

# DEPARTMENT OF STATE

## OFFICE OF THE STATE BANK COMMISSIONER

Statutory Authority: 5 Delaware Code, Section 121(b); (5 Del.C. §121(b))  
5 DE Admin. Code 1103, 1104, 1105, 1106, 1107, 1108, 1109, 1110, 1111, 1112 and 1114

### FINAL

### ORDER

#### 1103 Instructions for Preparation of Franchise Tax

#### 1104 Estimated Franchise Tax Report

#### 1105 Final Franchise Tax Report

#### 1106 Instructions for Preparation of Franchise Tax for Federal Savings Banks Not Headquartered in this State but Maintaining Branches in this State

#### 1107 Estimated Franchise Tax Report Federal Savings Banks Not Headquartered in Delaware

#### 1108 Final Franchise Tax Report Federal Savings Banks Not Headquartered in Delaware

#### 1109 Instructions for Calculation of Employment Tax Credits

#### 1110 Instructions for Preparation of Franchise Tax for Resulting Branches in this State of Out-of-State Banks

#### 1111 Estimated Franchise Tax Report for Resulting Branches in this State of Out-of-State Banks

#### 1112 Final Franchise Tax Report for Resulting Branches in this State of Out-of-State Banks

#### 1114 Alternative Franchise Tax

IT IS HEREBY ORDERED, this 11th day of January, 2017, that amended Regulations 1103, 1104, 1105, 1106, 1107, 1108, 1109, 1110, 1111, 1112 and 1114 are adopted as Regulations of the State Bank Commissioner. The effective date of each of these Regulations is February 11, 2017. These Regulations are adopted by the State Bank Commissioner in accordance with Title 5 of the Delaware Code and pursuant to the requirements of Chapters 11 and 101 of Title 29 of the Delaware Code, as follows:

1. Notice of the proposed amended Regulations and their text was published in the December 1, 2016 issue of the Delaware *Register of Regulations*. The Notice also was mailed to all persons who had made a timely written request to the Office of the State Bank Commissioner for advance notice of its regulation-making proceedings. The Notice included, among other things, a summary of the proposed amended Regulations and invited interested persons to submit written comments to the Office of the State Bank Commissioner on or before January 4, 2017. The Notice further stated that the proposed amended Regulations were available for inspection during regular business hours at the Office of the State Bank Commissioner, 555 E. Loockerman Street, Suite 210, Dover, Delaware 19901, and that copies were available upon request.

2. No written comments concerning the proposed amended Regulations were received on or before January 4, 2017.

3. After review and consideration, the State Bank Commissioner hereby adopts amended Regulations 1103, 1104, 1105, 1106, 1107, 1108, 1109, 1111, 1112 and 1114 as proposed. These amended Regulations were published as proposed amended Regulations in the December 1, 2016 issue of the Delaware *Register of Regulations* and are incorporated herein by reference.

4. After further review and consideration, the State Bank Commissioner hereby adopts amended Regulation 1110 as proposed, with further minor technical and conforming amendments to amended subsections 3.3 and 3.4 of that Regulation. The State Bank Commissioner has determined that these further amendments are not substantive, for purposes of Section 10118(c) of Title 29 of the Delaware Code. The final version of amended Regulation 1110 is attached hereto and incorporated herein by reference.

Robert A. Glen  
State Bank Commissioner

#### 1103 Instructions for Preparation of Franchise Tax

5 Del.C. Ch. 11

Formerly Regulation No.: 5.1101etal.0002

Effective Date: ~~September 11, 2004~~ **[Proposed February 11, 2017]**

**1.0** This regulation applies to banking organizations and trust companies, other than resulting branches in this State of out-of-state banks or federal savings banks not headquartered in this state but maintaining branches in this State. The estimated and final franchise tax reports that accompany this regulation are found in regulations 1104 (~~formerly 5.1101etal.0003~~) and 1105 (~~formerly 5.1101etal.0004~~), respectively. Regulations 1106, 1107 and 1108 (~~formerly~~

~~5.1101etal.0005, 5.1101etal.0006 and 5.1101etal.0007~~) are applicable to federal savings banks not headquartered in this State but maintaining branches in this State. Regulations 1110, 1111 and 1112 (~~formerly 5.1101etal.0009, 5.1101etal.0010 and 5.1101etal.0011~~) are applicable to resulting branches in this State of out-of-state banks.

## 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, or a resulting branch in this State of a foreign bank authorized pursuant to Chapter 14 of Title 5; 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 Facility”** means a set of asset and liability accounts, segregated on the books of a banking organization, that includes only international banking facility deposits, borrowings and extensions of credit.

**“International Banking Transaction”** shall mean any of the following transactions, whether engaged in by a banking organization, any foreign branch thereof (established pursuant to 5 Del.C. §771 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 and 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.

**“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 the total net interest income plus total non-interest income, minus provision for loan and lease losses, provision for allocated transfer risk, and total non-interest expense, and adjustments made for securities gains or losses and other appropriate adjustments.

**“Out-of-State Bank”** has the same meaning as in §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 §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 Estimated Franchise Tax

- 3.1 A banking organization or trust company whose franchise tax liability for the current year is estimated to exceed \$10,000 shall file an estimated franchise tax report with the State Bank Commissioner and pay estimated franchise tax.
- 3.1.4 3.2 Filing. The estimated franchise tax report shall be filed with the State Bank Commissioner on the first day of March of the current year.
- 3.1.2 3.3 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 franchise tax report required above in subsection 3.1.4 3.2, unless the State Bank Commissioner is satisfied that such failure was not willful.
- 3.1.3 3.4 Form. The estimated franchise tax report shall be in the form set out in Regulation 1104 (~~formerly No. 5.1101etal.0003~~).
- 3.1.4 3.5 Calculation of estimated tax. The total estimated annual franchise tax shall be calculated as follows:
- 3.1.4.1 3.5.1 The estimated net operating income before taxes, which includes the income of any corporation making an election as provided in Regulation No. 1101 (~~formerly 5.1101(f).0004~~);
- 3.1.4.2 3.5.2 Adjusted for any estimated income from an insurance division or subsidiary;
- 3.1.4.3 3.5.3 Less any deductions set forth in 5 **Del.C.** §1101;
- 3.1.4.4 3.5.4 Multiplied by .56 to arrive at estimated taxable income;
- 3.1.4.5 3.5.5 The appropriate rate of taxation set forth in 5 **Del.C.** §1105 shall be applied;
- 3.1.4.6 3.5.6 The subtotal estimated annual franchise tax shall be adjusted for tax credits applicable pursuant to 5 **Del.C.** §1105, which are calculated in accordance with Regulation No. 1109 (~~formerly 5.1105.0008~~);
- 3.1.4.7 3.5.7 The subtotal estimated annual franchise tax shall be adjusted for Travelink tax credits calculated in accordance with Department of Transportation Travelink tax credit reporting requirements;
- 3.1.4.8 3.5.8 The subtotal estimated annual franchise tax shall be adjusted for Historic Preservation Tax Credits calculated in accordance with 30 **Del.C.** §§1811 et seq. and the regulations thereunder. Claimed credits must be accompanied by a Certificate of Completion issued by the Delaware State Historic Preservation Office certifying that the credits have been properly earned, in accordance with 5 **Del.C.** §1105(g). If the credits have been transferred, sold or assigned to the taxpayer by another person, a Certificate of Transfer must also be attached, in accordance with 30 **Del.C.** §1814(c);
- 3.5.9 The subtotal estimated annual franchise tax shall be adjusted for any other applicable tax credit(s) [attach supporting schedule identifying the tax credit(s)].
- 3.1.5 3.6 Payment of estimated tax. The estimated tax liability shall be due and payable as follows:
- 3.1.5.1 3.6.1 40% due on or before June 1 of the current taxable year;
- 3.1.5.2 3.6.2 20% due on or before September 1 of the current taxable year;
- 3.1.5.3 3.6.3 20% due on or before December 1 of the current taxable year.

### 4.0 Final Franchise Tax

- 4.1 Filing. The December 31 call report, verified by oath, setting forth the net operating income of the banking organization and the final franchise tax report, 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 each year; provided, however, that a banking organization ~~entitled to take an additional 15 days to submit its Report of Condition and Income to the appropriate federal bank supervisory authority shall~~ may file the December 31 call report and the final franchise tax report with the Office of the State Bank Commissioner on or before February 15 of each year, any later date allowed by the Federal Financial Institutions Examination Council guidelines for filing its Report of Condition and Income, except as otherwise required by 5 **Del.C.** §904.
- 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 franchise tax report required above in subsection 4.1, unless the State Bank Commissioner is satisfied that such failure was not willful.
- 4.3 Form. The final franchise tax report shall be in the form set out in Regulation No. 1105 (~~formerly 5.1101etal.0004~~).
- 4.4 Calculation of final tax. The total final franchise tax shall be calculated as follows:

- 4.4.1 The net operating income before taxes, which includes the income of any corporation making an election as provided in Regulation No. 1101 (~~formerly 5.1101(f).0004~~);
- 4.4.2 Adjusted for any income from an insurance division or subsidiary; (include a report of income showing the name and federal employer identification number of the division or subsidiary);
- 4.4.3 Less any deduction set forth in 5 **Del.C.** §1101; (include a report of income showing the name and federal employer identification number of each subsidiary taken as a deduction);
- 4.4.4 Multiplied by .56 to arrive at "taxable income";
- 4.4.5 The appropriate rate of taxation set forth in 5 **Del.C.** §1105 shall be applied to the taxable income to arrive at subtotal annual franchise tax;
- 4.4.6 The subtotal annual franchise tax shall be adjusted for tax credits applicable pursuant to 5 **Del.C.** §1105, which are calculated in accordance with Regulation No. 1109 (~~formerly 5.1105.0008~~);
- 4.4.7 The subtotal annual franchise tax shall be adjusted for Travelink tax credits calculated in accordance with Department of Transportation Travelink tax credit reporting requirements;
- 4.4.8 The subtotal ~~estimated~~ annual franchise tax shall be adjusted for Historic Preservation Tax Credits calculated in accordance with 30 **Del.C.** §§1811 et seq. and the regulations thereunder. Claimed credits must be accompanied by a Certificate of Completion issued by the Delaware State Historic Preservation Office certifying that the credits have been properly earned, in accordance with 5 **Del.C.** §1105(g). If the credits have been transferred, sold or assigned to the taxpayer by another person, a Certificate of Transfer must also be attached, in accordance with 30 **Del.C.** §1814(c);
- 4.4.9 The subtotal annual franchise tax shall be adjusted for any other applicable tax credit(s) [attach supporting schedule identifying the tax credit(s)].

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

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

- 6.1 In the case of any underpayment of estimated franchise tax or installment of estimated 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 franchise tax or installment payment which would be required to be made if the estimated 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 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 franchise tax or installment was required to be paid to the earlier of the date when such estimated 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 franchise tax or any installment shall not be imposed if the total amount of all payments of estimated 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 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 Franchise Tax

- 7.1 In the case of a late payment of final 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 Any corporation which has elected to be treated as a "subsidiary corporation" of a banking organization or trust company pursuant to §1101(f) and filed with the State Bank Commissioner the required election form in accordance with Commissioner's Regulation No. 1101 (~~formerly 5.1101(f).0001~~) shall provide (a) a tentative report of income for the electing corporation covering estimated bank franchise tax liability for the current income year to be submitted in conjunction with the estimated franchise tax report due March 1 for a banking organization or trust company whose franchise tax liability for the current year is estimated to exceed \$10,000, and (b) a report of income for the electing corporation as of December 31 of each year to be submitted in conjunction with the final franchise tax report due January 30 or ~~February 15, as applicable~~ any later date allowed as provided in subsection 4.1 above.
- 8.2 As long as the election remains in effect, the ownership and employment tests must be met. Therefore, the election form in Regulation No. 1101 (~~formerly Regulation 5.1101(f).0001~~) must be completed each year for each Electing Corporation and submitted with the final franchise tax report.

#### **1104 Estimated Franchise Tax Report** 5 Del.C. Ch. 11

Formerly Regulation No.: 5.1101etal.0003

Effective Date: ~~September 11, 2001~~ **[Proposed February 11, 2017]**

**1.0** This report shall be completed by any banking organization (other than a resulting branch in this State of an out-of-state bank, as defined in §1101(a) of Title 5 of the **Delaware Code**) or trust company with an estimated tax liability in excess of \$10,000 in a given year. The completed report is to be filed in the Office of the State Bank Commissioner on or before March 1 of the current year. Instructions for the preparation of this report are found in Regulation 1103 (~~formerly 5.1101etal.0002~~).

#### **1104A.pdf Estimated Franchise Tax Report**

#### **1105 Final Franchise Tax Report** 5 Del.C. Ch. 11

Formerly Regulation No.: 5.1101etal.0004

Effective Date: ~~September 11, 2001~~ **[Proposed February 11, 2017]**

This report shall be completed by all banking organizations (other than resulting branches in this State of out-of-state banks, as defined in §1101(a) of Title 5 of the **Delaware Code**) and trust companies and submitted to the Office of the State Bank Commissioner on or before January 30; provided, however, that a banking organization ~~entitled to take an additional 15 days to submit its Report of Condition and Income to the appropriate federal bank supervisory authority shall may~~ submit this report to the Office of the State Bank Commissioner on or before ~~February 15~~ any later date allowed by the Federal Financial Institutions Examination Council guidelines for filing its Report of Condition and Income. Income reported is for the previous calendar year. Instructions for the preparation of this report are found in Regulation 1103 (~~formerly 5.1101etal.0002~~).

#### **1105A.pdf Final Franchise Tax Report**

#### **1106 Instructions for Preparation of Franchise Tax for Federal Savings Banks Not Headquartered in this State but Maintaining Branches in this State** 5 Del.C. Ch. 11

Formerly Regulation No.: 5.1101etal.0005

Effective Date: ~~September 11, 2001~~ **[Proposed February 11, 2017]**

**1.0** This regulation applies only to federal savings banks not headquartered in this State but maintaining branches in this State. The estimated and final franchise tax reports that accompany this regulation are found in regulations 1107 (~~formerly 5.1101etal.0006~~) and 1108 (~~formerly 5.1101etal.0007~~), respectively.

#### **2.0 Definitions**

**“Net Operating Income Before Taxes”** means the total net income calculated in accordance with Section 8.0 of this Regulation, with adjustments made for securities gains or losses and other appropriate adjustments.

### 3.0 Estimated Franchise Tax

- 3.1 A federal savings bank not headquartered in this State whose franchise tax liability for the current year is anticipated to exceed \$10,000 shall file an estimated franchise tax report with the State Bank Commissioner and pay estimated franchise tax.
- ~~3.1.1~~ 3.2 Filing. The estimated franchise tax report shall be filed with the State Bank Commissioner on the first day of March of the current year.
- ~~3.1.2~~ 3.3 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 franchise tax report required above in ~~subsection 3.1.1~~ 3.2, unless the State Bank Commissioner is satisfied that such failure was not willful.
- ~~3.1.3~~ 3.4 Form. The estimated franchise tax report shall be in the form set out in Regulation No. 1107 (~~formerly 5.1101 et al. 0006~~);.
- ~~3.1.4~~ 3.5 Calculation of estimated tax. The total estimated annual franchise tax shall be calculated as follows:
- ~~3.1.4.1~~ 3.5.1 The estimated net operating income before taxes of the branch or branches located in Delaware;
- ~~3.1.4.2~~ 3.5.2 Less the estimated interest income from obligations of volunteer fire companies;
- ~~3.1.4.3~~ 3.5.3 The appropriate rate of taxation set forth in 5 **Del.C.** §1105 shall be applied;
- ~~3.1.4.4~~ 3.5.4 The subtotal estimated annual franchise tax shall be adjusted for tax credits applicable pursuant to 5 **Del.C.** §1105, which are calculated in accordance with Regulation No. 1109 (~~formerly 5.1105.0008~~);.
- ~~3.1.4.5~~ 3.5.5 The subtotal estimated annual franchise tax shall be adjusted for Travelink tax credits calculated in accordance with Department of Transportation Travelink tax credit reporting requirements;.
- ~~3.1.4.6~~ 3.5.6 The subtotal estimated annual franchise tax shall be adjusted for Historic Preservation Tax Credits calculated in accordance with 30 **Del.C.** §§1181 et seq. and the regulations thereunder. Claimed credits must be accompanied by a Certificate of Completion issued by the Delaware State Historic Preservation Office certifying that the credits have been properly earned, in accordance with 5 **Del.C.** §1105(g). If the credits have been transferred, sold or assigned to the taxpayer by another person, a Certificate of Transfer must also be attached, in accordance with 30 **Del.C.** §1814(c);.
- 3.5.7 The subtotal estimated annual franchise tax shall be adjusted for any other applicable tax credit(s) [attach supporting schedule identifying the tax credit(s)].
- ~~3.1.5~~ 3.6 Payment of estimated tax. The estimated tax liability shall be due and payable as follows:
- ~~3.1.5.1~~ 3.6.1 40% due on or before June 1 of the current year;
- ~~3.1.5.2~~ 3.6.2 20% due on or before September 1 of the current year;
- ~~3.1.5.3~~ 3.6.3 20% due on or before December 1 of the current year.

### 4.0 Final Franchise Tax

- 4.1 Filing. The December 31 call report, verified by oath, setting forth the net operating income of the Delaware branch or branches of the federal savings bank not headquartered in this State and the final franchise tax report shall be filed with the Office of the State Bank Commissioner on or before January 30 each year;.
- 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 franchise tax report required above in section 4.1, unless the State Bank Commissioner is satisfied that such failure was not willful.
- 4.3 Form. The final franchise tax report shall be in the form set out in Regulation No. 1108 (~~formerly 5.1101 et al. 0007~~).
- 4.4 Calculation of final tax. The total final franchise tax shall be calculated as follows:
- 4.4.1 The net operating income before taxes of the branch or branches located in Delaware;
- 4.4.2 Less the interest income from obligations of volunteer fire companies;
- 4.4.3 The appropriate rate of taxation set forth in 5 **Del.C.** §1105 shall be applied;
- 4.4.4 The subtotal annual franchise tax shall be adjusted for tax credits applicable pursuant to 5 **Del.C.** §1105, which are calculated in accordance with Regulation No. 1109 (~~formerly 5.1105.0008~~);.
- 4.4.5 The subtotal annual franchise tax shall be adjusted for Travelink tax credits calculated in accordance with Department of Transportation Travelink tax credit reporting requirements;.
- 4.4.6 The subtotal annual franchise tax shall be adjusted for Historic Preservation Tax Credits calculated in accordance with 30 **Del.C.** §§1811 et seq. and the regulations thereunder. Claimed credits must be accompanied by a Certificate of Completion issued by the Delaware State Historic Preservation Office

certifying that the credits have been properly earned, in accordance with 5 Del.C. §1105(g). If the credits have been transferred, sold or assigned to the taxpayer by another person, a Certificate of Transfer must also be attached, in accordance with 30 Del.C. §1814(c);

4.4.7 The subtotal annual franchise tax shall be adjusted for any other applicable tax credit(s) [attach supporting schedule identifying the tax credit(s)].

## **5.0 Payment of Final 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 and directed to the Office of the State Bank Commissioner.
- 5.2 The amount due and payable on or before March 1 for the previous calendar year shall be the final franchise tax, less any estimated tax payments made for the taxable year, plus any additional tax due to underpayment of estimated franchise tax or installment. If the final franchise tax is not paid by March 1, a penalty for late payment of the final franchise tax shall be assessed.

## **6.0 Additional Tax Due to Underpayment of Estimated Franchise Tax or Installment**

- 6.1 In the case of any underpayment of estimated franchise tax or installment of estimated franchise 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 franchise tax or installment payment which would be required to be made if the estimated 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 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 franchise tax or installment was required to be paid to the earlier of the date when such estimated 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 franchise tax or any installment shall not be imposed if the total amount of all payments of estimated tax made on or before the last date 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 tax were the tax shown on the final return of the federal savings bank not headquartered in this State for the preceding taxable year.

## **7.0 Penalty - Late Payment of Estimated Franchise Tax or Installment or Final Franchise Tax**

- 7.1 In the case of a late payment of final 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 Separate Accounting by Delaware Branches**

- 8.1 Books and Records. Each branch in this State of a federal savings bank not headquartered in this State must keep a separate set of books and records as if it were an entity separate from the rest of the federal savings bank that operates such Delaware branch. These books and records must reflect the following items attributable to the Delaware branch:
  - 8.1.1 Assets and the credit equivalent amounts of offbalance sheet items used in computing the riskbased capital ratio under 12 C.F.R. part 567;
  - 8.1.2 Liabilities;
  - 8.1.3 Income and gain;
  - 8.1.4 Expense and loss.
- 8.2 Consolidation of Delaware Branches. If a federal savings bank not headquartered in this State operates more than one Delaware branch, it may treat all Delaware branches as a single separate entity for purposes of computing the assets, liabilities, income, gain, expense, and loss referred to above.
- 8.3 Determining Assets Attributable to a Delaware Branch
  - 8.3.1 General Principle of Asset Attribution. The general principle will be to attribute assets to a Delaware branch if personnel at the Delaware branch actively and materially participate in the solicitation, investigation, negotiation, approval, or administration of an asset.

- 8.3.2 Loans and Finance Leases. These assets will be attributed to a Delaware branch if personnel at the Delaware branch actively and materially participated in the solicitation, investigation, negotiation, final approval, or administration of a loan or financing lease. Loans include all types of loans, including credit and travel card accounts receivable.
- 8.3.3 Stocks and Debt Securities. These assets will be attributed to a Delaware branch if personnel at the Delaware branch actively and materially participated in the acquisition of such assets.
- 8.3.4 Foreign Exchange Contracts and Futures Options, Swaps, and Similar Assets. These assets will be attributed to a Delaware branch if personnel at the Delaware branch actively and materially participated in the solicitation, investigation, negotiation, acquisition, or administration of such assets.
- 8.3.5 Patents, Copyrights, Trademarks, and Similar Intellectual Property. These assets will be attributed to a Delaware branch if personnel at the Delaware branch actively and materially participated in the licensing of such asset.
- 8.3.6 Currency. U.S. and foreign currency will be attributed to a Delaware branch if physically stored at the Delaware branch.
- 8.3.7 Tangible Personal and Real Property. These assets (including bullion and other precious metals) will be attributed to a Delaware branch if they are located at or are part of the physical facility of a Delaware branch.
- 8.3.8 Other Business Assets. Other business assets will be attributed to a Delaware branch if personnel at the Delaware branch actively and materially participated in the acquisition of such assets.
- 8.3.9 Credit Equivalent Amounts of Regulatory Off Balance Sheet Items Taken Into Account in Determining RiskBased Capital Ratio. These are the credit equivalent amounts of offbalance sheet items described in 12 C.F.R. part 567 not otherwise addressed above (e.g., guarantees, standby letters of credit, commercial letters of credit, risk participations, sale and repurchase agreements and asset sales with recourse if not already included on the balance sheet, forward agreements to purchase assets, securities lent (if the lending federal savings bank is exposed to risk of loss), bid and performance bonds, commitments, revolving underwriting facilities). These assets will be attributed to a Delaware branch if personnel at the Delaware branch actively and materially participated in the solicitation, investigation, negotiation, acquisition, or administration of such assets.
- 8.4 Liabilities Attributable to a Delaware Branch.
  - 8.4.1 The liabilities attributable to a Delaware branch shall be the deposits recorded on the books of the Delaware branch plus any other legally enforceable obligations of the Delaware branch recorded on the books of the Delaware branch or the federal savings bank not headquartered in this State.
- 8.5 Income of a Delaware Branch.
  - 8.5.1 Income from Assets. Income and gain from assets (including fees from offbalance sheet items) attributed to a Delaware branch in accordance with the rules in subsection 8.3 above will be attributed to the Delaware branch.
  - 8.5.2 Income from Fees. Fee income not attributed to a Delaware branch in accordance with subsection 8.5.1 above will be attributed to the Delaware branch depending on the type of fee income.
    - 8.5.2.1 Fee income from letters of credit, travelers checks, and money orders will be attributed to the Delaware branch if the letters of credit, travelers checks, or money orders are issued by the Delaware branch, except to the extent that subsection 8.5.1 above requires otherwise.
    - 8.5.2.2 Fee income from services (e.g., trustee and custodian fees) will be attributed to the Delaware branch if the services generating the fees are performed by personnel at the Delaware branch. If services are performed both within and without Delaware, the fees from such services must be allocated between Delaware and other states based on the relative value of the services or upon the time spent in rendering the services or on some other reasonable basis. The basis for allocation must be disclosed and applied consistently from period to period.
- 8.6 Determining the Expenses of a Delaware Branch.
  - 8.6.1 Interest. The amount of interest expense of a Delaware branch shall be the actual interest booked by the Delaware branch, which should reflect market rates.
  - 8.6.2 Direct Expenses of a Delaware Branch. Expenses or other deductions that can be specifically identified with the gross income, gains, losses, deductions, assets, liabilities or other activities of the Delaware branch are direct expenses of such Delaware branch. Examples of such expenses are payroll, rent, depreciation and amortization of assets attributed to the Delaware branch, some taxes, insurance, the cost of supplies and fees for services rendered to the Delaware branch.
  - 8.6.3 Indirect Expenses of a Delaware Branch. Expenses or other deductions that cannot be specifically identified with the gross income, gains, losses, deductions, assets, liabilities, or other activities of a



Delaware branch must be allocated between the Delaware branch and the rest of the federal savings bank operating the Delaware branch. If the federal savings bank makes such an allocation on any reasonable basis, and applies such basis consistently from period to period, the allocation likely will be respected. If the federal savings bank makes no such allocation, such expenses could be allocated on the basis of the ratio of assets of the Delaware branch to the assets of the entire federal savings bank or based on the ratio of gross income of the Delaware branch to gross income of the entire federal savings bank.

## **1107 Estimated Franchise Tax Report Federal Savings Banks Not Headquartered in Delaware** 5 Del.C. Ch. 11

Formerly Regulation No.: 5.1101etal.0006

Effective Date: ~~September 11, 2001~~ **[Proposed February 11, 2017]**

This report shall be completed by any federal savings bank not headquartered in this State but maintaining branches in this State with an estimated tax liability in excess of \$10,000 in any given year. The completed report is to be filed in the Office of the State Bank Commissioner on or before March 1 of the current year. Instructions for the preparation of this report are found in Regulation 1106 (~~formerly 5.1101etal.0005~~).

### **1107A.pdf Estimated Franchise Tax Report Federal Savings Banks Not Headquartered in Delaware**

## **1108 Final Franchise Tax Report Federal Savings Banks Not Headquartered in Delaware** 5 Del.C. Ch. 11

Formerly Regulation No.: 5.1101etal.0007

Effective Date: ~~September 11, 2001~~ **[Proposed February 11, 2017]**

This report shall be completed by any federal savings bank not headquartered in this State but maintaining branches in this State and submitted to the Office of the State Bank Commissioner on or before January 30. Income reported is for the previous calendar year. Instructions for the preparation of this report are found in Regulation 1106 (~~formerly 5.1101etal.0005~~).

### **1108A.pdf Final Franchise Tax Report Federal Savings Banks Not Headquartered in Delaware**

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

Effective Date: ~~January 1, 2013~~ **[Proposed February 11, 2017]**

This regulation provides for the calculation of employment tax credits for the tax years 1997 through 2011 and 2012 through ~~2024~~ 2031 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 ~~2024~~ 2031, and subject to requirements in Sections 1105(e), 1105(f), and 1105(i) of Title 5 of the **Delaware Code**.

### **1.0 Definitions**

**“Base Year”** means calendar year 1996 for tax years 1997 through 2011, and calendar year 2011 for tax years 2012 through ~~2024~~ 2031, provided, however, that for tax years 2012 through 2031, that beginning on January 1, 2022 and each January 1<sup>st</sup> thereafter, the base year shall increase by one calendar year until the base year shall have reached the period after December 31, 2020 and before January 1, 2022.

**“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 ~~2024~~ 2031, 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 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** 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~~ 2032, 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.

## **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.

## **5.0 Applicable Years**

- 5.1 The employment tax credit 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~~ 2032, subject to the credit carryover described below.

## **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 appropriate Employment Tax Credit Calculation Worksheet accompanying this Regulation, which shall be submitted with the taxpayer's tax report.

**1109A.pdf Employment Tax Credit Calculation Worksheet For Years 1997 – 2011**

**1109AB.pdf Employment Tax Credit Calculation Worksheet For Years 2012 – ~~2024~~ 2031**

**1110 Instructions for Preparation of Franchise Tax for Resulting Branches in this State of Out-of-State Banks**  
**5 Del.C. Ch. 11**

Formerly Regulation No.: 5.1101etal.0009

Effective Date: September 11, 2004 [~~September 11, 2004~~ **Proposed February 11, 2017**]

**1.0** This regulation applies only to resulting branches in this State of out-of-state banks. The estimated and final franchise tax reports that accompany this regulation are found in regulations 1111 (~~formerly 5.1101etal.0010~~) and 1112 (~~formerly 5.1101etal.0011~~), respectively.

**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, or a resulting branch in this State of a foreign bank authorized pursuant to Chapter 14 of Title 5; 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 Facility”** means a set of asset and liability accounts, segregated on the books of a banking organization, that includes only international banking facility deposits, borrowings and extensions of credit.

**“International Banking Transaction”** shall mean any of the following transactions, whether engaged in by a banking organization, any foreign branch thereof (established pursuant to 5 Del.C. §771 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.

**“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 the total net income calculated in accordance with Section 9.0 of this Regulation, with adjustments made for securities gains or losses and other appropriate adjustments.

**“Out-of-State Bank”** has the same meaning as in §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 §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 Estimated Franchise Tax

3.1 A resulting branch or branches in this State of an out-of-state bank whose franchise tax liability for the current year, on a consolidated basis, is estimated to exceed \$10,000 shall file an estimated franchise tax report with the State Bank Commissioner and pay estimated tax.

3.1.4 3.2 Filing. The estimated franchise tax report shall be filed with the State Bank Commissioner on the first day of March of the current year.

3.1.2 3.3 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 franchise tax report required above in subsection **[3.1.4 3.2]**, unless the State Bank Commissioner is satisfied that such failure was not willful.

3.1.3 3.4 Form. The estimated franchise tax report shall be in the form set out in Regulation 1111 ~~[(formerly No. 5.1101 et al. 0040)]~~;

3.1.4 3.5 Calculation of estimated tax. The total estimated annual franchise tax shall be calculated as follows:

3.1.4.1 3.5.1 The estimated net operating income before taxes of the resulting branch or branches in this State of the out-of-state bank, which includes the income of any corporation making an election as provided in Regulation No. 1101 ~~(formerly 5.1101(f).0004)~~;

3.1.4.2 ~~Increased by the resulting branch imputed capital addback for the preceding income year (calculated in accordance with Section 4.4.2 of this Regulation).~~

3.1.4.3 3.5.2 Adjusted for any estimated income from an insurance division or subsidiary;

3.1.4.4 3.5.3 Less any deductions set forth in 5 **Del.C.** §1101;

3.1.4.5 3.5.4 Multiplied by .56 to arrive at estimated taxable income;

3.1.4.6 3.5.5 The appropriate rate of taxation set forth in 5 **Del.C.** §1105 shall be applied;

3.1.4.7 3.5.6 The subtotal estimated annual franchise tax shall be adjusted for tax credits applicable pursuant 5 **Del.C.** §1105, which are calculated in accordance with Regulation No. 1109 ~~(formerly 5.1105.0008)~~;

3.1.4.8 3.5.7 The subtotal estimated annual franchise tax shall be adjusted for Travelink tax credits calculated in accordance with Department of Transportation Travelink tax credit reporting requirements;

3.1.4.9 3.5.8 The subtotal estimated annual franchise tax shall be adjusted for Historic Preservation Tax Credits calculated in accordance with 30 **Del.C.** §§1811 et seq. and the regulations thereunder. Claimed credits must be accompanied by a Certificate of Completion issued by the Delaware State Historic Preservation Office certifying that the credits have been properly earned, in accordance with 5 **Del.C.** §1105(g). If the credits have been transferred, sold or assigned to the taxpayer by another person, a Certificate of Transfer must also be attached, in accordance with 30 **Del.C.** §1814(c);

3.5.9 The subtotal estimated annual franchise tax shall be adjusted for any other applicable tax credit(s) [attach supporting schedule identifying the credit(s)].

3.1.5 3.6 Payment of estimated tax. The estimated tax liability shall be due and payable as follows:

3.1.5.1 3.6.1 40% due on or before June 1 of the current taxable year;

3.1.5.2 3.6.2 20% due on or before September 1 of the current taxable year;

3.1.5.3 3.6.3 20% due on or before December 1 of the current taxable year.

### 4.0 Final Franchise Tax

4.1 Filing. The December 31 call report, verified by oath, setting forth the net operating income, on a consolidated basis, of the resulting branch or branches in this State of the out-of-state bank and the final franchise tax

report, setting forth the "taxable income", on a consolidated basis, of the resulting branch or branches in this State of the out-of-state bank, shall be filed with the Office of the State Bank Commissioner on or before January 30 each year; provided, however, that a resulting branch of an out-of-state bank ~~that is entitled to take an additional 15 days to submit its Report of Condition and Income to the appropriate federal bank supervisory authority shall~~ may file the December 31 call report and the final franchise tax report with the Office of the State Bank Commissioner on or before ~~February 15 of each year~~ any later date allowed by the Federal Financial Institutions Examination Council guidelines for filing its Report of Condition and Income.

- 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 franchise tax report required above in subsection 4.1, unless the State Bank Commissioner is satisfied that such failure was not willful.
- 4.3 Form. The final franchise tax report shall be in the form set out in Regulation No. 1112 ~~(formerly 5.1101etal.0011).~~
- 4.4 Calculation of final tax. The total final franchise tax shall be calculated as follows:
- 4.4.1 The net operating income before taxes of the resulting branch or branches in this State of the out-of-state bank, which includes the income of any corporation making an election as provided in Regulation No.1101 ~~(formerly 5.1101(f).0001);~~
- 4.4.2 ~~Increased by the resulting branch imputed capital addback, which is the product of the greater of the products determined under subparagraphs (a) and (b) of this subsection (2) and the average of the monthly shortterm applicable federal rates, as determined under §1274(d) of the Internal Revenue Code of 1986, as amended (26 U.S.C. §1274(d)), or any successor provisions thereto, and as published each month in the Internal Revenue Bulletin, for the twelvemonth period preceding the date on which the resulting branch imputed capital addback is being determined.~~
- 4.4.2.1 ~~The product of (i) the deposits recorded on the books of the resulting branch in this State, and (ii) the minimum risk-based capital ratio (expressed as a decimal fraction) that a resulting branch in this State would be required to maintain, if it were a bank, in order to be deemed "adequately capitalized" pursuant to 12 C.F.R. Part 325.~~
- 4.4.2.2 ~~The product of (i) the value of that portion of the total risk-weighted assets (as defined in 12 C.F.R. Part 325) of the out-of-state bank operating the resulting branch in this State that are attributable to such resulting branch in accordance with section 9.3 of this regulation, and (ii) the minimum riskbased capital ratio (expressed as a decimal fraction) that a resulting branch in this State would be required to maintain, if it were a bank, in order to be deemed 'adequately capitalized' pursuant to 12 C.F.R. Part 325.~~
- 4.4.3 ~~4.4.2~~ Adjusted for any income from an insurance division or subsidiary; (include a report of income showing the name and federal employer identification number of the division or subsidiary);
- 4.4.4 ~~4.4.3~~ Less any deduction set forth in 5 **Del.C.** §1101; (include a report of income showing the name and federal employer identification number of each subsidiary taken as a deduction);
- 4.4.5 ~~4.4.4~~ Multiplied by .56 to arrive at "taxable income";
- 4.4.6 ~~4.4.5~~ The appropriate rate of taxation set forth in 5 **Del.C.** §1105 shall be applied to the taxable income to arrive at subtotal annual franchise tax;
- 4.4.7 ~~4.4.6~~ The subtotal annual franchise tax shall be adjusted for tax credits pursuant to 5 **Del.C.** §1105, which are calculated in accordance with Regulation No. 1109 ~~(formerly 5.1105.0008);~~;
- 4.4.8 ~~4.4.7~~ The subtotal annual franchise tax shall be adjusted for Travelink tax credits calculated in accordance with Department of Transportation Travelink tax credit reporting requirements;.
- 4.4.9 ~~4.4.8~~ The subtotal annual franchise tax shall be adjusted for Historic Preservation Tax Credits calculated in accordance with 30 **Del.C.** §§1811 et seq. and the regulations thereunder. Claimed credits must be accompanied by a Certificate of Completion issued by the Delaware State Historic Preservation Office certifying that the credits have been properly earned, in accordance with 5 **Del.C.** §1105(g). If the credits have been transferred, sold or assigned to the taxpayer by another person, a Certificate of Transfer must also be attached, in accordance with 30 **Del.C.** §1814(c).
- 4.4.9 The subtotal annual franchise tax shall be adjusted for any other applicable tax credit(s) [attach supporting schedule identifying the credit(s)].

## 5.0 Payment of Final 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 franchise tax, less any estimated tax payments made for the taxable year, plus any additional tax due to underpayment

of estimated franchise tax or installment. If the final franchise tax is not paid by March 1, a penalty for late payment of the final franchise tax shall be assessed.

## **6.0 Additional Tax Due to Underpayment of Estimated Franchise Tax or Installment**

- 6.1 In the case of any underpayment of estimated franchise tax or installment of estimated 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 franchise tax or installment payment which would be required to be made if the estimated 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 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 franchise tax or installment was required to be paid to the earlier of the date when such estimated 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 franchise tax or any installment shall not be imposed if the total amount of all payments of estimated 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 tax were the tax shown on the final return of the resulting branch(es) of the out-of-state bank for the preceding taxable year.
- 6.4 ~~Notwithstanding the above, the addition to the tax with respect to any underpayment of estimated franchise tax or any installment shall not be imposed if the addition is attributable to the difference between the imputed capital addback for the current and preceding income years.~~

## **7.0 Penalty - Late Payment of Final Franchise Tax**

- 7.1 In the case of a late payment of final 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 Any corporation which has elected to be treated as a "subsidiary corporation" of the resulting branch(es) of the out-of-state bank pursuant to §1101(f) and filed with the State Bank Commissioner the required election form in accordance with Commissioner's Regulation No.1101 (~~formerly 5.1101(f).0001~~) shall provide (a) a tentative report of income for the electing corporation covering estimated bank franchise tax liability for the current income year to be submitted in conjunction with the estimated franchise tax report due March 1 for the resulting branch(es) of the out-of-state bank whose franchise tax liability for the current year is estimated to exceed \$10,000, and (b) a report of income for the electing corporation as of December 31 of each year to be submitted in conjunction with the Final Franchise Tax Report due January 30 or February 15, as applicable any later date allowed as provided in subsection 4.1 above.
- 8.2 As long as the election remains in effect, the ownership and employment tests must be met. Therefore, the election form in Regulation 1101 (~~formerly Regulation No. 5.1101(f).0001~~) must be completed each year for each Electing Corporation and submitted with the final franchise tax report.

## **9.0 Separate Accounting by Resulting Branches**

- 9.1 Books and Records. Each resulting branch must keep a separate set of books and records as if it were an entity separate from the rest of the bank that operates such resulting branch. These books and records must reflect the following items attributable to the resulting branch:
  - 9.1.1 Assets and the credit equivalent amounts of offbalance sheet items used in computing the riskbased capital ratio under 12 C.F.R. part 325;
  - 9.1.2 Liabilities;
  - 9.1.3 Income and gain;
  - 9.1.4 Expense and loss.
- 9.2 Consolidation of Delaware Branches. If a bank operates more than one resulting branch, it may treat all resulting branches as a single separate entity for purposes of computing the assets, liabilities, income, gain, expense, and loss referred to above.

### 9.3 Determining Assets Attributable to a Resulting Branch

- 9.3.1 General Principle of Asset Attribution. The general principle will be to attribute assets to a resulting branch if personnel at the resulting branch actively and materially participate in the solicitation, investigation, negotiation, approval, or administration of an asset.
- 9.3.2 Loans and Finance Leases. These assets will be attributed to a resulting branch if personnel at the resulting branch actively and materially participated in the solicitation, investigation, negotiation, final approval, or administration of a loan or financing lease. Loans include all types of loans, including credit and travel card accounts receivable.
- 9.3.3 Stocks and Debt Securities. These assets will be attributed to a resulting branch if personnel at the resulting branch actively and materially participated in the acquisition of such assets.
- 9.3.4 Foreign Exchange Contracts and Futures, Options, Swaps, and Similar Assets. These assets will be attributed to a resulting branch if personnel at the resulting branch actively and materially participated in the solicitation, investigation, negotiation, acquisition, or administration of such assets.
- 9.3.5 Patents, Copyrights, Trademarks, and Similar Intellectual Property. These assets will be attributed to a resulting branch if personnel at the resulting branch actively and materially participated in the licensing of such asset.
- 9.3.6 Currency. U.S. and foreign currency will be attributed to a resulting branch if physically stored at the resulting branch.
- 9.3.7 Tangible Personal and Real Property. These assets (including bullion and other precious metals) will be attributed to a resulting branch if they are located at or are part of the physical facility of a resulting branch.
- 9.3.8 Other Business Assets. Other business assets will be attributed to a resulting branch if personnel at the resulting branch actively and materially participated in the acquisition of such assets.
- 9.3.9 Credit Equivalent Amounts of Regulatory Off-Balance Sheet Items Taken Into Account in Determining Risk-Based Capital Ratio. These are the credit equivalent amounts of off-balance sheet items described in Appendix A to 12 C.F.R. part 325 (the "Appendix") not otherwise addressed above (e.g., guarantees, surety contracts, standby letters of credit, commercial letters of credit, risk participations, sale and repurchase agreements and asset sales with recourse if not already included on the balance sheet, forward agreements to purchase assets, securities lent (if the lending bank is exposed to risk of loss), bid and performance bonds, commitments, revolving underwriting facilities, note issuance facilities described in the Appendix). These assets will be attributed to a resulting branch if personnel at the resulting branch actively and materially participated in the solicitation, investigation, negotiation, acquisition, or administration of such assets.

### 9.4 Liabilities Attributable to a Resulting Branch. The liabilities attributable to a resulting branch shall be the deposits recorded on the books of the resulting branch plus any other legally enforceable obligations of the resulting branch recorded on the books of the resulting branch or its parent.

### 9.5 Income of a Resulting Branch.

- 9.5.1 Income from Assets. Income and gain from assets (including fees from off-balance sheet items) attributed to a resulting branch in accordance with the rules in section 9.3 above will be attributed to the resulting branch.
- 9.5.2 Income from Fees. Fee income not attributed to a resulting branch in accordance with paragraph 9.5.1. above will be attributed to the resulting branch depending on the type of fee income.
  - 9.5.2.1 Fee income from letters of credit, travelers checks, and money orders will be attributed to the resulting branch if the letters of credit, travelers checks, or money orders are issued by the resulting branch, except to the extent that paragraph 9.5.1 above requires.
  - 9.5.2.2 Fee income from services (e.g., trustee and custodian fees) will be attributed to the resulting branch if the services generating the fees are performed by personnel at the resulting branch. If services are performed both within and without Delaware, the fees from such services must be allocated between Delaware and other states based on the relative value of the services or upon the time spent in rendering the services or on some other reasonable basis. The basis for allocation must be disclosed and applied consistently from period to period.

### 9.6 Determining the Expenses of a Resulting Branch.

- 9.6.1 Interest. The amount of interest expense of a resulting branch shall be the actual interest booked by the resulting branch, which should reflect market rates.
- 9.6.2 Direct Expenses of a Resulting Branch. Expenses or other deductions that can be specifically identified with the gross income, gains, losses, deductions, assets, liabilities or other activities of the resulting branch are direct expenses of such resulting branch. Examples of such expenses are payroll, rent, depreciation

and amortization of assets attributed to the resulting branch, some taxes, insurance, the cost of supplies and fees for services rendered to the resulting branch.

- 9.6.3 Indirect Expenses of a Resulting Branch. Expenses or other deductions that cannot be specifically identified with the gross income, gains, losses, deductions, assets, liabilities, or other activities of a resulting branch must be allocated between the resulting branch and the rest of the bank operating the resulting branch. If the bank makes such an allocation on any reasonable basis, and applies such basis consistently from period to period, the allocation likely will be respected. If the bank makes no such allocation, such expenses could be allocated on the basis of the ratio of assets of the resulting branch to the assets of the entire bank or based on the ratio of gross income of the resulting branch to gross income of the entire bank.

## **1111 Estimated Franchise Tax Report for Resulting Branches in this State of Out-of-State Banks**

5 Del.C. Ch. 11

Formerly Regulation No.: 5.1101etal.0010

Effective Date: ~~September 11, 2001~~ **[Proposed February 11, 2017]**

This report shall be completed by the resulting branch(es) in this State of an out of state bank with an estimated tax liability in excess of \$10,000 in a given year. The completed report is to be filed in the Office of the State Bank Commissioner on or before March 1 of the current year. Instructions for the preparation of this report are found in Regulation 1110 (~~formerly 5.1101etal.0009~~).

### **1111A.pdf Estimated Franchise Tax Report for Resulting Branches in this State of Out-of-State Banks**

## **1112 Final Franchise Tax Report for Resulting Branches in this State of Out-of-State Banks**

5 Del.C. Ch. 11

Formerly Regulation No.: 5.1101etal.0011

Effective Date: ~~September 11, 2001~~ **[Proposed February 11, 2017]**

This report shall be completed by all resulting branch(es) in this state of out-of-state banks and submitted to the Office of the State Bank Commissioner on or before January 30; provided, however, that a resulting branch of an out-of-state bank ~~that is entitled to take an additional 15 days to submit its Report of Condition and Income to the appropriate federal bank supervisory authority shall~~ may submit this report to the Office of the State Bank Commissioner on or before ~~February 15~~ any later date allowed by the Federal Financial Institutions Examination Council guidelines for filings its Report of Condition and Income. Income reported is for the previous calendar year. Instructions for the preparation of this report are found in Regulation 1110 (~~formerly 5.1101etal.0009~~).

### **1112A.pdf Final Franchise Tax Report for Resulting Branches in this State of Out-of-State Banks**

## **1114 Alternative Franchise Tax**

### **Chapter 11 of Title 5 of the Delaware Code**

Effective Date: ~~December 11, 2006~~ **[Proposed February 11, 2017]**

**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 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.

**“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.

**“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.

3.1 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~~ 3.2 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~~ 3.3 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 ~~subsection 3.1.1. 3.2~~, 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~~ 3.4 Form. The estimated alternative franchise tax return is contained in this regulation as Form 1114E.

~~3.1.4~~ 3.5 Rounding. All amounts shall be rounded to the nearest dollar.

~~3.1.5~~ 3.6 Calculation of estimated alternative franchise tax. The total estimated alternative franchise tax shall be calculated as follows:

~~3.1.5.1~~ 3.6.1 The estimated net operating income before taxes of the banking organization or trust company;

~~3.1.5.2~~ 3.6.2 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~~ 3.6.3 Less any deductions set forth in Section 1101A(c)(1) of Title 5 of the Delaware Code;

~~3.1.5.4~~ 3.6.4 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~~ 3.6.5 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~~ 3.6.6 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~~ 3.6.7 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~~ 3.6.8 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~~ 3.6.9 Adjust the subtotal estimated alternative franchise tax for TravelLink tax credits calculated in accordance with Department of Transportation (DelDOT) TravelLink tax credit reporting requirements;

~~3.1.5.10~~ 3.6.10 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.

3.6.11 Adjust the subtotal estimated alternative franchise tax for any other applicable tax credit(s) [attach supporting schedule identifying the tax credit(s)].

~~3.1.6~~ 3.7 Payment of estimated alternative franchise tax. The estimated alternative franchise tax liability shall be due and payable as follows:

~~3.1.6.1~~ 3.7.1 40% due on or before June 1 of the current taxable year;

~~3.1.6.2~~ 3.7.2 20% due on or before September 1 of the current taxable year;

~~3.1.6.3~~ 3.7.3 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 TravelLink tax credits calculated in accordance with Department of Transportation (DelDOT) TravelLink 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);
- 4.5.11 Adjust the subtotal alternative franchise tax for any other applicable tax credit(s) [attach supporting schedule identifying the tax credit(s)].

## **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 and directed to the Office of the State Bank Commissioner.
- 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~~ return 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 franchise 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.

**1114A.pdf Form 1114E - Estimated Alternative Franchise Tax Return and Form 1114F Final Alternative Franchise Tax Return**