



MULTISTATE TAX COMMISSION

Working Together Since 1967 to Preserve Federalism and Tax Fairness

Financial Institutions Apportionment  
Property Factor Issues for Discussion  
(11-21-2011)

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**1. Clarify “change of material fact”**

- a. Current Language:** §4(i) *Period for which properly assigned loan remains assigned.* A loan that has been properly assigned to a state shall, absent any change of material fact, remain assigned to said state for the length of the original term of the loan. ~~Thereafter~~ Upon a change of material fact, said loan may be properly re-assigned to another state if said loan has a preponderance of substantive contact to a regular place of business there.
- b. Problem to be Addressed:** 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 objective criteria to determine when there has been a material change of fact.
- c. Issues and Options:**
- i. Should the model explicitly describe how sale of loans within the same controlled group will be treated? Options include:
1. A sale of loans within the same controlled group of corporations **shall not** constitute a material change of fact.
  2. A sale of loans within the same controlled group of corporations **shall not by itself** constitute a material change of fact.
  3. A sale of loans within the same controlled group of corporations **ordinarily will not** constitute a material change of fact.
  4. A sale of loans within the same controlled group of corporations **ordinarily will not** constitute a material change of fact, **unless the entity from which the loans were purchased has been a member of the controlled group for less than 12 months.**
  5. A sale of loans within the same controlled group of corporations is **presumed** not to constitute a material change of fact. **This presumption may be rebutted by a showing that ...** [Industry Group will insert suggestions]

6. The transfer of a loan or a pool of loans, to or from an entity that is within the same controlled group of corporations **shall not by itself be considered** as a material change of fact.
7. The transfer of a loan or a pool of loans, to or from an entity that is within the same controlled group of corporations **shall not constitute** a material change of fact.
8. The transfer of a loan or a pool of loans, to or from an entity that is within the same controlled group of corporations is not a change of material fact. But, this prohibition does not, by itself, preclude other changes of fact occurring in association with the same transaction that gave rise to such transfer from being considered for materiality.

ii. Should treatment of other transaction types also be explicitly described, such as:

1. The acquisition of the stock of an entity that owns loans
2. The acquisition of a loan or pool of loans from an entity that is not within the same controlled group of corporations
3. Credit card payments, renewals, etc. [ e.g., if a loan has no fixed term, then might one option for the “term of the loan” be the term of the agreement between the financial institution and the borrower, or the expiration date of the card, etc.?

iii. Should “controlled group” be defined? Group members have suggested

1. Combined reporting states: use the same definition that the state uses for defining “ownership or control”
2. Non-Combined reporting states:
  - a. If have an add-back statute: use definition of “related” or “affiliated” entity in that statute.
  - b. Or, if no add-back statute: use section 1563(a) of the Internal Revenue Code, with:
    - i. a “more than 50 percent” ownership test be substituted for the “at least 80 percent” test in 1563(a). [ Yes ]
    - ii. ~~The determination be made without regard to subsections (a)(4) and (e)(3)(C).~~

## 2. Update and Clarify the SINAA loan assignment rule (will be fleshed out further)

- a. What should the rule apply to? (e.g., a loan, a group of loans, how to determine the group?)

- b.** What should the rule be?
  - i. Which activities? (add and/or subtract from “SINAA”)?
  - ii. How to measure the activities (e.g., employees, costs, etc.)?
  - iii. How to weight the activities (equal weight, self weight, etc.)?
- c.** What changes are then needed for the presumptions? (section 4(g)(1)(B)-(C))