Proposed Special Apportionment Regulation Based on Workgroup Suggestions Updated 12/05/16:

Where the taxpayer's receipts, as defined by [Compact Article IV.1.g] are less than 3.33% of the taxpayer's gross receipts [as defined by Model Allocation and Apportionment Regulation IV.2.(a)(5),] the rules set forth herein shall be applied in calculating the taxpayer's receipts factor. These rules for calculating the receipts factor may also apply, in the discretion of the tax commissioner, in other circumstances in which the apportionment formula does not fairly represent the extent of the taxpayer's business activity in the state.

1) In the case of any taxpayer with gross receipts consisting of interest, investment income, dividends from related parties, or proceeds from the disposition of a business or business segment, those gross receipts, to the extent included in apportionable income, shall be assigned as follows:

   (a) ~~Dividends paid by a related party [as defined in Sec. 17 or other state law], shall be included in the receipts factor denominator and included in the receipts factor numerator of this state to the same extent as the dividend payor's average apportionment factor [or property and payroll factors] were in this state in the year in which the dividend was paid, provided that, where the payor's apportionment factor in the year of payment does not fairly reflect the source of the income from which the dividends were paid, the percentage of dividend payor's average apportionment factor[s] [or property and payroll factors] in this state for the years in which those earnings were generated;~~

   ALTERNATIVE (a): Dividends paid by a related party [as defined in Sec. 17 or other state law], shall be included in the receipts factor denominator and included in the receipts factor numerator of this state to the extent the dividend payor's average apportionment factor for the year in which the dividend was paid is in this state, provided that, where the payor's apportionment factor in that year fails to reflect of the source of the earnings from which the dividends paid, the dividends shall be included in the receipts factor numerator to the extent the dividend income was derived from business activity [or: sources] within this state;

   (b) Capital gains (but not capital losses) deriving from the disposition of the stock or other intangible property rights representing an ownership interest of a business entity shall be included in the denominator and shall be included in the numerator in [this state] to the same extent as the entity's average apportionment factors were assigned to this state in the year preceding the disposition. Capital gains (but not capital losses) deriving from the disposition of the assets of a business or business segment shall be included in the denominator and shall be included in the numerator in [this state] to the same extent as those assets were located in this state in the year preceding the disposition.

   (c) Receipts arising from those activities described in Sections 3(d) through 3(j) of the MTC's Formula for the Apportionment and Allocation of the Net Income of Financial Institutions Model Statute (as adopted July 29, 2015) [or this state's financial institution receipts factor rules] shall be included in numerator of the receipts factor for this state to the extent those receipts would be sourced to this state under [this state's financial institution receipts factor rules] or [under

Comment [BJF1]: Group agreed this could be eliminated in favor of Alternative A.

Comment [BJF2]: Group wanted more specificity on extent of look-through. Your reporter couldn't figure out how to accomplish that.

Comment [BJF3]: Added provision to cover sourcing of capital gains arising from non-stock sales of unincorporated businesses (e.g., LLC rights or partnership interests).

Comment [BJF4]: Separated out disposition of business segment assets from sales of intangible ownership interests the MTC's Formula for the Apportionment and Allocation of the Net Income of Financial Institutions Model Statute (as adopted July 29, 2015),

(d) Receipts derived from accounts receivable sold to or otherwise transferred to the taxpayer, to the extent they cannot be sourced under Subsection (c), shall be included in the denominator of the receipts factor and shall be included in the numerator of the receipts factor for this state to the extent those amounts are collected from borrowers in this state.

(e) The net amount [but not less than zero] of receipts not sourced under Sections (b-d) arising from investment activities, including the holding of or the maturity, redemption, sale, exchange or other disposition of [marketable securities or cash, shall be included in numerator of the receipts factor for this state to the extent those receipts would be sourced to this state under [this state's financial institution receipts factor rules] or [under the MTC's Formula for the Apportionment and Allocation of the Net Income of Financial Institutions Model Statute (as adopted July 29, 2015), Section 3(n), if this state has not adopted a special apportionment rule or statute for financial institutions];

2) If the taxpayer has gross receipts that are not included in the receipts factor pursuant to Section (1), and the state requires the use of multiple factor apportionment formulas, those gross receipts shall be included in the denominator of the receipts factor and included in the numerator of the receipts factor of this state by using the remaining apportionment factors and percentages applicable to that taxpayer where those factors are *non-deminimis*.

3) If the taxpayer has gross receipts that are not apportioned pursuant to Sections (1) and (2), those gross receipts shall be included in the denominator of the receipts factor and shall be included in the numerator of the receipts factor of this state in the same ratio as:

(a) the receipts factor of the remainder of the combined or consolidated group if the taxpayer's income and factors are included on a combined or consolidated return filed in this state; or
(b) the receipts factor applicable to the owner of a preponderance of beneficial interests in that taxpayer, if the taxpayer is filing as a separate entity in this state.

4) To the extent application of the preceding subsections fails to result in an equitable apportionment of the taxpayer's gross receipts, the taxpayer's receipts factor shall be calculated in a manner which reflects the extent of the taxpayer's business presence in this state.

Alternative Catch-alls:

[references cost of performance]

4 (a) To the extent application of the [preceding subsections] fails to result in an equitable apportionment of the taxpayer's gross receipts, the taxpayer's receipts factor shall be calculated in a manner which reflects the extent of the taxpayer's business presence in this state as determined by the percentage of income-producing activity in this state as measured by the costs of performance for that activity.

[references income derived from state, not business presence]

Comment [BJF5]: Group was concerned that taxpayers holding accounts receivable could use either C or D for sourcing income. This treatment gives preference to using Section C where possible, but the results should be the same under either section. Your reporter didn't want to add this subsection on accounts factoring companies since Subsection C references an established regulatory framework that should be left alone to work its magic.

4 (b) To the extent application of the [preceding subsections] fails to result in an equitable apportionment of the taxpayer's gross receipts, the taxpayer's receipts factor shall be calculated in a manner which reflects the extent to which the taxpayer's income (or loss) was derived from this state in comparison to other states, provided that this method would not result in a substantial portion of the income (or loss) being apportioned to more than one taxing jurisdiction, or not apportioned to any taxing jurisdiction.