



445 East Capitol Avenue
Pierre, South Dakota 57501
Phone: 605-773-3311
Fax: 605-773-6053

Guidance on Federal Tax Law Changes Relating to Foreign Dividend Recapture

April 26, 2018

Background

Historically, foreign dividends were excluded from federal taxable income but South Dakota required them to be added back to taxable income for South Dakota bank franchise tax purposes. Recent changes in federal tax law require that foreign dividends be recaptured, included in federal taxable income, and then taxed in the current period. This change has potential to result in some instances where foreign dividends that have already been taxed by South Dakota are recaptured at the federal level, included in South Dakota taxable income, and then taxed a second time.

SD Bank Franchise Tax Return Remedy

1. If a foreign dividend is required to be recaptured for federal filing purposes; is included in the South Dakota taxable income of the 2017 filing period; and has already been included in the taxable income of a South Dakota bank franchise tax return filed in a previous period, that dividend income may be subtracted from the taxable income in the current period of recapture.
 - i. A subtraction modification is only allowed for recaptured dividends that were previously included in the taxable income on a South Dakota bank franchise tax return filed prior to the 2017 period.
 - ii. Recaptured dividends that qualify can only be subtracted to the extent they are included in taxable income on the South Dakota bank franchise tax return filed for the 2017 period.
 - iii. Federal tax credits, modifications, or adjustments pertaining to recaptured dividends are not allowable for South Dakota filing purposes.
 - iv. Work papers prepared in order to calculate the South Dakota subtraction for recaptured dividends must accompany the bank franchise tax return filed with South Dakota.
2. Work papers used to calculate the South Dakota receipts factor must accompany the bank franchise tax return and provide a schedule of the dividends included in the receipts factor.
 - i. Dividends may only be included in the denominator of the receipts factor to the extent they are included in taxable income.
 - ii. Any credit, subtraction, allocation or other adjustment to dividends or recaptured dividends that reduces taxable income requires a corresponding reduction in the denominator of the receipts factor.