

# Financial Institutions State Tax Coalition

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February 18, 2018

William L. (Bill) Thompson  
Hearing Officer  
Multistate Tax Commission  
444 N. Capitol Street NW  
Suite 425  
Washington, DC 20001

## **Re: Proposed Reg. IV.18.(d) Receipts Factor - Bank Holding Companies and Subsidiaries**

Thank you for the opportunity to provide written comments on behalf of the Financial Institutions State Tax (“FIST”) Coalition in support of Proposed Reg. IV.18.(d) Receipts Factor - Bank Holding Companies and Subsidiaries, which would provide that bank holding companies and entities more than 50% owned by such holding companies determine their receipts factor numerators and denominators under the Multistate Tax Commission’s (“MTC’s”) Formula for the Apportionment and Allocation of the Net Income of Financial Institutions Model Statute (“MTC’s model financial institution apportionment provisions”).

The FIST Coalition is NOT supportive of the states adopting the revised Multistate Tax Compact’s (“Compact’s”) Article IV.1.g narrow definition of “receipts,” which excludes from the receipts factor interest from lending, income from investments, and receipts from security and hedging transactions. For financial service organizations, such receipts reflect the contribution of the taxpayers’ markets to the earning of income and in many cases are the bulk of the taxpayers’ regular trade or business receipts, and thus, should be included in their receipts factor. It also would raise constitutional issues to exclude such large components of the taxpayers’ regular trade or business receipts from the receipts factor.

However, where a state has adopted the revised Compact’s Article IV.1.g narrow definition of receipts, the FIST Coalition is supportive of adoption of the Proposed Reg. IV.18.(d) Receipts Factor - Bank Holding Companies and Subsidiaries.

The FIST Coalition believes that in light of the MTC’s model financial institution apportionment provisions without the adoption of Proposed Reg. IV.18.(d), the segment of the financial services industry with the greatest potential for apportionment incongruity are bank holding companies and their subsidiaries. The “financial institution” definition under MTC’s model financial institution apportionment provisions includes corporations that are directly or indirectly more than 50% owned by a bank holding company (i.e., “the broad definition of financial institution”). Under this MTC model apportionment provision, interest from lending, as well as receipts from security and hedging transactions and investment and trading assets and activities, are included in the receipts factor.

Nine (9) of the 16 MTC Compact Member states (that's more than 50% of the Compact Members) have adopted the MTC's model financial institution apportionment provisions with the broad definition of financial institution (Arkansas, Colorado, Hawaii, Idaho, Montana, New Mexico, North Dakota, Oregon, and Utah).

In addition, four (4) non-MTC Compact Member states also have adopted the MTC's model financial institution apportionment provisions with the broad definition of financial institution (Maine, Massachusetts, Mississippi, and New Hampshire). Moreover, although they did not adopt the MTC's model financial institution apportionment provisions, at least five (5) states have adopted taxing schemes and/or receipts sourcing provisions with the broad definition of financial institution (Connecticut, Illinois, Michigan, Minnesota, and Ohio).

Accordingly, at least 18 states have adopted the broad financial institution definition under which bank holding companies and corporations more than 50% owned by such holding companies apportion their receipts applying the same receipts definition and sourcing provisions.

Without the adoption of Proposed Reg. IV.18.(d), some states could be apportioning the income of bank holding companies and their subsidiaries based on as little as 4% of the taxpayer's regular trade or business receipts, while other states (including the 18 states listed above) would be including 100% of the entity's regular trade or business receipts in the receipts factor. The result of such different apportionment schemes could be bizarre and unconstitutional.

More importantly, by adopting the Model Formula for the Apportionment and Allocation of the Net Income of Financial Institutions Model Statute, the MTC and compact states have concluded that it is correct to apply the same receipts definition and sourcing provisions to banks, bank holding companies, and subsidiaries of such holding companies.

## **Conclusion**

In order to increase the uniformity in the manner that the MTC and Compact states suggest that bank holding companies and their subsidiaries apportion their income, the FIST Coalition believes that the Hearing Officer should recommend adoption (without any modifications) of the Proposed Reg. IV.18.(d) Receipts Factor - Bank Holding Companies and Subsidiaries.

Please contact me if you have any questions regarding the above comments.

Sincerely,

*Karen Boucher*

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Financial Institutions State Tax Coalition LLC  
Managing Member