

 **Rhode Island Department of Revenue**
Division of Taxation

Via Electronic Mail

April 11, 2024

The Honorable Marvin L. Abney
Chair, House Committee on Finance
Rhode Island State House
Providence, RI 02903

RE: Letter Regarding House Bill 7927 – An Act Relating to Taxation – Taxation of Banks

Dear Chair Abney:

I am writing on behalf of the Rhode Island Department of Revenue, Division of Taxation (“Division”), to: i) express concerns regarding issues with proposed House Bill 7927 as currently drafted; ii) explain the background and current statutory context in order to clarify the intended and unintended consequences of this bill; and iii) make recommendations and request your support in implementing those recommendations.

This letter is not intended as a position in support of or opposition to the bill, but only as recommendations on drafting to provide clarity in the bill and to aid tax administration and compliance.

As you know, this bill amends Chapter 44-14 of the Rhode Island General Laws to add a new section, R.I. Gen. Laws § 44-14-14.6, entitled “Allocation and apportionment method of income election.” The bill allows banking institutions whose business activities are taxable within and without Rhode Island to elect the allocation and apportionment method of income in R.I. Gen. Laws § 44-14-14.1. This election “shall be made by filing the form prescribed by the tax administrator with the annual return required by § 44-14-6.” The bill further proposes that the “portion of net income apportioned to Rhode Island for a banking institution making this election shall be determined by multiplying total net income by the receipts factor provided in § 44-14-14.3.” The bill is effective on January 1, 2025.

As currently drafted, this bill is not administrable as it contains conflicting language. The bill’s language allows for the election of a three-factor allocation and apportionment method, which is the current law and method under R.I. Gen. Laws § 44-14-14.1, but then mandates that those making the election determine apportionment by multiplying total net income by the receipts factor provided in § 44-14-14.3, which is in line with single sales factor apportionment. Not only does this conflate the two different apportionment methods, but it is incongruous for a banking institution to be permitted to elect its apportionment method while also being required to use single sales factor apportionment.

As a result of the statutory drafting inconsistencies, it is assumed, based on the description of the bill in the explanation, that the intent of the bill is to allow banking institutions subject to the bank excise tax pursuant to R.I. Gen. Laws § 44-14-1 *et seq.* the option of electing its apportionment annually. This would allow the institution to choose between single sales factor apportionment,

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which, in short, would account for only those items enumerated in the receipts factor set forth in R.I. Gen. Laws § 44-14-14.3, and the current three-factor apportionment, which would account for the same receipts factor, along with property and payroll factors set forth in R.I. Gen. Laws §§ 44-14-14.4 and 44-14-14.5. Banking institutions would make this choice annually at the time of filing their returns, which could be the March 15th due date, or later for fiscal year and/or extension filers.

The annual election would be difficult to administer. Filers essentially could elect a different apportionment method each year, which would require significant resources to audit for compliance and enforcement. The variable annual choices of apportionment methods by bank excise filers, along with the supporting records required and differentiation between sourcing methods at the federal level and with our neighboring states, also make it difficult to assess and estimate accurate revenue impacts from year to year. These concerns are complicated by the complex nature of bank excise filings and the fact that returns can be filed at different times depending on the nature of the filer, resulting in many of the taxpayers to actively filing and paying across multiple years. Based on these concerns, and on current resource constraints, it is not feasible to conduct thorough audits on elected apportionment on an annual basis, which would be necessary to ensure compliance and provide a level of certainty for revenue impacts and estimates.

The Division is aware that many states have differing statutory paradigms for determining apportionment, but no states allow for an election similar to the election proposed in House Bill 7927. Not only is this proposed tax structure not consistent with the vast majority of state tax regimes for financial institutions, including that of Massachusetts and Connecticut, but providing for this type of election could have broad unintended impacts in the regional marketplace. The complexity of the bank excise tax apportionment and sourcing options as it pertains to the Rhode Island marketplace require careful consideration and analysis. A clarification on the policy goals of this legislation is necessary to provide guidance as to administrability and fiscal impact. The Division would further note that a single apportionment regime, consistent with Rhode Island's regional neighbors, would alleviate many of its administrability concerns.

The Division takes no position with respect to the remainder of the proposed legislation. Rather, the Division is concerned solely with the issues of clarity, tax compliance, and tax administration. As such, the Division respectfully suggests that the bill be redrafted for clarity.

I look forward to working with you to address the issues raised in this letter and appreciate your consideration.

Very truly yours,



Neena S. Savage
Tax Administrator

cc: The Honorable Members of the House Committee on Finance (via:
HouseFinance@rilegislature.gov)
The Honorable Joseph J. Solomon, Jr. (rep-solomon@rilegislature.gov)
Nicole McCarty, Esquire, Chief Legal Counsel to the Speaker of the House
Lynne Urbani, Director of House Policy
Thomas A. Verdi, Director, Department of Revenue