

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

FINAL

ORDER

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

IT IS HEREBY ORDERED, this 10th day of September, 2020, that amended Regulations 801, 1101, 1104, 1105, 1107, 1108, 1111, 1112, 1113, 1114, and 1201 are adopted as Regulations of the State Bank Commissioner. The effective date of each of these Regulations is October 11, 2020. 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. Regulation 801 is amended by deleting the Office of the State Bank Commissioner’s old office mailing and delivery address and inserting the new office mailing and delivery address and removing a reference to the former Regulation number.

2. Regulations 1101, 1104, 1105, 1107, 1108, 1111, 1112, 1113, 1114, and 1201 are amended by deleting the Office of the State Bank Commissioner’s old mailing and delivery address and inserting the new mailing and delivery address.

3. The State Bank Commissioner is authorized to adopt regulations as provided in Section 121(b) of Title 5 of the Delaware Code.

4. The Administrative Procedures Act, Chapter 101 of Title 29 of the Delaware Code, provides at Section 10113, in pertinent part:

“(b) Regulations of the following types are exempted from the procedural requirements of this chapter and may be adopted informally: ...

“(4) Nonsubstantive changes in existing regulations to alter style or form or to correct technical errors; ...

“Any regulation adopted pursuant to this subsection, along with a copy of the order adopting said regulation, shall be filed with the Registrar of Regulations, and the regulation so filed shall become the official regulation as defined in § 1132 of this title.”

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)

Effective Date: ~~December 11, 2006~~ October 11, 2020

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).

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

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

- 3.4 The original of the election form must be filed with the State Bank Commissioner, ~~555 E. Loockerman Street, Suite 240~~ 1110 Forrest Avenue, Dover, Delaware ~~19904~~ 19904, 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

- 4.4 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 or 1111 or 1114 and each Final Franchise Tax Report under Regulation 1105 or 1112 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)

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

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.

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

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.

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

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

24 DE Reg. 385 (10/01/20) (Final)

1101A.pdf Election to be Treated as a Subsidiary Corporation Under 5 Del.C §1101(f) or §1101A(c)(3)
<http://regulations.delaware.gov/register/october2020/final/1101A.pdf>