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I N S E N A T E

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Introduced by Sen. KRUEGER -- read twice and ordered printed, and when printed to be committed to the Committee on Investigations and Government Operations

AN ACT to amend the tax law, in relation to establishing rules for receipts from services provided by asset management corporations

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. Subparagraph 2 of paragraph b of subdivision 2 of section 209-b of the tax law, as amended by section 3 of part K of chapter 63 of the laws of 2000, is amended to read as follows:

(2) services performed within the metropolitan commuter transportation district, provided, however, that (i) in the case of a taxpayer engaged in the business of publishing newspapers or periodicals, receipts arising from sales of advertising contained in such newspapers and periodicals shall be deemed to arise from services performed within the metropolitan commuter transportation district to the extent that such newspapers and periodicals are delivered to points within the metropolitan commuter transportation district, (ii) receipts from an investment company from the sale of management, administration or distribution services to such investment company shall be deemed to arise from services performed within the metropolitan commuter transportation district to the extent set forth in subparagraph six of paragraph (a) of subdivision three of section two hundred ten of this chapter (except that references in such subparagraph six to the state shall be deemed, for purposes of application to this clause, to be references to the metropolitan commuter transportation district), (iii) in the case of taxpayers principally engaged in the activity of air freight forwarding acting as principal and like indirect air carriage receipts arising from such activity shall arise from services performed within the metropolitan commuter transportation district as follows: one hundred percent of such receipts if both the pickup and delivery associated with such

EXPLANATION--Matter in ITALICS (underscored) is new; matter in brackets [ ] is old law to be omitted.

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receipts are made in the metropolitan commuter transportation district and fifty percent of such receipts if either the pickup or delivery associated with such receipts is made in the metropolitan commuter transportation district, [and] (iv) in the case of a taxpayer which is a registered securities or commodities broker or dealer, the receipts specified in subparagraph nine of paragraph (a) of subdivision three of section two hundred ten of this article shall be deemed to arise from services performed within the metropolitan commuter transportation district to the extent set forth in such subparagraph nine (except that references in such subparagraph nine to the state shall be deemed, for purposes of the application of this clause, to be references to the metropolitan commuter transportation district), AND (V) RECEIPTS FROM SERVICES PROVIDED BY AN ASSET MANAGEMENT CORPORATION SHALL BE DEEMED TO ARISE FROM SERVICES PERFORMED WITHIN THE METROPOLITAN COMMUTER TRANSPORTATION DISTRICT TO THE EXTENT SET FORTH IN SUBPARAGRAPH SIX-A OF PARAGRAPH (A) OF SUBDIVISION THREE OF SECTION TWO HUNDRED TEN OF THIS CHAPTER (EXCEPT THAT REFERENCES IN SUCH SUBPARAGRAPH SIX-A TO THE STATE SHALL BE DEEMED, FOR PURPOSES OF APPLICATION TO THIS CLAUSE, TO BE REFERENCES TO THE METROPOLITAN COMMUTER TRANSPORTATION DISTRICT),

S 2. Clause B of subparagraph 2 of paragraph a of subdivision 3 of section 210 of the tax law, as separately amended by section 1 of part K and section 13 of part Y of chapter 63 of the laws of 2000, is amended to read as follows:

(B) services performed within the state, provided, however, that (i) in the case of a taxpayer engaged in the business of publishing newspapers or periodicals, receipts arising from sales of advertising contained in such newspapers and periodicals shall be deemed to arise from services performed within the state to the extent that such newspapers and periodicals are delivered to points within the state, (ii) receipts from an investment company arising from the sale of management, administration or distribution services to such investment company shall be deemed to arise from services performed within the state to the extent set forth in subparagraph six of this paragraph, (iii) in the case of taxpayers principally engaged in the activity of air freight forwarding acting as principal and like indirect air carriage receipts arising from such activity shall arise from services performed within the state as follows: one hundred percent of such receipts if both the pickup and delivery associated with such receipts are made in this state and fifty percent of such receipts if either the pickup or delivery associated with such receipts is made in this state [and], (iv) in the case of a taxpayer which is a registered securities or commodities broker or dealer, the receipts specified in subparagraph nine of this paragraph shall be deemed to arise from services performed within the state to the extent set forth in such subparagraph nine, [and (iv)] (V) in the case of receipts arising from the transportation or transmission of gas through pipes, the portion of such receipts which constitute receipts from services performed within the state shall be the product of (I) the total of such receipts and (II) a fraction, the numerator of which is the taxpayer's transportation units within the state and the denominator of which is the taxpayer's transportation units within and without the state[. A] PROVIDED THAT FOR PURPOSES OF THIS SECTION A transportation unit is the transportation of one cubic foot of gas over a distance of one mile, AND (VI) RECEIPTS FROM SERVICES PROVIDED BY AN ASSET MANAGEMENT CORPORATION SHALL BE DEEMED TO ARISE FROM SERVICES PERFORMED WITHIN THIS STATE TO THE EXTENT SET FORTH IN SUBPARAGRAPH SIX-A OF THIS PARAGRAPH, S 3. Paragraph a of subdivision 3 of section 210 of the tax law is amended by adding a new subparagraph 6-a to read as follows:

(6-A) RULES FOR RECEIPTS FROM SERVICES PROVIDED BY ASSET MANAGEMENT CORPORATIONS. (A) FOR PURPOSES OF SUBCLAUSE (VI) OF CLAUSE (B) OF SUBPARAGRAPH TWO OF THIS PARAGRAPH, THE PORTION OF RECEIPTS RECEIVED BY AN ASSET MANAGEMENT CORPORATION ARISING FROM THE PROVISION OF ASSET MANAGEMENT SERVICES TO AN INDIVIDUAL, A REGULATED INVESTMENT COMPANY AS DEFINED IN SECTION 851 OF THE INTERNAL REVENUE CODE, OR AN INSTITUTIONAL INVESTOR HOLDING INVESTMENTS FOR THE BENEFIT OF OTHERS AS DETERMINED IN ACCORDANCE WITH CLAUSE (B) OF THIS SUBPARAGRAPH SHALL BE DEEMED TO ARISE FROM SERVICES PERFORMED WITHIN THE STATE, SUCH PORTION REFERRED TO HEREIN AS THE NEW YORK PORTION.

(B) THE ENTIRE NET INCOME OF AN ASSET MANAGEMENT CORPORATION SHALL BE APPORTIONED TO THIS STATE ON THE BASIS OF THE RATIO OF GROSS RECEIPTS FROM ASSET MANAGEMENT SERVICES FROM SOURCES WITHIN THIS STATE FOR THE INCOME YEAR EXPRESSED AS A PERCENTAGE OF ALL SUCH GROSS RECEIPTS FROM ASSET MANAGEMENT SERVICES BOTH WITHIN AND WITHOUT THE STATE FOR THE INCOME YEAR. THE SOURCE OF GROSS RECEIPTS FROM ASSET MANAGEMENT SERVICES SHALL BE DETERMINED AS FOLLOWS:

(A) IN THE CASE OF ASSET MANAGEMENT SERVICES PROVIDED DIRECTLY OR INDIRECTLY TO AN INDIVIDUAL, GROSS RECEIPTS WITH RESPECT TO SUCH SERVICES SHALL BE SOURCED TO THE STATE OF THE INDIVIDUAL'S DOMICILE.

(B) IN THE CASE OF ASSET MANAGEMENT SERVICES PROVIDED DIRECTLY OR INDIRECTLY TO AN INSTITUTIONAL INVESTOR HOLDING INVESTMENTS FOR THE BENEFIT OF OTHERS, SUCH AS A PENSION PLAN, RETIREMENT ACCOUNT OR POOL OF INVESTMENTS, INCLUDING A FUND (OTHER THAN AN INVESTMENT COMPANY UNDER THE INVESTMENT COMPANY ACT OF 1940 (15 U.S.C. S 80A-1 ET SEQ.)), OR TO AN INSTITUTIONAL INVESTOR ORGANIZED AS A PARTNERSHIP, S CORPORATION, A DISREGARDED ENTITY UNDER SECTION 7701 OF THE INTERNAL REVENUE CODE OR ANY OTHER SIMILAR ENTITY ORGANIZED UNDER FOREIGN LAW, GROSS RECEIPTS WITH RESPECT TO SUCH SERVICES SHALL BE SOURCED ACCORDING TO THE FOLLOWING RULES IN THE FOLLOWING ORDER:

(I) IF INFORMATION REGARDING THE DOMICILE OF BENEFICIARIES, OWNERS OR MEMBERS IS AVAILABLE TO THE ASSET MANAGEMENT CORPORATION PROVIDING ASSET MANAGEMENT SERVICES TO A PENSION PLAN, RETIREMENT ACCOUNT OR POOL OF INVESTMENTS, INCLUDING A FUND, (OTHER THAN AN INVESTMENT COMPANY UNDER THE INVESTMENT COMPANY ACT OF 1940 (15 U.S.C. S 80A-1 ET SEQ.)), OR TO AN INSTITUTIONAL INVESTOR ORGANIZED AS A PARTNERSHIP, S CORPORATION, A DISREGARDED ENTITY UNDER SECTION 7701 OF THE INTERNAL REVENUE CODE OF 1986, OR ANY OTHER SIMILAR ENTITY ORGANIZED UNDER FOREIGN LAW THROUGH THE EXERCISE OF REASONABLE DILIGENCE IN ASCERTAINING SUCH INFORMATION, GROSS RECEIPTS WITH RESPECT TO SUCH SERVICES SHALL BE SOURCED TO THE DOMICILE OF SUCH BENEFICIARIES, OWNERS OR MEMBERS;

(II) IF INFORMATION REGARDING THE DOMICILE OF BENEFICIARIES, OWNERS OR MEMBERS IS NOT AVAILABLE TO THE ASSET MANAGEMENT CORPORATION PROVIDING ASSET MANAGEMENT SERVICES TO A PENSION PLAN, RETIREMENT ACCOUNT OR POOL OF INVESTMENTS, INCLUDING A FUND (OTHER THAN AN INVESTMENT COMPANY UNDER THE INVESTMENT COMPANY ACT OF 1940 (15 U.S.C. S80A-1 ET SEQ.)), OR TO AN INSTITUTIONAL INVESTOR ORGANIZED AS A PARTNERSHIP, S CORPORATION, A DISREGARDED ENTITY UNDER SECTION 7701 OF THE INTERNAL REVENUE CODE OF 1986, OR ANY OTHER SIMILAR ENTITY ORGANIZED UNDER FOREIGN LAW THROUGH THE EXERCISE OF REASONABLE DILIGENCE IN ASCERTAINING SUCH INFORMATION, ANY REASONABLE ALTERNATIVE METHOD BASED ON INFORMATION READILY AVAILABLE TO THE ASSET MANAGEMENT CORPORATION MAY BE USED TO DETERMINE THE SOURCE OF GROSS RECEIPTS WITH RESPECT TO SUCH SERVICES. BASED ON FACTS AND CIRCUMSTANCES IN SPECIFIC CASES, REASONABLE ALTERNATIVE METHODS USED TO

DETERMINE THE SOURCE OF GROSS RECEIPTS FROM ASSET MANAGEMENT SERVICES MAY TAKE INTO ACCOUNT THE LATEST POPULATION CENSUS DATA AVAILABLE FROM THE UNITED STATES CENSUS BUREAU, THE DOMICILE OF THE SPONSOR OF A PENSION PLAN OR RETIREMENT ACCOUNT OR AN ACCOUNT OR POOL OF INVESTMENTS (OTHER THAN AN INVESTMENT COMPANY UNDER THE INVESTMENT COMPANY ACT OF 1940 (15 U.S.C. S 80A-1 ET SEQ.)), OR THE DOMICILE OF AN INSTITUTIONAL INVESTOR ORGANIZED AS A PARTNERSHIP, S CORPORATION, A DISREGARDED ENTITY UNDER SECTION 7701 OF THE INTERNAL REVENUE CODE OF 1986, OR ANY OTHER SIMILAR ENTITY ORGANIZED UNDER FOREIGN LAW; OR

(III) IF (I) THE DOMICILE OF BENEFICIARIES, OWNERS OR MEMBERS IS NOT REASONABLY ASCERTAINABLE UNDER ITEM (I) OF SUBCLAUSE (B); OR (II) NO REASONABLE ALTERNATIVE SOURCING METHOD EXISTS UNDER ITEM (II) OF SUBCLAUSE (B), GROSS RECEIPTS WITH RESPECT TO SUCH SERVICES SHALL BE SOURCED TO THE DOMICILE OF THE INSTITUTIONAL INVESTOR OR THE DOMICILE OF THE SPONSOR OF A PENSION PLAN OR RETIREMENT ACCOUNT OR AN ACCOUNT OR POOL OF INVESTMENTS, INCLUDING A FUND, OTHER THAN AN INVESTMENT COMPANY UNDER THE INVESTMENT COMPANY ACT OF 1940 (15 U.S.C. S 80A-1 ET SEQ.), TO WHICH ASSET MANAGEMENT SERVICES ARE PROVIDED.

(C) IN THE CASE OF ASSET MANAGEMENT SERVICES PROVIDED DIRECTLY OR INDIRECTLY TO AN INVESTMENT COMPANY UNDER THE INVESTMENT COMPANY ACT OF 1940 (15 U.S.C. S 80A-1 ET SEQ.), GROSS RECEIPTS WITH RESPECT TO SUCH SERVICES SHALL BE SOURCED TO THE DOMICILE OF THE SHAREHOLDERS OF SUCH INVESTMENT COMPANY IN ACCORDANCE WITH THE FOLLOWING PROCEDURE: THE PORTION OF THE GROSS RECEIPTS WITH RESPECT TO SUCH SERVICES THAT ARE SOURCED TO THIS STATE SHALL BE DETERMINED BY MULTIPLYING THE TOTAL OF SUCH GROSS RECEIPTS BY A FRACTION, THE NUMERATOR OF WHICH IS THE AVERAGE OF THE SUM OF THE BEGINNING OF YEAR AND THE END OF YEAR BALANCE OF SHARES OWNED BY THE INVESTMENT COMPANY SHAREHOLDERS DOMICILED IN THIS STATE FOR THE INVESTMENT COMPANY'S TAXABLE YEAR FOR FEDERAL INCOME TAX PURPOSES AND THE DENOMINATOR OF WHICH IS THE AVERAGE OF THE SUM OF THE BEGINNING OF YEAR AND THE END OF YEAR BALANCE OF SHARES OWNED BY ALL INVESTMENT COMPANY SHAREHOLDERS. A SEPARATE COMPUTATION SHALL BE MADE WITH RESPECT TO GROSS RECEIPTS FOR ASSET MANAGEMENT SERVICES PROVIDED DIRECTLY OR INDIRECTLY TO EACH INVESTMENT COMPANY.

(D) IN THE CASE OF ASSET MANAGEMENT SERVICES PROVIDED DIRECTLY OR INDIRECTLY TO A PERSON OTHER THAN THOSE PERSONS DESCRIBED IN SUBCLAUSES (A) THROUGH (C) OF THIS CLAUSE, TO THE DOMICILE OF SUCH PERSON.

(C) (A) FOR PURPOSES OF THIS SUBPARAGRAPH, "ADMINISTRATION SERVICES," IN EACH CASE WITH RESPECT TO INVESTMENTS, MEANS THE DIRECT OR INDIRECT PROVISION OF (I) CLERICAL, (II) ACCOUNTING, (III) BOOKKEEPING, (IV) DATA PROCESSING, (V) INTERNAL AUDITING, (VI) LEGAL AND TAX SERVICES, (VII) REGULATORY COMPLIANCE, OPERATIONS AND RELATED SERVICES, (VIII) RISK ANALYTICS, (IX) TRADE PROCESSING, CLEARING AND EXECUTION SERVICES, (X) TRANSFER AGENCY, AND (XI) CUSTODIAL SERVICES.

(B) "ASSET MANAGEMENT CORPORATION" MEANS A CORPORATION THAT (I) IS PRINCIPALLY ENGAGED IN THE PERFORMANCE OF ASSET MANAGEMENT SERVICES; (II) MAKES AN ELECTION FOR EACH TAXABLE YEAR TO BE TREATED AS AN ASSET MANAGEMENT CORPORATION BY FILING THE APPROPRIATE FORM OF RETURN PRESCRIBED BY THE COMMISSIONER TO MAKE SUCH ELECTION; AND (III) IS NOT OTHERWISE A REGISTERED SECURITIES OR COMMODITIES BROKER OR DEALER UNDER CLAUSE (A) OF SUBPARAGRAPH NINE OF THIS PARAGRAPH.

(C) FOR PURPOSES OF THIS SUBPARAGRAPH, "GROSS RECEIPTS" SHALL MEAN GROSS RECEIPTS REPORTED BY THE CORPORATION FOR ITS TAXABLE YEAR FOR PURPOSES OF THE FEDERAL INCOME TAX.

(D) FOR PURPOSES OF THIS SUBPARAGRAPH, "ASSET MANAGEMENT SERVICES" IN EACH CASE WITH RESPECT TO INVESTMENTS, INCLUDES, BUT IS NOT LIMITED TO,

DIRECTLY OR INDIRECTLY (I) RENDERING INVESTMENT ADVICE, INCLUDING INVESTMENT ANALYSIS, (II) MAKING DETERMINATIONS AS TO WHEN SALES AND PURCHASES ARE TO BE MADE, (III) SELLING OR PURCHASING OF INVESTMENTS, (IV) RENDERING ADMINISTRATION SERVICES, (V) RENDERING DISTRIBUTION SERVICES, OR (VI) MANAGING INVESTMENTS PURSUANT TO CONTRACTS FOR SUB-ADVISORY SERVICES.

(E) FOR PURPOSES OF THIS SUBPARAGRAPH, "DISTRIBUTION SERVICES" IN EACH CASE WITH RESPECT TO INVESTMENTS, INCLUDES, BUT IS NOT LIMITED TO, DIRECTLY OR INDIRECTLY (I) ADVERTISING, (II) SERVICING INVESTOR ACCOUNTS (INCLUDING REDEMPTIONS), (III) MARKETING SHARES OR SELLING SHARES OF CORPORATIONS OR BUSINESS TRUSTS REGISTERED AS INVESTMENT COMPANIES UNDER THE INVESTMENT COMPANY ACT OF 1940 (15 U.S.C. S 80A-1 ET SEQ.), OR (IV) MARKETING ASSET MANAGEMENT SERVICES (INCLUDING SELLING INTERESTS IN A POOL OF INVESTMENTS, SUCH AS A FUND).

(F) "DOMICILE", IN THE CASE OF AN INDIVIDUAL, SHALL HAVE THE MEANING ASCRIBED TO IT UNDER ARTICLE TWENTY-TWO OF THIS CHAPTER; AN ESTATE OR TRUST IS DOMICILED IN THE STATE IF IT IS A RESIDENT ESTATE OR TRUST AS DEFINED IN PARAGRAPH THREE OF SUBSECTION (B) OF SECTION SIX HUNDRED FIVE OF THIS CHAPTER; A BUSINESS ENTITY IS DOMICILED IN THE STATE IF THE LOCATION OF THE ACTUAL SEAT OF MANAGEMENT OR CONTROL IS IN THE STATE. IT SHALL BE PRESUMED THAT THE DOMICILE OF A SHAREHOLDER, WITH RESPECT TO ANY MONTH, IS HIS, HER OR ITS MAILING ADDRESS ON THE RECORDS OF THE INVESTMENT COMPANY AS OF THE LAST DAY OF SUCH MONTH; OR IN THE CASE OF A CORPORATION OR A PARTNERSHIP, S CORPORATION, A DISREGARDED ENTITY UNDER SECTION 7701 OF THE INTERNAL REVENUE CODE OF 1986, OR ANY OTHER SIMILAR ENTITY ORGANIZED UNDER FOREIGN LAW, ITS COMMERCIAL DOMICILE; PROVIDED, HOWEVER, DOMICILE SHALL BE PRESUMED TO BE THE MAILING ADDRESS OF THE BENEFICIARY OF A PENSION PLAN, OR THE OWNER OF AN ACCOUNT OR INTEREST IN A POOL OF INVESTMENTS BASED ON THE RECORDS OF THE SPONSOR OF SUCH PENSION PLAN, ACCOUNT OR POOL OF INVESTMENTS OR THE SHAREHOLDER'S MAILING ADDRESS ON THE RECORDS OF AN INVESTMENT COMPANY UNDER THE INVESTMENT COMPANY ACT OF 1940 (15 U.S.C. S 80A-1 ET SEQ.) IF REASONABLY ASCERTAINABLE.

(G) FOR PURPOSES OF THIS SUBPARAGRAPH, "SPONSOR" MEANS THE PERSON THAT HAS CONTRACTED DIRECTLY WITH THE BENEFICIARIES OF A PENSION PLAN OR RETIREMENT ACCOUNT OR THE OWNER OF ANY ACCOUNT OR INTEREST IN A POOL OF INVESTMENTS TO ADMINISTER AND MANAGE THE PENSION PLAN OR RETIREMENT ACCOUNT, OTHER ACCOUNT OR POOL OF INVESTMENTS.

S 4. Subparagraphs (H) and (I) of paragraph 2 of subsection a of section 1454 of the tax law, subparagraph (H) as relettered by section 2 of part AA of chapter 63 of the laws of 2000, are relettered subparagraphs (I) and (J), and a new subparagraph (H) is added to read as follows:

(H) THE ENTIRE NET INCOME OF AN ASSET MANAGEMENT CORPORATION SHALL BE APPORTIONED TO THIS STATE ON THE BASIS OF THE RATIO OF GROSS RECEIPTS FROM ASSET MANAGEMENT SERVICES FROM SOURCES WITHIN THIS STATE FOR THE INCOME YEAR EXPRESSED AS A PERCENTAGE OF ALL SUCH GROSS RECEIPTS FROM ASSET MANAGEMENT SERVICES BOTH WITHIN AND WITHOUT THE STATE FOR THE INCOME YEAR. THE SOURCE OF GROSS RECEIPTS FROM ASSET MANAGEMENT SERVICES SHALL BE DETERMINED AS FOLLOWS:

(I) IN THE CASE OF ASSET MANAGEMENT SERVICES PROVIDED DIRECTLY OR INDIRECTLY TO AN INDIVIDUAL, GROSS RECEIPTS WITH RESPECT TO SUCH SERVICES SHALL BE SOURCED TO THE STATE OF THE INDIVIDUAL'S DOMICILE.

(II) IN THE CASE OF ASSET MANAGEMENT SERVICES PROVIDED DIRECTLY OR INDIRECTLY TO AN INSTITUTIONAL INVESTOR HOLDING INVESTMENTS FOR THE BENEFIT OF OTHERS, SUCH AS A PENSION PLAN, RETIREMENT ACCOUNT OR POOL OF

INVESTMENTS, INCLUDING A FUND (OTHER THAN AN INVESTMENT COMPANY UNDER THE INVESTMENT COMPANY ACT OF 1940 (15 U.S.C. S 80A-1 ET SEQ.)), OR TO AN INSTITUTIONAL INVESTOR ORGANIZED AS A PARTNERSHIP, S CORPORATION, A DISREGARDED ENTITY UNDER SECTION 7701 OF THE INTERNAL REVENUE CODE, OR ANY OTHER SIMILAR ENTITY ORGANIZED UNDER FOREIGN LAW, GROSS RECEIPTS WITH RESPECT TO SUCH SERVICES SHALL BE SOURCED ACCORDING TO THE FOLLOWING RULES IN THE FOLLOWING ORDER:

(I) IF INFORMATION REGARDING THE DOMICILE OF BENEFICIARIES, OWNERS OR MEMBERS IS AVAILABLE TO THE ASSET MANAGEMENT CORPORATION PROVIDING ASSET MANAGEMENT SERVICES TO A PENSION PLAN, RETIREMENT ACCOUNT OR POOL OF INVESTMENTS, INCLUDING A FUND (OTHER THAN AN INVESTMENT COMPANY UNDER THE INVESTMENT COMPANY ACT OF 1940 (15 U.S.C. S 80A-1 ET SEQ.)), OR TO AN INSTITUTIONAL INVESTOR ORGANIZED AS A PARTNERSHIP, S CORPORATION, A DISREGARDED ENTITY UNDER SECTION 7701 OF THE INTERNAL REVENUE CODE OF 1986, AS AMENDED, AND THE REGULATIONS THEREUNDER, OR ANY OTHER SIMILAR ENTITY ORGANIZED UNDER FOREIGN LAW THROUGH THE EXERCISE OF REASONABLE DILIGENCE IN ASCERTAINING SUCH INFORMATION, GROSS RECEIPTS WITH RESPECT TO SUCH SERVICES SHALL BE SOURCED TO THE DOMICILE OF SUCH BENEFICIARIES, OWNERS OR MEMBERS;

(II) IF INFORMATION REGARDING THE DOMICILE OF BENEFICIARIES, OWNERS OR MEMBERS IS NOT AVAILABLE TO THE ASSET MANAGEMENT CORPORATION PROVIDING ASSET MANAGEMENT SERVICES TO A PENSION PLAN, RETIREMENT ACCOUNT OR POOL OF INVESTMENTS, INCLUDING A FUND (OTHER THAN AN INVESTMENT COMPANY UNDER THE INVESTMENT COMPANY ACT OF 1940 (15 U.S.C. S 80A-1 ET SEQ.)), OR TO AN INSTITUTIONAL INVESTOR ORGANIZED AS A PARTNERSHIP, S CORPORATION, A DISREGARDED ENTITY UNDER SECTION 7701 OF THE INTERNAL REVENUE CODE, OR ANY OTHER SIMILAR ENTITY ORGANIZED UNDER FOREIGN LAW THROUGH THE EXERCISE OF REASONABLE DILIGENCE IN ASCERTAINING SUCH INFORMATION, ANY REASONABLE ALTERNATIVE METHOD BASED ON INFORMATION READILY AVAILABLE TO THE ASSET MANAGEMENT CORPORATION MAY BE USED TO DETERMINE THE SOURCE OF GROSS RECEIPTS WITH RESPECT TO SUCH SERVICES. BASED ON FACTS AND CIRCUMSTANCES IN SPECIFIC CASES, REASONABLE ALTERNATIVE METHODS USED TO DETERMINE THE SOURCE OF GROSS RECEIPTS FROM ASSET MANAGEMENT SERVICES MAY TAKE INTO ACCOUNT THE LATEST POPULATION CENSUS DATA AVAILABLE FROM THE UNITED STATES CENSUS BUREAU, THE DOMICILE OF THE SPONSOR OF A PENSION PLAN OR RETIREMENT ACCOUNT OR AN ACCOUNT OR POOL OF INVESTMENTS (OTHER THAN AN INVESTMENT COMPANY UNDER THE INVESTMENT COMPANY ACT OF 1940 (15 U.S.C. S 80A-1 ET SEQ.)), OR THE DOMICILE OF AN INSTITUTIONAL INVESTOR ORGANIZED AS A PARTNERSHIP, S CORPORATION, OR DISREGARDED ENTITY UNDER SECTION 7701 OF THE INTERNAL REVENUE CODE, OR ANY OTHER SIMILAR ENTITY ORGANIZED UNDER FOREIGN LAW; OR

(III) IF (A) THE DOMICILE OF BENEFICIARIES, OWNERS OR MEMBERS IS NOT ASCERTAINED UNDER SUBCLAUSE (I) OF CLAUSE (II) OF THIS SUBPARAGRAPH OR,

(B) NO REASONABLE ALTERNATIVE SOURCING METHOD EXISTS UNDER SUBCLAUSE (II) OF CLAUSE (II) OF THIS SUBPARAGRAPH, GROSS RECEIPTS WITH RESPECT TO SUCH SERVICES SHALL BE SOURCED TO THE DOMICILE OF THE INSTITUTIONAL INVESTOR OR THE DOMICILE OF THE SPONSOR OF A PENSION PLAN OR RETIREMENT ACCOUNT OR AN ACCOUNT OR POOL OF INVESTMENTS, INCLUDING A FUND (OTHER THAN AN INVESTMENT COMPANY UNDER THE INVESTMENT COMPANY ACT OF 1940 (15 U.S.C. S 80A-1 ET SEQ.)), TO WHICH ASSET MANAGEMENT SERVICES ARE PROVIDED.

(III) IN THE CASE OF ASSET MANAGEMENT SERVICES PROVIDED DIRECTLY OR INDIRECTLY TO AN INVESTMENT COMPANY UNDER THE INVESTMENT COMPANY ACT OF 1940 (15 U.S.C. S 80A-1 ET SEQ.), GROSS RECEIPTS WITH RESPECT TO SUCH SERVICES SHALL BE SOURCED TO THE DOMICILE OF THE SHAREHOLDERS OF SUCH INVESTMENT COMPANY IN ACCORDANCE WITH THE FOLLOWING PROCEDURE: THE

PORTION OF THE GROSS RECEIPTS WITH RESPECT TO SUCH SERVICES THAT ARE SOURCED TO THIS STATE SHALL BE DETERMINED BY MULTIPLYING THE TOTAL OF SUCH GROSS RECEIPTS BY A FRACTION, THE NUMERATOR OF WHICH IS THE AVERAGE OF THE SUM OF THE BEGINNING OF YEAR AND THE END OF YEAR BALANCE OF SHARES OWNED BY THE INVESTMENT COMPANY SHAREHOLDERS DOMICILED IN THIS STATE FOR THE INVESTMENT COMPANY'S TAXABLE YEAR FOR FEDERAL INCOME TAX PURPOSES AND THE DENOMINATOR OF WHICH IS THE AVERAGE OF THE SUM OF THE BEGINNING OF YEAR AND THE END OF YEAR BALANCE OF SHARES OWNED BY ALL INVESTMENT COMPANY SHAREHOLDERS. A SEPARATE COMPUTATION SHALL BE MADE WITH RESPECT TO GROSS RECEIPTS FOR ASSET MANAGEMENT SERVICES PROVIDED DIRECTLY OR INDIRECTLY TO EACH INVESTMENT COMPANY.

(IV) IN THE CASE OF ASSET MANAGEMENT SERVICES PROVIDED DIRECTLY OR INDIRECTLY TO A PERSON OTHER THAN THOSE PERSONS DESCRIBED IN CLAUSES (I) THROUGH (III) OF THIS SUBPARAGRAPH, TO THE DOMICILE OF SUCH PERSON.

(V)(I) FOR PURPOSES OF THIS SUBPARAGRAPH, "ADMINISTRATION SERVICES", IN EACH CASE WITH RESPECT TO INVESTMENTS, MEANS THE DIRECT OR INDIRECT PROVISION OF (A) CLERICAL, (B) ACCOUNTING, (C) BOOKKEEPING, (D) DATA PROCESSING, (E) INTERNAL AUDITING, (F) LEGAL AND TAX SERVICES, (G) REGULATORY COMPLIANCE, OPERATIONS AND RELATED SERVICES, (H) RISK ANALYTICS, (I) TRADE PROCESSING, CLEARING AND EXECUTION SERVICES, (J) TRANSFER AGENCY, AND (K) CUSTODIAL SERVICES.

(II) "ASSET MANAGEMENT CORPORATION" MEANS A CORPORATION THAT (A) IS PRINCIPALLY ENGAGED IN THE PERFORMANCE OF ASSET MANAGEMENT SERVICES; (B) MAKES AN ELECTION FOR EACH TAXABLE YEAR TO BE TREATED AS AN ASSET MANAGEMENT CORPORATION BY FILING THE APPROPRIATE FORM OF RETURN PRESCRIBED BY THE COMMISSIONER TO MAKE SUCH ELECTION; AND (C) IS NOT OTHERWISE A REGISTERED SECURITIES OR COMMODITIES BROKER OR DEALER PURSUANT TO SECTION TWO HUNDRED TEN OF THIS CHAPTER.

(III) FOR PURPOSES OF THIS SUBPARAGRAPH, "GROSS RECEIPTS" SHALL MEAN GROSS RECEIPTS REPORTED BY THE CORPORATION FOR ITS TAXABLE YEAR FOR PURPOSES OF THE FEDERAL INCOME TAX.

(IV) FOR PURPOSES OF THIS SUBPARAGRAPH, "ASSET MANAGEMENT SERVICES", IN EACH CASE WITH RESPECT TO INVESTMENTS, INCLUDES, BUT IS NOT LIMITED TO, DIRECTLY OR INDIRECTLY (A) RENDERING INVESTMENT ADVICE, INCLUDING INVESTMENT ANALYSIS, (B) MAKING DETERMINATIONS AS TO WHEN SALES AND PURCHASES ARE TO BE MADE, (C) SELLING OR PURCHASING OF INVESTMENTS, (D) RENDERING ADMINISTRATION SERVICES, (E) RENDERING DISTRIBUTION SERVICES, OR (F) MANAGING INVESTMENTS PURSUANT TO CONTRACTS FOR SUB-ADVISORY SERVICES.

(V) FOR PURPOSES OF THIS SUBPARAGRAPH, "DISTRIBUTION SERVICES", IN EACH CASE WITH RESPECT TO INVESTMENTS, INCLUDES, BUT IS NOT LIMITED TO, DIRECTLY OR INDIRECTLY, (A) ADVERTISING, (B) SERVICING INVESTOR ACCOUNTS (INCLUDING REDEMPTIONS), (C) MARKETING SHARES OR SELLING SHARES OF CORPORATIONS OR BUSINESS TRUSTS REGISTERED AS INVESTMENT COMPANIES UNDER THE INVESTMENT COMPANY ACT OF 1940 (15 U.S.C. S 80A-1 ET SEQ.), OR (D) MARKETING ASSET MANAGEMENT SERVICES (INCLUDING SELLING INTERESTS IN A POOL OF INVESTMENTS, SUCH AS A FUND).

(VI) "DOMICILE", IN THE CASE OF AN INDIVIDUAL, SHALL HAVE THE MEANING ASCRIBED TO IT UNDER ARTICLE TWENTY-TWO OF THIS CHAPTER; AN ESTATE OR TRUST IS DOMICILED IN THE STATE IF IT IS A RESIDENT ESTATE OR TRUST AS DEFINED IN PARAGRAPH THREE OF SUBSECTION (B) OF SECTION SIX HUNDRED FIVE OF THIS CHAPTER; A BUSINESS ENTITY IS DOMICILED IN THE STATE IF THE LOCATION OF THE ACTUAL SEAT OF MANAGEMENT OR CONTROL IS IN THE STATE. IT SHALL BE PRESUMED THAT THE DOMICILE OF A SHAREHOLDER, WITH RESPECT TO ANY MONTH, IS HIS, HER OR ITS MAILING ADDRESS ON THE RECORDS OF THE INVESTMENT COMPANY AS OF THE LAST DAY OF SUCH MONTH; OR IN THE CASE OF A

CORPORATION OR A PARTNERSHIP, S CORPORATION, A DISREGARDED ENTITY UNDER SECTION 7701 OF THE INTERNAL REVENUE CODE, OR ANY OTHER SIMILAR ENTITY ORGANIZED UNDER FOREIGN LAW, ITS COMMERCIAL DOMICILE; PROVIDED, HOWEVER, DOMICILE SHALL BE PRESUMED TO BE THE MAILING ADDRESS OF THE BENEFICIARY OF A PENSION PLAN, OR THE OWNER OF AN ACCOUNT OR INTEREST IN A POOL OF INVESTMENTS BASED ON THE RECORDS OF THE SPONSOR OF SUCH PENSION PLAN, ACCOUNT OR POOL OF INVESTMENTS OR THE SHAREHOLDER'S MAILING ADDRESS ON THE RECORDS OF AN INVESTMENT COMPANY UNDER THE INVESTMENT COMPANY ACT OF 1940 (15 U.S.C. S 80A-1 ET SEQ.).

(VII) FOR PURPOSES OF THIS SUBPARAGRAPH, "SPONSOR" MEANS THE PERSON THAT HAS CONTRACTED DIRECTLY WITH THE BENEFICIARIES OF A PENSION PLAN OR RETIREMENT ACCOUNT OR THE OWNER OF ANY ACCOUNT OR INTEREST IN A POOL OF INVESTMENTS TO ADMINISTER AND MANAGE THE PENSION PLAN OR RETIREMENT ACCOUNT, OTHER ACCOUNT OR POOL OF INVESTMENTS.

S 5. Paragraph 1-a of subsection b of section 1454 of the tax law, as amended by section 1 of part A of chapter 63 of the laws of 2005, is amended to read as follows:

[1-a.] (1-A) Notwithstanding the provisions of paragraph one of this subsection, each banking corporation described in paragraph nine of subsection (a) of section fourteen hundred fifty-two of this article, EXCEPT FOR A BANKING CORPORATION THAT SUBSTANTIALLY PROVIDES ASSET MANAGEMENT SERVICES AS SUCH TERMS ARE DEFINED IN SUBPARAGRAPH (H) OF PARAGRAPH TWO OF SUBSECTION (A) OF THIS SECTION, subject to the tax imposed by this article that substantially provides management, administrative or distribution services to an investment company, as such terms are defined in subparagraph (G) of paragraph two of subsection (a) of this section, shall determine the portion of its entire net income derived from business carried on within the state by multiplying such income by an income allocation percentage obtained as follows:

S 6. Paragraph 3 of subsection c of section 1454 of the tax law, as added by chapter 161 of the laws of 2005, is amended to read as follows:

(3) For taxable years beginning on or after January first, two thousand six, each banking corporation described in paragraph nine of subsection (a) of section fourteen hundred fifty-two of this article, EXCEPT FOR A BANKING CORPORATION THAT IS AN ASSET MANAGEMENT CORPORATION AS DEFINED IN SUBPARAGRAPH (H) OF PARAGRAPH TWO OF SUBSECTION (A) OF THIS SECTION, subject to the tax imposed by this article that substantially provides management, administrative or distribution services to an investment company, as such terms are defined in subparagraph (G) of paragraph two of subsection (a) of this section, AND, FOR TAXABLE YEARS BEGINNING ON JANUARY FIRST, TWO THOUSAND NINE AND THEREAFTER, EACH ASSET MANAGEMENT CORPORATION AS DEFINED IN SUBPARAGRAPH (H) OF PARAGRAPH TWO OF SUBSECTION (A) OF THIS SECTION, shall determine the portion of its alternative entire net income derived from business carried on within the state by multiplying such income by the percentage ascertained for the taxable year under paragraph one-a of subsection (b) of this section, except that in computing such percentage (A) for taxable years beginning before January first, two thousand eight, no consideration shall be given to the phrase "eighty percent of" in paragraph one of subsection (a) of this section, (B) for taxable years beginning before January first, two thousand eight, when an election has been made pursuant to paragraph two of subsection (b) of this section (relating to an international banking facility) the taxpayer shall make the modifications described in such paragraph, and (C) for taxable years beginning on or after January first, two thousand eight, when an election has been made pursuant to paragraph two of subsection (b) of this section (relat-

ing to an international banking facility) the taxpayer shall make the modifications described in clause (ii) of subparagraph (A) of such paragraph.

S 7. This act shall take effect immediately and shall apply to taxable years beginning on or after January 1, 2009.