

**Readopt with amendment Rev 301.11, eff. 1-16-15 (Doc# 10758), to read as follows:**

Rev 301.11 “Costs of performance”, as used in RSA 77-A:3, I(c), means the direct costs of providing the service or activity determined in a manner consistent with generally accepted accounting principles and in accordance with practices prevalent in the trade or business of the organization.

**Adopt Rev 301.12, and renumber the existing Rev 301.12-Rev 301.35 as Rev 301.13 -Rev 301.36, so that Rev 301.12 reads as follows:**

Edit. The header should say “Conditional Approval Request”.

Rev 301.12 “Delivered to a location in this state” means the location of the market for the services provided by the taxpayer, without regard to the location of the property or payroll of the taxpayer.

**Readopt with amendment Rev 304.04, eff. 1-16-15 (Doc# 10758), to read as follows:**

Rev 304.04 Sales Factor. For taxable periods ending before December 31, 2021:

(a) Income producing activity shall include any:

- (1) Transaction, procedure, or operation directly engaged in by a business organization resulting in a separately identifiable item of income; or
- (2) Activity which creates an obligation of a particular customer to pay specific consideration to the business organization.

(b) The sales factor shall include:

- (1) Sales less returns and allowances;
- (2) Dividends not eligible for the dividend deduction under RSA 77-A:4, or the factor relief provided in RSA 77-A:3, II(b);
- (3) Interest;
- (4) Rents;
- (5) Royalties;
- (6) Capital gain income;
- (7) Net gains or losses; and
- (8) Other income unless the other income is properly includible as a reduction of an expense or allowance.

(c) The sales factor numerator for separate business organizations and all members of a combined group shall include the sum of:

- (1) Sales of tangible personal property, regardless of the conditions of sale delivered in New Hampshire, other than to the United States government;

- (2) Sales of tangible personal property originating in New Hampshire to a purchaser in another state in which the business organization is not taxable or subject to tax;
  - (3) Sales of tangible personal property originating in New Hampshire and delivered to the United States government in any state;
  - (4) Interest on receivables where the debtor or the encumbered property is located in New Hampshire;
  - (5) Gross receipts from the lease, rental, or other use of real or personal property located in New Hampshire;
  - (6) Gross receipts from the licensing or other use of intangible property when such property is used within New Hampshire;
  - (7) Gains or losses from the sale of property located in New Hampshire;
  - (8) Capital gains from the sale of business assets located within New Hampshire;
  - (9) Dividend income received by business organizations domiciled in New Hampshire;
  - (10) Gross receipts for the rendering of personal services when the services are performed in New Hampshire; and
  - (11) Other income which is earned in New Hampshire.
- (d) The rental, lease, licensing, or other use of tangible or intangible personal property in New Hampshire shall be considered a separate and distinct income producing activity within New Hampshire.
- (e) Business organizations utilizing combined reporting shall determine the costs of performance as used in RSA 77-A:3, I(c) and Rev 301.11 for each business organization on a separate entity basis.
- (f) When an income producing activity results from the use of personal property within and without New Hampshire during the taxable period, gross receipts attributable to New Hampshire shall be measured by one of the following ratios:
- (1) Where the amount of time is the most appropriate measure under the specific facts and circumstances of the business organization's activities, the time the property was used in New Hampshire as compared to the total time of use of the property everywhere during that taxable period; or
  - (2) Where distance is the most appropriate measure under the specific facts and circumstances of the business organization's activities, the distance traveled or covered in New Hampshire as compared to the total distance traveled or covered everywhere during the taxable period.
- (g) Personal services performed in New Hampshire shall be a separate income producing activity performed in New Hampshire unless the business organization ~~can~~ demonstrates the activity performed in New Hampshire is completely dependent upon activities performed by the business organization in one or more other states.

- (h) The rendering of personal services shall be attributed to New Hampshire if the activity:
- (1) Is completely performed in New Hampshire; or
  - (2) Performed in New Hampshire is a dependent component of a service performed both within and without New Hampshire and a greater proportion of the costs directly associated with performing such service are incurred in New Hampshire.
- (i) Costs of performance shall be determined on a separate entity basis consistent with the separate entity treatment provided in RSA 77-A:1, I notwithstanding that *the taxpayer files* a combined report ~~is filed~~.
- (j) In determining the costs directly associated with the performance of the service in (h) above, the business organization shall allocate all compensation costs, including benefits, of personnel rendering the service based on the amount of time spent rendering the service in New Hampshire as compared to the time spent in rendering the service outside New Hampshire.
- (k) Expenses incurred in obtaining or retaining customers or clients, including contract negotiations, shall not be costs directly associated with the performance of the service.
- (l) The sales price shall include all interest, carrying charge or time-price differential charges, and excise taxes passed on to the buyer or included as part of the selling price of the product.
- (m) Business organizations includible in a combined group shall eliminate all intergroup transactions with other members of the combined group for both the numerator and denominator of the sales factor.

**Adopt Rev 304.041 to read as follows:**

Rev 304.041 Sales Factor. For taxable periods ending on or after December 31, 2021:

- (a) The sales factor shall include:
- (1) Sales less returns and allowances;
  - (2) Dividends not eligible for the dividend deduction under RSA 77-A:4, or the factor relief provided in RSA 77-A:3, II(b);
  - (3) Interest;
  - (4) Rents;
  - (5) Royalties;
  - (6) Capital gain net income;
  - (7) Net gains or losses; and
  - (8) Other income unless the other income is properly includible as a reduction of an expense or allowance.

(b) The sales factor numerator for separate business organizations and all members of a combined group shall include the sum of:

- (1) Sales of tangible personal property, regardless of the conditions of sale delivered in New Hampshire, other than to the United States government;
- (2) Sales of tangible personal property originating in New Hampshire to a purchaser in another state in which the business organization is not taxable or subject to tax;
- (3) Sales of tangible personal property originating in New Hampshire and delivered to the United States government in any state;
- (4) Ordinary net gains or losses and capital gains from the sale of real or tangible property, if and to the extent the property is located in this state;
- (5) Ordinary net gains or losses and capital gains from the sale of intangible property, if and to the extent the property is used in this state;
- (6) Sales, rental, lease, licensing, or other use of real property, if and to the extent the property is located in this state;
- (7) Rental, lease, licensing, or other use of tangible personal property, if and to the extent the property is located in this state;
- (8) Sales of services, if and to the extent the service is delivered to a location in this state;
- (9) Sale, rental, lease, license, or other use of intangible property, if and to the extent the property is used in this state;
- (10) Interest income, if and to the extent the debtor or encumbered property is located in this state;
- (11) Dividend income, if and to the extent the business organization's commercial domicile is in this state; and
- (12) Other income, if and to the extent the income is derived from sources in this state.

(c) In the case of the delivery of a service to a customer by in-person means, the service ~~is~~ **shall be considered** delivered in New Hampshire if and to the extent that the customer receives the service in New Hampshire.

(d) In the case of the delivery of a service to a customer by electronic transmission, the service ~~is~~ **shall be considered** delivered in New Hampshire if and to the extent that the taxpayer's customer receives the service in New Hampshire.

(e) In the case of the delivery of a service by electronic transmission, where the service is delivered electronically to end users or other third-party recipients through or on behalf of the customer, the service ~~is~~ **shall be considered** delivered in New Hampshire if and to the extent that the end users or other third-party recipients are in New Hampshire.

(f) In the case of the delivery of a professional service to a customer other than by in-person means, the service ~~is~~ ***shall be considered*** delivered in New Hampshire if and to the extent that the customer receives the benefit of the service in New Hampshire.

(g) In the case of sales other than sales of tangible personal property, if the state or states of assignment cannot be determined, the state or states of assignment shall be reasonably approximated. Methods to reasonably approximate such sales shall include, but not be limited to, multiplying such sales by a percentage that equals the ratio that the population of New Hampshire bears to the combined total population of every state within the United States where such business organization is taxable or subject to tax. The need, and methodology used, for reasonable approximation shall be determined on a separate entity basis consistent with the separate entity treatment provided in RSA 77-A:1, I, notwithstanding that a combined report is filed.

(h) In the case of sales other than sales of tangible personal property, if the taxpayer is not taxable in a state to which a sale is assigned, or if the state of assignment cannot be determined or reasonably approximated, such sale shall be excluded from the denominator of the sales factor.

(i) The sales price shall include all interest, carrying charges or time-price differential charges, and excise taxes passed on to the buyer or included as part of the selling price of the product.

(j) Business organizations includible in a combined group shall eliminate all intergroup transactions with other members of the combined group for both the numerator and denominator of the sales factor.

**Readopt with amendment Rev 304.06, eff. 1-16-15 (Doc# 10758), to read as follows:**

Rev 304.06 Use of Special Industry Apportionment Provisions. Paragraphs (a) through (e) ~~are effective~~ ***shall apply to*** taxable periods ending before December 31, 2021 ***and paragraph (f) shall apply to taxable periods ending on or after December 31, 2021 as follows:***

(a) A business organization, which is not a member of a combined group, may elect to use one of the industry specific apportionment provisions in Rev 304.07 through Rev 304.11, provided more than 50% of the business organization's:

- (1) Gross receipts for the taxable period are from sources relating to the industry identified by the rule; and
- (2) Total assets on the last day of the taxable period are commonly related to the industry identified by the rule.

(b) A business organization, which is a member of a combined group, may elect to use one of the industry specific apportionment provisions in Rev 304.07 through Rev 304.11 provided more than 50% of the combined group's:

- (1) Gross receipts for the taxable period are from sources relating to the industry identified by the rule; and
- (2) Total assets on the last day of the taxable period are commonly related to the industry identified by the rule.

(c) The business organization or group of business organizations electing to use the industry specific apportionment provisions contained in Rev 304.07 through Rev 304.11 shall continue to use the apportionment provisions until:

(1) The department grants, in writing, a request made to the department to change the method used; *and*

~~(2) The principal business organization may request approval by the department to change the apportionment method used by submitting a written request to the department; and~~

~~(3) The department approves of a change in the apportionment method upon a showing that the business organizations:~~

- a. No longer meets the requirements to use special industry apportionment provisions; or
- b. Circumstances have changed so that the use of special industry apportionment provisions no longer accurately reflects the business organization's business activity in New Hampshire.

(d) Unless otherwise indicated, the industry specific apportionment provision elected by the business organization shall apply in its entirety.

Edit. "may petition pursuant to Rev 304.05 for,"

(e) If further adjustments to the formula are necessary to accurately reflect the business organization's business activity in New Hampshire, the business organization may petition for, or the commissioner may require, modification under RSA 77-A:3, II.

~~(f) For taxable periods ending on or after December 31, 2021, a~~ business organization or combined group shall use one of the industry specific apportionment provisions in Rev 304.07 through Rev 304.11, provided more than 50% of the business organization's or combined group's:

- (1) Gross receipts for the taxable period are from sources relating to the industry identified by the rule; and
- (2) Total assets on the last day of the taxable period are commonly related to the industry identified by the rule.

**Readopt with amendment Rev 304.07, eff. 1-16-15 (Doc# 10758), to read as follows:**

Rev 304.07 Adjustments Required to Apportionment Factors for Airline Industries.

(a) For purposes of this section, the following definitions shall apply:

- (1) "Aircraft ready for flight" means aircraft which are:
  - a. Owned or acquired through rental or lease;
  - b. In the possession of the business organization; and

c. Available for service on the business organization's routes or charters;

(2) "Commercial airlines" means business organizations which operate aircraft in the income producing activity of carrying passengers or cargo for remuneration;

(3) "Cost of aircraft by type" means the average original cost, as calculated by the business organization, by type of aircraft ready for flight;

(4) "Departures" means all takeoffs whether they are regularly scheduled service or charter flights that occur during the taxable period excluding takeoffs where the sole purpose of the departure is the maintenance or ferrying of the aircraft;

(5) "Mobile payroll" means the total compensation determined in accordance with Rev 304.034 for flight crew and maintenance facility personnel;

(6) "Mobile property" means:

a. Aircraft;

b. Engines;

c. Transmissions;

d. Electronic components; or

e. Other parts of an aircraft capitalized or inventoried for federal income tax purposes or which generally move from location to location in the organization's route system;

(7) "NH departures" means departures occurring from within the geographical confines of New Hampshire;

(8) "Non-mobile payroll" means the total compensation determined in accordance with Rev 304.03 for all employees of the business organization other than flight crew and maintenance facility personnel;

(9) "Non-mobile property" means tangible personal property used in the operation of a commercial airline and permanently located at a particular place of business;

(10) "Non-transportation sales" means all receipts of the business organization other than those classified as transportation sales; and

(11) "Transportation sales" means the receipts from transporting passengers, freight or mail and the sale of products or services associated with such transportation such as, but not limited to, liquor sales, and audio headset or pet crate rentals.

(b) Commercial airlines shall apportion their income to New Hampshire using the apportionment provisions contained in RSA 77-A:3 and Rev 304.02, Rev 304.03, Rev 304.04, and Rev 304.041, subject to the adjustments in paragraphs (c), (d), and (e), below.

(c) The property factor's components shall be calculated utilizing the following provisions:

- (1) The factor shall be the sum of average New Hampshire mobile property and average New Hampshire non-mobile property, divided by the sum of average mobile property everywhere and average non-mobile property everywhere;
- (2) Average New Hampshire non-mobile property, and average non-mobile property everywhere shall be calculated using the provisions of Rev 304.02;
- (3) Average mobile property everywhere shall include the average value, as provided in Rev 304.02 (j), of all mobile property owned, rented and used by the business organization except that aircraft ready for flight shall be included based on the cost of aircraft by type;
- (4) Average New Hampshire mobile property shall equal average mobile property everywhere:
  - a. Multiplied by New Hampshire departures;
  - b. Divided by total departures; and
  - c. Departures of aircraft shall be weighted based upon the cost of aircraft by type; and
- (5) The property factor shall be expressed by the formula as follows:

Mobile Property		NH Departures		
Everywhere	X	-----	=	NH Mobile Property
		Total Departures		
Average NH		Average NH Non-Mobile		Total Average
Mobile Property	+	Property		NH Property
-----		-----	=	-----
-----				
Average Mobile Property		Average Non-Mobile		Total Average Property
Everywhere	+	Property		Everywhere
		Everywhere		

(d) The payroll factor's components shall be calculated utilizing the following provisions:

- (1) The factor shall be the sum of New Hampshire mobile payroll and New Hampshire non-mobile payroll, divided by the sum of mobile payroll everywhere and non-mobile payroll everywhere;
- (2) New Hampshire non-mobile payroll, and non-mobile payroll everywhere shall be calculated using the provisions of Rev 304.03;



(3) Mobile payroll everywhere shall include the total compensation of the business organization's flight crews and maintenance facility personnel;

(4) New Hampshire mobile payroll shall equal mobile payroll everywhere:

- a. Multiplied by New Hampshire departures;
- b. Divided by total departures; and
- c. Departures of aircraft shall be weighted based upon the cost of aircraft by type; and

(5) The payroll factor shall be expressed by formula as follows:

Mobile Payroll		NH Departures			
Everywhere	X	-----	=	NH Mobile Payroll	
		Total Departures			
NH Mobile Payroll	+	NH Non-Mobile Payroll		Total NH	
-----			=	Payroll	-----
---					
Mobile Payroll	+	Non-Mobile Payroll		Total Payroll Everywhere	
Everywhere		Everywhere			

(e) The sales factor's components shall be calculated utilizing the following provisions:

- (1) The sales factor shall be the sum of New Hampshire transportation sales and New Hampshire non-transportation sales, divided by the sum of transportation sales everywhere and non-transportation sales everywhere;
- (2) New Hampshire non-transportation sales and non-transportation sales everywhere shall be calculated using the provisions of Rev 304.04 and Rev 304.041;
- (3) Transportation sales everywhere shall include the total transportation sales of the business organization;
- (4) New Hampshire transportation sales shall include the receipts from all passengers and cargo enplaned in New Hampshire; and
- (5) The sales factor shall be expressed by formula as follows:

NH Transportation		NH Non-Transportation		Total NH
Sales		Sales		Sales
-----	+	-----	=	-----
Transportation Sales Everywhere		Non-Transportation Sales Everywhere		Total Sales Everywhere

(f) The business organization shall maintain the records necessary to substantiate the departures by type of aircraft and the receipts for passengers and cargo that enplaned in New Hampshire and everywhere.

**Readopt with amendment Rev 304.08, eff. 1-16-15 (Doc# 10758), to read as follows:**

Rev 304.08 Adjustments Required To Apportionment Factors For Printing and Publishing Industries.

(a) For purposes of this section, the following definitions shall apply:

(1) "Outer-jurisdictional property" means tangible personal property, such as orbiting satellites and undersea transmission cables, which are not physically located in any particular state, that are:

- a. Owned or rented by the business organization; and
- b. Used in the business of:
  - 1. Publishing;
  - 2. Licensing;
  - 3. Selling; or
  - 4. Otherwise distributing printed material;

(2) "Print" or "printed material" means the physical or digital embodiment or printed version of any thought or expression including, without limitation:

- a. A play;
- b. A story;
- c. An article;
- d. A column; or
- e. Other literary, commercial, educational, artistic or other written or printed work and may take the form of:
  - 1. A book;

2. A newspaper;
3. A magazine;
4. A periodical;
5. A trade journal; or
6. Any other form of printed matter contained on any medium or property;

(3) "Purchaser" or "subscriber" means:

- a. The individual location of the:
  1. Residence;
  2. Business; or
  3. Other outlet which is the final recipient of the print or printed material; and
- b. Not a wholesaler or other distributor of print or printed material; and

(4) "Terrestrial facility" means any:

- a. Telephone line;
- b. Cable;
- c. Fiber optic;
- d. Microwave transmission or reception equipment;
- e. Earth station;
- f. Satellite dish; or
- g. Antennae or other relay system or device that is used to:
  1. Receive;
  2. Transmit;
  3. Relay; or
  4. Carry any data, voice, image, or other information transmitted from or by any outer-jurisdictional property to the ultimate recipient thereof.

(b) Business organizations having income derived from the publishing, sale, licensing, or other distribution of books, newspapers, magazines, periodicals, trade journals, or other printed material, shall apportion their income to New Hampshire using the apportionment provisions contained in RSA 77-A:3, Rev 304.02, Rev 304.03, Rev 304.04, and Rev 304.041, subject to the adjustments in paragraphs (c), (d), and (e), below.

(c) The property factor's components shall be calculated utilizing the following provisions:

(1) The property factor shall be the sum of average New Hampshire outer-jurisdictional property and average New Hampshire non-outer jurisdictional property, divided by the sum of average outer-jurisdictional property everywhere and average non-outer jurisdictional property everywhere;

(2) Average New Hampshire non-outer jurisdictional property, and average non-outer jurisdictional property everywhere shall be calculated using the provisions of Rev 304.02;

(3) Average outer-jurisdictional property everywhere shall include the average value, as provided in Rev 304.02(j), of all outer-jurisdictional property owned, rented, and used by the business organization;

(4) Average New Hampshire outer-jurisdictional property shall equal average outer-jurisdictional property everywhere:

a. Multiplied by the number of uplinks and downlinks used during the taxable period to transmit from New Hampshire and to receive in New Hampshire any data, voice, image, or other information; and

b. Divided by the total number of uplinks and downlinks the business organization used for transmissions everywhere;

(5) Should information requested in (c)(4) above not be available or should such measurement of activity not be applicable to the type of outer-jurisdictional property used by the business organization, the average New Hampshire outer-jurisdictional property shall be calculated as follows:

a. Multiplied by the amount of time, in terms of hours and minutes of use or such other measurement of use of outer-jurisdictional property used during the taxable period to transmit from New Hampshire and to receive in New Hampshire any data, voice, image, or other information; and

b. Divided by the total amount of time or other measurement of use that was used for transmissions everywhere;

(6) Outer-jurisdictional property shall be considered to have been used by the business organization in its business activities within New Hampshire when such property, wherever located, has been employed by the business organization in any manner in the following functions:

a. The publication, sale, licensing, or other distribution of books, newspapers, magazines, or other printed material; and

b. Transmission of any data, voice, image, or other information to or from New Hampshire, through an earth station or terrestrial facility located in New Hampshire; and

(7) The property factor shall be expressed by formula as follows:

Average NH Outer-Jurisdictional Property	+	Average NH Non-Outer Jurisdictional Property		Total Average NH Property
				=
Average Outer- Jurisdictional Property Everywhere	+	Non Outer-Jurisdictional Property Everywhere		Total Average Property Everywhere

(d) The payroll factor shall be calculated in accordance with Rev 304.03.

(e) The sales factor's components shall be calculated in the following manner:

(1) The sales factor shall be the sum of New Hampshire print or printed material sales and New Hampshire non-print or non-printed material sales, divided by the sum of print or printed material sales everywhere and non-print or non-printed material sales everywhere;

(2) New Hampshire non-print or non-printed material sales, and non-print or non-printed material sales everywhere, shall be calculated using the provisions of Rev 304.04 and Rev 304.041;

(3) Print or printed material sales everywhere shall include all receipts from advertising and the sale, rental, or other use of the business organization's printed materials or customer lists;

(4) New Hampshire print or printed material sales for each publication shall be equal to the receipts calculated in (e)(3) above:

a. Multiplied by the business organization's in-state circulation to purchasers and subscribers of its printed material; and

b. Divided by its total circulation to purchasers and subscribers everywhere;

(5) In the event the purchaser or subscriber is the United States government or the business organization is not taxable in a state, the gross receipts from all sources associated with the printed materials, shall be included in the numerator of the sales factor of New Hampshire if the printed material or other property is shipped from an in-state:

a. Office;

- b. Store;
- c. Warehouse;
- d. Factory; or
- e. Other place of storage or business;

(6) The method used to determine the circulation of a publication shall be used consistently between the numerator and the denominator and from year to year; and

(7) The sales factor shall be expressed by formula as follows:

NH Print or Printed Material Sales	+ NH Non-Print or Non-Printed Material Sales	Total NH Sales
		=
Print or Printed Material Sales	+ Non-Print or Non-Printed Material Sales	Total Sales
Everywhere	+ Everywhere	Everywhere

**Readopt with amendment Rev 304.09, eff. 10-23-19 (Doc# 12906), to read as follows:**

**Rev 304.09 Adjustments Required to Apportionment Factors For Television and Radio Broadcasting Industries.**

(a) For purposes of this section, the following definitions shall apply:

(1) "Broadcast" means the transmission of radio programming by an electronic signal conducted by:

- a. Radio waves;
- b. Microwaves;
- c. Wires;
- d. Lines;
- e. Coaxial cables;
- f. Wave guides;
- g. Fiber optics; or

**Note to JLCAR:** The Motion Picture Association of America has submitted information in support of its opposition to the apportionment factors for broadcasters in Rev 304.09 and has submitted proposed draft language for this section. (See attachments). It states that the apportionment serves to double count the same audience to two different taxpayers and that the proposal violates the Legislature's intent that the Department modernize the apportionment methods because no updates have been made specific to apportionment for broadcasters. (The Notice indicates that changes are proposed as a result of [HB 4](#), 2019, Sections 424, 425, and 430). JLCAR staff is unable to locate anything in the statute that would require the Department to use a different method of apportionment. In conversation with JLCAR staff, the Department stated that the market based apportionment was already being applied to broadcasters and that in its view adopting the method proposed by the Motion Picture Assoc. would actually violate the Legislature's intent. The Department also noted that this proposal will align with the other New England states.

h. Other conduits of communications;

(2) "Film" means performances or productions telecast, live or otherwise, including, but not limited to:

a. News;

b. Sporting events;

c. Plays;

d. Stories; and

e. Other literary, commercial, educational, or artistic works, in the format of a motion picture, a videotape, video disc, or other medium;

(3) "Outer-jurisdictional property" means tangible personal property, such as orbiting satellites, undersea transmission cables, which are not physically located in any particular state, that are:

a. Owned or rented by the business organization; and

b. Used in the business of

1. Telecasting; or

2. Broadcasting;

(4) "Placed into service" means when the film is first telecast to the primary audience for which the film was created;

(5) "Radio" means performances or productions broadcast, live or otherwise, on radio, including, but not limited to:

a. News;

b. Sporting events;

c. Plays;

d. Stories; or

e. Other literary, commercial, educational, or artistic works, in the format of an audiotape, disc, or other medium;

(6) "Rent" means the payments or consideration such as, but not limited to, license fees provided for the broadcast or other use of television or radio programming;

- (7) "Subscriber" means the individual location of the residence or other outlet which is the ultimate recipient of the transmission;
- (8) "Tangible personal property" means property other than:
- a. Real estate;
  - b. Film; or
  - c. Radio programming; and
- (9) "Telecast" means the transmission of television programming by an electronic signal conducted by:
- a. Radio waves;
  - b. Microwaves;
  - c. Wires;
  - d. Lines;
  - e. Coaxial cables;
  - f. Wave guides;
  - g. Fiber optics; or
  - h. Other conduits of communications.
- (b) Business organizations shall apportion their income to New Hampshire using the apportionment provisions contained in RSA 77-A:3, ~~and~~ Rev 304.02, Rev 304.03, Rev 304.04, and Rev 304.041, subject to the adjustments in (f), (g), (h), and (i) below.
- (c) Each episode of a series of films produced for television shall constitute a separate film notwithstanding that the series relates to the same principal subject and is produced during one or more television seasons.
- (d) Each episode of a series of radio programming produced for radio broadcast shall constitute separate radio programming notwithstanding that the series relates to the same principal subject and is produced during one or more taxable periods.
- (e) A film shall not be placed in service merely because it is:
- (1) Completed and therefore in a condition or state of readiness and availability for telecast;
  - (2) Telecast to prospective sponsors or purchasers; or
  - (3) Shown in preview before a select audience.



(f) The property factor for television and radio broadcasters shall be:

(1) The sum of New Hampshire programming property and New Hampshire non-programming property, divided by the sum of total programming property and total non-programming property; and

(2) The components calculated in accordance with the provisions of Rev 304.02, and in the following manner:

a. Total non-programming property shall include all real and tangible personal property other than outer-jurisdictional and film or radio programming property owned, rented, ~~and~~ *or* employed by the business organization;

b. New Hampshire non-programming property shall include all real and tangible personal property other than outer-jurisdictional and film or radio programming property owned, rented, ~~and~~ *or* employed by the business organization in New Hampshire;

c. Total programming property shall be the average cost, determined as provided in Rev 304.02(j), of all outer-jurisdictional and film or radio programming property owned, rented, and used by the business organization;

d. New Hampshire programming property shall be the average costs, determined as provided in Rev 304.02(j), of all outer-jurisdictional and film or radio programming property owned, rented, and used by the business organization in New Hampshire;

e. New Hampshire programming property shall be the sum of:

1. The average cost of outer-jurisdictional property everywhere:

i. Multiplied by the amount of use, in hours and minutes or other comparable form of measurement, of outer-jurisdictional property during the taxable period to transmit from New Hampshire and to receive in New Hampshire any data, voice, image, or other information; and

ii. Divided by the total amount of time or other comparable measurement that outer-jurisdictional property was used for transmissions everywhere;

2. The original cost of audio or video cassettes, discs or similar media containing film or radio programming and intended for sale or rental by the business organization for home viewing or listening within New Hampshire; and

3. To the extent the business organization licenses or otherwise permits others to manufacture or distribute audio or video cassettes, disc, or other media containing film or radio programming for home viewing or listening, the license, royalty, or other fees reviewed by the business organization capitalized at a rate of 8 times the gross receipts derived there from during the taxable period; and

f. The property factor shall be expressed by formula as follows:

Average NH Outer- Jurisdictional & Programming Property	+	Average NH Non-Outer Jurisdictional & Non- Programming Property		Total Average NH Property
-----				=
-----				-----
Average Outer- Jurisdictional & Programming Property Everywhere	+	Average Non- Outer Jurisdictional & Non- Programming Property  Everywhere		Total Average Everywhere Property

- (g) The payroll factor shall be calculated in accordance with Rev 304.03.
- (h) The sales factor shall be the sum of New Hampshire programming sales and New Hampshire non-programming sales, divided by the sum of programming sales everywhere and non-programming sales everywhere.
- (i) The sales factor components shall be calculated in the following manner:
  - (1) Non-programming sales, both everywhere and in New Hampshire, shall be calculated using the provisions of Rev 304.04 and Rev 304.041;
  - (2) Programming sales everywhere shall include all receipts from advertising and the sale, rental or other use of the business organization’s film or radio programming or customer lists; and
  - (3) New Hampshire programming sales shall equal programming sales everywhere:
    - a. Multiplied by the business organization’s in-state audience; and
    - b. Divided by the business organization’s total audience everywhere;
  - (4) The method used to determine the audience shall be used consistently to determine both in-state audience and total audience, and used consistently from year to year; and
  - (5) The sales factor shall be expressed by formula as follows:

NH Programming		NH Non-Programming		Total NH
Sales	+	Sales		Sales
-----				=
-----				-----
Programming		Non-Programming		Total Everywhere
Sales Everywhere	+	Sales Everywhere		Sales

**Readopt with amendment Rev 304.10, eff. 1-16-15 (Doc# 10758), to read as follows:**

Rev 304.10 Adjustments Required to Apportionment Factors For Financial Institutions.

(a) For purposes of this section, the following definitions shall apply:

- (1) "Billing address" means the location indicated in the books and records of the business organization on the first day of the taxable year, or on such later date in the taxable period when the customer relationship began, as the address where any notice, statement, or bill relating to a customer's account is mailed to the customer;
- (2) "Borrower or credit cardholder located in New Hampshire" means:
  - a. An individual or business organization engaged in a trade or business which maintains its commercial domicile in New Hampshire; or
  - b. An individual who is not engaged in a trade or business but whose billing address is in New Hampshire;
- (3) "Commercial domicile" means, for businesses organized under the laws of:
  - a. The United States, the place from which the trade or business is principally managed and directed; or
  - b. A foreign country, the Commonwealth of Puerto Rico, any territory or possession of the United States, the state of the United States, or the District of Columbia to which the greatest number of employees, as defined in Rev 301.14, are regularly connected or out of which they are working, irrespective of where the services of such employees are performed, as of the last day of the taxable year;
- (4) "Credit card" means a card or other medium entitling its holder to credit by virtue of its use to purchase goods or services from businesses;
- (5) "Credit card issuer's reimbursement fee" means the fee a business organization receives from a merchant's bank because one of the persons to whom the business organization has issued a credit card has charged merchandise or services to the credit card;

(6) "Finance lease" means any lease transaction, including any *that are classified as a* direct financing lease or leverage lease *under generally accepted accounting principles* ~~that meets the criteria of Financial Accounting Standards Board Statement No. 13, "Accounting for Leases"~~ or any other lease that is accounted for as a financing by a lessor under generally accepted accounting principles which is the functional equivalent of an extension of credit and that transfers substantially all of the benefits and risks incident to the ownership of property to the lessee;

(7) "Financial institution" means:

- a. Any corporation or other business entity registered under:
  1. State law as a bank holding company;
  2. The Federal Bank Holding Company Act of 1956, as amended; or
  3. The Federal National Housing Act, as amended, as a savings and loan holding company;
- b. A national bank organized and existing as a national bank association pursuant to the National Bank Act, 12 U.S.C. 21 et seq.;
- c. A savings association or federal savings bank as defined in the Federal Deposit Insurance Act, 12 U.S.C. 1813(b)(1);
- d. Any bank or thrift institution incorporated or organized under the laws of any state;
- e. Any corporation organized under the provisions of 12 U.S.C. 611 to 631;
- f. Any agency or branch of a foreign depository as defined in 12 U.S.C. 3101;
- g. A production credit association organized under the Federal Farm Credit Act of 1933, all of whose stock held by the Federal Production Credit Corporation has been retired;
- h. Any corporation, other than an insurance company, whose voting stock is more than 50% owned, directly or indirectly, by any person or business entity described in subsections a. through g. above;
- i. A corporation or other business entity which during the current taxable period and the previous 2 taxable periods derived an average of 50% of its total gross income for financial accounting purposes from finance leases;
- j. Any other person or business entity, other than an insurance company, a real estate broker, a securities dealer, or other similar business entities, which derive more than 50% of their gross income excluding non-recurring and extraordinary items from activities that a person described in subsections a. through i. above is authorized to transact; and
- k. Any person or business entity having more than 50% of its total gross business income derived from or attributable to the issuance and maintenance of credit cards to consumers

provided that such credit card ~~may~~ *can* be used by the consumer to purchase goods and services from organizations other than the card issuer;

(8) “Gross rents” means:

a. The actual sum of money or other consideration payable for the use or possession of property except:

1. Reasonable amounts payable as separate charges for water and electric service furnished by the lessor;
2. Reasonable amounts payable as service charges for janitorial services furnished by the lessor;
3. Reasonable amounts payable for storage, provided such amounts are payable for space not designated for use by and not under the control of the taxpayer; and
4. That portion of any rental payment applicable to the space subleased from the taxpayer and not used by the taxpayer;

b. Any amount payable for the use or possession of real property and tangible property whether designated as a fixed sum of money or as a percentage of receipts, profits, or otherwise; and

c. Any amount payable as additional rent or in lieu of rent, such as interest, taxes, insurance, repairs, or any other amount required to be paid by the terms of a lease or other arrangement, including the amount of amortization or depreciation allowed in computing the taxable income base for the taxable year of any improvement to real property made by or on behalf of the business organization which reverts to the owner or lessor upon termination of a lease or other arrangement;

(9) “Loan” means any extension of credit resulting from direct negotiations between the business organization and its customers and:

a. Includes:

1. Participation;
2. Syndications;
3. Leases treated as loans for federal income tax purposes; and
4. The purchase, in whole or in part, of such extension of credit from another business organization; and

b. Excludes:

1. Properties treated as loans under section 595 of the IRC;

2. Futures or forward contracts;
3. Options;
4. Notional principal contracts such as swaps;
5. Credit card receivables, including purchased credit card relationships;
6. Non-interest bearing balances due from depository institutions;
7. Cash items in the process of collection;
8. Federal funds sold;
9. Securities purchased under agreements to resell;
10. Assets held in a trading account;
11. Securities; and
12. Interests in a real estate mortgage investment conduit (REMIC), or other mortgage-backed or asset-backed security;

(10) “Loan secured by real property” means 50% or more of the aggregate value of the collateral used to secure a loan or other obligation, when valued at fair market value as of the time the original loan or obligation was incurred, was real property;

(11) “Merchant discount” means the fee, or negotiated discount, charged to a merchant by the business organization for the privilege of participating in a program whereby a credit card is accepted in payment for merchandise or services sold to the card holder;

(12) “Participation” means an extension of credit in which an undivided ownership interest is held on a pro rata basis in a single loan or pool of loans and the related collateral by the credit originator and any other lenders who have purchased a portion of such loan or pool of loans whether or not known to the borrower;

(13) “Person” means an individual, estate, trust, partnership, corporation, and any other business entity;

(14) “Real and tangible property” means assets:

- a. On which the taxpayer may claim depreciation for federal income tax purposes;
- b. To which the taxpayer holds legal title and on which no other person may claim depreciation for federal income tax purposes or could claim depreciation if subject to federal income taxation; or
- c. That have not been acquired in lieu of, or pursuant to, a foreclosure;

- (15) “Regular place of business” means an office where the business organization conducts business in a regular and systematic manner and is continuously maintained, occupied, and used by employees of the business organization;
- (16) “Syndication” means an extension of credit in which 2 or more persons fund the credit extension and each person is at risk at a specified:
- a. Percentage of the total extension of credit; or
  - b. Dollar amount;
- (17) “Taxable” means:
- a. A business organization, as defined in RSA 77-A:1, I., subject in another state to:
    - 1. A net income tax, a franchise tax measured by net income;
    - 2. A franchise tax for the privilege of doing business; or
    - 3. A corporate stock tax including a bank shares tax, a single business tax, or an earned surplus tax, or any tax which is imposed upon or measured by net income; or
  - b. Another state has jurisdiction to subject the business organization to any of such taxes regardless of whether, the state does or does not impose such taxes; and
- (18) “Transportation property” means:
- a. Vehicles and vessels capable of moving under their own power; and
  - b. Equipment or containers attached to the vehicle or vessel.
- (b) Financial institutions shall apportion their income to New Hampshire using the apportionment provisions contained in RSA 77-A:3 and Rev 304.02, Rev 304.03, Rev 304.04, and Rev 304.041, subject to the adjustments in paragraphs (c), (d), and (e), below.
- (c) The property factor's components shall be calculated utilizing the following provision:
- (1) The property factor shall include only property the income or expenses of which are included, or would have been included if not fully depreciated or expensed, in the computation of the apportionable income tax base for the taxable period;
  - (2) The property factor shall be the sum of the value of the real and tangible property and the intangible property components;
  - (3) The real and tangible property component shall be calculated using the provision of Rev 304.02;

(4) The intangible property component shall include the average value of the business organization's loans and credit card receivables;

(5) Intangible property shall be determined to be located in New Hampshire when it is properly assigned to a regular place of business of the business organization within New Hampshire, based upon the preponderance of substantive contacts relating to the loans having occurred in New Hampshire;

(6) Substantive contacts shall occur when one or more of the following activities are conducted by employees connected with, or working out of the business organization's regular place of business in New Hampshire, regardless of where the services of such employee were actually performed:

a. Solicitation of the customer by an employee or the customer initiation of contact with the business organization at its regular place of business;

b. Investigation of the customer's credit-worthiness and the degree of risk involved in making the particular loan;

c. Negotiation between the employee of the business organization and the customer regarding the terms of the loan such as the:

1. Amount;

2. Duration;

3. Interest rate;

4. Frequency of repayment;

5. Currency denomination; and

6. Security requirements;

d. Approval of the agreement by the employees or directors of the business organization; and

e. Administering the account by performing services such as:

1. Bookkeeping;

2. Collecting payments;

3. Corresponding with the customer; or

4. Proceeding against the customer in the case of default;

(7) The intangible property included under paragraph (4) above, shall be valued in the following manner:



a. Loans shall be valued at their outstanding principal balance, without regard to any reserve for bad debts;

b. Credit card receivables shall be valued at their outstanding principal balance, without regard to any reserve for bad debts, with the exception that credit card receivables which are written-off in whole or in part for federal income tax purposes shall not be included in the principal balance to the extent of the portion that is written-off; and

c. Loans, when written off in whole or in part, shall not be included in the total to the extent of the portion that is written off for:

1. Federal income tax purposes; or

2. Regulatory purposes through a specifically allocated reserve pursuant to regulatory or financial accounting guidelines;

(8) Loans properly assigned to New Hampshire shall, absent any change of material fact, remain assigned to New Hampshire for the length of the original term of the loan;

(9) Upon completion of the original term of loans referenced in (8), above, they may be properly assigned to another state if said loans have a preponderance of substantive contact to a regular place of business there; and

(10) Credit card receivables shall be treated as loans and subject to the provisions of (c)(6) above, for purposes of determining the location of credit card receivables.

(d) The payroll factor shall be calculated in accordance with Rev 304.03.

(e) The sales factor shall be calculated utilizing the following provisions in lieu of the provisions contained in Rev 304.04 and Rev 304.041:

(1) The sales factor shall be a fraction, as follows:

a. The numerator shall be the receipts from the lease, sublease, rental, or sub-rental of real property located in New Hampshire, and the lease or rental of tangible personal property, other than transportation equipment, located in New Hampshire when it is first placed in service by the lessee owned by the business organization in New Hampshire during the taxable year; and

b. The denominator shall be the receipts of the business organization within and without New Hampshire during the taxable period.

(2) The sales factor numerator and denominator shall be calculated in a consistent manner from year-to-year, and include those receipts described herein which constitute income and are included in the computation of the apportionable income base for the taxable period;

(3) Receipts from the lease or rental of transportation property owned by the business organization shall be:

- a. Included in the numerator to the extent that the property is used in New Hampshire; and
  - b. Calculated in the following manner:
    1. The amount of receipts from aircraft to be included in the numerator of New Hampshire's sales factor shall be determined by multiplying all the receipts from the lease or rental of the aircraft by a fraction, as follows:
      - (i) The numerator shall be the number of landings of the aircraft in New Hampshire; and
      - (ii) The denominator shall be the total number of landings of the aircraft;
    2. Motor vehicles shall be included in the numerator of the state in which they are registered and deemed to be used wholly within such state; and
    3. If the extent of the use of any transportation property within New Hampshire cannot be determined, the property shall be deemed to be used wholly in the state in which the property has its principal base of operations;
- (4) The numerator shall include interest and fees, or penalties in the nature of interest, from loans secured by real property if, at the time the original agreement is made, the following shall apply:
- a. The property is entirely located within New Hampshire;
  - b. The property is located both within New Hampshire and one or more other states, and more than 50% of the fair market value of the real property is located within New Hampshire; or
  - c. More than 50% of the fair market value of the real property is not located within any one state, and the borrower is located in New Hampshire;
- (5) Interest and fees or penalties in the nature of interest from loans not secured by real property shall be included in the numerator if the borrower is located in New Hampshire;
- (6) Net gains from the sale of loans, including income recorded under the coupon stripping rules of section 1286 of the ~~IRC~~ *internal revenue code*, shall be included in the numerator utilizing the following provisions:
- a. The amount of net gains, but not less than zero, from the sale of loans secured by real property included in the numerator shall be determined by multiplying such net gains by a fraction, as follows:
    1. The numerator shall be the amount included in the numerator of the sales factor pursuant to (4) above; and

2. The denominator shall be the total amount of interest and fees, or penalties in the nature of interest, from loans secured by real property;
- b. The amount of net gains, but not less than zero, from the sale of loans not secured by real property included in the numerator shall be determined by multiplying such net gains by a fraction, as follows:
  1. The numerator shall be the amount included in the numerator of the sales factor pursuant to (5) above; and
  2. The denominator shall be the total amount of interest and fees, or penalties in the nature of interest, from loans not secured by real property;
- (7) The numerator shall include interest and fees or penalties in the nature of interest from credit card receivables and receipts from fees, such as annual fees, charged to cardholders if the billing address of the cardholder is in New Hampshire;
- (8) The amount of net gains, but not less than zero, from the sale of credit card receivables included in the numerator shall be determined by multiplying such net gains by a fraction, as follows:
  - a. The numerator shall be the amount included in the numerator of the sales factor pursuant to (7) above; and
  - b. The denominator shall be the business organization's total amount of interest and fees or penalties in the nature of interest from credit card receivables and fees charged to card holders;
- (9) The numerator shall include all credit card issuer's reimbursement fees multiplied by a fraction, as follows:
  - a. The numerator shall be the amount included in the numerator of the sales factor pursuant to (7) above; and
  - b. The denominator shall be the business organization's total amount of interest and fees or penalties in the nature of interest from credit card receivables and fees charged to card holders;
- (10) The numerator shall include receipts from merchant discount if the commercial domicile of the merchant is in New Hampshire;
- (11) Receipts from merchant discount, referenced in (10), above, shall:
  - a. Be computed net of any cardholder charge backs; and
  - b. Not be reduced by any interchange transaction fees or by any issuer's reimbursement fees paid to another for charges made by its card holders;

(12) The numerator shall include receipts from loan servicing fees utilizing the following provisions:

a. For loan servicing fees derived from loans secured by real property, the total amount of such fees shall be multiplied by a fraction, as follows:

1. The numerator shall be the amount included in the numerator of the receipts factor pursuant to (4) above; and
2. The denominator shall be the total amount of interest and fees, or penalties in the nature of interest, from loans secured by real property;

b. For loan servicing fees derived from loans not secured by real property, the total amount of such fees shall be multiplied by a fraction, as follows:

1. The numerator shall be the amount included in the numerator of the receipts factor pursuant to (9) above; and
2. The denominator shall be the total amount of interest and fees, or penalties in the nature of interest, from loans not secured by real property; and

c. For circumstances in which the business organization receives loan servicing fees for servicing either the secured or the unsecured loans of another business organization, the numerator shall include such fees if the borrower is located in New Hampshire;

(13) The numerator shall include receipts from services not otherwise apportioned under this section if the service is performed:

- a. In New Hampshire; or
- b. Everywhere and a greater proportion of the income-producing activity is performed in New Hampshire based on cost of performance;

(14) The sales factor shall include interest, dividends, net gains not less than zero, and other income from investment assets and activities and trading assets and activities in accordance with the following provisions:

a. Investment assets and activities and trading assets and activities shall include, but are not limited to the following:

1. Investment securities;
2. Trading account assets;
3. Federal funds;
4. Securities purchased and sold under agreements to resell or repurchase;
5. Options;

6. Future contracts;
7. Forward contracts;
8. Notional principal contracts such as swaps;
9. Equities; and
10. Foreign currency transactions;

b. The sales factor shall include the amount by which:

1. Interest from federal funds sold and securities purchased under resale agreements exceeds interest expense on federal funds purchased and securities sold under repurchase agreements; and
2. Interest, dividends, gains, and other income from trading assets and activities, including but not limited to assets and activities in the matched book, in the arbitrage book, and foreign currency transactions, exceed amounts paid in lieu of interest, amounts paid in lieu of dividends, and losses from such assets and activities;

c. The sales factor:

1. Numerator shall include interest, dividends, net gains, but not less than zero, and other income utilizing the following provisions for:

(i) Investment assets and activities and from trading assets and activities described in a. above, the total amount of such income shall be multiplied by a fraction, as follows:

i. The numerator shall be the average value of such assets which are properly assigned to a regular place of business of the business organization within New Hampshire; and

ii. The denominator shall be the average value of all such assets;

(ii) Federal funds sold and purchased and from securities purchased under resale agreements and securities sold under repurchase agreements described in b. above, the amount of excess interest shall be multiplied by a fraction, as follows:

i. The numerator shall be the average value of federal funds sold and securities purchased under agreements to resell which are properly assigned to a regular place of business of the business organization within New Hampshire; and

ii. The denominator shall be the average value of all such funds and such securities; and

(iii) Trading assets and activities described in c. above, excluding amounts described in (i) or (ii), above, the amount of the excess income shall be multiplied by a fraction, as follows:

i. The numerator shall be the average value of such trading assets which are properly assigned to a regular place of business of the business organization within New Hampshire; and

ii. The denominator shall be the average value of all such assets; and

2. Average value shall be determined using the provisions of Rev 304.02(j);

d. If the provisions of (c) above do not equitably reflect the business organization for business done in this state a modified procedure shall be:

1. Required by the commissioner in lieu of using the provisions enumerated in c. above, in accordance with RSA 77-A:3, II (a); or

2. Requested by the business organization for all subsequent returns utilizing the provisions of Rev 304.05;

e. If using a modified procedure pursuant to (d) above, the modified procedure shall be calculated as follows:

1. The numerator shall include interest, dividends, net gains, ~~but~~ not less than zero and other income utilizing the following provisions for:

(i) Investment assets and activities and from trading assets and activities described in a. above, the total amount of such income shall be multiplied by the following fraction:

i. A numerator consisting of the gross income from such assets and activities assigned to a regular place of business of the taxpayer within New Hampshire; and

ii. A denominator consisting of the gross income from all assets and activities;

(ii) Federal funds sold and purchased from securities purchased under resale agreements, and securities sold under repurchase agreements described in b., above, the amount of excess interest shall be multiplied by the following fraction:

i. A numerator consisting of the gross income from funds and securities assigned to a regular place of business of the business organization within New Hampshire; and

ii. A denominator consisting of the gross income from all such funds and such securities; and

(iii) Trading assets and activities described in c. above, excluding amounts described in (i) or (ii) above, the amount of the excess income shall be multiplied by the following:

i. A numerator consisting of the gross income from trading assets and activities assigned to a regular place of business of the business organization within New Hampshire; and

ii. A denominator consisting of the gross income from all such assets and activities;

f. Investment asset or activity, or trading asset or activity, shall be presumed to occur at the commercial domicile of the business organization;

g. The business organization may rebut the presumption in f. above, by demonstrating that:

1. The day-to-day decisions regarding the asset or activity occurred at a regular place of business outside New Hampshire; and

2. Where the day-to-day decisions regarding an investment asset or activity or trading asset or activity occur at more than one regular place of business, one of which is in New Hampshire, that the investment or trading policies or guidelines concerning such decisions were made outside New Hampshire; and

h. All receipts assigned under this section to a state where the taxpayer is not taxable shall be included in the numerator of the sales factor, if the business organization's commercial domicile is in New Hampshire; and

(15) The numerator shall include receipts from the sales of tangible personal property not otherwise apportioned under this section utilizing the provisions of Rev 304.04 and Rev 304.041.

**Readopt with amendment Rev 304.11, eff. 1-16-15 (Doc# 10758), to read as follows:**

Rev 304.11 Adjustments Required To Apportionment Factors For Transportation Industries Other Than Airlines, Communication And Energy Companies.

(a) For purposes of this section, the following definitions shall apply:

(1) "Commercial transportation company" means any business organization:

a. Other than an airline, *or* communication or energy company, that is paid to transport packages, materials, equipment, freight, mail, or other products from one point to another for a customer; or

b. That transports individuals for a fee, other than the organization's employees, from one point to another;

(2) "Mobile payroll" means the total compensation for vehicle drivers and any service personnel such as tour guides, conductors, or other attendants determined in accordance with Rev 304.03(a);

(3) "Mobile property" means any vehicles used by a commercial transportation company for transporting:

- a. Passengers;
- b. Packages;
- c. Materials;
- d. Equipment;
- e. Freight;
- f. Mail or other products; or
- g. Any related equipment that generally moves from location to location within the organization's transportation system;

(4) "Non-mobile payroll" means the total compensation determined in accordance with Rev 304.03 for all employees of the business organization, other than vehicle drivers and any service personnel;

(5) "Non-mobile property" means:

- a. Fixed tangible personal property used in the operation of a commercial transportation company; and
- b. Located at a particular place of business;

(6) "Non-transportation income" means all receipts of the business organization other than those classified as transportation income;

(7) "Revenue miles" means the distance passengers, packages, materials, equipment, freight, mail, or other products were transported -for a fee; and

(8) "Transportation income" means:

- a. The receipts from transporting passengers, packages, materials, equipment, freight, mail, or other products; and
- b. The sale of products or services associated with such transportation such as food, beverages, liquor, magazines, or insurance for loss or damage.



(b) Commercial transportation companies shall apportion their income to New Hampshire using the apportionment provisions contained in RSA 77-A:3, ~~and~~ Rev 304.02, Rev 304.03, Rev 304.04, and Rev 304.041, subject to the adjustments in (c), (d), and (e), below.

(c) The property factor's components shall be calculated utilizing the following provisions:

- (1) The property factor shall be the sum of average New Hampshire mobile property and average New Hampshire non-mobile property, divided by the sum of average mobile property everywhere and average non-mobile property everywhere;
- (2) Average New Hampshire non-mobile property, and average non-mobile property everywhere shall be calculated using the provisions of Rev 304.02;
- (3) Average mobile property everywhere shall include the average value, as provided in Rev 304.02 (j), of all mobile property owned, rented, and used by the business organization;
- (4) Average New Hampshire mobile property shall equal average mobile property everywhere:
  - a. Multiplied by New Hampshire revenue miles; and
  - b. Divided by total revenue miles; and
- (5) The property factor shall be expressed by formula as follows:

Average Mobile Property Everywhere	X	$\frac{\text{NH Revenue Miles}}{\text{Total Revenue Miles}}$	=	Average NH Mobile Property
Average NH Mobile Property	+	Average NH Non-Mobile Property	=	Total Average NH Property
Average Mobile Property Everywhere	+	Average Non-Mobile Property Everywhere	=	Total Average Property Everywhere

(d) The payroll factor's components shall be calculated utilizing the following provisions:

- (1) The payroll factor shall be the sum of New Hampshire mobile payroll and New Hampshire non-mobile payroll, divided by the sum of mobile payroll everywhere and non-mobile payroll everywhere;
- (2) New Hampshire non-mobile payroll, and non-mobile payroll everywhere, shall be calculated using the provisions of Rev 304.03;

(3) Mobile payroll everywhere shall include the total compensation of the business organization for vehicle drivers and any service personnel such as tour guides, conductors or other attendants;

(4) New Hampshire mobile payroll shall equal mobile payroll everywhere:

- a. Multiplied by New Hampshire revenue miles;
- b. Divided by total revenue miles; and

(5) The payroll factor shall be expressed by formula as follows:

	X	$\frac{\text{NH Revenue Miles}}{\text{Total Revenue Miles}}$	=	NH Mobile Payroll																				
Mobile Payroll Everywhere																								
<table style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 30%; text-align: center;">NH Mobile Payroll</td> <td style="width: 10%; text-align: center;">+</td> <td style="width: 30%; text-align: center;">NH Non-Mobile Payroll</td> <td style="width: 10%; text-align: center;">=</td> <td style="width: 20%; text-align: center;">Total NH Payroll</td> </tr> <tr> <td style="border-top: 1px dashed black;"></td> <td></td> <td style="border-top: 1px dashed black;"></td> <td></td> <td style="border-top: 1px dashed black;"></td> </tr> <tr> <td style="border-top: 1px dashed black;">-</td> <td></td> <td style="border-top: 1px dashed black;"></td> <td></td> <td style="border-top: 1px dashed black;"></td> </tr> <tr> <td style="border-top: 1px dashed black;">Mobile Payroll Everywhere</td> <td style="border-top: 1px dashed black;">+</td> <td style="border-top: 1px dashed black;">Non-Mobile Payroll Everywhere</td> <td style="border-top: 1px dashed black;"></td> <td style="border-top: 1px dashed black;">Total Payroll Everywhere</td> </tr> </table>					NH Mobile Payroll	+	NH Non-Mobile Payroll	=	Total NH Payroll						-					Mobile Payroll Everywhere	+	Non-Mobile Payroll Everywhere		Total Payroll Everywhere
NH Mobile Payroll	+	NH Non-Mobile Payroll	=	Total NH Payroll																				
-																								
Mobile Payroll Everywhere	+	Non-Mobile Payroll Everywhere		Total Payroll Everywhere																				

(e) The sales factor's components shall be calculated utilizing the following provisions:

(1) The sales factor shall be the sum of New Hampshire transportation income and New Hampshire non-transportation income, divided by the sum of transportation income everywhere and non-transportation income everywhere;

(2) New Hampshire non-transportation income and non-transportation income everywhere shall be calculated using the provisions of Rev 304.04 and Rev 304.041;

(3) Transportation income everywhere shall include the total transportation income of the business organization;

(4) New Hampshire transportation income shall equal transportation income everywhere:

- a. Multiplied by New Hampshire revenue miles; and
- b. Divided by total revenue miles; and

(5) The sales factor shall be expressed by formula as follows:

		NH Revenue Miles		
Transportation	X	-----	=	NH Transportation
Income Everywhere		Total Revenue Miles		Income
NH Transportation		NH Non-Transportation		Total NH Sales
Income	+	Sales		
-----			=	-----
-----				
Transportation	Income	Non-Transportation	Sales	Total Everywhere Sales
Everywhere		Everywhere		
	+			

(f) The business organization shall maintain the records necessary to substantiate the revenue miles and the receipts for all passengers, packages, materials, equipment, freight, mail, or other products when the transportation service commences or terminates in New Hampshire.

**Readopt with amendment Rev 308.01, eff. 1-16-15 (Doc# 10758), to read as follows:**

Rev 308.01 Taxpayer Records and Information.

- (a) Every business organization shall ~~maintain~~:
  - (1) **Maintain** ~~All~~ accounting, financial, or general information necessary to establish the amount of gross income, deductions, credits, or any other information required to be shown on any return, schedule, or attachment required under RSA 77-A and any department rules adopted to implement the business profits tax such as, but not limited to:
    - a. General ledger;
    - b. Cash receipts records;
    - c. Cash disbursements records;
    - d. Sales records;
    - e. Payroll records;
    - f. Bank statements with all enclosures;
    - g. Paid and unpaid invoices from vendors;
    - h. Correspondence, contracts, or other agreements;
    - i. Federal tax returns and all schedules attached or required to be attached thereto;

- j. State and local tax returns and all schedules attached or required to be attached thereto for all jurisdictions in which the business organization has activities; and
- k. Any electronic records maintained by the taxpayer; and

(2) **Retain such** ~~The records shall be retained~~ for a minimum period of 3 years from the date the returns were filed with the department or until the completion of all:

- a. Audits commenced by the department;
- b. Administrative appeals pending before the department; and
- c. Judicial proceedings pending between the business organization and the department.

(b) Every business organization shall provide the commissioner or the commissioner's authorized designee access to:

(1) All records or information necessary to establish the amount of gross income, deductions, credits, or other information required to be shown on any return, schedule, or attachment required under RSA 77-A and any department rules adopted to implement the business profits tax;

(2) Key company personnel for interviews where applicable upon advance notice and at times during the regular business day;

(3) Minutes of meetings for the business organization's:

- a. Board of directors;
- b. Audit committee;
- c. Compensation committee;
- d. Finance committee; and
- e. Other similar committees or subcommittees of the board, where applicable;

(4) Consolidated or separate federal income tax returns and all related schedules and exhibits as filed with the United States Internal Revenue Service including federal Form 5471 or other similar document for each year under audit;

(5) Annual financial statements, notes, and supporting schedules, including consolidating work papers for each year under audit;

(6) A reconciliation between net income from financial statements and net income per books on federal Form Schedule M as filed with the United States Internal Revenue Service for each year under audit;

(7) A reconciliation between the business organization's gross business profits and the IRC as described in RSA 77-A:1, XX;

- (8) Schedules of sales, payrolls, and properties by state and documentation to support the respective apportionment factor for each year under audit;
  - (9) Federal unemployment and withholding returns filed with the United States Internal Revenue Service for each year under audit;
  - (10) A New Hampshire unemployment return as filed with the New Hampshire department of employment security for each year under audit;
  - (11) Schedules of income taxes, franchise taxes based on income, and capital stock taxes listing the state, type of tax, and amount for each year under audit;
  - (12) Complete state tax returns for states other than New Hampshire where business is conducted;
  - (13) Any listing of any key officers or employees who have substantial knowledge of and access to documentation on:
    - a. Pricing policies;
    - b. Profit centers or other methods of allocating income and expense among related parties;
    - c. Methods of factor determination; and
    - d. Other data to establish a business organization's proper tax liability;
  - (14) Any records or information to establish that uncontrolled market prices were used for all intergroup activity between members of a combined group and any overseas business organization;
  - (15) Company policy and procedure manuals and any other information used to establish the operational policies of the business organization; and
  - (16) Any electronic records statements, including but not limited to accounting software.
- (c) Every business organization having overseas business organizations or foreign dividends from unitary sources shall maintain the financial records necessary to verify:
- (1) That 80% or more of the dividend payor's average payroll and property is assignable to a location outside the 50 states or territory or possession of the United States and the District of Columbia;
  - (2) The amount of dividend paid by each payor;
  - (3) The taxable income of the payor based upon United States tax standards;
  - (4) The foreign apportionment factor information for each dividend payor as required under Rev 304.02, Rev 304.03, Rev 304.04, and Rev 304.041; and

**Unclear/Legis. Intent.** The Department has an exemption from rulemaking for its forms found at RSA 21-J:13-a; however, it is unclear which rule requires that this form be completed and filed. A citation to the rule that requires the completion of the form is needed.

Approval 2/12/2021 38

(5) Any additional information supporting Form NH-1120-WE **Combined Business Profits Tax Return** and affiliated schedules.

**Readopt with amendment Rev 2401.05, eff. 1-29-16 (Doc# 11032), to read as follows:**

Rev 2401.05 “Costs of performance”, as used in RSA 77-E:4, I(c)(3), means the direct costs of providing the service or activity determined in a manner consistent with generally accepted accounting principles and in accordance with accepted conditions or practices in the trade or business of the business enterprise.

**Adopt Rev 2401.07, and renumber the existing Rev 2401.07-Rev 2401.14 as Rev 2401.08-Rev 2401.15, so that Rev 2401.07 reads as follows:**

Rev 2401.07 “Delivered to a location in this state;” means the location of the market for the services provided by the taxpayer, without regard to the location of the property or payroll of the taxpayer.

**Readopt with amendment Rev 2403.03, eff. 1-29-16 (Doc# 11032), to read as follows:**

Rev 2403.03 Utilization of Deductions in Arriving at the Taxable Amount of the Enterprise Value Tax Base.

(a) The deduction allowed for compensation from self employment income retained in the business enterprise, as provided in RSA 77-E:3, I, shall be deducted from the compensation element of the tax base to arrive at the compensation amount subject to the apportionment factor.

(b) The deduction allowed for dividends received from members of an affiliated group of business enterprises as provided in RSA 77-E:3, II and III, shall be deducted from the dividend element of the tax base to arrive at the dividend amount subject to the apportionment factor.

(c) In instances where a business enterprise, entitled to a dividend received deduction, has not paid dividends to its owners, the business enterprise shall:

(1) Apportion the dividend received deduction using the dividends apportionment factor determined in accordance with Rev 2404.06 and Rev 2404.061; and

(2) Use such apportioned amount as an offset to either:

- a. The taxable compensation portion of the tax base; or
- b. The taxable interest portion of the tax base.

**Readopt with amendment Rev 2404.06, eff. 1-29-16 (Doc# 11032), to read as follows:**

Rev 2404.06 Dividends Apportionment Factor. For taxable periods ending before December 31, 2021:

(a) Revenue-producing activity shall include:

(1) Any transaction, procedure, or operation in which a business enterprise directly engaged in by a business enterprise resulting in a separately identifiable item of income; or

(2) The performance of any activity creating an obligation of a particular customer to pay specific consideration to the business enterprise.

(b) The denominator of the sales portion of the dividends apportionment factor shall include the following:

- (1) Sales less returns and allowances;
- (2) Dividends which are not eligible for the dividend deduction under RSA 77-E:3, II and III;
- (3) Other interest;
- (4) Rental income;
- (5) Royalties;
- (6) Capital gain income;
- (7) Net gains or losses; and
- (8) Other income, unless the other income is properly includible as a reduction of an expense or allowance.

(c) The numerator of the sales portion for each business enterprise shall include:

- (1) Sales of tangible personal property regardless of the conditions of sale delivered in New Hampshire, other than to the United States government;
- (2) Sales of tangible personal property originating in New Hampshire to a purchaser in another state in which the business enterprise is not taxable or subject to tax;
- (3) Sales of tangible personal property originating in New Hampshire and delivered to the United States government in any state;
- (4) Interest on receivables where the debtor or the encumbered property is located in New Hampshire;
- (5) Gross receipts from the lease, rental, or other use of real or personal property located in New Hampshire;
- (6) Gross receipts from the licensing or other use of intangible property when such property is used within New Hampshire; and
- (7) Personal services performed in New Hampshire;
- (8) Capital gains from the sale of business assets located within New Hampshire;
- (9) Dividend income received by business enterprises domiciled in New Hampshire;
- (10) Gross receipts for the rendering of personal services when the services are performed in New Hampshire; and
- (11) Other income which is earned in New Hampshire.

(d) Sales price shall include:

- (1) All interest;
- (2) Carrying charge or time-price differential charges; and
- (3) Excise taxes passed on to the buyer or included as part of the selling price of the product.

(e) The rental, lease, licensing, or other use of tangible or intangible personal property in New Hampshire shall be considered a separate and distinct revenue producing activity within New Hampshire.

(f) When a revenue producing activity results from the use of personal property within and without New Hampshire during the taxable period, gross receipts attributable to New Hampshire shall be measured by one of the following ratios:

- (1) The time the property was used in New Hampshire as compared to the total time of use of the property everywhere during that taxable period when the amount of time is the most appropriate measure under the specific facts and circumstances of the business enterprise's activities; or
- (2) The distance traveled or covered in New Hampshire as compared to the total distance traveled or covered everywhere during the taxable period when distance is the most appropriate measure under the specific facts and circumstances of the business enterprise's activities.

(g) Personal services performed in New Hampshire shall be a separate revenue producing activity performed in New Hampshire unless the business enterprise can demonstrate the activity performed in New Hampshire is completely dependent upon activities performed by the business enterprise in one or more other states.

(h) Personal services shall be attributed to New Hampshire if:

- (1) The activity is completely performed in New Hampshire; or
- (2) The activity performed in New Hampshire is a dependent component of a service performed both within and without New Hampshire and a greater proportion of the costs directly associated with performing such service are incurred in New Hampshire.

(i) In determining the costs directly associated with the performance of the service in (h), above, the business enterprise shall allocate all compensation costs, including benefits, of personnel performing the service based on the amount of time spent performing the service in New Hampshire as compared to the time spent in performing the service outside New Hampshire.

(j) Expenses incurred in obtaining or retaining customers or clients, including contract negotiations, shall not be costs directly associated with the performance of the service.

**Adopt Rev 2404.061 to read as follows:**

Rev 2404.061 Dividends Apportionment Factor. For taxable periods ending on or after December 31, 2021:



(a) The denominator of the sales portion of the dividends apportionment factor shall include the following:

- (1) Sales less returns and allowances;
- (2) Dividends which are not eligible for the dividend deduction under RSA 77-E:3, II and III;
- (3) Other interest;
- (4) Rental income;
- (5) Royalties;
- (6) Capital gain net income;
- (7) Net gains or losses; and
- (8) Other income, unless the other income is properly includible as a reduction of an expense or allowance.

(b) The numerator of the sales portion for each business enterprise shall include:

- (1) Sales of tangible personal property regardless of the conditions of sale delivered in New Hampshire, other than to the United States government;
- (2) Sales of tangible personal property originating in New Hampshire to a purchaser in another state in which the business enterprise is not taxable or subject to tax;
- (3) Sales of tangible personal property originating in New Hampshire and delivered to the United States government in any state;
- (4) Ordinary net gains or losses and capital gains from the sale of real or tangible property, if and to the extent the property is located in this state;
- (5) Ordinary net gains or losses and capital gains from the sale of intangible property, if and to the extent the property is used in this state;
- (6) Sales of a service, if and to the extent the service is delivered to a location in this state;
- (7) Sales, rental, lease, license, or other use of intangible property, if and to the extent the property is used in this state;
- (8) Interest income, if and to the extent the debtor or encumbered property is located in this state;
- (9) Dividend income received by business enterprises domiciled in New Hampshire; and
- (10) Other income, if and to the extent the income is derived from sources in this state.

(c) In the case of the delivery of a service by electronic transmission, where the service is delivered electronically to end users or other third-party recipients through or on behalf of the customer, the service *is shall be considered* delivered in New Hampshire if and to the extent that the end users or other third-party recipients are in New Hampshire.

(d) In the case of the delivery of a professional service to a customer other than by in-person means, the service *is shall be considered* delivered in New Hampshire if and to the extent that the customer receives the benefit of the service in New Hampshire.

(e) In the case of sales other than sales of tangible personal property, if the state or states of assignment cannot be determined, the state or states of assignment shall be reasonably approximated. Methods to reasonably approximate such sales shall include, but not be limited to, multiplying such sales by a percentage that equals the ratio that the population of New Hampshire bears to the combined total population of every state within the United States where such business organization is taxable or subject to tax. The need, and methodology used, for reasonable approximation shall be determined on a separate entity basis consistent with the separate entity treatment provided in RSA 77-A:1, I, notwithstanding that a combined report is filed.

(f) In the case of sales other than sales of tangible personal property, if the taxpayer is not taxable in a state to which a sale is assigned, or if the state of assignment cannot be determined or reasonably approximated, such sale shall be excluded from the denominator of the sales factor.

(g) The sales price shall include all interest, carrying charges or time-price differential charges and excise taxes passed on to the buyer or included as part of the selling price of the product.

**Note to JLCAR regarding the potential need for legislation to address remote public hearing options.** The rulemaking public hearing for this proposal was to be held on 12/14/2020 as an in person public hearing with an option to attend telephonically. RSA 541-A:11 appears to presume in-person hearings and certainly does not address remote public hearings as it was enacted before the use of such technologies. While the Governor’s E.O. #12 amends RSA 91-A to allow for remote hearings, that does not apply to departments, and the provisions of RSA 541-A:11, I(a) requiring an agency to “afford all interested persons reasonable opportunity to testify...in accordance with the terms of the notice” must be met. A legislative fix may be needed in RSA 541-A:11, along with changes to all Chapter 200 rules, to clearly allow for remote rulemaking hearing, to establish criteria for the conducting them in order to ensure full public participation in the rulemaking process, and to perhaps require a remote option during global pandemics.

**Appendix**

<b>Rule Number</b>	<b>State Statute Implemented</b>
Rev 301.11	RSA 77-A:3
Rev 301.12	RSA 77-A:3
Rev 304.04	RSA 77-A:3
Rev 304.041	RSA 77-A:3
Rev 304.06	RSA 77-A:3
Rev 304.07	RSA 77-A:3
Rev 304.08	RSA 77-A:3
Rev 304.09	RSA 77-A:3
Rev 304.10	RSA 77-A:3
Rev 304.11	RSA 77-A:3
Rev 308.01	RSA 77-A:3; RSA 77-A:11
Rev 2401.05	RSA 77-E:4
Rev 2401.07	RSA 77-E:4
Rev 2403.03	RSA 77-E:4
Rev 2404.06	RSA 77-E:4
Rev 2404.061	RSA 77-E:4