

1 SUBPART 4-6

2 OTHER RULES

3 Sec.

4 4-6.1 Power of the Commissioner of Taxation and Finance to adjust [~~business allocation percentage and~~  
5 ~~alternative business allocation percentage~~] apportionment fraction

6 4-6.2 [*Discretionary adjustment: taxpayer using expense factor in place of property factor*]

7 4-6.3 Rules relating to [~~allocation~~] apportionment by a government contractor

8 4-6.4 Short period [~~business allocation percentage and short period alternative business allocation~~  
9 ~~percentage~~] apportionment fraction

10 4-6.5 Rules relating to [~~allocation~~] apportionment by a corporate partner of a partnership or joint venture

11 Section 4-6.1. Power of the Commissioner of Taxation and Finance to adjust [~~business allocation~~  
12 ~~percentage and alternative business allocation percentage~~] apportionment fraction. ( Tax Law, §~~210(8)~~ 210-  
13 A(11))

14 (a) Generally, the [~~business allocation percentage~~] apportionment fraction results in a fair [~~allocation~~]  
15 apportionment of the taxpayer's business capital and business income to New York State [~~and the alternative~~  
16 ~~business allocation percentage results in a fair allocation of the taxpayer's alternative business income to New~~  
17 ~~York State~~]. However, [~~experience in this and other states which impose similar franchise taxes has shown that~~  
18 ~~due to the nature of certain businesses~~] in certain instances, the [~~formulas~~]apportionment fraction used to  
19 [~~compute the percentages~~] apportion business capital and business income may [~~work hardship in some cases~~  
20 ~~and not do justice either to the taxpayer or to the State~~] not reach a fair result. Subdivision 11 of section 210-A  
21 of Article 9-A of the Tax Law authorizes the commissioner, in his or her discretion or at the request of the  
22 taxpayer, [~~to use other methods~~] to adjust the apportionment fraction in order to more accurately reflect the  
23 taxpayer's business activity within New York State. In the case of a combined report, the term "taxpayer" in

24 this Subpart means the combined group and the request to adjust the apportionment fraction on the combined  
25 report must be made by the designated agent. If [a different method is used] the apportionment fraction is  
26 adjusted, it must be calculated to effect a fair and proper [allocation] apportionment of the business income[;]  
27 and business capital [and alternative business income] reasonably attributable to the State.

28 (b) When it appears that the [business allocation percentage or alternative business allocation  
29 percentage] apportionment fraction does not properly reflect the [activity, nature of business,] business income  
30 or business capital of the taxpayer in New York State, the commissioner, in his or her discretion or at the  
31 request of the taxpayer, may adjust the [business allocation percentage or alternative business allocation  
32 percentage] apportionment fraction by:

33 (1) excluding one or more [factors] items of receipts, net income, net gain or other items included in the  
34 determination of the apportionment fraction;

35 (2) including one or more [factors], [such as expenses, purchases or contract values minus subcontract  
36 values] other items in the determination of the apportionment fraction; or

37 (3) [excluding one or more assets used in computing any factor included in the business allocation  
38 percentage or alternative business allocation percentage, provided the income therefrom is also excluded in  
39 determining entire net income or minimum taxable income; or

40 (4) any other similar or different method calculated to effect a fair and proper [allocation]  
41 apportionment of the taxpayer's business income and business capital reasonably attributable to the State .

42 (c)(1) A taxpayer may not vary the statutory [business allocation percentage or alternative business  
43 allocation percentage formulas described in sections 210(3)(a) and 210(3-a)(a) of the Tax Law] apportionment  
44 fraction without the consent of the commissioner. A taxpayer making a request for an adjustment of its  
45 [business allocation percentage or alternative business allocation percentage] apportionment fraction that does  
46 not have such consent prior to the time it files its report must file its report and compute its tax [in accordance

47 with the statutory formulas] using the apportionment fraction determined pursuant to section 210-A of the Tax  
48 Law and the applicable regulations in this Part. If a taxpayer receives consent after filing its report, the taxpayer  
49 may then amend the report and use the approved method to compute its tax due.

50 (2) A request to vary the [statutory formula] apportionment fraction must be submitted in writing and  
51 must be submitted separately from the report as prescribed by the Department and must set forth full  
52 information on which the request is based. If the taxpayer has not requested that the commissioner adjust the  
53 apportionment fraction before the date on the first written piece of correspondence received by the taxpayer  
54 from the Audit Division about the commencement of an audit of the report, the determination of whether or not  
55 the apportionment fraction results in a proper reflection of the business income and business capital of the  
56 taxpayer will be made during the course of that audit.

57 (d) The party seeking to vary the apportionment fraction bears the burden of proof to demonstrate that  
58 the apportionment fraction determined pursuant to section 210-A of the Tax Law and the applicable regulations  
59 in this Part does not result in a proper reflection of the taxpayer's business income or business capital within the  
60 State and that the proposed adjustment is appropriate.

61 (e) See Tax Law section 211.5 concerning other powers of the commissioner to adjust business income  
62 and business capital of a taxpayer.

63 Section 4-6.2 is REPEALED.

64 Section 4-6.3. Rules relating to [allocation] apportionment by a government contractor. (Tax Law, §  
65 [210-(8)] 210-A(11)).

66 Government contracts are awarded on several bases including cost sharing, time and materials, fixed price  
67 and cost plus a fee. Reimbursed costs as well as fees, commissions, incentive payments and any other type of  
68 remuneration paid to a taxpayer for the performance of a government contract must be included in the  
69 computation of the [allocation factors] apportionment fraction. Reimbursed costs must be included in

70 computing the ~~[allocation factors]~~ apportionment fraction even though reimbursed costs are not reported as  
71 receipts in the taxpayer's Federal income tax return. ~~[Where reimbursed wages are not deducted by the taxpayer~~  
72 ~~on its Federal income tax return, such wages should be allocated in the year in which the net fee is included in~~  
73 ~~gross income for Federal income tax purposes. The terms of the contract are used to determine when ownership~~  
74 ~~of property has passed but, in the absence of a contract provision, property is treated as belonging to the~~  
75 ~~taxpayer until shipment is made to the government. Property owned by the government may not be included in~~  
76 ~~the property factor.]~~

77 Section 4-6.4. Short period ~~[business allocation percentage and short period alternative business~~  
78 ~~allocation percentage]~~ apportionment fraction. (Tax Law, § ~~[210(8)]~~ 210-A(11))

79 (a) A taxpayer ~~[which]~~ that is subject to tax for a period less than its taxable period for Federal income  
80 tax purposes computes its ~~[business allocation and alternative business allocation percentage]~~ apportionment  
81 fraction only for the period it is subject to tax in New York State.

82 (b) ~~[Except for corporations principally engaged in the conduct of aviation or in the conduct of a railroad~~  
83 ~~or trucking business, the]~~ The business income and business capital for the short period are ~~[allocated]~~  
84 apportioned by ~~[a business allocation percentage and the alternative business income for the short period is~~  
85 ~~allocated by an alternative business allocation percentage, both determined by a three factor formula consisting~~  
86 ~~of:~~

87 ~~(1) tangible property (see Subpart 4-3 of this Part) for the period for which it is subject to tax in New York~~  
88 ~~State; however, the taxpayer may compute its tangible property values by placing them on an annual basis and~~  
89 ~~by prorating these values for the period for which it is subject to tax in New York State;~~

90 ~~(2) receipts (see Subpart 4-4 of this Part) for the period for which it is subject to tax in New York State;~~

91 ~~and~~

92 ~~(3) payroll (see Subpart 4-5 of this Part) for the period for which it is subject to tax in New York State]~~ an  
93 apportionment fraction determined pursuant to section 210-A of the Tax Law and the applicable regulations in  
94 this Part, using only those receipts, net income, net gain and other items for the period for which it is subject to  
95 the tax in New York State.

96 See Tax Law section 210-A and subdivision (b) of section 4-2.2 of this Part for method of computing the  
97 [business allocation percentage] apportionment fraction. ~~[See section 210(3-a)(a) of the Tax Law for method~~  
98 ~~of computing the alternative business allocation percentage.~~

99 ~~(e) The business income, business capital and alternative business income of a corporation principally~~  
100 ~~engaged in the conduct of aviation for the short period are allocated by a business allocation percentage~~  
101 ~~determined pursuant to section 210(3)(a)(7)(A) of the Tax Law.~~

102 ~~(d) The business income, business capital and alternative business income of a corporation principally~~  
103 ~~engaged in the conduct of a railroad or trucking business for a short period are allocated by a business allocation~~  
104 ~~percentage determined pursuant to section 210(3)(a)(8) of the Tax Law.~~

105 ~~(e)]~~ (c) The short period ~~[business allocation percentage and the short period alternative business allocation~~  
106 ~~percentage]~~ apportionment fraction must be applied to business income and business capital ~~[and alternative~~  
107 ~~business income, respectively, which]~~ that have been prorated to represent business income and business capital  
108 ~~[and alternative business income]~~ for the period for which the taxpayer is subject to tax in New York State.  
109 Prorated business income~~;~~ and prorated business capital ~~[and prorated alternative business income]~~ are  
110 computed as follows:

111 (1) divide business income~~;~~ or business capital ~~[or alternative business income]~~ before ~~[allocation]~~  
112 apportionment by the number of months covered by the taxpayer's Federal return; and

113 (2) multiply the figure determined in paragraph (1) of this subdivision by the number of months for which  
114 the taxpayer is subject to tax in New York State.

115 Example 1: A corporation incorporated in the State of Delaware in [1990] 2010 became subject to tax in  
116 New York State on July 2, [1997] 2016. The taxpayer reports on a fiscal year ending November 30th. The short  
117 period [~~business allocation percentage~~] apportionment fraction, computed as described in subdivision (b) of this  
118 section, is 20 percent. It had business income of \$24,000 for the 12-month period covered by the Federal return.  
119 The taxpayer's [~~allocated~~] apportioned business income is \$2,000, computed as follows:

120 \$24,000 divided by 12 (months) = \$2,000

121 \$2,000 x 5 (months) = \$10,000

122 \$10,000 x 20% = \$2,000

123 [~~(f)~~] (d) A taxpayer must submit complete details with its report showing how it computed [~~each factor of~~  
124 ~~the business allocation percentage and alternative business allocation percentage~~] its apportionment fraction for  
125 the period it is subject to tax in New York State, if for less than a full year. If, in the opinion of the  
126 Commissioner, the prorated business income or [the prorated alternative business income] prorated business  
127 capital for the period for which the taxpayer is subject to tax in New York State does not properly reflect the  
128 business income [~~or alternative business income~~] and business capital for such period, the Commissioner may  
129 determine business income [~~or alternative business income~~] and business capital solely on the basis of the  
130 taxpayer's business income [~~or alternative business income~~] and business capital during such period.

131 4-6.5 text to be added later