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Sent: Monday, August 22, 2022 10:22 AM
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Subject: RE: Proposed Income Tax Rule 003.02 [IWOV-IMANAGE.FID1300298]

Phil, responding to your email below, I have been in contact with my banking folks and have the following feedback with our more specific concerns about the substantive issues in adopting the latest MTC rule – in addition to our concerns about and strong objections to the timing of this change. As you suggest, the property factor is a major concern, and although we recognize there are gray areas in determining the situs of loans, the process has worked for years and is still in place in many states.

1) Applying a change in Rule 003.02 from referencing the 1994 MTC Formula to the 2015 MTC Formula (without adding a statutory election to apportion using the 1994 Formula) would discriminate against many financial institutions, provide a disincentive to invest in physical branch operations in Idaho and result in a significant increase in tax liability for some financial institutions. This would contradict the intent of HB 563 that would allow financial institutions to elect to maintain the status quo with respect to allocation and apportionment.

2) A change in Rule 003.02 would also affect financial institutions by changing the method of sourcing "receipts from services not otherwise apportioned under this section" of the MTC Formula. Some financial institutions' percentage of receipts from services sourced to Idaho under market sourcing is higher than the percentage sourced to Idaho under cost of performance. HB 563 was written to move most corporations to market sourcing, but provided language that kept financial institutions subject to Rule 582 and Rule 003.02. All parties including the Tax Commission agreed in March that HB 563 kept financial institutions using the cost of performance method (and avoided a potential tax increase). A change in Rule 003.02 would result in a tax increase to certain financial institutions. As noted, the intent of HB 563, at least with respect to special industries such as financial institutions, was to allow them to elect to maintain the status quo.

3) A change in Rule 003.02 would also affect financial institutions by stripping loans out of the property factor. This is a significant change and would also result in a tax increase for certain financial institutions. Some financial institutions make loans to customers in most or all 50 states, but do not operate branches nationwide. On the other hand, some

> financial institutions have made a significant investment in Idaho over the years, with branch locations throughout Idaho and hundreds of employees in Idaho. Because those financial institutions have made a significant investment in branches, offices, and employees in Idaho, their percentage of real and personal property in Idaho is higher than their percentage of loans in Idaho. Stripping loans out of the property factor punishes financial institutions that invest heavily in branches, offices, and employees in Idaho. We do not believe the legislature/Governor intended to increase taxes on financial institutions that have invested heavily in Idaho. Nor do we believe the legislature/Governor intend to discourage financial institutions from increasing their investment in Idaho branches and offices.

As I noted in my earlier email, we could have addressed this in the legislation if we had thought it was an issue, and the email exchange we had on March 29 confirmed on our minds that it wasn't.

Please let me know if you have any questions about this.

Rick