



September 17, 2015

Blair A. Hillyer
President and CEO
First National Bank of Dennison
P.O. Box 31
Dennison, OH 44621

Subject: Ohio Financial Institutions Tax

Dear Mr. Hillyer:

I am responding to your recent letter requesting the opinion of the Office of the Comptroller of the Currency (OCC) on the applicability of the Ohio Financial Institutions Tax (FIT) to national banks with their principal office in Ohio. The FIT levies a tax on every financial institution for the privilege of conducting business in the state of Ohio.¹ Specifically, you ask whether the FIT is consistent with 12 U.S.C. § 548, which provides that, for purposes of state tax law, a national bank shall be treated as a state bank chartered by the state in which the national bank has its principal office. You question whether the FIT is consistent with 12 U.S.C. § 548 because the FIT provides Ohio-chartered state banks with a tax credit for regulatory assessments paid to the Ohio Division of Financial Institutions, but it provides no corresponding credit for a national bank that has its principal office in Ohio. You suggest the FIT, therefore, does not treat Ohio national banks the same as Ohio-chartered state banks.

The OCC agrees that the FIT does not treat a national bank with its principal office located in Ohio as if it were an Ohio-chartered state bank. For that reason, the FIT is inconsistent with 12 U.S.C. § 548. It is the opinion of the OCC that the imposition of the FIT on a national bank with its principal office in Ohio is not authorized under federal law.

I. Background

The state of Ohio enacted the FIT in 2012, and it replaced the Ohio corporation franchise tax that previously applied to financial institutions.² A financial institution must pay the FIT for each

¹ Ohio Rev. Code § 5726.02.

² 2011 Ohio HB 510.

calendar year that it does business in Ohio or otherwise has a nexus in or with Ohio; the tax payment is due on the first day of January of that calendar year.³

Financial institutions are defined to include: (1) bank organizations; (2) holding companies of bank organizations, except for diversified savings and loan holding companies and grandfathered unitary savings and loan holding companies; and (3) nonbank financial organizations, meaning entities that engage in business primarily as small dollar lenders.⁴ Bank organizations subject to the FIT include: national banks; federal savings associations and federal savings banks; banks, banking associations, trust companies, savings and loan associations, savings banks, and other banking institutions organized or incorporated under the laws of the United States, any state, or a foreign country; Edge corporations organized and operating under 12 U.S.C. § 611, *et seq.*; branches and agencies of foreign banks; small business investment companies; and companies chartered under the Farm Credit Act of 1933.⁵

The amount of the tax assessed under the FIT equals the greater of a minimum tax of one thousand dollars or a certain percentage of "total Ohio equity capital" less any allowed credits.⁶ "Total Ohio equity capital" means the product of the total equity capital⁷ of a financial institution as of the end of the taxable year multiplied by the Ohio apportionment ratio.⁸ The FIT imposes a tax rate on total Ohio equity capital of 8 mills per dollar on the first \$200 million; 4 mills per dollar for equity capital between \$200 million and \$1.3 billion; and 2.5 mills per dollar on equity capital equal to or in excess of \$1.3 billion.⁹ The law provides for the adjustment of these rates if the amount of taxes collected differs from the targeted tax amount by certain specified percentages.¹⁰

Institutions may claim tax credits for job creation, regulatory assessments paid to Ohio's Division of Financial Institutions, historic building rehabilitation, venture capital loan loss, new markets, motion picture production, research and development, and qualifying dealers in intangibles.¹¹ Late payments or filings and failures to make required payments or filings may result in the imposition of penalties, charging of interest, and cancellation of authority to do business in Ohio.¹²

³ Ohio Rev. Code § 5726.02(A).

⁴ Ohio Rev. Code § 5726.01(H) and (M).

⁵ Ohio Rev. Code § 5726.01(B). Credit unions, insurance companies, and institutions organized under the Federal Farm Loan Act are not bank organizations subject to the FIT. *Id.*

⁶ Ohio Rev. Code §§ 5726.02(B), 5726.04(A).

⁷ "Total equity capital" means the sum of the common stock at par value, perpetual preferred stock and related surplus, other surplus not related to perpetual preferred stock, retained earnings, accumulated other comprehensive income, treasury stock, unearned employee stock ownership plan shares, and other equity components of a financial institution. "Total equity capital" excludes any noncontrolling interests, as reported on an FR Y-9 or call report, unless those interests are in a bank organization or a bank holding company. Ohio Rev. Code § 5726.01(S).

⁸ Ohio Rev. Code § 5726.04(C). The apportionment ratio is based on the proportion of the institution's gross receipts that can be apportioned to Ohio. The ratio is a fraction, the numerator of which is the total gross receipts of the financial institution in Ohio during the taxable year and denominator of which is the total gross receipts of the financial institution everywhere during the taxable year. Ohio Rev. Code § 5726.05.

⁹ Ohio Rev. Code § 5726.04(A).

¹⁰ Ohio Rev. Code § 5726.04(E).

¹¹ Ohio Rev. Code §§ 5726.50 to 5726.57.

¹² Ohio Rev. Code §§ 5726.07, 5726.21, 5726.32, 5726.40.

II. Discussion

States have the authority to tax national banks only with express authorization from Congress.¹³ Twelve U.S.C. § 548 provides that “[f]or the purposes of any tax law enacted under authority of the United States or any State, a national bank shall be treated as a bank organized and existing under the laws of the State or other jurisdiction within which its principal office is located.” Legislative history clarifies that in using the phrase “treated as,” Congress intended for a national bank to be taxed as if it were a state bank chartered by the state in which the national bank has its principal office.¹⁴

The FIT does not meet the requirements for state taxation of national banks under 12 U.S.C. § 548 because the FIT does not treat a national bank “as a bank organized and existing under the laws of the State or other jurisdiction within which its principal office is located.” Ohio law provides that each bank organization organized under Title XI of the Ohio Revised Code may claim a nonrefundable tax credit against the FIT for regulatory assessments paid to the Ohio Division of Financial Institutions.¹⁵ The law provides no similar credit for regulatory assessments paid by bank organizations not organized under Title XI of the Ohio Revised Code, and it provides no credit for assessments paid to other financial regulators. Thus, the FIT provides a tax credit to Ohio-chartered state banks that is not available to national banks. This arrangement does not treat a national bank with its principal office located in Ohio as if it were an Ohio-chartered state bank, in contravention of 12 U.S.C. § 548. Because the FIT is inconsistent with 12 U.S.C. § 548, it is the opinion of the OCC that the imposition of the FIT on a national bank with its principal office in Ohio is not authorized under federal law.

I trust that the foregoing is responsive to your inquiry. If you have any questions concerning this opinion, please contact Andra Shuster, Senior Counsel, Legislative and Regulatory Activities Division, at (202) 649-6283.

Sincerely,



Amy S. Friend
Senior Deputy Comptroller and Chief Counsel
Office of the Comptroller of the Currency

¹³ *First Agricultural National Bank v. State Tax Comm'n*, 392 U.S. 339, 340-46 (1968).

¹⁴ Conference Report No. 91-728, Dec. 9, 1969.

¹⁵ Ohio Rev. Code § 5726.51.