IN THE DISTRICT COURT OF LANCASTER COUNTY, NEBRASKA

APPLE INC. and U.S. SUBSIDIARIES, Petitioners, v. NEBRASKA DEPARTMENT OF REVENUE, and JAMES KAMM, in his official capacity as Nebraska Tax Commissioner, Respondents.	Case No. CI 24-4186 **JUDGMENT AND ORDER OF REMAND ON PETITION FOR JUDICIAL REVIEW**

THIS MATTER CAME before the Court on November 17, 2025, for a hearing on a Petition for Review under the Administrative Procedure Act. Michael J. Hilkin, Stephen P. Kranz, and Matthew R. Ottemann appeared for Petitioners Apple Inc. and U.S. Subsidiaries ("Apple"). Ryan D. Baker and L. Jay Bartel appeared for Respondents, the Nebraska Department of Revenue ("NDOR") and James Kamm, in his official capacity as Nebraska Tax Commissioner. The Court heard oral argument and took the matter under advisement. Now being fully advised, the Court reverses the Tax Commissioner's order dated October 29, 2024, and remands to the Tax Commissioner for further proceedings consistent with this opinion.

BACKGROUND

I. Facts.

Apple Inc., a California corporation, is the parent company of its wholly owned domestic and foreign subsidiaries, including controlled foreign corporations ("CFCs") that operate outside of the United States. (E1, ¶¶ 1–2, 8.) Apple's business designs, manufactures, markets, and sells a variety of products and services, and generates revenue from selling them throughout the world. (See E21–34.) It has subsidiaries in over 50 countries. (E35, ¶ 10; E21–34.) Apple Inc. typically earns more revenue from foreign customers than U.S. customers. (31:2–24; E8, at 2; E9–19; E35, ¶¶ 9, 12–13.) With one retail store and few employees in Nebraska, Apple maintains a small business presence in Nebraska. (88:11–15.)

In 2017, the United States Congress enacted the Tax Cuts and Jobs Act ("TCJA"), which included an overhaul of federal taxation of U.S. corporations that earn international income. *Precision Castparts Corp. v. Neb. Dep't of Rev.*, 317 Neb. 481, 483, 10 N.W.3d 707, 709 (2024). As part of the overhaul, the TCJA changed the taxation of the earnings of a CFC. *Id.* Prior to 2017, active business income from a CFC's offshore businesses was not generally taxed by the United States when it was earned, and it was taxable only when the income was repatriated to the United States, generally through a distribution to U.S. shareholders. *Id.* Certain foreign earnings could previously be taxed through a provision of the federal tax code referred to as "Subpart F" and codified at 26 U.S.C. § 951 et seq. *Id.* As part of this 2017 change, however, the TCJA created a new, one-time tax codified at 26 U.S.C. § 965 for tax year 2017. *Id.* at 483–84, 10 N.W.3d at 710 (internal citation omitted). It mandated a one-time increase to a U.S. shareholder's Subpart F Income (called "965 Income") calculated based on its share of a CFC's accumulated post-1986 deferred foreign income. (E1, ¶ 8.)

Apple filed its original Nebraska Corporation Income Tax Return for tax year 2017 on July 19, 2019. (E1, ¶ 3; E2.) On that return Apple reported total sales or gross receipts of $121,284,150,045 and Nebraska sales or gross receipts of $153,870,184, yielding a sales factor of 0.1269% under Neb. Rev. Stat. § 77-2734.14. (E1, ¶¶ 19, 34.) Apple did not include any 965 Income in its Nebraska taxable income and reported no Nebraska income tax liability arising from its 965 Income. (E1, ¶ 13.)

On July 22, 2020, before Apple amended that return, NDOR issued Apple a letter explaining adjustments to Apple's Nebraska taxable income on its 2017 return, following a review of Apple's 965 Income arising from its CFCs. (E1, ¶ 17; E6.) NDOR allowed an additional deduction of $118,138,296,119 while disallowing $281,660,885,708 in deduction of its 965 Income as dividends received, increasing Apple's adjusted federal taxable income ("FTI") to $179,080,648,966. (E6, at 2; E1, ¶ 24.) NDOR also recalculated Apple's apportionment factor to 0.0382% by adding $281,660,885,708, the § 965(a) inclusion amount, to the denominator. (E1, ¶¶ 20–21.) Apple subsequently filed an amended Nebraska return on August 13, 2020, which retained the 0.1269% factor and the deduction of its 965 Income and reported Nebraska taxable income of $19,743,177. (E1, ¶ 5; E3.) As a result of NDOR's adjustments, Apple's apportioned Nebraska taxable income for the 2017 tax year increased from $19,743,177 to $68,408,808, and its Nebraska tax liability increased from $1,539,712 to $5,340,498. (E1, ¶¶ 25–26.)

II. Procedural Background.

Apple timely filed a formal protest and Petition for Redetermination on October 6, 2020. (T6–14, T15–35, T90–105.) Apple first argued that 965 Income should not be included in its pre-apportionment tax base, but also, that if 965 Income were not deductible, its Total CFC Sales of $884,190,197,654 in gross receipts generating 965 Income should be added to the sales factor denominator, yielding a factor of 0.0153%. (*Id.*; E1, ¶¶ 24, 34–36; E6, at 2.) An administrative hearing was held on March 28, 2024. On October 29, 2024, the Tax Commissioner issued an order denying Apple's protest and affirming NDOR's assessment. (T874–890.) Apple timely filed its Petition for Review.

Following *Precision Castparts Corp.*, *supra*, Apple no longer challenges inclusion of 965 Income in its pre-apportionment tax base. (Pet'rs' Br., at 1.) The issues before this Court on de novo review are whether on the record presented the statutory apportionment or alternative apportionment applies, and if the latter whether the proposed methods proffered satisfy the equitable apportionment requirements.

STANDARD OF REVIEW

"Any final action of the Tax Commissioner may be appealed, and the appeal shall be in accordance with the Administrative Procedure Act." Neb. Rev. Stat. § 77-27,127 (Reissue 2018); *see Crow v. Neb. Dep't of Rev.*, 316 Neb. 154, 3 N.W.3d 881 (2024). Under the Administrative Procedure Act, a district court reviews an agency's decision without a jury de novo on the record of the agency. Neb. Rev. Stat. § 84-917(5)(a) (Reissue 2024); *accord Crow, supra*. "The court may affirm, reverse, or modify the decision of the agency or remand the case for further proceedings." *Id.* In a review de novo on the record, the district court is required to make independent factual determinations based upon the record, and the Court reaches its own independent conclusions with respect to the matters at issue. *Med. Creek LLC v. Middle Republican Nat. Res. Dist.*, 296 Neb. 1, 8, 892 N.W.2d 74, 80 (2017).

The material figures in this case are stipulated or established by documentary exhibits, no party has challenged the truthfulness of any witness, and the questions presented are ones of statutory construction and of the application of the equitable apportionment standard to undisputed amounts.

ANALYSIS

The amount of Apple's pre-apportionment tax base is no longer disputed, and the parties also agree that the sales factor governs apportionment under Neb. Rev. Stat. § 77-2734.05(1), with Apple's total sales in Nebraska during tax year 2017 as the numerator. The parties characterize the remaining dispute as what belongs in the denominator considering the one-time inclusion of nondeductible 965 Income in Apple's tax base as a result of the TCJA.

NDOR's chosen formula adds the § 965(a) inclusion amount ($281,660,885,708) to the denominator, computing an apportionment factor of 0.0382%, whereas Apple proposes to add its Total CFC Sales, the gross receipts generating 965 Income ($884,190,197,654), to compute a factor of 0.0153%. The table below summarizes the components of each party's position.

	Statutory Sales Factor	**NDOR's Apportionment Factor**	**Apple's Proposed Factor**
Numerator	$153,870,184	$153,870,184	$153,870,184
Statutory Denominator (total 2017 sales)	$121,284,150,045	$121,284,150,045	$121,284,150,045
Addition of § 965(a) Inclusion Amount	–	$281,660,885,708	–
Addition of Total CFC Sales	–	–	$884,190,197,654
Total Denominator	$121,284,150,045	$402,945,035,753	$1,005,474,347,699
Calculated Factor	0.1269%	0.0382%	0.0153%

I. Alternative Apportionment Under Neb. Rev. Stat. § 77-2734.15.

Under the Nebraska Revenue Act of 1967, "[f]or a corporate taxpayer that is subject to tax in another state, its taxable income shall be the portion of the taxpayer's federal taxable income, as adjusted, that is determined to be connected with the taxpayer's operations in this state pursuant to sections 77-2734.05 to 77-2734.15." Neb. Rev. Stat. § 77-2734.02(3). Under Nebraska's general apportionment rules, for tax year 2017, "federal taxable income, as adjusted, shall be multiplied by the sales factor only." § 77-2734.05(1). "The sales factor is a fraction, the numerator of which is the total sales of the taxpayer in this state during the tax period, and the denominator of which is the total sales everywhere during the tax period." § 77-2734.14(1).

Alternative apportionment may be employed when "the apportionment provisions contained in sections 77-2734.01 to 77-2734.14 do not fairly represent the taxable income that is reasonably attributable to the business operations conducted within this state." Neb. Rev. Stat. § 77-2734.15(1). Subsection (2) provides that such authority "is intended to apply only in *unique and nonrecurring factual situations* which would otherwise produce incongruous results under the normal apportionment formula." § 77-2734.15(2) (emphasis supplied).

The Court agrees with NDOR that the TCJA's creation of a one-time transition tax based on post-1986 accumulated CFC earnings presents the exact sort of "unique and nonrecurring factual situation" contemplated by § 77-2734.15(2). With the one-time inclusion of significant 965 Income in Apple's pre-apportionment tax base, the normal sales factor formula under § 77-2734.14(1) cannot fairly represent Apple's taxable income reasonably attributable to its business operations conducted in Nebraska, because the statutory denominator reflects only Apple's 2017 sales, while the income being apportioned reflects accumulated CFC earnings drawn from a multi-year period, 2005 through 2017, that does not correspond to the single tax year captured by the statutory denominator. (E1, ¶¶ 9, 30; E8.) An alternative method must therefore be employed under § 77-2734.15(1).

II. The Entity-Classification Question Under § 77-2734.05(3) and IRC § 243.

Before evaluating either alternative method proposed by the parties, the Court must address a threshold question, namely whether the general exclusion of CFC receipts from the sales factor under § 77-2734.05(3) operates as an absolute bar on the methodologies the parties propose.

Section 77-2734.05(3) provides that "[i]n the computation of the factors only the part of a unitary group that is subject to the Internal Revenue Code shall be included." Section 77-2734.04(23) defines "subject to the Internal Revenue Code" as applying only to a corporation that "meets the requirements of section 243 of the Internal Revenue Code in order for its distributions to qualify for the dividends-received deduction." IRC § 243(a) limits that qualification to "domestic corporation[s] . . . subject to taxation under this chapter." The record indisputably establishes that Apple's CFCs are foreign corporations that do not meet the IRC § 243 requirements. (E1, ¶ 7.) Under the standard apportionment framework, therefore, CFC gross receipts must be excluded from the sales factor, and the Tax Commissioner's order correctly reaches that conclusion. (T886.)

Apple argues, however, that the Nebraska Supreme Court's characterization of 965 income as "pass-through" in *Precision Castparts Corp.* must mean that CFC receipts are to be treated like partnership receipts, which are included in a partner's sales factor under 316 Neb. Admin. Code § 24-315.02(A).

The pass-through characterization in *Precision Castparts Corp.* addressed only how 965 income is attributed to Apple for purposes of determining Nebraska taxable income, and it answered the question of income attribution and tax base inclusion. It did *not* address the separate question of how to classify the *entity* generating the underlying receipts for purposes of the sales factor. The argument conflates the two concepts. Simply characterizing an item of income as pass-through does not reclassify the entity from which it derives. The Nebraska Supreme Court did not hold that CFCs are the equivalent of domestic pass-through entities for all statutory purposes. It held only that 965 income is an inclusion of income and not a dividend. *Precision Castparts Corp.*, 317 Neb. at 490–93. The distinction between income attribution and entity classification disposes of the argument.

The partnership regulation in question addresses an entity type that both Nebraska and federal law treat as a flow-through vehicle for all tax purposes, in that all of the partnership's receipts generating income attributed to the partner are included. A CFC, by contrast, is a separate foreign corporation, and only the narrow inclusion of 965 Income is attributed to Apple, not all CFC receipts. The business entities and resulting financial relationships are not equivalent to partnerships, and the existence of a regulatory accommodation for partnerships does not compel the same treatment in the absence of direction by the Unicameral. *Cf. Big Blue Express v. Neb. Dep't of Rev.*, 309 Neb. 838, 852, 962 N.W.2d 528, 538 (2021) (tax provisions favoring the taxpayer are to be strictly construed in favor of the government and will not be extended by construction).

Under the standard apportionment statutes, Apple's Total CFC Sales are excluded from the sales factor by § 77-2734.05(3) and § 77-2734.04(23), however, the question remains whether, in the alternative apportionment setting, that exclusion may be modified to address the incongruity created by 965 Income. The text of the alternative apportionment statute supplies the answer. Section 77-2734.15(1) is triggered when "the apportionment provisions contained in sections 77-2734.01 to 77-2734.14 do not fairly represent" the taxable income reasonably attributable to a taxpayer's operations in this state, and the exclusion on which NDOR relies, § 77-2734.05(3), falls squarely within that enumerated range. The provision NDOR would treat as an absolute bar is therefore one of the very provisions the Legislature made subject to adjustment under the equitable apportionment authority. Reading the two provisions together in this manner gives effect to each, the exclusion governing the standard formula and the equitable authority governing departures from it, without rejecting either as superfluous. *Woodmen of the World Life Ins. Soc'y v. Neb. Dep't of Rev.*, 299 Neb. 43, 53, 907 N.W.2d 1, 9 (2018). The Court concludes that § 77-2734.15(1)'s grant of authority to employ "any other method to effectuate an equitable apportionment" is broad enough to permit consideration of CFC receipts in a properly structured alternative formula, but that, for the independent reasons discussed below, Apple's proposed formula including them does not qualify as equitable.

III. The Equitable Standard and the Burden of Proof.

Section 77-2734.15(1) permits a departure from the standard apportionment provisions only through a method that will "effectuate an equitable apportionment of the taxpayer's income." Section 77-2734.15(2) confines that authority to unique and nonrecurring situations that would otherwise produce incongruous results. Any alternative method advanced by either party must therefore satisfy the statutory standard of equitable apportionment.

The parties dispute who bears the burden on that question. NDOR relies on Neb. Rev. Stat. § 77-2781, which provides that in any proceeding before the Tax Commissioner the burden of proof rests on the taxpayer except as to several enumerated issues, none of which, NDOR contends, encompasses the selection of an alternative apportionment method. From that omission NDOR argues that the burden remains on Apple as to the apportionment formula. That position accords with the general rule that a rebuttable presumption of validity attaches to the action of the Tax Commissioner and that the burden of proof rests on the party challenging it. *Norwest Corp. v. Dep't of Ins.*, 253 Neb. 574, 583, 571 N.W.2d 628, 634 (1997); *Dillard Dep't Stores, Inc. v.*

Polinsky, 247 Neb. 821, 825, 530 N.W.2d 637, 641 (1995). See *Pfizer Inc. v. Lancaster Cnty. Bd. of Equalization*, 260 Neb. 265, 272, 616 N.W.2d 326, 335 (2000)(expressio unius est exclusio alterius). Apple relies on the rule, followed in other jurisdictions, that the party seeking to invoke an equitable apportionment provision bears the burden of demonstrating both that the standard formula does not fairly represent its income and that the proposed alternative is reasonable. See *Microsoft Corp. v. Franchise Tax Bd.*, 139 P.3d 1169, 1177 (Cal. 2006); *Union Pac. Corp. v. Idaho State Tax Comm'n*, 83 P.3d 116, 120 (Idaho 2004).

The Court need not resolve that dispute, because the disposition is the same under either allocation. On de novo review the Court independently determines whether each proposed method effectuates an equitable apportionment within the meaning of § 77-2734.15(1). That reviewing function is distinct from the formulation of an equitable method, which § 77-2734.15(1) commits, in the first instance, to the Tax Commissioner. The Court's task here is the former, to assess the two methods the parties have placed before it, not to craft a method of its own. For the reasons that follow, neither method effectuates an equitable apportionment. Even were the burden placed entirely on Apple, Apple has demonstrated that the Commissioner's method is not equitable, but it has not demonstrated that its own proposed method is the equitable alternative the statute requires. Apple itself has invited the Court to determine which method is proper rather than to rest on any presumption, and the Court resolves the matter on that independent footing.

IV. The Proposed Methods.

Because alternative apportionment is required, the question is whether either method proposed by the parties effectuates an equitable apportionment under § 77-2734.15(1). A method that departs from the gross-receipts basis of the sales factor, or that fails to relate the denominator to the income and activity actually subject to Nebraska tax, does not. Measured against that standard, neither method is equitable.

Before the methods are examined individually, the Court observes a structural defect common to both. This structural feature is not a matter of contested fact, as each component of both fractions, the single-year numerator and domestic denominator and the multi-period additions, is established by the parties' stipulation, and the Court's conclusion concerns only the legal significance of that undisputed structure under § 77-2734.15(1). The income being apportioned combines Apple's ordinary 2017 income with 965 Income reflecting CFC earnings accumulated from 2005 through 2017. (E1, ¶¶ 9, 30; E8.) Each proposed method, however, pairs a numerator confined to Apple's 2017 Nebraska sales, and a domestic denominator confined to Apple's 2017 sales everywhere, with a foreign addition that reflects the full accumulation period. Under NDOR's method that addition is the § 965(a) inclusion amount, an income figure accumulated over those thirteen years, and under Apple's method it is the Total CFC Sales that generated the 965 Income over the same span. Under either construction, a single tax year of domestic activity is measured against thirteen years of foreign activity within the same fraction, and the period reflected in the apportionment factor corresponds to neither the single year captured by the numerator nor the multi-year character of the income in the base. Any method that introduces multi-period amounts into only one component of the fraction, while confining every other component to a single year, does not compare like with like, and the methods before the Court differ in this respect only in the magnitude and direction of the resulting distortion.

A. The Commissioner's Method.

In addition to the temporal mismatch common to both methods, the Commissioner's method suffers from two defects of its own. The sales factor is constructed entirely on gross receipts. "Sales" is defined to mean all gross receipts of the taxpayer, Neb. Rev. Stat. § 77-2734.04(20), and both the numerator and the balance of the denominator consist of Apple's gross receipts. The Commissioner's method purports to represent the activity of the CFCs that generated the 965 Income, not by the statutory *gross receipts* of those CFCs but by an *income* figure, which is the § 965(a) inclusion amount of $281,660,885,708. NDOR acknowledges that the standard apportionment statutes do not employ *income* in the computation of an apportionment factor. The proposed method, therefore, measures the foreign market activity on a different, and far smaller, basis than the gross receipts basis applied to every other factor component. Consequently, the gross receipts that generated the 965 Income greatly exceed the income figure inserted in the denominator, and the Commissioner's method therefore underrepresents the foreign market activity relative to Apple's domestic activity and correspondingly enlarges the share of Apple's income apportioned to Nebraska. Because the denominator is the shared base of the fraction, a smaller measure of foreign activity there necessarily yields a larger factor, and thus a larger apportioned share, than a measure consistent with the gross receipts basis applied everywhere else in the formula would produce. The formula presents like activity, but on unlike terms, and it therefore does not effectuate an equitable apportionment.

The second defect concerns calibration, and it is not cured by the income figure the Commissioner selected. The denominator addition reflects the *gross* § 965(a) inclusion of $281,660,885,708, while the income that entered Apple's tax base was the *net* amount of $163,522,589,589 remaining after the § 965(c) deduction of $118,138,296,119. The Commissioner's method therefore relates the denominator neither to the gross receipts that generated the income, nor to the net income subjected to apportionment. Whether measured against activity, or against income, the denominator is simply not calculated in relation to the thing it is meant to represent, and as a result the Court finds that the resulting apportionment is not equitable within the meaning of § 77-2734.15(1).

B. Apple's Proposed Method.

The method Apple proposes likewise fails the standard. First, it presents the temporal mismatch common to both methods in its most pronounced form. Apple's proposed denominator of $884,190,197,654 in Total CFC Sales is not confined to 2017. It includes gross receipts of Apple's CFCs which were accumulated over the years from 2005 through 2017. That is thirteen tax years of foreign sales introduced into the denominator which is then paired with a numerator reflecting only Apple's Nebraska sales during 2017. (T886.) The result is also structurally unsound, but in a manner that favors Apple, because thirteen years of CFC gross receipts are placed against a single year of Nebraska sales. The Commissioner's order correctly observed that Apple's calculation accelerates foreign sales into the denominator from periods outside the tax year, inexplicably stretching back to 2005, without including comparable Nebraska sales from those years in the numerator. (T886.) While § 77-2734.14(1), which confines the standard sales factor to sales "during the tax period," does not itself govern a method adopted under the equitable apportionment authority of § 77-2734.15(1), the temporal matching it reflects, that the figures compared in a sales factor should be drawn from the same period, remains sound practice in constructing an equitable formula, and a method that pairs thirteen years of foreign receipts against a single year of Nebraska sales departs from that practice in a manner that systematically inflates one side of the fraction.

Second, Apple's method also suffers from a calibration defect in that it proposes to include $884,190,197,654 in Total CFC Sales in the denominator, an amount reflecting the full gross receipts associated with the gross § 965(a) inclusion of $281,660,885,708. As noted previously, the § 965(c) deduction of $118,138,296,119, reduced the income entering Apple's tax base to $163,522,589,589. Apple thus proposes a denominator driven by *gross* receipts associated with the full § 965(a) amount, while the income in the apportionment base reflects only the *net* amount after the § 965(c) deduction. The mismatch substantially inflates the denominator relative to the income subject to apportionment. Approximately $118,138,296,119 of the underlying income, the portion removed by the § 965(c) deduction, never entered Apple's Nebraska tax base, yet the receipts associated with that income would still enlarge the denominator and depress the apportionment factor. That too is not an equitable apportionment.

V. Remand.

Neither NDOR's method nor Apple's proposed method satisfies § 77-2734.15(1). The Commissioner must therefore devise an alternative formula that effectuates an equitable apportionment of the income attributable to Apple's 2017 965 Income. Because the Court has determined that the standard statutory factor of 0.1269% does not fairly represent the taxable income reasonably attributable to Apple's Nebraska operations once 965 Income is included in the base, the Commissioner may not reinstate that factor on remand. On remand, the method must represent the activity of the CFCs that generated the 965 Income on a basis consistent with the gross-receipts foundation of the sales factor, rather than by an income proxy. The use of a 965 income figure as a proxy for that activity, as in the Commissioner's method, does not satisfy this requirement. Further, any amount added to the denominator must be calibrated to the receipts and income actually entering Apple's Nebraska tax base for tax year 2017. To the extent CFC gross receipts are considered, they must be proportioned or otherwise limited so that the denominator corresponds to the income subject to apportionment, and the method must account for the § 965(c) deduction so that the denominator is not driven by income that never entered the tax base. The method must additionally address the temporal mismatch that undermined both parties' proposed formulas by reconciling, on a principled basis, the periods reflected in the numerator, the denominator, and the income subject to apportionment. Receipts from periods other than tax year 2017 may be considered only if the Commissioner articulates a principled basis for doing so that is consistent with equitable apportionment and that does not apply different tax years to the numerator and the denominator. Finally, the Commissioner shall address whether and how the CFC exclusion of § 77-2734.05(3) operates within the alternative apportionment authority of § 77-2734.15(1), including whether a proportionate share approach to CFC receipts, analogous to the treatment of partnership receipts under 316 Neb. Admin. Code § 24-315.02(A), is consistent with the statutory scheme.

The Court does not prescribe a particular formula. Section 77-2734.15 requires an equitable approximation, not perfection, and some imprecision is inherent in any method of apportionment. The Commissioner retains discretion to fashion a method that satisfies the statutory standard and the directions stated above.

VI. Constitutional Questions Not Reached.

Apple also contends that the Commissioner's method violates the fair apportionment requirements of the Commerce and Due Process Clauses by producing a grossly distorted result, and that it discriminates against foreign commerce in violation of the Foreign Commerce Clause. See *Kraft Gen. Foods, Inc. v. Iowa Dep't of Revenue & Fin.*, 505 U.S. 71 (1992). Because the Court resolves this matter on statutory grounds and remands for the adoption of an equitable method, it is unnecessary to reach these constitutional questions, and the Court declines to do so. *Avis Rent a Car Sys. v. McDavid*, 313 Neb. 479, 984 N.W.2d 632 (2023) (a court is not obligated to engage in an analysis that is not necessary to adjudicate the case and controversy before it). The questions remain available should a revised formula present the issues on remand.

CONCLUSION

Alternative apportionment under Neb. Rev. Stat. § 77-2734.15(1) is warranted given the unique and nonrecurring nature of the TCJA's one-time 965 transition tax. Under the standard framework, § 77-2734.05(3) and § 77-2734.04(23) exclude CFC gross receipts from the sales factor, but the equitable apportionment authority of § 77-2734.15(1) is broad enough to permit consideration of CFC activity in a properly structured alternative formula. Neither the Commissioner's method nor Apple's proposed method effectuates an equitable apportionment. Both pair a single tax year of domestic activity in the numerator and the domestic portion of the denominator against thirteen years of accumulated foreign activity, a temporal mismatch that neither method reconciles. Beyond that shared defect, the former represents foreign market activity by an income proxy inconsistent with the gross-receipts basis of the factor and uncalibrated to the income in the tax base, and the latter inflates the denominator relative to the income actually subject to apportionment.

The Court therefore reverses the Tax Commissioner's order dated October 29, 2024, and remands for further proceedings consistent with this opinion.

IT IS SO ORDERED. Dated this 13th day of July 2026.

BY THE COURT:

Kevin R. McManaman
District Judge