

OFFICIAL OPINION NO. 84-09, Apportionment of bank franchise tax

February 7, 1984

Honorable Robert R. Weber  
State Representative  
State Capitol  
Pierre, South Dakota 57501

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Apportionment of bank franchise tax

Dear Representative Weber:

You have requested my official opinion on the following factual situation:

FACTS:

A tax is imposed pursuant to SDCL 10-43, and distribution and apportionment is provided for in SDCL 10-43-76, 77. In the administration and collection of this tax a listing of the banks or financial institutions upon which the tax is applied is compiled by the Department of Revenue. This list is given to the office of the State Treasurer and/or the office of the State Auditor and thereafter given to the offices of the various County Auditors and/or County Treasurers. The listing of the banks or financial institutions indicates the address, city, town or village in which the bank or financial institution is physically located. Thereafter upon receiving the tax and said list the tax monies are distributed, but in the case of several, if not many, counties that tax monies are only distributed to the taxing subdivision in which the bank or financial institution is physically located.

Concerning these facts you have asked the following question:

QUESTION:

Given the provisions of SDCL 10-43-76, 77, should not the tax imposed and collected pursuant to SDCL 10-43 be apportioned and distributed to more than the taxing subdivision

in which the bank or financial institution is physically located and, if so, to which units or subdivisions of local government should said tax be apportioned and distributed?

The law relating to apportionment of the Bank Franchise Tax was originally codified at SDC 1960 Supp, 57.30All. At that time since the Bank Franchise Tax was in lieu of then-levied personal property taxes, the apportionment of the Franchise Tax was made to the political subdivision where the bank was located in the same proportion as personal property taxes were distributed. In 1978, with the repeal of the personal property tax, the statute in question was changed as it now appears in SDCL 10-43-77. That section reads as follows:

The county treasurer upon receipt of such funds shall apportion and distribute the funds between the taxing subdivisions, including the county, in the same proportion as the average personal property taxes assessed in each taxing subdivision, including the county, for calendar years 1972, 1973, 1974, 1975 and 1976 were distributed as determined and certified by the secretary of revenue.

Thus it can be seen that the legislature has broadened the base, so to speak, and every tax-levying entity is entitled to its proportionate share of funds, providing that a subdivision levied personal property tax during the years 1972 through 1976. If a subdivision has gone out of existence since the enactment of the change in 1978, the money must be split up among the remaining districts which have continued in existence. If a new district has been formed, it would not be entitled to any of the funds generated by the tax. The County Treasurer is responsible for distributing the funds to all taxing subdistricts of the county directly proportionate to the personal property tax levied by such districts for the years 1972-1976, inclusive.

Respectfully submitted,

Mark V. Meierhenry  
Attorney General