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LEGAL ALERT

April 25, 2013

Hate the Sin, Love the Sinner: MTC's Financial Institution Apportionment Effort

The Multistate Tax Commission's (MTC) Financial Institutions Working Group held its monthly meeting on April 23, 2013 to discuss a proposed apportionment formula for financial institutions.

By way of background, since 2007 the Working Group has examined whether the MTC's special financial apportionment regulations, which were adopted in 1994 and applied by many states, are in need of revision. In recent months, the Working Group, which consists of representatives from states and industry, has been examining whether to include loans in the property factor and the best method to source them. Under the existing MTC rules, loans are sourced for property factor purposes based on where the preponderance of the substantive contacts relating to a loan has occurred. This process considers five factors: solicitation, investigation, negotiation, approval and administration of the loan (the aptly named SINAA test).

Sutherland Observation: There was some confusion in recent months about whether the Working Group had returned to square one on its five-year effort to redesign the financial institution apportionment rules. See prior Sutherland coverage here.

The meeting began by examining a newly proposed apportionment formula for financial institutions, developed by MTC economist Elliot Dubin. The proposal seeks to mitigate the perceived bias of attributing the location of the loans to only one state by utilizing a five-factor formula that is comprised of: "sales, tangible property (including self produced intellectual property such as computer software), financial assets such as loans and loan pools, wages and salaries, and number of employees." However, as Dubin acknowledged, the proposal does not address the primary focus of the Working Group discussions: the sourcing of receipts from lending. Dubin's full analysis and proposal can be found here.

Music to My Ears

The Working Group proceeded to discuss the proposed formula while listening to the soundtrack from a telephone participant's hold music. While grooving to the upbeat 1980s music, members of the Working Group acknowledged that the study of a new apportionment formula was premature given the unresolved issue of how to source loans and whether to retain the property factor. After some discussion, the Working Group reached a consensus that the property factor should be included, but a more workable solution, other than SINAA, should be studied for the sourcing of loans.

Sutherland Observation: Many of the participating states view SINAA as "inadministrable" and too complex to be an efficient method of sourcing. In fact, some states even acknowledged that if no workable solution on the sourcing of loans can be reached, they would consider excluding loans from the property factor.

The next meeting is scheduled for May 21, 2013 at 3:30 p.m. Stayed tuned for further MTC Financial Institutions Working Group developments.

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If you have any questions about this Legal Alert, please feel free to contact any of the attorneys listed below or the Sutherland attorney with whom you regularly work.

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