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MEMORANDUM

To: The Honorable Marvin L. Abney, Chairman, House Finance Committee
The Honorable Louis P. DiPalma, Chairman, Senate Finance Committee

From: Joseph Codega Jr., Budget Officer 

Date: May 10, 2024

Subject: Amendments to the FY 2025 Appropriations Act (24-H-7225)

Governor's Budget Amendment #19

The Governor requests article amendments be made under the FY 2025 Appropriations Act to Article 6, *Relating to Taxes and Fees*.

This amendment creates for financial institution taxpayers, under R.I. Gen. Laws § 44-14-1 et seq., an election to allocate and apportion their net income beginning in Tax Year 2025. The amendment also clarifies the procedure for application of an alternative net income apportionment methodology. Furthermore, the amendment adds to certain financial institution taxpayers' net income business expenses or deductions that are an inter-company transaction among entities in the taxpayer's unitary group. Finally, the amendment authorizes a combined reporting study to enable the Division of Taxation to analyze the policy and fiscal ramifications of changing the bank excise tax statute to a combined method of reporting.

If you have any questions regarding these amendments, please feel free to call me or my staff at 222-6300.

cc: Sharon Reynolds Ferland, House Fiscal Advisor
Stephen Whitney, Senate Fiscal Advisor
Brian Daniels, Director, Office of Management and Budget
Jonathan Womer, Director of Administration

H 7225 RELATING TO MAKING APPROPRIATIONS IN SUPPORT OF FY 2025

Article 6 – Relating to Taxes and Fees

New SECTION 13. Page 163, after line 18: Insert new Section 13 as follows and renumber all subsequent sections accordingly:

SECTION 1. [Effective January 1, 2025.] Sections 44-14-13 and 44-14-14.1 of the General Laws in Chapter 44-14 entitled "Taxation of Banks" are hereby amended to read as follows:

44-14-13. Business expenses deductible.

(a) In computing net income there shall be allowed as deductions all the ordinary and necessary expenses paid or incurred by the taxpayer during the income period in carrying on its trade or business, except United States income and excess profits taxes and the tax imposed by this chapter. Without limiting the generality of the foregoing there shall be allowed as deductions: a reasonable allowance for salaries and other compensation for personal services actually rendered; rent; repairs; bad debts; interest; taxes, except United States income and excess profits taxes and the tax imposed by this chapter; losses sustained and not compensated for by insurance or otherwise; depreciation; depletion of mines, oil and gas wells, and timber; amortization of assets; amortization of premiums on "securities" as defined in § 44-14-2(5)(ii); and contributions to any corporation, association, or fund organized and operated exclusively for religious, charitable, scientific, literary, or educational purposes, no part of the net earnings of which inures to the benefit of any private shareholder or individual.

(b) For tax years beginning on or after January 1, 2025, to the extent that a taxpayer subject to tax under this chapter has elected to allocate and apportion its net income pursuant to § 44-14-14.1(f)(1) and would be included in a unitary business, as defined in § 44-11-1(11), with one or more entities subject to tax under chapter 11 of this title if not for the exemptions set forth in § 44-

11-1(4)(i), all business expense transactions between the taxpayer and the members of the unitary business shall be added to net income of the taxpayer subject to tax under this chapter; except that no such adjustment shall be required to the extent it would result in duplicate taxation in violation of law.

44-14-14.1. Apportionment and allocation of income for purposes of taxation.

(a) Except as specifically provided in this chapter a banking institution whose business activity is taxable both within and outside of this state shall allocate and apportion its net income as provided in §§ 44-14-14.1 — 44-14-14.5. A financial institution organized under the laws of a foreign country, the Commonwealth of Puerto Rico or a territory or possession of the United States whose effectively connected income (as defined under the federal Internal Revenue Code) is taxable both within this state and within another state, other than the state in which it is organized shall allocate and apportion its net income as provided in §§ 44-14-14.1 — 44-14-14.5.

(b) All income shall be apportioned to this state by multiplying this income by the apportionment percentage. The apportionment percentage is determined by adding the taxpayer's receipts factor (as described in § 44-14-14.3), property factor (as described in § 44-14-14.4), and payroll factor (as described in § 44-14-14.5) together and dividing the sum by three. If one of the factors is missing, the two remaining factors are added and the sum is divided by two. If two of the factors are missing, the remaining factor is the apportionment percentage. A factor is missing if both its numerator and denominator are zero, but it is not missing merely because its numerator is zero.

(c) Each factor shall be computed according to the method of accounting (cash or accrual basis) used by the taxpayer for the taxable year.

(d) For tax years ending prior to January 1, 2025, if the allocation and apportionment provisions of §§ 44-14-14.1 — 44-14-14.5 do not fairly represent the extent of the taxpayer's business activity in this state, the taxpayer may petition for or the tax administrator may require, in respect to all or any part of the taxpayer's business activity, if reasonable:

(1) The exclusion of any one or more of the factors;

(2) The inclusion of one or more additional factors which will fairly represent the taxpayer's business activity in this State; or

(3) The employment of any other method to effectuate an equitable allocation and apportionment of the taxpayer's income.

(e) For tax years beginning on or after January 1, 2025, if the allocation and apportionment provisions of §§ 44-14-14.1 – 44-14-14.5 or subsection (f) of this section are not reasonably adapted to approximate the net income derived from business carried on within the state, a banking institution may apply to the tax administrator, or the tax administrator may require the banking institution, to have its income derived from business carried on within the state determined by an alternative method. Such application shall be made by attaching to its duly-filed return a statement of the reasons why the banking institution believes that §§ 44-14-14.1 – 44-14-14.5 or subsection (f) of this section are not reasonably adapted to approximate its net income derived from business carried on within the state and a description of the method sought by it. A banking institution which so applies shall, upon receipt of a request therefor from the tax administrator, file with the tax administrator, under oath of its treasurer, a statement of such additional information as the tax administrator may require.

If, after such application by the banking institution, or after the tax administrator's own review, the tax administrator determines that §§ 44-14-14.1 – 44-14-14.5 or subsection (f) of this

section are not reasonably adapted to approximate the banking institution's net income derived from business carried on within the state, the tax administrator shall by reasonable methods determine the amount of net income derived from business activity carried on within the state. The amount thus determined shall be the net income taxable under §§ 44-14-3 or 44-14-4 and the foregoing determination shall be in lieu of the determination required by §§ 44-14-14.1 – 44-14-14.5 or subsection (f) of this section. If an alternative method is used by the tax administrator hereunder, the tax administrator, in their discretion, may require similar information from such banking institution if it shall appear that such alternative method or §§ 44-14-14.1 – 44-14-14.5 or subsection (f) of this section are not reasonably adapted to approximate for the applicable year the banking institution's net income derived from business carried on within the state and may again by reasonable methods determine such income.

(f) For tax years beginning on or after January 1, 2025:

(1) Except as specifically provided in this chapter a banking institution whose business activity is taxable both within and outside of this state may elect to allocate and apportion its net income by multiplying its net income by its receipts factor as described in § 44-14-14.3. For purposes of an election made pursuant to this subsection (1), the following shall apply:

(i) An election shall be made by filing the form prescribed by the tax administrator with the taxpayer's duly-filed return. The election shall take effect in the tax year for which the taxpayer makes the election and shall remain in effect for all subsequent tax years; except that, after a minimum of five subsequent tax years after the tax year for which the election is made, in the event of a material change of facts or law, a taxpayer may apply to the tax administrator to revoke the election. Such application shall be made by attaching a statement of the event of a material change of facts or law to the taxpayer's duly-filed return. A banking institution which so applies shall,

upon receipt of a request therefor from the tax administrator, file with the tax administrator, under oath of its treasurer, a statement of such additional information as the tax administrator may require.

(ii) If the receipts factor is missing, the whole of the banking institution's net income shall be taxable pursuant to §§ 44-14-3 — 44-14-4. The receipts factor shall be missing if both its numerator and denominator are zero, but it shall not be missing merely because its numerator is zero.

(iii) The receipts factor shall be computed according to the method of accounting (cash or accrual basis) used by the taxpayer for the taxable year.

SECTION 2. [Effective January 1, 2025.] Chapter 44-14 of the General Laws entitled "Taxation of Banks" is hereby amended by adding thereto the following section:

44-14-39. Combined reporting study.

(a) For the purpose of this section:

(1) "Common ownership" means more than fifty percent (50%) of the voting control of each member of the group is directly or indirectly owned by a common owner or owners, either corporate or non-corporate, whether or not owner or owners are members of the combined group.

(2) "Member" means a banking institution included in a unitary business.

(3) "Unitary business" means the activities of a group of two (2) or more banking institutions as defined in § 44-14-2(2) and corporations as defined in § 44-11-1(4) under common ownership that are sufficiently interdependent, integrated or interrelated through their activities so as to provide mutual benefit and produce a significant sharing or exchange of value among them or a significant flow of value between the separate parts. The term unitary business shall be construed to the broadest extent permitted under the United States Constitution.

(4) “United States” means the fifty (50) states of the United States, the District of Columbia, and the United States’ territories and possessions.

(b) Combined reporting.

(1) As part of its tax return for the taxable year beginning after December 31, 2023 but before January 1, 2026, each banking institution which is part of a unitary business must file a report, in a manner prescribed by the tax administrator, for the combined group containing the combined net income of the combined group. The use of a combined report does not disregard the separate identities of the members of the combined group. The report shall include, at a minimum, for each taxable year the following:

(i) The difference in tax owed as a result of filing a combined report compared to the tax owed under the current filing requirements;

(ii) Volume of sales in the state and worldwide; and

(iii) Taxable income in the state and worldwide.

(2) The combined reporting requirement required pursuant to this section shall not include any persons that engage in activities enumerated in §§ 44-13-4 or 44-17-1, whether within or outside this state. Neither the income or loss nor the apportionment factors of such a person shall be included, directly or indirectly, in the combined report.

(3) Members of a combined group shall exclude as a member and disregard the income and apportionment factors of any banking institution chartered or corporation incorporated in a foreign jurisdiction (a “foreign banking institution or corporation”) if the average of its property, payroll, and sales factors outside the United States is eighty percent (80%) or more. If a foreign banking institution or corporation is includible as a member in the combined group, to the extent that such foreign banking institution or corporation’s income is subject to the provisions of a federal income

tax treaty, such income is not includible in the combined group net income. Such member shall also not include in the combined report any expenses or apportionment factors attributable to income that is subject to the provisions of a federal income tax treaty. For purposes of this chapter, “federal income tax treaty” means a comprehensive income tax treaty between the United States and a foreign jurisdiction, other than a foreign jurisdiction which the organization for economic co-operation and development has determined has not committed to the internationally agreed tax standard, or has committed to the international agreed tax standard but has not yet substantially implemented that standard, as identified in the then-current organization for economic co-operation and development progress report.

(c) Any banking institution which is required to file a report under this section which fails to file a timely report or which files a false report shall be assessed a penalty not to exceed ten thousand dollars (\$10,000). The penalty may be waived for good cause shown for failure to timely file.

(d) The tax administrator shall on or before March 15, 2027, based on the information provided in income tax returns and the data submitted under this section, submit a report to the chairs of the house finance committee and senate finance committee, and the house fiscal advisor and the senate fiscal advisor analyzing the policy and fiscal ramifications of changing the bank excise tax statute to a combined method of reporting.