The draft apportionment rules for receipts from other services and business activities have changed since the first draft posted in October 2015. While most changes were minor, notable changes include an inquiry safe harbor for certain taxpayers and clarifications of the rules for intermediary transactions.

Reg. Sec. 4-2.15 Receipts from Other Services and Other Business Activities (Tax Law, Sec. 210-A(10)).

(a) General Principles of Application. A taxpayer's sourcing of receipts from services and other business activities not otherwise enumerated in section 210-A of the Tax Law must be consistent with the principles set out below. Receipts from services include receipts from compensation for services not otherwise sourced under § 210-A of the Tax Law, including, but not limited to, commissions, finder's fees, loan servicing fees, and fees for professional services.

(1) Section 210-A(10) of the Tax Law provides various sourcing rules that apply sequentially in a hierarchy. A taxpayer must annually exercise due diligence in attempting to apply the primary rule of where the benefit is received, as described in subdivision (c) of this section. It may abandon such primary rule only if it lacks sufficient information to apply that rule, in which case it must use the delivery destination, as described in subdivision (d) of this section. If a taxpayer cannot apply the rules in subdivisions (c) and (d) after exercising due diligence, it must then use the rules in subdivision (e) of this section for the receipts for the preceding taxable year. Lastly, if the taxpayer cannot apply the rules in subdivisions (c), (d), or (e) of this subdivision after exercising due diligence, it must then use the rules in subdivision (f) for the receipts for the current year. For intermediary transactions, a taxpayer should refer to the rules in subdivision (g) prior to applying the hierarchy. A taxpayer's method of sourcing its receipts, including the use of a method of approximation where applicable, must reflect an attempt to comply with the regulatory standards set forth herein rather than an attempt to minimize the taxpayer's tax liability.

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

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

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

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

(iv) If applying a level of the hierarchy other than subdivision (c), records must also document the steps taken before abandoning each level of the hierarchy. When abandoning a level of the hierarchy, the standard of due diligence is not satisfied if a taxpayer merely relies on the fact that its existing systems of recording transactions or the current format of its books and records do not capture the information required by these rules.

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

(i) The presumption may be overcome by the taxpayer if the taxpayer can prove, by clear and convincing evidence, that the method it proposes to use better reflects the intent of the applicable rule of the hierarchy. In such a case, the location to which the receipts from the service or other business activity will be sourced will be based on the evidence accumulated by the taxpayer. If the taxpayer believes it has overcome the presumption and uses an alternative method, upon audit the Department may examine the taxpayer’s alternative method to determine if the presumption has been overcome and, if so, whether it was applied in a consistent manner.

(ii) The presumption may be overcome by the Department if the Department can prove, by clear and convincing evidence, that the method it proposes to use better reflects the intent of the applicable rule of the hierarchy, and that the taxpayer had access to, or could have obtained upon reasonable inquiries when required, information at the time it filed its original return that could have been used to apply the Department’s method.

(4) Sourcing of commingled receipts.

(i) When a sale includes both a service or other business activity that would otherwise be sourced under these rules and tangible personal property commingled into one receipt, the entire receipt will be sourced as tangible personal property under the rules for section 210-A(2)(a) of the Tax Law and section 4-2.1 of this Subpart. This rule does not apply to sales of a service or other business activity when the tangible personal property is incidental to the service or other business activity; such sales must be sourced under these rules instead of section 210-A(2)(a) of the Tax Law and section 4-2.1 of this Subpart.

(ii) When a sale includes both a service or other business activity sourced under these rules and a sale, rental or license to use a digital product that would otherwise be sourced under the rules for section 210-A(4) of the Tax Law and section 4-2.3 of this Subpart, commingled into one receipt, the entire receipt will be sourced as a service or other business activity under these rules. This rule does not apply to sales, rentals or licenses to use a digital product when the service or other business activity is incidental to the digital product; such sales must be sourced under the rules for section 210-A(4) of the Tax Law and section 4-2.3 of this Subpart.

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

(b) General Definitions.

(1) *Billing address* means the location indicated in the books and records of the taxpayer as the primary address with respect to a customer's account as kept in good faith in the normal course of business.

(2) *State where a contract is managed by the customer* means the primary location at which an employee or other representative of a customer serves as the person with responsibility for monitoring or managing the contract of sale with the taxpayer.

(3) *Customer* means the party who enters into a transaction with the taxpayer for the purchase of a service or other business activity from the taxpayer. A customer can be either an individual customer or a business customer. A business customer may also be an intermediary.

(4) *Individual customer* means a customer whose purchase from the taxpayer is for personal use, and not for a business purpose. In any instance in which the taxpayer, acting in good faith, cannot reasonably determine whether the customer is an individual customer, the taxpayer must treat the customer as a business customer.

(5) *Business customer* means a customer that is not an individual customer, including but not limited to, a sole proprietor, S corporation, limited liability company, limited partnership, limited liability partnership, general partnership, corporation, non-profit organization, trust, the U.S. Government, any foreign, state, or local government, or any agency or instrumentality of such government. In any instance in which the taxpayer, acting in good faith, cannot reasonably determine whether the customer is an individual customer or business customer, the taxpayer must treat the customer as a business customer.

(6) *Intermediary* means the business customer of a taxpayer that indicates, as part of its contract or other agreement with the taxpayer, that the service or other business activity will be primarily utilized by a consumer.

(7) *Consumer* means a party, other than the intermediary, primarily utilizing the service or other business activity provided by the taxpayer either "through" an intermediary or "on behalf of" an intermediary.

(8) *Intermediary transaction* means a transaction in which the location where the customer receives the benefit of a service or other business activity, or the location at which a service or other business activity is delivered, is the location of the consumer rather than the location of the customer itself. Such a transaction is sourced under the rules in subdivision (g) of this section.

To be considered an intermediary transaction, the service or other business activity, pursuant to the terms of a contract or other agreement between the taxpayer and intermediary, must be: (a) provided by the taxpayer, at the direction of the intermediary, directly to the consumer; or (b) sold by the taxpayer to the intermediary, who then passes on the service or other business activity related to tangible personal property to the consumer.

In intermediary transactions where the intermediary passes on the service or other business activity related to tangible personal property to the consumer, the taxpayer is obligated under the agreement to perform at least a substantial portion of the service or other business activity after the tangible personal property that the service or other business activity relates to is delivered by the intermediary to the consumer.

(c) Benefit Received. (1) General rule. A taxpayer must include a receipt in New York receipts when the benefit is received by the taxpayer's customer in New York. The benefit is received by the taxpayer's customer where the customer derives the value from a service or other business activity purchased from the taxpayer. Unless enumerated in the specific types of service transactions set forth in paragraphs (2) and (3) of this subdivision for in-person services and services related to real property, determining where the benefit is received depends on whether the customer is an individual customer as defined in paragraph (4) of subdivision (b) of this section or business customer as defined in paragraph (5) of subdivision (b) of this section.

(i) Individual customer. In the case where the taxpayer's customer is an individual, the benefit is presumed to be received at the billing address of the customer in the taxpayer's records. If the taxpayer does not have the customer's billing address, it is not required to make reasonable inquiries to the customer, and instead must use reasonable approximation, as described in subparagraph (iv) of this paragraph.

(ii) Business customer. In the case where the taxpayer's customer is a business, the benefit is presumed to be received in New York to the extent the taxpayer's books and records kept in the normal course of business, without regard to the billing address of the taxpayer's customer, indicate the customer receives the benefit of the service or other business activity in New York. The benefit is received at the location of a third party (i.e. the customer's customer) only in the case of an intermediary transaction.

(A) Reasonable Inquiries.
   (1) If the taxpayer cannot determine where the benefit is received based upon such books and records, the taxpayer must, in exercising due diligence, make reasonable inquiries to the customer to determine where the benefit of the service or other business activity is received.
   (2) Inquiry Safe Harbor. Reasonable inquiries are not required if the taxpayer has more than 250 business customers purchasing substantially similar services or activities that would be sourced under this section and no more than 5 percent of receipts from such services or activities are from one customer.

(B) If, after satisfying the requirements of subclause (1) or (2) of clause (A), the taxpayer does not have adequate information to determine where the benefit is received by the customer, the taxpayer must use reasonable approximation, as described in subparagraph (iv) of this paragraph.

(iii) Benefit received both within and without New York. Where the customer receives the benefit in New York and at least one other location, the taxpayer should source the receipts based on the value derived by the customer in each location where benefit is received as a percentage of the total value derived by the customer.

(iv) Reasonable approximation. Where a taxpayer cannot adequately determine the location or locations where the benefit is actually received and/or the percentage of total value received at each location from the taxpayer's books and records kept in the ordinary course of business, and after making reasonable inquiries to the customer when required, then reasonable approximation must be used to make that determination.

(A) Definition. Reasonable approximation is an alternative method used to determine the location at which a customer receives the benefit of a service or other business activity in instances in which:

(I)(i) the location or locations where the benefit is actually received and/or the benefit actually received in each location as a share of the total benefit received cannot be determined, or

(ii) obtaining the location or locations where the benefit is actually received and/or the benefit actually received in each location as a share of the total benefit received would require the taxpayer to expend undue effort and expense beyond the standard amount of due diligence as required by (a)(2)(iv) of this section; and

(II) the taxpayer has sufficient information to reasonably approximate the location or locations where the benefit is received and/or the benefit received in each location as a share of the total benefit received. If the taxpayer does not have sufficient information to use reasonable approximation, the taxpayer must source its receipts under the next level of the hierarchy, the delivery destination, as described in subdivision (d) of this section.

(B) Rules for reasonable approximation. (I) In an instance where a taxpayer is required under this subparagraph to reasonably approximate, the taxpayer must use a method that is intended to approximate the results that would be obtained under the applicable rules or standards set forth to determine where the benefit is received.

(II) In any instance where a taxpayer can ascertain the location or locations where a substantial portion of similar receipts are sourced ("sourced receipts"), but not all of such receipts, and the taxpayer reasonably believes, based on all available information, that the geographic distribution of the remainder of such receipts is substantially similar to that of the sourced receipts, it may source such receipts in the same proportion as its sourced receipts.

(III) In any case in which a taxpayer uses a method of approximation to source its receipts and the Commissioner determines that the method of approximation employed by the taxpayer is not reasonable, the Commissioner may substitute a method of approximation that the Commissioner determines is appropriate.

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

(V) In any case in which, after reasonable inquiries are made when required, the only available information regarding where the benefit is received is that the service benefits the general population of multiple states, the entire country, or multiple countries, and the taxpayer does not have more specific information to determine how to divide the receipt between these multiple locations, the taxpayer may not use reasonable approximation based on population to determine the location at which a customer primarily receives the benefit of a service or other business receipt. In such circumstances, the taxpayer must instead source its receipts under the next level of the hierarchy, the delivery destination, as described in subdivision (d) of this section.

(2) In-Person Services. (i) In-person services are those services physically provided by the taxpayer and consist of two categories—services rendered to the body of an individual or in the physical presence of an individual and services rendered on the tangible personal property of a customer. Both categories include situations where the services are provided directly by the taxpayer or on behalf of the taxpayer by a third-party contractor or an intermediary. Except as otherwise provided, where the service provided by the taxpayer is an in-person service, the benefit of the service is received at the location where the service is received by the customer. Therefore, the receipt is included in New York receipts if, and to the extent, the customer receives the in-person service in New York.

(A) Services rendered to the body of an individual or in the physical presence of an individual.

(I) Examples include, but are not limited to: medical and dental services, including medical testing and x-rays; child care; hair cutting and salon services; live entertainment and athletic performances; and in-person training or lessons.

i. Where the service is performed with respect to the body of an individual (e.g. hair cutting or x-ray services) or in the physical presence of the customer (e.g. live entertainment or athletic performances), the receipt is presumed to be sourced to the location where the service is performed.

(B) Services rendered on the tangible personal property of a customer.

(I) Examples include, but are not limited to repair services, dry cleaning, and equipment upgrades.

i. Where the service is performed with respect to the customer's tangible personal property, the receipt is presumed to be sourced to the location where the customer receives the property from the taxpayer after the service is performed.

(ii) Special rules for specific types of in-person services.

(A) Services such as medical and dental services, which involve or require significant in-person contact, are "in-person services" within the meaning of this section, and are sourced under such rules. Legal, accounting, financial and consulting services, although they may involve an amount of in-person contact, are not treated as in-person services within the meaning of this paragraph, as significant in-person contact is not required in order to perform this type of service. Instead, such services are sourced using the general rule in paragraph (1) of this subdivision.

(B) Services that are related to real property are not treated as in-person services within the meaning of this paragraph, regardless of whether or not they are performed in-person. Instead, such services are sourced using the rules for services related to real property in paragraph (3) of this subdivision.

(3) Services Related to Real Property. With respect to services related to real property, the benefit of a service is received where the real property is located, without regard to whether the customer is an individual or business. Services related to real property include, but are not limited to: services performed directly on the property, such as landscaping and construction services; and services that are not necessarily performed on the property, but nevertheless relate to the property, such as architectural services, engineering services, legal services, mortgage servicing, and services related to the sale of real property.

(4) Examples of where the benefit is received.

Example 1: Audit Corp is located in New York and provides accounting and tax services. Audit Corp contracts with Client Corp to audit the books and records of Client Corp's three locations in State A, State B and New York for the taxable year ended 20XX. Client Corp's managers of the three locations make several visits to Audit Corp to provide their respective locations' books and records to the auditors assigned to the respective audits and to address periodic inquiries. In its books and records, Audit Corp tracks the hours each of its auditors spent on the respective audits of the three locations. Audit Corp bills Client Corp for its services using the same hourly rate for each of its auditors.

Audit Corp's services are not considered an in-person service because, although there was in-person contact, it was not integral to the performance of the service. The benefit is received by Client Corp at each location to the extent the audit was of that location because that is where Client Corp derives the value of the service. Audit Corp determines where the benefit of its service is received based on Audit Corp's books and records that indicate the time spent auditing each location by each staff member. Audit Corp should determine the amount of its New York receipts by multiplying the receipts it receives from Client Corp by a fraction, the numerator of which is the amount of time spent by Audit Corp employees auditing Client Corp's New York location and the denominator of which is the total amount of time spent by Audit Corp's employees auditing all of Client Corp's locations. All of Audit Corp's receipts from Client Corp are included in everywhere receipts.

Example 2: Office Interiors Corp contracts with 75 business customers to provide workspace design services. Office Interiors Corp meets with clients and develops options for employee workspace layouts, including design features like colors, materials, and furniture. Newco hires Office Interiors Corp to design employee workspaces for its main office in New York and a satellite office in State A. The contract provides that Office Interiors Corp will be paid a flat fee to design workspaces in both offices, but does not break down the fee between the two locations. Office Interiors Corp knows that Newco will derive the value from the service at both office locations, but does not know how to apportion the receipt between the two offices. Upon reasonable inquiries, Newco informs Office Interiors Corp of the square footage of each office. Office Interiors Corp decides that the square footage of each office could be used to approximate the percentage of the benefit received by Newco at each location. Office Interiors Corp must determine the amount of its New York receipts by multiplying the receipts it receives from its contract with Newco by a fraction, the numerator of which is the number of square feet of office space within Newco's New York office and the denominator of which is the total number of square feet in both of Newco's offices served by the contract. All of Office Interior Corp's receipts from Newco are included in everywhere receipts.

Example 3: Teaching Corp provides in-person seminars in New York to individuals and business customers. The seminars and the materials used in connection with the seminars are prepared outside New York, the teachers who teach the seminars include teachers that are not New York residents, and the students who attend the seminars include students that are not New York residents. Since the customers are in the same location as Teaching Corp when the service is provided, it is deemed to be an in-person service and, therefore, the entire benefit is received in New York. One hundred percent of such receipts are included in New York receipts and everywhere receipts.

Example 4: Watch Corp is a watch repair corporation with retail locations in multiple states including New York. Customer A goes into Watch Corp's New York location to have his watch repaired. The repair work is performed at Watch Corp's New York location. In some instances, the customer takes back possession of the watch in New York. In other instances, the customer requests that the repaired watch be shipped to his or her home address in State A. Since the repair is completed on the customer's watch, which is tangible personal property, it is considered an in-person service. In those instances where the customer takes back possession of the watch in New York, the benefit is received in New York because the customer receives the repaired watch in New York and the receipts for the repair work are included in New York receipts. In those instances where the customer has the watch shipped to his or her home address in State A, the benefit is received in State A and the receipts for the repair work are not included in New York receipts. In both instances, all of the receipts are included in everywhere receipts.

Example 5: Engineering Corp, located in State B, provides engineering, management, and oversight of large-scale building projects on a contract basis. Builder Corp is building an office complex in New York. Builder Corp contracts with Engineering Corp to oversee construction of the buildings on the site. Engineering Corp performs some of its services in New York at the building site and performs some additional services at its office in State B. Because all of Engineering Corp's services are related to real property, the benefit is received by Builder Corp at the location of the building site in New York. Therefore, one hundred percent of receipts are included in New York receipts and everywhere receipts.

Example 6: Pest Control Corp contracts with building owners and managers to provide pest control and eradication services. Housing Corp owns one hundred two-bedroom apartments in New York and one hundred one-bedroom apartments in State B, and contracts with Pest Control Corp for pest control services for all the apartments. The contract assesses a fee based on the size of apartment, $10 per one-bedroom apartment and $20 per two-bedroom apartment. Since Pest Control Corp’s services are related to real property, Housing Corp receives the benefit of the service at the location of the real property in both State B and in New York. Pest Control Corp includes a portion of the total receipt to New York, determined by multiplying the total receipt by a fraction, the numerator of which is the portion of the receipt attributable to apartments located within New York and the denominator of which is the total receipt from the contract. Thus, Pest Control Corp includes 2/3 of the total receipt in New York receipts. One hundred percent of such receipts are included in everywhere receipts.

Example 7: Law Corp, located in State C, is hired by Client Corp to handle a major litigation matter concerning the sale of its manufacturing plant located in New York. Client Corp has manufacturing plants in New York and State B. The trial takes place in State C, which is the location of the opposing party in the lawsuit. The court documents, which are public records, reflect that the subject matter is the manufacturing plant located in New York. Because Law Corp’s entire service is related to the manufacturing plant, which is real property, the benefit is received by Client Corp at the location of the manufacturing plant. Therefore, Law Corp must include one hundred percent of its receipts from Client Corp in both New York receipts and everywhere receipts.

Example 8: Consulting Corp provides two main types of facility consulting services—site selection and environmental compliance. Consulting Corp has 60 business customers who have hired them to find suitable locations for expansion and 200 business customers who have hired them to provide environmental compliance services. Despite the differing subject matter, the consulting services are substantially similar enough that Consulting Corp may use the inquiry safe harbor (see (c)(1)(ii)(A)(2) of this section).

Consulting Corp provides environmental compliance services to QRS, a federal government agency, which has regional offices located in New York and 11 other states. The contract, which is managed in State B, provides that Consulting Corp will provide consulting services to help QRS run its internal operations at all 12 office buildings in a more environmentally friendly manner. However, Consulting Corp does not have any information about the size of the regional offices, other than the number of offices. Consulting Corp is not required to make inquiries, and can reasonably approximate where the benefit is received by including 1/12 of its receipts in New York receipts. One hundred percent of such receipts are included in everywhere receipts.

Example 9: Consulting Corp provides consulting services to determine the safety of train tracks for Train Corp in relation to a portion of train service that runs through New York and 5 other states for a flat fee. Some areas of the track are more heavily traveled than others, requiring more attention, and some portions of the track require special attention, such as where signals are located. Consulting Corp's books and records indicate only the location of the tracks its services relate to and how many miles of track are located in New York and each of the 5 other states. Upon reasonable inquiries, Consulting Corp cannot obtain additional information to determine specifically where Train Corp derives the value of its service. Consulting Corp should reasonably approximate where the benefit is received by multiplying the total receipts it receives from Train Corp by a fraction, the numerator of which is the miles of track its service relates to located within New York and the denominator of which is the total miles of track its service relates to located within and without New York. Consulting Corp must include one hundred percent of its receipts from Train Corp in everywhere receipts.

Example 10: Sales Corp owns retail locations in various states and acts as a sales agent of Manufacturing Corp, wholly located in New York. A salesman at Sales Corp's State A location received an order from a customer in State A. The order was forwarded to and accepted by Manufacturing Corp and Sales Corp receives a commission on this sale from Manufacturing Corp. Sales Corp must determine where Manufacturing Corp derives the value of its service to determine how much of this receipt should be included in New York receipts. Sales Corp's books and records indicate Manufacturing Corp will fulfill this order at its location in New York. Therefore, Sales Corp must include one hundred percent of its receipt from its commission in both New York receipts and everywhere receipts.

(d) Delivery Destination. (1) Where a taxpayer, after exercising due diligence, cannot determine or reasonably approximate where the customer has received the benefit, it should include the receipt in New York receipts where the service or other business activity is delivered to the customer within New York. Determining the delivery destination depends on whether the customer is an individual or business customer.

(i) Individual Customer. The location at which the service or other business activity is delivered is determined based on evidence available to the taxpayer, including, but not limited to, sales records. The Department may examine the taxpayer's evidence and other evidence the Department deems to be relevant to determine whether such evidence reasonably reflects the delivery destination and whether the method was applied in a consistent manner. If, after applying due diligence, the taxpayer does not have adequate information to determine the delivery destination, the taxpayer must apply the next level of the hierarchy, the receipts for the preceding taxable year, as described in subdivision (e) of this section.

(ii) Business Customer. The location where the service or other business activity is delivered is presumed to be the location at which the contract of sale is managed by the customer. If the taxpayer cannot determine the location where the contract of sale is managed by the customer, then the delivery destination is presumed to be the billing address of the customer. If, after applying due diligence, the taxpayer does not have adequate information to determine the delivery destination, the taxpayer must apply the next level of the hierarchy, the receipts for the preceding taxable year, as described in subdivision (e) of this section.

(2) Examples of delivery destination.

Example 11: Statistics Corp provides data compilation and analysis services that will be used in policymaking for XYZ, a federal government agency, which has regional offices throughout the United States. Statistics Corp's only contact with XYZ is with its main office located in State A, and Statistics Corp is unsure which of XYZ's offices focus on policymaking and which focus on direct client services. After reasonable inquiries, Statistics Corp does not have any additional information as to which regional offices will use the data compilation and analysis services. Because Statistics Corp does not have adequate information to determine where the benefit is received, or even apply reasonable approximation, Statistics Corp is allowed to source the receipts based on the delivery destination of its services. Since the contract is managed by XYZ's main office in State A, the receipts are not included in New York receipts. One hundred percent of the receipts are included in everywhere receipts.

Example 12: Architect Corp, located in New York, provides architectural services to Developer Corp, located in State A, to design the floor plan of homes, which Developer Corp plans to build into a housing community at an as-yet undetermined location. Architect Corp is providing a service related to real property, and ordinarily the benefit is received where the real property is located. However, at the time Architect Corp completes its service and the transaction with Developer Corp, Developer Corp has not yet purchased land to build the homes. Therefore, because Architect Corp does not know where the real property is located to source the receipt based on where the benefit is received, Architect Corp must source the receipt based on the delivery destination of its service. Since the contract between Architect Corp and Developer Corp is managed by Developer Corp at its headquarters in State A, the receipt is not included in New York receipts. One hundred percent of the receipts are included in everywhere receipts.

(e) Receipts for the Preceding Taxable Year.

(1) Where a taxpayer, after exercising due diligence, cannot determine or reasonably approximate where the customer has received the benefit, nor determine the delivery destination, it should source its receipts from that activity to New York based on receipts from the sales of that type of service or other business activity for the preceding taxable year. The amount included in New York receipts for the current taxable year is determined by multiplying such receipts by a fraction, the numerator of which is the amount included in New York receipts from the sales of that type of activity in the preceding taxable year and the denominator of which is the amount included in everywhere receipts from the sales of that type of activity in the preceding taxable year. This level of the hierarchy cannot apply in a taxpayer's first taxable year beginning on or after January 1, 2015 and before January 1, 2016, nor to a taxpayer's first taxable year in New York. In such tax year, a taxpayer must reject this method and move directly to the method described in subdivision (f).

(2) Example of receipts for the preceding taxable year.

Example 13: Sales Corp provides only one type of service to approximately 200 business customers. In tax year 2017, all of its receipts were sourced using the rules in subdivision (c) of this section, and, as a result 45 percent of Sales Corp's receipts were included in New York receipts. In tax year 2018, Sales Corp continues to provide only one type of service to its customers. At the end of tax year 2018, Sales Corp's computer system crashes and it is unable to recover information it had obtained on where the benefit of its services were received or where the services were delivered. Upon reasonable inquiries to its known customers, Sales Corp still cannot obtain information on where the benefits were received or where the services were delivered. Therefore, Sales Corp must include 45 percent of its 2018 receipts in its 2018 New York receipts. One hundred percent of receipts sourced under this section are included in everywhere receipts.

(f) Receipts for Current Taxable Year**.**

(1) Where a taxpayer, after exercising due diligence, cannot determine or reasonably approximate where the customer has received the benefit, nor the delivery destination, or cannot use the receipts for the preceding taxable year for a certain type of service or other business activity, it must source the receipt from that service or other business activity to New York based on all those receipts that can be sourced using the methods in subdivisions (c) and (d) of this section. The amount included in New York receipts for the current taxable year is determined by multiplying such receipts by a fraction, the numerator of which is the amount included in New York receipts from all services and other business activities using the methods in subdivisions (c) and (d) of this section for the current taxable year and the denominator of which is the amount included in everywhere receipts from services and other business activities sourced using the methods in subdivisions (c) and (d) for the current taxable year.

(2) Example of receipts for the current taxable year.

Example 14: Taxpayer A has $10,000 in receipts from a new type of service not otherwise enumerated in Section 210-A. After exercising due diligence, Taxpayer A cannot determine where the customer received the benefit or where the service was delivered. Therefore, Taxpayer A must determine the portion of the $10,000 to include in New York receipts based on the receipts sourced under subdivisions (c) and (d) of this section in the current tax year. In the current tax year, Taxpayer A has $150,000 in other business receipts sourced under the methods outlined in subdivisions (c) and (d) of this section, of which $75,000 (or 50 percent) are New York receipts. Therefore, Taxpayer A would include 50 percent of the $10,000, or $5,000, of receipts from the new type of service in New York receipts. One hundred percent of receipts from the new type of service are included in everywhere receipts.

(g) Rules for Intermediary Transactions.

(1) In the case of intermediary transactions, the location where the receipt is sourced is determined using the hierarchy of methods described in subdivisions (c) and (d) of this section based on the location of the individual or business consumers, rather than the intermediary.

(2) The taxpayer is required to make inquiries to the intermediary, but not to the consumers, when necessary to determine where the consumer receives the benefit of the service or other business activity or where the service or other business activity is delivered to the consumer regardless of the number of business customers the taxpayer has or the percentage of receipts from any one customer. Such inquiries may be fulfilled by the intermediary providing information from its books and records to the taxpayer that demonstrates the location where the consumer receives the benefit of the service or other business receipt or, if that information is unavailable, where the service or other business receipt is delivered to the consumer.

(3) If, after exercising due diligence, the taxpayer has inadequate information to apply the hierarchy of rules described in subdivisions (c) and (d) of this section with reference to the location of the consumers, the taxpayer should apply the hierarchy of rules described in subdivisions (c) and (d) of this section based on the intermediary. If after exercising due diligence, the taxpayer has inadequate information to apply the hierarchy of rules described in subdivisions (c) and (d) of this section with reference to either the consumers or the intermediary, the taxpayer must then apply the hierarchy of rules described in subdivisions (e) and (f).

(4) Examples of intermediary transactions.

Example 15: Fulfillment Corp (the taxpayer), a corporation based outside New York, provides product fulfillment services in New York and in neighboring states to Sales Corp (the intermediary), a corporation located outside New York that sells tangible personal property through a mail order catalog and over the internet to its customers (consumers). In some cases, when a customer of Sales Corp purchases tangible personal property from Sales Corp to be sent to New York, Fulfillment Corp will, pursuant to its contract with Sales Corp, send that property from its fulfillment warehouse located outside New York directly to Sales Corp's customer and Fulfillment Corp will collect a fee per transaction from Sales Corp. Fulfillment Corp is providing an in-person service rendered to the tangible personal property it is delivering. However, because Fulfillment Corp's fulfillment services are provided at the direction of Sales Corp pursuant to its contract, this is an intermediary transaction. Therefore, Fulfillment Corp's receipts from Sales Corp are included in New York receipts to the extent Fulfillment Corp sends Sales Corp's products to consumers in New York. One hundred percent of Fulfillment Corp's receipts from Sales Corp are included in everywhere receipts.

Example 16: Loan Corp (the taxpayer) is based in New York and operates offices whereby individuals and businesses can discuss loan options and obtain a loan from unrelated lenders. Loan Corp will also service the loans it procures. Bank Corp (the intermediary) enters into a contract with Loan Corp whereby Bank Corp will pay Loan Corp a fee to procure borrowers (consumers) and handle servicing of loans financed by Bank Corp. Loan Corp handles all interactions with the consumers, who have no contact or interaction with Bank Corp directly. The fee earned by Loan Corp is received in an intermediary transaction because Loan Corp is providing a service to consumers at the direction of Bank Corp pursuant to its contract.

Loan Corp assists Business Consumer A in obtaining a mortgage loan from Bank Corp to purchase an office building in State C. Because the service is related to real property, Loan Corp must source its receipt to the location of the real property. The real property is located in State C so the receipt from Bank Corp to Loan Corp for procuring the borrower and servicing the mortgage loan is not included in New York receipts. One hundred percent of such receipts are included in everywhere receipts.

Loan Corp assists Individual B, a resident of State D, in obtaining an auto loan from Bank Corp. Loan Corp sends monthly bills to Individual B during the term of the loan. Loan Corp's receipt from Bank Corp for procuring the borrower and servicing the loan is not included in New York receipts because Bank Corp receives the benefit of the service at Individual D's billing address in State D. One hundred percent of such receipts are included in everywhere receipts.

(5) Examples of transactions that are not intermediary transactions.

Example 17: Rating Corp has a contract with Credit Card Corp to provide credit rating services to Credit Card Corp for individuals applying for credit cards. Credit Card Corp receives all credit rating services at its corporate office in State A where it makes determinations on whether or not to issue credit cards to applicants. Applicants from all over the country submit applications to Credit Card Corp who then provides information about the applicants to Rating Corp to receive a credit rating. Rating Corp issues the rating for each applicant to Credit Card Corp who utilizes this information to make a determination as to whether or not Credit Card Corp will issue the applicant a credit card. This is not an intermediary transaction because the service is provided directly to Credit Card Corp and is not passed on to the applicant.

Additionally, Credit Card Corp receives the benefit from this service because the credit rating helps Credit Card Corp make informed business decisions. Because Credit Card Corp utilizes the service entirely in State A where it makes credit determinations on credit card applications, the receipt is not included in New York receipts. One hundred percent of such receipt is included in everywhere receipts.

Example 18: Production Corp enters into a contract with Cable Network Corp, wholly located in New York, to produce a made-for-television movie. Production Corp will provide the service of producing the television program which will then be delivered to Cable Network Corp. Cable Network Corp owns the copyrights related to the movie and will then air this program to its subscribers. This is not an intermediary transaction because the service is not provided by Production Corp to consumers at the direction of Cable Network Corp. Also, in this instance, the service is completed prior to Cable Network Corp passing the movie along to subscribers. Cable Network Corp derives the value from this service at its location where it airs the program. Because Cable Network Corp receives the benefit of the service in New York where it is located, the entire receipt is included in New York receipts. One hundred percent of such receipt is included in everywhere receipts.

Example 19: Credit Ratings Corp, located in New York, has a contract with Debt Issuer Corp whereby Credit Ratings Corp opines, via the assignment of a letter grade, on the creditworthiness of Debt Issuer Corp’s debt obligation. The rating does not constitute a recommendation of the suitability of an investment for any particular investor. Credit Ratings Corp may issue the rating via press release, which allows potential investors to consider the rating/letter grade. Credit Ratings Corp also includes the rating in its database of ratings on its website, which allows for public viewing. However, the principal element of the service is the development of the rating; any dissemination via digital means is incidental to such service. Therefore, the receipt is sourced under these rules. Furthermore, this service does not constitute an intermediary transaction because the rating is not provided by Credit Ratings Corp directly to individual investors at Debt Issuer’s direction or to Debt Issuer Corp who then passes it along to individual investors. For this reason, the receipt must be sourced to the location Debt Issuer Corp receives the benefit of the service, which cannot be at the location of investors. Credit Rating Corp’s books and records indicate that the rating is being sought on the advice of Debt Issuer’s corporate finance division, which is responsible for overall fiscal strategy and execution and is located in State A. Therefore, the receipt is not included in New York receipts. One hundred percent of such receipt is included in everywhere receipts.