

### **Proposed Special Apportionment Regulation Based on Workgroup Suggestions on 3/22/16:**

If application of the definition of “receipts” in Article IV, Section 1.(g) or exclusion of receipts under Article IV, section 17 fails to fairly reflect the business activity of the taxpayer in this state, the following methods shall be employed to the extent that they effectuate an equitable allocation and apportionment of the taxpayer’s income (or loss):

- 1) Use of the taxpayer’s property and payroll factors;
- 2) If use of the taxpayer’s property and payroll factors will not effectuate an equitable allocation and apportionment of the taxpayer’s income, then:
  - a) If the predominance of the taxpayer’s income is derived from interest and related investment income from the maturity, redemption, sale, exchange or other disposition of [marketable] securities, then by treating that taxpayer as a financial institution under this state’s apportionment statutes, regulations or rules applicable to those institutions;
  - b) If the predominance of the taxpayer’s income is derived from capital gains or losses from the disposition of a business, business segment or capital asset used in the unitary business, then by apportioning the taxpayer’s income 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 six months or longer, 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;
  - c) If the predominance of the taxpayer’s income is derived from dividends received, that income may be apportioned:
    - i) Using the dividend payor’s apportionment factors [or property and payroll factors] for the year in which the dividend was paid, or
    - ii) If it can be shown that the dividend related to income earned in periods other than the year in which the dividend was paid, using of the payor’s apportionment factors [or property and payroll factors] from that period;
  - d) If paragraphs (a), (b), or (c) do not apply, then:
    - i) 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 may be apportioned using the factors applicable to that combined group;

- ii) Otherwise, the taxpayer's income may be apportioned using the apportionment factors of the owner of the preponderance of beneficial interests in that taxpayer.
- 3) If the taxpayer's income cannot be equitably apportioned under paragraphs (1) or (2) above, the taxpayer's income may 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.