

NOTE: This handout is intended only for purposes of facilitating discussion at the Interested Parties Meeting on May 18, 2018.

50 State Analysis Sourcing of Intangibles

Staff comments are *italicized*.

Statutory and regulatory cost of performance sourcing language is not replicated.

State	Statute Language	Regulation Language
Alabama	<p>Ala. Code § 40-27-1, Art. IV, § 17(a)(4-5)</p> <p>(4) In the case of lease or license of intangible property; or sale or other exchange of intangible property if the receipts from the sale or exchange derive from payments that are contingent on the productivity, use, or disposition of the property, if and to the extent the intangible property is used in this state; provided that intangible property used in marketing a good or service to a consumer is used in this state if the good or service that is marketed using the intangible property is purchased by a consumer who is in this state; and</p> <p>(5) In the case of sale of intangible property other than that referenced in section (4) above; where the property sold is a contract right, government license, or similar intangible property that authorizes the holder to conduct a business activity in a specific geographic area; if and to the extent the intangible property is used in or otherwise associated with this state, provided that any sale of intangible property not otherwise described in this section (5) or section (4) above shall be excluded from the numerator and the denominator of the sales factor.</p>	<i>No regulatory guidance.</i>
Alaska	<i>Cost of performance sourcing.</i>	
Arizona	<i>Cost of performance sourcing.</i>	
Arkansas	<i>Cost of performance sourcing.</i>	
California	<i>Omitted.</i>	
Colorado	<p>Colo. Rev. Stat. § 39-22-303.5(4)(c)</p> <p>(c) Sales, other than sales of tangible personal property, are in Colorado as follows: [¶] ... [¶] (IV) Interest and dividend income to the extent included in taxable income, if the taxpayer's commercial domicile is in Colorado;</p>	<p>39 Colo. Code Regs. § 22-303.5.4(c)(4-6)</p> <p>(4) Interest and dividend income is included in the Colorado sales factor numerator if the taxpayer's commercial domicile for that trade or business is located in Colorado. (5) Gain from the sale of intangible property is included in the Colorado sales factor numerator if the taxpayer's commercial</p>

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	<p>(V) Gain from the sale of intangible property if the taxpayer's commercial domicile is in Colorado;</p> <p>(VI) Patent and copyright royalties, if and to the extent that:</p> <p>(A) The patent or copyright is utilized by the payer in Colorado; or</p> <p>(B) The patent or copyright is utilized by the payer in a state in which the taxpayer is not taxable and the taxpayer's commercial domicile is in Colorado[.]</p>	<p>domicile for that trade or business is located in Colorado.</p> <p>(6) Patent and copyright royalties are included in the Colorado sales factor numerator if:</p> <p>(a) The patent or copyright is utilized by the payer in Colorado, or</p> <p>(b) The patent or copyright is utilized by the payer in a state in which the taxpayer is not taxable and the taxpayer's commercial domicile for that trade or business is located in Colorado.</p>
<p>Connecticut</p>	<p>Conn. Gen. Stat. § 12-218(b)(4)</p> <p>(4) Gross receipts from the rental, lease or license of intangible property are assignable to this state if and to the extent the property is used in this state. Intangible property utilized in marketing a good or service to a consumer is used in this state if that good or service is purchased by a consumer in this state.</p>	<p>Connecticut Special Notice 2017(1) (April 17, 2017)</p> <p>Individual Customers</p> <p>Receipts from the rental, lease, or license of intangible property to an individual customer are sourced to Connecticut if, and to the extent, the customer uses the intangible property in this state. If the taxpayer's customer is an individual, intangible property shall be presumed to be used in this state if the billing address of the taxpayer's customer, as determined when the bill for the intangible property is issued, is in this state.</p> <p>If the taxpayer uses the customer's billing address as the method of sourcing the receipts to this state, DRS will accept this sourcing method, unless DRS reasonably believes that the billing address was used for tax avoidance purposes.</p> <p>The presumption to use the billing address may be overcome by the taxpayer by showing that either the contract between the taxpayer and the taxpayer's customer, or other books and records of the taxpayer kept in the normal course of business, provide the extent to which the intangible property is used at a location (or locations) in this state.</p> <p>If the taxpayer believes it has overcome the presumption and uses a method based on either the contract between the taxpayer and the taxpayer's customer or other books and records of the taxpayer kept in the normal course of business, DRS may examine the taxpayer's</p>

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		<p>method to determine if the billing address presumption has been overcome and, if so, whether the taxpayer's method of assignment reasonably reflects where the intangible property was used by the taxpayer's customers.</p> <p>Business Customers Receipts from the rental, lease or license of intangible property to a business customer are sourced to this state if, and to the extent, the customer uses the intangible property in this state. The location(s) where a business customer uses intangible property shall be determined as follows:</p> <p>Marketing Intangibles. If a license is granted for the right to use intangible property in connection with the sale, lease, license, or other marketing of goods, services, or other items, the royalties or other licensing fees paid by the licensee for such right(s) are sourced to this state to the extent that the fees are attributable to the sale or other provision of goods, services, or other items purchased or otherwise acquired by the ultimate customers in this state. If the contract between the taxpayer and the taxpayer's customer or the taxpayer's books and records kept in the normal course of business provide a method to determine the ultimate customers in this state, the taxpayer shall utilize such contract or books and records to determine the location(s) of the use of the intangible property. If the location(s) of use cannot be determined by the contract or books and records, the location(s) of use shall be reasonably approximated. If the location(s) of use cannot be reasonably approximated, it shall be presumed that use occurs at the location where the order is placed or, if unknown, at the licensee's billing address.</p> <p>Non-marketing and Manufacturing Intangibles. If a license is granted for the right to use intangible property other than in connection with the sale, lease, license, or other marketing of goods, services, or other items, the licensing fees paid by the licensee for such right(s) are attributable to this state to the extent that the use for which the fees are paid takes place in this state. If the contract between the taxpayer and the</p>

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		<p>taxpayer's customer or the taxpayer's books and records kept in the normal course of business provide a method to determine the location(s) of use, the taxpayer shall utilize such contract or books and records to source the receipts. If the location(s) of use cannot be determined by the contract or books and records, the location(s) of use shall be reasonably approximated. If the location(s) of use cannot be reasonably approximated, it shall be presumed that use occurs at the location where the order is placed or, if unknown, at the licensee's billing address.</p> <p>Mixed Intangibles. If a license of intangible property includes both a license of a marketing intangible and a license of a non-marketing intangible, and the fees to be paid in each instance are separately stated in the licensing contract, then the separately stated fees should be sourced based upon the above.</p> <p>If the fees to be paid in each instance are not separately stated in the contract, it shall be presumed that the licensing fees are paid entirely for the license of a marketing intangible except to the extent that the taxpayer or DRS can reasonably establish otherwise.</p>
Delaware	<p>Del. Code Ann. § 1903(b)(2)</p> <p>(2) Patent and copyright royalties (less applicable or related expenses) shall be allocated proportionately to the states in which the product or process protected by the patent is manufactured or used or in which the publication protected by the copyright is produced or printed[.]</p>	
Florida	<i>Cost of performance sourcing.</i>	
Georgia		<p>GA Comp. R. & Regs. 560-7-7-.03(5)(c)(6)(viii)</p> <p>viii. Royalties. Gross receipts shall include royalty or other receipts for the use of, or for the privilege of using, intangible property including patents, know-how, formulas, designs, processes, patterns, copyrights, trade names, service names, franchises, licenses, contracts, customer lists, or similar items where such receipts are from activities which constitute the taxpayer's regular trade or business. Except as otherwise provided in this regulation, such</p>

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		receipts must be attributed to the state in which the property is used by the purchaser. If the property is used in more than one state, then the royalties or other income must be apportioned to Georgia pro rata according to the portion of use in Georgia. Intangible property is used in Georgia if the purchaser uses the intangible property or the rights therein in Georgia.
Hawaii	<i>Cost of performance sourcing.</i>	
Idaho	<i>Cost of performance sourcing.</i>	
Illinois	<p>35 ILCS 5/304 (a)(3)(B-1) & (B-2)</p> <p>(B-1) Patents, copyrights, trademarks, and similar items of intangible personal property.</p> <p>(i) Gross receipts from the licensing, sale, or other disposition of a patent, copyright, trademark, or similar item of intangible personal property, other than gross receipts governed by paragraph (B-7) of this item (3), are in this State to the extent the item is utilized in this State during the year the gross receipts are included in gross income.</p> <p>(ii) Place of utilization.</p> <p>(I) A patent is utilized in a state to the extent that it is employed in production, fabrication, manufacturing, or other processing in the state or to the extent that a patented product is produced in the state. If a patent is utilized in more than one state, the extent to which it is utilized in any one state shall be a fraction equal to the gross receipts of the licensee or purchaser from sales or leases of items produced, fabricated, manufactured, or processed within that state using the patent and of patented items produced within that state, divided by the total of such gross receipts for all states in which the patent is utilized.</p> <p>(II) A copyright is utilized in a state to the extent that printing or other publication originates in the state. If a copyright is utilized in more than one state, the extent to which it is utilized in any one state shall be a fraction equal to the gross receipts from sales or licenses of materials printed or published in that state divided by the total of such gross receipts for all states in which the copyright is utilized.</p> <p>(III) Trademarks and other items of intangible personal property governed by this paragraph (B-1) are utilized in the state in which the</p>	<p>Ill. Admin. Code 100.3370 100.3370(c)(3)</p> <p>(3) For taxable years ending on or after December 31, 1999, gross receipts from the licensing, sale, or other disposition of a patent, copyright, trademark, or similar item of intangible personal property that are not excluded from the sales factor under subsection (a)(2)(F) are included in the numerator of the sales factor to the extent the item is utilized in this State during the year the gross receipts are included in gross income. (IITA Section 304(a)(3)(B-1)) For purposes of this subsection (c)(3):</p> <p>(A) A patent is utilized in a state to the extent that it is employed in production, fabrication, manufacturing, or other processing in the state or to the extent that a patented product is produced in the state. If a patent is utilized in more than one state, the extent to which it is utilized in any one state shall be a fraction equal to the gross receipts of the licensee or purchaser from sales or leases of items produced, fabricated, manufactured, or processed within that state using the patent and of patented items produced within that state, divided by the total of the gross receipts for all states in which the patent is utilized. (IITA Section 304(a)(3)(B-1)(ii)(I))</p> <p>(B) A copyright is utilized in a state to the extent that printing or other publication originates in the state. Printing or other publication originates at the place at which the licensee of the copyright incorporates the copyrighted material into the physical medium by which it will be delivered to the purchaser of the material or, if the copyrighted material is delivered to the</p>

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	<p>commercial domicile of the licensee or purchaser is located.</p> <p>(iii) If the state of utilization of an item of property governed by this paragraph (B-1) cannot be determined from the taxpayer's books and records or from the books and records of any person related to the taxpayer within the meaning of Section 267(b) of the Internal Revenue Code, 26 U.S.C. 267, the gross receipts attributable to that item shall be excluded from both the numerator and the denominator of the sales factor.</p> <p>(B-2) Gross receipts from the license, sale, or other disposition of patents, copyrights, trademarks, and similar items of intangible personal property, other than gross receipts governed by paragraph (B-7) of this item (3), may be included in the numerator or denominator of the sales factor only if gross receipts from licenses, sales, or other disposition of such items comprise more than 50% of the taxpayer's total gross receipts included in gross income during the tax year and during each of the 2 immediately preceding tax years; provided that, when a taxpayer is a member of a unitary business group, such determination shall be made on the basis of the gross receipts of the entire unitary business group.</p>	<p>purchaser without use of a physical medium, the place at which delivery of the copyrighted material to the person purchasing the material from the licensee originates. If a copyright is utilized in more than one state, the extent to which it is utilized in any one state shall be a fraction equal to the gross receipts from sales or licenses of materials printed or published in that state divided by the total of the gross receipts for all states in which the copyright is utilized. (IITA Section 304(a)(3)(B-1)(ii)(II))</p> <p>(C) Trademarks and other items of intangible personal property governed by this subsection (c)(3) are utilized in the state in which the commercial domicile of the licensee or purchaser is located. (IITA Section 304(a)(3)(B-1)(ii)(III))</p> <p>(D) If the place of utilization of an item of property under subsection (c)(3)(A), (B) or (C) cannot be determined from the taxpayer's books and records or from the books and records of any person related to the taxpayer within the meaning of 26 USC 267(b), the gross receipts attributable to that item shall be excluded from both the numerator and the denominator of the sales factor. (IITA Section 304(a)(3)(B-1)(iii))</p>
Indiana	<p>Ind. Code § 6-3-2-2(e)</p> <p>(e) The sales factor is a fraction, the numerator of which is the total sales of the taxpayer in this state during the taxable year, and the denominator of which is the total sales of the taxpayer everywhere during the taxable year. Sales include receipts from intangible property and receipts from the sale or exchange of intangible property. However, with respect to a foreign corporation, the denominator does not include sales made in a place that is outside the United States. Receipts from intangible personal property are derived from sources within Indiana if the receipts from the intangible personal property are attributable to Indiana under section 2.2 of this chapter [regarding interest income, dividends, and related receipts].</p>	<p>Ind. Admin. Code 3.1-1-55(e)</p> <p>(e) Gross receipts from intangible personal property shall, if classified as business income, be attributed to this state based upon the ratio which the total property and payroll factors in this state bears to the total of the property and payroll factors everywhere for the tax period as determined in Regulations 6-3-2-2(c)(010) et seq. and 6-3-2-2(d)(010) et seq.</p>
Iowa		Iowa Admin. Code r. 701-54.2(3)(e)

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		<p>e. Royalty income and licensing fees. All royalty income and licensing fees from intangible personal property determined to be business income shall be included in the numerator of the business activity formula to the extent that the royalty or licensing asset is an integral part of some business activity occurring regularly in Iowa. If the royalty or licensing asset is not an integral part of some business activity occurring regularly in or outside of Iowa and if an election of inclusion is made, the royalties or licensing fees shall be included in the numerator of the business activity formula if the taxpayer's commercial domicile is in Iowa.</p>
Kansas	<i>Cost of performance sourcing.</i>	
Kentucky	<p>Ky. Rev. Stat. Ann. § 141.120 (8)(c)(3)</p> <p>(3) Sales, other than sales of tangible personal property, are in this state if the income-producing activity is performed in this state; or the income-producing activity is performed both in and outside this state and a greater proportion of the income-producing activity is performed in this state than in any other state, based on costs of performance.</p>	<p>Ky. Admin. Regs. 16:270, section 4(1)</p> <p>(1) Receipts from intangible property shall be assigned to Kentucky, regardless of the corporation's or general partnership's commercial domicile, if possession and control of the intangible personal property is localized in connection with a trade or business, creating business situs with Kentucky, so that substantial use or value attaches to the intangible property in Kentucky.</p> <p>(2) In determining if possession and control is localized in connection with a trade or business, the following factors shall be considered:</p> <p>(a) The use of the intangible property in the continuous course of the trade or business in Kentucky;</p> <p>(b) The permanency of the location of the intangible property in Kentucky;</p> <p>(c) The independent control and management of the intangible property in Kentucky;</p> <p>(d) The possession and control of the intangible property in Kentucky by an independent local agent for the purpose of transacting a permanent business; and</p> <p>(e) The establishment or use of the intangible property in Kentucky in a manner that attaches substantial use and value of the intangible property to the Kentucky trade or business.</p>
Louisiana	<p>La. Rev. Stat. Ann. § 47:287.95L(1)</p> <p>(1) Sales other than sales of tangible personal property are to be sourced to this state if the taxpayer's market for the sale is in this state. The</p>	<i>No regulatory guidance.</i>

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	<p>taxpayer's market for a sale is in this state and the sale is assigned to the state for the purpose of this Section as follows:</p> <p>[¶] ... [¶] (d) In the case of lease or license of intangible property, including a sale or exchange of such property where the receipts from the sale or exchange derive from payments that are contingent on the productivity, use, or disposition of the property, if and to the extent the intangible property is used in the state.</p> <p>(e) In the case of the sale of intangible property, other than as provided in Subparagraph (d) of this Paragraph, where the property sold is a contract right, government license, or similar intangible property that authorizes the holder to conduct a business activity in a specific geographic area, if and to the extent that the intangible property is used in or otherwise associated with the state; provided, however, that any sale of intangible property, not otherwise described in this Subparagraph and Subparagraph (d) of this Paragraph, shall be excluded from the numerator and the denominator of the sales factor.</p>	
<p>Maine</p>	<p>36 MRS § 5211(16-A)(B)</p> <p>(B) Gross receipts from the license, sale or other disposition of patents, copyrights, trademarks or similar items of intangible personal property must be attributed to this State if the intangible property is used in this State by the licensee. If the intangible personal property is used by the licensee in more than one state, the income must be apportioned to this State according to the portion of use in this State. In instances in which the purchaser or licensee of the intangible personal property is the Federal Government, the receipts are attributable to this State if a greater proportion of the income-producing activity is performed in this State than in any other state based on costs of performance.</p>	<p>CMR 18-125-801.06(E)(2)</p> <p>(2) Gross receipts from the sale of patents, copyrights, or trademarks. Generally, gross receipts from the license, sale or other disposition of patents, copyrights, trademarks or similar items of intangible personal property must be attributed to this State if the intangible property is used in this State by the licensee or if the taxpayer's commercial domicile is in this State and the taxpayer is not taxable in the state in which the property is used by the licensee.</p> <p>(a) Used in more than one state. Where the intangible personal property is used by the licensee in more than one state, the income must be apportioned to this State according to the portion of use in this State.</p> <p>(b) Federal Government or taxpayer not taxable in other state. Where the purchaser or licensee of the intangible personal property is the Federal Government or the receipts are otherwise attributable to a state in which the taxpayer is not taxable, the receipts are attributable to this</p>

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		State if the greater proportion of the income-producing activity is performed in this State than in any other state based on the costs of performance.
Maryland		Md. Regs. Code § 03.04.03.08(C)(3)(d) (d) Gross income from intangible items such as dividends, interest, royalties, and capital gains from the sale of intangible property shall be included in the numerator based upon the average of the property and payroll factors.
Massachusetts	63 Mass. G.L. § 38(f) (f) Sales, other than sales of tangible personal property, are in the commonwealth if the corporation's market for the sale is in the commonwealth. The corporation's market for a sale is in the commonwealth and the sale is thus assigned to the commonwealth for the purpose of this section:— [¶] ... [¶] (4) in the case of lease or license of intangible property, including a sale or exchange of such property where the receipts from the sale or exchange derive from payments that are contingent on the productivity, use or disposition of the property, if and to the extent the intangible property is used in the commonwealth; and (5) in the case of the sale of intangible property, other than as provided in clause (4), where the property sold is a contract right, government license or similar intangible property that authorizes the holder to conduct a business activity in a specific geographic area, if and to the extent that the intangible property is used in or otherwise associated with the commonwealth; provided, however, that any sale of intangible property, not otherwise described in this clause or clause (4), shall be excluded from the numerator and the denominator of the sales factor.	<i>Guidance at 830 CMR 63.38.1(d)(5),(6). Omitted due to length.</i>
Michigan	Mich. Comp. Laws Ann. § 206.665(1)(e) (e) Royalties and other income received for the use of or for the privilege of using intangible property, including patents, know-how, formulas, designs, processes, patterns, copyrights, trade names, service names, franchises, licenses, contracts, customer lists, custom computer software, or similar items, are attributed to the	<i>No regulatory guidance.</i>

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	<p>state in which the property is used by the purchaser. If the property is used in more than 1 state, the royalties or other income shall be apportioned to this state pro rata according to the portion of use in this state. If the portion of use in this state cannot be determined, the royalties or other income shall be excluded from both the numerator and the denominator. Intangible property is used in this state if the purchaser uses the intangible property or the rights to the intangible property in the regular course of its business operations in this state, regardless of the location of the purchaser's customers.</p>	
Minnesota	<p>Minn. Stat. 290.191.5(h),(i)</p> <p>(h) Royalties and other income received for the use of or for the privilege of using intangible property, including patents, know-how, formulas, designs, processes, patterns, copyrights, trade names, service names, franchises, licenses, contracts, customer lists, or similar items, must be attributed to the state in which the property is used by the purchaser. If the property is used in more than one state, the royalties or other income must be apportioned to this state pro rata according to the portion of use in this state. If the portion of use in this state cannot be determined, the royalties or other income must be excluded from both the numerator and the denominator. Intangible property is used in this state if the purchaser uses the intangible property or the rights therein in the regular course of its business operations in this state, regardless of the location of the purchaser's customers.</p> <p>(i) Sales of intangible property are made within the state in which the property is used by the purchaser. If the property is used in more than one state, the sales must be apportioned to this state pro rata according to the portion of use in this state. If the portion of use in this state cannot be determined, the sale must be excluded from both the numerator and the denominator of the sales factor. Intangible property is used in this state if the purchaser used the intangible property in the regular course of its business operations in this state.</p>	<i>No regulatory guidance.</i>
Mississippi	<i>Cost of performance sourcing.</i>	

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<p>Missouri</p>	<p>Mo. Rev. Stat. § 143.451.2(3)(e),(i)</p> <p>(e) For the purposes of this subdivision, a transaction involving the sale other than the sale of tangible property is “in this state” if the taxpayer’s market for the sales is in this state. The taxpayer’s market for sales is in this state: [¶] ... [¶] d. In the case of intangible property:</p> <p>(i) That is rented, leased, or licensed, if and to the extent the property is used in this state by the rentee, lessee, or licensee, provided that intangible property utilized in marketing a good or service to a consumer is “used in this state” if that good or service is purchased by a consumer who is in this state. Franchise fees or royalties received for the rent, lease, license, or use of a trade name, trademark, service mark, or franchise system or provides a right to conduct business activity in a specific geographic area are “used in this state” to the extent the franchise location is in this state; and</p> <p>(ii) That is sold, if and to the extent the property is used in this state, provided that:</p> <p>i. A contract right, government license, or similar intangible property that authorizes the holder to conduct a business activity in a specific geographic area is “used in this state” if the geographic area includes all or part of this state;</p> <p>ii. Receipts from intangible property sales that are contingent on the productivity, use, or disposition of the intangible property shall be treated as receipts from the rental, lease, or licensing of such intangible property under item (i) of this subparagraph; and</p> <p>iii. All other receipts from a sales of intangible property shall be excluded from the numerator and denominator of the sales factor[...]</p>	<p><i>Market sourcing is only available for electing single-sales apportionment taxpayers. Existing regulations based on cost of performance rules (for non-electing taxpayers) can be found at Mo. Code Regs. 10-2.075(55).</i></p>
<p>Montana</p>	<p>Mont. Code Ann. § 15-1-601, Article IV(17)</p> <p>(17) (a) Receipts, other than receipts described in subsection (16), are in this state if the taxpayer's market for the sales is in this state. The taxpayer's market for sales is in this state: [¶] ... [¶] (iv) in the case of intangible property:</p> <p>(A) that is rented, leased, or licensed, if and to the extent the property is used in this state, provided that intangible property utilized in marketing a good or service to a consumer is “used in this state” if that good or service is</p>	<p><i>Guidance at Mont. Admin. R. 42.26.249. Omitted due to length.</i></p>

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	<p>purchased by a consumer who is in this state; and (B) that is sold, if and to the extent the property is used in this state, provided that: (I) a contract right, government license, or similar intangible property that authorizes the holder to conduct a business activity in a specific geographic area is “used in this state” if the geographic area includes all or part of this state; (II) receipts from intangible property sales that are contingent on the productivity, use, or disposition of the intangible property shall be treated as receipts from the rental, lease, or licensing of such intangible property under subsection (17)(a)(iv)(A); and (III) all other receipts from a sale of intangible property shall be excluded from the numerator and denominator of the receipts factor.</p>	
Nebraska	<p>Neb. Rev. Stat. § 77-2734.14(3)(c)</p> <p>(c) Sales of intangible property are in this state if the buyer uses the intangible property at a location in this state. If the buyer uses the intangible property within and without this state, the sales are apportioned between this state in proportion to the use of the intangible property in this state and the other states. If the location of a sale cannot be determined, the sale of intangible property is in this state if the buyer’s billing address is in this state[.]</p>	<p>Neb. Admin Rules & Regs. 24-335(1)</p> <p>(1) Sales of Intangible Property. Sales of intangible property are attributable to Nebraska if the buyer uses the intangible property at a location in Nebraska, even if the buyer’s customers are located in another state. (A) If the buyer uses the intangible property within and outside Nebraska, the sales are attributable to Nebraska in proportion to the use of the intangible property in Nebraska and the use everywhere during the tax period. (1) Marketing Intangible. If the intangible is used by the buyer in marketing its products, the use of the intangible in Nebraska is the share of the receipts that reflects the sales of the buyer within and outside Nebraska. If this cannot be determined, the use of the intangible in Nebraska is the share of the receipts that reflects the population of Nebraska relative to the population everywhere the buyer markets the product using the intangible. Examples of a marketing intangible include licensing of a service mark, trademark, or trade name. (2) Production Intangible. If the intangible is used by the buyer to produce its products, the use of the intangible in Nebraska is the share of the production which occurs in Nebraska using the intangible relative to the production of the product using the intangible everywhere.</p>

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		<p>Examples of a production intangible include licensing of patents or copyrights.</p> <p>(3) Service Intangible. If the intangible is used by the buyer like a good or service, or used by the business itself, the sales are attributable to Nebraska using the rules for sales of services in Reg-24-333. Examples of a service intangible include licensing use of a legal research service.</p> <p>(4) Mixed Intangible. If the intangible is used by the buyer in more than one of the ways listed in Reg-24-335.01A(1), (2), or (3), and the fees charged for each type of use are separately stated in the license, the separate uses are attributable to Nebraska separately. If the intangible is used by the buyer in more than one of the ways listed in Reg-24-335.01A(1), (2), or (3), and the fees charged for each type of use are not separately stated in the license, the sales are attributable to Nebraska based on which use is most predominant.</p> <p>(B) If the location of use cannot be determined, the sale of intangible property is attributable to Nebraska if the buyer's billing address is in Nebraska.</p> <p><i>Additional rules apply to income from intangible assets used in a treasury function, income from loans, and credit card receivables.</i></p>
Nevada	<i>No corporate income tax.</i>	
New Hampshire	<i>Cost of performance sourcing.</i>	
New Jersey		<p>N.J. Admin. Code tit. 18, § 7-8.11(a),(b)</p> <p>(a) Receipts from rentals of real and personal property situated in New Jersey, and royalties from the use in New Jersey of patents or copyrights, are allocable to New Jersey.</p> <p>1. Receipts from rentals include all amounts received by the taxpayer for the use or occupation of property, whether or not such property is owned by the taxpayer.</p> <p>2. Receipts from royalties include all amounts received by the taxpayer for the use of patents or copyrights, whether or not such patents or copyrights were originally issued to or are owned by the taxpayer.</p>

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		<p>3. A patent or copyright is used in New Jersey to the extent that activities thereunder are carried on in New Jersey.</p> <p>(b) Receipts from royalties derived from trademarks utilized in business in New Jersey are deemed located in New Jersey.</p> <p>1. Receipts from royalties derived from trademarks utilized both within and outside New Jersey will be allocated to New Jersey based upon the use of the trademarks in New Jersey in relation to all use by the licensee.</p> <p>2. Receipts from royalties derived from trademark license agreements, which wholly or in part authorize the licensee to sell or market products or services, are sourced to New Jersey in the same ratio as the licensee recognizes in its sales fraction receipts from sales related to the trademarked items or services.</p>
New Mexico	<i>Cost of performance sourcing.</i>	
New York	<p>Tax Law § 210-A(3)(b), (4)(b)</p> <p>(3)(b) Receipts of royalties from the use of patents, copyrights, trademarks, and similar intangible personal property within the state are included in the numerator of the apportionment fraction. Receipts of royalties from the use of patents, copyrights, trademarks and similar intangibles within and without the state are included in the denominator of the apportionment fraction. A patent, copyright, trademark or similar intangible property is used in the state to the extent that the activities thereunder are carried on in the state.</p> <p>(4) (b) Receipts from the sale of, licence [sic] to use, or granting of remote access to digital products within the state, determined according to the hierarchy of methods set forth in subparagraphs one through four of paragraph (c) of this subdivision, shall be included in the numerator of the apportionment fraction. Receipts from the sale of, license to use, or granting of remote access to digital products within and without the state shall be included in the denominator of the apportionment fraction.</p>	<p>N.Y. Comp. Codes R. & Regs. tit. 20, § 4-4.4 (c)</p> <p>(c) Receipts of royalties from the use in New York State of patents and copyrights are allocated to New York State. Royalties include all amounts received by the taxpayer for the use of patents or copyrights, whether or not such patents or copyrights were issued to or are owned by the taxpayer. A patent or copyright is used in New York State to the extent that the activities thereunder are carried on in New York State.</p> <p>N.Y. Comp. Codes R. & Regs. tit. 20, § 4-4.6(a)</p> <p>(a) All business receipts earned by the taxpayer in New York State are allocated to New York State.... Receipts from the sale of intangible personal property included in business capital, held by the taxpayer as a dealer for sale to customers in the regular course of its business, are business receipts and are allocated to New York State if the sales were made in New York State or through a New York State office of the taxpayer.</p>

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	<p>The taxpayer must exercise due diligence under each method described in paragraph (c) of this subdivision before rejecting it and proceeding to the next method in the hierarchy, and must base its determination on information known to the taxpayer or information that would be known to the taxpayer upon reasonable inquiry. If the receipt for a digital product is comprised of a combination of property and services, it cannot be divided into separate components and is considered to be one receipt regardless of whether it is separately stated for billing purposes. The entire receipt must be allocated by this hierarchy.</p> <p>(c) Hierarchy of sourcing methods.(1) The customer’s primary use location of the digital product; (2) The location where the digital product is received by the customer, or is received by a person designated for receipt by the customer; (3) The apportionment fraction determined pursuant to this subdivision for the preceding taxable year for such digital product; or (4) The apportionment fraction in the current taxable year for those digital products that can be sourced using the hierarchy of sourcing methods in subparagraphs one and two of this paragraph.</p>	
North Carolina	<p>N.C. Gen. Stat. 105-130.4(l)(3)</p> <p>(3) Other sales are in this State if: [¶] ... [¶] (b) The receipts are from intangible property and are received from sources within this State[.]</p>	<i>No regulatory guidance.</i>
North Dakota	<i>Cost of performance sourcing.</i>	
Ohio	<p>Ohio Rev. Code Ann. § 5733.05(B)(2)(c)(ii)</p> <p>(ii) Receipts from all other sales not eliminated or excluded from the fraction shall be situated to this state as follows: Receipts from the sale, exchange, disposition, or other grant of the right to use trademarks, trade names, patents, copyrights, and similar intellectual property shall be situated to this state to the extent that the receipts are based on the amount of use of that property in this state. If the receipts are not based on the amount of use of that property, but rather on the right to use the property and the payor has the right to use the property in this state, then the receipts from</p>	<i>No regulatory guidance.</i>

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	the sale, exchange, disposition, or other grant of the right to use such property shall be situated to this state to the extent the receipts are based on the right to use the property in this state.	
Oklahoma	Okla. Admin. Code § 710:50-17-71(1)(A)(i) (i) Oklahoma does not allow receipts from items other than sales to be included in the formula even though other types of income (royalties, interest, capital gains, and other income) are included in the apportioned income.	<i>No regulatory guidance.</i>
Oregon	Or. Rev. Stat. § 314.665(4) (4) Sales, other than sales of tangible personal property, are in this state if the taxpayer's market for sales is in this state, as determined under section 2 of this 2017 Act.	<i>No regulatory guidance.</i>
Pennsylvania	<i>Cost of performance sourcing.</i>	
Rhode Island		<i>Guidance at Reg. CT 15-04, Rule 8(f), 8(i)(8)(ii) and (iii). Omitted due to length.</i>
South Carolina	S.C. Code Ann. § 12-6-2295(A) (A) The terms 'sales' as used in Section 12-6-2280 and 'gross receipts' as used in Section 12-6-2290 include, but are not limited to, the following items if they have not been separately allocated: (3) receipts from the use of intangible property in this State including, but not limited to, royalties from patents, copyrights, trademarks, and trade names[.]	
South Dakota	<i>No corporate income tax.</i>	
Tennessee	Tenn. Code Ann. § 67-4-2012(i)(1)(D) (D) In the case of intangible property: (i) That is rented, leased, or licensed, if and to the extent the intangible property is used in this state; provided, that intangible property utilized in marketing a good or service to a consumer is considered used in this state if that good or service is purchased by a consumer who is in this state; and (ii) That is sold, if and to the extent the property is used in this state; provided, that: (a) A contract right, government license, or similar intangible property that authorizes the holder to conduct a business activity in a specific geographic area is considered used in this state if	<i>Regulator guidance is at Tenn. Comp. R. & Regs. 1320-6-1-.42(5-7). Omitted due to length.</i>

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	<p>the geographic area includes all or part of this state;</p> <p>(b) Receipts from intangible property sales that are contingent on the productivity, use, or disposition of the intangible property shall be treated as receipts from the rental, lease, or licensing of such intangible property under subdivision (i)(1)(D)(i); and</p> <p>(c) All other receipts from a sale of intangible property shall be excluded from the numerator and denominator of the receipts factor.</p>	
Texas	<p>Tex. Tax Code Ann. § 171.103(a) <i>(Note: Margin Tax)</i></p> <p>(a) Subject to Section 171.1055, in apportioning margin, the gross receipts of a taxable entity from its business done in this state is the sum of the taxable entity's receipts from: [¶] ... [¶]</p> <p>(4) the use of a patent, copyright, trademark, franchise, or license in this state[.]</p>	<p>Tex. Admin. Code 3.591(e)(21) <i>(Note: Margin Tax)</i></p> <p>(21) Patents, copyrights, and other intangible rights.</p> <p>(A) Receipts from the use of intangibles.</p> <p>(i) Revenues from a patent royalty are included in Texas receipts to the extent that the patent is utilized in production, fabrication, manufacturing, or other processing in Texas.</p> <p>(ii) Revenues from a copyright royalty are included in Texas receipts to the extent that the copyright is utilized in printing or other publication in Texas.</p> <p>(iii) Revenues that the owner of a trademark, franchise, or license receives are included as Texas receipts to the extent the trademark, franchise or license is used in Texas.</p> <p>(iv) Royalties from an affiliated taxable entity that does not transact a substantial portion of its business or regularly maintain a substantial portion of its assets in the United States are excluded from Texas receipts and receipts everywhere.</p> <p>(B) Sales. Sales of intangibles are apportioned based on the location of payor.</p>
Utah	<p>Utah Code Ann. § 59-7-319(4)(a-c)</p> <p>(a) Subject to Subsection (4)(b), a receipt in connection with intangible property is considered to be in this state if the intangible property is used in this state.</p> <p>(b) If the intangible property described in Subsection (4)(a) is used in this state and outside this state, a receipt in connection with the</p>	<p>Utah Admin. R. R865-6F-8(11)(d)(iii)</p> <p>(iii) Where intangible property generates business income and the state in which that intangible property is being used can be determined, that income is included in the denominator of the sales factor and, if and to the extent that property is used in this</p>

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	<p>intangible property shall be apportioned to this state in accordance with Subsection (4)(c). (c) For purposes of Subsection (4)(b), for a taxable year the percentage of a receipt in connection with intangible property that is considered to be in this state is the percentage of the use of the intangible property that occurs in this state during the taxable year.</p>	<p>state, in the numerator of the sales factor as well. For example, usually the state in which the intangible property is being used can be readily identified in respect to interest income received on deferred payments on sales of tangible property, see Subsection (10)(a)(i), and income from the sale, licensing or other use of intangible personal property. (A) Where intangible property generates business income and the state in which that intangible property is being used cannot be determined, the income cannot be assigned to the numerator of the sales factor for any state and shall be excluded from the denominator of the sales factor. For example, where business income in the form of dividends received on stock, royalties received on patents or copyrights, or interest received on bonds, debentures or government securities results from the mere holding of the intangible personal property by the taxpayer, such dividends and interest shall be excluded from the denominator of the sales factor. (B) Exclude from the denominator of the sales factor, receipts from the sales of securities unless the taxpayer is a dealer therein.</p>
Vermont	<p>Vt. Code R. § 1.5833-1(d)(1)(D), (d)(4)</p> <p>(d)(1) ... Receipts from the following are allocable to Vermont: [¶] ... [¶] (D) royalties from the use in Vermont of patents and copyrights[.]</p> <p>(d)(4) ... [R]oyalties from the use in Vermont of patents or copyrights and receipts from the licensing of computer software used in Vermont and similar transactions are apportionable to Vermont. [¶] ... [¶] Receipts from royalties include all amounts received by the taxpayer for the use of patents or copyrights whether or not such patents or copyrights were originally issued to or are owned by the taxpayer. [¶] A patent or</p>	

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	copyright is used in Vermont to the extent that activities thereunder are carried on in Vermont.	
Virginia	<i>Cost of performance sourcing.</i>	
Washington	<p>Wash. Rev. Code §82.04.462(3)(b) <i>(Note: Business and Occupation Tax.)</i></p> <p>(b) Except as otherwise provided in this section, for purposes of computing the receipts factor, gross income of the business generated from each apportionable activity is attributable to the state:(i) Where the customer received the benefit of the taxpayer’s service or, in the case of gross income from royalties, where the customer used the taxpayer’s intangible property. When a customer receives the benefit of the taxpayer’s services or uses the taxpayer’s intangible property in this and one or more other states and the amount of gross income of the business that was received by the taxpayer in return for the services received or intangible property used by the customer in this state can be reasonably determined by the taxpayer, such amount of gross income must be attributed to this state.</p>	<p>Wash. Admin. Code §458-20-19403(201)(a-c)</p> <p>(a) Where the customer uses the intangible property.</p> <p>(i) If a taxpayer can reasonably determine the amount of a specific apportionable royalty receipt that relates to a specific use in a state, that royalty receipt is attributable to that state. When a customer uses the taxpayer’s intangible property in this and one or more other states and the amount of gross income of the business that was received by the taxpayer in return for intangible property used by the customer in this state can be reasonably determined by the taxpayer, such amount of gross income must be attributed to this state. This may be shown by application of a reasonable method of proportionally attributing use, and thus receipts, among the states. The result determines the apportionable royalty receipts attributed to each state. Under certain situations, the use of data based on an attribution method specified in (b) and (c) of this subsection may also be a reasonable method of proportionally attributing receipts among states.</p> <p>(ii) If a taxpayer is unable to separately determine, or use a reasonable method of proportionally attributing, the use and receipts in specific states under (a)(i) of this subsection, and the customer used the intangible property in multiple states, the apportionable royalty receipts are attributed to the state in which the intangible property was primarily used. Primarily means, in this case, more than fifty percent.</p> <p>(b) Office of negotiation. If the taxpayer is unable to attribute apportionable royalty receipts to a location under (a) of this subsection, then apportionable royalty receipts must be attributed to the office of the customer from which the royalty agreement with the taxpayer was negotiated.</p> <p>(c) If (a) and (b) cannot be used, then by reference to Wash. Admin. Code §458-20-19402(301)(c-g) the following tiering rules apply: 1) Customer’s billing address 2) Address where customer payment is sent from</p>

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State	Statute Language	Regulation Language
		3) Customer's address indicated by taxpayer's records or contract 4) Taxpayer's commercial domicile
West Virginia	<i>Cost of performance sourcing.</i>	
Wisconsin	<p>Wis. Stat. § 71.25(9)(df), (dj), & (dk)</p> <p>(df) 1. Gross receipts from the use of computer software are in this state if the purchaser or licensee uses the computer software at a location in this state.</p> <p>2. Computer software is used at a location in this state if the purchaser or licensee uses the computer software in the regular course of business operations in this state, for personal use in this state, or if the purchaser or licensee is an individual whose domicile is in this state. If the purchaser or licensee uses the computer software in more than one state, the gross receipts shall be divided among those states having jurisdiction to impose an income tax on the taxpayer in proportion to the use of the computer software in those states. To determine computer software use in this state, the department may consider the number of users in each state where the computer software is used, the number of site licenses or workstations in this state, and any other factors that reflect the use of computer software in this state.</p> <p>(dj) 1. Except as provided in subd. 2m. and par. (df), gross royalties and other gross receipts received for the use or license of intangible property, including patents, copyrights, trademarks, trade names, service names, franchises, licenses, plans, specifications, blueprints, processes, techniques, formulas, designs, layouts, patterns, drawings, manuals, technical know-how, contracts, and customer lists, are sales in this state if any of the following applies: a. The purchaser or licensee uses the intangible property in the operation of a trade or business at a location in this state. Except as provided in subd. 2m., if the purchaser or licensee uses the intangible property in the operation of a trade or business in more than one state, the gross royalties and other gross receipts from the use of the intangible property shall be divided between those states having jurisdiction to impose an income tax on the</p>	<p>Wis. Admin Code Tax 2.39(6)(e),(h)</p> <p>(e) Receipts attributable to Wisconsin from the use of computer software. Receipts attributable to Wisconsin from providing the use of computer software are determined as provided in ss. 71.04 [¶] ... [¶]</p> <p>(h) Receipts from intangible property for taxable years beginning on or after January 1, 2009. For taxable years beginning on or after January 1, 2009, the amount includable in the numerator of the sales factor for gross receipts from the sale of, license of, or allowing use of intangible property in this state is determined as provided in ss. 71.04 (7) (dj) and (dk) and 71.25 (9) (dj) and (dk), Stats. For purposes of applying these paragraphs, the following rules apply: 1. To determine the purchaser's or licensee's use of intangible property in this state, factors that may be considered include the number of licensed sites in each state, the volume of property manufactured, produced, or sold pursuant to the arrangement at locations in this state, or other data that reflects the relative usage of the intangible property in this state.</p> <p>2. If the purchaser's or licensee's billing address or commercial domicile is in this state, that billing address or commercial domicile may not conclusively determine that the transaction is in this state except in cases where the location of use of the intangible property cannot be determined. If the location of use of the intangible property cannot be determined, subds. 3. and 4. apply.</p> <p>3. If the location of use of the intangible property cannot be determined, the gross receipts from the sale of, license of, or other receipts from allowing use of intangible property are in this state if the purchaser's or licensee's commercial domicile is in this state.</p> <p>4. If subd. 3. would otherwise apply except that the state of the purchaser's or licensee's commercial domicile cannot be determined, the gross receipts from the sale of, license of, or allowing use of intangible property are in this</p>

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	<p>taxpayer in proportion to the use of the intangible property in those states.</p> <p>b. The purchaser or licensee is billed for the purchase or license of the use of the intangible property at a location in this state.</p> <p>c. The purchaser or licensee of the use of the intangible property has its commercial domicile in this state.</p> <p>2m. For taxable years beginning after December 31, 2018, a broadcaster's gross royalties and other gross receipts received for the use or license of intangible property are sales in this state only if the commercial domicile of the purchaser or licensee is in this state and the purchaser or licensee has a direct connection or relationship with the broadcaster pursuant to a contract under which the royalties or receipts are derived. With regard to a broadcaster who is a member of a combined group, as defined in s. 71.255 (1) (a), this subdivision does not apply to the gross royalties and receipts of the members who are not broadcasters.</p> <p>(dk) Sales of intangible property, excluding securities, are sales in this state if any of the following applies:</p> <ol style="list-style-type: none"> 1. The purchaser uses the intangible property in the regular course of business operations in this state or for personal use in this state. If the purchaser uses the intangible property in more than one state, the sales shall be divided between those states having jurisdiction to impose an income tax on the taxpayer in proportion to the use of the intangible property in those states. 2. The purchaser is billed for the purchase of the intangible property at a location in this state. 3. The purchaser of the intangible property has its commercial domicile in this state. 	<p>state if the purchaser or licensee is billed for the purchase, license, or use of the intangible property at a location in this state.</p>
Wyoming	<i>No corporate income tax.</i>	