



**Model General Allocation & Apportionment Regulations
as of July 25, 2018
(Examples Removed)ⁱ**

••• Reg. IV.17.(a). Receipts Factor: Sales Other Than Sales of Tangible Personal Property in This State: General Rules.

In general, Article IV.17. provides for the inclusion in the numerator of the receipts factor of gross receipts arising from transactions other than sales of tangible personal property.

(1) Market-Based Sourcing.

Receipts, other than receipts described in Article IV.16 (from sales of tangible personal property) are in [state] within the meaning of Article IV.17 and this Reg. IV.17 if and to the extent that the taxpayer's market for the sales is in [state]. In general, the provisions in this section establish uniform rules for (1) determining whether and to what extent the market for a sale other than the sale of tangible personal property is in [state], (2) reasonably approximating the state or states of assignment where the state or states cannot be determined, (3) excluding receipts from the sale of intangible property from the numerator and denominator of the receipts factor pursuant to Article IV.17(a)(4)(ii)(c), and (4) excluding receipts from the denominator of the receipts factor, pursuant to Article IV.17(c) where the state or states of assignment cannot be determined or reasonably approximated, or where the taxpayer is not taxable in the state to which the receipts are assigned as determined under Article IV.3 and applicable regulations,

(2) Outline of topics.

The provisions in this Reg. IV.17 are organized as follows:

ⁱ Prepared on August 1, 2025, by Virginia Tax's Tax Legislation Division. The MTC regulations are being explored as a potential option for consideration as part of the legislative study Virginia Tax is conducting pursuant to HB 1600. Virginia Tax does not have an official position on using the MTC regulations and prepared these for discussion purposes only."

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(3) Definitions.

For the purposes of this Reg. IV.17 these terms have the following meanings:

- (A) “Billing address” means the location indicated in the books and records of the taxpayer as the primary mailing address relating to a customer’s account as of the time of the transaction as kept in good faith in the normal course of business and not for tax avoidance purposes.

- (B) “Business customer” means a customer that is a business operating in any form, including a sole proprietorship. Sales to a non-profit organization, to a trust, to the U.S. Government, to a foreign, state or local government, or to an agency or instrumentality of that government are treated as sales to a business customer and must be assigned consistent with the rules for those sales.
- (C) “Code” means the Internal Revenue Code as currently written and subsequently amended.
- (D) “Individual customer” means a customer that is not a business customer.
- (E) “Intangible property” generally means property that is not physical or whose representation by physical means is merely incidental and includes, without limitation, copyrights; patents; trademarks; trade names; brand names; franchises; licenses; trade secrets; trade dress; information; know-how; methods; programs; procedures; systems; formulae; processes; technical data; designs; licenses; literary, musical, or artistic compositions; information; ideas; contract rights including broadcast rights; agreements not to compete; goodwill and going concern value; securities; and, except as otherwise provided in Reg. IV.17, computer software. Receipts from the sale of intangible property may be excluded from the numerator and denominator of the taxpayer’s receipts factor pursuant to Article IV.17 and [Reg. IV.17.\(f\).\(1\)\(D\)](#).
- (F) “Place of order,” means the physical location from which a customer places an order for a sale other than a sale of tangible personal property from a taxpayer, resulting in a contract with the taxpayer.
- (G) “Population” means the most recent population data maintained by the U.S. Census Bureau for the year in question as of the close of the taxable period.
- (H) “Related party” means:
 - (1) a stockholder who is an individual, or a member of the stockholder's family set forth in section 318 of the Code if the stockholder and the members of the stockholder's family own, directly, indirectly, beneficially or constructively, in the aggregate, at least 50 per cent of the value of the taxpayer's outstanding stock;
 - (2) a stockholder, or a stockholder's partnership, limited liability company, estate, trust or corporation, if the stockholder and the stockholder's partnerships, limited liability companies, estates, trusts and corporations own directly, indirectly, beneficially or constructively, in the aggregate, at least 50 per cent of the value of the taxpayer's outstanding stock; or

(3) a corporation, or a party related to the corporation in a manner that would require an attribution of stock from the corporation to the party or from the party to the corporation under the attribution rules of the Code if the taxpayer owns, directly, indirectly, beneficially or constructively, at least 50 per cent of the value of the corporation's outstanding stock. The attribution rules of the Code shall apply for purposes of determining whether the ownership requirements of this definition have been met. [or insert state definition]

- (I) “State where a contract of sale is principally managed by the customer,” means the primary location at which an employee or other representative of a customer serves as the primary contact person for the taxpayer with respect to the day-to-day execution and performance of a contract entered into by the taxpayer with the customer.

(4) General Principles of Application; Contemporaneous Records.

In order to satisfy the requirements of Reg. IV.17, a taxpayer’s assignment of receipts from sales of other than tangible personal property must be consistent with the following principles:

- (A) A taxpayer shall apply the rules set forth in Reg. IV.17 based on objective criteria and shall consider all sources of information reasonably available to the taxpayer at the time of its tax filing including, without limitation, the taxpayer’s books and records kept in the normal course of business. A taxpayer shall determine its method of assigning receipts in good faith, and apply it consistently with respect to similar transactions and year to year. A taxpayer shall retain contemporaneous records that explain the determination and application of its method of assigning its receipts, including its underlying assumptions, and shall provide those records to the [Agency] upon request.
- (B) Reg. IV.17 provides various assignment rules that apply sequentially in a hierarchy. For each sale to which a hierarchical rule applies, a taxpayer must make a reasonable effort to apply the primary rule applicable to the sale before seeking to apply the next rule in the hierarchy (and must continue to do so with each succeeding rule in the hierarchy, where applicable). For example, in some cases, the applicable rule first requires a taxpayer to determine the state or states of assignment, and if the taxpayer cannot do so, the rule requires the taxpayer to reasonably approximate the state or states. In these cases, the taxpayer must attempt to determine the state or states of assignment (i.e., apply the primary rule in the hierarchy) in good faith and with reasonable effort before it may reasonably approximate the state or states.

- (C) A taxpayer’s method of assigning its receipts, including the use of a method of approximation, where applicable, must reflect an attempt to obtain the most accurate assignment of receipts consistent with the regulatory standards set forth in Reg. IV.17, rather than an attempt to lower the taxpayer’s tax liability. A method of assignment that is reasonable for one taxpayer may not necessarily be reasonable for another taxpayer, depending upon the applicable facts.

(5) Rules of Reasonable Approximation.

- (A) **In General.** In general, Reg. IV.17 establishes uniform rules for determining whether and to what extent the market for a sale other than the sale of tangible personal property is in [state]. The regulation also sets forth rules of reasonable approximation, which apply if the state or states of assignment cannot be determined. In some instances, the reasonable approximation must be made in accordance with specific rules of approximation prescribed in Reg. IV.17. In other cases, the applicable rule in Reg. IV.17 permits a taxpayer to reasonably approximate the state or states of assignment, using a method that reflects an effort to approximate the results that would be obtained under the applicable rules or standards set forth in Reg. IV.17.
- (B) **Approximation Based Upon Known Sales.** In an instance where, applying the applicable rules set forth in [Reg. IV.17.\(d\)](#). (Sale of a Service), a taxpayer can ascertain the state or states of assignment of a substantial portion of its receipts from sales of substantially similar services (“assigned receipts”), but not all of those sales, and the taxpayer reasonably believes, based on all available information, that the geographic distribution of some or all of the remainder of those sales generally tracks that of the assigned receipts, it shall include receipts from those sales which it believes tracks the geographic distribution of the assigned receipts in its receipts factor in the same proportion as its assigned receipts. This rule also applies in the context of licenses and sales of intangible property where the substance of the transaction resembles a sale of goods or services. *See* [Reg.s IV.17.\(e\).\(5\)](#) and [\(f\).\(1\)\(C\)](#).
- (C) **Related-Party Transactions – Information Imputed from Customer to Taxpayer.** Where a taxpayer has receipts subject to this Reg. IV.17 from transactions with a related-party customer, information that the customer has that is relevant to the sourcing of receipts from these transactions is imputed to the taxpayer.

(6) Rules with Respect to Exclusion of Receipts from the Receipts Factor

- (A) The receipts factor only includes those amounts defined as receipts under Article IV.1(g) and applicable regulations.
 - (B) Certain receipts arising from the sale of intangibles are excluded from the numerator and denominator of the sales factor pursuant to Article IV.17(a)(4)(ii)(C). *See* [Reg. IV.17.\(f\).\(1\)\(D\)](#).
 - (C) In a case in which a taxpayer cannot ascertain the state or states to which receipts of a sale are to be assigned pursuant to the applicable rules set forth in Reg. IV.17 (including through the use of a method of reasonable approximation, where relevant) using a reasonable amount of effort undertaken in good faith, the receipts must be excluded from the denominator of the taxpayer's receipts factor pursuant to Article IV. 17.(c). and these regulations.
 - (D) In a case in which a taxpayer can ascertain the state or states to which receipts from a sale are to be assigned pursuant to the applicable rules set forth in Reg. IV.17, but the taxpayer is not taxable in one or more of those states, pursuant to Article IV.3 and applicable regulations, the receipts that would otherwise be assigned to those states where the taxpayer is not taxable must be excluded from the denominator of the taxpayer's receipts factor pursuant to Article IV.17.(c).
 - (E) Receipts of a taxpayer from hedging transactions, or from holding cash or securities, or from the maturity, redemption, sale, exchange, loan or other disposition of cash or securities, shall be excluded pursuant to Article IV.1.(g) and Art. IV.17.
- (7) Changes in Methodology; [tax administrator] Review
- (A) No Limitation on Article IV.18 or Reg. IV.18. Nothing in the regulations adopted here pursuant to Article IV.17 is intended to limit the application of Article IV.18 or the authority granted to [the tax administrator] under Section 18. To the extent that regulations adopted pursuant to Section 18 conflict with provisions of these regulations adopted pursuant to Section 17, the regulations adopted pursuant to Section 18 control. If the application of Section 17 or the regulations adopted pursuant thereto result in the attribution of receipts to the taxpayer's receipts factor that does not fairly represent the extent of the taxpayer's business activity in [state], the taxpayer may petition for or [the tax administrator] may require the use of a different method for attributing those receipts.
 - (B) General Rules Applicable to Original Returns. In any case in which a taxpayer files an original return for a taxable year in which it properly assigns its receipts using a method of assignment, including a method of reasonable approximation,

in accordance with the rules stated in Reg. IV.17., the application of such method of assignment shall be deemed to be a correct determination by the taxpayer of the state or states of assignment to which the method is properly applied. In those cases, neither [the tax administrator] nor the taxpayer (through the form of an audit adjustment, amended return, abatement application or otherwise) may modify the taxpayer's methodology as applied for assigning those receipts for the taxable year. However, [the tax administrator] and the taxpayer may each subsequently, through the applicable administrative process, correct factual errors or calculation errors with respect to the taxpayer's application of its filing methodology.

(C) [Tax Administrator] Authority to Adjust a Taxpayer's Return. The provisions contained in this Reg. IV.17.(a)(7)(C) are subject to Reg. IV. 17.(a)(7)(B). The [tax administrator's] ability to review and adjust a taxpayer's assignment of receipts on a return to more accurately assign receipts consistently with the rules or standards of Reg. IV.17, includes, but is not limited to, each of the following potential actions.

1. In a case in which a taxpayer fails to properly assign receipts from a sale in accordance with the rules set forth in Reg. IV.17, including the failure to properly apply a hierarchy of rules consistent with the principles of [Reg. IV.17.\(a\).\(4\)\(B\)](#), [the tax administrator] may adjust the assignment of the receipts in accordance with the applicable rules in Reg. IV.17.
2. In a case in which a taxpayer uses a method of approximation to assign its receipts and [the tax administrator] determines that the method of approximation employed by the taxpayer is not reasonable, the [tax administrator] may substitute a method of approximation that the [tax administrator] determines is appropriate or may exclude the receipts from the taxpayer's numerator and denominator, as appropriate.
3. In a case in which [the tax administrator] determines that a taxpayer's method of approximation is reasonable, but has not been applied in a consistent manner with respect to similar transactions or year to year, the [tax administrator] may require that the taxpayer apply its method of approximation in a consistent manner.
4. In a case in which a taxpayer excludes receipts from the denominator of its receipts factor on the theory that the assignment of the receipts cannot be reasonably approximated, the [tax administrator] may determine that the

exclusion of those receipts is not appropriate, and may instead substitute a method of approximation that the [tax administrator] determines is appropriate.

5. In a case in which a taxpayer fails to retain contemporaneous records that explain the determination and application of its method of assigning its receipts, including its underlying assumptions, or fails to provide those records to [the tax administrator] upon request, the [tax administrator] may treat the taxpayer's assignment of receipts as unsubstantiated, and may adjust the assignment of the receipts in a manner consistent with the applicable rules in Reg. IV.17.
6. In a case in which the [tax administrator] concludes that a customer's billing address was selected by the taxpayer for tax avoidance purposes, the [tax administrator] may adjust the assignment of receipts from sales to that customer in a manner consistent with the applicable rules in Reg. IV.17.

(D) Taxpayer Authority to Change a Method of Assignment on a Prospective Basis. A taxpayer that seeks to change its method of assigning its receipts under Reg. IV.17 must disclose, in the original return filed for the year of the change, the fact that it has made the change. If a taxpayer fails to adequately disclose the change, the [tax administrator] may disregard the taxpayer's change and substitute an assignment method that the [tax administrator] determines is appropriate.”.

(E)[Tax administrator] Authority to Change a Method of Assignment on a Prospective Basis. The [tax administrator] may direct a taxpayer to change its method of assigning its receipts in tax returns that have not yet been filed, including changing the taxpayer's method of approximation, if upon reviewing the taxpayer's filing methodology applied for a prior tax year, [the tax administrator] determines that the change is appropriate to reflect a more accurate assignment of the taxpayer's receipts within the meaning of Reg. IV.17, and determines that the change can be reasonably adopted by the taxpayer. [the tax administrator] will provide the taxpayer with a written explanation as to the reason for making the change. In a case in which a taxpayer fails to comply with [the tax administrator]'s direction on subsequently filed returns, [the tax administrator] may deem the taxpayer's method of assigning its receipts on those returns to be unreasonable, and may substitute an assignment method that the [tax administrator] determines is appropriate.

(8) Further Guidance.

The [tax administrator] may issue further public written statements with respect to the rules set forth in Reg. IV.17. These statements may, among other things, include guidance with respect to: (1) what constitutes a reasonable method of approximation

within the meaning of the rules, and (2) the circumstances in which a filing change with respect to a taxpayer's method of reasonable approximation will be deemed appropriate.

•• Reg. IV.17.(b). Sale, Rental, Lease or License of Real Property..

In the case of a sale, rental, lease or license of real property, the receipts from the sale are in [state] if and to the extent that the property is in [state].

•• Reg. IV.17.(c). Rental, Lease or License of Tangible Personal Property.

In the case of a rental, lease or license of tangible personal property, the receipts from the sale are in [state] if and to the extent that the property is in [state]. If property is mobile property that is located both within and without [state] during the period of the lease or other contract, the receipts assigned to [state] are the receipts from the contract period multiplied by the fraction computed under Reg. IV.10.(d). (as adjusted when necessary to reflect differences between usage during the contract period and usage during the taxable year).

•• Reg. IV.17.(d). Sale of a Service.

(1) General Rule.

The receipts from a sale of a service are in [state] if and to the extent that the service is delivered to a location in [state]. In general, the term “delivered to a location” refers to the location of the taxpayer's market for the service, which may not be the location of the taxpayer's employees or property. The rules to determine the location of the delivery of a service in the context of several specific types of service transactions are set forth at [Reg.s IV.17.\(d\).\(2\)-\(4\)](#).

(2) In-Person Services.

(A) In General.

Except as otherwise provided in this Reg. IV.17.(d).(2), in-person services are services that are physically provided in person by the taxpayer, where the customer or the customer's real or tangible property upon which the services are performed is in the same location as the service provider at the time the services are performed. This rule includes situations where the services are provided on behalf of the taxpayer by a third-party contractor. Examples of in-person services include, without limitation,

warranty and repair services; cleaning services; plumbing services; carpentry; construction contractor services; pest control; landscape services; medical and dental services, including medical testing, x-rays and mental health care and treatment; child care; hair cutting and salon services; live entertainment and athletic performances; and in-person training or lessons. In-person services include services within the description above that are performed at (1) a location that is owned or operated by the service provider or (2) a location of the customer, including the location of the customer's real or tangible personal property. Various professional services, including legal, accounting, financial and consulting services, and other similar services as described in [Reg. IV.17.\(d\).\(4\)](#), although they may involve some amount of in-person contact, are not treated as in-person services within the meaning of this Reg. IV.17.(d).(2).

(B) Assignment of Receipts.

1. Rule of Determination. Except as otherwise provided in this [Reg. IV.17.\(d\).\(2\)\(B\)](#), if the service provided by the taxpayer is an in-person service, the service is delivered to the location where the service is received. Therefore, the receipts from a sale are in [state] if and to the extent the customer receives the in-person service in [state]. In assigning its receipts from sales of in-person services, a taxpayer must first attempt to determine the location where a service is received, as follows:
 - a. If the service is performed with respect to the body of an individual customer in [state] (e.g. hair cutting or x-ray services) or in the physical presence of the customer in [state] (e.g. live entertainment or athletic performances), the service is received in [state].
 - b. If the service is performed with respect to the customer's real estate in [state] or if the service is performed with respect to the customer's tangible personal property at the customer's residence or in the customer's possession in [state], the service is received in [state].
 - c. If the service is performed with respect to the customer's tangible personal property and the tangible personal property is to be shipped or delivered to the customer, whether the service is performed within or outside [state], the service is received in [state] if the property is shipped or delivered to the customer in [state].

(C) Rule of Reasonable Approximation. In an instance in which the state or states where a service is actually received cannot be determined, but the taxpayer has

sufficient information regarding the place of receipt from which it can reasonably approximate the state or states where the service is received, the taxpayer shall reasonably approximate such state or states. If the state to which the receipts are to be assigned can be determined or reasonably approximated, but the taxpayer is not taxable in that state, the receipts that would otherwise be assigned to the state are excluded from the denominator of the taxpayer's receipts factor pursuant to Article IV.17.(c). and [Reg. IV.17.\(a\).\(6\)\(D\)](#).

(3) Services Delivered to the Customer or on Behalf of the Customer, or Delivered Electronically Through the Customer.

(A) In General.

If the service provided by the taxpayer is not an in-person service within the meaning of [Reg. IV.17.\(d\).\(2\)](#) or a professional service within the meaning of [Reg. IV.17\(d\)\(4\)](#), and the service is delivered to or on behalf of the customer, or delivered electronically through the customer, the receipts from a sale are in [state] if and to the extent that the service is delivered in [state]. For purposes of this Reg. IV.17.(d).(3), a service that is delivered "to" a customer is a service in which the customer and not a third party is the recipient of the service. A service that is delivered "on behalf of" a customer is one in which a customer contracts for a service but one or more third parties, rather than the customer, is the recipient of the service, such as fulfillment services, or the direct or indirect delivery of advertising to the customer's intended audience (see [Reg. IV.17.\(d\).\(3\)\(B\)1](#) and [Example \(iv\)](#) under (d).(3)(B)1.c.). A service can be delivered to or on behalf of a customer by physical means or through electronic transmission. A service that is delivered electronically "through" a customer is a service that is delivered electronically to a customer for purposes of resale and subsequent electronic delivery in substantially identical form to an end user or other third-party recipient.

(B) Assignment of Receipts.

The assignment of receipts to a state or states in the instance of a sale of a service that is delivered to the customer or on behalf of the customer, or delivered electronically through the customer, depends upon the method of delivery of the service and the nature of the customer. Separate rules of assignment apply to services delivered by physical means and services delivered by electronic transmission. (For purposes of this Reg. IV.17.(d).(3), a service delivered by an electronic transmission is not a delivery by a physical means). If a rule of assignment set forth in this Reg. IV.17.(d).(3), depends on whether the customer is an individual or a business customer, and the taxpayer acting in good faith cannot reasonably determine whether

the customer is an individual or business customer, the taxpayer shall treat the customer as a business customer. If the state to which the receipts from a sale are to be assigned can be determined or reasonably approximated, but the taxpayer is not taxable in that state, the receipts that would otherwise be assigned to that state are excluded from the denominator of the taxpayer's receipts factor. *See* Article IV.17(c) and [Reg. IV.17.\(a\).\(6\)\(D\)](#).

1. **Delivery to or on Behalf of a Customer by Physical Means** Whether to an Individual or Business Customer. Services delivered to a customer or on behalf of a customer through a physical means include, for example, product delivery services where property is delivered to the customer or to a third party on behalf of the customer; the delivery of brochures, fliers or other direct mail services; the delivery of advertising or advertising-related services to the customer's intended audience in the form of a physical medium; and the sale of custom software (e.g., where software is developed for a specific customer in a case where the transaction is properly treated as a service transaction for purposes of corporate taxation) where the taxpayer installs the custom software at the customer's site. The rules in this Reg. IV.17.(d).(3)(B)1. apply whether the taxpayer's customer is an individual customer or a business customer.
 - a. **Rule of Determination.** In assigning the receipts from a sale of a service delivered to a customer or on behalf of a customer through a physical means, a taxpayer must first attempt to determine the state or states where the service is delivered. If the taxpayer is able to determine the state or states where the service is delivered, it shall assign the receipts to that state or states.
 - b. **Rule of Reasonable Approximation.** If the taxpayer cannot determine the state or states where the service is actually delivered, but has sufficient information regarding the place of delivery from which it can reasonably approximate the state or states where the service is delivered, it shall reasonably approximate the state or states.
2. **Delivery to a Customer by Electronic Transmission.** Services delivered by electronic transmission include, without limitation, services that are transmitted through the means of wire, lines, cable, fiber optics, electronic signals, satellite transmission, audio or radio waves, or other similar means, whether or not the service provider owns, leases or otherwise controls the transmission equipment. In the case of the delivery of a service by electronic transmission to a customer, the following rules apply.

a. Services Delivered By Electronic Transmission to an Individual Customer.

- i. Rule of Determination. In the case of the delivery of a service to an individual customer by electronic transmission, the service is delivered in [state] if and to the extent that the taxpayer's customer receives the service in [state]. If the taxpayer can determine the state or states where the service is received, it shall assign the receipts from that sale to that state or states.
- ii. Rules of Reasonable Approximation. If the taxpayer cannot determine the state or states where the customer actually receives the service, but has sufficient information regarding the place of receipt from which it can reasonably approximate the state or states where the service is received, it shall reasonably approximate the state or states. If a taxpayer does not have sufficient information from which it can determine or reasonably approximate the state or states in which the service is received, it shall reasonably approximate the state or states using the customer's billing address.

b. Services Delivered By Electronic Transmission to a Business Customer.

- i. Rule of Determination. In the case of the delivery of a service to a business customer by electronic transmission, the service is delivered in [state] if and to the extent that the taxpayer's customer receives the service in [state]. If the taxpayer can determine the state or states where the service is received, it shall assign the receipts from that sale to the state or states. For purposes of this Reg. IV.17.(d.) (3)(B) 2.b., it is intended that the state or states where the service is received reflect the location at which the service is directly used by the employees or designees of the customer.
- ii. Rule of Reasonable Approximation. If the taxpayer cannot determine the state or states where the customer actually receives the service, but has sufficient information regarding the place of receipt from which it can reasonably approximate the state or states where the service is received, it shall reasonably approximate the state or states.
- iii. Secondary Rule of Reasonable Approximation. In the case of the delivery of a service to a business customer by electronic transmission where a taxpayer does not have sufficient information from which it can determine or reasonably approximate the state or states in which the service is received, the taxpayer shall reasonably approximate the state or states as set forth in this regulation. In these cases, unless the taxpayer can

apply the safe harbor set forth in [Reg. IV.17.\(d\).\(3\)\(B\)2.b.iv.](#), the taxpayer shall reasonably approximate the state or states in which the service is received as follows: first, by assigning the receipts from the sale to the state where the contract of sale is principally managed by the customer; second, if the state where the customer principally manages the contract is not reasonably determinable, by assigning the receipts from the sale to the customer's place of order; and third, if the customer's place of order is not reasonably determinable, by assigning the receipts from the sale using the customer's billing address; provided, however, if the taxpayer derives more than 5% of its receipts from sales of services from any single customer, the taxpayer is required to identify the state in which the contract of sale is principally managed by that customer.

- iv. Safe Harbor. In the case of the delivery of a service to a business customer by electronic transmission a taxpayer may not be able to determine, or reasonably approximate under [Reg. IV.17.\(d\).\(3\)\(B\)2.b.ii.](#), the state or states in which the service is received. In these cases, the taxpayer may, in lieu of the rule stated at [Reg. IV.17.\(d\).\(3\)\(B\)2.b.iii.](#), apply the safe harbor stated in this subsection. Under this safe harbor, a taxpayer may assign its receipts from sales to a particular customer based upon the customer's billing address in a taxable year in which the taxpayer (1) engages in substantially similar service transactions with more than 250 customers, whether business or individual, and (2) does not derive more than 5% of its receipts from sales of all services from that customer. This safe harbor applies only for purposes of [omitted reference] services delivered by electronic transmission to a business customer, and not otherwise.
 - v. Related Party Transactions. In the case of a sale of a service by electronic transmission to a business customer that is a related party, the taxpayer may not use the secondary rule of reasonable approximation in [Reg. IV.17.\(d\).\(3\)\(B\)2.b.iii](#) but may use the rule of reasonable approximation in [Reg. IV.17.\(d\).\(3\)\(B\)2.b.ii](#), and the safe harbor in [Reg. IV.17.\(d\).\(3\)\(B\)2.b.iv](#), provided that [the tax administrator] may aggregate sales to related parties in determining whether the sales exceed 5% of receipts from sales of all services under that safe harbor provision if necessary or appropriate to prevent distortion.
3. Services Delivered Electronically Through or on Behalf of an Individual or Business Customer. A service delivered electronically "on behalf of" the customer is one in which a customer contracts for a service to be delivered

electronically but one or more third parties, rather than the customer, is the recipient of the service, such as the direct or indirect delivery of advertising on behalf of a customer to the customer's intended audience. A service delivered electronically "through" a customer to third-party recipients is a service that is delivered electronically to a customer for purposes of resale and subsequent electronic delivery in substantially identical form to end users or other third-party recipients.

- a. **Rule of Determination.** In the case of the delivery of a service by electronic transmission, where the service is delivered electronically to end users or other third-party recipients through or on behalf of the customer, the service is delivered in [state] if and to the extent that the end users or other third-party recipients are in [state]. For example, in the case of the direct or indirect delivery of advertising on behalf of a customer to the customer's intended audience by electronic means, the service is delivered in [state] to the extent that the audience for the advertising is in [state]. In the case of the delivery of a service to a customer that acts as an intermediary in reselling the service in substantially identical form to third-party recipients, the service is delivered in [state] to the extent that the end users or other third-party recipients receive the services in [state]. The rules in this subsection Reg. IV.17(d).(3)(B)3.a. apply whether the taxpayer's customer is an individual customer or a business customer and whether the end users or other third-party recipients to which the services are delivered through or on behalf of the customer are individuals or businesses.
- b. **Rule of Reasonable Approximation.** If the taxpayer cannot determine the state or states where the services are actually delivered to the end users or other third-party recipients either through or on behalf of the customer, but has sufficient information regarding the place of delivery from which it can reasonably approximate the state or states where the services are delivered, it shall reasonably approximate the state or states.
- c. **Select Secondary Rules of Reasonable Approximation.**
 - i. If a taxpayer's service is the direct or indirect electronic delivery of advertising on behalf of its customer to the customer's intended audience, and if the taxpayer lacks sufficient information regarding the location of the audience from which it can determine or reasonably approximate that location, the taxpayer shall reasonably approximate the audience in a state for the advertising using the following secondary rules of reasonable approximation. If a taxpayer is delivering advertising directly or indirectly

to a known list of subscribers, the taxpayer shall reasonably approximate the audience for advertising in a state using a percentage that reflects the ratio of the state's subscribers in the specific geographic area in which the advertising is delivered relative to the total subscribers in that area. For a taxpayer with less information about its audience, the taxpayer shall reasonably approximate the audience in a state using the percentage that reflects the ratio of the state's population in the specific geographic area in which the advertising is delivered relative to the total population in that area.

- ii. If a taxpayer's service is the delivery of a service to a customer that then acts as the taxpayer's intermediary in reselling that service to end users or other third party recipients, if the taxpayer lacks sufficient information regarding the location of the end users or other third party recipients from which it can determine or reasonably approximate that location, the taxpayer shall reasonably approximate the extent to which the service is received in a state by using the percentage that reflects the ratio of the state's population in the specific geographic area in which the taxpayer's intermediary resells the services, relative to the total population in that area.
- iii. When using the secondary reasonable approximation methods provided above, the relevant specific geographic area [of delivery] include only the areas where the service was substantially and materially delivered or resold. Unless the taxpayer demonstrates the contrary, it will be presumed that the area where the service was substantially and materially delivered or resold does not include areas outside the United States.

(4) Professional Services.

(A) In General.

Except as otherwise provided in this Reg. IV.17.(d).(4), professional services are services that require specialized knowledge and in some cases require a professional certification, license or degree. These services include the performance of technical services that require the application of specialized knowledge. Professional services include, without limitation, management services, bank and financial services, financial custodial services, investment and brokerage services, fiduciary services, tax preparation, payroll and accounting services, lending services, credit card services (including credit card processing services), data processing services, legal services,

consulting services, video production services, graphic and other design services, engineering services, and architectural services.

(B) Overlap with Other Categories of Services.

1. Certain services that fall within the definition of “professional services” set forth in this Reg. IV.17.(d).(4) are nevertheless treated as “in-person services” within the meaning of [Reg. IV.17.\(d\).\(2\)](#), and are assigned under the rules of that subsection. Specifically, professional services that are physically provided in person by the taxpayer such as carpentry, certain medical and dental services or child care services, where the customer or the customer’s real or tangible property upon which the services are provided is in the same location as the service provider at the time the services are performed, are “in-person services” and are assigned as such, notwithstanding that they may also be considered to be “professional services.” However, professional services where the service is of an intellectual or intangible nature, such as legal, accounting, financial and consulting services, are assigned as professional services under the rules of this Reg. IV.17(d)(4), notwithstanding the fact that these services may involve some amount of in-person contact.
2. Professional services may in some cases include the transmission of one or more documents or other communications by mail or by electronic means. In some cases, all or most communications between the service provider and the service recipient may be by mail or by electronic means. However, in these cases, despite this transmission, the assignment rules that apply are those set forth in this Reg. IV.17(d)(4), and not those set forth in [Reg. IV.17.\(d\).\(3\)](#), pertaining to services delivered to a customer or through or on behalf of a customer.

(C) Assignment of Receipts.

In the case of a professional service, it is generally possible to characterize the location of delivery in multiple ways by emphasizing different elements of the service provided, no one of which will consistently represent the market for the services. Therefore, the location of delivery in the case of professional services is not susceptible to a general rule of determination, and must be reasonably approximated. The assignment of receipts from a sale of a professional service depends in many cases upon whether the customer is an individual or business customer. In any instance in which the taxpayer, acting in good faith, cannot reasonably determine whether the customer is an individual or business customer, the taxpayer shall treat the customer as a business customer. For purposes of assigning the receipts from a

sale of a professional service, a taxpayer's customer is the person that contracts for the service, irrespective of whether another person pays for or also benefits from the taxpayer's services. In any instance in which the taxpayer is not taxable in the state to which receipts from a sale is assigned, the receipts are excluded from the denominator of the taxpayer's receipts factor. *See* Article IV.17(c) and [Reg. IV.17.\(a\).\(6\)\(D\)](#).

1. General Rule. Receipts from sales of professional services other than those services described in [Reg. IV.17.\(d\).\(4\)\(C\)2](#). (architectural and engineering services), [Reg. IV.17.\(d\).\(4\)\(C\)3](#). (services provided by a financial institution) and [Reg. IV.17.\(d\).\(4\)\(C\)4](#). (transactions with related parties) are assigned in accordance with this Reg. IV.17.(d).(4)(C)1.
 - a. Professional Services Delivered to Individual Customers. Except as otherwise provided in Reg. IV.17(d)(4) (see in particular [Reg. IV.17.\(d\).\(4\)\(C\)4](#), in any instance in which the service provided is a professional service and the taxpayer's customer is an individual customer, the state or states in which the service is delivered must be reasonably approximated as set forth in this Reg. IV.17.(d).(4)(C)1.a. In particular, the taxpayer shall assign the receipts from a sale to the customer's state of primary residence, or, if the taxpayer cannot reasonably identify the customer's state of primary residence, to the state of the customer's billing address; provided, however, in any instance in which the taxpayer derives more than 5% of its receipts from sales of all services from an individual customer, the taxpayer shall identify the customer's state of primary residence and assign the receipts from the service or services provided to that customer to that state.
 - b. Professional Services Delivered to Business Customers. Except as otherwise provided in Reg. IV.17.(d).(4), in any instance in which the service provided is a professional service and the taxpayer's customer is a business customer, the state or states in which the service is delivered must be reasonably approximated as set forth in this section. In particular, unless the taxpayer may use the safe harbor set forth at Reg. [IV.17.\(d\).\(4\)\(C\)1.c](#), the taxpayer shall assign the receipts from the sale as follows: first, by assigning the receipts to the state where the contract of sale is principally managed by the customer; second, if the place of customer management is not reasonably determinable, to the customer's place of order; and third, if the customer place of order is not reasonably determinable, to the customer's billing address; provided, however, in any instance in which the taxpayer derives more than 5% of its receipts from sales of all services from a customer, the taxpayer is required to

identify the state in which the contract of sale is principally managed by the customer.

- c. Safe Harbor; Large Volume of Transactions. Notwithstanding the rules set forth in [Reg. IV.17.\(d\).\(4\)\(C\)1.a.](#) and [b.](#), a taxpayer may assign its receipts from sales to a particular customer based on the customer's billing address in any taxable year in which the taxpayer (1) engages in substantially similar service transactions with more than 250 customers, whether individual or business, and (2) does not derive more than 5% of its receipts from sales of all services from that customer. This safe harbor applies only for purposes of [Reg. IV.17.\(d\).\(4\)\(C\)1.](#) and not otherwise.
2. Architectural and Engineering Services with respect to Real or Tangible Personal Property. Architectural and engineering services with respect to real or tangible personal property are professional services within the meaning of this Reg. IV.17.(d)(4). However, unlike in the case of the general rule that applies to professional services, (1) the receipts from a sale of an architectural service are assigned to a state or states if and to the extent that the services are with respect to real estate improvements located, or expected to be located, in the state or states; and (2) the receipts from a sale of an engineering service are assigned to a state or states if and to the extent that the services are with respect to tangible or real property located in the state or states, including real estate improvements located in, or expected to be located in, the state or states. These rules apply whether or not the customer is an individual or business customer. In any instance in which architectural or engineering services are not described in Reg. IV.17(d)(4)(C)2, the receipts from a sale of these services must be assigned under the general rule for professional services. See [Reg. IV.17.\(d\).\(4\)\(C\)1.](#)
 3. Services Provided by a Financial Institution. The apportionment rules that apply to financial institutions are set forth at [financial institutions special apportionment statute or regulation]. [Drafter's Note: not all states have special industry rules or statutes for sourcing financial institution income.] That [financial institutions special apportionment statute or regulation] includes specific rules to determine a financial institution's receipts factor. However, [the statute or regulation] also provides that receipts from sales, other than sales of tangible personal property, including service transactions, that are not otherwise apportioned under [the statute or regulation], are to be assigned pursuant to Article IV.17. and these regulations. In any instance in which a financial institution performs services that are to be assigned pursuant to Article IV.17. and these regulations including, for example, financial custodial services, those

services are considered professional services within the meaning of this Reg. IV.17(d)(4), and are assigned according to the general rule for professional service transactions as set forth at [Reg. IV.17.\(d\).\(4\)\(C\)1.](#)

4. Related Party Transactions. In any instance in which the professional service is sold to a related party, rather than applying the rule for professional services delivered to business customers in [Reg. IV.17.\(d\).\(4\)\(C\)1.b.](#), the state or states to which the service is assigned is the place of receipt by the related party as reasonably approximated using the following hierarchy: (1) if the service primarily relates to specific operations or activities of a related party conducted in one or more locations, then to the state or states in which those operations or activities are conducted in proportion to the related party's payroll at the locations to which the service relates in the state or states; or (2) if the service does not relate primarily to operations or activities of a related party conducted in particular locations, but instead relates to the operations of the related party generally, then to the state or states in which the related party has employees, in proportion to the related party's payroll in those states. The taxpayer may use the safe harbor provided by [Reg. IV.17.\(d\).\(4\)\(C\)1.c](#) provided that [the tax administrator] may aggregate the receipts from sales to related parties in applying the 5% rule if necessary or appropriate to avoid distortion.

•• Reg. IV.17.(e). License or Lease of Intangible Property.

(1) General Rules.

- (A) The receipts from the license of intangible property are in [state] if and to the extent the intangible is used in [state]. In general, the term "use" is construed to refer to the location of the taxpayer's market for the use of the intangible property that is being licensed and is not to be construed to refer to the location of the property or payroll of the taxpayer. The rules that apply to determine the location of the use of intangible property in the context of several specific types of licensing transactions are set forth at [Reg. IV.17.\(e\).\(2\)-\(5\).](#) For purposes of the rules set forth in this Reg. IV.17.(e)., a lease of intangible property is to be treated the same as a license of intangible property.
- (B) In general, a license of intangible property that conveys all substantial rights in that property is treated as a sale of intangible property for purposes of Reg. IV.17. See [Reg. IV.17.\(f\).](#) Note, however, that for purposes of Reg.s IV.17.(e). and (f)., a sale or exchange of intangible property is treated as a license of that

property where the receipts from the sale or exchange derive from payments that are contingent on the productivity, use or disposition of the property.

- (C) Intangible property licensed as part of the sale or lease of tangible property is treated under Reg. IV.17 as the sale or lease of tangible property.
- (D) In any instance in which the taxpayer is not taxable in the state to which the receipts from the license of intangible property are assigned, the receipts are excluded from the denominator of the taxpayer's receipts factor. *See* Article IV.17(c) and [Reg. IV.17.\(a\).\(6\)\(D\)](#).
- (E) Nothing in this Reg. IV.17.(e). shall be construed to allow or require inclusion of receipts in the receipts factor that are not included in the definition of "receipts" pursuant to Article IV.1.(g). or related regulations, or that are excluded from the numerator and the denominator of the receipts factor pursuant to Article IV.17.(a).(4)(ii)(C). For examples of the types of intangibles that are excluded pursuant to Article IV.1(g), see Reg. IV [insert cross-reference]. For examples of the types of intangibles that are excluded pursuant to Article IV.17.(a).(4)(ii)(C), see [Reg. IV.17.\(f\).\(1\)\(D\)](#). So, to the extent that the transfer of either a security, as defined in [cross-reference], or business "goodwill" or similar intangible value, including, without limitation, "going concern value" or "workforce in place," may be characterized as a license or lease of intangible property, receipts from such transaction shall be excluded from the numerator and the denominator of the taxpayer's receipts factor.

(2) License of a Marketing Intangible.

Where a license is granted for the right to use intangible property in connection with the sale, lease, license, or other marketing of goods, services, or other items (i.e., a marketing intangible) to a consumer, the royalties or other licensing fees paid by the licensee for that marketing intangible are assigned to [state] to the extent that those fees are attributable to the sale or other provision of goods, services, or other items purchased or otherwise acquired by consumers or other ultimate customers in [state]. Examples of a license of a marketing intangible include, without limitation, the license of a service mark, trademark, or trade name; certain copyrights; the license of a film, television or multimedia production or event for commercial distribution; and a franchise agreement. In each of these instances the license of the marketing intangible is intended to promote consumer sales. In the case of the license of a marketing intangible, where a taxpayer has actual evidence of the amount or proportion of its receipts that is attributable to [state], it shall assign that amount or proportion to [state]. In the absence of actual evidence of the amount or proportion of the licensee's receipts

that are derived from [state] consumers, the portion of the licensing fee to be assigned to [state] must be reasonably approximated by multiplying the total fee by a percentage that reflects the ratio of the [state] population in the specific geographic area in which the licensee makes material use of the intangible property to regularly market its goods, services or other items relative to the total population in that area. If the license of a marketing intangible is for the right to use the intangible property in connection with sales or other transfers at wholesale rather than directly to retail customers, the portion of the licensing fee to be assigned to [state] must be reasonably approximated by multiplying the total fee by a percentage that reflects the ratio of the [state] population in the specific geographic area in which the licensee's goods, services, or other items are ultimately and materially marketed using the intangible property relative to the total population of that area. Unless the taxpayer demonstrates that the marketing intangible is materially used in the marketing of items outside the United States, the fees from licensing that marketing intangible will be presumed to be derived from within the United States.

(3) License of a Production Intangible.

If a license is granted for the right to use intangible property other than in connection with the sale, lease, license, or other marketing of goods, services, or other items, and the license is to be used in a production capacity (a “production intangible”), the licensing fees paid by the licensee for that right are assigned to [state] to the extent that the use for which the fees are paid takes place in [state]. Examples of a license of a production intangible include, without limitation, the license of a patent, a copyright, or trade secrets to be used in a manufacturing process, where the value of the intangible lies predominately in its use in that process. In the case of a license of a production intangible to a party other than a related party where the location of actual use is unknown, it is presumed that the use of the intangible property takes place in the state of the licensee's commercial domicile (where the licensee is a business) or the licensee's state of primary residence (where the licensee is an individual). If the [tax administrator] can reasonably establish that the actual use of intangible property pursuant to a license of a production intangible takes place in part in [state], it is presumed that the entire use is in this state except to the extent that the taxpayer can demonstrate that the actual location of a portion of the use takes place outside [state]. In the case of a license of a production intangible to a related party, the taxpayer must assign the receipts to where the intangible property is actually used.

(4) License of a Mixed Intangible.

If a license of intangible property includes both a license of a marketing intangible and a license of a production intangible (a “mixed intangible”) and the fees to be paid in each

instance are separately and reasonably stated in the licensing contract, the [tax administrator] will accept that separate statement for purposes of Reg. IV.17. If a license of intangible property includes both a license of a marketing intangible and a license of a production intangible and the fees to be paid in each instance are not separately and reasonably stated in the contract, it is presumed that the licensing fees are paid entirely for the license of the marketing intangible except to the extent that the taxpayer or the [tax administrator] can reasonably establish otherwise.

(5) License of Intangible Property where Substance of Transaction Resembles a Sale of Goods or Services.

(A) In general.

In some cases, the license of intangible property will resemble the sale of an electronically-delivered good or service rather than the license of a marketing intangible or a production intangible. In these cases, the receipts from the licensing transaction are assigned by applying the rules set forth in [Reg. IV.17.\(d\).\(3\)\(B\)2](#) and [3](#), as if the transaction were a service delivered to an individual or business customer or delivered electronically through an individual or business customer, as applicable. Examples of transactions to be assigned under this Reg. IV.17.(e).(5) include, without limitation, the license of database access, the license of access to information, the license of digital goods (*see* [Reg. IV.17.\(g\).\(2\)](#)), and the license of certain software (*e.g.*, where the transaction is not the license of pre-written software that is treated as the sale of tangible personal property, *see* [Reg. IV.17.\(g\).\(1\)](#)).

(B) Sublicenses.

Pursuant to [Reg. IV.17.\(e\).\(5\)\(A\)](#), the rules of [Reg. IV.17.\(d\).\(3\)\(B\)3](#). may apply where a taxpayer licenses intangible property to a customer that in turn sublicenses the intangible property to end users as if the transaction were a service delivered electronically through a customer to end users. In particular, the rules set forth at [Reg. IV.17.\(d\).\(3\)\(B\)3](#). that apply to services delivered electronically to a customer for purposes of resale and subsequent electronic delivery in substantially identical form to end users or other recipients may also apply with respect to licenses of intangible property for purposes of sublicense to end users. For this purpose, the intangible property sublicensed to an end user shall not fail to be substantially identical to the property that was licensed to the sublicensor merely because the sublicense transfers a reduced bundle of rights with respect to that property (*e.g.*, because the sublicensee's rights are limited to its own use of the property and do not include the ability to grant a further sublicense), or because that property is bundled with additional services or items of property.

••• Reg. IV.17.(f). Sale of Intangible Property.

(1) Assignment of Receipts.

The assignment of receipts to a state or states in the instance of a sale or exchange of intangible property depends upon the nature of the intangible property sold. For purposes of this Reg. IV.17(f), a sale or exchange of intangible property includes a license of that property where the transaction is treated for tax purposes as a sale of all substantial rights in the property and the receipts from transaction are not contingent on the productivity, use or disposition of the property. For the rules that apply where the consideration for the transfer of rights is contingent on the productivity, use or disposition of the property, *see* [Reg. IV.17.\(e\).\(1\)](#).

(A) Contract Right or Government License that Authorizes Business Activity in Specific Geographic Area.

In the case of a sale or exchange of intangible property where the property sold or exchanged is a contract right, government license or similar intangible property that authorizes the holder to conduct a business activity in a specific geographic area, the receipts from the sale are assigned to a state if and to the extent that the intangible property is used or is authorized to be used within the state. If the intangible property is used or may be used only in this state the taxpayer shall assign the receipts from the sale to [state]. If the intangible property is used or is authorized to be used in [state] and one or more other states, the taxpayer shall assign the receipts from the sale to [state] to the extent that the intangible property is used in or authorized for use in [state], through the means of a reasonable approximation.

(B) Sale that Resembles a License (Receipts are Contingent on Productivity, Use or Disposition of the Intangible Property).

In the case of a sale or exchange of intangible property where the receipts from the sale or exchange are contingent on the productivity, use or disposition of the property, the receipts from the sale are assigned by applying the rules set forth in [Reg. IV.17.\(e\)](#). (pertaining to the license or lease of intangible property).

(C) Sale that Resembles a Sale of Goods and Services.

In the case of a sale or exchange of intangible property where the substance of the transaction resembles a sale of goods or services and where the receipts from the sale

or exchange do not derive from payments contingent on the productivity, use or disposition of the property, the receipts from the sale are assigned by applying the rules set forth in [Reg. IV.17.\(e\).\(5\)](#) (relating to licenses of intangible property that resemble sales of goods and services). Examples of these transactions include those that are analogous to the license transactions cited as examples in [Reg. IV.17.\(e\).\(5\)](#).

(D) Excluded Receipts.

Receipts from the sale of intangible property are not included in the receipts factor in any case in which the sale does not give rise to receipts within the meaning of Article IV.1(g). In addition, in any case in which the sale of intangible property does result in receipts within the meaning of Article IV.1(g), those receipts are excluded from the numerator and the denominator of the taxpayer's receipts factor if the receipts are not referenced in Article IV.17(a)(4)(i), (ii)(A) or (ii)(B). *See* Article IV.17(a)(4)(ii)(C). The sale of intangible property that is excluded from the numerator and denominator of the taxpayer's receipts factor under this provision includes, without limitation, the sale of a partnership interest, the sale of business "goodwill," the sale of an agreement not to compete, or similar intangible value. Also, in any instance in which, the state to which the receipts from a sale is to be assigned can be determined or reasonably approximated, but where the taxpayer is not taxable in such state, the receipts that would otherwise be assigned to such state shall be excluded from the numerator and denominator of the taxpayer's receipts factor. *See* [Reg. IV.17.\(a\).\(6\)\(D\)](#).

••• **Reg. IV.17.(g). Special Rules.**

(1) Software Transactions.

A license or sale of pre-written software for purposes other than commercial reproduction (or other exploitation of the intellectual property rights) transferred on a tangible medium is treated as the sale of tangible personal property, rather than as either the license or sale of intangible property or the performance of a service. In these cases, the receipts are in [state] as determined under the rules for the sale of tangible personal property set forth under Article IV.16. and related regulations. In all other cases, the receipts from a license or sale of software are to be assigned to [state] as determined otherwise under Reg. IV.17. (e.g., depending on the facts, as the development and sale of custom software, *see* [Reg. IV.17.\(d\).\(3\)](#), as a license of a marketing intangible, *see* [Reg. IV.17.\(e\).\(2\)](#), as a license of a production intangible, *see* [Reg. IV.17.\(e\).\(3\)](#), as a license of intangible property where the substance of the transaction resembles a sale of goods or services, *see* [Reg. IV.17.\(e\).\(5\)](#), or as a sale of intangible property, *see* [Reg. IV.17.\(f\)](#)).

(2) Sales or Licenses of Digital Goods or Services.

(A) In general.

In the case of a sale or license of digital goods or services, including, among other things, the sale of various video, audio and software products or similar transactions, the receipts from the sale or license are assigned by applying the same rules as are set forth in [Reg. IV.17.\(d\).\(3\)\(B\)2.](#) or [3.](#), as if the transaction were a service delivered to an individual or business customer or delivered through or on behalf of an individual or business customer. For purposes of the analysis, it is not relevant what the terms of the contractual relationship are or whether the sale or license might be characterized, depending upon the particular facts, as, for example, the sale or license of intangible property or the performance of a service. See [Regs IV.17.\(e\).\(5\)](#) and [\(f\).\(1\)\(C\).](#)

(B) Telecommunications Companies.

In the case of a taxpayer that provides telecommunications or ancillary services and that is thereby subject to Reg. IV.18(i), receipts from the sale or license of digital goods or services not otherwise assigned for apportionment purposes pursuant to that regulation are assigned pursuant to this Reg. IV.17(g)(2)(B), by applying the rules set forth in [Reg. IV.17.\(d\).\(3\)\(B\)2.](#) or [3.](#) as if the transaction were a service delivered to an individual or business customer or delivered through or on behalf of an individual or business customer. However, in applying these rules, if the taxpayer cannot determine the state or states where a customer receives the purchased product it may reasonably approximate this location using the customer's place of "primary use" of the purchased product, applying the definition of "primary use" set forth in [MTC Model Regulation for Sourcing Sales of Telecommunications and Ancillary Services].

••• Reg. IV.17.(h). Mediation.

Whenever a taxpayer is subjected to different sourcing methodologies regarding intangibles or services, by the [State Tax Agency] and one or more other state taxing authorities, the taxpayer may petition for, and the [State Tax Agency] may participate in, and encourage the other state taxing authorities to participate in, non-binding mediation in accordance with the alternative dispute resolution rules promulgated by the Multistate Tax Commission from time to time, regardless of whether all the state taxing authorities are members of the Multistate Tax Compact.