

**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** 1101, 1109 and 1113 and 1114

**FINAL**

**Order Adopting Amended Regulations 1101, 1109 and 1113 and new Regulation 1114**

IT IS HEREBY ORDERED on this 2<sup>nd</sup> day of November of 2006 that amended Regulations 1101, 1109 and 1113 and new Regulation 1114 are adopted as regulations of the State Bank Commissioner. Copies of amended Regulations 1101, 1109 and 1113 and new Regulation 1114 are attached hereto and incorporated herein by reference. Amended Regulations 1101, 1109 and 1113 supersede previous Regulations 1101, 1109 and 1113. The effective date of amended Regulations 1101, 1109 and 1113 and new Regulation 1114 is December 11, 2006. Each regulation is adopted by the State Bank Commissioner in accordance with Title 5 of the **Delaware Code**.

Amended Regulations 1101, 1109 and 1113 and new Regulation 1114 are adopted pursuant to the requirements of Chapters 11 and 101 of Title 29 of the **Delaware Code**, as follows:

1. Notice of proposed amended Regulations 1101, 1109 and 1113 and new Regulation 1114 and their text were published in the October 1, 2006 issue of the *Delaware Register of Regulations*. The notice was also published in the *News Journal* and the *Delaware State News* on October 1, 2006, and mailed to all persons who had made timely written requests to the Office of the State Bank Commissioner for advanced notice of its regulation making proceedings. The notice, among other things, summarized the proposed amended and new regulations, invited interested persons to submit written comments to the Office of the State Bank Commissioner on or before November 2, 2006, and stated that the proposed regulations were available for inspection at the Office of the State Bank Commissioner, that copies were available upon request, and that a public hearing would be held on November 2, 2006 at 10:00 a.m. at the Office of the State Bank Commissioner in Dover, DE.

2. No comments concerning the proposed amended and new regulations were received on or before November 2, 2006.

3. A public hearing was held on November 2, 2006 at 10:00 a.m. regarding the proposed amended Regulations 1101, 1109 and 1113 and new Regulation 1114. State Bank Commissioner, Robert A. Glen, Deputy Bank Commissioner for Supervisory Affairs, Francis S. Babiarez, Bank Franchise Tax Specialist for the Office of the State Bank Commissioner, Kevin J. Muller, Deputy Attorney General, Frank N. Broujos, and a court reporter attended the hearing, with Mr. Broujos participating by telephone. The State Bank Commissioner and the Deputy Bank Commissioner for Supervisory Affairs summarized the proposed and new regulations for the record. No other comments were made or received at the hearing.

4. After review and consideration, the State Bank Commissioner hereby adopts amended Regulations 1101, 1109 and 1113 and new Regulation 1114 as proposed.

November 2, 2006

Robert A. Glen  
State Bank Commissioner

**1101 Election to Be Treated for Tax Purposes as a "Subsidiary Corporation" of a Delaware Chartered Banking Organization or Trust Company, National Bank Having its Principal Office in Delaware, or Out-of-State Bank That Operates a Resulting Branch in Delaware**  
5 **Del.C.** §1101(f), §1101A(c)(3)

Formerly Regulation No.: ~~5.1101(f).0004~~  
Effective Date: ~~September 11, 2004~~ Proposed

**1.0 Purpose**

1.1 Pursuant to 5 **Del.C.** §1101(f) and §1101A(c)(3), certain corporations may elect to be treated as a “subsidiary corporation” of a Delaware chartered banking organization or trust company, a national bank having its principal office in Delaware, or an out-of-state bank that operates a resulting branch in Delaware. If a valid election is made, the electing corporation will be taxable on a consolidated basis with its deemed parent Delaware chartered banking organization or trust company, national bank having its principal office in Delaware, or out-of-state bank that operates a resulting branch in Delaware, and the electing corporation will be exempt from Delaware state corporation income taxes and occupational license taxes (as provided in 5 **Del.C.** §1109).

## **2.0 Who May Elect**

2.1 A corporation may make the election only if it meets the following two tests:

2.1.1 Ownership test: Eighty percent (80%) of the total combined voting power of all classes of voting stock of the electing corporation (“Electing Corporation”) is owned by an out-of-state bank that operates a resulting branch in Delaware or, directly or indirectly, by a bank holding company (“Qualifying Entity”) that also, directly or indirectly, owns all of the stock of a Delaware chartered banking organization or trust company, a national bank located in Delaware or an out-of-state bank that operates a resulting branch in Delaware (“Deemed Parent”). For purposes of determining ownership of the voting power of an Electing Corporation, non-voting stock convertible into voting stock shall be treated as having been so converted.

2.1.2 In order to determine if this test is met, Question 5 on the election form must be completed. In Column A of Question 5, list each class of stock or property right which has voting rights or can be converted into stock with voting rights. In Column B, state the percentage of the Electing Corporation’s total voting power of that particular class of stock (assuming full conversion). In Column C, state the percentage of each respective class that the Qualifying Entity owns. If each figure in Column C is at least 80%, then this first test is met and Column D need not be completed. If not, Column D should be calculated by multiplying Column B times Column C. The sum of the figures in Column D must be at least equal to 80%. The ownership test must be met at all times during the taxable year for which the election is made.

2.2 Employment Test: The Electing Corporation, together with its affiliates (defined by 5 **Del.C.** §773(1)), employs by or before the end of the taxable year following the taxable year in which the election was made at least 200 persons in Delaware.

## **3.0 Where to File**

3.1 The original of the election form must be filed with the State Bank Commissioner, 555 E. Loockerman Street, Suite 210, Dover, Delaware 19901, and a copy must be filed with the Delaware Division of Revenue, 820 N. French Street, Wilmington, Delaware 19801.

## **4.0 When to Make the Election**

4.1 The election must be made and filed before the first day of the fourth month of the Electing Corporation’s taxable year, except that, (1) in the case of a corporation that is newly formed or acquired by the Qualifying Entity, the election may be made and filed within 90 days of such formation or acquisition, and such later election shall not be subject to the payment of any additional tax under 5 **Del.C.** §1104(c) for underpayment of estimated tax or installment for periods before the date of such election, and (2) with the approval of the Commissioner, a later election may be made, subject to the payment of any additional tax for underpayment of estimated tax or installment as provided in 5 **Del.C.** §1104(c) and applicable regulations of the Commissioner.

## **5.0 Supplemental Reporting Requirements**

5.1 Once an election has been made under 5 **Del.C.** §1101(f) or §1101A(c)(3) for any Electing Corporation, and so long as the same remains in effect, each Estimated Franchise Tax Report under Regulation 1104 (formerly 5.1101etal.0003) or 1111 (formerly 5.1101etal.0010) or 1114 and each Final Franchise Tax Report under Regulation 1105 (formerly 5.1101etal.0004) or 1112 (formerly 5.1101etal.0011) or 1114 filed by the Deemed Parent shall indicate on the first page thereof the name of each Electing Corporation whose income and expenses are consolidated with that of the Deemed Parent. In addition, each such consolidated Report filed by the Deemed Parent shall have attached to it separate Reports completed on an individual non-consolidated basis for each Electing Corporation (complete such attachments only to the extent necessary to calculate estimated or final taxable income).

5.2 As long as the election remains in effect, the ownership and employment tests must be met.

Therefore, the election form must be completed each year for each Electing Corporation and attached to the Final Franchise Tax Report of the Deemed Parent.

**5 DE Reg. 647 (09/01/01)**

**6.0 Termination of Election**

6.1 Once an election is made, it remains in effect until terminated (a) by notice of voluntary termination delivered to the State Bank Commissioner, with a copy to the Delaware Division of Revenue, at any time during the Electing Corporation’s taxable year (which termination shall be effective as of the first day of such taxable year), or (b) by failure to meet the ownership test and the employment test referenced in section 2.1[.1] and 2.2 hereof. If either test is first failed at any time during the first six months of any taxable year, the termination shall relate back to the first day of such taxable year. If either test is failed at any time during the second six months of any taxable year, the termination shall relate forward to the first day of the succeeding taxable year. However, an Electing Corporation shall have the allowable time period referenced in Section 2.2 initially to meet the employment test.

6.2 If an election is terminated, the Deemed Parent shall file an amended Estimated and/or Final Franchise Tax Report for the year for which the election was originally made, which Estimated and/or Final Franchise Tax Report shall eliminate the income and expenses of the Electing Corporation. Any resulting reduction in bank franchise taxes can be utilized by the Deemed Parent as credit (without interest) against its future bank franchise tax liability.

**7.0 Taxable Year**

7.1 The “taxable year” of an Electing Corporation shall end on the same date as the taxable year of the Deemed Parent (as determined for federal income tax reporting purposes), unless a different taxable year is approved by the State Bank Commissioner.

**Election to be Treated as a Subsidiary Corporation Under 5 Del.C §1101(f) or §1101A(c)(3)**

Initial Election \_\_\_\_\_ or Verification For Tax Year \_\_\_\_\_

1. Name and Principal Place of Business of Electing Corporation:
  
2. First day of Electing Corporation’s taxable year for which election is made:
  
3. Name and Principal Place of Business of Qualifying Entity (as defined in Section 2.1[.1] of this regulation).
  
4. Name and Principal Place of Business of Deemed Parent (as defined in Section 2.1[.1] of this regulation):
  
5. Ownership of Voting Power of Electing Corporation (See Section 2.1[.1] of this regulation):

(A)	(B)	(C)	(D)
Class of Voting Stock (including property convertible into voting stock)	Class’s Percentage of Corporation’s Total Voting Power	Percentage of Class Held by Qualifying Entity	Weighted Voting Power of Class Held by Qualifying Entity
_____	_____	_____	_____
_____	_____	_____	_____

(A)	(B)	(C)	(D)
Total	100%	Total	

6. Does the Electing Corporation and its "affiliates" (as defined by 5 Del.C. §773(1)) currently have 200 or more Delaware employees? \_\_\_\_\_

7. If the answer to Question 6 is "No," do you expect the number of Delaware employees of the Electing Corporation and its affiliates to be at least equal to 200 by the end of the taxable year following the year of election? \_\_\_\_\_

8. The undersigned does hereby certify that the undersigned is duly authorized on behalf of the Electing Corporation to make an election to be treated as a "subsidiary corporation" of the above-named Deemed Parent for purposes of 5 Del.C. §1101 or §1101A and that all statements herein are true and correct to the best of the undersigned's knowledge and belief.

_____	_____	_____
Date	Signature	Title
_____		_____
Print Name	Phone No.	
_____		
_____		
_____		
Print Address		

Mail Completed Forms To:

Office of the State Bank Commissioner  
 555 E. Loockerman Street, Suite 210  
 Dover, DE 19901  
**5 DE Reg. 647 (09/01/01)**  
**10 DE Reg. 643 (10/01/06) (Prop.)**

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

Formerly Regulation No.: 5.1105.0008  
 Effective Date: ~~September 11, 2004~~ Proposed

This regulation provides for the calculation of employment tax credits for the years 1997 through 2006 ~~2011~~ for entities subject to the bank franchise tax. These employment tax credits are provided in Section 1105(d), and subject to requirements in Sections 1105(e) and 1105(f), of Title 5 of the **Delaware Code**.

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

**1.0 Definitions**

**"Base Year"** means calendar year 1996.

**"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 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 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 \$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.

## **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 provided above may be earned and applied only in tax years beginning after December 31, 1996 and ending before January 1, ~~2007~~ 2012, subject to the credit carryover described below.  
**5 DE Reg. 669 (09/01/01)**

## **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 Employment Tax Credit Calculation Worksheet, which shall be submitted with the taxpayer’s tax report.

### **Employment Tax Credit Calculation Worksheet For Years 1997 - ~~2006~~ 2011**

The Following Eligibility Requirements Apply to the Employment Tax Credit:

- The Number Of Qualified Employees Must Have Increased By At Least 50 Since Base Year 1996.
- Your Organization Must Have Made At Least \$750,000 In New Investments Within Delaware After 12/96.

A. Employment Requirement	
1. Total Qualified Employees at Year End	_____
2. Less Number of Full-time Employees Working During Base Year	_____
3. Subtotal	_____
4. Less Minimum New Qualified Employee Threshold	_____ (50)
5. Maximum Qualified Employees	_____
B. Required Investment	
6. New Investment from 1/1/97 to Current Tax Year	_____
7. Less Minimum New Investment for First 50 Employees	_____ (\$750,000)
8. Subtotal	_____
9. Divided by \$15,000 (Rounded down to the next Lowest Whole Number)	_____
10. Eligible Qualified Employees (Use the Lesser of Line 5 or 9)	_____
C. Credit Calculation	
11. Employment Tax Credit for Current Tax Year (\$400 X Line 10)	_____
12. Prior Years' Tax Credit Carryover (If Applicable)	_____
13. Total Tax Credit Available	_____
D. Credit Allowed	
14. Current Year Franchise Tax Liability Pursuant to Chapter 11 of Title 5	_____
15. Maximum Tax Credit Allowed (50% of Line 14)	_____
E. Total Tax Credit Taken	
16. (Lesser of Line 13 or Line 15)	_____
F. Tax Credit Carryforward	
17. (Line 13 less Line 16)	_____

**1113 Election by a Subsidiary Corporation of a Banking Organization or Trust Company to be Taxed in Accordance with Chapter 19 of Title 30**

Effective Date: ~~September 11, 2004~~ Proposed

**1.0 Qualifications for Election**

Pursuant to 5 Del.C. §1101(e) and §1101A(c)(2), a subsidiary corporation of a banking organization or trust company may elect to be taxed in accordance with Chapter 19 of Title 30 if the subsidiary is not itself a banking organization or trust company, if the subsidiary is not described in §1902(b)(8) of Title 30, and if the subsidiary is not engaged in the sale, distribution, underwriting of, or dealing in, securities.

**2.0 Effect**

If a valid election is made, the electing subsidiary shall not be considered a subsidiary corporation of its parent banking organization or trust company for the purposes of Chapter 11 of Title 5, and the income of the electing subsidiary shall be excluded from the taxable income of its parent banking organization or trust company for the tax year involved.

**3.0 Filing**

An electing subsidiary shall make this election by filing the original of Form A under this regulation with the State Bank Commissioner; 555 E. Loockerman Street; Suite 210; Dover, DE, 19901 and a copy with the Delaware Division of Revenue; 820 N. French Street; Wilmington, DE 19801.

**4.0 Reporting Requirements**

Every year, an electing subsidiary shall file with the State Bank Commissioner on or before the date that its Delaware State Income Tax Return is due (1) Form B under this regulation, and (2) a copy of its Delaware State Income Return as filed with the Delaware Division of Revenue.

**5.0 Termination of Election**

An election under this regulation remains in effect until terminated. An electing subsidiary may terminate its election by filing a notice to that effect with the State Bank Commissioner and the Delaware Division of Revenue.

**FORM A**  
**Election of a Subsidiary Corporation to be Taxed in Accordance**  
**with Chapter 19 of Title 30**

The subsidiary corporation identified below hereby elects to be taxed in accordance with Chapter 19 of Title 30 of the **Delaware Code**.

1. (a) Name and address of subsidiary corporation:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

(b) State of incorporation of subsidiary corporation: \_\_\_\_\_

(c) Federal Employer Identification Number of subsidiary corporation:

\_\_\_\_\_

2. (a) Name and principal place of business of subsidiary corporation's parent banking organization or trust company:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

(b) Percentage of outstanding voting shares of subsidiary corporation owned by parent banking organization or trust company: \_\_\_\_\_

3. Is the subsidiary corporation engaged in the sale, distribution, underwriting of, or dealing in, securities?  
\_\_\_ yes \_\_\_ no

4. Are the activities of the subsidiary corporation within this state confined to the maintenance and management of its intangible investments or of the intangible investments of corporations or business trusts registered as investment companies under the Investment Company Act of 1940 as amended (15 USC 80a-1 et seq.) and the collection and distribution of the income from such investments or from tangible property physically located outside this State within the meaning of 30 **Del.C.** § 1902(b)(8)?  
\_\_\_ yes \_\_\_ no

5. Is the subsidiary corporation a banking organization or trust company as defined by 5 **Del.C.** §101?  
\_\_\_ yes \_\_\_ no

6. Describe the principal activities of the subsidiary corporation:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

7. Effective date of election: \_\_\_\_\_

The undersigned hereby certifies that the undersigned is duly authorized on behalf of the subsidiary corporation to make an election to be taxed under 30 **Del.C.** Ch. 19 and that all statements herein are true and correct to the best of the undersigned's knowledge and belief.

Date	Signature of President, Treasurer or Other Proper Officer	Title
	Print Name	Phone No.
	Print Address	

Mail or deliver original completed form to:  
Office of the State Bank Commissioner  
555 E. Loockerman Street, Suite 210  
Dover, DE 19901

Mail or deliver copy to:  
Delaware Division of Revenue  
820 N. French Street  
Wilmington, DE 19801.

**FORM B**

**Annual Report of a Subsidiary Corporation Electing to be Taxed in Accordance with Chapter 19 of Title 30**  
Tax Year \_\_\_\_\_

1. (a) Name and address of subsidiary corporation:  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_
- (b) Federal Employer Identification Number of subsidiary corporation:  
\_\_\_\_\_
  
2. (a) Name and address of parent banking organization or trust company:  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_
- (b) Percentage of outstanding voting shares of subsidiary corporation owned by parent banking organization or trust company: \_\_\_\_\_
  
3. Is the subsidiary corporation engaged in the sale, distribution, underwriting of, or dealing in, securities?  
\_\_\_ yes \_\_\_ no
  
4. Are the activities of the subsidiary corporation within this state confined to the maintenance and management of its intangible investments or of the intangible investments of corporations or business trusts registered as investment companies under the Investment Company Act of 1940 as amended (15 USC 80a-1 et seq.) and the collection and distribution of the income from such investments or from tangible property physically located outside this State within the meaning of 30 Del.C. §1902(b)(8)? \_\_\_ yes \_\_\_ no
  
5. Is the subsidiary corporation a banking organization or trust company as defined by 5 Del.C. §101?  
\_\_\_ yes \_\_\_ no

Attach copy of the subsidiary corporation's Delaware Income Tax Return for the tax year listed above.

The undersigned hereby certifies that the undersigned is duly authorized on behalf of the subsidiary corporation to make this return and that all statements herein are true and correct to the best of the undersigned's knowledge and belief.

_____	_____	_____
Date	Signature of President, Treasurer or Other Proper Officer	Title
_____	_____	_____
	Print Name	Phone No.
_____		
_____		
_____		
	Print Address	

Mail or deliver original completed form to:  
Office of the State Bank Commissioner  
555 E. Loockerman Street, Suite 210  
Dover, DE 19901  
**8 DE Reg. 474 (09/01/04)**

**1114 Alternative Franchise Tax**  
**Chapter 11 of Title 5 of the Delaware Code**

Effective Date: Proposed

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

**2.0 Definitions**

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

“Banking organization” means:

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

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

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

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

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

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

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

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

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

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

### **3.0 Instructions for Filing the Estimated Alternative Franchise Tax Return**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

#### **4.0 Instructions for Filing the Final Alternative Franchise Tax Return**

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

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

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

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

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

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

4.5.2 Plus the net operating income before taxes of any corporation(s) making an election as provided in Regulation No. 1101, (attach Regulation 1101 form – Election To Be Treated As A Subsidiary

Corporation Under Sections 1101(f) or 1101A(c)(3) of Title 5 of the **Delaware Code** and a separate report of income for each electing corporation);

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

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

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

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

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

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

4.5.9 Adjust the subtotal alternative franchise tax for 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**).

## **5.0 Payment of Final Alternative Franchise Tax**

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

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

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

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

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

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

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

6.3 Notwithstanding the above, the addition to the tax with respect to any underpayment of estimated alternative franchise tax or any installment shall not be imposed if the total amount of all payments of estimated alternative tax made on or before the last date prescribed for the payment thereof equals or exceeds the amount which would have been required to be paid on or before such date if the estimated alternative tax were the tax shown on the final return of the banking organization or trust company for the preceding taxable year.

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



1.	<u>Estimated net operating income before taxes of banking organization or trust company</u>	_____
2.	<u>Estimated net operating income before taxes of electing corporation(s)</u>	_____
3.	<u>Estimated net operating income before taxes of corporations taxed under Ch. 19 of Title 30</u>	_____
4.	<u>Subtotal net operating income before taxes</u> <u>[add lines 1 and 2 and subtract line 3]</u>	_____
5.	<u>Deductions:</u>	
	(a) <u>Estimated net operating income before taxes of any non-United States branch office.</u>	_____
	(b) <u>Estimated gross income derived from international banking transactions.</u>	_____
	(c) <u>Estimated gross income of an international banking facility.</u>	_____
	(d) <u>Estimated income earned from business activities conducted outside the United States.</u>	_____
	(e) <u>Estimated interest income from obligations of volunteer fire companies.</u>	_____
	(f) <u>Estimated examination fees paid to the Office of the State Bank Commissioner.</u>	_____
	(g) <u>Estimated income derived from acting as an insurer.</u>	_____
6.	<u>Total estimated deductions</u> <u>[add lines 5(a) - (g)]</u>	_____
7.	<u>Estimated entire net income before apportionment</u> <u>[subtract line 6 from line 4]</u>	_____
8.	<u>Estimated apportionment percentage</u> <u>[from Schedule 1-D, Line 6 – attach completed Schedule]</u>	_____ %
9.	<u>Estimated elective income tax base</u> <u>[multiply line 7 by percentage on line 8]</u>	_____
10.	<u>Bank income tax table:</u>	
	(a) <u>First \$50,000,000 of line 9 at 7.0%</u>	_____
	(b) <u>Next \$50,000,000 of line 9 at 5.0%</u>	_____
	(c) <u>Next \$400,000,000 of line 9 at 3.0%</u>	_____
	(d) <u>Next \$800,000,000 of line 9 at 1.0%</u>	_____
	(e) <u>Amount of line 9 over \$1,300,000,000 at 0.5%</u>	_____
11.	<u>Estimated total bank income tax liability</u> <u>[add lines 10(a) - (e)]</u>	_____

12. Estimated total location benefit tax liability  
 [from Schedule 2, Line 11 - attach completed Schedule] \_\_\_\_\_
13. Estimated alternative franchise tax liability  
 before tax credits [add lines 11 and 12] \_\_\_\_\_
14. Tax credits:  
 (a) Estimated total employment tax credits \_\_\_\_\_  
 (b) Estimated Travelink tax credits \_\_\_\_\_  
 (c) Estimated historic preservation tax credits \_\_\_\_\_
15. Estimated total tax credits  
 [add lines 14(a) - (c)] \_\_\_\_\_
16. Estimated total alternative franchise tax liability  
 [subtract line 15 from line 13] \_\_\_\_\_
17. Payment structure and dates:  
 (a) June 1 (40% of line 16 due) \_\_\_\_\_  
 (b) September 1 (20% of line 16 due) \_\_\_\_\_  
 (c) December 1 (20% of line 16 due) \_\_\_\_\_

I, the undersigned officer, hereby certify that this estimated report, including any accompanying schedules and statements, has been prepared in conformance with the appropriate instructions and is true and correct to the best of my knowledge and belief.

<u>Date</u>	<u>Signature of President, Treasurer or Other Proper Officer</u>	<u>Title</u>
	_____ <u>Print Name</u>	_____ <u>Phone No.</u>
	_____ _____ _____ <u>Print Address</u>	_____ <u>E-mail</u>

Mail Completed Form To:  
Office of the State Bank Commissioner  
555 E. Loockerman Street, Suite 210  
Dover, DE 19901  
Form 1114F - Final Alternative Franchise Tax Return  
Chapter 11 of Title 5 of the Delaware Code

Amended Final Alternative Tax Return  
 (check box if filing an amended return)

\_\_\_\_\_

Name of Banking Organization or Trust Company

Tax Year

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Federal Employer  
Identification Number

Address

List below corporation(s) electing under Section  
1101A(c)(3) of Title 5 of the Delaware Code  
and attach to tax return Regulation 1101 form – Election  
To Be Treated As A Subsidiary Corporation Under  
5 Del.C. § 1101(f) or § 1101A(c)(3); include  
Federal EIN for each. Attach additional pages if necessary.

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

- 1. Net operating income before taxes of banking organization or trust company – [attach statement of net income] \_\_\_\_\_
  
- 2. Net operating income before taxes of electing corporation(s) – [attach separate report of income for each electing corporation] \_\_\_\_\_
  
- 3. Net operating income before taxes of corporations taxed under Ch. 19 of Title 30 – [attach separate report of income for each electing corporation] \_\_\_\_\_
  
- 4. Subtotal net operating income before taxes [add lines 1 and 2 and subtract line 3] \_\_\_\_\_
  
- 5. Deductions:
  - (a) Net operating income before taxes of any non-United States branch office. \_\_\_\_\_
  - (b) Gross income derived from international banking transactions. \_\_\_\_\_
  - (c) Gross income of an international banking facility. \_\_\_\_\_
  - (d) Income earned from business activities conducted outside the United States. \_\_\_\_\_
  - (e) Interest income from obligations of volunteer fire companies. \_\_\_\_\_
  - (f) Any examination fee paid to the Office of the State Bank Commissioner. \_\_\_\_\_
  - (g) Income derived from acting as an insurer. \_\_\_\_\_
  
- 6. Total deductions [add lines 5(a) - (g)] \_\_\_\_\_

7.	<u>Entire net income before apportionment</u> <u>[subtract line 6 from line 4]</u>	_____
8.	<u>Apportionment percentage</u> <u>[from Schedule 1-D, line 6 – attach completed</u> <u>Schedule]</u>	_____ %
9.	<u>Elective income tax base</u> <u>[multiply line 7 by percentage on line 8]</u>	_____
10.	<u>Bank income tax table:</u> <u>(a) First \$50,000,000 of line 9 at 7.0%</u> <u>(b) Next \$50,000,000 of line 9 at 5.0%</u> <u>(c) Next \$400,000,000 of line 9 at 3.0%</u> <u>(d) Next \$800,000,000 of line 9 at 1.0%</u> <u>(e) Amount of line 9 over \$1,300,000,000 at 0.5%</u>	_____ _____ _____ _____ _____
11.	<u>Total bank income tax liability</u> <u>[add lines 10(a) - (e)]</u>	_____
12.	<u>Total location benefit tax liability</u> <u>[from Schedule 2, line 11 – attach completed</u> <u>Schedule]</u>	_____
13.	<u>Alternative franchise tax liability before tax credits</u> <u>[add lines 11 and 12]</u>	_____
14.	<u>Tax credits:</u> <u>(a) Total employment tax credits</u> <u>[calculated in accordance with Regulation</u> <u>No. 1109, attach completed Employment</u> <u>Tax Credit Calculation Worksheet]</u>	_____
	<u>(b) Travelink tax credits</u> <u>[calculated in accordance with Department of</u> <u>Transportation (DelDot) reporting requirements;</u> <u>attach DelDot approval and calculation</u> <u>worksheet]</u>	_____
	<u>(c) Historic preservation tax credits</u> <u>[attach Certificate of Completion in accordance</u> <u>with Section 1105(g) of Title 5 of the Delaware</u> <u>Code and, if applicable, a Certificate of Transfer</u> <u>in accordance with Section 1814(c) of Title 30</u> <u>of the Delaware Code]</u>	_____
15.	<u>Total tax credits</u> <u>[add lines 14(a) - (c)]</u>	_____
16.	<u>Total alternative franchise tax liability</u> <u>[subtract line 15 from line 13]</u>	_____
17.	<u>Estimated tax payments:</u> <u>(a) June 1 payment</u>	_____

	(b) <u>September 1 payment</u>	_____
	(c) <u>December 1 payment</u>	_____
	(d) <u>Total estimated tax payments</u>	_____
	<u>[add lines 17(a) - (c)]</u>	_____
18.	<u>March 1 final tax payment</u>	_____
	<u>[subtract line 17(d) from line 16]</u>	_____
19.	<u>Additional tax due to underpayment of estimated tax or installment (if applicable)</u>	_____
20.	<u>Penalty for late payment of final tax (if applicable)</u>	_____
21.	<u>Total final tax payment</u>	_____
	<u>[add lines 18, 19 and 20]</u>	_____

I, the undersigned officer, hereby certify that this return, including any accompanying schedules and statements, has been prepared in conformance with the appropriate instructions and is true and correct to the best of my knowledge and belief.

<u>Date</u>	<u>Signature of President, Treasurer or Other Proper Officer</u>	<u>Title</u>
	_____	_____
	<u>Print Name</u>	<u>Phone No.</u>
	_____	_____
	_____	<u>E-mail</u>
	<u>Print Address</u>	_____
	_____	

Mail Completed Form To:  
Office of the State Bank Commissioner  
555 E. Loockerman Street, Suite 210  
Dover, DE 19901

**Schedule 1 – APPORTIONMENT PERCENTAGE CALCULATION WORKSHEET**

As of December 31, 20\_\_

**Schedule 1-A: Real and Tangible Personal Property:**

<u>(a) Within Delaware</u>		<u>(b) Within and Without Delaware</u>	
<u>(1) Value at</u>	<u>(2) Value at</u>	<u>(1) Value at</u>	<u>(2) Value at</u>
<u>January 1,</u>	<u>December 31,</u>	<u>January 1,</u>	<u>December 31,</u>
<u>20__</u>	<u>20__</u>	<u>20__</u>	<u>20__</u>

- |   |           |       |           |       |
|---|-----------|-------|-----------|-------|
| 1. <u>Real and tangible personal property owned</u>                                   | _____     | _____ | _____     | _____ |
| 2. <u>Real and tangible personal property rented (eight times annual rental paid)</u> | _____     | _____ | _____     | _____ |
| 3. <u>Total property value [add lines 1 and 2]</u>                                    | _____     | _____ | _____     | _____ |
| 4. <u>Average property value [add line 3, columns (1) and (2); then divide by 2]</u>  | (a) _____ | _____ | (b) _____ | _____ |

Note: Disregard any property that is not used in the taxpayer's business.

**Schedule 1-B: Wages, Salaries, and Other Compensation:**

- |  |                            |  |
|--|----------------------------|--|
|  | <u>(a) Within Delaware</u> | <u>(b) Within and Without Delaware</u> |
| 1. <u>Wages, salaries and other employee compensation paid</u> | (a) _____                  | (b) _____                              |

**Schedule 1-C: Receipts:**

- |   |                            |  |
|---|----------------------------|--|
|   | <u>(a) Within Delaware</u> | <u>(b) Within and Without Delaware</u> |
| 1. <u>Sales of tangible personal property</u>   | _____                      | _____                                  |
| 2. <u>Rents and royalties from tangible property</u>  | _____                      | _____                                  |
| 3. <u>Patent and copyright royalties</u>  | _____                      | _____                                  |
| 4. <u>Gains from the sale or other disposition of real property</u>   | _____                      | _____                                  |
| 5. <u>Gains from the sale or other disposition of tangible property for which an allowance for depreciation is permitted for federal income tax purposes</u>                                    | _____                      | _____                                  |
| 6. <u>Interest, fees or penalties in the nature of interest, and loan servicing fees from loans secured by real property, and gains from the sale of loans secured by real property</u>         | _____                      | _____                                  |
| 7. <u>Interest, fees or penalties in the nature of interest, and loan servicing fees from loans not secured by real property, and gains from the sale of loans not secured by real property</u> | _____                      | _____                                  |
| 8. <u>Gross receipts from interest, dividends, gains and other income from investment assets and activities and from trading assets and activities</u>  | _____                      | _____                                  |
| 9. <u>All other gross receipts</u>  | _____                      | _____                                  |
| 10. <u>Total receipts</u><br><u>[add lines 1 - 9]</u>   | (a) _____                  | (b) _____                              |

**Schedule 1-D: Calculation of Apportionment Percentage**

- |    |  |                    |      |             |
|----|--|--------------------|------|-------------|
| 1. | (a) <u>Average property value within Delaware</u><br>[Schedule 1-A line 4(a)]<br>divided by  | (a) _____<br><br>÷ | =    | (c) _____ % |
|    | (b) <u>Average property value within and without Delaware</u><br>[Schedule 1-A line 4(b)]  | (b) _____          |      |             |
| 2. | (a) <u>Total wages, salaries and other employee compensation paid within Delaware</u><br><br>[Schedule 1-B line 1(a)]<br>divided by  | (a) _____<br><br>÷ | =    | (c) _____ % |
|    | (b) <u>Total wages, salaries and other employee compensation paid within and without Delaware</u><br>[Schedule 1-B line 1 (b)]   | (b) _____          |      |             |
| 3. | (a) <u>Total gross receipts from within Delaware</u><br>[Schedule 1-C line 10(a)]<br>divided by  | (a) _____<br><br>÷ | x2 = | (c) _____ % |
|    | (b) <u>Total gross receipts from within and without Delaware</u><br>[Schedule 1-C line 10(b)]  | (b) _____          |      |             |
| 4. | <u>Total [add lines 1(c), 2(c) and 3(c)]</u>   |                    |      | _____ %     |
| 5. | <u>Number of apportionment factors</u><br>[Normally, there are 4 apportionment factors, but the number will be less if a factor is missing. A factor is missing if both its numerator and denominator are zero, but a factor is not missing merely because its numerator is zero.] |                    |      | _____       |
| 6. | <u>Apportionment percentage [divide line 4 by line 5]</u>  |                    |      | _____ %     |

**SCHEDULE 2 – LOCATION BENEFIT TAX CALCULATION WORKSHEET**

**As of December 31, 20\_\_**

