To: Multistate Tax Commission

From: Greg Matson, Executive Director

Re: Proposed REG.IV.18.(k). Receipts Factor – Bank Holding Companies and Subsidiaries

Date: July 25, 2018

The model REG.IV.18.(k). Receipts Factor – Bank Holding Companies and Subsidiaries (attached) was approved by the Executive Committee on January 8, 2018 for public hearing pursuant to Compact Art. VII and Bylaw 7. On January 12, 2018 the Commission gave notice of the public hearing to be held at the Hall of the States, Room 231, 444 North Capitol Street, N.W., Washington, DC. The public hearing was held by Judge William L. (Bill) Thompson, retired chief judge of the Alabama Tax Tribunal. The Hearing Officer’s Report was provided for the Executive Committee’s consideration on April 26, 2018. The Executive Committee approved the model for Bylaw 7 survey of the Compact member states on that same day. That survey was conducted by the Commission and a majority of affected states have now responded that they would consider the model. Therefore, pursuant to Bylaw 7, the Chair has directed consideration of this model by the Commission and proper notice of has been provided according to Bylaw 4.

The Commission may take any action with respect to the model, including approving it for recommendation to the states under Art. VI(3)(b) of the Compact. Bylaw 5(c), governing approval of the Commission, requires an affirmative vote of: (1) at least 60% of the total number of member states, and (2) member states reflecting a majority of the total population of all member states according to the current United States Statistical Abstract. (If there are minority views, those views will be transmitted with any recommendations.) Pursuant to Bylaw 5(d), if the vote of the members present at the Commission meeting results in the model neither being approved nor rejected, voting shall remain open for 15 days to allow absent or abstaining members to submit a written vote.
Resolution Adopting Recommended Amendments to the Model
General Allocation and Apportionment Regulations
Reg. IV. 18.(k) REG.IV.18.(k). Receipts Factor – Bank Holding
Companies and Subsidiaries

WHEREAS, changes to Article IV of the Compact (UIDTPA) necessitated changes be made in the model General Allocation and Apportionment Regulations; and

WHEREAS, following the Executive Committee’s instructions to update those model regulations, the Uniformity Committee has considered changes to regulations under Article IV, Section 18 having to do with the treatment of certain gross receipts when received by bank holding companies and subsidiaries; and

WHEREAS, the Uniformity Committee the referred draft amendments to the Executive Committee, which voted to approve them for public hearing on January 8, 2018; and

WHEREAS, that hearing was duly noticed and was held on February 20, 2018 and the hearing officer’s report was submitted to the Executive Committee on April 26, 2018; and

WHEREAS, the Executive Committee approved the draft amendments for bylaw 7 survey; and

WHEREAS, the majority of affected member states have given an affirmative response to that survey;

Now, therefore, be it:

RESOLVED, this day, July 25, 2018, that the Commission hereby adopts the recommended amendments to the model General Allocation and Apportionment Regulations, Reg.IV.18.(k).
This draft regulation would be inserted at Section REG. IV.18.- subsection (k).

REG.IV.18.(k). Receipts Factor – Bank Holding Companies and Subsidiaries.

DRAFTER’S NOTE: THIS REGULATION MAY BE APPROPRIATE FOR USE BY STATES THAT HAVE ADOPTED SPECIAL RULES FOR THE ALLOCATION AND APPORTIONMENT OF FINANCIAL INSTITUTIONS, INCLUDING THE MULTISTATE TAX COMMISSION’S MODEL FORMULA FOR THE APPORTIONMENT AND ALLOCATION OF NET INCOME OF FINANCIAL INSTITUTIONS (AS AMENDED JULY 29, 2015), THAT DO NOT EXPLICITLY INCLUDE BANK HOLDING COMPANIES, SAVINGS AND LOAN HOLDING COMPANIES, AND MAJORITY-OWNED SUBSIDIARIES OF SUCH ENTITIES IN THE DEFINITION OF “FINANCIAL INSTITUTIONS” SUBJECT TO SUCH SPECIAL RULES. THIS REGULATION MAY ALSO APPLY TO STATES THAT HAVE NO SPECIAL RULES FOR THE ALLOCATION AND APPORTIONMENT OF FINANCIAL INSTITUTIONS. IF YOUR STATE’S DEFINITION OF “FINANCIAL INSTITUTIONS” ALREADY INCLUDES SUCH ENTITIES, THEN THIS REGULATION MAY BE UNNECESSARY.

(1) For any corporation or other business entity registered under state law as a bank holding company or registered under the Federal Bank Holding Company Act of 1956, as amended, or registered as a savings and loan holding company under the Federal National Housing Act, as amended, and any entity more than 50 percent owned [directly or indirectly] by such holding companies, receipts are included in the receipts factor denominator and assigned to the receipts factor numerator in this state to the extent those receipts would be included in the denominator and assigned to this state under the MTC’s Formula for the Apportionment and Allocation of the Net Income of Financial Institutions Model Statute (as adopted July 29, 2015). REG.IV.18.(c) does not apply to a taxpayer that is subject to this REG.IV.18.(d).

(2) Nothing in this Reg.IV.18.(d) shall prohibit the taxpayer from petitioning for, or the [state tax agency or administrator] from applying, an alternative method to calculate the taxpayer’s receipts factor in order to fairly represent the extent of the taxpayer’s business activity in this state as provided for in [reference to Compact Article IV, Section 18 or similar state law]