Financial Institution Industry Thoughts/Reactions

January 22, 2013 [Revised April 23, 2013 to include Montana and footnote 1]

On the December 2012 MTC Working Group conference call, the four participating states (Colorado, Massachusetts, Montana, and North Dakota)[1] requested that the working group take a fresh look at the property factor. Below are the thoughts/reactions from participating industry members.

"Fresh Look" Request was Shocking

Prior to the December 2012 conference call, the MTC Working Group had concluded and reported to the MTC Income/Franchise Tax Uniformity Subcommittee on many occasions that:

> **Property Factor: State and Industry Overarching Goal** – the intent is not to recreate the 1994 apportionment outcome of sourcing property to particular states. Rather, the intent is to attempt to maintain the 1994 policy of sourcing property to the location of loan activity.

Moreover, the property factor issues to be worked on were reported as being:

> <u>Problems to be addressed:</u> Under the current loan location rule, it is not clear whether the SINAA factors are of equal weight or, conversely, whether the large presence of one factor can outweigh the absence of other SINAA factors. As a result, it is unclear both to tax administrators and to financial institutions, how the SINAA factors should be applied in individual cases. While industry participants noted that some clarification would be helpful, they did indicate that with the exception of a couple of states they are not encountering significant problems with the current SINAA sourcing provision.
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> In addition, the term "change of material fact" in the loan assignment rule is undefined. A question has arisen as to whether the sale of a loan or pool of loans to another entity within the same controlled group of corporations as the seller constitutes a material change of fact. Both taxpayers and tax administrators would benefit from the inclusion of objective criteria to determine when there has been a material change of fact.

We have already revisited the idea of moving away from SINAA multiple times within the working group over the past several years and have agreed that SINAA should be left in place. This agreement to leave SINAA in place was presented to the Uniformity Committee on several occasions Moreover, as Lennie Collins (the chair of this work group) strongly voiced on the October 2012 working group call – "the working group has previously decided to keep loans in the property factor and retain the 3 factor formula so the working group is not going to reconsider those points." Thus at this point, participating industry members are not willing to take a "fresh look" at eliminating the property factor or eliminating loans from the property factor.

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[1] Colorado, Massachusetts and North Dakota have adopted the MTC financial institution apportionment provisions; however, since 2009 Colorado apportions based solely on sales.