1100 Taxation

1114 Alternative Franchise Tax

Chapter 11 of Title 5 of the Delaware Code

Effective Date: December 11, 2006

1.0 This regulation applies to banking organizations and trust companies, other than federal savings banks not headquartered in this State but maintaining branches in this State, that annually elect to pay an alternative franchise tax pursuant to Section 1101A of Title 5 of the **Delaware Code**. The election to pay the alternative franchise tax is made by filing an original final alternative franchise tax return on the due date, or an amended return within 180 days of the due date of the original return.

2.0 Definitions

"Bank" means every bank and every corporation conducting a banking business of any kind or plan whose principal place of business is in this State, except a national bank.

"Banking organization" means:

- A bank or bank and trust company organized and existing under the laws of this State;
- A national bank, including a federal savings bank, with its principal office in this State;
- An Edge Act corporation organized pursuant to § 25(a) of the Federal Reserve Act, 12 U.S.C. § 611 et seq. (an "Edge Act Corporation"), or a state chartered corporation exercising the powers granted thereunto pursuant to an agreement with the Board of Governors of the Federal Reserve System (an "Agreement Corporation"), and maintaining an office in this State;
- A federal branch or agency licensed pursuant to § 4 and § 5 of the International Banking Act of 1978, 12 U.S.C. § 3101 et seq., to maintain an office in this State;
- A foreign bank branch, foreign bank limited purpose branch or foreign bank agency organized pursuant to Chapter 14 of Title 5 of the **Delaware Code**, or a resulting branch in this State of a foreign bank authorized pursuant to Chapter 14 of Title 5 of the **Delaware Code**; or
- A resulting branch in this State of an out-of-state bank, or a branch office in this State of an out-of-state bank.

"International Banking Transaction" shall mean any of the following transactions, whether engaged in by a banking organization, any foreign branch thereof (established pursuant to Section 771 of Title 5 of the **Delaware Code** or federal law) or any subsidiary corporation directly or indirectly owned by any banking organization:

- The financing of the exportation from, or the importation into, the United States or between jurisdictions abroad of tangible property or services;
- The financing of the production, preparation, storage or transportation of tangible personal property or services which are identifiable as being directly and solely for export from, or import into, the United States or between jurisdictions abroad;
- The financing of contracts, projects or activities to be performed substantially abroad, except those transactions secured by a mortgage, deed of trust or other lien upon real property located in this State;
- The receipt of deposits or borrowings or the extensions of credit by an international banking facility, except the loan or deposit of funds secured by mortgage, deed of trust or other lien upon real property located in this State;
- The underwriting, distributing and dealing in debt and equity securities outside of the United States and the conduct of any activities permissible to an Edge Act Corporation or an Agreement Corporation described above, or any of its subsidiaries, in connection with the transaction of banking or other financial operations; or
- The entering into foreign exchange trading or hedging transactions in connection with the activities described in paragraphs (1) through (5) above.

"International Banking Facility" means a set of asset and liability accounts, segregated on the books and records of a banking organization, that includes only international banking facility deposits, borrowings and extensions of credit.

"National Bank" means a banking association organized under the authority of the United States and having a principal place of business in this State.

"Net Operating Income Before Taxes" means all pre-tax net income from the operations of a banking organization or trust company, including extraordinary items and other adjustments, computed in accordance with principles used by the Federal Financial Institutions Examination Council or other appropriate federal authority.

"Out-of-state bank" has the same meaning as in Section 795 of Title 5 of the **Delaware Code**, which is (i) a State bank, as defined in the Federal Deposit Insurance Act, as amended, at 12 U.S.C. § 1813(a), that is not chartered under Delaware law, or (ii) a national bank association created under the National Bank Act (12 U.S.C. § 21 et seq.) whose organization certificate identifies an address outside Delaware as the place at which its discount and deposit operations are to be carried out.

"Resulting branch in this State of an out-of-state bank" has the same meaning as in Section 1101(a) of Title 5 of the **Delaware Code**, which is a branch office in this State of an out-of-state bank resulting from a merger as provided in Subchapter VII of Chapter 7 of Title 5 of the **Delaware Code**, and, in addition, a branch office in this State of an out-of-state bank.

"Securities Business" means to engage in the sale, distribution and underwriting of, and deal in, stocks, bonds, debentures, notes or other securities.

"Trust Company" means a trust company or corporation doing a trust company business which has a principal place of business in this State.

3.0 Instructions for Filing the Estimated Alternative Franchise Tax Return

3.1 A banking organization or trust company whose alternative franchise tax liability for the current year is estimated to exceed $10,000 should file an estimated alternative franchise tax return with the State Bank Commissioner, instead of the estimated franchise tax report in Regulation No. 1104 or No. 1111, and pay estimated alternative franchise tax:

3.1.1 Filing. The estimated alternative franchise tax return shall be filed with the State Bank Commissioner on the first day of March of the current year. Filing an estimated tax return for a particular taxation method is not a mandatory election of that particular method. Additional tax due that results from the underpayment of estimated taxes will be computed on the basis of the final method properly chosen.

3.1.2 Penalty for late filing. A late filing penalty shall be assessed against the taxpayer in the amount of $25 for each day after the due date that the taxpayer fails to file the estimated alternative franchise tax return required by section 3.1.1., or an estimated franchise tax report pursuant to Regulation No. 1104 or No. 1111, unless the State Bank Commissioner is satisfied that such failure was not willful.

3.1.3 Form. The estimated alternative franchise tax return is contained in this regulation as Form 1114E.

3.1.4 Rounding. All amounts shall be rounded to the nearest dollar.

3.1.5 Calculation of estimated alternative franchise tax. The total estimated alternative franchise tax shall be calculated as follows:

3.1.5.1 The estimated net operating income before taxes of the banking organization or trust company;

3.1.5.2 Plus the estimated net operating income before taxes of any corporation(s) making an election as provided in Regulation No. 1101;

3.1.5.3 Less any deductions set forth in Section 1101A(c)(1) of Title 5 of the Delaware Code;

3.1.5.4 Less the estimated net operating income before taxes of any subsidiary corporation(s) and Edge Act corporation(s) making an election as provided in Regulation No. 1113;

3.1.5.5 Apportion the entire net income to the State of Delaware in accordance with Section 1101A(c)(6) of Title 5 of the Delaware Code (attach Schedule 1 – Apportionment Percentage Calculation Worksheet [apportionment percentage shall be rounded to the nearest tenth of a percent]);

3.1.5.6 Multiply the elective income tax base by the rate of taxation set forth in Section 1101A(c)(7) of Title 5 of the Delaware Code;

3.1.5.7 Plus the estimated location benefit tax liability calculated in accordance with Section 1101A(d) of Title 5 of the Delaware Code, (attach Schedule 2 – Location Benefit Tax Calculation Worksheet);

3.1.5.8 Adjust the subtotal estimated alternative franchise tax for applicable employment tax credits pursuant to Section 1105 of Title 5 of the Delaware Code, calculated in accordance with Regulation No. 1109;

3.1.5.9 Adjust the subtotal estimated alternative franchise tax for TraveLink tax credits calculated in accordance with Department of Transportation (DelDOT) TraveLink tax credit reporting requirements;

3.1.5.10 Adjust the subtotal estimated alternative franchise tax for Historic Preservation Tax Credits calculated in accordance with Chapter 18 of Title 30 of the Delaware Code and the regulations thereunder.

3.1.6 Payment of estimated alternative franchise tax. The estimated alternative franchise tax liability shall be due and payable as follows:

3.1.6.1 40% due on or before June 1 of the current taxable year;

3.1.6.2 20% due on or before September 1 of the current taxable year;

3.1.6.3 20% due on or before December 1 of the current taxable year.

4.0 Instructions for Filing the Final Alternative Franchise Tax Return

4.1 Filing. The December 31 call report, verified by oath, setting forth the net operating income of the banking organization or trust company and the final alternative franchise tax return, setting forth the "taxable income" of the banking organization or trust company, shall be filed with the Office of the State Bank Commissioner on or before January 30; provided, however, that a banking organization may file this return on or before any later date allowed by the Federal Financial Institutions Examination Council guidelines for filing its Report of Condition and Income. A banking organization or trust company whose original final franchise tax report was filed pursuant to Regulation No. 1105 or No. 1112 may elect to pay the alternative franchise tax pursuant to Section 1101A of Title 5 of the Delaware Code by filing an amended final alternative franchise tax return, as provided in this regulation, within 180 days of the due date of the original return.

4.2 Penalty for late filing. A late filing penalty shall be assessed against the taxpayer in the amount of $25 for each day after the due date that the taxpayer fails to file the final alternative franchise tax return required by subsection 4.1, or the final franchise tax report in Regulation No. 1105 or No. 1112, unless the State Bank Commissioner is satisfied that such failure was not willful.

4.3 Form. The final alternative franchise tax return is contained in this regulation as Form 1114F.

4.4 Rounding. All amounts shall be rounded to the nearest dollar.

4.5 Calculation of final alternative franchise tax. The total final alternative franchise tax shall be calculated as follows:

4.5.1 The net operating income before taxes of the banking organization or trust company, (attach a statement of net income that is filed with an appropriate financial regulatory agency);

4.5.2 Plus the net operating income before taxes of any corporation(s) making an election as provided in Regulation No. 1101, (attach Regulation 1101 form – Election To Be Treated As A Subsidiary Corporation Under Sections 1101(f) or 1101A(c)(3) of Title 5 of the Delaware Code and a separate report of income for each electing corporation);

4.5.3 Less any deductions set forth in Section 1101A(c)(1) of Title 5 of the Delaware Code;

4.5.4 Less the net operating income before taxes of any subsidiary corporation(s) and Edge Act corporation(s) making an election as provided in Regulation No. 1113;

4.5.5 Apportion the entire net income to the State of Delaware in accordance with Section 1101A(c)(6) of Title 5 of the Delaware Code (attach Schedule 1 – Apportionment Percentage Calculation Worksheet [apportionment percentage shall be rounded to the nearest tenth of a percent]);

4.5.6 Multiply the elective income tax base by the rate of taxation set forth in Section 1101A(c)(7) of Title 5 of the Delaware Code;

4.5.7 Plus the location benefit tax liability calculated in accordance with Section 1101A(d) of Title 5 of the Delaware Code, computed as of December 31 of the year prior to the year for which alternative franchise tax is paid (attach Schedule 2 – Location Benefit Tax Calculation Worksheet);

4.5.8 Adjust the subtotal alternative franchise tax for applicable employment tax credits pursuant to Section 1105 of Title 5 of the Delaware Code calculated in accordance with Regulation No. 1109, (attach Employment Tax Credit Calculation Worksheet);

4.5.9 Adjust the subtotal alternative franchise tax for TraveLink tax credits calculated in accordance with Department of Transportation (DelDOT) TraveLink tax credit reporting requirements, (attach DelDOT approval and calculation worksheet);

4.5.10 Adjust the subtotal alternative franchise tax for Historic Preservation Tax Credits calculated in accordance with Chapter 18 of Title 30 of the Delaware Code and the regulations thereunder, (attach a Certificate of Completion issued by the Delaware State Historic Preservation Office certifying that the credits have been properly earned, in accordance with Section 1105(g) of Title 5 of the Delaware Code, and if the credits have been transferred, sold or assigned to the taxpayer by another person, also attach a Certificate of Transfer in accordance with Section 1814(c) of Title 30 of the Delaware Code).

5.0 Payment of Final Alternative Franchise Tax

5.1 Taxes owed for the previous calendar year are due and payable on or before March 1 of the following year. Checks or other forms of payment should be made payable or directed to the State of Delaware.

5.2 The amount due and payable on or before March 1 for the previous calendar year shall be the final alternative franchise tax, less any estimated tax payments made for the taxable year, plus any additional tax due to underpayment of estimated alternative franchise tax or installment. If the final alternative franchise tax is not paid by March 1, a penalty for late payment of the final alternative franchise tax shall be assessed.

6.0 Additional Tax Due to Underpayment of Estimated Alternative Franchise Tax or Installment

6.1 In the case of any underpayment of alternative estimated franchise tax or an installment of estimated alternative tax required by Chapter 11 of Title 5 of the **Delaware Code**, there shall be added to the tax for the taxable year an amount determined at the rate of 0.05 percent per day upon the amount of the underpayment for the period of the underpayment. The amount of the underpayment shall be the excess of:

6.1.1 The amount of the estimated alternative franchise tax or installment payment which would be required to be made if the estimated alternative tax were equal to 80 percent of the tax shown on the final return for the taxable year, or if no return were filed, 80 percent of the tax for such year; over

6.1.2 The amount, if any, of the estimated alternative tax or installment paid on or before the last date prescribed for payment.

6.2 The period of the underpayment shall run from the date the estimated alternative franchise tax or installment was required to be paid to the earlier of the date when such estimated alternative tax or installment is paid or the date of the final payment of tax for the year;

6.3 Notwithstanding the above, the addition to the tax with respect to any underpayment of estimated alternative franchise tax or any installment shall not be imposed if the total amount

of all payments of estimated alternative tax made on or before the last date prescribed for the payment thereof equals or exceeds the amount which would have been required to be paid on or before such date if the estimated alternative tax were the tax shown on the final return of the banking organization or trust company for the preceding taxable year.

7.0 Penalty - Late Payment of Final Alternative Franchise Tax

7.1 In the case of a late payment of final alternative franchise tax as required by Chapter 11 of Title 5 of the **Delaware Code**, there shall be added to the tax a penalty in an amount determined at the rate of 0.05 percent per day until required payment is made.

8.0 Election to be listed as a "Subsidiary Corporation"

8.1 Regulation No. 1101 shall apply to elections to be treated as a subsidiary corporation pursuant to Section 1101A(c)(3) of Title 5 of the **Delaware Code.**

8.2 Any corporation which has elected to be treated as a "subsidiary corporation" of a banking organization or trust company pursuant to Section 1101A(c)(3) of Title 5 of the **Delaware Code** and has filed with the State Bank Commissioner the required election form in accordance with Regulation No. 1101 shall provide a report of income for each electing corporation as of December 31 of each year to be submitted in conjunction with the final alternative franchise tax return due January 30; provided, however, that a banking organization may file this report on or before any later date allowed by the Federal Financial Institutions Examination Council guidelines for filing its Report of Condition and Income.

8.3 As long as the election remains in effect, the ownership and employment tests must be met. Therefore, the election form in Regulation No. 1101 must be completed each year for each Electing Corporation and submitted with the final alternative franchise tax return.

9.0 Election by a Subsidiary Corporation of a Banking Organization or Trust Company to be Taxed in Accordance with Chapter 19 of Title 30

9.1 Regulation No. 1113 shall apply to elections to be taxed in accordance with Chapter 19 of Title 30 pursuant to Section 1101A(c)(2) of Title 5 of the Delaware Code.

10.0 Election by an Edge Act Corporation to be Taxed in Accordance with Chapter 19 of Title 30

10.1 Regulation No. 1113 shall apply to elections to be taxed in accordance with Chapter 19 of Title 30 pursuant to Section 1101A(c)(4) of Title 5 of the **Delaware Code**.

11.0 Instructions for Filing an Amendment to the Final Alternative Franchise Tax Return

11.1 Filing. To amend a previously filed final alternative tax return, or to elect the alternative franchise tax method as provided in Section 1101A(a) of Title 5 of the Delaware Code, place a check mark (✔) in the box provided on Form 1114F and complete the return in accordance with Section 4 of this regulation. Attach a complete copy of the original filing along with a statement of explanation for all changes.

10 DE Reg. 1046 (12/01/06)

Form 1114E - Estimated Alternative Franchise Tax Return