

Comparison of Mass and Cal Rules for Receipts from Use of Intangibles

For both marketing and non-marketing intangibles California inserted a sentence referencing a contract between the parties

The contract between the taxpayer and the licensee of the intangible property or the taxpayer's books and records kept in the normal course of business shall be presumed to provide a method for determination of the ultimate customers in this state for the purchase of goods, services, or other items in connection with the use of the intangible property. This presumption may be overcome by the taxpayer or the Franchise Tax Board by showing, based on a preponderance of the evidence, that the ultimate customers in this state are not determinable under the contract or the taxpayer's books and records.

For marketing intangibles California has an approximation method prior to going to population

To determine the customer's or licensee's use of marketing intangibles in this state, factors that may be considered include the number of licensed sites in each state, the volume of property manufactured, produced or sold pursuant to the arrangement at locations in this state, or other data that reflects the relative usage of the intangible property in this state.

For marketing intangibles at wholesale California has language limiting population U.S. population unless taxpayer demonstrates particular foreign countries are involved.

The population used shall be the U.S. population, unless it can be shown by the taxpayer that the intangible property is being used materially in other parts of the world. If the taxpayer can show that the intangible property is being used materially in other parts of the world, then only the populations of those other countries where the intangible is being materially used shall be added to the U.S. population.

For non-marketing intangibles California final default is billing address rather than commercial domicile which is used in the Massachusetts regulation

For mixed intangibles California has a sentence allowing the state to use a reasonable method to divide before going to treating them all as marketing

If the Franchise Tax Board determines that the separate statement is not reasonable, then the Franchise Tax Board may assign the fees using a reasonable method that accurately reflects the licensing of a marketing intangible and the licensing of a non-marketing or manufacturing intangible.