Oregon

Theodore R. Kulongoski, Governor

Department of Revenue
955 Center St NE
Salem OR 97301-2555

DATE: October 16, 2008

TO: Interested Parties

SUBJECT: **Work Group for Proposed Rulemaking for OAR 150-314.280-(N), *Apportionment Factors for Financial Organizations***

The Department of Revenue has developed draft amendments to OAR 150-314.280-(N), the financial apportionment regulation. The draft changes to the rule include replacing cost of performance with a different method of apportionment, adding new definitions, clarifying some existing definitions and adding apportionment methods for more specific income categories. The draft also contemplates making portions of the rule that contain policy changes effective prospectively, while updates clarifying current policy will apply to all tax years open for adjustment.

The next step in our process is to share this draft with as many interested parties as possible. Our goal is to receive feedback and work through any issues that come to light to develop a rule that is both practical and workable for taxpayers and the Department. With this goal in mind, we have scheduled a work session on **Thursday, November 6, 2008, 1:30-3:30** at the Revenue Building in the Fishbowl conference room**.** Please RSVP by email or phone.

Following the work session, the department will evaluate the feedback received, make any necessary changes to the draft rule, set an informal comment period and schedule a follow-up work session, if needed. A copy of the draft amendments to the rule is attached.

Please feel free to share this invitation with others who you think may be interested in this process. If you are not able to attend in person you may send written comments to:

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ORS 183.335(2)(b)(G) requests public comment on whether other options should be considered for achieving the rule's substantive goals while reducing negative economic impact of the rule on business.

In compliance with the Americans with Disabilities Act (ADA), this information is available in alternative formats upon request.

OREGON DEPARTMENT OF REVENUE

ADMINISTRATIVE RULE REVIEW

Amended Rule Permanent Rule	Rule No. OAR 150-314.280-(N)	
	Page 	Last Revised Date October 15, 2008
	NOTICE OF INTENDED ACTION	
	Bulletin Dated TBD	Hearing Scheduled TBD

PURPOSE: To provide financial organizations with a method to apportion all of their receipts in a way that fairly represents the net income of the business activity done within Oregon.

150-314.280-(N)

~~Modified~~ Apportionment Factors for Financial Organizations

(1) This rule is based in part on a model regulation adopted by the Multistate Tax Commission to promote uniform treatment of this item by the states. A financial organization having income from business activity that is taxable both within and without ~~this state~~Oregon must allocate and apportion its net income as provided in this rule for tax years beginning on or after January 1, 1993. All items of nonbusiness income (income that is not includable in the apportionable tax base) must be allocated pursuant to the provisions of ORS 314.610 through 314.645 and the rules thereunder. A financial organization organized under the laws of a foreign country, the Commonwealth of Puerto Rico, or a territory or possession of the United States whose effectively connected income (as defined under the ~~Federal~~ Internal Revenue Code) is taxable both within ~~this state~~Oregon and within another state, other than the state ~~in which~~where it is organized, must allocate and apportion its net income as provided in this rule.

(2)(a) For tax years beginning on or after July 1, 2005, all business income must be apportioned to Oregon by multiplying the income by a multiplier equal to 100 percent of the sales factor described in section (4) of this rule. ~~For tax years beginning on or after January 1, 1991 and before May 1, 2003, all business income must be apportioned to this state by multiplying the income by a fraction. The numerator of the fraction is two times the sales factor, as described in section (4) of this rule, plus the property factor, as described in section (5) of this rule, plus the payroll factor, as described in section (6) of this rule. The denominator of the fraction is four. If one of the factors is missing, the remaining~~

~~factors are added and the sum is divided by three (divide by two if the missing factor is the sales factor). A factor is missing if both its numerator and denominator are zero, but it is not missing merely because its numerator is zero.~~

(b) For tax years beginning on or after May 1, 2003 and before July 1, 2005, all business income must be apportioned to ~~this state~~Oregon by multiplying the income by a multiplier equal to 80 percent of the sales factor described in section (4) of this rule plus 10 percent of the property factor described in section (5) of this rule plus 10 percent of the payroll factor described in section (6) of this rule.

(c) For tax years beginning on or after January 1, 1991 and before May 1, 2003, all business income must be apportioned to Oregon by multiplying the income by a fraction. The numerator of the fraction is two times the sales factor, as described in section (4) of this rule, plus the property factor, as described in section (5) of this rule, plus the payroll factor, as described in section (6) of this rule. The denominator of the fraction is four. If one of the factors is missing, the remaining factors are added and the sum is divided by three (divide by two if the missing factor is the sales factor). A factor is missing if both its numerator and denominator are zero, but it is not missing merely because its numerator is zero. ~~For tax years beginning on or after July 1, 2005, all business income must be apportioned to this state by multiplying the income by a multiplier equal to 100 percent of the sales factor described in section (4) of this rule.~~

(d) Each factor must be computed according to the method of accounting (cash or accrual) used by the taxpayer for the taxable year.

(e) See OAR 150-314.280-(M) for other methods of apportionment and allocation or modification of the method in this rule that may be allowable.

(3) Definitions as used in this rule, unless the context requires otherwise ~~requires~~:

(a) “Billing address” means the location indicated in the books and records of the taxpayer on the first day of the taxable year (or on such later date in the taxable year when the customer relationship began) as the address where any notice, statement, or bill relating to a customer’s account is mailed.

(b) “Borrower or credit card holder located in ~~this state~~Oregon” means:

(A) A borrower, other than a credit card holder, that is engaged in a trade or business that maintains its commercial domicile in ~~this state~~Oregon; or

(B) A borrower that is not engaged in a trade or business or a credit card holder whose billing address is in ~~this state~~Oregon.

(c) “Commercial domicile” means:

(A) The headquarters of the trade or business, that is, the place ~~from which~~where the trade or business is principally managed and directed; or

(B) If a taxpayer is organized under the laws of a foreign country, or of the Commonwealth of Puerto Rico, or any territory or possession of the United States, such taxpayer’s commercial domicile is deemed for the purposes of this rule to be the state of the United States or the District of Columbia ~~from which~~where such taxpayer’s trade or business in the United States is principally managed or directed. It is presumed, subject to rebuttal, that the location ~~from which~~where the taxpayer’s trade or business is principally managed and directed is the state of the United States or the District of Columbia to which the greatest number of employees are regularly connected or out of which they are working, no matter where the services of such employees are performed, as of the last day of the taxable year.

(d) “Credit card” means credit, travel or entertainment card.

(e) “Credit card issuer’s reimbursement fee” means the fee a taxpayer receives from a merchant’s bank because one of the persons to whom the taxpayer has issued a credit card has charged merchandise or services provided by the merchant to the credit card.

(f) “Deposit” has the following meanings, but in no case includes interinstitution fund transfers:

(A) The unpaid balance of money or its equivalent received or held by a financial organization in the usual course of business and for which it has given or is obligated to give credit, either conditionally or unconditionally, to a commercial, checking, savings, time, or thrift account whether or not advance notice is required to withdraw the credited funds, or which is evidenced by its certificate of deposit, thrift certificate, investment certificate, or certificate of indebtedness, or other similar name, or a check or draft drawn against a deposit account and certified by the financial organization, or a letter of credit or a traveler's check on which the financial organization is primarily liable. However, without limiting the generality of the term "money or its equivalent," any such account or instrument must be regarded as evidencing the receipt of the equivalent of money when credited or issued in exchange for checks or drafts or for a promissory note upon which the person obtaining the credit or instrument is primarily or secondarily liable, or for a charge against a deposit account, or in settlement of checks, drafts, or other instruments forwarded to the bank for collection.

(B) Trust funds received or held by the financial organization, whether held in the trust department or held or deposited in any other department of the financial organization.

(C) Money received or held by a financial organization, or the credit given for money or its equivalent received or held by a financial organization, in the usual course of business for a special or specific purpose, regardless of the legal relationship so established. Under this paragraph, "deposit" includes, but is not limited to, escrow funds, funds held as security for an obligation due to the financial organization or others, including funds held as dealers reserves, or for securities loaned by the financial organization, funds deposited by a debtor to meet maturing obligations, funds deposited as advance payment on subscriptions to United States government securities, funds held for distribution or purchase of securities, funds held to meet its acceptances or letters of credit, and withheld taxes. It does not include funds received by the financial organization for immediate application to the reduction of indebtedness to the receiving financial organization, or under condition that the receipt of the funds immediately reduces or extinguishes the indebtedness.

(D) Outstanding drafts, including advice or another such organization, cashier's checks, money orders, or other officer's checks issued in the usual course of business for any purpose, but not including those issued in payment for services, dividends, or purchases or other costs or expenses of the financial organization itself.

(E) Money or its equivalent held as a credit balance by a financial organization on behalf of its customer if the entity is engaged in soliciting and holding such balances in the regular course of its business.

(~~f~~g) “Financial corporation,” “financial institution” ~~has the same meaning as~~and “financial organization” ~~in subsection (3)(g) of this rule.~~

~~(g) “Financial organization” is~~have the same meaning as financial organization as defined in ORS 314.610(4) and OAR 150-314.610(4).

(h) “Loan” means any extension of credit resulting from direct negotiations between the taxpayer and its customer, or the purchase, in whole or in part, of such extension of credit from another. Loans include participations, syndications, and leases treated as loans for federal income tax purposes. Loans do not include: loans representing property acquired in lieu of or pursuant to a foreclosure under section 595 of the federal Internal Revenue Code; futures or forward contracts; options; notional principal contracts such as swaps; credit card receivables, including purchased credit card relationships; noninterest bearing balances due from other depository institutions; cash items in the process of collection; federal funds sold; securities purchased under agreements to resell; assets held in a trading account; securities; interests in a REMIC, or other mortgage-backed or asset-backed security; and other similar items.

(i) “Loans secured by real property” means that 50 percent or more of the aggregate value of the collateral used to secure a loan or other obligation, when valued at fair market value as of the time the original loan or obligation was incurred, was real property.

(j) “Merchant discount” means the fee (or negotiated discount) charged to a merchant by the taxpayer for the privilege of participating in a program whereby a credit card is accepted in payment for merchandise or services sold to the card holder.

(k) “Participation” means an extension of credit in which an undivided ownership interest is held on a pro rata basis in a single loan or pool of loans and related collateral. In a loan participation, the credit originator initially makes the loan and then subsequently resells all or a portion of it to other lenders. The participation may or may not be known to the borrower.

(l) “Person” means an individual, estate, trust, partnership, corporation, and any other business entity.

(m) “Principal base of operations” with respect to transportation property means the place of more or less permanent nature from which ~~said~~ the property is regularly directed or controlled. With respect to an employee, the “principal base of operations” means the place of more or less permanent nature from which the employee regularly:

(A) Starts his or her work and to which the employee customarily returns in order to receive instructions from the employer, or

(B) Communicates with customers or other persons, or

(C) Performs any other functions necessary to the exercise of the employee’s trade or profession at some other point or points.

(n) “Real property owned” and “tangible personal property owned” means real and tangible personal property, respectively,

(A) On which the taxpayer may claim depreciation for federal income tax purposes; or

(B) Property ~~to which~~that the taxpayer holds legal title to and on which no other person may claim depreciation for federal income tax purposes (or could claim depreciation if subject to federal income tax). Real and tangible personal property do not include coin, currency, or property acquired in lieu of or pursuant to a foreclosure.

(o) "Readily available" means information that already exists in printed form, information that is stored electronically, and is ready to be printed or copied without requiring any programming, or information that already exists on microfiche or microfilm. Information that requires a substantial amount of time to locate or prepare for release is not readily available information.

(~~o~~p) "Regular place of business" means an office at which the taxpayer conducts business in a regular and systematic manner and that is continuously maintained, occupied, and used by employees of the taxpayer.

(~~p~~q) "State" is defined in ORS 314.610(8).

(~~q~~r) "Syndication" means an extension of credit ~~in which~~ that two or more persons fund and where each person is at risk only up to a specified percentage of the total extension of credit or up to a specified dollar amount.

(~~r~~s) "Taxable" is defined as "taxable in another state" in ORS 314.620.

(~~s~~t) "Transportation property" means vehicles and vessels capable of moving under their own power, such as aircraft, trains, water vessels, and motor vehicles, as well as any equipment or containers attached to such property, such as rolling stock, barges, trailers, or the like.

(4) Sales Factor.

(a) In general. The sales factor is a fraction as provided in ORS 314.665(1). The sales factor includes only those receipts described ~~herein~~ in this rule that constitute business income and are included in the computation of the apportionable income base for the taxable year.

(b) Receipts from the lease of real property. The numerator of the receipts factor includes receipts from the lease or rental of real property owned by the taxpayer if the property is located within Oregon and receipts from the sublease of real property that is located within Oregon. (Note: This subsection applies only to tax years beginning on or after January 1, 2010.)~~See OAR 150-314.665(4)~~.

(c) Receipts from the lease of tangible personal property.

(A) Except as described in paragraph (B) of this subsection, the numerator of the sales factor includes receipts from the lease or rental of tangible personal property owned by the taxpayer if the property is located within ~~this state~~Oregon when it is first placed in service by the lessee.

(B) Receipts from the lease or rental of transportation property owned by the taxpayer are included in the numerator of the sales factor to the extent that the property is used in ~~this state~~Oregon. The extent an aircraft is deemed to be used in ~~this state~~Oregon is determined by multiplying the receipts from the lease or rental of the aircraft by a fraction, the numerator of which is the number of landings of the aircraft in ~~this state~~Oregon and the denominator of which is the total number of landings of the aircraft. If the extent of the use of any transportation property within ~~this state~~Oregon cannot be determined, then the property is deemed to be used wholly in the state where~~in which~~ the property has its principal base of operations. A motor vehicle is deemed to be used wholly in the state where~~in which~~ it is registered.

(d) ~~Interest~~ Receipts from loans secured by real property.

(A) The numerator of the sales factor includes interest, ~~and~~ fees ~~or~~ and penalties ~~in the nature of interest~~ from loans secured by real property if the property is located within ~~this state~~Oregon. If the property is located both within ~~this state~~Oregon and one or more other states, the receipts described in this subsection are included in the numerator of the sales factor if more than 50 percent of the fair market value of the real property is located within ~~this state~~Oregon. If more than 50 percent of the fair market value of the real property is not located within any one state, then the receipts described in this subsection must be included in the numerator of the sales factor if the borrower is located in ~~this state~~Oregon.

(B) The determination of whether the real property securing a loan is located within ~~this state~~Oregon is made as of the time the original agreement was made, and any and all subsequent substitutions of collateral are disregarded.

(e) ~~Interest~~ Receipts from loans not secured by real property. The numerator of the sales factor includes interest, ~~and~~ fees ~~or~~ and penalties ~~in the nature of interest~~ from loans not secured by real property if the borrower is located in ~~this state~~Oregon.

(f) Net gains from the sale of loans. The numerator of the sales factor includes net gains from the sale of loans. Net gains from the sale of loans include~~s~~ income recorded under the coupon stripping rules of section 1286 of the Internal Revenue Code.

(A) The amount of net gains (but not less than zero) from the sale of loans secured by real property included in the numerator is determined by multiplying such net gains by a fraction, the numerator of which is the amount included in the numerator of the sales factor pursuant to subsection (d) of this section and the denominator of which is the total amount of interest, ~~and~~ fees ~~or~~ and penalties ~~in the nature of interest~~ from loans secured by real property.

(B) The amount of net gains (but not less than zero) from the sale of loans not secured by real property included in the numerator is determined by multiplying such net gains by a fraction, the numerator of which is the amount included in the numerator of the sales factor pursuant to subsection (e) of this section and the denominator of which is the total amount of interest, ~~and~~ fees ~~or~~ and penalties ~~in the nature of interest~~ from loans not secured by real property.

(g) Receipts from credit card receivables. The numerator of the sales factor includes interest, ~~and~~ fees ~~or~~ and penalties ~~in the nature of interest~~ from credit card receivables and receipts from all fees charged to card holders, ~~such as~~including but not limited to annual fees, if the billing address of the card holder is in ~~this state~~Oregon.

(h) Net gains from the sale of credit card receivables. The numerator of the sales factor includes all net gains (but not less than zero) from the sale of credit card receivables multiplied by a fraction, the numerator of which is the amount included in the numerator of the sales factor pursuant to subsection (g) of this section and the denominator of which is the taxpayer’s total amount of interest, ~~and~~ fees ~~or~~ and penalties ~~in the nature of interest~~ from credit card receivables and fees charged to card holders.

(i) Credit card issuer’s reimbursement fees. The numerator of the sales factor includes all credit card issuer’s reimbursement fees multiplied by a fraction, the numerator of which is the amount included in the numerator of the sales factor pursuant to subsection (g) of this section and the denominator of which is the taxpayer's total amount of interest, ~~and~~ fees ~~or~~ and penalties ~~in the nature of interest~~ from credit card receivables and fees charged to card holders.

(j) Receipts from merchant discount. ~~The numerator of the sales factor includes receipts from merchant discount if the commercial domicile of the merchant is in this state.~~ Such receipts are computed net of any card holder charge backs, but are not reduced by any interchange transaction fees or by any issuer's reimbursement fees paid to another for charges made by its card holders

(A) If the financial organization has readily available information regarding the commercial domicile or location of the merchant, then the numerator of the receipts factor includes receipts from merchant discount if the commercial domicile or location of the merchant is in Oregon.

(B) If the financial organization does not have readily available information regarding the commercial domicile or location of the merchant, then the numerator of the receipts factor includes receipts from merchant discount multiplied by a fraction, the numerator of which is the amount included in the numerator of the receipts factor pursuant to subsection (g) of this rule and the denominator of which is the taxpayer's total amount of interest, fees and penalties from credit card receivables and fees charged to card holders.

(C) The method used for sourcing merchant discount must be consistently applied in all states that provide options similar to those in paragraphs (A) and (B) of this subsection and also must be used on all subsequent returns unless the taxpayer receives prior permission from the Department of Revenue to use a different method.

(k) Loan servicing fees.

(A) The numerator of the sales factor includes loan servicing fees derived from loans secured by real property multiplied by a fraction, the numerator of which is the amount included in the numerator of the sales factor pursuant to subsection (d) of this section and the denominator of which is the total amount of interest, ~~and~~ fees ~~or~~ and penalties ~~in the nature of interest~~ from loans secured by real property.

(B) The numerator of the sales factor includes loan servicing fees derived from loans not secured by real property multiplied by a fraction, the numerator of which is the amount included in the numerator of the sales factor pursuant to subsection (e) of this section and the denominator of which is the total amount of interest, ~~and~~ fees ~~or~~ and penalties ~~in the nature of interest~~ from loans not secured by real property.

(C) In circumstances in which the taxpayer receives loan servicing fees for servicing either the secured or the unsecured loans of another, the numerator of the sales factor must include such fees if the borrower is located in ~~this state~~Oregon.

(l) Receipts from services not covered elsewhere in this rule.~~. See OAR 150-314.665(4).~~ Such receipts are attributed to Oregon based on the ratio that total deposits from Oregon, its residents, including any business with an office or other place of business in Oregon, its political subdivisions, agencies, and instrumentalities bear to the total deposits from all states, their residents, their political subdivisions, agencies, and instrumentalities. In the case of an unregulated financial organization subject to this section, these receipts are apportioned to Oregon based on the ratio that gross business income, excluding such receipts, earned from sources within Oregon bears to gross business income, excluding such receipts, earned from sources within all states. For purposes of this section, deposits made by Oregon residents, including its political subdivisions, agencies, and instrumentalities must be attributed to

Oregon, whether or not the deposits are accepted or maintained by the taxpayer at locations within Oregon. (Note: This subsection applies only to tax years beginning on or after January 1, 2010.)

(m) Receipts from the financial organization's investment assets and activities and trading assets and activities.

(A) Interest, dividends (less Oregon dividend deduction), net gains (but not less than zero), and other income from investment assets and activities and from trading assets and activities engaged in by a financial organization for its own account, and not on behalf of other persons, are included in the sales factor. Investment assets and activities and trading assets and activities include but are not limited to: investment securities, trading account assets, federal funds; securities purchased and sold under agreements to resell or repurchase, options, future contracts, forward contracts, notional principal contracts such as swaps, equities, and foreign currency transactions. With respect to the investment and trading assets and activities described in subparagraphs (i) and (ii) of this paragraph, the sales factor includes the amounts described in such subparagraphs.

(i) The sales factor includes the amount ~~by which~~of interest from federal funds sold and securities purchased under resale agreements that exceeds interest expense on federal funds purchased and securities sold under repurchase agreements.

(ii) The sales factor includes the amount ~~by which~~of interest, dividends (less Oregon dividend deduction), gains, and other income from trading assets and activities, including but not limited to assets and activities in the matched book, in the arbitrage book, and foreign currency transactions, that exceed amounts paid in lieu of interest, amounts paid in lieu of dividends, and losses from such assets and activities.

(B) The numerator of the sales factor includes interest, dividends (less Oregon dividend deduction), net gains (but not less than zero), and other income from investment assets and activities and from trading assets and activities engaged in by a financial organization for its own account, and not on behalf of other persons, described in paragraph (A) that are attributable to ~~this state~~Oregon.

(i) The amount of interest, dividends (less Oregon dividend deduction), net gains (but not less than zero) and other income from investment assets and activities in the investment account to be attributed to ~~this state~~Oregon and included in the numerator of the sales factor is determined by multiplying all such income from such assets and activities by a fraction, the numerator of which is the average value of such assets that are properly assigned to a regular place of business of the taxpayer within ~~this state~~Oregon and the denominator of which is the average value of all such assets.

(ii) The amount of interest from federal funds sold and purchased and from securities purchased under resale agreements and securities sold under repurchase agreements attributable to ~~this state~~Oregon and included in the numerator of the sales factor is determined by multiplying the amount described in subparagraph (i) of paragraph (A) from such funds and such securities by a fraction, the numerator of which is the average value of federal funds sold and securities purchased under agreements to resell that are properly assigned to a regular place of business of the taxpayer within ~~this state~~Oregon and the denominator of which is the average value of all such funds and such securities.

PURPOSE: To provide financial organizations with a method to apportion all of their receipts in a way that fairly represents the net income of the business activity done within Oregon.

(iii) The amount of interest, dividends (less Oregon dividend deduction), gains, and other income from trading assets and activities, including but not limited to assets and activities in the matched book, in the arbitrage book, and foreign currency transactions, (but excluding amounts described in subparagraphs (i) and (ii) of this paragraph), attributable to ~~this state~~Oregon and included in the numerator of the sales factor is determined by multiplying the amount described in subparagraph (ii) of paragraph (A) by a fraction, the numerator of which is the average value of such trading assets that are properly assigned to a regular place of business of the taxpayer within ~~this state~~Oregon and the denominator of which is the average value of all such assets.

(iv) For purposes of this paragraph, average value is determined using the rules for determining the average value of tangible personal property set forth in subsections (c) and (d) of section (5).

(C) In lieu of using the method set forth in paragraph (B) of this subsection, the taxpayer may elect, or the department may require in order to fairly and accurately reflect the net income from ~~represent~~ the business activity of the taxpayer in ~~this state~~Oregon, the use of the method set forth in this paragraph.

(i) The amount of interest, dividends (less Oregon dividend deduction), net gains (but not less than zero), and other income from investment assets and activities in the investment account to be attributed to ~~this state~~ Oregon and included in the numerator of the sales factor is determined by multiplying all such income from such assets and activities by a fraction, the numerator of which is the gross income from such assets and activities that are properly assigned to a regular place of business of the taxpayer within ~~this state~~Oregon and the denominator of which is the gross income from all such assets and activities.

(ii) The amount of interest from federal funds sold and purchased and from securities purchased under resale agreements and securities sold under repurchase agreements attributable to ~~this state~~Oregon and included in the numerator of the sales factor is determined by multiplying the amount described in subparagraph (i) of paragraph (A) from such funds and such securities by a fraction, the numerator of which is the gross income from such funds and such securities that are properly assigned to a regular place of business of the taxpayer within ~~this state~~Oregon and the denominator of which is the gross income from all such funds and such securities.

(iii) The amount of interest, dividends (less Oregon dividend deduction), gains, and other income from trading assets and activities, including but not limited to assets and activities in the matched book, in the arbitrage book, and foreign currency transactions (but excluding amounts described in subparagraphs (i) and (ii) of this paragraph) attributable to ~~this state~~Oregon and included in the numerator is determined by multiplying the amount described in subparagraph (ii) of paragraph (A) by a fraction, the numerator of which is the gross income from such trading assets and activities that are properly assigned to a regular place of business of the taxpayer within ~~this state~~Oregon and the denominator of which is the gross income from all such assets and activities.

(D) If the taxpayer elects or is required by the department to use the method set forth in paragraph (C) of this subsection, it must use this method on all subsequent returns unless the taxpayer receives prior written permission from the department, or the department requires the use of a different method.

(E) The taxpayer has the burden of proving that the receipts from an investment asset or activity or trading asset or activity was properly assigned to a regular place of business outside of ~~this state~~Oregon by demonstrating that the day-to-day decisions regarding the asset or activity occurred at a regular place of business outside ~~this state~~of Oregon. Where the day-to-day decisions regarding an investment asset or activity or trading asset or activity occur at more than one regular place of business, and one such regular place of business is in ~~this state~~Oregon and one such regular place of business is outside ~~this state~~of Oregon, such asset or activity is considered to be located at the regular place of business of the taxpayer where the investment or trading policies or guidelines with respect to the asset or activity are established. Unless the taxpayer demonstrates to the contrary, such policies and guidelines are presumed to be established at the commercial domicile of the taxpayer.

(n) Receipts from the issuance of travelers checks and money orders are attributed to the state where the checks or money orders are purchased.

~~(n) All other receipts. The numerator of the sales factor includes all other receipts pursuant to the rules set forth under ORS 314.665.~~

(o) Receipts generated from fees charged at automated teller machines (ATM's) are attributed to the state where the ATM is physically located.

(p) Receipts from trust and investment management activities in connection with trusts. The numerator of the receipts factor includes fees and other receipts from trust services, including investment management of assets and other activities in connection with a trust based on one of the following methods.

(A) Such receipts are attributed to Oregon based on the ratio that total deposits from Oregon, its residents, including any business with an office or other place of business in Oregon, its political subdivisions, agencies, and instrumentalities bear to the total deposits from all states, their residents, their political subdivisions, agencies, and instrumentalities. In the case of an unregulated financial organization subject to this section, these receipts are apportioned to Oregon based on the ratio that gross business income, excluding such receipts, earned from sources within Oregon bears to gross business income, excluding such receipts, earned from sources within all states. For purposes of this section, deposits made by Oregon residents, including its political subdivisions, agencies, and instrumentalities must be attributed to Oregon, whether or not the deposits are accepted or maintained by the taxpayer at locations within Oregon.

(B) At the option of the taxpayer such receipts may be disregarded from both the numerator and denominator.

(C) The method used for sourcing receipts from trust and investment management activities in connection with trusts must be consistently applied in all states that provide options similar to those in paragraphs (A) and (B) of this subsection and also must be used on all subsequent returns unless the taxpayer receives prior permission from the Department of Revenue to use a different method.

(q) Receipts from investment management activities performed by a financial organization on behalf of other persons. The numerator of the receipts factor includes fees and other receipts from investment management activities performed by a financial organization on behalf of other persons if the address of the person for whom the financial organization performs the investment management activities is in this state.

(~~o~~r) Attribution of certain receipts to commercial domicile. All receipts that would be assigned under this section to a state in which the taxpayer is not taxable are included in the numerator of the sales factor if the taxpayer's commercial domicile is in ~~this state~~Oregon.

(5) Property Factor.

(a) In general. The property factor is a fraction, the numerator of which is the average value of the taxpayer's real property, tangible personal property, loans, and credit card receivables located and used within ~~this state~~Oregon during the taxable year and the denominator of which is the average value of all such property located and used both within and without ~~this state~~Oregon during the taxable year.

(b) Property included. The property factor includes only property the income or expenses of which are included (or would have been included if not fully depreciated or expensed, or depreciated or expensed to a nominal amount) in the computation of the apportionable income base for the taxable year.

(c) Value of property owned by the taxpayer.

(A) The value of real property and tangible personal property owned by the taxpayer is the original cost or other basis of such property for federal income tax purposes without regard to depletion, depreciation, or amortization.

(B) Loans are valued at their outstanding principal balance, without regard to any reserve for bad debts. If a loan is charged off in whole or in part for federal income tax purposes, the portion of the loan charged off is not outstanding. A specifically allocated reserve established pursuant to regulatory or financial accounting guidelines that is treated as charged off for federal income tax purposes is treated as charged off for purposes of this section.

(C) Credit card receivables are valued at their outstanding principal balance, without regard to any reserve for bad debts. If a credit card receivable is charged off in whole or in part for federal income tax purposes, the portion of the receivable charged off is not outstanding.

(d) Average value of property owned by the taxpayer. See OAR 150-314.655(2)-(A) and 150-314.655(3).

(e) Average value of real property and tangible personal property rented to the taxpayer. See OAR 150-314.655(2)-(B).

(f) Location of real property and tangible personal property owned by or rented to the taxpayer.

(A) Except as described in paragraph (B) of this subsection, real property and tangible personal property owned by or rented to the taxpayer is considered to be located within ~~this state~~Oregon if it is physically located, situated, or used within ~~this state~~Oregon.

(B) Transportation property is included in the numerator of the property factor to the extent that the property is used in ~~this state~~Oregon. The extent an aircraft is deemed to be used in ~~this state~~Oregon and the amount of value that is included in the numerator of ~~this state~~Oregon's property factor is determined by multiplying the average value of the aircraft by a fraction, the numerator of which is the number of landings of the aircraft in ~~this state~~Oregon and the denominator of which is the total number of landings of the aircraft everywhere. If the extent of the use of any transportation property within ~~this state~~Oregon cannot be determined, then the property is deemed to be used wholly in the state ~~in which~~where the property has its principal base of operations. A motor vehicle is deemed to be used wholly in the state ~~in which~~where it is registered.

(g) Location of loans.

(A)(i) A loan is considered to be located within ~~this state~~Oregon if it is properly assigned to a regular place of business of the taxpayer within ~~this state~~Oregon.

(ii) A loan is properly assigned to the regular place of business ~~with which~~where it has a preponderance of substantive contacts. A loan assigned by the taxpayer to a regular place of business without ~~the state~~Oregon is presumed to have been properly assigned if:

(I) The taxpayer has assigned, in the regular course of its business, such loan on its records to a regular place of business consistent with federal or state regulatory requirements;

(II) Such assignment on its records is based upon substantive contacts of the loan to such regular place of business; and

(III) The taxpayer uses ~~said~~ the same records for reflecting assignment of loans for the filing of all state and local tax returns ~~for which~~where an assignment of loans to a regular place of business is required.

(iii) The presumption of proper assignment of a loan provided in subparagraph (A)(ii) of this section may be rebutted upon a showing by the department, supported by a preponderance of the evidence, that the preponderance of substantive contacts regarding such loan did not occur at the regular place of business ~~to which~~where it was assigned on the taxpayer's records. When such presumption has been rebutted, the loan is located within ~~this state~~Oregon if:

(I) The taxpayer had a regular place of business within ~~this state~~Oregon at the time the loan was made; and

(II) The taxpayer fails to show, by a preponderance of the evidence, that the preponderance of substantive contacts regarding such loan did not occur within ~~this state~~Oregon.

(B) In the case of a loan that is assigned by the taxpayer to a place without ~~this state~~Oregon that is not a regular place of business, it is presumed, subject to rebuttal by the taxpayer on a showing supported by the preponderance of evidence, that the preponderance of substantive contacts regarding the loan occurred within ~~this state~~Oregon if, at the time the loan was made the taxpayer's commercial domicile, as defined by subsection (3)(c), was within ~~this state~~Oregon.

(C) To determine the state ~~in which~~where the preponderance of substantive contacts relating to a loan have occurred, the facts and circumstances regarding the loan at issue will be reviewed on a case-by-case basis and consideration will be given to such activities as the solicitation, investigation, negotiation, approval, and administration of the loan. The terms "solicitation," "investigation," "negotiation," "approval," and "administration" are defined as follows:

(i) Solicitation. Solicitation is either active or passive. Active solicitation occurs when an employee of the taxpayer initiates the contact with the customer. Such activity is located at the regular place of business that the taxpayer's employee is regularly connected with or working out of, regardless of where the services of such employee were actually performed. Passive solicitation occurs when the customer initiates the contact with the taxpayer. If the customer's initial contact was not at a regular place of business of the taxpayer, the regular place of business, if any, where the passive solicitation occurred is determined by the facts in each case.

(ii) Investigation. Investigation is the procedure whereby employees of the taxpayer determine the credit-worthiness of the customer as well as the degree of risk involved in making a particular agreement. Such activity is located at the regular place of business that the taxpayer's employees are regularly connected with or working out of, regardless of where the services of such employees were actually performed.

(iii) Negotiation. Negotiation is the procedure whereby employees of the taxpayer and its customer determine the terms of the agreement (e.g., the amount, duration, interest rate, frequency of repayment, currency denomination, and security required). Such activity is located at the regular place of business that the taxpayer's employees are regularly connected with or working out of, regardless of where the services of such employees were actually performed.

(iv) Approval. Approval is the procedure whereby employees or the board of directors of the taxpayer make the final determination whether to enter into the agreement. Such activity is located at the regular place of business that the taxpayer's employees are regularly connected with or working out of, regardless of where the services of such employees were actually performed. If the board of directors makes the final determination, such activity is located at the commercial domicile of the taxpayer.

(v) Administration. Administration is the process of managing the account. This process includes bookkeeping, collecting the payments, corresponding with the customer, reporting to management regarding the status of the agreement, and proceeding against the borrower or the security interest if the borrower is in default. Such activity is located at the regular place of business that oversees this activity.

(h) Location of credit card receivables. For purposes of determining the location of credit card receivables, credit card receivables are treated as loans and are subject to the provisions of subsection (g) of this section.

(i) Period ~~for~~ during which properly assigned loan remains assigned. A loan that has been properly assigned to a state, absent any change of material fact, remains assigned to that state for the length of the original term of the loan. Thereafter, the loan may be properly assigned to another state if the loan has a preponderance of substantive contact to a regular place of business there.

(6) Payroll factor. In general. The payroll factor is determined as provided in ORS 314.660 and the rules thereunder.

[Publications: The publication(s) referred to or incorporated by reference in this rule is available from the Department of Revenue pursuant to ORS 183.360(2) and ORS 183.355(6).]

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Stats. Implemented: ORS 314.280

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