MULTISTATE TAX COMMISSION

Working Together Since 1967 to Preserve Federalism and Tax Fairness

Financial Institutions Apportionment
Property Factor Issues for Discussion
(9-15-2011)

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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, said loan may be properly assigned to another state if said loan has a preponderance of substantive contact to a regular place of business there. (emphasis added)

   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 is *presumed, subject to rebuttal,* not to constitute a material change of fact.

         3. The transfer of a loan or a pool of loans, to/from an entity that is within the same controlled group of corporations *shall not by itself* be considered as 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).

   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 for the next meeting)

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))