

**Proposed Special Apportionment Regulation Based on Workgroup Suggestions Updated 11/21/16:**

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 gross receipts consisting of interest, investment income, dividends from related parties, or proceeds from the disposition of a business or business segment **or capital asset**, those gross receipts shall be assigned as follows:

(a) Dividends paid by a related party [as defined in Sec. 17 or other state law], to the extent included in the taxable base, shall be included in the receipts factor denominator and included in the receipts factor numerator of this state by use of the following percentages:

i) The percentage of the dividend payor's average apportionment factor [or property and payroll factors] for [this state] for the year in which the dividend was paid, if that information is available, or if not, the most recent year available;

ii) Where the payor's apportionment factor in the year of payment is not reflective of the source of the income from which the dividends were paid, the percentage of dividend payor's average apportionment factor[s] [or property and payroll factors] in this state for the years in which those earnings were generated;

**ALTERNATIVE (a):** Dividends paid by a related party [as defined in Sec. 17 or other state law], to the extent included in the taxable base, shall be included in the receipts factor denominator and included in the receipts factor numerator of this state to the extent the dividend payor's average apportionment factor for the year in which the dividend was paid is in this state, provided that, where the payor's apportionment factor in that year fails to reflect of the source of the dividends paid, the dividends shall be included in the receipts factor numerator to the extent the dividend income was derived from business activity [or: sources] within this state;

(b) Capital gains [but not capital losses] arising from the disposition of a business or business segment shall be included in the denominator and shall be included in the numerator in [this state] in the same percentage as the **business or business segment's average apportionment factors were assigned to this state in the year preceding the disposition; provided that, in the case of an asset sale, if more than 50% of the value of those assets represents goodwill or other intangible value, by using the business or business segment's receipts factor in this state in the year preceding the disposition.**

**Comment [BJF1]:** A question was raised as to whether subsections (i) and (ii) inadvertently created an ambiguity on how to source dividends; also, a question was raised as to whether there should be a "look-through" to the operational source of the income, not just the prior year's factors. Alternative (a) attempts to eliminate the ambiguity and does authorize a look through.

**Comment [BJF2]:** Some suggested "unitary business segment."

**Comment [BJF3]:** It was suggested that stock sales would not allow for a break-out of goodwill versus tangible assets; alternatively, the entire goodwill distinction could be eliminated to reduce complexity.

(c) Receipts from lending activities, including gains from the sales of loans shall be included in numerator of the receipts factor for this state to the extent those receipts would be sourced to this state under 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];

(d) Amounts collected on accounts receivable sold to or otherwise transferred to the taxpayer 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 extent those amounts are collected from the transferor's customers in this state.

(e) The net amount [but not less than zero] of receipts not sourced under Sections (b-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 numerator of the receipts factor for this state to the extent those receipts would be sourced 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];

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 included in the numerator of the receipts factor of this state by using the remaining apportionment factors and percentages applicable to that taxpayer where those factors are non-deminimis.

3) If the taxpayer has gross receipts that are not apportioned pursuant to Sections (1) and (2), and if the state apportions income pursuant to the receipts factor only, those gross receipts shall be included in the denominator of the receipts factor and shall be included in the numerator of the receipts factor of this state in the same ratio as:

- (a) the receipts factor of the remainder of the combined or consolidated group if the taxpayer's income and factors are included on a combined or consolidated return filed in this state; or
- (b) the receipts factor applicable to the owner of a preponderance of beneficial interests in that taxpayer, if the taxpayer is filing as a separate entity in this state.

4) To the extent application of the preceding subsections fails to result in an equitable apportionment of the taxpayer's gross receipts, the taxpayer's receipts factor shall be calculated in a manner which reflects the extent of the taxpayer's business presence in this state.

Alternative Catch-alls:

[references cost of performance]

4 (a) To the extent application of the preceding subsections fails to result in an equitable apportionment of the taxpayer's gross receipts, the taxpayer's receipts factor shall be calculated in a manner which reflects the extent of the taxpayer's business presence in this state as determined by

**Comment [BJF4]:** Lending activities described as follows:  
(d) interest, penalties and fees from loans secured by real property;  
(e) ...unsecured loans  
(f) net gain on sale of loans  
(g) credit card holder fees;  
(h) net gain on sale of credit card receivables;  
(i) reimbursement fees  
(j) merchant discount fees  
**NOT LENDING:**  
(k) ATM fees  
(l) loan serving fees  
(m) other services  
(n) investment activity

**Comment [BJF5]:** PROPOSED NEW MATERIAL: (1) should it be limited to accounts receivables received from related parties?(2) should "billing address" be used instead of "customers in this state"?

**Comment [BJF6]:** Group asked that regulation reflect financial institution regulation's treatment of investment income at net, not gross.

**Comment [BJF7]:** Proposed additional language applicable to holding companies, etc.

the percentage of income-producing activity in this state as measured by the costs of performance for that activity.

[references income derived from state, not business presence]

4 (b) To the extent application of the [preceding subsections] fails to result in an equitable apportionment of the taxpayer's gross receipts, the taxpayer's receipts factor shall be calculated in a manner which reflects the extent to which the taxpayer's income (or loss) was derived from this state in comparison to other states, provided that this method would not result in a substantial portion of the income (or loss) being apportioned to more than one taxing jurisdiction, or not apportioned to any taxing jurisdiction.