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Sent: Tuesday, October 14, 2008 9:34 AM
To: Sheldon H. Laskin
Cc: Loftsgard, Mary L.; Stearns, Robyn D.; Moberg, Eileen A.
Subject: FI Work Group Follow Up questions

Sheldon:

This is North Dakota's comments with respect to the September 30 e-mail in which members of the above-referenced work group were asked to respond to 3 questions.

1. Data re: "non-passive" interest income. North Dakota believes it may be helpful to continue looking at this issue, and if necessary, involve other affected stakeholders. North Dakota adopted the model regulation's definitions and, more than occasionally, have encountered situations in which entities question whether they should report and pay tax under the financial institution tax or the corporate income tax. The basis for these questions are the "more than 50% rule" cited in your questions. We do not have any suggestions for Elliot or Ann as to how to make the data "more relevant."
2. Sourcing receipts from trust activities.
 - a. Determining the Legal Domicile of the Trust. This is a difficult question to answer particularly since North Dakota determines the domicile of a trust by looking at the following factors and if any one apply, we consider the trust to be a North Dakota domiciled trust:
 - i. A trust beneficiary is a North Dakota resident;
 - ii. A trustee is a resident of North Dakota;
 - iii. Any asset making up any part of the trust is situated in North Dakota;
 - iv. Any or all of the administration or income production of the trust takes place in North Dakota;
 - v. The trust documents indicate that North Dakota law is applicable to the trust or to the opposite parties with respect to the fiduciary relationship; or
 - vi. The trust is a revocable trust and the grantor is a North Dakota resident.
 - b. Cost of Performance Study Difficulty and Expense. This question is better answered by the FIST coalition. However, from an audit perspective, there is no uniformity on how or when these studies are done nor is there uniformity as to the end-result for similar/identical receipts between taxpayers, making it difficult to verify the results for each audit conducted. We also question what facts or circumstances would trigger the financial institution to conduct another study. Finally, we would

appreciate input from the industry representatives as to whether they are willing or able to conduct a COP study for every tax year so that the States would have that information available for audit purposes.

c. Receipts from Trust Activities and Investments Industry Suggestions. Not applicable.

3. Financial Crisis: It is our believe that we should continue the dialogue with industry and not allow the current financial crisis to interfere with our goal of drafting an “up-to-date” regulation. The current financial crisis is unfortunate and will affect all stakeholders. Financial institutions in particular, may be impacted by substantial changes to the manner in which they conduct their businesses.

When the current rules were adopted, the hearing officer as well as all of the stakeholders were fully aware and recognized the need for change. However, the rules required updating and were not indicative of the changes occurring, or anticipated to occur in the banking industry. Furthermore, continuing the conversation can only serve to increase the States’ knowledge and understanding of the financial services industry and maintain an open line of communication.

If necessity precipitates the stakeholders (States and FIST) from further participation in the working group, North Dakota suggests that MTC staff continue to provide participating States educational materials and other information on the financial industry, so that once the financial crisis stabilizes w would be able to “hit the ground running.”

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