

# STATE OF COLORADO

DEPARTMENT OF REVENUE  
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PLR-13-001

January 24, 2013

XXXXXXXXXXXXXXXXXXXX  
ATTN: XXXXXXXXXXXXXXX  
XXXXXXXXXXXXXXXXXXXX  
XXXXXXXXXXXXXXXXXXXX

Dear XXXXXXXXXXXX,

You submitted on behalf of XXXXXXXXXXXXXXXXXXXX ("Company") a request for a private letter ruling to the Colorado Department of Revenue ("Department") pursuant to Regulation 24-35-103.5. This letter is the Department's private letter ruling.

## Issues

1. May Company file its income tax returns under an alternative method of apportionment, different from the method required by Special Regulation 7A – Financial Institutions?

## Conclusion

1. Company may file under an alternative method of apportionment as described below.

## Background

Company is a savings and loan holding company. Company has multiple subsidiaries. One subsidiary, "Broker", is a securities broker-dealer, whose principal business is the sale of broker-dealer services to clients. Another Company subsidiary, "Bank", is a bank, the principal business of which is to provide banking services to clients. Bank's primary customer base is made up of clients of Broker, although non-clients of Broker may also be clients of Bank. Company and its subsidiaries are financial institutions, required to file a Colorado income tax return under Special Regulation 7A – Financial Institutions.

Company has represented that it has a substantial amount of receipts from investment and trading assets and activities. These activities consist generally of investments of cash. The source of the cash being invested is generally cash on deposit by customers. Bank customers maintain deposit accounts with Bank, and the cash in those accounts is invested. Broker's clients may have cash on deposit with Broker, either because the customer wishes to maintain such cash on account or due to trades on the customer's behalf that resulted in

excess cash. Most cash maintained in Broker's customer accounts is swept daily and invested by Bank. Some cash is maintained on Broker's books

Company notes that, with respect to its receipts from investment and trading assets and activities under 1)c)xiii)(2) of the financial institutions special regulation, it is required to calculate the Colorado numerator on the basis of the location of the regular place of business of the activities, and that, pursuant to 1)c)xiii)(5), such location is determined on the basis of the location of the day-to-day decisions regarding the asset or activity.

Company argues that such a rule does not fairly represent the extent of the taxpayer's activities in Colorado. Company notes that the overall purpose of the rule is to source receipts to the location from which such receipts arise (the market principle) and that the current rule reflects a cost of performance principle rather than a market principle.

### **Discussion**

The financial institution rule regarding investment and trading assets and activities presupposes that these types of receipts have no true market that gives rise to the receipt. Thus, the traditional rule substitutes the location of the taxpayer from which the activities are directed.

The Department recognizes that the taxpayer's location is not a reflection of the market giving rise to the receipt. However, the Department also does not believe that the location of the payor of the investment return represents the "market" giving rise to the receipt. The "location" of the payor is likely to be a relatively arbitrary single location (representing either commercial domicile, headquarters location, or incorporation location) of what is likely to be a regional, nationwide, or worldwide activity that generates the return on the taxpayer's original investment.

While the Department feels that neither the existing rule nor a "payor" substitute adequately serve as proxies for the market for the receipt, the Department does conclude that a "deposits" factor, such as the one employed by the State of Minnesota is a reasonable proxy for the market for such activities.

The Department believes that the Company's situation described herein is similar to the apportionment of income of a mutual fund management company. In that circumstance, a taxpayer derives income (and receipts) from the investment of assets that belong to a customer (either of the taxpayer or a party related to the taxpayer). Although the receipts of a mutual fund investment advisor reflect fees rather than a margin between return received and return paid, we do not perceive that difference to be significant.

The Department recognizes that the Bank's and Broker's customer accounts reflect more a source of capital than the investment of capital. However, the Department concludes that such a rule serves as the best possible proxy for an otherwise opaque investment "market".

The Department will therefore allow and, once accepted and utilized by Company, require, Company to calculate the sales factor numerator under the alternative apportionment method as follows.

Company will calculate the ratio of total deposits from Colorado customer accounts (determined by a primary contact address in Colorado) to total deposits from all customer accounts. Company will multiply that ratio by its receipts from investment assets and activities. The resulting product will be the amount of Colorado numerator receipts from investment assets and activities.

The remainder of Bank's, and Company's, apportionment shall be as otherwise required by law.

### **Miscellaneous**

This ruling applies only to sales and use taxes administered by the Department. Please note that the Department administers state and state-collected city and county sales taxes and special district sales and use taxes, but does not administer sales and use taxes for self-collected home rule cities and counties. You may wish to consult with local governments which administer their own sales or use taxes about the applicability of those taxes. Visit our web site at [www.colorado.gov/revenue/tax](http://www.colorado.gov/revenue/tax) for more information about state and local sales taxes.

This ruling is premised on the assumption that Company has completely and accurately disclosed all material facts. The Department reserves the right, among others, to independently evaluate Company's representations. This ruling is null and void if any such representation is incorrect and has a material bearing on the conclusions reached in this ruling. This ruling is subject to modification or revocation in accordance to Department Regulation 24-35-103.5.

Enclosed is a redacted version of this ruling. Pursuant to statute and regulation, this redacted version of the ruling will be made public within 60 days of the date of this letter. Please let me know in writing within that 60 day period whether you have any suggestions or concerns about this redacted version of the ruling.

Sincerely,

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