WEST VIRGINIA CODE: §11-23-5A

§11-23-5a. Special apportionment rules - financial organizations.

(a) General. -- The Legislature hereby finds that the general formula set forth in section five of this article for apportioning the tax base of corporations and partnerships taxable in this state as well as in another state is inappropriate for use by financial organizations due to the particular characteristics of those organizations and the manner in which their business is conducted. Accordingly, the general formula set forth in section five of this article may not be used to apportion the tax base of financial organizations which shall use only the apportionment formula and methods set forth in this section.

(b) West Virginia financial organizations taxable in another state. -- A financial organization that has its commercial domicile in this state and which is taxable in another state may not apportion its tax base as provided in section five of this article, but shall apportion its tax base to this state by multiplying it by the special gross receipts factor calculated as provided in subsection (f) of this section. The product of this multiplication is the portion of its tax base that is attributable to business activity in this state.

(c) Out-of-state financial organizations with business activities in this state. -- A financial organization that does not have its commercial domicile in this state and which regularly engages in business in this state shall apportion its tax base to this state by multiplying it by the special gross receipts factor calculated as provided in subsection (f) of this section. The product of this multiplication is the portion of its tax base that is attributable to business activity in this state.

(d) Engaging in business -- nexus presumptions and exclusions. -- A financial organization that has its commercial domicile in another state is presumed to be regularly engaging in business in this state if during any year it obtains or solicits business with twenty or more persons within this state, or if the sum of the value of its gross receipts attributable to sources in this state equals or exceeds $100,000. However, gross receipts from the following types of property, as well as those contacts with this state reasonably and exclusively required to evaluate and complete the acquisition or disposition of the property, the servicing of the property or the income from it, the collection of income from the property or the acquisition or liquidation of collateral relating to the property shall not be a factor in determining whether the owner is engaging in business in this state:

(1) An interest in a real estate mortgage investment conduit, a real estate investment trust or a regulated investment company;

(2) An interest in a loan backed security representing ownership or participation in a pool of promissory notes or certificates of interest that provide for payments in relation to payments or reasonable projections of payments on the notes or certificates;

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(3) An interest in a loan or other asset from which the interest is attributed to a consumer loan, a commercial loan or a secured commercial loan and in which the payment obligations were solicited and entered into by a person that is independent, and not acting on behalf, of the owner;

(4) An interest in the right to service or collect income from a loan or other asset from which interest on the loan is attributed as a loan described in the previous paragraph and in which the payment obligations were solicited and entered into by a person that is independent, and not acting on behalf, of the owner; or

(5) Any amounts held in an escrow or trust account with respect to property described above.

(e) Definitions. -- For purposes of this section:

(1) "Commercial domicile" means the same as that term is defined in section three of this article.

(2) "Deposit" means: (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 it 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 credit funds, or which is evidenced by a 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: Provided, That without limiting the generality of the term "money or its equivalent", any 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 any 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 a 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 thereby established, including, without being limited to, escrow funds, funds held as security for an obligation due the financial organization or other, 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: Provided, That there shall not

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be included funds which are received by the financial organization for immediate application to the reduction of an indebtedness to the receiving financial organization or under condition that the receipt thereof immediately reduces or extinguishes an indebtedness;

(D) Outstanding drafts, including advice or authorization to charge a financial organization's balance in another 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; and

(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 balances in the regular course of its business.

(3) "Financial organization" means a financial organization as defined in subdivision (13), subsection (b), section three of this article, as well as a partnership which derives more than fifty percent of its gross business income from one or more of the activities enumerated in subparagraphs (1) through (6), inclusive, paragraph (C) of said subdivision.

(4) "Sales" means: For purposes of apportionment under this section, the gross receipts of a financial organization included in the gross receipts factor described in subsection (f) of this section, regardless of their source.

(f) Special gross receipts factor. -- The gross receipts factor is a fraction, the numerator of which is the total gross receipts of the taxpayer from sources within this state during the taxable year and the denominator of which is the total gross receipts of the taxpayer wherever earned during the taxable year: Provided, That neither the numerator nor the denominator of the gross receipts factor shall include receipts from obligations described in paragraphs (A), (B), (C) and (D), subdivision (1), subsection (f), section six, article twenty-four of this chapter.(1) Numerator. -- The numerator of the gross receipts factor shall include, in addition to items otherwise includable in the sales factor under section five of this article, the following:

(A) Gross receipts from the lease or rental of real or tangible personal property, whether as the economic equivalent of an extension of credit or otherwise if the property is located in this state;

(B) Interest income and other receipts from assets in the nature of loans which are secured primarily by real estate or tangible personal property if the security property is located in the state. In the event that the security property is also located in one or more other states, receipts shall be presumed to be from sources within this state, subject to rebuttal based upon factors described in rules to be promulgated by the Tax Commissioner, including the factor that the proceeds of any loans were applied and used by the borrower entirely outside of this state;

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(C) Interest income and other receipts from consumer loans which are unsecured or are secured by intangible property that are made to residents of this state, whether at a place of business, by traveling loan officer, by mail, by telephone or other electronic means or otherwise;

(D) Interest income and other receipts from commercial loans and installment obligations which are unsecured or are secured by intangible property if and to the extent that the borrower or debtor is a resident of or is domiciled in this state: Provided, That receipts are presumed to be from sources in this state and the presumption may be overcome by reference to factors described in rules to be promulgated by the Tax Commissioner, including the factor that the proceeds of any loans were applied and used by the borrower entirely outside of this state;

(E) Interest income and other receipts from a financial organization's syndication and participation in loans, under the rules set forth in paragraphs (A) through (D), inclusive, of this subdivision;

(F) Interest income and other receipts, including service charges, from financial institution credit card and travel and entertainment credit card receivables and credit card holders' fees if the borrower or debtor is a resident of this state or if the billings for any receipts are regularly sent to an address in this state;

(G) Merchant discount income derived from financial institution credit card holder transactions with a merchant located in this state. In the case of merchants located within and without this state, only receipts from merchant discounts attributable to sales made from locations within this state shall be attributed to this state. It shall be presumed, subject to rebuttal, that the location of a merchant is the address shown on the invoice submitted by the merchant to the taxpayer;

(H) Gross receipts from the performance of services are attributed to this state if:

(i) The service receipts are loan-related fees, including loan servicing fees, and the borrower resides in this state, except that, at the taxpayer's election, receipts from loan-related fees which are either: (I) "Pooled" or aggregated for collective financial accounting treatment; or (II) manually written as nonrecurring extraordinary charges to be processed directly to the general ledger may either be attributed to a state based upon the borrowers' residences or upon the ratio that total interest sourced to that state bears to total interest from all sources;

(ii) The service receipts are deposit-related fees and the depositor resides in this state, except that, at the taxpayer's election, receipts from deposit-related fees which are either: (I) "Pooled" or aggregated for collective financial accounting treatment; or (II) manually written as nonrecurring extraordinary charges to be processed directly to the general ledger may either be attributed to a state based upon the depositors' residences or upon the ratio that total deposits sourced to that state bears to total deposits from all sources;

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(iii) The service receipt is a brokerage fee and the account holder is a resident of this state;

(iv) The service receipts are fees related to estate or trust services and the estate's decedent was a resident of this state immediately before death or the grantor who either funded or established the trust is a resident of this state; or

(v) The service receipt is associated with the performance of any other service not identified above and the service is performed for an individual resident of, or for a corporation or other business domiciled in, this state and the economic benefit of service is received in this state;

(I) Gross receipts from the issuance of travelers' checks and money orders if checks and money orders are purchased in this state; and

(J) All other receipts not attributed by this rule to a state in which the taxpayer is taxable shall be attributed pursuant to the laws of the state of the taxpayer's commercial domicile.

(2) Denominator. -- The denominator of the gross receipts factor shall include all of the taxpayer's gross receipts from transactions of the kind included in the numerator, but without regard to their source or situs.

(g) Limited tax credit for certain financial organizations for certain periods. -- A credit shall be allowed against the tax imposed by this article on a financial organization with its commercial domicile in this state that acquires a financial organization that does not have its commercial domicile in this state: Provided, That the goodwill associated with the acquisition is first added to the net equity of the financial organization with its commercial domicile in this state on or after January 1, 2008: Provided, however, That the prior recordation of the goodwill associated with the acquisition on the balance sheet of a financial organization that does not have its commercial domicile in this state shall not affect, limit or reduce the availability of the credit authorized by this subsection. The credit shall equal fifty percent of the goodwill associated with the acquisition in the amount first recorded on the balance sheet of the financial organization with its commercial domicile in this state, multiplied by the tax rate applicable to the financial organization under this article for the taxable year. For purposes of this subsection, the term "goodwill" shall have the meaning set forth in the capital adequacy guidelines for bank holding companies established by the Federal Reserve Board in 12 C.F.R. 225, Appendix A, as the same may be revised from time to time.

(h) Effective date. -- The provisions of this section enacted in chapter one hundred sixty-seven, Acts of the Legislature, 1991, shall apply to all taxable years beginning on or after January 1, 1991. The amendments to this section, enacted in the year one 1996, shall apply to taxable years beginning after December 31, 1995. The amendments to this section, enacted in the year 2008, shall apply to taxable years beginning after December 31, 2008: Provided, That the amendments to subsection (g) of this section, enacted in the year 2008, shall apply to taxable years beginning after December 31, 2007.

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