

### Proposed Special Apportionment Regulation Based on Workgroup Suggestions Updated 5/2/16:

If the denominator of the receipts factor as calculated pursuant to [Compact Article IV], is 3.33% or less of the taxpayer's gross receipts or is otherwise insubstantial in comparison with the taxpayer's apportionable gross receipts then the following rules may be applied to the extent they effectuate an equitable apportionment of the taxpayer's income (or loss):

**Comment [BJF1]:** Group wanted a more flexible trigger standard...

**Comment [BJF2]:** Changed "shall" back to "may"

1) In the case of any taxpayer deriving [ ] gross receipts from interest and investment income, dividends from related parties, or capital gains, the receipts factor shall be determined as follows:

**Comment [BJF3]:** 20% rule removed.

(a) Receipts from interest or investments, including receipts from the maturity, redemption, sale, exchange or other disposition of [marketable] securities, shall be included in the denominator and shall be attributed to the numerator in [this state] to the extent those receipts would be sourced to this state under this state's [financial institution receipts factor rules][or the MTC Model Financial Institutions statute, if this state has not adopted a special apportionment rule or statute for financial institutions];

(b) Receipts from 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 sales factor denominator and included in the numerator of this state by use of the following percentages:

**Comment [BJF4]:** Subsections 1 b and 1 c refer to "percentages" rather than "ratios" as used in Section 2 and 3. This is not intended as a substantive difference, but merely to highlight two possible approaches for the group's consideration.

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, or

ii) Where dividends are paid from earnings in a year other than the year in which the dividend was paid, the percentage of dividend payor's average apportionment factor [or property or payroll factors] in this state for the year(s) in which those earnings were generated;

(c) Receipts from the sale of capital assets of a business or business segment shall be included in the denominator and shall be attributed to the numerator in [this state] in the same percentage as the business or business segment's average apportionment factor [or property and payroll factors] for [this state] for the year preceding the sale; provided that, if more than 50% of the value of the assets being sold represents goodwill or other intangible value, using the same percentage of the receipts factor in this state of the business entity or business segment sold.

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 the same ratio as the taxpayer's property and payroll factors in this state.

**Comment [BJF5]:** See comment above...

3) If the taxpayer has gross receipts that are not included in the receipts factor pursuant to Section (1), and if the state apportions income pursuant to the receipts factor only, the taxpayer shall include those receipts in the denominator and shall include those receipts in the numerator for this state the portion of receipts equal to the following ratios:

- (a) If the taxpayer is part of a unitary group of corporations, then by the same ratio of that unitary group's receipts in this state to receipts everywhere, as though the taxpayer were filing on a combined basis;
- (b) If the taxpayer is not a member of a unitary group of corporations, then by the same ratio of receipts in this state to receipts everywhere applicable to the owner of a preponderance of beneficial interests in that taxpayer.

4) To the extent application of Sections (1), (2) and (3), where applicable, fail to result in an equitable apportionment of the taxpayer's gross receipts, the taxpayer's income (or loss) shall be apportioned to this state in a manner which reflects the extent to which the taxpayer's income was derived from income-producing activity in this state in comparison to other states, including a comparison of the locations for the costs of performance for that income-producing activity, 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.

**Comment [BJF6]:** Helen proposed that the former "income-producing activity as measured by cost of performance" might have an appropriate role to play as a default.

[Alternative to 4] If the taxpayer's [gross receipts] cannot be equitably apportioned under the paragraphs above, the taxpayer's income (or loss) [shall] 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.

**Comment [BJF7]:** Former catch-all rule without mention of COP