

S T A T E O F N E W Y O R K

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I N S E N A T E

January 26, 2011

Introduced by Sen. KRUEGER -- read twice and ordered printed, and when printed to be committed to the Committee on Investigations and Government Operations -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

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

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

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

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

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

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

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

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

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

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

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

54 (C) FOR PURPOSES OF THIS SUBPARAGRAPH, "GROSS RECEIPTS" SHALL MEAN
55 GROSS RECEIPTS REPORTED BY THE CORPORATION FOR ITS TAXABLE YEAR FOR
56 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.

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

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

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

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

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

55 (III) IN THE CASE OF ASSET MANAGEMENT SERVICES PROVIDED DIRECTLY OR
56 INDIRECTLY TO AN INVESTMENT COMPANY UNDER THE INVESTMENT COMPANY ACT OF

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

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

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

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

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

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

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

51 (VI) "DOMICILE", IN THE CASE OF AN INDIVIDUAL, SHALL HAVE THE MEANING
52 ASCRIBED TO IT UNDER ARTICLE TWENTY-TWO OF THIS CHAPTER; AN ESTATE OR
53 TRUST IS DOMICILED IN THE STATE IF IT IS A RESIDENT ESTATE OR TRUST AS
54 DEFINED IN PARAGRAPH THREE OF SUBSECTION (B) OF SECTION SIX HUNDRED FIVE
55 OF THIS CHAPTER; A BUSINESS ENTITY IS DOMICILED IN THE STATE IF THE
56 LOCATION OF THE ACTUAL SEAT OF MANAGEMENT OR CONTROL IS IN THE STATE. IT

1 SHALL BE PRESUMED THAT THE DOMICILE OF A SHAREHOLDER, WITH RESPECT TO
2 ANY MONTH, IS HIS, HER OR ITS MAILING ADDRESS ON THE RECORDS OF THE
3 INVESTMENT COMPANY AS OF THE LAST DAY OF SUCH MONTH; OR IN THE CASE OF A
4 CORPORATION OR A PARTNERSHIP, S CORPORATION, A DISREGARDED ENTITY UNDER
5 SECTION 7701 OF THE INTERNAL REVENUE CODE, OR ANY OTHER SIMILAR ENTITY
6 ORGANIZED UNDER FOREIGN LAW, ITS COMMERCIAL DOMICILE; PROVIDED, HOWEVER,
7 DOMICILE SHALL BE PRESUMED TO BE THE MAILING ADDRESS OF THE BENEFICIARY
8 OF A PENSION PLAN, OR THE OWNER OF AN ACCOUNT OR INTEREST IN A POOL OF
9 INVESTMENTS BASED ON THE RECORDS OF THE SPONSOR OF SUCH PENSION PLAN,
10 ACCOUNT OR POOL OF INVESTMENTS OR THE SHAREHOLDER'S MAILING ADDRESS ON
11 THE RECORDS OF AN INVESTMENT COMPANY UNDER THE INVESTMENT COMPANY ACT OF
12 1940 (15 U.S.C. S 80A-1 ET SEQ.).

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

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

21 [1-a.] (1-A) Notwithstanding the provisions of paragraph one of this
22 subsection, each banking corporation described in paragraph nine of
23 subsection (a) of section fourteen hundred fifty-two of this article,
24 EXCEPT FOR A BANKING CORPORATION THAT SUBSTANTIALLY PROVIDES ASSET
25 MANAGEMENT SERVICES AS SUCH TERMS ARE DEFINED IN SUBPARAGRAPH (H) OF
26 PARAGRAPH TWO OF SUBSECTION (A) OF THIS SECTION, subject to the tax
27 imposed by this article that substantially provides management, adminis-
28 trative or distribution services to an investment company, as such terms
29 are defined in [subparagraph (G) of] paragraph [two] THREE of subsection
30 (a) of this section, shall determine the portion of its entire net
31 income derived from business carried on within the state by multiplying
32 such income by an income allocation percentage obtained as follows:

33 (A) For taxable years beginning on or after January first, two thou-
34 sand six and before the first day of January, two thousand seven, by
35 adding the following percentages:

36 (i) the product of seventeen percent and the percentage determined
37 under paragraph one of subsection (a) of this section,

38 (ii) the product of fifty percent and the percentage determined under
39 paragraph two of subsection (a) of this section, and

40 (iii) the product of thirty-three percent and the percentage deter-
41 mined under paragraph three of subsection (a) of this section.

42 (B) For taxable years beginning on or after January first, two thou-
43 sand seven and before the first day of January, two thousand eight, by
44 adding the following percentages:

45 (i) the product of ten percent and the percentage determined under
46 paragraph one of subsection (a) of this section,

47 (ii) the product of seventy percent and the percentage determined
48 under paragraph two of subsection (a) of this section, and

49 (iii) the product of twenty percent and the percentage determined
50 under paragraph three of subsection (a) of this section.

51 (C) For taxable years beginning on or after January first, two thou-
52 sand eight, by the percentage ascertained under paragraph two of
53 subsection (a) of this section.

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

1 (3) For taxable years beginning on or after January first, two thou-
2 sand six, each banking corporation described in paragraph nine of
3 subsection (a) of section fourteen hundred fifty-two of this article,
4 EXCEPT FOR A BANKING CORPORATION THAT IS AN ASSET MANAGEMENT CORPORATION
5 AS DEFINED IN SUBPARAGRAPH (H) OF PARAGRAPH TWO OF SUBSECTION (A) OF
6 THIS SECTION, subject to the tax imposed by this article that substan-
7 tially provides management, administrative or distribution services to
8 an investment company, as such terms are defined in subparagraph (G) of
9 paragraph two of subsection (a) of this section, AND, FOR TAXABLE YEARS
10 BEGINNING ON JANUARY FIRST, TWO THOUSAND TWELVE AND THEREAFTER, EACH
11 ASSET MANAGEMENT CORPORATION AS DEFINED IN SUBPARAGRAPH (H) OF PARAGRAPH
12 TWO OF SUBSECTION (A) OF THIS SECTION, shall determine the portion of
13 its alternative entire net income derived from business carried on with-
14 in the state by multiplying such income by the percentage ascertained
15 for the taxable year under paragraph one-a of subsection (b) of this
16 section, except that in computing such percentage (A) for taxable years
17 beginning before January first, two thousand eight, no consideration
18 shall be given to the phrase "eighty percent of" in paragraph one of
19 subsection (a) of this section, (B) for taxable years beginning before
20 January first, two thousand eight, when an election has been made pursu-
21 ant to paragraph two of subsection (b) of this section (relating to an
22 international banking facility) the taxpayer shall make the modifica-
23 tions described in such paragraph, and (C) for taxable years beginning
24 on or after January first, two thousand eight, when an election has been
25 made pursuant to paragraph two of subsection (b) of this section (relat-
26 ing to an international banking facility) the taxpayer shall make the
27 modifications described in clause (ii) of subparagraph (A) of such para-
28 graph.

29 S 7. This act shall take effect immediately and shall apply to taxable
30 years beginning on or after January 1, 2012.