

DELAWARE STATE SENATE

144th GENERAL ASSEMBLY

SENATE BILL NO. 213

AN ACT TO AMEND TITLE 5 OF THE DELAWARE CODE PERTAINING TO THE DELAWARE BANK FRANCHISE TAX AND TITLE 30 OF THE DELAWARE CODE PERTAINING TO THE DELAWARE CORPORATION INCOME TAX.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend the last sentence of Section 1101(e) of Title 5 of the Delaware Code by inserting after the word "in" and before the symbol "Section " the following: "Section 1901(2) or".

Section 2. Amend the last sentence of Section 1101A(c)(2) of Title 5 of the Delaware Code by inserting after the word "in" and before the symbol "Section " the following: "Section 1901(2) or".

Section 3. Amend Section 1623(d) of Title 30 of the Delaware Code by adding a new paragraph at the end of that subsection as follows:

"In applying paragraph (7) of subsection (b) of Section 1903 of this title to such corporation, the ratio described in such paragraph (7) of such corporation shall be determined by including in such ratio the corporation's distributive share of each relevant item of such pass-through entity."

Section 4. Amend Section 1901 of Title 30 of the Delaware Code by (a) redesignating the following subdivisions of that section: existing subdivisions (1) through (3) as new subdivisions (4) through (6); existing subdivision (4) as new subdivision (8); existing subdivisions (5) through (7) as new subdivisions (10) through (12); existing subdivision (8) as new subdivision (14); existing subdivision (9) as new subdivision (17); existing subdivision (10) as new subdivision (18); and existing subdivision (11) as new subdivision (16) and (b) by adding the following new subdivisions, at the appropriate locations numbered as set forth below:

"(1) 'Administration services' means, in each case with respect to intangible investments (as such term is defined in Section 1902(b)(8) of this title), (a) clerical, (b) accounting, (c) bookkeeping, (d) data processing, (e) internal auditing, (f) tax services, (g) regulatory compliance, operations and related services, (h) risk analytics, and (i) trade processing, clearing and execution services.

(2) 'Asset management corporation' means a corporation (i) 90% or more of the gross receipts of which are derived from the performance of asset management services, (ii) that is not exempt from taxation under this chapter pursuant to Section 1902(b)(8) of this title and (iii) that makes an election for each taxable year to be treated as an asset management corporation by filing the appropriate form of return prescribed by the Director to make such election. For purposes of this

Section 80a-1 et seq.) or the domicile of an institutional investor organized as a pass-through entity (as defined in Section 1601(6)a. of this title); or,

(iii) if

(A) the domicile of beneficiaries, owners or members is not ascertained under clause (7) b. (i); or,

(B) no reasonable alternative sourcing method exists under clause (7) b. (ii), gross receipts with respect to such services shall be sourced to the domicile of the institutional investor or the domicile of the sponsor of a pension plan or retirement account or an account or pool of intangible investments, including a fund (other than an investment company under the Investment Company Act of 1940 (15 U.S.C. Section 80a-1 et seq.)), to which asset management services are provided.

c. In the case of asset management services provided directly or indirectly to an investment company under the Investment Company Act of 1940 (15 U.S.C. Section 80a-1 et seq.), gross receipts with respect to such services shall be sourced to the domicile of the shareholders of such investment company in accordance with the following procedure: the portion of the gross receipts with respect to such services that are sourced to this State shall be determined by multiplying the total of such gross receipts by a fraction, the numerator of which is the average of the sum of the beginning of year and the end of year balance of shares owned by the investment company shareholders domiciled in this State for the investment company's taxable year for federal income tax purposes and the denominator of which is the average of the sum of the beginning of year and the end of year balance of shares owned by all investment company shareholders. A separate computation shall be made with respect to gross receipts for asset management services provided directly or indirectly to each investment company.

d. In the case of asset management services provided directly or indirectly to a person other than those persons described in subparagraphs a. through c. of this paragraph (7), to the domicile of such person."

Section 7. This Act shall be effective for taxable years beginning after December 31, 2008.

SYNOPSIS

This Act recognizes the changing nature of the financial services industry by permitting certain types of corporations to apportion their apportionable income based on a single ratio of Delaware-sourced gross receipts from asset management services to all gross receipts from asset management services, rather than the 3 ratio average apportionment factor used by other corporations.

The Act creates a definition of an "asset management corporation," which is a corporation, 90% or more of the federally reported gross receipts of which are derived from asset management services, which is also defined by the Act. The Act permits, but does not require, corporations that meet the criteria for treatment as asset management corporations to elect such treatment for each taxable year. Asset management services are services rendered with respect to

intangible investments and consist of rendering investment advice, determining the timing of sales and purchases of intangible investments, selling and purchasing intangible investments, rendering administration and distribution services and managing contracts for sub-advisory services. The sourcing of gross receipts derived from providing asset management services is based generally on the domicile of the consumer of asset management services.

The Act prevents the election by subsidiary corporations of banking organizations, trust companies or electing banking organizations and trust companies under the Delaware Bank Franchise Tax to be taxed as asset management corporations under the Corporation Income Tax of Title 30 of the Delaware Code rather than under the Delaware Bank Franchise Tax under Title 5 of the Delaware Code