

AN ACT

ENTITLED, An Act to revise certain provisions concerning the bank franchise tax.

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

Section 1. That subdivision (4) of § 10-43-1 be amended to read:

- (4) "Financial institution," any banking institution, production credit association, or savings and loan association organized under the laws of the United States and located or doing business in this state; any bank, savings and loan association, mutual saving bank, or trust company, organized under the laws of this state or of any other state, district, territory, or country, doing business within this state; any person licensed in this state pursuant to chapter 54-4, the installment repayment small loan and consumer finance law; and any person in the business of buying loans, notes, or other evidences of debt except those persons registered as broker-dealers pursuant to chapter 47-31B; and persons in the business of making installment repayment and open-end loans which may be unsecured or secured by real or personal property, which loans are in an aggregate amount exceeding five hundred dollars, which are repaid in two or more installment payments or one lump sum payment extending over a time exceeding thirty days from the day the loan was made except where the loan is made by the person selling the property, incidental to the sale of the property and where the seller is primarily in the business of selling such real or personal property or except where the loan is made to a related corporation and the primary business of these related corporations is the production and sale of tangible personal property or where the loan is made in the form of an advance to secure the production of equipment to be obtained by the lender or to finance a joint venture between the lender and others which has been formed to produce and sell tangible personal property;

Section 2. That § 10-43-2 be amended to read:

10-43-2. An annual tax is hereby imposed on each financial institution doing business in this state or licensed to do business in this state during any part of its tax year.

Section 3. That § 10-43-2.1 be repealed.

Section 4. That § 10-43-4 be amended to read:

10-43-4. The liability for the tax imposed by this chapter shall arise upon the first day of each tax year and shall be based upon the net income assignable to this state at the rate of six percent on net income of four hundred million dollars or less; at the rate of five percent on net income exceeding four hundred million dollars but equal to or less than four hundred twenty-five million dollars; at the rate of four percent on the net income exceeding four hundred twenty-five million dollars but equal to or less than four hundred fifty million dollars; at the rate of three percent on the net income exceeding four hundred fifty million dollars but equal to or less than four hundred seventy-five million dollars; at the rate of two percent on the net income exceeding four hundred seventy-five million dollars but equal to or less than five hundred million dollars; at the rate of one percent on the net income exceeding five hundred million dollars but equal to or less than six hundred million dollars; at the rate of one-half of one percent on the net income exceeding six hundred million dollars but equal to or less than one billion two hundred million dollars; and at the rate of one-quarter of one percent on the net income exceeding one billion two hundred million dollars. The tax payable under this section may be no less than two hundred dollars.

Section 5. That § 10-43-5 be amended to read:

10-43-5. The tax referred to in this chapter is in lieu of all other taxes, state, county, and local, except taxes upon the institutions' real property, taxes upon the institutions' leased sites, taxes upon tangible personal property and products transferred electronically not normally used in extension of credit or acceptance of deposits and the retail sales tax or the use tax on tangible personal property

and any product transferred electronically. However, tangible personal property and any product transferred electronically acquired by the financial institution through a foreclosure proceeding are exempt from such other taxes.

Section 6. That § 10-43-10.3 be amended to read:

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

- (1) Dividends received from financial institutions subject to taxation under this chapter to the extent such dividends were included in taxable income as determined under the Internal Revenue Code;
- (2) Taxes imposed upon the financial institution within the tax year, under the Internal Revenue Code excluding any taxes imposed under 26 USC § 1374 and 26 USC § 1375;
- (3) Any interest expense described in §§ 291(e)(1)(B) and 265(b) of the Internal Revenue Code, which interest expense shall be deductible;
- (4) Any capital gain from liquidating sales within the twelve-month period beginning on the date on which a financial institution adopts a plan of complete liquidation if all of the assets of the financial institution are distributed in complete liquidation less assets retained to meet claims within the twelve-month period, or from the distribution of property in complete liquidation of the financial institution which is subject to federal corporate income taxes pursuant to § 336 of the Internal Revenue Code;
- (5) Any adjustment to taxable income due to a change in the method used to compute the federal bad debt deduction where the adjustment has already been included in taxable income for purposes of the tax imposed by this chapter;
- (6) For those financial institutions making an election pursuant to 26 USC § 1362(a), as amended, and in effect on January 1, 2015, imputed federal income taxes in an amount equal to the taxes that would have been paid on net income as defined in § 10-43-10.1 had

the financial institution continued to file its federal tax return without making an election to file pursuant to 26 USC § 1362(a); and

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

Section 7. That § 10-43-10.4 be amended to read:

10-43-10.4. No carryback of net operating losses may be deducted from net income for state tax purposes.

Section 8. That § 10-43-10.5 be amended to read:

10-43-10.5. A deduction may be made for a carryforward of a net operating loss. The deduction is limited to the seven tax years immediately following the tax year of the loss. Net income may not be less than zero prior to making the adjustments provided for in §§ 10-43-10.2 and 10-43-10.3 because of a deduction taken for losses not incurred during the tax year for which the return is being filed.

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

Section 9. That § 10-43-24.1 be amended to read:

10-43-24.1. The payroll factor used in § 10-43-22.1 is a fraction, the numerator of which is the total amount paid in this state during the tax period by the financial institution for compensation, and the denominator of which is the total compensation paid everywhere during the tax period. Compensation does not include any payment to any independent contractor or any other person not classified as an employee.

Section 10. That § 10-43-30 be amended to read:

10-43-30. Each taxpayer shall file a return for the tax year, and pay any tax imposed by this chapter, within fifteen days after the taxpayer's federal income tax return is due.

Any return not filed by the due date or tax not paid by the due date is delinquent and bears penalty and interest as provided in § 10-59-6.

Section 11. That § 10-43-30.1 be amended to read:

10-43-30.1. Any taxpayer shall receive an extension of time to file the return required by this chapter to a day not later than six months from the day the return was originally due, if the taxpayer:

- (1) Files for an extension of time to file the taxpayer's federal income tax return;
- (2) Files a copy of the federal income tax return extension request with the Department of Revenue on or before the day the return was originally due; and
- (3) Makes a reasonable estimate of the amount of tax due and pays that amount with or prior to the request for extension of time to file.

If the time for filing the return is extended at the request of the taxpayer, and the amount of tax due exceeds the reasonable estimate paid pursuant to subdivision (3), interest, but not penalty, shall be added to the difference at the same rate as provided for in § 10-59-6 from the time the return was originally due until the additional taxes due are paid.

Section 12. That § 10-43-31 be repealed.

Section 13. That § 10-43-32 be repealed.

Section 14. That § 10-43-34 be amended to read:

10-43-34. Before a corporation may be dissolved and its assets distributed, the corporation shall make a return for any settlement of the tax for any income earned in the income year up to its final date of dissolution.

Section 15. That § 10-43-42.1 be amended to read:

10-43-42.1. The provisions of this chapter shall be administered by the secretary of revenue and

the secretary may promulgate rules, pursuant to chapter 1-26, concerning:

- (1) The procedure for filing tax returns and payment of the tax;
- (2) The type of accounting to be used;
- (3) The definition and deductibility of net federal income taxes;
- (4) The application of the tax and exemptions; and
- (5) The records to be retained by the taxpayer.

Section 16. That § 10-43-43.1 be amended to read:

10-43-43.1. Each person subject to tax under this chapter shall make and keep for a period of six years after federal taxable income has been finally determined by the United States any records as required by the secretary of revenue or otherwise necessary for the administration of this chapter. The records shall, at all times during business hours of the day, be subject to inspection by the secretary to determine the amount of tax due.

If in the normal conduct of the business, the required records are maintained and kept at an office outside the State of South Dakota, it shall be a sufficient compliance with this section if the records are made available for audit and examination by the Department of Revenue at the office outside of South Dakota.

Section 17. That § 10-43-62 be repealed.

Section 18. That § 10-43-63 be repealed.

Section 19. That § 10-43-64 be repealed.

Section 20. That § 10-43-65 be repealed.

Section 21. That § 10-43-66 be repealed.

Section 22. That § 10-43-67 be repealed.

Section 23. That § 10-43-69 be repealed.

Section 24. That § 10-43-70 be repealed.

Section 25. That § 10-43-71 be repealed.

Section 26. That § 10-43-72 be repealed.

Section 27. That § 10-43-75.1 be repealed.

Section 28. That § 10-43-77 be amended to read:

10-43-77. The county treasurer upon receipt of the funds, remitted to the county pursuant to § 10-43-76, shall apportion and distribute the funds between the taxing subdivisions in the same proportion as the real property taxes levied in each taxing subdivision in the previous year as determined and certified by the secretary of revenue.

Section 29. That § 10-43-78 be repealed.

Section 30. That § 10-43-82 be repealed.

Section 31. That § 10-43-92 be amended to read:

10-43-92. As used in § 10-43-91, the term, extended term trust, means any trust which has no limitation on duration which would require the trust to cease and terminate on a date not later than twenty-one years beyond any life in being. Extended term trusts may not include any trust subject to the Employee Retirement Income Security Act of 1974, as amended and in effect on January 1, 2016.

Section 32. The provisions of this Act only apply to returns that are related to tax years ending in 2015 or thereafter and filed after December 31, 2015.

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I certify that the attached Act
originated in the
SENATE as Bill No. 53

Secretary of the Senate
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President of the Senate

Attest:

Secretary of the Senate

Speaker of the House

Attest:

Chief Clerk

Senate Bill No. 53
File No. _____
Chapter No. _____

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Received at this Executive Office
this ____ day of _____ ,
20__ at _____ M.

By _____
for the Governor
=====

The attached Act is hereby
approved this _____ day of
_____, A.D., 20__

Governor

=====
STATE OF SOUTH DAKOTA,
ss.
Office of the Secretary of State

Filed _____, 20__
at _____ o'clock __ M.

Secretary of State

By _____
Asst. Secretary of State