

Income/Franchise:

New York: Comments on Final Draft Proposed Article 9-A Apportionment Rules are Due August 26

Final Draft Proposed New York State Business Corporation Franchise Tax Regulations, Subparts 4-1, 4-2, 4-3 and 4-4 (Apportionment), N.Y. Dept. of Tax. & Fin. (7/1/22). The New York State Department of Taxation and Finance (Department) has posted final draft proposed regulations pertaining to all apportionment rules under Article 9-A, the Business Corporation Franchise Tax. Previously revised in 2019, the latest revisions provide updates and new examples under the general apportionment rules as well as the rules for sourcing receipts from digital products and services. For example, the July 1 release includes:

URL: <https://www.tax.ny.gov/pdf/bus/ct/Apportionment-all-July-2022.pdf>

- Rules for sourcing net gains from the sale of tangible personal property and real property;
- New examples for sourcing sales of tangible personal property, royalties, advertising receipts, and receipts from digital products/services;
- Updates to the rules for sourcing interest income from federal funds and interest income from other financial instruments, specifically with regard to interest from money deposited with the federal reserve;
- Guidance providing that cryptocurrency generally falls under the definition of a “digital product” for apportionment purposes;
- A new “billing address safe harbor” for sourcing receipts from digital products/services and services and other business receipts; and
- Revisions to the rule for sourcing receipts from services provided to passive investment customers.

The Department asks for any public comments on these final draft proposed regulations by August 26, 2022. The Department stated that in 2022, it intends to begin the State Administrative Procedure Act (SAPA) process to formally propose and adopt these regulations. Please contact us with any questions.

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