

## **BANK FRANCHISE TAX**

**STATUTORY PROVISION:** Title 5, Delaware Code, Chapter 11, Sections 1101-1115 provide statutory basis for banks, trust companies, resulting branches in this state of out-of-state banks and federal savings banks not headquartered in this state but maintaining branches in this State. Title 5, Delaware Code, Chapter 18, Sections 1801-1809 provide statutory basis for building and loan associations.

**ADMINISTRATIVE AGENCY:** The bank franchise tax is administered and collected by the Office of the State Bank Commissioner, a division within the Department of the Secretary of State.

**TAX CALCULATION:** For banks and trust companies, the bank franchise tax calculation begins with net operating income before taxes as reported on the Dec. 31 call report and includes an adjustment for securities gains and losses and other appropriate adjustments. If an election is made to treat certain corporations as subsidiary corporations for tax purposes, their income is also included. Reductions are allowed for: income from an insurance division or subsidiary; net operating income before taxes from specific subsidiaries or out-of-state branches that are taxable under Delaware law or the law of any other state, including shares tax; non-United States branch offices; gross income from international banking transactions and facilities; interest income from volunteer fire companies; and examination fees paid to the Office of the State Bank Commissioner. This sum is then multiplied by 0.56 to arrive at taxable income.

For federal savings banks not headquartered in this State but maintaining branches in this state, taxable income is equal to the net operating income of the branch or branches located in Delaware before taxes with adjustments for securities gains and losses and other appropriate adjustments. A reduction is allowed for interest income from volunteer fire companies.

Building and loan associations are taxed on net operating income before taxes, defined as total operating income minus total operating expense. Reductions are allowed for net operating income before taxes from specific subsidiaries or branches that are otherwise taxable under Delaware law or the law of any other state, gross income from international banking facilities and transactions, interest income from volunteer fire companies, and examination fees paid to the Office of the State Bank Commissioner. This sum is then multiplied by 0.56 to arrive at taxable income.

The bank franchise tax is paid instead of State corporate income taxes, occupational taxes, and all other State taxes except for real estate.

Banks have the option of using an “Alternative Franchise Tax”. The Alternative Franchise Tax has two parts:

1. A traditional income tax employing three-factor apportionment with a double-weighted receipts factor. The tax’s regressive rates range from 7.0% on taxable income not in excess of \$50 million to 0.5% on taxable income in excess of \$1.3 billion.
2. A “Location Benefit Tax” based on net assets. The minimum tax is \$1.6 million with additional liability ranging from 0.012% on the value of net assets not in excess of \$5.0 billion to 0.004% on net assets in excess of \$20 billion but not in excess of \$90 billion. The maximum Location Benefit Tax is \$6.2 million.

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**TAX RATES:** The rate of tax upon taxable income is as calculated under the standard franchise tax:

TAXABLE INCOME RANGE	TAX RATE
Not greater than \$20 million	8.7%
\$20 million to \$25 million	6.7%
\$25 million to \$30 million	4.7%
\$30 million to \$650 million	2.7%
Greater than \$650 million	1.7%

The rate of tax on elective income tax base as calculated under the alternative franchise tax:

TAXABLE INCOME RANGE	TAX RATE
Not greater than \$50 million	7.0%
\$50 million to \$100 million	5.0%
\$100 million to \$500 million	3.0%
\$500 million to \$1.3 billion	1.0%
Greater than \$1.3 billion	0.5%

The rate of tax on the value of net assets as calculated under the location benefits tax:

VALUE OF ASSETS	TAX RATE
Not greater than \$5 billion	\$1.6 million + 0.012%
\$5 billion to \$20 billion	0.008%
\$20 billion to \$90 million	0.004%

**TAX CREDITS:** The bank franchise tax liability can be adjusted by tax credits. Tax credits available include:

- Travelink tax credits calculated in accordance with Department of Transportation Travelink tax credit reporting requirements;
- An employee tax credit for certain new bank employees, provided the bank creates at least 200 new jobs for qualified employees and invests at least \$15,000 per new qualified employees;
- A Historic Preservation tax credit as administered by the Delaware State Historic Preservation Office; and
- The New Economy Tax Credit designed to attract high paying, competitive jobs for new bank employees, provided the bank creates at least 50 net new jobs which each must have an annual salary of at least \$100,000 (adjusted for inflation). Up to 40% of the withholding taxes collected and paid on behalf of new qualified employees during the taxable year will be rebated. Higher credits are granted to banks that locate jobs in preferred geographic locations. This Act was expanded effective 6/30/12 and provides that employers relocating at least 200 jobs with average salaries of \$70,000 or greater to Delaware will be entitled to a tax credit on the withholding paid on behalf of the relocated employees. The size of the tax

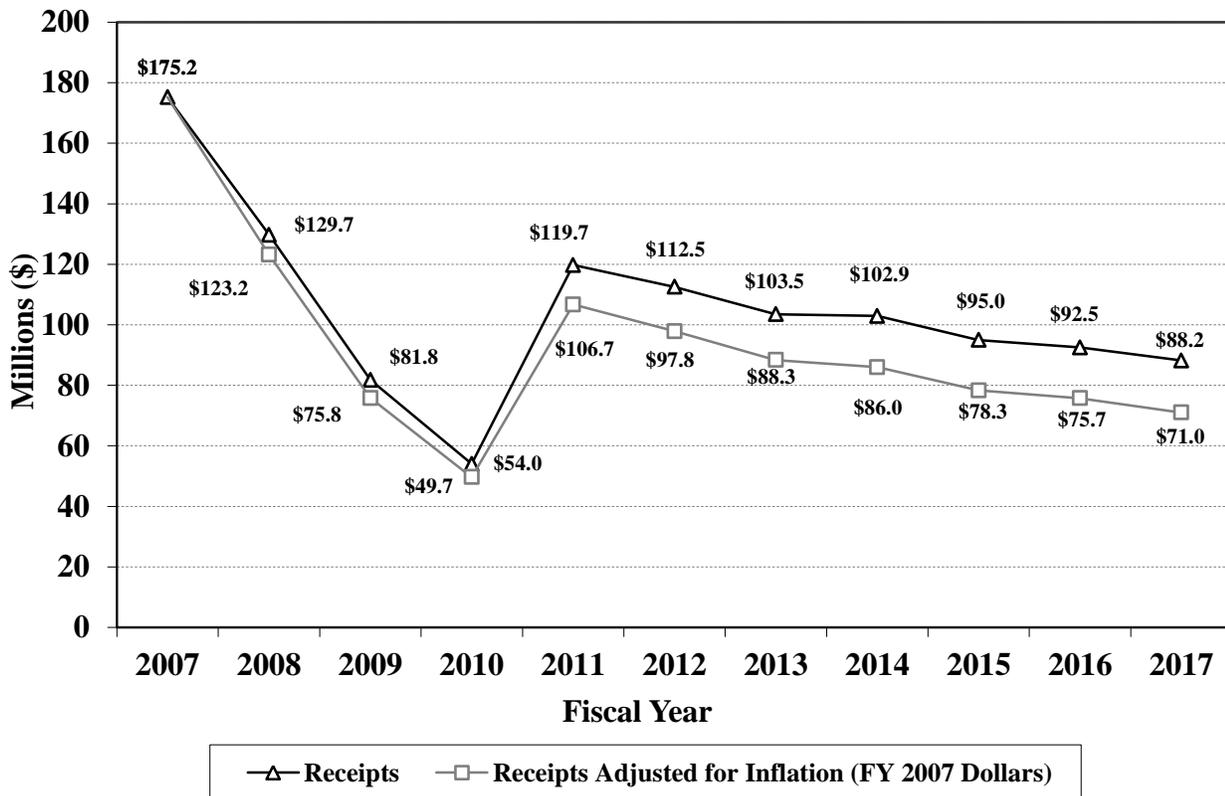
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credit increases if more than 200 jobs are relocated and can reach as high as 40% if the employer relocates 500 or more employees to Delaware;

- The Veterans’ Opportunity Credit shall be awarded to employers hiring qualified veterans. The credit shall equal 10% of a qualified veteran wages, up to a maximum of \$1,500. Employers may take the credit in the year the qualified veteran is hired and the two subsequent tax years;
- The Business Finder’s Fee Tax Credit creates incentives for existing businesses to partner with the State in an effort to create new employment opportunities for Delaware Citizens, and to stimulate the Delaware economy by expanding the tax base. This tax program would award each Sponsor Firm and each New Business Firm with a \$500 annual tax credit per Delaware job created by the new business, with the tax credit available for three years.
- The Vocational Rehabilitation Hiring Tax Credit provides an incentive for Delaware’s employers to hire referrals from vocational rehabilitation. The credit shall be awarded to employers hiring qualified disabled workers. The amount of the credit shall equal 10%, but not exceed \$1,500, of the gross wages paid by the qualified employer to a vocational rehabilitation referral. Employers may take the credit in the year the qualified disabled worker is hired and for the 2 taxable years thereafter.

### TAX RECEIPTS

#### Bank Franchise Tax



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### LEGISLATIVE HISTORY

Approved Date	Effective Date	<u>Description of Changes</u>
2/18/81	2/18/81	Adopted Financial Center Development Act which provided for: the acquisition of stock in Delaware banks by out-of-state bank holding companies; the regulation of bank revolving and closed-end credit; the taxation of Delaware banks' income from non-United States branch offices; regressive rates of taxation on net income of banks in excess of \$20 million; the elimination of interest ceilings; refunds of pre-computed interest by the actuarial method; allowances by the Bank Commissioner for a reasonable time for savings bank branch openings; direct or indirect loans to directors and executive officers of banks; the deletion of previously repealed provisions regarding the collection, payment, and dishonor of demand items, and the revocation of letters of credit; the amendment to Title 30 with respect to the taxation of affiliated finance companies (63 Del. Laws c 2).
6/30/81	6/30/81	Allowed savings/building and loan associations 75 days after the end of their fiscal year to report net earnings for the previous taxable period and pay the proper amount of tax for said period (63 Del. Laws c 66).
6/6/83	6/6/83	Exempted international banking transactions and international banking facilities from taxation (64 Del. Laws c 43; HB 127).
7/13/83	7/13/83	Computed taxable income by summing: net securities gains or losses before taxes; net operating income before taxes from subsidiaries otherwise taxed under Delaware law; net operating income before taxes as shown on the books of any non-United States branch office (those established pursuant to Title 5, <u>Delaware Code</u> , §771, or federal law). If at least 80% of the gross income constitutes income from international banking transactions or from an international banking facility as set forth in Title 5, <u>Delaware Code</u> , §101. This sum is multiplied by 0.56 to arrive at net taxable income. Amended rules on collections and rates (64 Del. Laws c 160; HB 1 for HB 350).
7/2/84	7/2/84	Excluded interest income from obligations of volunteer fire companies in taxable income (64 Del. Laws c 328; SB 365).
7/20/84	7/20/84	Exempted subsidiaries of banks that are subject to taxation by other states, thereby avoiding double taxation (64 Del. Laws c 442; SB 500).
8/13/84	8/13/84	Allowed any non-bank subsidiary of a Delaware bank to elect to be taxed in accordance with the provisions of Chapter 19 of Title 30 (Corporation Income Tax). If this election is made, the subsidiary is not considered a "subsidiary corporation" for purposes of bank taxation. Such election is not be available to any corporation described in Title 30, <u>Delaware Code</u> , Section 1902(b)(8).

Allowed any corporation which is owned 80% by a bank holding company, and which directly owns all the stock of a Delaware bank, to elect to be treated as a "subsidiary corporation" of a bank. To qualify for this election, the electing corporation and its affiliates must employ at least 200 persons in Delaware by the end of the taxable year following the year in which the election is made (64 Del. Laws c 461; HB 724).

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Approved Date	Effective Date	<u>Description of Changes</u>
5/18/87	7/1/87	Provided for quarterly estimated tax returns and payment for taxpayers whose annual tax liability exceeds \$10,000 (66 Del. Laws c 23; HB 117).
7/14/88	7/14/88	Changed due dates for estimated payments and established March 1 the due date for final payments (66 Del. Laws c 378; HB 634).
6/29/89	6/29/89	Changed tentative return filing date to March 1 of the current income year (67 Del. Laws c 55; SB 216).
7/2/90	7/2/90	Changed the percentage of estimated final liability due with tentative tax returns from 25% on 6/1, 9/1, and 12/1; to 40%, 20%, and 20%, respectively (67 Del. Laws, c 279; HB 773).
2/6/92	1/1/92	Established temporary new employment and health care credits for firms that qualify in 1992 or 1993 (68 Del. Laws c 202; HB 415).
7/2/92	1/1/93	Changed the bank franchise tax base for savings/building and loan associations to taxable income (previously a net earnings basis). Replaced the single 8.7% rate on savings/building and loan associations with a regressive rate structure (8.7% on amounts under \$20 million to 2.7% on amounts over \$30 million). Established a deduction for certain operating income from any subsidiary or foreign branch otherwise subject to income tax and established within the U.S. pursuant to Title 30, <u>Delaware Code</u> Section 771. Imposed the bank franchise tax on federal savings banks not headquartered in Delaware, but maintaining branches in the state. Exempted net earnings derived from banks acting as insurers pursuant to, Title 5, <u>Delaware Code</u> , §761(a) (14); or Title 18, <u>Delaware Code</u> . Increased penalty on underpayment of estimated tax from 1% to 1.5% per month (68 Del. Laws c 303; SB 382).
4/12/95	4/12/95	Clarified that the income from all of the permissible activities of an Edge Act corporation, or from a so-called "agreement corporation" and its subsidiaries, are to be deducted in computing "taxable income" under the Delaware Bank franchise tax; it also clarified that certain limited-purpose Edge Act corporations and their subsidiaries (investment Edge) which satisfy the exemption requirements for an investment holding company under Title 30 may elect to be taxed under Chapter 19 of Title 30, rather than the bank franchise tax (70 Del. Laws c 16; SB 71).
6/28/95	9/29/95	Provided for the taxation of out-of-state banks with branches in Delaware as if those branches constituted separate Delaware banks; and for the taxation of foreign bank limited purpose branches. Required filing of estimated tax returns by banking organizations and federal savings banks not headquartered in Delaware but maintaining branches in Delaware. Made franchise taxes on these banking organizations subject to the same periods of limitation for claims for assessment, credit, or refunds as those in Title 30, <u>Delaware Code</u> , §531 and §539 (70 Del. Laws c 112; SB 207).
7/11/96	1/1/97	Created a \$400 tax credit for each new bank employees provided the bank creates at least 50 new jobs for "qualified employees" and invests at least \$15,000 per new "qualified employee." Created a new bank franchise tax bracket of 1.7% on taxable income above \$650 million (70 Del. Laws c 486; SB 483).

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4/23/97	4/23/97	Provided for: deduction for net operating income before taxes derived from business activity subject to shares tax under the laws of another state; \$25 per day late filing penalty for failure to file an estimated or final franchise tax report; 0.05% per day penalty on late payments and underpayment of estimated tax (71 Del. Laws c 19; SB 44).
5/14/97	9/29/97	Provided for a state-chartered savings bank; reduced fees for new branches of all state-chartered banks, and for bank mergers or conversions; reduced the required number of incorporators for new state-chartered banks from 15 to 3 (71 Del. Laws c 19; SB 67).
7/23/97	1/1/98	Removed the “safe harbor” (which allows banks to make estimated tax payments equal to the previous year’s tax liability) for those banks with taxable income of \$200,000 or more in any of the three proceeding years. (71 Del. Laws c 217; HB 257).
4/9/99	1/1/99	Reestablished the safe harbor allowing banks to make estimate tax payments equal to the previous year’s tax liability. Clarified that tax returns filed with State Bank Commissioner are subject to the same confidentiality standards as tax returns filed with the Department of Finance. Amended several provisions to achieve conformity with other laws and industry developments (72 Del. Laws c 15; SB 57).
4/9/99	4/9/99	Clarified the confidentiality of bank returns and that the Bank Commissioner has the authority to abate franchise tax assessments under limited circumstances and enter into closing agreements to resolve bank franchise tax issues. Adds §1113 -§1115 and §1807-§1809 (72 Del. Laws c 15; SB 57).
5/18/99	5/18/99	Enabled foreign banks to select Delaware as their "home state" under the federal International Banking Act of 1978, which permits the establishment of branches in the State that may engage in a general banking business. (72 Del. Laws c 35; HB 156).
7/20/99	7/20/99	Amended Travelink program by: adding Welfare-to-Work provisions, updating eligibility requirements, and establishing a \$100,000 annual tax credit cap (72 Del. Laws c 188; HB 292).
7/23/99	7/23/99	Required a separate finance charge by an automobile dealer before a retail transaction is subject to regulation by the State Bank Commissioner (72 Del. Laws c 218; HB 163 with HA 1).
6/20/00	6/20/00	Extended the employment tax credit program for an additional five years through tax year 2006 (72 Del. Laws c 331; HB 550).
7/18/00	1/1/00	Extended the “Blue Collar Jobs” credit program for an additional five years (72 Del. Laws c 442; SB 304).
2/2/01	1/1/01	Established Historic Preservation Credit, which provides a 20% credit for qualified rehabilitation expenditures on properties that qualify for the federal credit, and 30% for those properties that do not qualify for the federal credit. These amounts are increased to 30% and 40% for certain low-income housing projects. Credits granted may not exceed \$3 million in any one fiscal year. (73 Del Laws c 06; HB1 as amended by SA1).

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4/17/01	4/17/01	Clarified that the Commissioner is authorized to share information on back franchise tax returns with other tax authorities on a reciprocal basis (73 Del Laws c 24; HB 130).
7/12/05	7/12/05	Increased the annual allocation for Historic Preservation Credits from \$3 million to \$5 million (75 Del. Laws c 152; HB 228).
6/30/06	6/30/06	Extended the employment tax credit program for an additional five years, through 2011 (75 Del. Laws c 335; SB 343).
1/24/06	1/1/07	Permitted certain banking organizations and trust companies to elect into an alternative bank franchise system consisting of a three-factor apportioned income tax and a location benefit tax (75 Del. Laws c 223; SB 249).
6/30/07	6/30/07	Extended the Blue Collar Jobs Credit program through June 20, 2009, and implemented the New Economy Jobs Credit Program (76 Del. Laws c 78; SB 149).
6/3/08	1/1/09	Provided that subsidiaries of banking organizations may not elect to be taxed as asset management companies under Title 30 (76 Del. Laws c 234; SB 213).
6/16/10	10/1/10	Created a tax credit program that would award each Sponsor Firm and each New Business Firm with a \$500 annual tax credit per Delaware job created by the new business, with the tax credit available for three years. The program requires that the new business be brought to Delaware as a result of the efforts of the sponsor, and would specifically exclude those business, such as real estate agents, banks and commercial landlords, that already have an incentive to bring out-of-state business to Delaware. (77 Del. Laws c 300; HB 380).
7/19/10	7/1/10	Provided for a 10-year extension to the Historic Preservation Tax Credit Act which was scheduled to expire in June 2010. (77 Del. Laws c 413; SB 209).
7/1/11	1/1/12	Created a 10-year tax credit for banking organizations and trust companies that add 200 or more jobs after 2011. (78 Del. Laws c 72; SB 91).
7/1/11	1/1/12	Increased the incentive for major financial institutions to locate their charters and operations in Delaware by lowering the location benefit tax paid by banks that elect into the alternative franchise tax. (78 Del. Laws c 72; SB 92).
7/31/12	1/1/12	Established the Veterans' Opportunity Credit, which shall be awarded to employers hiring qualified veterans. The credit shall equal 10% of a qualified veteran's wages, up to a maximum of \$1,500. Employers may take the credit in the year the qualified veteran is hired and the subsequent two tax years. (78 Del. Laws c 381; HB 275 w/SA 2).

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Approved Date	Effective Date	<u>Description of Changes</u>
8/13/12	6/30/12	Expanded the New Economy Jobs Program by creating another means by which employers relocating jobs to Delaware may qualify for the tax credit. Under this Act, employers that relocate at least 200 jobs with average salaries of \$70,000 or greater to Delaware will be entitled to a tax credit equal to 25% of the withholding paid by the employer on behalf of the relocated employees. If employers relocate more than 200 jobs, the size of the tax credit increases and can reach 40% if the employer relocates 500 or more employees. The Act also maintains incentives for relocating jobs into municipalities, targeted growth areas and counties, and on to redeveloped brownfields. Altogether, the maximum tax credit can reach 65% of the withholding paid on behalf of the relocated employees. (78 Del. Laws c 396; SB 271).
1/30/13	1/1/13	Removed obsolete provisions related to the imputed capital addback for a banking organization that is a resulting branch in this State of an out-of-state bank. Resulting branch imputed capital addback shall not apply to tax years beginning after December 31, 2012. (79 Del. Laws c 3; SB1).
6/5/14	6/5/14	Designated \$1,500,000 in annual Historic Preservation Credit funds as reserved for projects in Downtown Development Districts. (79 Del. Laws c 240; SB 191).
7/1/14	1/1/14	Extended the 10 year tax credit available to bank franchise taxpayers that create 200 or more jobs by extending the sunset of the tax credit from January 1, 2022 to January 1, 2032 and providing for a rolling base year for measuring employment growth. (79 Del. Laws c 291; HB 414).
3/17/16	1/1/17	Reinstated the New Economy Jobs Tax Credit, which had sunset in 2014, and also expanded the scope of the credit to include provisions covering retained jobs for companies involved in or resulting from a corporate restructuring. (80 Del. Laws c 207; SB 200).
8/29/16	1/1/17	Established the Vocational Rehabilitation Hiring Tax Credit, which shall be awarded to employers hiring qualified disabled workers. The credit shall equal 10% of a qualified disabled worker's wages, up to a maximum of \$1,500. Employers may take the credit in the year the qualified disabled worker is hired and the subsequent two tax years. (80 Del. Laws c 400; SB 221).

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**FILING PROCEDURES:** A bank, trust company, resulting branches in this State of out-of-state bank, and federal savings banks not headquartered in Delaware but maintaining branches in Delaware whose franchise tax liability for the current tax year is estimated to exceed \$10,000 must file an Estimated Franchise Tax Report by March 1.

Estimated tax installments are required of taxpayers with an annual tax liability more than \$10,000. The filing of estimated tax liability is due and payable in installments as follows: 40% on June 1; 20% on September 1; and 20% on December 1.

The December 31 call report and the Final Franchise Tax Report are due by January 30 of the succeeding year. The final franchise tax balance must be paid by March 1.

Payment of franchise taxes on the income of building and loan associations must accompany the report of net earnings, which is due within 75 days of the end of the association's fiscal year.

**PENALTIES AND INTEREST:** Late payment penalties are calculated at 0.05% per day that taxes remain unpaid from the original due date.

Additional taxes for underpayment of estimated tax are assessed at 0.05% per day on the amount of underpayment for the period of underpayment.

A \$25 per day late filing penalty is assessed for each day the taxpayer fails to file an estimated or final franchise tax report.