

JAN 19 1996
WAYS AND MEANS

HOUSE FILE 2085
BY DINKLA

Passed House, Date _____ Passed Senate, Date _____
Vote: Ayes _____ Nays _____ Vote: Ayes _____ Nays _____
Approved _____

A BILL FOR

1 An Act relating to the state franchise tax which is imposed on
2 financial institutions and providing an effective and a
3 retroactive applicability date provision.

4 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

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HF 2085

1 Section 1. Section 422.60, Code 1995, is amended by
2 striking the section and inserting in lieu thereof the
3 following:

4 422.60 IMPOSITION OF FRANCHISE TAX.

5 1. A franchise tax measured by net income is imposed on
6 every financial institution for the privilege of doing
7 business in this state and for exercising its franchise in a
8 corporate or organized capacity.

9 2. The franchise tax is imposed at a rate equal to five
10 percent of the net income received or accrued during the
11 taxable year. If the net income is derived from business
12 carried on partly within and partly without the state or from
13 sources partly within or without the state, the tax shall be
14 imposed on the portion of the net income allocated and
15 apportioned to the state as provided in section 422.61A.

16 Sec. 2. Section 422.61, Code Supplement 1995, is amended
17 by striking the section and inserting in lieu thereof the
18 following:

19 422.61 DEFINITIONS.

20 As used in this division, unless the context otherwise
21 requires:

22 1. "Bank" means any of the following:

23 a. A corporation or other business entity registered under
24 state law as a bank holding company, registered under the
25 Federal Bank Holding Company Act of 1956, as amended, or
26 registered as a savings and loan holding company under the
27 Federal National Housing Act, as amended.

28 b. A national bank organized and existing as a national
29 bank association pursuant to the National Bank Act, 12 U.S.C.
30 § 21 et seq.

31 c. A savings association or federal savings bank as
32 defined in the Federal Deposit Insurance Act, 12 U.S.C. §
33 1813(b)(1).

34 d. A bank or thrift institution incorporated or organized
35 under the laws of any state.

1 e. A corporation organized under 12 U.S.C. § 611-631.

2 f. An agency or branch of a foreign depository as defined
3 in 12 U.S.C. § 3101.

4 g. A production credit association organized under the
5 federal Farm Credit Act of 1933, of which all stock held by
6 the federal production corporation has been retired.

7 2. "Billing address" means the location indicated in the
8 books and records of the taxpayer on the first day of the
9 taxable year or on the later date in the taxable year when the
10 customer relationship began as the address where any notice,
11 statement, or bill relating to a customer's account is mailed.

12 3. "Borrower or credit cardholder located in this state"
13 means a borrower, other than a credit cardholder, that is
14 engaged in a trade or business which maintains its commercial
15 domicile in this state and a borrower that is not engaged in a
16 trade or business or a credit cardholder whose billing address
17 is in this state.

18 4. "Commercial domicile" means the place from which the
19 trade or business is principally managed and directed. If a
20 taxpayer is organized under the laws of a foreign country, of
21 the Commonwealth of Puerto Rico, or of any territory or
22 possession of the United States, the taxpayer's commercial
23 domicile is the state in which the taxpayer has declared to be
24 its home state pursuant to the federal International Banking
25 Act of 1978; or, if the taxpayer has not made such a
26 declaration or is not required to make such a declaration, its
27 commercial domicile is the state of the United States or the
28 District of Columbia to which the greatest number of employees
29 are regularly connected or out of which they are working,
30 irrespective of where the services of the employee are
31 performed, as of the last day of the taxable year.

32 5. "Credit card" means credit, travel, or entertainment
33 card.

34 6. "Credit card issuer's reimbursement fee" means the fee
35 a taxpayer receives from a merchant's bank because one of the

1 persons to whom the taxpayer has issued a credit card has
2 charged merchandise or services to the credit card.

3 7. "Financial institution" means any of the following:

4 a. A bank.

5 b. A corporation whose voting stock is more than fifty
6 percent owned, directly or indirectly, by a bank, other than
7 an insurance company taxable under chapter 432 or a
8 corporation taxable under division III of this chapter.

9 c. A corporation or other business entity that derives
10 more than fifty percent of its total gross income for
11 financial accounting purposes from finance leases. For
12 purposes of this subsection, a "finance lease" means a lease
13 transaction which is the functional equivalent of an extension
14 of credit and that transfers substantially all of the benefits
15 and risks incident to the ownership of property. "Finance
16 lease" includes a direct financing lease or leverage lease
17 that meets the criteria of financial accounting standards
18 board statement No. 13, regarding accounting for leases, or
19 any other lease that is accounted for as a financing by a
20 lessor under generally accepted accounting principles. For
21 this classification to apply, the average of the gross income
22 in the current tax year and immediately preceding two tax
23 years must satisfy the more than fifty percent requirement and
24 gross income from incidental or occasional transactions shall
25 be disregarded in determining the fifty percent requirement.

26 d. Any other person, other than an insurance company
27 taxable under chapter 432, which derives more than fifty
28 percent of its gross income from activities that a bank, or a
29 company described in paragraph "c", is authorized to transact.
30 For the purposes of this paragraph, the computation of gross
31 income shall not include income from nonrecurring,
32 extraordinary items.

33 The department is authorized to exclude any person from the
34 application of this paragraph upon the person proving, by
35 clear and convincing evidence, that the income-producing

1 activity of the person is not in substantial competition with
2 those of a bank or a company described in paragraph "c".

3 8. "Gross rents" means the actual sum of money or other
4 consideration payable for the use or possession of property.
5 "Gross rents" includes, but is not limited to, the following:

6 a. An amount payable for the use or possession of real
7 property or tangible property whether designated as a fixed
8 sum of money or as a percentage of receipts, profits, or
9 otherwise.

10 b. An amount payable as additional rent or in lieu of
11 rent, such as interest, taxes, insurance, repairs, or any
12 other amount required to be paid by the terms of a lease or
13 other arrangement.

14 c. A proportionate part of the cost of an improvement to
15 real property made by or on behalf of the taxpayer which
16 reverts to the owner or lessor upon termination of a lease or
17 other arrangement. The amount to be included in gross rents
18 is the amount of amortization or depreciation allowed in
19 computing the taxable income base for the taxable year.
20 However, where a building is erected on leased land by or on
21 behalf of the taxpayer, the value of the land is determined by
22 multiplying the gross rent by eight and the value of the
23 building is determined in the same manner as if owned by the
24 taxpayer.

25 d. All of the following are not included in the term
26 "gross rents":

27 (1) Reasonable amounts payable as separate charges for
28 water and electric service furnished by the lessor.

29 (2) Reasonable amounts payable as service charges for
30 janitorial services furnished by the lessor.

31 (3) Reasonable amounts payable for storage, provided such
32 amounts are payable for space not designated and not under the
33 control of the taxpayer.

34 (4) That portion of any rental payment which is applicable
35 to the space subleased from the taxpayer and not used by it.

1 9. "Loan" means any extension of credit resulting from
2 direct negotiations between the taxpayer and its customer, or
3 the purchase, in whole or in part, of such extension of credit
4 from another. Loans include participations, syndications, and
5 leases treated as loans for federal income tax purposes.

6 "Loan" does not include any of the following: properties
7 treated as loans under section 595 of the Internal Revenue
8 Code; futures or forward contracts; options; notional
9 principal contracts such as swaps; credit card receivables,
10 including purchased credit card relationships; non-interest-
11 bearing balances due from depository institutions; cash items
12 in the process of collection; federal funds sold; securities
13 purchased under agreements to resell; assets held in a trading
14 account; securities; interests in a real estate mortgage
15 investment conduit (REMIC) or other mortgage-backed or asset-
16 backed security; or other similar items.

17 10. "Loan secured by real property" means a loan in which
18 fifty percent or more of the aggregate value of the collateral
19 used to secure the loan or other obligation, when valued at
20 fair market value as of the time the original loan or
21 obligation was incurred, was real property.

22 11. "Merchant discount" means the fee or negotiated
23 discount charged to a merchant by the taxpayer for the
24 privilege of participating in a program whereby a credit card
25 is accepted in payment for merchandise or services sold to the
26 cardholder.

27 12. "Net income" means taxable income of the financial
28 institution as computed in accordance with section 422.35.

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

1 14. "Principal base of operations" with respect to
2 transportation property means the place of a more or less
3 permanent nature from which that property is regularly
4 directed or controlled. With respect to an employee,
5 "principal base of operations" means the place of a more or
6 less permanent nature from which the employee regularly starts
7 the employee's work and to which the employee customarily
8 returns in order to receive instructions from the taxpayer,
9 communicates with the employee's customers or other persons,
10 or performs any other functions necessary to the exercise of
11 the employee's trade or profession at some other point or
12 points.

13 15. "Real property owned" and "tangible personal property
14 owned" mean real and tangible personal property, respectively,
15 on which the taxpayer may claim depreciation for federal
16 income tax purposes, or property to which the taxpayer holds
17 legal title and on which no other person may claim
18 depreciation for federal income tax purposes or could claim
19 depreciation if subject to federal income tax. Real and
20 tangible personal property do not include coin, currency, or
21 property acquired in lieu of or pursuant to a foreclosure.

22 16. "Regular place of business" means an office at which
23 the taxpayer carries on its business in a regular and
24 systematic manner and which is continuously maintained,
25 occupied, and used by employees of the taxpayer.

26 17. "State" means a state of the United States, the
27 District of Columbia, the Commonwealth of Puerto Rico, any
28 territory or possession of the United States, or any foreign
29 country.

30 18. "Syndication" is an extension of credit in which two
31 or more persons fund and for which each person is at risk only
32 up to a specified percentage of the total extension of credit
33 or up to a specified dollar amount.

34 19. "Taxable in another state" means that a taxpayer is
35 subject in another state to a net income tax, a franchise tax

1 measured by net income, a franchise tax for the privilege of
2 doing business, a corporate stock tax including a bank shares
3 tax, a single business tax, an earned surplus tax, or any
4 other tax which is imposed upon or measured by net income.

5 20. "Taxable year" means a fiscal or calendar year or
6 period for which the taxpayer is required to make a return to
7 the federal government; or means the period for which a return
8 is made by the taxpayer, if a return is made for a period of
9 less than twelve months, or made for a period for which no
10 return to the federal government is required.

11 21. "Transportation property" means vehicles or vessels
12 capable of moving under their own power, such as aircraft,
13 trains, water vessels, and motor vehicles, as well as any
14 equipment or containers attached to that property, such as
15 rolling stock, barges, trailers, or the like.

16 Sec. 3. NEW SECTION. 422.61A APPORTIONMENT AND
17 ALLOCATION INCOME.

18 1. The director shall determine that part of the net
19 income of a financial institution derived from business
20 carried on within the state as follows:

21 a. If the financial institution does not have income from
22 a business activity which is taxable in another state, the
23 whole of its net income shall be taxable under section 422.60.

24 b. If the financial institution has income from business
25 activity which is taxable both within and without this state,
26 its net income shall be apportioned to this state by
27 multiplying its net income by the apportionment factor
28 determined pursuant to section 422.61B.

29 c. The factor shall be computed according to the method of
30 accounting, cash or accrual basis, used by the taxpayer for
31 the taxable year.

32 2. All items of nonbusiness income which are not
33 includeable in the apportionable tax base determined pursuant
34 to section 422.61B shall be allocated pursuant to section
35 422.33.

1 Sec. 4. NEW SECTION. 422.61B APPORTIONMENT FACTOR.

2 1. GENERAL. The receipts factor is a fraction, the
3 numerator of which is the total receipts of the taxpayer in
4 this state during the taxable year and the denominator of
5 which is the total receipts of the taxpayer within and without
6 this state during the taxable year. The method of calculating
7 receipts for purposes of the denominator is the same as the
8 method used in calculating receipts for purposes of the
9 numerator.

10 The numerator of the receipts factor is the sum of only
11 those receipts described in subsections 2 through 14 which
12 constitute business income and are included in the computation
13 of the apportionable income base for the taxable year.

14 2. RECEIPTS FROM THE LEASE OF REAL PROPERTY. Receipts
15 from the lease or rental of real property owned by the
16 taxpayer if the property is located within this state or
17 receipts from the sublease of real property if the property is
18 located within this state.

19 3. RECEIPTS FROM THE LEASE OF TANGIBLE PERSONAL PROPERTY.

20 a. Except as described in paragraph "b", receipts from the
21 lease or rental of tangible personal property owned by the
22 taxpayer if the property is located within this state when it
23 is first placed in service by the lessee.

24 b. Receipts from the lease or rental of transportation
25 property owned by the taxpayer are included in the numerator
26 of the receipts factor to the extent that the property is used
27 in this state. The extent to which an aircraft is deemed to
28 be used in this state and the amount of receipts to be
29 included in the numerator of the receipts factor is determined
30 by multiplying all the receipts from the lease or rental of
31 the aircraft by a fraction, the numerator of which is the
32 number of landings of the aircraft in this state and the
33 denominator of which is the total number of landings of the
34 aircraft. If the extent of the use of any transportation
35 property within this state cannot be determined, the property

1 is deemed to be used wholly in the state in which the property
2 has its principal base of operations. A motor vehicle is
3 deemed to be used wholly in the state in which it is
4 registered.

5 4. INTEREST FROM LOANS SECURED BY REAL PROPERTY. Interest
6 and fees or penalties in the nature of interest from loans
7 secured by real property if the property is located within
8 this state. If the property is located within this state and
9 one or more other states, the receipts described in this
10 subsection are included in the numerator of the receipts
11 factor if more than fifty percent of the fair market value of
12 the real property is located within this state. If more than
13 fifty percent of the fair market value of the real property is
14 not located within any one state, the receipts described in
15 this subsection are included in the numerator of the receipts
16 factor if the borrower is located in this state.

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

21 5. INTEREST FROM LOANS NOT SECURED BY REAL PROPERTY.
22 Interest and fees or penalties in the nature of interest from
23 loans not secured by real property if the borrower is located
24 in this state.

25 6. NET GAINS FROM THE SALES OF LOANS. Net gains from the
26 sale of loans includes income recorded under the coupon
27 stripping rules of section 1286 of the Internal Revenue Code.

28 a. The amount of net gains, but not less than zero, from
29 the sale of loans secured by real property included in the
30 numerator is determined by multiplying these net gains by a
31 fraction, the numerator of which is the amount included in the
32 numerator of the receipts factor pursuant to subsection 4 and
33 the denominator of which is the total amount of interest and
34 fees or penalties in the nature of interest from loans secured
35 by real property.

1 b. The amount of net gains, but not less than zero, from
2 the sale of loans not secured by real property included in the
3 numerator is determined by multiplying these net gains by a
4 fraction, the numerator of which is the amount included in the
5 numerator of the receipts factor pursuant to subsection 5 and
6 the denominator of which is the total amount of interest and
7 fees or penalties in the nature of interest from loans not
8 secured by real property.

9 7. RECEIPTS FROM CREDIT CARD RECEIVABLES. Interest and
10 fees or penalties in the nature of interest from credit card
11 receivables and receipts from fees charged to cardholders,
12 such as annual fees, if the billing address of the cardholder
13 is in this state.

14 8. NET GAINS FROM THE SALE OF CREDIT CARD RECEIVABLES.
15 Net gains, but not less than zero, from the sale of credit
16 card receivables multiplied by a fraction, the numerator of
17 which is the amount included in the numerator of the receipts
18 factor pursuant to subsection 7 and the denominator of which
19 is the taxpayer's total amount of interest and fees or
20 penalties in the nature of interest from credit card
21 receivables and fees charged to cardholders.

22 9. CREDIT CARD ISSUER'S REIMBURSEMENT FEES. All credit
23 card issuer's reimbursement fees multiplied by a fraction, the
24 numerator of which is the amount included in the numerator of
25 the receipts factor pursuant to subsection 7 and the
26 denominator of which is the taxpayer's total amount of
27 interest and fees or penalties in the nature of interest from
28 credit card receivables and fees charged to cardholders.

29 10. RECEIPTS FROM MERCHANT DISCOUNTS. Receipts from
30 merchant discounts if the commercial domicile of the merchant
31 is in this state. These receipts shall be computed net of any
32 cardholder charge backs, but shall not be reduced by any
33 interchange transaction fees or by any issuer's reimbursement
34 fees paid to another for charges made by its cardholders.

35 11. LOAN SERVICING FEES.

1 a. Loan servicing fees derived from loans secured by real
2 property multiplied by a fraction, the numerator of which is
3 the amount included in the numerator of the receipts factor
4 pursuant to subsection 4 and the denominator of which is the
5 total amount of interest and fees or penalties in the nature
6 of interest from loans secured by real property.

7 b. Loan servicing fees derived from loans not secured by
8 real property multiplied by a fraction, the numerator of which
9 is the amount included in the numerator of the receipts factor
10 pursuant to subsection 5 and the denominator of which is the
11 total amount of interest and fees or penalties in the nature
12 of interest from loans not secured by real property.

13 In circumstances in which the taxpayer receives loan
14 servicing fees for servicing either the secured or the
15 unsecured loans of another, the numerator of the receipts
16 factor shall include these fees if the borrower is located in
17 this state.

18 12. RECEIPTS FROM SERVICES. Receipts from services not
19 otherwise apportioned under this section if the service is
20 performed in this state. If the service is performed both
21 within and without this state, the numerator of the receipts
22 factor includes receipts from services not otherwise
23 apportioned under this section, if a greater proportion of the
24 income-producing activity is performed in this state based on
25 cost of performance.

26 13. RECEIPTS FROM INVESTMENT ASSETS AND ACTIVITIES AND
27 TRADING ASSETS AND ACTIVITIES.

28 a. Interest, dividends, net gains, and other income from
29 investment assets and activities and from trading assets and
30 activities shall be included in the receipts factor.
31 Investment assets and activities and trading assets and
32 activities include but are not limited to: investment
33 securities, trading account assets, federal funds, securities
34 purchased and sold under agreements to resell or repurchase,
35 options, future contracts, forward contracts, notional

1 principal contracts such as swaps, equities, and foreign
2 currency transactions. With respect to the investment and
3 trading assets and activities described in subparagraphs (1)
4 and (2), the receipts factor shall include the amounts
5 described in those subparagraphs.

6 (1) The receipts factor shall include the amount by which
7 interest from federal funds sold and securities purchased
8 under resale agreements exceeds interest expense on federal
9 funds purchased and securities sold under repurchase
10 agreements.

11 (2) The receipts factor shall include the amount by which
12 interest, dividends, net gains, and other income from trading
13 assets and activities, including but not limited to assets and
14 activities in the matched book, in the arbitrage book, and
15 foreign currency transactions, exceed interest expense from
16 securities sold but not yet repurchased and net losses from
17 those assets and activities.

18 b. The numerator of the receipts factor includes interest,
19 dividends, net gains, and other income from investment assets
20 and activities and from trading assets and activities
21 described in paragraph "a" that are attributable to this
22 state.

23 (1) The amount of interest, dividends, net gains, and
24 other income from investment assets and activities in the
25 investment account to be attributed to this state and included
26 in the numerator is determined by multiplying all income from
27 the assets and activities by a fraction, the numerator of
28 which is the average value of the assets which are properly
29 assigned to a regular place of business of the taxpayer within
30 this state and the denominator of which is the average value
31 of all the assets.

32 (2) The amount of interest from federal funds sold and
33 purchased and from securities purchased under resale
34 agreements and securities sold under repurchase agreements
35 attributable to this state and included in the numerator is

1 determined by multiplying the amount described in paragraph
2 "a", subparagraph (1), from the federal funds and securities
3 by a fraction, the numerator of which is the average value of
4 federal funds sold and securities purchased under agreements
5 to resell which are properly assigned to a regular place of
6 business of the taxpayer within this state and the denominator
7 of which is the average value of all the federal funds and the
8 securities.

9 (3) The amount of interest, dividends, net gains, and
10 other income from trading assets and activities, including but
11 not limited to assets and activities in the matched book, in
12 the arbitrage book, and foreign currency transactions, but
13 excluding amounts described in subparagraph (1) or (2),
14 attributable to this state and included in the numerator is
15 determined by multiplying the amount described in paragraph
16 "a", subparagraph (2), by a fraction, the numerator of which
17 is the average value of the trading assets which are properly
18 assigned to a regular place of business of the taxpayer within
19 this state and the denominator of which is the average value
20 of all the assets.

21 (4) For purposes of this lettered paragraph, average value
22 shall be determined as follows:

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

27 (b) Loans are valued at their outstanding principal
28 balance, without regard to any reserve for bad debts. If a
29 loan is charged-off in whole or in part for federal income tax
30 purposes, the portion of the loan charged-off is not
31 outstanding. A specifically allocated reserve established
32 pursuant to regulatory or financial accounting guidelines
33 which is treated as charged-off for federal income tax
34 purposes shall be treated as charged-off for purposes of this
35 lettered paragraph.

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

6 (d) The average value of property owned by the taxpayer is
7 computed on an annual basis by adding the value of the
8 property on the first day of the taxable year and the value on
9 the last day of the taxable year and dividing the sum by two.
10 If averaging on this basis does not properly reflect the
11 average value, the director may require averaging on a more
12 frequent basis. The taxpayer may elect to average on a more
13 frequent basis. When averaging on a more frequent basis is
14 required by the director or is elected by the taxpayer, the
15 same method of valuation must be used consistently by the
16 taxpayer with respect to property within and without the state
17 and on all subsequent returns unless the taxpayer receives
18 prior permission from the director or the director requires a
19 different method of determining average value.

20 c. In lieu of using the method set forth in paragraph "b",
21 the taxpayer may elect, or the director may require in order
22 to fairly represent the business activity of the taxpayer in
23 this state, the use of the method set forth in this lettered
24 paragraph.

25 (1) The amount of interest, dividends, net gains, and
26 other income from investment assets and activities in the
27 investment account to be attributed to this state and included
28 in the numerator is determined by multiplying all the income
29 from the assets and activities by a fraction, the numerator of
30 which is the gross income from the assets and activities which
31 are properly assigned to a regular place of business of the
32 taxpayer within this state and the denominator of which is the
33 gross income from all the assets and activities.

34 (2) The amount of interest from federal funds sold and
35 purchased and from securities purchased under resale

1 agreements and securities sold under repurchase agreements
2 attributable to this state and included in the numerator is
3 determined by multiplying the amount described in paragraph
4 "a", subparagraph (1), from the funds and securities by a
5 fraction, the numerator of which is the gross income from the
6 funds and securities which are properly assigned to a regular
7 place of business of the taxpayer within this state and the
8 denominator of which is the gross income from all the funds
9 and securities.

10 (3) The amount of interest, dividends, net gains, and
11 other income from trading assets and activities, including but
12 not limited to assets and activities in the matched book, in
13 the arbitrage book, and foreign currency transactions, but
14 excluding amounts described in subparagraph (1) or (2),
15 attributable to this state and included in the numerator is
16 determined by multiplying the amount described in paragraph
17 "a", subparagraph (2), by a fraction, the numerator of which
18 is the gross income from the trading assets and activities
19 which are properly assigned to a regular place of business of
20 the taxpayer within this state and the denominator of which is
21 the gross income from all the assets and activities.

22 d. If the taxpayer elects or is required by the director
23 to use the method set forth in paragraph "c", the taxpayer
24 shall use this method on all subsequent returns unless the
25 taxpayer receives prior permission from the director to use,
26 or the director requires a different method.

27 e. The taxpayer shall have the burden of proving that an
28 investment asset or activity or trading asset or activity was
29 properly assigned to a regular place of business outside of
30 this state by demonstrating that the day-to-day decisions
31 regarding the asset or activity occurred at a regular place of
32 business outside the state. Where the day-to-day decisions
33 regarding an investment asset or activity or trading asset or
34 activity occur at more than one regular place of business and
35 one such regular place of business is in this state and one

1 such regular place of business is outside this state, the
2 asset or activity shall be considered to be located at the
3 regular place of business of the taxpayer where the investment
4 or trading policies or guidelines with respect to the asset or
5 activity are established. Unless the taxpayer demonstrates to
6 the contrary, the policies and guidelines shall be presumed to
7 be established at the commercial domicile of the taxpayer.

8 14. ALL OTHER RECEIPTS. All other receipts which would be
9 assigned under this section to a state in which the taxpayer
10 is not taxable, if the taxpayer's commercial domicile is in
11 this state.

12 15. ALTERNATIVE METHOD. If a taxpayer believes that the
13 method of allocation and apportionment prescribed in this
14 section as administered by the director and applied to the
15 taxpayer's business has operated or will so operate as to
16 subject the taxpayer to taxation on a greater portion of the
17 taxpayer's net income than is reasonably attributable to
18 business or sources within the state, the taxpayer may file
19 with the director a statement of the taxpayer's objections and
20 an alternative method of allocation and apportionment which
21 the taxpayer believes to be proper under the circumstances
22 with the detail and proof and within the time as the director
23 may reasonably prescribe. If the director concludes that the
24 method of allocation and apportionment employed is in fact
25 inapplicable or inequitable, the director shall redetermine
26 the taxable income by another method of allocation and
27 apportionment as seems best calculated to assign to the state
28 for taxation the portion of the income reasonably attributable
29 to business and sources within the state, not exceeding,
30 however, the amount which would be arrived at by application
31 of the statutory rules for apportionment.

32 Sec. 5. Section 422.63, Code 1995, is amended by striking
33 the section and inserting in lieu thereof the following:

34 422.63 CONSOLIDATED RETURNS.

35 For taxable years beginning on or after January 1, 1996, if

1 two or more financial institutions participate in the filing
2 of a consolidated return for federal income tax purposes, the
3 director may require or those financial institutions may, if
4 all financial institutions so participating elect, and if that
5 election is made not later than the due date for filing its
6 return for the taxable year, including any extensions thereof,
7 make a consolidated return showing the consolidated income of
8 all these financial institutions and other information as the
9 director may require, subject to all of the following:

10 1. All members of an affiliated group shall join in the
11 filing of an Iowa consolidated return to the extent they are
12 subject to the tax imposed by this section. Members of an
13 affiliated group not subject to tax under this section shall
14 not be included in a consolidated return.

15 2. Each member of the affiliated group shall consent to
16 the rules governing a consolidated return prescribed by the
17 director at the time the consolidated return is filed, unless
18 the director requires the filing of a consolidated return.
19 The filing of a consolidated return shall be considered the
20 affiliated group's consent.

21 3. The filing of a consolidated return for any taxable
22 year shall require the filing of consolidated returns for all
23 subsequent taxable years as long as the filing taxpayers
24 remain members of an affiliated group unless the director
25 determines that the filing of separate returns will more
26 clearly disclose the taxable incomes of each member of the
27 affiliated group. This determination shall be made after a
28 specific request by the taxpayer for the filing of separate
29 returns.

30 4. The computation of consolidated taxable income for the
31 members of an affiliated group of financial institutions
32 subject to tax shall be made in the same manner and under the
33 same procedures, including all intercompany adjustments and
34 eliminations, as are required for consolidating the incomes of
35 affiliated financial institutions for federal income tax

1 purposes.

2 Sec. 6. This Act, being deemed of immediate importance,
3 takes effect upon enactment and applies to taxable years
4 beginning on or after January 1, 1996.

5

EXPLANATION

6 The bill rewrites the franchise tax, the tax on financial
7 institutions, and defines the term "financial institution" to
8 include the following:

9 1. Banks, including in-state and out-of-state banks.

10 2. Certain specifically enumerated corporations including
11 but not limited to: certain collection agencies, certain card
12 issuers, certain corporations involved in retail installment
13 sales, and certain mortgage lenders and brokers.

14 3. A business that any corporation carries on if such
15 corporation derives more than 50 percent of its gross income
16 from loan origination or lending activities including
17 discounting obligations and credit card activities in
18 substantial competition with a bank.

19 Currently, the entities listed above, with the exception of
20 banks, do not fall within Iowa's franchise tax or within
21 Iowa's corporate income tax. The definition as such broadens
22 the base of entities which could be subject to the franchise
23 tax.

24 The bill also introduces the concept of economic nexus. An
25 entity will be considered to be doing business within the
26 state even if the entity does not have a physical presence
27 within the state but transacts business with residents of this
28 state, i.e., a credit card issuer, or has receipts
29 attributable to sources within this state, i.e., loans secured
30 by property located within the state.

31 The bill addresses the issue of apportionment when a
32 financial institution is subject to taxation in another state.
33 If an Iowa-based financial institution has no taxable business
34 activity in another state, its entire net income is taxable by
35 Iowa. A financial institution is taxable in another state if,

1 in that state, the financial institution is subject to a
2 variety of taxes, including but not limited to a net income
3 tax, a franchise tax, or a corporate stock tax; or that state
4 has jurisdiction to subject such financial institution to any
5 of such taxes.

6 The bill utilizes in part the apportionment formula for
7 financial institutions recently recommended in a report issued
8 by the multistate tax commission (MTC) dated May 12, 1994, to
9 apportion net income of a financial institution which carries
10 on its business both within and without Iowa. Although the
11 MTC report recommends utilization of the three-factor approach
12 utilized by almost every state with the exception of Iowa,
13 i.e., property, payroll, and receipts, in keeping with Iowa's
14 single-factor approach, the proposed legislation utilizes
15 solely a receipts factor for apportionment purposes.

16 For purposes of the receipts factor, all receipts which
17 would otherwise be assigned to a state in which a financial
18 institution is not taxable shall be included in the numerator
19 of the receipts factor if the institution's commercial
20 domicile is in Iowa.

21 The bill takes effect upon enactment and applies
22 retroactively to taxable years beginning on or after January
23 1, 1996.

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