

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

6

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

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

22

23

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 Part 4 of Subchapter A of title 20 NYCRR is repealed and a new Part 4,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

26 Part 4

27 Apportionment

- 28 Subpart 4-1 General
- 29 Subpart 4-2 Specific Apportionment Rules
- 30 Subpart 4-3 Receipts from the Sale of, Rental of, License to Use, and Granting of
31 Remote Access to Digital Products and Digital Services
- 32 Subpart 4-4 Receipts from Other Services and Other Business Activities

33
34 Subpart 4-1

35 GENERAL

36 Section

- 37 4-1.1 Definitions
- 38 4-1.2 General rules for apportionment
- 39 4-1.3 Lump sum payments
- 40 4-1.4 Installment sales
- 41 4-1.5 Apportionment on combined reports
- 42 4-1.6 Power of the Commissioner to adjust the business
43 apportionment factor
- 44 4-1.7 Short period BAF

45
46 Section 4-1.1 Definitions. [Tax Law, Sections 208(1) and 210-A]

47 For purposes of this Part, the following definitions apply:

48 (a) “Billing address” means the location indicated in the books and records of the
49 corporation as the primary address with respect to a customer’s account.

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

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

59 (c) (1) “Marked to market” means that a financial instrument is, under IRC section 475 or
60 1256, treated by the corporation as sold for its fair market value on the last business day of the
61 corporation’s taxable year.

62 (2) In the case of a corporation that is a dealer in securities, as defined in IRC section
63 475(c)(1), a financial instrument will not be considered to be marked to market if it:

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

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

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

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

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

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

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

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

92

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

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

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

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

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

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

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

114 (5) amounts specified in section 208(9)(b) (other than sections 208(9)(b)(1) and
115 208(9)(b)(2)).

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

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

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

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

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

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

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

154 (i) A corporation must retain records that explain the determination and application of its
155 method of sourcing its receipts used in completing the return, including its underlying
156 assumptions, and must provide such records to the commissioner upon request.

157 (j) A corporation must take reasonable steps to update its existing systems of recording
158 transactions or the current format of its books and records to capture the information required by
159 these rules. It is not sufficient to rely on the fact that existing systems do not adequately capture
160 the required information.

161 (k) In determining the amount of New York receipts, the corporation must consider the

162 location during the entire time period in which the activity generating the receipts occurs.

163 Section 4-1.3. Lump sum payments.

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

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

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

185 the rules for other services and other business receipts in Subpart 4-3 of this Part.

186

187 Example 2: Book Corp sells electronic books and physical books through its website.

188 Customers purchase a bundle of both an electronic and physical book, the price of which

189 includes a discounted price of the electronic and physical book but the breakdown is not

190 separately stated. For bundled purchases, the electronic book is available for immediate

191 download by the customer and the physical book is shipped from Book Corp to the

192 customer.

193 Customer B, with a New York billing address, purchases a bundled purchase of an

194 electronic and a physical book commingled into one receipt. As the receipt cannot be

195 reasonably divided between the electronic book and the physical book, the entire receipt

196 should be sourced as a sale of tangible personal property.

197

198 Section 4-1.4 Installment sales

199 In the case of an asset sale where the proceeds of the sale are received by the seller on an

200 installment basis as provided for in IRC section 453, the portion of the receipts or gains

201 attributable to New York must be determined in the year of the sale by applying the

202 apportionment rules in section 210-A and this Subchapter. The same ratio of New York receipts

203 to everywhere receipts from the installment income for each type of asset shall be used in

204 subsequent years to determine how much of the installment payment is included in New York

205 receipts. The entire amount of the annual installment is included in everywhere receipts.

206 Example: Corporation C sells its building in New York in the 2016 tax year and has a

207 \$5,000,000 gain. It has no other sales of real property. Under the sales agreement,

208 the proceeds of the sale will be paid to Corporation C in 5 equal annual
209 installments. As the real property is located in New York, the entire gain is
210 attributable to New York and \$1,000,000 is included in New York receipts and
211 everywhere receipts each year.

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

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

227

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

229 The apportionment factor on a combined report is computed as though the corporations
230 included in the combined report are a single corporation, unless otherwise provided, and is

231 computed in accordance with the following principles.

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

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

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

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

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

252

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

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

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

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

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

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

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

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

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

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

309 party seeking to vary the BAF must demonstrate that application of the statutory formula
300 attributes income or capital to the State out of all proportion to the business transacted by the
301 taxpayer in the State.

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

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

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

336 (3) Corporation C is a corporate partner in Partnership X and for tax years 2015 through
337 2018 it computes its tax with respect to its interest in such partnership under the aggregate
338 method. In tax year 2019, Corporation C's only activity for the year is the selling of its financial
339 investments that results in \$5,000,000 of business receipts. Seventy-five percent of its business
340 receipts, or \$3,750,000, is the net gain from the sale of its partnership interest in Partnership
341 X. Corporation C did not make the fixed percentage election. As such, net gains from the sale
342 of a partnership interest are not included in the numerator or denominator of the BAF unless the
343 commissioner determines that inclusion of such net gains is necessary to properly reflect the
344 taxpayer's business income or capital. In this instance, under the statutory formula, the receipts

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

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

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

364

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

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

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

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

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

381 $\$24,000 \text{ divided by } 12 \text{ (months)} = \$2,000$

382 $\$2,000 \times 5 \text{ (months)} = \$10,000$

383 $\$10,000 \times 20 \text{ percent} = \$2,000$

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

391		Subpart 4-2
392		SPECIFIC APPORTIONMENT RULES
393	Section	
394	4-2.1	Receipts and net gains from the sale of tangible personal property
395	4-2.2	Net gains from the sale of real property
396	4-2.3	Receipts from rents and royalties
397	4-2.4	Net income from qualified financial instruments for corporations
398		other than non-captive REITs and non-captive RICs
399	4-2.5	Interest income and net gains from loans
400	4-2.6	Interest income and net gains from asset backed securities and
401		other government agency debt
402	4-2.7	Interest income and net gains from corporate bonds
403	4-2.8	Net interest income from reverse repurchase agreements and
404		securities borrowing agreements
405	4-2.9	Net interest income from federal funds
406	4-2.10	Net income from commodities
407	4-2.11	Marked to market net gains
408	4-2.12	Interest, net gains, and other income from other financial
409		instruments
410	4-2.13	Brokerage commissions
411	4-2.14	Receipts from credit cards and similar activities
412	4-2.15	Receipts received by credit card processors
413	4-2.16	Receipts from railroad, trucking and omnibus businesses

414 4-2.17 Receipts from the sale of advertising

415

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

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

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

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

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

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

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

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

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

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

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

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

460 (e) Examples.

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

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

474
475 Section 4-2.2 Net gains from the sale of real property. (Tax Law, Section 210-A(2)(d))

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

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

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

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

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

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

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

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

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

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

516 Example 2: Corporation X receives \$500 from customer A and \$300 from customer B
517 for short-term automobile rentals. Customer A picks up the automobile at Corporation X's New
518 York location and returns it to such location. As both the pickup and return locations are in the
519 state for customer A, the \$500 from customer A is included in New York receipts and
520 everywhere receipts. Customer B picks up the automobile at Corporation X's New York
521 location but returns it to Corporation X's location outside of New York State. As half of the
522 pickup and return locations are in the state, half of the receipts from customer B, \$150, is
523 included in New York receipts and \$300 is included in everywhere receipts. Corporation X has a
524 total of \$650 of New York receipts, \$500 from customer A and \$150 from customer B. It has
525 \$800 in everywhere receipts, \$500 from customer A and \$300 from customer B.

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

529 included in everywhere receipts.

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

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

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

549

550 Network Corp's books and records indicate the location of Cable Corp's viewers. The
551 amount of New York receipts is determined by multiplying such receipts by a fraction,

552 the numerator of which is the number of subscribers in New York State and the
553 denominator of which is the total number of subscribers within and without New York
554 State.

555
556 Example 2: Network Corp sells a license to distribute its movie to Streaming Corp for a
557 set fee. Under the licensing agreement, Streaming Corp is allowed to add the movie to its
558 library of movies and other programming offered by the streaming service. Streaming
559 Corp sells monthly subscriptions to view all of its content to individual viewers for a fee
560 set by Streaming Corp. Although the movie is digitally delivered by Network Corp to
561 Streaming Corp, the means of delivery is incidental to the sale of a license to distribute,
562 broadcast or sublicense the movie. As such, Network Corp's receipts are apportioned
563 under this section to the location where the license is used, which is presumed to be the
564 location where the movie is available for viewing. If Network Corp's books and records
565 do not indicate the location of Streaming Corp's viewers, it must use a reasonable
566 method to approximate the subscriber location.

567
568 Section 4-2.4 Net income from qualified financial instruments for corporations other than
569 non-captive REITs and non-captive RICs (Tax Law, Section 210-A(5)(a))

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

572 (a)(1) A qualified financial instrument means any financial instrument that meets the
573 following criteria: (i) the instrument is described in one of the specified clauses of section 210-
574 A(5)(a)(2) clause: (A) - loans, (B) - federal, state and municipal debt, (C) - asset backed

575 securities and other government agency debt, (D) - corporate bonds, (G) - stock or partnership
576 interest, (H) - other financial instruments, or (I) - commodities; and (ii) the instrument has been
577 marked to market in the taxable year.

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

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

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

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

596 (i) loans secured by real property;

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

598 market are loans secured by real property;

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

600 Subchapter;

601 (iv) stock that generates other exempt income, as defined in section 208(6-a) and section
602 3-4.6 of this Subchapter, that is not marked to market, with respect to that other exempt income;

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

604 and

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

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

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

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

621 (c) (1) A taxpayer or the designated agent in the case of a combined report, may elect the
622 fixed percentage method to include eight percent of net income from qualified financial
623 instruments in New York receipts and one hundred percent of all net income from qualified
624 financial instruments in everywhere receipts (whether or not such net income would otherwise be
625 included in the New York receipts or everywhere receipts pursuant to the provisions of section
626 210-A(5)(a)(2)). Net income from qualified financial instruments is the sum of (i) net gains (not
627 less than zero) from each type of qualified financial instrument that would be subject to the same
628 sourcing method in section 210-A(5)(a)(2) and the applicable regulations if not for the fixed
629 percentage method, (ii) marked to market net gains (not less than zero) from each type of
630 qualified financial instrument that would be subject to the same sourcing method in section 210-
631 A(5)(a)(2) and the applicable regulations if not for the fixed percentage method election, (iii) net
632 income (not less than zero) from each type of qualified financial instrument that would be
633 subject to the same sourcing method in section 210-A(5)(a)(2) and the applicable regulations if
634 not for the fixed percentage method, and (iv) receipts from each type of qualified financial
635 instrument.

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

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

643 (ii) In the case of a combined report, the fixed percentage method election must be made

644 by the designated agent. It is binding on all members of a combined group and the Department
645 for that taxable year and cannot be revoked or overridden for that taxable year.

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

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

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

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

666 Example 1: Corporation X, a dealer in securities, elects to use the fixed percentage

667 method in the manner required by subdivision (c) of this section to determine the amount of its
668 net income (not less than zero) from qualified financial instruments to include in its New York
669 receipts or everywhere receipts.

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

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

690 The following instruments are considered qualified financial instruments: unsecured
691 loans A, D and E; corporate bonds B, F, and G; and stocks C and H. The amount of net income
692 (not less than zero) from qualified financial instruments included in New York receipts or
693 everywhere receipts is determined using the rules for the fixed percentage method. Loans I and J
694 secured by real property are nonqualified financial instruments. Therefore, the amount of
695 receipts and net gains (not less than zero) from these instruments included in Corporation X's
696 New York receipts or everywhere receipts is determined using the sourcing method in section
697 210-A(5)(a)(2) and the applicable regulations.

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

706 The following instruments are qualified financial instruments in the combined report of
707 Corporations Y and Z: Corporation Y's corporate bonds and interests in publicly traded
708 partnerships and Corporation Z's corporate bonds. The amount of receipts, net gains (not less
709 than zero), and net income (not less than zero) from these instruments included in the combined
710 group's New York receipts or everywhere receipts is determined using the rules for the fixed
711 percentage method. Corporation Y's loans secured by real property are always considered
712 nonqualified financial instruments. In addition, Corporation Z's unsecured loans are

713 nonqualified financial instruments because the only loans that are marked to market by either
714 corporation are loans secured by real property and Corporation Z's stocks are nonqualified
715 financial instruments because neither corporation marked to market stocks. Therefore, the
716 amount of such receipts and net gains (not less than zero) from Corporation Y's loans secured by
717 real property and Corporation Z's unsecured loans included in the combined group's New York
718 receipts or everywhere receipts is determined using the sourcing method outlined in section 210-
719 A(5)(a)(2) and applicable regulations.

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

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

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

- 732 • \$1,000 of dividends from stock;
- 733 • \$0 of gains from sales of stock (as the loss is limited to zero);
- 734 • \$750 of gains from sales of bonds sold through a licensed exchange or registered
735 securities broker or dealer;

- 736 • \$25,000 of gains from sales of bonds not sold through a licensed exchange or
737 registered securities broker or dealer; and
- 738 • \$7,500 of marked to market net gains from stock (\$10,000 minus \$2,500).
- 739 Corporation X includes \$2,740 (8 percent multiplied by \$34,250) from qualified financial
740 instruments in its New York receipts. Since Corporation X only has net income (not less than
741 zero) from qualified financial instruments, the result is a BAF of 0.080000.

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

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

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

- 755 • \$200 of dividends from stock A;
- 756 • \$750 of dividends from stock B;
- 757 • (\$300) loss from the sale of stock C;
- 758 • (\$500) loss from the sale of State D bond;

- 759 • \$700 gain from the sale of State Q bond;
- 760 • \$150 of interest from treasury bill E;
- 761 • \$100 gain from the sale of New York State bond F;
- 762 • \$600 of interest from unsecured loan G;
- 763 • \$1,000 gain from the sale of unsecured loan H; and
- 764 • \$400 of marked to market net gains from stock.

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

- 767 • \$950 of dividends from stock;
- 768 • \$0 of gains from sales of stock (as the loss is limited to zero);
- 769 • \$200 of gains from sales of other state bonds (100 percent of the net gain is included
770 when the fixed percentage election is made, as opposed to 50 percent of the net gain
771 under the sourcing method in section 210-A(5)(a)(2)(B));
- 772 • \$150 of interest from treasury bills;
- 773 • \$100 of gains from sales of New York State bonds;
- 774 • \$600 of interest from unsecured loans;
- 775 • \$1,000 of gain from unsecured loans; and
- 776 • \$400 of marked to market net gains from stock.

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

779 In addition, corporation R owns loan I secured by real property and Corporation S owns
780 loan J secured by real property and an interest in widely held partnership K. Since Corporation S
781 does not mark to market its interest in widely held partnership K and Corporation R does not

782 own and mark to market any interests in publicly traded or widely held partnerships, the interest
783 in partnership K is a nonqualified financial instrument. The amount of income, gains, and losses
784 from nonqualified financial instruments for Corporations R and S is broken down as follows:

- 785 • \$300 gain from the sale of loan I secured by real property in State Y (\$0 is included
786 in the combined group's New York receipts and \$300 is included in the combined
787 group's everywhere receipts);
- 788 • \$250 gain from the sale of loan J secured by real property in New York (\$250 is
789 included in both the combined group's New York receipts and everywhere receipts);
- 790 • \$400 gain from the sale of widely held partnership K domiciled in New York (\$0 is
791 included in both the combined group's New York receipts and everywhere receipts);
792 and
- 793 • \$200 of marked to market net gains from loans secured by real property (\$91 is
794 included in the combined group's New York receipts and \$200 is included in the
795 combined group's everywhere receipts. The amount included in the combined
796 group's New York receipts is determined by multiplying the \$200 of marked to
797 market net gains by the ratio of net gains from actual sales of loans secured by real
798 property located in New York to net gains from actual sales of all loans secured by
799 real property [$\$250/\550]).

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

803 The combined group has a total of \$613 of New York receipts (\$272 from qualified
804 financial instruments and \$341 from nonqualified financial instruments) and \$4,150 of

805 everywhere receipts (\$3,400 from qualified financial instruments and \$750 from nonqualified
806 financial instruments). The result is the combined group's BAF is 0.147711.

807

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

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

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

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

827 (ii) For each sale of a loan secured by real property, the corporation shall compute a gain

828 or loss from the sale by subtracting the carrying cost of the loan from the sale price of the loan. If
829 the sale price exceeds the carrying cost, the result is a gain. If the sale price is less than the
830 carrying cost, the result is a loss.

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

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

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

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

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

851 commercial domicile.

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

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

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

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

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

874 (d) Examples

875 Example 1: Corporation X has interest income from loans secured by real property of
876 \$5,000, broken down as follows:

- 877 • \$2,500 from Loan N secured by real property located in New York;
- 878 • \$1,500 from Loan O secured by real property located outside of New York; and
- 879 • \$1,000 from Loan P secured by property located in New York and another state.

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

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

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

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

- 896 • Loan N, secured only by real property in New York, was sold for \$300,000. After
897 deducting its carrying cost of the loan from the sale price, Corporation Y computes a
898 loss of \$1,000 from Loan N; and
- 899 • Loan O, secured by real property in New York and another state, was sold for
900 \$200,000. After deducting its carrying cost of the loan from the sale price,
901 Corporation Y computes a gain of \$1,500 from Loan O.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

975

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

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

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

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

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

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

996 (2) To determine the amount of net gains from sales of corporate bonds sold through a
997 registered securities broker or dealer or through a licensed exchange, the corporation shall
998 subtract the sum of all losses from the sale of such bonds from the sum of all gains computed
999 from the sale of such bonds. If the result is equal to or less than zero, no amount is included in
1000 New York receipts and everywhere receipts.

1001 (3) To determine the amount of net gains from sales of corporate bonds other than bonds
1002 sold through a registered securities broker or dealer or through a licensed exchange, the
1003 corporation shall subtract the sum of all losses from the sale of such bonds from the sum of all
1004 gains from the sale of such bonds. If the result is equal to or less than zero, no amount shall be
1005 included in New York receipts and everywhere receipts.

1006 (4) If the purchaser is an individual, the individual is located in New York if the
1007 individual's billing address in the records of the corporation is in the state. If the purchaser is a
1008 business entity, the business entity is located in New York if its commercial domicile is in the
1009 state.

1010 (5) Gross proceeds shall be determined after the deduction of transactional costs incurred

1011 to acquire the corporate bond but shall not be less than zero. The transactional costs incurred to
1012 acquire the corporate bond shall not include the corporation's adjusted basis in the bond.

1013

1014 Section 4-2.8 Net interest income from reverse repurchase agreements and securities
1015 borrowing agreements [Tax Law, Sec. 210-A(5)(a)(2)(E)]

1016 (a) Eight percent of net interest income (not less than zero) from reverse repurchase
1017 agreements and securities borrowing agreements is included in New York receipts. Net interest
1018 income (not less than zero) from reverse repurchase agreements and securities borrowing
1019 agreements is included in everywhere receipts.

1020 (b) Net interest income from reverse repurchase agreements and securities borrowing
1021 agreements is determined for purposes of this section after the deduction of the interest expense
1022 from the corporation's repurchase agreements and securities lending agreements but cannot be
1023 less than zero. For this calculation, the amount of such interest expense is the interest expense
1024 associated with the sum of the value of the corporation's repurchase agreements where it is the
1025 seller/borrower plus the value of the corporation's securities lending agreements where it is
1026 the securities lender, provided such sum is limited to the sum of the value of the corporation's
1027 reverse repurchase agreements where it is the purchaser/lender plus the value of the
1028 corporation's securities lending agreements where it is the securities borrower.

1029 (c) Example: Corporation A has \$4,000 of interest income from reverse repurchase
1030 agreements and \$5,000 of interest expense from repurchase agreements for the tax year ended
1031 December 31, 2016. Corporation A also has \$6,000 of interest income from securities borrowing
1032 agreements and \$3,000 of interest expense from securities lending agreements for the same year.
1033 To determine the amount of net interest income from these transactions, Corporation A must

1034 reduce the sum of the interest income from reverse repurchase agreements and securities
1035 borrowing agreements by the sum of the interest expense from repurchase agreements and
1036 securities lending agreements. The result is \$2,000 ($\$4,000 + \$6,000 - \$5,000 - \$3,000$) of net
1037 interest income from reverse repurchase and securities borrowing agreements that is included in
1038 everywhere receipts. Corporation A must also report \$160 (8 percent of \$2,000) in New York
1039 receipts.

1040 Section 4-2.9 Net interest income from federal funds [(Tax Law, Sec. 210-A(5)(a)(2)(F)]

1041 (a) Eight percent of net interest income (not less than zero) from federal funds is included
1042 in New York receipts. The net interest income (not less than zero) from federal funds is included
1043 in everywhere receipts.

1044 (b) Net interest income from federal funds is determined after the deduction of interest
1045 expense from federal funds. Interest income from federal funds means interest income paid by
1046 another institution in the federal reserve system for borrowing the corporation's funds deposited
1047 at a federal reserve bank. Interest expense from federal funds includes the interest paid by the
1048 corporation to another institution in the federal reserve system for the use of the other
1049 institution's funds deposited at a federal reserve bank.

1050 (c) Interest paid to the corporation directly by the federal reserve for reserves maintained
1051 at a federal reserve bank does not constitute interest income from federal funds for purposes of
1052 this section and is apportioned under the rules for other financial instruments.

1053

1054 Section 4-2.10 Net income from commodities [Tax Law, Sec. 210-A(5)(a)(2)(I)]

1055 (a) (1) The amount of net income (not less than zero) from all commodities included in
1056 New York receipts or everywhere receipts is determined separately for sales of all commodities

1057 actually delivered and sales of commodities where delivery does not actually occur.

1058 (A) The amount of net income (not less than zero) included in New York receipts from
1059 sales of commodities actually delivered is the product of such net income (not less than zero) and
1060 a fraction, the numerator of which is the amount of gross receipts from sales of all commodities
1061 actually delivered to points within the state and the denominator of which is the amount of all
1062 gross receipts from sales of commodities actually delivered.

1063 (B) The amount of net income (not less than zero) included in New York receipts from
1064 commodities where delivery does not actually occur is the product of such net income (not less
1065 than zero) and a fraction, the numerator of which is the amount of gains from sales of
1066 commodities where delivery does not actually occur to purchasers located in the state and the
1067 denominator of which is the amount of gains from all sales of commodities where delivery does
1068 not actually occur. One hundred percent of net income (not less than zero) from sales of
1069 commodities actually delivered is included in everywhere receipts. One hundred percent of net
1070 income (not less than zero) from sales of commodities where delivery does not actually occur is
1071 included in everywhere receipts.

1072 (2) Net income (not less than zero) is determined by subtracting the cost to acquire or
1073 produce all commodities from the gross proceeds from the sale of commodities, provided the
1074 result cannot be less than zero. The cost to acquire or produce all commodities includes the
1075 purchase price of commodities and all transaction costs associated with the acquisition or
1076 production of the commodities.

1077 (3) Example.

1078 Corporation A, a separate Article 9-A filer, makes sales of commodities where the
1079 commodities are actually delivered and sales of commodities where delivery does not actually

1080 occur.

1081 Sales of commodities actually delivered

1082 Corporation A has receipts from sales of commodities where the commodities are actually
1083 delivered broken down as follows:

- 1084 • \$200 of gross receipts from gold sold to purchasers in states other than New York
1085 State but delivered to New York State;
- 1086 • \$700 of gross receipts from gold sold to purchasers located in New York State but
1087 delivered to states other than New York State;
- 1088 • \$100 of gross receipts from silver sold to purchasers located in New York State but
1089 delivered to states other than New York State; and
- 1090 • \$1,000 of gross receipts from electricity sold to purchasers located in New York
1091 State and delivered to points within New York.

1092 Corporation A incurred the following costs to acquire or produce the commodities where
1093 the commodities are actually delivered:

- 1094 • \$715 for gold;
- 1095 • \$85 for silver; and
- 1096 • \$400 for electricity.

1097 Corporation A uses the sourcing rule contained in section 210-A(5)(a)(2)(I) and this
1098 section to determine the amount of net income (not less than zero) to include in its New York
1099 receipts or everywhere receipts.

1100 Corporation A first determines the amount of gross receipts from sales of commodities
1101 where the commodities are actually delivered, which is \$2,000 (\$200 plus \$700 plus \$100 plus
1102 \$1,000). Next, Corporation A determines the total cost it incurred to acquire or produce such

1103 commodities, which is \$1,200 (\$715 plus \$85 plus \$400). The result is Corporation A has \$800
1104 of net income from sales of commodities that are actually delivered.

1105 The amount of net income from the sales of commodities actually delivered that is
1106 included in New York receipts is the net income from such sales multiplied by a fraction, the
1107 numerator of which is the amount of gross receipts from sales of commodities actually delivered
1108 to points within New York State and the denominator of which is the amount of gross receipts
1109 from sales of commodities actually delivered. Corporation A multiplies its net income of \$800
1110 by 60 percent ($\$1,200/\$2,000$), and the product is \$480, which Corporation A must include in its
1111 New York receipts. All \$800 of net income from sales of commodities actually delivered is
1112 included in everywhere receipts.

1113 Sales of commodities where delivery does not actually occur

1114 Corporation A has gains and losses from sales of commodities that are not actually
1115 delivered in the following amounts:

- 1116 • \$100 of gains from gold sold to purchasers located in New York State;
- 1117 • (\$200) of losses from gold sold to purchasers located in New York State;
- 1118 • \$500 of gains from gold sold to purchasers located in states other than New York
1119 State;
- 1120 • \$400 of gains from corn sold to purchasers located in states other than New York
1121 State; and
- 1122 • (\$300) of losses from corn sold to purchasers located in states other than New
1123 York State.

1124 Corporation A first determines the amount of net income from sales of commodities that
1125 are not actually delivered, which is \$500 ($\$100 - \$200 + \$500 + \$400 - \300). Next, it

1126 determines the amount of gains from such sales, which is \$1,000 ($\$100 - \$0 + \$500 + \$400 - \0).

1127 The amount of net income to be included in New York from the sales of commodities that
1128 are not actually delivered is determined by multiplying such net income by a fraction, the
1129 numerator of which is the amount of gains from sales to purchasers located within New York
1130 State of commodities that are not actually delivered and the denominator of which is the amount
1131 of gains from sales within and without New York of commodities that are not actually delivered.
1132 Corporation A multiplies its \$500 of net income by 10 percent ($\$100/\$1,000$). The result is \$50
1133 included in New York receipts. All \$500 of net income is included in everywhere receipts.

1134 Total sales of commodities

1135 Corporation A includes \$530 ($\$480 + \50) of net income from commodities in its New
1136 York receipts and \$1,300 ($\$800 + \500) of net income from commodities in its everywhere
1137 receipts.

1138 (b) (1) In the case of a combined report, the amount of net income (not less than zero) of
1139 the combined group from commodities included in the combined group's New York receipts or
1140 everywhere receipts is determined separately for sales of commodities actually delivered and sales
1141 of commodities where delivery does not actually occur.

1142 (A) The amount of net income (not less than zero) for all members of the combined group
1143 included in the combined group's New York receipts from sales of commodities actually
1144 delivered is the product of such net income (not less than zero) and a fraction, the numerator of
1145 which is the amount of gross receipts from sales of all commodities actually delivered to points
1146 within the state for all members of the combined group and the denominator of which is the
1147 amount of all gross receipts from sales of commodities that are actually delivered for all members
1148 of the combined group.

1149 (B) The amount of net income (not less than zero) for all members of the combined group
1150 included in the combined group's New York receipts from commodities where delivery does not
1151 actually occur is the product of such net income (not less than zero) and a fraction, the numerator
1152 of which is the amount of gains for all members of the combined group from sales of
1153 commodities where delivery does not actually occur to purchasers located in the state, and the
1154 denominator of which is the amount of gains for all members of the combined group from all
1155 sales of commodities where delivery does not actually occur to purchasers. One hundred percent
1156 of net income (not less than zero) from sales of commodities for all members of the combined
1157 group is included in the combined group's everywhere receipts.

1158 (2) Net income (not less than zero) is determined by subtracting the cost to acquire or
1159 produce all commodities from the gross proceeds from the sale of commodities, provided the
1160 result cannot be less than zero. The cost to acquire or produce all commodities is the amount paid
1161 to purchase or produce the commodity. The cost to acquire or produce all commodities includes
1162 the purchase price of commodities and all transaction costs associated with the purchase of the
1163 commodities.

1164 (c) For purposes of this section, the term commodity has the same meaning as in
1165 subparagraphs (A), (B), and (C) of IRC section 475(e)(2).

1166 (d) For rules pertaining to sales of tangible personal property that is not traded as a
1167 commodity, see section 4-2.1 of this Subpart.

1168

1169 Section 4-2.11 Marked to market net gains [Tax Law, Sections 210-A(5)(a)(1) and 210-
1170 A(5)(a)(2)(J)]

1171 (a) If the taxpayer or designated agent, in the case of a combined group, has made the

1172 fixed percentage method election in the manner required by subdivision (c) of section 4-2.4 of
1173 this Subpart, then eight percent of marked to market net gains (not less than zero) from each type
1174 of qualified financial instrument is included in New York receipts and one hundred percent of
1175 such marked to market net gains are included in everywhere receipts.

1176 (b) If the taxpayer or designated agent, in the case of a combined group, has not made
1177 the fixed percentage method election, then the amount of marked to market net gains from
1178 qualified financial instruments included in New York receipts and everywhere receipts is
1179 determined using the rules set forth in paragraphs (1), (2) and (3) of this subdivision. The
1180 amount of marked to market net gains (not less than zero) from instruments that are not qualified
1181 financial instruments included in New York receipts or everywhere receipts is also determined
1182 using the rules set forth in paragraphs (1), (2) and (3) of this subdivision.

1183 (1) Marked to market net gains (not less than zero) from stocks are not included in New
1184 York receipts or everywhere receipts, unless the commissioner has required the corporation's net
1185 gains from sales of stocks be included in the apportionment factor. Marked to market net gains
1186 (not less than zero) from partnership interests are not included in New York receipts or
1187 everywhere receipts, unless the commissioner has required that the corporation's net gains from
1188 the sale of partnership interests be included in the apportionment factor.

1189 (2) The amount of marked to market net gains (not less than zero) from each type of
1190 financial instrument included in New York receipts is determined by multiplying the marked to
1191 market net gains (not less than zero) from each such type of financial instrument by a fraction,
1192 the numerator of which is the net gains from actual sales of that type of financial instrument
1193 included in New York receipts determined under the applicable clause of section 210-A(5)(a)(2)
1194 and the applicable regulations in this Subchapter and the denominator of which is the net

1195 gains from actual sales of that type of financial instrument included in everywhere receipts
1196 determined under the applicable clause of section 210-A(5)(a)(2) and the applicable regulations
1197 in this Subchapter. Marked to market net gains (not less than zero) from financial instruments
1198 for which the amount included in New York receipts is determined under the immediately
1199 preceding sentence are included in everywhere receipts.

1200 (3) If there are no actual sales of that type of financial instrument that is marked to
1201 market or if the corporation has an overall net loss from the actual sale of that type of financial
1202 instrument, the amount of marked to market net gains (not less than zero) from that type of
1203 financial instrument included in New York receipts is determined by multiplying the marked
1204 to market net gains (but not less than zero) from that type of financial instrument by a
1205 fraction, the numerator of which is the sum of the amount of receipts included New York
1206 receipts under clauses (A) - loans, (B) - federal, state, and municipal debt, (C) - asset backed
1207 securities and other agency debt, (D) - corporate bonds, (E) - reverse repurchase agreements and
1208 securities borrowing agreements, (F) - federal funds, (G) - stock or partnership interests, (H) -
1209 other financial instruments and (I) - physical commodities of section 210-A(5)(a)(2) and
1210 subclause (ii) of section 210-A(5)(a)(2)(J), and the denominator of which is the sum of the
1211 amount of receipts included in the everywhere receipts under clauses (A), (B), (C), (D), (E),
1212 (F), (G), (H) and (I) of section 210-A(5)(a)(2) and subclause (ii) of section 210-A(5)(a)(2)(J).
1213 One hundred percent of marked to market net gains (not less than zero) for which the amount to
1214 be included in New York receipts determined under the immediately preceding sentence are
1215 included in everywhere receipts.

1216

1217 Section 4-2.12 Interest income, net gains, and other income from other financial

1218 instruments. [Tax Law, Section 210-A(5)(a)(2)(H)]

1219 (a) Interest income, net gains (not less than zero), and other income (not less than zero)
1220 from other financial instruments includes interest income, net gains, and other income from
1221 financial instruments that are not described in the rules for section 210-A(5)(a)(2)(A)-(G), (I),
1222 and (J) and the applicable regulations.

1223 (b) Interest income from other financial instruments includes, but is not limited to,
1224 interest income on (i) deposit accounts, (ii) money market accounts, a (iii) debt issued by a
1225 country, or political subdivision thereof, other than the United States, and (iv) reserves
1226 maintained with the Federal Reserve. Such interest income is included in New York receipts if
1227 the payor is located in New York State. One hundred percent of such interest income is
1228 included in everywhere receipts.

1229 (c) (1) For purposes of this section, an individual, as payor or purchaser, is located in
1230 New York State if its billing address is in New York State; and a business entity, as payor or
1231 purchaser, is located in New York State if its commercial domicile is in New York State.

1232 (2) The location for a government entity, as payor or purchaser, is dependent on the type
1233 of government entity.

1234 (d) (1) For each sale of a financial instrument apportioned under this section, the
1235 corporation shall compute a gain or loss from the sale by subtracting the adjusted basis in such
1236 financial instrument from the sale price of such financial instrument. If the sale price exceeds
1237 the adjusted basis, the result is a gain. If the sale price is less than the adjusted basis, the result is
1238 a loss.

1239 (2) To determine the amount of net gains from sales of each type of financial instrument
1240 apportioned under this section, the gains from sales of a type of other financial instrument are

1241 reduced by the losses from sales of that same type of other financial instrument, provided the
1242 result cannot be less than zero. The computation is done for each type of instrument so that
1243 gains from one type of financial instrument cannot offset losses from another type of financial
1244 instrument.

1245 (3) (i) The amount of net gains (not less than zero) from sales of a type of other financial
1246 instrument included in New York receipts is the product of net gains from the sales of that type of
1247 other financial instrument and a fraction, the numerator of which is gross proceeds from sales of
1248 that type of financial instrument to purchasers located within the state and the denominator of
1249 which is gross proceeds from sales of that type of financial instrument to purchasers located
1250 within and without New York State. Net gains (not less than zero) from the sale that type of other
1251 financial instrument is included in everywhere receipts.

1252 (ii) For each sale of a financial instrument, the corporation shall compute a gain or loss
1253 from the sale by subtracting its adjusted basis in such financial instrument from the sale price of
1254 such financial instrument. If the sale price exceeds the adjusted basis, the result is a gain. If the
1255 sale price is less than the adjusted basis, the result is a loss.

1256 (iii) To determine the amount of net gains from sales of one type of financial instrument,
1257 the corporation shall subtract the sum of all losses from the sale of that type of financial
1258 instrument from the sum of all gains from the sale of that type of financial instrument. If the
1259 result is equal to or less than zero, no amount is included in New York receipts and everywhere
1260 receipts.

1261 (iv) Gross proceeds shall be determined after the deduction of transactional costs incurred
1262 to acquire the financial instrument but shall not be less than zero. The transactional costs incurred
1263 to acquire the financial instrument shall not include the corporation's adjusted basis.

1264 (e) Other income (not less than zero) from other financial instruments includes, but is not
1265 limited to, substitute payments in lieu of dividends and income received from stock of the federal
1266 reserve bank.

1267 (f) Examples.

1268 Example 1: Taxpayer A earns \$2,000,000 of interest income on deposits on accounts at
1269 the New York State branch and the State X branch of a bank whose commercial domicile is
1270 located in State Y. No interest income is included in New York receipts because the commercial
1271 domicile of the bank is State Y. The \$2,000,000 of interest income is included in everywhere
1272 receipts.

1273 Example 2: Taxpayer B receives \$1,500 of income from Money Market Fund M. The
1274 commercial domicile of Money Market Fund M is State X. No interest income is included in
1275 New York receipts because the commercial domicile of Money Market Fund M is in State X.
1276 The \$1,500 of income is included in everywhere receipts.

1277 Example 3: Taxpayer C maintains reserves at its required Federal Reserve Bank. These
1278 funds generate \$1,000 of interest income that is not considered interest income from federal funds.
1279 Only one of the twelve Federal Reserve Banks is located in New York. As a result, 1/12 of the
1280 interest income is included in New York receipts. All \$1,000 of interest income is included in
1281 everywhere receipts.

1282 Example 4: As a member of the Federal Home Loan Bank (FHLBank), Taxpayer D is
1283 required to invest in the FHLBank. During the taxable year, Taxpayer D receives \$10,000 of
1284 income from this investment. Only one of the eleven Federal Home Loan Banks is located in
1285 New York. As a result, while \$10,000 is included in everywhere receipts, only 1/11 of the that
1286 amount, or \$909, is included in New York receipts.

1287 Example 5: Taxpayer E receives \$2,000 of substitute payments in lieu of dividends from

1288 its stock of Corporation X, domiciled in state Y. No substitute payments in lieu of dividends are
1289 included in New York receipts because the payor, Corporation X, is domiciled in State Y. All
1290 \$2,000 of such payments are included in everywhere receipts.

1291 Example 6: Taxpayer F owns debt issued by Country X, debt issued by Country Y, debt
1292 issued by Country Z, foreign currency swaps for the currency A, and foreign currency swaps for
1293 currency B. Taxpayer F has two types of other financial instruments – debt issued by other
1294 countries and foreign currency swaps. When determining the amount of New York receipts or
1295 everywhere receipts, any gains from sales of debt issued by other countries may be reduced only
1296 by losses from sales of debt issued by other countries and any gains from sales of foreign
1297 currency swaps may be reduced only by losses from sales of foreign currency swaps.

1298

1299 Section 4-2.13 Brokerage commissions [Tax Law, Section 210-A(5)(b)(1)]

1300 (a) Receipts constituting brokerage commissions derived from the execution of purchase
1301 or sale orders for securities or commodities for customers shall be deemed to be generated within
1302 the state if the corporation's records indicate the mailing address of the customer who is
1303 responsible for paying such commissions is in the state.

1304 (b) Example. Broker X earns \$10,000 in brokerage commission income from investment
1305 advisor Y to execute trades for investment partnership Z. Investment advisor Y is responsible
1306 for paying the commission to Broker X but passes on the brokerage commission expense to its
1307 investors in the form of fees. Broker X's records indicate that the mailing address of investment
1308 advisor Y is within New York State and investment partnership Z's mailing address is in state A.
1309 Because Investment advisor Y is the customer responsible for paying the brokerage commission
1310 to Broker X and its mailing address in Broker X's records is in New York State, \$10,000 is

1311 included in both New York receipts and everywhere receipts.

1312

1313 Section 4-2.14 Receipts from credit cards and similar activities [Tax Law, Section 210-
1314 A(5)(c)(1)-(3)]

1315 (a) Receipts received by issuer banks from credit card receivables constituting interest,
1316 and fees and penalties in the nature of interest and service charges and fees from credit cards are
1317 included in New York State receipts if the mailing address of the card holder in the records of the
1318 issuer bank is in New York State. All such receipts are included in everywhere receipts.

1319 (b) In the event that credit card receivables are purchased from an issuer bank, the
1320 purchaser shall include such receipts in New York receipts if the mailing address of the card
1321 holder in the records of the purchaser is in New York State. All such receipts are included in
1322 everywhere receipts.

1323 (c) Receipts from merchant discounts are included in New York receipts if the merchant
1324 is located within the state. One hundred percent of receipts from merchant discounts are
1325 included in everywhere receipts. In the case of a merchant with locations both within and
1326 without New York State, only receipts from merchant discounts attributable to sales made from
1327 locations within New York State are included in New York receipts. It shall be presumed that
1328 the location of the merchant is the address of the merchant shown on the invoice submitted by
1329 the merchant to the corporation.

1330

1331 Section 4-2.15 Receipts received by credit card processors. [Tax Law, Section 210-
1332 A(5)(c)(4)]

1333 (a) For purposes of this Part, the following definitions shall apply:

1334 (1) Credit card includes credit, bank, travel and entertainment or pre-paid payment cards
1335 or products that can be presented at a physical point-of-sale terminal, electronically, or by
1336 telephone.

1337 (2) Credit card processor means an entity, whether it is a corporation or an
1338 unincorporated entity, that derives 50 percent or more of its gross receipts from any or all of the
1339 following: credit card authorization processing, clearing processing, settlement processing, and
1340 volume-based activities. In the case of a combined report, whether an entity is a credit card
1341 processor is determined on a corporation-by-corporation basis. The apportionment rules
1342 described in this section and section 210-A(5)(c)(4) shall apply only to those receipts generated
1343 by the entities in the combined report that qualify as credit card processors.

1344 (3) Authorization processing means the routing of transaction data from a merchant to an
1345 acquirer bank or from an acquirer bank to an issuer bank for approval or rejection and the routing
1346 of that approval or rejection back to the originating party.

1347 (4) Clearing processing means the service of processing of a batch of hundreds or
1348 thousands of previously-authorized transactions to determine the net amounts due to or from
1349 issuer banks and acquirer banks.

1350 (5) Settlement processing means the service of delivering instructions for the actual
1351 movement of funds between issuer banks and acquirer banks that reflects the amounts
1352 determined to be due to or from each entity during clearing processing.

1353 (6) Credit card processor's network means the hardware and software that enable a credit
1354 card processor to facilitate the transfer of financial transaction information to and from issuer
1355 banks and acquirer banks and, in the case of a third-party processor, to and from merchants,
1356 including by any of the following: receiving, processing, and relaying such financial transaction

1357 information.

1358 (7) Volume-based activities means services that are charged to customers measured on
1359 the dollar volume or number of credit card transactions.

1360 (8) Access point means a physical location at which a credit card processor's customers
1361 access or may access the credit card processor's network.

1362 (9) Percent of New York State access points means the number of access points located
1363 in New York State divided by the total number of access points in the United States.

1364 (10) Acquirer bank means a financial institution that contracts with merchants to accept
1365 payments by credit card.

1366 (11) Issuer bank means a financial institution that issues credit cards to account holders.

1367 (b) (1) Except as provided for in paragraph (2) of this subdivision, the amount of receipts
1368 from authorization processing, clearing processing, and settlement processing earned by credit
1369 card processors included in New York receipts is the product of all such receipts and the percent
1370 of the credit card processor's New York State access points that could generate receipts subject
1371 to this paragraph. All such receipts are included in everywhere receipts.

1372 (2) If the credit card processor is a third-party processor, and after exercising due
1373 diligence, cannot identify the access points for its authorization, clearing, and settlement
1374 processing transactions on behalf of issuer banks or acquirer banks, the amount of receipts from
1375 those transactions earned from banks with billing addresses, kept in the normal course of the
1376 credit card processor's operations, in New York State shall be included in New York
1377 receipts. All such receipts are included in everywhere receipts.

1378 (c) (1) Except as provided for in paragraph (2) of this subdivision, the amount of all other
1379 receipts, including receipts from volume-based activities, received by credit card processors not

1380 specifically addressed in subdivisions one through nine of section 210-A shall be included in
1381 New York receipts by multiplying the total amount of such other receipts by the average
1382 percentage of (i) eight percent and (ii) the percent of the credit card processor's New York State
1383 access points.

1384 (2) If the credit card processor is a third-party processor that uses the provisions of
1385 paragraph (2) of subdivision (b) of this section, then the amount of all other receipts, including
1386 receipts from volume-based activities, received by such credit card processor not specifically
1387 addressed in subdivisions one through nine of section 210-A shall be included in New York
1388 receipts by multiplying the total amount of such other receipts by the average percentage of (i)
1389 eight percent and (ii) the percent of its customers with billing addresses in the state.

1390 (d) Notwithstanding section 4-1.6 of this Part, if it shall appear that the receipts included
1391 in New York receipts pursuant to this section do not accurately reflect the locations where such
1392 receipts of the credit card processor are earned because the credit card processor has receipts
1393 arising from activities outside of the United States, then the credit card processor is authorized to
1394 calculate New York receipts pursuant to this section based on the New York State percentage of
1395 total access points, which shall be calculated by dividing the number of access points physically
1396 located in New York State by the total number of access points used to generate the receipts
1397 being apportioned under this section. The corporation bears the burden of proof to demonstrate
1398 that applying the apportionment rules contained in subdivisions (b) and (c) of this section do not
1399 result in an accurate apportionment of the receipts subject to the rules in this section within New
1400 York State.

1401

1402 Section 4-2.16 Receipts from railroad, trucking and omnibus businesses.[Tax Law,

1403 Section 210-A(6)]

1404 (a) The amount of receipts received by a corporation from its conduct of a railroad
1405 business (including surface railroad, whether or not operated by steam, subway railroad, elevated
1406 railroad, palace car, or sleeping car), trucking business or omnibus business included in New
1407 York receipts is determined by multiplying the amount of receipts from such business by a
1408 fraction, the numerator of which is the number of revenue miles operated within New York State
1409 and the denominator of which is the total number of revenue miles operated. All such receipts
1410 are included in everywhere receipts.

1411 (b) Revenue miles operated while an omnibus is engaged in school bus operations must
1412 be disregarded in computing the fraction.

1413 (c) For purposes of this section, revenue mile is the transportation for consideration of
1414 passengers or freight for the distance of one mile. It does not include *nonrevenue miles*, such as
1415 deadheading (driving an unladen truck).

1416

1417 Section 4-2.17 Receipts from the sale of advertising. [Tax Law, Section 210-A(8)].

1418 (a) Receipts from the sale of advertising encompass the following activities:

1419 (1) Receipts from providing advertising space or time in or on a medium for
1420 dissemination to the public or part of the public, whether such medium is for sale or for free
1421 consumption. Examples include:

1422 (i) the sale of printed page space in a magazine, newspaper, or other similar periodical;

1423 (ii) the sale of space on or in directories, bulletins, phone books, restaurant placemats,
1424 cash register receipts, maps, or any other similar medium;

1425 (iii) the posting of material on billboards, buildings, or vehicles;

1426 (iv) the sale of time in radio or television broadcasts; or

1427 (v) the sale of space on a Web page, regardless of the method of compensation paid by
1428 the advertiser to the Web site host.

1429 (2) Receipts received for providing an advertising or marketing service.

1430 For purposes of this paragraph, an advertising or marketing service includes:

1431 (i) consultation on and development of advertising or marketing campaigns; or

1432 (ii) securing placement of advertising or marketing materials in various forms of
1433 media.

1434 (b) Apportionment of receipts from the sale of advertising.

1435 (1) The amount of receipts from the publishing of advertising in newspapers or
1436 periodicals included in New York receipts is determined by multiplying such receipts by a
1437 fraction, the numerator of which is the number of newspapers and periodicals containing such
1438 advertising delivered to points within New York State and the denominator of which is the total
1439 number of newspapers and periodicals delivered to points within and without New York State.
1440 One hundred percent of such receipts are included in everywhere receipts.

1441 (2)(i) The amount of receipts from the sale of space on other physical media included in
1442 New York receipts is determined by multiplying such receipts by a fraction, the numerator of
1443 which is the number of New York State locations of such media and the denominator of which is
1444 the total number of locations within and without New York State. One hundred percent of such
1445 receipts are included in everywhere receipts.

1446 (ii) If the physical media is rolling stock, such as buses, vans, or automobiles, the
1447 numerator of the fraction in subparagraph (i) is the number of miles operated within New York
1448 State and the denominator is the number of total miles operated within and without New York

1449 State.

1450 Example 1: Billboard Company owns 15 roadside billboards, 5 in New York State and 10
1451 in State A. For a fee, Billboard Company will post advertisements from unrelated businesses for
1452 a determined length of time. It receives \$150,000 from Selling Corp to allow advertisements on
1453 each of its billboards. Billboard Company must determine the amount of receipts included in
1454 New York receipts according to the ratio of billboards in New York State to all billboards.
1455 Therefore, it includes \$50,000 ($1/3 * \$150,000$) in New York receipts. All \$150,000 is included
1456 in everywhere receipts.

1457 Example 2: Bus Company allows businesses to post advertisements on the exterior and
1458 interior of its vehicles. It receives \$7,000 from Company A, \$4,000 from Company B, and
1459 \$14,000 from Company C to have its vehicles display ads for those businesses. Bus Company
1460 knows the mileage within and without New York State for each of the vehicles containing the
1461 ads. Buses containing ads for Company A travel 30,000 miles in New York State out of a total
1462 of 60,000 miles (50% of its miles in New York). Buses containing ads for Company B travel
1463 14,000 miles in New York State out of a total of 70,000 miles (20% of its miles in New York).
1464 Buses containing ads for Company C travel 40,000 miles, exclusively in New York State (100%
1465 of its miles are in New York). Bus Company must include \$18,300 in New York receipts, which
1466 is the sum of \$3,500 from Company A (50% multiplied by \$7,000), \$800 from Company B (20%
1467 multiplied by \$4,000), and \$14,000 from Company C. All \$25,000 is included in everywhere
1468 receipts.

1469 (3) The amount of receipts from the sale of advertising time in radio or television
1470 broadcasts included in New York receipts is determined by multiplying such receipts by a
1471 fraction, the numerator of which is the number of listeners or viewers in New York State and the

1472 denominator of which is the total number of listeners or viewers within and without New York
1473 State. One hundred percent of such receipts are included in everywhere receipts.

1474 (4) (i) The amount of receipts from the sale of advertising not described above and
1475 furnished, provided, or delivered to, or accessed by the viewer or listener through the use of wire,
1476 cable, fiber-optic, laser, microwave, radio wave, satellite or similar successor media or any
1477 combination thereof included in New York receipts is determined by multiplying such receipts
1478 by a fraction, the numerator of which is the number of listeners or viewers in New York State
1479 and the denominator of which is the total number of listeners or viewers within and without New
1480 York State. One hundred percent of such receipts are included in everywhere receipts.

1481 (ii) If, after exercising due diligence, a corporation lacks sufficient information to apply
1482 subparagraph (i) of this paragraph, it may use a reasonable method to estimate the numbers of
1483 listeners or viewers to include in the numerator and denominator of the fraction described in
1484 subparagraph (i) of this paragraph. Such method should be based on data available to the
1485 corporation either as part of its operations, such as metrics or information for account holders,
1486 subscribers, or page or advertisement hits, or under the terms of the contract with the entity
1487 seeking to place the ad, such as any contractual obligations to identify ad recipients or to target
1488 the ad to specific demographics.

1489 (iii) In any case in which a corporation uses a method of estimation to determine the
1490 amounts for the numerator and denominator of the fraction described in subparagraph (i) of this
1491 paragraph and the commissioner determines that the method employed by the corporation is not
1492 reasonable, the commissioner may substitute a method that the commissioner determines is
1493 appropriate. In this instance, the corporation bears the burden of demonstrating that the method
1494 the commissioner prescribes is not reasonable.

1495 (iv) In any case in which the commissioner determines that a corporation's method is
1496 reasonable, but that it has not been applied in a consistent manner with respect to similar
1497 transactions, the commissioner may require that the corporation apply its method in a consistent
1498 manner.

1499 (v) Example. Web Corp provides digital advertisements for various retail corporations
1500 on its website. Its books and records capture a variety of advertising metrics for each ad
1501 placed, which include but are not limited to, the number of times an ad is viewed by an IP
1502 address, the number of unique IP addresses that view an ad, and the number of times Web
1503 Corp's users click on an ad and are directed to the retailer's website based on the users'
1504 IP address.

1505
1506 Web Corp enters into an agreement with Retail Corp A to provide digital advertisements
1507 for Retail Corp A on Web Corp's website. Pursuant to the agreement, Web Corp will
1508 receive payment each time the advertisement is viewed, regardless of whether the ad is
1509 viewed from the same location multiple times or whether the Web Corp's users click on
1510 the advertisement or not. As the receipt is earned based on the number of views, the
1511 amount of receipts from Retail Corp A included in New York receipts is determined by
1512 multiplying the total receipts by a fraction, the numerator of which is the total number of
1513 views of the advertisement in New York State and the denominator is the total view of
1514 the advertisements. One hundred percent of such receipts are included in everywhere
1515 receipts.

1516

1517 Web Corp enters into an agreement with Retail Corp B to provide digital advertisements

1518 for Retail Corp on Web Corp’s website. Pursuant to the agreement, Web Corp will
1519 receive payment each time Web Corp’s users click on the advertisement and are directed
1520 to Retail Corp B’s website. No payment is received by Web Corp if the ad is just viewed
1521 on Web Corp’s website. As the receipt is based on the number of times the ad is clicked
1522 on, the amount of Web Corp’s receipts from Retail Corp B included in New York
1523 receipts is determined by multiplying the total receipts by a fraction, the numerator of
1524 which is the total number of times that Retail Corp B’s ad is clicked on in New York
1525 State and the denominator is the total number of times Retail Corp B’s ad is clicked
1526 on. The location where an ad is clicked on is based upon the IP address. One hundred
1527 percent of such receipts are included in everywhere receipts.

1528 (c) Apportionment of receipts from advertising services. (1) The amount of receipts from
1529 the provision of advertising or marketing services (e.g., the creation and/or implementation of an
1530 advertising or marketing campaign) included in New York receipts is determined by multiplying
1531 such receipts by a fraction, the numerator of which is the number of intended targets of such
1532 advertising or marketing in New York State and the denominator of which is the total number of
1533 intended targets (“the intended target fraction”). One hundred percent of such receipts are
1534 included in everywhere receipts.

1535 (2) To determine the proper ratio of New York State to everywhere targets for the
1536 intended targets fraction, a corporation must primarily rely on statistics and information that are
1537 compiled or utilized as part of the market research and advertising strategy developed by the
1538 corporation for its customer. If no such statistics or information are available, a corporation may
1539 then use other sources of information that attempt to determine the location of the intended
1540 targets.

1541 (i) In any case in which a corporation uses a method to determine the location of the
1542 intended targets and the commissioner determines that the method employed by the corporation
1543 is not reasonable, the commissioner may substitute a method that the commissioner determines is
1544 appropriate. In this instance, the corporation bears the burden of demonstrating that the method
1545 the commissioner prescribes is not reasonable.

1546 (ii) In any case in which the commissioner determines that a corporation's method is
1547 reasonable, but that it has not been applied in a consistent manner with respect to similar
1548 transactions, the commissioner shall require that the corporation apply its method in a consistent
1549 manner.

1550 Example 3: Advert Corp is hired by Blower Corp to develop an advertising and
1551 marketing plan to increase sales of Blower Corp's snow blowers in the Northeast, which is a
1552 sales region defined by Blower Corp. In developing the campaign, Advert Corp obtains
1553 information from Blower Corp about the locations of Blower Corp's shipments of its units to
1554 retailers, and in some cases, directly to consumers in the Northeast sales region. The ratio of
1555 shipments to New York State locations to shipments to all Northeast locations is a reasonable
1556 method of determining the distribution of the intended targets of Advert Corp's advertising and
1557 marketing strategy. Advert Corp should multiply the receipt it receives from Blower Corp by
1558 this ratio to determine the amount of the receipt to include in New York receipts. One hundred
1559 percent of such receipts are included in everywhere receipts.

1560 Example 4: Advert Corp is hired by Finance Corp to produce a nationwide advertising
1561 campaign to create demand for Finance Corp's new investment product marketed to retirees.
1562 Finance Corp will not divulge location information about any of its account holders, except to
1563 say that it has account holders in every state. Advert Corp has access to information that shows

1564 the distribution of Americans of or nearing retirement age in each state. Advert Corp should
1565 multiply the receipts it receives from Finance Corp by the ratio of such Americans in New York
1566 State to all such Americans to determine the amount of the receipt to include in New York
1567 receipts. One hundred percent of such receipts are included in everywhere receipts.

1568 Example 5: AdCo works with local businesses to create printed advertisements that
1569 appear on paper placemats at restaurants. Businesses pay AdCo to design the ads and to secure
1570 their inclusion on placemats. Once the content and design of the ad is agreed upon, AdCo works
1571 with a printing company that produces the placemats to ensure that the ad appears on the printed
1572 placemats and that it meets the design and content specifications. As part of AdCo's
1573 responsibilities in providing this service, it determines the locations where the printed placemats
1574 will be delivered. AdCo receives a receipt from Landscaper Co to create an ad to be included on
1575 placemats. AdCo determines that the placemats will be delivered to Restaurant Company, which
1576 has 3 restaurants in New York State and 1 in State B (4 total restaurants). AdCo must include 75
1577 percent of the receipts earned from Landscaper Co for designing and securing the ad on the
1578 placemats in its New York receipts. One hundred percent of such receipts are included in
1579 everywhere receipts.

1580 (3) Where a lump sum is received by the corporation as payment for advertising or
1581 marketing services and such advertising or marketing services consists of a combination of
1582 activities including the creating of the advertising or marketing campaign and the actual purchase
1583 of advertising space or time, the corporation must allocate the lump sum among each of the types
1584 of activities based on both the costs of purchasing the advertising or marketing space or time and
1585 the intended targets of the advertising or marketing or by some other reasonable method. Full
1586 details must be submitted with the corporation's report.

1587 Example 6: Advert Corp is hired by School Supply Corp to develop an advertising and
1588 marketing plan to increase sales of students' school supplies at its retail stores. The campaign
1589 will use newspapers ads, television commercials, and in-store promotions. Advert Corp will
1590 receive one lump sum for the entire advertising and marketing campaign. It first determines how
1591 to allocate the lump sum among the various advertising strategies by multiplying the lump sum
1592 by a fraction, the numerator of which is the cost of employing the particular medium, (i.e., the
1593 cost of placing ads in newspapers), and the denominator of which is the total cost of employing
1594 all the forms of media outreach (i.e., the sum of the cost of ad buys in newspapers, ad buys on
1595 television, and deploying in-store promotions).

1596 To determine the amount of each allocated amount of the lump sum to be included in
1597 New York receipts, the amount of each allocated amount of the lump sum is then multiplied by
1598 its own intended target fraction as described in paragraph one of this subdivision. Thus, for
1599 newspaper ad buys, the allocated amount of the lump sum included in New York receipts is
1600 based on the ratio of the New York State circulation of the newspapers containing the ad buys to
1601 the total circulation of such newspapers where the inserts will appear. For the television ad buys,
1602 the allocated amount of the lump sum included in New York receipts is based on the ratio of
1603 viewers in New York State to the total number of viewers within the region where the ad buys
1604 will be broadcast. For the in-store promotions, the allocated amount of the lump sum included in
1605 New York receipts is based on the ratio of New York State stores engaging in the promotions to
1606 all stores engaging in the promotions. One hundred percent of such receipts are included in
1607 everywhere receipts.

1608

1609

1610 Subpart 4-3 Receipts from the Sale of, Rental of, License to Use, and Granting of Remote
1611 Access to Digital Products and Digital Services [Tax Law, Section 210-A(4)].

1612

1613 Sec. 4-3.1 Definitions

1614 Sec. 4-3.2 General Principles

1615 Sec. 4-3.3 Special Rules for Determining Primary Use Location

1616 Sec. 4-3.4 General Rule for Determining Primary Use Location

1617 Sec. 4.3.5 Reasonable Approximation Based on Customer Information

1618 Sec. 4-3.6 Reasonable Approximation Based on General Information

1619 Sec. 4-3.7 Where the Digital Product or Digital Service is Received

1620 Sec. 4-3.8 Intermediary Transactions

1621 Sec. 4-3.9 Receipts for the Preceding Taxable Year

1622 Sec. 4-3.10 Receipts for the Current Taxable Year

1623 Sec. 4-3.11 Examples

1624

1625 Section 4-3.1 Definitions. For purposes of this Subpart, the following terms shall have
1626 the meanings indicated below.

1627 (a) Consumer means an individual or entity, other than an intermediary, whose location
1628 is where the intermediary derives value from the digital product or digital service provided by
1629 the corporation.

1630 (b) Customer means the party who enters into a transaction with the corporation for the
1631 purchase of, rental of, license to use, or remote access to a digital product from the corporation.

1632 A customer can be either an individual customer or a business customer. Only a business

1633 customer may also be an intermediary. In any instance in which the corporation, acting in good
1634 faith, cannot reasonably determine whether the customer is an individual customer, the
1635 corporation must treat the customer as a business customer.

1636 (1) Individual customer means a customer who enters into a transaction with the
1637 corporation for the purchase of, rental of, license to use, or remote access to a digital product or
1638 digital service for personal use, and not for a business purpose.

1639 (2) Business customer means a customer that is not an individual customer, including, but
1640 not limited to, a sole proprietor, S corporation, limited liability company, limited partnership,
1641 limited liability partnership, general partnership, corporation, non-profit organization, trust, the
1642 U.S. Government, any foreign, state, or local government, or any agency or instrumentality of
1643 such government.

1644 (c) Digital product means any property of whatever nature delivered through the use of
1645 wire, cable, fiber-optic, laser, microwave, radio wave, satellite or similar successor media, or any
1646 combination thereof (hereinafter referred to as digitally delivered). Digital product includes, but
1647 is not limited to, an audio work, audiovisual work, visual work, electronic book or literary work,
1648 graphic work, electronic database, game, information or entertainment service, website, digital
1649 application, or cryptocurrency or similar asset digitally delivered. In addition, digital product
1650 includes computer software by whatever means delivered, including physical media. Further,
1651 digital product includes the storage of any property that constitutes a digital product. The term
1652 “delivered to” includes furnished, provided, or given access to.

1653 A digital product does not include property listed in the second sentence of this
1654 subdivision that is not digitally delivered. Receipts from such products must be apportioned as
1655 receipts from sales of tangible personal property or from rentals and royalties.

1656 A digital product does not include property listed in the second sentence of this
1657 subdivision, if the fact that it is digitally delivered is incidental to the sale of a license to
1658 distribute, broadcast, or right to sublicense the work to third parties for other than personal use.
1659 The receipts from that sale must be sourced as royalties.

1660 (d) Digital service means a service not otherwise addressed in sections 210-A(1) – (3) or
1661 (5) – (9). It does not include a service related to an asset described in section 210-A(5). A digital
1662 service must be:

1663 (1) directly related to the creation, testing, modification, enhancement, and maintenance
1664 of a product that must be digital in nature with no comparable non-digital form, regardless of the
1665 means of transmission or level of human interaction; or

1666 (2) that has been fully automated, uses one or more software applications in providing the
1667 service, and is delivered via the means listed in the first sentence of the definition of digital
1668 product in subdivision (c) of this section. However, this does not include services where the
1669 service provider:

1670 (i) includes an element of human interaction as part of the service, unless incidental; or

1671 (ii) offers alternative services or optional features that include human interaction and
1672 provide similar functionality to the automated service.

1673 (e) Intermediary means the business customer of a corporation that derives value from a
1674 digital product or digital service at the location of a consumer in an intermediary transaction.

1675 (f) Intermediary transaction means a transaction where the business customer
1676 (intermediary) derives value from a digital product or digital service at the location of the
1677 consumer rather than the location of the customer itself. Such a transaction is sourced using the
1678 rules for intermediary transactions in section 4-3.8 of this Subpart. Intermediary transactions do

1679 not include digital products or digital services sourced under the special rules in section 4-3.3 of
1680 this Subpart.

1681 (1) To be considered an intermediary transaction, the digital product or digital service,
1682 pursuant to the explicit or implicit terms of a contract or other agreement between the
1683 corporation and intermediary, must meet the requirements of subparagraph (i), (ii) or (iii) of this
1684 paragraph:

1685 (i) it must be provided by the corporation, at the direction of the intermediary, directly to
1686 the consumer;

1687 (ii) it must be sold by the corporation to the intermediary, who then passes on the digital
1688 product or digital service to the consumer and either:

1689 (A) the corporation actively maintains or interacts with the digital product or digital
1690 service after the consumer receives it from the intermediary; or

1691 (B) the corporation must be obligated to perform a substantial portion of the digital
1692 service after the digital product or other property that the service relates to is delivered by the
1693 intermediary to the consumer; or

1694 (iii) it must be made readily available by the corporation (e.g., through a website) at the
1695 request of the intermediary to be accessed by the consumer and the corporation actively
1696 maintains or interacts with the digital product or digital service after the consumer receives or
1697 accesses it from the intermediary.

1698 (g) Location where a contract is managed by the customer means the primary location at
1699 which an employee or other representative of a customer serves as the person with responsibility
1700 for monitoring or managing the day-to-day execution of the contract of sale, rental, license to
1701 use, or granting of remote access with the corporation.

1702

1703

1704 Section 4-3.2 General Principles (a) Receipts from the sale of, rental of, license to use, or
1705 granting of remote access to digital products and digital services are included in New York
1706 receipts if the location where the customer derives value from the digital product or digital
1707 service according to the hierarchy of methods set forth in section 210-A and paragraphs (1)
1708 through (4) of subdivision (b) of this section is in New York. The corporation must exercise due
1709 diligence under each method described in subdivision (b) of this section before rejecting it
1710 and proceeding to the next method in the hierarchy, and must base its determination on
1711 information known to the corporation or information that would be known to the corporation
1712 upon reasonable inquiry. One hundred percent of such receipts are included in everywhere
1713 receipts.

1714 (b) The hierarchy of methods described in paragraphs (1) through (4) of this subdivision
1715 to determine where the customer derives value from the digital product or digital service must be
1716 applied sequentially.

1717 (1) A corporation must apportion the receipt to the customer's primary use location.

1718 (2) It may abandon such primary use method only if, after exercising due diligence, it
1719 lacks sufficient information to apply that method, in which case it must use the location where
1720 the digital product or service is received by the customer.

1721 (3) If, after exercising due diligence, a corporation cannot apply the methods described
1722 in paragraphs (1) and (2) of this subdivision, it must then source the receipts from that digital
1723 product or service in the same way as those receipts were sourced in the preceding taxable year.

1724 (4) Lastly, if the corporation cannot apply the methods described in paragraphs (1), (2)

1725 and (3) of this subdivision after exercising due diligence, it must source the receipts from that
1726 digital product to New York by multiplying the amount of those receipts by a fraction, the
1727 numerator of which is the total of New York receipts for the current taxable year from the
1728 corporation's other digital products and digital services apportioned using the methods in
1729 described in paragraphs (1) and (2) of this subdivision, and the denominator of which is the total
1730 of the everywhere receipts for the current taxable year from the corporation's other digital
1731 products and digital services apportioned using the methods described in paragraphs (1) and (2)
1732 of this subdivision.

1733 (c) Corporations should refer first to the special rules for primary use location in section
1734 4-3.3 of this Subpart prior to determining if a transaction qualifies as an intermediary transaction.
1735 Unless a special rule in section 4-.3.3 of this Subpart applies, a corporation should then
1736 determine if the rules for intermediary transactions in section 4-3.8 of this Subpart apply before
1737 applying the other rules in this Subpart.

1738 (d) In exercising due diligence, the following standards apply:

1739 (1) (i) In applying the rules under this Subpart, if the required information is not readily
1740 available to the corporation, the corporation must make reasonable inquiries to a business
1741 customer to determine the information required by these rules.

1742 (ii) If the corporation has more than 250 business customers purchasing substantially
1743 similar digital products or digital services that would be sourced under this Subpart and no more
1744 than 5 percent of receipts from such digital products or digital services are from one particular
1745 customer, then inquiries are not required for that customer ("inquiries safe harbor").

1746 (iii) If the corporation has more than 10,000 business customers purchasing substantially
1747 similar digital products or digital services that would be sourced under this Subpart and no more

1748 than 5 percent of receipts from such digital products or digital services are from one particular
1749 customer, then the primary use location of the digital product or digital service is presumed to be
1750 the customer's billing address ("billing address safe harbor").

1751 (2) Corporations must document the steps taken before abandoning each method of the
1752 hierarchy or step within a method of the hierarchy, such as moving from a special rule for
1753 determining primary use location to the general rule for determining primary use location,
1754 including documentation of reasonable inquiries made.

1755 (3) When the commissioner determines that the corporation had access to, or could have
1756 obtained upon reasonable inquiries when required, information at the time it filed its original
1757 return to apply a method of apportionment that comes earlier in the hierarchy than the method
1758 utilized by the corporation, the commissioner may require the corporation to use such method.

1759 (e) If there is a presumption in applying a method in the hierarchy, the presumption may
1760 be overcome by either the corporation or the Department.

1761 (1) The presumption may be overcome by the corporation if the corporation can prove,
1762 by clear and convincing evidence, that the method it proposes to use better reflects the location
1763 where the customer derives value from the digital product or digital service. In such a case, the
1764 location to which the receipts from the digital product or digital service will be sourced will be
1765 based on the evidence accumulated by the corporation. If the corporation believes it has
1766 overcome the presumption and uses an alternative method, upon audit the Department may
1767 examine the corporation's alternative method to determine if the presumption has been overcome
1768 and, if so, whether it was applied in a consistent manner for similar transactions.

1769 (2) The presumption may be overcome by the Department if the Department can prove,
1770 by clear and convincing evidence, that the method it proposes to use better reflects the location

1771 where the customer derives value from the digital product or digital service, and that the
1772 corporation had access to, or could have obtained upon reasonable inquiries when required,
1773 information at the time it filed its original return that could have been used to apply the
1774 Department's method.

1775 (f) For digital products that are intangible assets such as cryptocurrency, net gains (not
1776 less than zero) are included in the BAF. For this purpose, net gains means gross proceeds minus
1777 the adjusted basis in the digital asset.

1778 Section 4-3.3 Special rules for determining primary use location. (a) In applying the
1779 primary use location method of the hierarchy, a corporation must determine first if the type of
1780 receipt must be sourced using the special rules in this section. When applying the special rules in
1781 this section, the specific criteria to apply the special rules will be met regardless of whether the
1782 digital product or digital service is provided directly by the corporation or on behalf of the
1783 corporation. The special rules apply to the receipts described in subdivisions (b) through (e) of
1784 this section. If a corporation meets the specific criteria to apply a special rule, but does not have
1785 sufficient information to apply the rule, the corporation should use the rules for reasonable
1786 approximation to apply the special rule. However, if the corporation does not have sufficient
1787 information to apply the rules for reasonable approximation to the special rule, then the special
1788 rule no longer applies.

1789 (b) Facilitation of in-person services. Services rendered to the body of an individual or in
1790 the physical presence of an individual and, based on the nature of the service, requires the
1791 physical presence of an individual, are considered in-person services. Receipts from digital
1792 facilitation of the provision of in-person services are apportioned under the special rule in this
1793 subdivision.

1794 (1) Digital facilitation of the provision of in-person services includes, but is not limited
1795 to, ride-sharing; facilitating ticket sales for live entertainment and athletic performances; and
1796 scheduling of in-person training or lessons.

1797 (2) The primary use location of the facilitation of in-person services is presumed to be the
1798 location where the in-person service is performed.

1799 (3) In-person services do not include:

1800 (i) services that do not require significant in-person contact in order to perform,
1801 but nevertheless may include in-person contact, including, but not limited to, legal,
1802 accounting, financial and consulting services; and

1803 (ii) the obligation to perform services or fund the performance of services that
1804 may or may not actually occur at an undetermined future date (e.g., facilitation of the
1805 purchase of insurance) is not an in-person service, although significant in-person contact
1806 may ultimately occur when the service is actually performed.

1807 (c) Services related to tangible personal property. Receipts from digital services that
1808 include services related to tangible personal property are sourced under the special rule in this
1809 subdivision. This includes commissions and other receipts related to the facilitation of services
1810 related to tangible personal property. Receipts from the facilitation of in-person services related
1811 to tangible personal property are apportioned under the special rule in this subdivision, rather
1812 than the special rule in subdivision (b) of this section for the facilitation of in-person services.

1813 (1) Digital services related to tangible personal property include, but are not
1814 limited to: computer troubleshooting, software installation, and facilitation of the sale of
1815 tangible personal property.

1816 (2) The primary use location of services related to tangible personal property is

1817 presumed to be at the location where the property is received after the service is
1818 performed.

1819 (3) The obligation to perform services or fund the performance of services that
1820 may or may not actually occur at an undetermined future date (e.g., warranty services,
1821 facilitation of the purchase of insurance) is not a service related to tangible personal
1822 property, although a service may ultimately be performed on tangible personal property.

1823 (d) Services related to real property. Receipts from digital services related to real
1824 property, including commissions and other receipts related to the facilitation of such services, are
1825 apportioned under the special rule in this subdivision. Digital services related to real property
1826 include services that relate to the improvement or maintenance of the property and services that
1827 relate to the title, purchase, sale, rental, appraisal, assessment or basis in the property. Receipts
1828 from the facilitation of in-person services related to real property are apportioned under the
1829 special rule in this subdivision, rather than the special rule in subdivision (b) of this section for
1830 facilitation of in-person services.

1831 (1) Digital services related to real property include, but are not limited to: security
1832 services, mortgage servicing, title searches and facilitating property or room rentals.

1833 (2) The primary use location of the digital service related to real property is
1834 presumed to be where the real property is located.

1835 (e) Sales of computer software at retail locations. (1) Receipts from the sale of
1836 prewritten, non-customized computer software sold at a physical retail location that sells more
1837 than one type of digital product and/or a combination of digital products and other products,
1838 where the customer is physically present at the physical retail location at the time they take
1839 possession of the software or right to download such software, are apportioned under the special

1840 rule in this subdivision.

1841 (2) With respect to receipts from software sold under the conditions of this special rule,
1842 the receipt is apportioned to the physical retail location where the software is sold.

1843

1844 Section 4-3.4 General Rule for Determining Primary Use Location. A corporation must
1845 include a receipt in New York receipts when the digital product or digital service is primarily
1846 used by the corporation's customer in New York. Unless the corporation meets the specific
1847 criteria and has sufficient information necessary to apply the special rules in section 4-3.3 of this
1848 Subpart, determining the primary use location depends on whether the customer is an individual
1849 customer or a business customer.

1850 (a) Individual customer. In the case where the corporation's customer is an individual,
1851 the primary use location is presumed to be at the customer's billing address. If the corporation
1852 does not have the customer's billing address, it must use reasonable approximation.

1853 (b) Business customer. (1) Except in instances where the billing address safe harbor
1854 applies, the primary use location of the corporation's business customer is presumed to be in
1855 New York to the extent the information in the corporation's books and records kept in the
1856 ordinary course of business, other than the billing address of the corporation's customer,
1857 indicate that the customer's use of the digital product or digital service is in New York. Where
1858 the primary use location is in New York and at least one other location, the corporation should
1859 source the receipts based on the percentage of use by the customer in each primary use location.

1860 (2) The digital product or digital service is primarily used at the location of a third party
1861 (i.e., the consumer) only in the case of an intermediary transaction.

1862 (3) If the corporation does not have adequate information to determine where the digital

1863 product or digital service is primarily used by the customer, the corporation must use reasonable
1864 approximation.

1865

1866 Section 4-3.5. Reasonable approximation based on customer information. (a) Where a
1867 corporation's books and records kept in the ordinary course of business and reasonable inquiries
1868 to the customer when required do not provide adequate information to determine the customer's
1869 primary use location of a digital product or digital service, then reasonable approximation based
1870 on customer information must be used to determine primary use location.

1871 (b) Definition. Reasonable approximation based on customer information is an
1872 alternative method used to determine the location or locations at which a customer primarily uses
1873 a digital product or digital service in instances in which:

1874 (1) (i) the location or locations where the digital product or digital service is
1875 primarily used and/or the percentage of use attributable to each location as a share of
1876 the total use cannot be determined, or

1877 (ii) obtaining the primary use location or locations and/or the percentage of use
1878 attributable to each location as a share of the total use would require the
1879 corporation to expend undue effort and expense beyond the standard amount of
1880 due diligence as required by this section; and

1881 (2) the corporation has sufficient information to reasonably approximate the primary use
1882 location or locations and/or the percentage of use attributable to each location as a share
1883 of the total use.

1884 (c) Application of reasonable approximation based on customer information.

1885 (1) A corporation must use all available information in its books and records, including

1886 information obtained upon reasonable inquiries where required, and information publicly
1887 available about the location or locations where its actual customers primarily use the
1888 digital product or service.

1889 (2) When a corporation is required under this section to reasonably approximate, the
1890 corporation must use a method that is intended to approximate where the customer
1891 primarily uses the digital product or digital service.

1892 (3) Sourced receipts method. In any instance where a corporation can ascertain the
1893 location or locations where a substantial portion of similar receipts are sourced (“sourced
1894 receipts”), but not all of such receipts, and the corporation reasonably believes, based on
1895 all available information, that the geographic distribution of the remainder of such
1896 receipts is substantially similar to that of the sourced receipts, it may source such receipts
1897 in the same proportion as its sourced receipts (sourced receipts method). If the
1898 corporation reasonably believes, based on all available information, that the geographic
1899 distribution of the remainder of such receipts is different from that of the sourced
1900 receipts, and the corporation otherwise lacks sufficient information to use reasonable
1901 approximation either under this section or under section 4-3.6 of this Subpart, it must
1902 next attempt to source such receipts under the method described in paragraph (2) of
1903 subdivision (b) of section 4-3.2 of this Subpart.

1904 (4) In any case in which a corporation uses a method of approximation to apportion its
1905 receipts and the commissioner determines that the method of approximation employed by
1906 the corporation is not reasonable, the commissioner may substitute a method of
1907 approximation that the commissioner determines is appropriate.

1908 (5) In any case in which the commissioner determines that a corporation’s method of

1909 approximation is reasonable, but that it has not been applied in a consistent manner with
1910 respect to similar transactions, the commissioner may require that the corporation apply
1911 its method of approximation in a consistent manner.

1912 (6) In any case in which, after reasonable inquiries are made when required, the
1913 corporation does not have sufficient information based on its actual customers to use
1914 reasonable approximation, the corporation must next attempt to source such receipts
1915 using the rules for reasonable approximation based on general information.

1916

1917 Section 4-3.6 Reasonable approximation based on general information. (a) Where, after meeting
1918 the requirements of due diligence, a corporation lacks sufficient information to use the rules for
1919 reasonable approximation based on customer information to determine the customer's primary
1920 use location of a digital product or digital service, the corporation must use reasonable
1921 approximation based on general information.

1922 (b) Definition. Reasonable approximation based on general information is an alternative
1923 method used to determine the location at which a customer primarily uses the digital product or
1924 digital service in instances in which a general information measurement, such as the general
1925 population, a subset of the general population, or some other general metric, reasonably reflects
1926 the geographic distribution of the customer's primary use location.

1927 (c) Application of reasonable approximation based on general information.

1928 (1) A corporation must use statistical information based on an appropriate metric,
1929 that reasonably approximates where the customers primarily use the digital product or digital
1930 service.

1931 (2) In any case in which the commissioner determines that the corporation's

1932 method of approximation is not reasonable, the commissioner may substitute another general
1933 information measurement that the commissioner determines is appropriate.

1934 (3) In any case in which the commissioner determines that the corporation's
1935 method of approximation is reasonable, but that it has not been applied in a consistent manner
1936 with respect to similar transactions, the commissioner must require that the corporation apply its
1937 method of approximation in a consistent manner.

1938 (d) In any case in which the corporation does not have sufficient information to
1939 reasonably approximate based on general information, the corporation must instead source its
1940 receipts under the method in the hierarchy described in paragraph (2) of subdivision (b) of
1941 section 4-3.2 of this Subpart, where the digital product or digital service is received.

1942

1943 Section 4-3.7 Where the Digital Product or Digital Service is Received.

1944 (a) When a corporation, after exercising due diligence, cannot determine or reasonably
1945 approximate the business customer's primary use location for a digital product or digital service,
1946 it should include the receipt in New York receipts when the digital product or digital service is
1947 received by the customer within New York.

1948 (b) The location where the digital product or digital service is received is presumed to be
1949 the location at which the contract of sale is managed by the customer. If the corporation cannot
1950 determine the location where the contract of sale is managed by the customer, then the location
1951 where the digital product is received is presumed to be the billing address of the customer. If,
1952 after applying due diligence, the corporation does not have adequate information to determine
1953 where the digital product or digital service is received, the corporation must apply the method of
1954 the hierarchy described in paragraph (3) of subdivision (b) of section 4-3.2 of this Subpart, based

1955 on the sourcing of receipts for the preceding taxable year.

1956

1957 Section 4-3.8 Rules for intermediary transactions.

1958 (a) In the case of intermediary transactions, the location where the receipt is sourced is
1959 determined using the hierarchy of methods described in paragraphs (1) and (2) of subdivision (b)
1960 of section 4-3.2 of this Subpart based on the location of the consumers, rather than the
1961 intermediary. If the corporation uses reasonable approximation based on the sourced receipts
1962 method to source its receipts from an intermediary transaction, it may apply that method taking
1963 only transactions with that particular intermediary into consideration.

1964 (b) In applying the hierarchy of methods described in paragraphs (1) and (2) of
1965 subdivision (b) of section 4-3.2 of this Subpart, the corporation is required to make inquiries to
1966 the intermediary, but not to the consumers, regardless of the number of business customers the
1967 corporation has or the percentage of receipts the corporation receives from any one customer, in
1968 order to determine the amount of receipts to source to New York based on the location of the
1969 consumers. Such inquiries may be fulfilled by the intermediary providing information from its
1970 books and records to the corporation that demonstrates the relevant information.

1971 (c) If, after exercising due diligence, the corporation has inadequate information to apply
1972 the methods of the hierarchy described in paragraphs (1) and (2) of subdivision (b) of section 4-
1973 3.2 of this Subpart with reference to the location of the consumers, the corporation should apply
1974 the methods of the hierarchy described in such paragraphs (1) and (2) based on the intermediary.
1975 If after exercising due diligence, the corporation has inadequate information to apply the
1976 methods of the hierarchy described in paragraphs (1) and (2) of subdivision (b) of section 4-3.2
1977 of this Subpart with reference to either the consumers or the intermediary, the corporation must

1978 then apply the methods of the hierarchy described in paragraphs (3) and (4) of subdivision (b) of
1979 section 4-3.2 of this Subpart.

1980 (d) This section does not apply in instances where the billing address safe harbor applies. In
1981 instances where the billing address safe harbor applies, the receipts shall be sourced to the billing
1982 address of the intermediary.

1983

1984 Section 4-3.9 Receipts for the Preceding Taxable Year

1985 When a corporation, after exercising due diligence, cannot determine the amount to
1986 include in New York receipts using the methods of the hierarchy in described in paragraphs (1)
1987 and (2) of subdivision (b) of section 4-3.2 of this Subpart, it should source its receipts from that
1988 digital product or digital service to New York based on the sourcing of receipts from the sales of
1989 that type of digital product or digital service for the preceding taxable year. The amount
1990 included in New York receipts for the current taxable year is determined by multiplying such
1991 receipts by a fraction, the numerator of which is the amount included in New York receipts from
1992 the sales of that type of digital product or digital service in the preceding taxable year and the
1993 denominator of which is the amount included in everywhere receipts from all such sales of that
1994 type of digital product or digital service in the preceding taxable year. This method of the
1995 hierarchy cannot apply in a corporation's first taxable year beginning on or after January 1,
1996 2015. In such tax year, a corporation must reject this method and move directly to the next
1997 method of the hierarchy described in paragraph (4) of subdivision (b) of section 4-3.2 of this
1998 Subpart based on receipts for the current taxable year.

1999

2000 Section 4-3.10 Receipts for Current Taxable Year

2001 When a corporation, after exercising due diligence, cannot determine the amount to
2002 include in New York receipts using the methods of the hierarchy described in paragraphs (1), (2)
2003 and (3) of subdivision (b) of section 4-3.2 of this Subpart, it must source the receipt from that
2004 digital product or digital service to New York based on the sourcing of all those current taxable
2005 year receipts for all other digital products and digital services that can be sourced using the
2006 methods described in such paragraphs (1) and (2). The amount included in New York receipts
2007 for the current taxable year is determined by multiplying such receipts by a fraction, the
2008 numerator of which is the amount included in New York receipts from all digital products and
2009 digital services that can be sourced using the methods in described in paragraphs (1) and (2) of
2010 subdivision (b) of section 4-3.2 of this Subpart for the current taxable year and the denominator
2011 of which is the amount included in everywhere receipts from digital products and digital services
2012 sourced using the methods described in such paragraphs (1) and (2) for the current taxable year.

2013
2014 Section 4-3.11 Examples. For purposes of these examples, it can be assumed that the
2015 corporation has met all the requirements of due diligence unless otherwise provided and that the
2016 billing address safe harbor does not apply.

2017
2018 Example 1: Software Corp sells tax preparation software to individuals through its
2019 website. When individual customers purchase the software, Software Corp provides the
2020 software on a disk shipped to the customer's address. Customer A purchases the
2021 software and has it shipped to her billing address in New York. Software Corp ships a
2022 box to Customer A that contains the software on a disk and a user manual explaining how
2023 the software works and troubleshooting tips. Computer software by whatever means

2024 delivered is considered to be a digital product and therefore receipts from the software are
2025 sourced under the rules in this Subpart. Because the product is purchased online, it does
2026 not qualify for the special rule for computer software sold at a retail location. Although
2027 the sale of the software to Customer A includes the user manual, which is tangible
2028 personal property, the user manual is incidental to the actual sale of the software, and
2029 therefore the entire receipt is sourced as a digital product. It is presumed that Customer
2030 A primarily uses the software at his or her billing address which is located within New
2031 York. Software Corp includes the receipt in New York receipts and everywhere receipts.

2032
2033 Example 2: Develop Corp, a software development corporation located in State A, enters
2034 into a contract with a business customer, Purchaser Corp, which is physically located in
2035 both New York and State A, to develop custom software to be licensed to Purchaser
2036 Corp's business. Develop Corp delivers the software electronically from its office in
2037 State A to Purchaser Corp. Purchaser Corp will primarily use the software at the location
2038 where its employees utilize the software. As no special rules apply to this receipt,
2039 Develop Corp must use its books and records to determine where the software will be
2040 primarily used. Based on Develop Corp's records, it is providing Purchaser Corp 100
2041 licenses to use the software at Purchaser Corp's New York location and 300 licenses to
2042 use the software at Purchaser Corp's State A location. As a result, 25 percent of the
2043 receipt (100/400) is included in New York receipts. One hundred percent of such receipt
2044 is included in everywhere receipts.

2045

2046 Example 3: Movie Corp sells movies for personal use to individual customers that either

2047 may be downloaded from the internet or received via DVD, a physical
2048 medium. Customer A purchases a digital download for a movie (a digital product) and
2049 pays with their credit card that has a billing address in State A. As no special rules apply,
2050 Movie Corp must use its books and records to determine where the movie will be
2051 primarily used. The general rule presumes that the digital product is primarily used at
2052 Customer A's billing address in State A. Therefore, the receipt from this sale is not
2053 included in New York receipts. The receipt from this sale is included in everywhere
2054 receipts.

2055 Customer B purchases a DVD and requests it be shipped to an address in New York. A
2056 DVD is not one of the methods of delivery specifically provided for in section 210-A(4),
2057 so the movie on a DVD is not considered a digital product. Therefore, Video Corp's
2058 receipt from Customer B is a receipt from the sale of tangible personal property and, as
2059 such, should be sourced pursuant to the rules for receipts from the sale of tangible
2060 personal property.

2061
2062 Example 4: Cable TV Corp, a corporation that is located outside of New York, sells
2063 monthly subscriptions for cable television to individual customers in New York and other
2064 states. Cable TV Corp provides cable television through cables that are installed at the
2065 location of each customer's television that will be receiving content. Cable TV Corp also
2066 has a billing address on file for each of its customers. While most of Cable TV Corp's
2067 customers have cable installed at their billing address, a number of Cable TV Corp's
2068 customers have cable installed at an address other than their billing address. The cable
2069 television subscription sold by Cable TV Corp is a digital product. As no special rules

2070 apply, the general rule presumes that the digital product is primarily used at an individual
2071 customer's billing address. However, either Cable TV Corp or the commissioner can
2072 overcome this presumption through clear and convincing evidence as to where the cable
2073 is installed, which better reflects where the digital product is primarily used.

2074

2075 Example 5: Security Corp sells cyber security software to 1,000 business customers,
2076 including a federal agency XYZ. XYZ has its headquarters located in Washington D.C.,
2077 and 12 regional offices relatively similar in size located in 12 different states, one of
2078 which is New York. Security Corp generally conducts business with a person at XYZ's
2079 headquarters, but Security Corp provides cyber security software to XYZ's entire
2080 network, which is utilized by XYZ employees at all of the 13 locations. As no special
2081 rules apply, Security Corp must use its books and records to determine the primary use
2082 location of the software. It does not have more detailed information, such as the number
2083 of computers or the distribution of licenses among the locations. Since Security Corp has
2084 over 250 business customers and not more than 5 percent of its receipts are from XYZ, it
2085 is not required to make reasonable inquiries to determine where the digital product is
2086 primarily used. Security Corp chooses to exercise the inquiry safe harbor and uses
2087 reasonable approximation based on customer information to include 1/13 of the receipts
2088 from its cyber security software in New York receipts. Security Corp includes 100
2089 percent of such receipts in everywhere receipts.

2090

2091 Example 6: Office Corp, an office supply retailer, has physical stores located in New
2092 York and other states. Office Corp sells a variety of office supplies, including a

2093 multitude of prewritten computer software programs. When customers purchase items
2094 from Office Corp, they take possession of the purchased items immediately at the retail
2095 location. In the case of software purchases, customers can either purchase the software
2096 on a disk or can purchase a code to download the computer software at a later time.
2097 Office Corp's sale of prewritten software qualifies for the special rule for sales of
2098 computer software at retail locations. Therefore, Office Corp includes the receipts from
2099 the sale of the software in New York receipts to the extent the location of the retail store
2100 is in New York. Office Corp includes 100 percent of such receipts in everywhere
2101 receipts.

2102
2103 Example 7: Music Corp provides music streaming services to individual customers for a
2104 monthly subscription fee. Customers can access Music Corp's service through an
2105 application on their mobile devices or by visiting Music Corp's website. Once in their
2106 account, individuals can listen to music on a variety of channels and indicate whether
2107 they like certain songs. Music Corp uses an algorithm to recommend songs to customers
2108 based on songs they have previously indicated that they like. As this service is entirely
2109 automated, it meets the definition of a digital service and therefore is sourced under the
2110 rules in this Subpart. As no special rules apply, Music Corp must use the general rule to
2111 determine the primary use location of its streaming services. Therefore, the primary use
2112 location is presumed to be at the billing addresses of its customers. To the extent that
2113 customers have billing addresses located in New York, receipts from such customers are
2114 included in New York receipts. Music Corp must include 100 percent of its receipts from
2115 customers in everywhere receipts.

2116

2117 Example 8: Webapp located in State A sells subscription plans to its web-based
2118 video/voice conferencing service. This service allows its customers to hold meetings
2119 remotely using video and voice transmitted through a web browser. Meetings can be
2120 joined by attendees in multiple locations. When a customer purchases a subscription to
2121 Webapp's service, the customer may log into its online account to use the service at any
2122 location where it can access a web browser. Customers also can use this service to
2123 conduct meetings with parties who are not subscribers simply by sending the attendee an
2124 invitation to the meeting; this can be done from any location as no specialized software is
2125 required. Webapp's service is provided entirely online, without any human intervention
2126 by Webapp. Therefore, it is considered a digital service.

2127

2128 Development Studio subscribes to Webapp's digital service and uses WebApp's service
2129 to hold numerous meetings with its customers and employees that access the service
2130 throughout the country.

2131

2132 As no special rules apply, Webapp must use its books and records to determine the
2133 primary use location of its digital service. It determines that Development Studio's
2134 subscription for Webapp's digital service is used by employees of Development Studio's
2135 New York office. Webapp includes 100 percent of this receipt in New York receipts and
2136 in everywhere receipts.

2137

2138 Example 9: Website Corp designs custom software and Web applications for use by

2139 various businesses. Travel Corp, located in State A, operates hotels in New York and
2140 other states and rents rooms to its customers. Travel Corp wants to make the ability to
2141 book a room accessible to its customers via the internet, so Travel Corp contracts with
2142 Website Corp to design a custom website using Travel Corp's name and methodology,
2143 which will allow Travel Corp's customers to book hotel rooms online for a fee. Under
2144 the contract, Travel Corp will pay Website Corp a flat annual fee to maintain and host the
2145 website. Website Corp is providing a digital service related to the facilitation of a room
2146 rental, which is a digital service related to real property. As Website Corp receives a flat
2147 annual fee, it must use reasonable approximation based on customer information to
2148 apportion the receipt under the special rule for digital services related to real property to
2149 the various real property locations. Therefore, Website Corp multiplies the receipt it
2150 receives from Travel Corp by a fraction, the numerator of which is the number of rooms
2151 rented in New York via the website and the denominator of which is the number of rooms
2152 rented everywhere via the website. Website Corp includes 100 percent of such receipt in
2153 everywhere receipts.

2154
2155 Example 10: Room Corp operates a website that acts as a digital marketplace to facilitate
2156 the short-term rental of apartments and houses between individual homeowners and
2157 individuals looking for short-term rentals. Individual homeowners are able to list their
2158 homes on Room Corp's website and will pay Room Corp a small commission if someone
2159 books their property via Room Corp's website. In return Room Corp provides a variety of
2160 services to the homeowners automatically via their website, such as payment processing,
2161 liability insurance, and ID verification of renters. The digital service Room Corp is

2162 providing is related to the facilitation of a real property rental which is a digital service
2163 related to real property. Therefore, Room Corp must include the receipts from
2164 facilitating real property rentals in New York receipts to the extent the real property is
2165 located in New York. Room Corp must include 100 percent of the receipts in everywhere
2166 receipts.

2167
2168 Example 11: Ticket Corp operates a website that allows individuals to purchase tickets to
2169 various live events. Sports Corp enters into a contract with Ticket Corp to list tickets for
2170 its sporting events on Ticket Corp's website and Ticket Corp retains a small commission
2171 for every ticket that is purchased through its website under this contract. Ticket Corp's
2172 fully automated website is providing the digital service of facilitating the purchase of an
2173 in-person service because the ticket sales are for a live sporting event and a live sporting
2174 event meets the definition of in-person service. Therefore, Ticket Corp should source its
2175 receipts from the commissions it receives for facilitating in-person services to the
2176 location of the venue hosting the event.

2177
2178 Example 12: Game Co, an online gaming company based in New York, sells monthly
2179 subscriptions to individual customers. The majority of Game Co's customers do not pay
2180 with a credit card. They instead use an online payment transfer service to pay their
2181 monthly subscription fee, and therefore do not provide Game Co with a billing address.
2182 To subscribe, individuals need to provide only a first name, screen name, password, and
2183 online payment information. As such, Game Co does not have enough information to
2184 determine the primary use location and, because Game Co's customers are individuals,

2185 Game Co does not need to make reasonable inquiries as to individuals' billing addresses.
2186 Although Game Co does not have address information for most of its subscribers, it can
2187 use IP address information to determine where the individual customers log into the
2188 website. Therefore, Game Co can use this information to reasonably approximate based
2189 on customer information the primary use location of its game and must include receipts
2190 from subscribers logging into its game from IP addresses located within New York in
2191 New York receipts. Game Co includes 100 percent of such receipts in everywhere
2192 receipts.

2193
2194 Example 13: Marketplace Corp hosts a website that facilitates the sale of tangible
2195 personal property by unrelated individuals. Marketplace Corp does not take title to any
2196 of the tangible property posted on its website. Item sellers can create accounts on
2197 Marketplace Corp's website and list property for sale. Individual buyers can visit
2198 Marketplace Corp's website to view pages containing tangible property that item sellers
2199 are offering for sale. Marketplace Corp makes these pages readily available for consumer
2200 access at the request of the item sellers. Marketplace Corp receives two primary revenue
2201 streams from the item sellers: (1) a small fee for listing tangible property on Marketplace
2202 Corp's website, regardless of whether it sells; and (2) a small commission for every sale
2203 of tangible property made via Marketplace Corp's website. Both revenue streams are
2204 services related to tangible personal property and, therefore, the special rule applies.
2205 Marketplace Corp receives the first revenue stream directly from the item seller when the
2206 item seller lists the tangible property on Marketplace Corp's website. In fact,
2207 Marketplace Corp receives this receipt regardless of whether the property is sold or the

2208 seller removes it from the website without a sale. Therefore, although it is a service
2209 related to tangible personal property, Marketplace Corp does not have information on
2210 where the tangible personal property is received by a buyer because, at the time the fee is
2211 received by Marketplace Corp, the property has not yet been, and in fact may never be,
2212 sold. Furthermore, the service Marketplace Corp provided to generate this receipt is
2213 complete at the time the tangible property is listed and there is not yet a consumer in the
2214 transaction, so this receipt is not generated in an intermediary transaction. Receipts from
2215 listing fees are included in New York receipts using the general rule based on the primary
2216 use location of the item seller. Marketplace Corp includes all receipts from listing fees
2217 generated via its website in everywhere receipts.

2218 In contrast, Marketplace Corp is receiving the second revenue stream from item sellers at
2219 the time the tangible personal property is sold and, as such, Marketplace Corp has
2220 information on where the tangible personal property will be delivered to the consumer.
2221 Marketplace Corp includes receipts from its second revenue stream for commissions in
2222 New York receipts to the extent the commission was received for facilitating the sale of
2223 tangible personal property delivered into New York. Marketplace Corp includes all
2224 receipts from commissions received via its website in everywhere receipts.

2225
2226 Example 14: Software Corp sells case management software to 200 large corporations.
2227 Business Corp purchases software from Software Corp to be installed on laptops used by
2228 Business Corp's employees. The contract between Business Corp and Software Corp is
2229 managed at Business Corp's office in State A, but Business Corp's employees spend the
2230 majority of their time working throughout the country, including in New York. As no

2231 special rules apply, Software Corp must use its books and records to determine where the
2232 software will be primarily used. Software Corp's books and records do not provide any
2233 information on the amount of time that Business Corp's employees spend working in
2234 other states to determine where the software is primarily used. Software Corp does not
2235 qualify for the inquiry safe harbor because it has only 200 customers, so it must ask
2236 Business Corp where its employees utilize the software. Business Corp is not able to
2237 provide such information, nor would population information be relevant to software used
2238 by Business Corp's employees in internal operations. Therefore, Software Corp does not
2239 have adequate information to determine the primary use locations or reasonably
2240 approximate such locations. It must source the receipt to where the digital product is
2241 received, which is presumed to be at the location where the contract is managed.
2242 Business Corp manages the contract with Software Corp at its office in State A;
2243 therefore, the receipt is not included in New York receipts. Software Corp must include
2244 100 percent of the receipt in everywhere receipts.

2245
2246 Example 15: Sales Corp provides only one type of digital product to approximately 200
2247 business customers. In tax year 2017, all of its receipts were sourced using the rules for
2248 primary use location and as a result, 45 percent of Sales Corp's receipts were included in
2249 New York receipts. In tax year 2018, Sales Corp continues to provide only one type of
2250 digital product to its customers. At the end of tax year 2018, Sales Corp's computer
2251 system crashes and it is unable to recover information it had obtained on where the digital
2252 product was primarily used. Upon reasonable inquiries to its known customers, Sales
2253 Corp still cannot obtain information on where the digital products were primarily used or

2254 determine where they were received. Therefore, under the method of the hierarchy in
2255 paragraph (3) of subdivision (b) of section 4-3.2 of this Subpart, Sales Corp includes 45
2256 percent of its 2018 receipts in its 2018 New York receipts. Sales Corp includes 100
2257 percent of receipts from this type of digital product in everywhere receipts.

2258

2259 Example 16: Taxpayer A has \$10,000 in receipts from a new type of digital product.
2260 After exercising due diligence, Taxpayer A cannot determine where the digital product is
2261 primarily used or where it was received. Further, because this is a new type of digital
2262 product, it cannot use the method of the hierarchy described in paragraph (3) of
2263 subdivision (b) of section 4-3.2 of this Subpart. Therefore, under the method of the
2264 hierarchy described in paragraph (4) of subdivision (b) of section 4-3.2 of this Subpart,
2265 Taxpayer A must determine the portion of the \$10,000 to include in New York receipts
2266 based on the apportionment of the receipts for all its other digital products and digital
2267 services sourced under the methods of the hierarchy described in paragraphs (1) and (2)
2268 of subdivision (b) of section 4-3.2 of this Subpart. In the current tax year, Taxpayer A
2269 has \$65,000 in digital products receipts and \$85,000 in digital services receipts sourced
2270 under the methods of the hierarchy described in paragraphs (1) and (2) of subdivision (b)
2271 of section 4-3.2 of this Subpart of which \$75,000 (or 50 percent) are New York receipts.
2272 Therefore, Taxpayer A includes 50 percent of the \$10,000, or \$5,000, of receipts from the
2273 new type of digital product in New York receipts. Taxpayer A includes 100 percent of
2274 receipts from the new type of digital product in everywhere receipts.

2275

2276 Example 17: App Design Corp (the taxpayer), a corporation located in State B, provides

2277 mobile phone application (“app”) design services to its customer, Bank Corp (the
2278 intermediary), which has branches located in New York and other states. Bank Corp
2279 contracts with App Design Corp to have App Design Corp design an app that will be
2280 readily available for free download by any of Bank Corp’s account holders (the
2281 consumers) via a digital marketplace. App Design Corp also will provide periodic
2282 updates to ensure the app runs smoothly and the information transmitted through the app
2283 is secure. App Design Corp is receiving receipts from Bank Corp in an intermediary
2284 transaction because App Design Corp is making its digital product readily available to
2285 consumers at the request of Bank Corp, and App Design Corp maintains involvement
2286 with the app after consumers download it. As no special rule for determining primary use
2287 location applies, App Corp must determine where Bank Corp primarily uses the digital
2288 service, which is at the location where the consumers download and use the app.
2289 App Design Corp cannot determine information on New York account holders who
2290 download the app based on its own books and records because it does not have
2291 information on either the primary use location or where the app is received by the
2292 consumers, and therefore App Design Corp must make reasonable inquiries to Bank Corp
2293 for location statistics on account holders who download the app. Bank Corp cannot
2294 provide App Design Corp with any information after reasonable inquiries, so App Design
2295 Corp should look to publicly available information, such as the number of Bank Corp’s
2296 bank branches located within and without New York and use the percentage of branches
2297 in New York to reasonably approximate based on customer information the primary use
2298 location of the app.
2299

2300 Example 18: Website Design Corp (the taxpayer) designs and maintains websites for
2301 unrelated parties. Database Corp (the intermediary) develops an internet-based
2302 information database and enters into a contract with Website Design Corp to create a
2303 website and sell access to the database to individual customers (the consumers) for a
2304 small monthly fee. The contract specifies that Website Design Corp will retain a
2305 commission each month from every consumer that pays for access to the database and
2306 remit the remainder to Database Corp. Website Design Corp actively maintains and
2307 updates the website where it makes the database readily available on the internet for
2308 access by consumers at the request of Database Corp. Therefore, Website Design Corp
2309 must source its receipts from commissions based on the location of the consumers rather
2310 than the location of Database Corp. As no special rule for determining primary use
2311 location applies, Website Design Corp must use the general rule to determine the primary
2312 use location of its digital service. As the consumers are individuals, Website Design
2313 Corp presumes the digital product will be primarily used at the billing addresses of the
2314 consumers. To the extent that consumers have billing addresses located in New York,
2315 receipts from such customers are included in New York receipts. Website Design Corp
2316 must include 100 percent of its receipts in everywhere receipts.

2317
2318 Example 19: Research Corp, a corporation located in State D, compiles a digital
2319 collection of treatises on a variety of subjects and sells a copy of its collection to
2320 University A, located in New York. However, Research Corp does not provide
2321 continuing support after the sale and, if Research Corp were to update any information, it
2322 would sell this as a separate product. Therefore, after Research Corp delivers the copy of

2323 the digital collection to University A, it maintains no interaction with the product and
2324 provides no further services in connection with the receipt. For this reason, this is not
2325 considered an intermediary transaction. As no special rules apply, Research Corp must
2326 use its books and records to determine if it can ascertain the primary use location of the
2327 digital collection. Research Corp's books and records indicate that University A will use
2328 the digital collection at its location in New York; therefore, the entire receipt is included
2329 in both New York receipts and everywhere receipts.

2330
2331 Example 20: Images Corp, a corporation located in State E, maintains an online database
2332 of digital images that it licenses to customers to use in a variety of publications. Receipts
2333 from the license to use the digital database are sourced under these rules. Newspaper
2334 Corp, located in New York, enters into a contract with Images Corp whereby, in
2335 exchange for a monthly flat fee, Newspaper Corp receives a license to use an unlimited
2336 number of images from Image Corp's online database in Newspaper Corp's print and
2337 digital publications which will be viewed by Newspaper Corp's subscribers worldwide.
2338 Images Corp's database is only accessible by Newspaper Corp directly and not by its
2339 subscribers; therefore, this is not an intermediary transaction. Images Corp must source
2340 the receipt it receives from Newspaper Corp under the general rule to the primary use
2341 location of Newspaper Corp. Newspaper Corp uses the images it selects from the online
2342 database when composing articles; therefore, Newspaper Corp's primary use location is
2343 where this editorial control is exercised. Because Newspaper Corp makes editorial
2344 decisions at its office located in New York, the entire receipt is included in both New
2345 York receipts and everywhere receipts.

2346

2347

Example 21: Exchange Corp, a security exchange located in New York, has contracts

2348

with 300 brokerage firms that grant digital access to its exchange. Under the terms of the

2349

contract, employees of the firms are able to digitally access the exchange for purposes of

2350

purchasing or selling shares of stock on the exchange for a fee. Exchange Corp's

2351

contract with Trader Corp, one such brokerage firm, allows Trader Corp's 120 traders

2352

based in New York and 80 traders based in State A to buy and sell shares of stock on the

2353

exchange on behalf of clients. As Exchange Corp is not a registered securities broker or

2354

dealer, the fees it earns from allowing customers to trade on the exchange cannot be

2355

sourced under the rules in section 210-A(5)(b). Furthermore, because the fee is for

2356

granting digital access to the exchange, the receipt is sourced under the rules in this

2357

Subpart.

2358

This is not an intermediary transaction because Exchange Corp is not providing access to

2359

the exchange directly to consumers at Trader Corp's direction. Only Trader Corp's own

2360

employees have digital access to the exchange. For this reason, the receipt must be

2361

sourced to the location where Trader Corp's traders primarily utilize the digital product.

2362

Exchange Corp does not have adequate information to determine the exact location where

2363

the traders primarily use this digital product and, since Exchange Corp has more than 250

2364

business customers that pay fees for substantially similar digital products, and no more

2365

than 5 percent of its receipts are from Trader Corp, Exchange Corp is not required to

2366

make reasonable inquiries to Trader Corp. Therefore, Exchange Corp must use its books

2367

and records to reasonably approximate where Trader Corp's traders primarily use the

2368

exchange. Since 60 percent of Trader Corp's traders are based in New York, 60 percent

2369 of the receipts Exchange Corp receives from Trader Corp are included in New York
2370 receipts. Exchange Corp includes 100 percent of the receipts in everywhere receipts.

2371

2372 Example 22: Channel Corp operates a digital platform, available through Channel Corp's
2373 website or as a downloadable application, for individual subscribers to access Channel
2374 Corp's content for a monthly fee. Subscribers can subscribe either directly with Channel
2375 Corp. or through another entity.

2376

2377 For revenue earned directly by Channel Corp from its subscribers, it is presumed that an
2378 individual subscriber primarily accesses the Channel Corp's digital content at its billing
2379 address. Therefore, receipts earned by subscribers with billing addresses in New York
2380 are included in New York receipts. Channel Corp includes 100 percent of the receipts it
2381 earned from these subscribers in everywhere receipts.

2382

2383 Platform Corp (the intermediary) operates a digital application store where individuals
2384 can download and purchase a subscription to various digital applications. Under the
2385 agreement between Channel Corp and Platform Corp, Platform Corp can sell
2386 subscriptions to Channel Corp's service in its marketplace for a fee set by Channel Corp
2387 in exchange for a commission. In addition, the agreement requires that Platform Corp
2388 receive all payments from individual subscribers for access to Channel Corp's service
2389 and must remit the fees, after retaining its commission, to Channel Corp.

2390

2391 While subscribers download Channel Corp's digital application from Platform Corp's

2392 platform, the subscribers access Channel Corp's service directly through its digital
2393 application to view content. Channel Corp actively maintains and updates the digital
2394 application which is readily available for access by subscribers who pay for the service
2395 through Platform Corp. Platform Corp forwards these receipts minus its commission to
2396 Channel Corp. Therefore, these are receipts from an intermediary transaction and
2397 Channel Corp must source them based on the location of the subscribers (the consumers)
2398 rather than the location of Platform Corp. Channel Corp's books and records do not have
2399 information on the consumer's billing address. Therefore, Channel Corp must make
2400 reasonable inquiries to Platform Corp to determine where the subscribers access Channel
2401 Corp's digital application. After making such inquiries, Channel Corp still does not
2402 know the subscriber location so it reasonably approximates that location using third-party
2403 data.

2404
2405 Example 23: Channel Corp operates a digital platform, available through Channel Corp's
2406 website or as a downloadable application of digital content that can be accessed by users.
2407 Phone Corp sells phone subscription plans, some of which bundle access to various
2408 digital platforms of movies and TV shows operated by different providers as part of the
2409 package. Channel Corp enters into an agreement with Phone Corp (the intermediary) that
2410 allows Phone Corp to bundle access to Channel Corp's digital platform in exchange for a
2411 fee set by Channel Corp. Under the agreement, Phone Corp may decide what fee to
2412 charge (or even not charge) its customers for the bundled service. After individual
2413 consumers purchase a phone plan that provides access to Channel Corp's digital content,
2414 the consumers access Channel Corp's digital platform through its website or by

2415 downloading Channel Corp's application.

2416

2417 Channel Corp actively maintains and updates the application which is readily available
2418 for access by subscribers who pay for service through Phone Corp. Therefore, these are
2419 receipts from intermediary transactions and Channel Corp must source based on the
2420 location of the Phone Corp's users rather than the location of Phone Corp. It is presumed
2421 that the users primarily access the digital content at their billing address. Channel Corp's
2422 books and records do not contain the billing address of Phone Corp's users and, upon
2423 inquiries, Phone Corp did not provide this information. However, if Channel Corp
2424 collects location information when subscribers create an account to access Channel
2425 Corp's service, then Channel Corp may use such information to reasonably approximate
2426 use. To the extent the location is in New York, the receipts are included in New York
2427 receipts. All receipts that Channel Corp receives from Phone Corp are included in
2428 everywhere receipts.

2429

2430

2431

2432 Subpart 4-4 Receipts from Other Services and Other Business Activities [Tax Law, Section 210-

2433

A(10)].

2434

2435 Sec. 4-4.1 Definitions

2436 Sec. 4-4.2 General Principles

2437 Sec. 4-4.3 Special Rules for Determining Where the Benefit is Received

2438 Sec. 4-4.4 General Rule for Determining Where the Benefit is Received

2439 Sec. 4-4.5 Reasonable Approximation Based on Customer Information

2440	Sec. 4-4.6	Reasonable Approximation Based on General Information
2441	Sec. 4-4.7	Delivery Destination
2442	Sec. 4-4.8	Intermediary Transactions
2443	Sec. 4-4.9	Receipts for the Preceding Taxable Year
2444	Sec. 4-4.10	Receipts for the Current Taxable Year
2445	Sec. 4-4.11	Examples

2446

2447 Section 4-4.1 Definitions. For purposes of this Subpart, the following terms shall have the
2448 meanings indicated below.

2449 (a) Consumer means an individual or entity, other than the intermediary, whose location
2450 is where the intermediary derives value from the service or other business activity provided by
2451 the corporation.

2452 (b) Customer means the party who enters into a transaction with the corporation for the
2453 purchase of a service or other business activity from the corporation. A customer can be an
2454 individual customer, a business customer or a passive investment customer. Only a business
2455 customer may also be an intermediary. In any instance in which the corporation, acting in good
2456 faith, cannot reasonably determine whether the customer is an individual customer, the
2457 corporation must treat the customer as a business customer.

2458 (1) Individual customer means a customer who enters into a transaction with the
2459 corporation for the purchase of a service or other business activity from the corporation for
2460 personal use, and not for a business purpose.

2461 (2) Business customer means a customer that is not an individual customer or passive
2462 investment customer, including but not limited to, a sole proprietor, S corporation, limited

2463 liability company, limited partnership, limited liability partnership, general partnership,
2464 corporation, non-profit organization, trust, the U.S. Government, any foreign, state, or local
2465 government, or any agency or instrumentality of such government.

2466 (3) Passive investment customer means a customer that is an unincorporated entity, such as a
2467 limited partnership, general partnership, limited liability company, limited liability partnership, or trust,
2468 that pools capital from passive investors for the purpose of trading or making investments in stocks,
2469 bonds, securities, commodities, loans, or other financial assets, but that does not otherwise conduct a trade
2470 or business.

2471 (c) Intermediary means the business customer of a corporation that derives value from a
2472 service or other business activity at the location of a consumer in an intermediary transaction.

2473 (d) Intermediary transaction means a transaction where the business customer
2474 (intermediary) derives value from a service or other business activity at the location of the
2475 consumer rather than the location of the customer itself. Such transaction is sourced using the
2476 rules for intermediary transactions in section 4-4.8 of this Subpart. Intermediary transactions do
2477 not include services or activities sourced under the special rules in section 4-4.3 of this Subpart.

2478 (1) To be considered an intermediary transaction, the service or other business activity,
2479 pursuant to the explicit or implicit terms of a contract or other agreement between the
2480 corporation and intermediary, must meet the requirements of subparagraphs (i) or (ii) of this
2481 paragraph.

2482 (i) it must be provided by the corporation, at the direction of the intermediary, directly to
2483 the consumer;

2484 (ii) it must be sold by the corporation to the intermediary, who then passes on the service
2485 or other business activity to the consumer, provided the corporation must be obligated under the

2486 agreement to perform a substantial portion of the service or other business activity after the
2487 property that the service or other business activity relates to is delivered by the intermediary to
2488 the consumer.

2489 (e) Location where a contract is managed by the customer means the primary location at
2490 which an employee or other representative of a customer serves as the person with responsibility
2491 for monitoring or managing the day-to-day execution of the contract of sale with the corporation.

2492

2493 Section 4-4.2 General Principles

2494 (a) Receipts and net gains (not less than zero) from services and other business activities
2495 not otherwise enumerated in section 210-A, such as net gains (not less than zero) from the sale
2496 of intangible property as well as receipts from the compensation for certain services, such as
2497 commissions, finder's fees, loan servicing fees, and fees for professional services are sourced
2498 according to the hierarchy of methods set forth in section 210-A and paragraphs (1) through (4)
2499 of subdivision (b) of this section. The corporation must exercise due diligence under each
2500 method described in subdivision (b) of this section before rejecting it and proceeding to the next
2501 method in the hierarchy, and must base its determination on information known to the
2502 corporation or information that would be known to the corporation upon reasonable inquiry.

2503 (b) The hierarchy of methods described in paragraphs (1) through (4) of this subdivision
2504 to determine where the customer derives value from the service or other business activity must
2505 be applied sequentially.

2506 (1) A corporation must apportion the receipt to the location where the benefit of the
2507 service or other business activity is received.

2508 (2) A corporation may abandon the method of the hierarchy in paragraph (1) of this
2509 subdivision only if, after exercising due diligence, it lacks sufficient information to apply that
2510 method, in which case it must use the delivery destination.

2511 (3) If, after exercising due diligence, a corporation cannot apply the methods described in
2512 paragraphs (1) and (2) of this subdivision, it must source the receipts from that service or other
2513 business activity in the same way as those receipts were sourced in the preceding taxable year.

2514 (4) Lastly, if the corporation cannot apply the methods described in paragraphs (1), (2),
2515 and (3) of this subdivision after exercising due diligence, it must then source the receipts from
2516 that service or other business activity to New York by multiplying the amount of those receipts
2517 by a fraction, the numerator of which is the total of New York receipts for the current taxable
2518 year from the corporation's receipts from other services and other business activities apportioned
2519 using the methods described in paragraphs (1) and (2) of this subdivision, and the denominator of
2520 which is the total of the everywhere receipts for the current taxable year from the corporation's
2521 other services and other business activities apportioned using the methods described in
2522 paragraphs (1) and (2) of this subdivision.

2523 (c) Corporations should refer first to the special rules for determining where the benefit is
2524 received in section 4-4.3 of this Subpart prior to determining if a transaction qualifies as an
2525 intermediary transaction. Unless a special rule in section 4-4.3 of this Subpart applies, a
2526 corporation should then determine if the rules for intermediary transactions in section 4-4.8 of
2527 this Subpart apply before a corporation should refer to the rules for intermediary transactions
2528 prior to applying the other rules in this Subpart.

2529 (d) In exercising due diligence, the following standards apply:

2530 (1) (i) In applying the rules in this Subpart, if the required information is not readily
2531 available to the corporation, the corporation must make reasonable inquiries to a business
2532 customer to determine the information required by these rules.

2533 (ii) If the corporation has more than 250 business customers purchasing substantially
2534 similar services or other business activities as purchased by the particular customer that would be
2535 sourced under this Subpart and no more than 5 percent of receipts from such services or activities
2536 are from that particular customer, then inquiries are not required for that customer (“inquiries
2537 safe harbor”).

2538 (iii) If the corporation has more than 10,000 business customers purchasing substantially
2539 similar services or activities as purchased by the particular customer that would be sourced under
2540 this Subpart and no more than 5 percent of receipts from such services or activities are from that
2541 particular customer, then the benefit from such service or activity is presumed to be received at
2542 the customer’s billing address (“billing address safe harbor”).

2543 (2) Corporations must document the steps taken before abandoning each method of the
2544 hierarchy or step within a level of the hierarchy, such as moving from a special rule for
2545 determining where the benefit is received to the general rule for determining where the benefit is
2546 received, including documentation of reasonable inquiries made.

2547 (3) When the commissioner determines that the corporation had access to, or could have
2548 obtained upon reasonable inquiries when required, information at the time it filed its original
2549 return to apply a method of apportionment that comes earlier in the hierarchy than the method
2550 utilized by the corporation, the commissioner may require the corporation to use such method.

2551 (e) If there is a presumption in applying a method in the hierarchy, the presumption may
2552 be overcome by either the corporation or the Department.

2553 (1) The presumption may be overcome by the corporation if the corporation can prove,
2554 by clear and convincing evidence, that the method it proposes to use better reflects the location
2555 where the customer derives value from the service or other business activity. In such a case, the
2556 location to which the receipts from the service or other business activity will be sourced will be
2557 based on the evidence accumulated by the corporation. If the corporation believes it has
2558 overcome the presumption and uses an alternative method, upon audit the Department may
2559 examine the corporation's alternative method to determine if the presumption has been overcome
2560 and, if so, whether it was applied in a consistent manner for similar transactions.

2561 (2) The presumption may be overcome by the Department if the Department can prove,
2562 by clear and convincing evidence, that the method it proposes to use better reflects the location
2563 where the customer derives value from the service or other business activity, and that the
2564 corporation had access to, or could have obtained upon reasonable inquiries when required,
2565 information at the time it filed its original return that could have been used to apply the
2566 Department's method.

2567
2568 Section 4-4.3 Special Rules for Determining Where the Benefit is Received. (a) In
2569 applying the first method in the hierarchy described in paragraph (1) of subdivision (b) of section
2570 4-4.2 of this Subpart, a corporation must determine first if the type of receipt must be sourced
2571 using the special rules in this section. When applying the special rules in this section, the
2572 specific criteria to apply the special rules will be met regardless of whether the service or other
2573 business activity is provided directly by the corporation or on behalf of the corporation. The
2574 special rules apply to the receipts described in subdivisions (b) through (e) this section. If a
2575 corporation meets the specific criteria to apply a special rule, but does not have sufficient

2576 information to apply the rule, the corporation should use the rules for reasonable approximation
2577 to apply the special rule. However, if the corporation does not have sufficient information to
2578 apply the rules for reasonable approximation to the special rule, then the special rule no longer
2579 applies .

2580 (b) In-Person Services. Services rendered to the body of an individual or in the physical
2581 presence of an individual and, based on the nature of the service, requires the physical presence
2582 of an individual, are considered in-person services. Receipts from in-person services are
2583 apportioned under the rule in this subdivision. In addition, receipts from the facilitation of in-
2584 person services are apportioned under the special rule in this subdivision.

2585 (1) In-person services include, but are not limited to, medical and dental services,
2586 including medical testing and x-rays; childcare; hair cutting and salon services; live entertainment
2587 and athletic performances; modeling; and in-person training or lessons.

2588 (2) In-person services do not include (i) services that do not require significant in-person
2589 contact in order to perform, but nevertheless may include in-person contact, including, but not
2590 limited to, legal, accounting, or financial and consulting services, and (ii) the obligation to
2591 perform services or fund the performance of services that may or may not actually occur at an
2592 undetermined future date (e.g. facilitation of the purchase of insurance), although significant in
2593 person contact may ultimately occur when the service is actually performed.

2594 (3) The benefit of in-person services is presumed to be received at the location where the
2595 in-person service is performed.

2596

2597 (c) Services related to tangible personal property. Receipts from services related to
2598 tangible personal property, including the facilitation of services related to tangible personal

2599 property, are apportioned under the rule in this subdivision. Receipts from in-person services
2600 related to tangible personal property are apportioned under the rule in this subdivision, rather
2601 than the special rule for in-person services.

2602 (1) Services related to tangible personal property include, but are not limited to, repair
2603 services; dry cleaning; preparation and service of food or drink; towing; fulfillment; and
2604 equipment upgrades.

2605 (2) The obligation to perform services or fund the performance of services that may or
2606 may not actually occur at an undetermined future date (e.g., warranty services, facilitation of the
2607 purchase of insurance) is not a service related to tangible personal property, although a service
2608 may ultimately be performed on tangible personal property.

2609 (3) The benefit of services related to tangible personal property is presumed to be received at
2610 the location where the property is received after the service is performed.

2611 (d) Services related to real property. Receipts from services related to real property,
2612 including the facilitation of such services, are apportioned under the rule in this subdivision.
2613 Services related to real property include services that relate to the improvement or maintenance
2614 of the property and services that relate to the title, purchase, sale, rental, appraisal, assessment or
2615 basis in the property. Receipts from in-person services related to real property are apportioned
2616 under the rule in this subdivision, rather than the special rule for in-person services.

2617 (1) Services related to real property include, but are not limited to, architectural services,
2618 engineering services, landscaping, property maintenance, construction, demolition, security, land
2619 surveying, mortgage servicing, and real estate commissions.

2620 (2) The benefit of a service related to real property is presumed to be received where the
2621 real property is located.

2622 (e) Sales of intangible property. With respect to the net gains (not less than zero) from the
2623 sale of intangible property not otherwise addressed in subdivisions one through nine of section
2624 210-A, the benefit of such sale is presumed to be received at the location where the value of the
2625 intangible was accumulated. Intangible property includes, but is not limited to, goodwill,
2626 copyrights, patents, trademarks, trade names, brand names, licenses, and trade secrets.

2627

2628

2629 Section 4-4.4 General Rule for Determining Where the Benefit is Received. A
2630 corporation must include a receipt in New York receipts when the benefit of the service or other
2631 business activity is received by the corporation's customer in New York. Unless the corporation
2632 meets the specific criteria and has sufficient information necessary to apply the special rules in
2633 section 4-4.3 of this Subpart, determining where the benefit is received depends on whether the
2634 customer is an individual customer or a business customer.

2635 (a) Individual customer. In the case where the corporation's customer is an individual,
2636 the benefit of the service or other business activity is presumed to be received at the customer's
2637 billing address. If the corporation does not have the customer's billing address, it must use
2638 reasonable approximation.

2639 (b) Business customer. (1) Except in instances where the billing address safe harbor
2640 applies, the benefit of the service or other business activity is presumed to be received in New
2641 York, without regard to the billing address of the corporation's customer, if the customer
2642 receives the benefit of the service or other business activity in New York.

2643 (2) The benefit can be received at the location of a third party (e.g., the consumer) only in
2644 the case of an intermediary transaction. A third party does not include the customer's

2645 employees, agents, officers, partners (in the case of a partnership), managing members (in the
2646 case of a limited liability company), or shareholders (in the case of a New York S corporation).

2647 (3) Benefit received both within and without New York. Where the customer receives
2648 the benefit in New York and at least one other location, the corporation should source the
2649 receipts based on the percentage of value derived by the customer in each location where benefit
2650 is received.

2651 (c) Passive investment customer. (1) Services provided to passive investment customers
2652 are apportioned under the rules provided for in this subdivision unless a special rule for
2653 determining where the benefit is received is applicable.

2654 (2) In the case of a passive investment customer, the benefit of the service or other
2655 business activity is presumed to be received at the location where the contract is managed by the
2656 passive investment customer.

2657
2658 Section 4-4.5 Reasonable approximation based on customer information. (a) Where a
2659 corporation's books and records kept in the ordinary course of business and reasonable inquiries
2660 to the customer when required do not provide adequate information for apportionment of a
2661 receipt from a service or other business activity, then reasonable approximation must be used to
2662 determine where the benefit is received.

2663 (b) Definition. Reasonable approximation based on customer information is an alternative
2664 method used to determine the location or locations at which a customer receives the benefit of a
2665 service or other business activity in instances in which:

2666 (1)(i) the location or locations where the benefit is received and/or the percentage
2667 of benefit actually received in each location as a share of the total benefit received cannot
2668 be determined, or

2669 (ii) obtaining the location or locations where the benefit is received and/or the
2670 percentage of benefit received in each location as a share of the total benefit received
2671 would require the corporation to expend undue effort and expense beyond the standard
2672 amount of due diligence as required by this section; and

2673 (2) the corporation has sufficient information to reasonably approximate the
2674 location or locations where the benefit is received and/or the percentage of benefit received in
2675 each location as a share of the total benefit received.

2676 (c) Application of reasonable approximation based on customer information.

2677 (1) A corporation must use all available information in its books and records,
2678 including information obtained upon reasonable inquiries where required, and
2679 information publicly available about the location or locations where its actual customers
2680 receive the benefit of the service or other business activity.

2681 (2) When a corporation is required under this section to reasonably approximate,
2682 the corporation must use a method that is intended to approximate where the customer
2683 receives the benefit from the service or other business activity.

2684 (3) Sourced receipts method. In any instance where a corporation can ascertain the
2685 location or locations where a substantial portion of similar receipts are sourced (“sourced
2686 receipts”), but not all of such receipts, and the corporation reasonably believes, based on
2687 all available information, that the geographic distribution of the remainder of such
2688 receipts is substantially similar to that of the sourced receipts, it may source such receipts

2689 in the same proportion as its sourced receipts (the sourced receipts method). If the
2690 corporation reasonably believes, based on all available information, that the geographic
2691 distribution of the remainder of such receipts is different from that of the sourced
2692 receipts, and the corporation otherwise lacks sufficient information to use reasonable
2693 approximation either under this section or section 4-4.6 of this Subpart, it must next
2694 attempt to source such receipts under the method described in paragraph (2) of
2695 subdivision (b) of section 4-4.2 of this Subpart.

2696 (4) In any case in which a corporation uses a method of approximation to
2697 apportion its receipts and the commissioner determines that the method of approximation
2698 employed by the corporation is not reasonable, the commissioner may substitute a
2699 method of approximation that the commissioner determines is appropriate.

2700 (5) In any case in which the commissioner determines that a corporation's method
2701 of approximation is reasonable, but that it has not been applied in a consistent manner
2702 with respect to similar transactions, the commissioner may require that the corporation
2703 apply its method of approximation in a consistent manner.

2704 (6) In any case in which, after reasonable inquiries are made when required, the
2705 corporation does not have sufficient information based on its actual customers to use
2706 reasonable approximation, the taxpayer must next attempt to determine where the benefit
2707 is received using the rules for reasonable approximation based on general information.

2708

2709 Section 4-4.6 Reasonable approximation based on general information. (a) Where, after
2710 meeting the requirements of due diligence, a corporation lacks sufficient information to use the
2711 rules for reasonable approximation based on customer information to determine where the

2712 customer receives the benefit of the service or other business activity, the corporation must use
2713 reasonable approximation based on general information.

2714 (b) Definition. Reasonable approximation based on general information is an alternative
2715 method used to determine the location at which a customer receives the benefit of a service or
2716 other business activity in instances in which a general information measurement, such as the
2717 general population, a subset of the general population, or some other general metric reasonably
2718 reflects the geographic distribution of where the customer receives the benefit.

2719 (c) Application of reasonable approximation based on general information.

2720 (1) A corporation must use statistical information based on an appropriate measurement
2721 that reasonably approximates the location where customers receive the benefit of the service or
2722 other business activity.

2723 (2) In any case in which the commissioner determines that the corporation's method of
2724 approximation is not reasonable, the commissioner may substitute the use of a method that the
2725 commissioner determines is appropriate.

2726 (3) In any case in which the commissioner determines that the corporation's method of
2727 approximation is reasonable, but that it has not been applied in a consistent manner with respect
2728 to similar transactions, the commissioner must require that the corporation apply its method of
2729 approximation in a consistent manner.

2730 (d) In any case in which the corporation does not have sufficient information to
2731 reasonably approximate based on general information, the corporation must instead source its
2732 receipts to the delivery destination described in paragraph (2) of subdivision (b) of section 4-4.2
2733 of this Subpart.

2734

2735 Section 4-4.7 Delivery Destination.

2736 (a) When a corporation, after exercising due diligence, cannot determine or reasonably
2737 approximate where the business customer has received the benefit of a service or other business
2738 activity, it should include the receipt in New York receipts when the service or other business
2739 activity is delivered to the customer within New York.

2740 (b) The location where the service or other business activity is delivered is presumed to
2741 be the location at which the contract of sale is managed by the customer. If the corporation
2742 cannot determine the location where the contract of sale is managed by the customer, then the
2743 delivery destination is presumed to be the billing address of the customer. If, after applying due
2744 diligence, the corporation does not have adequate information to determine the delivery
2745 destination, the corporation must apply the method of the hierarchy described in paragraph (3) of
2746 subdivision (b) of section 4-4.2 of this, based on the sourcing of receipts for the preceding
2747 taxable year

2748

2749 Section 4-4.8 Rules for intermediary transactions.

2750 (a) In the case of intermediary transactions, the location where the receipt is sourced is
2751 determined using the hierarchy of methods described in paragraphs (1) and (2) of subdivision (b)
2752 of section 4-4.2 of this Subpart based on the location of the consumers, rather than the
2753 intermediary. If the corporation uses reasonable approximation based on the sourced receipts
2754 method to source its receipts from an intermediary transaction, it must apply that method only
2755 taking transactions with that particular intermediary into consideration.

2756 (b) In applying the hierarchy of methods described in paragraphs (1) and (2) of subdivision
2757 (b) of section 4-4.2 of this Subpart, the corporation is required to make inquiries to the

2758 intermediary, but not to the consumers, regardless of the number of business customers the
2759 corporation has or the percentage of receipts from any one customer, in order to determine the
2760 amount of receipts to source to New York based on the location of the consumers. Such
2761 inquiries may be fulfilled by the intermediary providing information from its books and records
2762 to the corporation that demonstrates the relevant information

2763 (c) If, after exercising due diligence, the corporation has inadequate information to apply
2764 the methods of the hierarchy described in paragraphs (1) and (2) of subdivision (b) of section
2765 4-4.2 of this Subpart with reference to the location of the consumers, the corporation should
2766 apply the methods of the hierarchy described in paragraphs (1) and (2) of subdivision (b) of
2767 section 4-4.2 of this Subpart based on the intermediary. If, after exercising due diligence, the
2768 corporation has inadequate information to apply the methods of the hierarchy described in
2769 paragraphs (1) and (2) of subdivision (b) of section 4-4.2 of this Subpart with reference to either
2770 the consumers or the intermediary, the corporation must then apply the methods of the hierarchy
2771 described in paragraphs (3) and (4) of subdivision (b) of section 4-4.2 of this Subpart.

2772 (d) This section does not apply in instances where the billing address safe harbor applies.
2773 In instances where the billing address safe harbor applies, the receipts shall be sourced to the
2774 billing address of the intermediary.

2775

2776 Section 4-4.9 Receipts for the Preceding Taxable Year.

2777 (a) When a corporation, after exercising due diligence, cannot determine the amount to
2778 include in New York receipts using the methods of the hierarchy described in paragraphs (1) and
2779 (2) of subdivision (b) of section 4-4.2 of this Subpart, it should source its receipts from that
2780 service or other business activity to New York based on the sourcing of receipts from the sales of

2781 that type of service or other business activity for the preceding taxable year. The amount
2782 included in New York receipts for the current taxable year is determined by multiplying such
2783 receipts by a fraction, the numerator of which is the amount included in New York receipts from
2784 the sales of that type of service or other business activity in the preceding taxable year and the
2785 denominator of which is the amount included in everywhere receipts from all such sales of that
2786 type of service or other business activity in the preceding taxable year. This method of the
2787 hierarchy cannot apply in a corporation's first taxable year beginning on or after January 1, 2015.
2788 In such tax year, a corporation must reject this method and move directly to the next method of
2789 the hierarchy described in paragraph (4) of subdivision (b) of section 4-4.2 of this Subpart based
2790 on receipts for the current taxable year.

2791

2792 Section 4-4.10 Receipts for Current Taxable Year.

2793 When a corporation, after exercising due diligence, cannot determine the amount to
2794 include in New York receipts using the methods in the hierarchy described in paragraphs (1), (2)
2795 and (3) of subdivision (b) of section 4-4.2 of this Subpart, it must source the receipt from that
2796 service or other business activity to New York based on the sourcing of all those current taxable
2797 year receipts for all other services and other business activities that can be sourced using the in
2798 such paragraphs (1) and (2). The amount included in New York receipts for the current taxable
2799 year is determined by multiplying such receipts by a fraction, the numerator of which is the
2800 amount included in New York receipts from all services and other business activities that can be
2801 sourced using the methods described in paragraphs (1) and (2) of subdivision (b) of section 4-4.2
2802 of this Subpart for the current taxable year and the denominator of which is the amount included

2803 in everywhere receipts from services and other business activities sourced using the methods in
2804 described in such paragraphs (1) and (2) for the current taxable year.

2805

2806 Section 4-4.11 Examples. For purposes of these examples, it can be assumed that the
2807 corporation has met all the requirements of due diligence unless otherwise provided and that the
2808 billing address safe harbor does not apply.

2809 Example 1: Audit Corp is located in New York and provides accounting and tax
2810 services. Audit Corp contracts with Client Corp to audit the books and records of Client
2811 Corp's three locations in State A, State B and New York. Client Corp's managers of the
2812 three locations make several visits to Audit Corp to provide their respective locations'
2813 books and records to the auditors assigned to the respective audits and to address periodic
2814 inquiries. In its books and records, Audit Corp tracks the hours each of its auditors spent
2815 on the respective audits of the three locations. Audit Corp bills Client Corp for its
2816 services using the same hourly rate for each of its auditors.

2817 Audit Corp's services are not considered an in-person service because, although there
2818 was in-person contact, it was not required for Audit Corp to be able to perform its
2819 service. Therefore, Audit Corp must apply the general rule for determining where the
2820 benefit is received. It determines the benefit is received by Client Corp at each location
2821 based on Audit Corp's books and records. The amount Audit Corp includes in its New
2822 York receipts is the hourly charge spent on audits of the New York location. All of Audit
2823 Corp's receipts from Client Corp are included in everywhere receipts.

2824

2825 Example 2: Teaching Corp provides in-person seminars in New York to individuals and
2826 business customers. The seminars and the materials used in connection with the seminars
2827 are prepared outside New York, the teachers who teach the seminars include teachers that
2828 are not New York residents, and the students who attend the seminars include students
2829 that are not New York residents. Since the customers are in the same location as
2830 Teaching Corp when the service is provided, it is deemed to be an in-person service and
2831 the special rule for determining where the benefit is received applies. As such, it is
2832 presumed that the benefit is received at the location where the service is performed,
2833 which is New York. One hundred percent of such receipts are included in New York
2834 receipts and everywhere receipts.

2835
2836 Example 3: Watch Corp is a watch repair corporation with retail locations in multiple
2837 states including New York. The repair work is performed at Watch Corp's New York
2838 location. In some instances, the customer takes back possession of the watch in New
2839 York. In other instances, the customer requests that the repaired watch be shipped to his
2840 or her home address. Since the repair is completed on the customer's watch, which is
2841 tangible personal property, it is considered a service related to tangible personal property.
2842 Therefore, the special rule for determining where the benefit is received for services
2843 related to tangible personal property applies and it is presumed that the benefit is received
2844 at the location where the property is received after the service is performed. In those
2845 instances, where the customer takes back possession of the watch in New York, the
2846 benefit is received in New York because the customer receives the repaired watch in New
2847 York and the receipts for the repair work are included in New York receipts. In those

2848 instances, where the customer has the watch shipped to his or her home address, the
2849 benefit is received in New York only if the watch is shipped to a home address in New
2850 York. In both instances, all of the receipts are included in everywhere receipts.

2851

2852 Example 4: Troubleshooting Corp operates a call center located in New York that
2853 provides troubleshooting services for use of home appliances over the telephone to
2854 individual customers located throughout the United States. The contract between
2855 Troubleshooting Corp and its customers provides that, for a fee per call, the customer can
2856 call Troubleshooting Corp and the call center employee will walk the customer through
2857 troubleshooting his or her appliance. Although provided over the telephone, this service
2858 includes a level of human interaction and, therefore, it is not a digital service and must be
2859 sourced under the rules in this Subpart.

2860 Home appliances are tangible personal property so the service Troubleshooting Corp is
2861 providing is related to tangible personal property. Under the special rule for determining
2862 where the benefit is received for services related to tangible personal property, the benefit
2863 is presumed to be received at the location where the property is received after the service
2864 is performed. However, Troubleshooting Corp does not have information on where the
2865 tangible personal property was received by the customer or where it is currently located.
2866 It only has the billing address of its customer. Therefore, Troubleshooting Corp uses the
2867 billing addresses of its customers to reasonably approximate where the tangible personal
2868 property is located and will include receipts in New York receipts to the extent that
2869 customers have billing addresses located in New York. Troubleshooting Corp must

2870 include one hundred percent of its receipts from troubleshooting services in everywhere
2871 receipts.

2872

2873 Example 5: Law Corp, located in State C, is hired by Client Corp to handle a major
2874 litigation matter concerning the sale of its manufacturing plant located in New York.

2875 Client Corp has manufacturing plants in New York and State B. The trial takes place in
2876 State C, which is the location of the opposing party in the lawsuit. The court documents,
2877 which are public records, reflect that the subject matter is the manufacturing plant located
2878 in New York. Because Law Corp's entire service is related to the manufacturing plant,
2879 which is real property, the special rule for determining where the benefit is received for
2880 services related to real property applies. Therefore, the benefit is presumed to be
2881 received by Client Corp at the location of the manufacturing plant. Therefore, Law Corp
2882 must include one hundred percent of its receipts from Client Corp in both New York
2883 receipts and everywhere receipts.

2884

2885 Example 6: Consulting Corp provides two main types of facility consulting services—
2886 licensing requirements and environmental compliance. Consulting Corp has 60 business
2887 customers who have hired them to obtain applicable permits and licenses and 200
2888 business customers who have hired them to provide environmental compliance services.
2889 Despite the differing subject matter, the consulting services are substantially similar
2890 enough that Consulting Corp may use the inquiry safe harbor.

2891 Consulting Corp provides environmental compliance services to QRS, a federal
2892 government agency, which has one regional office located in New York and 11 regional

2893 offices located in other states. The contract, which is managed in State B, provides that
2894 Consulting Corp will provide consulting services to help QRS run its internal operations
2895 at all 12 office buildings in an environmentally compliant manner. However, Consulting
2896 Corp only knows the number of offices and does not have any information about the size
2897 of the regional offices. Consulting Corp is not required to make inquiries as it qualifies
2898 for the inquiries safe harbor. As no special rules for determining where the benefit is
2899 received apply to the services offered by Consulting Corp, it must apply the general rule
2900 for determining where the benefit is received. Since Consulting Corp does not have exact
2901 information about where the benefit is received, it can reasonably approximate based on
2902 customer information where the benefit is received by including 1/12 of its receipts from
2903 QRS in New York receipts. One hundred percent of such receipts are included in
2904 everywhere receipts.

2905
2906 Example 7: Consulting Corp provides consulting services to determine the safety of train
2907 tracks to 200 business customers, including Train Corp. Consulting Corp provides
2908 consulting services to Train Corp in relation to a portion of train service that runs through
2909 New York and 5 other states for a flat fee. As this is a service related to real property,
2910 the special rule for determining where the benefit is received for services related to real
2911 property applies. Under that rule, the benefit is presumed to be received at the location of
2912 the property. Because the real property involved is located within six states, it is
2913 necessary to look to Consulting Corp's books and records to determine the share of the
2914 benefit received at the real property located in New York.

2915 Some areas of the track are more heavily traveled than others, requiring more attention,
2916 and some portions of the track require special attention, such as where signals are located.
2917 Consulting Corp's books and records indicate only the location of the tracks its services
2918 relate to and how many miles of track are located in New York and each of the 5 other
2919 states. Upon reasonable inquiries, Consulting Corp cannot obtain additional information
2920 to determine specifically where Train Corp receives the benefit of its service. Consulting
2921 Corp should reasonably approximate based on customer information where the benefit is
2922 received by multiplying the total receipts it receives from Train Corp by a fraction, the
2923 numerator of which is the miles of track its service relates to located within New York
2924 and the denominator of which is the total miles of track its service relates to located
2925 within and without New York. Consulting Corp must include one hundred percent of its
2926 receipts from Train Corp in everywhere receipts.

2927
2928 Example 8: Furniture Sales Corp owns showroom locations in various states and acts as
2929 a sales agent of Couch Corp. Pursuant to the agreement between the two parties,
2930 Furniture Sales Corp receives a commission on each piece of furniture it sells. A
2931 salesperson at Furniture Sales Corp's State A location received an order for a couch from
2932 a customer and, as part of the process, documents that the customer would like the couch
2933 delivered in New York. Furniture Corp's commission is earned for a service related to
2934 tangible personal property (the couch) and the special rule for determining where the
2935 benefit is received applies. As such, the benefit of its service is presumed to be received
2936 at the location where the tangible personal property is received after the service is
2937 performed. Therefore, the commission is sourced to the delivery address. One hundred

2938 percent of Furniture Sales Corp's commission is included in both New York receipts and
2939 everywhere receipts.

2940

2941 Example 9: Architect Corp, located in New York, provides architectural services to
2942 Developer Corp, located in State A, to design the floor plan of homes to be built at one of
2943 the development sites owned by Developer Corp. Developer Corp knows the floorplan
2944 will be used at one of its developments, but Developer Corp will not know which
2945 floorplan goes to which site until it enters into contracts with homebuyers. Architect Corp
2946 is providing a service related to real property. Therefore, the special rule for determining
2947 where the benefit is received for services related to real property provides that the benefit
2948 of the service is presumed to be received at the location of the real property. As Architect
2949 Corp does not know where the real property is located to source the receipt based on the
2950 special rule for services related to real property and reasonable inquiries to the Developer
2951 Corp do not yield that information, it must use reasonable approximation based on
2952 customer information to determine the real property location. The books and records,
2953 including the contract with Developer Corp, indicate that Developer Corp owns two
2954 development sites, one in New York and one in State A. Therefore, Architect Corp must
2955 use reasonable approximation to source the receipt between these two locations and
2956 include 50 percent of the receipt in New York receipts. One hundred percent of the
2957 receipts are included in everywhere receipts.

2958

2959 Example 10: Retail Corp offers extended warranties on computers purchased by
2960 individual customers for personal use for a flat fee. The extended warranty covers both

2961 the computer hardware and any software installed on the computer. To utilize the
2962 warranty, customers bring the computer to any of Retail Corp's locations for repair.
2963 Once the repair is complete, customers have the choice to take back possession of the
2964 computer at Retail Corp's location where the repair was completed or request that the
2965 repaired computer be shipped to the customer's address.

2966 The amount Retail Corp receives for the extended warranty is a commingled receipt as
2967 the warranty price does not separately state the portion of the receipt that is for hardware
2968 repairs (subject to the rules in this section) and software repairs (otherwise subject to the
2969 rules for receipts from digital products and digital services). As a result, the entire
2970 amount is properly sourced under the rules in this section. The sale of the warranty is the
2971 sale of an obligation to perform a service at an undetermined future date. Therefore, the
2972 receipt does not qualify as a sale of a service related to tangible personal property and
2973 instead must be sourced under the general rule for determining where the benefit is
2974 received. Retail Corp's customers are individuals, so the benefit is presumed to be
2975 received at the customers' billing addresses. Retail Corp includes receipts from sales of
2976 extended warranties to customers with billing addresses in New York in New York
2977 receipts. One hundred percent of its receipts from the sales of extended warranties are
2978 included in everywhere receipts.

2979 Example 11: Model Agency Corp contracts with individual models to connect the models
2980 with modeling jobs in exchange for a commission. The contract between Model Agency
2981 Corp and the model specifies the commission that Model Agency Corp receives for each
2982 modeling job it books. In addition, such contract requires that Model Agency Corp
2983 receives all payments the model is entitled to for his or her service and provides that

2984 Model Agency Corp must retain its commission from the payments and pass the
2985 remainder on to the model.

2986 Modeling Agency Corp contracts with two such models, Model 1 who lives in New York
2987 and Model 2 who lives in State Z. Modeling Agency Corp books both models for a
2988 photoshoot in New York with ClothesCo. ClothesCo pays the models' fees to Modeling
2989 Agency Corp, which keeps a portion as its commissions and remits the remainder to the
2990 models. Although Modeling Agency Corp collected the fees from ClothesCo, it is
2991 receiving a commission from its contract with each Model.

2992 The service provided by Modeling Agency Corp is booking the models for the
2993 photoshoot. The models are providing an in-person service to ClothesCo because they
2994 must be physically present for the photoshoot. Therefore, the receipt received by
2995 Modeling Agency Corp is a commission for the facilitation of an in-person service.
2996 Therefore, the special rule for determining where the benefit is received for in-person
2997 services provides that the benefit is presumed to be received at the location where the in-
2998 person service is performed, which is the location of the photoshoot. The commissions
2999 Model Agency Corp receives from Model 1 and Model 2 are included in New York
3000 receipts. One hundred percent of its receipts from commissions it receives are included
3001 in everywhere receipts.

3002
3003 Example 12: Statistics Corp provides data compilation and analysis services that will be
3004 used in policymaking for TUV, a federal government agency, which has regional offices
3005 throughout the United States. Statistics Corp's only contact with TUV is with its main
3006 office located in State A, and Statistics Corp does not know the locations of TUV's other

3007 offices, nor which of TUV's offices focus on policymaking and which focus on direct
3008 client services. After reasonable inquiries, Statistics Corp does not have any additional
3009 information as to which regional offices will use the data compilation and analysis
3010 services. Furthermore, a general information measurement such as population
3011 information would not be relevant because the compilation and analysis services are used
3012 by employees rather than the general public. Because no special rules for determining
3013 where the benefit is received apply and Statistics Corp does not have adequate
3014 information to determine where the benefit is received, or even to apply reasonable
3015 approximation, Statistics Corp is required to source the receipts based on the delivery
3016 destination of its services. Since the contract of sale is managed by TUV's main office in
3017 State A, the receipts are not included in New York receipts. One hundred percent of the
3018 receipts are included in everywhere receipts.

3019
3020 Example 13: Sales Corp provides only one type of service to approximately 200 business
3021 customers and the service is not subject to the special rules for determining where the
3022 benefit is received. In tax year 2017, all of its receipts were sourced using the method of
3023 the hierarchy described in paragraph (3) of subdivision (b) of section 4-4.2 of this
3024 Subpart, and, as a result 45 percent of Sales Corp's receipts were included in New York
3025 receipts. In tax year 2018, Sales Corp continues to provide only one type of service to its
3026 customers. At the end of tax year 2018, Sales Corp's computer system crashes and it is
3027 unable to recover information it had obtained on where the benefit of its services were
3028 received or where the services were delivered. Upon reasonable inquiries to its known
3029 customers, Sales Corp still cannot obtain information on where the benefits were received

3030 or where the services were delivered. Therefore, Sales Corp must include 45 percent of
3031 its 2018 receipts in its 2018 New York receipts. One hundred percent of receipts sourced
3032 under this section are included in everywhere receipts.

3033
3034 Example 14: Taxpayer A has \$10,000 in receipts from a new type of service subject to
3035 this Subpart. Since the service is not subject to any of the special rules for determining
3036 where the benefit is received, Taxpayer A must exercise due diligence to determine
3037 where the customer received the benefit or where the service was delivered. As Taxpayer
3038 A cannot determine those locations, it must determine the portion of the \$10,000 to
3039 include in New York receipts based on the methods of the hierarchy described in
3040 paragraphs (1) and (2) of subdivision (b) of section 4-4.2 of this Subpart in the current tax
3041 year. In the current tax year, Taxpayer A has \$150,000 in other business receipts sourced
3042 under the methods of the hierarchy described in paragraphs (1) and (2) of subdivision (b)
3043 of section 4-4.2 of this Subpart, of which \$75,000 (or 50 percent) are New York receipts.
3044 Therefore, Taxpayer A would include 50 percent of the \$10,000, or \$5,000, of receipts
3045 from the new type of service in New York receipts. One hundred percent of receipts
3046 from the new type of service are included in everywhere receipts.

3047 Example 15: Loan Corp (the taxpayer) is based in New York and operates offices
3048 whereby individuals and businesses can discuss loan options and obtain a loan from
3049 unrelated lenders. Loan Corp also will service the loans it procures. Bank Corp (the
3050 intermediary) enters into a contract with Loan Corp whereby Bank Corp will pay Loan
3051 Corp a fee to procure borrowers (consumers) and a fee to handle servicing of loans

3052 financed by Bank Corp. Loan Corp handles all interactions with the consumers, who
3053 have no contact or interaction with Bank Corp directly.

3054 Loan Corp assists a business consumer in obtaining a mortgage loan from Bank Corp to
3055 purchase an office building in State C. Because this service is related to real property,
3056 Loan Corp must use the special rule for determining where the benefit is received for
3057 services related to real property. The benefit of both the procurement fee and the
3058 servicing fee is presumed to be received at the location of the real property.

3059 Loan Corp assists an individual who is a resident of State D, in obtaining a personal loan
3060 from Bank Corp. Loan Corp sends monthly bills to the borrower during the term of the
3061 loan. Loan Corp's receipts from Bank Corp for procuring the borrower and servicing the
3062 loan is an intermediary transaction because pursuant to its contract, Loan Corp is
3063 providing a service at the direction of Bank Corp directly to the location of the consumer.
3064 These receipts are not included in New York receipts because the individual's billing
3065 address is in State D. One hundred percent of such receipts are included in everywhere
3066 receipts.

3067 Example 16: Debt Collection Corp (the taxpayer) has offices in New York and State A.
3068 Student Loan Corp (the intermediary), which is located in State C, enters into a contract
3069 with Debt Collection Corp whereby Student Loan Corp will pay Debt Collection Corp a
3070 fee to collect outstanding debt owed to Student Loan Corp by borrowers (consumers).
3071 Debt Collection Corp communicates with borrowers by phone and email, and collects
3072 outstanding debt directly from borrowers who make debt payments online to Debt
3073 Collection Corp. After retaining a portion of the payment as its fee, Debt Collection
3074 Corp remits the remainder of the collected money to Student Loan Corp electronically.

3075 Despite the electronic means to perform its work and transfer funds, the service has not
3076 been fully automated and there is a non-incidental level of human interaction, thus Debt
3077 Collection Corp's activities do not satisfy the definition of a digital service. Therefore,
3078 the receipt is to be sourced using the rules in this Subpart. Debt Collection Corp is
3079 providing a service to Student Loan Corp, who instructs Debt Collection Corp to collect
3080 from borrowers on its behalf. This service is provided directly to the location of the
3081 consumers at Student Loan Corp's direction, which meets the definition of an
3082 intermediary transaction. Therefore, Debt Collection Corp must source the receipt from
3083 the fee earned from Student Loan Corp to the location of the consumers.

3084 Debt Collection Corp uses the billing addresses of the consumers to include receipts in
3085 New York receipts to the extent that consumers have billing addresses located in New
3086 York. Debt Collection Corp must include one hundred percent of its receipts from the
3087 service provided to Student Loan Corp in everywhere receipts.

3088 Example 17: Credit Score Corp has a contract with Credit Card Corp to provide credit
3089 rating services to Credit Card Corp for individuals applying for credit cards. Credit Card
3090 Corp receives all credit rating services at its corporate office in State A where it makes
3091 determinations on whether or not to issue credit cards to applicants. Applicants from all
3092 over the country submit applications to Credit Card Corp who then provides information
3093 about the applicants to Credit Score Corp to receive a credit rating. Credit Score Corp
3094 issues the rating for each applicant to Credit Card Corp who utilizes this information to
3095 make a determination as to whether or not Credit Card Corp will issue the applicant a
3096 credit card. This is not an intermediary transaction because the service is provided by
3097 Credit Score Corp directly to Credit Card Corp and is not passed on to the applicants

3098 applying for the credit cards. Because Credit Card Corp utilizes the service entirely in
3099 State A where it makes credit determinations on credit card applications, Credit Score
3100 Corp does not include the receipt in New York receipts. One hundred percent of such
3101 receipt is included in Credit Score Corp's everywhere receipts.

3102 Example 18: Production Corp enters into a contract with Cable Network Corp to provide
3103 the service of producing a made-for-television movie. Production Corp delivers the
3104 television production to Cable Network Corp's New York office, which is the office
3105 location responsible for contracting for the production and determining its usage. The
3106 production service receipt is not considered an intermediary transaction because the
3107 production service is not provided by Production Corp directly to Cable Network Corp's
3108 consumers at the direction of Cable Network Corp and the production service is
3109 completed prior to Cable Network Corp determining if and when the production will be
3110 aired.

3111
3112 As Cable Network Corp receives the benefit of this service at its New York office, the
3113 entire receipt is included in both New York receipts and everywhere receipts.

3114
3115 Example 19: Credit Ratings Corp, located in New York, has a contract with Debt Issuer
3116 Corp whereby Credit Ratings Corp opines, via the assignment of a letter grade, on the
3117 creditworthiness of Debt Issuer Corp's debt obligation. The rating does not constitute a
3118 recommendation of the suitability of an investment for any particular investor. Credit
3119 Ratings Corp may issue the rating via press release, which allows potential investors to
3120 consider the rating/letter grade. Credit Ratings Corp also includes the rating in its

3121 database of ratings on its website, which allows for public viewing. However, the
3122 principal element of the service is the development of the rating; any dissemination via
3123 digital means is incidental to such service. Therefore, the receipt is sourced under the
3124 rules in this Subpart. Furthermore, this service does not constitute an intermediary
3125 transaction because the rating is not provided by Credit Ratings Corp directly to
3126 individual investors at Debt Issuer's direction. In addition, the rating is not provided to
3127 Debt Issuer Corp to pass along directly to individual investors. For this reason, the
3128 receipt must be sourced to the location at which Debt Issuer Corp receives the benefit of
3129 the service. Credit Rating Corp's books and records indicate that the rating is being
3130 sought on the advice of Debt Issuer's corporate finance division, which is responsible for
3131 overall fiscal strategy and execution and is located in State A. Therefore, the receipt is
3132 not included in Credit Rating Corp's New York receipts. One hundred percent of such
3133 receipt is included in Credit Rating Corp's everywhere receipts.

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