

5708

2009-2010 Regular Sessions

I N S E N A T E

May 28, 2009

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:

1 Section 1. Subparagraph 2 of paragraph b of subdivision 2 of section
2 209-b of the tax law, as amended by section 3 of part K of chapter 63 of
3 the laws of 2000, is amended to read as follows:
4 (2) services performed within the metropolitan commuter transportation
5 district, provided, however, that (i) in the case of a taxpayer engaged
6 in the business of publishing newspapers or periodicals, receipts arising
7 from sales of advertising contained in such newspapers and periodicals
8 shall be deemed to arise from services performed within the metropolitan
9 commuter transportation district to the extent that such
10 newspapers and periodicals are delivered to points within the metropolitan
11 commuter transportation district, (ii) receipts from an investment
12 company from the sale of management, administration or distribution
13 services to such investment company shall be deemed to arise from
14 services performed within the metropolitan commuter transportation
15 district to the extent set forth in subparagraph six of paragraph (a) of
16 subdivision three of section two hundred ten of this chapter (except
17 that references in such subparagraph six to the state shall be deemed,
18 for purposes of application to this clause, to be references to the
19 metropolitan commuter transportation district), (iii) in the case of
20 taxpayers principally engaged in the activity of air freight forwarding
21 acting as principal and like indirect air carriage receipts arising from
22 such activity shall arise from services performed within the metropolitan
23 commuter transportation district as follows: one hundred percent of
24 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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1 receipts are made in the metropolitan commuter transportation district
2 and fifty percent of such receipts if either the pickup or delivery
3 associated with such receipts is made in the metropolitan commuter
4 transportation district, [and] (iv) in the case of a taxpayer which is a
5 registered securities or commodities broker or dealer, the receipts
6 specified in subparagraph nine of paragraph (a) of subdivision three of
7 section two hundred ten of this article shall be deemed to arise from
8 services performed within the metropolitan commuter transportation
9 district to the extent set forth in such subparagraph nine (except that
10 references in such subparagraph nine to the state shall be deemed, for
11 purposes of the application of this clause, to be references to the
12 metropolitan commuter transportation district), AND (V) RECEIPTS FROM
13 SERVICES PROVIDED BY AN ASSET MANAGEMENT CORPORATION SHALL BE DEEMED TO
14 ARISE FROM SERVICES PERFORMED WITHIN THE METROPOLITAN COMMUTER TRANSPOR-
15 TATION DISTRICT TO THE EXTENT SET FORTH IN SUBPARAGRAPH SIX-A OF PARA-
16 GRAPH (A) OF SUBDIVISION THREE OF SECTION TWO HUNDRED TEN OF THIS CHAP-
17 TER (EXCEPT THAT REFERENCES IN SUCH SUBPARAGRAPH SIX-A TO THE STATE
18 SHALL BE DEEMED, FOR PURPOSES OF APPLICATION TO THIS CLAUSE, TO BE
19 REFERENCES TO THE METROPOLITAN COMMUTER TRANSPORTATION DISTRICT),

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

24 (B) services performed within the state, provided, however, that (i)
25 in the case of a taxpayer engaged in the business of publishing newspa-
26 pers or periodicals, receipts arising from sales of advertising
27 contained in such newspapers and periodicals shall be deemed to arise
28 from services performed within the state to the extent that such newspa-
29 pers and periodicals are delivered to points within the state, (ii)
30 receipts from an investment company arising from the sale of management,
31 administration or distribution services to such investment company shall
32 be deemed to arise from services performed within the state to the
33 extent set forth in subparagraph six of this paragraph, (iii) in the
34 case of taxpayers principally engaged in the activity of air freight
35 forwarding acting as principal and like indirect air carriage receipts
36 arising from such activity shall arise from services performed within
37 the state as follows: one hundred percent of such receipts if both the
38 pickup and delivery associated with such receipts are made in this state
39 and fifty percent of such receipts if either the pickup or delivery
40 associated with such receipts is made in this state [and], (iv) in the
41 case of a taxpayer which is a registered securities or commodities
42 broker or dealer, the receipts specified in subparagraph nine of this
43 paragraph shall be deemed to arise from services performed within the
44 state to the extent set forth in such subparagraph nine, [and (iv)] (V)
45 in the case of receipts arising from the transportation or transmission
46 of gas through pipes, the portion of such receipts which constitute
47 receipts from services performed within the state shall be the product
48 of (I) the total of such receipts and (II) a fraction, the numerator of
49 which is the taxpayer's transportation units within the state and the
50 denominator of which is the taxpayer's transportation units within and
51 without the state[. A] PROVIDED THAT FOR PURPOSES OF THIS SECTION A
52 transportation unit is the transportation of one cubic foot of gas over
53 a distance of one mile, AND (VI) RECEIPTS FROM SERVICES PROVIDED BY AN
54 ASSET MANAGEMENT CORPORATION SHALL BE DEEMED TO ARISE FROM SERVICES
55 PERFORMED WITHIN THIS STATE TO THE EXTENT SET FORTH IN SUBPARAGRAPH
56 SIX-A OF THIS PARAGRAPH,

1 S 3. Paragraph a of subdivision 3 of section 210 of the tax law is
2 amended by adding a new subparagraph 6-a to read as follows:

3 (6-A) RULES FOR RECEIPTS FROM SERVICES PROVIDED BY ASSET MANAGEMENT
4 CORPORATIONS. (A) FOR PURPOSES OF SUBCLAUSE (VI) OF CLAUSE (B) OF
5 SUBPARAGRAPH TWO OF THIS PARAGRAPH, THE PORTION OF RECEIPTS RECEIVED BY
6 AN ASSET MANAGEMENT CORPORATION ARISING FROM THE PROVISION OF ASSET
7 MANAGEMENT SERVICES TO AN INDIVIDUAL, A REGULATED INVESTMENT COMPANY AS
8 DEFINED IN SECTION 851 OF THE INTERNAL REVENUE CODE, OR AN INSTITUTIONAL
9 INVESTOR HOLDING INVESTMENTS FOR THE BENEFIT OF OTHERS AS DETERMINED IN
10 ACCORDANCE WITH CLAUSE (B) OF THIS SUBPARAGRAPH SHALL BE DEEMED TO ARISE
11 FROM SERVICES PERFORMED WITHIN THE STATE, SUCH PORTION REFERRED TO HERE-
12 IN AS THE NEW YORK PORTION.

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

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

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

33 (I) IF INFORMATION REGARDING THE DOMICILE OF BENEFICIARIES, OWNERS OR
34 MEMBERS IS AVAILABLE TO THE ASSET MANAGEMENT CORPORATION PROVIDING ASSET
35 MANAGEMENT SERVICES TO A PENSION PLAN, RETIREMENT ACCOUNT OR POOL OF
36 INVESTMENTS, INCLUDING A FUND, (OTHER THAN AN INVESTMENT COMPANY UNDER
37 THE INVESTMENT COMPANY ACT OF 1940 (15 U.S.C. S 80A-1 ET SEQ.)), OR TO
38 AN INSTITUTIONAL INVESTOR ORGANIZED AS A PARTNERSHIP, S CORPORATION, A
39 DISREGARDED ENTITY UNDER SECTION 7701 OF THE INTERNAL REVENUE CODE OF
40 1986, OR ANY OTHER SIMILAR ENTITY ORGANIZED UNDER FOREIGN LAW THROUGH
41 THE EXERCISE OF REASONABLE DILIGENCE IN ASCERTAINING SUCH INFORMATION,
42 GROSS RECEIPTS WITH RESPECT TO SUCH SERVICES SHALL BE SOURCED TO THE
43 DOMICILE OF SUCH BENEFICIARIES, OWNERS OR MEMBERS;

44 (II) IF INFORMATION REGARDING THE DOMICILE OF BENEFICIARIES, OWNERS OR
45 MEMBERS IS NOT AVAILABLE TO THE ASSET MANAGEMENT CORPORATION PROVIDING
46 ASSET MANAGEMENT SERVICES TO A PENSION PLAN, RETIREMENT ACCOUNT OR POOL
47 OF INVESTMENTS, INCLUDING A FUND (OTHER THAN AN INVESTMENT COMPANY UNDER
48 THE INVESTMENT COMPANY ACT OF 1940 (15 U.S.C. S80A-1 ET SEQ.)), OR TO AN
49 INSTITUTIONAL INVESTOR ORGANIZED AS A PARTNERSHIP, S CORPORATION, A
50 DISREGARDED ENTITY UNDER SECTION 7701 OF THE INTERNAL REVENUE CODE OF
51 1986, OR ANY OTHER SIMILAR ENTITY ORGANIZED UNDER FOREIGN LAW THROUGH
52 THE EXERCISE OF REASONABLE DILIGENCE IN ASCERTAINING SUCH INFORMATION,
53 ANY REASONABLE ALTERNATIVE METHOD BASED ON INFORMATION READILY AVAILABLE
54 TO THE ASSET MANAGEMENT CORPORATION MAY BE USED TO DETERMINE THE SOURCE
55 OF GROSS RECEIPTS WITH RESPECT TO SUCH SERVICES. BASED ON FACTS AND
56 CIRCUMSTANCES IN SPECIFIC CASES, REASONABLE ALTERNATIVE METHODS USED TO

1 DETERMINE THE SOURCE OF GROSS RECEIPTS FROM ASSET MANAGEMENT SERVICES
2 MAY TAKE INTO ACCOUNT THE LATEST POPULATION CENSUS DATA AVAILABLE FROM
3 THE UNITED STATES CENSUS BUREAU, THE DOMICILE OF THE SPONSOR OF A
4 PENSION PLAN OR RETIREMENT ACCOUNT OR AN ACCOUNT OR POOL OF INVESTMENTS
5 (OTHER THAN AN INVESTMENT COMPANY UNDER THE INVESTMENT COMPANY ACT OF
6 1940 (15 U.S.C. S 80A-1 ET SEQ.)), OR THE DOMICILE OF AN INSTITUTIONAL
7 INVESTOR ORGANIZED AS A PARTNERSHIP, S CORPORATION, A DISREGARDED ENTITY
8 UNDER SECTION 7701 OF THE INTERNAL REVENUE CODE OF 1986, OR ANY OTHER
9 SIMILAR ENTITY ORGANIZED UNDER FOREIGN LAW; OR

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

19 (C) IN THE CASE OF ASSET MANAGEMENT SERVICES PROVIDED DIRECTLY OR
20 INDIRECTLY TO AN INVESTMENT COMPANY UNDER THE INVESTMENT COMPANY ACT OF
21 1940 (15 U.S.C. S 80A-1 ET SEQ.), GROSS RECEIPTS WITH RESPECT TO SUCH
22 SERVICES SHALL BE SOURCED TO THE DOMICILE OF THE SHAREHOLDERS OF SUCH
23 INVESTMENT COMPANY IN ACCORDANCE WITH THE FOLLOWING PROCEDURE: THE
24 PORTION OF THE GROSS RECEIPTS WITH RESPECT TO SUCH SERVICES THAT ARE
25 SOURCED TO THIS STATE SHALL BE DETERMINED BY MULTIPLYING THE TOTAL OF
26 SUCH GROSS RECEIPTS BY A FRACTION, THE NUMERATOR OF WHICH IS THE AVERAGE
27 OF THE SUM OF THE BEGINNING OF YEAR AND THE END OF YEAR BALANCE OF
28 SHARES OWNED BY THE INVESTMENT COMPANY SHAREHOLDERS DOMICILED IN THIS
29 STATE FOR THE INVESTMENT COMPANY'S TAXABLE YEAR FOR FEDERAL INCOME TAX
30 PURPOSES AND THE DENOMINATOR OF WHICH IS THE AVERAGE OF THE SUM OF THE
31 BEGINNING OF YEAR AND THE END OF YEAR BALANCE OF SHARES OWNED BY ALL
32 INVESTMENT COMPANY SHAREHOLDERS. A SEPARATE COMPUTATION SHALL BE MADE
33 WITH RESPECT TO GROSS RECEIPTS FOR ASSET MANAGEMENT SERVICES PROVIDED
34 DIRECTLY OR INDIRECTLY TO EACH INVESTMENT COMPANY.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

20 (II) IF INFORMATION REGARDING THE DOMICILE OF BENEFICIARIES, OWNERS OR
21 MEMBERS IS NOT AVAILABLE TO THE ASSET MANAGEMENT CORPORATION PROVIDING
22 ASSET MANAGEMENT SERVICES TO A PENSION PLAN, RETIREMENT ACCOUNT OR POOL
23 OF INVESTMENTS, INCLUDING A FUND (OTHER THAN AN INVESTMENT COMPANY UNDER
24 THE INVESTMENT COMPANY ACT OF 1940 (15 U.S.C. S 80A-1 ET SEQ.)), OR TO
25 AN INSTITUTIONAL INVESTOR ORGANIZED AS A PARTNERSHIP, S CORPORATION, A
26 DISREGARDED ENTITY UNDER SECTION 7701 OF THE INTERNAL REVENUE CODE, OR
27 ANY OTHER SIMILAR ENTITY ORGANIZED UNDER FOREIGN LAW THROUGH THE EXER-
28 CISE OF REASONABLE DILIGENCE IN ASCERTAINING SUCH INFORMATION, ANY
29 REASONABLE ALTERNATIVE METHOD BASED ON INFORMATION READILY AVAILABLE TO
30 THE ASSET MANAGEMENT CORPORATION MAY BE USED TO DETERMINE THE SOURCE OF
31 GROSS RECEIPTS WITH RESPECT TO SUCH SERVICES. BASED ON FACTS AND CIRCUM-
32 STANCES IN SPECIFIC CASES, REASONABLE ALTERNATIVE METHODS USED TO DETER-
33 MINE THE SOURCE OF GROSS RECEIPTS FROM ASSET MANAGEMENT SERVICES MAY
34 TAKE INTO ACCOUNT THE LATEST POPULATION CENSUS DATA AVAILABLE FROM THE
35 UNITED STATES CENSUS BUREAU, THE DOMICILE OF THE SPONSOR OF A PENSION
36 PLAN OR RETIREMENT ACCOUNT OR AN ACCOUNT OR POOL OF INVESTMENTS (OTHER
37 THAN AN INVESTMENT COMPANY UNDER THE INVESTMENT COMPANY ACT OF 1940 (15
38 U.S.C. S 80A-1 ET SEQ.)), OR THE DOMICILE OF AN INSTITUTIONAL INVESTOR
39 ORGANIZED AS A PARTNERSHIP, S CORPORATION, OR DISREGARDED ENTITY UNDER
40 SECTION 7701 OF THE INTERNAL REVENUE CODE, OR ANY OTHER SIMILAR ENTITY
41 ORGANIZED UNDER FOREIGN LAW; OR

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

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

52 (III) IN THE CASE OF ASSET MANAGEMENT SERVICES PROVIDED DIRECTLY OR
53 INDIRECTLY TO AN INVESTMENT COMPANY UNDER THE INVESTMENT COMPANY ACT OF
54 1940 (15 U.S.C. S 80A-1 ET SEQ.), GROSS RECEIPTS WITH RESPECT TO SUCH
55 SERVICES SHALL BE SOURCED TO THE DOMICILE OF THE SHAREHOLDERS OF SUCH
56 INVESTMENT COMPANY IN ACCORDANCE WITH THE FOLLOWING PROCEDURE: THE

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

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

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

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

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

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

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

48 (VI) "DOMICILE", IN THE CASE OF AN INDIVIDUAL, SHALL HAVE THE MEANING
49 ASCRIBED TO IT UNDER ARTICLE TWENTY-TWO OF THIS CHAPTER; AN ESTATE OR
50 TRUST IS DOMICILED IN THE STATE IF IT IS A RESIDENT ESTATE OR TRUST AS
51 DEFINED IN PARAGRAPH THREE OF SUBSECTION (B) OF SECTION SIX HUNDRED FIVE
52 OF THIS CHAPTER; A BUSINESS ENTITY IS DOMICILED IN THE STATE IF THE
53 LOCATION OF THE ACTUAL SEAT OF MANAGEMENT OR CONTROL IS IN THE STATE. IT
54 SHALL BE PRESUMED THAT THE DOMICILE OF A SHAREHOLDER, WITH RESPECT TO
55 ANY MONTH, IS HIS, HER OR ITS MAILING ADDRESS ON THE RECORDS OF THE
56 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-

1 ing to an international banking facility) the taxpayer shall make the
2 modifications described in clause (ii) of subparagraph (A) of such para-
3 graph.
4 S 7. This act shall take effect immediately and shall apply to taxable
5 years beginning on or after January 1, 2009.