

SECOND REGULAR SESSION

SENATE BILL NO. 1212

101ST GENERAL ASSEMBLY

INTRODUCED BY SENATOR CRAWFORD.

5783S.01I

ADRIANE D. CROUSE, Secretary

AN ACT

To repeal section 143.455, RSMo, and to enact in lieu thereof two new sections relating to the apportionment of income for financial institutions.

Be it enacted by the General Assembly of the State of Missouri, as follows:

Section A. Section 143.455, RSMo, is repealed and two new
2 sections enacted in lieu thereof, to be known as sections
3 143.455 and 143.556, to read as follows:

143.455. 1. Missouri taxable income of a corporation
2 shall include all income derived from sources within this
3 state.

4 2. For all tax years beginning on or after January 1,
5 2020, a corporation described in subdivision (1) of
6 subsection 1 of section 143.441 shall determine its income
7 derived from sources within this state by allocating and
8 apportioning its net income as provided in this section.

9 3. As used in this section, unless the context
10 otherwise requires, the following terms mean:

11 (1) "Apportionable income":

12 (a) All income that is apportionable under the
13 Constitution of the United States and is not allocated under
14 the laws of this state, including:

15 a. Income arising from transactions and activity in
16 the regular course of the corporation's trade or business;
17 and

EXPLANATION-Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.

18 b. Income arising from tangible and intangible
19 property if the acquisition, management, employment,
20 development, or disposition of the property is or was
21 related to the operation of the corporation's trade or
22 business; and

23 (b) Any income that would be allocable to this state
24 under the Constitution of the United States, but that is
25 apportioned rather than allocated pursuant to the laws of
26 this state;

27 (2) "Commercial domicile", the principal place from
28 which the trade or business of the corporation is directed
29 or managed;

30 **(3) "Financial institution":**

31 (a) Any corporation or other business entity organized
32 under the laws of this state as a bank holding company or
33 registered under the Federal Bank Holding Company Act of
34 1956, as amended, or registered as a savings and loan
35 holding company under the Federal National Housing Act, as
36 amended;

37 (b) A national bank organized and existing as a
38 national bank association pursuant to the provisions of the
39 National Bank Act, 12 U.S.C. Section 21 et seq.;

40 (c) A savings association or federal savings bank as
41 defined in the Federal Deposit Insurance Act, 12 U.S.C.
42 Section 1813(b)(1);

43 (d) Any bank or thrift institution incorporated or
44 organized under the laws of any state;

45 (e) Any corporation organized under the provisions of
46 12 U.S.C. Sections 611 to 631;

47 (f) Any agency or branch of a foreign depository as
48 defined in 12 U.S.C. §3101;

49 (g) A state credit union, the loan assets of which
50 exceed fifty million dollars as of the first day of its
51 taxable year;

52 (h) A production credit association organized under
53 the Federal Farm Credit Act of 1933, all of whose stock held
54 by the federal production credit corporation has been
55 retired;

56 (i) Any corporation whose voting stock is more than
57 fifty percent owned, directly or indirectly, by any person
58 or business entity described in paragraphs (a) to (h) of
59 this subdivision;

60 [(3)] (4) "Financial organization", any bank, trust
61 company, savings bank, industrial bank, land bank, safe
62 deposit company, private banker, savings and loan
63 association, credit union, cooperative bank, small loan
64 company, sales finance company, investment company, or any
65 type of insurance company;

66 [(4)] (5) "Nonapportionable income", all income other
67 than apportionable income;

68 [(5)] (6) "Public utility", any business entity:

69 (a) Which owns or operates any plant, equipment,
70 property, franchise, or license for the transmission of
71 communications, transportation of goods or persons, except
72 by pipeline, or the production, transmission, sale,
73 delivery, or furnishing of electricity, water or steam; and

74 (b) Whose rates of charges for goods or services have
75 been established or approved by a federal, state, or local
76 government or governmental agency;

77 [(6)] (7) "Receipts", all gross receipts of the
78 corporation that are not allocated under the provisions of
79 this section, and that are received from transactions and
80 activity in the regular course of the corporation's trade or

81 business; except that receipts of a corporation from hedging
82 transactions and from the maturity, redemption, sale,
83 exchange, loan or other disposition of cash or securities,
84 shall be excluded.

85 4. For purposes of allocation and apportionment of
86 income under this section, a corporation is taxable in
87 another state if:

88 (1) In that state it is subject to a net income tax, a
89 franchise tax measured by net income, a franchise tax for
90 the privilege of doing business, or a corporate stock tax; or

91 (2) That state has jurisdiction to subject the
92 corporation to a net income tax regardless of whether, in
93 fact, the state does or does not do so.

94 5. Rents and royalties from real or tangible personal
95 property, capital gains, interest, dividends or patent or
96 copyright royalties, to the extent that they constitute
97 nonapportionable income, shall be allocated as provided in
98 subsections 6 to 9 of this section.

99 6. (1) Net rents and royalties from real property
100 located in this state are allocable to this state.

101 (2) Net rents and royalties from tangible personal
102 property are allocable to this state:

103 (a) If and to the extent the property is utilized in
104 this state; or

105 (b) In their entirety if the corporation's commercial
106 domicile is in this state and the corporation is not
107 organized under the laws of or taxable in the state in which
108 the property is utilized.

109 (3) The extent of utilization of tangible personal
110 property in a state is determined by multiplying the rents
111 and royalties by a fraction, the numerator of which is the
112 number of days of physical location of the property in the

state during the rental or royalty period in the taxable year and the denominator of which is the number of days of physical location of the property everywhere during all rental or royalty periods in the taxable year. If the physical location of the property during the rental or royalty period is unknown or unascertainable by the corporation, tangible personal property is utilized in the state in which the property was located at the time the rental or royalty payer obtained possession.

7. (1) Capital gains and losses from sales of real property located in this state are allocable to this state.

(2) Capital gains and losses from sales of tangible personal property are allocable to this state if:

(a) The property had a situs in this state at the time of the sale; or

(b) The corporation's commercial domicile is in this state and the corporation is not taxable in the state in which the property had a situs.

(3) Capital gains and losses from sales of intangible personal property are allocable to this state if the corporation's commercial domicile is in this state.

8. Interest and dividends are allocable to this state if the corporation's commercial domicile is in this state.

9. (1) Patent and copyright royalties are allocable to this state:

(a) If and to the extent that the patent or copyright is utilized by the payer in this state; or

(b) If and to the extent that the patent or copyright is utilized by the payer in a state in which the corporation is not taxable and the corporation's commercial domicile is in this state.

144 (2) A patent is utilized in a state to the extent that
145 it is employed in production, fabrication, manufacturing, or
146 other processing in the state or to the extent that a
147 patented product is produced in the state. If the basis of
148 receipts from patent royalties does not permit allocation to
149 states or if the accounting procedures do not reflect states
150 of utilization, the patent is utilized in the state in which
151 the corporation's commercial domicile is located.

152 (3) A copyright is utilized in a state to the extent
153 that printing or other publication originates in the state.
154 If the basis of receipts from copyright royalties does not
155 permit allocation to states or if the accounting procedures
156 do not reflect states of utilization, the copyright is
157 utilized in the state in which the corporation's commercial
158 domicile is located.

159 10. All apportionable income shall be apportioned to
160 this state by multiplying the net income by a fraction, the
161 numerator of which is the total receipts of the corporation
162 in this state during the tax period and the denominator of
163 which is the total receipts of the corporation everywhere
164 during the tax period.

165 11. Receipts from the sale of tangible personal
166 property are in this state if the property is received in
167 this state by the purchaser. In the case of the delivery of
168 goods by common carrier or by other means of transportation,
169 including transportation by the purchaser, the place at
170 which the goods are ultimately received after all
171 transportation has been completed shall be considered as the
172 place at which the goods are received by the purchaser.
173 Direct delivery into this state by the taxpayer to a person
174 or firm designated by a purchaser from within or without the

175 state shall constitute delivery to the purchaser in this
176 state.

177 12. (1) Receipts, other than receipts described in
178 subsection 11 of this section, are in this state if the
179 corporation's market for the sales is in this state. The
180 corporation's market for sales is in this state:

181 (a) In the case of sale, rental, lease, or license of
182 real property, if and to the extent the property is located
183 in this state;

184 (b) In the case of rental, lease, or license of
185 tangible personal property, if and to the extent the
186 property is located in this state;

187 (c) In the case of sale of a service, if and to the
188 extent the ultimate beneficiary of the service is located in
189 this state and shall not be in this state if the ultimate
190 beneficiary of the service rendered by the corporation or
191 the corporation's designee is located outside this state; and

192 (d) In the case of intangible property:

193 a. That is rented, leased, or licensed, if and to the
194 extent the property is used in this state, provided that
195 intangible property utilized in marketing a good or service
196 to a consumer is "used in this state" if that good or
197 service is purchased by a consumer who is in this state.
198 Franchise fees or royalties received for the rent, lease,
199 license, or use of a trade name, trademark, service mark, or
200 franchise system or provides a right to conduct business
201 activity in a specific geographic area "are used in this
202 state" to the extent the franchise is located in this state;
203 and

204 b. That is sold, if and to the extent the property is
205 used in this state, provided that:

206 (i) A contract right, government license, or similar
207 intangible property that authorizes the holder to conduct a
208 business activity in a specific geographic area is "used in
209 this state" if the geographic area includes all or part of
210 this state;

211 (ii) Receipts from intangible property sales that are
212 contingent on the productivity, use, or disposition of the
213 intangible property shall be treated as receipts from the
214 rental, lease, or licensing of such intangible property
215 under subparagraph a. of this paragraph; and

216 (iii) All other receipts from a sale of intangible
217 property shall be excluded from the numerator and
218 denominator of the receipts factor.

219 (2) If the state or states of assignment under
220 subdivision (1) of this subsection cannot be determined, the
221 state or states of assignment shall be reasonably
222 approximated.

223 (3) The director may prescribe regulations as
224 necessary or appropriate to carry out the purposes of this
225 section.

226 13. (1) In the case of certain industries where
227 unusual factual situations produce inequitable results under
228 the apportionment and allocation provisions of this section,
229 the director shall promulgate rules for determining the
230 apportionment and allocation factors for each such industry,
231 but such rules shall be applied uniformly.

232 (2) If the allocation and apportionment provisions of
233 this section do not fairly represent the extent of the
234 corporation's income applicable to this state, the
235 corporation may petition for or the director may require:

236 (a) Separate accounting;

(b) The inclusion of one or more additional factors which will fairly represent the corporation's income applicable to this state; or

(c) The employment of any other method to effectuate an equitable allocation and apportionment of the corporation's income.

(3) The party petitioning for, or the director requiring, the use of any method to effectuate an equitable allocation and apportionment of the corporation's income pursuant to subdivision (2) of this subsection shall prove by a preponderance of evidence:

(a) That the allocation and apportionment provisions of this section do not fairly represent the extent of the corporation's income applicable to this state; and

(b) That the alternative to such provisions is reasonable.

The same burden of proof shall apply whether the corporation is petitioning for, or the director is requiring, the use of any reasonable method to effectuate an equitable allocation and apportionment of the corporation's income.

Notwithstanding the previous sentence, if the director can show that in any two of the prior five tax years, the corporation had used an allocation or apportionment method at variance with its allocation or apportionment method or methods used for such other tax years, then the director shall not bear the burden of proof in imposing a different method pursuant to subdivision (2) of this subsection.

(4) If the director requires any method to effectuate an equitable allocation and apportionment of the corporation's income, the director cannot impose any civil or criminal penalty with reference to the tax due that is

268 attributable to the corporation's reasonable reliance solely
269 on the allocation and apportionment provisions of this
270 section.

271 (5) A corporation that has received written permission
272 from the director to use a reasonable method to effectuate
273 an equitable allocation and apportionment of the
274 corporation's income shall not have that permission revoked
275 with respect to transactions and activities that have
276 already occurred unless there has been a material change in,
277 or a material misrepresentation of, the facts provided by
278 the corporation upon which the director reasonably relied.

279 14. Any corporation described in subdivision (1) of
280 subsection 1 of section 143.441 organized in this state or
281 granted a permit to operate in this state for the
282 transportation or care of passengers shall report its gross
283 earnings within the state on intrastate business and shall
284 also report its gross earnings on all interstate business
285 done in this state. Such report shall be subject to inquiry
286 for the purpose of determining the amount of income to be
287 included in Missouri taxable income. This subsection shall
288 not apply to a railroad.

289 15. A corporation described in subdivision (2) of
290 subsection 1 of section 143.441 shall include in its
291 Missouri taxable income all income arising from all sources
292 in this state and all income from each transportation
293 service wholly within this state, from each service where
294 the only rails and lines of such corporation used are those
295 in this state, and such proportion of revenue from each
296 service where the facilities of such corporation in this
297 state and in another state or states are used, as the
298 mileage used over the rails and lines of such corporation in
299 the state shall bear to the total mileage used over the

300 rails and lines of such corporation. The corporation may
301 elect to compute the portion of income from all sources
302 within this state in the following manner:

303 (1) The income from all sources shall be determined as
304 provided;

305 (2) The amount of investment of such corporation on
306 December thirty-first of each year in this state in fixed
307 transportation facilities, real estate and improvements,
308 plus the value on December thirty-first of each year of any
309 fixed transportation facilities, real estate and
310 improvements in this state leased from any other railroad
311 shall be divided by the sum of the total amount of
312 investment of such corporation on December thirty-first of
313 each year in fixed transportation facilities, real estate
314 and improvements, plus the value on December thirty-first of
315 each year, of any fixed transportation facilities, real
316 estate and improvements leased from any other railroad.
317 Where any fixed transportation facilities, real estate or
318 improvements are leased by more than one railroad, such
319 portion of the value shall be used by each railroad as the
320 rental paid by each shall bear to the rental paid by all
321 lessees. The income shall be multiplied by the fraction
322 thus obtained to determine the proportion to be used to
323 arrive at the amount of Missouri taxable income.

324 16. A corporation described in subdivision (3) of
325 subsection 1 of section 143.441 shall include in its
326 Missouri taxable income one-half of the net income from the
327 operation of a bridge between this and another state. If
328 any such bridge is owned or operated by a railroad
329 corporation or corporations, or by a corporation owning a
330 railroad corporation using such bridge, then the figures for
331 operation of such bridge may be included in the return of

such railroad or railroads; or if such bridge is owned or operated by any other corporation which may now or hereafter be required to file an income tax return, one-half of the income or loss to such corporation from such bridge may be included in such return by adding or subtracting the same to or from another net income or loss shown by the return.

17. A corporation described in subdivision (4) of subsection 1 of section 143.441 shall include in its Missouri taxable income all income arising from all sources within this state. Income shall include revenue from each telephonic or telegraphic service rendered wholly within this state; from each service rendered for which the only facilities of such corporation used are those in this state; and from each service rendered over the facilities of such corporation in this state and in other state or states, such proportion of such revenue as the mileage involved in this state shall bear to the total mileage involved over the lines of said company in all states. The corporation may elect to compute the portion of income from all sources within this state in the following manner:

(1) The income from all sources shall be determined as provided;

(2) The amount of investment of such corporation on December thirty-first of each year in this state in telephonic or telegraphic facilities, real estate and improvements thereon, shall be divided by the amount of the total investment of such corporation on December thirty-first of each year in telephonic or telegraphic facilities, real estate and improvements. The income of the corporation shall be multiplied by the fraction thus obtained to determine the proportion to be used to arrive at the amount of Missouri taxable income.

18. From the income determined in this section to be from all sources within this state shall be deducted such of the deductions for expenses in determining Missouri taxable income as were incurred in this state to produce such income and all losses actually sustained in this state in the business of the corporation.

19. If a corporation derives only part of its income from sources within Missouri, its Missouri taxable income shall only reflect the effect on Missouri taxable income of the deduction for net operating loss allowed by Section 172 of the Internal Revenue Code. The extent applicable to Missouri shall be determined by multiplying the amount that would otherwise affect Missouri taxable income by the ratio for the year of the Missouri taxable income of the corporation for the year divided by the Missouri taxable income for the year as though the corporation had derived all of its income from sources within Missouri. For the purpose of the preceding sentence, Missouri taxable income shall not reflect the deduction.

20. Any investment funds service corporation organized as a corporation or S corporation which has any shareholders resided in this state shall be subject to Missouri income tax as provided in this chapter.

21. A financial institution may use the method provided under section 143.556 to effectuate an equitable allocation and apportionment of the financial institution's income.

143.556. 1. As used in this section, the following terms shall mean:

(1) "Billing address", 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

6 the customer relationship began, as the address where any
7 notice, statement or bill relating to a customer's account
8 is mailed;

9 (2) "Borrower or credit card holder located in this
10 state":

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

14 (b) A borrower that is not engaged in a trade or
15 business or a credit card holder whose billing address is in
16 this state;

17 (3) "Card issuer's reimbursement fee", the fee a
18 taxpayer receives from a merchant's bank because one of the
19 persons to whom the taxpayer has issued a credit, debit, or
20 similar type of card has charged merchandise or services to
21 the card;

22 (4) "Commercial domicile":

23 (a) The headquarters of the trade or business that is
24 the place from which the trade or business is principally
25 managed and directed; or

26 (b) If a taxpayer is organized under the laws of a
27 foreign country, or of the Commonwealth of Puerto Rico, or
28 any territory or possession of the United States, such
29 taxpayer's commercial domicile shall be deemed for the
30 purposes of this section to be the state of the United
31 States or the District of Columbia from which such
32 taxpayer's trade or business in the United States is
33 principally managed and directed. It shall be presumed,
34 subject to rebuttal, that the location from which the
35 taxpayer's trade or business is principally managed and
36 directed is the state of the United States or the District
37 of Columbia to which the greatest number of employees are

38 regularly connected or out of which such employees are
39 working, irrespective of where the services of such
40 employees are performed, as of the last day of the taxable
41 year;

42 (5) "Compensation", wages, salaries, commissions, and
43 any other form of remuneration paid to employees for
44 personal services that are included in such employee's gross
45 income under Chapter 26 of the U.S. Code. In the case of
46 employees not subject to Chapter 26 of the U.S. Code, the
47 determination of whether such payments would constitute
48 gross income to such employees under Chapter 26 of the U.S.
49 Code shall be made as though such employees were subject to
50 Chapter 26 of the U.S. Code;

51 (6) "Credit card", a card or other means of providing
52 information that entitles the holder to charge the cost of
53 purchases, or a cash advance, against a line of credit;

54 (7) "Debit card", a card or other means of providing
55 information that enables the holder to charge the cost of
56 purchases, or a cash withdrawal, against the holder's bank
57 account or a remaining balance on the card;

58 (8) "Employee", with respect to a particular taxpayer,
59 any individual who, under the usual common-law rules
60 applicable in determining the employer-employee
61 relationship, has the status of an employee of that taxpayer;

62 (9) "Gross rents", the actual sum of money or other
63 consideration payable for the use or possession of
64 property. "Gross rents" shall include, but not be limited
65 to any amount payable for the use or possession of real
66 property or tangible property whether designated as a fixed
67 sum of money or as a percentage of receipts, profits or
68 otherwise; any amount payable as additional rent or in lieu
69 of rent, such as interest, taxes, insurance, repairs or any

70 other amount required to be paid by the terms of a lease or
71 other arrangement; and a proportionate part of the cost of
72 any improvement to real property made by or on behalf of the
73 taxpayer which reverts to the owner or lessor upon
74 termination of a lease or other arrangement. The amount to
75 be included in gross rents is the amount of amortization or
76 depreciation allowed in computing the taxable income base
77 for the taxable year. However, where a building is erected
78 on leased land by or on behalf of the taxpayer, the value of
79 the land is determined by multiplying the gross rent by
80 eight and the value of the building is determined in the
81 same manner as if owned by the taxpayer. "Gross rents"
82 shall not include reasonable amounts payable as separate
83 charges for water and electric service furnished by the
84 lessor; reasonable amounts payable as service charges for
85 janitorial services furnished by the lessor; reasonable
86 amounts payable for storage, provided such amounts are
87 payable for space not designated and not under the control
88 of the taxpayer; or that portion of any rental payment which
89 is applicable to the space subleased from the taxpayer and
90 not used by it;

91 (10) "Loan", any extension of credit resulting from
92 direct negotiations between the taxpayer and its customer,
93 and the purchase, in whole or in part, of such extension of
94 credit from another. Loans include participations,
95 syndications, and leases treated as loans for federal income
96 tax purposes. Loans shall not include futures or forward
97 contracts; options; notional principal contracts such as
98 swaps; credit card receivables, including purchased credit
99 card relationships; non-interest bearing balances due from
100 depository institutions; cash items in the process of
101 collection; federal funds sold; securities purchased under

102 agreements to resell; assets held in a trading account;
103 securities; interests in a REMIC, or other mortgage-backed
104 or asset-backed security; and other similar items;

105 (11) "Loan secured by real property", a loan for which
106 fifty percent or more of the aggregate value of the
107 collateral used to secure such loan or other obligation,
108 when valued at fair market value as of the time the original
109 loan or obligation was incurred, was real property;

110 (12) "Merchant discount", the fee or negotiated
111 discount charged to a merchant by the taxpayer for the
112 privilege of participating in a program whereby a credit,
113 debit, or similar type of card is accepted in payment for
114 merchandise or services sold to the card holder, net of any
115 cardholder charge-back and unreduced by any interchange
116 transaction or issuer reimbursement fee paid to another for
117 charges or purchases made by its cardholder;

118 (13) "Participation", an extension of credit in which
119 an undivided ownership interest is held on a pro rata basis
120 in a single loan or pool of loans and related collateral.
121 In a loan participation, the credit originator initially
122 makes the loan and then subsequently resells all or a
123 portion of it to other lenders. The participation may or
124 may not be known to the borrower;

125 (14) "Person", an individual, estate, trust,
126 partnership, corporation, or any other business entity;

127 (15) "Principal base of operations", with respect to
128 transportation property, means the place of more or less
129 permanent nature from which said property is regularly
130 directed or controlled. With respect to an employee, the
131 "principal base of operations" means the place of more or
132 less permanent nature from which the employee regularly:

133 (a) Starts his or her work and to which he or she
134 customarily returns in order to receive instructions from
135 his or her employer;

136 (b) Communicates with his or her customers or other
137 persons; or

138 (c) Performs any other functions necessary to the
139 exercise of his or her trade or profession at some other
140 point or points;

141 (16) "Real property owned" or "tangible personal
142 property owned", real and tangible personal property,
143 respectively:

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

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

152 (17) "Regular place of business", an office at which
153 the taxpayer carries on its business in a regular and
154 systematic manner and which is continuously maintained,
155 occupied, and used by employees of the taxpayer;

156 (18) "State", a state of the United States, the
157 District of Columbia, the Commonwealth of Puerto Rico, any
158 territory or possession of the United States or any foreign
159 country;

160 (19) "Syndication", an extension of credit in which
161 two or more persons fund and each person is at risk only up
162 to a specified percentage of the total extension of credit
163 or up to a specified dollar amount;

164 (20) "Taxable", either:

165 (a) A taxpayer is subject in another state to a net
166 income tax, a franchise tax measured by net income, a
167 franchise tax for the privilege of doing business, a
168 corporate stock tax including a bank shares tax, a single
169 business tax, or an earned surplus tax, or any tax which is
170 imposed upon or measured by gross or net income; or

171 (b) Another state has jurisdiction to subject the
172 taxpayer to any of such taxes regardless of whether, in
173 fact, the state does or does not;

174 (21) "Transportation property", vehicles and vessels
175 capable of moving under their own power, such as aircraft,
176 trains, water vessels, and motor vehicles, as well as any
177 equipment or containers attached to such property, such as
178 rolling stock, barges, or trailers.

179 2. A financial institution whose business activity is
180 taxable both within and without this state may allocate and
181 apportion its net income as provided in this section. All
182 items of nonbusiness income, which are not includable in the
183 apportionable income tax base, shall be allocated pursuant
184 to the provisions of this chapter. A financial institution
185 organized under the laws of a foreign country, the
186 Commonwealth of Puerto Rico, or a territory or possession of
187 the United States whose effectively connected income, as
188 defined under Chapter 26 of the U.S. Code, is taxable both
189 within this state and within another state, other than the
190 state in which it is organized, shall allocate and apportion
191 its net income as provided in this section.

192 3. All business income which is includable in the
193 apportionable income tax base shall be apportioned to this
194 state by multiplying such income by the apportionment
195 percentage determined under this section. The percentage

shall be computed according to the method of accounting used by the taxpayer for the taxable year.

4. If the allocation and apportionment provisions of this section do not fairly represent the extent of the taxpayer's business activity in this state, the taxpayer may petition for or the director may require, in respect to all or any part of the taxpayer's business activity, if reasonable:

(1) Separate accounting; or

(2) The employment of any other method to effectuate an equitable allocation and apportionment of the taxpayer's income.

5. (1) The receipts factor shall be a fraction, the numerator of which is the receipts of the taxpayer in this state during the taxable year and the denominator of which is the receipts of the taxpayer within and without this state during the taxable year. The method of calculating receipts for purposes of the denominator shall be the same as the method used in determining receipts for purposes of the numerator. The receipts factor shall include only those receipts described herein which constitute business income and are included in the computation of the apportionable income base for the taxable year.

(2) For receipts from the lease of real property, the numerator of the receipts factor shall include receipts from the lease or rental of real property owned by the taxpayer if the property is located within this state or receipts from the sublease of real property if the property is located within this state.

(3) For receipts from the lease of tangible personal property:

227 (a) Except as described in paragraph (b) of this
228 subdivision, the numerator of the receipts factor shall
229 include receipts from the lease or rental of tangible
230 personal property owned by the taxpayer if the property is
231 located within this state when it is first placed in service
232 by the lessee;

233 (b) Receipts from the lease or rental of
234 transportation property owned by the taxpayer shall be
235 included in the numerator of the receipts factor to the
236 extent that the property is used in this state. The extent
237 to which an aircraft will be deemed to be used in this state
238 and the amount of receipts that are to be included in the
239 numerator of the receipts factor shall be determined by
240 multiplying all of the receipts from the lease or rental of
241 the aircraft by a fraction, the numerator of which is the
242 number of landings of the aircraft in this state and the
243 denominator of which is the total number of landings of the
244 aircraft. If the extent of the use of any transportation
245 property within this state cannot be determined, then the
246 property shall be deemed to be used wholly in the state in
247 which the property has its principal base of operations. A
248 motor vehicle shall be deemed to be used wholly in the state
249 in which it is registered.

250 (4) (a) For interest, fees, and penalties imposed in
251 connection with loans secured by real property, the
252 numerator of the receipts factor shall include interest,
253 fees, and penalties imposed in connection with loans secured
254 by real property if the property is located within this
255 state. If the property is located both within this state and
256 one or more other states, the receipts described in this
257 subdivision shall be included in the numerator of the
258 receipts factor if more than fifty percent of the fair

market value of the real property is located within this state. If more than fifty percent of the fair market value of the real property is not located within any one state, then the receipts described in this subdivision shall be included in the numerator of the receipts factor if the borrower is located in this state.

(b) The determination of whether the real property securing a loan is located within this state shall be made as of the time the original agreement was made and any and all subsequent substitutions of collateral shall be disregarded.

(5) For interest, fees, and penalties imposed in connection with loans not secured by real property where the borrower is located in this state, the numerator of the receipts factor shall include interest, fees, and penalties imposed in connection with such loans.

(6) (a) For net gains from the sale of loans, the numerator of the receipts factor shall include net gains from the sale of loans. Net gains from the sale of loans shall include income recorded under the coupon stripping rules of 26 U.S.C. Section 1286.

(b) The amount of net gains, but not less than zero, from the sale of loans secured by real property included in the numerator shall be determined by multiplying such net gains by a fraction, the numerator of which is the amount included in the numerator of the receipts factor pursuant to subdivision (3) of this subsection and the denominator of which is the total amount of interest and fees or penalties in the nature of interest from loans secured by real property.

(c) The amount of net gains, but not less than zero, from the sale of loans not secured by real property included

in the numerator shall be determined by multiplying such net gains by a fraction, the numerator of which is the amount included in the numerator of the receipts factor pursuant to subdivision (4) of this subsection and the denominator of which is the total amount of interest and fees or penalties in the nature of interest from loans not secured by real property.

(7) For receipts from fees, interest, and penalties charged to card holders, the numerator of the receipts factor shall include fees, interest, and penalties charged to credit, debit, or similar card holders, including but not limited to annual fees and overdraft fees, if the billing address of the card holder is in this state.

(8) For net gains from the sale of credit card receivables, the numerator of the receipts factor shall include 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 receipts factor pursuant to subdivision (6) of this subsection and the denominator of which is the taxpayer's total amount of interest and fees or penalties in the nature of interest from credit card receivables and fees charged to card holders.

(9) For card issuer's reimbursement fees, the numerator of the receipts factor shall include:

(a) All credit card issuer's reimbursement fees multiplied by a fraction, the numerator of which is the amount of fees, interest, and penalties charged to credit card holders included in the numerator of the receipts factor pursuant to subdivision (6) of this subsection and the denominator of which is the taxpayer's total amount of fees, interest, and penalties charged to credit card holders;

(b) All debit card issuer's reimbursement fees multiplied by a fraction, the numerator of which is the amount of fees, interest, and penalties charged to debit card holders included in the numerator of the receipts factor pursuant to subdivision (6) of this subsection and the denominator of which is the taxpayer's total amount of fees, interest, and penalties charged to debit card holders;

(c) All other card issuer's reimbursement fees multiplied by a fraction, the numerator of which is the amount of fees, interest, and penalties charged to all other card holders included in the numerator of the receipts factor pursuant to subdivision (6) of this subsection and the denominator of which is the taxpayer's total amount of fees, interest, and penalties charged to all other card holders.

(10) (a) For receipts from merchant discount, if the taxpayer can readily determine the location of the merchant and if the merchant is in this state, the numerator of the receipts factor shall include receipts from merchant discount.

(b) If the taxpayer cannot readily determine the location of the merchant, the numerator of the receipts factor shall include such receipts from the merchant discount multiplied by a fraction:

a. In the case of a merchant discount related to the use of a credit card, the numerator of which is the amount of fees, interest, and penalties charged to credit card holders that is included in the numerator of the receipts factor pursuant to subdivision (6) of this subsection and the denominator of which is the taxpayer's total amount of fees, interest, and penalties charged to credit card holders;

354 b. In the case of a merchant discount related to the
355 use of a debit card, the numerator of which is the amount of
356 fees, interest, and penalties charged to debit card holders
357 that is included in the numerator of the receipts factor
358 pursuant to subdivision (6) of this subsection, and the
359 denominator of which is the taxpayer's total amount of fees,
360 interest, and penalties charged to debit card holders;

361 c. In the case of a merchant discount related to the
362 use of all other types of cards, the numerator of which is
363 the amount of fees, interest, and penalties charged to all
364 other card holders that is included in the numerator of the
365 receipts factor pursuant to subdivision (6) of this
366 subsection, and the denominator of which is the taxpayer's
367 total amount of fees, interest, and penalties charged to all
368 other card holders.

369 (c) The taxpayer's method for sourcing each receipt
370 from a merchant discount shall be consistently applied to
371 such receipt in all states that have adopted sourcing
372 methods substantially similar to paragraphs (a) and (b) of
373 this subdivision and shall be used on all subsequent returns
374 for sourcing receipts from such merchant unless the director
375 permits or requires application of the alternative method.

376 (11) (a) For receipts from ATM fees, the receipts
377 factor shall include all ATM fees that are not forwarded
378 directly to another bank.

379 (b) The numerator of the receipts factor shall include
380 fees charged to a cardholder for the use at an ATM of a card
381 issued by the taxpayer if the cardholder's billing address
382 is in this state.

383 (c) The numerator of the receipts factor shall include
384 fees charged to a cardholder, other than the taxpayer's

cardholder, for the use of such card at an ATM owned or rented by the taxpayer, if the ATM is in this state.

(12) (a) For loan servicing fees, the numerator of the receipts factor shall include 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 receipts factor pursuant to subdivision (3) of this subsection and the denominator of which is the total amount of interest and fees or penalties in the nature of interest from loans secured by real property.

(b) The numerator of the receipts factor shall include 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 receipts factor pursuant to subdivision (4) of this subsection and the denominator of which is the total amount of interest and fees or 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 receipts factor shall include such fees if the borrower is located in this state.

(13) (a) For receipts from the financial institution's investment assets and activity and trading assets and activity, interest, dividends, net gains, but not less than zero, and other income from investment assets and activities and from trading assets and activities that are reported on the taxpayer's financial statements, call reports, or similar reports shall be included in the receipts factor. Investment assets and activities and trading assets and activities shall include, but are not

417 limited to, investment securities, trading account assets,
418 federal funds, securities purchased and sold under
419 agreements to resell or repurchase, options, futures
420 contracts, forward contracts, notional principal contracts
421 such as swaps, equities, and foreign currency transactions.
422 With respect to the investment and trading assets and
423 activities, the receipts factor shall include:

424 a. The amount by which interest from federal funds
425 sold and securities purchased under resale agreements
426 exceeds interest expense on federal funds purchased and
427 securities sold under repurchase agreements; and

428 b. The amount by which interest, dividends, gains, and
429 other income from trading assets and activities, including
430 but not limited to assets and activities in the matched
431 book, in the arbitrage book, and foreign currency
432 transactions, exceed amounts paid in lieu of interest,
433 amounts paid in lieu of dividends, and losses from such
434 assets and activities.

435 (b) a. The numerator of the receipts factor shall
436 include interest, dividends, net gains, but not less than
437 zero, and other income from investment assets and activities
438 and from trading assets and activities described in
439 paragraph (a) of this subdivision that are attributable to
440 this state.

441 b. The amount of interest, dividends, net gains, but
442 not less than zero, and other income from investment assets
443 and activities in the investment account to be attributed to
444 this state and included in the numerator shall be determined
445 by multiplying all such income from such assets and
446 activities by a fraction, the numerator of which is the
447 average value of such assets which are properly assigned to
448 a regular place of business of the taxpayer within this

state and the denominator of which is the average value of all such assets.

c. 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 and included in the numerator shall be determined by multiplying the amount described in subparagraph a of paragraph (a) of this subdivision 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 which are properly assigned to a regular place of business of the taxpayer within this state and the denominator of which is the average value of all such funds and such securities.

d. The amount of interest, dividends, 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 b or c of this paragraph, attributable to this state and included in the numerator shall be determined by multiplying the amount described in subparagraph b of paragraph (a) of this subdivision by a fraction, the numerator of which is the average value of such trading assets which are properly assigned to a regular place of business of the taxpayer within this state and the denominator of which is the average value of all such assets.

(c) In lieu of using the method set forth in paragraph (b) of this subdivision, the taxpayer may elect, or the directors may require in order to fairly represent the business activity of the taxpayer in this state, the use of the method set forth in this paragraph.

481 a. The amount of interest, dividends, net gains, but
482 not less than zero, and other income from investment assets
483 and activities in the investment account to be attributed to
484 this state and included in the numerator shall be determined
485 by multiplying all such income from such assets and
486 activities by a fraction, the numerator of which is the
487 gross income from such assets and activities which are
488 properly assigned to a regular place of business of the
489 taxpayer within this state and the denominator of which is
490 the gross income from all such assets and activities.

491 b. The amount of interest from federal funds sold and
492 purchased and from securities purchased under resale
493 agreements and securities sold under repurchase agreements
494 attributable to this state and included in the numerator
495 shall be determined by multiplying the amount described in
496 subparagraph a of paragraph (a) of this subdivision from
497 such funds and such securities by a fraction, the numerator
498 of which is the gross income from such funds and such
499 securities which are properly assigned to a regular place of
500 business of the taxpayer within this state and the
501 denominator of which is the gross income from all such funds
502 and such securities.

503 c. The amount of interest, dividends, gains and other
504 income from trading assets and activities, including but not
505 limited to assets and activities in the matched book, in the
506 arbitrage book and foreign currency transactions but
507 excluding amounts described in subparagraphs a or b of this
508 paragraph, attributable to this state and included in the
509 numerator shall be determined by multiplying the amount
510 described in subparagraph b of paragraph (a) of this
511 subdivision by a fraction, the numerator of which is the
512 gross income from such trading assets and activities which

are properly assigned to a regular place of business of the taxpayer within this state 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 director to use the method set forth in paragraph (c) of this subdivision, it shall use this method on all subsequent returns unless the taxpayer receives prior permission from the director to use, or the director requires a different method.

(e) The taxpayer shall have the burden of proving that an investment asset or activity or trading asset or activity was properly assigned to a regular place of business outside of this state by demonstrating that the day-to-day decisions regarding the asset or activity occurred at a regular place of business outside this state. 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 and one such regular place of business is outside this state, such asset or activity shall be 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 shall be presumed to be established at the commercial domicile of the taxpayer.

(14) All receipts which would be assigned under this section to a state in which the taxpayer is not taxable shall be included in the numerator of the receipts factor if the taxpayer's commercial domicile is in this state.

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