Proposed Special Apportionment Regulation Based on Workgroup Suggestions Updated 5/2/16:

If the denominator of the receipts factor as calculated pursuant to [Compact Article IV], is [3.33% or less of the taxpayer's gross receipts] [insubstantial in comparison with the taxpayer's gross receipts] then the following rules shall apply to the extent they effectuate an equitable apportionment of the taxpayer's income (or loss):

1) In the case of any taxpayer deriving more than [20%] of its gross receipts from interest and investment income, dividends from related parties, or capital gains, those receipts shall be apportioned as follows:

2)

(a) [Gross] Receipts from interest and investment income from the maturity, redemption, sale, exchange or other disposition of [marketable] securities, 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 this state's[financial institution receipts factor rules][or the MTC Model Financial Institutions statute, if this state has not adopted a special apportionment rule or statute for financial institutions] ;

(b) [Gross] Receipts from dividends paid by a related party [as defined in Sec. 17 or other state law], shall be apportioned to this state as follows:

i) Using the dividend payor's state apportionment factor [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) Where the dividend derives from [relates to] income earned in periods other than the year in which the dividend was paid, using of the payor's apportionment factor [or property and payroll factors] for this state for that period;

(c) Capital gains or losses from the disposition of a business, business segment or capital asset used in the unitary business shall be apportioned 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, 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;

2) To the extent the taxpayer's income (or loss) is not apportioned pursuant to Section (1), and the state requires the use of multiple factor apportionment formulas, the taxpayer's income (or loss) shall be apportioned to this state to the extent the taxpayer's property and payroll is located in this state.

Comment [HH1]: The group has discussed whether this is necessary and workable.

Comment [BJF2]: Michael Fatale has questioned whether the "California rule" for capital gains (including the short year return distinction) is needlessly complex for our needs...

Comment [BJF3]: Holly suggests this placement as making use of property and payroll the first default for 3-factor states.

3) To the extent the taxpayer's income (or loss) is not apportioned pursuant to Section (1), and the state apportions income pursuant to the receipts factor only:

   (a) 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 (or loss) shall be apportioned to this state to the extent the combined group's receipts are in this state;

   (b) If the taxpayer is not a member of a unitary group of corporations, the taxpayer's income shall be apportioned to this state to the extent the apportionment factors of the owner of the preponderance of beneficial interest in that taxpayer are in this state.

4) To the extent application of Sections (1), (2) and (3), where applicable, fail to result in an equitable apportionment of the taxpayer's income (or loss), the income (or loss) shall be apportioned to this state in a manner which reflects the extent to which the taxpayer's income was derived from income-producing activity in this state in comparison to other states, including a comparison of the locations for the costs of performance for that income-producing activity, 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.

[Alternative to 4] If the taxpayer's income cannot be equitably apportioned under paragraphs above, the taxpayer's income may [shall] 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.

Comment [BJF4]: Staff changed "may" to "shall" throughout, except alternative paragraph 4, below.

Comment [BJF5]: Helen proposed that the former "income-producing activity as measured by cost of performance" might have an appropriate role to play as a default.

Comment [BJF6]: Former catch-all rule without mention of COP