

State of South Dakota

EIGHTY-NINTH SESSION
LEGISLATIVE ASSEMBLY, 2014

400V0389

HOUSE STATE AFFAIRS
ENGROSSED NO. **HB 1200** - 02/07/2014

Introduced by: The Committee on State Affairs at the request of the Office of the Governor

1 FOR AN ACT ENTITLED, An Act to revise certain bank franchise tax provisions regarding
2 net income and net operating losses.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. That § 10-43-10.2 be amended to read as follows:

5 10-43-10.2. ~~Additional items of~~ Added to taxable income are:

6 (1) ~~Net operating losses or capital losses incurred prior to July 1, 1978, included in~~
7 ~~taxable income under the Internal Revenue Code;~~

8 ~~(2)~~ Interest or dividend income derived from obligations or securities of states or
9 political subdivisions or authorities thereof not included in taxable income as
10 determined under the Internal Revenue Code;

11 ~~(3)~~(2) All income taxes paid or accrued, as the case may be, during the tax year under the
12 provisions of chapter 10-43 or under the provisions of any income tax, or franchise
13 or privilege taxes measured by income levied by any other state or political
14 subdivision to the extent that such taxes were deducted to determine federal taxable
15 income;



1 ~~(4)~~(3) Bad debt deductions in excess of credits actually ascertained to be worthless and
2 charged off within the tax year;

3 ~~(5)~~(4) Any amount subsequently received on account of a bad debt previously charged off
4 as a deduction for tax purposes;

5 ~~(6)~~(5) Any amount received as a refund of federal income taxes during the tax year if that
6 amount was previously deducted in determining net income;

7 ~~(7)~~(6) Dividends received from other corporations to the extent that such dividends have
8 been deducted from net income as determined under the Internal Revenue Code;

9 ~~(8)~~ ~~The difference obtained by subtracting net income under the accrual method of~~
10 ~~accounting from net income under the cash method of accounting. If the difference~~
11 ~~is less than zero then the provisions of § 10-43-10.3 apply. This is an optional~~
12 ~~adjustment and is available only to financial institutions first doing business in South~~
13 ~~Dakota after January 1, 1987, or to financial institutions that are required to switch~~
14 ~~from the cash method of accounting to the accrual method of accounting under § 448~~
15 ~~of the Internal Revenue Code; and~~

16 ~~(9)~~(7) Any capital loss from liquidating sales within the twelve-month period beginning on
17 the date on which a financial institution adopts a plan of complete liquidation if all
18 of the assets of the financial institution are distributed in complete liquidation less
19 assets retained to meet claims within ~~such~~ the twelve-month period, or from the
20 distribution of property in complete liquidation of the financial institution which is
21 subject to federal corporate income taxes pursuant to § 336 of the Internal Revenue
22 Code.

23 Section 2. That § 10-43-10.3 be amended to read as follows:

24 10-43-10.3. Subtracted from taxable income are:

- 1 (1) Interest and dividends from obligations of the United States government and its
2 agencies which this state is prohibited by federal law or treaty from taxing by an
3 income tax, a franchise tax, or a privilege tax;
- 4 (2) Dividends received from financial institutions subject to taxation under this chapter
5 to the extent such dividends were included in taxable income as determined under the
6 Internal Revenue Code;
- 7 (3) Taxes imposed upon the financial institution within the tax year, under the Internal
8 Revenue Code excluding any taxes imposed under 26 USC § 1374 and 26 USC
9 § 1375;
- 10 (4) ~~Additional depreciation expenses to provide for the amortization of the excess, if any,~~
11 ~~of the remaining undepreciated tax basis as determined under the provisions of this~~
12 ~~chapter, over the depreciable basis as determined for federal tax purposes. Such~~
13 ~~excess shall be determined as of January 1, 1977, or on the first day of the first~~
14 ~~taxable year starting after January 1, 1977, and amortized over the remaining~~
15 ~~depreciable life of that asset or group of assets;~~
- 16 ~~(5) Any interest expense described in §§ 291(e)(1)(B) and 265(b) of the Internal Revenue~~
17 ~~Code, which interest expense shall be deductible;~~
- 18 ~~(6) The difference obtained by subtracting net income under the cash method of~~
19 ~~accounting from net income under the accrual method of accounting. If the difference~~
20 ~~is less than zero then the provisions of § 10-43-10.2 apply. This is an optional~~
21 ~~adjustment and is available only to financial institutions first doing business in South~~
22 ~~Dakota after January 1, 1987, or to financial institutions that are required to switch~~
23 ~~from the cash method of accounting to the accrual method of accounting under § 448~~
24 ~~of the Internal Revenue Code;~~

1 ~~(7)~~ Any meal expense and entertainment expense disallowed under § 274(n) of the
2 Internal Revenue Code;

3 ~~(8)~~(5) Any capital gain from liquidating sales within the twelve-month period beginning on
4 the date on which a financial institution adopts a plan of complete liquidation if all
5 of the assets of the financial institution are distributed in complete liquidation less
6 assets retained to meet claims within ~~such~~ the twelve-month period, or from the
7 distribution of property in complete liquidation of the financial institution which is
8 subject to federal corporate income taxes pursuant to § 336 of the Internal Revenue
9 Code;

10 ~~(9)~~(6) Any adjustment to taxable income due to a change in the method used to compute the
11 federal bad debt deduction where the adjustment has already been included in taxable
12 income for purposes of the tax imposed by this chapter;

13 ~~(10)~~(7) For those financial institutions making an election pursuant to 26 USC
14 § 1362(a), as amended, and in effect on January 1, 1997, imputed federal
15 income taxes in an amount equal to the taxes that would have been paid on net
16 income as defined in § 10-43-10.1 had the financial institution continued to
17 file its federal tax return without making an election to file pursuant to 26
18 USC § 1362(a); and

19 ~~(11)~~(8) For those financial institutions organized as limited liability companies,
20 imputed federal income taxes in an amount equal to the taxes that would have
21 been paid on net income as defined in § 10-43-10.1 had the financial
22 institution elected to file as a subchapter C corporation under the Internal
23 Revenue Code.

24 Section 3. That § 10-43-10.4 be amended to read as follows:

1 10-43-10.4. No ~~carryover~~ carryback of net operating losses or capital losses may be deducted
2 from ~~the items of additional taxable income includable~~ net income for state tax purposes
3 pursuant to § 10-43-10.2.

4 Section 4. That chapter 10-43 be amended by adding thereto a NEW SECTION to read as
5 follows:

6 A deduction may be made for a carryforward of a net operating loss or capital loss. The
7 deduction is limited to the seven tax years immediately following the tax year of the loss. Net
8 income may not be less than zero prior to making the adjustments provided for in §§ 10-43-10.2
9 and 10-43-10.3 because of a deduction taken for losses not incurred during the tax year for
10 which the return is being filed.

11 The provisions of this section only apply to net operating losses or capital losses incurred
12 on or after January 1, 2015.

13 Section 5. That ARSD 64:26:03:12 be repealed.

14 ~~64:26:03:12. Net operating loss carryover. Net operating losses carried forward from~~
15 ~~another year on a taxpayer's federal tax return may not reduce net income for South Dakota~~
16 ~~franchise tax purposes. Net income may not be less than zero prior to making the adjustments~~
17 ~~provided for in SDCL 10-43-10.2 or 10-43-10.3 because of a deduction taken for losses not~~
18 ~~incurred during the tax year for which the return is being filed.~~

19 Section 6. The effective date of this Act is January 1, 2015.