This draft version contains updates for all apportionment rules (*last updated in 2019*), including the rules for digital products/services as well as services and other business receipts that were previously posted separately. In addition, the rules for New York State S corporations that were previously included as Subpart 4-3 have been moved to Subpart 10-3 in the Parts 5 through 10 draft regulation.

In addition to editorial, consistency and reorganizational changes, notable changes include:

- Replacing taxpayer with corporation as the rules apply to corporations determining if the economic nexus standard is met and also non-taxpayer members of combined groups.
- Clarifying the items included in the business apportionment factor (BAF).
- Addressing the apportionment of lump sum payments.
- Inclusion of rules for net gains from the sale of tangible personal property and real property.
- New examples for sourcing sales of tangible personal property, royalties, advertising receipts, and receipts from digital products/services.
- Updates to the rules for federal funds and other financial instruments.
- Clarifying that cryptocurrency falls under the definition of digital product.
- Inclusion of a billing address safe harbor for receipts from digital products/services and services and other business receipts.
- Revision of the rule for services to passive investment customers based on rules adopted by other states and the Multistate Tax Commission.

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 Part 4 of Subchapter A of title 20 NYCRR is repealed and a new Part 4, Apportionment, is added to read as follows.

Part 4

Apportionment

Subpart 4-1

GENERAL

Section 4-1.1 Definitions. [Tax Law, Sections 208(1) and 210-A]

For purposes of this Part, the following definitions apply:

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

(b) (1) "Commercial domicile" is determined by the use of the following hierarchy for business entities, based on the information known to the corporation or publicly or readily available information: (i) the seat of management and control of the business entity; and (ii) the billing address of the business entity in the corporation's records. Corporations must exercise due diligence before abandoning the first method in this hierarchy and proceeding to the second method.

(2) Unless the corporation demonstrates the contrary, the seat of management and control is presumed to be in the United States. In the case of a business entity that is a sole proprietor, the seat of management and control is the principal place of business of the sole proprietor.

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

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

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

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

(d) "Marked to market gain or loss" means the gain or loss recognized by the corporation under IRC section 475 or 1256 because the financial instrument is treated as sold for its fair market value on the last business day of the corporation's taxable year.

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

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

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

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

(g) “Tangible personal property” means corporeal personal property, such as machinery, tools, implements, goods, wares and merchandise. It includes audio works, audiovisual works, literary works, visual works, graphic works, or games, delivered via a physical medium, that are not subject to the rules for receipts from digital products and digital services. It does not mean money, deposits in banks, shares of stock, bonds, notes, credits or evidences of any interest in property and evidences of debt.

Section 4-1.2 General rules for apportionment. [Tax Law, section 210-A]

(a) All corporations apportion within and without New York State their total business income and business capital by a business apportionment factor (BAF) that is a fraction. The numerator and denominator of the BAF includes only those receipts, net income, net gains, and other items described in section 210-A and the applicable regulations in this Subchapter that are included in the computation of entire net income for the taxable year. The numerator of the BAF is the sum of all amounts required to be included in the numerator pursuant to section 210-A and the applicable regulations in this Subchapter (referred to as New York receipts in this Subchapter) and the denominator of which is the sum of all amounts required to be included in the denominator pursuant to section 210-A and the applicable regulations in this Subchapter (referred to as everywhere receipts in this Subchapter).

(b) The following amounts shall not be included in either New York receipts or everywhere receipts:

(1) gross income from investment capital, even if such income is included in business income pursuant to the eight percent of entire net income limitation on gross investment income.

(2) any portion of gross other exempt income generated by stock that is not marked to market.

(3) any portion of gross other exempt income generated by stock that is marked to market in instances where the taxpayer did not make the fixed percentage election for qualified financial instruments.

(4) amounts specified in section 208(9)(a) (other than section 208(9)(a)(19)).

(5) amounts specified in section 208(9)(b) (other than sections 208(9)(b)(1) and 208(9)(b)(2)).

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

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

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

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

(f) A corporation's method of apportioning its receipts must reflect an attempt to comply with the regulatory standards set forth herein rather than an attempt to minimize the corporation's tax liability.

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

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

(i) A corporation 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.

(j) A corporation must take reasonable steps to 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.

(k) In determining the amount of New York receipts, the corporation must consider the location during the entire time period in which the activity generating the receipts occurs.

Section 4-1.3. Lump sum payments.

(a) When a sale is comprised of both a digital product and a digital service, both of which are sourced under Subpart 4-3 of this Part, the receipt cannot be divided into separate components for purposes of the application of the rules in such Subpart, and is considered to be one receipt regardless of whether the components are separately stated for billing purposes.

(b) Except as provided in subdivision (a) of this section, in the case of the sale of multiple assets or services in one transaction, the proceeds from the sale shall be reasonably divided among the types of assets or services sold by the corporation and the receipts or net gains from each type must be apportioned using the applicable rule in section 210-A and the applicable rules in this Subchapter. If the receipt or net gain cannot be reasonably divided, the corporation should use the rule that is the most reflective for the type of income generated. Provided, a corporation cannot use the rules for intermediary transactions unless almost all of the activities carried on under the agreement are intermediary transactions. Full details regarding the sale and the division of the proceeds and gain must be submitted with the corporation's report.

Example 1: Corporation B sells all the assets of one of its divisions for a gain, which is properly reported as business income. The assets sold consisted of real property, tangible personal property, and goodwill. The portion of the gain attributable to the sale of tangible personal property shall be apportioned to New York State using the rules for net gains from the sale of tangible personal property in section 4-2.1 of this Part, the portion attributable to the sale of real property shall be apportioned to New York State using the rules for net gains from the sale of real property in section 4-2.2 of this Part, and the portion attributable to the sale of goodwill shall be apportioned to New York State using the rules for other services and other business receipts in Subpart 4-3 of this Part.

Example 2: Book Corp sells electronic books and physical books through its website. Customers purchase a bundle of both an electronic and physical book, the price of which includes a discounted price of the electronic and physical book but the breakdown is not separately stated. For bundled purchases, the electronic book is available for immediate download by the customer and the physical book is shipped from Book Corp to the customer.

Customer B, with a New York billing address, purchases a bundled purchase of an electronic and a physical book commingled into one receipt. As the receipt cannot be reasonably divided between the electronic book and the physical book, the entire receipt should be sourced as a sale of tangible personal property.

Section 4-1.4 Installment sales

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

Example: Corporation C sells its building in New York in the 2016 tax year and has a $5,000,000 gain. It has no other sales of real property. Under the sales agreement, the proceeds of the sale will be paid to Corporation C in 5 equal annual installments. As the real property is located in New York, the entire gain is attributable to New York and $1,000,000 is included in New York receipts and everywhere receipts each year.

In tax year 2016, besides the installment gain, Corporation C has only $20,000,000 of rental income from its New York property and $5,000,000 of rental income from real property located outside New York. Corporation C has $21,000,000 of New York receipts ($1,000,000 of the gain from the New York real estate installment sale and $20,000,000 of rental income from the New York property) and $26,000,000 of everywhere receipts ($1,000,000 of the gain from the real estate installment sale and $25,000,000 of rental income from real property located within and without the state). Its BAF for the 2016 tax year is 0.807692.

In tax year 2017, beside the installment gain, Corporation C has only $2,000,000 of rental income from real property located outside of New York. Corporation C has $1,000,000 of New York receipts (its second installment of the gain from New York real property) and $3,000,000 of everywhere receipts ($1,000,000 of its second installment of gains from the sale of real property plus $2,000,000 of rental income from real property located outside the state). Its BAF for the 2017 tax year is 0.333333.

Section 4-1.5 Apportionment on combined reports. [Tax Law, Section 210-C(5)]

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

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

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

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

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

(c) If an apportionment rule contained in section 210-A and this Subchapter requires the use of a fraction to compute the amount included in the combined group's New York receipts, the amount included in the numerator or denominator of such fraction is determined after the intercorporate eliminations required by subdivision (a) of this section.

Section 4-1.6 Power of the Commissioner of Taxation and Finance to adjust the business apportionment factor. [Tax Law, Section 210-A(11)]

(a) Generally, the BAF results in a fair apportionment of the corporation's business capital and business income to New York State. However, in certain instances, the BAF may not result in a proper reflection of the taxpayer's activities, business income or business capital in the State and the commissioner, in their discretion or at the request of the taxpayer, is authorized to adjust the BAF in order to properly and fairly reflect the taxpayer's activities within New York. In the case of a combined report, the term "taxpayer" in this section means the combined group and the request to adjust the BAF on the combined report must be made by the designated agent. If the BAF is adjusted, it must be calculated to effect a fair and proper apportionment of the business income and business capital of the taxpayer, or in the case of a combined report, the combined group, reasonably attributable to the State.

(b) When it appears that the BAF does not fairly and properly reflect the activities, business income or business capital of the taxpayer in New York State, the commissioner, in their discretion or at the request of the taxpayer, may adjust the BAF by:

(1) excluding one or more items of receipts, net income, net gain or other items included in the determination of the BAF;

(2) including one or more other items in the determination of the BAF; or

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

(c)(1) A taxpayer may not vary the statutory BAF on an original report for a taxable year without the consent of the commissioner. A taxpayer making a request for an adjustment of its

BAF that does not have such consent prior to the time it files its report must file its report and compute its tax using the BAF determined pursuant to section 210-A and the applicable regulations in this Part. If a taxpayer receives consent after filing its report, the taxpayer may then amend the report and use the approved method to compute its tax due. If a taxpayer's request is denied before it files its original report, it must file its report and compute its tax using the BAF determined pursuant to section 210-A and the applicable regulations in this Part. The taxpayer then may request reconsideration of its request during the course of an audit of the report. Alternatively, if the taxpayer's request is denied and an audit has not been commenced, the taxpayer may file an amended report using its proposed adjusted BAF, provided that the amended report is accompanied by a full explanation and justification for the adjustments made to the BAF

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

(d) The party seeking to vary the BAF bears the burden of proof to demonstrate by clear and convincing evidence that the BAF determined pursuant to section 210-A and the applicable regulations in this Subchapter does not result in a proper reflection of the taxpayer's business income or business capital within the State and that the proposed adjustment is appropriate. The party seeking to vary the BAF must demonstrate that application of the statutory formula attributes income or capital to the State out of all proportion to the business transacted by the taxpayer in the State.

(e) Examples. For purposes of these examples, it is assumed amounts requested to be included in the BAF are properly included in business income.

(1) Corporation A's only office is located in New York. Corporation A invests in stocks for its own account and also performs some administrative and investment advisory services for customers located solely in New York. Ninety-five percent of its income consists of dividends and net gains from its stock holdings. The remaining five percent of its income consists of the fees it receives for the administrative and investment advisory services. The taxpayer does not make the fixed percentage election. As such, dividends and net gains from stock are not included in the numerator or denominator of the BAF unless the commissioner determines that inclusion of such dividends and net gains is necessary to properly reflect the taxpayer's business income or capital. In this instance, under the statutory formula, the receipts generating ninety-five percent of the taxpayer's income would not have any representation in the BAF. Accordingly, in order to properly reflect the taxpayer's business income, it is appropriate to include the dividends and net gains from the stock holdings in the BAF. The dividends from the stock of corporations domiciled in New York would be included in the numerator of the BAF. The net gains would be included in the numerator of the BAF to the extent that the purchasers are located in New York, provided that if purchaser is a registered securities broker or dealer or the transaction is made through a licensed exchange, then eight percent of the net gains would be included in the numerator of the BAF. The total amount of dividends and net gains would be included in the denominator of the BAF.

(2) Corporation B is a registered broker-dealer. The majority of its receipts are comprised of commissions derived from the execution of securities and commodities purchase or sales orders. It has an office in New York and an office in State X. These commissions are included in the numerator of the BAF if the taxpayer's records indicate the mailing address of the customer who is responsible for paying such commissions is in the state. However, in State X, these commissions are included in the numerator of the BAF if the services are performed in State X. Corporation B is concerned that the commissions for the purchase and sale orders executed by its office in State X for customers with New York mailing addresses will be sourced to State X for purposes of State X's tax and sourced to New York for New York purposes. Corporation B requests that New York allow a discretionary adjustment to the exclude such receipts from the numerator of the BAF. This discretionary adjustment is not necessary. The fact that State X also would source commissions from New York customers to State X does not mean that inclusion of those commissions in the numerator of the New York BAF does not fairly and properly reflect Corporation B's activities and business income in New York.

(3) Corporation C is a corporate partner in Partnership X and for tax years 2015 through 2018 it computes its tax with respect to its interest in such partnership under the aggregate method. In tax year 2019, Corporation C's only activity for the year is the selling of its financial investments that results in $5,000,000 of business receipts. Seventy-five percent of its business receipts, or $3,750,000, is the net gain from the sale of its partnership interest in Partnership X. Corporation C did not make the fixed percentage election. As such, net gains from the sale of a partnership interest are not included in the numerator or denominator of the BAF unless the commissioner determines that inclusion of such net gains is necessary to properly reflect the taxpayer's business income or capital. In this instance, under the statutory formula, the receipts

generating seventy-five percent of the taxpayer's business receipts would not have any representation in the BAF. Accordingly, in order to properly reflect the taxpayer's business income, it is appropriate to include the net gains from the sale of Partnership X in the BAF.

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

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

Section 4-1.7 Short period BAF. (Tax Law, Section 210-A(11))

(a) A corporation that is subject to tax for a period less than its taxable period for Federal income tax purposes computes its BAF only for the period it is subject to tax in New York State.

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

(c) The short period BAF must be applied to business income and business capital that have been prorated to represent business income and business capital for the period for which the corporation is subject to tax in New York State as required by Part 2 of this Subchapter.

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

$24,000 divided by 12 (months) = $2,000

$2,000 x 5 (months) = $10,000

$10,000 x 20 percent = $2,000

(d) A corporation must submit complete details with its report showing how it computed its BAF for the period it is subject to tax in New York State, if for less than a full year. If, in the opinion of the commissioner, either on their own volition or at the request of the corporation, the prorated business income or prorated business capital for the period for which the corporation is subject to tax in New York State does not properly reflect the business income and business capital for such period, the commissioner may determine business income and business capital solely on the basis of the corporation’s business income and business capital during such period.

Subpart 4-2

SPECIFIC APPORTIONMENT RULES

Section	
4-2.1	Receipts and net gains from the sale of tangible personal property
4-2.2	Net gains from the sale of real property
4-2.3	Receipts from rents and royalties
4-2.4	Net income from qualified financial instruments for corporations other than non-captive REITs and non-captive RICs
4-2.5	Interest income and net gains from loans
4-2.6	Interest income and net gains from asset backed securities and other government agency debt
4-2.7	Interest income and net gains from corporate bonds
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4-2.9	Net interest income from federal funds
4-2.10	Net income from commodities
4-2.11	Marked to market net gains
4-2.12	Interest, net gains, and other income from other financial instruments
4-2.13	Brokerage commissions
4-2.14	Receipts from credit cards and similar activities
4-2.15	Receipts received by credit card processors
4-2.16	Receipts from railroad, trucking and omnibus businesses

4-2.17 Receipts from the sale of advertising

Section 4-2.1 Receipts and net gains from the sale of tangible personal property. (Tax Law, Section 210-A(2)(a))

(a) Receipts and net gains (not less than zero) from the sale of tangible personal property are included in New York receipts if paragraph (1), (2), or (3) of this subdivision applies. All receipts and net gains (not less than zero) from the sale of tangible personal property are included in everywhere receipts.

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

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

(3) The possession of the property is transferred to a purchaser or purchaser's designee at a point outside New York State, where the final destination of the property is a point in New York State. Where possession of the property is transferred outside New York

State, it is presumed that the final destination is a point outside New York State unless there is sufficient evidence to demonstrate that the destination is a point in New York State. See subdivision (c) of this section regarding evidence of destination.

(b) (1) To compute a gain or loss from the sale of tangible personal property, the corporation must subtract its adjusted basis in the tangible personal property from the sale price of the tangible personal property. If the sale price exceeds the adjusted basis, the result is a gain. If the sale price is less than the adjusted basis, the result is a loss.

(2) To determine the amount of net gains from sales of tangible personal property to be included in the numerator and denominator of the BAF, the corporation first must subtract the sum of all losses computed under paragraph (1) of this subdivision from the sum of all gains computed under such paragraph (1). If the result is equal to or less than zero, no amount is included in New York receipts and everywhere receipts. If the total amount of net gains (not less than zero) from sales of tangible personal property located in New York exceeds the net gains (not less than zero) from sales of tangible personal property located within and without New York State, the amount included in New York receipts is limited to the amount included in everywhere receipts.

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

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

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

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

(e) Examples.

Example 1: Retail Corporation operates an online clothing store that serves the United States. Customers purchase clothing via the website and the clothing is shipped to the customer's home. Receipts from the sale of clothing shipped to locations within New York are included in New York receipts. Receipts from the sale of clothing shipped to locations within and without New York are included in everywhere receipts.

Example 2: Corporation A operates a car rental business in New York State and elsewhere in the United States. To keep its inventory up-to-date and make room for newer models, Corporation A sells some of its fleet of cars every year. The net gain (not less than zero) from these sales, which is properly reported as business income, shall be apportioned to New York State to the extent that the final destination of the cars sold is in New York. One hundred percent of the net gains (not less than zero) are included in everywhere receipts. However, the amount included in New York receipts is limited to the amount included in everywhere receipts.

Section 4-2.2 Net gains from the sale of real property. (Tax Law, Section 210-A(2)(d))

(a) Net gains (not less than zero) from the sales of real property located in New York are included in New York receipts. Net gains (not less than zero) from sales of real property located within and without New York State are included in everywhere receipts.

(b) For each sale of real property, the corporation must compute a gain or loss from the sale by subtracting its adjusted basis in the real property from the sale price of the real property. If the sale price exceeds the adjusted basis, the result is a gain. If the sale price is less than the adjusted basis, the result is a loss.

(c) To determine the amount of net gains from sales of real property to be included in the numerator and denominator of the BAF, the corporation first must subtract the sum of all losses computed under subdivision (b) of this section from the sum of all gains computed under subdivision (b). If the result is equal to or less than zero, no amount is included in New York receipts and everywhere receipts. If the total amount of net gains (not less than zero) from sales of real property located in New York exceeds the net gains (not less than zero) from sales of real property located within and without New York State, the amount included in New York receipts is limited to the amount included in everywhere receipts.

Section 4-2.3 Receipts from rents and royalties. (Tax Law, Section 210-A(3))

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

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

(3) Gross receipts from real and tangible personal property that is subleased from the corporation must be included in the BAF.

(4) The amount of receipts from the rental of motor vehicles and other rolling stock, such as trucks or construction equipment, included in New York receipts is the product of such receipts and a fraction. Such fraction may be based on miles operated in New York State compared to total miles operated, time operated in New York State compared to total time operated, number of pickup and delivery locations in the state compared to the total of such locations, or any other method that fairly apportions such receipts to New York State. One

hundred percent of the receipts from the rental of motor vehicles and other rolling stock, such as trucks or construction equipment, are included in everywhere receipts. Omnibus operations while engaged in school bus operations must be disregarded in computing the amount of New York receipts and everywhere receipts.

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

Example 2: Corporation X receives $500 from customer A and $300 from customer B for short-term automobile rentals. Customer A picks up the automobile at Corporation X's New York location and returns it to such location. As both the pickup and return locations are in the state for customer A, the $500 from customer A is included in New York receipts and everywhere receipts. Customer B picks up the automobile at Corporation X's New York location but returns it to Corporation X's location outside of New York State. As half of the pickup and return locations are in the state, half of the receipts from customer B, $150, is included in New York receipts and $300 is included in everywhere receipts. Corporation X has a total of $650 of New York receipts, $500 from customer A and $150 from customer B. It has $800 in everywhere receipts, $500 from customer A and $300 from customer B.

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

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

(3) A patent, copyright, trademark, license, and similar intangible such as a license is used in New York State to the extent that the activities thereunder are carried on in New York State. If, after exercising due diligence, a corporation lacks sufficient information in its books and records to determine where the activities are carried on, it may use a reasonable method to estimate such location based on third party information (if available) or population.

Example 1: Network Corp sells a license to broadcast its network to Cable Corp for a set fee. Under the licensing agreement, Cable Corp is allowed to bundle Network Corp's network with other content and sell the bundle to individual subscribers for a monthly fee set by Cable Corp. Even though the content is digitally delivered to Cable Corp by Network Corp, the delivery means is incidental to the sale of a license to distribute, broadcast or sublicense. As such, Network Corp's receipts are apportioned under this section to the location where the license is used, which is presumed to be the location where the network is available for viewing.

Network Corp's books and records indicate the location of Cable Corp's viewers. The amount of New York receipts is determined by multiplying such receipts by a fraction, the numerator of which is the number of subscribers in New York State and the denominator of which is the total number of subscribers within and without New York State.

Example 2: Network Corp sells a license to distribute its movie to Streaming Corp for a set fee. Under the licensing agreement, Streaming Corp is allowed to add the movie to its library of movies and other programming offered by the streaming service. Streaming Corp sells monthly subscriptions to view all of its content to individual viewers for a fee set by Streaming Corp. Although the movie is digitally delivered by Network Corp to Streaming Corp, the means of delivery is incidental to the sale of a license to distribute, broadcast or sublicense the movie. As such, Network Corp's receipts are apportioned under this section to the location where the license is used, which is presumed to be the location where the movie is available for viewing. If Network Corp's books and records do not indicate the location of Streaming Corp's viewers, it must use a reasonable method to approximate the subscriber location.

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

The following rules apply to corporations that are not subject to section 10-4.3 of this Subchapter.

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

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

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

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

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

(i) loans secured by real property;

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

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

(iv) stock that generates other exempt income, as defined in section 208(6-a) and section 3-4.6 of this Subchapter, that is not marked to market, with respect to that other exempt income;

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

(vi) instruments the receipts from which are subject to section 210-A(5)(b)(2) and (6).

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

(5) If a corporation is a partner in a partnership and is computing its tax with respect to its interest in the partnership using the aggregate method as described in section 10-2.3 of this Subchapter, and the partnership marks to market a type of financial instrument, the corporation is deemed to have marked to market that type of financial instrument for purposes of determining if that type of financial instrument is a qualified financial instrument.

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

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

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

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

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

(4) If the fixed percentage election has been made, other exempt income, as defined in section 208(6-a) and section 3-4.6 of this Subchapter, generated by a stock that is marked to market will be re-classified as business income and will be included in New York and everywhere receipts as provided in this subdivision.

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

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

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

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

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

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

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

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

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

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

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

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

- $1,000 of dividends from stock;
- $0 of gains from sales of stock (as the loss is limited to zero);
- $750 of gains from sales of bonds sold through a licensed exchange or registered securities broker or dealer;

- $25,000 of gains from sales of bonds not sold through a licensed exchange or registered securities broker or dealer; and
- $7,500 of marked to market net gains from stock ($10,000 minus $2,500).

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

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

Corporation R owns and marks to market stock A, stock B, bond D issued by State D, and unsecured loan H. Corporation S owns stock C, treasury bill E, bond F issued by New York State, and unsecured loan G but does not mark to market these instruments. Although Corporation S does not mark to market its stock, government issued debt, and unsecured loan, these instruments still are qualified financial instruments because the determination is done as though all the corporations properly included in the combined report are a single corporation.

The income, gains, or losses from qualified financial instruments for Corporations R and S is broken down as follows:

- $200 of dividends from stock A;
- $750 of dividends from stock B;
- ($300) loss from the sale of stock C;
- ($500) loss from the sale of State D bond;

- $700 gain from the sale of State Q bond;
- $150 of interest from treasury bill E;
- $100 gain from the sale of New York State bond F;
- $600 of interest from unsecured loan G;
- $1,000 gain from the sale of unsecured loan H; and
- $400 of marked to market net gains from stock.

The combined group includes $3,400 of net income (not less than zero) from such qualified financial instruments in everywhere receipts broken down as follows:

- $950 of dividends from stock;
- $0 of gains from sales of stock (as the loss is limited to zero);
- $200 of gains from sales of other state bonds (100 percent of the net gain is included when the fixed percentage election is made, as opposed to 50 percent of the net gain under the sourcing method in section 210-A(5)(a)(2)(B));
- $150 of interest from treasury bills;
- $100 of gains from sales of New York State bonds;
- $600 of interest from unsecured loans;
- $1,000 of gain from unsecured loans; and
- $400 of marked to market net gains from stock.

The combined group includes $272 ($3,400 multiplied by 8 percent) of net income from qualified financial instruments in the combined group's New York receipts.

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

- $300 gain from the sale of loan I secured by real property in State Y ($0 is included in the combined group's New York receipts and $300 is included in the combined group's everywhere receipts);
- $250 gain from the sale of loan J secured by real property in New York ($250 is included in both the combined group's New York receipts and everywhere receipts);
- $400 gain from the sale of widely held partnership K domiciled in New York ($0 is included in both the combined group's New York receipts and everywhere receipts); and
- $200 of marked to market net gains from loans secured by real property ($91 is included in the combined group's New York receipts and $200 is included in the combined group's everywhere receipts. The amount included in the combined group's New York receipts is determined by multiplying the $200 of marked to market net gains by the ratio of net gains from actual sales of loans secured by real property located in New York to net gains from actual sales of all loans secured by real property [$250/$550]).

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

The combined group has a total of $613 of New York receipts ($272 from qualified financial instruments and $341 from nonqualified financial instruments) and $4,150 of everywhere receipts ($3,400 from qualified financial instruments and $750 from nonqualified financial instruments). The result is the combined group's BAF is 0.147711.

Section 4-2.5 Interest income and net gains from loans. [Tax Law, Section 210-A(5)(a)(2)(A)]

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

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

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

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

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

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

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

(b) (1) A loan not secured by real property means that less than fifty percent of the aggregate value of the collateral used to secure a loan, when valued at FMV as of the time the loan is originated, is real property.

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

commercial domicile.

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

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

(iii) To determine the amount of net gains from sales of all loans not secured by real property, the corporation shall subtract the sum of all losses computed in subparagraph (ii) of this paragraph from the sum of all gains computed in subparagraph (ii) of this paragraph. If the result is equal to or less than zero, no amount shall be included in New York receipts and everywhere receipts.

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

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

(d) Examples

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

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

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

Because the property used to secure Loan P is located within and without New York, Corporation X must determine the fair market value (FMV) of the properties at the time the loan was originated when determining the portion of such interest income to include in New York receipts. At the time the loan was originated, the FMV of the New York property was $200,000 and the FMV of the property located outside of New York was $300,000. Therefore, Corporation X includes $400 ($200,000/$500,000 * $1,000) of the interest income from loan P in New York receipts.

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

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

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

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

To determine the amount of net gains from loans secured by real property to include in New York receipts, Corporation Y must determine the gross proceeds from sales of loans secured by real property in New York and total gross proceeds from loans secured by real property within and without New York.

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

The gross proceeds from loans secured by real property within the state of $380,000 is the sum of $300,000 from loan N and $80,000 from Loan O ($200,000 gross proceeds * 40 percent). The total gross proceeds of loans secured by real property located within and without the state is $500,000. Corporation Y's gross proceeds fraction of $380,000/$500,000 (or 76 percent) is used to determine the portion of net gains from loans secured by real property in New York. Corporation Y includes $380 of net gains from loans secured by real property in New

York receipts (76 percent* $500). Five hundred dollars of net gains from loans secured by real property is included in everywhere receipts.

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

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

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

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

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

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

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

(2) To determine the amount of net gains from sales of the asset backed securities referenced in paragraph (1) of subdivision (b) of this section, the corporation shall subtract the sum of all losses from the sale of such asset backed securities from the sum of all gains from the sale of such asset backed securities. If the result is equal to or less than zero, no amount is included in New York receipts and everywhere receipts.

(3) To determine the amount of net gains from sales of the asset backed securities referenced in paragraph (2) of subdivision (b) of this section, the corporation shall subtract the

sum of all losses from the sale of such asset backed securities from the sum of all gains from the sale of such asset backed securities. If the result is equal to or less than zero, no amount is included in New York receipts and everywhere receipts.

(d) If the purchaser is an individual, the individual is located in New York if the corporation's records indicate the purchaser's billing address in the records of the corporation is in the state. If the purchaser is a business entity, the business entity is located in New York if its commercial domicile is in the state.

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

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

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

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

(2) The amount of net gains (not less than zero) from sales of corporate bonds other than bonds sold through a registered securities broker or dealer or through a licensed exchange included in New York receipts is the product of net gains from the sale of all such bonds and a

fraction, the numerator of which is gross proceeds from sales of such bonds to purchasers located within the state and the denominator of which is gross proceeds from sales of such bonds to purchasers located within and without New York State. Net gains (not less than zero) from the sale of such bonds shall be included in everywhere receipts.

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

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

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

(4) If the purchaser is an individual, the individual is located in New York if the individual's billing address in the records of the corporation is in the state. If the purchaser is a business entity, the business entity is located in New York if its commercial domicile is in the state.

(5) Gross proceeds shall be determined after the deduction of transactional costs incurred

to acquire the corporate bond but shall not be less than zero. The transactional costs incurred to acquire the corporate bond shall not include the corporation's adjusted basis in the bond.

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

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

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

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

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

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

(b) Net interest income from federal funds is determined after the deduction of interest expense from federal funds. Interest income from federal funds means interest income paid by another institution in the federal reserve system for borrowing the corporation's funds deposited at a federal reserve bank. Interest expense from federal funds includes the interest paid by the corporation to another institution in the federal reserve system for the use of the other institution's funds deposited at a federal reserve bank.

(c) Interest paid to the corporation directly by the federal reserve for reserves maintained at a federal reserve bank does not constitute interest income from federal funds for purposes of this section and is apportioned under the rules for other financial instruments.

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

(a) (1) The amount of net income (not less than zero) from all commodities included in New York receipts or everywhere receipts is determined separately for sales of all commodities actually delivered and sales of commodities where delivery does not actually occur.

(A) The amount of net income (not less than zero) included in New York receipts from sales of commodities actually delivered is the product of such net income (not less than zero) and a fraction, the numerator of which is the amount of gross receipts from sales of all commodities actually delivered to points within the state and the denominator of which is the amount of all gross receipts from sales of commodities actually delivered.

(B) The amount of net income (not less than zero) included in New York receipts from commodities where delivery does not actually occur is the product of such net income (not less than zero) and a fraction, the numerator of which is the amount of gains from sales of commodities where delivery does not actually occur to purchasers located in the state and the denominator of which is the amount of gains from all sales of commodities where delivery does not actually occur. One hundred percent of net income (not less than zero) from sales of commodities actually delivered is included in everywhere receipts. One hundred percent of net income (not less than zero) from sales of commodities where delivery does not actually occur is included in everywhere receipts.

(2) Net income (not less than zero) is determined by subtracting the cost to acquire or produce all commodities from the gross proceeds from the sale of commodities, provided the result cannot be less than zero. The cost to acquire or produce all commodities includes the purchase price of commodities and all transaction costs associated with the acquisition or production of the commodities.

(3) Example.

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

Sales of commodities actually delivered

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

- $200 of gross receipts from gold sold to purchasers in states other than New York State but delivered to New York State;
- $700 of gross receipts from gold sold to purchasers located in New York State but delivered to states other than New York State;
- $100 of gross receipts from silver sold to purchasers located in New York State but delivered to states other than New York State; and
- $1,000 of gross receipts from electricity sold to purchasers located in New York State and delivered to points within New York.

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

- $715 for gold;
- $85 for silver; and
- $400 for electricity.

Corporation A uses the sourcing rule contained in section 210-A(5)(a)(2)(I) and this section to determine the amount of net income (not less than zero) to include in its New York receipts or everywhere receipts.

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

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

Sales of commodities where delivery does not actually occur

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

- $100 of gains from gold sold to purchasers located in New York State;
- ($200) of losses from gold sold to purchasers located in New York State;
- $500 of gains from gold sold to purchasers located in states other than New York State;
- $ 400 of gains from corn sold to purchasers located in states other than New York State; and
- ($300) of losses from corn sold to purchasers located in states other than New York State.

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

The amount of net income to be included in New York from the sales of commodities that are not actually delivered is determined by multiplying such net income by a fraction, the numerator of which is the amount of gains from sales to purchasers located within New York State of commodities that are not actually delivered and the denominator of which is the amount of gains from sales within and without New York of commodities that are not actually delivered. Corporation A multiplies its $500 of net income by 10 percent ($100/$1,000). The result is $50 included in New York receipts. All $500 of net income is included in everywhere receipts.

Total sales of commodities

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

(b) (1) In the case of a combined report, the amount of net income (not less than zero) of the combined group from commodities included in the combined group's New York receipts or everywhere receipts is determined separately for sales of commodities actually delivered and sales of commodities where delivery does not actually occur.

(A) The amount of net income (not less than zero) for all members of the combined group included in the combined group's New York receipts from sales of commodities actually delivered is the product of such net income (not less than zero) and a fraction, the numerator of which is the amount of gross receipts from sales of all commodities actually delivered to points within the state for all members of the combined group and the denominator of which is the amount of all gross receipts from sales of commodities that are actually delivered for all members of the combined group.

(B) The amount of net income (not less than zero) for all members of the combined group included in the combined group’s New York receipts from commodities where delivery does not actually occur is the product of such net income (not less than zero) and a fraction, the numerator of which is the amount of gains for all members of the combined group from sales of commodities where delivery does not actually occur to purchasers located in the state, and the denominator of which is the amount of gains for all members of the combined group from all sales of commodities where delivery does not actually occur to purchasers. One hundred percent of net income (not less than zero) from sales of commodities for all members of the combined group is included in the combined group’s everywhere receipts.

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

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

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

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

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

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

(1) Marked to market net gains (not less than zero) from stocks are not included in New York receipts or everywhere receipts, unless the commissioner has required the corporation's net gains from sales of stocks be included in the apportionment factor. Marked to market net gains (not less than zero) from partnership interests are not included in New York receipts or everywhere receipts, unless the commissioner has required that the corporation's net gains from the sale of partnership interests be included in the apportionment factor.

(2) The amount of marked to market net gains (not less than zero) from each type of financial instrument included in New York receipts is determined by multiplying the marked to market net gains (not less than zero) from each such type of financial instrument by a fraction, the numerator of which is the net gains from actual sales of that type of financial instrument included in New York receipts determined under the applicable clause of section 210-A(5)(a)(2) and the applicable regulations in this Subchapter and the denominator of which is the net

gains from actual sales of that type of financial instrument included in everywhere receipts determined under the applicable clause of section 210-A(5)(a)(2) and the applicable regulations in this Subchapter. Marked to market net gains (not less than zero) from financial instruments for which the amount included in New York receipts is determined under the immediately preceding sentence are included in everywhere receipts.

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

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

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

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

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

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

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

(2) To determine the amount of net gains from sales of each type of financial instrument apportioned under this section, the gains from sales of a type of other financial instrument are

reduced by the losses from sales of that same type of other financial instrument, provided the result cannot be less than zero. The computation is done for each type of instrument so that gains from one type of financial instrument cannot offset losses from another type of financial instrument.

(3) (i) The amount of net gains (not less than zero) from sales of a type of other financial instrument included in New York receipts is the product of net gains from the sales of that type of other financial instrument and a fraction, the numerator of which is gross proceeds from sales of that type of financial instrument to purchasers located within the state and the denominator of which is gross proceeds from sales of that type of financial instrument to purchasers located within and without New York State. Net gains (not less than zero) from the sale that type of other financial instrument is included in everywhere receipts.

(ii) For each sale of a financial instrument, the corporation shall compute a gain or loss from the sale by subtracting its adjusted basis in such financial instrument from the sale price of such financial instrument. If the sale price exceeds the adjusted basis, the result is a gain. If the sale price is less than the adjusted basis, the result is a loss.

(iii) To determine the amount of net gains from sales of one type of financial instrument, the corporation shall subtract the sum of all losses from the sale of that type of financial instrument from the sum of all gains from the sale of that type of financial instrument. If the result is equal to or less than zero, no amount is included in New York receipts and everywhere receipts.

(iv) Gross proceeds shall be determined after the deduction of transactional costs incurred to acquire the financial instrument but shall not be less than zero. The transactional costs incurred to acquire the financial instrument shall not include the corporation’s adjusted basis.

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

(f) Examples.

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

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

Example 3: Taxpayer C maintains reserves at its required Federal Reserve Bank. These funds generate $1,000 of interest income that is not considered interest income from federal funds. Only one of the twelve Federal Reserve Banks is located in New York. As a result, 1/12 of the interest income is included in New York receipts. All $1,000 of interest income is included in everywhere receipts.

Example 4: As a member of the Federal Home Loan Bank (FHLBank), Taxpayer D is required to invest in the FHLBank. During the taxable year, Taxpayer D receives $10,000 of income from this investment. Only one of the eleven Federal Home Loan Banks is located in New York. As a result, while $10,000 is included in everywhere receipts, only 1/11 of the that amount, or $909, is included in New York receipts.

Example 5: Taxpayer E receives $2,000 of substitute payments in lieu of dividends from its stock of Corporation X, domiciled in state Y. No substitute payments in lieu of dividends are included in New York receipts because the payor, Corporation X, is domiciled in State Y. All $2,000 of such payments are included in everywhere receipts.

Example 6: Taxpayer F owns debt issued by Country X, debt issued by Country Y, debt issued by Country Z, foreign currency swaps for the currency A, and foreign currency swaps for currency B. Taxpayer F has two types of other financial instruments – debt issued by other countries and foreign currency swaps. When determining the amount of New York receipts or everywhere receipts, any gains from sales of debt issued by other countries may be reduced only by losses from sales of debt issued by other countries and any gains from sales of foreign currency swaps may be reduced only by losses from sales of foreign currency swaps.

Section 4-2.13 Brokerage commissions [Tax Law, Section 210-A(5)(b)(1)]

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

(b) Example. Broker X earns $10,000 in brokerage commission income from investment advisor Y to execute trades for investment partnership Z. Investment advisor Y is responsible for paying the commission to Broker X but passes on the brokerage commission expense to its investors in the form of fees. Broker X's records indicate that the mailing address of investment advisor Y is within New York State and investment partnership Z's mailing address is in state A. Because Investment advisor Y is the customer responsible for paying the brokerage commission to Broker X and its mailing address in Broker X's records is in New York State, $10,000 is included in both New York receipts and everywhere receipts.

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

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

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

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

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

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

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

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

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

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

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

(6) Credit card processor's network means the hardware and software that enable a credit card processor to facilitate the transfer of financial transaction information to and from issuer banks and acquirer banks and, in the case of a third-party processor, to and from merchants, including by any of the following: receiving, processing, and relaying such financial transaction

information.

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

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

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

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

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

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

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

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

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

(d) Notwithstanding section 4-1.6 of this Part, if it shall appear that the receipts included in New York receipts pursuant to this section do not accurately reflect the locations where such receipts of the credit card processor are earned because the credit card processor has receipts arising from activities outside of the United States, then the credit card processor is authorized to calculate New York receipts pursuant to this section based on the New York State percentage of total access points, which shall be calculated by dividing the number of access points physically located in New York State by the total number of access points used to generate the receipts being apportioned under this section. The corporation bears the burden of proof to demonstrate that applying the apportionment rules contained in subdivisions (b) and (c) of this section do not result in an accurate apportionment of the receipts subject to the rules in this section within New York State.

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

(a) The amount of receipts received by a corporation from its conduct of a railroad business (including surface railroad, whether or not operated by steam, subway railroad, elevated railroad, palace car, or sleeping car), trucking business or omnibus business included in New York receipts is determined by multiplying the amount of receipts from such business by a fraction, the numerator of which is the number of revenue miles operated within New York State and the denominator of which is the total number of revenue miles operated. All such receipts are included in everywhere receipts.

(b) Revenue miles operated while an omnibus is engaged in school bus operations must be disregarded in computing the fraction.

(c) For purposes of this section, revenue mile is the transportation for consideration of passengers or freight for the distance of one mile. It does not include *nonrevenue miles*, such as deadheading (driving an unladen truck).

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

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

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

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

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

(iii) the posting of material on billboards, buildings, or vehicles;

(iv) the sale of time in radio or television broadcasts; or

(v) the sale of space on a Web page, regardless of the method of compensation paid by the advertiser to the Web site host.

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

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

(i) consultation on and development of advertising or marketing campaigns; or

(ii) securing placement of advertising or marketing materials in various forms of media.

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

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

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

(ii) If the physical media is rolling stock, such as buses, vans, or automobiles, the numerator of the fraction in subparagraph (i) is the number of miles operated within New York State and the denominator is the number of total miles operated within and without New York

State.

Example 1: Billboard Company owns 15 roadside billboards, 5 in New York State and 10 in State A. For a fee, Billboard Company will post advertisements from unrelated businesses for a determined length of time. It receives $150,000 from Selling Corp to allow advertisements on each of its billboards. Billboard Company must determine the amount of receipts included in New York receipts according to the ratio of billboards in New York State to all billboards. Therefore, it includes $50,000 (1/3*$150,000) in New York receipts. All $150,000 is included in everywhere receipts.

Example 2: Bus Company allows businesses to post advertisements on the exterior and interior of its vehicles. It receives $7,000 from Company A, $4,000 from Company B, and $14,000 from Company C to have its vehicles display ads for those businesses. Bus Company knows the mileage within and without New York State for each of the vehicles containing the ads. Buses containing ads for Company A travel 30,000 miles in New York State out of a total of 60,000 miles (50% of its miles in New York). Buses containing ads for Company B travel 14,000 miles in New York State out of a total of 70,000 miles (20% of its miles in New York). Buses containing ads for Company C travel 40,000 miles, exclusively in New York State (100% of its miles are in New York). Bus Company must include $18,300 in New York receipts, which is the sum of $3,500 from Company A (50% multiplied by $7,000), $800 from Company B (20% multiplied by $4,000), and $14,000 from Company C. All $25,000 is included in everywhere receipts.

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

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

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

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

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

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

(v) Example. Web Corp provides digital advertisements for various retail corporations on its website. Its books and records capture a variety of advertising metrics for each ad placed, which include but are not limited to, the number of times an ad is viewed by an IP address, the number of unique IP addresses that view an ad, and the number of times Web Corp's users click on an ad and are directed to the retailer's website based on the users' IP address.

Web Corp enters into an agreement with Retail Corp A to provide digital advertisements for Retail Corp A on Web Corp's website. Pursuant to the agreement, Web Corp will receive payment each time the advertisement is viewed, regardless of whether the ad is viewed from the same location multiple times or whether the Web Corp's users click on the advertisement or not. As the receipt is earned based on the number of views, the amount of receipts from Retail Corp A included in New York receipts is determined by multiplying the total receipts by a fraction, the numerator of which is the total number of views of the advertisement in New York State and the denominator is the total view of the advertisements. One hundred percent of such receipts are included in everywhere receipts.

Web Corp enters into an agreement with Retail Corp B to provide digital advertisements for Retail Corp on Web Corp's website. Pursuant to the agreement, Web Corp will receive payment each time Web Corp's users click on the advertisement and are directed to Retail Corp B's website. No payment is received by Web Corp if the ad is just viewed on Web Corp's website. As the receipt is based on the number of times the ad is clicked on, the amount of Web Corp's receipts from Retail Corp B included in New York receipts is determined by multiplying the total receipts by a fraction, the numerator of which is the total number of times that Retail Corp B's ad is clicked on in New York State and the denominator is the total number of times Retail Corp B's ad is clicked on. The location where an ad is clicked on is based upon the IP address. One hundred percent of such receipts are included in everywhere receipts.

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

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

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

(ii) In any case in which the commissioner determines that a corporation's method is reasonable, but that it has not been applied in a consistent manner with respect to similar transactions, the commissioner shall require that the corporation apply its method in a consistent manner.

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

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

Example 5: AdCo works with local businesses to create printed advertisements that appear on paper placemats at restaurants. Businesses pay AdCo to design the ads and to secure their inclusion on placemats. Once the content and design of the ad is agreed upon, AdCo works with a printing company that produces the placemats to ensure that the ad appears on the printed placemats and that it meets the design and content specifications. As part of AdCo's responsibilities in providing this service, it determines the locations where the printed placemats will be delivered. AdCo receives a receipt from Landscaper Co to create an ad to be included on placemats. AdCo determines that the placemats will be delivered to Restaurant Company, which has 3 restaurants in New York State and 1 in State B (4 total restaurants). AdCo must include 75 percent of the receipts earned from Landscaper Co for designing and securing the ad on the placemats in its New York receipts. One hundred percent of such receipts are included in everywhere receipts.

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

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

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

Subpart 4-3 Receipts from the Sale of, Rental of, License to Use, and Granting of Remote Access to Digital Products and Digital Services [Tax Law, Section 210-A(4)].

Section 4-3.1 Definitions. For purposes of this Subpart, the following terms shall have the meanings indicated below.

(a) Consumer means an individual or entity, other than an intermediary, whose location is where the intermediary derives value from the digital product or digital service provided by the corporation.

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

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

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

(c) Digital product means any property of whatever nature delivered through the use of wire, cable, fiber-optic, laser, microwave, radio wave, satellite or similar successor media, or any combination thereof (hereinafter referred to as digitally delivered). Digital product includes, but is not limited to, an audio work, audiovisual work, visual work, electronic book or literary work, graphic work, electronic database, game, information or entertainment service, website, digital application, or cryptocurrency or similar asset digitally delivered. In addition, digital product includes computer software by whatever means delivered, including physical media. Further, digital product includes the storage of any property that constitutes a digital product. The term "delivered to" includes furnished, provided, or given access to.

A digital product does not include property listed in the second sentence of this subdivision that is not digitally delivered. Receipts from such products must be apportioned as receipts from sales of tangible personal property or from rentals and royalties.

A digital product does not include property listed in the second sentence of this subdivision, if the fact that it is digitally delivered is incidental to the sale of a license to distribute, broadcast, or right to sublicense the work to third parties for other than personal use. The receipts from that sale must be sourced as royalties.

(d) Digital service means a service not otherwise addressed in sections 210-A(1) – (3) or (5) – (9). It does not include a service related to an asset described in section 210-A(5). A digital service must be:

(1) directly related to the creation, testing, modification, enhancement, and maintenance of a product that must be digital in nature with no comparable non-digital form, regardless of the means of transmission or level of human interaction; or

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

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

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

(e) Intermediary means the business customer of a corporation that derives value from a digital product or digital service at the location of a consumer in an intermediary transaction.

(f) Intermediary transaction means a transaction where the business customer (intermediary) derives value from a digital product or digital service at the location of the consumer rather than the location of the customer itself. Such a transaction is sourced using the rules for intermediary transactions in section 4-3.8 of this Subpart. Intermediary transactions do not include digital products or digital services sourced under the special rules in section 4-3.3 of this Subpart.

(1) To be considered an intermediary transaction, the digital product or digital service, pursuant to the explicit or implicit terms of a contract or other agreement between the corporation and intermediary, must meet the requirements of subparagraph (i), (ii) or (iii) of this paragraph:

(i) it must be provided by the corporation, at the direction of the intermediary, directly to the consumer;

(ii) it must be sold by the corporation to the intermediary, who then passes on the digital product or digital service to the consumer and either:

(A) the corporation actively maintains or interacts with the digital product or digital service after the consumer receives it from the intermediary; or

(B) the corporation must be obligated to perform a substantial portion of the digital service after the digital product or other property that the service relates to is delivered by the intermediary to the consumer; or

(iii) it must be made readily available by the corporation (e.g., through a website) at the request of the intermediary to be accessed by the consumer and the corporation actively maintains or interacts with the digital product or digital service after the consumer receives or accesses it from the intermediary.

(g) 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 day-to-day execution of the contract of sale, rental, license to use, or granting of remote access with the corporation.

Section 4-3.2 General Principles (a) Receipts from the sale of, rental of, license to use, or granting of remote access to digital products and digital services are included in New York receipts if the location where the customer derives value from the digital product or digital service according to the hierarchy of methods set forth in section 210-A and paragraphs (1) through (4) of subdivision (b) of this section is in New York. The corporation must exercise due diligence under each method described in subdivision (b) of this section before rejecting it and proceeding to the next method in the hierarchy, and must base its determination on information known to the corporation or information that would be known to the corporation upon reasonable inquiry. One hundred percent of such receipts are included in everywhere receipts.

(b) The hierarchy of methods described in paragraphs (1) through (4) of this subdivision to determine where the customer derives value from the digital product or digital service must be applied sequentially.

(1) A corporation must apportion the receipt to the customer's primary use location.

(2) It may abandon such primary use method only if, after exercising due diligence, it lacks sufficient information to apply that method, in which case it must use the location where the digital product or service is received by the customer.

(3) If, after exercising due diligence, a corporation cannot apply the methods described in paragraphs (1) and (2) of this subdivision, it must then source the receipts from that digital product or service in the same way as those receipts were sourced in the preceding taxable year.

(4) Lastly, if the corporation cannot apply the methods described in paragraphs (1), (2)

and (3) of this subdivision after exercising due diligence, it must source the receipts from that digital product to New York by multiplying the amount of those receipts by a fraction, the numerator of which is the total of New York receipts for the current taxable year from the corporation's other digital products and digital services apportioned using the methods in described in paragraphs (1) and (2) of this subdivision, and the denominator of which is the total of the everywhere receipts for the current taxable year from the corporation's other digital products and digital services apportioned using the methods described in paragraphs (1) and (2) of this subdivision.

(c) Corporations should refer first to the special rules for primary use location in section 4-3.3 of this Subpart prior to determining if a transaction qualifies as an intermediary transaction. Unless a special rule in section 4-.3.3 of this Subpart applies, a corporation should then determine if the rules for intermediary transactions in section 4-3.8 of this Subpart apply before applying the other rules in this Subpart.

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

(1) (i) In applying the rules under this Subpart, if the required information is not readily available to the corporation , the corporation must make reasonable inquiries to a business customer to determine the information required by these rules.

(ii) If the corporation has more than 250 business customers purchasing substantially similar digital products or digital services that would be sourced under this Subpart and no more than 5 percent of receipts from such digital products or digital services are from one particular customer, then inquiries are not required for that customer ("inquiries safe harbor").

(iii) If the corporation has more than 10,000 business customers purchasing substantially similar digital products or digital services that would be sourced under this Subpart and no more than 5 percent of receipts from such digital products or digital services are from one particular customer, then the primary use location of the digital product or digital service is presumed to be the customer's billing address ("billing address safe harbor").

(2) Corporations must document the steps taken before abandoning each method of the hierarchy or step within a method of the hierarchy, such as moving from a special rule for determining primary use location to the general rule for determining primary use location, including documentation of reasonable inquiries made.

(3) When the commissioner determines that the corporation 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 corporation, the commissioner may require the corporation to use such method.

(e) If there is a presumption in applying a method in the hierarchy, the presumption may be overcome by either the corporation or the Department.

(1) The presumption may be overcome by the corporation if the corporation 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 digital product or digital service. In such a case, the location to which the receipts from the digital product or digital service will be sourced will be based on the evidence accumulated by the corporation. If the corporation believes it has overcome the presumption and uses an alternative method, upon audit the Department may examine the corporation'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.

(2) 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 digital product or digital service, and that the corporation 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.

(f) For digital products that are intangible assets such as cryptocurrency, net gains (not less than zero) are included in the BAF. For this purpose, net gains means gross proceeds minus the adjusted basis in the digital asset.

Section 4-3.3 Special rules for determining primary use location. (a) In applying the primary use location method of the hierarchy, a corporation must determine first if the type of receipt must be sourced using the special rules in this section. When applying the special rules in this section, the specific criteria to apply the special rules will be met regardless of whether the digital product or digital service is provided directly by the corporation or on behalf of the corporation. The special rules apply to the receipts described in subdivisions (b) through (e) of this section. If a corporation meets the specific criteria to apply a special rule, but does not have sufficient information to apply the rule, the corporation should use the rules for reasonable approximation to apply the special rule. However, if the corporation does not have sufficient information to apply the rules for reasonable approximation to the special rule, then the special rule no longer applies.

(b) Facilitation of 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. Receipts from digital facilitation of the provision of in-person services are apportioned under the special rule in this subdivision.

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

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

(3) In-person services do not include:

(i) 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, financial and consulting services; and

(ii) 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) is not an in-person service, although significant in-person contact may ultimately occur when the service is actually performed.

(c) Services related to tangible personal property. Receipts from digital services that include services related to tangible personal property are sourced under the special rule in this subdivision. This includes commissions and other receipts related to the facilitation of services related to tangible personal property. Receipts from the facilitation of in-person services related to tangible personal property are apportioned under the special rule in this subdivision, rather than the special rule in subdivision (b) of this section for the facilitation of in-person services.

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

(2) The primary use location of services related to tangible personal property is

presumed to be at the location where the property is received after the service is performed.

(3) 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.

(d) Services related to real property. Receipts from digital services related to real property, including commissions and other receipts related to the facilitation of such services, are apportioned under the special rule in this subdivision. Digital 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. Receipts from the facilitation of in-person services related to real property are apportioned under the special rule in this subdivision, rather than the special rule in subdivision (b) of this section for facilitation of in-person services.

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

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

(e) Sales of computer software at retail locations. (1) Receipts from the sale of prewritten, non-customized computer software sold at a physical retail location that sells more than one type of digital product and/or a combination of digital products and other products, where the customer is physically present at the physical retail location at the time they take possession of the software or right to download such software, are apportioned under the special rule in this subdivision.

(*2*) With respect to receipts from software sold under the conditions of this special rule, the receipt is apportioned to the physical retail location where the software is sold.

Section 4-3.4 General Rule for Determining Primary Use Location. A corporation must include a receipt in New York receipts when the digital product or digital service is primarily used by the corporation's customer in New York. Unless the corporation meets the specific criteria and has sufficient information necessary to apply the special rules in section 4-3.3 of this Subpart, determining the primary use location depends on whether the customer is an individual customer or a business customer.

(a) Individual customer. In the case where the corporation's customer is an individual, the primary use location is presumed to be at the customer's billing address. If the corporation does not have the customer's billing address, it must use reasonable approximation.

(b) Business customer. (1) Except in instances where the billing address safe harbor applies, the primary use location of the corporation's business customer is presumed to be in New York to the extent the information in the corporation's books and records kept in the ordinary course of business, other than the billing address of the corporation's customer, indicate that the customer's use of the digital product or digital service is in New York. Where the primary use location is in New York and at least one other location, the corporation should source the receipts based on the percentage of use by the customer in each primary use location.

(2) The digital product or digital service is primarily used at the location of a third party (i.e., the consumer) only in the case of an intermediary transaction.

(3) If the corporation does not have adequate information to determine where the digital

product or digital service is primarily used by the customer, the corporation must use reasonable approximation.

Section 4-3.5. Reasonable approximation based on customer information. (a) Where a corporation's books and records kept in the ordinary course of business and reasonable inquiries to the customer when required do not provide adequate information to determine the customer's primary use location of a digital product or digital service, then reasonable approximation based on customer information must be used to determine primary use location.

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

(1) (i) the location or locations where the digital product or digital service is primarily used and/or the percentage of use attributable to each location as a share of the total use cannot be determined, or

(ii) obtaining the primary use location or locations and/or the percentage of use attributable to each location as a share of the total use would require the corporation to expend undue effort and expense beyond the standard amount of due diligence as required by this section; and

(2) the corporation has sufficient information to reasonably approximate the primary use location or locations and/or the percentage of use attributable to each location as a share of the total use.

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

(1) A corporation 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 primarily use the digital product or service.

(2) When a corporation is required under this section to reasonably approximate, the corporation must use a method that is intended to approximate where the customer primarily uses the digital product or digital service.

(3) Sourced receipts method. In any instance where a corporation 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 corporation 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 (sourced receipts method). If the corporation 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 the corporation otherwise lacks sufficient information to use reasonable approximation either under this section or under section 4-3.6 of this Subpart, it must next attempt to source such receipts under the method described in paragraph (2) of subdivision (b) of section 4-3.2 of this Subpart.

(4) In any case in which a corporation uses a method of approximation to apportion its receipts and the commissioner determines that the method of approximation employed by the corporation is not reasonable, the commissioner may substitute a method of approximation that the commissioner determines is appropriate.

(5) In any case in which the commissioner determines that a corporation'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 corporation apply its method of approximation in a consistent manner.

(6) In any case in which, after reasonable inquiries are made when required, the corporation does not have sufficient information based on its actual customers to use reasonable approximation, the corporation must next attempt to source such receipts using the rules for reasonable approximation based on general information.

Section 4-3.6 Reasonable approximation based on general information. (a) Where, after meeting the requirements of due diligence, a corporation lacks sufficient information to use the rules for reasonable approximation based on customer information to determine the customer's primary use location of a digital product or digital service, the corporation must use reasonable approximation based on general information.

(b) Definition. Reasonable approximation based on general information is an alternative method used to determine the location at which a customer primarily uses the digital product or digital service in instances in which a general information measurement, such as the general population, a subset of the general population, or some other general metric, reasonably reflects the geographic distribution of the customer's primary use location.

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

(1) A corporation must use statistical information based on an appropriate metric, that reasonably approximates where the customers primarily use the digital product or digital service.

(2) In any case in which the commissioner determines that the corporation's

method of approximation is not reasonable, the commissioner may substitute another general information measurement that the commissioner determines is appropriate.

(3) In any case in which the commissioner determines that the corporation'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 corporation apply its method of approximation in a consistent manner.

(d) In any case in which the corporation does not have sufficient information to reasonably approximate based on general information, the corporation must instead source its receipts under the method in the hierarchy described in paragraph (2) of subdivision (b) of section 4-3.2 of this Subpart, where the digital product or digital service is received.

Section 4-3.7 Where the Digital Product or Digital Service is Received.

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

(b) The location where the digital product or digital service is received is presumed to be the location at which the contract of sale is managed by the customer. If the corporation cannot determine the location where the contract of sale is managed by the customer, then the location where the digital product is received is presumed to be the billing address of the customer. If, after applying due diligence, the corporation does not have adequate information to determine where the digital product or digital service is received, the corporation must apply the method of the hierarchy described in paragraph (3) of subdivision (b) of section 4-3.2 of this Subpart, based on the sourcing of receipts for the preceding taxable year.

Section 4-3.8 Rules for intermediary transactions.

(a) In the case of intermediary transactions, the location where the receipt is sourced is determined using the hierarchy of methods described in paragraphs (1) and (2) of subdivision (b) of section 4-3.2 of this Subpart based on the location of the consumers, rather than the intermediary. If the corporation uses reasonable approximation based on the sourced receipts method to source its receipts from an intermediary transaction, it may apply that method taking only transactions with that particular intermediary into consideration.

(b) In applying the hierarchy of methods described in paragraphs (1) and (2) of subdivision (b) of section 4-3.2 of this Subpart , the corporation is required to make inquiries to the intermediary, but not to the consumers, regardless of the number of business customers the corporation has or the percentage of receipts the corporation receives from any one customer, in order to determine the amount of receipts to source to New York based on the location of the consumers. Such inquiries may be fulfilled by the intermediary providing information from its books and records to the corporation that demonstrates the relevant information.

(c) If, after exercising due diligence, the corporation has inadequate information to apply the methods of the hierarchy described in paragraphs (1) and (2) of subdivision (b) of section 4-3.2 of this Subpart with reference to the location of the consumers, the corporation should apply the methods of the hierarchy described in such paragraphs (1) and (2) based on the intermediary. If after exercising due diligence, the corporation has inadequate information to apply the methods of the hierarchy described in paragraphs (1) and (2) of subdivision (b) of section 4-3.2 of this Subpart with reference to either the consumers or the intermediary, the corporation must then apply the methods of the hierarchy described in paragraphs (3) and (4) of subdivision (b) of section 4-3.2 of this Subpart.

(d)This section does not apply in instances where the billing address safe harbor applies. In instances where the billing address safe harbor applies, the receipts shall be sourced to the billing address of the intermediary.

Section 4-3.9 Receipts for the Preceding Taxable Year

When a corporation, after exercising due diligence, cannot determine the amount to include in New York receipts using the methods of the hierarchy in described in paragraphs (1) and (2) of subdivision (b) of section 4-3.2 of this Subpart, it should source its receipts from that digital product or digital service to New York based on the sourcing of receipts from the sales of that type of digital product or digital service 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 digital product or digital service 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 digital product or digital service in the preceding taxable year. This method of the hierarchy cannot apply in a corporation's first taxable year beginning on or after January 1, 2015. In such tax year, a corporation must reject this method and move directly to the next method of the hierarchy described in paragraph (4) of subdivision (b) of section 4-3.2 of this Subpart based on receipts for the current taxable year.

Section 4-3.10 Receipts for Current Taxable Year

When a corporation, after exercising due diligence, cannot determine the amount to include in New York receipts using the methods of the hierarchy described in paragraphs (1), (2) and (3) of subdivision (b) of section 4-3.2 of this Subpart, it must source the receipt from that digital product or digital service to New York based on the sourcing of all those current taxable year receipts for all other digital products and digital services that can be sourced using the methods described in such paragraphs (1) and (2). 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 digital products and digital services that can be sourced using the methods in described in paragraphs (1) and (2) of subdivision (b) of section 4-3.2 of this Subpart for the current taxable year and the denominator of which is the amount included in everywhere receipts from digital products and digital services sourced using the methods described in such paragraphs (1) and (2) for the current taxable year.

Section 4-3.11 Examples. For purposes of these examples, it can be assumed that the corporation has met all the requirements of due diligence unless otherwise provided and that the billing address safe harbor does not apply.

Example 1: Software Corp sells tax preparation software to individuals through its website. When individual customers purchase the software, Software Corp provides the software on a disk shipped to the customer's address. Customer A purchases the software and has it shipped to her billing address in New York. Software Corp ships a box to Customer A that contains the software on a disk and a user manual explaining how the software works and troubleshooting tips. Computer software by whatever means delivered is considered to be a digital product and therefore receipts from the software are sourced under the rules in this Subpart. Because the product is purchased online, it does not qualify for the special rule for computer software sold at a retail location. Although the sale of the software to Customer A includes the user manual, which is tangible personal property, the user manual is incidental to the actual sale of the software, and therefore the entire receipt is sourced as a digital product. It is presumed that Customer A primarily uses the software at his or her billing address which is located within New York. Software Corp includes the receipt in New York receipts and everywhere receipts.

Example 2: Develop Corp, a software development corporation located in State A, enters into a contract with a business customer, Purchaser Corp, which is physically located in both New York and State A, to develop custom software to be licensed to Purchaser Corp's business. Develop Corp delivers the software electronically from its office in State A to Purchaser Corp. Purchaser Corp will primarily use the software at the location where its employees utilize the software. As no special rules apply to this receipt, Develop Corp must use its books and records to determine where the software will be primarily used. Based on Develop Corp's records, it is providing Purchaser Corp 100 licenses to use the software at Purchaser Corp's New York location and 300 licenses to use the software at Purchaser Corp's State A location. As a result, 25 percent of the receipt (100/400) is included in New York receipts. One hundred percent of such receipt is included in everywhere receipts.

Example 3: Movie Corp sells movies for personal use to individual customers that either may be downloaded from the internet or received via DVD, a physical medium. Customer A purchases a digital download for a movie (a digital product) and pays with their credit card that has a billing address in State A. As no special rules apply, Movie Corp must use its books and records to determine where the movie will be primarily used. The general rule presumes that the digital product is primarily used at Customer A's billing address in State A. Therefore, the receipt from this sale is not included in New York receipts. The receipt from this sale is included in everywhere receipts.

Customer B purchases a DVD and requests it be shipped to an address in New York. A DVD is not one of the methods of delivery specifically provided for in section 210-A(4), so the movie on a DVD is not considered a digital product. Therefore, Video Corp's receipt from Customer B is a receipt from the sale of tangible personal property and, as such, should be sourced pursuant to the rules for receipts from the sale of tangible personal property.

Example 4: Cable TV Corp, a corporation that is located outside of New York, sells monthly subscriptions for cable television to individual customers in New York and other states. Cable TV Corp provides cable television through cables that are installed at the location of each customer's television that will be receiving content. Cable TV Corp also has a billing address on file for each of its customers. While most of Cable TV Corp's customers have cable installed at their billing address, a number of Cable TV Corp's customers have cable installed at an address other than their billing address. The cable television subscription sold by Cable TV Corp is a digital product. As no special rules apply, the general rule presumes that the digital product is primarily used at an individual customer's billing address. However, either Cable TV Corp or the commissioner can overcome this presumption through clear and convincing evidence as to where the cable is installed, which better reflects where the digital product is primarily used.

Example 5: Security Corp sells cyber security software to 1,000 business customers, including a federal agency XYZ. XYZ has its headquarters located in Washington D.C., and 12 regional offices relatively similar in size located in 12 different states, one of which is New York. Security Corp generally conducts business with a person at XYZ's headquarters, but Security Corp provides cyber security software to XYZ's entire network, which is utilized by XYZ employees at all of the 13 locations. As no special rules apply, Security Corp must use its books and records to determine the primary use location of the software. It does not have more detailed information, such as the number of computers or the distribution of licenses among the locations. Since Security Corp has over 250 business customers and not more than 5 percent of its receipts are from XYZ, it is not required to make reasonable inquiries to determine where the digital product is primarily used. Security Corp chooses to exercise the inquiry safe harbor and uses reasonable approximation based on customer information to include 1/13 of the receipts from its cyber security software in New York receipts. Security Corp incudes 100 percent of such receipts in everywhere receipts.

Example 6: Office Corp, an office supply retailer, has physical stores located in New York and other states. Office Corp sells a variety of office supplies, including a multitude of prewritten computer software programs. When customers purchase items from Office Corp, they take possession of the purchased items immediately at the retail location. In the case of software purchases, customers can either purchase the software on a disk or can purchase a code to download the computer software at a later time. Office Corp's sale of prewritten software qualifies for the special rule for sales of computer software at retail locations. Therefore, Office Corp includes the receipts from the sale of the software in New York receipts to the extent the location of the retail store is in New York. Office Corp includes 100 percent of such receipts in everywhere receipts.

Example 7: Music Corp provides music streaming services to individual customers for a monthly subscription fee. Customers can access Music Corp's service through an application on their mobile devices or by visiting Music Corp's website. Once in their account, individuals can listen to music on a variety of channels and indicate whether they like certain songs. Music Corp uses an algorithm to recommend songs to customers based on songs they have previously indicated that they like. As this service is entirely automated, it meets the definition of a digital service and therefore is sourced under the rules in this Subpart. As no special rules apply, Music Corp must use the general rule to determine the primary use location of its streaming services. Therefore, the primary use location is presumed to be at the billing addresses of its customers. To the extent that customers have billing addresses located in New York, receipts from such customers are included in New York receipts. Music Corp must include 100 percent of its receipts from customers in everywhere receipts.

Example 8: Webapp located in State A sells subscription plans to its web-based video/voice conferencing service. This service allows its customers to hold meetings remotely using video and voice transmitted through a web browser. Meetings can be joined by attendees in multiple locations. When a customer purchases a subscription to Webapp’s service, the customer may log into its online account to use the service at any location where it can access a web browser. Customers also can use this service to conduct meetings with parties who are not subscribers simply by sending the attendee an invitation to the meeting; this can be done from any location as no specialized software is required. Webapp’s service is provided entirely online, without any human intervention by Webapp. Therefore, it is considered a digital service.

Development Studio subscribes to Webapp’s digital service and uses WebApp’s service to hold numerous meetings with its customers and employees that access the service throughout the country.

As no special rules apply, Webapp must use its books and records to determine the primary use location of its digital service. It determines that Development Studio’s subscription for Webapp’s digital service is used by employees of Development Studio’s New York office. Webapp includes 100 percent of this receipt in New York receipts and in everywhere receipts.

Example 9: Website Corp designs custom software and Web applications for use by various businesses. Travel Corp, located in State A, operates hotels in New York and other states and rents rooms to its customers. Travel Corp wants to make the ability to book a room accessible to its customers via the internet, so Travel Corp contracts with Website Corp to design a custom website using Travel Corp's name and methodology, which will allow Travel Corp's customers to book hotel rooms online for a fee. Under the contract, Travel Corp will pay Website Corp a flat annual fee to maintain and host the website. Website Corp is providing a digital service related to the facilitation of a room rental, which is a digital service related to real property. As Website Corp receives a flat annual fee, it must use reasonable approximation based on customer information to apportion the receipt under the special rule for digital services related to real property to the various real property locations. Therefore, Website Corp multiples the receipt it receives from Travel Corp by a fraction, the numerator of which is the number of rooms rented in New York via the website and the denominator of which is the number of rooms rented everywhere via the website. Website Corp includes 100 percent of such receipt in everywhere receipts.

Example 10: Room Corp operates a website that acts as a digital marketplace to facilitate the short-term rental of apartments and houses between individual homeowners and individuals looking for short-term rentals. Individual homeowners are able to list their homes on Room Corp's website and will pay Room Corp a small commission if someone books their property via Room Corp's website. In return Room Corp provides a variety of services to the homeowners automatically via their website, such as payment processing, liability insurance, and ID verification of renters. The digital service Room Corp is providing is related to the facilitation of a real property rental which is a digital service related to real property. Therefore, Room Corp must include the receipts from facilitating real property rentals in New York receipts to the extent the real property is located in New York. Room Corp must include 100 percent of the receipts in everywhere receipts.

Example 11: Ticket Corp operates a website that allows individuals to purchase tickets to various live events. Sports Corp enters into a contract with Ticket Corp to list tickets for its sporting events on Ticket Corp's website and Ticket Corp retains a small commission for every ticket that is purchased through its website under this contract. Ticket Corp's fully automated website is providing the digital service of facilitating the purchase of an in-person service because the ticket sales are for a live sporting event and a live sporting event meets the definition of in-person service. Therefore, Ticket Corp should source its receipts from the commissions it receives for facilitating in-person services to the location of the venue hosting the event.

Example 12: Game Co, an online gaming company based in New York, sells monthly subscriptions to individual customers. The majority of Game Co's customers do not pay with a credit card. They instead use an online payment transfer service to pay their monthly subscription fee, and therefore do not provide Game Co with a billing address. To subscribe, individuals need to provide only a first name, screen name, password, and online payment information. As such, Game Co does not have enough information to determine the primary use location and, because Game Co's customers are individuals, Game Co does not need to make reasonable inquiries as to individuals' billing addresses. Although Game Co does not have address information for most of its subscribers, it can use IP address information to determine where the individual customers log into the website. Therefore, Game Co can use this information to reasonably approximate based on customer information the primary use location of its game and must include receipts from subscribers logging into its game from IP addresses located within New York in New York receipts. Game Co includes 100 percent of such receipts in everywhere receipts.

Example 13: Marketplace Corp hosts a website that facilitates the sale of tangible personal property by unrelated individuals. Marketplace Corp does not take title to any of the tangible property posted on its website. Item sellers can create accounts on Marketplace Corp's website and list property for sale. Individual buyers can visit Marketplace Corp's website to view pages containing tangible property that item sellers are offering for sale. Marketplace Corp makes these pages readily available for consumer access at the request of the item sellers. Marketplace Corp receives two primary revenue streams from the item sellers: (1) a small fee for listing tangible property on Marketplace Corp's website, regardless of whether it sells; and (2) a small commission for every sale of tangible property made via Marketplace Corp's website. Both revenue streams are services related to tangible personal property and, therefore, the special rule applies. Marketplace Corp receives the first revenue stream directly from the item seller when the item seller lists the tangible property on Marketplace Corp's website. In fact, Marketplace Corp receives this receipt regardless of whether the property is sold or the seller removes it from the website without a sale. Therefore, although it is a service related to tangible personal property, Marketplace Corp does not have information on where the tangible personal property is received by a buyer because, at the time the fee is received by Marketplace Corp, the property has not yet been, and in fact may never be, sold. Furthermore, the service Marketplace Corp provided to generate this receipt is complete at the time the tangible property is listed and there is not yet a consumer in the transaction, so this receipt is not generated in an intermediary transaction. Receipts from listing fees are included in New York receipts using the general rule based on the primary use location of the item seller. Marketplace Corp includes all receipts from listing fees generated via its website in everywhere receipts.

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

Example 14: Software Corp sells case management software to 200 large corporations. Business Corp purchases software from Software Corp to be installed on laptops used by Business Corp's employees. The contract between Business Corp and Software Corp is managed at Business Corp's office in State A, but Business Corp's employees spend the majority of their time working throughout the country, including in New York. As no special rules apply, Software Corp must use its books and records to determine where the software will be primarily used. Software Corp's books and records do not provide any information on the amount of time that Business Corp's employees spend working in other states to determine where the software is primarily used. Software Corp does not qualify for the inquiry safe harbor because it has only 200 customers, so it must ask Business Corp where its employees utilize the software. Business Corp is not able to provide such information, nor would population information be relevant to software used by Business Corp's employees in internal operations. Therefore, Software Corp does not have adequate information to determine the primary use locations or reasonably approximate such locations. It must source the receipt to where the digital product is received, which is presumed to be at the location where the contract is managed. Business Corp manages the contract with Software Corp at its office in State A; therefore, the receipt is not included in New York receipts. Software Corp must include 100 percent of the receipt in everywhere receipts.

Example 15: Sales Corp provides only one type of digital product to approximately 200 business customers. In tax year 2017, all of its receipts were sourced using the rules for primary use location 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 digital product 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 digital product was primarily used. Upon reasonable inquiries to its known customers, Sales Corp still cannot obtain information on where the digital products were primarily used or determine where they were received. Therefore, under the method of the hierarchy in paragraph (3) of subdivision (b) of section 4-3.2 of this Subpart, Sales Corp includes 45 percent of its 2018 receipts in its 2018 New York receipts. Sales Corp includes 100 percent of receipts from this type of digital product in everywhere receipts.

Example 16: Taxpayer A has $10,000 in receipts from a new type of digital product. After exercising due diligence, Taxpayer A cannot determine where the digital product is primarily used or where it was received. Further, because this is a new type of digital product, it cannot use the method of the hierarchy described in paragraph (3) of subdivision (b) of section 4-3.2 of this Subpart. Therefore, under the method of the hierarchy described in paragraph (4) of subdivision (b) of section 4-3.2 of this Subpart, Taxpayer A must determine the portion of the $10,000 to include in New York receipts based on the apportionment of the receipts for all its other digital products and digital services sourced under the methods of the hierarchy described in paragraphs (1) and (2) of subdivision (b) of section 4-3.2 of this Subpart. In the current tax year, Taxpayer A has $65,000 in digital products receipts and $85,000 in digital services receipts sourced under the methods of the hierarchy described in paragraphs (1) and (2) of subdivision (b) of section 4-3.2 of this Subpart of which $75,000 (or 50 percent) are New York receipts. Therefore, Taxpayer A includes 50 percent of the $10,000, or $5,000, of receipts from the new type of digital product in New York receipts. Taxpayer A includes 100 percent of receipts from the new type of digital product in everywhere receipts.

Example 17: App Design Corp (the taxpayer), a corporation located in State B, provides mobile phone application ("app") design services to its customer, Bank Corp (the intermediary), which has branches located in New York and other states. Bank Corp contracts with App Design Corp to have App Design Corp design an app that will be readily available for free download by any of Bank Corp's account holders (the consumers) via a digital marketplace. App Design Corp also will provide periodic updates to ensure the app runs smoothly and the information transmitted through the app is secure. App Design Corp is receiving receipts from Bank Corp in an intermediary transaction because App Design Corp is making its digital product readily available to consumers at the request of Bank Corp, and App Design Corp maintains involvement with the app after consumers download it. As no special rule for determining primary use location applies, App Corp must determine where Bank Corp primarily uses the digital service, which is at the location where the consumers download and use the app. App Design Corp cannot determine information on New York account holders who download the app based on its own books and records because it does not have information on either the primary use location or where the app is received by the consumers, and therefore App Design Corp must make reasonable inquiries to Bank Corp for location statistics on account holders who download the app. Bank Corp cannot provide App Design Corp with any information after reasonable inquiries, so App Design Corp should look to publicly available information, such as the number of Bank Corp's bank branches located within and without New York and use the percentage of branches in New York to reasonably approximate based on customer information the primary use location of the app.

Example 18: Website Design Corp (the taxpayer) designs and maintains websites for unrelated parties. Database Corp (the intermediary) develops an internet-based information database and enters into a contract with Website Design Corp to create a website and sell access to the database to individual customers (the consumers) for a small monthly fee. The contract specifies that Website Design Corp will retain a commission each month from every consumer that pays for access to the database and remit the remainder to Database Corp. Website Design Corp actively maintains and updates the website where it makes the database readily available on the internet for access by consumers at the request of Database Corp. Therefore, Website Design Corp must source its receipts from commissions based on the location of the consumers rather than the location of Database Corp. As no special rule for determining primary use location applies, Website Design Corp must use the general rule to determine the primary use location of its digital service. As the consumers are individuals, Website Design Corp presumes the digital product will be primarily used at the billing addresses of the consumers. To the extent that consumers have billing addresses located in New York, receipts from such customers are included in New York receipts. Website Design Corp must include 100 percent of its receipts in everywhere receipts.

Example 19: Research Corp, a corporation located in State D, compiles a digital collection of treatises on a variety of subjects and sells a copy of its collection to University A, located in New York. However, Research Corp does not provide continuing support after the sale and, if Research Corp were to update any information, it would sell this as a separate product. Therefore, after Research Corp delivers the copy of the digital collection to University A, it maintains no interaction with the product and provides no further services in connection with the receipt. For this reason, this is not considered an intermediary transaction. As no special rules apply, Research Corp must use its books and records to determine if it can ascertain the primary use location of the digital collection. Research Corp's books and records indicate that University A will use the digital collection at its location in New York; therefore, the entire receipt is included in both New York receipts and everywhere receipts.

Example 20: Images Corp, a corporation located in State E, maintains an online database of digital images that it licenses to customers to use in a variety of publications. Receipts from the license to use the digital database are sourced under these rules. Newspaper Corp, located in New York, enters into a contract with Images Corp whereby, in exchange for a monthly flat fee, Newspaper Corp receives a license to use an unlimited number of images from Image Corp's online database in Newspaper Corp's print and digital publications which will be viewed by Newspaper Corp's subscribers worldwide. Images Corp's database is only accessible by Newspaper Corp directly and not by its subscribers; therefore, this is not an intermediary transaction. Images Corp must source the receipt it receives from Newspaper Corp under the general rule to the primary use location of Newspaper Corp. Newspaper Corp uses the images it selects from the online database when composing articles; therefore, Newspaper Corp's primary use location is where this editorial control is exercised. Because Newspaper Corp makes editorial decisions at its office located in New York, the entire receipt is included in both New York receipts and everywhere receipts.

Example 21: Exchange Corp, a security exchange located in New York, has contracts with 300 brokerage firms that grant digital access to its exchange. Under the terms of the contract, employees of the firms are able to digitally access the exchange for purposes of purchasing or selling shares of stock on the exchange for a fee. Exchange Corp's contract with Trader Corp, one such brokerage firm, allows Trader Corp's 120 traders based in New York and 80 traders based in State A to buy and sell shares of stock on the exchange on behalf of clients. As Exchange Corp is not a registered securities broker or dealer, the fees it earns from allowing customers to trade on the exchange cannot be sourced under the rules in section 210-A(5)(b). Furthermore, because the fee is for granting digital access to the exchange, the receipt is sourced under the rules in this Subpart.

This is not an intermediary transaction because Exchange Corp is not providing access to the exchange directly to consumers at Trader Corp's direction. Only Trader Corp's own employees have digital access to the exchange. For this reason, the receipt must be sourced to the location where Trader Corp's traders primarily utilize the digital product. Exchange Corp does not have adequate information to determine the exact location where the traders primarily use this digital product and, since Exchange Corp has more than 250 business customers that pay fees for substantially similar digital products, and no more than 5 percent of its receipts are from Trader Corp, Exchange Corp is not required to make reasonable inquiries to Trader Corp. Therefore, Exchange Corp must use its books and records to reasonably approximate where Trader Corp's traders primarily use the exchange. Since 60 percent of Trader Corp's traders are based in New York, 60 percent of the receipts Exchange Corp receives from Trader Corp are included in New York receipts. Exchange Corp includes 100 percent of the receipts in everywhere receipts.

Example 22: Channel Corp operates a digital platform, available through Channel Corp's website or as a downloadable application, for individual subscribers to access Channel Corp's content for a monthly fee. Subscribers can subscribe either directly with Channel Corp. or through another entity.

For revenue earned directly by Channel Corp from its subscribers, it is presumed that an individual subscriber primarily accesses the Channel Corp's digital content at its billing address. Therefore, receipts earned by subscribers with billing addresses in New York are included in New York receipts. Channel Corp includes 100 percent of the receipts it earned from these subscribers in everywhere receipts.

Platform Corp (the intermediary) operates a digital application store where individuals can download and purchase a subscription to various digital applications. Under the agreement between Channel Corp and Platform Corp, Platform Corp can sell subscriptions to Channel Corp's service in its marketplace for a fee set by Channel Corp in exchange for a commission. In addition, the agreement requires that Platform Corp receive all payments from individual subscribers for access to Channel Corp's service and must remit the fees, after retaining its commission, to Channel Corp.

While subscribers download Channel Corp's digital application from Platform Corp's platform, the subscribers access Channel Corp's service directly through its digital application to view content. Channel Corp actively maintains and updates the digital application which is readily available for access by subscribers who pay for the service through Platform Corp. Platform Corp forwards these receipts minus its commission to Channel Corp. Therefore, these are receipts from an intermediary transaction and Channel Corp must source them based on the location of the subscribers (the consumers) rather than the location of Platform Corp. Channel Corp's books and records do not have information on the consumer's billing address. Therefore, Channel Corp must make reasonable inquiries to Platform Corp to determine where the subscribers access Channel Corp's digital application. After making such inquiries, Channel Corp still does not know the subscriber location so it reasonably approximates that location using third-party data.

Example 23: Channel Corp operates a digital platform, available through Channel Corp's website or as a downloadable application of digital content that can be accessed by users. Phone Corp sells phone subscription plans, some of which bundle access to various digital platforms of movies and TV shows operated by different providers as part of the package. Channel Corp enters into an agreement with Phone Corp (the intermediary) that allows Phone Corp to bundle access to Channel Corp's digital platform in exchange for a fee set by Channel Corp. Under the agreement, Phone Corp may decide what fee to charge (or even not charge) its customers for the bundled service. After individual consumers purchase a phone plan that provides access to Channel Corp's digital content, the consumers access Channel Corp's digital platform through its website or by downloading Channel Corp’s application.

Channel Corp actively maintains and updates the application which is readily available for access by subscribers who pay for service through Phone Corp. Therefore, these are receipts from intermediary transactions and Channel Corp must source based on the location of the Phone Corp’s users rather than the location of Phone Corp. It is presumed that the users primarily access the digital content at their billing address. Channel Corp’s books and records do not contain the billing address of Phone Corp’s users and, upon inquiries, Phone Corp did not provide this information. However, if Channel Corp collects location information when subscribers create an account to access Channel Corp’s service, then Channel Corp may use such information to reasonably approximate use. To the extent the location is in New York, the receipts are included in New York receipts. All receipts that Channel Corp receives from Phone Corp are included in everywhere receipts.

Subpart 4-4 Receipts from Other Services and Other Business Activities [Tax Law, Section 210-A(10)].

Section 4-4.1 Definitions. For purposes of this Subpart, the following terms shall have the meanings indicated below.

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

(b) Customer means the party who enters into a transaction with the corporation for the purchase of a service or other business activity from the corporation. 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 corporation, acting in good faith, cannot reasonably determine whether the customer is an individual customer, the corporation must treat the customer as a business customer.

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

(2) 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.

(3) 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 a trade or business.

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

(d) Intermediary transaction means a transaction where the business customer (intermediary) derives value from a service or other business activity at the location of the consumer rather than the location of the customer itself. Such transaction is sourced using the rules for intermediary transactions in section 4-4.8 of this Subpart. Intermediary transactions do not include services or activities sourced under the special rules in section 4-4.3 of this Subpart.

(1) 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 corporation and intermediary, must meet the requirements of subparagraphs (i) or (ii) of this paragraph.

(i) it must be provided by the corporation, at the direction of the intermediary, directly to the consumer;

(ii) it must be sold by the corporation to the intermediary, who then passes on the service or other business activity to the consumer, provided the corporation 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 consumer.

(e) 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 day-to-day execution of the contract of sale with the corporation.

Section 4-4.2 General Principles

(a) Receipts and net gains (not less than zero) from services and other business activities not otherwise enumerated in section 210-A, such as net gains (not less than zero) from the sale of intangible property as well as receipts from the compensation for certain services, such as commissions, finder's fees, loan servicing fees, and fees for professional services are sourced according to the hierarchy of methods set forth in section 210-A and paragraphs (1) through (4) of subdivision (b) of this section. The corporation must exercise due diligence under each method described in subdivision (b) of this section before rejecting it and proceeding to the next method in the hierarchy, and must base its determination on information known to the corporation or information that would be known to the corporation upon reasonable inquiry.

(b) The hierarchy of methods described in paragraphs (1) through (4) of this subdivision to determine where the customer derives value from the service or other business activity must be applied sequentially.

(1) A corporation must apportion the receipt to the location where the benefit of the service or other business activity is received.

(2) A corporation may abandon the method of the hierarchy in paragraph (1) of this subdivision only if, after exercising due diligence, it lacks sufficient information to apply that method, in which case it must use the delivery destination.

(3) If, after exercising due diligence, a corporation cannot apply the methods described in paragraphs (1) and (2) of this subdivision, it must source the receipts from that service or other business activity in the same way as those receipts were sourced in the preceding taxable year.

(4) Lastly, if the corporation cannot apply the methods described in paragraphs (1), (2), and (3) of this subdivision after exercising due diligence, it must then source the receipts from that service or other business activity to New York by multiplying the amount of those receipts by a fraction, the numerator of which is the total of New York receipts for the current taxable year from the corporation’s receipts from other services and other business activities apportioned using the methods described in paragraphs (1) and (2) of this subdivision, and the denominator of which is the total of the everywhere receipts for the current taxable year from the corporation’s other services and other business activities apportioned using the methods described in paragraphs (1) and (2) of this subdivision.

(c) Corporations should refer first to the special rules for determining where the benefit is received in section 4-4.3 of this Subpart prior to determining if a transaction qualifies as an intermediary transaction. Unless a special rule in section 4-4.3 of this Subpart applies, a corporation should then determine if the rules for intermediary transactions in section 4-4.8 of this Subpart apply before a corporation should refer to the rules for intermediary transactions prior to applying the other rules in this Subpart.

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

(1) (i) In applying the rules in this Subpart, if the required information is not readily available to the corporation, the corporation must make reasonable inquiries to a business customer to determine the information required by these rules.

(ii) If the corporation has more than 250 business customers purchasing substantially similar services or other business activities as purchased by the particular customer that would be sourced under this Subpart 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").

(iii) If the corporation has more than 10,000 business customers purchasing substantially similar services or activities as purchased by the particular customer that would be sourced under this Subpart and no more than 5 percent of receipts from such services or activities are from that particular customer, than the benefit from such service or activity is presumed to be received at the customer's billing address ("billing address safe harbor").

(2) Corporations must document the steps taken before abandoning each method of the hierarchy or step within a level of the hierarchy, such as moving from a special rule for determining where the benefit is received to the general rule for determining where the benefit is received, including documentation of reasonable inquiries made.

(3) When the commissioner determines that the corporation 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 corporation, the commissioner may require the corporation to use such method.

(e) If there is a presumption in applying a method in the hierarchy, the presumption may be overcome by either the corporation or the Department.

(1) The presumption may be overcome by the corporation if the corporation 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 corporation. If the corporation believes it has overcome the presumption and uses an alternative method, upon audit the Department may examine the corporation'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.

(2) 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 corporation 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.

Section 4-4.3 Special Rules for Determining Where the Benefit is Received. (a) In applying the first method in the hierarchy described in paragraph (1) of subdivision (b) of section 4-4.2 of this Subpart, a corporation must determine first if the type of receipt must be sourced using the special rules in this section. When applying the special rules in this section, 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 corporation or on behalf of the corporation. The special rules apply to the receipts described in subdivisions (b) through (e) this section. If a corporation meets the specific criteria to apply a special rule, but does not have sufficient information to apply the rule, the corporation should use the rules for reasonable approximation to apply the special rule. However, if the corporation does not have sufficient information to apply the rules for reasonable approximation to the special rule, then the special rule no longer applies .

(b) 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. Receipts from in-person services are apportioned under the rule in this subdivision. In addition, receipts from the facilitation of in-person services are apportioned under the special rule in this subdivision.

(1) In-person services include, but are not limited to, medical and dental services, including medical testing and x-rays; childcare; hair cutting and salon services; live entertainment and athletic performances; modeling; and in-person training or lessons.

(2) In-person services do not include (i) 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 (ii) 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.

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

(c) Services related to tangible personal property. Receipts from services related to tangible personal property, including the facilitation of services related to tangible personal property, are apportioned under the rule in this subdivision. Receipts from in-person services related to tangible personal property are apportioned under the rule in this subdivision, rather than the special rule for in-person services.

(1) 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.

(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., 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.

(3) 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.

(d) Services related to real property. Receipts from services related to real property, including the facilitation of such services, are apportioned under the rule in this subdivision. 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. Receipts from in-person services related to real property are apportioned under the rule in this subdivision, rather than the special rule for in-person services.

(1) 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.

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

(e) 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 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.

Section 4-4.4 General Rule for Determining Where the Benefit is Received. A corporation must include a receipt in New York receipts when the benefit of the service or other business activity is received by the corporation's customer in New York. Unless the corporation meets the specific criteria and has sufficient information necessary to apply the special rules in section 4-4.3 of this Subpart, determining where the benefit is received depends on whether the customer is an individual customer or a business customer.

(a) Individual customer. In the case where the corporation's customer is an individual, the benefit of the service or other business activity is presumed to be received at the customer's billing address. If the corporation does not have the customer's billing address, it must use reasonable approximation.

(b) Business customer. (1) Except in instances where the billing address safe harbor applies, the benefit of the service or other business activity is presumed to be received in New York, without regard to the billing address of the corporation's customer, if the customer receives the benefit of the service or other business activity in New York.

(2) The benefit can be received at the location of a third party (e.g., the consumer) only in the case of an intermediary transaction. A third party does not include the customer's

employees, agents, officers, partners (in the case of a partnership), managing members (in the case of a limited liability company), or shareholders (in the case of a New York S corporation).

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

(c) Passive investment customer. (1) Services provided to passive investment customers are apportioned under the rules provided for in this subdivision unless a special rule for determining where the benefit is received is applicable.

(2) In the case of a passive investment customer, the benefit of the service or other business activity is presumed to be received at the location where the contract is managed by the passive investment customer.

Section 4-4.5 Reasonable approximation based on customer information. (a) Where a corporation'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 determine where the benefit is received.

(b) 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:

(1)(i) 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

(ii) 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 corporation to expend undue effort and expense beyond the standard amount of due diligence as required by this section; and

(2) the corporation 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.

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

(1) A corporation 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.

(2) When a corporation is required under this section to reasonably approximate, the corporation must use a method that is intended to approximate where the customer receives the benefit from the service or other business activity.

(3) Sourced receipts method. In any instance where a corporation 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 corporation 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 corporation 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 the corporation otherwise lacks sufficient information to use reasonable approximation either under this section or section 4-4.6 of this Subpart, it must next attempt to source such receipts under the method described in paragraph (2) of subdivision (b) of section 4-4.2 of this Subpart.

(4) In any case in which a corporation uses a method of approximation to apportion its receipts and the commissioner determines that the method of approximation employed by the corporation is not reasonable, the commissioner may substitute a method of approximation that the commissioner determines is appropriate.

(5) In any case in which the commissioner determines that a corporation'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 corporation apply its method of approximation in a consistent manner.

(6) In any case in which, after reasonable inquiries are made when required, the corporation does not have sufficient information based on its actual customers to use reasonable approximation, the taxpayer must next attempt to determine where the benefit is received using the rules for reasonable approximation based on general information.

Section 4-4.6 Reasonable approximation based on general information. (a) Where, after meeting the requirements of due diligence, a corporation lacks sufficient information to use the rules for reasonable approximation based on customer information to determine where the customer receives the benefit of the service or other business activity, the corporation must use reasonable approximation based on general information.

(b) 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 a general information measurement, such as the general population, a subset of the general population, or some other general metric reasonably reflects the geographic distribution of where the customer receives the benefit.

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

(1) A corporation must use statistical information based on an appropriate measurement that reasonably approximates the location where customers receive the benefit of the service or other business activity.

(2) In any case in which the commissioner determines that the corporation's method of approximation is not reasonable, the commissioner may substitute the use of a method that the commissioner determines is appropriate.

(3) In any case in which the commissioner determines that the corporation'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 corporation apply its method of approximation in a consistent manner.

(d) In any case in which the corporation does not have sufficient information to reasonably approximate based on general information, the corporation must instead source its receipts to the delivery destination described in paragraph (2) of subdivision (b) of section 4-4.2 of this Subpart.

Section 4-4.7 Delivery Destination.

(a) When a corporation, 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.

(b) 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 corporation 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 corporation does not have adequate information to determine the delivery destination, the corporation must apply the method of the hierarchy described in paragraph (3) of subdivision (b) of section 4-4.2 of this, based on the sourcing of receipts for the preceding taxable year

Section 4-4.8 Rules for intermediary transactions.

(a) In the case of intermediary transactions, the location where the receipt is sourced is determined using the hierarchy of methods described in paragraphs (1) and (2) of subdivision (b) of section 4-4.2 of this Subpart based on the location of the consumers, rather than the intermediary. If the corporation 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 particular intermediary into consideration.

(b) In applying the hierarchy of methods described in paragraphs (1) and (2) of subdivision (b) of section 4-4.2 of this Subpart, the corporation is required to make inquiries to the intermediary, but not to the consumers, regardless of the number of business customers the corporation has or the percentage of receipts from any one customer, in order to determine the amount of receipts to source to New York based on the location of the consumers. Such inquiries may be fulfilled by the intermediary providing information from its books and records to the corporation that demonstrates the relevant information

(c) If, after exercising due diligence, the corporation has inadequate information to apply the methods of the hierarchy described in in paragraphs (1) and (2) of subdivision (b) of section 4-4.2 of this Subpart with reference to the location of the consumers, the corporation should apply the methods of the hierarchy described in paragraphs (1) and (2) of subdivision (b) of section 4-4.2 of this Subpart based on the intermediary. If, after exercising due diligence, the corporation has inadequate information to apply the methods of the hierarchy described in paragraphs (1) and (2) of subdivision (b) of section 4-4.2 of this Subpart with reference to either the consumers or the intermediary, the corporation must then apply the methods of the hierarchy described in paragraphs (3) and (4) of subdivision (b) of section 4-4.2 of this Subpart.

(d) This section does not apply in instances where the billing address safe harbor applies. In instances where the billing address safe harbor applies, the receipts shall be sourced to the billing address of the intermediary.

Section 4-4.9 Receipts for the Preceding Taxable Year.

(a) When a corporation, after exercising due diligence, cannot determine the amount to include in New York receipts using the methods of the hierarchy described in paragraphs (1) and (2) of subdivision (b) of section 4-4.2 of this Subpart, 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 method of the hierarchy cannot apply in a corporation's first taxable year beginning on or after January 1, 2015. In such tax year, a corporation must reject this method and move directly to the next method of the hierarchy described in paragraph (4) of subdivision (b) of section 4-4.2 of this Subpart based on receipts for the current taxable year.

Section 4-4.10 Receipts for Current Taxable Year.

When a corporation, after exercising due diligence, cannot determine the amount to include in New York receipts using the methods in the hierarchy described in paragraphs (1), (2) and (3) of subdivision (b) of section 4-4.2 of this Subpart, 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 in such paragraphs (1) and (2). 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 described in paragraphs (1) and (2) of subdivision (b) of section 4-4.2 of this Subpart 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 described in such paragraphs (1) and (2) for the current taxable year.

Section 4-4.11 Examples. For purposes of these examples, it can be assumed that the corporation has met all the requirements of due diligence unless otherwise provided and that the billing address safe harbor does not apply.

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. Therefore, Audit Corp must apply the general rule for determining where the benefit is received. It determines the benefit is received by Client Corp at each 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 the special rule for determining where the benefit is received applies. As such, it is presumed that the benefit is received at the location where the service is performed, which is 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. Therefore, the special rule for determining where the benefit is received for services related to tangible personal property applies and it is presumed that the benefit is received at the location where the property is received after the service is performed. 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 individual 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 and must be sourced under the rules in this Subpart.

Home appliances are tangible personal property so the service Troubleshooting Corp is providing is related to tangible personal property. Under the special rule for determining where the benefit is received for services related to tangible personal property, the benefit is presumed to be received at the location where the property is received after the service is performed. However, Troubleshooting Corp does not have information on where the tangible personal property was received by the customer or where it is currently located. It only has the billing address of its customer. Therefore, Troubleshooting Corp uses the billing addresses of its customers to reasonably approximate where the tangible personal property is located and will 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 special rule for determining where the benefit is received for services related to real property applies. Therefore, the benefit is presumed to be 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. As no special rules for determining where the benefit is received apply to the services offered by Consulting Corp, it must apply the general rule for determining where the benefit is received. Since Consulting Corp does not have exact information about where the benefit is received, it 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. As this is a service related to real property, the special rule for determining where the benefit is received for services related to real property applies. Under that rule, the benefit is presumed to be received at the location of the property. Because the real property involved is located within six states, it is necessary to look to Consulting Corp's 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) and the special rule for determining where the benefit is received applies. As such, the benefit of its service is presumed to be received at the location where the tangible personal property is received after the service is performed. Therefore, 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. Architect Corp is providing a service related to real property. Therefore, the special rule for determining where the benefit is received for services related to real property provides that the benefit of the service is presumed to be received at the location of the real property. As 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 and reasonable inquiries to the Developer Corp do not yield that information, 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 percent 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 for receipts from digital products and digital services). 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 for determining where the benefit is received. 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. Therefore, the special rule for determining where the benefit is received for in-person services provides that the benefit is presumed to be received at the location where the in-person service is performed, which is the location of the photoshoot. The commissions Model 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: 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, a general information measurement such as population information would not be relevant because the compilation and analysis services are used by employees rather than the general public. Because no special rules for determining where the benefit is received apply and 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.

Example 13: Sales Corp provides only one type of service to approximately 200 business customers and the service is not subject to the special rules for determining where the benefit is received. In tax year 2017, all of its receipts were sourced using the method of the hierarchy described in paragraph (3) of subdivision (b) of section 4-4.2 of this Subpart, 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.

Example 14: Taxpayer A has $10,000 in receipts from a new type of service subject to this Subpart. Since the service is not subject to any of the special rules for determining where the benefit is received, Taxpayer A must exercise due diligence to determine where the customer received the benefit or where the service was delivered. As Taxpayer A cannot determine those locations, it must determine the portion of the $10,000 to include in New York receipts based on the methods of the hierarchy described in paragraphs (1) and (2) of subdivision (b) of section 4-4.2 of this Subpart in the current tax year. In the current tax year, Taxpayer A has $150,000 in other business receipts sourced under the methods of the hierarchy described in paragraphs (1) and (2) of subdivision (b) of section 4-4.2 of this Subpart, 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.

Example 15: 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 also will 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 determining where the benefit is received for services related to real property. The benefit of both the procurement fee and the servicing fee is presumed to be received at 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 16: 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. Therefore, the receipt is to be sourced using the rules in this Subpart. 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.

Example 17: 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 applicants applying for the credit cards. 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 18: Production Corp enters into a contract with Cable Network Corp to provide the service of producing a made-for-television movie. Production Corp delivers the television production to Cable Network Corp's New York office, which is the office location responsible for contracting for the production and determining its usage. The production service receipt is not considered an intermediary transaction because the production service is not provided by Production Corp directly to Cable Network Corp's consumers at the direction of Cable Network Corp and the production service is completed prior to Cable Network Corp determining if and when the production will be aired.

As Cable Network Corp receives the benefit of this service at its New York office, the entire receipt is included in both New York receipts and everywhere receipts.

Example 19: Credit Ratings Corp, located in New York, has a contract with Debt Issuer Corp whereby Credit Ratings Corp opines, via the assignment of a letter grade, on the creditworthiness of Debt Issuer Corp's debt obligation. The rating does not constitute a recommendation of the suitability of an investment for any particular investor. Credit Ratings Corp may issue the rating via press release, which allows potential investors to consider the rating/letter grade. Credit Ratings Corp also includes the rating in its database of ratings on its website, which allows for public viewing. However, the principal element of the service is the development of the rating; any dissemination via digital means is incidental to such service. Therefore, the receipt is sourced under the rules in this Subpart. 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. In addition, the rating is not provided to Debt Issuer Corp to pass along directly 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.