

1 NOTE: The rules for sourcing receipts from digital products and other business receipts
2 are currently posted separately for ease of review. While some Subpart 4-6 amendments have
3 already been posted (discretionary adjustments), the remainder of the amendments to Subpart 4-6
4 are forthcoming.

5 Section 1. The title of Part 4 of title 20 NYCRR is amended as follows:

6 Part 4

7 [ALLOCATION] APPORTIONMENT

8 Section 2. Subparts 4-1, 4-2, 4-3, 4-4, 4-5, 4-7, 4-8, 4-9 and 4-10 are repealed.

9 Section 3. New Subparts 4-1, 4-2, and 4-3 are added to read as follows:

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Subpart 4-1

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GENERAL

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Section

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4-1.1

General rules for apportionment

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4-1.2

Apportionment on combined reports

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4-1.3

Definitions

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Section 4-1.1 General rules for apportionment. (Tax Law, Section 210-A)

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(a) All taxpayers apportion within and without New York State their business income

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and business capital by an apportionment factor. The factor is a fraction, the numerator of

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which is the sum of all business receipts required to be included in the numerator pursuant to the

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Section 210-A of the Tax Law and the applicable regulations, hereinafter referred to as New

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York receipts, and the denominator of which is the sum of all business receipts required to be

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included in the denominator pursuant to Section 210-A of the Tax Law and the applicable

24 regulations, hereinafter referred to as everywhere receipts.

25 (b) For purposes of this Part, the term business receipts means receipts, net income (not
26 less than zero), net gains (not less than zero) and other items described in section 210-A of the
27 Tax Law and the applicable regulations that are received in the regular course of the taxpayer's
28 business, provided such amounts are includible in the computation of the taxpayer's entire net
29 income for the taxable year. Business receipts do not include (i) any receipts, net income (not
30 less than zero) or net gains (not less than zero) from investment capital as defined in section 208.5
31 of the Tax Law and section XX, even if such receipts are included in business income pursuant to
32 the limitation on investment income described in section XX, (ii) other exempt income as defined
33 in section 208.6-a of the Tax Law and section XX generated by stock that is not marked to
34 market, and (iii) other exempt income generated by stock that is marked to market in instances
35 where the taxpayer did not make the fixed percentage election for qualified financial instruments
36 provided for in section 4-2.6 of this Part. Business receipts from sales of real, personal, or
37 intangible property that arise from unusual events are not included in New York receipts or
38 everywhere receipts.

39 (c) Business receipts do not include reimbursements of expenses (i) paid for by the
40 taxpayer on behalf of a customer that are received from the customer in advance or received
41 from the customer and placed by the taxpayer into a separate account, provided the
42 reimbursement does not exceed the amount of expenses and (ii) reimbursements received by the
43 taxpayer under a cost-sharing arrangement the taxpayer has with another company, where that
44 cost-sharing arrangement does not include any mark-up of the expense.

45 (d) Examples.

46 Example 1: Corporation A is a professional employer organization (“PEO”). It contracts

47 with its customers to provide a number of services. These services may involve the handling of
48 the customer's payroll functions including the payment of wages and withholding the
49 employee's and customer's necessary statutory taxes and unemployment insurance payments. In
50 order to provide these services, the PEO may have to pay out of its own account the wages of the
51 employees and other expenses before it is reimbursed from funds in a dedicated account set up
52 on behalf of its customers for those wages and other expenses. The amount reimbursed does not
53 exceed the amount of expenses. These reimbursements are not considered business receipts and
54 therefore are not included in New York receipts or everywhere receipts.

55 Example 2: Corporation B sells all the assets of one of its divisions for a gain, which is
56 properly reported as business income. The gain from the sale of these assets is not included in
57 Corporation B's New York receipts or everywhere receipts because the sale is an unusual event.

58 Example 3: Corporation C, a consulting firm, sells its office building and the
59 accompanying parcel of land for a gain, which is properly reported as business income. The gain
60 is not included in Corporation C's New York receipts or everywhere receipts because the sale is
61 an unusual event.

62 Example 4: Corporation D acquires a note issued by Corporation E that pays interest
63 quarterly. Corporation D properly reports the interest income as business income. Corporation
64 D's earning of interest income from Corporation E's note is not an unusual event; it is earned in
65 the regular course of Corporation D's business. The amount of interest income included in
66 Corporation D's New York receipts or everywhere receipts is determined in accordance with
67 section 210-A of the Tax Law.

68 Example 5: Corporation F owns 100 percent of Corporations G and H. All three
69 corporations are engaged in a unitary business and properly included in a combined report.

70 Corporation F sells 100 percent of its stock of Corporation H to an unrelated third-party,
71 realizing a gain on the sale that is properly reported as business income. The gain is not included
72 in the combined group's New York receipts or everywhere receipts because the sale is an unusual
73 event.

74 Example 6: Corporation I, a manufacturing corporation that files on a separate basis for
75 Article 9-A, owns 40 percent of the stock of Corporation J. Although Corporations I and J are
76 not engaged in a unitary business, the stock does not meet the requirements to be investment
77 capital contained in section 208(5) of the Tax Law and section XX. Corporation I sells all of its
78 stock of Corporation J to an unrelated third-party, realizing a gain on the sale that is properly
79 reported as business income. The gain is not included in Corporation I's New York receipts or
80 everywhere receipts because the sale is an unusual event.

81 Example 7: Corporation K, a financial corporation engaged in the business of buying and
82 selling stock that files on a separate basis for Article 9-A, owns 40 percent of the stock of
83 Corporation L. Although Corporations K and L are not engaged in a unitary business, the stock
84 does not meet the requirements to be investment capital contained in section 208(5) of the Tax
85 Law and section XX. Corporation K sells all of its stock of Corporation L to an unrelated third-
86 party, realizing a gain on the sale that is properly reported as business income. The sale of
87 Corporation K's stock of Corporation L is not an unusual event. It is received in the regular
88 course of business as Corporation K is in the business of buying and selling stocks. The amount
89 of gain included in Corporation K's New York receipts or everywhere receipts is determined in
90 accordance with section 210-A of the Tax Law and the applicable regulations.

91 (e) All business receipts for the period covered by the report, computed on a
92 cash or accrual basis according to the method of accounting used in the computation of its

93 entire net income, must be taken into account.

94 (f) New York and everywhere receipts shall be computed using the rules in section 210-A
95 of the Tax Law. For certain types of receipts, the provisions of this Part provide further guidance.

96 (g) For rules relating to discretionary adjustments of the apportionment factor and the
97 MCTD apportionment percentage, see Subpart 4-6 and section 9-6.2.

98 (h) For rules relating to apportionment for corporate partners, see section XX.

99 4-1.2 Apportionment on combined reports. (Tax Law, Section 210-C.5)

100 (a) For purposes of this Part, in the case of a combined report, the term taxpayer means all
101 corporations included in the combined report, regardless of whether such individual members of
102 the combined group are themselves subject to tax.

103 (b) The apportionment factor on a combined report is computed as though the corporations
104 included in the combined report are a single corporation and is computed in accordance with the
105 following principles.

106 (1) All intercorporate business receipts, income, gains and losses are eliminated in
107 computing the combined group's New York receipts or everywhere receipts. Intercorporate
108 receipts, income, gains and losses are receipts, income, gains and losses realized by any
109 corporation included in the combined report from a transaction with any other corporation
110 included in the combined report.

111 (2) Net gains (not less than zero), marked to market net gains (not less than zero), net
112 interest income (not less than zero), or net income (not less than zero) from a certain type of asset
113 on a combined report are computed as though the corporations included in the combined report
114 are a single corporation.

115 (i) For purposes of computing net gains (not less than zero), the aggregate gain from the

116 sale of one type of asset for all members of the combined group is reduced by the aggregate loss
117 from the sale of the same type of asset subject to the same customer sourcing rule in Tax Law
118 section 210-A and the applicable regulations for all members of the combined group, provided
119 that the result cannot be less than zero.

120 (ii) For purposes of computing net interest income (not less than zero) from federal funds,
121 interest income from federal funds for all members of the combined group is reduced by the
122 interest expense from federal funds for all members of the combined group, provided the result
123 cannot be less than zero.

124 (3) If an apportionment rule contained in section 210-A of the Tax Law and the
125 applicable regulations requires the use of a fraction to compute the amount included in the
126 combined group's New York receipts, such specific fraction shall be computed as though the
127 corporations included in the combined report are a single corporation. The amount included in
128 the numerator or denominator of such fraction is determined after the intercorporate eliminations
129 required by paragraph (1) of this subdivision.

130 4-1.3 Definitions. (Tax Law, Sections 208.1 and 210-A)

131 (a) (1) Commercial domicile is determined by the use of the following hierarchy for
132 business entities, based on the information known to the taxpayer or information that would have
133 been known upon reasonable inquiry: (i) the seat of management and control of the business
134 entity; and (ii) the billing address of the business entity in the taxpayer's records. Taxpayers must
135 exercise due diligence before abandoning the first method in this hierarchy and proceeding to the
136 second level.

137 (2) In the case of a business entity that is a sole proprietor, the seat of management and
138 control is the principal place of business of the sole proprietor.

139 (3) In the case of a business entity that is an alien corporation that under any provision of
140 the internal revenue code is not treated as a domestic corporation as defined in section seven
141 thousand seven hundred one of such code, the seat of management and control must be the
142 location within a state of the United States or the District of Columbia from which the
143 corporation's United States trade or business is principally managed and controlled.

144 (b) Marked to market means that a financial instrument is, under section 475 or 1256 of
145 the internal revenue code, treated by the taxpayer as sold for its fair market value on the last
146 business day of the taxpayer's taxable year.

147 (c) Marked to market gain or loss means the gain or loss recognized by the taxpayer under
148 section 475 or 1256 of the internal revenue code because the financial instrument is treated as sold
149 for its fair market value on the last business day of the taxpayer's taxable year.

150 (d) Real property means land, buildings, structures, and improvements thereon. In
151 addition, it includes shares in a cooperative housing corporation in connection with the grant or
152 transfer of a proprietary leasehold.

153 (e) Tangible personal property means corporeal personal property, such as machinery,
154 tools, implements, goods, wares and merchandise. It includes audio works, audiovisual works,
155 visual works, graphic works, or games delivered via a physical medium that are not subject to
156 Section 4-2.2 of this Part. It does not mean money, deposits in banks, shares of stock, bonds,
157 notes, credits or evidences of any interest in property and evidences of debt.

158 Subpart 4-2

159 SPECIFIC APPORTIONMENT RULES

160 Section

161 4-2.1 Receipts from the sale of tangible personal property

162	4-2.2	Receipts from rents and royalties
163	4-2.3	Receipts from the sales of, license to use, and granting of remote
164		access of digital products
165	4-2.4	Receipts from qualified financial instruments
166	4-2.5	Receipts from loans
167	4-2.6	Net interest income from reverse repurchase agreements and
168		securities borrowing agreements
169	4-2.7	Net income from commodities
170	4-2.8	Marked to market net gains
171	4-2.9	Receipts, net gains, and other income from other financial
172		instruments
173	4-2.10	Receipts from credit cards and similar activities
174	4-2.11	Receipts received by credit card processors
175	4-2.12	Receipts from certain services to investment companies
176	4-2.13	Receipts from railroad, trucking and omnibus businesses
177	4-2.14	Receipts from the sale of advertising
178	4-2.15	Receipts from other services and other business activities

179 4-2.1 Receipts from the sale of tangible personal property. (Tax Law, Section 210-

180 A.2(a))

181 Receipts from the sale of tangible personal property are included in New York receipts if
 182 subdivision (a), (b) or (c) below applies. One hundred percent of receipts from the sale of
 183 tangible personal property are included in everywhere receipts.

184 (a) The property is shipped via common or contract carrier, irrespective of whether the

185 shipment is arranged by the taxpayer or the purchaser, or via the taxpayer's vehicle or other
186 means of transportation, to a point in New York State (where property is so shipped to a point
187 outside New York State, the receipts from the sale of such property are not included in
188 New York receipts unless the destination of the property is a point in New York State). See
189 subdivision (d) of this section regarding evidence of destination.

190 (b) The possession of the property is transferred to a purchaser or purchaser's
191 designee at a point in New York State, unless the destination of the property is a point
192 outside New York State. Where possession of the property is transferred in New York State,
193 it is presumed that the destination is a point in New York State unless there is sufficient
194 evidence to demonstrate that the destination is a point outside New York State. See
195 subdivision (d) of this section regarding evidence of destination.

196 (c) The possession of the property is transferred to a purchaser or purchaser's
197 designee at a point outside New York State, where the destination of the property is a point in
198 New York State. Where possession of the property is transferred outside New York State, it is
199 presumed that the destination is a point outside New York State unless there is sufficient
200 evidence to demonstrate that the destination is a point in New York State. See subdivision
201 (d) of this section regarding evidence of destination.

202 (d) Examples of the types of evidence that ordinarily will be sufficient to demonstrate
203 the destination of property include:

204 (1) a bill of lading or other shipping document designating the destination location,
205 regardless of the F.O.B. point, and

206 (2) a purchase invoice designating the destination location.

207 (e) For rules relating to receipts from sales of tangible personal property traded as

208 commodities, see section 4-2.7 of this Subpart.

209 4-2.2 Receipts from rents and royalties. (Tax Law, Section 210-A.3)

210 (a)(1) Receipts from rentals of real and tangible personal property located in New
211 York State are included in New York receipts. One hundred percent of receipts from rentals of
212 real and tangible personal property are included in everywhere receipts.

213 (2) Receipts from rentals include all amounts received by the taxpayer for the use of
214 or occupation of tangible personal property or real property, whether or not such property is
215 owned by the taxpayer.

216 (3) Gross receipts from real and tangible personal property that is subleased from the
217 taxpayer must be included in the apportionment factor.

218 (4) The amount of receipts from the rental of motor vehicles and other rolling stock, such
219 as trucks or construction equipment, included in New York receipts is the product of such
220 receipts and a fraction, the numerator of which is the number of miles operated within New York
221 State and the denominator of which is the total number of miles operated. One hundred percent
222 of the receipts from the rental of motor vehicles and other rolling stock, such as trucks or
223 construction equipment, are included in everywhere receipts. Miles operated while an omnibus
224 is engaged in school bus operations must be disregarded in computing the amount of New York
225 receipts and everywhere receipts.

226 (b)(1) Receipts from the use in New York State of patents, copyrights, trademarks,
227 and similar intangibles such as licenses are included in New York receipts. One hundred
228 percent of receipts from the use of patents, copyrights, trademarks, and similar intangibles such
229 as licenses are included in everywhere receipts.

230 (2) These receipts include, but are not limited to, (i) all amounts received by the

231 taxpayer for the use of patents, copyrights, trademarks or similar intangibles such as licenses
232 whether or not such patents, copyrights, trademarks or similar intangibles were issued to or are
233 owned by the taxpayer and whether or not paid as royalties and (ii) amounts received from the
234 use of copyrights for audio works, audiovisual works, visual works, graphic works, or games
235 delivered via a physical medium.

236 (3) A patent, copyright, trademark, and similar intangible such as a license is used in New
237 York State to the extent that the activities thereunder are carried on in New York State.

238 (4) For amounts received from the use of copyrights for audio works, audiovisual works,
239 visual works, graphic works, or games that constitute digital products, see Section 4-2.3.

240 4-2.3 Receipts from the sales of, license to use, and granting of remote access to digital
241 products. (Tax Law, Section 210-A.4) - Placeholder

242 4-2.4 Receipts from qualified financial instruments. (Tax Law, Section 210-A. 5(a))

243 (a)(1) A qualified financial instrument means any financial instrument that meets the
244 following criteria: (i) the instrument is described in one of the clauses of section 210-A.5(a)(2) of
245 the Tax Law: clause (A) - loans, (B) - federal, state and municipal debt, (C) - asset backed
246 securities and other agency debt, (D) - corporate bonds, (G) - stock or partnership interest, (H) -
247 other financial instruments, or (I) - physical commodities, and

248 (ii) the instrument has been marked to market in the taxable year.

249 (2) (i) If a taxpayer has marked to market any instrument described in clause (A), (B),
250 (C), (D), or (I) of section 210-A.5(a)(2) of the Tax Law, then any other financial instrument
251 described in the same clause that has not been marked to market is also a qualified financial
252 instrument in the taxable year.

253 (ii) The determination of qualified financial instrument is done separately for stocks and

254 partnership interests described in section 210-A.5(a)(2)(G) of the Tax Law. If a taxpayer has
255 marked to market a stock, then any other stock that has not been marked to market is also a
256 qualified financial instrument in the taxable year. If a taxpayer has marked to market a
257 partnership interest, then any other partnership interest that has not been marked to market is also
258 a qualified financial instrument in the taxable year.

259 (iii) If a taxpayer has marked to market a specific financial instrument described in
260 section 210-A.5(a)(2)(H) of the Tax Law, then only a financial instrument of the same type also
261 is a qualified financial instrument in the taxable year. Therefore, some types of financial
262 instruments described in section 210-A.5(a)(2)(H) of the Tax Law may be qualified financial
263 instruments while other types of financial instruments subject to such clause may not be qualified
264 financial instruments.

265 (3) Notwithstanding the provisions of paragraphs (1) and (2) of this subdivision, the
266 following financial instruments shall not be qualified financial instruments:

267 (i) loans secured by real property;

268 (ii) loans not secured by real property, if the only loans the taxpayer has marked to
269 market are loans secured by real property;

270 (iii) stock that is investment capital as defined in section 208.5 of the Tax Law and
271 section XX;

272 (iv) stock that generates other exempt income, as defined in section 208.6-a of the Tax
273 Law and section XX, that is not marked to market, with respect to that other exempt income; and

274 (v) partnership interests that do not meet the definition of security in section 475(c) of the
275 internal revenue code.

276 (4) If a corporation is included in a combined report, the determination of whether a

277 financial instrument is a qualified financial instrument is determined as though all corporations
278 included in the combined report are a single corporation.

279 (b) Except as provided in subdivision (c) of this section, the amount of receipts, net
280 income (not less than zero) and net gains (not less than zero) from qualified financial instruments
281 included in New York receipts or everywhere receipts is determined using the customer sourcing
282 method contained in 210-A.5(a)(2) of the Tax Law and as further described in this Subpart.

283 (c) (1) A taxpayer or the designated agent, in the case of a combined report, may elect the
284 fixed percentage method to include eight percent of all receipts, net gains (not less than zero),
285 and net income (not less than zero) from qualified financial instruments in New York receipts
286 and one hundred percent of all receipts, net gains (not less than zero), and net income (not less
287 than zero) from qualified financial instruments in everywhere receipts (whether or not such net
288 income would otherwise be included in the New York receipts or everywhere receipts pursuant
289 to the provisions of section 210-A.5(a)(2) of the Tax Law). All receipts, net gains (not less than
290 zero), and net income (not less than zero) from qualified financial instruments is the sum of (i)
291 net gains (not less than zero) from each type of qualified financial instrument that would be
292 subject to the same customer sourcing method in Tax Law section 210-A.5(a)(2) and the
293 applicable regulations if not for the fixed percentage method, (ii) marked to market net gains (not
294 less than zero) from each type of qualified financial instrument that would be subject to the same
295 customer sourcing method in Tax Law section 210-A.5(a)(2) and the applicable regulations if not
296 for the fixed percentage method election, (iii) net income (not less than zero) from each type of
297 qualified financial instrument that would be subject to the same customer sourcing method in
298 Tax Law section 210-A.5(a)(2) and the applicable regulations if not for the fixed percentage
299 method, and (iv) receipts from each type of qualified financial instrument that would be subject

300 to the same customer sourcing method in Tax Law section 210-A.5(a)(2) and the applicable
301 regulations if not for the fixed percentage method.

302 (2) The fixed percentage method election shall only be made annually on an original,
303 timely filed report, determined with regard to extensions for time for filing. Any fixed
304 percentage method election made on a report that is filed late will be invalid and ineffective.

305 (3) (i) Once the fixed percentage method election has been made in the manner required
306 in paragraph (2) of this subdivision for a taxable year, it is binding on the taxpayer and the
307 Department and cannot be revoked or overridden.

308 (ii) In the case of a combined report, the fixed percentage method election shall be made
309 by the designated agent. It is binding on all members of a combined group and the Department
310 and cannot be revoked or overridden.

311 (4) In the case of a combined report, all receipts, net gains (not less than zero), and net
312 income (not less than zero) from qualified financial instruments included in the combined
313 group's New York receipts and everywhere receipts is computed as though all corporations
314 included in the combined report are a single corporation. All receipts, net gains (not less than
315 zero), and net income (not less than zero) from qualified financial instruments for the combined
316 group is the sum of (i) net gains (not less than zero) from each type of qualified financial
317 instrument that would be subject to the same customer sourcing method in Tax Law section 210-
318 A.5(a)(2) and the applicable regulations if not for the fixed percentage method for all members
319 of the combined group, (ii) marked to market net gains (not less than zero) from each type of
320 qualified financial instrument that would be subject to the same customer sourcing method in
321 Tax Law section 210-A.5(a)(2) and the applicable regulations if not for the fixed percentage
322 method election for all members of the combined group, (iii) net income (not less than zero)

323 from each type of qualified financial instrument that would be subject to the same customer
324 sourcing method in Tax Law section 210-A.5(a)(2) and the applicable regulations if not for the
325 fixed percentage method for all members of the combined group, and (iv) receipts from each
326 type of qualified financial instrument that would be subject to the same customer sourcing
327 method in Tax Law section 210-A.5(a)(2) and the applicable regulations if not for the fixed
328 percentage method for all members of the combined group.

329 (5) Examples. For purposes of the following examples, it is assumed that the
330 corporations do not have investment capital or other exempt income generated by stock that is
331 not marked to market.

332 Example 1: Corporation X owns and marks to market unsecured loan A, corporate bond
333 B, and stock C. In addition, it owns unsecured loan D, unsecured loan E, corporate bond F,
334 corporate bond G, stock H, loan I secured by real property, and loan J secured by real property
335 but does not mark to market these instruments. Corporation X elects to use the fixed percentage
336 method in the manner required by paragraph (2) of subdivision (c) of this section to determine
337 the amount of receipts, net gains (not less than zero), and net income (not less than zero) from
338 qualified financial instruments included in New York receipts or everywhere receipts.

339 The following instruments are considered qualified financial instruments: unsecured
340 loans A, D and E; corporate bonds B, F, and G; and stocks C and H. The amount of receipts, net
341 gains (not less than zero), and net income (not less than zero) from qualified financial
342 instruments included in New York receipts or everywhere receipts is determined using the rules
343 for the fixed percentage method. Loans I and J secured by real property are not qualified
344 financial instruments. Therefore, the amount of receipts and net gains (not less than zero) from
345 these instruments included in Corporation X's New York receipts or everywhere receipts is

346 determined using the customer sourcing method in 210-A.5(A)(2) of the Tax Law and the
347 applicable regulations.

348 Example 2: Corporations Y and Z are properly included in a combined report.

349 Corporation Y owns and marks to market loans secured by real property, corporate bonds, and
350 interests in publicly traded partnerships. Corporation Z owns unsecured personal loans, stocks,
351 and corporate bonds, but does not mark to market these financial instruments. Corporation Y, the
352 designated agent, elects to use the fixed percentage method in the manner required by paragraph
353 (2) of subdivision (c) of this section to determine the amount of the combined group's receipts,
354 net gains (not less than zero), and net income (not less than zero) from qualified financial
355 instruments to include in the combined group's New York receipts or everywhere receipts.

356 The following instruments are qualified financial instruments in the combined report of
357 Corporations Y and Z: Corporation Y's corporate bonds and interests in publicly traded
358 partnerships and Corporation Z's corporate bonds. The amount of receipts, net gains (not less
359 than zero), and net income (not less than zero) from these instruments included in the combined
360 group's New York receipts or everywhere receipts is determined using the rules for the fixed
361 percentage method. Corporation Y's loans secured by real property are prohibited from being
362 qualified financial instruments. In addition, Corporation Z's unsecured loans are not qualified
363 financial instruments because the only loans that are marked to market by either corporation are
364 loans secured by real property and Corporation Z's stocks are not qualified financial instruments
365 because neither corporation marked to market stocks. Therefore, the amount of such receipts and
366 net gains (not less than zero) included in the combined group's New York receipts or everywhere
367 receipts is determined using the customer sourcing method outlined in 210-A.5(A)(2) and
368 applicable regulations.

369 Example 3: Corporation X elects to use the fixed percentage method in the manner
370 required by paragraph (2) of subdivision (c) of this section to determine the amount of its
371 receipts, net gains (not less than zero), and net income (not less than zero) from qualified
372 financial instruments to include in the combined group's New York receipts or everywhere
373 receipts.

374 It has \$1,000 in dividends from Stock A, (\$200) loss from the sale of Stock B, \$750 gain
375 from the sale of corporate bond C that was sold through a licensed exchange, \$25,000 gain from
376 the sale of corporate bond D that was not sold through a registered securities broker or dealer or
377 through a licensed exchange, \$10,000 of marked to market gains from stock, and (\$2,500)
378 marked to market losses from stock. Corporation X marks to market its stocks and bonds.
379 Therefore, stocks and bonds constitute qualified financial instruments.

380 Corporation X has \$34,250 of receipts and net gains (not less than zero) from qualified
381 financial instruments included in everywhere receipts broken down as follows:

- 382 • \$1,000 of dividends from stock;
- 383 • \$0 of gains from sales of stock (as the loss is limited to zero);
- 384 • \$750 of gains from sales of bonds sold through a licensed exchange or registered
385 securities broker or dealer;
- 386 • \$25,000 of gains from sales of bonds not sold through a licensed exchange or
387 registered securities broker or dealer; and
- 388 • \$7,500 of marked to market net gains from stock (\$10,000 minus \$2,500).

389 Corporation X includes \$2,740 (8 percent multiplied by \$34,250) from qualified financial
390 instruments in its New York receipts. Since Corporation X only has receipts and net gains (not
391 less than zero) from qualified financial instruments, the result is a business apportionment factor

392 of eight percent.

393 Example 4: Corporations R and S are properly included in a combined report, with
394 Corporation R identified as the designated agent. Corporation R elects to use the fixed
395 percentage method in the manner required by paragraph (2) of subdivision (c) of this section to
396 determine the amount of the combined group's receipts, net gains (not less than zero), and net
397 income (not less than zero) from qualified financial instruments to include in New York receipts
398 and everywhere receipts.

399 Corporation R owns and marks to market stock A, stock B, bond D issued by State D,
400 and unsecured loan H. Corporation S owns stock C, treasury bill E, bond F issued by New York
401 State, and unsecured loan G but does not mark to market these instruments. Although
402 Corporation S does not mark to market its stock, government issued debt, and unsecured loan,
403 these instruments are still qualified financial instruments because the determination is done as
404 though all the corporations properly included in the combined report are a single corporation.

405 The income, gains, or losses from qualified financial instruments for Corporations R and
406 S is broken down as follows:

- 407 • \$200 of dividends from stock A;
- 408 • \$750 of dividends from stock B;
- 409 • (\$300) loss from the sale of stock C;
- 410 • \$500 gain from the sale of State D bond;
- 411 • \$150 of interest from treasury bill E;
- 412 • (\$200) loss from the sale of New York State bond F;
- 413 • \$600 of interest from unsecured loan G;
- 414 • \$1,000 gain from the sale of unsecured loan H; and

- 415 • \$400 of marked to market net gains from stock.

416 The combined group includes \$3,600 of receipts and net gains (not less than zero) from
417 such qualified financial instruments in everywhere receipts broken down as follows:

- 418 • \$950 of dividends from stock;
- 419 • \$0 of gains from sales of stock (as the loss is limited to zero);
- 420 • \$500 of gains from sales of other state bonds (100 percent of the net gain is included
421 when the fixed percentage election is made, as opposed to 50 percent of the net gain
422 under the customer sourcing method);
- 423 • \$150 of interest from treasury bills;
- 424 • \$0 of gains from sales of New York State bonds;
- 425 • \$600 of interest from unsecured loans;
- 426 • \$1,000 of gain from unsecured loans; and
- 427 • \$400 of marked to market net gains from stock.

428 The combined group includes \$288 (\$3,600 multiplied by 8 percent) of income and net
429 gains from qualified financial instruments in the combined group's New York receipts.

430 In addition, corporation R owns loan I secured by real property and Corporation S owns
431 loan J secured by real property and an interest in widely held partnership K. Since Corporation S
432 does not mark to market its interest in widely held partnership K and Corporation R does not
433 own and mark to market any publicly traded or widely held partnerships, the interest in
434 partnership K is not a qualified financial instrument. The amount of income, gains, and losses
435 from instruments that are not qualified financial instruments for Corporations R and S is broken
436 down as follows:

- 437 • \$300 gain from the sale of loan I secured by real property in State Y (\$0 is included

438 in the combined group's New York receipts and \$300 is included in the combined
439 group's everywhere receipts);

- 440 • \$250 gain from the sale of loan J secured by real property in New York (\$250 is
441 included in both the combined group's New York receipts and everywhere receipts);
- 442 • \$400 gain from the sale of widely held partnership K domiciled in New York (\$0 is
443 included in both the combined group's New York receipts and everywhere receipts);

444 and

- 445 • \$200 of marked to market net gains from loans secured by real property (\$90 is
446 included in the combined group's New York receipts and \$200 is included in the
447 combined group's everywhere receipts. The amount included in the combined
448 group's New York receipts is determined by multiplying the \$200 of marked to
449 market net gains by 45 percent ($\$250/\550), which is the ratio of net gains from
450 actual sales of loans secured by real property located in New York to net gains from
451 actual sales of all loans secured by real property).

452 The combined group includes \$340 of income and net gains from instruments that are not
453 qualified financial instruments in its New York receipts and \$750 of income and net gains from
454 instruments that are not qualified financial instruments in its everywhere receipts.

455 The combined group has a total of \$628 of New York receipts (\$288 from qualified
456 financial instruments and \$340 not from qualified financial instruments) and \$4,350 of
457 everywhere receipts (\$3,600 from qualified financial instruments and \$750 not from qualified
458 financial instruments). The result is the combined group's business apportionment factor is
459 14.4368 percent.

460 4-2.5 Receipts from loans. (Tax Law, Section 210-A.5(a)(2)(A))

461 (a) (1) A loan secured by real property means that real property constitutes fifty percent or
462 more of the aggregate value of the collateral used to secure a loan, when valued at fair market
463 value (FMV), as of the time the loan is originated.

464 (2) If one or more of the properties that secure the loan are located outside of New York,
465 the amount of interest income from such loan included in New York receipts is the product of
466 such interest income and a fraction, the numerator of which is the FMV of real property located in
467 New York State used to secure the loan and the denominator of which is the FMV of all real
468 property used to secure the loan.

469 (b) (1) A loan not secured by real property means that less than fifty percent of the
470 aggregate value of the collateral used to secure a loan, when valued at FMV as of the time the
471 loan is originated, is real property.

472 (2) Interest income from loans not secured by real property is included in New York
473 receipts if borrower's location as of the time the loan is originated is in New York State.

474 (3) If the borrower is an individual, the borrower's location is the borrower's mailing
475 address in the records of the lender. If the borrower is a business entity, the borrower's location is
476 the borrower's commercial domicile.

477 (c) The determination of the type of loan, FMV of real property, and borrower's location
478 is made only at the time the loan is originated, and will be redetermined only if the loan is
479 refinanced.

480 (d) Examples

481 Example 1: Taxpayer D makes multiple loans not secured by real property to
482 Corporation E, domiciled in State X. Each loan is executed by a separate division of Corporation
483 E and the divisions are located in State Y, State Z, and New York State. The interest income

484 earned by Taxpayer D on these loans is not included in New York receipts because Corporation
485 E's commercial domicile is State X. All such interest income is included in everywhere receipts.

486 Example 2: Taxpayer E earns interest income from a loan not secured by real property
487 that it made to Corporation F, domiciled in New York at the time the loan is originated. The
488 interest income is included in New York receipts because Corporation F's commercial domicile
489 is New York State. Five years after the loan is originated, the commercial domicile of
490 Corporation F changes from New York State to State X. The interest income continues to be
491 included in New York receipts because Corporation F's commercial domicile at the time the loan
492 was originated was New York State. All such interest income is included in everywhere
493 receipts.

494 4-2.6 Net interest income from reverse repurchase agreements and securities borrowing
495 agreements (Tax Law, Section 210-A.5(a)(2)(E))

496 (a) Eight percent of net interest income (not less than zero) from reverse repurchase
497 agreements is included in New York receipts. Eight percent of net interest income (not less than
498 zero) from securities borrowing agreements is included in New York receipts. One hundred
499 percent of net interest income from reverse repurchase agreements and one hundred percent of net
500 interest income from securities borrowing agreements is included in everywhere receipts.

501 (b) (1) Net interest income from reverse repurchase agreements is determined after the
502 deduction of the interest expense from the taxpayer's repurchase agreements but cannot be less
503 than zero. For this calculation, the amount of interest expense is the interest expense associated
504 with the value of the taxpayer's repurchase agreements where it is the seller/borrower, provided
505 the amount is limited to the value of the taxpayer's reverse repurchase agreements where it is the
506 purchaser/lender.

507 (2) In the case of a combined report, the amount of net interest income included in the
508 combined group's New York receipts or everywhere receipts from reverse repurchase agreements
509 is determined after the deduction of the interest expense from the repurchase agreements for all
510 members of the combined group but cannot be less than zero. For this calculation, the amount of
511 interest expense is the interest expense associated with the value of the repurchase agreements for
512 all members of the combined group where members are seller/borrower, provided the amount is
513 limited to the value of reverse repurchase agreements for all members of the combined group
514 where members are purchaser/lender.

515 (c) (1) Net interest income from securities borrowing agreements is determined after the
516 deduction of the interest expense from the taxpayer's securities lending agreements but cannot be
517 less than zero. For this calculation, the amount of interest expense is the interest expense
518 associated with the value of the taxpayer's securities lending agreements where it is securities
519 lender, provided the amount is limited to the value of the taxpayer's securities lending agreements
520 where it is securities borrower.

521 (2) In the case of a combined report, the amount of net interest income included in the
522 combined group's New York receipts or everywhere receipts from securities borrowing
523 agreements is determined after the deduction of the interest expense from the securities lending
524 agreements for all members of the combined group but cannot be less than zero. For this
525 calculation, the amount of interest expense is the interest expense associated with the value of the
526 securities lending agreements for all members of the combined group where members are
527 securities lender, provided the amount is limited to the value of securities lending agreements for
528 all members of the combined group where members are securities borrower.

529 4-2.7 Net income from commodities (Tax Law, Sec. 210-A.5(a)(2)(I))

530 (a) (1) The amount of net income (not less than zero) from all commodities included in
531 New York receipts or everywhere receipts is determined separately for sales of commodities
532 actually delivered and sales of commodities where delivery does not actually occur. The amount
533 of net income (not less than zero) included in New York receipts from sales of commodities
534 actually delivered occurs is the product of such net income (not less than zero) and a fraction, the
535 numerator of which is the amount of gross receipts from sales of all commodities actually
536 delivered to points within the state and the denominator of which is the amount of all gross
537 receipts from sales of commodities actually delivered. The amount of net income (not less than
538 zero) included in New York receipts from commodities where delivery does not actually occur is
539 the product of such net income (not less than zero) and a fraction, the numerator of which is the
540 amount of gains from sales of commodities where delivery does not actually occur to purchasers
541 located in the state and the denominator of which is the amount of gains from all sales of
542 commodities where delivery does not actually occur to all purchasers. One hundred percent of net
543 income (not less than zero) from sales of commodities actually delivered is included in
544 everywhere receipts. One hundred percent of net income (net less than zero) from sales of
545 commodities where delivery does not actually occur is included in everywhere receipts. Net
546 income (not less than zero) is determined after the deduction of the cost to acquire or produce all
547 commodities, provided the result cannot be less than zero.

548 (2) Example.

549 Corporation A, a separate Article 9-A filer, makes sales of commodities where the
550 commodities are actually delivered and sales of commodities where delivery does not actually
551 occur.

552 Sales of commodities actually delivered.

553 Corporation A has receipts from sales of commodities where the commodities are actually
554 delivered broken down as follows:

- 555 • \$200 of gross receipts from sale of gold sold to purchasers in states other than New
556 York State but delivered to New York State;
- 557 • \$700 of gross receipts from gold sold to purchasers located in New York State but
558 delivered to states other than New York State;
- 559 • \$100 of gross receipts from silver sold to purchasers located in New York State but
560 delivered to states other than New York State; and
- 561 • \$1,000 of gross receipts from electricity sold to purchasers located in New York
562 State and delivered to points within New York.

563 Corporation A incurred the following costs to acquire or produce the commodities where
564 the commodities are actually delivered:

- 565 • \$715 for gold;
- 566 • \$85 for silver; and
- 567 • \$400 for electricity.

568 Corporation A uses the customer sourcing rule contained in section 210-A.5(a)(2)(I) of the
569 Tax Law and this section to determine the amount of net income (not less than zero) to include in
570 its New York receipts or everywhere receipts.

571 Corporation A first determines the amount of gross receipts from sales of commodities
572 where the commodities are actually delivered, which is \$2,000 (\$200 plus \$700 plus \$100 plus
573 \$1,000). Next, Corporation A determines the total cost it incurred to acquire or produce such
574 commodities, which is \$1,200 (\$715 plus \$85 plus \$400). The result is Corporation A has \$800
575 of net income from sales of commodities that are actually delivered.

576 The amount of net income from the sales of commodities that are actually delivered that
577 is included in New York receipts is the net income from such sales multiplied by a fraction, the
578 numerator of which is the amount of gross receipts from sales of commodities that are actually
579 delivered to points within New York State and the denominator of which is the amount of gross
580 receipts from sales of commodities that are actually delivered. Corporation A multiplies its net
581 income of \$800 by 60 percent ($\$1,200/\$2,000$), and the product is \$480, which Corporation A
582 must include in its New York receipts. All \$800 of net income from sales of commodities that
583 are actually delivered is included in everywhere receipts.

584 Sales of commodities where delivery does not actually occur

585 Corporation A has gains and losses from sales of commodities that are not actually
586 delivered in the following amounts:

- 587 • \$100 of gains from sales of gold sold to purchasers located in New York State;
- 588 • (\$200) of losses from sales of gold sold to purchasers located in New York State;
- 589 • \$500 of gains from sales of gold sold to purchasers located in states other than
590 New York State;
- 591 • \$ 400 of gains from sales of corn sold to purchasers located in states other than
592 New York State; and
- 593 • (\$300) of losses from sales of corn sold to purchasers located in states other than
594 New York State.

595 Corporation A first determines the amount of net income from sales of commodities that
596 are not actually delivered, which is \$500 ($\$100 - \$200 + \$500 + \$400 - \300). Next, it
597 determines the amount of gains from such sales, which is \$1,000 ($\$100 - \$0 + \$500 + \$400 - \0).

598 The amount of net income to be included in New York from the sales of commodities that

599 are not actually delivered is determined by multiplying such net income by a fraction, the
600 numerator of which is the amount of gains from sales to purchasers located within New York
601 State of commodities that are not actually delivered and the denominator of which is the amount
602 of gains from sales of commodities that are not actually delivered. Corporation A multiplies its
603 \$500 of net income by 10 percent ($\$100/\$1,000$). The result is \$50 included in New York
604 receipts. All \$500 of net income is included in everywhere receipts.

605 Total sales of commodities

606 Corporation A includes \$530 ($\$480 + \50) of net income from commodities in its New
607 York receipts and \$1,300 ($\$800 + \500) of net income from commodities in its everywhere
608 receipts.

609 (a) In the case of a combined report, the amount of net income (not less than zero) of the
610 combined group from commodities included in the combined group's New York receipts or
611 everywhere receipts is determined separately for sales of commodities actually delivered and sales
612 of commodities where delivery does not actually occur. The amount of net income (not less than
613 zero) for all members of the combined group included in the combined group's New York
614 receipts from sales of commodities actually delivered is the product of such net income (not less
615 than zero) and a fraction, the numerator of which is the amount of gross receipts from sales of all
616 commodities actually delivered to points within the state for all members of the combined group
617 and the denominator of which is the amount of all gross receipts from sales of commodities that
618 are actually delivered for all members of the combined group. The amount of net income (not
619 less than zero) for all members of the combined group included in the combined group's New
620 York receipts from commodities where delivery does not actually occur is the product of such net
621 income (not less than zero) and a fraction, the numerator of which is the amount of gains from

622 sales of commodities to purchasers located in the state, where delivery does not actually occur, for
623 all members of the combined group and the denominator of which is the amount of gains from all
624 sales of commodities to all purchasers, where delivery does not actually occur, for all members of
625 the combined group. One hundred percent of net income (not less than zero) from sales of
626 commodities for all members of the combined group is included in the combined group's
627 everywhere receipts. Net income (not less than zero) is determined after the deduction of the cost
628 to acquire or produce all commodities, provided the result cannot be less than zero.

629 (c) For purposes of this section, the term commodity has the same meaning as in
630 subparagraphs (A), (B), and (C) of section 475(e)(2) of the internal revenue code.

631 (d) For rules pertaining to sales of tangible personal property that is not traded as
632 commodities, see section 4-2.1 of this Subpart.

633 4-2.8 Marked to Market Net Gains (Tax Law, Sections 210-A.5(a)(1) and 210-
634 A.5(a)(2)(J))

635 (a) If the taxpayer or designated agent, in the case of a combined group, has made the
636 fixed percentage method election in the manner required by paragraph (2) of subdivision (c) of
637 section 4-6 of this Part, then eight percent of marked to market net gains (not less than zero)
638 from each type of qualified financial instrument is included in New York receipts and one
639 hundred percent of such marked to market net gains are included in everywhere receipts.

640 (b) If the taxpayer or designated agent, in the case of a combined group, has not made
641 the fixed percentage method election, then the amount of marked to market net gains from
642 qualified financial instruments included in New York receipts or everywhere receipts is
643 determined using the rules set forth in paragraphs (1), (2) and (3) of this subdivision. The
644 amount of marked to market net gains (not less than zero) from instruments that are not qualified

645 financial instruments included in New York receipts or everywhere receipts is also determined
646 using the rules set forth in paragraphs (1), (2) and (3) of this subdivision.

647 (1) Marked to market net gains (not less than zero) from stocks are not included in New
648 York receipts or everywhere receipts, unless the Commissioner has required that net gains from
649 sales of stocks be included in the apportionment factor pursuant to Tax Law section 210-
650 A.5(a)(2)(G). Marked to market net gains (not less than zero) from partnership interests are not
651 included in New York receipts or everywhere receipts, unless the Commissioner has required
652 that net gains from the sale of partnership interests be included in the apportionment factor
653 pursuant to Tax Law section 210-A.5(a)(2)(G).

654 (2) The amount of marked to market net gains (not less than zero) from each type of
655 financial instrument included in New York receipts is determined by multiplying the marked to
656 market net gains (not less than zero) from each such type of financial instrument by a fraction,
657 the numerator of which is the net gains from actual sales of that type of financial instrument
658 included in New York receipts determined under the applicable clause of section 210-A.5(a)(2)
659 of the Tax Law and the denominator of which is the net gains from actual sales of that type
660 of financial instrument included in everywhere receipts determined under the applicable clause
661 of section 210-A.5(a)(2) of the Tax Law. Marked to market net gains (not less than zero) from
662 financial instruments for which the amount included in New York receipts is determined
663 under the immediately preceding sentence are included in everywhere receipts.

664 (3) If there are no actual sales of that type of financial instrument that is marked to
665 market or if the taxpayer has an overall net loss from the actual sale of that type of financial
666 instrument, the amount of marked to market net gains (not less than zero) from that type of
667 financial instrument included in New York receipts is determined by multiplying the marked

668 to market net gains (but not less than zero) from that type of financial instrument by a
669 fraction, the numerator of which is the sum of the amount of receipts included New York
670 receipts under clauses (A) - loans, (B) - federal, state, and municipal debt, (C) - asset backed
671 securities and other agency debt, (D) - corporate bonds, (E) - reverse repurchase agreements and
672 securities borrowing agreements, (F) - federal funds, (G) - stock or partnership interests, (H) -
673 other financial instruments and (I) - physical commodities of section 210-A.5(a)(2) of the Tax
674 Law and subclause (ii) of section 210-A.5(a)(2)(J) of the Tax Law, and the denominator of
675 which is the sum of the amount of receipts included in the everywhere receipts under
676 clauses (A), (B), (C), (D), (E), (F), (G), (H) and (I) and subclause (ii) of section 210-A.5(a)(2)(J)
677 of the Tax Law. One hundred percent of marked to market net gains (not less than zero) for
678 which the amount to be included in New York receipts determined under the immediately
679 preceding sentence are included in everywhere receipts.

680 4-2.9 Receipts, net gains, and other income from other financial instruments. (Tax
681 Law, Section 210-A.5(a)(2)(H))

682 (a) Receipts, net gains (not less than zero), and other income (not less than zero) from
683 other financial instruments includes receipts, net gains, and other income from financial
684 instruments that are not described in the rules for Tax Law section 210-A.5(a)(2)(A)-(G), (I), and
685 (J) and the applicable regulations.

686 (b) For purposes of this section, (1) a government entity, as payor or purchaser, is located
687 in New York State if the main office of such entity is in New York State; (2) an individual, as
688 payor or purchaser, is located in New York State if its billing address is in New York State; and
689 (3) a business entity, as payor or purchaser, is located in New York State if its commercial
690 domicile is in New York State.

691 (c) Interest income from other financial instruments includes, but is not limited to,
692 interest income on (i) deposit accounts, (ii) money market mutual funds, (iii) debt issued by a
693 country, or political subdivision thereof, other than the United States, and (iv) funds deposited
694 with the Federal Reserve (other than interest from federal funds described in section 210-
695 A.5(a)(2)(F) of the Tax Law). Such interest income is included in New York receipts if the
696 payor is located in New York State. One hundred percent of such interest income is included in
697 everywhere receipts.

698 Example 1: Taxpayer A earns \$2,000,000 of interest income on deposits on accounts at
699 the New York State branch and the State X branch of a bank whose commercial domicile is
700 located in State Y. No interest income is included in New York receipts because the commercial
701 domicile of the bank is State Y. All \$2,000,000 of interest income is included in everywhere
702 receipts.

703 Example 2: Taxpayer B receives \$1,500 of income from Money Market Fund M. The
704 commercial domicile of Money Market Fund M is State X. No interest income is included in
705 New York receipts because the commercial domicile of Money Market Fund M is in State X. All
706 \$1,500 of income is included in everywhere receipts.

707 Example 3: Taxpayer C deposits funds with the Federal Reserve Bank of New York
708 State. These funds generate \$1,000 of interest income that is not considered interest income
709 from federal funds. All \$1,000 of interest income is included in New York receipts because the
710 main office of the Federal Reserve Bank of New York is in New York State. All \$1,000 of
711 interest income is included in everywhere receipts.

712 Example 4: Taxpayer D deposits funds with the Federal Reserve Bank of Boston. These
713 funds generate \$10,000 of interest income that is not considered interest income from federal

714 funds. No interest income is included in New York receipts because the main office of the
715 Federal Reserve Bank of Boston is not in New York. All \$10,000 of interest income is included
716 in everywhere receipts.

717 (d) (1) For purposes of computing net gains (not less than zero) from other financial
718 instruments, the gains from sales of a particular type of other financial instrument are reduced by
719 the losses from sales of that same type of other financial instrument, provided the result cannot
720 be less than zero. For purposes of computing other income (not less than zero) from other
721 financial instruments, the computation is done for each type of instrument.

722 (2) For purposes of computing the combined group's net gains (not less than zero)
723 included in New York receipts or everywhere receipts, the gains from sales of a particular type
724 of other financial instrument for all members of the combined group is reduced by the losses
725 from sales of that same type of other financial instrument for all members of the combined
726 group, provided the result is not less than zero. For purposes of computing the combined group's
727 other income (not less than zero) from other financial instruments, the computation is done for
728 each type of instrument for all members of the combined group.

729 Example 1: Taxpayer E receives \$2,000 of substitute payments in lieu of dividends from
730 its stock of Corporation X, domiciled in state Y. No substitute payments in lieu of dividends are
731 included in New York receipts because the payor, Corporation X, is domiciled in State Y. All
732 \$2,000 of such payments are included in everywhere receipts.

733 Example 2: Taxpayer F owns debt issued by Country X, debt issued by Country Y, debt
734 issued by Country Z, foreign currency swaps for the currency A, and foreign currency swaps for
735 currency B. Taxpayer F has two types of other financial instruments – debt issued by other
736 countries and foreign currency swaps. When determining the amount of New York receipts or

737 everywhere receipts, any gains from sales of debt issued by other countries may only be reduced
738 by losses from sales of debt issued by other countries and any gains from sales of foreign
739 currency swaps may only be reduced by losses from sales of foreign currency swaps.

740 4-2.10 Receipts from credit cards and similar activities (Tax Law, Section 210-A.5(c)(1)-
741 (3))

742 (a) Receipts received by issuer banks from credit card receivables constituting interest,
743 and fees and penalties in the nature of interest and service charges and fees from credit cards are
744 included in New York State receipts if the mailing address of the card holder in the records of the
745 issuer bank is in New York State. All such receipts are included in everywhere receipts. For
746 purposes of this section, credit card and issuer bank shall have the same meaning as paragraph
747 (1) of subdivision (a) of section 4-2.11 of this subpart.

748 (b) Receipts from merchant discounts are included in New York receipts if the merchant
749 is located within the state. One hundred percent of receipts from merchant discounts are
750 included in everywhere receipts. In the case of a merchant with locations both within and
751 without New York State, only receipts from merchant discounts attributable to sales made from
752 locations within New York State are included in New York receipts. It shall be presumed that
753 the location of the merchant is the address of the merchant shown on the invoice submitted by
754 the merchant to the taxpayer.

755 4-2.11 Receipts received by credit card processors. (Tax Law, Section 210-A.5(c)(4))

756 (a) For purposes of this section, the following definitions shall apply:

757 (1) Credit card includes credit, bank, travel and entertainment or pre-paid payment cards
758 or products that can be presented at a physical point-of-sale terminal, electronically, or by
759 telephone.

760 (2) Credit card processor means an entity, whether it is a corporation or an
761 unincorporated entity, that derives 50 percent or more of its gross receipts from any or all of the
762 following: credit card authorization processing, clearing processing, settlement processing, and
763 volume-based activities.

764 (3) Authorization processing means the routing of transaction data from a merchant to an
765 acquirer bank or from an acquirer bank to an issuer bank for approval or rejection and the routing
766 of that approval or rejection back to the originating party.

767 (4) Clearing processing means the service of processing of a batch of hundreds or
768 thousands of previously-authorized transactions to determine the net amounts due to or from
769 credit card issuers and credit card acquirers.

770 (5) Settlement processing means the service of delivering instructions for the actual
771 movement of funds between issuing banks and acquirer banks that reflects the amounts
772 determined to be due to or from each entity during clearing processing.

773 (6) Credit card processor's network means the hardware and software that enable a credit
774 card processor to facilitate the transfer of financial transaction information to and from issuer
775 banks and acquirer banks and, in the case of a third-party processor, to and from merchants,
776 including by any of the following: receiving, processing, and relaying such financial transaction
777 information.

778 (7) Volume-based activities means services that are charged to customers measured on
779 the dollar volume or number of credit card transactions.

780 (8) Access point means a physical location at which a credit card processor's customers
781 access or may access the credit card processor's network.

782 (9) Percent of New York State access points means the number of access points located

783 in New York State divided by the total number of access points in the United States.

784 (10) Acquirer bank means a financial institution that contracts with merchants to accept
785 payments by credit card.

786 (11) Issuer bank means a financial institution that issues credit cards to account holders.

787 (b) (1) Except as provided for in paragraph (2) of this subdivision, the amount of receipts
788 from authorization processing, clearing processing, and settlement processing earned by credit
789 card processors included in New York receipts is the product of all such receipts and the percent
790 of the credit card processor's New York State access points that could generate receipts subject
791 to this paragraph. All such receipts are included in everywhere receipts.

792 (2) If the credit card processor is a third-party processor, and after exercising due
793 diligence, cannot identify the access points for its authorization, clearing, and settlement
794 processing transactions on behalf of issuer banks, the amount of receipts from those transactions
795 earned from issuer banks with billing addresses, kept in the normal course of the credit card
796 processor's operations, in New York State shall be included in New York receipts. All such
797 receipts are included in everywhere receipts.

798 (c) The amount of all other receipts, including receipts from volume-based activities,
799 received by credit card processors not specifically addressed in subdivisions one through nine of
800 section 210-A of the Tax Law shall be included in New York receipts by multiplying the total
801 amount of such other receipts by the average percentage of (i) eight percent and (ii) the percent
802 of the credit card processor's New York State access points.

803 (d) Notwithstanding section 4-6 of this Subpart, if it shall appear that the receipts
804 included in New York receipts pursuant to this section do not accurately reflect the locations
805 where the credit card processor's receipts are earned because the credit card processor has

806 receipts arising from activities outside of the United States, then the credit card processor is
807 authorized to calculate New York receipts based on the New York State percentage of total
808 access points, which shall be calculated as access points physically located in New York State
809 divided by the total number of access points used to generate the receipts being apportioned
810 under this section. The taxpayer bears the burden of proof to demonstrate that applying the
811 apportionment rules contained in subdivisions (b) and (c) of this section does not result in a
812 proper reflection of the taxpayer's business income or business capital within the New York
813 State.

814 4-2.12 Receipts from certain services to investment companies (Tax Law Section 210-
815 A.5(d))

816 (a) (1) Receipts received from an investment company arising from the sale of
817 management, administration or distribution services to such investment company are included in
818 everywhere receipts. The portion of such receipts included in New York receipts is the product
819 of such receipts and a fraction, the numerator of which is the sum of the monthly percentages
820 determined for each month of the investment company's taxable year for federal income tax
821 purposes which taxable year ends within the taxable year of the taxpayer and the denominator of
822 which is the number of such monthly percentages.

823 (2) (i) In the case of an investment company defined in subparagraph (i) of paragraph (1)
824 of subdivision (b) of this section, the monthly percentage for each month is determined by
825 dividing the number of shares in the investment company that are owned on the last day of the
826 month by shareholders that are located in the state by the total shares outstanding on that date.
827 Any month during which the investment company had no outstanding shares shall not be
828 included in the computation in paragraph (1) of subdivision (a) of this section.

829 (ii) In the case of an investment company defined in subparagraph (ii) of paragraph (1) of
830 subdivision (b) of this section that is an entity that elects to be taxable as a corporation for federal
831 income tax purposes, the monthly percentage for each month is the percentage of the investment
832 company owned by investors located in New York State as of the last day of the month. Any
833 month during which the investment company had no investors shall not be included in the
834 computation in paragraph (1) of subdivision (a) of this section.

835 (iii) In the case of an investment company defined in subparagraph (ii) of paragraph (1)
836 of subdivision (b) of this section that is an entity that does not elect to be taxable as a corporation
837 for federal income tax purposes, the monthly percentage for each month is the percentage of
838 profits or losses, as applicable, allocated to investors located in New York as of the last day of
839 the month. Any month during which the investment company had no investors shall not be
840 included in the computation in paragraph (1) of subdivision (a) of this section.

841 (3) For purposes of this section, an individual, estate or trust is deemed to be located in
842 New York State if his, her or its mailing address on the records of the investment company is in
843 New York State. A business entity is deemed to be located in New York State if its commercial
844 domicile is located in New York State.

845 (b) Definitions. For purposes of this section, the following terms shall have the following
846 meanings.

847 (1) Investment company means:

848 (i) a regulated investment company, as defined in section 851 of the internal revenue
849 code, and a partnership to which section 7704(a) of the internal revenue code applies (by virtue
850 of section 7704(c)(3) of such code) and that meets the requirements of section 851(b) of such
851 code. The preceding sentence shall be applied to the taxable year for federal income tax

852 purposes of the business entity that is asserted to constitute an investment company that
853 ends within the taxable year of the taxpayer; or

854 (ii) an unincorporated entity, such as a limited partnership, general partnership, limited
855 liability company, or trust, that pools capital from passive investors and that trades or makes
856 investments in stocks, bonds, securities, commodities, loans, or other financial assets, but that
857 does not otherwise conduct a trade or business. An entity that invests directly or indirectly in
858 real estate does not constitute an investment company unless the investments are de minimis or
859 consist of stock in publicly traded corporations.

860 (2) Receipts from an investment company include amounts received directly from an
861 investment company as well as amounts received from the shareholders or investors in such
862 investment company, in their capacity as such.

863 (3) Management services means the rendering of investment advice to an investment
864 company, making determinations as to when sales and purchases of securities are to be made on
865 behalf of an investment company, or the selling or purchasing of securities constituting assets
866 of an investment company, and related activities. In the case of any investment company defined
867 in subparagraph (i) of paragraph (1) of subdivision (b) of this section, it only includes such
868 activity or activities performed pursuant to a contract entered into pursuant to subsection (a) of
869 section fifteen of the federal investment company act of nineteen hundred forty, as amended.

870 (4) Distribution services means the services of advertising, servicing investor accounts
871 (including redemptions), marketing shares or selling shares of an investment company, but, in
872 the case of advertising, servicing investor accounts (including redemptions) or marketing shares,
873 only where such service is performed by a person who is (or was, in the case of a closed end
874 company) also engaged in the service of selling such shares. In the case of an open end company,

875 such service of selling shares must be performed pursuant to a contract entered into pursuant to
876 section 15(b) of the federal investment company act of nineteen hundred forty, as amended.

877 (5) Administration services includes clerical, accounting, bookkeeping, data processing,
878 internal auditing, legal and tax services performed for an investment company but only if the
879 provider of such service or services during the taxable year in which such service or services
880 are sold also sells management or distribution services, as defined hereinabove, to such
881 investment company.

882 4-2.13 Receipts from railroad, trucking and omnibus businesses. (Tax Law, Section 210-
883 A.6)

884 The amount of receipts from the conduct of a railroad business (including surface
885 railroad, whether or not operated by steam, subway railroad, elevated railroad, palace car, or
886 sleeping car), trucking business or omnibus business included in New York receipts is
887 determined by multiplying the amount of receipts from such business by a fraction, the
888 numerator of which is the number of miles operated within New York State and the denominator
889 of which is the total number of miles operated. All such receipts are included in everywhere
890 receipts. Miles operated while an omnibus is engaged in school bus operations must be
891 disregarded in computing the fraction.

892 4-2.14 Receipts from the sale of advertising. (Tax Law, Section 210-A.8).

893 (a) Receipts from the sale of advertising encompass the following activities:

894 (1) Receipts from providing advertising space or time in or on a medium for
895 dissemination to the public or part of the public, whether such medium is for sale or for free
896 consumption. Examples include:

897 (i) the sale of printed page space in a magazine, newspaper, or other similar periodical;

898 (ii) the sale of space on or in directories, bulletins, phone books, restaurant placemats,
899 cash register receipts, maps, or any other similar medium;

900 (iii) the posting of material on billboards, buildings, or vehicles;

901 (iv) the sale of time in radio or television broadcasts; or

902 (v) the sale of space on a Web page, regardless of the method of compensation paid by
903 the advertiser to the Web site host.

904 (2) Receipts received for providing an advertising or marketing service.

905 (i) For purposes of this paragraph, an advertising or marketing service includes:

906 (a) consultation on and development of advertising or marketing campaigns; or

907 (b) securing placement of advertising or marketing materials in various forms of media.

908 (b) Apportionment of receipts from the sale of advertising.

909 (1) The amount of receipts from the publishing of advertising in newspapers or
910 periodicals included in New York receipts is determined by multiplying such receipts by a
911 fraction, the numerator of which is the number of newspapers and periodicals containing such
912 advertising delivered to points within New York State and the denominator of which is the total
913 number of newspapers and periodicals delivered to points within and without New York State.
914 One hundred percent of such receipts are included in everywhere receipts.

915 (2) The amount of receipts from the sale of space on other physical media included in
916 New York receipts is determined by multiplying such receipts by a fraction, the numerator of
917 which is the number of New York State locations of such media and the denominator of which is
918 the total number of locations within and without New York State. One hundred percent of such
919 receipts are included in everywhere receipts.

920 (i) If the physical media is rolling stock, such as buses, vans, or automobiles, the

921 numerator of the fraction in paragraph two of this subdivision is the number of miles operated
922 within New York State and the denominator is the number of total miles operated within and
923 without New York State.

924 Example 1: Billboard Company owns 5 roadside billboards in New York State and 10 in
925 State A. For a fee, Billboard Company will post advertisements from unrelated businesses for a
926 determined length of time. It receives \$150,000 from Selling Corp to allow advertisements on
927 each of its billboards. Billboard Company must determine the amount of receipts included in
928 New York receipts according to the ratio of billboards in New York State to all billboards.
929 Therefore, it includes \$50,000 ($1/3 * \$150,000$) in New York receipts. All \$150,000 is included
930 in everywhere receipts.

931 Example 2: Bus Company allows businesses to post advertisements on the exterior and
932 interior of its vehicles. It receives \$7,000 from Company A, \$4,000 from Company B, and
933 \$14,000 from Company C to have its vehicles display ads for those businesses. Bus Company
934 knows the mileage within and without New York State for each of the vehicles containing the
935 ads. Buses containing ads for Company A travel 30,000 miles in New York State out of a total
936 of 60,000 miles. Buses containing ads for Company B travel 14,000 miles in New York State
937 out of a total of 70,000 miles. Buses containing ads for Company C travel 40,000 miles,
938 exclusively in New York State. Bus Company must include \$18,300 in New York receipts,
939 which is the sum of 50 percent of the receipt from Company A, 20 percent of the receipt from
940 Company B, and 100 percent of the receipt from Company C. All \$25,000 is included in
941 everywhere receipts.

942 (3) The amount of receipts from the sale of advertising time in radio or television
943 broadcasts included in New York receipts is determined by multiplying such receipts by a

944 fraction, the numerator of which is the number of listeners or viewers in New York State and the
945 denominator of which is the total number of listeners or viewers within and without New York
946 State. One hundred percent of such receipts are included in everywhere receipts.

947 (4) The amount of receipts from the sale of advertising not described above and
948 furnished, provided, or delivered to, or accessed by the viewer or listener through the use of wire,
949 cable, fiber-optic, laser, microwave, radio wave, satellite or similar successor media or any
950 combination thereof included in New York receipts is determined by multiplying such receipts
951 by a fraction, the numerator of which is the number of listeners or viewers in New York State
952 and the denominator of which is the total number of listeners or viewers within and without New
953 York State. One hundred percent of such receipts are included in everywhere receipts.

954 (c) Apportionment of receipts from advertising services. (1) The amount of receipts from
955 the provision of advertising or marketing services (e.g., the creation and/or implementation of an
956 advertising or marketing campaign) included in New York receipts is determined by multiplying
957 such receipts by a fraction, the numerator of which is the number of intended targets of such
958 advertising or marketing in New York State and the denominator of which is the total number of
959 intended targets (“the intended target fraction”). One hundred percent of such receipts are
960 included in everywhere receipts.

961 (i) To determine the proper ratio of New York State to everywhere targets for the
962 intended targets fraction, a taxpayer must primarily rely on statistics and information that are
963 compiled or utilized as part of the market research and advertising strategy developed by the
964 taxpayer for its customer. If no such statistics or information are available, a taxpayer may then
965 use other sources of information that attempt to determine the location of the intended targets.

966 (A) In any case in which a taxpayer uses a method to determine the location of the

967 intended targets and the Commissioner determines that the method employed by the taxpayer is
968 not reasonable, the Commissioner may substitute a method that the Commissioner determines is
969 appropriate.

970 (B) In any case in which the Commissioner determines that a taxpayer's method is
971 reasonable, but that it has not been applied in a consistent manner with respect to similar
972 transactions, the Commissioner may require that the taxpayer apply its method in a consistent
973 manner.

974 Example 3: Advert Corp is hired by Blower Corp to develop an advertising and
975 marketing plan to increase sales of Blower Corp's snow blowers in the Northeast, which is a
976 sales region defined by Blower Corp. In developing the campaign, Advert Corp obtains
977 information from Blower Corp about the locations of Blower Corp's shipments of its units to
978 retailers, and in some cases, directly to consumers in the Northeast sales region. The ratio of
979 shipments to New York State locations to shipments to all Northeast locations is a reasonable
980 method of determining the distribution of the intended target of Advert Corp's advertising and
981 marketing strategy. Advert Corp should multiply the receipt it receives from Blower Corp by
982 this ratio to determine the amount of the receipt to include in New York receipts.

983 Example 4: Advert Corp is hired by Finance Corp to produce a nationwide advertising
984 campaign to create demand for Finance Corp's new investment product focused on retirees.
985 Finance Corp will not divulge location information about any of its account holders, except to
986 say that it has account holders in every state. Advert Corp has access to information that shows
987 the distribution of Americans of or nearing retirement age in each state. Advert Corp should
988 multiply the receipt it receives from Finance Corp by the ratio of such Americans in New York
989 State to all Americans to determine the amount of the receipt to include in New York receipts.

990 One hundred percent of such receipts are included in everywhere receipts.

991 Example 5: AdCo works with local businesses to create printed advertisements that
992 appear on paper placemats at restaurants. Businesses pay AdCo to design the ads and to secure
993 their inclusion on placemats. Once the content and design of the ad is agreed upon, AdCo works
994 with a printing company that produces the placemats to ensure that the ad appears on the printed
995 placemats and that it meets the design and content specifications. As part of AdCo's
996 responsibilities in providing this service, it determines the locations where the printed placemats
997 will be delivered. AdCo receives a receipt from Landscaper Co to create an ad to be included on
998 placemats. AdCo determines that the placemats will be delivered to Restaurant Company, which
999 has 3 restaurants in New York State and 1 in State B. AdCo must include 75 percent of the
1000 receipts earned from Landscaper Co for designing and securing the ad on the placemats in its
1001 New York receipts. One hundred percent of such receipts are included in everywhere receipts.

1002 (2) Where a lump sum is received by the taxpayer as payment for advertising or
1003 marketing services and such advertising or marketing services consists of a combination of
1004 activities including such activities as the creating of the advertising or marketing campaign and
1005 the actual purchase of advertising space or time, the taxpayer must allocate the lump sum among
1006 each of the types of activities based on both the costs of purchasing the advertising or marketing
1007 space or time and the intended targets of the advertising or marketing or by some other
1008 reasonable method. Full details must be submitted with the taxpayer's report.

1009 Example 6: Advert Corp is hired by School Supply Corp to develop an advertising and
1010 marketing plan to increase sales of students' school supplies at its retail stores. The campaign
1011 will use printed inserts into newspapers, television commercials, and in-store promotions.
1012 Advert Corp will receive one lump sum for the entire advertising and marketing campaign. It

1013 first determines how to allocate the lump sum among the various advertising strategies by
 1014 multiplying the lump sum by a fraction, the numerator of which is the cost of employing the
 1015 particular medium, (i.e. the cost of placing ads in newspapers), and the denominator of which is
 1016 the total cost of employing all the forms of media outreach (i.e. the sum of the cost of ad buys in
 1017 newspapers, ad buys on television, and deploying in-store promotions).

1018 To determine the amount of each allocated cost included in New York receipts, the
 1019 amount of each allocated cost is then multiplied by its own intended target fraction as described
 1020 in paragraph one of this subdivision. Thus, for newspaper ad buys, the allocated cost included in
 1021 New York receipts is based on the ratio of the New York State circulation of the newspapers
 1022 containing the ad buys to the total circulation of such newspapers where the inserts will appear.
 1023 For the television ad buys, the allocated cost included in New York receipts is based on the ratio
 1024 of viewers in New York State to the total number of viewers within the region where the ad buys
 1025 will be broadcast. For the in-store promotions, the allocated cost included in New York receipts
 1026 is based on the ratio of New York State stores engaging in the promotions to all stores engaging
 1027 in the promotions. One hundred percent of such receipts are included in everywhere receipts.

1028 4-2.15 Receipts from other services and other business receipts (Tax Law, Section 210-
 1029 A.10) – Placeholder

1030

1031 Subpart 4-3 New York S corporations

1032

Section

1033

4-3.1

Definition of business receipts for New York S corporations

1034

4-3.2

Nonresident and Part-Year Resident Shareholders of New York S

1035

Corporations

1036 4-3.3 Definitions

1037 4-3.4 Examples

1038 4-3.1 Definition of business receipts for New York S corporations. (Tax Law, Section
1039 210-A)

1040 A New York S corporation determines the amount of business receipts included in New
1041 York receipts or everywhere receipts using the rules in section 210-A of the Tax Law and
1042 Subparts 4-1 and 4-2 of this Part, except that the term business receipts for a New York S
1043 corporation means all receipts, net income (not less than zero), net gains (not less than zero), and
1044 other items described in section 210-A of the Tax Law and the applicable regulations which are
1045 received in the regular course of the taxpayer's business and are included in the New York S
1046 corporation's nonseparately computed income and loss or in the New York S corporation's
1047 separately stated items of income and loss, determined pursuant to subdivision (a) of section
1048 1366 of the internal revenue code. Business receipts for New York S corporations include
1049 amounts that otherwise would have been characterized as investment income from investment
1050 capital or other exempt income for New York C corporations.

1051 4-3.2 Nonresident and Part-Year Resident Shareholders of New York S Corporations.
1052 (Tax Law, Sections 631 and 632)

1053 (a) To determine the amounts derived from New York sources for purposes of Article 22 of the
1054 Tax Law, a nonresident shareholder of a New York S corporation multiplies its pro-rata share of
1055 the New York S corporation's items of income, gain, loss, and deduction (and any related Tax
1056 Law section 612 modifications) that are included in the nonresident shareholder's New York
1057 adjusted gross income by a fraction, the numerator of which is the New York S corporation's
1058 New York receipts and the denominator of which is the New York S corporation's everywhere

1059 receipts. Such fraction is hereinafter referred to as the apportionment factor.

1060 (b) For part-year resident shareholders, the rule in subdivision (a) only applies to the New York
1061 S corporation's items received during the nonresident period of the tax year (and any related Tax
1062 Law section 612 modifications) that are included in the part-year resident's New York adjusted
1063 gross income.

1064 4-3.3 Definitions. (Tax Law, Sections 208.1-A, 660(a), and 660(i))

1065 (a) New York S corporation means, with respect to any taxable year, a corporation
1066 subject to tax under Article 9-A of the Tax Law for which an election is in effect pursuant to
1067 section 660(a) of the Tax Law for such year. It includes a corporation subject to tax under Article
1068 9-A of the Tax Law for which an election is deemed to be in effect pursuant to section 660(i) of
1069 the Tax Law.

1070 (b) Any corporation that does not meet the definition in subdivision (a) of this section
1071 shall only use the rules for section 210-A of the Tax Law and Subparts 4-1 and 4-2 of this Part.
1072 Such corporations shall not be subject to Subpart 4-3 of this Part.

1073 4-3.4 Examples.

1074 Example 1: Corporation A, a financial corporation that is a New York S corporation, has
1075 the following types of receipts:

- 1076 • dividends from stock of unitary corporations;
- 1077 • dividends from stock of non-unitary corporations;
- 1078 • net gains from sales of stock of non-unitary corporations;
- 1079 • interest from loans secured by real property;
- 1080 • interest from corporate bonds; and
- 1081 • net gains from sales of corporate bonds.

1082 All of Corporation A's receipts arise from the regular course of Corporation A's business
1083 and do not arise from unusual events. Therefore, all of these receipts are considered business
1084 receipts for Corporation A. The amount of such receipts included in Corporation A's New York
1085 receipts or everywhere receipts is determined in accordance with section 4-3.1 of this Subpart.

1086 Dividends and net gains from stock are not included in its New York receipts or
1087 everywhere receipts pursuant to section 210-A.5(a)(2)(G) of the Tax Law. The amount of
1088 interest from loans secured by real property, interest from corporate bonds, and net gains from
1089 the sale of corporate bonds included in New York receipts or everywhere receipts is determined
1090 in accordance with section 210-A.5(a)(2) of the Tax Law and Subparts 4-1 and 4-2 of this Part.

1091 To determine the amounts derived from New York sources for purposes of Article 22 of
1092 the Tax Law, nonresident shareholder X of Corporation A must multiply its pro-rata share of
1093 Corporation A's items of income, gain, loss, and deduction that are included in shareholder X's
1094 New York adjusted gross income, including all income, gain, and loss from Corporation A's
1095 stocks, loans, and corporate bonds by Corporation A's apportionment factor.

1096 Example 2: Same facts as Example 1 except that Corporation A makes the fixed
1097 percentage election pursuant to section 4-2.4(c) of this Part and only the stock is a qualified
1098 financial instrument. The result is that eight percent of the dividends and net gains (not less than
1099 zero) from stocks are included in Corporation A's New York receipts and one hundred percent of
1100 dividends and net gains (not less than zero) from stock are included in everywhere receipts. The
1101 amount of interest from the loans secured by real property, interest from corporate bonds, and net
1102 gains from the sales of corporate bonds included in New York receipts or everywhere receipts is
1103 determined in accordance with section 210-A of the Tax Law and the applicable regulations.

1104 To determine the amounts derived from New York sources for purposes of Article 22 of

1105 the Tax Law, nonresident shareholder X of Corporation A must multiply its pro-rata share of
1106 Corporation A's items of income, gain, loss, and deduction that are included in shareholder X's
1107 New York adjusted gross income, including all income, gain, and loss from Corporation A's
1108 stock, loans, and corporate bonds by Corporation A's apportionment factor.

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