Draft Issues List

For Potential Revisions to Multistate Tax Commission Model Regulation on Apportionment of Income for Financial Institutions

February 20, 2008

For Discussion Purposes Only

I. What is a financial institution?

   A. Are rules needed to reflect the expansion of banking\financial activity to include non-traditional banking\financial activity?

      1. What activities do financial institutions engage in now, directly or indirectly, that they did not in1994?

      2. What banking\financial activities do entities that fall outside of the current definition of "financial institution" engage in now that they did not in 1994?

   B. Are specific rules needed for REMICs, REITS, RIC's or any other special entities?

      1. How are REMIC's, REIT's, and RIC's being used by financial institutions today in comparison to 1994?

      2. Should uncontrolled REMIC's, REIT's or RIC's be treated the same as controlled entities for purposes of allocation and apportionment of their income?

II. Inclusion and sourcing of loan values in property factor –

   A. Should the objective of the property factor sourcing rule for loan values be to reflect the market or to reflect some other business activity?

   B. Assignment rule - SINAA – Solicitation, Investigation, Negotiation, Approval and Administration.

      1. Should SINAA be replaced with a different sourcing methodology? What are the options?

      2. Is there a need to establish a weighting with respect to SINAA factors? Should there be different weightings for different loan types (e.g. credit cards)? What happens if one or more of the activities occurs in different states?

3. How does one determine SINAA when a loan is transferred between related entities or between members of a combined or consolidated group?

4. Are there other activities that could\should be taken into account?

5. What should be done with loans where there are no SINAA activities or they are de minimis?

6. Should the interpretation and application of SINAA reflect a "money-center" bias?

C. Application of assignment rule –

1. Loan by loan versus type of loan?

2. How does one define “loan type”?

3. How does one determine a loan type’s location?

   i. Sampling?
   ii. Loan-by-Loan?
   iii. By location of owner?
   iv. If loan is secured by other asset, by the location of the assets?
   v. By how a financial institution administers types of loans?

4. What are the regulatory requirements of either a federal or state body that assign a loan to a place of business?

D. Third party transfer, solicitation and processing –

1. What is a material change of facts which support a change of assignment?

2. Does the transfer to a related party change the place of assignment?

3. Where do you assign a loan which has been purchased from an unrelated entity either individually or as part of a portfolio?

4. Do we need additional rules for the context of combined or consolidated reporting?

E. How should the securitization of loans be treated?

III. Credit card receivables – currently treated as loans

A. Where should these be located?

B. How should solicitation of credit cards be treated under SINAA or under alternative formulas?

C. Do we need additional rules for the context of combined or consolidated reporting?

IV. Assignment of receipts -

A. How should RICs and REMICs be treated?

B. Is merchant discount income properly sourced to the commercial domicile of the merchant? Or the business location of the transaction?

C. Are the rules for the assignment of other receipts proper? How material are these other receipts? Can\Should they be ignored?

D. Should cost of performance be used for any receipts (e.g. fee income)? If so, should a pure cost of performance rule apply, or a modified rule based on some reasonable apportionment factor?

V. Is it possible to simplify administration of whatever rule is developed by using information or definitions already employed for other regulatory purposes?

A. How are records required to be maintained for state and federal interest limitation, banking, and SEC purposes?

B. Are terms used in the model rule consistent with how the same terms are used for interest limitation, banking and SEC purposes?

C. Are sourcing rules used in the model rule consistent with any rules used for interest limitation, banking and SEC purposes?