Ohio Revised Code

Section 5726.05 Apportionment factor.

Effective: March 27, 2013
Legislation: House Bill 510 - 129th General Assembly

(A) An apportionment factor shall be used to determine the total Ohio equity capital of a financial institution. The factor shall be based upon the gross receipts generated by the financial institution.

(B) The apportionment factor is a fraction, the numerator of which is the total gross receipts of the financial institution in this state during the taxable year and the denominator of which is the total gross receipts of the financial institution everywhere during the taxable year. Gross receipts generated by a financial institution shall be sitused to this state in the proportion that the customers' benefit in this state with respect to the services received bears to the customers' benefit everywhere with respect to the services received. The physical location where the customer ultimately uses or receives the benefit of what was received shall be paramount in determining the proportion of the benefit in this state to the benefit everywhere. The method of calculating gross receipts for purposes of the denominator shall be the same as the method used in determining gross receipts for purposes of the numerator.

(C) The following are examples of gross receipts to be included in the numerator of the apportionment factor:

(1) Receipts from the lease, sublease, rental, or subrental of real property located in this state;

(2) Receipts from the lease, sublease, rental, or subrental of tangible personal property to the extent such property is used in this state;

(3) Interest, fees, penalties, or any other charge received from loans secured by real property located within this state;

(4) Interest, fees, penalties, or any other charge received from loans not secured by real property if the borrower is located in this state;

(5) The amount of net gains, but not less than zero, from the sale of loans secured by real property located in this state;

(6) The amount of net gains, but not less than zero, from the sale of loans not secured by real property if the borrower is located in this state;

(7) Interest, annual fees, penalties, or any other charges received from credit card receivables and from cardholders if the billing address of the cardholder is located in this state;

(8) The amount of net gains, but not less than zero, from the sale of credit card receivables if the billing address of the cardholder is located in this state;

(9) Reimbursement fees of a credit card issuer if the billing address of the cardholder is located in this state;

(10) Receipts from merchant discounts if the merchant is located in this state;

(11) Loan servicing fees derived from loans secured by real property located in this state;

(12) Loan servicing fees derived from loans not secured by real property if the borrower is located in this state;

(13) Loan servicing fees derived from servicing loans from other financial institutions if the borrower is located in this state;

(14) Receipts not otherwise listed herein if the payor of those receipts is located in this state.

(D)(1) Receipts from investment assets and activities and trading assets and activities, including interest and dividends, are in this state to the extent the financial institution's customer is in this state, which a financial institution may determine by electing to apply either the gross receipts factor calculated under division (B) of this section to the investment assets and activities and trading assets and activities or the method prescribed in division (D)(2) of this section. As used in division (D) of this section, "investment assets and activities and trading assets and activities" includes interest, dividends, and other income from assets and activities, including, but not limited to: investment 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; foreign currency transactions; and amounts in the matched book and in the arbitrage book, but excluding amounts otherwise sourced in this section.

(2) If a financial institution elects to apply the method prescribed in division (D)(2) of this section, each of the following apply:

(a) With respect to the investment and trading assets and activities, the gross receipts factor shall include the following:

(i) 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.

(ii) The amount by which 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, exceed amounts paid in lieu of interest, amounts paid in lieu of dividends, and losses from such assets and activities.

(b) The numerator of the gross receipts factor shall include 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 attributable to this state as follows:

(i) The amount of interest, other than interest described in division (D)(2)(b)(ii) of this section, dividends, other than dividends described in that division, net gains, but not less than zero, and other income from investment assets and activities in the investment account to be attributed to this state and included in the numerator is determined by multiplying all such income from such assets and activities by a fraction, the numerator of which is the average value of such assets that 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.

(ii) 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 is determined by multiplying the amount described in division (D)(2)(a)(i) of this section 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 that 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.

(iii) 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 transaction, but excluding amounts described in division (D)(2)(b)(i) or (ii) of this section, attributable to this state and included in the numerator is determined by multiplying the amount described in division (D)(2)(a)(ii) of this section by a fraction, the numerator of which is the average value of such trading assets that 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.

(3) For purposes of division (D)(2) of this section, average value shall be determined as follows:

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

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

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

(b) The average value of property owned by the taxpayer is computed on an annual basis by adding the value of the property on the first day of the taxable year and the value on the last day of the taxable year and dividing the sum by two. If averaging on this basis does not properly reflect average value, the tax commissioner may require averaging on a more frequent basis. The taxpayer may elect to average on a more frequent basis. When averaging on a more frequent basis is required by the tax commissioner or is elected by the taxpayer, the same method of valuation must be used consistently by the taxpayer with respect to property within and without this state and on all subsequent returns unless the taxpayer receives prior permission from the tax commissioner or the tax commissioner requires a different method of determining value.

(E) A taxpayer's election under division (D)(1) of this section shall be in effect on all subsequent returns unless the taxpayer receives prior permission from the tax commissioner to use or the tax commissioner requires a different method.

(F) A 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.

(G) If the apportionment provisions of this section do not fairly represent the extent of the taxpayer's business activity in this state, the taxpayer may request, or the tax commissioner may require or permit, an alternative method. Such a request must be made within any applicable statute of limitations set forth in this chapter.

(H) A financial institution's "gross receipts" for purposes of the calculation required by division (B) or (D) of this section shall be determined using the financial institution's method of accounting for income tax purposes. If a financial institution's method of accounting is changed for income tax purposes, its method of accounting for purposes of the calculation required by division (B) or (D) of this section shall be changed accordingly.

(I) The tax commissioner shall adopt administrative rules to provide additional guidance for the application of this section.