

DRAFT

**R865. Tax Commission, Auditing.**

**R865-6F. Franchise Tax.**

**R865-6F-32. Taxation of Financial Institutions Pursuant to Utah Code Ann. Sections 59-7-302 through 59-7-321.**

(1) ~~[Definitions.]~~ As used in this section:

(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 the later date in the taxable year when the customer relationship began, where any notice, statement or bill relating to a customer's account is mailed.

(b) "Borrower or credit card holder located in this state" means:

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

(ii) a borrower that is not engaged in a trade or business, or a credit card holder, whose billing address is in this state.

(c) "Commercial domicile" means:

(i) the place from which the trade or business is principally managed and directed; or

(ii) 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, that taxpayer's commercial domicile shall be deemed for the purposes of this rule to be the state of the United States or the District of Columbia from which that taxpayer's trade or business in the United States is principally managed and directed. It shall be presumed, subject to rebuttal, that the location from which 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, irrespective of where the services of those employees are performed, as of the last day of the taxable year.

(d) "Compensation" means wages, salaries, commissions, and any other form of remuneration paid to employees for personal services that are included in the employee's gross income under the federal Internal Revenue Code. In the case of employees not subject to the federal Internal Revenue Code, the determination of whether payments constitute gross income under the federal Internal Revenue Code shall be made as though those employees were subject to the federal Internal Revenue Code.

(e) "Credit card" means a credit, travel, or entertainment card.

(f) "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 to the credit card.

(g) "Employee" means, with respect to a particular taxpayer, any individual who, under the usual common law rules applicable in determining the employer-employee relationship, has the status of an employee of that taxpayer.

~~[(h) "Financial institution" means:~~

40 ~~—— (i) any corporation or other business entity registered under state law as a bank holding~~  
41 ~~company or registered under the Federal Bank Holding Company Act of 1956, as amended, or~~  
42 ~~registered as a savings and loan holding company under the Federal National Housing Act, as~~  
43 ~~amended;~~

44 ~~—— (ii) a national bank organized and existing as a national bank association pursuant to the~~  
45 ~~provisions of the National Bank Act, 12 U.S.C. Sections 21 et seq.;~~

46 ~~—— (iii) a savings association or federal savings bank as defined in the Federal Deposit~~  
47 ~~Insurance Act, 12 U.S.C. Section 1813(b)(1);~~

48 ~~—— (iv) any bank, industrial loan corporation, or thrift institution incorporated or organized~~  
49 ~~under the laws of any state;~~

50 ~~—— (v) any corporation organized under the provisions of 12 U.S.C. Sections 611 through 631.~~

51 ~~—— (vi) any agency or branch of a foreign depository as defined in 12 U.S.C. Section 3101;~~

52 ~~—— (vii) a production credit association organized under the Federal Farm Credit Act of 1933,~~  
53 ~~all of whose stock held by the Federal Production Credit Corporation has been retired;~~

54 ~~—— (viii) any corporation whose voting stock is more than 50 percent owned, directly or~~  
55 ~~indirectly, by any person or business entity described in Subsections (1)(h)(i) through (vii), other~~  
56 ~~than an insurance company taxable under Title 59, Chapter 9, Taxation of Admitted Insurers;~~

57 ~~—— (ix) a corporation or other business entity that derives more than 50 percent of its total~~  
58 ~~gross income for financial accounting purposes from finance leases. For purposes of this~~  
59 ~~subsection, a "finance lease" shall mean any lease transaction that is the functional equivalent of~~  
60 ~~an extension of credit and that transfers substantially all of the benefits and risks incident to the~~  
61 ~~ownership of property. The phrase shall include any direct financing lease or leverage lease that~~  
62 ~~meets the criteria of Financial Accounting Standards Board Statement No. 13, Accounting for~~  
63 ~~Leases, or any other lease that is accounted for as a financing lease by a lessor under generally~~  
64 ~~accepted accounting principles. For this classification to apply:~~

65 ~~—— (A) the average of the gross income in the current tax year and immediately preceding~~  
66 ~~two tax years must satisfy the more than 50 percent requirement; and~~

67 ~~—— (B) gross income from incidental or occasional transactions shall be disregarded;~~

68 ~~—— (x) any other person or business entity, other than an insurance company, a credit union~~  
69 ~~exempt from the corporation franchise tax under Section 59-7-102, a real estate broker, or a~~  
70 ~~securities dealer, that derives more than 50 percent of its gross income from activities that a~~  
71 ~~person described in Subsections (1)(h)(ii) through (vii) and (1)(h)(ix) is authorized to transact.~~

72 ~~—— (A) For purposes of this subsection, the computation of gross income shall not include~~  
73 ~~income from non-recurring, extraordinary items; and~~

74 ~~—— (B) The commission is authorized to exclude any person from the application of~~  
75 ~~Subsection (1)(h)(x) upon receipt of proof, by clear and convincing evidence, that the income-~~  
76 ~~producing activity of that person is not in substantial competition with those persons described~~  
77 ~~in Subsections (1)(h)(ii) through (vii) and (1)(h)(ix).]~~

78 (h) "Financial Institution" means the same as that term is defined in Section 59-7-317.

79 (i) "Gross rents" means the actual sum of money or other consideration payable for the  
80 use or possession of property.

81 (i) Gross rents includes:

82 (A) any amount payable for the use or possession of real property or tangible property  
83 whether designated as a fixed sum of money or as a percentage of receipts, profits or otherwise;

84 (B) any amount payable as additional rent or in lieu of rent, such as interest, taxes,  
85 insurance, repairs or any other amount required to be paid by the terms of a lease or other  
86 arrangement; and

87 (C) a proportionate part of the cost of any improvement to real property, made by or on  
88 behalf of the taxpayer, that reverts to the owner or lessor upon termination of a lease or other  
89 arrangement. The amount included in gross rents is the amount of amortization or depreciation  
90 allowed in computing the taxable income base for the taxable year. However, where a building  
91 is erected on leased land by or on behalf of the taxpayer, the value of the land is determined by  
92 multiplying the gross rent by eight and the value of the building is determined in the same  
93 manner as if owned by the taxpayer.

94 (ii) Gross rents does not include:

95 (A) reasonable amounts payable as separate charges for water and electric service  
96 furnished by the lessor;

97 (B) reasonable amounts payable as service charges for janitorial services furnished by the  
98 lessor;

99 (C) reasonable amounts payable for storage, provided those amounts are payable for  
100 space not designated and not under the control of the taxpayer; and

101 (D) that portion of any rental payment applicable to the space subleased from the  
102 taxpayer and not used by the taxpayer.

103 (j) "Loan" means any extension of credit resulting from direct negotiations between the  
104 taxpayer and the taxpayer's customer, or the purchase, in whole or in part, of an extension of  
105 credit from another.

106 (i) Loan includes participations, syndications, and leases treated as loans for federal  
107 income tax purposes.

108 (ii) Loan does not include properties treated as loans under Section 595 of the federal  
109 Internal Revenue Code, futures or forward contracts, options, notional principal contracts such  
110 as swaps, credit card receivables, including purchased credit card relationships, non-interest  
111 bearing balances due from depository institutions, cash items in the process of collection, federal  
112 funds sold, securities purchased under agreements to resell, assets held in a trading account,  
113 securities, interests in a real estate mortgage investment conduit as defined in Section 860D of  
114 the Internal Revenue Code, or other mortgage-backed or asset-backed security, and other similar  
115 items.

116 (k) "Loans secured by real property" means that fifty percent or more of the aggregate  
117 value of the collateral used to secure a loan or other obligation, when valued at fair market value  
118 as of the time the original loan or obligation was incurred, was real property.

119 (l) "Merchant discount" means the fee, or negotiated discount, charged to a merchant  
120 by the taxpayer for the privilege of participating in a program whereby a credit card is accepted  
121 in payment for merchandise or services sold to the card holder.

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

126 (n) "Person" means an individual, estate, trust, partnership, corporation, and any other  
127 business entity.

(o) "Principal base of operations" means:

(i) with respect to transportation property, the place of more or less permanent nature from which that property is regularly directed or controlled; and

(ii) with respect to an employee, the place of more or less permanent nature from which the employee regularly:

(A) starts his work and to which he customarily returns in order to receive instructions from his employer;

(B) communicates with his customers or other persons; or

(C) performs any other functions necessary to the exercise of his trade or profession at some other point or points.

(p)(i) "Real property owned" and "tangible personal property owned" mean real and tangible personal property, respectively:

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

(B) property to which the taxpayer holds legal title and on which no other person may claim depreciation for federal income tax purposes, or could claim depreciation if subject to federal income tax.

(ii) Real and tangible personal property do not include coin, currency, or property acquired in lieu of or pursuant to a foreclosure.

(q) "Regular place of business" means an office at which the taxpayer carries on business in a regular and systematic manner and is continuously maintained, occupied, and used by employees of the taxpayer.

(r) "State" means a state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, any territory or possession of the United States, or any foreign country.

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

(t) "Taxable" means:

(i) a taxpayer is subject in another state to a net income tax, a franchise tax measured by net income, a franchise tax for the privilege of doing business, a corporate stock tax, including a bank shares tax, a single business tax, an earned surplus tax, or any tax imposed upon or measured by net income; or

(ii) another state has jurisdiction to subject the taxpayer to taxes regardless of whether that state actually imposes those taxes.

(u) "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 that property, such as rolling stock, barges, and trailers.

(2) [ ~~Apportionment and Allocation~~ ] (a) A financial institution whose business activity is taxable both within and without this state, or a financial institution whose business activity is taxable within this state and is a member of a unitary group that includes one or more financial institutions where any member of the group is taxable without this state, shall allocate and apportion its net income as provided in this rule. All items of nonbusiness income shall be allocated pursuant to the provisions of Section 59-7-306. A financial institution 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 and within another state, other than the state in which it is organized, shall allocate and apportion its net income as provided in this rule.

(b) The fraction by which business income shall be apportioned to the state shall be determined in accordance with rule R865-6F-8(4) and (7). Except as modified by this rule, the property factor shall be determined in accordance with R865-6F-8(8), the payroll factor in accordance with R865-6F-8(9), and the sales factor in accordance with R865-6F-8(10).

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

(d) If a unitary group of corporations filing a combined report includes one or more corporations meeting the definition of financial institution and one or more corporations that do not meet that definition, the provisions of this rule regarding the calculation of the property, payroll, and ~~[receipts]~~ sales factors of the apportionment fraction shall apply only to those corporations meeting the definition of financial institution. Those corporations not meeting the definition of financial institution shall compute their apportionment data based on rule R865-6F-8 or such other industry apportionment rule adopted by the commission that may be applicable. The apportionment data of all members of the unitary group shall be included in calculating a single apportionment fraction for the unitary group. The numerators and denominators of the property, payroll, and ~~[receipts]~~ sales factors of the financial institutions shall be added to the numerators and denominators, respectively, of the property, payroll, and sales factors of the nonfinancial institutions to determine the property, payroll, and sales factors of the unitary group.

~~(3) [Receipts Factor.]~~ (a) ~~[In general.]~~ The ~~[receipts]~~ sales factor is 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 is the same as the method used in determining receipts for purposes of the numerator. The ~~[receipts]~~ sales factor shall include only those receipts 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]~~ sales factor includes receipts from the lease or rental of real property owned by the taxpayer and receipts from the sublease of real property, if the property is located within this state.

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

(i) Except as described in Subsection (3)(d), the numerator of the ~~[receipts]~~ 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 when it is first placed in service by the lessee.

(ii) Receipts from the lease or rental of transportation property owned by the taxpayer are included in the numerator of the ~~[receipts]~~ sales factor to the extent that the property is used in this state.

(A) The extent an aircraft will be deemed to be used in this state and the amount of receipts that shall be included in the numerator of this state's ~~[receipts]~~ sales factor are determined by multiplying all 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 and the denominator of which is the total number of landings of the aircraft.

216 (B) If the extent of the use of any transportation property within this state cannot be  
217 determined, that property will be deemed to be used wholly in the state in which the property  
218 has its principal base of operations.

219 (C) A motor vehicle will be deemed to be used wholly in the state in which it is registered.

220 (d) ~~[Interest from loans secured by real property.]~~

221 (i) The numerator of the ~~[receipts]~~ sales factor includes interest and fees or penalties in  
222 the nature of interest from loans secured by real property if the property is located within this  
223 state. If the property is located both within this state and one or more other states, the receipts  
224 described in this subsection are included in the numerator of the ~~[receipts]~~ sales factor if more  
225 than fifty percent of the fair market value of the real property is located within this state. If more  
226 than fifty percent of the fair market value of the real property is not located within any one state,  
227 the receipts described in this subsection shall be included in the numerator of the ~~[receipts]~~ sales  
228 factor if the borrower is located in this state.

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

232 (e) ~~[Interest from loans not secured by real property.]~~ The numerator of the ~~[receipts]~~  
233 sales factor includes interest and fees or penalties in the nature of interest from loans not secured  
234 by real property if the borrower is located in this state.

235 (f) ~~[Net gains from the sale of loans.]~~ (i) The numerator of the ~~[receipts]~~ sales factor  
236 includes net gains from the sale of loans.

237 (ii) Net gains from the sale of loans includes income recorded under the coupon stripping  
238 rules of Section 1286 of the Internal Revenue Code.

239 ~~[(+)]~~(iii) The amount of net gains, but not less than zero, from the sale of loans secured by  
240 real property included in the numerator is determined by multiplying the net gains by a fraction  
241 the numerator of which is the amount included in the numerator of the ~~[receipts]~~ sales factor  
242 pursuant to Subsection (3)(d), and the denominator of which is the total amount of interest and  
243 fees or penalties in the nature of interest from loans secured by real property.

244 ~~[(+)]~~(iv) The amount of net gains, but not less than zero, from the sale of loans not secured  
245 by real property included in the numerator is determined by multiplying the net gains by a  
246 fraction the numerator of which is the amount included in the numerator of the ~~[receipts]~~ sales  
247 factor pursuant to Subsection (3)(e), and the denominator of which is the total amount of interest  
248 and fees or penalties in the nature of interest from loans not secured by real property.

249 (g) ~~[Receipts from credit card receivables.]~~ The numerator of the ~~[receipts]~~ sales factor  
250 includes interest and fees or penalties in the nature of interest from credit card receivables and  
251 receipts from fees charged to card holders, such as annual fees, if the billing address of the card  
252 holder is in this state.

253 (h) ~~[Net gains from the sale of credit card receivables.]~~ The numerator of the ~~[receipts]~~  
254 sales factor includes net gains, but not less than zero, from the sale of credit card receivables  
255 multiplied by a fraction, the numerator of which is the amount included in the numerator of the  
256 ~~[receipts]~~ sales factor pursuant to Subsection (3)(g), and the denominator of which is the  
257 taxpayer's total amount of interest and fees or penalties in the nature of interest from credit card  
258 receivables and fees charged to card holders.

(i) ~~[Credit card issuer's reimbursement fees.]~~ The numerator of the ~~[receipts]~~ 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 ~~[receipts]~~ sales factor pursuant to Subsection (3)(g), 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.

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

(k) ~~[Loan servicing fees.]~~(i) The numerator of the ~~[receipts]~~ 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 ~~[receipts]~~ sales factor pursuant to Subsection (3)(d), 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.

(ii) The numerator of the ~~[receipts]~~ 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 ~~[receipts]~~ sales factor pursuant to Subsection (3)(e), 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.

(iii) 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]~~ sales factor shall include those fees if the borrower is located in this state.

(l) ~~[Receipts from services.]~~ The numerator of the ~~[receipts]~~ sales factor includes receipts from services not otherwise apportioned under this section if the purchaser of the services receives a greater benefit of the service in this state than in any other state.

~~[(m) Receipts from investment assets and activities and trading assets and activities.~~

~~—— (i) Interest, dividends, net gains, but not less than zero, and other income from investment assets and activities and from trading assets and activities shall be included in the receipts factor.~~

~~—— (ii) Investment assets and activities and trading assets and activities include investments securities, trading account assets, federal funds, securities purchased and sold under agreements to resell or repurchase, options, futures contracts, forward contracts, notional principal contracts such as swaps, equities, and foreign currency transactions.~~

~~—— (iii) The receipts factor shall include the following investment and trading assets and activities:~~

~~—— (A) The receipts factor shall include the amount by which interest from federal funds sold and securities purchased under resale agreements exceeds interest expense on federal funds purchased and securities sold under repurchase agreements.~~

~~—— (B) The receipts factor shall include the amount by which interest, dividends, gains and other income from trading assets and activities, including assets and activities in the matched book and arbitrage book, and foreign currency transactions, exceed amounts paid in lieu of interest, amounts paid in lieu of dividends, and losses from those assets and activities.~~

303           (iv) The numerator of the receipts factor includes interest, dividends, net gains, but not  
304 less than zero, and other income from investment assets and activities and from trading assets  
305 and activities described in Subsection (3)(m) that are attributable to this state.

306           ~~—— (A) The amount of interest, dividends, net gains, but not less than zero, and other income~~  
307 ~~from investment assets and activities in the investment accounts attributed to this state and~~  
308 ~~included in the numerator is determined by multiplying all such income from assets and activities~~  
309 ~~by a fraction, the numerator of which is the average value of the assets properly assigned to a~~  
310 ~~regular place of business of the taxpayer within this state and the denominator of which is the~~  
311 ~~average value of all those assets.~~

312           ~~—— (B) The amount of interest from federal funds sold and purchased and from securities~~  
313 ~~purchased under resale agreements and securities sold under repurchase agreements~~  
314 ~~attributable to this state and included in the numerator is determined by multiplying the amount~~  
315 ~~of those funds and securities described in Subsection (3)(m)(iii)(A) by a fraction, the numerator~~  
316 ~~of which is the average value of federal funds sold and securities purchased under agreements~~  
317 ~~to resell that are properly assigned to a regular place of business of the taxpayer within this state~~  
318 ~~and the denominator of which is the average value of all those funds and securities.~~

319           ~~—— (C) The amount of interest, dividends, gains, and other income from trading assets and~~  
320 ~~activities, including assets and activities in the matched book and arbitrage book and foreign~~  
321 ~~currency transactions, but excluding amounts described in Subsections (3)(m)(iv)(A) and~~  
322 ~~(3)(m)(iv)(B), attributable to this state and included in the numerator is determined by~~  
323 ~~multiplying the amount described in Subsection (3)(m)(iii)(B) by a fraction, the numerator of~~  
324 ~~which is the average value of those trading assets that are properly assigned to a regular place of~~  
325 ~~business of the taxpayer within this state and the denominator of which is the average value of~~  
326 ~~all those assets.~~

327           ~~—— (D) For purposes of this subsection, average value shall be determined using the rules for~~  
328 ~~determining the average value of tangible personal property set forth in Subsections (4)(c) and~~  
329 ~~(d).~~

330           ~~—— (v) In lieu of using the method set forth in Subsection (3)(m)(iv), the taxpayer may elect,~~  
331 ~~or the commission may require in order to fairly represent the business activity of the taxpayer~~  
332 ~~in this state, the use of the method set forth in this subsection.~~

333           ~~—— (A) The amount of interest, dividends, net gains, but not less than zero, and other income~~  
334 ~~from investment assets and activities in the investment account attributed to this state and~~  
335 ~~included in the numerator is determined by multiplying all income from those assets and~~  
336 ~~activities by a fraction, the numerator of which is the gross income from those assets and~~  
337 ~~activities properly assigned to a regular place of business of the taxpayer within this state and~~  
338 ~~the denominator of which is the gross income from all those assets and activities.~~

339           ~~—— (B) The amount of interest from federal funds sold and purchased and from securities~~  
340 ~~purchased under resale agreements and securities sold under repurchase agreements~~  
341 ~~attributable to this state and included in the numerator is determined by multiplying the amount~~  
342 ~~of those funds and securities described in Subsection (3)(m)(iii)(A) by a fraction, the numerator~~  
343 ~~of which is the gross income from those funds and securities properly assigned to a regular place~~  
344 ~~of business of the taxpayer within this state and the denominator of which is the gross income~~  
345 ~~from all those funds and securities.~~

346 ~~\_\_\_\_\_ (C) The amount of interest, dividends, gains and other income from trading assets and~~  
347 ~~activities, including assets and activities in the matched book and arbitrage book and foreign~~  
348 ~~currency transactions, but excluding amounts described in Subsections (3)(m)(v)(A) or (B),~~  
349 ~~attributable to this state and included in the numerator is determined by multiplying the amount~~  
350 ~~described in Subsection (3)(m)(iii)(B) by a fraction, the numerator of which is the gross income~~  
351 ~~from those trading assets and activities properly assigned to a regular place of business of the~~  
352 ~~taxpayer within this state and the denominator of which is the gross income from all those assets~~  
353 ~~and activities.~~

354 ~~\_\_\_\_\_ (vi) If the taxpayer elects or is required by the commission to use the method set forth in~~  
355 ~~Subsection (3)(m)(v), the taxpayer shall use this method on all subsequent returns unless the~~  
356 ~~taxpayer receives prior permission from the commission to use, or the commission requires, a~~  
357 ~~different method.~~

358 ~~\_\_\_\_\_ (vii) The taxpayer shall have the burden of proving that an investment asset or activity or~~  
359 ~~trading asset or activity was properly assigned to a regular place of business outside of this state~~  
360 ~~by demonstrating that the day-to-day decisions regarding the asset or activity occurred at a~~  
361 ~~regular place of business outside this state. Where the day-to-day decisions regarding an~~  
362 ~~investment asset or activity or trading asset or activity occur at more than one regular place of~~  
363 ~~business and one regular place of business is in this state and one regular place of business is~~  
364 ~~outside this state, that asset or activity shall be considered to be located at the regular place of~~  
365 ~~business of the taxpayer where the investment or trading policies or guidelines with respect to~~  
366 ~~the asset or activity are established. Unless the taxpayer demonstrates to the contrary, policies~~  
367 ~~and guidelines shall be presumed to be established at the commercial domicile of the taxpayer.]~~

368 (m) (i) Receipts from investment assets and activities and trading assets and activities are  
369 included in the sales factor in accordance with Section 59-7-317.

370 (ii) For purposes of the term "sales from investment activities and assets and trading  
371 activities and assets" defined in Section 59-7-317, "net gain" means the amount of net gain and  
372 does not mean gross receipts related to the net gain.

373 (n) [All other receipts.] The numerator of the [receipts] sales factor includes all other  
374 receipts pursuant to the rules set forth in Rule R865-6F-8(10) and (11).

375 (o)[Attribution of certain receipts to commercial domicile.](i) Except as provided in  
376 Subsection (3)(o)(ii), all receipts that would be assigned under this section to a state in which the  
377 taxpayer is not taxable shall be included in the numerator of the [receipts] sales factor if the  
378 taxpayer's commercial domicile is in this state.

379 (ii)(A) If a unitary group includes one or more financial institutions, and if any member of  
380 the unitary group is subject to the taxing jurisdiction of this state, the receipts of each financial  
381 institution in the unitary group shall be included in the numerator of this state's [receipts] sales  
382 factor as provided in Subsections (3)(a) through (n) rather than being attributed to the  
383 commercial domicile of the financial institution as provided in Subsection (3)(o)(i).

384 (B) If a unitary group includes one or more financial institutions whose commercial  
385 domicile is in this state, and if any member of the unitary group is taxable in another state under  
386 section 59-7-305, the receipts of each financial institution in the unitary group that would be  
387 included in the numerator of the other state's [receipts] sales factor under Subsections (3)(a)  
388 through (n) may not be included in the numerator of this state's [receipts] sales factor.

389 (4) [Property Factor.]

390 (a) ~~[In General.]~~

391 (i) For taxpayers that do not elect to include the property described in Subsections (4)(g)  
392 through (i) within the property factor, the property factor is a fraction, the numerator of which  
393 is the average value of real property and tangible personal property owned by or rented to the  
394 taxpayer that is located or used within this state during the taxable year, and the denominator  
395 of which is the average value of all that property located or used within and without this state  
396 during the taxable year.

397 (ii) For taxpayers that elect to include the property described in Subsections (4)(g)  
398 through (i) within the property factor, the property factor is a fraction, the numerator of which  
399 is the average value of real property and tangible personal property owned by or rented to the  
400 taxpayer that is located or used within this state during the taxable year, and the average value  
401 of the taxpayer's loans and credit card receivables that are located within this state during the  
402 taxable year, and the denominator of which is the average value of all that property located or  
403 used within and without this state during the taxable year.

404 (b) ~~[Property included.]~~ The property factor shall include only property the income or  
405 expenses of which are included, or would have been included if not fully depreciated or  
406 expensed, or depreciated or expensed to a nominal amount, in the computation of the  
407 apportionable income base for the taxable year.

408 (c) ~~[Value of property owned by the taxpayer.]~~ (i) For taxpayers that do not elect to  
409 include the property described in Subsections (4)(g) through (i) within the property factor, the  
410 value of real property and tangible personal property owned by the taxpayer is the original cost  
411 or other basis of that property for federal income tax purposes without regard to depletion,  
412 depreciation or amortization.

413 (ii) For taxpayers that elect to include the property described in Subsections (4)(g)  
414 through (i) within the property factor:

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

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

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

426 (d) ~~[Average value of property owned by the taxpayer.]~~ The average value of property  
427 owned by the taxpayer is computed on an annual basis by adding the value of the property on  
428 the first day of the taxable year and the value on the last day of the taxable year and dividing the  
429 sum by two.

430 (i) If averaging on this basis does not properly reflect average value, the commission may  
431 require averaging on a more frequent basis, or the taxpayer may elect to average on a more  
432 frequent basis.

433 (ii) When averaging on a more frequent basis is required by the commission or is elected  
434 by the taxpayer, the same method of valuation must be used consistently by the taxpayer with  
435 respect to property within and without this state and on all subsequent returns unless the  
436 taxpayer receives prior permission from the commission to use a different method, or the  
437 commission requires a different method of determining average value.

438 (e) ~~[Average value of real property and tangible personal property rented to the~~  
439 ~~taxpayer.]~~ (i) The average value of real property and tangible personal property that the taxpayer  
440 has rented from another and are not treated as property owned by the taxpayer for federal  
441 income tax purposes, shall be determined annually by multiplying the gross rents payable during  
442 the taxable year by eight.

443 (ii) If the use of the general method described in this subsection results in inaccurate  
444 valuations of rented property, any other method that properly reflects the value may be adopted  
445 by the commission or by the taxpayer when approved in writing by the commission. Once  
446 approved, that other method of valuation must be used on all subsequent returns unless the  
447 taxpayer receives prior approval from the commission to use a different method, or the  
448 commission requires a different method of valuation.

449 (f) ~~[Location of real property and tangible personal property owned or rented to the~~  
450 ~~taxpayer.]~~ (i) Except as described in Subsection (4)(f)(ii), real property and tangible personal  
451 property owned by or rented to the taxpayer are considered located within this state if they are  
452 physically located, situated, or used within this state.

453 (ii) Transportation property is included in the numerator of the property factor to the  
454 extent that the property is used in this state.

455 (A) The extent an aircraft will be deemed to be used in this state and the amount of value  
456 that shall be included in the numerator of this state's property factor is determined by multiplying  
457 the average value of the aircraft by a fraction, the numerator of which is the number of landings  
458 of the aircraft in this state and the denominator of which is the total number of landings of the  
459 aircraft everywhere.

460 (B) If the extent of the use of any transportation property within this state cannot be  
461 determined, the property will be deemed to be used wholly in the state in which the property  
462 has its principal base of operations.

463 (C) A motor vehicle will be deemed to be used wholly in the state in which it is registered.

464 (g) ~~[Location of Loans.]~~ (i) A loan is considered located within this state if it is properly  
465 assigned to a regular place of business of the taxpayer within this state.

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

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

471 (B) the assignment on its records is based upon substantive contacts of the loan to the  
472 regular course of business; and

473 (C) the taxpayer uses the records reflecting assignment of loans for the filing of all state  
474 and local tax returns for which an assignment of loans to a regular place of business is required.

475 (iii) The presumption of proper assignment of a loan provided in Subsection (4)(g)(ii) may  
476 be rebutted upon a showing by the commission, supported by a preponderance of the evidence,

477 that the preponderance of substantive contacts regarding the loan did not occur at the regular  
478 place of business to which it was assigned on the taxpayer's records. When the presumption has  
479 been rebutted, the loan shall then be located within this state if:

480 (A) the taxpayer had a regular place of business within this state at the time the loan was  
481 made; and

482 (B) the taxpayer fails to show, by a preponderance of the evidence, that the  
483 preponderance of substantive contacts regarding the loan did not occur within this state.

484 (iv) In the case of a loan assigned by the taxpayer to a place without this state that is not  
485 a regular place of business, it shall be presumed, subject to rebuttal by the taxpayer on a showing  
486 supported by the preponderance of the evidence, that the preponderance of substantive  
487 contacts regarding the loan occurred within this state if, at the time the loan was made the  
488 taxpayer's commercial domicile, as defined in this rule, was within this state.

489 (v) To determine the state in which the preponderance of substantive contacts relating  
490 to a loan have occurred, the facts and circumstances regarding the loan at issue shall be reviewed  
491 on a case-by-case basis, and consideration shall be given to activities such as the solicitation,  
492 investigation, negotiation, approval, and administration of the loan.

493 (A) ~~[Solicitation.]~~ Solicitation is either active or passive.

494 (I) Active solicitation occurs when an employee of the taxpayer initiates the contact with  
495 the customer. The activity is located at the regular place of business at which the taxpayer's  
496 employee is regularly connected or working out of, regardless of where the services of the  
497 employee were actually performed.

498 (II) Passive solicitation occurs when the customer initiates the contact with the taxpayer.  
499 If the customer's initial contact was not at a regular place of business of the taxpayer, the regular  
500 place of business, if any, where the passive solicitation occurred is determined by the facts in  
501 each case.

502 (B) ~~[Investigation.]~~ Investigation is the procedure whereby employees of the taxpayer  
503 determine the credit-worthiness of the customer as well as the degree of risk involved in making  
504 a particular agreement. The activity is located at the regular place of business at which the  
505 taxpayer's employees are regularly connected or working out of, regardless of where the services  
506 of those employees were actually performed.

507 (C) ~~[Negotiation.]~~ Negotiation is the procedure whereby employees of the taxpayer and  
508 its customer determine the terms of the agreement, such as amount, duration, interest rate,  
509 frequency of repayment, currency denomination, and security required. The activity is located  
510 at the regular place of business at which the taxpayer's employees are regularly connected or  
511 working out of, regardless of where the services of those employees were actually performed.

512 (D) ~~[Approval.]~~ Approval is the procedure whereby employees or the board of directors  
513 of the taxpayer make the final determination whether to enter into the agreement.

514 (I) The activity is located at the regular place of business at which the taxpayer's  
515 employees are regularly connected or working out of, regardless of where the services of those  
516 employees were actually performed.

517 (II) If the board of directors makes the final determination, the activity is located at the  
518 commercial domicile of the taxpayer.

519 (E) ~~[Administration.]~~ Administration is the process of managing the account.

520 (I) Administration includes bookkeeping, collecting the payments, corresponding with the  
521 customer, reporting to management regarding the status of the agreement and proceeding  
522 against the borrower or the security interest if the borrower is in default.

523 (II) The activity is located at the regular place of business that oversees this activity.

524 (h) ~~[Location of credit card receivables.]~~ For purposes of determining the location of  
525 credit card receivables, credit card receivables shall be treated as loans and shall be subject to  
526 the provisions of Subsection (4)(g).

527 (i) ~~[Period for which properly assigned loan remains assigned.]~~ (i) A loan that has been  
528 properly assigned to a state shall, absent any change of material fact, remain assigned to that  
529 state for the length of the original term of the loan.

530 (ii) Thereafter, the loan may be properly assigned to another state if the loan has a  
531 preponderance of substantive contact to a regular place of business in that state.

532 (j) (i) Each taxpayer shall make an initial election on whether to include the property  
533 described in Subsections (4)(g) through (i) within the property factor.

534 (ii) The initial election is the election made or the filing position taken on the first return  
535 filed ~~[after the effective date of this rule]~~ for a taxable year beginning on or after January 1, 1998.

536 (iii) This election is irrevocable for a period of three years from the time the initial election  
537 is made, except in the case where a substantial ownership change occurs and commission  
538 approval is obtained to change the election.

539 (iv) After the initial three-year period, the election may be revocable only with the prior  
540 approval of the commission and shall require the showing of a significant change in circumstance.

541  
542 (5) ~~[Payroll factor.]~~ (a) ~~[In general.]~~ The payroll factor is a fraction, the numerator of which  
543 is the total amount paid in this state during the taxable year by the taxpayer for compensation  
544 and the denominator of which is the total compensation paid by the taxpayer both within and  
545 without this state during the taxable year. The payroll factor shall include only that compensation  
546 included in the computation of the apportionable income tax base for the taxable year.

547 (b) ~~[Compensation relating to nonbusiness income and independent contractors.]~~ The  
548 compensation of any employee for services or activities connected with the production of  
549 nonbusiness income, and payments made to any independent contractor or any other person  
550 not properly classifiable as an employee, shall be excluded from both the numerator and  
551 denominator of this factor.

552 (c) ~~[When compensation paid in this state.]~~ Compensation is paid in this state if any one  
553 of the following tests, applied consecutively, is met:

554 (i) The employee's services are performed entirely within this state.

555 (ii) The employee's services are performed both within and without the state, but the  
556 service performed without the state is incidental to the employee's service within the state. The  
557 term "incidental" means any service that is temporary or transitory in nature, or that is rendered  
558 in connection with an isolated transaction.

559 (iii) If the employee's services are performed both within and without this state, the  
560 employee's compensation will be attributed to this state:

561 (A) if the employee's principal base of operations is within this state;

562 (B) if there is no principal base of operations in any state in which some part of the  
563 services are performed, but the place from which the services are directed or controlled is in this  
564 state; or

565 (C) if the principal base of operations and the place from which the services are directed  
566 or controlled are not in any state in which some part of the service is performed but the  
567 employee's residence is in this state.

568 (6) This rule is effective for a taxable year[s] beginning on or after [December 31, 1997]  
569 January 1, 2026.

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