Proposed Special Apportionment Regulation Based on Workgroup Suggestions Updated 4/12/2016:

If the denominator of the receipts factor is [SEE MASS di minimis language] under [REF. STATUTORY PROVISIONS DEFINING/OR EXCLUDING RECEIPTS] then the following rules shall apply to the extent they effectuate an equitable allocation and apportionment of the taxpayer's income (or loss):

1) The receipts factor shall include:

a) ~~If the predominance of the taxpayer's income is derived~~ Receipts from interest and ~~related~~ investment income from the maturity, redemption, sale, exchange or other disposition of [marketable] securities, ~~then~~ which shall be included in numerator of the receipts factor for this state to the extent those receipts would be sourced to this state under the ~~by treating that taxpayer as a financial institution under this state's apportionment statutes, regulations or rules applicable to those institutions~~ [financial institution receipts factor rules];

b) ~~If the predominance of the taxpayer's income is derived~~ Receipts from dividends paid by a related party [as defined in Sec. 17 or other state law], ~~that incomet~~ which shall be included in the numerator of the receipts factor for this state on an apportioned basis, as follows ~~may be apportioned~~:

i) Using the dividend payor's apportionment factor~~s~~ [or property and payroll factors] for this state for the year in which the dividend was paid, if available, or the most recent year available, or

ii) If it can be shown that the dividend relate~~sd~~ to income earned in periods other than the year in which the dividend was paid, using of the payor's apportionment factor~~s~~ [or property and payroll factors] for this state ~~from~~ for that period;

2) ~~If the predominance of the~~ To the extent the taxpayer's income is derived from capital gains or losses from the disposition of a business, business segment or capital asset used in the unitary business, then by apportioning the taxpayer's income as follows:

i) If the capital gain is recognized in a tax period of six months or less, using the prior tax year's property and payroll factors of the business entity or business segment being disposed of; provided that, if more than 50% of the capital gain represents goodwill or other intangible value, by using the receipts factor of the business entity;

ii) If the capital gain is recognized in a tax period of longer than six months ~~or longer~~, using the current year's property and payroll factors of the business entity or business segment being disposed of; provided that, if more than 50% of the capital gain represents goodwill or other intangible value, by using the receipts factor of the business entity;

3) If ~~paragraphs (a), (b), or (c)~~ sections (1) and (2) do not apply, then the taxpayer's net income or loss will be apportioned as follows:

i) Using property and payroll factors of the taxpayer [for states that have property and payroll factors];

Comment [HH1]: Michael has provided language that uses a percentage rather than zero here and the group discussed that a percentage of gross receipts might be a better way to go. That MASS language will be posted in a separate document on the project page. (See (11)(b) of that document: A factor is inapplicable and, consequently, is not used to calculate a taxpayer's apportionment percentage if the denominator of the factor is less than 3.33 percent of the taxpayer's taxable net income, or if the factor is otherwise determined to be insignificant in producing income.

Comment [HH2]: The group discussed that we may not need this type of limitation and it could be difficult to apply.

Comment [HH3]: In general, the process of making this work for unrelated parties was discussed and the group concluded that the rule should be limited to dividends paid by related parties.

Comment [HH4]: Suggested by Holly but not discussed by the group.

ii) Using a receipts factor which includes any gross receipts of the taxpayer in the factor and includes the portion of those receipts in the numerator for this state to the extent the related costs of performance of the activities generating the receipts are in this state;

Comment [HH5]: Suggested by Helen as another alternative. (Note this may be included here or in section 1 above.)

~~i)~~iii) If the taxpayer is a member of a unitary group of corporations but is filing a return as a separate entity, the taxpayer's income may be apportioned using the factors applicable to that combined group;

~~ii)~~iv) Otherwise, the taxpayer's income may be apportioned using the apportionment factors of the owner of the preponderance of beneficial interests in that taxpayer.

4) If the taxpayer's income cannot be equitably apportioned under paragraphs above, the taxpayer's income may be apportioned to this state in a manner which reflects the extent to which the taxpayer's income was derived from this state in comparison to other states provided that this method would not result in a substantial portion of the income being apportioned to more than one taxing jurisdiction, or not apportioned to any taxing jurisdiction.