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These proposed revisions to Part 4 replace the previously posted draft dated August 31, 2017. In addition, revisions to the discretionary adjustment rules are now included in this draft and replace the version dated March 4, 2016. While the Department welcomes comments on all of the proposed changes, the Department specifically requests comments on the definition of “business receipts” and the elimination of the apportionment rule regarding unusual events.

The rules for sourcing receipts from digital products and other business receipts are currently posted separately and will be incorporated into this draft at a later date. Apportionment rules for corporate partners will be released at a later date in a separate Subpart dedicated to corporate partner issues.

**November 2019 Update:** Section 4-4.1(f) has been amended to include new example 3 relating to a discretionary adjustment to the business apportionment factor when a corporate partner sells its interest in a partnership.

Section 1. Part 4 of Subchapter A of title 20 NYCRR is repealed and a new Part 4, Apportionment, is added to read as follows.

	Part 4
	Apportionment
Subpart 4-1	General
Subpart 4-2	Specific Apportionment Rules
Subpart 4-3	New York S Corporations
Subpart 4-4	Other Rules

Subpart 4-1

## 24 GENERAL

## 25 Section

26 4-1.1 General rules for apportionment

27 4-1.2 Apportionment on combined reports

28 4-1.3 Definitions

29 **Section 4-1.1 General rules for apportionment. (Tax Law, Section 210-A)**

30 (a) All taxpayers apportion within and without New York State their total business  
31 income and business capital by a business apportionment factor. The factor is a fraction, the  
32 numerator of which is the sum of all business receipts required to be included in the numerator  
33 pursuant to Tax Law section 210-A and this Part, hereinafter referred to as New York receipts,  
34 and the denominator of which is the sum of all business receipts required to be included in the  
35 denominator pursuant to Tax Law section 210-A and the applicable regulations, hereinafter  
36 referred to as everywhere receipts.

37 (b) Unless otherwise provided, the term business receipts means items included in the  
38 computation of the taxpayer's gross income as defined in IRC section 61 and entire net income  
39 for the taxable year. Business receipts do not include (i) receipts, net income (not less than zero)  
40 or net gains (not less than zero) from investment capital as defined in Tax Law section 208(5) and  
41 section 3-4.1 of this Subchapter, even if such receipts, net income (not less than zero), or net gains  
42 (not less than zero) are included in business income pursuant to the gross investment income  
43 limitation described in section 3-4.6 of this Subchapter, (ii) other exempt income as defined in  
44 Tax Law section 208(6-a) and section 3-4.7 of this Subchapter generated by stock that is not  
45 marked to market, (iii) other exempt income generated by stock that is marked to market in  
46 instances where the taxpayer did not make the fixed percentage election for qualified financial

47 instruments provided for in section 4-2.5 of this Part, (iv) amounts specified in Tax Law section  
48 208(9)(a)(3) through (18), and (v) amounts specified in Tax Law section 208(9)(b)(3) through  
49 (21).

50 (c) Business receipts do not include certain reimbursements of expenses (i) paid for by the  
51 taxpayer on behalf of a customer that are received from the customer in advance or received  
52 from the customer and placed by the taxpayer into a separate account, provided the  
53 reimbursement does not exceed the amount of expenses and (ii) reimbursements received by the  
54 taxpayer under a cost-sharing arrangement the taxpayer has with another company, where that  
55 cost-sharing arrangement does not include any mark-up of the expense. In the case of a cost-  
56 sharing arrangement that the taxpayer has with another company that includes a mark-up of  
57 expenses, only the amount of the mark-up shall be included in business receipts.

58 (d) In the case of the sale of multiple assets in one transaction, the proceeds from the sale  
59 of the assets shall be reasonably divided among the types of assets sold by the taxpayer and the  
60 receipts or net gains from each type of asset must be apportioned using the applicable rule in Tax  
61 Law section 210-A and this Part for each type of asset sold. Full details regarding the sale and  
62 the division of the proceeds and gain must be submitted with the taxpayer's report.

63 (e) In the case of an asset sale where the proceeds of the sale are received by the seller on  
64 an installment basis as provided for in IRC section 453, the portion of the receipts or net gains  
65 attributable to New York must be determined in the year of the sale by applying the  
66 apportionment rules in Tax Law section 210-A and this Part. The same ratio of New York  
67 receipts to everywhere receipts from the installment income for each type of asset shall be used  
68 in subsequent years to determine how much of the installment payment is included in New York  
69 receipts. The entire amount of the annual installment is included in everywhere receipts.

70 (f) All business receipts for the period covered by the report, computed on a  
71 cash or accrual basis according to the method of accounting used in the computation of its  
72 entire net income, must be taken into account.

73 (g) New York and everywhere receipts shall be computed using the rules in Tax Law  
74 section 210-A. For certain types of receipts, the provisions of this Part provide further guidance.  
75 Such rules shall be applied to each receipt, item of income, gain, or other item described in Tax  
76 Law section 210-A except as otherwise provided.

77 (h) Examples.

78 Example 1: Corporation A is a professional employer organization (“PEO”). It contracts  
79 with its customers to provide a number of services, including the handling of the payment of  
80 wages, the withholding of the employees’ and customer’s necessary statutory taxes and  
81 unemployment insurance payments, and the remitting of such taxes and unemployment insurance  
82 payments to the Department and the Department of Labor. In order to provide these services, the  
83 PEO may have to pay out of its own account the wages of the employees and other expenses  
84 before it is reimbursed by its customers from funds in a dedicated account set up on behalf of its  
85 customers for those wages and other expenses. The amount reimbursed does not exceed the  
86 amount of expenses. These reimbursements are not considered business receipts and therefore  
87 are not included in New York receipts or everywhere receipts.

88 Example 2: Corporation B sells all the assets of one of its divisions for a gain, which is  
89 properly reported as business income. The assets sold consisted of real property, tangible  
90 personal property, and goodwill. The portion of the gain attributable to the sale of tangible  
91 personal property shall be apportioned to New York State using the rules for Tax Law section  
92 210-A(2)(a), the portion attributable to the sale of real property shall be apportioned to New York

93 State using the rules for Tax Law section 210-A(2)(d), and the portion attributable to the sale of  
94 goodwill shall be apportioned to New York State using the rules for Tax Law section 210-A(10).

95 Example 3: Corporation C sells its New York real estate in the 2016 tax year and has a  
96 \$5,000,000 net gain. Under the sales agreement, the proceeds of the sale will be paid to  
97 Corporation C in 5 equal annual installments. As the real property is located in New York, the  
98 entire gain is attributable to New York and \$1,000,000 is included in New York receipts and  
99 everywhere receipts each year.

100 In tax year 2016, Corporation C also has \$20,000,000 of rental income from its New York  
101 property and \$5,000,000 of rental income from real property located outside New York.  
102 Corporation C has \$21,000,000 of New York receipts (\$1,000,000 of the net gain from the New  
103 York real estate installment sale and \$20,000,000 of rental income from the New York property)  
104 and \$26,000,000 of everywhere receipts (\$1,000,000 of the net gain from the real estate  
105 installment sale and \$25,000,000 of rental income from real property located within and without  
106 the state). Its business apportionment factor for the 2016 tax year is 0.807692.

107 In tax year 2017, Corporation C has only \$2,000,000 of rental income from real property  
108 located outside of New York. Corporation C has \$1,000,000 of New York receipts (its second  
109 installment of the net gain from New York real property) and \$3,000,000 of everywhere receipts  
110 (\$1,000,000 of its second installment of net gains from the sale of real property plus \$2,000,000  
111 of rental income from real property located outside the state). Its business apportionment factor  
112 for the 2017 tax year is 0.333333.

113

114 **Section 4-1.2 Apportionment on combined reports. (Tax Law, Section 210-C(5))**

115 (a) For purposes of this Part, in the case of a combined report, the term taxpayer means all

116 corporations included in the combined report, regardless of whether such individual members of  
117 the combined group are themselves subject to tax, except as otherwise provided.

118 (b) The apportionment factor on a combined report is computed as though the corporations  
119 included in the combined report are a single corporation, unless otherwise provided, and is  
120 computed in accordance with the following principles.

121 (1) All intercorporate business receipts, income, gains and losses are eliminated in  
122 computing the combined group's New York receipts or everywhere receipts. Intercorporate  
123 receipts, income, gains and losses are receipts, income, gains and losses realized by any  
124 corporation included in the combined report from a transaction with any other corporation  
125 included in the combined report.

126 (2) Net gains (not less than zero), marked to market net gains (not less than zero), net  
127 interest income (not less than zero), and net income (not less than zero) from any respective type  
128 of asset on a combined report are computed as follows:

129 (i) For purposes of computing net gains (not less than zero) for all members of the  
130 combined group, the aggregate gain from the sale of one type of asset is reduced by the aggregate  
131 loss from the sale of the same type of asset subject to the same customer sourcing rule in Tax Law  
132 section 210-A and the applicable regulations in this Part, provided that the result cannot be less  
133 than zero.

134 (ii) For purposes of computing net interest income (not less than zero) from federal funds  
135 for all members of the combined group, the aggregate amount of interest income from federal  
136 funds is reduced by the aggregate amount of interest expense from federal funds, provided the  
137 result cannot be less than zero.

138 (3) If an apportionment rule contained in Tax Law section 210-A and this Part requires

139 the use of a fraction to compute the amount included in the combined group's New York receipts,  
140 the amount included in the numerator or denominator of such fraction is determined after the  
141 intercorporate eliminations required by paragraph (1) of this subdivision.

142

143 **Section 4-1.3 Definitions. (Tax Law, Sections 208(1) and 210-A)**

144 For purposes of this Part, the following definitions apply:

145 (a) (1) Commercial domicile is determined by the use of the following hierarchy for  
146 business entities, based on the information known to the taxpayer or information that would have  
147 been known upon reasonable inquiry, such as publicly or readily available information: (i) the seat  
148 of management and control of the business entity within the United States; and (ii) the billing  
149 address of the business entity in the taxpayer's records. Taxpayers must exercise due diligence  
150 before abandoning the first method in this hierarchy and proceeding to the second level.

151 (2) In the case of a business entity that is a sole proprietor, the seat of management and  
152 control is the principal place of business of the sole proprietor.

153 (b) (1) Marked to market means that a financial instrument is, under IRC section 475 or  
154 1256, treated by the taxpayer as sold for its fair market value on the last business day of the  
155 taxpayer's taxable year.

156 (2) In the case of a taxpayer that is a dealer in securities, as defined in IRC section  
157 475(c)(1), a financial instrument will not be considered to be marked to market if it:

158 (i) is a security, as defined in IRC section 475(c)(2); and

159 (ii) comes within one of the exceptions described in IRC section 475(b)(1), whether or not  
160 the taxpayer identifies the security under IRC section 475(b)(2).

161 (c) Marked to market gain or loss means the gain or loss recognized by the taxpayer under

162 IRC section 475 or 1256 because the financial instrument is treated as sold for its fair market  
163 value on the last business day of the taxpayer's taxable year.

164 (d) Real property means land, buildings, structures, and improvements thereon. In  
165 addition, it includes shares in a cooperative housing corporation in connection with the grant or  
166 transfer of a proprietary leasehold.

167 (e) (1) Registered broker or dealer means a broker or dealer registered as such by the  
168 Securities and Exchange Commission or a broker or dealer registered as such by the Commodities  
169 Futures Trading Commission, and shall include an OTC derivatives dealer as defined under  
170 regulations of the Securities and Exchange Commission at Title 17, part 240, section 3b-12 of the  
171 Code of Federal Regulations (17 CFR 240.3b-12).

172 (2) In the case of a combined report, registered broker or dealer is determined on a  
173 corporation by corporation basis.

174 (3) A corporation that itself is not a registered broker or dealer will not be deemed to be a  
175 registered broker or dealer because it is a partner in a partnership that is a registered broker or  
176 dealer or a member of a limited liability company that is a registered broker or dealer. Provided,  
177 business receipts from such registered broker or dealer that are described in Tax Law section 210-  
178 A(5)(b) and are passed through to the corporation are apportioned using the rules in such section  
179 210-A(5)(b).

180 (f) Tangible personal property means corporeal personal property, such as machinery,  
181 tools, implements, goods, wares and merchandise. It includes audio works, audiovisual works,  
182 literary works, visual works, graphic works, or games, delivered via a physical medium, which  
183 are not subject to section 4-2.3 of this Part. It does not mean money, deposits in banks, shares of  
184 stock, bonds, notes, credits or evidences of any interest in property and evidences of debt.

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Subpart 4-2

SPECIFIC APPORTIONMENT RULES

Section

- 4-2.1 Receipts from the sale of tangible personal property
- 4-2.2 Receipts from rents and royalties
- 4-2.3 Receipts from the sales of, license to use, and granting of remote access to digital products
- 4-2.4 Net income from qualified financial instruments for corporations other than non-captive REITs and non-captive RICs
- 4-2.5 Interest income and net gains from loans
- 4-2.6 Interest income and net gains from asset backed securities and other government agency debt
- 4-2.7 Interest income and net gains from corporate bonds
- 4-2.8 Net interest income from reverse repurchase agreements and securities borrowing agreements
- 4-2.9 Net interest income from federal funds
- 4-2.10 Net income from commodities
- 4-2.11 Marked to market net gains
- 4-2.12 Interest, net gains, and other income from other financial instruments
- 4-2.13 Brokerage commissions
- 4-2.14 Receipts from credit cards and similar activities

208	4-2.15	Receipts received by credit card processors
209	4-2.16	Receipts from railroad, trucking and omnibus businesses
210	4-2.17	Receipts from the sale of advertising
211	4-2.18	Receipts from other services and other business activities

212

213 **Section 4-2.1 Receipts from the sale of tangible personal property. (Tax Law,**  
214 **Section 210-A(2)(a))**

215 (a) Receipts from the sale of tangible personal property are included in New York receipts  
216 if paragraph (1), (2), or (3) of this subdivision applies. All receipts from the sale of tangible  
217 personal property are included in everywhere receipts.

218 (1) The property is shipped via common or contract carrier, irrespective of whether  
219 the shipment is arranged by the taxpayer or the purchaser, or via the taxpayer's vehicle or other  
220 means of transportation, to a point in New York State. Where property is so shipped to a point  
221 outside New York State, the receipts from the sale of such property are not included in  
222 New York receipts unless the final destination of the property is a point in New York State. See  
223 subdivision (b) of this section regarding evidence of destination.

224 (2) The possession of the property is transferred to a purchaser or purchaser's  
225 designee at a point in New York State, unless the final destination of the property is a  
226 point outside New York State. Where possession of the property is transferred in New York  
227 State, it is presumed that the final destination is a point in New York State unless there is  
228 sufficient evidence to demonstrate that the final destination is a point outside New York State.  
229 See subdivision (b) of this section regarding evidence of destination.

230 (3) The possession of the property is transferred to a purchaser or purchaser's

231 designee at a point outside New York State, where the final destination of the property is a  
232 point in New York State. Where possession of the property is transferred outside New York  
233 State, it is presumed that the final destination is a point outside New York State unless there  
234 is sufficient evidence to demonstrate that the destination is a point in New York State. See  
235 subdivision (b) of this section regarding evidence of destination.

236 (b) Examples of the types of evidence that ordinarily will be sufficient to demonstrate  
237 the final destination of property include:

238 (1) a bill of lading or other shipping document designating the final destination  
239 location, regardless of the F.O.B. point, and

240 (2) a purchase invoice designating the final destination location.

241 (c) For rules relating to receipts from sales of tangible personal property traded as  
242 commodities, see section 4-2.10 of this Subpart.

243

244 **Section 4-2.2 Receipts from rents and royalties. (Tax Law, Section 210-A(3))**

245 (a)(1) Receipts from rentals of real and tangible personal property located in New  
246 York State are included in New York receipts. One hundred percent of receipts from rentals of  
247 real and tangible personal property are included in everywhere receipts.

248 (2) Receipts from rentals include all amounts received by the taxpayer for the use of  
249 or occupation of tangible personal property or real property, whether or not such property is  
250 owned by the taxpayer.

251 (3) Gross receipts from real and tangible personal property that is subleased from the  
252 taxpayer must be included in the apportionment factor.

253 (4) The amount of receipts from the rental of motor vehicles and other rolling stock, such

254 as trucks or construction equipment, included in New York receipts is the product of such  
255 receipts and a fraction. Such fraction may be based on miles operated in New York State  
256 compared to total miles operated, time operated in New York State compared to total time  
257 operated, number of pickup and delivery locations in the state compared to the total of such  
258 locations, or any other method that fairly apportions such receipts to New York State. One  
259 hundred percent of the receipts from the rental of motor vehicles and other rolling stock, such as  
260 trucks or construction equipment, are included in everywhere receipts. Omnibus operations  
261 while engaged in school bus operations must be disregarded in computing the amount of New  
262 York receipts and everywhere receipts.

263 Example 1: Corporation W receives \$20,000 from its customer to provide transportation  
264 by omnibus from a location in New York State to a location outside of New York. Such  
265 transportation is not for school bus operations. Twenty-five percent of the miles traveled by the  
266 Corporation W's omnibus are in New York, 5 miles in New York State out of a total 20 miles.  
267 Corporation W must include \$5,000 in New York receipts ( $25\% * \$20,000$ ). Twenty thousand  
268 dollars is included in everywhere receipts.

269 Example 2: Corporation X receives \$500 from customer A and \$300 from customer B  
270 for short-term automobile rentals. Customer A picks up the automobile at Corporation X's New  
271 York location and returns it to such location. As both the pickup and return locations are in the  
272 state for customer A, the \$500 from customer A is included in New York receipts and  
273 everywhere receipts. Customer B picks up the automobile at Corporation X's New York  
274 location but returns it to Corporation X's location outside of New York State. As half of the  
275 pickup and return locations are in the state, half of the receipts from customer B, \$150, is  
276 included in New York receipts and \$300 is included in everywhere receipts. Corporation X has a

277 total of \$650 of New York receipts, \$500 from customer A and \$150 from customer B. It has  
278 \$800 in everywhere receipts, \$500 from customer A and \$300 from customer B.

279 (b)(1) Receipts from the use in New York State of patents, copyrights, trademarks,  
280 licenses, and similar intangibles are included in New York receipts. One hundred percent of  
281 receipts from the use of patents, copyrights, trademarks, licenses, and similar intangibles are  
282 included in everywhere receipts.

283 (2) These receipts include, but are not limited to, (i) all amounts received by the  
284 taxpayer for the use of patents, copyrights, trademarks, licenses, and similar intangibles whether  
285 or not such patents, copyrights, trademarks, licenses, and similar intangibles were issued to or are  
286 owned by the taxpayer and whether or not paid as royalties and (ii) amounts received from the  
287 use of copyrights for audio works, audiovisual works, visual works, graphic works, or games by  
288 whatever means delivered.

289 (3) A patent, copyright, trademark, license, and similar intangible such as a license is  
290 used in New York State to the extent that the activities thereunder are carried on in New York  
291 State.

292  
293 **Section 4-2.3 Receipts from the sales of, license to use, and granting of remote access**  
294 **to digital products. (Tax Law, Section 210-A(4))** – Draft regulation posted separately

295  
296 **Section 4-2.4 Net income from qualified financial instruments for corporations other**  
297 **than non-captive REITs and non-captive RICs (Tax Law, Section 210-A(5)(a))**

298 The following rules apply to taxpayers that are not subject to section 3-11.4 of this  
299 Subchapter.

300 (a)(1) A qualified financial instrument means any financial instrument that meets the  
301 following criteria: (i) the instrument is described in one of the specified clauses of Tax Law  
302 section 210-A(5)(a)(2): clause (A) - loans, (B) - federal, state and municipal debt, (C) - asset  
303 backed securities and other government agency debt, (D) - corporate bonds, (G) - stock or  
304 partnership interest, (H) - other financial instruments, or (I) - physical commodities; and  
305 (ii) the instrument has been marked to market in the taxable year.

306 (2) (i) If a taxpayer has marked to market any instrument described in clause (A), (B),  
307 (C), (D), or (I) of Tax Law section 210-A(5)(a)(2), then any other financial instrument described  
308 in the same clause that has not been marked to market is also a qualified financial instrument in  
309 the taxable year. Each of these clauses is one type of financial instrument.

310 (ii) The determination of qualified financial instrument is done separately for stocks and  
311 partnership interests described in Tax Law section 210-A(5)(a)(2)(G). Stocks are one type of  
312 financial instrument and partnership interests are another type of financial instrument. If a  
313 taxpayer has marked to market a stock, then any other stock that has not been marked to market  
314 is also a qualified financial instrument in the taxable year. If a taxpayer has marked to market a  
315 partnership interest, then any other partnership interest that has not been marked to market is also  
316 a qualified financial instrument in the taxable year.

317 (iii) If a taxpayer has marked to market a specific financial instrument described in Tax  
318 Law section 210-A(5)(a)(2)(H), then only a financial instrument of the same type is also a  
319 qualified financial instrument in the taxable year. Therefore, some types of financial instruments  
320 described in Tax Law section 210-A(5)(a)(2)(H) may be qualified financial instruments while  
321 other types of financial instruments subject to such clause may be nonqualified financial  
322 instruments.

323 (3) Notwithstanding the provisions of paragraphs (1) and (2) of this subdivision, the  
324 following financial instruments shall always be nonqualified financial instruments:

325 (i) loans secured by real property;

326 (ii) loans not secured by real property, if the only loans the taxpayer has marked to  
327 market are loans secured by real property;

328 (iii) stock that is investment capital as defined in Tax Law section 208(5) and section 3-  
329 4.1 of this Subchapter;

330 (iv) stock that generates other exempt income, as defined in Tax Law section 208(6-a)  
331 and section 3-4.7 of this Subchapter, that is not marked to market, with respect to that other  
332 exempt income;

333 (v) partnership interests that do not meet the definition of security in IRC section 475(c);

334 and

335 (vi) instruments the receipts from which are subject to Tax Law section 210-A(5)(b).

336 (4) If a corporation is included in a combined report, the determination of whether a  
337 financial instrument is a qualified financial instrument is determined as though all corporations  
338 included in the combined report are a single corporation. Thus, if one corporation in the  
339 combined group marks to market a specific type of financial instrument, then all such financial  
340 instruments of that type reported by every member of the combined group are considered  
341 qualified financial instruments.

342 (5) If a corporation is a partner in a partnership and is computing its tax with respect to its  
343 interest in the partnership using the aggregate method as described in section 3-13.3 of this  
344 Subchapter, and the partnership marks to market a type of financial instrument, the corporation is  
345 deemed to have marked to market that type of financial instrument for purposes of determining if

346 that type of financial instrument is a qualified financial instrument.

347 (b) Except as provided in subdivision (c) of this section, the amount of receipts, net  
348 income (not less than zero) and net gains (not less than zero) from qualified financial instruments  
349 included in New York receipts or everywhere receipts is determined using the customer sourcing  
350 method contained in Tax Law section 210-A(5)(a)(2) and as further described in this Subpart.

351 (c) (1) A taxpayer or the designated agent, in the case of a combined report, may elect the  
352 fixed percentage method to include eight percent of net income from qualified financial  
353 instruments in New York receipts and one hundred percent of all net income from qualified  
354 financial instruments in everywhere receipts (whether or not such net income would otherwise be  
355 included in the New York receipts or everywhere receipts pursuant to the provisions of Tax Law  
356 section 210-A(5)(a)(2)). Net income from qualified financial instruments is the sum of (i) net  
357 gains (not less than zero) from each type of qualified financial instrument that would be subject  
358 to the same customer sourcing method in Tax Law section 210-A(5)(a)(2) and the applicable  
359 regulations if not for the fixed percentage method, (ii) marked to market net gains (not less than  
360 zero) from each type of qualified financial instrument that would be subject to the same customer  
361 sourcing method in Tax Law section 210-A(5)(a)(2) and the applicable regulations if not for the  
362 fixed percentage method election, (iii) net income (not less than zero) from each type of qualified  
363 financial instrument that would be subject to the same customer sourcing method in Tax Law  
364 section 210-A(5)(a)(2) and the applicable regulations if not for the fixed percentage method, and  
365 (iv) receipts from each type of qualified financial instrument.

366 (2) The fixed percentage method election must be made annually and may only be made  
367 on an original, timely filed report, determined with regard to extensions for time for filing. Any  
368 fixed percentage method election made on a report that is filed late will be invalid and

369 ineffective.

370 (3) (i) Once the fixed percentage method election has been made in the manner required  
371 in paragraph (2) of this subdivision for a taxable year, it is binding on the taxpayer and the  
372 Department for that taxable year and cannot be revoked or overridden.

373 (ii) In the case of a combined report, the fixed percentage method election shall be made  
374 by the designated agent. It is binding on all members of a combined group and the Department  
375 for that taxable year and cannot be revoked or overridden.

376 (4) If the fixed percentage election has been made, other exempt income, as defined in  
377 Tax Law section 208(6-a) and section 3-4.7 of this Subchapter, generated by a stock that is  
378 marked to market shall be re-classified as business income and will be included in New York and  
379 everywhere receipts as provided in this subdivision.

380 (5) A partnership cannot make the fixed percentage method election.

381 (d) In the case of a combined report, net income from qualified financial instruments  
382 included in the combined group's New York receipts and everywhere receipts is the sum of (i)  
383 net gains (not less than zero) from each type of qualified financial instrument that would be  
384 subject to the same customer sourcing method in Tax Law section 210-A(5)(a)(2) and the  
385 applicable regulations if not for the fixed percentage method for all members of the combined  
386 group, (ii) marked to market net gains (not less than zero) from each type of qualified financial  
387 instrument that would be subject to the same customer sourcing method in Tax Law section 210-  
388 A(5)(a)(2) and the applicable regulations if not for the fixed percentage method election for all  
389 members of the combined group, (iii) net income (not less than zero) from each type of qualified  
390 financial instrument that would be subject to the same customer sourcing method in Tax Law  
391 section 210-A(5)(a)(2) and the applicable regulations if not for the fixed percentage method for

392 all members of the combined group, and (iv) receipts from each type of qualified financial  
393 instrument for all members of the combined group.

394 (e) Examples. For purposes of the following examples, it is assumed that the  
395 corporations do not have investment capital or other exempt income generated by stock that is  
396 not marked to market.

397 Example 1: Corporation X, a dealer in securities, elects to use the fixed percentage  
398 method in the manner required by subdivision (c) of this section to determine the amount of its  
399 net income (not less than zero) from qualified financial instruments to include in its New York  
400 receipts or everywhere receipts.

401 It owns and marks to market an unsecured loan. However, Corporation X was not  
402 required, under IRC section 475, to mark to market the loan, because the loan was acquired by  
403 Corporation X in the ordinary course of its business and is not being held for sale by Corporation  
404 X. Since the loan comes within this exception to the general rule that requires dealers in  
405 securities to use the mark to market accounting method for such securities, the loan has not been  
406 marked to market, as that term is defined in section 4-1.3(b) of this Part, for purposes of  
407 Corporation X's election to use the fixed percentage method. The loan will be deemed not to  
408 have been marked to market even if Corporation X fails to identify the loan as meeting the  
409 exception to the general rule. Also, since the loan has not been marked to market, as that term is  
410 defined in these regulations, no other loan that has not been marked to market by Corporation X  
411 will be a qualified financial instrument in the taxable year. These unsecured loans are  
412 nonqualified financial instruments. The amount of any receipts and net gains from these assets  
413 that are included in New York or everywhere receipts is determined using the customer sourcing  
414 rule in Tax Law 210-A(5)(a)(2)(A) and section 4-2.5 of this Subpart.

415 Example 2: Corporation X owns and marks to market unsecured loan A, corporate bond  
416 B, and stock C. In addition, it owns unsecured loan D, unsecured loan E, corporate bond F,  
417 corporate bond G, stock H, loan I secured by real property, and loan J secured by real property  
418 but does not mark to market these instruments. Corporation X elects to use the fixed percentage  
419 method in the manner required by subdivision (c) of this section to determine the amount of net  
420 income (not less than zero) from qualified financial instruments included in New York receipts  
421 or everywhere receipts.

422 The following instruments are considered qualified financial instruments: unsecured  
423 loans A, D and E; corporate bonds B, F, and G; and stocks C and H. The amount of net income  
424 (not less than zero) from qualified financial instruments included in New York receipts or  
425 everywhere receipts is determined using the rules for the fixed percentage method. Loans I and J  
426 secured by real property are nonqualified financial instruments. Therefore, the amount of  
427 receipts and net gains (not less than zero) from these instruments included in Corporation X's  
428 New York receipts or everywhere receipts is determined using the customer sourcing method in  
429 Tax Law section 210-A(5)(a)(2) and the applicable regulations.

430 Example 3: Corporations Y and Z are properly included in a combined report.  
431 Corporation Y owns and marks to market loans secured by real property, corporate bonds, and  
432 interests in publicly traded partnerships. Corporation Z owns unsecured personal loans, stocks,  
433 and corporate bonds, but does not mark to market these financial instruments. Corporation Y, the  
434 designated agent, elects to use the fixed percentage method in the manner required by  
435 subdivision (c) of this section to determine the amount of the combined group's net income (not  
436 less than zero) from qualified financial instruments to include in the combined group's New  
437 York receipts or everywhere receipts.

438           The following instruments are qualified financial instruments in the combined report of  
439 Corporations Y and Z: Corporation Y's corporate bonds and interests in publicly traded  
440 partnerships and Corporation Z's corporate bonds. The amount of receipts, net gains (not less  
441 than zero), and net income (not less than zero) from these instruments included in the combined  
442 group's New York receipts or everywhere receipts is determined using the rules for the fixed  
443 percentage method. Corporation Y's loans secured by real property are always considered  
444 nonqualified financial instruments. In addition, Corporation Z's unsecured loans are  
445 nonqualified financial instruments because the only loans that are marked to market by either  
446 corporation are loans secured by real property and Corporation Z's stocks are nonqualified  
447 financial instruments because neither corporation marked to market stocks. Therefore, the  
448 amount of such receipts and net gains (not less than zero) included in the combined group's New  
449 York receipts or everywhere receipts is determined using the customer sourcing method outlined  
450 in Tax Law section 210-A(5)(a)(2) and applicable regulations.

451           Example 4: Corporation X elects to use the fixed percentage method in the manner  
452 required by paragraph (2) of subdivision (c) of this section to determine the amount of its net  
453 income (not less than zero) from qualified financial instruments to include in the New York  
454 receipts or everywhere receipts.

455           It has \$1,000 in dividends from Stock A, (\$200) loss from the sale of Stock B, \$750 gain  
456 from the sale of corporate bond C that was sold through a licensed exchange, \$25,000 gain from  
457 the sale of corporate bond D that was not sold through a registered securities broker or dealer or  
458 through a licensed exchange, \$10,000 of marked to market gains from stock, and (\$2,500)  
459 marked to market losses from stock. Corporation X marks to market its stocks and bonds.  
460 Therefore, stocks and bonds constitute qualified financial instruments.

461 Corporation X has \$34,250 of net income (not less than zero) from qualified financial  
462 instruments included in everywhere receipts broken down as follows:

- 463 • \$1,000 of dividends from stock;
- 464 • \$0 of gains from sales of stock (as the loss is limited to zero);
- 465 • \$750 of gains from sales of bonds sold through a licensed exchange or registered  
466 securities broker or dealer;
- 467 • \$25,000 of gains from sales of bonds not sold through a licensed exchange or  
468 registered securities broker or dealer; and
- 469 • \$7,500 of marked to market net gains from stock (\$10,000 minus \$2,500).

470 Corporation X includes \$2,740 (8 percent multiplied by \$34,250) from qualified financial  
471 instruments in its New York receipts. Since Corporation X only has net income (not less than  
472 zero) from qualified financial instruments, the result is a business apportionment factor of  
473 0.080000.

474 Example 5: Corporations R and S are properly included in a combined report, with  
475 Corporation R identified as the designated agent. Corporation R elects to use the fixed  
476 percentage method in the manner required by subdivision (c) of this section to determine the  
477 amount of the combined group's net income (not less than zero) from qualified financial  
478 instruments to include in New York receipts and everywhere receipts.

479 Corporation R owns and marks to market stock A, stock B, bond D issued by State D,  
480 and unsecured loan H. Corporation S owns stock C, treasury bill E, bond F issued by New York  
481 State, and unsecured loan G but does not mark to market these instruments. Although  
482 Corporation S does not mark to market its stock, government issued debt, and unsecured loan,  
483 these instruments still are qualified financial instruments because the determination is done as

484 though all the corporations properly included in the combined report are a single corporation.

485 The income, gains, or losses from qualified financial instruments for Corporations R and

486 S is broken down as follows:

- 487 • \$200 of dividends from stock A;
- 488 • \$750 of dividends from stock B;
- 489 • (\$300) loss from the sale of stock C;
- 490 • \$500 gain from the sale of State D bond;
- 491 • \$150 of interest from treasury bill E;
- 492 • \$100 gain from the sale of New York State bond F;
- 493 • \$600 of interest from unsecured loan G;
- 494 • \$1,000 gain from the sale of unsecured loan H; and
- 495 • \$400 of marked to market net gains from stock.

496 The combined group includes \$3,700 of net income (not less than zero) from such

497 qualified financial instruments in everywhere receipts broken down as follows:

- 498 • \$950 of dividends from stock;
- 499 • \$0 of gains from sales of stock (as the loss is limited to zero);
- 500 • \$500 of gains from sales of other state bonds (100 percent of the net gain is included
- 501 when the fixed percentage election is made, as opposed to 50 percent of the net gain
- 502 under the customer sourcing method);
- 503 • \$150 of interest from treasury bills;
- 504 • \$100 of gains from sales of New York State bonds;
- 505 • \$600 of interest from unsecured loans;
- 506 • \$1,000 of gain from unsecured loans; and

- 507           • \$400 of marked to market net gains from stock.

508           The combined group includes \$296 (\$3,700 multiplied by 8 percent) of net income from  
509 qualified financial instruments in the combined group's New York receipts.

510           In addition, corporation R owns loan I secured by real property and Corporation S owns  
511 loan J secured by real property and an interest in widely held partnership K. Since Corporation S  
512 does not mark to market its interest in widely held partnership K and Corporation R does not  
513 own and mark to market any publicly traded or widely held partnerships, the interest in  
514 partnership K is a nonqualified financial instrument. The amount of income, gains, and losses  
515 from nonqualified financial instruments for Corporations R and S is broken down as follows:

- 516           • \$300 gain from the sale of loan I secured by real property in State Y (\$0 is included  
517 in the combined group's New York receipts and \$300 is included in the combined  
518 group's everywhere receipts);
- 519           • \$250 gain from the sale of loan J secured by real property in New York (\$250 is  
520 included in both the combined group's New York receipts and everywhere receipts);
- 521           • \$400 gain from the sale of widely held partnership K domiciled in New York (\$0 is  
522 included in both the combined group's New York receipts and everywhere receipts);  
523 and
- 524           • \$200 of marked to market net gains from loans secured by real property (\$91 is  
525 included in the combined group's New York receipts and \$200 is included in the  
526 combined group's everywhere receipts. The amount included in the combined  
527 group's New York receipts is determined by multiplying the \$200 of marked to  
528 market net gains by the ratio of net gains from actual sales of loans secured by real  
529 property located in New York to net gains from actual sales of all loans secured by

530 real property [\$250/\$550]).

531 The combined group includes \$341 of income and net gains from nonqualified financial  
532 instruments in its New York receipts and \$750 of income and net gains from nonqualified  
533 financial instruments in its everywhere receipts.

534 The combined group has a total of \$637 of New York receipts (\$296 from qualified  
535 financial instruments and \$341 from nonqualified financial instruments) and \$4,450 of  
536 everywhere receipts (\$3,700 from qualified financial instruments and \$750 from nonqualified  
537 financial instruments). The result is the combined group's business apportionment factor is  
538 0.143146.

539

540 **Section 4-2.5 Interest income and net gains from loans. (Tax Law, Section 210-**

541 **A(5)(a)(2)(A))**

542 (a) (1) A loan secured by real property means that real property constitutes fifty percent or  
543 more of the aggregate value of the collateral used to secure a loan, when valued at fair market  
544 value (FMV), as of the time the loan is originated.

545 (2) Interest income from loans secured by real property located within the state shall be  
546 included in New York receipts. If one or more of the properties that secure the loan are located  
547 outside of New York, the amount of interest income from such loan included in New York  
548 receipts is the product of such interest income and a fraction, the numerator of which is the FMV  
549 of real property located in New York State used to secure the loan and the denominator of which  
550 is the FMV of all real property used to secure the loan. All interest income from loans secured by  
551 real property shall be included in everywhere receipts.

552 (3) (i) The amount of net gains (not less than zero) from sales of loans secured by real

553 property included in New York receipts is the product of net gains from all loans secured by real  
554 property and a fraction, the numerator of which is gross proceeds from sales of loans secured by  
555 real property located within the state and the denominator of which is gross proceeds from sales  
556 of loans secured by real property located within and without New York State. Net gains (not less  
557 than zero) from all loans secured by real property computed in subparagraph (iii) of this paragraph  
558 shall be included in everywhere receipts.

559 (ii) For each sale of a loan secured by real property, the taxpayer shall compute a gain or  
560 loss from the sale by subtracting the carrying cost of the loan from the sale price of the loan. If  
561 the sale price exceeds the carrying cost, the result is a gain. If the sale price is less than the  
562 carrying cost, the result is a loss.

563 (iii) To determine the amount of net gains from sales of loans secured by real property, the  
564 taxpayer shall subtract the sum of all losses computed in subparagraph (ii) of this paragraph from  
565 the sum of all gains computed in subparagraph (ii) of this paragraph. If the result is equal to or  
566 less than zero, no amount is included in New York receipts and everywhere receipts.

567 (iv) Gross proceeds shall be determined after the deduction of transactional costs incurred  
568 to acquire the loan but shall not be less than zero. The transactional costs incurred to acquire the  
569 loan shall not include the carrying cost of the loan.

570 (v) If one or more of the properties that secure the loan are located outside of New York,  
571 the amount of gross proceeds from loans secured by real property within the state is the product of  
572 all such gross proceeds and a fraction, the numerator of which is the FMV of real property located  
573 in New York State used to secure the loan and the denominator of which is the FMV of all real  
574 property used to secure the loan.

575 (b) (1) A loan not secured by real property means that less than fifty percent of the

576 aggregate value of the collateral used to secure a loan, when valued at FMV as of the time the  
577 loan is originated, is real property.

578 (2) Interest income from loans not secured by real property is included in New York  
579 receipts if borrower's location as of the time the loan is originated is in New York State. All  
580 interest income from loans not secured by real property is included in everywhere receipts. If the  
581 borrower is an individual, the borrower's location is the borrower's billing address in the records  
582 of the lender. If the borrower is a business entity, the borrower's location is the borrower's  
583 commercial domicile.

584 (3)(i) The amount of net gains (not less than zero) from sales of loans not secured by real  
585 property included in New York receipts is the product of net gains from all loans not secured by  
586 real property and a fraction, the numerator of which is gross proceeds from sales of loans not  
587 secured by real property to purchasers located within the state and the denominator of which is  
588 gross proceeds from sales of loans not secured by real property to purchasers located within and  
589 without New York State. Net gains (not less than zero) from the sale of loans not secured by real  
590 property computed in subparagraph (iii) of this paragraph shall be included in everywhere  
591 receipts.

592 (ii) For each sale of a loan not secured by real property, the taxpayer shall compute a gain  
593 or loss from the sale by subtracting the carrying cost of the loan from the sale price of the loan. If  
594 the sale price exceeds the carrying cost, the result is a gain. If the sale price is less than the  
595 carrying cost, the result is a loss.

596 (iii) To determine the amount of net gains from sales of all loans not secured by real  
597 property, the taxpayer shall subtract the sum of all losses computed in subparagraph (ii) of this  
598 paragraph from the sum of all gains computed in subparagraph (ii) of this paragraph. If the result

599 is equal to or less than zero, no amount shall be included in New York receipts and everywhere  
600 receipts.

601 (iv) Gross proceeds shall be determined after the deduction of transactional costs incurred  
602 to acquire the loan but shall not be less than zero. The transactional costs incurred to acquire the  
603 loan shall not include the carrying cost of the loan.

604 (c) The determinations of the type of loan, FMV of real property, and borrower's location  
605 are made only at the time the loan is originated, and will be redetermined only if the loan is  
606 refinanced.

607 (d) Examples

608 Example 1: Corporation X has interest income from loans secured by real property of  
609 \$5,000, broken down as follows:

- 610 • \$2,500 from Loan N secured by real property located in New York;
- 611 • \$1,500 from Loan O secured by real property located outside of New York; and
- 612 • \$1,000 from Loan P secured by property located in New York and another state.

613 The \$2,500 of interest income from Loan N is included in New York receipts because the  
614 property used to secure the loan is located within the state. The \$1,500 of interest income from  
615 Loan O is not included in New York receipts because the property used to secure the loan is not  
616 in New York State.

617 Because the property used to secure Loan P is located within and without New York,  
618 Corporation X must determine the fair market value (FMV) of the properties at the time the loan  
619 was originated when determining the portion of such interest income to include in New York  
620 receipts. At the time the loan was originated, the FMV of the New York property was \$200,000  
621 and the FMV of the property located outside of New York was \$300,000. Therefore,

622 Corporation X includes \$400 ( $\$200,000/\$500,000 * \$1,000$ ) of the interest income from loan P  
623 in New York receipts

624 Corporation X includes \$2,900 of interest income from loans secured by real property in  
625 New York receipts and \$5,000 interest income from loans secured by real property in  
626 everywhere receipts.

627 Example 2: Corporation Y's sale of Loans N and O, secured by real property within and  
628 without the state, during the taxable year are broken down as follows:

- 629 • Loan N, secured only by real property in New York, was sold for \$300,000. After  
630 deducting its carrying cost of the loan from the sale price, Corporation Y computes a  
631 loss of \$1,000 from Loan N; and
- 632 • Loan O, secured by real property in New York and another state, was sold for  
633 \$200,000. After deducting its carrying cost of the loan from the sale price,  
634 Corporation Y computes a gain of \$1,500 from Loan O.

635 Corporation Y has net gains from loans secured by real property of \$500, the \$1,000 loss  
636 from Loan N offsets the \$1,500 gain from Loan O.

637 To determine the amount of net gains from loans secured by real property to include in  
638 New York receipts, Corporation Y must determine the gross proceeds from sales of loans secured  
639 by real property in New York and total gross proceeds from loans secured by real property.

640 As the property used to secure Loan O is located within and without New York,  
641 Corporation Y first determines that the fair market value (FMV) at the time the loan was  
642 originated of the New York property was \$200,000 and the property located outside of New  
643 York was \$300,000. Therefore, the New York property is 40 percent ( $\$200,000/\$500,000$ ) of the  
644 total FMV of all the properties used to secure Loan O.

645           The gross proceeds from loans secured by real property within the state of \$380,000 is  
646 the sum of \$300,000 from loan N and \$80,000 from Loan O ( $\$200,000 \text{ gross proceeds} * 40\%$ ).  
647 The total gross proceeds of loans secured by real property located within and without the state is  
648 \$500,000. Corporation Y's gross proceeds fraction of  $\$380,000/\$500,000$  (or 76%) is used to  
649 determine the portion of net gains from loans secured by real property in New York.  
650 Corporation Y includes \$380 of net gains from loans secured by real property in New York  
651 receipts ( $76\% * \$500$ ). Five hundred dollars of net gains from loans secured by real property is  
652 included in everywhere receipts.

653           Example 3: Taxpayer D makes multiple loans not secured by real property to  
654 Corporation E, domiciled in State X. Each loan is executed by a separate division of Corporation  
655 E and the divisions are located in State Y, State Z, and New York State. The interest income  
656 earned by Taxpayer D on these loans is not included in New York receipts because Corporation  
657 E's commercial domicile is State X. All such interest income is included in everywhere receipts.

658           Example 4: Taxpayer E earns interest income from a loan not secured by real property  
659 that it made to Corporation F, domiciled in New York at the time the loan is originated. The  
660 interest income is included in New York receipts because Corporation F's commercial domicile  
661 is New York State. Five years after the loan is originated, the commercial domicile of  
662 Corporation F changes from New York State to State X. The interest income continues to be  
663 included in New York receipts because Corporation F's commercial domicile at the time the loan  
664 was originated was New York State. All such interest income is included in everywhere  
665 receipts.

666

667           **Section 4-2.6 Interest income and net gains from asset backed securities and other**  
668 **government agency debt (Tax Law, Section 210-A(5)(a)(2)(C))**

669           (a) Eight percent of interest income from (i) asset backed securities or other securities  
670 issued by government agencies, including but not limited to securities issued by the Government  
671 National Mortgage Association, the Federal National Mortgage Association, the Federal Home  
672 Loan Mortgage Corporation, or the Small Business Administration, or (ii) asset backed securities  
673 issued by other entities, is included in New York receipts. One hundred percent of all such  
674 interest income is included in everywhere receipts.

675           (b)(1) Eight percent of net gains (not less than zero) from sales of (i) asset backed  
676 securities or other securities issued by government agencies or (ii) asset backed securities that are  
677 sold through a registered securities broker or dealer or through a licensed exchange is included in  
678 New York receipts. One hundred percent of all such net gains (not less than zero) is included in  
679 everywhere receipts.

680           (2) The amount of net gains (not less than zero) from sales of asset backed securities not  
681 referenced in paragraph (1) of this subdivision included in New York receipts is the product of net  
682 gains from the sale of all such asset backed securities and a fraction, the numerator of which is  
683 gross proceeds from sales of such asset backed securities to purchasers located within the state  
684 and the denominator of which is gross proceeds from sales of such asset backed securities to  
685 purchasers located within and without New York State. Net gains (not less than zero) from the  
686 sale such of such asset backed securities is included in everywhere receipts.

687           (c) (1) For each sale of an asset backed security, the taxpayer shall compute a gain or loss  
688 from the sale by subtracting the basis in such security from the sale price of such security. If the  
689 sale price exceeds the basis, the result is a gain. If the sale price is less than the basis, the result is

690 a loss.

691 (2) To determine the amount of net gains from sales of the asset backed securities  
692 referenced in subdivision (b) of this section, the taxpayer shall subtract the sum of all losses from  
693 the sale of such asset backed securities from the sum of all gains from the sale of such asset  
694 backed securities. If the result is equal to or less than zero, no amount is included in New York  
695 receipts and everywhere receipts.

696 (3) To determine the amount of net gains from sales of the asset backed securities  
697 referenced in paragraph (2) of subdivision (b) of this section, the taxpayer shall subtract the sum  
698 of all losses from the sale of such asset backed securities from the sum of all gains from the sale  
699 of such asset backed securities. If the result is equal to or less than zero, no amount is included in  
700 New York receipts and everywhere receipts.

701 (d) If the purchaser is an individual, the individual is located in New York if the  
702 taxpayer's records indicate his or her billing address in the records of the taxpayer is in the state.  
703 If the purchaser is a business entity, the business entity is located in New York if its commercial  
704 domicile is in the state.

705 (e) Gross proceeds shall be determined after the deduction of transactional costs incurred  
706 to acquire the asset backed security but shall not be less than zero. The transactional costs  
707 incurred to acquire the asset backed security shall not include the taxpayer's basis.

708

709 **Section 4-2.7 Interest income and net gains from corporate bonds (Tax Law, Section**  
710 **210-A(5)(a)(2)(D))**

711 (a) Interest income from corporate bonds is included in New York receipts if the  
712 commercial domicile of the issuing corporation is in New York. All interest income from

713 corporate bonds is included in everywhere receipts.

714 (b)(1) Eight percent of net gains (not less than zero) from sales of corporate bonds sold  
715 through a registered securities broker or dealer or through a licensed exchange is included in New  
716 York receipts. One hundred percent of all such net gains (not less than zero) computed in  
717 paragraph (3) of this subdivision is included in everywhere receipts.

718 (2) The amount of net gains (not less than zero) from sales of corporate bonds other than  
719 bonds sold through a registered securities broker or dealer or through a licensed exchange  
720 included in New York receipts is the product of net gains from the sale of all such bonds and a  
721 fraction, the numerator of which is gross proceeds from sales of such bonds to purchasers located  
722 within the state and the denominator of which is gross proceeds from sales of such bonds to  
723 purchasers located within and without New York State. Net gains (not less than zero) from the  
724 sale of such bonds computed in paragraph (3) shall be included in everywhere receipts.

725 (c) (1) For each sale of a bond, the taxpayer shall compute a gain or loss from the sale by  
726 subtracting the basis in such bond from the sale price of such bond. If the sale price exceeds the  
727 basis, the result is a gain. If the sale price is less than the basis, the result is a loss.

728 (2) To determine the amount of net gains from sales of corporate bonds sold through a  
729 registered securities broker or dealer or through a licensed exchange, the taxpayer shall subtract  
730 the sum of all losses from the sale of such bonds from the sum of all gains computed from the sale  
731 of such bonds. If the result is equal to or less than zero, no amount is included in New York  
732 receipts and everywhere receipts.

733 (3) To determine the amount of net gains from sales of corporate bonds other than bonds  
734 sold through a registered securities broker or dealer or through a licensed exchange, the taxpayer  
735 shall subtract the sum of all losses computed in paragraph (2) of this subdivision from the sum of

736 all gains computed in paragraph (2) of this subdivision. If the result is equal to or less than zero,  
737 no amount shall be included in New York receipts and everywhere receipts.

738 (4) If the purchaser is an individual, the individual is located in New York if its billing  
739 address in the records of the taxpayer is in the state. If the purchaser is a business entity, the  
740 business entity is located in New York if its commercial domicile is in the state.

741 (5) Gross proceeds shall be determined after the deduction of transactional costs incurred  
742 to acquire the corporate bond but shall not be less than zero. The transactional costs incurred to  
743 acquire the corporate bond shall not include the taxpayer's basis.

744

745 **Section 4-2.8 Net interest income from reverse repurchase agreements and securities**  
746 **borrowing agreements (Tax Law, Sec. 210-A(5)(a)(2)(E))**

747 (a) Eight percent of net interest income (not less than zero) from reverse repurchase  
748 agreements and securities borrowing agreements is included in New York receipts. Net interest  
749 income (not less than zero) from reverse repurchase agreements and securities borrowing  
750 agreements is included in everywhere receipts.

751 (b) Net interest income from reverse repurchase agreements and securities borrowing  
752 agreements is determined for purposes of this subdivision after the deduction of the interest  
753 expense from the corporation's repurchase agreements and securities lending agreements but  
754 cannot be less than zero. For this calculation, the amount of such interest expense is the interest  
755 expense associated with the sum of the value of the taxpayer's repurchase agreements where it is  
756 the seller/borrower plus the value of the taxpayer's securities lending agreements where it is  
757 the securities lender, provided such sum is limited to the sum of the value of the taxpayer's

758 reverse repurchase agreements where it is the purchaser/lender plus the value of the  
759 taxpayer's securities lending agreements where it is the securities borrower.

760 (c) Example: Taxpayer A has \$4,000 of interest income from reverse repurchase  
761 agreements and \$5,000 of interest expense from repurchase agreements for the tax year ended  
762 December 31, 2016. Taxpayer A also has \$6,000 of interest income from securities borrowing  
763 agreements and \$3,000 of interest expense from securities lending agreements for the same year.  
764 To determine the amount of net interest income from these transactions, Taxpayer A must reduce  
765 the sum of the interest income from reverse repurchase agreements and securities borrowing  
766 agreements by the sum of the interest expense from repurchase agreements and securities lending  
767 agreements. The result is \$2,000 ( $\$4,000 + \$6,000 - \$5,000 - \$3,000$ ) of net interest income from  
768 reverse repurchase and securities borrowing agreements that is included in everywhere  
769 receipts. Taxpayer A must also report \$160 (8% of \$2,000) in New York receipts.

770 **Section 4-2.9 Net interest income from federal funds ((Tax Law, Sec. 210-**  
771 **A(5)(a)(2)(F))**

772 (a) Eight percent of net interest income (not less than zero) from federal funds is included  
773 in New York receipts. The net interest income (not less than zero) from federal funds is included  
774 in everywhere receipts.

775 (b) Net interest income from federal funds is determined after the deduction of interest  
776 expense from federal funds. Interest income from federal funds includes interest income paid  
777 directly by the federal reserve on funds deposited at a federal reserve bank and interest income  
778 paid by another institution on the taxpayer's funds deposited at a federal reserve bank that are  
779 borrowed by another institution in the federal reserve system. Interest expense from federal  
780 funds includes the interest paid by the taxpayer to another institution in the federal reserve

781 system for the use of the other institution's funds deposited at a federal reserve bank.

782

783 **Section 4-2.10 Net income from commodities (Tax Law, Sec. 210-A(5)(a)(2)(I))**

784 (a) (1) The amount of net income (not less than zero) from all commodities included in

785 New York receipts or everywhere receipts is determined separately for sales of commodities

786 actually delivered and sales of commodities where delivery does not actually occur. The amount

787 of net income (not less than zero) included in New York receipts from sales of commodities

788 actually delivered occurs is the product of such net income (not less than zero) and a fraction, the

789 numerator of which is the amount of gross receipts from sales of all commodities actually

790 delivered to points within the state and the denominator of which is the amount of all gross

791 receipts from sales of commodities actually delivered. The amount of net income (not less than

792 zero) included in New York receipts from commodities where delivery does not actually occur is

793 the product of such net income (not less than zero) and a fraction, the numerator of which is the

794 amount of gains from sales of commodities where delivery does not actually occur to purchasers

795 located in the state and the denominator of which is the amount of gains from all sales of

796 commodities where delivery does not actually occur to all purchasers. One hundred percent of net

797 income (not less than zero) from sales of commodities actually delivered is included in

798 everywhere receipts. One hundred percent of net income (not less than zero) from sales of

799 commodities where delivery does not actually occur is included in everywhere receipts.

800 (2) Net income (not less than zero) is determined by subtracting the cost to acquire or

801 produce all commodities from the gross proceeds from the sale of commodities, provided the

802 result cannot be less than zero. The cost to acquire or produce all commodities includes the

803 purchase price of commodities and all transaction costs associated with the purpose of the

804 commodities.

805 (3) Example.

806 Corporation A, a separate Article 9-A filer, makes sales of commodities where the  
807 commodities are actually delivered and sales of commodities where delivery does not actually  
808 occur.

809 Sales of commodities actually delivered

810 Corporation A has receipts from sales of commodities where the commodities are actually  
811 delivered broken down as follows:

- 812 • \$200 of gross receipts from gold sold to purchasers in states other than New York  
813 State but delivered to New York State;
- 814 • \$700 of gross receipts from gold sold to purchasers located in New York State but  
815 delivered to states other than New York State;
- 816 • \$100 of gross receipts from silver sold to purchasers located in New York State but  
817 delivered to states other than New York State; and
- 818 • \$1,000 of gross receipts from electricity sold to purchasers located in New York  
819 State and delivered to points within New York.

820 Corporation A incurred the following costs to acquire or produce the commodities where  
821 the commodities are actually delivered:

- 822 • \$715 for gold;
- 823 • \$85 for silver; and
- 824 • \$400 for electricity.

825 Corporation A uses the customer sourcing rule contained in Tax Law section 210-  
826 A.5(a)(2)(I) and this section to determine the amount of net income (not less than zero) to

827 include in its New York receipts or everywhere receipts.

828 Corporation A first determines the amount of gross receipts from sales of commodities  
829 where the commodities are actually delivered, which is \$2,000 (\$200 plus \$700 plus \$100 plus  
830 \$1,000). Next, Corporation A determines the total cost it incurred to acquire or produce such  
831 commodities, which is \$1,200 (\$715 plus \$85 plus \$400). The result is Corporation A has \$800  
832 of net income from sales of commodities that are actually delivered.

833 The amount of net income from the sales of commodities actually delivered that is  
834 included in New York receipts is the net income from such sales multiplied by a fraction, the  
835 numerator of which is the amount of gross receipts from sales of commodities actually delivered  
836 to points within New York State and the denominator of which is the amount of gross receipts  
837 from sales of commodities actually delivered. Corporation A multiplies its net income of \$800  
838 by 60 percent ( $\$1,200/\$2,000$ ), and the product is \$480, which Corporation A must include in its  
839 New York receipts. All \$800 of net income from sales of commodities actually delivered is  
840 included in everywhere receipts.

841 Sales of commodities where delivery does not actually occur

842 Corporation A has gains and losses from sales of commodities that are not actually  
843 delivered in the following amounts:

- 844 • \$100 of gains from gold sold to purchasers located in New York State;
- 845 • (\$200) of losses from gold sold to purchasers located in New York State;
- 846 • \$500 of gains from gold sold to purchasers located in states other than New York  
847 State;
- 848 • \$ 400 of gains from corn sold to purchasers located in states other than New York  
849 State; and

850                   • (\$300) of losses from corn sold to purchasers located in states other than New  
851                   York State.

852                   Corporation A first determines the amount of net income from sales of commodities that  
853                   are not actually delivered, which is \$500 ( $\$100 - \$200 + \$500 + \$400 - \$300$ ). Next, it  
854                   determines the amount of gains from such sales, which is \$1,000 ( $\$100 - \$0 + \$500 + \$400 - \$0$ ).

855                   The amount of net income to be included in New York from the sales of commodities that  
856                   are not actually delivered is determined by multiplying such net income by a fraction, the  
857                   numerator of which is the amount of gains from sales to purchasers located within New York  
858                   State of commodities that are not actually delivered and the denominator of which is the amount  
859                   of gains from sales of commodities that are not actually delivered. Corporation A multiplies its  
860                   \$500 of net income by 10 percent ( $\$100/\$1,000$ ). The result is \$50 included in New York  
861                   receipts. All \$500 of net income is included in everywhere receipts.

862                   Total sales of commodities

863                   Corporation A includes \$530 ( $\$480 + \$50$ ) of net income from commodities in its New  
864                   York receipts and \$1,300 ( $\$800 + \$500$ ) of net income from commodities in its everywhere  
865                   receipts.

866                   (b) (1) In the case of a combined report, the amount of net income (not less than zero) of  
867                   the combined group from commodities included in the combined group's New York receipts or  
868                   everywhere receipts is determined separately for sales of commodities actually delivered and sales  
869                   of commodities where delivery does not actually occur. The amount of net income (not less than  
870                   zero) for all members of the combined group included in the combined group's New York  
871                   receipts from sales of commodities actually delivered is the product of such net income (not less  
872                   than zero) and a fraction, the numerator of which is the amount of gross receipts from sales of all

873 commodities actually delivered to points within the state for all members of the combined group  
874 and the denominator of which is the amount of all gross receipts from sales of commodities that  
875 are actually delivered for all members of the combined group. The amount of net income (not  
876 less than zero) for all members of the combined group included in the combined group's New  
877 York receipts from commodities where delivery does not actually occur is the product of such net  
878 income (not less than zero) and a fraction, the numerator of which is the amount of gains from  
879 sales of commodities to purchasers located in the state, where delivery does not actually occur, for  
880 all members of the combined group and the denominator of which is the amount of gains from all  
881 sales of commodities to all purchasers, where delivery does not actually occur, for all members of  
882 the combined group. One hundred percent of net income (not less than zero) from sales of  
883 commodities for all members of the combined group is included in the combined group's  
884 everywhere receipts.

885 (2) Net income (not less than zero) is determined by subtracting the cost to acquire or  
886 produce all commodities from the gross proceeds from the sale of commodities, provided the  
887 result cannot be less than zero. The cost to acquire or produce all commodities is the amount paid  
888 to purchase or produce the commodity. The cost to acquire or produce all commodities includes  
889 the purchase price of commodities and all transaction costs associated with the purchase of the  
890 commodities.

891 (c) For purposes of this section, the term commodity has the same meaning as in  
892 subparagraphs (A), (B), and (C) of IRC section 475(e)(2).

893 (d) For rules pertaining to sales of tangible personal property that is not traded as  
894 commodities, see section 4-2.1 of this Subpart.

895

896           **Section 4-2.11 Marked to market net gains (Tax Law, Sections 210-A(5)(a)(1) and**  
897 **210-A(5)(a)(2)(J))**

898           (a) If the taxpayer or designated agent, in the case of a combined group, has made the  
899 fixed percentage method election in the manner required by subdivision (c) of section 4-2.4 of  
900 this Subpart, then eight percent of marked to market net gains (not less than zero) from each type  
901 of qualified financial instrument is included in New York receipts and one hundred percent of  
902 such marked to market net gains are included in everywhere receipts.

903           (b) If the taxpayer or designated agent, in the case of a combined group, has not made  
904 the fixed percentage method election, then the amount of marked to market net gains from  
905 qualified financial instruments included in New York receipts or everywhere receipts is  
906 determined using the rules set forth in paragraphs (1), (2) and (3) of this subdivision. The  
907 amount of marked to market net gains (not less than zero) from instruments that are not qualified  
908 financial instruments included in New York receipts or everywhere receipts is also determined  
909 using the rules set forth in paragraphs (1), (2) and (3) of this subdivision.

910           (1) Marked to market net gains (not less than zero) from stocks are not included in New  
911 York receipts or everywhere receipts, unless the Commissioner has required that net gains from  
912 sales of stocks be included in the apportionment factor pursuant to Tax Law section 210-  
913 A(5)(a)(2)(G). Marked to market net gains (not less than zero) from partnership interests are not  
914 included in New York receipts or everywhere receipts, unless the Commissioner has required  
915 that net gains from the sale of partnership interests be included in the apportionment factor  
916 pursuant to Tax Law section 210-A(5)(a)(2)(G).

917           (2) The amount of marked to market net gains (not less than zero) from each type of  
918 financial instrument included in New York receipts is determined by multiplying the marked to

919 market net gains (not less than zero) from each such type of financial instrument by a fraction,  
920 the numerator of which is the net gains from actual sales of that type of financial instrument  
921 included in New York receipts determined under the applicable clause of Tax Law section 210-  
922 A(5)(a)(2) and the denominator of which is the net gains from actual sales of that type of  
923 financial instrument included in everywhere receipts determined under the applicable clause of  
924 Tax Law section 210-A(5)(a)(2). Marked to market net gains (not less than zero) from financial  
925 instruments for which the amount included in New York receipts is determined under the  
926 immediately preceding sentence are included in everywhere receipts.

927 (3) If there are no actual sales of that type of financial instrument that is marked to  
928 market or if the taxpayer has an overall net loss from the actual sale of that type of financial  
929 instrument, the amount of marked to market net gains (not less than zero) from that type of  
930 financial instrument included in New York receipts is determined by multiplying the marked  
931 to market net gains (but not less than zero) from that type of financial instrument by a  
932 fraction, the numerator of which is the sum of the amount of receipts included New York  
933 receipts under clauses (A) - loans, (B) - federal, state, and municipal debt, (C) - asset backed  
934 securities and other agency debt, (D) - corporate bonds, (E) - reverse repurchase agreements and  
935 securities borrowing agreements, (F) - federal funds, (G) - stock or partnership interests, (H) -  
936 other financial instruments and (I) - physical commodities of Tax Law section 210-A(5)(a)(2)  
937 and subclause (ii) of Tax Law section 210-A(5)(a)(2)(J), and the denominator of which is the  
938 sum of the amount of receipts included in the everywhere receipts under clauses (A), (B),  
939 (C), (D), (E), (F), (G), (H) and (I) of Tax Law section 210-A(5)(a)(2) and subclause (ii) of Tax  
940 Law section 210-A(5)(a)(2)(J). One hundred percent of marked to market net gains (not less  
941 than zero) for which the amount to be included in New York receipts determined under the

942 immediately preceding sentence are included in everywhere receipts.

943

944 **Section 4-2.12 Interest income, net gains, and other income from other financial**  
945 **instruments. (Tax Law, Section 210-A(5)(a)(2)(H))**

946 (a) Interest income, net gains (not less than zero), and other income (not less than zero)  
947 from other financial instruments includes interest income, net gains, and other income from  
948 financial instruments that are not described in the rules for Tax Law section 210-A(5)(a)(2)(A)-  
949 (G), (I), and (J) and the applicable regulations.

950 (b) Interest income from other financial instruments includes, but is not limited to,  
951 interest income on (i) deposit accounts, (ii) money market mutual funds, and (iii) debt issued by  
952 a country, or political subdivision thereof, other than the United States. Such interest income is  
953 included in New York receipts if the payor is located in New York State. One hundred percent  
954 of such interest income is included in everywhere receipts.

955 (c) (1) For purposes of this section, an individual, as payor or purchaser, is located in  
956 New York State if its billing address is in New York State; and a business entity, as payor or  
957 purchaser, is located in New York State if its commercial domicile is in New York State.

958 (2) The location for a government entity, as payor or purchaser, is dependent on the type  
959 of government entity.

960 (d) (1) For each sale of a financial instrument apportioned under this section, the taxpayer  
961 shall compute a gain or loss from the sale by subtracting the basis in such financial instrument  
962 from the sale price of such financial instrument. If the sale price exceeds the basis, the result is a  
963 gain. If the sale price is less than the basis, the result is a loss.

964 (2) To determine the amount of net gains from sales of each type of financial instrument

965 apportioned under this section, the gains from sales of a type of other financial instrument are  
966 reduced by the losses from sales of that same type of other financial instrument, provided the  
967 result cannot be less than zero. The computation is done for each type of instrument so that  
968 gains from one type of financial instrument cannot offset losses from another type of financial  
969 instrument.

970 (e) Other income (not less than zero) from other financial instruments includes, but is not  
971 limited to substitute payments in lieu of dividends, and income received from stock of the federal  
972 reserve bank.

973 (f) Examples.

974 Example 1: Taxpayer A earns \$2,000,000 of interest income on deposits on accounts at  
975 the New York State branch and the State X branch of a bank whose commercial domicile is  
976 located in State Y. No interest income is included in New York receipts because the commercial  
977 domicile of the bank is State Y. The \$2,000,000 of interest income is included in everywhere  
978 receipts.

979 Example 2: Taxpayer B receives \$1,500 of income from Money Market Fund M. The  
980 commercial domicile of Money Market Fund M is State X. No interest income is included in  
981 New York receipts because the commercial domicile of Money Market Fund M is in State X.  
982 The \$1,500 of income is included in everywhere receipts.

983 Example 3: As a member of the Federal Home Loan Bank (FHLBank), taxpayer D is  
984 required to invest in the FHLBank. During the taxable year, Taxpayer D receives \$10,000 of  
985 income from this investment. Only one of the eleven Federal Home Loan Banks is located in  
986 New York. As a result, while \$10,000 is included in everywhere receipts, only 1/11 of the that  
987 amount, or \$909, is included in New York receipts.

988 Example 4: Taxpayer E receives \$2,000 of substitute payments in lieu of dividends from  
989 its stock of Corporation X, domiciled in state Y. No substitute payments in lieu of dividends are  
990 included in New York receipts because the payor, Corporation X, is domiciled in State Y. All  
991 \$2,000 of such payments are included in everywhere receipts.

992 Example 5: Taxpayer F owns debt issued by Country X, debt issued by Country Y, debt  
993 issued by Country Z, foreign currency swaps for the currency A, and foreign currency swaps for  
994 currency B. Taxpayer F has two types of other financial instruments – debt issued by other  
995 countries and foreign currency swaps. When determining the amount of New York receipts or  
996 everywhere receipts, any gains from sales of debt issued by other countries may be reduced only  
997 by losses from sales of debt issued by other countries and any gains from sales of foreign  
998 currency swaps may be reduced only by losses from sales of foreign currency swaps.

999

1000 **Section 4-2.13 Brokerage commissions (Tax Law, Section 210-A(5)(b))**

1001 Receipts constituting brokerage commissions derived from the execution of purchase or  
1002 sale orders for securities or commodities for customers shall be deemed to be generated within  
1003 the state if the taxpayer's records indicate the mailing address of the customer who is responsible  
1004 for paying such commissions is in the state.

1005 Example: Broker X earns \$10,000 in brokerage commission income from investment  
1006 advisor Y to execute trades for investment partnership Z. Investment advisor Y is responsible  
1007 for paying the commission to Broker X but passes on the brokerage commission expense to its  
1008 investors in the form of fees. Broker X's records indicate that the mailing address of investment  
1009 advisor Y is within New York State and investment partnership Z's mailing address is in state A.  
1010 Because Investment advisor Y is the customer responsible for paying the brokerage commission

1011 to Broker X and its mailing address in Broker X's records is in New York State, \$10,000 is  
1012 included in both New York receipts and everywhere receipts.

1013

1014 **Section 4-2.14 Receipts from credit cards and similar activities (Tax Law, Section**  
1015 **210-A(5)(c)(1)-(3))**

1016 (a) Receipts received by issuer banks from credit card receivables constituting interest,  
1017 and fees and penalties in the nature of interest and service charges and fees from credit cards are  
1018 included in New York State receipts if the mailing address of the card holder in the records of the  
1019 issuer bank is in New York State. All such receipts are included in everywhere receipts.

1020 (b) In the event that credit card receivables are purchased from an issuer bank, the  
1021 purchaser shall include such receipts in New York receipts if the mailing address of the card  
1022 holder in the records of the purchaser is in New York State. All such receipts are included in  
1023 everywhere receipts.

1024 (c) For purposes of this section, credit card and issuer bank shall have the same meaning  
1025 as section 4-2.15(a)(1) of this Subpart.

1026 (d) Receipts from merchant discounts are included in New York receipts if the merchant  
1027 is located within the state. One hundred percent of receipts from merchant discounts are  
1028 included in everywhere receipts. In the case of a merchant with locations both within and  
1029 without New York State, only receipts from merchant discounts attributable to sales made from  
1030 locations within New York State are included in New York receipts. It shall be presumed that  
1031 the location of the merchant is the address of the merchant shown on the invoice submitted by  
1032 the merchant to the taxpayer.

1033

1034           **Section 4-2.15 Receipts received by credit card processors. (Tax Law, Section 210-**  
1035 **A(5)(c)(4))**

1036           (a) For purposes of this section, the following definitions shall apply:

1037           (1) Credit card includes credit, bank, travel and entertainment or pre-paid payment cards  
1038 or products that can be presented at a physical point-of-sale terminal, electronically, or by  
1039 telephone.

1040           (2) Credit card processor means an entity, whether it is a corporation or an  
1041 unincorporated entity, that derives 50 percent or more of its gross receipts from any or all of the  
1042 following: credit card authorization processing, clearing processing, settlement processing, and  
1043 volume-based activities. In the case of a combined report, whether an entity is a credit card  
1044 processor is determined on a corporation by corporation basis. The apportionment rules described  
1045 in this subdivision and Tax Law section 210-A(5)(c)(4) shall apply only to those receipts  
1046 generated by the entities in the combined report that qualify as credit card processors.

1047           (3) Authorization processing means the routing of transaction data from a merchant to an  
1048 acquirer bank or from an acquirer bank to an issuer bank for approval or rejection and the routing  
1049 of that approval or rejection back to the originating party.

1050           (4) Clearing processing means the service of processing of a batch of hundreds or  
1051 thousands of previously-authorized transactions to determine the net amounts due to or from  
1052 issuer banks and acquirer banks.

1053           (5) Settlement processing means the service of delivering instructions for the actual  
1054 movement of funds between issuing banks and acquirer banks that reflects the amounts  
1055 determined to be due to or from each entity during clearing processing.

1056           (6) Credit card processor's network means the hardware and software that enable a credit

1057 card processor to facilitate the transfer of financial transaction information to and from issuer  
1058 banks and acquirer banks and, in the case of a third-party processor, to and from merchants,  
1059 including by any of the following: receiving, processing, and relaying such financial transaction  
1060 information.

1061 (7) Volume-based activities means services that are charged to customers measured on  
1062 the dollar volume or number of credit card transactions.

1063 (8) Access point means a physical location at which a credit card processor's customers  
1064 access or may access the credit card processor's network.

1065 (9) Percent of New York State access points means the number of access points located  
1066 in New York State divided by the total number of access points in the United States.

1067 (10) Acquirer bank means a financial institution that contracts with merchants to accept  
1068 payments by credit card.

1069 (11) Issuer bank means a financial institution that issues credit cards to account holders.

1070 (b) (1) Except as provided for in paragraph (2) of this subdivision, the amount of receipts  
1071 from authorization processing, clearing processing, and settlement processing earned by credit  
1072 card processors included in New York receipts is the product of all such receipts and the percent  
1073 of the credit card processor's New York State access points that could generate receipts subject  
1074 to this paragraph. All such receipts are included in everywhere receipts.

1075 (2) If the credit card processor is a third-party processor, and after exercising due  
1076 diligence, cannot identify the access points for its authorization, clearing, and settlement  
1077 processing transactions on behalf of issuer banks or acquirer banks, the amount of receipts from  
1078 those transactions earned from banks with billing addresses, kept in the normal course of the  
1079 credit card processor's operations, in New York State shall be included in New York

1080 receipts. All such receipts are included in everywhere receipts.

1081 (c) (1) Except as provided for in paragraph (2) of this subdivision, the amount of all other  
1082 receipts, including receipts from volume-based activities, received by credit card processors not  
1083 specifically addressed in subdivisions one through nine of Tax Law section 210-A shall be  
1084 included in New York receipts by multiplying the total amount of such other receipts by the  
1085 average percentage of (i) eight percent and (ii) the percent of the credit card processor's New  
1086 York State access points.

1087 (2) If the credit card processor is a third-party processor that uses the provisions of  
1088 paragraph (2) of subdivision (b) of this section, then the amount of all other receipts, including  
1089 receipts from volume-based activities, received by such credit card processor not specifically  
1090 addressed in subdivisions one through nine of Tax Law section 210-A shall be included in New  
1091 York receipts by multiplying the total amount of such other receipts by the average percentage of  
1092 (i) eight percent and (ii) the percent of its customers with billing addresses in the state.

1093 (d) Notwithstanding section 4-4.1 of this Part, if it shall appear that the receipts included  
1094 in New York receipts pursuant to this section do not accurately reflect the locations where such  
1095 receipts of the credit card processor are earned because the credit card processor has receipts  
1096 arising from activities outside of the United States, then the credit card processor is authorized to  
1097 calculate New York receipts pursuant to this section based on the New York State percentage of  
1098 total access points, which shall be calculated by dividing the number of access points physically  
1099 located in New York State by the total number of access points used to generate the receipts  
1100 being apportioned under this section. The taxpayer bears the burden of proof to demonstrate that  
1101 applying the apportionment rules contained in subdivisions (b) and (c) of this section does not  
1102 result in an accurate apportionment of the receipts subject to the rules in this section within New

1103 York State.

1104

1105 **Section 4-2.16 Receipts from railroad, trucking and omnibus businesses. (Tax Law,**  
1106 **Section 210-A(6))**

1107 The amount of receipts received by a corporation from its conduct of a railroad business  
1108 (including surface railroad, whether or not operated by steam, subway railroad, elevated railroad,  
1109 palace car, or sleeping car), trucking business or omnibus business included in New York  
1110 receipts is determined by multiplying the amount of receipts from such business by a fraction,  
1111 the numerator of which is the number of revenue miles operated within New York State and the  
1112 denominator of which is the total number of revenue miles operated. All such receipts are  
1113 included in everywhere receipts. Revenue miles operated while an omnibus is engaged in school  
1114 bus operations must be disregarded in computing the fraction. For purposes of this section,  
1115 revenue mile is the transportation for consideration of passengers or freight for the distance of  
1116 one mile. It does not include *nonrevenue miles*, such as deadheading (driving an unladen truck).

1117

1118 **Section 4-2.17 Receipts from the sale of advertising. (Tax Law, Section 210-A(8)).**

1119 (a) Receipts from the sale of advertising encompass the following activities:

1120 (1) Receipts from providing advertising space or time in or on a medium for  
1121 dissemination to the public or part of the public, whether such medium is for sale or for free  
1122 consumption. Examples include:

1123 (i) the sale of printed page space in a magazine, newspaper, or other similar periodical;

1124 (ii) the sale of space on or in directories, bulletins, phone books, restaurant placemats,  
1125 cash register receipts, maps, or any other similar medium;

1126 (iii) the posting of material on billboards, buildings, or vehicles;  
1127 (iv) the sale of time in radio or television broadcasts; or  
1128 (v) the sale of space on a Web page, regardless of the method of compensation paid by  
1129 the advertiser to the Web site host.

1130 (2) Receipts received for providing an advertising or marketing service.

1131 For purposes of this paragraph, an advertising or marketing service includes:

1132 (i) consultation on and development of advertising or marketing campaigns; or  
1133 (ii) securing placement of advertising or marketing materials in various forms of  
1134 media.

1135 (b) Apportionment of receipts from the sale of advertising.

1136 (1) The amount of receipts from the publishing of advertising in newspapers or  
1137 periodicals included in New York receipts is determined by multiplying such receipts by a  
1138 fraction, the numerator of which is the number of newspapers and periodicals containing such  
1139 advertising delivered to points within New York State and the denominator of which is the total  
1140 number of newspapers and periodicals delivered to points within and without New York State.  
1141 One hundred percent of such receipts are included in everywhere receipts.

1142 (2)(i) The amount of receipts from the sale of space on other physical media included in  
1143 New York receipts is determined by multiplying such receipts by a fraction, the numerator of  
1144 which is the number of New York State locations of such media and the denominator of which is  
1145 the total number of locations within and without New York State. One hundred percent of such  
1146 receipts are included in everywhere receipts.

1147 (ii) If the physical media is rolling stock, such as buses, vans, or automobiles, the  
1148 numerator of the fraction in subparagraph (i) is the number of miles operated within New York

1149 State and the denominator is the number of total miles operated within and without New York  
1150 State.

1151 Example 1: Billboard Company owns 5 roadside billboards in New York State and 10 in  
1152 State A. For a fee, Billboard Company will post advertisements from unrelated businesses for a  
1153 determined length of time. It receives \$150,000 from Selling Corp to allow advertisements on  
1154 each of its billboards. Billboard Company must determine the amount of receipts included in  
1155 New York receipts according to the ratio of billboards in New York State to all billboards.  
1156 Therefore, it includes \$50,000 ( $1/3 * \$150,000$ ) in New York receipts. All \$150,000 is included  
1157 in everywhere receipts.

1158 Example 2: Bus Company allows businesses to post advertisements on the exterior and  
1159 interior of its vehicles. It receives \$7,000 from Company A, \$4,000 from Company B, and  
1160 \$14,000 from Company C to have its vehicles display ads for those businesses. Bus Company  
1161 knows the mileage within and without New York State for each of the vehicles containing the  
1162 ads. Buses containing ads for Company A travel 30,000 miles in New York State out of a total  
1163 of 60,000 miles. Buses containing ads for Company B travel 14,000 miles in New York State  
1164 out of a total of 70,000 miles. Buses containing ads for Company C travel 40,000 miles,  
1165 exclusively in New York State. Bus Company must include \$18,300 in New York receipts,  
1166 which is the sum of 50 percent of the receipt from Company A, 20 percent of the receipt from  
1167 Company B, and 100 percent of the receipt from Company C. All \$25,000 is included in  
1168 everywhere receipts.

1169 (3) The amount of receipts from the sale of advertising time in radio or television  
1170 broadcasts included in New York receipts is determined by multiplying such receipts by a  
1171 fraction, the numerator of which is the number of listeners or viewers in New York State and the

1172 denominator of which is the total number of listeners or viewers within and without New York  
1173 State. One hundred percent of such receipts are included in everywhere receipts.

1174 (4) (i) The amount of receipts from the sale of advertising not described above and  
1175 furnished, provided, or delivered to, or accessed by the viewer or listener through the use of wire,  
1176 cable, fiber-optic, laser, microwave, radio wave, satellite or similar successor media or any  
1177 combination thereof included in New York receipts is determined by multiplying such receipts  
1178 by a fraction, the numerator of which is the number of listeners or viewers in New York State  
1179 and the denominator of which is the total number of listeners or viewers within and without New  
1180 York State. One hundred percent of such receipts are included in everywhere receipts.

1181 (ii) If, after exercising due diligence, a taxpayer lacks sufficient information to apply  
1182 subparagraph (i) of this paragraph, it may use a reasonable method to estimate the numbers of  
1183 listeners or viewers to include in the numerator and denominator of the fraction described in  
1184 subparagraph (i) of this paragraph. Such method should be based on data available to the  
1185 taxpayer either as part of its operations, such as metrics or information for account holders,  
1186 subscribers, or page or advertisement hits, or under the terms of the contract with the entity  
1187 seeking to place the ad, such as any contractual obligations to identify ad recipients or to target  
1188 the ad to specific demographics.

1189 (iii) In any case in which a taxpayer uses a method of estimation to determine the  
1190 amounts for the numerator and denominator of the fraction described in subparagraph (i) of this  
1191 paragraph and the Commissioner determines that the method employed by the taxpayer is not  
1192 reasonable, the Commissioner may substitute a method that the Commissioner determines is  
1193 appropriate. In this instance, the taxpayer bears the burden of demonstrating that the method the  
1194 Commissioner prescribes is not reasonable.

1195 (iv) In any case in which the Commissioner determines that a taxpayer's method is  
1196 reasonable, but that it has not been applied in a consistent manner with respect to similar  
1197 transactions, the Commissioner may require that the taxpayer apply its method in a consistent  
1198 manner.

1199 (c) Apportionment of receipts from advertising services. (1) The amount of receipts from  
1200 the provision of advertising or marketing services (e.g., the creation and/or implementation of an  
1201 advertising or marketing campaign) included in New York receipts is determined by multiplying  
1202 such receipts by a fraction, the numerator of which is the number of intended targets of such  
1203 advertising or marketing in New York State and the denominator of which is the total number of  
1204 intended targets ("the intended target fraction"). One hundred percent of such receipts are  
1205 included in everywhere receipts.

1206 (2) To determine the proper ratio of New York State to everywhere targets for the  
1207 intended targets fraction, a taxpayer must primarily rely on statistics and information that are  
1208 compiled or utilized as part of the market research and advertising strategy developed by the  
1209 taxpayer for its customer. If no such statistics or information are available, a taxpayer may then  
1210 use other sources of information that attempt to determine the location of the intended targets.

1211 (i) In any case in which a taxpayer uses a method to determine the location of the  
1212 intended targets and the Commissioner determines that the method employed by the taxpayer is  
1213 not reasonable, the Commissioner may substitute a method that the Commissioner determines is  
1214 appropriate. In this instance, the taxpayer bears the burden of demonstrating that the method the  
1215 Commissioner prescribes is not reasonable.

1216 (ii) In any case in which the Commissioner determines that a taxpayer's method is  
1217 reasonable, but that it has not been applied in a consistent manner with respect to similar

1218 transactions, the Commissioner shall require that the taxpayer apply its method in a consistent  
1219 manner.

1220       Example 3: Advert Corp is hired by Blower Corp to develop an advertising and  
1221 marketing plan to increase sales of Blower Corp's snow blowers in the Northeast, which is a  
1222 sales region defined by Blower Corp. In developing the campaign, Advert Corp obtains  
1223 information from Blower Corp about the locations of Blower Corp's shipments of its units to  
1224 retailers, and in some cases, directly to consumers in the Northeast sales region. The ratio of  
1225 shipments to New York State locations to shipments to all Northeast locations is a reasonable  
1226 method of determining the distribution of the intended targets of Advert Corp's advertising and  
1227 marketing strategy. Advert Corp should multiply the receipt it receives from Blower Corp by  
1228 this ratio to determine the amount of the receipt to include in New York receipts.

1229       Example 4: Advert Corp is hired by Finance Corp to produce a nationwide advertising  
1230 campaign to create demand for Finance Corp's new investment product marketed to retirees.  
1231 Finance Corp will not divulge location information about any of its account holders, except to  
1232 say that it has account holders in every state. Advert Corp has access to information that shows  
1233 the distribution of Americans of or nearing retirement age in each state. Advert Corp should  
1234 multiply the receipts it receives from Finance Corp by the ratio of such Americans in New York  
1235 State to all Americans to determine the amount of the receipt to include in New York receipts.  
1236 One hundred percent of such receipts are included in everywhere receipts.

1237       Example 5: AdCo works with local businesses to create printed advertisements that  
1238 appear on paper placemats at restaurants. Businesses pay AdCo to design the ads and to secure  
1239 their inclusion on placemats. Once the content and design of the ad is agreed upon, AdCo works  
1240 with a printing company that produces the placemats to ensure that the ad appears on the printed

1241 placemats and that it meets the design and content specifications. As part of AdCo's  
1242 responsibilities in providing this service, it determines the locations where the printed placemats  
1243 will be delivered. AdCo receives a receipt from Landscaper Co to create an ad to be included on  
1244 placemats. AdCo determines that the placemats will be delivered to Restaurant Company, which  
1245 has 3 restaurants in New York State and 1 in State B. AdCo must include 75 percent of the  
1246 receipts earned from Landscaper Co for designing and securing the ad on the placemats in its  
1247 New York receipts. One hundred percent of such receipts are included in everywhere receipts.

1248 (3) Where a lump sum is received by the taxpayer as payment for advertising or  
1249 marketing services and such advertising or marketing services consists of a combination of  
1250 activities including the creating of the advertising or marketing campaign and the actual purchase  
1251 of advertising space or time, the taxpayer must allocate the lump sum among each of the types of  
1252 activities based on both the costs of purchasing the advertising or marketing space or time and  
1253 the intended targets of the advertising or marketing or by some other reasonable method. Full  
1254 details must be submitted with the taxpayer's report.

1255 Example 6: Advert Corp is hired by School Supply Corp to develop an advertising and  
1256 marketing plan to increase sales of students' school supplies at its retail stores. The campaign  
1257 will use newspapers ads, television commercials, and in-store promotions. Advert Corp will  
1258 receive one lump sum for the entire advertising and marketing campaign. It first determines how  
1259 to allocate the lump sum among the various advertising strategies by multiplying the lump sum  
1260 by a fraction, the numerator of which is the cost of employing the particular medium, (i.e. the  
1261 cost of placing ads in newspapers), and the denominator of which is the total cost of employing  
1262 all the forms of media outreach (i.e. the sum of the cost of ad buys in newspapers, ad buys on  
1263 television, and deploying in-store promotions).

1264 To determine the amount of each allocated cost included in New York receipts, the  
 1265 amount of each allocated cost is then multiplied by its own intended target fraction as described  
 1266 in paragraph one of this subdivision. Thus, for newspaper ad buys, the allocated cost included in  
 1267 New York receipts is based on the ratio of the New York State circulation of the newspapers  
 1268 containing the ad buys to the total circulation of such newspapers where the inserts will appear.  
 1269 For the television ad buys, the allocated cost included in New York receipts is based on the ratio  
 1270 of viewers in New York State to the total number of viewers within the region where the ad buys  
 1271 will be broadcast. For the in-store promotions, the allocated cost included in New York receipts  
 1272 is based on the ratio of New York State stores engaging in the promotions to all stores engaging  
 1273 in the promotions. One hundred percent of such receipts are included in everywhere receipts.

1274

1275 **Section 4-2.18 Receipts from other services and other business receipts (Tax Law,**  
 1276 **Section 210-A(10))** – Draft regulations posted separately

1277

1278 **Subpart 4-3 New York S corporations**

1279 Section

1280 4-3.1 Definition of business receipts for New York S corporations

1281 4-3.2 Nonresident and part-year resident shareholders of New York S  
 1282 Corporations

1283 4-3.3 Examples

1284 **Section 4-3.1 Definition of business receipts for New York S corporations. (Tax Law,**  
 1285 **Section 210-A)**

1286 A New York S corporation as defined in Tax Law section 208(1-A) determines the

1287 amount of business receipts included in New York receipts or everywhere receipts using the  
1288 rules in Tax Law section 210-A and Subparts 4-1 and 4-2 of this Part, except as provided in this  
1289 Subpart.

1290 (a) The term business receipts for a New York S corporation means all receipts, net  
1291 income (not less than zero), net gains (not less than zero), and other items described in Tax Law  
1292 section 210-A and the applicable regulations that are included in the New York S corporation's  
1293 nonseparately computed income and loss or in the New York S corporation's separately stated  
1294 items of income and loss, determined pursuant to subdivision (a) of IRC section 1366. Business  
1295 receipts for New York S corporations include amounts that otherwise would have been  
1296 characterized as investment income from investment capital or other exempt income for New  
1297 York C corporations.

1298 (b) For purposes of applying the rules in section 4-2.4 of this Part, the term qualified  
1299 financial instrument shall have the same meaning as in section 4-2.4, except that the instruments  
1300 excluded from qualified financial instruments in the case of New York S corporations shall be  
1301 limited to the following:

- 1302 (1) loans secured by real property;
- 1303 (2) loans not secured by real property, if the only loans the taxpayer has marked to  
1304 market are loans secured by real property; and
- 1305 (3) partnership interests that do not meet the definition of security in IRC section 475(c).

1306 Because a New York S corporation does not have any investment capital or other exempt  
1307 income, stock that otherwise would have been investment capital or could generate other exempt  
1308 income for a New York C corporation as defined in Tax Law section 208(1-A) may be a  
1309 qualified financial instrument for a New York S corporation.

1310

1311 **Section 4-3.2 Nonresident and part-year resident shareholders of New York S**1312 **Corporations. (Tax Law, Sections 631 and 632)**

1313 (a) To determine the amounts derived from New York sources for purposes of Article 22  
1314 of the Tax Law, a nonresident shareholder of a New York S corporation multiplies its pro-rata  
1315 share of the New York S corporation's items of income, gain, loss, and deduction (and any  
1316 related Tax Law section 612 modifications) that are included in the nonresident shareholder's  
1317 New York adjusted gross income by a fraction, the numerator of which is the New York S  
1318 corporation's New York receipts and the denominator of which is the New York S corporation's  
1319 everywhere receipts. Such fraction is hereinafter referred to as the apportionment factor.

1320 (b) For part-year resident shareholders, the rule in subdivision (a) applies only to the New  
1321 York S corporation's items received during the nonresident period of the tax year (and any  
1322 related Tax Law section 612 modifications) that are included in the part-year resident's New  
1323 York adjusted gross income.

1324

1325 **Section 4-3.3 Examples.**

1326 Example 1: Corporation A is a New York S corporation that has the following types of

1327 receipts:

- 1328 • dividends from stock of unitary corporations (that would have been characterized as  
1329 other exempt income for a New York C corporation);
- 1330 • dividends from stock of non-unitary corporations (that would have been characterized  
1331 as investment income for a New York C corporation);

- 1332           • net gains from sales of stock of non-unitary corporations (that would have been  
1333           characterized as investment income for a New York C corporation);
- 1334           • interest from loans secured by real property;
- 1335           • interest from corporate bonds; and net gains from sales of corporate bonds.

1336           Corporation A marks to market stock of non-unitary corporations only. No other assets  
1337 are marked to market.

1338           All of these receipts are considered business receipts for Corporation A. The amount of  
1339 such receipts included in Corporation A's New York receipts or everywhere receipts is  
1340 determined in accordance with section 4-3.1 of this Subpart.

1341           Corporation A did not make the fixed percentage election pursuant to section 4-2.4(c) of  
1342 this Part. Therefore, dividends and net gains from stock are not included in its New York  
1343 receipts or everywhere receipts pursuant to Tax Law section 210-A.5(a)(2)(G) and the amount of  
1344 interest from loans secured by real property, interest from corporate bonds, and net gains from  
1345 the sale of corporate bonds included in New York receipts or everywhere receipts is determined  
1346 in accordance with Tax Law section 210-A.5(a)(2) and Subparts 4-1 and 4-2 of this Part.

1347           To determine the amounts derived from New York sources for purposes of Article 22 of  
1348 the Tax Law, nonresident shareholder X of Corporation A must multiply its pro-rata share of  
1349 Corporation A's items of income, gain, loss, and deduction that are included in shareholder X's  
1350 New York adjusted gross income, including all income, gain, and loss from Corporation A's  
1351 stocks, loans, and corporate bonds by Corporation A's apportionment factor.

1352           Example 2: Same facts as Example 1 except that Corporation A makes the fixed  
1353 percentage election pursuant to section 4-2.4(c) of this Part. Since one stock has been marked to  
1354 market, all stock are qualified financial instruments. The result is that eight percent of the

1355 dividends and net gains (not less than zero) from stocks are included in Corporation A's New  
1356 York receipts and one hundred percent of dividends and net gains (not less than zero) from stock  
1357 are included in everywhere receipts. The loans and corporate bonds are not qualified financial  
1358 instruments as none of these assets have been marked to market. The amount of interest from the  
1359 loans secured by real property, interest from corporate bonds, and net gains from the sales of  
1360 corporate bonds included in New York receipts or everywhere receipts is determined in  
1361 accordance with Tax Law section 210-A and the applicable regulations.

1362 To determine the amounts derived from New York sources for purposes of Tax Law,  
1363 Article 22, nonresident shareholder X of Corporation A must multiply its pro-rata share of  
1364 Corporation A's items of income, gain, loss, and deduction that are included in shareholder X's  
1365 New York adjusted gross income, including all income, gain, and loss from Corporation A's  
1366 stock, loans, and corporate bonds by Corporation A's apportionment factor.

#### 1367 1368 **SUBPART 4-4**

#### 1369 **OTHER RULES**

#### 1370 **Section**

- 1371 4-4.1 Power of the Commissioner of Taxation and Finance to adjust the  
1372 business apportionment factor
- 1373 4-4.2 Short period business apportionment factor

1374

1375 **Section 4-4.1. Power of the Commissioner of Taxation and Finance to adjust the**  
1376 **business apportionment factor. (Tax Law, Section 210-A(11))**

1377 (a) Generally, the business apportionment factor results in a fair apportionment of the  
1378 taxpayer's business capital and business income to New York State. However, in certain  
1379 instances, the business apportionment factor may not result in a proper reflection of the  
1380 taxpayer's activities, business income or business capital in the State. Tax Law section 210-  
1381 A(11) authorizes the commissioner, in his or her discretion or at the request of the taxpayer, to  
1382 adjust the business apportionment factor in order to properly and fairly reflect the taxpayer's  
1383 activities within New York. In the case of a combined report, the term "taxpayer" in this Subpart  
1384 means the combined group and the request to adjust the business apportionment factor on the  
1385 combined report must be made by the designated agent. If the business apportionment factor is  
1386 adjusted, it must be calculated to effect a fair and proper apportionment of the business income  
1387 and business capital of the taxpayer, or in the case of a combined report, the combined group,  
1388 reasonably attributable to the State.

1389 (b) When it appears that the business apportionment factor does not fairly and properly  
1390 reflect the activities, business income or business capital of the taxpayer in New York State, the  
1391 commissioner, in his or her discretion or at the request of the taxpayer, may adjust the business  
1392 apportionment factor by:

1393 (1) excluding one or more items of receipts, net income, net gain or other items included  
1394 in the determination of the business apportionment factor ;

1395 (2) including one or more other items in the determination of the business apportionment  
1396 factor ; or

1397 (3) any other similar or different method calculated to effect a fair and proper  
1398 apportionment of the taxpayer's business income and business capital reasonably attributable to  
1399 the State.

1400 (c)(1) A taxpayer may not vary the statutory business apportionment factor on an original  
1401 report for a taxable year without the consent of the commissioner. A taxpayer making a request  
1402 for an adjustment of its business apportionment factor that does not have such consent prior to  
1403 the time it files its report must file its report and compute its tax using the business  
1404 apportionment factor determined pursuant to Tax Law section 210-A and the applicable  
1405 regulations in this Part. If a taxpayer receives consent after filing its report, the taxpayer may  
1406 then amend the report and use the approved method to compute its tax due. If a taxpayer's  
1407 request is denied before it files its original report, it must file its report and compute its tax using  
1408 the business apportionment factor determined pursuant to Tax Section 210-A and the applicable  
1409 regulations in this Part. The taxpayer then may request reconsideration of its request during the  
1410 course of an audit of the report. Alternatively, if the taxpayer's request is denied and an audit has  
1411 not been commenced, the taxpayer may file an amended report using its proposed adjusted  
1412 business apportionment factor , provided that the amended report is accompanied by a full  
1413 explanation and justification for the adjustments made to the business apportionment factor .

1414 (2) Except as otherwise provided in paragraph one of this subdivision, a request to vary  
1415 the business apportionment factor must be submitted in writing and must be submitted separately  
1416 from the report to which it relates and must set forth full information on which the request is  
1417 based. If the taxpayer has not requested that the commissioner adjust the business apportionment  
1418 factor before the date on the first written piece of correspondence received by the taxpayer from  
1419 the Audit Division about the commencement of an audit of the report, the determination of  
1420 whether or not the business apportionment factor results in a fair and proper reflection of the  
1421 business income and business capital of the taxpayer will be made during the course of that  
1422 audit.

1423 (d) The party seeking to vary the business apportionment factor bears the burden of proof  
1424 to demonstrate by clear and convincing evidence that the business apportionment factor  
1425 determined pursuant to Tax Law section 210-A and the applicable regulations in this Part does  
1426 not result in a proper reflection of the taxpayer's business income or business capital within the  
1427 State and that the proposed adjustment is appropriate. The party seeking to vary the business  
1428 apportionment factor must demonstrate that application of the statutory formula attributes  
1429 income or capital to the State out of all proportion to the business transacted by the taxpayer in  
1430 the State.

1431 (e) See Tax Law section 211(5) concerning other powers of the Commissioner to adjust  
1432 business income and business capital of a taxpayer.

1433 (f) Examples.

1434 (1) Corporation A's only office is located in New York. Corporation A invests in stocks  
1435 for its own account and also performs some administrative and investment advisory services for  
1436 customers located solely in New York. Ninety-five percent of its income consists of dividends  
1437 and net gains from its stock holdings. The remaining five percent of its income consists of the  
1438 fees it receives for the administrative and investment advisory services. Under Tax Law section  
1439 210-A(5)(a)(2)(G), dividends and net gains from stock are not included in the numerator or  
1440 denominator of the business apportionment fraction unless the Commissioner determines  
1441 pursuant to Tax Law section 210-A(11) and this section that inclusion of such dividends and net  
1442 gains is necessary to properly reflect the taxpayer's business income or capital of the taxpayer. In  
1443 this instance, under the statutory formula, the receipts generating ninety-five percent of the  
1444 taxpayer's income would not have any representation in the business apportionment fraction.  
1445 Accordingly, in order to properly reflect the taxpayer's business income, it is appropriate to

1446 include the dividends and net gains from the stock holdings in the business apportionment  
1447 fraction. The dividends from the stock of corporations domiciled in New York would be  
1448 included in the numerator of the business apportionment fraction. The net gains would be  
1449 included in the numerator of the business apportionment fraction to the extent that the purchasers  
1450 are located in New York. The total amount of dividends and net gains would be included in the  
1451 denominator of the business apportionment fraction.

1452 (2) Corporation B is a registered broker-dealer. The majority of its receipts are comprised  
1453 of commissions derived from the executive of securities and commodities purchase or sales  
1454 orders. It has an office in New York and an office in State X. Under Tax Law section 210-  
1455 A(5)(b) and section 4-2.13 of this Part, these commissions are included in the numerator of the  
1456 business apportionment fraction if the taxpayer's records indicate the mailing address of the  
1457 customer who is responsible for paying such commissions is in the state. However, in State X,  
1458 these commissions are included in the numerator of the business apportionment fraction if the  
1459 services are performed in State X. Corporation B is concerned that the commissions for the  
1460 purchase and sale orders executed by its office in State X for customers with New York mailing  
1461 addresses will be sourced to State X for purposes of State X's tax and sourced to New York for  
1462 New York purposes. Corporation B requests that New York allow a discretionary adjustment to  
1463 the exclude such receipts from the numerator of the business apportionment fraction. This  
1464 discretionary adjustment is not necessary. The fact that State X also would source commissions  
1465 from New York customers to State X does not mean that inclusion of those commissions in the  
1466 numerator of the New York business apportionment fraction does not fairly and properly reflect  
1467 Corporation's activities and business income in New York.

1468 (3) Corporation C is a corporate partner in Partnership X and for tax years 2015 through

1469 2018 it computes its tax with respect to its interest in such partnership under the aggregate  
1470 method. In tax year 2019, Corporation C's only activity for the year is the selling of its financial  
1471 investments that results in \$5,000,000 of business receipts. Seventy-five percent of its business  
1472 receipts, or \$3,750,000, is the net gain from the sale of its partnership interest in Partnership  
1473 X. Under Tax Law section 210-A(5)(a)(2)(G), net gains from the sale of a partnership interest  
1474 are not included in the numerator or denominator of the business apportionment fraction unless  
1475 the Commissioner determines pursuant to Tax Law section 210-A(11) and this section that  
1476 inclusion of such net gains is necessary to properly reflect the taxpayer's business income or  
1477 capital of the taxpayer. In this instance, under the statutory formula, the receipts generating  
1478 seventy-five percent of the taxpayer's business receipts would not have any representation in the  
1479 business apportionment fraction. Accordingly, in order to properly reflect the taxpayer's business  
1480 income, it is appropriate to include the net gains from the sale of Partnership X in the business  
1481 apportionment fraction.

1482 Under the aggregate method, a corporate partner is treated as participating in the  
1483 partnership's transactions and activities and is viewed as having an undivided interest in the  
1484 partnership's assets, liabilities and items of receipts, income, gain, loss and deduction. As such,  
1485 the sale of Partnership X will be treated as the sale of the underlying assets owned by Partnership  
1486 X. Corporation C must reasonably divide the net gain from the sale of its interest among the  
1487 types of underlying assets owned by Partnership X. The receipts or net gains from each type of  
1488 asset must be apportioned using the applicable rule in Tax Law section 210-A and this Part for  
1489 each type of asset.

1490 Partnership X's assets consist of tangible personal property, real property, and  
1491 goodwill. The portion of the gain attributable to the sale of tangible personal property is

1492 included in New York receipts if the tangible personal property is in New York State. The  
1493 portion attributable to the sale of real property is included in New York receipts if the real  
1494 property is located in New York State. The portion of the goodwill is included in New York  
1495 receipts if the value is accumulated in New York State, based on the partnership's average  
1496 business allocation percentage from previous years. The net gain from the sale of the interest in  
1497 Partnership X is included in everywhere receipts.

1498

1499 **Section 4-4.2 Short period business apportionment factor . (Tax Law, Section 210-**

1500 **A(11))**

1501 (a) A taxpayer that is subject to tax for a period less than its taxable period for Federal  
1502 income tax purposes computes its business apportionment factor only for the period it is subject  
1503 to tax in New York State.

1504 (b) The business income and business capital for the short period are apportioned by  
1505 a business apportionment factor determined pursuant to Tax Law section 210-A and the  
1506 applicable regulations in this Part, using only those receipts, net income, net gain and other items  
1507 for the period for which it is subject to the tax in New York State.

1508 (c) The short period business apportionment factor must be applied to business income and  
1509 business capital that have been prorated to represent business income and business capital for the  
1510 period for which the taxpayer is subject to tax in New York State. Prorated business income and  
1511 prorated business capital are computed as follows:

1512 (1) divide business income or business capital before apportionment by the number of  
1513 months covered by the taxpayer's Federal return; and

1514 (2) multiply the figure determined in paragraph (1) of this subdivision by the number of  
1515 months for which the taxpayer is subject to tax in New York State.

1516 Example 1: A corporation incorporated in the State of Delaware in 2010 became subject to  
1517 tax in New York State on July 2, 2016. The taxpayer reports on a fiscal year ending November  
1518 30th. The short period business apportionment factor, computed as described in subdivision (b)  
1519 of this section, is 20 percent. It had business income of \$24,000 for the 12-month period covered  
1520 by the Federal return. The taxpayer's apportioned business income is \$2,000, computed as  
1521 follows:

1522  $\$24,000 \text{ divided by } 12 \text{ (months)} = \$2,000$

1523  $\$2,000 \times 5 \text{ (months)} = \$10,000$

1524  $\$10,000 \times 20\% = \$2,000$

1525 (d) A taxpayer must submit complete details with its report showing how it computed its  
1526 business apportionment factor for the period it is subject to tax in New York State, if for less  
1527 than a full year. If, in the opinion of the Commissioner, either on his or her own volition or at the  
1528 request of the taxpayer, the prorated business income or prorated business capital for the period  
1529 for which the taxpayer is subject to tax in New York State does not properly reflect the business  
1530 income and business capital for such period, the Commissioner may determine business income  
1531 and business capital solely on the basis of the taxpayer's business income and business capital  
1532 during such period.