COMMONWEALTH of VIRGINIA
Department of Taxation
Richmond, Virginia 23282

MEMORANDUM

TO: William Hamilton
Interstate Audit Supervisor

DATE: March 17, 1988

SUBJECT: Financial Corporation Apportionment Factor

In response to your memorandum of January 15, 1988, requesting clarification of the financial corporation factor, I offer the following:

The financial corporation factor came into existence in 1976. As § 58-151.050:1 was originally enacted in 1976, and amended in 1979, "business income" was required to be apportioned by a fraction, "the numerator of which is its business income from sources within this state." The section defined business income from sources within this state as the sum of:

1. fees, commissions or other compensation for financial services rendered within this state;
2. gross profits from trading in stocks, bonds or other securities managed within this state;
3. Interest and dividends received within this state;

etc.

Thus, it is apparent that each item of income was to be examined separately to determine if it belonged in the numerator of the factor. In cases where an item of income was attributable to activity in Virginia and other states, a determination had to be made. Section 58-151.050:1 contained no guidance for making this determination and no reference to "costs of performance." However, in computing the sales factor for intangible income under § 58-151.049, a similar type of analysis was performed. Since the latter section referred to "costs of performance" it was a reasonable approach to adopt for purposes of computing the financial corporation apportionment formula.

However, this section was substantially rewritten in 1981. The section now requires all income of a financial corporation, other than allocable dividends, to be apportioned by a ratio. The ratio is defined as being based on costs of performance in the Commonwealth over costs of performance everywhere. The section no longer refers to the sum of a list of particular types of income in defining the factor. The list is now relevant only to the test for whether a corporation is a financial corporation.

In view of the substantive change to § 58-151.50:1 (now recodified as § 58.1-418) it appears that the intent of the General Assembly is to require the use of a single ratio based on costs of performance in the Commonwealth over costs of performance everywhere.

Field Services is using the correct method. The method used by Technical Services was proper until the law was substantially rewritten as part of the 1981 amendments to deal with the Champion case.

Danny M. Payne

Danny M. Payne, Director
Tax Policy Division

cc: R. B. Postans
R. L. Holt
W. H. Reynolds

Enclosure