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New Focus on Tax Sharing Agreements for Financial Institutions

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The Bankers' Statement – Spring 2014

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As most bankers know, Ohio adopted a new Ohio Financial Institutions Tax (FIT), which is based on a consolidated entity formula explained below. Given the new consolidated approach to taxing financial institutions with a presence in Ohio and the bank regulatory issues that accompany any type of inter-company and bank liability sharing or exchange, it is important that financial institutions have in place an appropriate tax sharing agreement. This agreement must meet regulatory scrutiny and provide compliance with applicable bank regulatory requirements as well as the requirements of the FIT.

We discussed the new tax in our [client alert](#) published in January 2013. It became effective January 1, 2014.

The FIT is an annual privilege tax that Ohio imposes on financial institutions doing business in Ohio. The tax base is a financial institution's total equity capital apportioned to Ohio. Total equity capital equals the total equity capital reported on the financial institution's federal call report or FR Y-9 (as the case may be). Accordingly, the FIT is calculated on a consolidated basis. This requirement of consolidated reporting is a significant change from the former Ohio corporation franchise tax, which was calculated on a separate company basis. Equally significant is that members of the consolidated FIT return are jointly and severally liable for the FIT just like the federal income tax. Particularly because the FIT imposes joint and several liability, financial institutions should have a tax sharing agreement specific to the FIT in addition to any tax sharing agreement already implemented for federal income tax or regulatory compliance purposes. The FIT return is due annually by October 15. Estimated tax payments are due annually on January 31, March 31 and May 31. Financial institutions should have an Ohio FIT Tax Sharing Agreement in place by October 15 at the latest and perhaps earlier for purposes of bank regulatory exams.