

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

DRAFT

1 STATE OF NEW YORK

2 DEPARTMENT OF TAXATION AND FINANCE

3 COMMISSIONER OF TAXATION AND FINANCE

4 ALBANY, NEW YORK

5 Regulation Section 4-2.18 Receipts from Other Services and Other Business Activities (Tax
6 Law, Section 210-A(10)).

7 (a) General Principles of Application. A taxpayer's apportionment of receipts from services and
8 other business activities not otherwise enumerated in section 210-A of the Tax Law must be
9 consistent with the principles set out below. Such receipts include, but are not limited to, income
10 from the sale of intangible property as well as receipts from compensation for certain services,
11 such as commissions, finder's fees, loan servicing fees, and fees for professional services.

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

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

16 (ii) To determine the location where the customer derives value from the service
17 or other business activity, section 210-A(10) of the Tax Law provides various
18 sourcing rules that apply sequentially in a hierarchy. A taxpayer must annually
19 exercise due diligence in attempting to apply the primary sourcing rule of where
20 the benefit is received, as described in subdivision (c) of this section. It may
21 abandon such primary sourcing rule only if, after exercising due diligence, it lacks
22 sufficient information to apply that rule, in which case it must use the delivery
23 destination, as described in subdivision (d) of this section.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

92 (4) Sourcing of commingled receipts.

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

101 (ii) When a sale includes both a service or other business activity sourced under
102 these rules and a sale, rental or license to use a digital product and/or digital
103 service that would otherwise be sourced under the rules for Tax Law section 210-
104 A(4) and section 4-2.3 of this Subpart, commingled into one receipt, the entire
105 receipt must be sourced as a service or other business activity under these rules.
106 This rule does not apply to the sale, rental, license to use, or granting of remote
107 access to a digital product and/or a digital service when the service or other
108 business activity is incidental to the digital product and/or digital service; such
109 sales must be sourced under the rules for Tax Law section 210-A(4) and section
110 4-2.3 of this Subpart.

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

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

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

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

121 (3) Customer means the party who enters into a transaction with the taxpayer for the
122 purchase of a service or other business activity from the taxpayer. A customer can be an
123 individual customer, a business customer, or a passive investment customer. Only a
124 business customer may also be an intermediary. In any instance in which the taxpayer,
125 acting in good faith, cannot reasonably determine whether the customer is an individual
126 customer, the taxpayer must treat the customer as a business customer.

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

130 (5) Business customer means a customer that is not an individual customer or passive
131 investment customer, including but not limited to, a sole proprietor, S corporation,
132 limited liability company, limited partnership, limited liability partnership, general
133 partnership, corporation, non-profit organization, trust, the U.S. Government, any
134 foreign, state, or local government, or any agency or instrumentality of such government.

135 (6) Passive investment customer means a customer that is an unincorporated entity, such
136 as a limited partnership, general partnership, limited liability company, limited liability

137 partnership, or trust, that pools capital from passive investors for the purpose of trading or
138 making investments in stocks, bonds, securities, commodities, loans, or other financial
139 assets, but that does not otherwise conduct an active business. An entity is considered as
140 engaged in an active business if the average value, determined on a quarterly basis, of its
141 loans, federal, state and municipal debt, asset backed securities and other government
142 agency debt, corporate bonds, reverse repurchase agreements and securities borrowing
143 agreements, federal funds, stocks and partnership interests, physical commodities and
144 other financial instruments that it owns does not exceed fifty percent of the average value
145 of its total assets.

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

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

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

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

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

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

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

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

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

182 information to apply the rules for reasonable approximation to the special rule, the
183 taxpayer must use the general rule in paragraph (2) of this subdivision.

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

189 (a) In-person services include, but are not limited to: medical and dental
190 services, including medical testing and x-rays; child care; hair cutting and
191 salon services; live entertainment and athletic performances; modeling; and
192 in-person training or lessons.

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

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

203 (ii) Services related to tangible personal property. Services related to tangible
204 personal property, including the facilitation of services related to tangible personal

205 property, are apportioned under the rules in this subparagraph. In-person services
206 related to tangible personal property are apportioned under the rules in this
207 subparagraph, rather than the rules in subparagraph (i) of this paragraph.

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

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

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

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

226 (a) Services related to real property include, but are not limited to:
227 architectural services, engineering services, landscaping, property

228 maintenance, construction, demolition, security, land surveying, mortgage
229 servicing, and real estate commissions.

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

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

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

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

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

250 with services as described in the preceding sentence to the passive
251 investment customer.

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

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

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

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

271 (ii) Business customer. In the case where the taxpayer's customer is a business,
272 the benefit is presumed to be received in New York to the extent the taxpayer's

273 books and records kept in the ordinary course of business, without regard to the
274 billing address of the taxpayer's customer, indicate the customer receives the
275 benefit of the service or other business activity in New York. The benefit can be
276 received at the location of a third party (e.g. the consumer) only in the case of an
277 intermediary transaction or if the customer is a passive investment customer. If
278 the taxpayer does not have adequate information to determine where the benefit is
279 received by the customer, the taxpayer must use reasonable approximation, as
280 described in paragraph (3) of this subdivision.

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

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

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

293 (a) (1) the location or locations where the benefit is received and/or the
294 percentage of benefit actually received in each location as a share
295 of the total benefit received cannot be determined, or

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

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

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

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

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

314 (c) Sourced receipts method. In any instance where a taxpayer can
315 ascertain the location or locations where a substantial portion of similar
316 receipts are sourced (“sourced receipts”), but not all of such receipts, and
317 the taxpayer reasonably believes, based on all available information, that
318 the geographic distribution of the remainder of such receipts is

319 substantially similar to that of the sourced receipts, it may source such
320 receipts in the same proportion as its sourced receipts (the sourced receipts
321 method). If the taxpayer reasonably believes, based on all available
322 information, that the geographic distribution of the remainder of such
323 receipts is different from that of the sourced receipts, and otherwise lacks
324 sufficient information to use reasonable approximation, it must source
325 such receipts under paragraph (4) of this subdivision.

326 (d) In any case in which a taxpayer uses a method of approximation to
327 apportion its receipts and the Commissioner determines that the method of
328 approximation employed by the taxpayer is not reasonable, the
329 Commissioner may substitute a method of approximation that the
330 Commissioner determines is appropriate.

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

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

340 (4) Reasonable approximation based on general information. Where, after meeting the
341 requirements of due diligence, a taxpayer lacks sufficient information to use the rules in

342 paragraphs (1) through (3) of this subdivision, as applicable, to apportion its receipts, the
343 taxpayer must use reasonable approximation based on general information.

344 (i) Definition. Reasonable approximation based on general information is an
345 alternative method used to determine the location at which a customer receives
346 the benefit of a service or other business activity in instances in which the general
347 population or a subset of the general population reasonably reflects the
348 geographic distribution of where the customer receives the benefit.

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

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

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

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

363 (d) In any case in which the Commissioner determines that the taxpayer's
364 method of approximation is reasonable, but that it has not been applied in

365 a consistent manner with respect to similar transactions, the Commissioner
366 must require that the taxpayer apply its method of approximation in a
367 consistent manner.

368 (e) In any case in which the taxpayer does not have sufficient information
369 to reasonably approximate based on general information, the taxpayer
370 must instead source its receipts under the next level of the hierarchy, the
371 delivery destination, as described in subdivision (d) of this section.

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

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

383 Audit Corp's services are not considered an in-person service because, although there
384 was in-person contact, it was not required for Audit Corp to be able to perform its
385 service. The benefit is received by Client Corp at each location to the extent the audit
386 was of that location based on Audit Corp's books and records. The amount Audit Corp
387 includes in its New York receipts is the hourly charge spent on audits of the New York

388 location. All of Audit Corp's receipts from Client Corp are included in everywhere
389 receipts.

390 Example 2: Teaching Corp provides in-person seminars in New York to individuals and
391 business customers. The seminars and the materials used in connection with the seminars
392 are prepared outside New York, the teachers who teach the seminars include teachers that
393 are not New York residents, and the students who attend the seminars include students
394 that are not New York residents. Since the customers are in the same location as
395 Teaching Corp when the service is provided, it is deemed to be an in-person service and,
396 therefore, the entire benefit is received in New York. One hundred percent of such
397 receipts are included in New York receipts and everywhere receipts.

398 Example 3: Watch Corp is a watch repair corporation with retail locations in multiple
399 states including New York. The repair work is performed at Watch Corp's New York
400 location. In some instances, the customer takes back possession of the watch in New
401 York. In other instances, the customer requests that the repaired watch be shipped to his
402 or her home address. Since the repair is completed on the customer's watch, which is
403 tangible personal property, it is considered a service related to tangible personal property.
404 In those instances, where the customer takes back possession of the watch in New York,
405 the benefit is received in New York because the customer receives the repaired watch in
406 New York and the receipts for the repair work are included in New York receipts. In
407 those instances, where the customer has the watch shipped to his or her home address, the
408 benefit is received in New York only if the watch is shipped to a home address in New
409 York. In both instances, all of the receipts are included in everywhere receipts.

410 Example 4: Troubleshooting Corp operates a call center located in New York that
411 provides troubleshooting services for use of home appliances over the telephone to
412 customers located throughout the United States. The contract between Troubleshooting
413 Corp and its customers provides that, for a fee per call, the customer can call
414 Troubleshooting Corp and the call center employee will walk the customer through
415 troubleshooting his or her appliance. Although provided over the telephone, this service
416 includes a level of human interaction and, therefore, it is not a digital service as defined
417 in section 4-2.3 and must be sourced under the rules in this section.

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

428 Example 5: Law Corp, located in State C, is hired by Client Corp to handle a major
429 litigation matter concerning the sale of its manufacturing plant located in New York.
430 Client Corp has manufacturing plants in New York and State B. The trial takes place in
431 State C, which is the location of the opposing party in the lawsuit. The court documents,
432 which are public records, reflect that the subject matter is the manufacturing plant located

433 in New York. Because Law Corp's entire service is related to the manufacturing plant,
434 which is real property, the benefit is received by Client Corp at the location of the
435 manufacturing plant. Therefore, Law Corp must include one hundred percent of its
436 receipts from Client Corp in both New York receipts and everywhere receipts.

437 Example 6: Consulting Corp provides two main types of facility consulting services—
438 licensing requirements and environmental compliance. Consulting Corp has 60 business
439 customers who have hired them to obtain applicable permits and licenses and 200
440 business customers who have hired them to provide environmental compliance services.
441 Despite the differing subject matter, the consulting services are substantially similar
442 enough that Consulting Corp may use the inquiry safe harbor.

443 Consulting Corp provides environmental compliance services to QRS, a federal
444 government agency, which has one regional office located in New York and 11 regional
445 offices located in other states. The contract, which is managed in State B, provides that
446 Consulting Corp will provide consulting services to help QRS run its internal operations
447 at all 12 office buildings in an environmentally compliant manner. However, Consulting
448 Corp only knows the number of offices and does not have any information about the size
449 of the regional offices. Consulting Corp is not required to make inquiries as it qualifies
450 for the inquiries safe harbor, and can reasonably approximate based on customer
451 information where the benefit is received by including 1/12 of its receipts from QRS in
452 New York receipts. One hundred percent of such receipts are included in everywhere
453 receipts.

454 Example 7: Consulting Corp provides consulting services to determine the safety of train
455 tracks to 200 business customers, including Train Corp. Consulting Corp provides

456 consulting services to Train Corp in relation to a portion of train service that runs through
457 New York and 5 other states for a flat fee. This is a service related to real property so the
458 receipt must be sourced to the location of the property. However, the real property is
459 located within six states so it is necessary to look to the books and records to determine
460 the share of the benefit received at the real property located in New York.

461 Some areas of the track are more heavily traveled than others, requiring more attention,
462 and some portions of the track require special attention, such as where signals are located.
463 Consulting Corp's books and records indicate only the location of the tracks its services
464 relate to and how many miles of track are located in New York and each of the 5 other
465 states. Upon reasonable inquiries, Consulting Corp cannot obtain additional information
466 to determine specifically where Train Corp receives the benefit of its service. Consulting
467 Corp should reasonably approximate based on customer information where the benefit is
468 received by multiplying the total receipts it receives from Train Corp by a fraction, the
469 numerator of which is the miles of track its service relates to located within New York
470 and the denominator of which is the total miles of track its service relates to located
471 within and without New York. Consulting Corp must include one hundred percent of its
472 receipts from Train Corp in everywhere receipts.

473 Example 8: Furniture Sales Corp owns showroom locations in various states and acts as
474 a sales agent of Couch Corp. Pursuant to the agreement between the two parties,
475 Furniture Sales Corp receives a commission on each piece of furniture it sells. A
476 salesperson at Furniture Sales Corp's State A location received an order for a couch from
477 a customer and, as part of the process, documents that the customer would like the couch
478 delivered in New York. Furniture Corp's commission is earned for a service related to

479 tangible personal property (the couch). As such, the commission is sourced to the
480 delivery address. One hundred percent of Furniture Sales Corp's commission is included
481 in both New York receipts and everywhere receipts.

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

496 Example 10: Retail Corp offers extended warranties on computers purchased by
497 individual customers for personal use for a flat fee. The extended warranty covers both
498 the computer hardware and any software installed on the computer. To utilize the
499 warranty, customers bring the computer to any of Retail Corp's locations for repair.
500 Once the repair is complete, customers have the choice to take back possession of the

501 computer at Retail Corp's location where the repair was completed or request that the
502 repaired computer be shipped to the customer's address.

503 The amount Retail Corp receives for the extended warranty is a commingled receipt as
504 the warranty price does not separately state the portion of the receipt that is for hardware
505 repairs (subject to the rules in this section) and software repairs (otherwise subject to the
506 rules in section 4-2.3). As a result, the entire amount is properly sourced under the rules
507 in this section. The sale of the warranty is the sale of an obligation to perform a service
508 at an undetermined future date. Therefore, the receipt does not qualify as a sale of a
509 service related to tangible personal property and instead must be sourced under the
510 general rule in paragraph (1) of this subdivision. Retail Corp's customers are individuals,
511 so the benefit is presumed to be received at the customers' billing addresses. Retail Corp
512 includes receipts from sales of extended warranties to customers with billing addresses in
513 New York in New York receipts. One hundred percent of its receipts from the sales of
514 extended warranties are included in everywhere receipts.

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

522 Modeling Agency Corp contracts with two such models, Model 1 who lives in New York
523 and Model 2 who lives in State Z. Modeling Agency Corp books both models for a

524 photoshoot in New York with ClothesCo. ClothesCo pays the models' fees to Modeling
525 Agency Corp, which keeps a portion as its commissions and remits the remainder to the
526 models. Although Modeling Agency Corp collected the fees from ClothesCo, it is
527 receiving a commission from its contract with each Model.

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

535 Example 12: Management Corp, an investment management corporation, with an office
536 located in New York, provides investment advisory services in exchange for a fee.
537 Management Corp enters into a contract with Hedge Fund to provide the fund with
538 investment advisory services. In addition, the contract authorizes Management Corp to
539 have broad discretionary authority to manage funds and securities of Hedge Fund
540 (including authority to purchase, sell, and otherwise trade securities of Hedge Fund) in a
541 manner consistent with the investment strategy of the fund. Management Corp is
542 providing its services to an entity that is not an investment company as defined under Tax
543 Law Section 210-A(5)(d); therefore, receipts from these services are sourced under the
544 rules in this section. The service provided by Management Corp is a management service
545 provided to a passive investment customer, so Management Corp must use the rule for
546 management services to passive investment customers to source this receipt to the

547 location where Hedge Fund utilizes the investment advice to make investment decisions.
548 Because Hedge Fund has granted broad discretionary authority to Management Corp to
549 manage funds and securities of Hedge Fund, it is presumed that the location where Hedge
550 Fund receives the benefit is the location where Management Corp executes these
551 investment advisory and management decisions. Management Corp makes and utilizes
552 the investment advisory and management decisions for Hedge Fund at Management
553 Corp's office located in New York; therefore, the entire receipt is included in both New
554 York receipts and everywhere receipts.

555 (d) Delivery Destination.

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

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

568 (3) Example of delivery destination. For purposes of this example it can be assumed that
569 the taxpayer has met all the requirements of due diligence unless otherwise provided.

570 Example 13: Statistics Corp provides data compilation and analysis services that will be
571 used in policymaking for TUV, a federal government agency, which has regional offices
572 throughout the United States. Statistics Corp's only contact with TUV is with its main
573 office located in State A, and Statistics Corp does not know the locations of TUV's other
574 offices, nor which of TUV's offices focus on policymaking and which focus on direct
575 client services. After reasonable inquiries, Statistics Corp does not have any additional
576 information as to which regional offices will use the data compilation and analysis
577 services. Furthermore, population information would not be relevant because the
578 compilation and analysis services are used by employees rather than the general public.
579 Because Statistics Corp does not have adequate information to determine where the
580 benefit is received, or even to apply reasonable approximation, Statistics Corp is required
581 to source the receipts based on the delivery destination of its services. Since the contract
582 of sale is managed by TUV's main office in State A, the receipts are not included in New
583 York receipts. One hundred percent of the receipts are included in everywhere receipts.

584 (e) Receipts for the Preceding Taxable Year.

585 (1) When a taxpayer, after exercising due diligence, cannot determine the amount to
586 include in New York receipts using the methods in subdivision (c) or (d) of this section, it
587 should source its receipts from that service or other business activity to New York based
588 on the sourcing of receipts from the sales of that type of service or other business activity
589 for the preceding taxable year. The amount included in New York receipts for the current
590 taxable year is determined by multiplying such receipts by a fraction, the numerator of
591 which is the amount included in New York receipts from the sales of that type of service
592 or other business activity in the preceding taxable year and the denominator of which is

593 the amount included in everywhere receipts from all such sales of that type of service or
594 other business activity in the preceding taxable year. This level of the hierarchy cannot
595 apply in a taxpayer's first taxable year beginning on or after January 1, 2015. In such tax
596 year, a taxpayer must reject this method and move directly to the next level of the
597 hierarchy, as described in subdivision (f).

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

601 Example 14: Sales Corp provides only one type of service to approximately 200 business
602 customers. In tax year 2017, all of its receipts were sourced using the rules in subdivision
603 (c) of this section, and, as a result 45 percent of Sales Corp's receipts were included in
604 New York receipts. In tax year 2018, Sales Corp continues to provide only one type of
605 service to its customers. At the end of tax year 2018, Sales Corp's computer system
606 crashes and it is unable to recover information it had obtained on where the benefit of its
607 services were received or where the services were delivered. Upon reasonable inquiries
608 to its known customers, Sales Corp still cannot obtain information on where the benefits
609 were received or where the services were delivered. Therefore, Sales Corp must include
610 45 percent of its 2018 receipts in its 2018 New York receipts. One hundred percent of
611 receipts sourced under this section are included in everywhere receipts.

612 (f) Receipts for Current Taxable Year.

613 (1) When a taxpayer, after exercising due diligence, cannot determine the amount to
614 include in New York receipts using methods in subdivision (c), (d), or (e) of this section,
615 it must source the receipt from that service or other business activity to New York based

616 on the sourcing of all those current taxable year receipts for all other services and other
617 business activities that can be sourced using the methods in subdivisions (c) and (d) of
618 this section. The amount included in New York receipts for the current taxable year is
619 determined by multiplying such receipts by a fraction, the numerator of which is the
620 amount included in New York receipts from all services and other business activities that
621 can be sourced using the methods in subdivisions (c) and (d) of this section for the
622 current taxable year and the denominator of which is the amount included in everywhere
623 receipts from services and other business activities sourced using the methods in
624 subdivisions (c) and (d) for the current taxable year

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

628 Example 15: Taxpayer A has \$10,000 in receipts from a new type of service not
629 otherwise enumerated in Section 210-A. After exercising due diligence, Taxpayer A
630 cannot determine where the customer received the benefit or where the service was
631 delivered. Therefore, Taxpayer A must determine the portion of the \$10,000 to include
632 in New York receipts based on the receipts sourced under subdivisions (c) and (d) of this
633 section in the current tax year. In the current tax year, Taxpayer A has \$150,000 in other
634 business receipts sourced under the methods outlined in subdivisions (c) and (d) of this
635 section, of which \$75,000 (or 50 percent) are New York receipts. Therefore, Taxpayer A
636 would include 50 percent of the \$10,000, or \$5,000, of receipts from the new type of
637 service in New York receipts. One hundred percent of receipts from the new type of
638 service are included in everywhere receipts.

639 (g) Rules for Intermediary Transactions.

640 (1) In the case of intermediary transactions, the location where the receipt is sourced is
641 determined using the hierarchy of methods described in subdivisions (c) and (d) of this
642 section based on the location of the consumers, rather than the intermediary. If the
643 taxpayer uses reasonable approximation based on the sourced receipts method to source
644 its receipts from an intermediary transaction, it must apply that method only taking
645 transactions with that intermediary into consideration.

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

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

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

663 Example 16: Loan Corp (the taxpayer) is based in New York and operates offices
664 whereby individuals and businesses can discuss loan options and obtain a loan from
665 unrelated lenders. Loan Corp will also service the loans it procures. Bank Corp (the
666 intermediary) enters into a contract with Loan Corp whereby Bank Corp will pay Loan
667 Corp a fee to procure borrowers (consumers) and a fee to handle servicing of loans
668 financed by Bank Corp. Loan Corp handles all interactions with the consumers, who
669 have no contact or interaction with Bank Corp directly.

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

674 Loan Corp assists an individual who is a resident of State D, in obtaining a personal loan
675 from Bank Corp. Loan Corp sends monthly bills to the borrower during the term of the
676 loan. Loan Corp's receipts from Bank Corp for procuring the borrower and servicing the
677 loan is an intermediary transaction because pursuant to its contract, Loan Corp is
678 providing a service at the direction of Bank Corp directly to the location of the consumer.
679 These receipts are not included in New York receipts because the individual's billing
680 address is in State D. One hundred percent of such receipts are included in everywhere
681 receipts.

682 Example 17: Debt Collection Corp (the taxpayer) has offices in New York and State A.
683 Student Loan Corp (the intermediary), which is located in State C, enters into a contract
684 with Debt Collection Corp whereby Student Loan Corp will pay Debt Collection Corp a
685 fee to collect outstanding debt owed to Student Loan Corp by borrowers (consumers).
686 Debt Collection Corp communicates with borrowers by phone and email, and collects
687 outstanding debt directly from borrowers who make debt payments online to Debt
688 Collection Corp. After retaining a portion of the payment as its fee, Debt Collection
689 Corp remits the remainder of the collected money to Student Loan Corp electronically.
690 Despite the electronic means to perform its work and transfer funds, the service has not
691 been fully automated and there is a non-incidental level of human interaction, thus Debt
692 Collection Corp's activities do not satisfy the definition of a digital service in section 4-
693 2.3 of this Part. Therefore, the receipt is to be sourced using the rules in this section.
694 Debt Collection Corp is providing a service to Student Loan Corp, who instructs Debt
695 Collection Corp to collect from borrowers on its behalf. This service is provided directly
696 to the location of the consumers at Student Loan Corp's direction, which meets the
697 definition of an intermediary transaction. Therefore, Debt Collection Corp must source
698 the receipt from the fee earned from Student Loan Corp to the location of the consumers.
699 Debt Collection Corp uses the billing addresses of the consumers to include receipts in
700 New York receipts to the extent that consumers have billing addresses located in New
701 York. Debt Collection Corp must include one hundred percent of its receipts from the
702 service provided to Student Loan Corp in everywhere receipts.

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

706 Example 18: Credit Score Corp has a contract with Credit Card Corp to provide credit
707 rating services to Credit Card Corp for individuals applying for credit cards. Credit Card
708 Corp receives all credit rating services at its corporate office in State A where it makes
709 determinations on whether or not to issue credit cards to applicants. Applicants from all
710 over the country submit applications to Credit Card Corp who then provides information
711 about the applicants to Credit Score Corp to receive a credit rating. Credit Score Corp
712 issues the rating for each applicant to Credit Card Corp who utilizes this information to
713 make a determination as to whether or not Credit Card Corp will issue the applicant a
714 credit card. This is not an intermediary transaction because the service is provided by
715 Credit Score Corp directly to Credit Card Corp and is not passed on to the applicant.
716 Because Credit Card Corp utilizes the service entirely in State A where it makes credit
717 determinations on credit card applications, Credit Score Corp does not include the receipt
718 in New York receipts. One hundred percent of such receipt is included in Credit Score
719 Corp's everywhere receipts.

720 Example 19: Production Corp enters into a contract with Cable Network Corp, wholly
721 located in New York, to produce a made-for-television movie. Production Corp will
722 provide the service of producing the television program which will then be delivered to
723 Cable Network Corp. Cable Network Corp owns the copyrights related to the movie and
724 will then air this program to its subscribers. This is not an intermediary transaction
725 because the service is not provided by Production Corp directly to consumers at the

726 direction of Cable Network Corp. Also, in this instance, the service is completed prior to
727 Cable Network Corp passing the movie along to subscribers. Cable Network Corp
728 receives the benefit of this service at the location where it makes the decision to air the
729 program, which is in New York. One hundred percent of such receipt is included in
730 Production Corp's New York receipts and everywhere receipts.

731 Example 20: Credit Ratings Corp, located in New York, has a contract with Debt Issuer
732 Corp whereby Credit Ratings Corp opines, via the assignment of a letter grade, on the
733 creditworthiness of Debt Issuer Corp's debt obligation. The rating does not constitute a
734 recommendation of the suitability of an investment for any particular investor. Credit
735 Ratings Corp may issue the rating via press release, which allows potential investors to
736 consider the rating/letter grade. Credit Ratings Corp also includes the rating in its
737 database of ratings on its website, which allows for public viewing. However, the
738 principal element of the service is the development of the rating; any dissemination via
739 digital means is incidental to such service. Therefore, the receipt is sourced under these
740 rules. Furthermore, this service does not constitute an intermediary transaction because
741 the rating is not provided by Credit Ratings Corp directly to individual investors at Debt
742 Issuer's direction nor to Debt Issuer Corp who then passes it along to individual
743 investors. For this reason, the receipt must be sourced to the location at which Debt
744 Issuer Corp receives the benefit of the service. Credit Rating Corp's books and records
745 indicate that the rating is being sought on the advice of Debt Issuer's corporate finance
746 division, which is responsible for overall fiscal strategy and execution and is located in
747 State A. Therefore, the receipt is not included in Credit Rating Corp's New York

748 receipts. One hundred percent of such receipt is included in Credit Rating Corp's
749 everywhere receipts.

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