

AN ACT

ENTITLED, An Act to revise the process for computing the net income of certain financial institutions for bank franchise tax collection purposes.

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

Section 1. That § 10-43-10.1 be amended to read as follows:

10-43-10.1. Net income, in the case of a financial institution, is taxable income as defined in the Internal Revenue Code, as amended, and in effect on January 1, 1997, and reportable for federal income tax purposes for the taxable year, but subject to the adjustments as provided in §§ 10-43-10.2 and 10-43-10.3. If a financial institution has elected to file its federal tax return pursuant to 26 USC 1362(a), as amended, and in effect on January 1, 1997, net income shall be computed in the same manner and in the same amount as if that institution had continued to file its federal tax return without making the election and the financial institution shall continue to be treated as a separate corporation for the purposes of this chapter.

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

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

- (1) Interest and dividends from obligations of the United States government and its agencies which this state is prohibited by federal law or treaty from taxing by an income tax, a franchise tax or a privilege tax;
- (2) 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;
- (3) 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;
- (4) Additional depreciation expenses to provide for the amortization of the excess, if any, of the remaining undepreciated tax basis as determined under the provisions of this chapter,

over the depreciable basis as determined for federal tax purposes. Such excess shall be determined as of January 1, 1977, or on the first day of the first taxable year starting after January 1, 1977, and amortized over the remaining depreciable life of that asset or group of assets;

- (5) Any interest expense described in §§ 291(e)(1)(B) and 265(b) of the Internal Revenue Code, which interest expense shall be deductible;
- (6) The difference obtained by subtracting net income under the cash method of accounting from net income under the accrual method of accounting. If the difference is less than zero then the provisions of § 10-43-10.2 apply. This is an optional adjustment and is available only to financial institutions first doing business in South Dakota after January 1, 1987, or to financial institutions that are required to switch from the cash method of accounting to the accrual method of accounting under § 448 of the Internal Revenue Code;
- (7) Any meal expense and entertainment expense disallowed under § 274(n) of the Internal Revenue Code;
- (8) 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 such 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;
- (9) 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;
- (10) For those financial institutions making an election pursuant to 26 USC 1362(a), as amended, and in effect on January 1, 1997, 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).

Section 3. This Act applies to all returns made pursuant to chapter 10-43 whose original due date for filing is on or after January 1, 1997.

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I certify that the attached Act originated in the

HOUSE as Bill No. 1033

\_\_\_\_\_  
Chief Clerk

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\_\_\_\_\_  
Speaker of the House

Attest:

\_\_\_\_\_  
Chief Clerk

\_\_\_\_\_  
President of the Senate

Attest:

\_\_\_\_\_  
Secretary of the Senate

House Bill No. 1033  
File No. \_\_\_\_\_  
Chapter No. \_\_\_\_\_

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Received at this Executive Office this \_\_\_\_ day of \_\_\_\_\_ ,

19\_\_ at \_\_\_\_ M.

By \_\_\_\_\_  
for the Governor

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The attached Act is hereby approved this \_\_\_\_\_ day of \_\_\_\_\_ , A.D., 19\_\_

\_\_\_\_\_  
Governor

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STATE OF SOUTH DAKOTA,  
ss.

Office of the Secretary of State

Filed \_\_\_\_\_ , 19\_\_  
at \_\_\_\_\_ o'clock \_\_ M.

\_\_\_\_\_  
Secretary of State

By \_\_\_\_\_  
Asst. Secretary of State