

The draft apportionment rules for receipts from sales of digital products have changed since the second draft posted in October 2016. In addition to the notable changes listed below, some examples were removed to reduce redundancies and new examples were added to illustrate the new rules. Additionally, some provisions were restructured or reordered to provide for clarity. Notable changes include:

- Expanding intermediary transactions to include situations where the taxpayer makes the digital product readily available (e.g. through a website) to be accessed by the consumers
- Adding a definition of digital service to clarify when a service should be sourced under this regulation or the services and other business activities regulation
- Adding special rules for particularized transactions including addressing the sourcing of receipts from the digital facilitation of certain services
- Changing the structure to apply special rules prior to applying the hierarchy or intermediary test
- Expanding reasonable approximation to allow reasonable approximation based on general information (e.g. population) if unable to apply reasonable approximation based on customer specific information

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STATE OF NEW YORK  
DEPARTMENT OF TAXATION AND FINANCE  
COMMISSIONER OF TAXATION AND FINANCE  
ALBANY, NEW YORK

Regulation Section 4-2.3 Receipts from the Sale of, Rental of, License to Use, and Granting of Remote Access to Digital Products and Digital Services (Tax Law, Section 210-A(4)).

(a) General Principles of Application. A taxpayer’s apportionment of receipts from digital products and digital services must be consistent with the principles set out below.

(1) Receipts from the sale of, rental of, license to use, or granting of remote access to digital products and digital services are included in New York receipts if the digital product or digital service is used within New York State.

(i) The location where the digital product or digital service is used is deemed to be the location where the customer derives value from the digital product or digital service.

(ii) To determine the location where the customer derives value from the digital product or digital service, Tax Law section 210-A(4) provides various sourcing rules that apply sequentially in a hierarchy. A taxpayer must annually exercise due diligence in attempting to apply the primary sourcing rule of the customer’s primary use location, as described in subdivision (c) of this section. It may abandon such primary sourcing rule only if, after exercising due diligence, it lacks sufficient information to apply that rule, in which case it must use the location where the digital product or service is received by the customer, as described in subdivision (d) of this section.

24 (iii) If, after exercising due diligence, a taxpayer cannot apply the sourcing rules  
25 in subdivisions (c) and (d) of this section, it must then use the sourcing rules in  
26 subdivision (e) of this section based on the sourcing of receipts for the preceding  
27 taxable year. Lastly, if the taxpayer cannot apply the rules in subdivisions (c),  
28 (d), or (e) of this section after exercising due diligence, it must then use the rules  
29 in subdivision (f) based on the sourcing of receipts for the current year.

30 (iv) Taxpayers should refer to the special rules as outlined in paragraph (1) of  
31 subdivision (c) prior to determining if a transaction qualifies as an intermediary  
32 transaction. Unless a special rule applies, for intermediary transactions, a  
33 taxpayer should refer to the rules in subdivision (g) prior to applying the  
34 hierarchy.

35 (v) A taxpayer's method of apportioning its receipts, including the use of a  
36 method of reasonable approximation where applicable, must reflect an attempt to  
37 comply with the regulatory standards set forth herein rather than an attempt to  
38 minimize the taxpayer's tax liability.

39 (2) In exercising due diligence, the following standards apply:

40 (i) A taxpayer's application of the regulatory standards set forth in this section  
41 must be based on objective criteria and should consider all sources of information  
42 reasonably available to the taxpayer at the time of filing its original tax return  
43 including, without limitation, the taxpayer's books and records, including its  
44 contracts or agreements with its customers, kept in the ordinary course of  
45 business. Taxpayers may, in good faith, rely on information provided by their  
46 customers.

47 (ii) A taxpayer's method of sourcing its receipts must be determined in good faith,  
48 applied in good faith, and applied consistently with respect to similar transactions.

49 (iii) A taxpayer must retain records that explain the determination and application  
50 of its method of sourcing its receipts used in completing the return, including its  
51 underlying assumptions, and must provide such records to the Commissioner  
52 upon request.

53 (iv) A taxpayer must update its existing systems of recording transactions or the  
54 current format of its books and records to capture the information required by  
55 these rules. It is not sufficient to rely on the fact that existing systems do not  
56 adequately capture the required information.

57 (v) If information is not readily available for the special rules or the general rule  
58 in paragraphs (1) and (2) of subdivision (c), taxpayers must make reasonable  
59 inquiries to a business customer to determine the information required by these  
60 rules. If the taxpayer has more than 250 business customers purchasing  
61 substantially similar digital products or digital services that would be sourced  
62 under this section and no more than 5 percent of receipts from such digital  
63 products or digital services are from that particular customer, then inquiries are  
64 not required for that customer ("inquiries safe harbor").

65 (vi) Taxpayers must document the steps taken before abandoning each level of the  
66 hierarchy or step within a level of the hierarchy, such as moving from a special  
67 rule to the general rule in subdivision (c), including documentation of reasonable  
68 inquiries made.

69 (vii) When the Commissioner determines that the taxpayer had access to, or could  
70 have obtained upon reasonable inquiries when required, information at the time it  
71 filed its original return to apply a method of apportionment that comes earlier in  
72 the hierarchy than the method utilized by the taxpayer, the Commissioner may  
73 require the taxpayer to use such method.

74 (3) At any point in the hierarchy where there is a presumption, the presumption may be  
75 overcome by either the taxpayer or the Department.

76 (i) The presumption may be overcome by the taxpayer if the taxpayer can prove,  
77 by clear and convincing evidence, that the method it proposes to use better  
78 reflects the location where the customer derives value from the digital product or  
79 digital service. In such a case, the location to which the receipts from the digital  
80 product or digital service will be sourced will be based on the evidence  
81 accumulated by the taxpayer. If the taxpayer believes it has overcome the  
82 presumption and uses an alternative method, upon audit the Department may  
83 examine the taxpayer's alternative method to determine if the presumption has  
84 been overcome and, if so, whether it was applied in a consistent manner for  
85 similar transactions.

86 (ii) The presumption may be overcome by the Department if the Department can  
87 prove, by clear and convincing evidence, that the method it proposes to use better  
88 reflects the location where the customer derives value from the digital product or  
89 digital service, and that the taxpayer had access to, or could have obtained upon  
90 reasonable inquiries when required, information at the time it filed its original  
91 return that could have been used to apply the Department's method.

92 (4) Sourcing of commingled receipts.

93 (i) When a sale is comprised of both a digital product and a digital service, both of  
94 which are sourced under this section, the receipt cannot be divided into separate  
95 components for purposes of the application of the rules in this section, and is  
96 considered to be one receipt regardless of whether the components are separately  
97 stated for billing purposes.

98 (ii) When a sale, rental, license to use, or granting of remote access includes both  
99 a digital product and/or digital service that would otherwise be sourced under  
100 these rules and tangible personal property commingled into one receipt, the entire  
101 receipt must be sourced as tangible personal property or rentals and royalties  
102 under the rules for Tax Law section 210-A(2)(a) and section 4-2.## of this  
103 Subpart, or Tax Law section 210-A(3) and section 4-2.## of this Subpart, as  
104 applicable. This rule does not apply to the sale, rental, license to use, or granting  
105 of remote access to a digital product and/or digital service when the tangible  
106 personal property is incidental to the digital product and/or digital service; such  
107 receipts must be sourced under these rules instead of Tax Law section 210-  
108 A(2)(a) and section 4-2.1 of this Subpart, or Tax Law section 210-A(3) and  
109 section 4-2.## of this Subpart, as applicable.

110 (iii) When a sale, rental, license to use, or granting of remote access includes both  
111 a digital product and/or digital service that would otherwise be sourced under  
112 these rules and a service or other business activity sourced under the rules for Tax  
113 Law section 210-A(10) commingled into one receipt, the entire receipt must be  
114 sourced as a service or other business activity under the rules for Tax Law section

115 210-A(10) and section 4-2.18 of this Subpart. This rule does not apply to the sale,  
116 rental, license to use, or granting of remote access to a digital product and/or  
117 digital service when the service or other business activity is incidental to the  
118 digital product and/or digital service; such receipts must be sourced under these  
119 rules instead of the rules for Tax Law section 210-A(10) and section 4-2.18 of this  
120 Subpart.

121 (iv) The rules for commingled receipts provided for in subparagraphs (ii) and (iii)  
122 of this paragraph do not apply if each component of the transaction is separately  
123 stated and the total receipt is reasonably allocated between the components.

124 (b) General Definitions. For purposes of this section, the following terms shall have the  
125 meanings indicated below.

126 (1) Billing address means the location indicated in the books and records of the taxpayer  
127 as the primary address with respect to a customer's account.

128 (2) Location where a contract is managed by the customer means the primary location at  
129 which an employee or other representative of a customer serves as the person with  
130 responsibility for monitoring or managing the contract of sale, rental, license to use, or  
131 granting of remote access with the taxpayer.

132 (3) Customer means the party who enters into a transaction with the taxpayer for the  
133 purchase of, rental of, license to use, or remote access to a digital product from the  
134 taxpayer. A customer can be either an individual customer or a business customer. Only  
135 a business customer may also be an intermediary. In any instance in which the taxpayer,  
136 acting in good faith, cannot reasonably determine whether the customer is an individual  
137 customer, the taxpayer must treat the customer as a business customer.

138 (4) Individual customer means a customer who enters into a transaction with the taxpayer  
139 for the purchase of, rental of, license to use, or remote access to a digital product or  
140 digital service for personal use, and not for a business purpose.

141 (5) Business customer means a customer that is not an individual customer, including, but  
142 not limited to, a sole proprietor, S corporation, limited liability company, limited  
143 partnership, limited liability partnership, general partnership, corporation, non-profit  
144 organization, trust, the U.S. Government, any foreign, state, or local government, or any  
145 agency or instrumentality of such government.

146 (6) Intermediary means the business customer of a taxpayer that primarily derives the  
147 value from a digital product or digital service at the location of a consumer in an  
148 intermediary transaction.

149 (7) Consumer means an individual or entity, other than an intermediary, whose location is  
150 where the intermediary primarily derives value from the digital product or digital service  
151 provided by the taxpayer.

152 (8) Intermediary transaction means a transaction in which the location where the business  
153 customer (intermediary) primarily derives value from a digital product or digital service  
154 is the location of the consumer rather than the location of the customer itself. Such a  
155 transaction is sourced using the rules in subdivision (g) of this section. Intermediary  
156 transactions do not include digital products or digital services sourced under the special  
157 rules in paragraph (1) of subdivision (c) of this section.

158 (i) To be considered an intermediary transaction, the digital product or digital  
159 service, pursuant to the explicit or implicit terms of a contract or other agreement

160 between the taxpayer and intermediary, must meet the requirements of (a), (b) or  
161 (c):

162 (a) provided by the taxpayer, at the direction of the intermediary, directly  
163 to the location of the consumer;

164 (b) sold by the taxpayer to the intermediary, who then passes on the  
165 digital product or digital service to the location of the consumer and either:

166 (1) the taxpayer actively maintains or interacts with the digital  
167 product or digital service after the consumer receives it from the  
168 intermediary; or

169 (2) the taxpayer must be obligated to perform a substantial portion  
170 of the digital service after the digital product or other property that  
171 the service relates to is delivered by the intermediary to the  
172 location of the consumer;

173 (c) made readily available by the taxpayer (e.g. through a website) at the  
174 request of the intermediary to be accessed by the consumer and the  
175 taxpayer actively maintains or interacts with the digital product or digital  
176 service after the consumer receives or accesses it from the intermediary.

177 (9) Digital product means any property of whatever nature delivered through the use of  
178 wire, cable, fiber-optic, laser, microwave, radio wave, satellite or similar successor  
179 media, or any combination thereof. Digital product includes, but is not limited to, an  
180 audio work, audiovisual work, visual work, electronic book or literary work, graphic  
181 work, electronic database, game, information or entertainment service, website, or digital  
182 application delivered via the means articulated in the preceding sentence or storage of

183 digital products. In addition, digital product includes computer software by whatever  
184 means delivered, including physical media. The term “delivered to” includes furnished,  
185 provided, or given access to.

186 A digital product does not include property listed in the second sentence of this paragraph  
187 delivered via any means other than those listed in the first sentence of this paragraph.

188 Receipts from such products may be apportioned under Tax Law section 210-A(2) and  
189 section 4-2.## of this Subpart or under Tax Law section 210-A(3)(a) and section 4-2.##  
190 of this Subpart as appropriate.

191 A digital product does not include property listed in the second sentence of this  
192 paragraph, regardless of means delivered, if the property is incidental to the sale of a  
193 license to distribute, broadcast, or right to sublicense the work to third parties for other  
194 than personal use. Such receipt will be sourced as royalties under the rules in Tax Law  
195 section 210-A(3)(b) and 4-2.## of this Subpart.

196 (10) Digital Service means a service, not otherwise addressed in Tax Law sections 210-  
197 A(1) – (3) or (5) – (9):

198 (i) directly related to the creation, testing, modification, enhancement, and  
199 maintenance of a digital product, regardless of the means of transmission or level  
200 of human interaction; or

201 (ii) that has been fully automated, uses one or more software applications in  
202 providing the service, and is delivered via the means listed in the first sentence of  
203 the definition of digital product in paragraph (9) of this subdivision. However,  
204 this does not include services where the service provider:

205 (a) includes an element of human interaction as part of the service, unless  
206 incidental; or

207 (b) offers alternative services or optional features that include human  
208 interaction and provide similar functionality to the automated service.

209 (c) Primary Use Location. A taxpayer must include a receipt in New York receipts when the  
210 digital product or digital service is primarily used by the taxpayer's customer in New York.

211 (1) Special rules. Certain types of receipts are sourced using the rules in this paragraph.

212 When applying the special rules in this paragraph, the specific criteria to apply the special  
213 rules will be met regardless of whether the digital product or digital service is provided  
214 directly by the taxpayer or on behalf of the taxpayer. Commissions and other receipts  
215 from the facilitation of services or other transactions are addressed in the special rules.

216 All other receipts from digital products and digital services must be sourced using the  
217 general rule in paragraph (2) of this subdivision. If a taxpayer meets the specific criteria  
218 to apply a special rule, but does not have sufficient information to apply the rule, the  
219 taxpayer should use the rules for reasonable approximation, as provided for in paragraph  
220 (3) of this subdivision, to apply the special rule or, if the taxpayer does not have sufficient  
221 information to apply the rules for reasonable approximation to the special rule, the  
222 taxpayer must use the general rule in paragraph (2) of this subdivision.

223 (i) Facilitation of in-person services. Services rendered to the body of an  
224 individual or in the physical presence of an individual and, based on the nature of  
225 the service, requires the physical presence of an individual, are considered in-  
226 person services. Digital facilitation of the provision of in-person services are  
227 apportioned under the rules in this subparagraph.

228 (a) Digital facilitation of the provision of in-person services includes, but  
229 is not limited to: ride-sharing, facilitating ticket sales for live  
230 entertainment and athletic performances; scheduling of in-person training  
231 or lessons.

232 (b) The primary use location of the facilitation of in-person services is  
233 presumed to be the location where the in-person service is performed.

234 (c) In-person services do not include:

235 (1) services that do not require significant in-person contact in  
236 order to perform, but nevertheless may include in-person contact,  
237 including, but not limited to, legal, accounting, financial and  
238 consulting services; and

239 (2) the obligation to perform services or fund the performance of  
240 services that may or may not actually occur at an undetermined  
241 future date (e.g. facilitation of the purchase of insurance) is not an  
242 in-person service, although significant in-person contact may  
243 ultimately occur when the service is actually performed.

244 (ii) Services related to tangible personal property. Digital services that include  
245 services related to tangible personal property are sourced under the rules in this  
246 subparagraph. This includes commissions and other receipts related to the  
247 facilitation of services related to tangible personal property. Facilitation of in-  
248 person services related to tangible personal property are apportioned under the  
249 rules in this subparagraph, rather than the rules in subparagraph (i) of this  
250 paragraph.

251 (a) Digital services related to tangible personal property include, but are  
252 not limited to: computer troubleshooting, software installation, and  
253 facilitation of the sale of tangible personal property.

254 (b) The primary use location of services related to tangible personal  
255 property is presumed to be at the location where the property is received  
256 after the service is performed.

257 (c) The obligation to perform services or fund the performance of services  
258 that may or may not actually occur at an undetermined future date (e.g.  
259 warranty services, facilitation of the purchase of insurance) is not service  
260 related to tangible personal property, although a service may ultimately be  
261 performed on tangible personal property.

262 (iii) Services related to real property. Digital services related to real property,  
263 including commissions and other receipts related to the facilitation of such  
264 services, are apportioned under the rules in this subparagraph. Digital services  
265 related to real property include services that relate to the improvement or  
266 maintenance of the property and services that relate to the title, purchase, sale,  
267 rental, appraisal, assessment or basis in the property. Facilitation of in-person  
268 services related to real property are apportioned under the rules in this  
269 subparagraph, rather than the rules in subparagraph (i) of this paragraph.

270 (a) Digital services related to real property include, but are not limited to:  
271 security services, mortgage servicing, title searches and facilitating  
272 property or room rentals.

273 (b) The primary use location of the digital service related to real property  
274 is presumed to be where the real property is located.

275 (iv) Sales of computer software at retail locations.

276 (a) Receipts from the sale of prewritten, non-customized computer  
277 software sold:

278 (1) at a physical retail location that sells more than one type of  
279 digital product and/or a combination of digital products and other  
280 products; and

281 (2) the customer is physically present at the physical retail location  
282 at the time they take possession of the software or right to  
283 download such software.

284 (b) With respect to receipts from software sold under the conditions of the  
285 special rule described in clause (a) of this subparagraph, the receipt is  
286 apportioned to the physical retail location where the software is sold.

287 (2) General rule. Unless the taxpayer meets the specific criteria and has sufficient  
288 information necessary to apply the special rules set forth in paragraph (1) of this  
289 subdivision, determining the primary use location depends on whether the customer is an  
290 individual customer or a business customer.

291 (i) Individual customer. In the case where the taxpayer's customer is an  
292 individual, the primary use location is presumed to be at the customer's billing  
293 address. If the taxpayer does not have the customer's billing address, it must use  
294 reasonable approximation, as described in paragraph (3) of this subdivision.

295 (ii) Business customer. In the case where the taxpayer's customer is a business,  
296 the primary use location is presumed to be in New York to the extent the  
297 taxpayer's books and records kept in the ordinary course of business, without  
298 regard to the billing address of the taxpayer's customer, indicate that the  
299 customer's use of the digital product or digital service is in New York. The  
300 digital product or digital service is primarily used at the location of a third party  
301 (i.e. the consumer) only in the case of an intermediary transaction. If the taxpayer  
302 does not have adequate information to determine where the digital product or  
303 digital service is primarily used by the customer, the taxpayer must use reasonable  
304 approximation, as described in paragraph (3) of this subdivision.

305 (iii) Primary use both within and without New York. Where the primary use  
306 location is in New York and at least one other location, the taxpayer should  
307 source the receipts based on the percentage of use by the customer in each  
308 primary use location.

309 (3) Reasonable approximation based on customer information. Where a taxpayer's books  
310 and records kept in the ordinary course of business and reasonable inquiries to the  
311 customer when required do not provide adequate information for apportionment of a  
312 receipt from a digital product or digital service, then reasonable approximation must be  
313 used to apportion the receipt.

314 (i) Definition. Reasonable approximation based on customer information is an  
315 alternative method used to determine the location or locations at which a customer  
316 primarily uses a digital product or digital service in instances in which:

- 317 (a) (1) the location or locations where the digital product or digital  
318 service is primarily used and/or the percentage of use attributable  
319 to each location as a share of the total use cannot be determined, or  
320 (2) obtaining the primary use location or locations and/or the  
321 percentage of use attributable to each location as a share of the  
322 total use would require the taxpayer to expend undue effort and  
323 expense beyond the standard amount of due diligence as required  
324 by this section; and
- 325 (b) the taxpayer has sufficient information to reasonably approximate the  
326 primary use location or locations and/or the percentage of use attributable  
327 to each location as a share of the total use.
- 328 (ii) Application of reasonable approximation based on customer information.
- 329 (a) A taxpayer must use all available information in its books and records,  
330 including information obtained upon reasonable inquiries where required,  
331 and information publicly available about the location or locations where  
332 its actual customers primarily use the digital product or service.
- 333 (b) When a taxpayer is required under this subparagraph to reasonably  
334 approximate, the taxpayer must use a method that is intended to  
335 approximate where the customer primarily uses the digital product or  
336 digital service.
- 337 (c) Sourced receipts method. In any instance where a taxpayer can  
338 ascertain the location or locations where a substantial portion of similar  
339 receipts are sourced (“sourced receipts”), but not all of such receipts, and

340 the taxpayer reasonably believes, based on all available information, that  
341 the geographic distribution of the remainder of such receipts is  
342 substantially similar to that of the sourced receipts, it may source such  
343 receipts in the same proportion as its sourced receipts (sourced receipts  
344 method). If the taxpayer reasonably believes, based on all available  
345 information, that the geographic distribution of the remainder of such  
346 receipts is different from that of the sourced receipts, and otherwise lacks  
347 sufficient information to use reasonable approximation, it must source  
348 such receipts under paragraph (4) of this subdivision.

349 (d) In any case in which a taxpayer uses a method of approximation to  
350 apportion its receipts and the Commissioner determines that the method of  
351 approximation employed by the taxpayer is not reasonable, the  
352 Commissioner may substitute a method of approximation that the  
353 Commissioner determines is appropriate.

354 (e) In any case in which the Commissioner determines that a taxpayer's  
355 method of approximation is reasonable, but that it has not been applied in  
356 a consistent manner with respect to similar transactions, the Commissioner  
357 may require that the taxpayer apply its method of approximation in a  
358 consistent manner.

359 (f) In any case in which, after reasonable inquiries are made when  
360 required, the taxpayer does not have sufficient information based on its  
361 actual customers to use reasonable approximation, the taxpayer must  
362 source such receipts under paragraph (4) of this subdivision.

363 (4) Reasonable approximation based on general information. Where, after meeting the  
364 requirements of due diligence, a taxpayer lacks sufficient information to use the rules in  
365 paragraphs (1) through (3) of this subdivision, as applicable, to apportion its receipts, the  
366 taxpayer must use reasonable approximation based on general information.

367 (i) Definition. Reasonable approximation based on general information is an  
368 alternative method used to determine the location at which a customer primarily  
369 uses the digital product or digital service in instances in which the general  
370 population or a subset of the general population reasonably reflects the  
371 geographic distribution of the customer's primary use location.

372 (ii) Application of reasonable approximation based on general information.

373 (a) A taxpayer must use statistical information based on the general  
374 population or a subset of the population (such as a specific demographic)  
375 of the entire country or a region of the country that reasonably  
376 approximates the population of customers who primarily use the digital  
377 product or digital service.

378 (b) When a taxpayer is required under this subparagraph to reasonably  
379 approximate based on general population or a subset of population, the  
380 taxpayer must use a method that is intended to approximate where the  
381 customer derives value from the digital product or digital service.

382 (c) In any case in which the Commissioner determines that the taxpayer's  
383 method of approximation is not reasonable, the Commissioner may  
384 substitute the use of a method that the Commissioner determines is  
385 appropriate.

386 (d) In any case in which the Commissioner determines that the taxpayer's  
387 method of approximation is reasonable, but that it has not been applied in  
388 a consistent manner with respect to similar transactions, the Commissioner  
389 must require that the taxpayer apply its method of approximation in a  
390 consistent manner.

391 (e) In any case in which the taxpayer does not have sufficient information  
392 to reasonably approximate based on general information, the taxpayer  
393 must instead source its receipts under the next level of the hierarchy,  
394 where the digital product or digital service is received, as described in  
395 subdivision (d) of this section.

396 (5) Examples of where the digital product or digital service is primarily used. For  
397 purposes of these examples it can be assumed that the taxpayer has met all the  
398 requirements of due diligence unless otherwise provided.

399 Example 1: Book Corp sells electronic books and physical books through its website.

400 When an individual customer purchases only an electronic book, it is available for  
401 immediate download by the customer. When an individual customer purchases only a  
402 physical book, the book is shipped to the customer. Customers may also purchase a  
403 bundle of both an electronic and physical book, the price of which includes a discounted  
404 price of the electronic and physical book but the breakdown is not separately stated. For  
405 bundled purchases, the electronic book is available for immediate download by the  
406 customer and the physical book is shipped from Book Corp to the customer.

407 Customer A, with a New York billing address, purchases an electronic book from Book  
408 Corp and downloads it onto his e-reader. Purchases of electronic books from Book Corp

409 are considered digital products that are sourced under these rules. Therefore, Book Corp  
410 includes the receipt from the electronic book purchase in New York receipts because this  
411 purchase was made by an individual customer with a billing address located in New  
412 York. Book Corp includes the receipt from Customer A in everywhere receipts.

413 Customer B, with a New York billing address, purchases a bundled purchase of an  
414 electronic and a physical book commingled into one receipt. Bundled purchases of  
415 electronic and physical books commingled into one receipt are sourced as tangible  
416 personal property under the rules for section Tax Law 210-A(2)(a) and section 4-2.## of  
417 this Subpart.

418 Example 2: Software Corp sells tax preparation software to individuals through its  
419 website. When individual customers purchase the software, Software Corp provides the  
420 software on a disk shipped to the customer's address. Customer A purchases the  
421 software and has it shipped to her billing address in New York. Software Corp ships a  
422 box to Customer A that contains the software on a disk and a user manual explaining how  
423 the software works and troubleshooting tips. Computer software by whatever means  
424 delivered is considered to be a digital product and therefore receipts from the software are  
425 sourced under these rules. Because the product is purchased online, it does not qualify  
426 for the retail location exception. Although the sale of the software to Customer A  
427 includes the user manual, which is tangible personal property, the user manual is  
428 incidental to the actual sale of the software, and therefore the entire receipt is sourced as a  
429 digital product. It is presumed that Customer A primarily uses the software at his or her  
430 billing address which is located within New York. Software Corp includes the receipt in  
431 New York receipts and everywhere receipts.

432 Example 3: Develop Corp, a software development corporation located in State A, enters  
433 into a contract with a business customer, Purchaser Corp, which is physically located in  
434 both New York and State A, to develop custom software to be licensed to Purchaser  
435 Corp's business. Develop Corp delivers the software electronically from its office in  
436 State A to Purchaser Corp. Purchase Corp will primarily use the software at the location  
437 where its employees utilize the software. Develop Corp's books and records indicate that  
438 Develop Corp is providing Purchaser Corp 100 licenses to use the software at Purchaser  
439 Corp's New York location and 300 licenses to use the software at Purchaser Corp's State  
440 A location. As a result, twenty five percent of the receipt (100/400) is included in New  
441 York receipts. One hundred percent of such receipt is included in everywhere receipts.

442 Example 4: Movie Corp sells movies for personal use to individual customers that may  
443 either be downloaded from the internet or received via DVD, a physical  
444 medium. Customer A purchases a digital download for a movie and pays with his credit  
445 card that has a billing address in State A. Movie Corp's receipt from Customer A's  
446 download is a receipt from a digital product and the digital product is presumed to be  
447 primarily used at Customer A's billing address in State A. Therefore, the receipt from  
448 this sale is not included in New York receipts. The receipt from this sale is included in  
449 everywhere receipts.

450 Customer B purchases a DVD and requests it be shipped to an address in New York. A  
451 DVD is not one of the methods specifically provided for in Tax Law section 210-A(4)  
452 and paragraph (9) of subdivision (b) of this section, so it is not considered a digital  
453 product. Therefore, Video Corp's receipt from Customer B is a receipt from the sale of

454 tangible personal property and, as such, should be sourced pursuant to the rules for Tax  
455 Law section 210-A(2)(a) and section 4-2.## of this Subpart.

456 Example 5: Cable TV Corp, a corporation that is located outside of New York, sells  
457 monthly subscriptions for cable television to individual customers in New York and other  
458 states. Cable TV Corp provides cable television through cables that are installed at the  
459 location of each customer's television that will be receiving content. Cable TV Corp also  
460 has a billing address on file for each of its customers. While most of Cable TV Corp's  
461 customers have cable installed at their billing address, a number of Cable TV Corp's  
462 customers have cable installed at an address other than their billing address. The cable  
463 television subscription sold by Cable TV Corp is a digital product. The presumption is  
464 that a digital product is primarily used at an individual customer's billing address.  
465 However, either Cable TV Corp or the Commissioner can overcome this presumption  
466 through clear and convincing evidence as to where the cable is installed, which better  
467 reflects where the digital product is primarily used.

468 Example 6: Security Corp sells cyber security software to 1,000 business customers,  
469 including a federal agency XYZ. XYZ has its headquarters located in Washington D.C.,  
470 and 12 regional offices relatively similar in size located in 12 different states, one of  
471 which is New York. Security Corp generally conducts business with a person at XYZ's  
472 headquarters, but Security Corp provides cyber security software to XYZ's entire  
473 network, which is utilized by XYZ employees at all of the 13 locations. The books and  
474 records of Security Corp do not specify more detailed information, such as the number of  
475 computers or the distribution of licenses among the locations. Since Security Corp has  
476 over 250 business customers and not more than five percent of its receipts are from XYZ,

477 it is not required to make reasonable inquiries to determine where the digital product is  
478 primarily used. Security Corp chooses to exercise the inquiry safe harbor and uses  
479 reasonable approximation based on customer information to include 1/13 of the receipts  
480 from its cyber security software in New York receipts. One hundred percent of such  
481 receipts are included in everywhere receipts.

482 Example 7: Office Corp, an office supply retailer, has a physical store located in New  
483 York. Office Corp sells a variety of office supplies, including a multitude of prewritten  
484 computer software programs. When customers purchase items from Office Corp, they  
485 take possession of the purchased items immediately at the retail location. In the case of  
486 software purchases, customers can either purchase the software on a disk or can purchase  
487 a code to download the computer software at a later time. Office Corp's sale of prewritten  
488 software qualifies for the special rule for sales of computer software at retail locations.  
489 Therefore, Office Corp includes the receipts from the sale of the software in New York  
490 receipts to the extent the location of the retail store is in New York. Office Corp includes  
491 one hundred percent of such receipts in everywhere receipts.

492 Example 8: Music Corp provides music streaming services to individual customers for a  
493 small monthly subscription fee. Customers can access Music Corp's service through an  
494 application on their mobile devices or by visiting Music Corp's website. Once in their  
495 account, individuals can listen to music on a variety of channels and indicate whether  
496 they like certain songs. Music Corp uses an algorithm to recommend songs to customers  
497 based on songs they have previously indicated that they like. As this service is entirely  
498 automated it meets the definition of a digital service and therefore is sourced under these  
499 rules. Music Corp uses the billing addresses of its customers to include receipts in New

500 York receipts to the extent that customers have billing addresses located in New York.

501 Music Corp must include one hundred percent of its receipts from customers in

502 everywhere receipts.

503 Example 9: Webapp located in State A sells subscription plans to its web-based

504 video/voice conferencing service. This service allows its customers to hold meetings

505 remotely using video and voice transmitted through a web browser. Meetings can be

506 joined by attendees in multiple locations. When a customer purchases a subscription to

507 Webapp's service, the customer may log into its online account to use the service at any

508 location where it can access a web browser. Customers can also use this service to

509 conduct meetings with parties who are not subscribers simply by sending the attendee an

510 invitation to the meeting; this can be done from any location as no specialized software is

511 required. Webapp's service is provided entirely online, without any human intervention

512 by Webapp. Therefore, it is considered a digital service.

513 Development Studio subscribes to Webapp's digital service and uses WebApp's service

514 to hold numerous meetings with its customers and employees that access the service

515 throughout the country.

516 Webapp's books and records indicate that Development Studio's subscription for

517 Webapp's digital service is used by employees of Development Studio's New York

518 office. Webapp includes one hundred percent of this receipt in New York receipts and in

519 everywhere receipts.

520 Example 10: Website Corp designs custom software and Web applications for use by

521 various businesses. Travel Corp, located in State A, operates hotels in New York and

522 other states and rents rooms to its customers. Travel Corp wants to make the ability to

523 book a room accessible to its customers via the internet, so Travel Corp contracts with  
524 Website Corp to design a custom website using Travel Corp's name and methodology,  
525 which will allow Travel Corp's customers to book hotel rooms online for a fee. Under  
526 the contract, Travel Corp will pay Website Corp a flat annual fee to maintain and host the  
527 website. Website Corp is providing a digital service related to the facilitation of a room  
528 rental which is a digital service related to real property. As Website Corp receives a flat  
529 annual fee it must use reasonable approximation based on customer information to  
530 apportion the receipt to the various real property locations. Therefore, Website Corp  
531 multiples the receipt it receives from Travel Corp by a fraction, the numerator of which is  
532 the number of rooms rented in New York via the website and the denominator of which is  
533 the number of rooms rented everywhere via the website. One hundred percent of such  
534 receipt is included in everywhere receipts.

535 Example 11: Room Corp operates a website that acts as a digital marketplace to facilitate  
536 the short-term rental of apartments and houses between individual homeowners and  
537 individuals looking for short-term rentals. Individual homeowners are able to list their  
538 homes on Room Corp's website and will pay Room Corp a small commission if someone  
539 books their property via Room Corp's website. In return Room Corp provides a variety of  
540 services to the homeowners automatically via their website such as payment processing,  
541 liability insurance, and ID verification of renters. The digital service Room Corp is  
542 providing is related to the facilitation of a real property rental which is a digital service  
543 related to real property. Therefore, Room Corp must include the receipts from  
544 facilitating real property rentals in New York receipts to the extent the real property is

545 located in New York. One hundred percent of receipts are included in everywhere  
546 receipts.

547 Example 12: Ticket Corp operates a website that allows individuals to purchase tickets to  
548 various live events. Sports Corp enters into a contract with Ticket Corp to list tickets for  
549 its sporting events on Ticket Corp's website and Ticket Corp retains a small commission  
550 for every ticket that is purchased through its website. Ticket Corp's fully automated  
551 website is providing the digital service of facilitating the purchase of an in-person service  
552 because the ticket sales are for a live sporting event that meets the definition of in-person  
553 service. Therefore, Ticket Corp should source its receipts from the commissions it  
554 receives for facilitating in-person services to the location of the venue hosting the event.

555 Example 13: Game Co, an online gaming company based in New York, sells monthly  
556 subscriptions to individual customers. The majority of Game Co's customers do not pay  
557 with a credit card. They instead use an online payment transfer service to pay their  
558 monthly subscription fee, and therefore do not provide Game Co with a billing address.  
559 To subscribe, individuals need to only provide a first name, screen name, password, and  
560 online payment information. As such, Game Co does not have enough information to  
561 determine the primary use location and, because Game Co's customers are individuals,  
562 Game Co does not need to make reasonable inquiries as to individuals' billing addresses.  
563 Although Game Co does not have address information for most of its subscribers, it can  
564 use IP address information to determine where the individual customers log into the  
565 website. Therefore, Game Co can use this information to reasonably approximate based  
566 on customer information the primary use location of its game and must include receipts  
567 from subscribers logging into its game from IP addresses located within New York in

568 New York receipts. Game Co includes one hundred percent of such receipts in  
569 everywhere receipts.

570 Example 14: Marketplace Corp (the taxpayer) hosts a website that facilitates the sale of  
571 various items of tangible personal property by unrelated individuals. Marketplace Corp  
572 does not take title to any of the tangible property posted on its website. Item sellers can  
573 create accounts on Marketplace Corp's website and list items for sale. Individual buyers  
574 can visit Marketplace Corp's website to view pages containing items that item sellers are  
575 offering for sale. Marketplace Corp makes these pages readily available for consumer  
576 access at the request of the item sellers. Marketplace Corp receives two primary revenue  
577 streams from the item sellers: (1) a small fee for listing a new item on Marketplace  
578 Corp's website, regardless of whether it sells; and (2) a small commission for every sale  
579 made via Marketplace Corp's website. Both revenue streams are services related to  
580 tangible personal property and, therefore, the special rule applies.

581 Marketplace Corp receives the first revenue stream directly from the item seller when the  
582 item seller lists the item on Marketplace Corp's website. In fact, Marketplace Corp  
583 receives this receipt regardless of whether the item is sold or the seller removes it from  
584 the website without a sale. Therefore, although it is a service related to tangible personal  
585 property, Marketplace Corp does not have information on where the tangible personal  
586 property is received by a buyer because it has not yet been, and may never be sold.

587 Furthermore, the service Marketplace Corp provided to generate this receipt is complete  
588 at the time the item is listed and there is not yet a consumer in the transaction so this  
589 receipt is not generated in an intermediary transaction. Receipts from listing fees are  
590 included in New York receipts using the general rule based on the primary use location of

591 the item seller. Marketplace Corp includes all receipts from listing fees generated via its  
592 website in everywhere receipts.

593 In contrast, Marketplace Corp is receiving the second revenue stream from item sellers at  
594 the time the tangible personal property is sold and, as such, Marketplace Corp has  
595 information on where the tangible personal property will be delivered to the consumer.  
596 Marketplace Corp includes receipts from its second revenue stream for commissions in  
597 New York receipts to the extent the commission was received for facilitating the sale of  
598 tangible personal property delivered into New York. Marketplace Corp includes all  
599 receipts from commissions received via its website in everywhere receipts.

600 (d) Where the Digital Product or Digital Service is Received.

601 (1) When a taxpayer, after exercising due diligence, cannot determine or reasonably  
602 approximate the business customer's primary use location for a digital product or digital  
603 service, it should include the receipt in New York receipts when the digital product or  
604 digital service is received by the customer within New York.

605 (2) The location where the digital product or digital service is received is presumed to be  
606 the location at which the contract of sale is managed by the customer. If the taxpayer  
607 cannot determine the location where the contract of sale is managed by the customer,  
608 then the location where the digital product is received is presumed to be the billing  
609 address of the customer. If, after applying due diligence, the taxpayer does not have  
610 adequate information to determine where the digital product or digital service is received,  
611 the taxpayer must apply the next level of the hierarchy, based on the sourcing of receipts  
612 for the preceding taxable year, as described in subdivision (e) of this section.

613 (3) Examples of where the digital product is received. For purposes of this example it  
614 can be assumed that the taxpayer has met all the requirements of due diligence unless  
615 otherwise provided.

616 Example 15: Software Corp sells case management software to 200 large corporations.  
617 Business Corp purchases software from Software Corp to be installed on laptops used by  
618 Business Corp's employees. The contract between Business Corp and Software Corp is  
619 managed at Business Corp's office in State A, but Business Corp's employees spend the  
620 majority of their time working throughout the country, including in New York. Software  
621 Corp's books and records do not provide any information on the amount of time that  
622 Business Corp's employees spend working in other states to determine where the  
623 software is primarily used. Software Corp does not qualify for the inquiry safe harbor  
624 because it has only 200 customers, so it must ask Business Corp where its employees  
625 utilize the software. Business Corp is not able to provide such information, nor would  
626 population information be relevant to software used by Business Corp's employees in  
627 internal operations. Therefore, Software Corp does not have adequate information to  
628 determine the primary use locations or reasonably approximate such locations. It must  
629 source the receipt to where the digital product is received, which is presumed to be at the  
630 location where the contract is managed. Business Corp manages the contract with  
631 Software Corp at its office in State A; therefore, the receipt is not included in New York  
632 receipts. One hundred percent of the receipt is included in everywhere receipts.

633 (e) Receipts for the Preceding Taxable Year.

634 (1) When a taxpayer, after exercising due diligence, cannot determine the amount to  
635 include in New York receipts using the methods in subdivision (c) or (d) of this section, it

636 should source its receipts from that digital product or digital service to New York based  
637 on the sourcing of receipts from the sales of that type of digital product or digital service  
638 for the preceding taxable year. The amount included in New York receipts for the current  
639 taxable year is determined by multiplying such receipts by a fraction, the numerator of  
640 which is the amount included in New York receipts from the sales of that type of digital  
641 product or digital service in the preceding taxable year and the denominator of which is  
642 the amount included in everywhere receipts from all such sales of that type of digital  
643 product or digital service in the preceding taxable year. This level of the hierarchy  
644 cannot apply in a taxpayer's first taxable year beginning on or after January 1, 2015. In  
645 such tax year, a taxpayer must reject this method and move directly to the next level of  
646 the hierarchy, as described in subdivision (f).

647 (2) Example of receipts for the preceding taxable year. For purposes of this example it  
648 can be assumed that the taxpayer has met all the requirements of due diligence unless  
649 otherwise provided.

650 Example 16: Sales Corp provides only one type of digital product to approximately 200  
651 business customers. In tax year 2017, all of its receipts were sourced using the rules in  
652 subdivision (c) of this section, and, as a result 45 percent of Sales Corp's receipts were  
653 included in New York receipts. In tax year 2018, Sales Corp continues to provide only  
654 one type of digital product to its customers. At the end of tax year 2018, Sales Corp's  
655 computer system crashes and it is unable to recover information it had obtained on where  
656 the digital product was primarily used. Upon reasonable inquiries to its known  
657 customers, Sales Corp still cannot obtain information on where the digital products were  
658 primarily used or determine where they were received. Therefore, Sales Corp includes

659 45 percent of its 2018 receipts in its 2018 New York receipts. One hundred percent of  
660 receipts from this type of digital product are included in everywhere receipts.

661 (f) Receipts for Current Taxable Year.

662 (1) When a taxpayer, after exercising due diligence, cannot determine the amount to  
663 include in New York receipts using methods in subdivision (c), (d), or (e) of this section,  
664 it must source the receipt from that digital product or digital service to New York based  
665 on the sourcing of all those current taxable year receipts for all other digital products and  
666 digital services that can be sourced using the methods in subdivisions (c) and (d) of this  
667 section. The amount included in New York receipts for the current taxable year is  
668 determined by multiplying such receipts by a fraction, the numerator of which is the  
669 amount included in New York receipts from all digital products and digital services that  
670 can be sourced using the methods in subdivisions (c) and (d) of this section for the  
671 current taxable year and the denominator of which is the amount included in everywhere  
672 receipts from digital products and digital services sourced using the methods in  
673 subdivisions (c) and (d) for the current taxable year.

674 (2) Example of receipts for the current taxable year. For purposes of this example it can  
675 be assumed that the taxpayer has met all the requirements of due diligence unless  
676 otherwise provided.

677 Example 17: Taxpayer A has \$10,000 in receipts from a new type of digital product.  
678 After exercising due diligence, Taxpayer A cannot determine where the digital product is  
679 primarily used or where it was received. Therefore, Taxpayer A must determine the  
680 portion of the \$10,000 to include in New York receipts based on the receipts for digital  
681 products and digital services sourced under subdivisions (c) and (d) of this section in the

682 current tax year. In the current tax year, Taxpayer A has \$65,000 in digital products  
683 receipts and \$85,000 in digital services receipts sourced under the methods outlined in  
684 subdivisions (c) and (d) of this section, of which \$75,000 (or 50 percent) are New York  
685 receipts. Therefore, Taxpayer A includes 50 percent of the \$10,000, or \$5,000, of  
686 receipts from the new type of digital product in New York receipts. One hundred percent  
687 of receipts from the new type of digital product are included in everywhere receipts.

688 (g) Rules for intermediary transactions.

689 (1) In the case of intermediary transactions, the location where the receipt is sourced is  
690 determined using the hierarchy of methods described in subdivisions (c) and (d) of this  
691 section based on the location of the consumers, rather than the intermediary. If the  
692 taxpayer uses reasonable approximation based on the sourced receipts method to source  
693 its receipts from an intermediary transaction, it may apply that method only taking  
694 transactions with that particular intermediary into consideration.

695 (2) The taxpayer is required to make inquiries to the intermediary, but not to the  
696 consumers, regardless of the number of business customers the taxpayer has or the  
697 percentage of receipts from any one customer, in order to determine the amount of  
698 receipts to source using methods described in subdivisions (c) and (d) of this section.  
699 Such inquiries may be fulfilled by the intermediary providing information from its books  
700 and records to the taxpayer that demonstrates the relevant information.

701 (3) If, after exercising due diligence, the taxpayer has inadequate information to apply the  
702 hierarchy of rules described in subdivisions (c) and (d) of this section with reference to  
703 the location of the consumers, the taxpayer should apply the hierarchy of rules described  
704 in subdivisions (c) and (d) of this section based on the intermediary. If after exercising

705 due diligence, the taxpayer has inadequate information to apply the hierarchy of rules  
706 described in subdivisions (c) and (d) of this section with reference to either the consumers  
707 or the intermediary, the taxpayer must then apply the hierarchy of rules described in  
708 subdivisions (e) and (f).

709 (4) Examples of intermediary transactions. For purposes of these examples it can be  
710 assumed that the taxpayer has met all the requirements of due diligence unless otherwise  
711 provided.

712 Example 18: App Design Corp (the taxpayer), a corporation located in State B, provides  
713 mobile phone application (“app”) design services to its customer, Bank Corp (the  
714 intermediary), which has branches located in New York and other states. Bank Corp  
715 contracts with App Design Corp to have App Design Corp design an app that will be  
716 readily available for free download by any of Bank Corp’s account holders (the  
717 consumers). App Design Corp will also provide periodic updates to ensure the app runs  
718 smoothly and the information transmitted through the app is secure. App Design Corp is  
719 receiving receipts from Bank Corp in an intermediary transaction because App Design  
720 Corp is making its digital product readily available to consumers at the request of Bank  
721 Corp, and App Design Corp maintains involvement with the app after consumers  
722 download it. Bank Corp primarily uses the digital service at the location where the  
723 consumers download and use the app.

724 App Design Corp cannot determine information on New York account holders who  
725 download the app based on its own books and records because it does not have  
726 information on either the primary use location or where the app is received by the  
727 consumers, and therefore App Design Corp must make reasonable inquiries to Bank Corp

728 for location statistics on account holders who download the app. Bank Corp cannot  
729 provide App Design Corp with any information after reasonable inquiries, so App Design  
730 Corp should look to publicly available information, such as the number of Bank Corp's  
731 bank branches located within and without New York and use the percentage of branches  
732 in New York to reasonably approximate based on customer information the primary use  
733 location of the app.

734 Example 19: Website Design Corp (the taxpayer) designs and maintains websites for  
735 unrelated parties. Database Corp (the intermediary) develops an internet-based  
736 information database and enters into a contract with Website Design Corp to create a  
737 website and sell access to the database to customers (the consumers) for a small monthly  
738 fee. The contract specifies that Website Design Corp will retain a commission each  
739 month from every consumer that pays for access to the database and remit the remainder  
740 to Database Corp. Website Design Corp actively maintains and updates the website  
741 where it makes the database readily available on the internet for access by consumers at  
742 the request of Database Corp. Therefore, Website Design Corp must source its receipts  
743 from commissions based on the location of the consumers rather than the location of  
744 Database Corp. Website Design Corp uses the billing addresses of the consumers to  
745 include receipts in New York receipts to the extent that consumers have billing addresses  
746 located in New York. Website Design Corp must include one hundred percent of its  
747 receipts in everywhere receipts.

748 (5) Examples of transactions that are not intermediary transactions. For purposes of these  
749 examples it can be assumed that the taxpayer has met all the requirements of due  
750 diligence unless otherwise provided.

751 Example 20: Research Corp, a corporation located in State D, compiles a digital  
752 collection of treatises on a variety of subjects and sells a copy of its collection to  
753 University A, located in New York. However, Research Corp does not provide  
754 continuing support after the sale and, if Research Corp were to update any information, it  
755 would sell this as a separate product. Therefore, after Research Corp delivers the copy of  
756 the digital collection to University A, it maintains no interaction with the product and  
757 provides no further services in connection with the receipt. For this reason, this is not  
758 considered an intermediary transaction. Research Corp will source the receipt based on  
759 the primary use location of the copy of the digital collection by University A. Research  
760 Corp's books and records indicate that University A will use the digital collection at its  
761 location in New York; therefore, the entire receipt is included in both New York receipts  
762 and everywhere receipts.

763 Example 21: Images Corp, a corporation located in State E, maintains an online database  
764 of digital images that it licenses to customers to use in a variety of publications. Receipts  
765 from the license to use the digital database are sourced under these rules. Newspaper  
766 Corp, located in New York, enters into a contract with Images Corp whereby, in  
767 exchange for a monthly flat fee, Newspaper Corp receives a license to use an unlimited  
768 number of images from Image Corp's online database in Newspaper Corp's print and  
769 digital publications which will be viewed by Newspaper Corp's subscribers worldwide.  
770 Images Corp's database is only accessible by Newspaper Corp directly and not by its  
771 subscribers so therefore, this is not an intermediary transaction. Images Corp must  
772 source the receipt it receives from Newspaper Corp to the primary use location of  
773 Newspaper Corp. Newspaper Corp uses the images it selects from the online database

774 when composing articles; therefore, Newspaper Corp's primary use location is where this  
775 editorial control is exercised. Newspaper Corp makes editorial decisions at its office  
776 located in New York; therefore, the entire receipt is included in both New York receipts  
777 and everywhere receipts.

778 Example 22: Exchange Corp, a security exchange located in New York, has contracts  
779 with 300 brokerage firms that grant digital access to its exchange. Under the terms of the  
780 contract, employees of the firms are able to digitally access the exchange for purposes of  
781 purchasing or selling shares of stock on the exchange for a fee. Exchange Corp's  
782 contract with Trader Corp, one such brokerage firm, allows Trader Corp's 120 traders  
783 based in New York and 80 traders based in State A to buy and sell shares of stock on the  
784 exchange on behalf of clients. As Exchange Corp is not a registered securities broker or  
785 dealer, the fees it earns from allowing customers to trade on the exchange cannot be  
786 sourced under the rules in Tax Law section 210-A(5)(b). Furthermore, as the fee is for  
787 granting digital access to the exchange, the receipt is sourced under the rules in this  
788 section.

789 This is not an intermediary transaction because Exchange Corp is not providing access to  
790 the exchange directly to consumers at Trader Corp's direction. Only Trader Corp's own  
791 employees have digital access to the exchange, not Trader Corp's customers. For this  
792 reason, the receipt must be sourced to the location where Trader Corp's traders primarily  
793 utilize the digital product. Exchange Corp does not have adequate information to  
794 determine the exact location where the traders primarily use this digital product and,  
795 since Exchange Corp has more than 250 business customers that pay fees for  
796 substantially similar digital products, and no more than 5 percent of its receipts are from

797 Trader Corp, Exchange Corp is not required to make reasonable inquiries to Trader Corp.  
798 Therefore, Exchange Corp must use its books and records to reasonably approximate  
799 where Trader Corp's traders primarily use the exchange. Since 60 percent of Trader  
800 Corp's traders are based in New York, 60 percent of the receipts Exchange Corp receives  
801 from Trader Corp are included in New York receipts. One hundred percent of the receipts  
802 are included in everywhere receipts.

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