The draft apportionment rules for receipts from services and other business activities 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 clarity. Notable changes include:

- Adding special rules for particularized transactions
- Addressing the sourcing of receipts from the 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
Regulation Section 4-2.18 Receipts from Other Services and Other Business Activities (Tax Law, Section 210-A(10)).

(a) General Principles of Application. A taxpayer’s apportionment 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. Such receipts include, but are not limited to, income from the sale of intangible property as well as receipts from compensation for certain services, such as commissions, finder’s fees, loan servicing fees, and fees for professional services.

(1) Receipts from services and other business activities are included in New York receipts if the location of the customer is within New York State.

   (i) The location of the customer is deemed to be the location where the customer derives value from the service or other business activity.

   (ii) To determine the location where the customer derives value from the service or other business activity, 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 sourcing rule of where the benefit is received, 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 delivery destination, as described in subdivision (d) of this section.
(iii) If, after exercising due diligence, a taxpayer cannot apply the sourcing rules in subdivisions (c) and (d) of this section, it must then use the sourcing rules in subdivision (e) of this section based on the sourcing of receipts for the preceding taxable year. Lastly, if the taxpayer cannot apply the rules in subdivisions (c), (d), or (e) of this section after exercising due diligence, it must then use the rules in subdivision (f) based on the sourcing of receipts for the current year.

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

(v) A taxpayer’s method of apportioning its receipts, including the use of a method of reasonable 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, 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 ordinary 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) A taxpayer must update its existing systems of recording transactions or the current format of its books and records to capture the information required by these rules. It is not sufficient to rely on the fact that existing systems do not adequately capture the required information.

(v) If information is not readily available for the special rules or the general rule in paragraphs (1) and (2) of subdivision (c), taxpayers must make reasonable inquiries to a business customer to determine the information required by these rules. 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 that particular customer, then inquiries are not required for that customer (“inquiries safe harbor”).

(vi) Taxpayers must document the steps taken before abandoning each level of the hierarchy or step within a level of the hierarchy, such as moving from a special rule to the general rule in subdivision (c), including documentation of reasonable inquiries made.
(vii) When the Commissioner determines that the taxpayer had access to, or could have obtained upon reasonable inquiries when required, information at the time it filed its original return to apply a method of apportionment that comes earlier in the hierarchy than the method utilized by the taxpayer, the Commissioner may require the taxpayer to use such method.

(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 location where the customer derives value from the service or other business activity. 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 for similar transactions.

(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 location where the customer derives value from the service or other business activity, 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 must be sourced as tangible personal property under the rules for Tax Law section 210-A(2)(a) and section 4-2.## 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 receipts must be sourced under these rules instead of Tax Law section 210-A(2)(a) and section 4-2.## 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 and/or digital service that would otherwise be sourced under the rules for Tax Law section 210-A(4) and section 4-2.3 of this Subpart, commingled into one receipt, the entire receipt must be sourced as a service or other business activity under these rules. This rule does not apply to the sale, rental, license to use, or granting of remote access to a digital product and/or a digital service when the service or other business activity is incidental to the digital product and/or digital service; such sales must be sourced under the rules for Tax Law section 210-A(4) 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. For purposes of this section, the following terms shall have the meanings indicated below.

(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.

(2) Location 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 an individual customer, a business customer, or a passive investment customer. Only a business customer may also be an intermediary. 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.

(4) Individual customer means a customer who enters into a transaction with the taxpayer for the purchase of a service or other business activity from the taxpayer for personal use, and not for a business purpose.

(5) Business customer means a customer that is not an individual customer or passive investment 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.

(6) Passive investment customer means a customer that is an unincorporated entity, such as a limited partnership, general partnership, limited liability company, limited liability
partnership, or trust, that pools capital from passive investors for the purpose of trading or making investments in stocks, bonds, securities, commodities, loans, or other financial assets, but that does not otherwise conduct an active business. An entity is considered as engaged in an active business if the average value, determined on a quarterly basis, of its loans, federal, state and municipal debt, asset backed securities and other government agency debt, corporate bonds, reverse repurchase agreements and securities borrowing agreements, federal funds, stocks and partnership interests, physical commodities and other financial instruments that it owns does not exceed fifty percent of the average value of its total assets.

(7) Intermediary means the business customer of a taxpayer that primarily derives the value from a service or other business activity at the location of a consumer in an intermediary transaction.

(8) Consumer means an individual or entity, other than the intermediary, whose location is where the intermediary primarily derives value from the service or other business activity provided by the taxpayer.

(9) Intermediary transaction means a transaction in which the location where the business customer (intermediary) primarily derives value from a service or other business activity is the location of the consumer rather than the location of the customer itself. Such transaction is sourced using the rules in subdivision (g) of this section. Intermediary transactions do not include services or activities sourced under the special rules in paragraph (1) of subdivision (c) of this section.

(i) To be considered an intermediary transaction, the service or other business activity, pursuant to the explicit or implicit terms of a contract or other
agreement between the taxpayer and intermediary, must meet the requirements of (a) or (b):

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

(b) sold by the taxpayer to the intermediary, who then passes on the service or other business activity to the location of the consumer, provided the taxpayer must be obligated under the agreement to perform a substantial portion of the service or other business activity after the property that the service or other business activity relates to is delivered by the intermediary to the location of the consumer.

(c) Benefit Received. A taxpayer must include a receipt in New York receipts when the benefit of the service or other business activity is received by the taxpayer’s customer in New York.

(1) Special rules. Certain types of receipts are sourced using the rules in this paragraph. When applying the special rules in this paragraph, the specific criteria to apply the special rules will be met regardless of whether the service or other business activity is provided directly by the taxpayer or on behalf of the taxpayer. Commissions and other receipts from the facilitation of services or other transactions are addressed in the special rules. All other receipts from services and other business activities must be sourced using the general rule in paragraph (2) of this subdivision. If a taxpayer meets the specific criteria to apply a special rule, but does not have sufficient information to apply the rule, the taxpayer should use the rules for reasonable approximation, as provided for in paragraph (3) of this subdivision, to apply the special rule or, if the taxpayer does not have sufficient
information to apply the rules for reasonable approximation to the special rule, the
taxpayer must use the general rule in paragraph (2) of this subdivision.

(i) In-Person Services. Services rendered to the body of an individual or in the
physical presence of an individual and, based on the nature of the service, requires
the physical presence of an individual, are considered in-person services and are
apportioned under the rules in this subparagraph. In addition, the facilitation of
in-person services are apportioned under the rules in this subparagraph.

(a) In-person services 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; modeling; and
in-person training or lessons.

(b) The benefit of in-person services is presumed to be received at the
location where the in-person service is performed.

(c) In-person services do not include (1) services that do not require
significant in-person contact in order to perform, but nevertheless may
include in-person contact, including, but not limited to, legal, accounting,
or financial and consulting services, and (2) the obligation to perform
services or fund the performance of services that may or may not actually
occur at an undetermined future date (e.g. facilitation of the purchase of
insurance), although significant in person contact may ultimately occur
when the service is actually performed.

(ii) Services related to tangible personal property. Services related to tangible
personal property, including the facilitation of services related to tangible personal
property, are apportioned under the rules in this subparagraph. In-person services related to tangible personal property are apportioned under the rules in this subparagraph, rather than the rules in subparagraph (i) of this paragraph.

(a) Services related to tangible personal property include, but are not limited to: repair services; dry cleaning; preparation and service of food or drink; towing; fulfillment; and equipment upgrades.

(b) The benefit of services related to tangible personal property is presumed to be received at the location where the property is received after the service is performed.

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

(iii) Services related to real property. Services related to real property, including the facilitation of such services, are apportioned under the rules in this subparagraph. Services related to real property include services that relate to the improvement or maintenance of the property and services that relate to the title, purchase, sale, rental, appraisal, assessment or basis in the property. In-person services related to real property are apportioned under the rules in this subparagraph, rather than the rules in subparagraph (i) of this paragraph.

(a) Services related to real property include, but are not limited to:

architectural services, engineering services, landscaping, property
maintenance, construction, demolition, security, land surveying, mortgage servicing, and real estate commissions.

(b) The benefit of a service related to real property is presumed to be received where the real property is located.

(iv) Sales of intangible property. With respect to the net gains (not less than zero) from the sale of intangible property not otherwise addressed in subdivisions one through nine of Tax Law section 210-A, the benefit of such sale is presumed to be received at the location where the value of the intangible was accumulated.

Intangible property includes, but is not limited to, goodwill, copyrights, patents, trademarks, trade names, brand names, licenses, and trade secrets.

(v) Services to passive investment customers. Management services provided to passive investment customers are apportioned under the rules provided for in this subparagraph. All other services or other business activities provided to passive investment customers are apportioned using other special rules, if applicable, or the general rule as if such customer is a business customer.

(a) For purposes of this subparagraph, management services to passive investment customers include services relating to the rendering of investment advice, making determinations as to when sales and purchases of securities are to be made, or the selling or purchasing of securities constituting assets of the passive investment customer, and related activities. This does not include services relating to accounting, legal advice, or other similar services unless these services are commingled
with services as described in the preceding sentence to the passive investment customer.

(b) The location where the benefit of the service is received by the passive investment customer is determined based on the location where the passive investment customer makes the decision to utilize the investment or management decisions.

(c) If, pursuant to a contract, the passive investment customer has granted broad discretionary authority to the taxpayer or another party to execute the investment advisory or investment management decisions on behalf of the passive investment customer, then the location where the benefit is received is presumed to be the location where the entity granted such authority executes these decisions, regardless of the location of the passive investment customer.

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

(i) Individual customer. In the case where the taxpayer’s customer is an individual, the benefit is presumed to be received at the customer’s billing address. If the taxpayer does not have the customer’s billing address, it must use reasonable approximation, as described in paragraph (3) of this subdivision.

(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 ordinary 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 can be received at the location of a third party (e.g. the consumer) only in the case of an intermediary transaction or if the customer is a passive investment customer. If 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 paragraph (3) of this subdivision.

(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 percentage of value derived by the customer in each location where benefit is received.

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

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

(a) the location or locations where the benefit is received and/or the percentage of benefit actually received in each location as a share of the total benefit received cannot be determined, or
(2) obtaining the location or locations where the benefit is received and/or the percentage of benefit 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 this section; and

(b) the taxpayer has sufficient information to reasonably approximate the location or locations where the benefit is received and/or the percentage of benefit received in each location as a share of the total benefit received.

(ii) Application of reasonable approximation based on customer information.

(a) A taxpayer must use all available information in its books and records, including information obtained upon reasonable inquiries where required, and information publicly available about the location or locations where its actual customers receive the benefit of the service or other business activity.

(b) When a taxpayer is required under this subparagraph to reasonably approximate, the taxpayer must use a method that is intended to approximate where the customer derives value from the service or other business activity.

(c) Sourced receipts method. 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 (the sourced receipts method). If the taxpayer reasonably believes, based on all available information, that the geographic distribution of the remainder of such receipts is different from that of the sourced receipts, and otherwise lacks sufficient information to use reasonable approximation, it must source such receipts under paragraph (4) of this subdivision.

(d) In any case in which a taxpayer uses a method of approximation to apportion 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.

(e) 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.

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

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

(i) Definition. Reasonable approximation based on general information 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 the general population or a subset of the general population reasonably reflects the geographic distribution of where the customer receives the benefit.

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

(a) A taxpayer must use statistical information based on the general population or a subset of the population (such as a specific demographic) of the entire country or a region of the country that reasonably approximates the population of customers who receive the benefit of the service or other business activity.

(b) When a taxpayer is required under this subparagraph to reasonably approximate based on general population or a subset of population, the taxpayer must use a method that is intended to approximate where the customer receives the benefit of the service or other business activity.

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

(d) In any case in which the Commissioner determines that the 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
must require that the taxpayer apply its method of approximation in a
consistent manner.

(e) In any case in which the taxpayer does not have sufficient information
to reasonably approximate based on general information, 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.

(5) Examples of where the benefit is received. For purposes of these examples it can be
assumed that the taxpayer has met all the requirements of due diligence unless otherwise
provided.

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. 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 required for Audit Corp to be able to perform its
service. The benefit is received by Client Corp at each location to the extent the audit
was of that location based on Audit Corp’s books and records. The amount Audit Corp
includes in its New York receipts is the hourly charge spent on audits of the New York
location. All of Audit Corp’s receipts from Client Corp are included in everywhere receipts.

Example 2: 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 3: Watch Corp is a watch repair corporation with retail locations in multiple states including New York. 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. Since the repair is completed on the customer’s watch, which is tangible personal property, it is considered a service related to tangible personal property. 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, the benefit is received in New York only if the watch is shipped to a home address in New York. In both instances, all of the receipts are included in everywhere receipts.
Example 4: Troubleshooting Corp operates a call center located in New York that provides troubleshooting services for use of home appliances over the telephone to customers located throughout the United States. The contract between Troubleshooting Corp and its customers provides that, for a fee per call, the customer can call Troubleshooting Corp and the call center employee will walk the customer through troubleshooting his or her appliance. Although provided over the telephone, this service includes a level of human interaction and, therefore, it is not a digital service as defined in section 4-2.3 and must be sourced under the rules in this section.

Home appliances are tangible personal property so the service Troubleshooting Corp is providing is related to tangible personal property. However, Troubleshooting Corp does not have information on where the tangible personal property was received by the customer or where it is currently located. Therefore, Troubleshooting Corp has inadequate information to apply the special rule for services related to tangible personal property and must instead apply the general rule. Troubleshooting Corp uses the billing addresses of its customers to include receipts in New York receipts to the extent that customers have billing addresses located in New York. Troubleshooting Corp must include one hundred percent of its receipts from troubleshooting services in everywhere receipts.

Example 5: 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 6: Consulting Corp provides two main types of facility consulting services—licensing requirements and environmental compliance. Consulting Corp has 60 business customers who have hired them to obtain applicable permits and licenses 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.

Consulting Corp provides environmental compliance services to QRS, a federal government agency, which has one regional office located in New York and 11 regional offices located in 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 an environmentally compliant manner. However, Consulting Corp only knows the number of offices and does not have any information about the size of the regional offices. Consulting Corp is not required to make inquiries as it qualifies for the inquiries safe harbor, and can reasonably approximate based on customer information where the benefit is received by including 1/12 of its receipts from QRS in New York receipts. One hundred percent of such receipts are included in everywhere receipts.

Example 7: Consulting Corp provides consulting services to determine the safety of train tracks to 200 business customers, including Train Corp. Consulting Corp provides
consulting services to Train Corp in relation to a portion of train service that runs through New York and 5 other states for a flat fee. This is a service related to real property so the receipt must be sourced to the location of the property. However, the real property is located within six states so it is necessary to look to the books and records to determine the share of the benefit received at the real property located in New York.

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 receives the benefit of its service. Consulting Corp should reasonably approximate based on customer information 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 8: Furniture Sales Corp owns showroom locations in various states and acts as a sales agent of Couch Corp. Pursuant to the agreement between the two parties, Furniture Sales Corp receives a commission on each piece of furniture it sells. A salesperson at Furniture Sales Corp’s State A location received an order for a couch from a customer and, as part of the process, documents that the customer would like the couch delivered in New York. Furniture Corp’s commission is earned for a service related to
tangible personal property (the couch). As such, the commission is sourced to the
delivery address. One hundred percent of Furniture Sales Corp’s commission is included
in both New York receipts and everywhere receipts.

Example 9: Architect Corp, located in New York, provides architectural services to
Developer Corp, located in State A, to design the floor plan of homes to be built at one of
the development sites owned by Developer Corp. Developer Corp knows the floorplan
will be used at one of its developments, but Developer Corp will not know which
floorplan goes to which site until it enters into contracts with homebuyers. Although
Architect Corp is providing a service related to real property, Architect Corp does not
know where the real property is located to source the receipt based on the special rule for
services related to real property. Instead, it must use reasonable approximation based on
customer information to determine the real property location. The books and records,
including the contract with Developer Corp, indicate that Developer Corp owns two
development sites, one in New York and one in State A. Therefore, Architect Corp must
use reasonable approximation to source the receipt between these two locations and
include 50% of the receipt in New York receipts. One hundred percent of the receipts are
included in everywhere receipts.

Example 10: Retail Corp offers extended warranties on computers purchased by
individual customers for personal use for a flat fee. The extended warranty covers both
the computer hardware and any software installed on the computer. To utilize the
warranty, customers bring the computer to any of Retail Corp’s locations for repair.
Once the repair is complete, customers have the choice to take back possession of the
computer at Retail Corp’s location where the repair was completed or request that the 
repaired computer be shipped to the customer’s address.

The amount Retail Corp receives for the extended warranty is a commingled receipt as 
the warranty price does not separately state the portion of the receipt that is for hardware 
repairs (subject to the rules in this section) and software repairs (otherwise subject to the 
rules in section 4-2.3). As a result, the entire amount is properly sourced under the rules 
in this section. The sale of the warranty is the sale of an obligation to perform a service 
at an undetermined future date. Therefore, the receipt does not qualify as a sale of a 

service related to tangible personal property and instead must be sourced under the 

general rule in paragraph (1) of this subdivision. Retail Corp’s customers are individuals, 

so the benefit is presumed to be received at the customers’ billing addresses. Retail Corp 

includes receipts from sales of extended warranties to customers with billing addresses in 

New York in New York receipts. One hundred percent of its receipts from the sales of 

extended warranties are included in everywhere receipts.

Example 11: Model Agency Corp contracts with individual models to connect the models 
with modeling jobs in exchange for a commission. The contract between Model Agency 
Corp and the model specifies the commission that Model Agency Corp receives for each 
modeling job it books. In addition, such contract requires that Model Agency Corp 
receives all payments the model is entitled to for his or her service and provides that 
Model Agency Corp must retain its commission from the payments and pass the 
remainder on to the model.

Modeling Agency Corp contracts with two such models, Model 1 who lives in New York 
and Model 2 who lives in State Z. Modeling Agency Corp books both models for a
photoshoot in New York with ClothesCo. ClothesCo pays the models’ fees to Modeling Agency Corp, which keeps a portion as its commissions and remits the remainder to the models. Although Modeling Agency Corp collected the fees from ClothesCo, it is receiving a commission from its contract with each Model.

The service provided by Modeling Agency Corp is booking the models for the photoshoot. The models are providing an in-person service to ClothesCo because they must be physically present for the photoshoot. Therefore, the receipt received by Modeling Agency Corp is a commission for the facilitation of an in-person service and is sourced to the location of the photoshoot. The commissions Modeling Agency Corp receives from Model 1 and Model 2 are included in New York receipts. One hundred percent of its receipts from commissions it receives are included in everywhere receipts.

Example 12: Management Corp, an investment management corporation, with an office located in New York, provides investment advisory services in exchange for a fee. Management Corp enters into a contract with Hedge Fund to provide the fund with investment advisory services. In addition, the contract authorizes Management Corp to have broad discretionary authority to manage funds and securities of Hedge Fund (including authority to purchase, sell, and otherwise trade securities of Hedge Fund) in a manner consistent with the investment strategy of the fund. Management Corp is providing its services to an entity that is not an investment company as defined under Tax Law Section 210-A(5)(d); therefore, receipts from these services are sourced under the rules in this section. The service provided by Management Corp is a management service provided to a passive investment customer, so Management Corp must use the rule for management services to passive investment customers to source this receipt to the
location where Hedge Fund utilizes the investment advice to make investment decisions. Because Hedge Fund has granted broad discretionary authority to Management Corp to manage funds and securities of Hedge Fund, it is presumed that the location where Hedge Fund receives the benefit is the location where Management Corp executes these investment advisory and management decisions. Management Corp makes and utilizes the investment advisory and management decisions for Hedge Fund at Management Corp’s office located in New York; therefore, the entire receipt is included in both New York receipts and everywhere receipts.

(d) Delivery Destination.

(1) When a taxpayer, after exercising due diligence, cannot determine or reasonably approximate where the business customer has received the benefit of a service or other business activity, it should include the receipt in New York receipts when the service or other business activity is delivered to the customer within New York.

(2) 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, based on the sourcing of receipts for the preceding taxable year, as described in subdivision (e) of this section.

(3) Example of delivery destination. For purposes of this example it can be assumed that the taxpayer has met all the requirements of due diligence unless otherwise provided.
Example 13: Statistics Corp provides data compilation and analysis services that will be used in policymaking for TUV, a federal government agency, which has regional offices throughout the United States. Statistics Corp’s only contact with TUV is with its main office located in State A, and Statistics Corp does not know the locations of TUV’s other offices, nor which of TUV’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. Furthermore, population information would not be relevant because the compilation and analysis services are used by employees rather than the general public. Because Statistics Corp does not have adequate information to determine where the benefit is received, or even to apply reasonable approximation, Statistics Corp is required to source the receipts based on the delivery destination of its services. Since the contract of sale is managed by TUV’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.

(e) Receipts for the Preceding Taxable Year.

(1) When a taxpayer, after exercising due diligence, cannot determine the amount to include in New York receipts using the methods in subdivision (c) or (d) of this section, it should source its receipts from that service or other business activity to New York based on the sourcing of 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 service or other business activity in the preceding taxable year and the denominator of which is
the amount included in everywhere receipts from all such sales of that type of service or
other business 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. In such tax
year, a taxpayer must reject this method and move directly to the next level of the
hierarchy, as described in subdivision (f).

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

Example 14: 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) When a taxpayer, after exercising due diligence, cannot determine the amount to
include in New York receipts using methods in subdivision (c), (d), or (e) of this section,
it must source the receipt from that service or other business activity to New York based
on the sourcing of all those current taxable year receipts for all other services and other
business activities 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 that
can be sourced 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. For purposes of this example it can
be assumed that the taxpayer has met all the requirements of due diligence unless
otherwise provided.

Example 15: 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 consumers, rather than the intermediary. If the taxpayer uses reasonable approximation based on the sourced receipts method to source its receipts from an intermediary transaction, it must apply that method only taking transactions with that intermediary into consideration.

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

(3) If, after exercising due diligence, the taxpayer has inadequate information to apply the hierarchy of rules described in subdivision (c) and (d) of this section with reference to the location of the consumers, the taxpayer should apply the hierarchy of rules described in subdivision (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 subdivision (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 subdivision (e) and (f).
Examples of intermediary transactions. For purposes of these examples it can be assumed that the taxpayer has met all the requirements of due diligence unless otherwise provided.

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 a fee to 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.

Loan Corp assists a business consumer in obtaining a mortgage loan from Bank Corp to purchase an office building in State C. Because this service is related to real property, Loan Corp must use the special rule for services related to real property and source both the procurement fee and the serving fee to the location of the real property.

Loan Corp assists an individual who is a resident of State D, in obtaining a personal loan from Bank Corp. Loan Corp sends monthly bills to the borrower during the term of the loan. Loan Corp’s receipts from Bank Corp for procuring the borrower and servicing the loan is an intermediary transaction because pursuant to its contract, Loan Corp is providing a service at the direction of Bank Corp directly to the location of the consumer. These receipts are not included in New York receipts because the individual’s billing address is in State D. One hundred percent of such receipts are included in everywhere receipts.
Example 17: Debt Collection Corp (the taxpayer) has offices in New York and State A. Student Loan Corp (the intermediary), which is located in State C, enters into a contract with Debt Collection Corp whereby Student Loan Corp will pay Debt Collection Corp a fee to collect outstanding debt owed to Student Loan Corp by borrowers (consumers). Debt Collection Corp communicates with borrowers by phone and email, and collects outstanding debt directly from borrowers who make debt payments online to Debt Collection Corp. After retaining a portion of the payment as its fee, Debt Collection Corp remits the remainder of the collected money to Student Loan Corp electronically. Despite the electronic means to perform its work and transfer funds, the service has not been fully automated and there is a non-incidental level of human interaction, thus Debt Collection Corp’s activities do not satisfy the definition of a digital service in section 4-2.3 of this Part. Therefore, the receipt is to be sourced using the rules in this section. Debt Collection Corp is providing a service to Student Loan Corp, who instructs Debt Collection Corp to collect from borrowers on its behalf. This service is provided directly to the location of the consumers at Student Loan Corp’s direction, which meets the definition of an intermediary transaction. Therefore, Debt Collection Corp must source the receipt from the fee earned from Student Loan Corp to the location of the consumers. Debt Collection Corp uses the billing addresses of the consumers to include receipts in New York receipts to the extent that consumers have billing addresses located in New York. Debt Collection Corp must include one hundred percent of its receipts from the service provided to Student Loan Corp in everywhere receipts.
(5) Examples of transactions that are not intermediary transactions. For purposes of these examples it can be assumed that the taxpayer has met all the requirements of due diligence unless otherwise provided.

Example 18: Credit Score 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 Credit Score Corp to receive a credit rating. Credit Score 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 by Credit Score Corp directly to Credit Card Corp and is not passed on to the applicant. Because Credit Card Corp utilizes the service entirely in State A where it makes credit determinations on credit card applications, Credit Score Corp does not include the receipt in New York receipts. One hundred percent of such receipt is included in Credit Score Corp’s everywhere receipts.

Example 19: 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 directly 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
receives the benefit of this service at the location where it makes the decision to air the
program, which is in New York. One hundred percent of such receipt is included in
Production Corp’s New York receipts and everywhere receipts.

Example 20: 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 nor to Debt Issuer Corp who then passes it along to individual
investors. For this reason, the receipt must be sourced to the location at which Debt
Issuer Corp receives the benefit of the service. 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 Credit Rating Corp’s New York
receipts. One hundred percent of such receipt is included in Credit Rating Corp’s everywhere receipts.