



MULTISTATE TAX COMMISSION

Working Together Since 1967 to Preserve Federalism and Tax Fairness

Financial Institutions Apportionment  
Property Factor Issues for Discussion  
(10-21-2011)

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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~~At the conclusion of the term of the loan, or 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.
- 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
  - iii. Should “controlled group” be defined? Group members have suggested using section [1563\(a\) of the Internal Revenue Code](#). Some have suggested:
    1. a “more than 50 percent” ownership test be substituted for the “at least 80 percent” test in 1563(a). [ Yes ]
    2. 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))