



MULTISTATE TAX COMMISSION

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To: Uniformity Committee, Income and Franchise Tax Subcommittee

From: Sheldon H. Laskin, Counsel

Date: March 2, 2011

Subject: Status Report, Financial Institutions Project

The purpose of this memo is to summarize the current status of the Income and Franchise Tax Subcommittee project to revise the MTC model apportionment formula for financial institutions.

The work group has completed its work on the receipts factor, subject to further direction by the subcommittee, and has resumed initial focus on the property factor.

In the early stages of this project, a number of papers were presented to the work group by state representatives regarding state experiences with SINAA and cost of performance under the current MTC financial institutions regulations. Industry submitted a response to those papers at that time.

In its response, industry has suggested that the SINAA factors be retained, except for solicitation. Industry would drop solicitation because solicitation is already used to source receipts, and because solicitation appears to be the factor that causes the most conflicts. The sourcing of loans is done based on the preponderance of the 5 SINAA factors and thus, in most situations there is no need to have 5 factors to determine the sourcing of the loans. Industry is working on drafting language that would provide how to source the loans where there is a tie among the states if only 4 factors were used.

In addition, industry strongly believes that loan sourcing was never intended to be done on a loan-by-loan and suggests that language clarify that in determining sourcing loans should be grouped based on management reports. Industry is drafting this language.

At the outset of the project Carl Joseph suggested that the sourcing of loans under SINAA may be made clearer if it were based on the cost associated with each of the SINAA elements. Initially industry thought there could be some merit to that, but as industry has begun working through the issues, it realized that there would be a significant burden placed on taxpayers if every financial institution was required by the regulation to undergo a significant cost study to determine the sourcing of loans. Industry is working on alternatives that might be used to determine the SINNA factors without requiring burdensome cost studies be undertaken.

Industry believes that each of the loan sourcing factors should continue to be given equal weight.

Finally, the states have suggested that the term “material change of fact” that would support resourcing the property factor numerator should not be construed to include a transfer of a loan or pool of loans from one member of a controlled group of corporations as the seller to another. Industry has suggested that language be added to clarify that an acquisition of loans from an unrelated 3rd party is a material change of fact.

Industry is to draft specific proposals for consideration by the work group. The Chair asked state members to do the same.