

136.535 Calculation of property factor.

(1) As used in this section:

- (a) "Administration" means the process of managing an account. The process includes bookkeeping, collecting the payments, corresponding with the customer, reporting to management regarding the status of the agreement and proceeding against the borrower or the security interest if the borrower is in default. The activity is located at the regular place of business that oversees this activity;
- (b) "Approval" means the procedure whereby employees or the board of directors of the financial institution make the final determination whether to enter into the agreement. The activity is located at the regular place of business which the financial institution's employees making the final determination are regularly connected with or working out of, regardless of where the services of the employees were actually performed. If the board of directors makes the final determination, the activity is located at the commercial domicile of the financial institution;
- (c) "Investigation" means the procedure whereby employees of the financial institution determine the credit worthiness of the customer as well as the degree of risk involved in making a particular agreement. The activity is located at the regular place of business which the financial institution's employees making the investigation are regularly connected with or working out of, regardless of where the services of the employees were actually performed;
- (d) "Negotiation" means the procedure whereby employees of the financial institution and its customer determine the terms of the agreement, including the amount, duration, interest rate, frequency of repayment, currency denomination, and security required. The activity is located at the regular place of business which the financial institution's employees are regularly connected with or out of, regardless of where the services of the employees were actually performed;
- (e) "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; and
- (f) "Solicitation" occurs when:
 - 1. An employee of the financial institution initiates contact with the customer. The activity is located at the regular place of business which the financial institution's employee making the contact is regularly connected with or working out of, regardless of where the services of the employee were actually performed; or
 - 2. The customer initiates the contact with the financial institution. If the customer's initial contact was not at a regular place of business of the

financial institution, the regular place of business, if any, where the solicitation occurred is determined by the facts in each case.

- (2) The property factor is a fraction, the numerator of which is the average value of real property and tangible personal property rented to the financial institution that is located or used within this Commonwealth during the taxable year, the average value of the financial institution's real and tangible personal property owned that is located or used within this Commonwealth during the taxable year, and the average value of the financial institution's loans and credit card receivables that are located within this Commonwealth during the taxable year, and the denominator of which is the average value of all such property located or used within and without this Commonwealth during the taxable year. Average value of property is determined under subsection (4) of this section.
- (3)
 - (a) The value of real property and tangible personal property owned by the financial institution is the original cost or other basis of property for federal income tax purposes without regard to depletion, depreciation, or amortization.
 - (b) 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 regulatory or financial accounting guidelines which is treated as charged off for federal income tax purposes shall be treated as charged off for purposes of this section.
 - (c) 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.
- (4) The average value of property owned by the financial institution 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 (2). If averaging on this basis does not properly reflect average value, the department may require averaging on a more frequent basis. The financial institution may request permission from the department to average on a more frequent basis. When averaging on a more frequent basis is authorized by the department, the same method of valuation shall be used consistently by the financial institution with respect to property within and without this Commonwealth and on all subsequent returns unless the financial institution receives prior permission from the department or the department requires a different method of determining average value.
- (5)
 - (a) The average value of real property and tangible personal property that the financial institution has rented from another and which is not treated as property owned by the financial institution for federal income tax purposes shall be determined annually by multiplying the gross rents payable during the taxable year by eight (8).
 - (b) Where the use of the general method described in this subsection results in

inaccurate valuations of rented property, any other method which properly reflects the value may be adopted by the department or by the financial institution when approved in writing by the department. Once approved, the alternative method of valuation shall be used on all subsequent returns unless the financial institution receives prior approval from the department or the department requires a different method of valuation.

- (6) (a) Except as described in paragraph (b) of this subsection, real property and tangible personal property owned by or rented to the financial institution is considered to be located within this Commonwealth if it is physically located, situated, or used within this Commonwealth.
 - (b) Transportation property is included in the numerator of the property factor to the extent that the property is used in this Commonwealth. The extent to which an aircraft shall be deemed to be used in this Commonwealth and the amount of value that is to be included in the numerator of this Commonwealth's property factor is determined by multiplying the average value of the aircraft by a fraction the numerator of which is the number of landings of the aircraft in this Commonwealth and the denominator of which is the total number of landings of the aircraft everywhere. If the extent of the use of any transportation property within this Commonwealth cannot be determined, then the property shall be deemed to be used wholly in the state in which the property has its principal base of operations. A motor vehicle shall be deemed to be used wholly in the state in which it is registered.
- (7) (a)
 - 1. A loan is considered to be located within this Commonwealth if it is properly assigned to a regular place of business of the financial institution within this Commonwealth.
 - 2. A loan is properly assigned to the regular place of business with which it has a preponderance of substantive contacts. A loan assigned by the financial institution to a regular place of business without the Commonwealth shall be presumed to have been properly assigned if:
 - a. The financial institution has assigned, in the regular course of its business, the loan on its records to a regular place of business consistent with federal or state regulatory requirements;
 - b. The assignment on its records is based upon substantive contacts of the loan to the regular place of business; and
 - c. The financial institution uses the records reflecting assignment of loans for the filing of all state and local tax returns for which an assignment of loans to a regular place of business is required.
 - 3. The presumption of proper assignment of a loan provided in subparagraph 2. of this paragraph may be rebutted upon a showing by the department, supported by a preponderance of the evidence, that the preponderance of substantive contacts regarding the loan did not occur at the regular place of business to which it was assigned on the financial institution's records. When the presumption has been rebutted, the loan shall then be located within this Commonwealth if the financial

institution had a regular place of business within this Commonwealth at the time the loan was made and the financial institution fails to show, by a preponderance of the evidence, that the preponderance of substantive contacts regarding the loan occurred outside this Commonwealth.

- (b) For financial institutions with commercial domicile in this Commonwealth as defined in KRS 136.500, it shall be presumed, subject to rebuttal by the financial institution on a showing supported by the preponderance of evidence, that the preponderance of substantive contacts regarding the loan occurred within this Commonwealth.
 - (c) To determine the state in which the preponderance of substantive contacts relating to a loan have occurred, the facts and circumstances regarding the loan at issue shall be reviewed on a case-by-case basis, and consideration shall be given to activities such as the solicitation, investigation, negotiation, approval, and administration of the loan as defined in subsection (1) of this section.
- (8) Credit card receivables shall be treated as loans and shall be subject to the provisions of subsection (7) of this section.
- (9) A loan that has been properly assigned to a state shall, absent any change of material fact, remain assigned to that state for the length of the original term of the loan. Thereafter, the loan may be properly assigned to another state if that loan has a preponderance of substantive contacts to a regular place of business there.

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History: Amended 2005 Ky. Acts ch. 85, sec. 333, effective June 20, 2005. -- Created 1996 Ky. Acts ch. 254, sec. 9, effective July 15, 1996.