TENNESSEE DEPARTMENT OF REVENUE
REVENUE RULING # 02-16

WARNING

Revenue rulings are not binding on the Department. This presentation of the ruling in a redacted form is information only. Rulings are made in response to particular facts presented and are not intended necessarily as statements of Departmental policy.

SUBJECT

Application of Tennessee's franchise, excise tax to a mortgage banking business that services loans in Tennessee and may hold security interests in real property located in Tennessee when foreclosures occur, but does not have any offices, employees, or representatives located in Tennessee.

SCOPE

Revenue rulings are statements regarding the substantive application of law and statements of procedure that affect the rights and duties of taxpayers and other members of the public. Revenue rulings are advisory in nature and are not binding on the Department.

FACTS

Mortgage banker[1], (hereinafter "Taxpayer"), is organized as a limited liability company ("LLC") and treated as a partnership for federal income tax purposes. The Taxpayer has its headquarters in [STATE – NOT TENNESSEE], but is registered to do business in each of the states in which it originates loans, including Tennessee.[2] The Taxpayer's members consist of both individuals and a C corporation. None of the Taxpayer's individual members live in Tennessee. The C corporation is a bank that files Tennessee franchise, excise tax returns because of the operations of one of its divisions, which is involved in leasing tangible personal property in Tennessee and other states. The Taxpayer does not own an interest in any other entities.

The Taxpayer began operations in Tennessee in the year [YEAR]. The Taxpayer services mortgage loans in Tennessee and states that it may eventually hold a security interest in real property if foreclosure occurs. The Taxpayer has no offices, employees, or other representatives located in Tennessee.

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[1] The Taxpayer cites the *5th Edition of Black's Law Dictionary* to define the term "mortgage banker" as:

> [a] person or firm engaged in the business of dealing in mortgages including their placement and refinancing. Normally such banker uses it own funds as opposed to a commercial or savings and loan bank, which uses primarily funds of depositors. While some mortgage bankers do provide long-term (permanent) financing, the majority specialize in short-term and interim financing. Mortgage bankers, or mortgage companies, are in the business of originating mortgage loans to sell. Attendant to the mortgage loan origination and resale functions, mortgage bankers may service loans, write hazard insurance, broker loans or property, manage property, act as leasing agents, or act as appraisers.

[2] For purposes of this ruling, it is assumed that where the Taxpayer indicates that it is registered to do business in Tennessee that the taxpayer is referring to its registration with the Tennessee Secretary of State.

From its [STATE – NOT TENNESSEE] office, the Taxpayer solicits loan originations in [STATES – NOT TENNESSEE], and Tennessee. The Taxpayer had planned to open a new loan origination office in [STATE – NOT TENNESSEE] in [MONTH – YEAR]. Until then, all [STATE – NOT TENNESSEE] loan originations were solicited and processed in [STATE – NOT TENNESSEE].

The Taxpayer also has an [STATE – NOT TENNESSEE] office that solicits and originates loans in [STATES – NOT TENNESSEE]. The personnel in the [STATE – NOT TENNESSEE] office also work with two wholesale loan originators, who work out of home offices in [STATE – NOT TENNESSEE], one wholesale loan originator in [STATE – NOT TENNESSEE], and one wholesale loan originator in [STATE – NOT TENNESSEE], who both also work out of home offices.

Loan originations are solicited by advertising in national publications, by making telephone calls to potential customers, by purchasing leads from telemarketing companies and calling potential customers, and through referrals from affinity relationships with various banks, finance and insurance companies. The Taxpayer does not currently advertise in local or so-called "national" yellow pages, but is currently considering doing both types of advertising.

Various title companies fund, on behalf of the Taxpayer, the loans originated by the Taxpayer. These title companies also prepare loan packages and perform closings on behalf of the Taxpayer. The Taxpayer also purchases loans from other loan originators and resells them.

QUESTIONS

1. Based on the description of the Taxpayer's activities in Tennessee, do these activities create a nexus for franchise, excise tax purposes in Tennessee for either the LLC or its members?

2. Based on the description of the Taxpayer's activities in Tennessee, would Tennessee classify and treat the LLC as a regular LLC, or would it be treated as a financial institution or financial organization under Tennessee law?

3. Does Tennessee require an LLC or its members to file franchise and/or excise tax returns, if the LLC does not have nexus in Tennessee, but is registered to do business?

4. If the LLC or its members are required to file franchise and/or excise tax returns in Tennessee, please provide guidance as to the specific filing requirements, e.g., which tax needs to be filed, for both the LLC and its members. If members are required to file income tax returns, are composite returns permitted for individual members and are there non-resident withholding requirements for individual members.

5. If the LLC or its members are required to file franchise and/or excise tax returns in Tennessee, please provide guidance on the sourcing rules for apportionment factor purposes of:

    a. how revenue from loan origination fees, where loans are closed in Tennessee on behalf of this corporation by un-related third parties, is sourced for the sales of receipts factor;

b how interest income from loans on real property located in Tennessee are sourced for the sales or receipts factor; and

c. whether loans held by this corporation are included in the property factor and how are they sourced.

RULING

1. To the extent the Taxpayer has no physical presence in Tennessee it does not, standing alone, have nexus with Tennessee. However, any business entity that has registered with the Tennessee Secretary of State to do business in Tennessee is required to file a franchise, excise tax return and pay the $100 minimum franchise tax even though it has no physical presence in Tennessee. T.C.A. § 67-4-2119. In the event that the Taxpayer ever forecloses on a mortgage secured by real property located in Tennessee and becomes an owner of that property, the Taxpayer could, depending on the facts and circumstances, have nexus with Tennessee.

The Taxpayer qualifies as a "financial institution" under Tennessee law. The C Corporation that owns part of the taxpayer has physical presence, and thus, tax nexus, in Tennessee. The C Corporation is a financial institution and if it is a member of the Taxpayer's unitary group of financial institutions, all financial institution members of the unitary group, including the Taxpayer, will be required to file a combined Tennessee franchise, excise tax return and pay the franchise, excise taxes computed thereon.

The Tennessee franchise, excise tax does not apply to individuals. Therefore, the nexus of the Taxpayer's individual members is moot. Since none of the individuals live in Tennessee or maintain a residence in Tennessee for more than (6) six months, they are not subject to the Tennessee Hall income tax on any dividend or interest income that they receive by virtue of their ownership of the Taxpayer.

2. See answer to Question 1 above.

3. If the Taxpayer or any of its unitary group members that are financial institutions are incorporated in Tennessee, have a certificate of authority to transact business in Tennessee, or are otherwise registered with the Tennessee Secretary of State, all members of the unitary group, including the Taxpayer, will be required to file a combined Tennessee franchise, excise tax return and pay the franchise, excise taxes computed thereon. If no member of the unitary group of financial institutions has physical presence in Tennessee but at least one such member is registered with the Tennessee Secretary of State to do business in Tennessee, only the minimum franchise tax of $100 will be due with the franchise, excise tax return filed.

4. See answer to Question 1 above. Tennessee has no withholding requirements for any of its taxes.

5. (a) Consumer loan origination fees, when the loan is not secured by real or tangible personal property, are attributed to Tennessee if the loan is made to a Tennessee resident.

Commercial loan origination fees, when the loan is not secured by real or tangible personal property, are attributed to Tennessee if the proceeds are to be applied in

Tennessee. If it cannot be determined where the funds are to be applied, the receipts are attributed to the state in which the business applied for the loan.

Loan origination fees, when the loan is secured by real or tangible personal property, are attributed to Tennessee if the security is located in Tennessee.

(b) Interest income from loans secured by real property are attributed to Tennessee if the security is located in Tennessee.

(c) The apportionment formula for financial institutions is a single gross receipts factor. No property factor is involved.

ANALYSIS

1. Tennessee's corporate franchise and excise taxes are taxes imposed upon the privilege of doing business in corporate form and the privilege of exercising the corporate franchise in Tennessee. *Memphis Bank & Trust Co. v. Garner*, 624 S.W.2d 551 (Tenn. 1981). Public Chapter 406 of the Public Acts of 1999 expanded application of Tennessee's franchise, excise taxes to other types of business entities. The expansion was further refined in Public Chapter 982 of the Public Acts of 2000. *See* T.C.A. § 67-4-2004(16). The taxes are imposed to compensate the state for the protection of the taxpayer's local activities and as compensation for the benefits received from doing business in Tennessee. *Mid-Valley Pipeline Co. v. King*, 431 S.W.2d 277, 280 (Tenn. 1968). The taxes are imposed on different tax bases. *First American Nat'l Bank v. Olsen*, 751 S.W.2d 417 (Tenn. 1987). The franchise tax has as its base the taxpayer's net worth with the minimum measure being the actual value of the property owned, or property used, in Tennessee. T.C.A. §§ 67-4-2106, 67-4-2108. The excise tax, on the other hand, is based upon a taxpayer's net earnings from business done in Tennessee. T.C.A. § 67-4-2007.

With certain exceptions, Tennessee imposes its franchise and excise taxes upon all persons[3] doing for profit business in Tennessee. T.C.A. §§ 67-4-2105 and 67-4-2007. The term "doing business in Tennessee" is defined to mean any activity "purposefully engaged in, within Tennessee, by a person with the object of gain, benefit, or advantage, consistent with the intent of the general assembly to subject such persons to the Tennessee franchise/excise tax to the extent permitted by the United States Constitution and the Constitution of Tennessee." T.C.A. § 67-4-2004(7)(A).

The Taxpayer engages in mortgage banking activities within Tennessee for gain. Nevertheless, unless the Taxpayer or one its unitary financial institution group members either has nexus with Tennessee, the Taxpayer's activities would not fall within the parameters of T.C.A. § 67-4-2004(7)(A) because taxation of the Taxpayer would not be permitted by the United States Constitution. However, any business entity that registers with the Tennessee Secretary of State

[3] The term "person" is defined broadly to include "every corporation, subchapter S corporation, limited liability company, limited liability partnership, professional registered limited liability partnership, limited partnership, cooperative, joint-stock association, business trust, regulated investment company, real estate investment trust, state-chartered or national bank, state-chartered or federally chartered savings and loan association." Tenn. Code Ann. § 67-4-2004(16).

to do business in Tennessee is required to file a franchise, excise tax return and pay the minimum franchise tax of $100 even though it has no physical presence in Tennessee. T.C.A. § 67-4-2119.

The Constitutional limitations on a state's power to tax out of state, or foreign persons, is found in the Due Process Clause of the Fourteenth Amendment and the Commerce Clause of Article 1, § 8. *See, J.C. Penney National Bank v. Johnson,* 19 S.W.3d 831 (Ct.App. 1999). In the context of state taxation, the Due Process Clause "requires some definite link, some minimum connection, between a state and the person, property or transaction it seeks to tax." *Quill Corp. v. North Dakota,* 504 U.S. 298, 306, 112 S.Ct. 1904, 119 L.Ed.2d 91 (1992) (quoting *Miller Brothers Co. v. Maryland,* 347 U.S. 340, 344-345, 74 S.Ct. 535, 539, 98 L.Ed. 744 (1054)). The Commerce Clause, however, requires more.[4] The Commerce Clause requires, among other things, that the activity subject to state tax must have a substantial nexus with the state. *See, Complete Auto Transit, Inc. v. Brady*, 430 U.S. 274, 97 S.Ct. 1669, 51 L.Ed2d 326 (1977) (the case in which the United States Supreme Court established the four principles that must be met before a state may constitutionally impose tax upon interstate commerce).

Substantial nexus under the Commerce Clause is not the same as minimum contacts under the Due Process Clause. *See Quill Corp. v. North Dakota,* supra at 313. To be sure, "the 'substantial nexus' requirement is not, like due process' 'minimum contacts' requirement, a proxy for notice, but rather a means for limiting state burdens on interstate commerce". *J.C. Penney Co. v. Johnson,* supra at 838 (citing *Quill Corp. v. North Dakota,* supra.). Therefore, the fact that the Taxpayer will be doing business in Tennessee is not, in and of itself, sufficient to allow for the imposition of Tennessee's franchise, excise taxes upon it. The Commerce Clause requires more.

In *National Bellas Hess, Inc. v. Department of Revenue of Ill.,* 386 U.S. 753, 87 S.Ct. 1389, 18 Led.2d 505 (1967) and *Quill Corp. v. North Dakota,* 504 U.S. 298, 112 S.Ct. 1904, 119 L.Ed.2d 91 (1992), the Supreme Court held that, in the context of a use tax, physical presence was required to satisfy the substantial nexus requirement of *Complete Auto.* In *J.C. Penny National Bank,* supra, the Tennessee Court of Appeals refused to limit the holding of *National Bellas Hess* and *Quill Corp.* to use taxes. Therefore, based on Tennessee case law precedent and the fact that there have been no cases in which the United States Supreme Court has upheld a tax where the out-of state taxpayer had no physical presence in the taxing state, the Taxpayer's mortgage banking activity in Tennessee will not, in and of itself, be sufficient to constitute substantial nexus.

The Taxpayer states that it is registered to do business in Tennessee and that it services Tennessee mortgage loans that were solicited from its [STATE – NOT TENNESSEE] office. The Taxpayer does not, however, provide any detail as to the activities involved in it's "servicing". The Taxpayer also states that it may hold security interests in real property located in Tennessee if foreclosure occurs, but that it has no offices, employees, or other representatives

[4] The Commerce Clause expressly authorizes Congress to "regulate commerce with foreign nations, and among the several States." U.S. CONST. Art. I, § 8 Cl. 3. In addition to this affirmative grant of power, the "negative" or dormant Commerce Clause serves to prohibit state actions that interfere with interstate commerce. *See, Quill Corp. v. North Dakota,* supra (citing *South Carolina State Highway Dept. v. Barnwell Bros., Inc.,* 303 U.S. 177, 185, 58 S.Ct. 510, 514, 82 L.Ed. 734 (1938)).

located in Tennessee. Thus, while it is clear that the Taxpayer will be doing business in Tennessee, it is not clear whether the Taxpayer will be physically present in Tennessee.

According to the Taxpayer, it will only hold a security interest in Tennessee property if it forecloses upon a mortgage secured by Tennessee real property.[5] Under Tennessee law, the Taxpayer will hold a security interest in Tennessee property if it is the mortgagee on any mortgage secured by real property located in Tennessee. If the Taxpayer forecloses upon a mortgage secured by real property located in Tennessee it might become the legal owner of that property. Such ownership may be sufficient to establish the requisite physical presence depending on the use and disposition of the property and other related facts.

Even if the Taxpayer itself is considered to lack the requisite physical presence with Tennessee, the Taxpayer could nonetheless be subject to Tennessee franchise, excise tax as a member of a unitary group of financial institutions. If the Taxpayer is a Tennessee financial institution that has, as a member of its unitary group, a financial institution with physical presence in Tennessee, the entire unitary group, including the Taxpayer, must file a Tennessee franchise, excise tax return on a combined basis. T.C.A. § 67-4-2006(a)(3).

For purposes of the Tennessee franchise, excise tax, T.C.A. § 67-4-2004(8) defines a financial institution as follows:

> "Financial institution" means a holding company, any regulated financial corporation, a subsidiary of a holding company or a regulated financial corporation, or any other person that is carrying on the business of a financial institution. However, "financial institution" does not include insurance companies subject to tax under §§ 56-4-201 – 56-4-214.

T.C.A. § 67-4-2004(8).

Thus, for Tennessee franchise, excise tax purposes, T.C.A. § 67-4-2004(8) treats a corporation as a financial institution if it is not an insurance company subject to tax under T.C.A. §§ 56-4-201 – 56-4-214 and it is carrying on the business of a financial institution as defined by T.C.A. § 67-4-2004(2)(A)-(B).

T.C.A. § 67-4-2004(2)(A) and (B) define the "business of a financial institution" as follows:

> (2)(A) "Business of a financial institution" means:
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> (i) The business that a regulated financial corporation may be authorized to do under state or federal law or the business that its subsidiary is authorized to do by the proper regulatory authorities;
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> (ii) The business that any corporation organized under the authority of the United States or organized under the laws of any other taxing jurisdiction or country does or has authority to do which is substantially similar to the business which a corporation

[5] The Taxpayer's statement that it "may hold security interests in real property located in Tennessee if foreclosure occurs" is somewhat confusing. Generally speaking, it is the mortgage holder that has the ability to foreclose on a mortgage. Furthermore, it is the mortgage holder that holds a security interest in the mortgage incident to the mortgage, not incident to the foreclosure.

may be created to do under title 45, or any business which a corporation or its subsidiary is authorized to do by title 45;

(iii) Otherwise making, acquiring, selling or servicing loans or extensions of credit, including, but not limited to, the following:

(a) Secured or unsecured consumer loans;

(b) Installment loans;

(c) Mortgages or deeds of trust or other secured loans on real or tangible personal property;

(d) Credit card loans;

(e) Secured or unsecured commercial loans of any type;

(f) Letters of credit and acceptance of drafts;

(g) Loans arising in factoring; and

(h) Any other transaction of a comparable economic effect;

(iv) Leasing or acting as an agent, broker or adviser in connection with leasing real and personal property that is the economic equivalent of an extension of credit; or

(v) Operating a credit card business.

(B) Notwithstanding the provisions of this subdivision (2), if the business of a financial institution generates less than fifty percent (50%) of a corporations gross income, the corporation shall not be considered to be a financial institution under subdivision (8). For purposes of this subdivision (2)(B), the computation of gross income of a corporation does not include income from nonrecurring, extraordinary transactions.

T.C.A. § 67-4-2004(2)(A) and (B).

Applying the above criteria to the Taxpayer, it is apparent that, for purposes of the Tennessee franchise, excise tax, Taxpayer is not an insurance company, a regulated financial corporation, a holding company, a subsidiary of a holding company, or a subsidiary of a regulated financial institution. The Taxpayer does, however, engage in the business of making, acquiring, selling and servicing extensions of credit. Assuming the activities described by the Taxpayer constitute greater than fifty percent (50%) of its gross income, such activity will fall within the scope of T.C.A. § 67-4-2004(2)(A). As a result, the Taxpayer will be treated as a financial institution for purposes of Tennessee franchise, excise tax.

Financial institutions that form a unitary business are required to file a combined return and pay taxes on all operations of the unitary business. T.C.A. § 67-4-2006(a)(3). The combined return is required for all financial institution members of the group even if some of the members would

not otherwise, standing alone, be subject to taxation. *Id.* In other words, as long as one of the unitary group members has nexus with Tennessee, all of the members, even those not present in Tennessee, must join in the combined return.

A "unitary business" is defined as follows:

> "Unitary business" means business activities or operations of financial institutions that are of mutual benefit, dependent upon or contributory to one another, individually or as a group, in transacting the business of a financial institution. "Unitary business" may be applied within a single legal entity or between multiple entities. "Unitary group" includes those entities that are engaged in a unitary business wholly within or within and without this state;
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> (A) Unity is presumed whenever there is unity of ownership, operation and use evidenced by centralized management or executive force, centralized purchasing, advertising, accounting or other controlled interaction among entities that are engaged in the business of a financial institution. The absence of these centralized activities does not, however, necessarily evidence a nonunitary business.
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> (B) Unity of ownership does not exist unless the corporation is a member of two (2) or more business entities and more than fifty percent (50%) of the voting stock of each member is directly or indirectly owned by:
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> (i) A common owner or common owners, either corporate or noncorporate; or
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> (ii) One (1) or more of the members of the group.

T.C.A. § 67-4-2004(25).

The facts state that the sole non-individual member of the Taxpayer is a bank that files Tennessee franchise, excise tax returns because of the operations of one of its divisions. Since a bank clearly falls within the definition of a financial institution, the next inquiry would be whether or not the member bank is unitary with the Taxpayer. The Taxpayer has failed to provide sufficient facts to make that determination. However, if the bank is part of the Taxpayer's unitary group, all financial institution members of the group, including the Taxpayer will be required to file a combined Tennessee franchise, excise tax return and pay the franchise, excise taxes computed thereon.

In the event that the Taxpayer and the bank do not have a unitary relationship, then the Taxpayer will not be required to join in the filing of a combined Tennessee franchise, excise tax return. However, if the Taxpayer has registered with the Tennessee Secretary of State to do business in Tennessee, it will file its own franchise, excise tax return and pay the minimum franchise tax of $100. T.C.A. § 67-4-2119. If the Taxpayer has not registered with the Tennessee Secretary of State to do business in Tennessee and is not unitary with any other financial institution that has physical presence in Tennessee, it will not be required to file a franchise, excise tax return. Assuming that it is not unitary with any other financial institution, the bank, which has physical presence in Tennessee, will file its own franchise tax return based on its own operations.

Since Tennessee franchise, excise tax is not applicable to individuals, the remaining members of the Taxpayer, which consists of individuals, do not have a franchise, excise tax filing requirement in Tennessee. As a result, the issue of nexus as to the individuals is moot. Since none of the individuals live in Tennessee or maintain a residence in Tennessee for more than (6) six months, they are not subject to the Tennessee Hall income tax on any dividend or interest income that they receive by virtue of their ownership of the Taxpayer.

2. See answer to Question 1 above.

3. To the extent permitted by the United States Constitution and the Constitution of the state of Tennessee, all "persons", as that term is defined by T.C.A. § 67-4-2004(16), that do for profit business in Tennessee or that exercise the corporate franchise are exercising a taxable privilege. See T.C.A. §§ 67-4-2005 and 67-4-2104. As a result, those persons are required by T.C.A. §§ 67-4-2015 and 67-4-2115 to file Tennessee franchise, excise tax returns. Tennessee law also provides that all taxable entities incorporated, domesticated, qualified or otherwise registered to do business in Tennessee must file franchise, excise tax returns and pay the minimum $100 franchise tax even if the entity has no physical presence in Tennessee or has become inactive in Tennessee. T.C.A. § 67-4-2119.

As discussed in Question 1 above, if the Taxpayer is part of a unitary group of financial institutions and if any of its unitary group members that are financial institutions have a physical presence in Tennessee, the unitary group is a taxable entity. As such, all members of the unitary group, including the Taxpayer, will be required by T.C.A. § 67-4-2006(a)(3) to file a combined Tennessee franchise, excise tax return and pay the franchise, excise taxes computed thereon. Even if the unitary group has no physical presence or conducts no business in Tennessee, if one of its members is chartered in Tennessee or has obtained a certificate of authority from the Tennessee Secretary of State, the unitary group must nonetheless file its Tennessee franchise, excise return and pay the minimum franchise tax required by T.C.A. § 67-4-2119.

4. See answer to Question 1 above. Tennessee has no withholding requirements for any of its taxes.

5. (a) For purposes of the receipts factor of the apportionment formula for Tennessee financial institutions, T.C.A. § 67-4-2013(b)(4) provides, in pertinent part, that receipts are attributed to Tennessee as follows:

> (A) Receipts from the lease or rental of real or tangible personal property shall be attributed to Tennessee if the property is located in Tennessee;
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> (B) (i) Interest income and other receipts from assets in the nature of loans or installment sales contracts that are primarily secured by or deal with real or tangible personal property shall be attributed to Tennessee if the security or sale property is located in Tennessee. If any part of the sale property or property standing as security for the payment of the debt is located part within and part without the state, only such proportion of the interest income or other receipts shall be attributed to Tennessee as the value of the property within the state bears to the whole property;

> (ii) "Value" means only that value which the property would command at a fair and voluntary sale. Value shall be determined at the time the loan is made and shall not vary from year to year. In the event additional real or tangible personal property is pledged as security or otherwise covered under a loan or installment sales contract after the time the loan is made, the ratio based on the value of the property in the state compared to the whole property shall be adjusted;
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> (C) Interest income and other receipts from consumer loans not secured by real or tangible personal property shall be attributed to Tennessee if the loan is made to a resident of Tennessee, whether at a place of business, by a traveling loan officer, by mail, telephone or other electronic means;
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> (D) Interest income and other receipts from commercial loans and installment obligations not secured by real or tangible personal property shall be attributed to Tennessee if the proceeds of the loan are to be applied in Tennessee. If it cannot be determined where the funds are to be applied, the receipts are to be attributed to the state in which the business applied for the loan. As used in this subdivision, "applied for" means initial inquiry (including customer assistance in preparing the loan application) or submission of a completed loan application, whichever occurs first. For attribution purposes, "loan" does not include demand deposit clearing accounts, federal funds, certificates of deposit, and other similar wholesale banking instruments issued by other financial institutions;
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> (E)-(J) . . . .

T.C.A. § 67-4-2013(b)(4).

Based on the foregoing, any consumer loan origination fees, when the loan is not secured by real or tangible personal property, are attributed to Tennessee if the loan is made to a Tennessee resident. T.C.A. §§ 67-4-2013(b)(4)(C) and 67-4-2118(d)(3). Commercial loan origination fees, however, when the loan is not secured by real or tangible personal property, are attributed to Tennessee if the proceeds of the loan are to be applied in Tennessee. If it cannot be determined where the funds are to be applied, the receipts are attributed to the state in which the business applied for the loan. T.C.A. §§ 67-4-2013(b)(4)(D) and 67-4-2118(d)(4). Finally, loan origination fees, when the loan is secured by real or tangible personal property, are attributed to Tennessee if the security or sale property is located in Tennessee. T.C.A. §§ 67-4-2013(b)(4)(B)(i) and 67-4-2118(d)(2)(A).

(b) Interest income from loans secured by real property are attributed to Tennessee if the security is located in Tennessee. T.C.A. §§ 67-4-2013(b)(4)(B)(i) and 67-4-2118(d)(2)(A).

(c) The apportionment formula for financial institutions is a single gross receipts factor. No property factor is involved. T.C.A. §§ 67-4-2013(b) and 67-4-2118.

Arnold B. Clapp, General Counsel

APPROVED: Ruth E. Johnson, Commissioner

DATE: 6/7/02