

810-27-1-.02 Application of Apportionment and Allocation.

(1) *Definitions.*

(a) A taxpayer means any corporation, Subchapter K entity, firm, association, governmental unit or agency or other person acting as a business entity in more than one state, but does not include any individual.

(b) "Apportionment" refers to the division of net income between states by the use of a formula containing apportionment factors.

(c) "Allocation" refers to the assignment of nonbusiness income to a particular state.

(d) "Business activity" refers to the transactions or activity occurring in the regular course of a trade or business of a taxpayer or to the acquisition, management, and disposition of property that constitute integral parts of the taxpayer's trade or business operations or to the sale, exchange, or disposition of real property or tangible or intangible personal property or the sale, exchange or disposition of stock of another corporation. Income from business activity includes business and nonbusiness income.

(e) "Employee" means (A) any officer of a corporation, or (B) any individual who, under the usual common-law rules applicable in determining the employer-employee relationship, has the status of an employee. Generally, a person will be considered to be an employee if included by an employer as an employee for purposes of the payroll taxes imposed by the Federal Insurance Contributions Act. However, for purposes of determining a taxpayer's payroll factor, a leased employee is an employee of the client (lessee) organization. A leased employee is also treated as an employee of the employee leasing company.

(f) "Gross Receipts" are the gross amounts realized (the sum of money and the fair market value of other property or services received) on the sale or exchange of property, the performance of services, or the use of property or capital (including rents, royalties, interest and dividends) in a transaction which produced business income, in which the income or loss is recognized (or would be recognized if the taxpayer were required to file a separate entity return) under the Internal Revenue Code. Amounts realized on the sale or exchange of property are not reduced for the cost of goods sold or the basis of property sold. Gross Receipts, even if business income, do not include such items as, for example:

1. repayment, maturity, or redemption of the principal of a loan, bond, or mutual fund or certificate of deposit or similar marketable instrument;

2. the principal amount received under a repurchase agreement or other transaction properly characterized as a loan;

3. proceeds from issuance of the taxpayer's own stock or from sale of treasury stock;
4. damages and other amounts received as the result of litigation;
5. property acquired by an agent on behalf of another;
6. tax refunds and other tax benefit recoveries;
7. pension reversions;
8. contributions to capital (except for sales of securities by securities dealers);
9. income from forgiveness of indebtedness; or
10. amounts realized from exchanges of inventory that are not recognized by the Internal Revenue Code

(2) *Application of Article IV.*

(a) *Apportionment.* If the business activity in respect to any trade or business of a taxpayer occurs both within and without this state, and if by reason of such business activity the taxpayer is taxable in another state, the portion of the net income (or net loss) arising from such trade or business which is derived from sources within this state shall be determined by apportionment in accordance with Code of Alabama 1975, §40-27-1, Articles IV.9 to IV.17.

(b) *Allocation.* Any taxpayer subject to the taxing jurisdiction of this state shall allocate all of its nonbusiness income or loss within or without this state in accordance with §40-27-1, Articles IV.4 to IV.8.

(c) *Public utility election.* If a taxpayer has income from business activity as a public utility which is not permitted to allocate and apportion net income pursuant to § 40-27-1, Article IV but derives more than 50 percent of income from business activities otherwise subject to this rule, the taxpayer may elect, with a timely filed original return, to allocate and apportion the entire net income as provided for in § 40-27-1, Article IV. The taxpayer must determine "business income" in accordance with Code of Alabama 1975, §40-27-1.1. If a taxpayer engaged in multistate business does not elect the reporting option available in this subparagraph or is not eligible to make the election then the taxpayer shall use separate (direct) accounting to determine income earned in this state.

(3) *Consistency and Uniformity in Reporting.* Year to year consistency. In filing returns with this state, if the taxpayer departs from or modifies the manner in which income has been classified as business income or nonbusiness income in returns

for prior years, the taxpayer shall disclose in the return for the current year the nature and extent of the modification.

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