

STATE OF DELAWARE
DEPARTMENT OF FINANCE
DIVISION OF REVENUE
601 DELAWARE AVENUE
WILMINGTON, DELAWARE 19899

TAX NEWSGRAM 74-7

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- Exemption From Tax - Banks, Trust Companies and Building and Loan Associations (H. B. 1110, 127th General Assembly, Approved by the Governor on July 10, 1974.)

A. Banks and Trust Companies

Section 1 of H. B. 1110, (Chap. 434, Laws of Delaware, 1974) imposes a franchise tax on Banks and Trust Companies measured by net income effective January 1, 1974.

Section 1108, Title 5, Delaware Code, as amended by the Bill, relating to Banks and Trust Companies, provides as follows:

"Section 1108. State Corporation Income and Other Taxes; Exemption.

Notwithstanding the provisions of Title 30 of the Delaware Code, all Banks, Trust Companies and National Banks being taxed in accordance with the provisions of this Chapter, shall be exempt from the State Corporation income tax as of January 1, 1974, and the taxation of income of Banks, Trust Companies, and National Banks under this Chapter shall be in lieu of occupational taxes or taxes upon the income, capital, and assets of such Bank, except that no real estate owned or acquired by such Bank or Trust Company shall be exempt from taxation." (Emph. added)

Pursuant to the above provision, any Bank or Trust Company subject to the new tax will not be liable for the tentative corporation income tax under Section 1904, Title 30, and may file a claim for refund with respect to any tentative corporation income tax reported and paid for any taxable year commencing on or after January 1, 1974.

Any such Bank or Trust Company filing returns on a fiscal year basis will be entitled to file a claim for refund for that portion of any corporation income tax paid on a final return with respect to income attributable to 1974. For example, a Bank or Trust Company operating on a fiscal year ending March 31, 1974, which filed a final corporation income tax return on July 1, 1974, for such fiscal year and paid the tax liability due, would be entitled to file a claim for refund of the pro rata portion

of the tax (three-twelfths) attributable to 1974 income.

The law further provides that the tax imposed on Banks and Trust Companies shall be in lieu of "occupational taxes or taxes upon the income, capital and assets" of such Bank. It is the position of the Division of Revenue that any Bank or Trust Company subject to the new law is exempted from occupational license taxes imposed under Chapter 23, Title 30, Delaware Code, for the license year commencing July 1, 1974. Since the current occupational licenses were due and payable on July 1, 1973, for the full license year (July 1 to June 30), and there is no provision in the law for prorating such fees, no refund of any such license fees will be allowed for the period from January 1, 1974, thru June 30, 1974.

Section 1108 does not provide that the new tax is in lieu of business license taxes (as contrasted with occupational license taxes), and, therefore, such Banks will continue to be subject to the requirements of Chapter 29, Title 30 (relating to the retailer license), Chapter 30 (relating to Motor Vehicle Dealer), and Chapter 43 (relating to the Use Lease Tax on the lease of tangible personal property). It is considered that such business license taxes do not fall within the meaning of the statutory phrase "occupational taxes or taxes upon the income, capital and assets" of such Banks.

B. Building and Loan Associations

Section 2 of H. B. 1110 adds a new Chapter 18 to Title 5, Delaware Code, relating to the taxation of Building & Loan Associations, imposing a franchise tax based on net earnings.

Sections 1804 and 1806, Title 5, (as amended) provide as follows:

"Section 1804. State Corporation Income Tax; Exemption

All Building and Loan Associations being taxed in accordance with the provisions of this Chapter shall be exempt from the State Corporation income tax beginning with the fiscal year for each such building and loan association in which this Chapter shall become effective."

"Section 1806. Exemption From Other Taxes

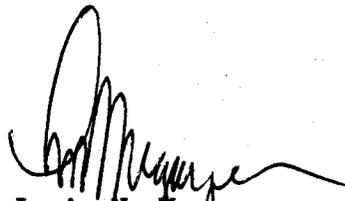
The taxation of the income of the Building and Loan Associations under this Chapter shall be in lieu of all taxes upon the capital, surplus, property and assets of such organization, except that no real estate owned by any such organization constituting the whole or any part of its capital, surplus or assets shall be exempt from taxation."

Section 3 of H. B. 1110, the effective date section, provides as follows:

"Section 3. This Act shall be effective as of January 1, 1974. For purposes of payment of the tax imposed by Section 2 of this Act, Building and Loan Associations whose fiscal years end after January 1, 1974, and before January 1, 1975, shall pay the tax on that pro rata portion of the net earnings of the Association accrued after January 1, 1974."

Pursuant to the provisions of Section 1804, any Building and Loan Association subject to the tax imposed by Chapter 18 is exempt from the Delaware Corporation income tax. The effective date provision of the Bill specifies that those Associations operating on a fiscal year basis will be taxed under the new law on the pro rata portion of their net earnings accrued after January 1, 1974. Accordingly, such Associations are exempt from the Corporation income tax effective January 1, 1974, and may file claims for refund with respect to that portion of any Corporation income tax reported and paid which is attributable to income earned after January 1, 1974. It is believed that the intent of the law is to exempt from the Corporation income tax as of January 1, 1974, any Association that is subject to the new tax on earnings derived after January 1, 1974.

Since Section 1806 does not state that the new tax is in lieu of "occupational taxes," such Associations will continue to be subject to all occupational and business license requirements imposed under Chapters 23, 29, 30, and 43, Title 30, Delaware Code.



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