

Comments to MTC Uniformity Committee

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Narrow Receipts Definition Doesn't Work

- As noted in our May 11, 2016 comments to the Executive Committee Chair, excluding from the general receipts factor interest on lending and receipts on investments and trading that are part of the taxpayer's regular trade or business is perplexing for the financial service industry
- The Oregon legislature recognized this problem when it recently passed HB 2273, which adopts a narrowed "sales" definition similar to that of the MTC's UDITPA rewrite, and specifically provided in the bill that the new definition does NOT apply to taxpayers who apportion their income under ORS 314.280 (financial institutions)

Narrow Receipts Definition Doesn't Work

- The segment of the financial services industry with the greatest potential for apportionment incongruity are subsidiaries of bank holding companies
- The “financial institution” definition under MTC’s Formula for the Apportionment and Allocation of the Net Income of Financial Institutions Model Statute includes corporations that are directly or indirectly more than 50% owned by a bank holding company (i.e., the broad definition of financial institution)
- Under the MTC financial institution apportionment provision, interest from lending, as well as receipts from security and hedging transactions, are included in the receipts factor

Narrow Receipts Definition Doesn't Work

- Eight (8) of the 16 MTC Compact Member states (**that's 50% of the Compact Members**) have adopted the MTC financial institution apportionment provisions with the broad definition of financial institution (Arkansas, Colorado, Hawaii, Idaho, New Mexico, North Dakota, Oregon, and Utah)
- Four (4) non-MTC Compact Member states also have adopted the MTC financial institution apportionment provisions with the broad definition of financial institution (Maine, Massachusetts, Mississippi, and New Hampshire)
 - Thus in these 12 states, a subsidiary of a bank holding company includes 100% of its receipts in the receipts factor

Narrow Receipts Definition Doesn't Work

- In order to obtain uniformity in the manner that the MTC suggests that subsidiaries of bank holding companies should apportion their income, we believe that the current draft Sec. 18 regulation should be modified to provide that all entities that are more than 50% owned by a bank holding company should apportion their income as provided under the MTC financial institution provisions
 - Without this change, we could have some states apportioning the entity's income based on only 4% of its receipts while other states are applying their apportionment provisions by including 100% of the entity's receipts

Narrow Receipts Definition Doesn't Work

- This could be an easy fix using the current draft Sec. 18 regulation and modifying sections (a) and (c)
 - (a) This section applies to the determination of the receipts factor if:
1) the taxpayer's receipts, as defined by [Compact Article IV.1.g], are less than 3.33% of the taxpayer's gross receipts, as defined by [Model Allocation and Apportionment Regulation IV.2.(a)(5)]; or 2) the taxpayer is more than fifty percent (50%) owned, directly or indirectly, by a bank holding company.

Narrow Receipts Definition Doesn't Work

(c)(6) If the taxpayer is more than fifty percent (50%) owned, directly or indirectly, by a bank holding company, receipts are included in the receipts factor denominator and assigned to the receipts factor numerator in this state to the extent those receipts would be assigned to this state under the MTC's Formula for the Apportionment and Allocation of the Net Income of Financial Institutions Model Statute (as adopted July 29, 2015) as if the taxpayer were a financial institution.