Multistate Tax Commission Memorandum

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To:	MTC Financial Institutions Work Group
From:	Sheldon H. Laskin and Shirley Sicilian
Date:	February 19, 2010
Subject:	Questions for the work group to consider re sourcing receipts from fees imposed on the use of debit and ATM cards

In the course of working on the next draft of the proposed MTC uniform regulation for apportioning income received by financial institutions, staff has had a conversation with Karen Boucher. As a result of that conversation, a number of questions have arisen that the work group should address before finalizing a regulation on the sourcing of receipts from fees imposed on the use of debit and ATM cards. Those questions follow.

1. Should there be separate sourcing rules for income derived from debit and ATM card fees by (a) card issuers and (b) machine owners or lessees? In the former case, if the income could be sourced based on the billing address of the card user, there would be no need for a proxy such as the location of the machine. The proxy would only be necessary in the latter case.

2. Are there any meaningful distinctions between an ATM card and a debit card, and the fees imposed for their use, that would require different sourcing rules for each? If not, should the regulation state that "as used herein, the term ATM card includes a debit card" with no separate references to debit cards?

3 Do financial institutions apply merchant discount for the use of a debit card? If so, should there be a different sourcing rule for merchant discount on debit cards than for credit cards?

4. How many entities can theoretically derive income from the use of ATM cards? The work group has been proceeding under the assumption that there are only two possible entities that would derive such income – the card issuer and/or the financial institution that owns or leases the machine at which the card was used. But there may be a third possibility. A number of non-financial institutions (such as convenience stores and bars) have ATM machines located on the premises. While the store owner may own or lease the machines, the store is not a financial institution. In that case, some financial

institution must be acting as a facilitator for the funds withdrawal. If so, does the work group contemplate that the income the facilitator receives from the card issuer would be covered by this regulation? In that event, it would be necessary to draft a sourcing rule that is reasonably administrable in this context for both industry and the states. If not, should the regulation state that it is not intended to apply to such third parties?