

5. Sourcing of Receipts

- a. The legislation creates new Tax Law §210-A, generally providing for the sourcing of receipts based on customer location.

The new law retains the current single-factor receipts only apportionment method under Article 9-A and expands the market-based “destination” sourcing method that currently applies to sellers of tangible personal property, asset management services performed for Regulated Investment Companies, certain broker-dealer services, television broadcasters, and magazine publishers. The new law expands specifically addressed categories subject to the destination sourcing rule, including for example digital products (online games, audio and audio visual works, and the like).

*EisnerAmper LLP comment:* Out-of-state taxpayers in the services industry that currently benefit from the performance-based apportionment method may be unfavorably impacted when the recipient of the services is located inside New York State. Under current law, receipts from the sale of capital assets (property not held for sale in the regular course of business) are excluded from the receipts factor. The new law has no comparable exclusion.