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A bank does not have domestic production gross receipts for purposes of the Sec. 199 domestic production activities deduction when customers download its free mobile phone app.

In a generic legal advice memorandum, the IRS Office of Chief Counsel concluded that a bank does not derive domestic production gross receipts (DPGR) from the disposition of computer software when it allows customers to download a free mobile phone app providing access to the bank’s online fee-based services. Because the app is considered online software for purposes of the Sec. 199 (<http://tinyurl.com/kweo7h4>) domestic production activities deduction (DPAD), the bank is not disposing of software when its customers download the app. Further, it does not directly derive gross receipts from downloads of the app because the app is provided free. (For a fuller discussion of the Sec. 199 deduction as it pertains to computer software, see “The Domestic Production Activities Deduction for Computer Software (/issues/2015/mar/computer-software-tax-deduction.html)”).

As described in the legal advice memo, the bank offers banking services to its customers through a variety of means, including bank branches, automated teller machines, texting, and over the internet via the bank's website, mobile website, and app. The bank's online platforms allow customers to access their bank accounts, view account balances and activity, make deposits, and transfer funds. Regardless of the channel customers use, all banking transactions are executed in essentially the same way through the bank's internal computer systems. These systems are not licensed or provided to customers. For any of the bank's online platforms to function, customers must be connected to the internet. The bank's app does not provide access to services not otherwise available through its website or mobile website.

Although the bank does not charge customers a fee to download or access its app, customers may incur fees for certain services initiated while using the app, such as wire transfers and check deposits. For financial reporting purposes, the bank recognizes these fees as revenue from the provision of banking services.

For purposes of the DPAD, a taxpayer's DPGR include gross receipts derived from the lease, rental, license, sale, exchange, or other disposition of qualified production property (QPP), including computer software, that is manufactured, produced, grown, or extracted in whole or in part within the United

States. QPP does not include receipts derived from customer technical support, telephone and telecommunication services, internet access services, online banking services, access to online media, and other similar services.

In Example (1) of Regs. Sec. 1.199-3(i)(6)(v) (http://www.ecfr.gov/cgi-bin/text-idx?SID=f0daa804ad8293f332d3ff70ae3b6a1c&node=se26.3.1_1199_63&rgn=div8), a bank produces computer software within the United States that enables customers to receive online banking services for a fee. Because the gross receipts derived from the online banking services are attributable to a service, they do not constitute gross receipts derived from the disposition of computer software.

The Chief Counsel's Office in the legal advice memo concluded that, as in the regulations' example, downloads of the bank's app by customers are not dispositions of computer software for purposes of the DPAD. The app provides customers access to the bank's internal computer software, allowing them to order various banking services. It does not function unless customers are connected to the internet, and it is useful to them only while connected. Although the DPAD regulations contain references to computer software downloads as dispositions, the intent, the Chief Counsel's Office said, is to include downloaded software that has independent functionality after customers are no longer connected to the internet.

The memo also noted that even if downloads of the bank's app were dispositions of computer software, there still would be no DPGR because the bank allows customers to download the app without charge. Fees are charged only for completed banking transactions or services. According to the regulations under Sec. 199, computer software produced to enable customers to receive and/or participate in online services is part of the online service, and gross receipts are not separately allocable to such computer software. The bank, therefore, derives gross receipts from the provision of banking services and not from downloads of its app.

- [Generic Legal Advice Memorandum AM 2014-008 \(http://www.irs.gov/pub/irs-utl/AM2014-008.pdf\)](http://www.irs.gov/pub/irs-utl/AM2014-008.pdf)

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