



Ohio Administrative Code Rule 5703-33-06 General situsing provision.

Effective: June 9, 2020

(A) The situsing concepts provided herein should be used in calculating the gross receipts for the apportionment factor.

As used herein, unless the context otherwise requires:

(1) "Billing address" means the location indicated in the books and records of the taxpayer on the first day of the taxable year (or on such later date in the taxable year when the customer relationship began) as the address where any notice, statement and/or bill relating to a customer's account is mailed.

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

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

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

(3) "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, debit, or similar type of card has charged merchandise or services to the card.

(4) "Commercial domicile" means:

(a) The headquarters of the trade or business, that is, the place from which the trade or business is principally managed and directed; or

(b) 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, such 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 such 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 such employees are performed, as of the last day of the taxable year.

(5) "Credit card" means a card, or other means of providing information, that entitles the holder to charge the cost of purchases, or a cash advance, against a line of credit.

(6) "Debit card" means a card, or other means of providing information, that enables the holder to charge the cost of purchases, or a cash withdrawal, against the holders bank account or a remaining balance on the card.

(7) "Financial institution" has the same meaning as defined in division (H) of section 5726.01 of the Revised Code.

(8) "Loan" means any extension of credit resulting from direct negotiations between the taxpayer and its customer, and/or the purchase, in whole or in part, of such extension of credit from another. Loans include participations, syndications, and leases treated as loans for federal income tax purposes. Loans shall not include: futures or forward contracts; options; notional principal contracts such as swaps; credit card receivables, including purchased credit card relationships; non-interest bearing balances due from depository institutions; cash items in the process of collection; federal funds sold; securities purchased under agreements to resell; assets held in a trading account; securities; interests in a REMIC, or other mortgage-backed or asset-backed security; and other similar items.

(9) "Loan secured by real property" means that fifty per cent or more of the aggregate value of the collateral used to secure a loan or other obligation, when valued at fair market value as of the time the original loan or obligation was incurred, was real property.

(10) "Merchant discount" means the fee (or negotiated discount) charged to a merchant by the



taxpayer for the privilege of participating in a program whereby a credit, debit, or similar type of card is accepted in payment for merchandise or services sold to the card holder, net of any cardholder charge-back and unreduced by any interchange transaction or issuer reimbursement fee paid to another for charges or purchases made its cardholder.

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

(12) "Person" has the same meaning as defined in section 5701.01 of the Revised Code.

(13) "Real property owned" and "tangible personal property owned" mean real and tangible personal property, respectively, (1) on which the taxpayer may claim depreciation for federal income tax purposes, or (2) 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). Real and tangible personal property do not include coin, currency, or property acquired in lieu of or pursuant to a foreclosure.

(14) "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.

(15) "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.

(B) Receipts factor.

(1) General. The receipts 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.



(2) Receipts from the lease of real property. The numerator of the receipts factor includes receipts from the lease or rental of real property owned by the taxpayer if the property is located within this state or receipts from the sublease of real property if the property is located within this state.

(3) Receipts from the lease of tangible personal property. The numerator of the receipts factor includes receipts from the lease or rental of tangible personal property owned by the taxpayer to the extent such property is used in this state or receipts from the sublease of tangible personal property to the extent such property is used in this state.

(4) Interest, fees, and penalties imposed in connection with loans secured by real property.

(a) The numerator of the receipts factor includes interest, fees, and penalties imposed in connection with loans secured by real property if the property is located within this state. If the property is located both within this state and one or more other states, the receipts described in this paragraph are included in the numerator of the receipts factor if more than fifty per cent of the fair market value of the real property is located within this state. If more than fifty per cent of the fair market value of the real property is not located within any one state, then the receipts described in this paragraph shall be included in the numerator of the receipts factor if the borrower is located in this state.

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

(5) Interest, fees, and penalties imposed in connection with loans not secured by real property. The numerator of the receipts factor includes interest, fees, and penalties imposed in connection with loans not secured by real property if the borrower is located in this state.

(6) Net gains from the sale of loans. The numerator of the receipts factor includes net gains from the sale of loans. Net gains from the sale of loans includes income recorded under the coupon stripping rules of Section 1286 of the Internal Revenue Code.

(a) The numerator shall include the amount of net gains (but not less than zero) from the sale of loans secured by real property where the real property is located in this state. If the net gain is from the sale



of loans located both in this state and other states, then the numerator includes the proportion of the net gain that the value of the in-state real property bears to the value of all the property securing the loan.

(b) The numerator shall include the amount of net gains (but not less than zero) from the sale of loans not secured by real property from loans where the borrower is located in this state.

(7) Receipts from fees, interest, and penalties charged to card holders. The numerator of the receipts factor includes fees, interest and penalties charged to credit, debit or similar card holders, including but not limited to annual fees and overdraft fees, if the billing address of the card holder is in this state.

(8) Net gains from the sale of credit card receivables. The numerator of the receipts factor includes 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) Card issuer's reimbursement fees. The numerator of the receipts factor includes:

(a) All credit card issuer's reimbursement fees if the billing address of the cardholder is located in this state.

(b) All debit card issuer's reimbursement fees if the billing address of the cardholder is located in this state.

(c) All other card issuer's reimbursement fees if the billing address of the cardholder is located in this state.

(10) Receipts from merchant discount.

(a) If the taxpayer can readily determine the location of the merchant and if the merchant is in this state, the numerator of the receipts factor includes receipts from merchant discount.

(b) If the taxpayer cannot readily determine the location of the merchant, the numerator of the



receipts factor includes such receipts from the merchant discount multiplied by a fraction:

(i) In the case of a merchant discount related to the use of a credit card, the numerator of which is the amount of fees, interest and penalties charged to credit card holders that is included in the numerator of the receipts factor pursuant to paragraph (B)(7) of this rule and the denominator of which is the taxpayer's total amount of fees, interest and penalties charged to credit card holders, and

(ii) In the case of a merchant discount related to the use of a debit card, the numerator of which is the amount of fees, interest and penalties charged to debit card holders that is included in the numerator of the receipts factor pursuant to paragraph (B)(7) of this rule, and the denominator of which is the taxpayers total amount of fees, interest and penalties charged to debit card holders.

(iii) In the case of a merchant discount related to the use of all other types of cards, the numerator of which is the amount of fees, interest and penalties charged to all other card holders that is included in the numerator of the receipts factor pursuant to paragraph (B)(7) of this rule, and the denominator of which is the taxpayers total amount of fees, interest and penalties charged to all other card holders.

(c) The taxpayers method for sourcing each receipt from a merchant discount must be consistently applied to such receipt in all states that have adopted sourcing methods substantially similar to paragraphs (B)(10)(a) and (B)(10)(b) of this rule and must be used on all subsequent returns for sourcing receipts from such merchant unless the tax commissioner permits or requires application of an alternative method.

(11) Receipts from ATM fees. The receipts factor includes all ATM fees that are not forwarded directly to another bank.

(a) The numerator of the receipts factor includes fees charged to a cardholder for the use at an ATM of a card issued by the taxpayer if the cardholders billing address is in this state.

(b) The numerator of the receipts factor includes fees charged to a cardholder, other than the taxpayers cardholder, for the use of such card at an ATM owned or rented by the taxpayer, if the



ATM is in this state.

(12) Loan servicing fees.

(i) The numerator of the receipts factor includes loan servicing fees derived from loans secured by real property located in this state. If the fee is derived from loans located both in this state and other states, then the numerator includes the proportion of the fee that the value of the in-state real property bears to the value of all the property securing the loan.

(ii) The numerator of the receipts factor includes loan servicing fees derived from loans not secured by real property if the borrower is located in this state.

(b) 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 factor shall include such fees if the borrower is located in this state.

(13) All other receipts. The numerator of the receipts factor includes all other receipts generated by the financial institution based upon the customer's benefit in this state with respect to the services or product received.

(C) Situating of investment assets and activity and trading assets and activity.

(1) Division (D) of section 5726.05 of the Revised Code allows a taxpayer to elect from two different methodologies in situating its investment assets and activities and its trading assets and activities. The taxpayer may either apply the apportionment factor that was calculated pursuant to division (B) of section 5726.05 of the Revised Code against its gross receipts from its investment assets and activities and its trading assets and activities, or it can situs each separate and distinct type of income from these activities pursuant to the statutory guidelines set forth in division (D)(2) of section 5726.05 of the Revised Code. The practical effect of this is that, in the apportionment calculation, under the first methodology a taxpayer will exclude the gross receipts from its investment assets and activities and its trading assets and activities whereas those gross receipts will be included under the second methodology.



(2) Division (D) of section 5726.05 of the Revised Code allows a taxpayer to elect the methodology for siting receipts from investment assets and activities and trading assets and activities. Whatever methodology the taxpayer initially elects, it shall use this method on all subsequent returns unless the taxpayer receives prior permission from the tax commissioner to use a different method.

(3) The 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.

(D) Any apportionment of receipts and fees in accordance with these guidelines must be reasonable, reproducible, verifiable, and supportable by the taxpayers business records.