

c. License of a Production Intangible.

Where a license is granted for the right to use intangible property other than in connection with the sale, lease, license, or other marketing of goods, services, or other items, and the license is to be used in a production capacity (a "production intangible"), the licensing fees paid by the licensee for such right are assigned to [state] to the extent that the use for which the fees are paid takes place in [state]. Examples of a license of a production intangible include, without limitation, the license of a patent, a copyright, or trade secrets to be used in a manufacturing process, where the value of the intangible lies predominately in its use in such process.

~~Where the location of use for a production intangible cannot be established or reasonably approximated, in the case of a license of a production intangible,~~ it shall be presumed that the use of the intangible property takes place in the state of the licensee's commercial domicile (where the licensee is a business) or the licensee's state of primary residence (where the licensee is an individual). ~~unless the taxpayer or the Commissioner can reasonably establish the location(s) of actual use. Ordinarily, the location of use for a production intangible licensed between related parties will be known to the licensor.~~ Where the Commissioner can reasonably establish that the actual use of intangible property pursuant to a license of a production intangible takes place in part in [state], it shall be presumed that the entire use is in this state except to the extent that the taxpayer can demonstrate that the actual location of a portion of the use takes place outside [state].

**Comment [BJF1]:** Holly's suggested language for intercompany transfers—might be applicable in other presumption situations as well....

d. License