

**Financial Institution Apportionment Workgroup
Recommended Conceptual Policy Goals
DRAFT April, 2009**

Items in **bold** are those for which we do not yet have a policy recommendation

- I. Retain three factor model, rather than move to single sales factor model

- II. Sales factor: Overarching state goal – reflect the market. Overarching industry goal – treat banks similarly to non-bank taxpayers where similar activity involved; not more than full taxation.
 - A. ATM fees §3(c) – location of ATMs.

 - B. Merchant Discount §3(j) – If information readily available, source to location of merchant. If information not readily available, source using proxy based on ratio of credit card interest and fees. Choice must be applied uniformly across states.

 - C. Receipts from banks own investment and trading assets and activities §3(m) – clarify this rule applies to the bank’s own assets and activities.

 - D. Receipts from investment and trading assets and activities on behalf of 3rd Party (trust accounts) new § – Continuing discussion.**
 - 1. **Overarching goal – reflect market, unless too easily manipulable or unreasonably difficult for banks to comply.**

 - 2. **List of Options States Identified for the Sourcing Rule:**
 - a. **location of trust assets**
 - b. **location where trust formed**
 - c. **location of trustee**
 - d. **location of trustor**
 - e. **location of beneficiaries, or**
 - f. **a share of total trust account receipts equal to the ratio of deposits in the state to total deposits of the institution**

 - 3. **Banks gathering more info on how they currently source.**

 - E. **Non-specified receipts, §§3(l) and (n), and specified receipts that fall below a certain percentage of total receipts – Continuing discussion.**
 - 1. **States’ suggestion: Include both non-specified service receipts and all other non-specified receipts in same proportion as all**

other receipts; use 1% as a *de minimus* threshold for specified receipts.

- 2. Banks suggestion: maintain existing rules. Existing rules use “cost of performance” to source non-specified service receipts and “the state’s regular situsing rules” for all other non-specified receipts. Existing rules do not contain *de minimus* exception for specified receipts.**

III. Property factor: Overarching goal – not trying to recreate the 1994 apportionment outcome (source to particular states), rather trying to recreate the 1994 policy (source to location of loan activity).

A. Location of Loans §4(g) –.

1. eliminate assignment based on:
 - a. presumption of correctness for assignment to regular place of business where assignment is consistent with regulatory requirements, and based on substantive contacts.
 - b. ability to rebut by showing preponderance of substantive contacts did not occur at the out-of-state regular place of business.
 - c. presumption of in-state assignment where 1. above is rebutted by 2. above, a regular place of business is in this state, and TP has not shown that preponderance of substantive contacts did not occur in this state.
2. Substitute assignment based simply on location of preponderance of substantive contacts, and
 - a. Allow preponderance of substantive contacts to be determined for categories of loans, rather than loan by loan basis.
 - b. Specify that preponderance of substantive contacts is determined based on the state with the greatest cost of performing the contact activities (which activities remain the same as under the old rule – solicitation, investigation, negotiation, approval and administration.)
 - c. Specify that if the loan activity is performed primarily through automated systems, the loan shall be assigned to the location of those automated systems.

B. Material Change §4(i) - Clarify “material change”

1. Specify that re-assignment to a “controlled group” member is not a “material change” justifying reassignment of a loan.
2. Define “control group” based on Section 1563(a) of the Internal Revenue Code with some adjustments (e.g., substitute “50%” ownership for “80%” ownership, etc.)

IV. Definitions: Overarching state goal – retain focus on financial Institution (rather than financial activity) and add other specified institutions that are heavily engaged in financial activity.

A. Retain appendix A

B. Add investment banks, if not already included