

Exhibit G

Letter from the Mississippi Bankers Association dated December 17, 2021



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Gordon Fellows, Jackson

December 17, 2021

Commissioner Chris Graham
Mississippi Department of Revenue
500 Clinton Center Drive
Clinton, MS 39056

Dear Commissioner Graham,

The Mississippi Bankers Association represents every commercial bank headquartered in Mississippi, and almost every out-of-state headquartered bank that provides bank branching services in our state. Collectively, MBA member-banks facilitate thousands of business and consumer transactions daily, and member banks currently hold more than \$71 billion in combined Mississippi deposits. MBA members are deeply intertwined in communities all over the state and work daily to help move local economies forward. We write today to make sure you and the Department are fully aware of many of the challenges the banking industry believe the proposed amendment to the state's sales and use tax of software regulations could cause Mississippi banks as they seek to fulfill their mission of supporting economic growth. Importantly, every bank in our state, even those that do not provide branches or hold deposits out of state, could be impacted by the regulation in its current form.

The banking industry, through deposit, credit, payment, and various other services, is deeply intertwined in all aspects of Mississippi commerce. And software plays a vital part in not only how banks interact with consumers and businesses at the customer-facing level, but it is also integral to the back-end processing and maintenance of records for every transaction that moves through the banking system. As such, we have many specific questions about the Department's recently proposed amendments.

We commend your agency for holding a public hearing on this important topic in November, and we were glad to participate in that conversation. We are writing this in the hopes that DOR might provide further clarification on each of the questions below. To help you respond to these questions, we have organized them as "General Banking Operations" questions and "General Tax Administration" questions.

GENERAL BANKING OPERATIONS

1. Banks use a core-banking system (“Core”) as a back-end system where all customer and account information is accessed, recorded, and housed. The Core is used to process and post various daily banking transactions to customer accounts (e.g., deposit, withdrawals, loans, payment transactions etc.). All digital and tangible transactions are recorded to the banks’ Core – essentially every banking transaction runs through a Core. The processing and posting within the Core involves “*computer data*” and “*uses automatic processing equipment to perform the set of tasks*” – namely updating the customer accounts to reflect the banking transactions initiated by the customers. Does this rise to the definition of “*computer software sales*” that would be taxable to banks every time a transaction is initiated under the proposed regulation? If so, would it be your opinion that this would, in effect, be a new tax on all financial transactions?
2. While a handful of the state’s larger banks run their own in-house Cores, most banks purchase Core software from a small group of vendors known as “core providers” – all of which are based out-of-state. If banks purchase their Core from a third-party vendor, would the purchase be taxable in Mississippi under the proposed regulation, even if the Core’s server is located out of state? As we read the amended regulation, the taxability determination would either be because the Core is deemed tangible personal property (“TPP”) or because the Core is deemed a “taxable computer service.” This could lead to double taxation concerns as enumerated below, where Mississippi tax is paid by both the banks and its banking customers under the proposed regulation.
 - a. If the Core is treated as a purchase of TPP, then is the Core really purchased for the ultimate benefit of the banks’ customers by virtue of the transaction processing being performed on the customers’ behalf?
 - i. In such instances, are banks really resellers of TPP and should they therefore be exempt from taxation on the purchase of the Core?
 - ii. See item 4 below for discussion regarding other functions supported by the Core for bank back-office functions. These supported functions could create additional secondary or tertiary taxable events depending on how the department interprets this question.
 - b. If the Core is treated as a purchase of taxable services, then who, in the department’s opinion, is really receiving the benefit of the services received? Is it the bank, the bank’s customers, or both?
 - c. If the department believes that the proposal now means that access to bank Core is a taxable event, there could be significant operational impact to banks if bank customers are subject to MS tax for transaction processing. How should banks address the following operational questions:
 1. How do banks develop the ability to collect taxes and remit to the taxing authorities for each transaction that accesses a Core? Keep in

mind this would be every transaction, even cash/in-person transactions – not just digital/web-based transactions.

2. How is consideration quantified?
3. When bank employees (bankers, tellers, etc.) input/initiate customer transactions to process in the Core, it often involves transferring data through multiple applications to interface with the Core. Such background applications include applications such as Application Program Interfaces (“APIs”), Enterprise Business Service (“EBS”) and others that are needed as platforms to connect and enable communication with the Core. If transaction processing on customer accounts create taxable transactions due the transfer of computer data, then there could be multiple layers of transactions to consider in processing any customer banking transactions as enumerated above.
 - a. See above resale implications to banks – banks often pay third party vendors for certain interface applications. A single transaction might involve multiple software vendors, depending on the type of transaction. Does the department intend for each level of vendor used to facilitate transactions to be taxable?
4. The Core also transfers data to other systems like the bank’s general ledger, data repositories, image centers and reporting systems. The transfer of such data is completed through daily data processing from the Core to feed the applicable subsystems. For most banking organizations, there are often various business legal entities that are used for specific lines of businesses and/or product offerings. Is such transfer of data now taxable in MS because the batch processing involves “*computer data and routines...to perform the set of tasks*” and constitutes computer software under the proposed regulation?
 - a. How do you value the consideration received?
 - b. How would you source the consideration?
5. A number of the state’s banks maintain physical (non-cloud based) servers housed on bank property in Mississippi. But Core software from out-of-state vendors are frequently used to manage the data stored on these in-state servers. Under the proposal in its current form, what tax implications will banks have for accessing in-state servers using Core software managed by out-of-state based vendors?
6. Banks also service loans in loan participation/syndication arrangements. The service involves the servicing Bank invoicing the borrower, collecting the payments on the loans and remitting the loan payments to the participant/ syndicator bank who owns the loan. The entire workflow happens within the Core. Does the transfer of data to facilitate the payment processing and then to remit the funds to the counterparty bank each create taxable events due to “*computer data and routines*” used “*to perform the set of tasks*”?
7. With the advent of online banking, bank customers access the Bank’s Core by either logging onto the Bank’s website or using the mobile banking application on their phones. When customers initiate a transaction online, a series of data exchange is triggered in the

background in order for the application to access the Core to obtain client information such as balances, electronic statements, check images, account transfers, etc. The data exchange to access the Core relies heavily on interfaces like APIs, ESBs, etc. that fall within the “*cloud computing*” definition as that is taxable under the proposed regulation. Who is the ultimate taxpayer in the online banking context?

- a. Will these client interactions involving exchange of client information (i.e., data) be considered taxable events?
 - b. If so, how do you source? Customers are more mobile then looking at where bank branches are located.
 - c. The cloud computing is often purchased by banks from third parties. Could the new rule be interpreted to mean the customer transaction is now taxable, along with accessing the API/ESB, along with accessing the Core?
8. As discussed above, throughout the life cycle of any bank transaction, there could be various interfaces that facilitate the workflow by using cloud computing. Some of those cloud computing components could include “services” that are performed by third-party vendors, such as cybersecurity providers, credit score providers, automated loan origination processes and e-signature capabilities among others. Such services involve the exchange of customer “data” to “perform a set of tasks”. Many of these third-party vendors are deemed software as a service (“SaaS”), platform as a service (“PaaS”) and infrastructure as a service (“IaaS”) providers. Do these types of services create taxable events for bank customers when these services are used in the background to facilitate customer transactions?
9. Electronic Payments - Debit card, credit card, money wires, ACH payments, and other methods of electronic payment all involve the exchange of data amongst many entities. Merchants, data encryption providers, payment network providers, intermediary banks and issuing banks are all parties that may be involved in the transaction flow of an electronic payment. Each “step” within the electronic payment process involves the exchange of payment data. Each entity involved may or may not be located within Mississippi. Additionally, the payment data goes upstream for approval by issuing bank and back downstream for payment confirmation.
- a. Will the exchange of electronic payment data be a taxable event under the proposed regulation?
 - i. If so, which portion of the payment chain will need to collect this tax? (Merchants, e.g., Walmart, card provides such as Visa/Mastercard, issuing/intermediary banks that hold local accounts and issue debit and credit cards, payment rail network providers, or others?)
 1. Various fees being paid or earned by the aforementioned parties for facilitating credit/debit card transactions (discount income, interchange income, processing fee income, etc.)
 - b. If taxable, are all or certain stages of the payment chain subject to tax?
 - c. If two concurrent steps are within the same bank, but utilize different systems, is one step considered resale and the other considered a sale at retail?

- d. From the bank's perspective, if a bank pays for a payment network provider's services, which transaction would be considered taxable?
 - i. The bank's purchase of the network's SaaS service or,
 - ii. the exchange of electronic payment data

Note – there continues to be much innovation in the payment space, including development of a new FedNow immediate payment system being developed by the Federal Reserve. How will the currently proposed regulation contemplate continuous innovation and change, which involves both the private sector and federal government, in the payment space?

10. Remote Deposit Capture – Banks often provide remote deposit capture services to accounts; these often involve special scanners the depositor must use. There are often fees associated with this hardware. Would this proposal create a new tax on deposit transactions if the customer chooses to use remote deposit capture? This could be especially burdensome in rural communities.

GENERAL TAX ADMINISTRATIVE CONSIDERATIONS

1. To the extent SaaS, IaaS and PaaS that are deemed taxable in MS, the Department of Revenue ("DOR") should have specific methods of deriving a taxable base and allocation.
 - a. If taxable, will the taxable base be based on its fair market value, imputed value, or some other method?
 - b. If so, how will this be determined?
 - c. Should any consideration be made for a taxable base that would be allocated based upon some sort of measurement (i.e. users, anticipated usage, etc.)?
 - d. Will an allocation calculation be dependent upon whether an entity is a Mississippi or out-of-state domiciled company?
 - i. How do you define domicile? Legal domicile, physical headquarter location, etc.
2. For SaaS, IaaS, and PaaS, other taxing jurisdictions have utilized allocation methods, which may conflict with Mississippi's determination of the taxable base and lead to double taxation situations.
 - a. Will the department provide credit for taxes paid? If so, how?
3. As written, the proposed regulation does not mention an effective date for these changes.
 - a. How does the DOR intend to apply these changes? Retroactively or on a prospective basis?
 - b. If retroactively, what date will be the DOR's intended effective date to enforce this regulation?
 - c. Will any relief for interest and penalties be granted for a certain amount of time for taxpayers to comply with this new interpretation?
4. Does the department intend to provide a specific list of what "*certain services*" delivered through cloud computing that will be taxable under the proposed regulation? As drafted, the

proposed regulation could potentially cause currently nontaxable services (such as bank deposits) to be taxable if they involve any form of electronic delivery mechanism, or perhaps even access to a bank Core.

5. For professional services, the regulation deems “*the recovery of damaged, delete, or lost data or other services*” as taxable. What are these other services?
6. The proposed regulation adds a section indicating “*sales of software or software services transmitted by the Internet to a destination outside of the State of Mississippi where the first use of such software or software services by the purchaser occurs outside the State of Mississippi is exempt from sales tax.*” How do you determine first use in the context of cloud computing?

We thank the Department for the opportunity to seek additional clarification and provide feedback to the department on the potential impact of these proposed changes. We ask each of these questions in an attempt to gain an accurate understanding of the potential impact on the banking industry and our customers that include both Mississippi’s business community and consumers.

Finally, we write to also specifically urge the department to take the following steps, among others, to mitigate the negative consequences to Mississippi’s banking industry and broader business community from these proposed changes:

1. Do not delete the final sentence of current Miss. Admin. Code 35.IV.5.06(300) which currently reads: “However, software maintained on a server located outside the state and accessible for use only via the Internet is not taxable.” The department’s proposed elimination of this phrase would drastically increase the tax liability of businesses across the state. In past sales/use tax audits, banks have not been taxed on software unless it was third party cloud-based or downloaded to a server in Mississippi. We urge the department to fully contemplate the likely impact of the proposed deletion of this exemption and to allow the exemption to remain.
2. We also urge the Department to follow the lead of 24 of other states, including Georgia and Florida, in specifically exempting SaaS because these transactions do not involve or result in the delivery or exchange of tangible personal property, as well as PaaS, IaaS, and other cloud-computing models where these services are accessed exclusively via the cloud or internet while the software is maintained on a server located outside the state. We ask the Department to distinguish the purchase of a service, performed via the use of computer hardware or software located outside the state, when the output of that service is delivered to a purchaser in the state via the internet, cloud, SaaS, or similar means. Finally, we urge the Department to clarify that these computer- or software-related services performed outside the state are not taxable in Mississippi solely because the purchaser or beneficiary of that service might be located in Mississippi.

We thank you and the Department for your willingness to consider these questions and feedback from Mississippi's banking industry. As you consider the future of the proposal, if the banking industry can be of further assistance in providing additional details or provide more feedback on the technical nature of how technology impacts the banking sector and the broad range of commercial and consumer financial activities our members facilitate every day, please feel free to reach out to me or Eric Bennett any time.

Sincerely,

A handwritten signature in black ink, appearing to read 'Gordon Fellows', written in a cursive style.

Gordon Fellows
President and CEO

Cc: Anne Hall Brashier, Office of Governor Tate Reeves