

2024 -- H 7927 SUBSTITUTE A

LC005388/SUB A

STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2024

A N A C T

RELATING TO TAXATION -- TAXATION OF BANKS

Introduced By: Representative Joseph J. Solomon

Date Introduced: March 04, 2024

Referred To: House Finance

It is enacted by the General Assembly as follows:

1 SECTION 1. Sections 44-14-13 and 44-14-14.1 of the General Laws in Chapter 44-14
2 entitled "Taxation of Banks" are hereby amended to read as follows:

3 **44-14-13. Business expenses deductible.**

4 (a) In computing net income there shall be allowed as deductions all the ordinary and
5 necessary expenses paid or incurred by the taxpayer during the income period in carrying on its
6 trade or business, except United States income and excess profits taxes and the tax imposed by this
7 chapter. Without limiting the generality of the foregoing there shall be allowed as deductions: a
8 reasonable allowance for salaries and other compensation for personal services actually rendered;
9 rent; repairs; bad debts; interest; taxes, except United States income and excess profits taxes and
10 the tax imposed by this chapter; losses sustained and not compensated for by insurance or
11 otherwise; depreciation; depletion of mines, oil and gas wells, and timber; amortization of assets;
12 amortization of premiums on "securities" as defined in § 44-14-2(5)(ii); and contributions to any
13 corporation, association, or fund organized and operated exclusively for religious, charitable,
14 scientific, literary, or educational purposes, no part of the net earnings of which inures to the benefit
15 of any private shareholder or individual.

16 (b) For tax years beginning on or after January 1, 2025, to the extent that a taxpayer subject
17 to tax under this chapter has elected to allocate and apportion its net income pursuant to § 44-14-
18 14.1(f)(1) and would be included in a unitary business, as defined in § 44-11-1(11), with one or
19 more entities subject to tax under chapter 11 of this title if not for the exemptions from the definition

1 of "corporations" set forth in § 44-11-1(4)(i), all business expense transactions between the
2 taxpayer and the members of the unitary business shall be added to net income of the taxpayer
3 subject to tax under this chapter; except that no such adjustment shall be required to the extent it
4 would result in duplicate taxation in violation of law.

5 (c) The adjustments required in subsection (b) of this section shall add back otherwise
6 deductible business expenses paid, accrued or incurred to a related member, except that a deduction
7 shall be permitted to the extent that either:

8 (1) The taxpayer establishes by clear and convincing evidence, as determined by the tax
9 administrator, that the disallowance of the deduction is unreasonable; or

10 (2) The taxpayer and the tax administrator agree in writing to the application of an
11 alternative method of apportionment. For purposes of this subsection, the add back of a business
12 expense transaction will be considered unreasonable where the taxpayer establishes by clear and
13 convincing evidence that the transaction was primarily entered into for a valid business purpose
14 rather than to avoid payment of taxes due under this chapter, the business expense paid is pursuant
15 to a written contract that reflects arm's length terms, and that it is supported by documented
16 economic substance. Nothing in this subsection shall be construed to limit or negate the tax
17 administrator's authority to otherwise enter into agreements and compromises otherwise allowed
18 by law.

19 **44-14-14.1. Apportionment and allocation of income for purposes of taxation.**

20 (a) Except as specifically provided in this chapter a banking institution whose business
21 activity is taxable both within and outside of this state shall allocate and apportion its net income
22 as provided in §§ 44-14-14.1 — 44-14-14.5. A financial institution organized under the laws of a
23 foreign country, the Commonwealth of Puerto Rico or a territory or possession of the United States
24 whose effectively connected income (as defined under the federal Internal Revenue Code) is
25 taxable both within this state and within another state, other than the state in which it is organized
26 shall allocate and apportion its net income as provided in §§ 44-14-14.1 — 44-14-14.5.

27 (b) All income shall be apportioned to this state by multiplying this income by the
28 apportionment percentage. The apportionment percentage is determined by adding the taxpayer's
29 receipts factor (as described in § 44-14-14.3), property factor (as described in § 44-14-14.4), and
30 payroll factor (as described in § 44-14-14.5) together and dividing the sum by three. If one of the
31 factors is missing, the two remaining factors are added and the sum is divided by two. If two of the
32 factors are missing, the remaining factor is the apportionment percentage. A factor is missing if
33 both its numerator and denominator are zero, but it is not missing merely because its numerator is
34 zero.

1 (c) Each factor shall be computed according to the method of accounting (cash or accrual
2 basis) used by the taxpayer for the taxable year.

3 (d) For tax years ending prior to January 1, 2025, if ~~if~~ the allocation and apportionment
4 provisions of §§ 44-14-14.1 — 44-14-14.5 do not fairly represent the extent of the taxpayer's
5 business activity in this state, the taxpayer may petition for or the tax administrator may require, in
6 respect to all or any part of the taxpayer's business activity, if reasonable:

7 (1) The exclusion of any one or more of the factors;

8 (2) The inclusion of one or more additional factors which will fairly represent the
9 taxpayer's business activity in this State; or

10 (3) The employment of any other method to effectuate an equitable allocation and
11 apportionment of the taxpayer's income.

12 (e) For tax years beginning on or after January 1, 2025, if the allocation and apportionment
13 provisions of §§ 44-14-14.1 through 44-14-14.5 or subsection (f) of this section are not reasonably
14 adapted to approximate the net income derived from business carried on within the state, a banking
15 institution may apply to the tax administrator, or the tax administrator may require the banking
16 institution, to have its income derived from business carried on within the state determined by an
17 alternative method. Such application shall be made by attaching to its duly-filed return a statement
18 of the reasons why the banking institution believes that §§ 44-14-14.1 through 44-14-14.5 or
19 subsection (f) of this section are not reasonably adapted to approximate its net income derived from
20 business carried on within the state and a description of the method sought by it. A banking
21 institution which so applies shall, upon receipt of a request therefor from the tax administrator, file
22 with the tax administrator, under oath of its treasurer, a statement of such additional information as
23 the tax administrator may require.

24 If, after such application by the banking institution, or after the tax administrator's own
25 review, the tax administrator determines that §§ 44-14-14.1 through 44-14-14.5 or subsection (f)
26 of this section are not reasonably adapted to approximate the banking institution's net income
27 derived from business carried on within the state, the tax administrator shall by reasonable methods
28 determine the amount of net income derived from business activity carried on within the state. The
29 amount thus determined shall be the net income taxable under §§ 44-14-3 or 44-14-4 and the
30 foregoing determination shall be in lieu of the determination required by §§ 44-14-14.1 through
31 44-14-14.5 or subsection (f) of this section. If an alternative method is used by the tax administrator
32 hereunder, the tax administrator, in their discretion, may require similar information from such
33 banking institution if it shall appear that such alternative method or §§ 44-14-14.1 through 44-14-
34 14.5 or subsection (f) of this section are not reasonably adapted to approximate for the applicable

1 year the banking institution's net income derived from business carried on within the state and may
2 again by reasonable methods determine such income.

3 (f) For tax years beginning on or after January 1, 2025:

4 (1) Except as specifically provided in this chapter a banking institution whose business
5 activity is taxable both within and outside of this state may elect to allocate and apportion its net
6 income by multiplying its net income by its receipts factor as described in § 44-14-14.3. For
7 purposes of an election made pursuant to this subsection (1), the following shall apply:

8 (i) An election shall be made by filing the form prescribed by the tax administrator with
9 the taxpayer's duly-filed return. The election shall take effect in the tax year for which the taxpayer
10 makes the election and shall remain in effect for all subsequent tax years; except that, after a
11 minimum of five (5) subsequent tax years after the tax year for which the election is made, in the
12 event of a material change of facts or law, a taxpayer may apply to the tax administrator to revoke
13 the election. Such application shall be made by attaching a statement of the event of a material
14 change of facts or law to the taxpayer's duly-filed return. A banking institution which so applies
15 shall, upon receipt of a request therefor from the tax administrator, file with the tax administrator,
16 under oath of its treasurer, a statement of such additional information as the tax administrator may
17 require.

18 (ii) If the receipts factor is missing, the whole of the banking institution's net income shall
19 be taxable pursuant to §§ 44-14-3 through 44-14-4. The receipts factor shall be missing if both its
20 numerator and denominator are zero, but it shall not be missing merely because its numerator is
21 zero.

22 (iii) The receipts factor shall be computed according to the method of accounting (cash or
23 accrual basis) used by the taxpayer for the taxable year.

24 SECTION 2. Chapter 44-14 of the General Laws entitled "Taxation of Banks" is hereby
25 amended by adding thereto the following section:

26 **44-14-39. Combined reporting study.**

27 (a) For the purpose of this section:

28 (1) "Common ownership" means more than fifty percent (50%) of the voting control of
29 each member of the group is directly or indirectly owned by a common owner or owners, either
30 corporate or non-corporate, whether or not owner or owners are members of the combined group.

31 (2) "Member" means a banking institution included in a unitary business.

32 (3) "Unitary business" means the activities of a group of two (2) or more banking
33 institutions as defined in § 44-14-2(2) and corporations as defined in § 44-11-1(4) under common
34 ownership that are sufficiently interdependent, integrated or interrelated through their activities so

1 as to provide mutual benefit and produce a significant sharing or exchange of value among them
2 or a significant flow of value between the separate parts. The term unitary business shall be
3 construed to the broadest extent permitted under the United States Constitution.

4 (4) “United States” means the fifty (50) states of the United States, the District of
5 Columbia, and the United States’ territories and possessions.

6 (b) Combined reporting.

7 (1) As part of its tax return for the taxable year beginning after December 31, 2023, but
8 before January 1, 2026, each banking institution which is part of a unitary business must file a
9 report, in a manner prescribed by the tax administrator, for the combined group containing the
10 combined net income of the combined group. The use of a combined report does not disregard the
11 separate identities of the members of the combined group. The report shall include, at a minimum,
12 for each taxable year the following:

13 (i) The difference in tax owed as a result of filing a combined report compared to the tax
14 owed under the current filing requirements;

15 (ii) Volume of sales in the state and worldwide; and

16 (iii) Taxable income in the state and worldwide.

17 (2) The combined reporting requirement required pursuant to this section shall not include
18 any persons that engage in activities enumerated in §§ 44-13-4 or 44-17-1, whether within or
19 outside this state. Neither the income or loss nor the apportionment factors of such a person shall
20 be included, directly or indirectly, in the combined report.

21 (3) Members of a combined group shall exclude as a member and disregard the income and
22 apportionment factors of any banking institution chartered or corporation incorporated in a foreign
23 jurisdiction (a “foreign banking institution or corporation”) if the average of its property, payroll,
24 and sales factors outside the United States is eighty percent (80%) or more. If a foreign banking
25 institution or corporation is includible as a member in the combined group, to the extent that such
26 foreign banking institution or corporation’s income is subject to the provisions of a federal income
27 tax treaty, such income is not includible in the combined group net income. Such member shall
28 also not include in the combined report any expenses or apportionment factors attributable to
29 income that is subject to the provisions of a federal income tax treaty. For purposes of this chapter,
30 “federal income tax treaty” means a comprehensive income tax treaty between the United States
31 and a foreign jurisdiction, other than a foreign jurisdiction which the organization for economic co-
32 operation and development has determined has not committed to the internationally agreed tax
33 standard, or has committed to the international agreed tax standard but has not yet substantially
34 implemented that standard, as identified in the then-current organization for economic co-operation

1 and development progress report.

2 (c) Any banking institution which is required to file a report under this section which fails
3 to file a timely report or which files a false report shall be assessed a penalty not to exceed ten
4 thousand dollars (\$10,000). The penalty may be waived for good cause shown for failure to timely
5 file.

6 (d) The tax administrator shall on or before March 15, 2027, based on the information
7 provided in income tax returns and the data submitted under this section, submit a report to the
8 chairs of the house finance committee and senate finance committee, and the house fiscal advisor
9 and the senate fiscal advisor analyzing the policy and fiscal ramifications of changing the bank
10 excise tax statute to a combined method of reporting.

11 SECTION 3. Section 35-6-1 of the General Laws in Chapter 35-6 entitled "Accounts and
12 Control" is hereby amended to read as follows:

13 **35-6-1. Controller — Duties in general.**

14 (a) Within the department of administration there shall be a controller who shall be
15 appointed by the director of administration pursuant to chapter 4 of title 36. The controller shall be
16 responsible for accounting and expenditure control and shall be required to:

17 (1) Administer a comprehensive accounting and recording system that will classify the
18 transactions of the state departments and agencies in accordance with the budget plan;

19 (2) Maintain control accounts for all supplies, materials, and equipment for all departments
20 and agencies except as otherwise provided by law;

21 (3) Prescribe a financial, accounting, and cost accounting system for state departments and
22 agencies;

23 (4) Identify federal grant-funding opportunities to support the governor's and general
24 assembly's major policy initiatives and provide technical assistance with the application process
25 and post-award grants management;

26 (5) Manage federal fiscal proposals and guidelines and serve as the state clearinghouse for
27 the application of federal grants;

28 (6) Pre-audit all state receipts and expenditures;

29 (7) Prepare financial statements required by the several departments and agencies, by the
30 governor, or by the general assembly;

31 (8) Approve the orders drawn on the general treasurer; provided, that the pre-audit of all
32 expenditures under authority of the legislative department and the judicial department by the state
33 controller shall be purely ministerial, concerned only with the legality of the expenditure and
34 availability of the funds, and in no event shall the state controller interpose his or her judgment

1 regarding the wisdom or expediency of any item or items of expenditure;

2 (9) Prepare and timely file, on behalf of the state, any and all reports required by the United
3 States, including, but not limited to, the Internal Revenue Service, or required by any department
4 or agency of the state, with respect to the state payroll; and

5 (10) Prepare a preliminary closing statement for each fiscal year. The controller shall
6 forward the statement to the chairpersons of the house finance committee and the senate finance
7 committee, with copies to the house fiscal advisor and the senate fiscal and policy advisor, by
8 September 1 following the fiscal year ending the prior June 30 or thirty (30) days after enactment
9 of the appropriations act, whichever is later. The report shall include but is not limited to:

10 (i) A report of all revenues received by the state in the completed fiscal year, together with
11 the estimates adopted for that year as contained in the final enacted budget, and together with all
12 deviations between estimated revenues and actual collections. The report shall also include cash
13 collections and accrual adjustments;

14 (ii) A comparison of actual expenditures with each of the actual appropriations, including
15 supplemental appropriations and other adjustments provided for in the Rhode Island general laws;

16 (iii) A statement of the opening and closing surplus in the general revenue account; and

17 (iv) A statement of the opening surplus, activity, and closing surplus in the state budget
18 reserve and cash stabilization account and the state bond capital fund.

19 (b) The controller shall provide supporting information on revenues, expenditures, capital
20 projects, and debt service upon request of the house finance committee chairperson, senate finance
21 committee chairperson, house fiscal advisor, or senate fiscal and policy advisor.

22 (c) Upon issuance of the audited annual financial statement, the controller shall provide a
23 report of the differences between the preliminary financial report and the final report as contained
24 in the audited annual financial statement.

25 (d) The controller shall create a special fund not part of the general fund and shall deposit
26 amounts equivalent to all deferred contributions under this act into that fund. Any amounts
27 remaining in the fund on June 15, 2010, shall be transferred to the general treasurer who shall
28 transfer such amounts into the retirement system as appropriate.

29 (e) Upon issuance of the audited financial statement, the controller shall transfer fifty
30 percent (50%) of all general revenues received in the completed fiscal year net of transfer to the
31 state budget reserve and cash stabilization account as required by § 35-3-20 in excess of those
32 estimates adopted for that year as contained in the final enacted budget to the employees' retirement
33 system of the state of Rhode Island as defined in § 36-8-2 and fifty percent (50%) to the
34 supplemental state budget reserve account as defined in § 35-3-20.2, [except that excess revenues](#)

1 [from fiscal year 2023 shall not be transferred to the supplemental state budget reserve account.](#)

2 (f) The controller shall implement a direct deposit payroll system for state employees.

3 (1) There shall be no service charge of any type paid by the state employee at any time
4 which shall decrease the net amount of the employee's salary deposited to the financial institution
5 of the personal choice of the employee as a result of the use of direct deposit.

6 (2) Employees hired after September 30, 2014, shall participate in the direct deposit
7 system. At the time the employee is hired, the employee shall identify a financial institution that
8 will serve as a personal depository agent for the employee.

9 (3) No later than June 30, 2016, each employee hired before September 30, 2014, who is
10 not a participant in the direct deposit system, shall identify a financial institution that will serve as
11 a personal depository agent for the employee.

12 (4) The controller shall promulgate rules and regulations as necessary for implementation
13 and administration of the direct deposit system, which shall include limited exceptions to required
14 participation.

15 SECTION 4. Sections 1 and 2 of this act shall take effect on January 1, 2025 and Section
16 3 of this act shall take effect upon passage.

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EXPLANATION
BY THE LEGISLATIVE COUNCIL
OF
A N A C T
RELATING TO TAXATION -- TAXATION OF BANKS

1 This act would create, for financial institution taxpayers, an election to allocate and
2 apportion their net income beginning in tax year 2025 and would also authorize a combined
3 reporting study. The act would also provide that excess revenues from fiscal year 2023 shall not be
4 transferred to the supplemental state budget reserve account.

5 Sections 1 and 2 of this act would take effect on January 1, 2025 and Section 3 of this act
6 would take effect upon passage.

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