

# DEPARTMENT OF STATE

## OFFICE OF THE STATE BANKING COMMISSIONER

Statutory Authority: 5 Delaware Code, Sections 121(b) and 29 Delaware Code, Section 10113(b)  
(5 Del.C. §121(b) & 29 Del.C. §10113(b))  
5 DE Admin. Code 1109

### FINAL

### ORDER

#### 1109 Instructions for Calculation of Employment Tax Credits (5 Del.C. §1105)

IT IS HEREBY ORDERED on this 8th day of November, 2012, that Regulation 1109, Instructions for Calculation of Employment Tax Credits, is amended to make it consistent with changes in Section 1105 of Title 5 of the Delaware Code under 78 Del. Laws Ch. 72. A copy of the amendments to Regulation 1109 is attached hereto and incorporated herein by reference, with deleted language struck through and added language underlined. The amendments are being adopted to conform that Regulation to provisions of 78 Del. Laws Ch. 72 which amended the basic law for Regulation 1109. The amendments do not otherwise alter the substance of Regulation 1109, the remaining provisions of which are not affected by these amendments.

The effective date of the amendments is January 1, 2013. The amendments are adopted by the State Bank Commissioner in accordance with Title 5, and pursuant to the requirements of Chapter 11 and Section 10113(b) of Title 29 of the Delaware Code. A copy of this order and the amendments to Regulation 1109 are to be filed with the Registrar of Regulations.

Robert A. Glen, State Bank Commissioner

#### 1109 Instructions for Calculation of Employment Tax Credits (5 Del.C. §1105)

Effective Date: ~~December 11, 2007~~ January 1, 2013

This regulation provides for the calculation of employment tax credits for the tax years 1997 through 2011 and 2012 through 2021 for entities subject to the bank franchise tax. These employment tax credits are provided in Section 1105(d) for tax years 1997 through 2011 and Section 1105(h) for tax years 2012 through 2021, and subject to requirements in Sections 1105(e), ~~and 1105(f)~~, and 1105(i) of Title 5 of the **Delaware Code**.

**5 DE Reg. 669 (09/01/01)**

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

#### 1.0 Definitions

**“Base Year”** means calendar year 1996 for tax years 1997 through 2011, and calendar year 2011 for tax years 2012 through 2021.

**“Full-time Employment”** means employment of any individual for at least 35 hours per week, not including absences excused by reason of vacations, illness, holidays or similar causes.

**“Health Care Benefits”** means financial protection against the medical care cost arising from disease and accidental bodily injury (for which the employer pays at least 50%) for workers employed by the employer for a continuous period of 6 months or more.

**“New Investment”** includes (1) machinery, (2) equipment and (3) the cost of land and improvements to land, provided that the new investment is placed into service within Delaware after December 1996 for tax years 1997 through 2011, or after December 2011 for tax years 2012 through 2021, and was not used by any person at any time within the one year period ending on the date the taxpayer placed such property in service in the conduct of the taxpayer’s business. If the new investment is leased or subleased by the taxpayer, the amount of the new investment shall be deemed to be eight times the net annual rent paid or incurred by the taxpayer. The net annual rent represents the gross rent paid or incurred by the taxpayer during the taxable year, less any gross rental income received by the taxpayer from sublessees of any portion of the facility during the taxable year.

**“Qualified Employee”** means an employee engaged in regular full-time employment, for whom the taxpayer provides health care benefits, who has been employed in Delaware by the taxpayer for a continuous period of

at least 6 months and who was not employed at the same facility in substantially the same capacity by a different employer during all or part of the base year.

## **2.0 Employment Tax Credit**

2.1 A tax credit for ~~the current tax year~~ tax years 1997 through 2011 shall be allowed against the tax imposed under subsection 1105(a) and 1101A of Title 5 of the **Delaware Code**. ~~The amount of the credit shall be in the amount of \$400~~ for each new qualified employee in excess of 50 qualified employees above the number of employees employed by the taxpayer in full-time employment during the base year.

2.2 For tax years beginning after December 31, 2011, and ending before January 1, 2022, there shall be allowed as a credit against the tax imposed under subsection 1105(a) or 1101A of Title 5 of the Delaware Code an amount equal to \$1,250 for each new qualified employee above the number of employees employed by the taxpayer in full-time employment during the base year; provided, however, that the credit provided pursuant to this section shall be available only for taxable years in which the taxpayer has at least 200 new qualified employees above the number of employees employed by the taxpayer in full-time employment during the base year. The base year shall be the period after December 31, 2010, and before January 1, 2012.

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

## **3.0 New Investment Required**

3.1 The employment tax credit provided above may not be claimed until the taxpayer has made new investments of at least \$15,000 per qualified employee in excess of the numbers of employees employed by the taxpayer in full-time employment during the base year.

## **4.0 Annual Limit On Credit**

4.1 The amount of the employment tax credit allowable for the current tax year (including any credit carried forward as provided below) shall not exceed 50 percent of the amount of tax imposed on the taxpayer under Section 1105(a) and 1101A of Title 5 of the **Delaware Code** for the current tax year.

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

## **5.0 Applicable Years**

5.1 The employment tax credit ~~provided~~ specified in Section 2.1 above may be earned and applied only in tax years beginning after December 31, 1996 and ending before January 1, 2012, subject to the credit carryover described below.

5.2 The employment tax credit specified in Section 2.2 above may be earned and applied only in tax years beginning after December 31, 2011 and ending before January 1, 2022, subject to the credit carryover described below.

**5 DE Reg. 669 (09/01/01)**

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

## **6.0 Credit Carryover**

6.1 The amount of the employment tax credit for any taxable year that is not allowable for such taxable year solely as a result of the limitation described above in Section 4.0 shall be a credit carryover to each of the succeeding 9 years in the manner described in Section 2011(f) of Title 30 of the **Delaware Code**.

## **7.0 Calculation Worksheet**

7.1 The employment tax credit provided above shall be calculated on the ~~accompanying~~ appropriate Employment Tax Credit Calculation Worksheet accompanying this Regulation, which shall be submitted with the taxpayer's tax report.

**16 DE Reg. 656 (12/01/12)**