank making the election under subsection B desiring an extension of time in accordance*
111 *with the provisions of subsection C shall, on or before the original due date for the filing of such*
112 *return, in accordance with the procedures established by the Tax Commissioner, pay the full amount*
113 *properly estimated as the balance of the tax due for the taxable year. If any amount of the balance of*
114 *the tax due is underestimated, interest at the rate prescribed in § 58.1-15 shall be assessed on such*
115 *amount from the original due date for filing of the income tax return to the date of payment. In addition*
116 *to interest, if the underestimation of the balance of tax due exceeds 10 percent of the actual tax liability,*
117 *there shall be added to the tax as a penalty an amount equal to two percent per month for each month*
118 *or fraction thereof from the original due date for the filing of the income tax return to the date of*
119 *payment.*

120 *E. If the return is not filed, or the full amount of the tax due is not paid, on or before the extended*

due date elected under subsection C, the penalty imposed by § 58.1-1216 shall apply as if no extension had been granted.

§ 58.1-1208. City tax.

Any city in this Commonwealth in which is located any bank may, by ordinance, impose a tax not to exceed 80 percent of the state rate of taxation on each \$100 of the net capital of such bank, *except for banks making the election under subsection B of § 58.1-1207*, located in such city. If such bank also has offices that are located outside the corporate limits of such city, the tax shall be apportioned as provided in § 58.1-1211.

§ 58.1-1209. Town tax.

Any incorporated town in this Commonwealth in which is located a bank may, by ordinance, impose a tax not to exceed 80 percent of the state rate of taxation for each \$100 of the net capital of a bank, *except for banks making the election under subsection B of § 58.1-1207*, located in such town. If such bank also has offices that are located outside the corporate limits of such town, the tax shall be apportioned as provided in § 58.1-1211.

§ 58.1-1210. County tax.

Any county of this Commonwealth in which is located any bank outside any incorporated town therein may, by ordinance, impose a tax not to exceed 80 percent of the state rate of taxation for each \$100 of the net capital of the bank, *except for banks making the election under subsection B of § 58.1-1207*, so located in such county outside the corporate limits of any town therein. If such bank also has offices that are located outside such county or within the corporate limits of any town therein, the tax shall be apportioned as provided in § 58.1-1211.

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

Each bank, *except for banks making the election under subsection B of § 58.1-1207*, in this 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 such bank shall also 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 subsection A of § 58.1-1207.

§ 58.1-1218. Local Bank Franchise Tax Fund; disposition of bank franchise tax revenue.

A. There is hereby created in the state treasury a special nonreverting fund to be known as the Local Bank Franchise Tax Fund, referred to in this section as "the Fund." The Fund shall be established on the books of the Comptroller and any funds remaining in the Fund at the end of a biennium shall not revert to the general fund but shall remain in the Fund. Interest earned on moneys in the Fund shall remain in the Fund and be credited to it. After transferring moneys from the Fund to the Department of Taxation for payment of the direct costs of administering this chapter, the moneys in the Fund shall be allocated to the Commonwealth's counties, cities, and towns, and distributed in accordance with subsection B.

B. The moneys in the Fund distributable among the counties, cities, and towns shall be apportioned and distributed by the Tax Commissioner based upon the basis of the latest yearly estimate of the population provided by the Weldon Cooper Center for Public Service at the University of Virginia. Such distribution shall be made as soon as practicable after the payment date prescribed in subsection B of § 58.1-1207 and after the close of each month during which the net revenue was received into the Fund. The distribution of the localities' share of such net revenue shall be computed with respect to the net revenue received in the state treasury during each month.

C. The net revenue distributable among the counties, cities, and towns shall be apportioned and distributed monthly according to each county's, city's, and town's pro rata distribution from the Fund. The Department of Taxation shall adjust the percentage share of distribution from the Fund due to each locality entitled to a distribution from the Fund upon a ruling by the Tax Commissioner in favor of a county, city, or town, provided that any such ruling in favor of a county, city, or town shall not result in more than an aggregate of \$100,000 being redistributed from all other counties, cities, and towns. Counties, cities, and towns are authorized to request such ruling.

D. For the purposes of the Comptroller making the required transfers, the Tax Commissioner shall make a written certification to the Comptroller no later than the twenty-fifth of each month certifying the bank franchise tax revenues generated in the preceding month. Within three calendar days of receiving such certification, the Comptroller shall make the required transfers to the Local Bank Franchise Tax Fund.

E. If errors are made in any distribution, or adjustments are otherwise necessary, the errors shall be corrected and adjustments made in the distribution for the next month or for subsequent months.

2. That the provisions of §§ 58.1-1206 through 58.1-1210 and 58.1-1212 of the Code of Virginia, as amended by this act, shall become effective on January 1, 2024.

182 3. That the provisions of § 58.1-1204 of the Code of Virginia, as amended by this act, and
183 § 58.1-1218 of the Code of Virginia, as created by this act, shall become effective on January 1,
184 2025.