

Proposed Clean Up of Section 18 Draft:

The version on the left-hand side is the most recent version of the draft with certain changes made as discussed in the last meeting. The version on the right-hand side is the “clean up” version which incorporates the following changes:

- Changes to the numbering (and cross-referencing) to conform to our model regulations.
- Changes to conform to ULC Drafting rules including – primarily avoiding the use of “shall” to express a statement of law, using “if” instead of “where,” avoiding “such,” etc.
- Use of the terms “receipts factor denominator” and “receipts factor numerator in this state” consistently throughout.
- Use of the phrase “in a proportion equal to” to indicate that receipts are to be apportioned by some factor for inclusion in the numerator; and use of the phrase “as determined pursuant to [ref. to state law]” to indicate the particular provisions of the state’s law which govern the determination of that factor.
- Clarifies that use of the multi-factor formula rule (old (2), new (d)) would be omitted for states that do not have a multi-factor formula.
- Restructures the introduction, (now (a)), and the old (1)(a), now (c)(1).
- Changes the introduction of old (1) (now (c)) to provide that the gross receipts (enumerated) are included in the receipts factor denominator (unless thrown out) to avoid having to repeat this provision in every subparagraph.
- Combines provisions within the old (1)(b), now (c)(2).
- Rewords that throw-out rule (old (5), new (e)).
- Rewords the provision referencing the residual Sec. 18 authority (old (6), new (f)).

<p>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.</p>	<p>[REG. IV.18#] (a) This section applies to the determination of the receipts factor if:</p> <p>(1) 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),], or</p> <p>(2) the [tax administrator] determines application of this section is necessary to fairly represent the extent of the taxpayer’s business activity in the state.</p> <p>(b) To be included in the receipts factor under this section, gross receipts must give rise to apportionable income and may be excluded if, as a category, they are de minimis in comparison to the taxpayer’s total gross receipts.</p>
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<p>(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:</p>	<p>(c) Gross receipts derived from dividends paid by related parties, interest, investments, or gains from the disposition of a business or business segment are included in the receipts factor denominator, unless required to be excluded under subsection (g) of this section, and are assigned to the receipts factor numerator in this state as follows:</p>
<p>(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 for 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;</p>	<p>(1) Dividends paid by a related party, [as defined in Sec. 17 or other state law], are assigned to the receipts factor numerator in this state as follows:</p> <p>(A) If paid from earnings in particular years, the dividends are assigned to the receipts factor numerator in this state in a proportion equal to the dividend payor's apportionment factor in this state, determined pursuant to [ref. to state law], for those years.</p> <p>(B) If it cannot reasonably be determined that the dividends were paid from earnings in particular years, the dividends are assigned to the receipts factor numerator in this state in a proportion equal to the dividend payor's apportionment factor in this state, determined pursuant to [ref. to state law], for the current and preceding year.</p> <p>(C) If the dividends were paid from earnings that were generated not by the direct activities of the dividend payor, but of another related party, the dividends are assigned to the receipts factor numerator in this state under paragraphs (A) or (B) of this subsection, as applicable, but using the other related party's apportionment factor in this state, determined pursuant to [ref. to state law].</p>
<p>(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 a part of the taxpayer's unitary business shall be included in the receipts factor denominator and shall be included in the receipts factor numerator in [this state] to the same extent as that business entity's average apportionment factors were 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</p>	<p>(2) Gains (but not losses) from the disposition of stock or other intangible property rights representing at least a 20% ownership interest in a business entity or from the disposition of assets of a business or business segment are assigned to the receipts factor numerator in this state in a proportion equal to the apportionment factor in this state as determined pursuant to [ref. to state law] for that business entity, business, or segment, as if filing on a separate basis, for the year preceding the disposition, unless use of the apportionment factor of a different year or year(s) is necessary to fairly represent the extent of the taxpayer's business activity in this state giving rise to the gains.</p>

<p>denominator and shall be included in the receipts factor numerator 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.</p>	
<p>(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 [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].</p>	<p>(3) Receipts 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 reference to state's financial institution receipts factor rules] are assigned to the receipts factor numerator in this state to the extent those receipts would be assigned to this state 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] as if the taxpayer were a financial institution.</p>
<p>(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.</p>	<p>(4) Gross receipts derived from accounts receivable previously sold to or otherwise transferred to the taxpayer, to the extent they cannot be assigned under subsection (c)(3), are assigned to the receipts factor numerator in this state if the receipts are collected from borrowers located in this state.</p>
<p>(e) The net amount, but not less than zero, of receipts not assigned under 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 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.</p>	<p>(5) The net amount, but not less than zero, of receipts not otherwise assigned under this subsection (c) arising from investment activities, including the holding of, or the maturity, redemption, sale, exchange, or other disposition of marketable securities or cash are assigned to the sales factor numerator in this state if the receipts would be assigned to this state under Section (n) 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 institutions receipts factor rules]; all other receipts from investment activities are assigned to the receipts factor numerator in this state if the receipts are managed in this state.</p>
<p>(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</p>	<p>(d) USE IF THE STATE HAS A MULTI-FACTOR FORMULA Gross receipts, other than those included and assigned under subsection (c) are included in the receipts factor denominator, unless eliminated pursuant to subsection (g),</p>

<p>denominator of the receipts factor and shall be included in the numerator of the receipts factor for this state by using the remaining apportionment factors and percentages applicable to that taxpayer, where those factors are non-de minimis.</p>	<p>and are assigned to the receipts factor numerator in this state in a proportion equal to the [average] of the taxpayer's [other apportionment factors] determined pursuant to [ref. to state law], if those factors are non-de minimis.</p>
<p>(3) If the taxpayer has gross receipts that 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 for this state to the same extent as the receipts factor numerators for the remainder of the combined or consolidated group are in this state.</p>	<p>NOTE – FROM THIS POINT – THE DRAFT'S NUMBERING ASSUMES THAT THE STATE INCLUDES SUBSECTION (d). IF NOT – THE FOLLOWING PROVISIONS AND CROSS-REFERENCES TO ANY SUBSECTIONS INCLUDING AND AFTER (d) WILL HAVE TO BE RENUMBERED.</p> <p>(e) Gross receipts, other than those included and assigned in subsections (c) and (d), of a taxpayer whose income and factors are included in a combined or consolidated return in this state are included in the receipts factor denominator, unless eliminated pursuant to Subsection (g), and are assigned to the receipts factor numerator in this state in a proportion equal to the receipts factor of the combined or consolidated group in this state determined pursuant to [state law].</p>
<p>(4) If the taxpayer has gross receipts that cannot be apportioned pursuant to Sections (1), (2) or (3) of this 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 applying the ratio of the federal taxable income of those entities which was apportioned to this state versus the federal taxable income of the federal consolidated group of which the taxpayer was a member.</p>	<p>(f) Gross receipts, other than those included and assigned in subsections (c), (d), and (e), of a taxpayer that files as part of a federal consolidated return are included in the receipts factor denominator, unless eliminated pursuant to subsection (g), and are assigned to the receipts factor numerator in this state in a proportion equal to a percentage, the numerator of which is the total of the consolidated group members' income apportioned to this state pursuant to [ref. to state law], and the denominator of which is the total federal consolidated income, but not greater than 100%.</p>
<p>(5) 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.</p>	<p>(e) Notwithstanding any other provision of this section, if the application of these rules by a jurisdiction where the taxpayer is not taxable [as defined in Article IV, Section 3] would result in gross receipts being sourced to that jurisdiction, they will be eliminated from the receipts factor denominator.</p>
<p>(6) 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 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.</p>	<p>(f) Nothing in this section shall prohibit the taxpayer from petitioning for or the [tax administrator] from applying an alternative method to calculate the taxpayer's receipts factor in order to fairly represent the extent of the taxpayer's business activity in this state as provided for in Article IV, Section 18.</p>