STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

U.S. Bank National Association, Petitioner, vs. South Carolina Department of Revenue, Respondent.	)	Docket No. 20-ALJ-17-0168-CC **AMENDED FINAL ORDER**

Appearances:

For the Petitioner: Nicole P. Johnson, Esq.
Craig B. Fields, Esq.
Bryson M. Geer, Esq.

For the Respondent: Marcus D. Antley, III, Esq.
W. Allen Myrick, Jr., Esq.

STATEMENT OF THE CASE

This matter comes before the South Carolina Administrative Law Court ("ALC" or "Court") following U.S. Bank National Association's ("U.S. Bank's") request for a contested case hearing under section 12-60-460 of the South Carolina Code (2014). U.S. Bank is contesting a Determination by the South Carolina Department of Revenue ("Department") assessing South Carolina bank taxes, penalties, and interest for the periods ending December 31, 2011, through December 31, 2016 ("Audit Period").

In its Determination, the Department concluded that applicable South Carolina law and long-standing Department policy require U.S. Bank to source its loan interest, credit card interest and fees, and credit card interchange fees (also referenced herein as "merchant fees") to South Carolina based upon the location of U.S. Bank's South Carolina borrowers. The Department further concluded that U.S. Bank must include the gain on its sale of Visa stock in its calculation of apportionable income.[1] U.S. Bank asserts that much less of its revenue from South Carolina

[1] The income of a taxpayer doing business in multiple states is apportioned to South Carolina, meaning attributed to the State for taxing purposes, or allocated away from the State, meaning attributed to another

borrowers should be subject to tax in the State because the majority of the income producing activity that generates revenue from these sources (i.e. its income steams) occurs outside of South Carolina. A hearing was held before this Court on August 17 and 18, 2023.[2]

ISSUES PRESENTED

1. Should U.S. Bank include income from mortgage loan interest and mortgage loan servicing fees from South Carolina borrowers in its gross receipts from within South Carolina?

2. Should U.S. Bank include income generated from its sales of South Carolina mortgages to Government Sponsored Agencies (GSEs) in its gross receipts from within South Carolina?

3. Should U.S. Bank include income from credit card interest and fees from South Carolina cardholders in its gross receipts from within South Carolina?

4. Should U.S. Bank include income from credit card interchange fees from South Carolina credit card merchants in its gross receipts from within South Carolina?

5. Should U.S. Bank include income from the sale of Visa stock in its apportionable income?

6. Is U.S. Bank subject to substantial understatement penalties?

FINDINGS OF FACT

Having observed the witnesses and exhibits presented at the hearing and taking into consideration the burden of persuasion and the credibility of the witnesses, I make the following findings of fact by a preponderance of the evidence:

(A) U.S. Bank's Business Operations

U.S. Bank is a national bank and wholly owned subsidiary of U.S. Bancorp. U.S. Bank provides a wide range of banking and trust services for retail and commercial clients. U.S. Bank is headquartered in Minnesota and is engaged in banking business in South Carolina and other states. From December 2012 to December 2016, the last five (5) years of the Audit Period, U.S. Bank had an average of forty (40) to fifty-four (54) employees in South Carolina and filed on average 1,583 South Carolina property tax returns during this same time frame. In addition to other

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jurisdiction for taxation. *See* S.C. Code Ann. 12-6-2220 (2014). The gross receipts of certain business, to include banks, are apportioned to South Carolina, and sourcing rules determine the tax treatment of the various streams, or types of income. S.C. Code Ann. § 12-6-2295 (2014 & Supp. 2023).

[2] In lieu of closing arguments, the parties submitted proposed orders on or about December 21, 2023. Thereafter, on March 1, 2024, U.S. Bank submitted a response to the Department's proposed order.

sources, U.S. Bank receives income from: (1) interest from residential mortgages, commercial loans and consumer loans; (2) credit card interest and fees; and (3) merchant interchange fees from processing credit/debit card transactions. U.S. Bank's income also includes mortgage servicing fees and the gains from the sale of mortgages. During the Audit Period, U.S. Bank also earned income from its sale of Visa stock.

(1) Residential Mortgages

A residential mortgage is a loan secured with a lien on residential real estate, typically referred to as "a one to four family property". As part of its normal operations, U.S. Bank originates, sells, and services residential mortgage loans, some of which are sold to borrowers in South Carolina. In addition to the principal payments due, South Carolina mortgage borrowers pay interest and fees to U.S. Bank as they repay their mortgage loans. During the Audit Period, U.S. Bank did not source any of this interest or fees to South Carolina.

The retail mortgage lending process begins with a borrower's submission of a mortgage application, possibly working through a loan officer.[3] A loan processor receives the mortgage application and may work with the borrower to make sure the application is complete. U.S. Bank contracts with an independent local appraiser to appraise the borrower's property. A U.S. Bank underwriter then reviews the loan file and makes a decision whether to approve the loan. After loan approval, the loan is then "closed" (the execution of a promissory note, mortgage, and related documents) using independent local third-party vendors, such as title agents, escrow agents or lawyers. Once the loan is closed, the loan is "funded", meaning money is made available to the borrower. Other than appraisals and closings, which are performed by third parties, U.S. Bank personnel located outside the State of South Carolina perform these primary mortgage activities.

U.S. Bank sold approximately ninety-five percent (95%) of the residential mortgages it originated in South Carolina to government sponsored entities (GSEs) such as Fannie Mae, Freddie Mac and Ginnie Mae, all located outside of South Carolina. It received income from the sale of mortgages secured by real property used or located in South Carolina. U.S. Bank did not source any income to South Carolina from the sale of those mortgages.

U.S. Bank services the residential mortgages it originates whether or not they are sold to other entities. As will be explained, U.S. Bank received income for servicing mortgages secured

[3] U.S. Bank had no loan officers in South Carolina during the Audit Period.

by real property located in South Carolina. Mortgage servicing includes processing borrowers' monthly payments and facilitating the payment of real estate taxes and property insurance for those borrowers who opt to allow U.S. Bank to make these payments, as well as handling collections in the event of a borrower's default on payments. U.S. Bank personnel and any automated systems performing these activities were located outside of South Carolina during the Audit Period. U.S. Bank did not source any income from mortgage servicing receipts to South Carolina.

Although the majority of activities associated with mortgage origination, the sale of mortgages to GSEs and mortgage servicing were performed by U.S. Bank personnel and systems located outside South Carolina, the mortgage-related activities that occurred in South Carolina included: (1) advertising; (2) borrowers providing mortgage/loan application documents; (3) appraisal of the real property; (4) payment of property taxes to South Carolina county offices; (5) payment of homeowners' insurance; (6) filing liens on the real property in South Carolina county offices; (7) borrowers' payment of principal, interest and fees; (8) borrowers' receipt of customer service; (9) collections; and (10) foreclosures using the South Carolina courts. Up to the point of U.S. Bank approving or denying a mortgage application, no income is produced, only costs.

(2) Credit Card Interest and Fees

A credit card represents an unsecured line of credit used to facilitate the purchase of goods and services. While physical credit cards are typically used in sales transactions, a physical card is not necessary for a cardholder to use the unsecured line of credit. U.S. Bank acts as an acquirer bank by processing credit card transactions on behalf of merchants (sellers of goods or services for purchase by cardholders) and as an issuer bank by issuing credit cards to cardholders (the purchasers of goods or services from merchants). As an acquirer bank, U.S. Bank contracts with merchants of goods and services to allow the consummation of card transactions between merchants and cardholders via a credit card network. As the issuer bank, U.S. Bank provides an unsecured line of credit—i.e. a credit card—to credit cardholders for the extension of credit to facilitate cashless sales transactions.

Much like the mortgage lending process, the credit card issuing process starts with a borrower submitting an application, often in response to advertising. U.S. Bank processes the application through a module known as its Integrated Card Systems and performs underwriting through its ACAPs underwriting engine. None of these systems are located in South Carolina. "Know Your Customer", an authentication process used by U.S. Bank to ensure that it receives

affirmative consent from the customer for the credit card products for which the customer applies, is operated out of Wisconsin. Once U.S. Bank approves the credit card application, a physical credit card is issued to a cardholder out of North Dakota. Monthly billing statements to cardholders are also issued out of North Dakota. In the event a cardholder defaults in payment, collection activities are initiated out of St. Louis, Missouri.

While none of the aforementioned activities occur in South Carolina, U.S. Bank does perform some credit card-related activities in South Carolina, including: offering co-branded cards with partners physically present in South Carolina; acting as the agent bank through Elan[4] for banks physically present in South Carolina; soliciting customers through either direct mail, U.S. Bank's in-person partners (e.g. Harley-Davidson store), or online; advertising co-branded cards through its partners' mailing lists; mailing credit cards to South Carolina cardholders; and offering customer service to South Carolina cardholders. In addition, potential U.S. Bank customers can apply for an Elan credit card through the mail, email, website, phone, or onsite with a partner in South Carolina. Significantly, U.S. Bank cardholders may initiate credit card transactions at merchant locations in South Carolina.

U.S. Bank's credit card operations receive income from three primary sources: (1) interest, (2) interchange fees, and (3) other fees such as annual fees and late fees. Interest from credit cards is essentially the same as interest from a loan. Whether interest is from a secured loan, unsecured loan, mortgage, or credit card, the customer pays for the extension of funds—i.e. the use or forbearance of money. Interchange fee income is paid to U.S. Bank by merchants that accept U.S. Bank credit credits for sales transactions. Although late fees are technically a different revenue stream from interest, they are effectively treated the same as interest because the late fee is an interest rate adjustment for the incremental risk of a delinquent credit cardholder. Similarly, annual fees are treated as it they are interest.[5] U.S. Bank admits that "allowing a person to make a purchase at point of sale [merchant location] without delivering funds from their checking account" is how U.S. Bank earns interest income.

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[4] Elan is a division of U.S. Bank that issues, markets, services, underwrites credit cards on behalf of smaller banks and credit unions.

[5] U.S. Bank's expert opined that annual fees should be treated the same as interest and late fees for the purpose of sourcing income.

Up to the point a customer receives an un-activated credit card in the mail, U.S. Bank does not produce any income from its credit card operations, only costs. No income (except in rare instances of an annual fee[6]) is produced if a customer never uses the credit card. No income is produced other than merchant interchange fees or annual fees if a cardholder pays off their credit card balance every month.

(3) Visa Stock

In 1970, U.S. Bancorp, which is U.S. Bank's parent corporation, and other banks created National BankAmericard, Inc., which became Visa USA, Inc. in 1975. In 2007, Visa USA, Inc. became Visa, Inc. Visa, Inc. thereafter issued U.S. Bancorp 5.1% of Class B common stock. In 2007, U.S. Bancorp transferred its Visa, Inc. stock to U.S. Bank. U.S. Bank sold this Visa stock to third parties during the Audit Period and realized gain on the transactions.

As an acquirer bank, U.S. Bank provides merchant access to the Visa credit card network that allows South Carolina merchants to consummate cashless transactions in South Carolina. U.S. Bank pays a fee to Visa for that access. U.S. Bank processes Visa credit card transactions. U.S. Bank has derivative contracts[7] created through its operations, including swap agreements[8] executed in conjunction with the sale of Visa stock. U.S. Bank is a large issuer of Visa credit cards. The Department alleges that U.S. Bank's ownership of Visa stock is directly connected to its banking business, and that it should have included gains from its sale of the stock in its apportionable income. US Bank maintains that this income should not be allocated to South Carolina as the stock is not connected to its business. Its witnesses further assert that U.S. Bank received no favorable treatment from Visa, Inc., with regard to credit card transactions as a result of stock ownership.

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[6] Annual fees typically are not due until a year after issuance of the card.

[7] "Derivatives are financial contracts whose value is linked to the value of the underlying asset." https://corporatefinanceinstitute.com/resources/derivatives/derivatives/.

[8] According to Investopedia, a "swap is a derivative contract. This financial agreement takes place between two parties to exchange assets that have cash flows for a set period of time. At the time the contract is initiated, the value of at least one of the assets being swapped is determined by a random or uncertain variable, such as an interest rate or a commodity price." https://www.investopedia.com/articles/optioninvestor/07/swaps.asp#:~:text=A%20swap%20is%20a%20derivative%20contract.%20This%20financial,as%20an%20interest%20rate%20or%20a%20commodity%20price.

(B) The Department's Audit Examination

The Department first contacted U.S. Bank regarding the Audit in September 2017. The initial audit covered the periods ending December 31, 2014 through December 31, 2016, but the Department found that U.S. Bank substantially understated its tax liability and extended the audit to include the periods December 31, 2011 to December 31, 2013. *See* S.C. Code Ann. § 12-54-85(C)(3) (2014).[9] The Department found that U.S. Bank had sourced to South Carolina only receipts from leasing tangible personal property in the State and some fees related to trusts in South Carolina. In addition to not sourcing any income from mortgage loans and credit cards to South Carolina, U.S. Bank excluded the gain from the sale of Visa stock from its apportionable base. After sourcing income from South Carolina loans, credit cards, as well as merchant credit card processing fees, to South Carolina and including the gain from the Visa stock in the apportionable income, the Audit resulted in a proposed assessment of additional tax in the amount of $3,775,638.00 in addition to penalties and interests.

Tax Year	Tax Owed	Tax Paid	Underpayment
2011	$532,308.00	$45,632.00	$486,676.00
2012	$914,091.00	$193,738.00	$720,353.00
2013	$855,034.00	$242,150.00	$612,884.00
2014	$869,920.00	$204,128.00	$665,792.00
2015	$835,271.00	$211,245.00	$624,026.00
2016	$871,507.00	$205,600.00	$665,907.00
Total	**$4,878,131.00**	**$1,102,493.00**	**$3,775,638.00**

[9] In pertinent part, this section provides that "taxes may be determined and assessed after the thirty-six month period if…"

> (3) there is a twenty percent understatement of the total of all taxes required to be shown on the return or document. The taxes in this case may be assessed at any time within seventy-two months from the date the return or document was filed or due to be filed, whichever is later. For the purpose of this item, the total of all taxes required to be shown on the return is the total of all taxes required to be shown on the return before any reduction for estimated payments, withholding payments, other prepayments, or discount allowed for timely filing of the return and payment of the tax due, but that amount must be reduced by another credit that may be claimed on the return…

(C) Summary of Expert Witness Testimony [10]

The Court qualified three expert witnesses: Dr. Brian Cody for U.S. Bank and Dr. Greg George and Professor John Swain for the Department.

(1) Dr. Brian Cody

The Court admitted Dr. Brian Cody as an expert in economics without objection.[11] Approximately 80% of Dr. Cody's work is serving as an expert witness. He has previously been recognized as an expert witness in South Carolina and has testified before the ALC on sourcing issues in cases such as *DIRECTV, Inc. v. Dep't of Revenue,* 421 S.C. 59, 804 S.E.2d 633 (Ct. App. 2017). Here, Dr. Cody defined income producing activity as "what a company gets paid to do." In contrast to how U.S. Bank sourced interest income on its South Carolina tax returns, Dr. Cody opined that one third of U.S. Bank's income from interest, whether from mortgage loans or credit cards, and credit card annual and late fees, should be attributed to South Carolina. Dr. Cody had no sourcing opinions on loans outside of residential mortgages and no sourcing opinions on income from the sale of Visa stock or merchant fees.

(2) Dr. Greg George

Without objection, the Court admitted Dr. Greg George as an expert in applied economics.[12] Dr. George has a background in academics, public policy, and the private sector.[13]

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[10] The Court summarizes the expert testimony here and is not making findings of fact based on said testimony.

[11] Dr. Cody is a principal in BJC Consulting, LLC., an independent economics consulting firm which he founded after a fourteen-year career with the accounting firm of KPMG, LLP. While at KPMG, LLP, significant portion of Dr. Cody's time was spent leading the Washington National Tax Group within the firm's economic and valuation services group. He earned bachelor's degrees in economics and French from the University of Missouri and a Ph.D. in Economics with a concentration in international finance and trade from the University of North Carolina at Chapel Hill. He has been credited with authorship of several scholarly publications.

[12] Applied economics is applying the principles, concepts, and theories of economics to real world situations.

[13] Dr George received a Bachelor of Science degree in Biology from the University of North Carlina, Chapel Hill, in 1990, a Master's degree from the University of North Carolina in 1997 and his Ph.D. in Economics from the University of South Carolina in 2002. He has served as an Assistant Professor in the Division of Business and Economics at Macon State College, Macon, Georgia and currently serves a Professor of Economics in the Middle Georgia State University School of Business in Macon, Georgia, where he is also the Director of the school's Center for Economic Analysis. Dr. George has published several scholarly articles in the field of economics.

According to Dr. George, income derived from South Carolina mortgage loans should be taxed in South Carolina. Dr. George opined that 100% of U.S. Bank's credit card interest and fees should be attributed to South Carolina when the borrowers are located in South Carolina. [14]

(3) Professor John Swain

The Court admitted Professor John Swain as an expert in state and local tax policy without objection.[15] Professor Swain practiced state and local taxation law for fourteen years before spending over twenty years in academia. He has published approximately fifty articles on tax law and was a coauthor of the Hellerstein State and Local Tax Treatise. Approximately ten state Supreme Courts have cited his articles. Professor Swain has testified as an expert witness in several South Carolina cases regarding the sourcing of income, including the *DIRECTV* case.

Professor Swain opined that the Department's position was consistent with good tax policy for five reasons. First, it attributes U.S. Bank's receipts to the state that provides the market that gives rise to those receipts and reflects the purpose of the sales factor to give credit to the market state's contribution to the taxpayer's income. Second, it is consistent with the way South Carolina attributes receipts from tangible personal property, other intangibles, and services. Third, it is consistent with "the nationwide trend and the effect of the legislature eliminating the property and payroll factors and relying solely on the sales factor." Swain offered that U.S. Bank's position is effectively reintroducing the property and payroll factors when South Carolina is clearly a single sales factor state. Fourth, it discourages tax avoidance behaviors such as moving people and property out of the state. Fifth, it promotes interstate uniformity in the treatment of these types of receipts.

Professor Swain opined that U.S. Bank's position in this case is inconsistent with good tax policy. He also questioned the administrability of Dr. Cody's approach from a tax policy

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[14] Dr. George further offered an opinion on the proper sourcing of merchant interchange fees. He did not, however, give this opinion during his deposition and at that time, denied having an opinion on this issue. The Court denied U.S. Bank's motion to strike Dr. George's testimony. U.S. Bank then moved to impeach Dr George's testimony. The Court believes that Dr. George should have adequately disclosed that he had developed an opinion on interchange fees prior to the hearing, thus allowing U.S. Bank an opportunity to explore that opinion prior to trial. Accordingly, the Court will not rely on Dr. George's testimony on the issue of merchant fees.

[15] Professor Swain is a Professor, Emeritus from the University of Arizona, James E. Rogers College of Law. He received an A.B. in Government from Dartmouth College in 1978 and his Juris Doctor from Yale Law School in 1984.

perspective. Professor Swain opined that ultimately the Department's position in this case is consistent with good tax policy, and it results in good tax policy regardless of whether the underlying receipt is from intangible property, tangible property, or a service.[16]

CONCLUSIONS OF LAW

(A) Jurisdiction and Burden of Proof

The ALC has subject matter jurisdiction over this matter. S.C. Code Ann. § 1-23-600(A) (2005 & Supp. 2023); § 12-60-460 (2014). A contested case hearing before the ALC is heard *de novo*. *Marlboro Park Hosp. v. S.C. Dep't of Health and Envtl. Control*, 358 S.C. 573, 579, 595 S.E.2d 851, 854 (2004). This Court must make its factual findings based on the preponderance of the evidence. S.C. Code Ann. § 1-23-600(A)(5) (2005 & Supp. 2023). Because U.S. Bank is challenging the Department Determination, it has the burden of proof. *See* SCALCR 29(B); *DIRECTV, Inc. v. Dep't of Revenue,* 421 S.C. 59, 78, 804 S.E.2d 633, 643 (Ct. App. 2017) *citing Leventis v. Dep't of Health and Envtl. Control*, 340 S.C. 118, 132033, 530 S.E.2d 643, 651 (Ct. App. 2000). Thus, to prevail in this contested case, U.S. Bank must prove by a preponderance of the evidence that the Department Determination is incorrect. *Id.*

(B) Bank Tax

South Carolina imposes a Bank Tax of 4.5% on the entire net income of every bank engaged in business in the State. S.C. Code Ann. § 12-11-20 (2014). The Bank Tax found under Chapter 11 of Title 12 is separate and distinct from the tax imposed in Chapter 6 of Title 12, the "South Carolina Income Tax Act", and banks are not subject to income tax. However, the General Assembly has provided that certain specific provisions related to income tax are adopted for the imposition and administration of the Bank Tax. *See* S.C. Code Ann. § 12-11-40 (2014) (providing that "[f]or the purpose of . . . allocation and apportionment . . . [and] penalties, . . . all of the provisions of Chapter 6 of this title that may be appropriate or applicable are adopted and made a part of this chapter for the enforcement and administration of this chapter...." Therefore, the income tax rules for allocation, apportionment, and penalties apply to the Bank Tax. Additionally, the Department's longstanding administrative policy is that banks will comply with sourcing

[16] Counsel for U.S. Bank pointed out on cross examination that portions of Dr. Swain's trial testimony regarding U.S. Bank's sales of mortgage to GSEs and mortgage servicing fees for those sold mortgages were inconsistent with testimony given during his deposition. After careful review, the Court finds that Dr. Swain adequately explained any perceived inconsistencies. Furthermore, the tax policy implications of any proposed tax treatment, while helpful to the Court, are not determinative.

principles similar to those used by multistate non-bank financial businesses, such as finance companies.[17]

(C) Allocation and Apportionment

Consistent with constitutional limitations, South Carolina only taxes income that is apportionable to this state. "If a taxpayer is transacting or conducting business partly within and partly without this State, the South Carolina income tax is imposed upon a base which *reasonably represents* the proportion of the trade or business carried on within this State." S.C. Code Ann. § 12-6-2210(B) (2014) (emphasis added). Unless an item of income is directly allocated away from South Carolina, it must be included in the apportionment income and the apportionment factors. *See* S.C. Code Ann. § 12-6-2220 (2014). If a taxpayer is not dealing principally in tangible personal property, which is the case for U.S. Bank, the "base" for apportionment is set by section 12-6-2290 (2014):

> [T]he taxpayer shall apportion its remaining net income using a fraction in which the numerator is gross receipts from within this State during the taxable year and the denominator is total gross receipts from everywhere during the taxable year. For purposes of this section, items included in gross receipts are as provided in Section 12-6-2295.

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[17] South Carolina Tax Commission Information Letter #94-35, dated December 20, 1994, announced that certain statutory provisions governing corporate income tax would be made applicable to banks by way of the bank tax. In pertinent part, IL #94-35 provides:

> For returns filed for years ending before 1997, the Department will accept multistate bank returns which are based upon the proportion of the bank's entire net income that reasonably represents the proportion of the bank's trade or business carried on within this State in the same manner as required of those corporations subject to the corporate income tax of Chapter 7 whose principal profits or income are derived from sources other than manufacturing, producing, collecting, buying, assembling, processing or selling, distributing or dealing in tangible personal property (i.e., the gross receipts method under Code Section 12-7-1190).
>
> The Department generally intends that banks who follow this procedure will comply with rules similar to those used by multistate non-bank financial businesses, such as mortgage companies.

This information letter is available on the Department's website. Section 12-11-40, which links the bank tax to income tax for purposes of calculation, was amended to its current form, effective April 1, 1996.

Section 12-6-2290 requires taxpayers, like U.S. Bank, who derive income from sources other than those described in section 12-6-2252[18] and section 12-6-2310[19], to use the single gross receipts apportionment formula. S.C. Code Ann. § 12-6-2295(A) (2014) provides a non-exclusive list of the items to be sourced, or included, in the gross receipts apportionment ratio:

> (A) The terms "sales" as used in Section 12-6-2280 and "gross receipts" as used in Section 12-6-2290 include, but are not limited to, the following items if they have not been separately allocated:
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> (1) receipts from the sale or rental of property maintained for sale or rental to customers in the ordinary course of the taxpayer's trade or business including inventory;
>
> (2) receipts from the sale of accounts receivable acquired in the ordinary course of trade or business for services rendered or from the sale or rental of property maintained for sale or rental to customers in the ordinary course of the taxpayer's trade or business if the accounts receivable were created by the taxpayer or a related party. For purposes of this item, a related person includes a person that bears a relationship to the taxpayer as described in Section 267 of the Internal Revenue Code;
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> (3) receipts from the use of intangible property in this State including, but not limited to, royalties from patents, copyrights, trademarks, and trade names;
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> (4) net gain from the sale of property used in the trade or business. For purposes of this subsection, property used in the trade or business means property subject to the allowance for depreciation, real property used in the trade or business, and intangible property used in the trade or business which is:
> (a) not property of a kind that properly would be includible in inventory of the business if on hand at the close of the taxable year; or
> (b) held by the business primarily for sale to customers in the ordinary course of the trade or business;
>
> (5) receipts from services if the entire income-producing activity is within this State. If the income-producing activity is performed partly within and partly without this State, sales are attributable to this State to the extent the income-producing activity is performed within this State.

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[18] This section includes taxpayers whose principal business is "(i) manufacturing, or collecting, buying, assembling or processing goods and materials in this State or (ii) selling, distributing, or dealing in tangible personal property within this State…"

[19] This section includes railroad companies, motor carriers, telephone service companies, pipeline companies, airline companies, and shipping lines.

"[T]he apportionment formula is a reasonable basis for establishing the income tax of corporations which…do business on a multistate level." *Eastman Kodak v. S.C. Tax Comm'n*, 308 S.C. 415, 419, 418 S.E.2d 542, 544 (*citing Covington Fabrics v. S.C. Tax Comm'n*, 264 S.C. 59, 212 S.E.2d 574 (1975)). "The obvious purpose of the apportionment formula is the determination of income from business activities within this State and is a proper subject for legislative action." *Covington Fabrics Corp.*, 264 S.C. at 66 *citing State Ex Rel. Maxwell v. Kent Coffey Mfg. Co.*, 168 S.E. 397 (N.C. 1933), *affd. per curiam* 291 U.S. 642 (1934). "The method of apportionment applicable to any particular taxpayer depends upon the nature of the taxpayer's business in this state." *DIRECTV*, 421 S.C. at 71, 804 S.E.2d at 639. Furthermore, our courts have declared that reasonableness is the goal with regard to apportionment":

> Although exactness in apportionment is desirable, all that is required is a reasonable approximation. "Furthermore, this Court has long realized the practical impossibility of a state's achieving a perfect apportionment of expansive, complex business activities such as those of appellant, and has declared that 'rough approximation rather than precision' is sufficient. *Illinois Central Ry. Co. v. State of Minnesota*, 309 U.S. 157, 161 (1940). Unless a palpably disproportionate result comes from an apportionment, a result which makes it patent that the tax is levied upon interstate commerce rather than upon an interstate privilege, this Court has not been willing to nullify honest state efforts to make apportionments." *International Harvester Co. v. Evatt*, 329 U.S. 416, reh. den., 329 U.S. 834 (1947).

Covington Fabrics Corp., 264 S.C. 59, 66–67, 212 S.E.2d 574, 577 (1975) (emphasis added).

(1) U.S. Bank's income from mortgage loans used in South Carolina should be sourced to South Carolina.

A taxpayer who uses intangibles in South Carolina must include revenue from those intangibles in its gross receipts from South Carolina. Subsection 12-6-2295(A)(3) plainly states that "receipts from the use of intangible property in this State" are to be included in the gross receipts apportionment ratio. *See also Geoffrey, Inc. v. S.C. Tax Comm'n*, 313 S.C. 15, 437 S.E.2d 13 (1993) (finding royalty income from trademark licenses used in South Carolina subject to South Carolina income tax). The Department offers that U.S. Bank mortgages are used in South Carolina by South Carolina borrowers who have obtained loans secured by real estate located within this State. The Department classifies a mortgage as intangible property. If that classification is correct, income derived from this property, namely interest and other fees, should be sourced in accordance with subsection 12-6-2295(A)(3). To the contrary, U.S. Bank asserts that its mortgages and mortgage servicing activities constitute services and should therefore be sourced pursuant to

subsection 12-6-2295(A)(5). U.S. Bank's expert, Dr. Cody, declined to define a mortgage as an intangible, instead, characterizing mortgages as "financial service[s]."[20]

To support its position, the Department cites subsection 12-16-20(4)'s definition of intangible personal property, which "include[s] deposits in banks, negotiable instruments, mortgages, debts, receivables, shares of stock, bonds, notes, creditors, evidences of an interest in property, evidences of debt, and choses in action generally." (emphasis added). While the Court finds that this statute is helpful to its understanding, it also notes that this statute is located in Chapter 16 of Title 12, which addresses Estate Taxes.[21]

There are two definitional provisions in Chapter 6 of Title 12 which, in combination, address the nature of mortgages:

> As used in this chapter, the following words have the meaning provided unless otherwise required by the context:
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> ***
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> (11) "Tangible property" includes real property and corporeal personal property but does not include money, bank deposits, shares of stock, bonds, credits, evidences of debt, choses in action, or evidences of an interest in property.
>
> (12) "Intangible property" means all property other than tangible property.

S.C. Code Ann. § 12-6-30 (2014) (emphasis added).

The Court finds that for the purposes of income tax, and therefore, the Bank Tax, mortgages must be classified as intangible property. Section 12-6-30(11) specifically excludes "evidences of debt" from the definition of "tangible property." The term "evidences of debt" is broad enough to include mortgages. *See Moon v. Center*, 133 S.C. 51, 130 S.E. 549 (1925) (finding that a mortgage lender must show "evidences of debt" to initiate foreclosure action); *see also U.S. Bank Tr. Nat.*

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[20] Dr. Cody elaborated by testifying that "its [mortgage as a financial service] is an extension of credit, along with then all of the services that go along with that extension of credit." He further explained that while the parties to a mortgage have a contract, the economic substance of their agreement "sets out the terms and conditions for this ongoing provision of financial services which is the funding of that loan, the provision of services along the way." The Court notes that Dr. Cody's description of a mortgage as "an extension of credit" appears to be consistent with the definition of a credit card accounts receivable.

[21] Section 12-16-20 is prefaced with the statement "[a]s used in this chapter [Estate Tax], unless the context clearly shows otherwise, the term or phrase [means]" (emphasis added)

Ass'n v. Bell, 385 S.C. 364, 374–75, 684 S.E.2d 199, 205 (Ct. App. 2009) ("[g]enerally, the party seeking foreclosure has the burden of establishing the existence of the debt and the mortgagor's default on that debt.") (emphasis added).[22] Because a mortgage constitutes an "evidence of debt", and "evidences of debt" are excluded from the definition of tangible property found under subsection 12-6-30(11), a mortgage must be considered "intangible property" under subsection 12-6-30(12).[23]

The Court finds that U.S. Bank's mortgages are being used by borrowers to buy or improve residential real estate in South Carolina. Use of the mortgage continues over the life of the mortgage loan as the borrower repays his debt to U.S. Bank, to include, principal, interest, servicing fees and all other fees associated with the life of the mortgage. As such, the Court finds that income from the use of U.S. Bank's mortgages in South Carolina must be sourced to this State pursuant to subsection 12-6-2295(A)(3).

(a) The Department properly relied on the location of the borrower as a proxy for the location of real property.

Specifically, the Court finds that the Department properly sourced the gross receipts of loan interest income to the location of the borrower. A mortgage is a loan secured by real property. Debts owed to a taxpayer are intangibles, rather than a service. Debts generate income in the form of interest—money paid for the use or forbearance of money. Like the royalty income from trademarks - which are identified as among the revenue items to be sourced to South Carolina under subsection 12-6-2295(3) - the interest income from loans to debtors in South Carolina for use in this State must be sourced to South Carolina. This is also consistent with the Department's longstanding administrative practice of sourcing income from loans to where the borrower is located.[24] A mortgage is used at the location of the real property and the borrower is a reasonable

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[22] Additionally, Black's Law Dictionary, (Fifth Edition , 1979), defines "Evidences of debt" as "a term applied to written instruments or securities for the payment of money, importing on their face the existence of a debt."

[23] This interpretation is consistent when read with the definition of "intangible personal property" found under subsection 12-16-20(4) (pertaining to estate taxes), as the examples of "intangible property" under that subsection are similar to those excluded from the definition of "tangible property" under subsection 12-6-30(11).

[24] In *Etiwan Fertilizer Co. v. S.C. Tax Comm'n*, 217 S.C. 354, 360, 60 S.E.2d 682, 684 (1950), our state Supreme Court explained that: "[W]here the construction of the statute has been uniform for many years in administrative practice, and has been acquiesced in by the General Assembly for a long period of time, such

proxy.[25] Payments on mortgages and other kinds of loans, are, therefore, receipts from within South Carolina when paid by a borrower located in South Carolina.

(b) The Court declines to adopt U.S. Bank's characterization of its mortgage activities as "services" under subsection 12-6-2295(A)(5).

In reaching the conclusion that mortgages are (1) intangible property and (2) the receipts from South Carolina borrowers for the use of those mortgages should be sourced to this state, the Court declines to accept U.S. Bank's argument that its mortgage activities (to include mortgage servicing), constitute "services" that should be sourced pursuant to section 12-6-2295(A)(5).

In support of its argument, U.S. Bank presented testimony from its expert witness in economics, Dr. Cody, who testified that a mortgage was a "financial service" from an economics standpoint.[26] Additionally, in its proposed order, U.S. Bank argued that mortgages were not

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construction is entitled to weight, and should not be overruled without cogent reasons." The Court believes that the Department correctly construes the definition of "intangible property" under § 12-6-30(12) as including mortgages, and that further construction of §12-6-2295(A)(3) (which requires a taxpayer to source income from "intangible property" to the location of the borrower), supports the Department's conclusion that U.S. Bank's income from mortgages should be sourced to South Carolina. Because the Department's method of sourcing income from intangibles to the state of the borrower are longstanding administrative practices, such method is entitled to deference from this Court.

The Department's auditor testified that this has been the Department's practice during the entire duration of his employment, which has been roughly at least forty-five (45) years. To show that the Court should not give deference to this policy, it is U.S. Bank's burden to prove that the policy is "arbitrary, discriminatory or unreasonable." *Colonial Life & Acc. Ins. Co. v. S.C. Tax Comm'n*, 248 S.C. 334, 339, 149 S.E.2d 777, 780 91966) ("The Commission has the power and duty . . . to prescribe a method for arriving at a tax base which reasonably represents the proportion of the trade or business carried on within this State . . . and its determination there about will not be overthrown by the courts except upon a showing, absent here, that it is arbitrary, discriminatory or unreasonable.") (internal quotation marks omitted). U.S. Bank has not done so here.

[25] An inextricable link exists among a mortgage, real property, and the location of the real property because a mortgage's value comes from the real property it secures—which is situated in a specific location/state. . Without the real property in South Carolina, U.S. Bank would receive no interest or servicing fees , or from South Carolina mortgages. Similarly, without South Carolin real property used as security for mortgages, there would be no gain from the sale of South Carolina mortgage loans. without Ultimately, income from a mortgage loan comes from the borrower through the payment of interest, making the South Carolina borrower a reasonable proxy for the mortgaged property.

[26] Specifically, Dr. Cody testified as follows:

> I view it as a financial service. It's an extension of credit, along with then all of the services that go along with that extension of credit. I think you can – if you're to think about the contract and said, Oh, I've got a loan agreement; I've got a mortgage agreement; isn't that intangible? I think if you just stop there though, you really miss the economics, which is, I

encompassed under subsection 12-6-2295(A)(3) because the examples of intangible property listed in that subsection are very different from the nature of mortgages.[27]

This Court is bound to follow the ordinary meaning of the governing tax statutes enacted by the General Assembly unless their plain language somehow creates an absurdity. *See Kiriakides v. United Artist Communications, Inc.*, 312 S.C. 271, 275, 440 S.E.2d 364, 366 (1994) ("However plain the ordinary meaning of the words used in a statute may be, the courts will reject that meaning when to accept it would lead to a result so plainly absurd that it could not possibly have been intended by the Legislature or would defeat the plain legislative intention.").

Here, the Court does not agree with U.S. Bank's characterization of mortgages as a "service". While the nature of the "intangible property" specifically identified in §12-6-2295(A)(3) (consisting of "royalties from patents, copyrights, trademarks, and trade names") seemingly contrasts with the nature of mortgages, U.S. Bank overlooks the preceding statutory language clarifying this list as non-exhaustive: "receipts from the use of intangible property in this State including, but not limited to, *royalties from patents, copyrights, trademarks, and trade names*...". S.C. Code Ann. § 12-6-2295(A)(3) (emphasis added). Because these items clearly serve as discrete examples of intangible property, rather than as an exhaustive list, the Court rejects U.S. Bank's argument that this subsection is incapable of including mortgages. For similar reasons, the Court does not agree with U.S. bank's assertion that mortgages are not included within § 12-6-2295(A)(3) because the enumerated items give "context for the type of income intended to be addressed by the provision." Here, the statutory language is clear, straightforward and creates no absurdity so as to disregard its common meaning. *See Hodges v. Rainey*, 341 S.C. 79, 88, 533 S.E.2d 578. 582 (2000) ("In the instant case, the ordinary meaning of section 1–3–240(B) will not

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> have a contract. What is that contract really doing though? Well, it sets out the terms and the conditions for this ongoing provision of financial services, which is the funding of the mortgage, the funding of that loan, the provision of the services along the way. So, in that way, no, I don't consider that an intangible.

In contrast, Dr. George, the Department's economics expert referred to mortgages as "financial products being sold in South Carolina and that generates income."

[27] This section provides for the South Carolina apportionment of "receipts from the use of intangible property in this State including, but not limited to, royalties from patents, copyrights, trademarks, and trade names.'

lead to absurd results unintended by the legislature, so the plain language of the statute should not be disregarded.").

Nevertheless, U.S. Bank further advanced that mortgage income, including interest and servicing fees, should be sourced under subsection 12-6-2295(A)(5), which addresses the sourcing of income from the sale of services. U.S. Bank contends that because the income producing activities regarding the issuance of a mortgage to a South Carolina borrower and the maintenance of that loan (which includes activities such as soliciting the borrower, evaluating the borrower's creditworthiness, funding the loan and the ancillary administrative tasks once it is approved) occurred outside of the State, the majority of the revenue from these activities should be sourced elsewhere and only "attributable to this State to the extent the income-producing activity is performed within this State."

U.S. Bank's revenue from mortgage lending mainly consists of interest revenue. Dr. Cody, U.S. Bank's economics expert, testified that two thirds of mortgage lending revenue should be sourced outside the state of South Carolina because the majority of income-producing activity associated with lending occurred outside of the State. He further opined that one third of this interest income should be sourced to South Carolina to recognize the role of the South Carolina borrower:

> So, we have three categories of income, the first being interest. As I look at the income producing activities that U.S. Bank performs with respect to mortgage interest, we really have two categories of those activities. One has to do with the people, and systems that are directly involved with performing all of the activities -- and we've heard extensive testimony about that today -- that go in and are necessary, and actually help to generate that income. So, there's that group.
>
> There's also the, I'll call it, capital allocation, the funding side of the mortgage business, as well. And that helps to then, as I say, perform -- be an income producing activity that helps to generate that interest income. So, I've got those two groups, if you will, of activities from U.S. Bank side. But I also think it's reasonable to take into account some contribution, some recognition that the borrower has in its receipt of financial services from U.S. Bank. So, I give some weight to the borrower, even though it's not an income producing activity of U.S. Bank, I recognize that, but I think economically, it's reasonable to give some recognition. So, given that people, systems, capital allocation, I determined that two-thirds of the income -- interest income should be attributed to sources outside of South

> Carolina, one-third to the decisions, to the borrower location, so that would be one-third within the state. So, that's interest income.[28]

While the Court disagrees with this argument, *even if* mortgages were characterized for tax purposes as a service, income from U.S. Bank's South Carolina mortgages would still be sourced to South Carolina. U.S. Bank seems to take the position that it performs multiple income producing activities, only a third of which occur in South Carolina, while the remaining two thirds occur in other states. The Court rejects this attempt to divvy up income producing activities.

In response to the assertion that a number of other activities performed by DIRECTV, most of which occurred outside of South Carolina, were income producing activities that should have been given tax recognition, the *DIRECTV* court observed that "DIRECTV's primary income-producing activity is the delivery of the signal to the customer because this activity actually generates income for DIRECTV" and that "[w]hile the other activities occurring prior to the delivery of signal are important for DIRECTV in that it can help lead to income, section 12-6-2295(A)(5) requires activities that actually produce income." *DIRECTV*, 421 S.C. 59, 77, 804 S.E.2d 633, 643 (2017) (emphasis added). As will be explained, the Court believes this same "income anticipatory" rationale applies here to U.S. Bank's out-of-state activities such that 100%

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[28] The Department's expert economist described this as an arbitrary division of income not based on economic theory. At first glance, the Court notes that Dr. Cody's opinion would seem to be internally inconsistent. Subsection 12-6-2295(A)(5) sources income from services based on where the income producing activity is performed. In sourcing 1/3 of U.S. Bank's mortgage income to South Carolina, Dr. Cody offers that "it's reasonable to take into account some contribution, some recognition that the borrower has in its receipt of financial services from U.S. Bank. So, I give some weight to the borrower, even though it's not an income producing activity of U.S. Bank, I recognize that, but I think economically, it's reasonable to give some recognition." (emphasis added).

Nevertheless, U.S. Bank may also be arguing that it performs multiple income producing activities, only a third of which occur in South Carolina, while the remaining two thirds occur in other states. The Court rejects this attempt to divvy up income producing activities. In response to the assertion that a number of other activities performed by *DirectTV*, most of which occurred outside of South Carolina, were income producing activities that should have been given tax recognition, the *DIRECTV* court observed that "DIRECTV's primary income-producing activity is the delivery of the signal to the customer because this activity actually generates income for DIRECTV" and that "[w]hile the other activities occurring prior to the delivery of signal are important for DIRECTV in that it can help lead to income, section 12-6-2295(A)(5) requires activities that actually produce income." *DIRECTV*, 421 S.C. 59, 77, 804 S.E.2d 633, 643 (2017) (emphasis added). As will be explained, the Court believes this same "income anticipatory" rationale applies here to U.S. Bank's out-of-state activities such that 100% of its mortgage lending income from South Carolina borrowers should be sourced to South Carolina.

of its mortgage lending income from South Carolina borrowers should be sourced to South Carolina.

In *DIRECTV,* our Court of Appeals examined the phrase "income-producing activity" in subsection 12-6-2295(A)(5). DIRECTV, a corporation headquartered in California, provided access to television entertainment via satellite to residential and commercial customers across the United States in exchange for a fee. Other than local South Carolina collection facilities, equipment rental and sale, and one or two employees, nearly all of DIRECTV's assets, employees, and property involved in providing its services to subscribers were located outside of South Carolina. The Court of Appeals concluded that DIRECTV's customers pay for the delivery of a satellite signal into their homes and businesses. Thus, the activity that produced DIRECTV's income was delivery of the satellite signal, not other activities that DIRECTV may have conducted outside of South Carolina. *DIRECTV,* 421 S.C. at 75, 804 S.E.2d at 642. Furthermore, the Court agreed the South Carolina customers' subscription payments, which allowed for delivery of a signal to them, represented 100% of DIRECTV's South Carolina subscription receipts. Therefore, the numerator—the receipts sourced to South Carolina—was best represented by including 100% of DIRECTV's South Carolina subscription receipts.

In response to DIRECTV's argument that its income-producing activity should include the groundwork in developing its packages of services, the Court found that those activities were preparatory and performed in anticipation of customers signing up for DIRECTV's services and of future profits. *See Mercury Motor Express, Inc. v. S.C. Tax Comm'n*, 244 S.C. 134, 135 S.E.2d 756 (1964) (excluding "incidental" activities from determination of a taxpayer's income-producing activity). Therefore, "these activities cannot be [income producing activities] because they do not produce income, but rather, are 'income-anticipatory' activities. . . . While the other activities occurring prior to the delivery of signal are important for DIRECTV in that it can help lead to income, section 12-6-2295(A)(5) requires activities that actually produce income." *DIRECTV* at 78; *see also Synthes USA HQ, Inc. v. Commonwealth*, 289 A.3d 846, 878 (Pa. 2023) (the Court adopted the benefit-received method for determining income-producing activity and sourced "the sale of services to where the service is fulfilled and the income finally produced, which is at the customer's location.").

Here, like DIRECTV, U.S. Bank's income-producing activities for mortgage loan interest income are directly related to activity that occurs within South Carolina. The true income-

producing activity engaged in by U.S. Bank is the issuance (sale) of mortgage loans to South Carolina borrowers. Even if the loans were a service, the borrower paying to use or hold money is analogous to the DIRECTV subscriber paying to receive digital television signal.[29] Instead of subscription fees, the borrowers here pay interest. The income-producing activity is loaning money to the borrower and that occurs where that borrower who receives the loan is located.

The borrower pays U.S. Bank to use or hold money. The debtor using the borrowed money creates U.S. Bank's income from mortgage lending. For loans to South Carolina borrowers, that income-producing activity occurs in South Carolina.[30]

In summary, as stated earlier, the Court declines to adopt U.S. Bank's reasoning. Mortgages are defined for purposes of South Carolina income taxation as intangible property and not as services, making section 12-06-2295(A)(3) the appropriate statutory provision for sourcing mortgage income and not section 12-6-2295(A)(5). Nevertheless, even if 12-6-2295(A)(5) applied to U.S. Bank's mortgage interest income, the income producing activities occurring outside of South Carolina that U.S. Bank relies upon would be classified as "anticipatory" or "preparatory" activities under the Court of Appeals' rationale in *DIRECTV, Inc. & Subsidiaries v. South Carolina Dept. of Revenue*, 421 S.C. 59, 804 S.E.2d 633 (Ct. App. 2017) While the activities enumerated by U.S. Bank are important and even necessary to its mortgage lending business, these activities are not, in the words of Dr. Cody, "what it being paid for." Instead, what is being paid for is the use of the loan funds to purchase and/or improve real property located in South Carolina.

(2) <u>U.S. Bank's income from its sale of South Carolina mortgages to GSEs should be sourced to South Carolina.</u>

During the Audit Period, U.S. Bank sold approximately 95% of its South Carolina loans to GSEs such as Fannie Mae, Freddie Mac and Ginnie Mae, which are all located outside of South Carolina. U.S. Bank, continuing to rely on §12-6-2295 (A)(5) to source the gain from the sale of mortgages as a service, offers that that the income generated from the sale of mortgages to GSEs

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[29] Dr. George offered that from an economic perspective, U.S. Bank is more like DIRECTV than a professional services firm.

[30] U.S. Bank performs many of the same or similar administrative tasks on loan applications that are ultimately denied.

should be sourced outside of South Carolina because the income producing activities associated with such sales occur outside the State. Dr. Cody opined as follows:

> Second, on the gain of sale on the mortgages -- this is when U.S. Bank sells pooled mortgages to one of the agencies, as we've heard -- there, all of the income producing activities performed by U.S. Bank are outside of South Carolina. Nothing happens within the state. We have all of those activities happening there. And the -- if we were to give any credence to the agencies, they're outside of the state, as well. So, a high-level of my conclusion is, on the gain on sale of mortgages, that all of that income should be sourced outside of South Carolina, all of those income producing activities [occur] outside.

To the contrary, the Department argues that the gain from the sale of South Carolina mortgages should be sourced to South Carolina because the real property securing the mortgage loan is located in South Carolina. The Court has earlier concluded that for income tax purposes, and therefore, bank tax, a mortgage is intangible property.

> The applicable provision of section 12-6-2295 provides as follows:
>
> (4) net gain from the sale of property used in the trade or business. For purposes of this subsection, property used in the trade or business means property subject to the allowance for depreciation, real property used in the trade or business, and intangible property used in the trade or business which is:
>
> (a) not property of a kind that properly would be includible in inventory of the business if on hand at the close of the taxable year; or
> (b) held by the business primarily for sale to customers in the ordinary course of the trade or business

Id. (emphasis added).

Here, a U.S. Bank mortgage is intangible property that is 1) used in U.S. Bank's trade or business; 2) is not of a kind properly included in inventory, such as merchandise or other personal property; and 3) is held by U.S. Bank primarily for sale to customers in the ordinary course of business. This third prong is met because U.S. Bank not only sells 95% of its South Carolina residential mortgage loans to GSEs, but its sales of originated mortgages are to borrowers, such that U.S. Bank mortgages are primarily held for sale to customers in the ordinary course of business. Because U.S. Bank's South Carolina mortgages are tied to real estate in South Carolina, the sales proceeds from the sale of said mortgages should be sourced to the State.[31]

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[31] The conclusion reached earlier that mortgage servicing fees for South Carolina mortgages should be sourced to South Carolina also extends to U.S. Bank's servicing fees earned on mortgages it sells to GSEs.

(3) <u>US Bank's credit card income from South Carolina Merchants and Cardholders should be sourced to South Carolina.</u>

(a) <u>Interest , late fees, and annual fees.</u>

U.S. Bank offers credit cards to its cardholding customers and extends credit to them for purchases of goods and services in exchange for interest and fees (late fees and annual fees). U.S. Bank argues that it should source interest and fee income from credit cards in a similar manner to how it suggested sourcing mortgage interest: one-third to South Carolina and two-thirds outside of the State. According to Dr. Cody, who offered that U.S. Bank's "extension of funds [is] a provision of a financial service", interest and fees should be sourced to South Carolina in accord with subsection 12-6-2295(A)(5):

> So again, on the interest in credit cards, again, we've got the people and systems that are performing those activities. Those all take place by U.S. Bank outside of South Carolina. We have the funding, the capital allocation activities performed by U.S. Bank, that takes place outside of the state. And, again, we have some contribution -- not an income producing activity, but its some recognition, I think, that's due to -- reasonable for the customer, the cardholder. And to the extent they're

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Dr. Cody's testimony on this issue leads the Court to believe there is no appreciable difference between servicing fees U.S. Bank earns from GSE-owned South Carolina mortgages as opposed to the fees generated from South Carolina mortgages that remain the property of U.S. Bank:

> Q. Briefly discuss your analysis regarding mortgage servicing rights.
>
> A. Yes. So, mortgage servicing rights are those rights to -- it sounds circular -- so, to actually perform the servicing functions on behalf of the lender. So, this would be – say when U.S. Bank has a pool of mortgages and they sell them to Freddie. Freddie, as we understand, doesn't have the infrastructure to actually service those loans. U.S. Bank does. So, U.S. Bank obtains the mortgage servicing rights from Freddie, and then it performs servicing on behalf of Freddie to the borrowers. What does that mean? It is the issuances of statements to the borrower, collection of funds, disbursement of escrow accounts, if that's part of the arrangement ,providing customer service. U.S. Bank performs all of those activities for the benefit of the lender, for the benefit of that agency, because they are the mortgage group. U.S. Bank would have no relationship -- it would maybe send statements to the borrower, but it has no economic relationship to them. It is acting on behalf of the lender.

Nothing in Dr. Cody's description indicates that the mortgage servicing fees earned on South Carolina mortgages owned by GSEs are not still being paid by South Carolina borrowers.

> in South Carolina, I would give some share -- allocate some share of the interest income to South Carolina. And in particular, it's my opinion that one-third of the income from interest on credit cards would be sourced to the state, and two-thirds would be associated with those activities, people, systems, and capital allocation by U.S. Bank outside.
>
> The second category has to do with fees. And in particular, I looked in detail at late fees and at the annual fees. And, again, for both of those, we have people and systems, capital allocation. All of those activities take place outside of the State of South Carolina. Giving some recognition to the cardholder location and what they're doing around some of their capital allocation, I think it's reasonable in both of those fees to give some recognition to that outsourcing. So, for the fees, that's late fees and annual fees, I would source two-thirds outside of the state and one-third to the State of South Carolina.

As with mortgage interest and fees, the Court declines to accept U.S. Bank's position on these funds. In extending credit to cardholders as an issuing bank, U.S. Bank is creating accounts receivables that fall into the definition of intangible property for purposes of South Carolina's income tax.[32] As South Carolina cardholders use their credit cards to buy goods and services and then repay U.S. Bank the balances owed on their credit card accounts, or even to pay annual fees to maintain access to those accounts, the borrowers are creating "receipts from the use of intangible property in this State" within the meaning of subsection 12-6-2295(A)(3). As such, the interest, late fees and annual fees paid to U.S. Bank by South Carolina cardholders should be sourced to South Carolina.

Even if these credit card receivables are treated as a service, the result is that credit card interest, late fees and annual fees should be sourced to South Carolina. Like with its mortgage loans, U.S. Bank incorrectly characterizes its income-anticipatory activities - such as soliciting the customer and checking the customer's creditworthiness and ancillary administrative activities after the customer receives a credit card - as income producing activities. However, the solicitation of customers, evaluation of the credit card applications, and administrative tasks supporting the credit card do not produce income. Credit cards exist for the purpose of obtaining money, property, labor, or services on credit. When a customer pays interest and fees related to a credit card, the customer

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[32] Black's Law Dictionary, (Fifth Edition , 1979), defines "accounts receivable" as "a debt, owed to an enterprise, that arises in the normal course of business dealings and is not support by negotiable paper. For example, the charge accounts of a department store… A claim against a debtor usually arising from sales or services rendered…"

is paying for the ability to spend money now on credit and pay later. This loan is the activity that produces income for U.S. Bank. For credit card holders in South Carolina, that income-producing activity occurs in South Carolina.

(b) Interchange Fees.

U.S. Bank also receives income from credit cards as interchange or merchant fees, defined by one of its witnesses as "the fees paid by a merchant to facilitate the routing of the [credit card] transaction and the delivery and settlement of payment from the issuing bank." The Court agrees that U.S. Bank receives interchange fees for its provision of a service such that subsection 12-6-2295(A)(5) is the applicable sourcing statute. In its proposed Order, U.S. Bank argues that its "income producing activity is the processing of the individual card transactions" and that the performance of these transaction activities occur outside South Carolina. While the Court does not disagree that U.S. Bank processes credit card transactions and that the out-of-state steps in transaction processing are important, and even integral, to U.S. Bank's credit card operations, the primary component of its processing activity – that which actually produces merchant interchange fee income, i.e., "what the merchant is paying for" – is U.S. Bank's delivery of the credit card approval/disapproval decision to the merchant location so that the merchant may either complete or terminate the sales transaction. Merchants are charged these fees each time a credit card is used by a cardholder to purchase a product or service. Without delivery of the approval or denial decisions to merchants, the credit card transactions could not be consummated. To the extent U.S. Bank's merchants are located in South Carolina, therefore, the primary income-producing activity as it relates to merchant interchange fees occurs in South Carolina. None of the out-of-state activities identified by U.S. Bank related to credit cards generate income. The true income-producing activity occurs at the location where the credit card transaction is initiated in South Carolina.

(4) U.S. Bank's ownership of Visa stock is connected to its business, so the gains from its sale of Visa stock (which is intangible personal property) should be included in U.S. Bank's apportionable income.

A taxpayer must apportion a net gain from the sale of property used in its business. Certain items of income are directly allocated and excluded from income apportioned to South Carolina. *See* S.C. Code Ann. § 12-6-2220 (2014). The gains from the sale of stock—an intangible—are either allocated to a taxpayer's principal place of business pursuant to section 12-6-2220(5)

("Gains and losses from sales of intangible personal property not connected with the business of the taxpayer and not held for sale to customers in the regular course of business, less all related expenses, are allocated to the state of the corporation's principal place of business...") (emphasis added) or apportioned to South Carolina pursuant to subsection 12-6-2295(A)(4) so that they are taxed by the State.

The test of allocation or apportionment of gains on stock sales is not whether *the sale* of the stock is connected to the business. Instead, the test is whether the stock itself is connected to the business. *M. Lowenstein Corp. v. S.C. Tax Comm'n*, 298 S.C. 93, 101, 378 S.E.2d 272, 276 (Ct. App. 1989) (noting that the "answer to the question of whether income is allocated or apportioned depends, not upon whether the income in dispute is connected with the business of the taxpayer, but rather upon whether the property producing the income is connected with the business.)" *Id.* at 101 and 276. In *Lowenstein*, the Court of Appeals concluded that bonds repurchased by the taxpayer were connected to its business, and thus the gain from their repurchase was properly apportioned to South Carolina: ("The director of taxes for Lowenstein testified that the bonds were issued 'because the company needed the funds to put into their operations.' Lowenstein offered no other reason for the bond issue. Thus, the bonds in question were connected with Lowenstein's business."). *Id.*

The question the Court must address is whether U.S. Bank's Visa stock was connected to its business. U.S. Bank argues that its Visa stock was not connected to its business operations and thus, should be allocated away from South Carolina. U.S. Bank received Visa, Inc., stock from U.S. Bancorp. There is no evidence in the Record that U.S. Bank's receipt of the stock itself was a product of its business operations. Furthermore, while U.S. Bank acknowledged that it issues Visa cards to cardholders, the Court accepts the testimony of its witnesses that U.S Bank did not receive any favorable treatment from Visa, Inc., with regard to its credit card transaction operations by virtues of its stock ownership.

The *Lowenstein* court determined that the bonds at issue in that case constituted property connected to the taxpayer's business because the bonds were issued to raise money for business operations. *Lowenstein,* 298 S.C. at 100, 378 S.E.2d at 276. The court's discussion of its conclusion that interest from loans the taxpayer (Clark-Schwebel) made to another corporation (Lowenstein) were connected to the taxpayer's business is instructive:

> We conclude that the demand notes are connected to the business of Clark–Schwebel, and thus the income from the notes is properly apportioned. We reach this conclusion for six reasons. First, the funds loaned to Lowenstein, and evidenced by the demand notes, all originated from, and were generated by, the business of Clark–Schwebel. Second, each month, the interest income produced by the notes was deposited in Clark–Schwebel's general bank accounts and was used for normal business operations. Third, the loan repayments made by Lowenstein were also deposited in Clark–Schwebel's general bank accounts and were also used for normal business needs. Fourth, the notes were created on virtually a daily basis in that the comptroller for Clark–Schwebel monitored its cash daily and wired excess funds to Lowenstein in uniform increments thus creating a continuous stream of notes between Clark–Schwebel and Lowenstein. Fifth, Clark–Schwebel demanded payment on the notes when it required cash to meet the needs of its business, such as when it needed funds to meet income tax payments and to stockpile inventory. Sixth, the fact that the notes generating the interest are demand notes indicates Clark–Schwebel sought to have the funds available, and in fact had the funds available, to meet the needs of its business.
>
> All of the above factors establish a broadbased connection between the demand notes and Clark–Schwebel's business. Such evidence is particularly persuasive when contrasted with Clark–Schwebel's lack of evidence that the demand notes are not connected with the business.

Id. at 99, 378 S.E.2d at 275.

The detailed evidentiary showings available to the *Lowenstein* court are not present here. The Department rests its contention that the gain from U.S. Bank's sale of Visa stock is connected to U.S. Bank's business on the facts that (1) U.S. Bank issues Visa cards and processes Visa card transactions and (2) U.S. Bank used its Visa stock with regard to swap agreement transactions. In its proposed order, the Department asserts that these swap agreements are somehow connected to U.S. Bank's business operations, by stating "[t]he use of swap agreements with the Visa stock alone makes the stock connected to the business…".[33]

U.S. Bank, however, has only provided evidence that it receives no favorable treatment from Visa, Inc., because of its ownership of Visa stock. The Record does not reveal that U.S. Bank addressed the Department's evidence that the Visa stock was used with regard to swap agreements.

[33] The parties provided the Court with a website address to U.S. Bank's Annual Reports. In its proposed order, the Department asserts that U.S. Bank's Annual Reports acknowledge that "the swap agreements were created through its operations." Orville Sharpe, the Department's auditor, provided testimony to this effect. However, the Department provided no further explanation beyond its reference to these reports.

Inasmuch as U.S. Bank has the burden of proof on this issue, it has thus failed to show that its Visa stock was not connected to its business. Accordingly, the Court finds that U.S. Bank's Visa stock was connected to its business and the gains from the stock's sale are apportionable to South Carolina.[34]

(D) Interest and Substantial Understatement Penalties.

1. Interest

Section 12-54-25(A) provides that "[i]f any tax is not paid when due, interest is due on the unpaid portion from the time the tax was due until paid in its entirety." Although U.S. Bank has paid some tax to South Carolina, it will be required to pay interest on its remaining unpaid tax liability.

2. Substantial Understatement Penalties

The Department has imposed substantial underpayment penalties. Section 12-54-155, which pertains to a taxpayer's substantial underpayment of tax or substantial misstatement of valuation, provides as follows:

> (A)(1) If there is an underpayment attributable to either a substantial understatement of tax for a taxable period ...there must be added to the tax an amount equal to twenty-five percent of the amount of the underpayment.
>
> ***
>
> (B)(1)(a) For purposes of this section, there is a substantial understatement of tax for a taxable period if the amount of the understatement for the taxable period exceeds the greater of ten percent of the tax required to be shown on the return for the taxable period or five thousand dollars.
>
> (b) In the case of a corporation other than an "S" Corporation or a personal holding company, as defined in Internal Revenue Code Section 542, item (1) must be applied by substituting "ten thousand dollars" for "five thousand dollars".
>
> (2)(a) For purposes of item (1), "understatement" means the excess of the amount of the tax required to be shown on the return for the taxable period over the amount of the tax imposed which is shown on the return.
>
> (b) The amount of the understatement under subitem (a) must be reduced by that portion of the understatement which is attributable to the tax treatment of an item: (i) by the taxpayer if there is or was substantial authority for that treatment, or (ii) with respect to which the relevant facts affecting the item's tax treatment are

[34] This result is largely a function of U.S. Bank's failure to carry its burden of proof on this issue as opposed to the Department's evidentiary showings. If the burden of the proof on this issue had instead rested with the Department, the result may have been different.

> adequately disclosed in the return or in a statement attached to the return and there is a reasonable basis for the tax treatment of the item by the taxpayer. For purposes of subsection (B)(2)(b)(ii) a corporation must not be treated as having a reasonable basis for its tax treatment of an item attributable to a multiple-party financing transaction if the treatment does not clearly reflect the income of the corporation. For purposes of this paragraph, the words "substantial authority" and "adequately disclosed" must be interpreted in accordance with Treasury Regulation Section 1.6662-4 as of the date on which the Internal Revenue Code is applied to state tax laws pursuant to Section 12-6-40.
>
> ***
>
> (D)(1) A penalty must not be imposed pursuant to this section with respect to a portion of an underpayment if it is shown that there was a reasonable cause for the portion and that the taxpayer acted in good faith with respect to the portion. For purposes of this item, the words " reasonable cause" and "good faith" must be interpreted in accordance with Treasury Regulation Section 1.6664-4 as of the date on which the Internal Revenue Code is applied to state tax laws pursuant to Section 12-6-40.

Id. (emphasis added).

U.S. Bank, in recognition that it owes some additional South Carolina income based even on its own rationale, argues that the substantial underpayment penalties should be abated or waived. In addition to U.S. Bank's reliance on subsection 12-54-155(D)(1), it primarily relies upon language under subsection 12-54-155(B)(2)(b), which directs that the penalty "must be reduced by that portion of the understatement which is attributable to the tax treatment of an item: (i) by the taxpayer if there is or was substantial authority for that treatment." (emphasis added). U.S. Bank questions whether longstanding policy exists to impose income taxes on the various streams of income at issue and further maintains that the Department has failed to make sufficient tax guidance available to taxpayers and the general public.[35] The substantial understatement penalty may only be waived if the Court finds that U.S. Bank had "substantial authority" for its tax treatment of the matters at issue. The state statute looks to 26 C.F.R. § 1.6662–4, Treas. Reg. § 1.6662–4 for its definition of "substantial authority." The determination employs an "objective standard involving an analysis of the law and the application of the law to relevant facts." In pertinent part, 26 C.F.R. § 1.6662–4, Treas. Reg. § 1.6662–4 provides as follows:

[35] At the outset, the Court notes that U.S. Bank's penalty waiver arguments are rooted in the belief that its various streams of income should be sourced under subsection 12-6-2295(A)(5). The Court has determined that subsection 12-6-2295(A)(5) applies to only one of its income streams – merchant interchange fees.

(3) Determination of whether substantial authority is present —(i) Evaluation of authorities. There is substantial authority for the tax treatment of an item only if the weight of the authorities supporting the treatment is substantial in relation to the weight of authorities supporting contrary treatment. All authorities relevant to the tax treatment of an item, including the authorities contrary to the treatment, are taken into account in determining whether substantial authority exists. The weight of authorities is determined in light of the pertinent facts and circumstances in the manner prescribed by paragraph (d)(3)(ii) of this section. There may be substantial authority for more than one position with respect to the same item. Because the substantial authority standard is an objective standard, the taxpayer's belief that there is substantial authority for the tax treatment of an item is not relevant in determining whether there is substantial authority for that treatment.

(ii) Nature of analysis. The weight accorded an authority depends on its relevance and persuasiveness, and the type of document providing the authority. For example, a case or revenue ruling having some facts in common with the tax treatment at issue is not particularly relevant if the authority is materially distinguishable on its facts, or is otherwise inapplicable to the tax treatment at issue. An authority that merely states a conclusion ordinarily is less persuasive than one that reaches its conclusion by cogently relating the applicable law to pertinent facts. The weight of an authority from which information has been deleted, such as a private letter ruling, is diminished to the extent that the deleted information may have affected the authority's conclusions. The type of document also must be considered. For example, a revenue ruling is accorded greater weight than a private letter ruling addressing the same issue. An older private letter ruling, technical advice memorandum, general counsel memorandum or action on decision generally must be accorded less weight than a more recent one. Any document described in the preceding sentence that is more than 10 years old generally is accorded very little weight. However, the persuasiveness and relevance of a document, viewed in light of subsequent developments, should be taken into account along with the age of the document. There may be substantial authority for the tax treatment of an item despite the absence of certain types of authority. Thus, a taxpayer may have substantial authority for a position that is supported only by a well-reasoned construction of the applicable statutory provision.

Section 12-54-155(D) further provides for relief "with respect to a portion of an underpayment if it is shown that there was a reasonable cause for the portion and that the taxpayer acted in good faith with respect to the portion." This section further references Treasury Regulation Section 1.6664-4 for interpretation of "reasonable cause and good faith". This regulation lists various factors to weigh in evaluating reasonable cause and good faith, to include 1) the facts and circumstances surrounding the taxpayer's tax treatment of the issue; 2) reliance on opinion or advice; 3) unreasonable assumptions; and 4) reliance on the invalidity of a regulation.

The Court must examine each of U.S. Bank's income streams to determine whether penalty relief is warranted.

(a) Mortgage interest and mortgage servicing fees.

The Court has determined that a mortgage is intangible property under section 12-6-30(12). As such, income from the use of that intangible should be sourced to South Carolina under subsection 12-6-2295(A)(3). The Department's long-standing policy of sourcing proceeds from the use of intangibles to the location of the borrower is consistent with these statutes. U.S. Bank defines a mortgage as a financial service and seeks to source gross proceeds under subsection 12-6-2295(A)(5). U.S. Bank argues that the Department has failed to publish sufficient guidance on this issue. The Court disagrees with this assertion. U.S. Bank has not provided any authority or other guidance to support its position that a mortgage is a service, Nevertheless, Treas. Reg. § 1.6662–4 seems to suggest that a taxpayer may have substantial authority in the absence of such guidance "for a position that is supported only by a well-reasoned construction of the applicable statutory provision."

The Court finds that U.S. Bank's position that a mortgage is a service and not intangible property does not rest on any well-reasoned construction of the applicable definitional statutes. Further, U.S. Bank's interpretation that subsection 12-6-2295(A)(3) does not embrace gross proceeds resulting from the use of mortgages in South Carolina because of the listed examples of intangible property is similarly not well-founded. Accordingly, the Court believes that U.S. Bank is liable for substantial underpayment penalties with regard to its tax liability arising out the failure to source mortgage interest from South Carolina mortgages to South Carolina. Further, while the Court does not question that U.S. Bank acted in good-faith for the purposes of Treasury Regulation Section 1.6664-4, the Court finds that "reasonable cause" is lacking with regard to U.S. Bank's position on mortgage interest. The Department's substantial underpayment penalty is therefore appropriate for its tax liability for mortgage interest.

Although mortgage servicing fees would ostensibly seem to create a closer question given the "service" nomenclature, the Court finds that these fees are incident to U.S. Bank's ownership of intangible property used in South Carolina such that they are inextricably related to the use of the mortgage. The root of U.S. Bank's improper tax treatment of mortgage servicing fees is its characterization of mortgages as a financial service instead of intangible property. The mortgage servicing fees that U.S. Bank generates are all a result of the use within South Carolina of U.S.

Bank's intangible property. The Court finds that U.S. Bank's position on mortgage servicing fees is neither supported by substantial authority under Treas. Reg. § 1.6662–4 nor supported by "reasonable cause" under Treas. Reg. § 1.6664–4 such that U.S. Bank is liable for substantial underpayment penalty for its failure to pay income taxes on its mortgage servicing fees.

(b) Sales of mortgages to GSEs.

U.S. Bank's argument about the gross proceeds resulting from its sales of mortgages to GSEs was based on its determination that its mortgages were services instead of intangible property. The gross proceeds resulting from the sale of this intangible property should be sourced to South Carolina under subsection 12-6-2295(A)(4) and not subsection 12-6-2295(A)(5). While the Court does not believe that this stream of income is encompassed within the Department's long-standing policy about gross proceeds from the use of intangible property such that it does not give any deference to said policy in this regard, the Court cannot find that U.S. Bank's interpretation of the applicable statutes to define mortgages as services is based on substantial authority or supported by reasonable cause. As such, the assessment of substantial underpayment penalties against U.S. Bank for tax on this stream of income is appropriate.

(c) Credit card interest and fees.

U.S. Bank, when acting as an issuer bank, creates accounts receivables when extending credit to its cardholders when they make cashless purchases of goods and services. Accounts receivable constitute intangible property. The interest generated on these credit card accounts, any late fees and annual fees assessed to the accounts are part of those accounts receivables. The Court has earlier determined that credit card interest and fees should have been sourced to South Carolina under subsection 12-6-2295(A)(3) as receipts from the use of intangible property in South Carolina. U.S. Bank's characterization of credit card interest, late fees and annual fees as services sourced under subsection 12-6-02295(A)(5) is not based on any substantial authority or reasonable cause such that the substantial understatement penalties are warranted.

(d) Merchant interchange fees.

The Court has determined that when U.S. Bank acts in its capacity as an acquirer bank, it receives interchange fees from merchants for the services that it has performed (i.e. the delivery of approval/denial decisions after credit card processing). And, while this income producing activity occurs in South Carolina at the merchant's location, the Court recognizes that this is a

complex issue. Both the Department and U.S. Bank rely upon the decision of the Court of Appeals in *DIRECTV*, and simply have arrived at differing conclusions about the location of the income producing activity. The Department has not brought to the Court's attention any policy guidance it has issued to assist taxpayers with the agency's interpretation of income-producing activity issues.[36] Treasury Regulation §1.6664-4 allows for waiver of substantial underpayment penalties when a taxpayer acted "with reasonable cause and good faith" with regard to a particular tax matter. Subsection (b) of Treasury Regulation §1.6664-4 in part, provides:

> Generally, the most important factor [in determining reasonable cause and good faith] is the extent of the taxpayer's effort to assess the taxpayer's proper tax liability. Circumstances that may indicate reasonable cause and good faith include an honest misunderstanding of fact or law that is reasonable in light of all the facts and circumstances, including the experience, knowledge and education of the taxpayer."

U.S. Bank is certainly not inexperienced in tax matters or lacks the guidance of knowledgeable persons, including tax experts, to advise it on these issues. Its witnesses who presented facts and opinion testimony here lead the Court to believe that all of U.S. Bank's positions in the case have been taken in good faith. And while the Court has not found reasonable cause for its treatment on any of the other income streams, it does find that U.S. Bank acted with reasonable cause as it relates to merchant interchange fees. The sourcing of income earned by the various players in the credit card industries presents difficult issues. U.S. Bank represents that it relied on the decisions in *Lockwood Green* and *DirectTV*. The Court finds that for the purpose of the substantial understatement penalty inquiry under Treasury Regulation §1.6664-4, U.S. Bank acted with good faith and reasonable cause with regard to its treatment of income from merchant interchange fees such that the substantial underpayment penalty should not be imposed on the tax due for this stream of income.

(e) Income from the sale of Visa stock.

The prevailing issue for this stream of income was whether U.S. Bank's Visa Stock was connected to its business. The Court found these sales proceeds to be taxable by South Carolina because U.S. Bank had the burden of proof and failed to provide evidence to answer the

[36] Given that the sourcing of gross proceeds generated by the sale of services must be determined on a case-by-case basis depending upon the nature of the taxpayer's business, the Department has not demonstrated that it has any applicable "long-standing policy" addressing this issue.

Department's assertions regarding derivative contracts and swap agreements. Under these circumstances, the Court declines to impose substantial understatement penalties on U.S. Bank for this stream of income.

CONCLUSION

After considering the evidence in the record and the pertinent legal authorities, I conclude that the Department properly sourced U.S. Bank's income from (1) interest from residential mortgages (including servicing fees and gains from their sale), commercial loans and consumer loans; (2) credit card interest and fees; and (3) merchant fees from processing credit/debit card transactions related to South Carolina borrowers to South Carolina. This Court rejects U.S. Bank's attempt to source the interest, fees, and gain from South Carolina mortgages outside of South Carolina. Further, the Visa stock was connected with U.S. Bank's business, and therefore, the gains from the stock's sale are apportionable to South Carolina. Finally, U.S. Bank is liable for substantial underpayment penalties on the streams of income at issue here except income from merchant interchange fees and its sale of Visa stock.

ORDER

THEREFORE, IT IS HEREBY ORDERED that the Department's assessment of $3,775,638.00 in tax, and $1,053,532.18 of interest on U.S. Bank's 2011, 2012, 2013, 2014, 2015 and 2016 bank tax returns is **AFFIRMED**.[37] U.S. Bank further owes substantial underpayment penalties on its tax liability resulting from all of its streams of income at issue except merchant interchange fees and sales of its Visa stock. The Department shall compute the penalty amount and forward the same to U.S. Bank.

AND IT IS SO ORDERED.

Milton G. Kimpson
Administrative Law Judge

Columbia, South Carolina
June 25, 2024

[37] The interest amount has been updated from the Proposed Assessment and is computed through July 18, 2020, and will continue to accrue until the tax, interest, and penalties are paid in full. *See* S.C. Code Ann. § 12-54-25 (2014).

CERTIFICATE OF SERVICE

I, Robert Reid hereby certify that I have on this date served this order upon all parties to this cause by depositing a copy hereof in the United States mail, postage paid, or by electronic mail, to the address provided by the party(ies) and/or their attorney(s).

Robert Reid

Judicial Law Clerk

June 25, 2024
Columbia, South Carolina