



MULTISTATE TAX COMMISSION

Discussion Draft

Proposed Special Apportionment Regulation ~~Latest Discussion Draft~~

For Taxpayers Lacking "Receipts"

(Updated 2/21/17)

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 non-de minimis gross receipts consisting of dividends from related parties, interest, investment income, 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 shall be included in the receipts factor numerator ~~effor~~ this state (i) where it can be reasonably determined that the dividends were paid from earnings generated by the dividend payor in particular years, by using the dividend payor's apportionment factors for those years; (ii) where the years in which the earnings were generated by the dividend payor cannot be reasonably determined, by using the average of the apportionment factors of the dividend payor for the current and preceding year; and (iii) where the dividend income was generated from activities or earnings of one or more related parties to the dividend payor, by using the apportionment factors of those related parties in the years in which those activities occurred or earnings were generated;

(b) Capital gains (but not capital losses) deriving from the disposition of the stock or other intangible property rights representing at least a 20% ownership interest in a business entity which is or was functionally connected to a part of the taxpayer's unitary business ~~activities~~ shall be included in the receipts factor denominator and shall be included in the receipts factor numerator ~~in [for this state]~~ to the same extent as that business entity's average apportionment factors were ~~assigned to in~~ this state in the year preceding the disposition, unless use of the business entity's apportionment factors in a different year is necessary to fairly reflect the location of the income-generating activity of that entity. Capital gains (but not capital losses) deriving from the disposition of the tangible assets of a business or business segment shall be included in the receipts factor denominator and shall be included in the receipts factor

numerator ~~in [for this state]~~ to the same extent as that business's apportionment factors were in this state in the year preceding the disposition, unless use of the business's apportionment factors in a different year is necessary to fairly reflect the location of the income-generating activity of that business.

- (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 the receipts factor denominator and shall be included in the receipts factor numerator for this state to the extent those receipts would be assigned 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)] or [this state's financial institution receipts factor rules].
- (d) Gross receipts derived from accounts receivable previously sold to or otherwise transferred to the taxpayer, to the extent they cannot be assigned under Subsection (1)(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 same extent that those amounts are collected from borrowers in this state.
- (e) The net amount [but not less than zero] of receipts not assigned under ~~Sections (Subsections (1)(b-) through (1)(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 the sales factor denominator and shall be included in the sales factor numerator ~~of the receipts factor~~ for this state to the same extent as the investment activities would be assigned 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]; all other receipts from investment activities shall be assigned to the state in which such investments are managed.
- 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 shall be included in the numerator of the receipts factor ~~effor~~ this state by using the remaining apportionment factors and percentages applicable to that taxpayer, where those factors are non-*de minimis*.
- 3) If the taxpayer has gross receipts that ~~are not~~cannot be apportioned pursuant to Sections (1) and (2) ~~of this regulation, and the taxpayer's income and factors are included on a combined or consolidated return filed in this state,~~ those gross receipts shall be included in the denominator of the receipts factor and shall be included in the numerator of the receipts factor ~~effor~~ this state into the same ratio~~extent~~ as the receipts factor ~~of numerators for~~ the remainder of the combined or consolidated group ~~if the taxpayer's income and factors are included on a combined or consolidated report or return filed~~are in this state; ~~or.~~
- 4) ~~(b) If the taxpayer is filing as a separate entity in~~ has gross receipts that cannot be apportioned pursuant to Sections (1), (2) or (3) of this state regulation, those gross receipts shall be included in the denominator of the receipts factor and shall be included in the numerator of the receipts factor

for this state by ~~taking~~applying the ratio of the federal taxable income of ~~new~~those entities which was apportioned to this state versus the federal taxable income apportioned to this state of the federal consolidated group of which the taxpayer is~~was~~ a member ~~which was apportioned to this state.~~

- 5) ~~3) [NEW MATERIAL]~~ Receipts which are or would be assigned under this regulation to a jurisdiction in which taxpayer is not taxable [as defined in Article IV, Section 3] in the current tax year shall be eliminated from the receipts factor numerator and denominator.
- 6) ~~4)~~ To the extent application of the preceding subsections fails to result in an equitable apportionment of the taxpayer's gross receipts, the taxpayer may petition for, or the [tax commissioner~~administrator]~~ may require the use of an alternative calculation of its receipts factor to more clearly reflect the extent of the taxpayer's business activity in this state as provided for in Article IV, Section 18.