Supreme Court of Ohio Clerk of Court - Filed April 08, 2015 - Case No. 2014-1836

In the
Supreme Court of Ohio

PATTON R. CORRIGAN,

Appellant,

v.

JOSEPH W. TESTA,
TAX COMMISSIONER OF OHIO

Appellee.

Case No. 2014-1836

Appeal from Ohio Board of Tax Appeals

BTA Case No. 2012-3244

APPENDIX TO MERIT BRIEF OF APPELLEE JOSEPH W. TESTA, TAX COMMISSIONER OF OHIO

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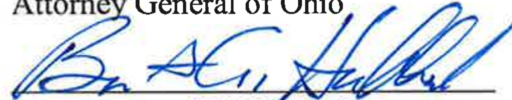

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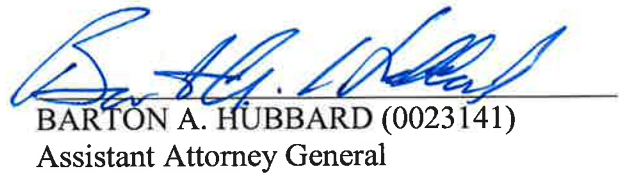

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Code of Alabama
Title 40. Revenue and Taxation. (Refs & Annos)
Chapter 18. Income Taxes. (Refs & Annos)
Article 1. General Provisions (Refs & Annos)

Ala.Code 1975 § 40-18-2

§ 40-18-2. Levied; persons and subjects taxable generally.

Currentness

(a) In addition to all other taxes now imposed by law, there is hereby levied and imposed a tax on the taxable income, as defined in this chapter, which tax shall be assessed, collected, and paid annually at the rate specified herein and for each taxable year as hereinafter provided. Persons and subjects taxable under this chapter are:

(1) Every individual residing in Alabama.

(2) Every corporation domiciled in Alabama or licensed or qualified to transact business in Alabama.

(3) Every corporation doing business in Alabama or deriving income from sources within Alabama, including income from property located in Alabama.

(4) Every nonresident estate or nonresident trust receiving income from property owned or business transacted in Alabama.

(5) Every resident estate and resident trust.

(6) Every nonresident individual receiving income from property owned or business transacted in Alabama.

(b) Every natural person domiciled in the State of Alabama, and every other natural person who maintains a permanent place of abode within the state or spends in the aggregate more than seven months of the income year within the state, shall be presumed to be residing within the state for the purposes of determining liability for income taxes under this chapter.

Credits

(Acts 1935, No. 194, p. 256; Code 1940, T. 51, § 373; Act 98-502, p. 1083, § 1; Act 2006-114, p. 173, § 2.)

Notes of Decisions (20)

Ala. Code 1975 § 40-18-2, AL ST § 40-18-2
Current through Act 2015-16 of the 2015 Regular Session.

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Code of Alabama
Title 40. Revenue and Taxation. (Refs & Annos)
Chapter 18. Income Taxes. (Refs & Annos)
Article 1. General Provisions (Refs & Annos)

Ala.Code 1975 § 40-18-5

§ 40-18-5. Tax on individuals.

Currentness

The tax levied and imposed by Section 40-18-2 shall be computed as follows:

(1) For a single person, head of family, or married persons filing separate returns:

a. Two percent of taxable income not in excess of five hundred dollars ($500).

b. Four percent of taxable income in excess of five hundred dollars ($500) and not in excess of three thousand dollars ($3,000).

c. Five percent of taxable income in excess of three thousand dollars ($3,000).

(2) For married persons filing a joint return:

a. Two percent of taxable income not in excess of one thousand dollars ($1,000).

b. Four percent of taxable income in excess of one thousand dollars ($1,000) and not in excess of six thousand dollars ($6,000).

c. Five percent of taxable income in excess of six thousand dollars ($6,000).

Credits
(Acts 1935, No. 194, p. 256; Code 1940, T. 51, § 377; Acts 1982, No. 82-465, p. 759, § 1; Acts 1982, 1st Ex. Sess., No. 82-667, p. 85, § 1; Act 98-502, p. 1083, § 1.)

Notes of Decisions (8)

Ala. Code 1975 § 40-18-5, AL ST § 40-18-5
Current through Act 2015-16 of the 2015 Regular Session.

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Code of Alabama
Title 40. Revenue and Taxation. (Refs & Annos)
Chapter 18. Income Taxes. (Refs & Annos)
Article 1. General Provisions (Refs & Annos)

Ala.Code 1975 § 40-18-21

§ 40-18-21. Credits for taxes paid on income from sources outside the state and for job development fees.

Currentness

(a)(1) For the purpose of ascertaining the income tax due under the provisions of this chapter by individual residents of Alabama whose gross income, as defined herein, is derived from sources both within and outside the State of Alabama, there shall be allowed a credit against the amount of tax found to be due by such resident, on account of income derived from outside the State of Alabama, the amount of income tax actually paid by such resident to any state or territory on account of business transacted or property held, directly or indirectly, outside the State of Alabama. Resident individual owners of Subchapter K entities, Alabama S corporations, and beneficiaries of estates or trusts who include their proportionate share of the income arising from one or more of these entities in their Alabama gross income shall be allowed a credit for their proportionate share of the income tax actually paid by the entity to any state or territory on account of business transacted or property held outside the State of Alabama, whether the payment was made on behalf of the resident individual owner or because the entity was not recognized by such state or territory as a non-taxable pass-through entity. For purposes of this subsection, income tax shall be defined to include, but not be limited to, any tax based in whole or in part on the entity's net income, net profits, or gross profits; provided, however, that the term income tax shall not include any tax based on the entity's net worth, capital, or asset values, and shall not include any tax for which an exclusion or deduction is claimed in the calculation of taxable income reported on the Alabama income tax return.

(2) In case the amount of income tax actually paid by or on behalf of an individual resident of Alabama, or by one of the entities described in subdivision (a)(1) above, to another state or territory is in excess of the amount of tax that would be due on the same income computed using the applicable Alabama income tax rates, then only such amount as would be due in this state on such taxable income shall be allowed as a credit. In no event shall the credit for income taxes paid to another state exceed the amount of tax that would be due on the same taxable income computed using the applicable Alabama income tax rates.

(3) If the amount of income tax actually paid by or on behalf of an individual resident of Alabama to any other state or territory on account of business transacted or property held is less than the amount of tax that would be due, as computed using the applicable Alabama income tax rates, then the income tax levied herein shall be computed on the entire taxable income from sources from both within and outside the state as defined herein, and the tax shall be paid less the credit allowed in this section for tax paid on income derived, directly or indirectly, from outside the state.

(4) Before a resident of Alabama may claim the credit allowed under this subsection (a), he or she shall file with his or her Alabama income tax return a certificate showing the amount of gross and net income derived, directly or indirectly, from sources outside this state, together with the amount of tax paid or to be paid on such income.

(b) Any taxpayer described in Section 40-18-2(1) or Section 40-18-2(6), who, during any year, has been assessed a job development fee as described in Section 41-10-44.8(b), shall be allowed a credit against the amount of income tax due under

the provisions of this chapter in such year in an amount equal to the job development fee withheld from the taxpayer's wages during the year.

(c)(1) A resident individual taxpayer, who is either a partner or member of a Subchapter K entity, a shareholder of an Alabama S corporation, or a beneficiary of an estate or trust, during all or part of a year, shall be allowed a credit equal to fifty percent (50%) of his or her proportionate share of the income taxes paid or accrued, including a payment recognized by 26 U.S.C. § 901, to a foreign country with respect to the trade or business or investment income of such business, including related operations and affiliates.

(2) Notwithstanding the foregoing, the credit allowed in this subsection shall not exceed the amount of income tax that would otherwise be imposed by Alabama on the individual's income derived from the foreign country.

Credits

(Acts 1935, No. 194, p. 256; Code 1940, T. 51, § 390; Acts 1993, 1st Ex. Sess., No. 93-852, p. 95, § 3; Acts 1997, No. 97-625, p. 1048, § 3; Act 2007-366, p. 718, § 1; Act 2012-427, p. 1163, § 1.)

Notes of Decisions (5)

Ala. Code 1975 § 40-18-21, AL ST § 40-18-21
Current through Act 2015-16 of the 2015 Regular Session.

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Arizona Revised Statutes Annotated
Title 43. Taxation of Income (Refs & Annos)
Chapter 10. Individuals (Refs & Annos)
Article 2. Tax Rates and Tables (Refs & Annos)

A.R.S. § 43-1011

§ 43-1011. Taxes and tax rates

Effective: July 24, 2014
Currentness

A. There shall be levied, collected and paid for each taxable year on the entire taxable income of every resident of this state and on the entire taxable income of every nonresident that is derived from sources within this state taxes determined in the following manner:

1. For taxable years beginning from and after December 31, 1996 through December 31, 1997:

(a) In the case of a single person or a married person filing separately:

If taxable income is:	The tax is:
$0--$10,000	2.90% of taxable income
$10,001--$25,000	$290, plus 3.30% of the excess over $10,000
$25,001--$50,000	$785, plus 3.90% of the excess over $25,000
$50,001--$150,000	$1,760, plus 4.80% of the excess over $50,000
$150,001 and over	$6,560, plus 5.17% of the excess over $150,000

(b) In the case of a married couple filing a joint return or a single person who is a head of a household:

If taxable income is:	The tax is:
$0--$20,000	2.90% of taxable income
$20,001--$50,000	$580, plus 3.30% of the excess over $20,000
$50,001--$100,000	$1,570, plus 3.90% of the excess over $50,000
$100,001--$300,000	$3,520, plus 4.80% of the excess over $100,000
$300,001 and over	$13,120, plus 5.17% of the excess over $300,000

2. For taxable years beginning from and after December 31, 1997 through December 31, 1998:

(a) In the case of a single person or a married person filing separately:

If taxable income is:	The tax is:
$0--$10,000	2.88% of taxable income
$10,001--$25,000	$288, plus 3.24% of the excess over $10,000
$25,001--$50,000	$774, plus 3.82% of the excess over $25,000
$50,001--$150,000	$1,729, plus 4.74% of the excess over $50,000
$150,001 and over	$6,469, plus 5.10% of the excess over $150,000

(b) In the case of a married couple filing a joint return or a single person who is a head of a household:

If taxable income is:	The tax is:
$0--$20,000	2.88% of taxable income
$20,001--$50,000	$576, plus 3.24% of the excess over $20,000
$50,001--$100,000	$1,548, plus 3.82% of the excess over $50,000
$100,001--$300,000	$3,458, plus 4.74% of the excess over $100,000
$300,001 and over	$12,938, plus 5.10% of the excess over $300,000

3. For taxable years beginning from and after December 31, 1998 through December 31, 2005:

(a) In the case of a single person or a married person filing separately:

If taxable income is:	The tax is:
$0--$10,000	2.87% of taxable income
$10,001--$25,000	$287, plus 3.20% of the excess over $10,000
$25,001--$50,000	$767, plus 3.74% of the excess over $25,000
$50,001--$150,000	$1,702, plus 4.72% of the excess over $50,000
$150,001 and over	$6,422, plus 5.04% of the excess over $150,000

(b) In the case of a married couple filing a joint return or a single person who is a head of a household:

If taxable income is:	The tax is:

$0--$20,000	2.87% of taxable income
$20,001--$50,000	$574, plus 3.20% of the excess over $20,000
$50,001--$100,000	$1,534, plus 3.74% of the excess over $50,000
$100,001--$300,000	$3,404, plus 4.72% of the excess over $100,000
$300,001 and over	$12,844, plus 5.04% of the excess over $300,000

4. For taxable years beginning from and after December 31, 2005 through December 31, 2006:

(a) In the case of a single person or a married person filing separately:

If taxable income is:	The tax is:
$0--$10,000	2.73% of taxable income
$10,001--$25,000	$273, plus 3.04% of the excess over $10,000
$25,001--$50,000	$729, plus 3.55% of the excess over $25,000
$50,001--$150,000	$1,617, plus 4.48% of the excess over $50,000
$150,001 and over	$6,097, plus 4.79% of the excess over $150,000

(b) In the case of a married couple filing a joint return or a single person who is a head of a household:

If taxable income is:	The tax is:
$0--$20,000	2.73% of taxable income
$20,001--$50,000	$546, plus 3.04% of the excess over $20,000
$50,001--$100,000	$1,458, plus 3.55% of the excess over $50,000
$100,001--$300,000	$3,233, plus 4.48% of the excess over $100,000
$300,001 and over	$12,193, plus 4.79% of the excess over $300,000

5. Subject to subsection B of this section, for taxable years beginning from and after December 31, 2006:

(a) In the case of a single person or a married person filing separately:

If taxable income is:	The tax is:
$0--$10,000	2.59% of taxable income

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$10,001--$25,000	$259, plus 2.88% of the excess over $10,000
$25,001--$50,000	$691, plus 3.36% of the excess over $25,000
$50,001--$150,000	$1,531, plus 4.24% of the excess over $50,000
$150,001 and over	$5,771, plus 4.54% of the excess over $150,000

(b) In the case of a married couple filing a joint return or a single person who is a head of a household:

If taxable income is:	The tax is:
$0--$20,000	2.59% of taxable income
$20,001--$50,000	$518, plus 2.88% of the excess over $20,000
$50,001--$100,000	$1,382, plus 3.36% of the excess over $50,000
$100,001--$300,000	$3,062, plus 4.24% of the excess over $100,000
$300,001 and over	$11,542, plus 4.54% of the excess over $300,000

B. For the taxable year beginning from and after December 31, 2014 through December 31, 2015, the department shall adjust the income dollar amounts for each rate bracket prescribed by subsection A, paragraph 5 of this section according to the average annual change in the metropolitan Phoenix consumer price index published by the United States bureau of labor statistics. The revised dollar amounts shall be raised to the nearest whole dollar. The income dollar amounts for each rate bracket shall not be revised below the amounts prescribed in the prior taxable year.

Credits

Added by Laws 1978, Ch. 213, § 2, eff. Jan. 1, 1979. Amended by Laws 1982, Ch. 75, § 2, eff. July 24, 1982; Laws 1990, 3rd S.S., Ch. 3, § 25; Laws 1991, Ch. 158, § 24, eff. Sept. 21, 1991, retroactively effective to Jan. 1, 1990; Laws 1994, Ch. 41, § 27; Laws 1995, 1st S.S., Ch. 9, § 5; Laws 1997, 1st S.S., Ch. 8, § 2; Laws 1998, 4th S.S., Ch. 3, § 7; Laws 1999, Ch. 5, § 24; Laws 1999, Ch. 274, § 4; Laws 2006, Ch. 354, § 36; Laws 2014, Ch. 10, § 1.

Editors' Notes

RETROACTIVE APPLICATION

<This section, as amended by Laws 2006, Ch. 354, applies retroactively to taxable years beginning January 1, 2006.>

<This section, as amended by Laws 1999, Ch. 5, applies retroactively to taxable years beginning January 1, 1998.>

<This section, as amended by Laws 1999, Ch. 274, applies retroactively to taxable years beginning January 1, 1997.>

<This section, as amended by Laws 1997, 1st S.S., Ch. 8, applies retroactively to taxable years beginning January 1, 1997.>

<This section, as amended by Laws 1995, 1st S.S., Ch. 9, applies retroactively to taxable years beginning January 1, 1994.>

Notes of Decisions (19)

A. R. S. § 43-1011, AZ ST § 43-1011
Current through legislation effective February 24, 2015 of the First Regular Session of the Fifty-Second Legislature

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A.R.S. § 43-1071

§ 43-1071. Credit for income taxes paid to other states; definitions

Effective: August 2, 2012
Currentness

A. Subject to the following conditions, residents shall be allowed a credit against the taxes imposed by this chapter for net income taxes imposed by and paid to another state or country on income taxable under this chapter:

1. The credit shall be allowed only for taxes paid to the other state or country on income that is derived from sources within that state or country and that is taxable under its laws irrespective of the residence or domicile of the recipient.

2. The credit shall not be allowed if the other state or country allows residents of this state a credit against the taxes imposed by that state or country for taxes paid or payable under this chapter.

3. The credit shall not exceed the proportion of the tax payable under this chapter as the income subject to tax in the other state or country and also taxable under this title bears to the taxpayer's entire income on which the tax is imposed by this chapter.

B. If any taxes paid to another state or country for which a taxpayer has been allowed a credit under this section are at any time credited or refunded to the taxpayer:

1. The taxpayer shall immediately report that fact to the department.

2. A tax equal to the credit allowed for the taxes credited or refunded by the other state or country is due and payable from the taxpayer on notice and demand from the department.

3. Interest shall be added to and collected as a part of the tax at the rate determined pursuant to § 42-1123 from the date the credit was allowed under this chapter to the date of the notice and demand.

4. If the tax and interest are not paid within ten days from the date of notice and demand, there shall be collected as a part of the tax interest on the unpaid amount of tax and interest at the rate of twelve per cent a year from the date of the notice and demand until the amount is paid.

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C. The credit against the taxes imposed by this chapter for net income taxes paid to another state or country shall not be allowed to any taxpayer or any class of taxpayers if the allowances of the credit will result in any invalid or illegal discrimination against another taxpayer or another class of taxpayers.

D. For taxable years beginning on or after January 1, 2002 and subject to the following conditions, a resident of this state, who is also considered to be a resident of another state under the laws of the other state, is allowed a credit against the taxes imposed by this title for net income taxes imposed by and paid to that state on income taxable under this title as follows:

1. The credit is allowed only if the other state taxes the income to the resident of this state and does not allow the taxpayer a credit against taxes imposed by that state on that income for taxes paid or payable on that income under this title.

2. The credit is allowed only for the proportion of the taxes paid to the other state as the income taxable under this title and also subject to tax in the other state bears to the entire income on which the taxes paid to the other state are imposed.

3. The credit may not exceed the proportion of the tax payable under this title as the income taxable under this title and also subject to tax in the other state bears to the entire income taxable under this title.

4. For the purpose of the credit allowed under this subsection, "income taxable under this title and also subject to tax in the other state" means income that would be sourced to the other state if the other state were imposing its income tax on the taxpayer as if the taxpayer was a nonresident of that other state.

E. For the purposes of this section, net income taxes imposed by another country include taxes that qualify for a credit under sections 901 and 903 of the internal revenue code [1] and the regulations under those sections.

F. For the purposes of this section:

1. "Entire income on which the other state's or country's tax is imposed" means the other state's or country's income computed under the equivalent of § 43-1094 but does not include any exemption allowable under the equivalent of § 43-1023.

2. "Entire income on which the tax is imposed by this chapter" means Arizona adjusted gross income as defined and computed under § 43-1001 but does not include any exemption allowed under § 43-1023.

3. "Income subject to tax in the other state or country and also taxable under this title" means the portion of income that is included in entire income on which the tax is imposed by this chapter that is also included in the entire income on which the other state's or country's tax is imposed. The taxpayer shall increase or reduce the portion of income that is included in the entire income on which the tax is imposed by this chapter by any related additions under § 43-1021 and by any related subtractions under § 43-1022. The taxpayer shall increase or reduce the portion of income that is included in the entire income on which the other state's or country's tax is imposed by any related additions and subtractions under the other state's equivalent of §§ 43-1021 and 43-1022, as applicable.

4. “Tax payable under this chapter” means the income tax imposed by this state on the taxpayer's taxable income as defined under § 43-1001 minus any tax credit amount claimed for the taxable year under this article but not including the credit amount allowed under this section.

Credits

Added by Laws 1978, Ch. 213, § 2, eff. Jan. 1, 1979. Amended by Laws 1981, Ch. 111, § 7; Laws 1983, Ch. 4, § 42, eff. Feb. 11, 1983; Laws 1985, Ch. 366, § 85, eff. July 1, 1986; Laws 1998, Ch. 1, § 296, eff. Jan. 1, 1999; Laws 1998, Ch. 68, § 1, eff. Jan. 1, 1999; Laws 1999, Ch. 250, § 16; Laws 2002, Ch. 130, § 4, eff. Jan. 1, 2003; Laws 2007, Ch. 112, § 1; Laws 2008, Ch. 220, § 1; Laws 2012, Ch. 257, § 18.

Editors' Notes

RETROACTIVE EFFECT

<This section, as amended by Laws 2002, Ch. 130, is effective for taxable years beginning January 1, 2003.>

RETROACTIVE APPLICATION

<This section, as amended by Laws 2008, Ch. 220, applies retroactively to taxable years beginning January 1, 2008.>

<This section, as amended by Laws 2007, Ch. 112, applies retroactively to taxable years beginning January 1, 2002.>

<Subsection E of this section, as amended by Laws 1999, Ch. 250, applies retroactively to taxable years beginning January 1, 1989.>

Notes of Decisions (9)

Footnotes

1 Internal Revenue Code sections may be found in Title 26 of U.S.C.A.

A. R. S. § 43-1071, AZ ST § 43-1071

Current through legislation effective February 24, 2015 of the First Regular Session of the Fifty-Second Legislature

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West's Arkansas Code Annotated
Title 26. Taxation
Subtitle 5. State Taxes (Chapters 50 to 71)
Chapter 51. Income Taxes (Refs & Annos)
Subchapter 2. Imposition of Tax (Refs & Annos)

A.C.A. § 26-51-201

§ 26-51-201. Residents subject to tax

Effective: February 6, 2015
Currentness

(a) For tax years beginning on and after January 1, 2014, a tax is imposed upon, and with respect to, the entire income of every resident, individual, trust, or estate. The tax shall be levied, collected, and paid annually upon the entire net income as defined and computed in this chapter at the following rates, giving effect to the tax credits provided hereafter, in the manner set forth:

(1) On the first four thousand two hundred ninety-nine dollars ($4,299) of net income or any part thereof, nine-tenths percent (0.9%);

(2) On the next four thousand one hundred dollars ($4,100) of net income or any part thereof, two and five-tenths percent (2.5%);

(3) On the next four thousand two hundred dollars ($4,200) of net income or any part thereof, three and five-tenths percent (3.5%);

(4) On the next eight thousand four hundred dollars ($8,400) of net income or any part thereof, four and five-tenths percent (4.5%);

(5) On the next fourteen thousand one hundred dollars ($14,100) of net income or any part thereof, six percent (6%);

(6) On net income of thirty-five thousand one hundred dollars ($35,100) and above, seven percent (7%);

(7) For tax years beginning on and after January 1, 2016, every resident, individual, trust, or estate having net income greater than or equal to twenty-one thousand dollars ($21,000), but less than or equal to seventy-five thousand dollars ($75,000), shall determine the amount of income tax due under this subsection in accordance with the table set forth below:

From	Less Than or Equal To	Rate
$0	$4,299	0.9%
$4,300	$8,399	2.5%

$8,400	$12,599	3.5%
$12,600	$20,999	4.5%
$21,000	$35,099	5%
$35,100	$75,000	6%

(8) For tax years beginning on and after January 1, 2015, every resident, individual, trust, or estate having net income of less than twenty-one thousand dollars ($21,000) shall determine the amount of income tax due under this subsection in accordance with the table set forth below:

From	Less Than or Equal To	Rate
$0	$4,299	0.9%
$4,300	$8,399	2.4%
$8,400	$12,599	3.4%
$12,600	$20,999	4.4%

(9) For tax years beginning on and after January 1, 2016, every resident, individual, trust, or estate having net income of more than seventy-five thousand dollars ($75,000) shall determine the amount of income tax due under this subsection in accordance with the table set forth below:

From	Less Than or Equal To	Rate
$0	$4,299	0.9%
$4,300	$8,399	2.5%
$8,400	$12,599	3.5%
$12,600	$20,999	4.5%
$21,000	$35,099	6%
$35,100 and above		6.9%

(10) For tax years beginning on and after January 1, 2016, every resident, individual, trust, or estate having net income of more than seventy-five thousand dollars ($75,000) but not more than eighty thousand dollars ($80,000), shall reduce the amount of income tax due as determined under subdivision (a)(9) of this section by deducting a bracket adjustment amount in accordance with the table set forth below:

From	Equal To	Bracket Adjustment Amount
$75,001	$76,000	$440
$76,001	$77,000	$340

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$77,001	$78,000	$240
$78,001	$79,000	$140
$79,001	$80,000	$40
$80,001 and above		$0

(11) The tables set forth in subdivisions (a)(1)-(a)(10) of this section shall be adjusted annually in accordance with the method set forth in subsection (d) of this section.

(b) However, no state income tax shall be due this state from a trust or estate created by a nonresident donor, trustor, or settlor, or by a nonresident testator even though administered by a resident trustee or personal representative except on income derived from:

(1) Lands situated in this state, including gains from any sale thereof;

(2) Any interest in lands situated in this state, including, without limitation, chattels real, including gains from any sale thereof;

(3) Tangible personal property located in Arkansas, including gains from any sale thereof; and

(4) Unincorporated businesses domiciled in Arkansas.

(c) No income tax shall be due the State of Arkansas from a nonresident beneficiary on income received from a trust being administered by a resident trustee except on income derived by the trust from:

(1) Lands situated in this state, including gains from any sale thereof;

(2) Any interest in lands situated in this state, including, without limitation, chattels real, including gains from any sale thereof;

(3) Tangible personal property located in Arkansas, including gains from any sale thereof; and

(4) Unincorporated businesses domiciled in Arkansas.

(d)(1) The Director of the Department of Finance and Administration shall prescribe annually a table which shall apply in lieu of the table contained in subsection (a) of this section with respect to each succeeding taxable year. The director shall increase the minimum and maximum dollar amounts for each rate bracket, rounding to the nearest one hundred dollars ($100), for which a tax is imposed under the table by the cost-of-living adjustment for each calendar year and by not changing the rate applicable to any rate bracket as adjusted.

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(2) For purposes of subdivision (d)(1) of this section, the cost-of-living adjustment for a calendar year is the percentage, if any, by which the CPI for the current calendar year exceeds the CPI for the preceding calendar year, not to exceed three percent (3%). The CPI for any calendar year is the average of the Consumer Price Index as of the close of the twelve-month period ending on August 31 of such calendar year. "Consumer Price Index" means the last Consumer Price Index for All Urban Consumers published by the United States Department of Labor.

(3) The new tables, as adjusted annually, shall be used by the director in preparing the income tax withholding tables pursuant to § 26-51-907.

Credits

Acts of 1929, Act 118, Art. 2, § 3; Acts of 1957, Act 20, § 1; Acts of 1961, Act 34, § 1; Acts of 1967, Act 46, § 1; Acts of 1971, Act 221, § 1; Acts of 1973, Act 215, §§ 1, 2; Acts of 1997, Act 328, § 5; Acts of 2013, Act 1459, §§ 1, 2, eff. Aug. 16, 2013; Acts of 2015, Act 22, § 2, eff. Feb. 6, 2015.

Formerly Pope's Dig., § 14026; A.S.A. 1947, § 84-2003.

Notes of Decisions (20)

A.C.A. § 26-51-201, AR ST § 26-51-201
Current through 2014 2nd Ex. Sess. and the Nov. 4, 2014, election, including changes made by the Ark. Code Rev. Comm. received through 3/1/2015. Also included are 2015 Regular Session laws effective through 3/20/15 the from the 2015 Reg. Sess. of the 90th Arkansas General Assembly.

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West's Arkansas Code Annotated
Title 26. Taxation
Subtitle 5. State Taxes (Chapters 50 to 71)
Chapter 53. Compensating or Use Taxes (Refs & Annos)
Subchapter 1. Compensating Tax Act (Refs & Annos)

A.C.A. § 26-53-131

§ 26-53-131. Taxes paid in other states

Effective: July 27, 2011
Currentness

(a)(1)(A)(i) The provisions of this subchapter shall not apply to any tangible personal property or taxable services used, consumed, distributed, or stored in this state upon which a like tax equal to or greater than the tax imposed by this subchapter has been paid in another state.

(ii) Proof of payment of the tax shall be made according to the rules and regulations promulgated by the Director of the Department of Finance and Administration.

(B) If the amount of tax paid in another state is less than the amount of Arkansas compensating tax imposed on the property or services by this subchapter, then the taxpayer shall pay to the director an amount of Arkansas compensating tax sufficient to make the combined amount of tax paid in the other state and this state equal to the total amount of Arkansas compensating tax that would be due if no tax on the property or services had been paid to any other state.

(2) No credit shall be given under this section for taxes paid on the property or services in another state if that state does not grant credit for taxes paid on similar tangible personal property or services in this state.

(b) The provisions of this section shall be cumulative to the provisions of this subchapter and shall not be construed as repealing or modifying any of the provisions of this subchapter.

(c) A credit is not allowed for sales or use taxes paid to another state with respect to the purchase of a motor vehicle, trailer, or semitrailer that was first registered by the purchaser in Arkansas.

Credits

Acts of 1989, Act 395, § 3; Acts of 1989 (3rd Ex. Sess.), Act 9, § 2; Acts of 2003, Act 1273, § 31, eff. Jan. 1, 2008; Acts of 2005, Act 2008, § 1, eff. Aug. 12, 2005; Acts of 2007, Act 180, § 1, eff. June 30, 2007; Acts of 2009, Act 655, § 37, eff. July 31, 2009; Acts of 2011, Act 983, § 12, eff. July 27, 2011.

A.C.A. § 26-53-131, AR ST § 26-53-131
Current through 2014 2nd Ex. Sess. and the Nov. 4, 2014, election, including changes made by the Ark. Code Rev. Comm. received through 3/1/2015. Also included are 2015 Regular Session laws effective through 3/20/15 the from the 2015 Reg. Sess. of the 90th Arkansas General Assembly.

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West's Annotated California Codes
Revenue and Taxation Code (Refs & Annos)
Division 2. Other Taxes (Refs & Annos)
Part 10. Personal Income Tax (Refs & Annos)
Chapter 2. Imposition of Tax (Refs & Annos)

West's Ann.Cal.Rev. & T.Code § 17041

§ 17041. Rates; inflation adjustment; adjusted gross income

Effective: January 1, 2011
Currentness

(a)(1) There shall be imposed for each taxable year upon the entire taxable income of every resident of this state who is not a part-year resident, except the head of a household as defined in Section 17042, taxes in the following amounts and at the following rates upon the amount of taxable income computed for the taxable year as if the resident were a resident of this state for the entire taxable year and for all prior taxable years for any carryover items, deferred income, suspended losses, or suspended deductions:

If the taxable income is:	The tax is:
Not over $3,650	1% of the taxable income
Over $3,650 but not over $8,650	$36.50 plus 2% of the excess over $3,650
Over $8,650 but not over $13,650	$136.50 plus 4% of the excess over $8,650
Over $13,650 but not over $18,950	$336.50 plus 6% of the excess over $13,650
Over $18,950 but not over $23,950	$654.50 plus 8% of the excess over $18,950
Over $23,950	$1,054.50 plus 9.3% of the excess over $23,950

(2) For taxable years beginning on or after January 1, 2009, and before January 1, 2011, the percentages specified in the table in paragraph (1) shall be increased by adding 0.25 percent to each percentage.

(b)(1) There shall be imposed for each taxable year upon the taxable income of every nonresident or part-year resident, except the head of a household as defined in Section 17042, a tax as calculated in paragraph (2).

(2) The tax imposed under paragraph (1) shall be calculated by multiplying the "taxable income of a nonresident or part-year resident," as defined in subdivision (i), by a rate (expressed as a percentage) equal to the tax computed under subdivision (a) on the entire taxable income of the nonresident or part-year resident as if the nonresident or part-year resident were a resident of this state for the taxable year and as if the nonresident or part-year resident were a resident of this state for all prior taxable years for any carryover items, deferred income, suspended losses, or suspended deductions, divided by the amount of that income.

(c)(1) There shall be imposed for each taxable year upon the entire taxable income of every resident of this state who is not a part-year resident for that taxable year, when the resident is the head of a household, as defined in Section 17042, taxes in the following amounts and at the following rates upon the amount of taxable income computed for the taxable year as if the resident were a resident of the state for the entire taxable year and for all prior taxable years for carryover items, deferred income, suspended losses, or suspended deductions:

If the taxable income is:	The tax is:
Not over $7,300	1% of the taxable income
Over $7,300 but not over $17,300	$73 plus 2% of the excess over $7,300
Over $17,300 but not over $22,300	$273 plus 4% of the excess over $17,300
Over $22,300 but not over $27,600	$473 plus 6% of the excess over $22,300
Over $27,600 but not over $32,600	$791 plus 8% of the excess over $27,600

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Over $32,600.. $1,191 plus 9.3% of the excess over $32,600

(2) For taxable years beginning on or after January 1, 2009, and before January 1, 2011, the percentages specified in the table in paragraph (1) shall be increased by adding 0.25 percent to each percentage.

(d)(1) There shall be imposed for each taxable year upon the taxable income of every nonresident or part-year resident when the nonresident or part-year resident is the head of a household, as defined in Section 17042, a tax as calculated in paragraph (2).

(2) The tax imposed under paragraph (1) shall be calculated by multiplying the "taxable income of a nonresident or part-year resident," as defined in subdivision (i), by a rate (expressed as a percentage) equal to the tax computed under subdivision (c) on the entire taxable income of the nonresident or part-year resident as if the nonresident or part-year resident were a resident of this state for the taxable year and as if the nonresident or part-year resident were a resident of this state for all prior taxable years for any carryover items, deferred income, suspended losses, or suspended deductions, divided by the amount of that income.

(e) There shall be imposed for each taxable year upon the taxable income of every estate, trust, or common trust fund taxes equal to the amount computed under subdivision (a) for an individual having the same amount of taxable income.

(f) The tax imposed by this part is not a surtax.

(g)(1) Section 1(g) of the Internal Revenue Code, [1] relating to certain unearned income of children taxed as if parent's income, shall apply, except as otherwise provided.

(2) Section 1(g)(7)(B)(ii)(II) of the Internal Revenue Code is modified, for purposes of this part, by substituting "1 percent" for "10 percent."

(h) For each taxable year beginning on or after January 1, 1988, the Franchise Tax Board shall recompute the income tax brackets prescribed in subdivisions (a) and (c). That computation shall be made as follows:

(1) The California Department of Industrial Relations shall transmit annually to the Franchise Tax Board the percentage change in the California Consumer Price Index for all items from June of the prior calendar year to June of the current calendar year, no later than August 1 of the current calendar year.

(2) The Franchise Tax Board shall do both of the following:

(A) Compute an inflation adjustment factor by adding 100 percent to the percentage change figure that is furnished pursuant to paragraph (1) and dividing the result by 100.

(B) Multiply the preceding taxable year income tax brackets by the inflation adjustment factor determined in subparagraph (A) and round off the resulting products to the nearest one dollar ($1).

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(i)(1) For purposes of this part, the term "taxable income of a nonresident or part-year resident" includes each of the following:

(A) For any part of the taxable year during which the taxpayer was a resident of this state (as defined by Section 17014), all items of gross income and all deductions, regardless of source.

(B) For any part of the taxable year during which the taxpayer was not a resident of this state, gross income and deductions derived from sources within this state, determined in accordance with Article 9 of Chapter 3 (commencing with Section 17301) and Chapter 11 (commencing with Section 17951).

(2) For purposes of computing "taxable income of a nonresident or part-year resident" under paragraph (1), the amount of any net operating loss sustained in any taxable year during any part of which the taxpayer was not a resident of this state shall be limited to the sum of the following:

(A) The amount of the loss attributable to the part of the taxable year in which the taxpayer was a resident.

(B) The amount of the loss which, during the part of the taxable year the taxpayer is not a resident, is attributable to California source income and deductions allowable in arriving at taxable income of a nonresident or part-year resident.

(3) For purposes of computing "taxable income of a nonresident or part-year resident" under paragraph (1), any carryover items, deferred income, suspended losses, or suspended deductions shall only be includable or allowable to the extent that the carryover item, deferred income, suspended loss, or suspended deduction was derived from sources within this state, calculated as if the nonresident or part-year resident, for the portion of the year he or she was a nonresident, had been a nonresident for all prior years.

Credits

(Added by Stats.1955, c. 939, p. 1659, § 2, eff. June 6, 1955. Amended by Stats.1959, c. 830, p. 2854, § 1, eff. June 8, 1959; Stats.1967, c. 963, p. 2478, § 30, eff. July 29, 1967; Stats.1971, 1st Ex.Sess., c. 1, p. 4897, § 11, eff. Dec. 8, 1971, operative Jan. 1, 1973; Stats.1973, c. 1180, p. 2462, § 1, eff. Oct. 2, 1973; Stats.1978, c. 569, p. 1925, § 1, eff. Aug. 30, 1978; Stats.1979, c. 1198, p. 4707, § 1, eff. Sept. 30, 1979; Initiative Measure (Prop. 7, § 1, approved June 8, 1982); Stats.1982, c. 327, § 179, eff. June 30, 1982; Stats.1983, c. 488, § 5, eff. July 28, 1983; Stats.1984, c. 938, § 1.7, eff. Sept. 7, 1984; Stats.1987, c. 1138, § 15, eff. Sept. 25, 1987; Stats.1988, c. 627, § 1; Stats.1989, c. 581, § 1, eff. Sept. 21, 1989; Stats.1989, c. 1352, § 7, eff. Oct. 2, 1989; Stats.1991, c. 117 (S.B.169), § 10, eff. July 16, 1991; Stats.1991, c. 474 (A.B.31), § 5, eff. Oct. 2, 1991; Stats.1992, c. 698 (A.B.2425), § 3, eff. Sept. 15, 1992; Stats.1993, c. 877 (S.B.673), § 8, eff. Oct. 6, 1993; Stats.1997, c. 611 (S.B.455), § 3, eff. Oct. 3, 1997; Stats.2001, c. 920 (A.B.1115), § 2.5, eff. Oct. 14, 2001; Stats.2003, c. 62 (S.B.600), § 280; Stats.2004, c. 13 (A.B.1740), § 1, eff. Feb. 11, 2004; Stats.2005, c. 22 (S.B.1108), § 183; Stats.2009-2010, 3rd Ex.Sess., c. 18 (A.B.3), § 9, eff. Feb. 20, 2009; Stats.2010, c. 14 (S.B.401), § 5.)

Notes of Decisions (23)

Footnotes

1 Internal Revenue Code sections are in Title 26 of the U.S.C.A.

West's Ann. Cal. Rev. & T. Code § 17041, CA REV & TAX § 17041
Current with urgency legislation through Ch. 2 of 2015 Reg.Sess.

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West's Annotated California Codes
Revenue and Taxation Code (Refs & Annos)
Division 2. Other Taxes (Refs & Annos)
Part 10. Personal Income Tax (Refs & Annos)
Chapter 12. Credit for Taxes Paid (Refs & Annos)

West's Ann.Cal.Rev. & T.Code § 18001

§ 18001. Residents

Effective: January 1, 2003
Currentness

(a) Subject to the following conditions, residents shall be allowed a credit against the "net tax" (as defined by Section 17039) for net income taxes imposed by and paid to another state (not including any preference, alternative, or minimum tax comparable to the tax imposed by Section 17062) on income taxable under this part:

(1) The credit shall be allowed only for taxes paid to the other state (not including any preference, alternative, or minimum tax comparable to the tax imposed by Section 17062) on income derived from sources within that state which is taxable under its laws irrespective of the residence or domicile of the recipient.

This paragraph shall not apply to residents to whom subdivision (b) of Section 17014 applies.

(2) The credit shall not be allowed if the other state allows residents of this state a credit against the taxes imposed by that state (not including any preference, alternative, or minimum tax comparable to the tax imposed by Section 17062) for "net tax" (as defined by Section 17039) paid or payable under this part.

(3) The credit shall not exceed the proportion of the "net tax" (as defined by Section 17039) payable under this part as the income subject to tax in the other state (not including any preference, alternative, or minimum tax comparable to the tax imposed by Section 17062) and also taxable under this part bears to the taxpayer's entire income upon which the "net tax" (as defined by Section 17039) is imposed by this part.

(4) No credit shall be allowed under this section for any tax imposed by Section 17062.

(b) For purposes of this section, the amount of "net income taxes" paid to another state shall include the taxpayer's pro rata share of any taxes on, or according to, or measured by, income or profits paid or accrued, which were paid by an S corporation, as provided by Section 18006.

(c) For purposes of this section, "income derived from sources within that state" shall be determined by applying the nonresident sourcing rules for determining income from sources within this state, as specified in Chapter 11 (commencing with Section 17951), and the regulations thereunder.

Credits

(Added by Stats.1955, c. 939, p. 1784, § 2, eff. June 6, 1955. Amended by Stats.1957, c. 215, p. 877, § 1, eff. April 24, 1957; Stats.1971, Ex.Sess., c. 1, p. 4983, § 102, eff. Dec. 8, 1971; Stats.1974, c. 980, p. 2030, § 2, eff. Sept. 20, 1974; Stats.1988, c. 11, § 28, eff. Feb. 19, 1988; Stats.1988, c. 1465, § 11, eff. Sept. 28, 1988; Stats.1989, c. 362, § 5; Stats.1990, c. 1349 (S.B.1925), § 8, eff. Sept. 26, 1990; Stats.2002, c. 374 (A.B.2979), § 3.)

Notes of Decisions (25)

West's Ann. Cal. Rev. & T. Code § 18001, CA REV & TAX § 18001
Current with urgency legislation through Ch. 2 of 2015 Reg.Sess.

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West's Colorado Revised Statutes Annotated
Title 39. Taxation
Specific Taxes
Income Tax
Article 22. Income Tax (Refs & Annos)
Part 1. General (Refs & Annos)

C.R.S.A. § 39-22-104

§ 39-22-104. Income tax imposed on individuals, estates, and trusts--single rate--definitions--repeal

Effective: August 6, 2014
Currentness

(1) Subject to subsection (2) of this section, with respect to taxable years commencing on or after January 1, 1987, but prior to January 1, 1999, a tax of five percent is imposed on the federal taxable income, as determined pursuant to section 63 of the internal revenue code, of every individual, estate, and trust.

(1.5) Subject to subsection (2) of this section, with respect to taxable years commencing on or after January 1, 1999, but prior to January 1, 2000, a tax of four and three-quarters percent is imposed on the federal taxable income, as determined pursuant to section 63 of the internal revenue code, of every individual, estate, and trust.

(1.7) Except as otherwise provided in section 39-22-627, subject to subsection (2) of this section, with respect to taxable years commencing on or after January 1, 2000, a tax of four and sixty-three one hundredths percent is imposed on the federal taxable income, as determined pursuant to section 63 of the internal revenue code, of every individual, estate, and trust.

(2) Prior to the application of the rate of tax prescribed in subsection (1), (1.5), or (1.7) of this section, the federal taxable income shall be modified as provided in subsections (3) and (4) of this section.

(3) There shall be added to the federal taxable income:

(a) Any federal net operating loss deduction carried over from a taxable year beginning prior to January 1, 1987;

(b) An amount equal to the interest income which is excluded from gross income for federal income tax purposes pursuant to section 103(a) of the internal revenue code less amortization of premium on obligations of any state or any political subdivision thereof, other than interest income on obligations of the state of Colorado or any political subdivision thereof which are issued on or after May 1, 1980, and other than interest income on obligations of the state of Colorado or any political subdivision thereof which were issued prior to May 1, 1980, to the extent that such interest is specifically exempt from income taxation under the laws of the state of Colorado authorizing the issuance of such obligations. The amount of such interest shall be the net amount after reduction by the amount of the deductions related thereto which are required by the internal revenue code to be allocated to such classes of interest.

(c) The deduction allowed by section 402(e)(3) of the internal revenue code; [1]

(d)(I) For income tax years beginning on and after January 1, 1992, for those taxpayers who deduct state income taxes pursuant to section 164(a)(3) of the internal revenue code, [2] an amount equal to the deduction claimed; except that such amount shall be limited to the amount required to reduce the federal itemized amount computed under section 161 of the internal revenue code to the amount of the standard deduction allowable under section 63(c) of the internal revenue code. [3]

(II) For income tax years beginning on or after January 1, 2000, for two individuals whose federal taxable income is determined on a joint federal return and who deduct state income taxes pursuant to section 164(a)(3) of the internal revenue code, an amount equal to the deduction claimed; except that such amount shall be limited to the amount required to reduce the federal itemized amount computed under section 161 of the internal revenue code to an amount equal to double the amount of the basic standard deduction allowable under section 63(c)(2) of the internal revenue code in the case of an individual federal return for an individual who is not the head of a household plus any additional standard deduction allowable under section 63(c)(3) of the internal revenue code, if applicable.

(e)(I) Any expenses incurred by a taxpayer with respect to expenditures made at, or payments made to, a club licensed pursuant to section 12-47-416, C.R.S., which has a policy to restrict membership on the basis of sex, sexual orientation, marital status, race, creed, religion, color, ancestry, or national origin. Any such club shall provide on each receipt furnished to a taxpayer a printed statement as follows:

The expenditures covered by this receipt are nondeductible for state income tax purposes.

(II) The general assembly finds, determines, and declares that the people of the state of Colorado desire to promote and achieve tax equity and fairness among all the state's citizens and further desire to conform to the public policy of nondiscrimination. The general assembly further declares that the provisions of this paragraph (e) are enacted for these reasons and for no other purpose.

(f) Any amount withdrawn from a medical savings account pursuant to section 39-22-504.7(3)(b)(II) or (3)(b)(III);

(g) For the income tax years commencing on or after January 1, 2000, an amount equal to the charitable contribution deduction allowed by section 170 of the internal revenue code [4] to the extent such deduction includes a contribution of real property to a charitable organization for a conservation purpose for which an income tax credit is claimed pursuant to section 39-22-522;

(h) Repealed by Laws 2010, Ch. 412, § 1, eff. July 1, 2010; also repealed by Laws 2010, Ch. 133, § 2, eff. Aug. 11, 2010.

(i) An amount equal to a business expense for labor services that is deducted pursuant to section 162(a)(1) of the internal revenue code but that is prohibited from being claimed as a deductible business expense for state income tax purposes pursuant to section 39-22-529.

(j) For income tax years commencing on or after January 1, 2015, but before January 1, 2020, an amount equal to the charitable contribution deduction allowed by section 170 of the internal revenue code to the extent such deduction includes a food contribution during the tax year to a hunger-relief charitable organization for which an income tax credit is claimed pursuant to section 39-22-536.

(4) There shall be subtracted from federal taxable income:

(a) An amount equal to any interest income on obligations of the United States and its possessions to the extent included in federal taxable income;

(a.5) For income tax years commencing on and after January 1, 1990, an amount equal to any interest income earned on Colorado investment deposits issued by qualified financial institutions pursuant to article 37 of title 11, C.R.S., as that article existed prior to its repeal on July 1, 2004, to the extent included in federal taxable income, but not to exceed twenty thousand dollars in any taxable year;

(b) To the extent included in federal adjusted gross income, the portion of any gain or loss from the sale or other disposition of property having a higher adjusted basis for Colorado income tax purposes than for federal income tax purposes on the date such property was sold or disposed of in a transaction in which gain or loss was recognized for purposes of federal income tax that does not exceed such difference in basis;

(c) The amount necessary to prevent the taxation under this article of any annuity or other amount of income or gain which was properly included in income or gain and was taxed under the laws of this state for a prior tax year, to the taxpayer, or to a decedent by reason of whose death the taxpayer acquired the right to receive the income or gain, or to a trust or estate from which the taxpayer received the income or gain;

(d) The net operating loss deduction allowed under section 39-22-504 to the extent carried over from a taxable year beginning prior to January 1, 1987;

(e) The amount of any refund or credit for overpayment of income taxes imposed by this state or any other taxing jurisdiction to the extent included in gross income for federal income tax purposes but not previously allowed as a deduction for Colorado income tax purposes;

(f)(I) For income tax years commencing on or after January 1, 1989, amounts received as pensions or annuities from any source by any individual who is fifty-five years of age or older at the close of the taxable year, to the extent included in federal adjusted gross income or as added in paragraph (c) of subsection (3) of this section;

(II) For income tax years commencing on or after January 1, 1989, amounts received as pensions or annuities from any source by any individual who is less than fifty-five years of age at the close of the taxable year if such benefits are received because of the death of the person originally entitled to receive such benefits and only to the extent such benefits are included in federal adjusted gross income or as added in paragraph (c) of subsection (3) of this section;

(III) For income tax years commencing on or after January 1, 1989, amounts subtracted under this paragraph (f) shall not exceed twenty thousand dollars per tax year; except that, for income tax years commencing on or after January 1, 2000, amounts subtracted under subparagraph (I) of this paragraph (f) shall not exceed twenty-four thousand dollars per tax year for any individual who is sixty-five years of age or older at the close of the taxable year. For the purpose of determining the exclusion allowed by this paragraph (f), in the case of a joint return, social security benefits included in federal taxable income shall be apportioned in a ratio of the gross social security benefits of each taxpayer to the total gross social security benefits of both

taxpayers. For the purposes of this paragraph (f), "pensions and annuities" means retirement benefits that are periodic payments attributable to personal services performed by an individual prior to his or her retirement from employment and that arise from an employer-employee relationship, from service in the uniformed services of the United States, or from contributions to a retirement plan which are deductible for federal income tax purposes. "Pensions and annuities" includes lump-sum distributions from pension and profit sharing plans to the extent that such distributions qualify for the tax-averaging computation under section 402(e)(1) of the internal revenue code, distributions from individual retirement arrangements and self-employed retirement accounts to the extent that such distributions are not deemed to be premature distributions for federal income tax purposes, amounts received from fully matured privately purchased annuities, social security benefits, and amounts paid from any such sources by reason of permanent disability or death of the person entitled to receive the benefits.

(g) Repealed by Laws 1989, H.B. 1354, § 3.

(h) Any amount contributed to a medical savings account by an employer pursuant to section 39-22-504.7(2)(e), to the extent such amount is not claimed as a deduction on the taxpayer's federal tax return;

(i)(I) For income tax years commencing on or after January 1, 1998, an amount equal to the portion attributable to interest and other income of a distribution under a qualified state tuition program that is distributed for the purpose of meeting qualified higher education expenses of a designated beneficiary, to the extent such amount is included in federal taxable income;

(II) For income tax years commencing on or after January 1, 2001, an amount equal to all payments or contributions made during the taxable year under an advance payment contract, to a savings trust account, or otherwise in connection with a qualified state tuition program established by collegeinvest created in section 23-3.1-203, C.R.S., or to a qualified state tuition program that is affiliated with an educational institution in the state and that is established and maintained pursuant to section 529 of the internal revenue code or any successor section;

(III) No exclusion shall be allowed pursuant to this paragraph (i) to the extent that such payments or contributions are excluded from the taxpayer's federal taxable income for the taxable year. Any exclusion taken under this paragraph (i) shall be subject to recapture in the taxable year or years in which any distribution, refund, or any other withdrawal is made pursuant to an advance payment contract, from a savings trust account, or otherwise in connection with a qualified state tuition program for any reason other than:

(A) To pay qualified higher education expenses;

(B) As a result of the beneficiary's death or disability; or

(C) As a result of receiving a scholarship and as long as the aggregate amount of distributions, refunds, or withdrawals made pursuant to this sub-subparagraph (C) do not exceed the amount of the scholarship provided during such tax year.

(IV) As used in this paragraph (i), "designated beneficiary" means a designated beneficiary as defined in section 529(e)(1) of the internal revenue code, [5] "qualified state tuition program" means a qualified state tuition program as defined in section 529(b) of the internal revenue code, [6] and "qualified higher education expenses" means qualified higher education expenses as defined in section 529(e)(3) of the internal revenue code. [7]

(j) For income tax years commencing on or after January 1, 2000, for two individuals whose federal taxable income is determined on a joint federal return and who claim the basic standard deduction allowable under section 63(c)(2) of the internal revenue code, an amount equal to the difference between an amount equal to double the amount of the basic standard deduction allowable under section 63(c)(2) of the internal revenue code in the case of an individual federal return for an individual who is not the head of a household and the amount of the basic standard deduction allowable under section 63(c)(2) of the internal revenue code in the case of a joint federal return.

(k) For income tax years commencing on or after January 1, 2000, for two individuals whose federal taxable income is determined on a joint federal return and who claim itemized deductions in an amount that is greater than the amount of the basic standard deduction allowable under section 63(c)(2) of the internal revenue code plus any additional standard deduction allowable under section 63(c)(3) of the internal revenue code, if applicable, in the case of a joint federal return, but less than double the amount of the basic standard deduction allowable under section 63(c)(2) of the internal revenue code plus any additional standard deduction allowable under section 63(c)(3) of the internal revenue code, if applicable, in the case of an individual federal return for an individual who is not the head of a household, an amount equal to the difference between an amount equal to double the amount of such basic standard deduction allowable in the case of an individual federal return for an individual who is not the head of a household plus any additional standard deduction allowable to either individual and the amount of the itemized deductions claimed by the resident individuals.

(l) Repealed by Laws 2010, Ch. 412, § 1, eff. July 1, 2010.

(l.5) Repealed by Laws 2010, Ch. 412, § 1, eff. July 1, 2010.

(m)(I) Except as provided in subparagraph (VII) of this paragraph (m), for any income tax year commencing on or after January 1, 2001, for any individual who claims the basic standard deduction allowed under section 63(c)(2) of the internal revenue code on the individual's federal return and, therefore, cannot claim an itemized deduction for charitable contributions pursuant to section 170 of the internal revenue code, an amount equal to the amount of any deduction based upon the aggregate amount of charitable contributions in excess of five hundred dollars that the individual could have claimed pursuant to section 170 of the internal revenue code if the individual had not claimed the basic standard deduction.

(II) Any state income tax modification allowed pursuant to the provisions of subparagraph (I) of this paragraph (m) shall be published in rules promulgated by the executive director in accordance with article 4 of title 24, C.R.S., and shall be included in income tax forms for that taxable year.

(III) Repealed by Laws 2010, Ch. 412, § 1, eff. July 1, 2010.

(IV) Repealed by Laws 2010, Ch. 412, § 1, eff. July 1, 2010.

(V) Repealed by Laws 2010, Ch. 412, § 1, eff. July 1, 2010.

(VI) Repealed by Laws 2010, Ch. 412, § 1, eff. July 1, 2010.

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(VII) For any income tax year commencing on or after January 1, 2015, but before January 1, 2020, any individual who claims an income tax credit allowed in section 39-22-536 may not claim the deduction set forth in this paragraph (m) for the food contribution to the hunger-relief charitable organization.

(n)(I)(A) For income tax years commencing on or after January 1, 2009, but prior to January 1, 2014, an amount equal to fifty percent of a landowner's costs incurred in performing wildfire mitigation measures in that income tax year on his or her property located within the state; except that the amount of the deduction claimed in an income tax year shall not exceed two thousand five hundred dollars or the total amount of the landowner's federal taxable income for the income tax year for which the deduction is claimed, whichever is less.

(B) In the case of two taxpayers filing a joint return, the amount subtracted from federal taxable income shall not exceed two thousand five hundred dollars in any taxable year. In the case of two taxpayers who may legally file a joint return but actually file separate returns, only one of the taxpayers may claim the deduction specified in this paragraph (n).

(C) In the case of real property owned as tenants in common, the deduction allowed pursuant to this paragraph (n) shall only be allowed to one of the individuals of the ownership group.

(II) A landowner who performs wildfire mitigation measures on his or her real property located within the state may claim the deduction authorized by this paragraph (n) if the wildfire mitigation measures are performed in a wild land-urban interface area and are authorized by a community wildfire protection plan adopted by a local government within the interface area.

(III) For purposes of this paragraph (n), unless the context otherwise requires:

(A) "Colorado state forest service" means the Colorado state forest service identified in section 23-31-310(2)(c), C.R.S.

(B) "Community wildfire protection plan" means a plan approved by any local government entities, local fire departments, and the Colorado state forest service that meets the definition of a community wildfire protection plan in the federal "Healthy Forests Restoration Act of 2003", Pub.L. No. 108-148, and meets the minimum requirements of collaboration by local and state government representatives with consultation by federal agencies and other interested parties, prioritized fuel reduction areas with identified types of treatments, and treatment of structural ignitability with recommendations to reduce ignitability.

(C) "Costs" means any actual out-of-pocket expense incurred and paid by the landowner, documented by receipt, for performing wildfire mitigation measures. Costs do not include any inspection or certification fees, in-kind contributions, donations, incentives, or cost sharing associated with performing wildfire mitigation measures. Costs do not include expenses paid by the landowner from any grants awarded to the landowner for performing wildfire mitigation measures.

(D) "Landowner" means any owner of record of private land located within the state, including any easement, right-of-way, or estate in the land, and includes the heirs, successors, and assigns of such land, and shall not include any partnership, S corporation, or other similar entity that owns private land as an entity.

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(E) "Wildfire mitigation measures" means the creation of a defensible space around structures; the establishment of fuel breaks; the thinning of woody vegetation for the primary purpose of reducing risk to structures from wildland fire; or the secondary treatment of woody fuels by lopping and scattering, piling, chipping, removing from the site, or prescribed burning; so long as such activities meet or exceed any Colorado state forest service standards or any other applicable state rules.

(IV) This paragraph (n) is repealed, effective January 1, 2015.

(n.5)(I)(A) For income tax years commencing on or after January 1, 2014, but prior to January 1, 2025, an amount equal to fifty percent of a landowner's costs incurred in performing wildfire mitigation measures in that income tax year on his or her property located within the state; except that the amount of the deduction claimed in an income tax year shall not exceed two thousand five hundred dollars or the total amount of the landowner's federal taxable income for the income tax year for which the deduction is claimed, whichever is less.

(B) In the case of two taxpayers filing a joint return, the amount subtracted from federal taxable income shall not exceed two thousand five hundred dollars in any taxable year. In the case of two taxpayers who may legally file a joint return but actually file separate returns, only one of the taxpayers may claim the deduction specified in this paragraph (n.5).

(C) In the case of real property owned as tenants in common, the deduction allowed pursuant to this paragraph (n.5) shall only be allowed to one of the individuals of the ownership group.

(II) A landowner who performs wildfire mitigation measures on his or her real property located within the state may claim the deduction authorized by this paragraph (n.5) if the wildfire mitigation measures are performed in a wildland-urban interface area.

(III) For purposes of this paragraph (n.5):

(A) "Colorado state forest service" means the Colorado state forest service identified in section 23-31-302, C.R.S.

(B) "Costs" means any actual out-of-pocket expense incurred and paid by the landowner, documented by receipt, for performing wildfire mitigation measures. "Costs" do not include any inspection or certification fees, in-kind contributions, donations, incentives, or cost sharing associated with performing wildfire mitigation measures. "Costs" do not include expenses paid by the landowner from any grants awarded to the landowner for performing wildfire mitigation measures.

(C) "Landowner" means any owner of record of private land located within the state, including any easement, right-of-way, or estate in the land, and includes the heirs, successors, and assigns of such land, and shall not include any partnership, S corporation, or other similar entity that owns private land as an entity.

(D) "Wildfire mitigation measures" means the creation of a defensible space around structures; the establishment of fuel breaks; the thinning of woody vegetation for the primary purpose of reducing risk to structures from wildland fire; or the secondary treatment of woody fuels by lopping and scattering, piling, chipping, removing from the site, or prescribed burning; so long as such activities meet or exceed any Colorado state forest service standards or any other applicable state rules.

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(IV) This paragraph (n.5) is repealed, effective January 1, 2026.

(o) For income tax years commencing on or after January 1, 2011, an amount equal to any amount received as employer matching contributions to an adult learner's individual trust account or savings account made pursuant to part 3 of article 3.1 of title 23, C.R.S.;

(p) For income tax years commencing on or after January 1, 2014, any amount received as a grant from the military family relief fund created in section 28-3-1502, C.R.S., to the extent that it is included in federal taxable income;

(q) For income tax years commencing on or after January 1, 2013, an amount equal to any amount received as compensation for an exonerated person pursuant to section 13-65-103, C.R.S., on or after January 1, 2014, except as to those portions of the judgment awarded as attorney fees for bringing a claim under such section;

(r) For income tax years commencing on or after January 1, 2014, if a taxpayer is licensed under the "Colorado Medical Marijuana Code", article 43.3 of title 12, C.R.S., an amount equal to any expenditure that is eligible to be claimed as a federal income tax deduction but is disallowed by section 280E of the internal revenue code because marijuana is a controlled substance under federal law;

(s) For income tax years commencing on or after January 1, 2014, if a taxpayer is licensed under the "Colorado Retail[8] Marijuana Code", article 43.4 of title 12, C.R.S., an amount equal to any expenditure that is eligible to be claimed as a federal income tax deduction but is disallowed by section 280E of the federal internal revenue code because marijuana is a controlled substance under federal law.

(t)(I) For income tax years commencing on or after January 1, 2015, compensation that would be subject to withholding under section 39-22-604, received by a nonresident individual for performing disaster-related work in the state during a disaster period.

(II) For purposes of this paragraph (t):

(A) "Declared state disaster emergency" means a disaster or emergency event for which the governor has issued an executive order declaring a disaster emergency.

(B) "Disaster period" means a period that begins with the day of the governor's executive order declaring a state disaster emergency and that extends for a period of sixty calendar days after the expiration of the governor's executive order.

(C) "Disaster-related work" means repairing, renovating, installing, building, or rendering services that relate to infrastructure that has been damaged, impaired, or destroyed by a declared state disaster emergency or providing emergency medical, firefighting, law enforcement, hazardous material, search and rescue, or other emergency service related to a declared state disaster emergency.

(D) "Infrastructure" means property and equipment owned or used by communications networks, gas and electric utilities, water pipelines, and public roads and bridges and related support facilities that service multiple customers or citizens, including but not limited to real and personal property such as buildings, offices, lines, poles, pipes, structures, and equipment.

(5) Any person who is required by the terms of this article to file a return whose only activities in Colorado consist of making sales, who does not own or rent real estate within the state of Colorado, and whose annual gross sales in or into this state amount to not more than one hundred thousand dollars may elect to pay a tax of one-half of one percent of his annual gross receipts derived from sales in or into Colorado in lieu of paying an income tax.

Credits

Repealed and reenacted by Laws 1987, H.B.1331, § 2. Amended by Laws 1988, H.B.1201, § 2; Laws 1989, H.B.1354, §§ 1, 3; Laws 1990, H.B.90-1178, § 2, eff. May 31, 1990; Laws 1992, H.B.92-1278, § 2, eff. June 1, 1992; Laws 1992, H.B.92-1344, § 37, eff. May 28, 1992; Laws 1994, H.B.94-1058, §§ 2, 3, eff. Jan. 1, 1995; Laws 1997, H.B.97-1076, § 20, eff. July 1, 1997; Laws 1997, S.B.97-45, § 1, eff. Aug. 6, 1997; Laws 1999, Ch. 213, § 1, eff. May 24, 1999; Laws 1999, Ch. 237, §§ 1, 2, eff. Aug. 4, 1999; Laws 1999, Ch. 247, § 2, eff. Aug. 4, 1999; Laws 1999, Ch. 314, § 1, eff. Aug. 4, 1999; Laws 1999, Ch. 333, § 1, eff. Aug. 4, 1999; Laws 2000, Ch. 163, § 1, eff. May 22, 2000; Laws 2000, Ch. 219, § 1, eff. Aug. 2, 2000; Laws 2000, Ch. 274, § 3, eff. Aug. 2, 2000; Laws 2000, Ch. 295, § 1, eff. May 31, 2000; Laws 2000, Ch. 296, § 1, eff. Aug. 2, 2000; Laws 2000, Ch. 369, § 98, eff. Aug. 2, 2000; Laws 2001, Ch. 133, § 2, eff. Aug. 8, 2001; Laws 2001, Ch. 317, § 54, eff. June 5, 2001; Laws 2004, Ch. 96, § 8, eff. April 7, 2004; Laws 2004, Ch. 179, § 36, eff. July 1, 2004; Laws 2004, Ch. 316, § 88, eff. Aug. 4, 2004; Laws 2005, Ch. 57, § 1, eff. April 8, 2005; Laws 2005, Ch. 304, § 1; Laws 2006, 1st Ex.Sess., Ch. 1, § 1, eff. upon proclamation of the governor, Dec. 31, 2006; Laws 2008, Ch. 334, § 1, eff. Aug. 5, 2008; Laws 2008, Ch. 341, § 35, eff. May 29, 2008; Laws 2010, Ch. 133, § 2, eff. Aug. 11, 2010; Laws 2010, Ch. 396, § 8, eff. June 9, 2010; Laws 2010, Ch. 412, §§ 1, 7, eff. July 1, 2010; Laws 2013, Ch. 27, § 1, eff. Aug. 7, 2013; Laws 2013, Ch. 91, § 1, eff. April 4, 2013; Laws 2013, Ch. 327, § 1, eff. Aug. 7, 2013; Laws 2013, Ch. 332, § 18, eff. May 28, 2013; Laws 2013, Ch. 409, § 5, eff. June 5, 2013; Laws 2014, Ch. 10, § 4, eff. Feb. 27, 2014; Laws 2014, Ch. 224, § 2, eff. Aug. 6, 2014; Laws 2014, Ch. 286, § 3, eff. May 30, 2014.

Notes of Decisions (7)

Footnotes

1 26 U.S.C.A. § 402(e)(3).

2 26 U.S.C.A. § 164(a)(3).

3 26 U.S.C.A. § 63(c).

4 26 U.S.C.A. § 170.

5 26 U.S.C.A. § 529(e)(1).

6 26 U.S.C.A. § 529(b).

7 26 U.S.C.A. § 529(e)(3).

8 So in original, "retail" should probably be capitalized.

C. R. S. A. § 39-22-104, CO ST § 39-22-104

Current through Ch. 2 of the First Regular Session of the 70th General Assembly (2015)

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C.R.S.A. § 39-22-108

§ 39-22-108. Credit for tax paid other states

Currentness

(1) With respect to all taxable years commencing on or after January 1, 1987, the amount of taxes on federal taxable income accrued to another state, the District of Columbia, or a territory or possession of the United States, on income derived by a resident individual, estate, or trust from sources in another state, the District of Columbia, or a territory or possession of the United States, shall be allowed as a credit against the tax computed under provisions of this article.

(2) The amount of credit taken under this section shall be subject to each of the following limitations:

(a) The amount of the credit for taxes on the federal taxable income taxed by another state, the District of Columbia, or a territory or possession of the United States shall not exceed the same proportion of the tax against which such credit is taken which the taxpayer's federal taxable income from the sources within such state, the District of Columbia, or a territory or possession of the United States bears to his entire federal taxable income for the same period;

(b) The total amount of the credit shall not exceed the same proportion of the tax against which such credit is taken which the taxpayer's federal taxable income from sources outside of Colorado bears to his entire federal taxable income for the same taxable year; and

(c) Federal taxable income shall be deemed to be from sources in another state in the same ratio as the modified federal adjusted gross income is from sources in such state.

(3) If accrued taxes when paid differ from the amounts claimed as credits by the taxpayer or if any tax paid is refunded in whole or in part, the taxpayer shall notify the executive director, who shall redetermine the amount of tax due for the years affected; the amount of tax, if any, found to be due upon such redetermination shall be paid by the taxpayer upon notice and demand or the amount of tax overpaid, if any, shall be credited or refunded to the taxpayer in accordance with the provisions of section 39-21-108. In the case of such a tax accrued but not paid, the executive director, as a condition precedent to the allowance of a credit, may require the taxpayer to deposit a surety bond or other security acceptable to the executive director in such amount as he may require, conditioned upon the payment by the taxpayer of any amount of tax found to be due upon any such redetermination.

(4) The credits provided for in this section, irrespective of the method of accounting employed by the taxpayer in keeping his books, shall be taken in the year in which the taxes of another state, the District of Columbia, or a territory or possession of the United States accrue, subject to the conditions prescribed in subsection (3) of this section.

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(5) The credits provided by this section shall be allowed only if the taxpayer furnishes to the executive director all information necessary for the verification and computation of such credits as the executive director, by regulation, may prescribe.

Credits

Repealed and reenacted by Laws 1987, H.B.1331, § 2. Amended by Laws 1988, H.B.1201, § 4.

C. R. S. A. § 39-22-108, CO ST § 39-22-108
Current through Ch. 2 of the First Regular Session of the 70th General Assembly (2015)

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Connecticut General Statutes Annotated
Title 12. Taxation (Refs & Annos)
Chapter 229. Income Tax (Refs & Annos)

C.G.S.A. § 12-700

§ 12-700. Imposition of tax on income. Rate

Effective: May 4, 2011
Currentness

(a) There is hereby imposed on the Connecticut taxable income of each resident of this state a tax:

(1) At the rate of four and one-half per cent of such Connecticut taxable income for taxable years commencing on or after January 1, 1992, and prior to January 1, 1996.

(2) For taxable years commencing on or after January 1, 1996, but prior to January 1, 1997, in accordance with the following schedule:

(A) For any person who files a return under the federal income tax for such taxable year as an unmarried individual or as a married individual filing separately:

Connecticut Taxable Income	Rate of Tax
Not over $2,250	3.0%
Over $2,250	$67.50, plus 4.5% of the excess over $2,250

(B) For any person who files a return under the federal income tax for such taxable year as a head of household, as defined in Section 2(b) of the Internal Revenue Code: [1]

Connecticut Taxable Income	Rate of Tax
Not over $3,500	3.0%
Over $3,500	$105.00, plus 4.5% of the excess over $3,500

(C) For any husband and wife who file a return under the federal income tax for such taxable year as married individuals filing jointly or a person who files a return under the federal income tax as a surviving spouse, as defined in Section 2(a) of the Internal Revenue Code:

Connecticut Taxable Income	Rate of Tax
Not over $4,500	3.0%

Over $4,500	$135.00, plus 4.5% of the excess over $4,500

(D) For trusts or estates, the rate of tax shall be 4.5% of their Connecticut taxable income.

(3) For taxable years commencing on or after January 1, 1997, but prior to January 1, 1998, in accordance with the following schedule:

(A) For any person who files a return under the federal income tax for such taxable year as an unmarried individual or as a married individual filing separately:

Connecticut Taxable Income	Rate of Tax
Not over $6,250	3.0%
Over $6,250	$187.50, plus 4.5% of the excess over $6,250

(B) For any person who files a return under the federal income tax for such taxable year as a head of household, as defined in Section 2(b) of the Internal Revenue Code:

Connecticut Taxable Income	Rate of Tax
Not over $10,000	3.0%
Over $10,000	$300.00, plus 4.5% of the excess over $10,000

(C) For any husband and wife who file a return under the federal income tax for such taxable year as married individuals filing jointly or any person who files a return under the federal income tax for such taxable year as a surviving spouse, as defined in Section 2(a) of the Internal Revenue Code:

Connecticut Taxable Income	Rate of Tax
Not over $12,500	3.0%
Over $12,500	$375.00, plus 4.5% of the excess over $12,500

(D) For trusts or estates, the rate of tax shall be 4.5% of their Connecticut taxable income.

(4) For taxable years commencing on or after January 1, 1998, but prior to January 1, 1999, in accordance with the following schedule:

(A) For any person who files a return under the federal income tax for such taxable year as an unmarried individual or as a married individual filing separately:

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Connecticut Taxable Income	Rate of Tax
Not over $7,500	3.0%
Over $7,500	$225.00, plus 4.5% of the excess over $7,500

(B) For any person who files a return under the federal income tax for such taxable year as a head of household, as defined in Section 2(b) of the Internal Revenue Code:

Connecticut Taxable Income	Rate of Tax
Not over $12,000	3.0%
Over $12,000	$360.00, plus 4.5% of the excess over $12,000

(C) For any husband and wife who file a return under the federal income tax for such taxable year as married individuals filing jointly or any person who files a return under the federal income tax for such taxable year as a surviving spouse, as defined in Section 2(a) of the Internal Revenue Code:

Connecticut Taxable Income	Rate of Tax
Not over $15,000	3.0%
Over $15,000	$450.00, plus 4.5% of the excess over $15,000

(D) For trusts or estates, the rate of tax shall be 4.5% of their Connecticut taxable income.

(5) For taxable years commencing on or after January 1, 1999, but prior to January 1, 2003, in accordance with the following schedule:

(A) For any person who files a return under the federal income tax for such taxable year as an unmarried individual or as a married individual filing separately:

Connecticut Taxable Income	Rate of Tax
Not over $10,000	3.0%
Over $10,000	$300.00, plus 4.5% of the excess over $10,000

(B) For any person who files a return under the federal income tax for such taxable year as a head of household, as defined in Section 2(b) of the Internal Revenue Code:

Connecticut Taxable Income	Rate of Tax
Not over $16,000	3.0%

Over $16,000	$480.00, plus 4.5% of the excess over $16,000

(C) For any husband and wife who file a return under the federal income tax for such taxable year as married individuals filing jointly or any person who files a return under the federal income tax for such taxable year as a surviving spouse, as defined in Section 2(a) of the Internal Revenue Code:

Connecticut Taxable Income	Rate of Tax
Not over $20,000	3.0%
Over $20,000	$600.00, plus 4.5% of the excess over $20,000

(D) For trusts or estates, the rate of tax shall be 4. 5% of their Connecticut taxable income.

(6) For taxable years commencing on or after January 1, 2003, but prior to January 1, 2009, in accordance with the following schedule:

(A) For any person who files a return under the federal income tax for such taxable year as an unmarried individual or as a married individual filing separately:

Connecticut Taxable Income	Rate of Tax
Not over $10,000	3.0%
Over $10,000	$300.00, plus 5.0% of the excess over $10,000

(B) For any person who files a return under the federal income tax for such taxable year as a head of household, as defined in Section 2(b) of the Internal Revenue Code:

Connecticut Taxable Income	Rate of Tax
Not over $16,000	3.0%
Over $16,000	$480.00, plus 5.0% of the excess over $16,000

(C) For any husband and wife who file a return under the federal income tax for such taxable year as married individuals filing jointly or any person who files a return under the federal income tax for such taxable year as a surviving spouse, as defined in Section 2(a) of the Internal Revenue Code:

Connecticut Taxable Income	Rate of Tax
Not over $20,000	3.0%
Over $20,000	$600.00, plus 5.0% of the excess over $20,000

(D) For trusts or estates, the rate of tax shall be 5.0% of the Connecticut taxable income.

(7) For taxable years commencing on or after January 1, 2009, but prior to January 1, 2011, in accordance with the following schedule:

(A) For any person who files a return under the federal income tax for such taxable year as an unmarried individual:

Connecticut Taxable Income	Rate of Tax
Not over $10,000	3.0%
Over $10,000 but not over $500,000	$300.00, plus 5.0% of the excess over $ 10,000
Over $500,000	$24,800, plus 6.5% of the excess over $500,000

(B) For any person who files a return under the federal income tax for such taxable year as a head of household, as defined in Section 2(b) of the Internal Revenue Code:

Connecticut Taxable Income	Rate of Tax
Not over $16,000	3.0%
Over $16,000 but not over $800,000	$480.00, plus 5.0% of the excess over $16,000
Over $800,000	$39,680, plus 6.5% of the excess over $800,000

(C) For any husband and wife who file a return under the federal income tax for such taxable year as married individuals filing jointly or any person who files a return under the federal income tax for such taxable year as a surviving spouse, as defined in Section 2(a) of the Internal Revenue Code:

Connecticut Taxable Income	Rate of Tax
Not over $20,000	3.0%
Over $20,000 but not over $1,000,000	$600.00, plus 5.0% of the excess over $20,000
Over $1,000,000	$49,600, plus 6.5% of the excess over $1,000,000

(D) For any person who files a return under the federal income tax for such taxable year as a married individual filing separately:

Connecticut Taxable Income	Rate of Tax
Not over $10,000	3.0%
Over $10,000 but not over $500,000	$300.00, plus 5.0% of the excess over $10,000

Over $500,000	$24,800, plus 6.5% of the excess over $500,000

(E) For trusts or estates, the rate of tax shall be 6.5% of the Connecticut taxable income.

(8) For taxable years commencing on or after January 1, 2011, in accordance with the following schedule:

(A) (i) For any person who files a return under the federal income tax for such taxable year as an unmarried individual:

Connecticut Taxable Income	Rate of Tax
Not over $10,000	3.0%
Over $10,000 but not over $50,000	$300.00, plus 5.0% of the excess over $10,000
Over $50,000 but not over $100,000	$2,300, plus 5.5% of the excess over $50,000
Over $100,000 but not over $200,000	$5,050, plus 6.0% of the excess over $100,000
Over $200,000 but not over $250,000	$11,050, plus 6.5% of the excess over $200,000
Over $250,000	$14,300, plus 6.70% of the excess over $250,000

(ii) Notwithstanding the provisions of subparagraph (A)(i) of this subdivision, for each taxpayer whose Connecticut adjusted gross income exceeds fifty-six thousand five hundred dollars, the amount of the taxpayer's Connecticut taxable income to which the three-per-cent tax rate applies shall be reduced by one thousand dollars for each five thousand dollars, or fraction thereof, by which the taxpayer's Connecticut adjusted gross income exceeds said amount. Any such amount of Connecticut taxable income to which, as provided in the preceding sentence, the three-per-cent tax rate does not apply shall be an amount to which the five-per-cent tax rate shall apply.

(iii) Each taxpayer whose Connecticut adjusted gross income exceeds two hundred thousand dollars shall pay, in addition to the tax computed under the provisions of subparagraphs (A)(i) and (A)(ii) of this subdivision, an amount equal to seventy-five dollars for each five thousand dollars, or fraction thereof, by which the taxpayer's Connecticut adjusted gross income exceeds two hundred thousand dollars, up to a maximum payment of two thousand two hundred fifty dollars.

(B) (i) For any person who files a return under the federal income tax for such taxable year as a head of household, as defined in Section 2(b) of the Internal Revenue Code:

Connecticut Taxable Income	Rate of Tax
Not over $16,000	3.0%
Over $16,000 but not over $80,000	$480.00, plus 5.0% of the excess over $16,000
Over $80,000 but not over $160,000	$3,680, plus 5.5% of the excess over $80,000
Over $160,000 but not over $320,000	$8,080, plus 6.0% of the excess over $160,000

Over $320,000 but not over $400,000	$17,680, plus 6.5% of the excess over $320,000
Over $400,000	$22,880, plus 6.70% of the excess over $400,000

(ii) Notwithstanding the provisions of subparagraph (B)(i) of this subdivision, for each taxpayer whose Connecticut adjusted gross income exceeds seventy-eight thousand five hundred dollars, the amount of the taxpayer's Connecticut taxable income to which the three-per-cent tax rate applies shall be reduced by one thousand six hundred dollars for each four thousand dollars, or fraction thereof, by which the taxpayer's Connecticut adjusted gross income exceeds said amount. Any such amount of Connecticut taxable income to which, as provided in the preceding sentence, the three-per-cent tax rate does not apply shall be an amount to which the five-per-cent tax rate shall apply.

(iii) Each taxpayer whose Connecticut adjusted gross income exceeds three hundred twenty thousand dollars shall pay, in addition to the tax computed under the provisions of subparagraphs (B)(i) and (B)(ii) of this subdivision, an amount equal to one hundred twenty dollars for each eight thousand dollars, or fraction thereof, by which the taxpayer's Connecticut adjusted gross income exceeds three hundred twenty thousand dollars, up to a maximum payment of three thousand six hundred dollars.

(C) (i) For any husband and wife who file a return under the federal income tax for such taxable year as married individuals filing jointly or any person who files a return under the federal income tax for such taxable year as a surviving spouse, as defined in Section 2(a) of the Internal Revenue Code:

Connecticut Taxable Income	Rate of Tax
Connecticut Taxable Income	Rate of Tax
Not over $20,000	3.0%
Over $20,000 but not over $100,000	$600.00, plus 5.0% of the excess over $20,000
Over $100,000 but not over $200,000	$4,600, plus 5.5% of the excess over $100,000
Over $200,000 but not over $400,000	$10,100, plus 6.0% of the excess over $200,000
Over $400,000 but not over $500,000	$22,100, plus 6.5% of the excess over $400,000
Over $500,000	$28,600, plus 6.70% of the excess over $500,000

(ii) Notwithstanding the provisions of subparagraph (C)(i) of this subdivision, for each taxpayer whose Connecticut adjusted gross income exceeds one hundred thousand five hundred dollars, the amount of the taxpayer's Connecticut taxable income to which the three-per-cent tax rate applies shall be reduced by two thousand dollars for each five thousand dollars, or fraction thereof, by which the taxpayer's Connecticut adjusted gross income exceeds said amount. Any such amount of Connecticut taxable income to which, as provided in the preceding sentence, the three-per-cent tax rate does not apply shall be an amount to which the five-per-cent tax rate shall apply.

(iii) Each taxpayer whose Connecticut adjusted gross income exceeds four hundred thousand dollars shall pay, in addition to the tax computed under the provisions of subparagraphs (C)(i) and (C)(ii) of this subdivision, an amount equal to one hundred fifty dollars for each ten thousand dollars, or fraction thereof, by which the taxpayer's Connecticut adjusted gross income exceeds four hundred thousand dollars, up to a maximum payment of four thousand five hundred dollars.

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(D) (i) For any person who files a return under the federal income tax for such taxable year as a married individual filing separately:

Connecticut Taxable Income	Rate of Tax
Not over $10,000	3.0%
Over $10,000 but not over $50,000	$300.00, plus 5.0% of the excess over $10,000
Over $50,000 but not over $100,000	$2,300, plus 5.5% of the excess over $50,000
Over $100,000 but not over $200,000	$5,050, plus 6.0% of the excess over $100,000
Over $200,000 but not over $250,000	$11,050, plus 6.5% of the excess over $200,000
Over $250,000	$14,300, plus 6.70% of the excess over $250,000

(ii) Notwithstanding the provisions of subparagraph (D)(i) of this subdivision, for each taxpayer whose Connecticut adjusted gross income exceeds fifty thousand two hundred fifty dollars, the amount of the taxpayer's Connecticut taxable income to which the three-per-cent tax rate applies shall be reduced by one thousand dollars for each two thousand five hundred dollars, or fraction thereof, by which the taxpayer's Connecticut adjusted gross income exceeds said amount. Any such amount of Connecticut taxable income to which, as provided in the preceding sentence, the three-per-cent tax rate does not apply shall be an amount to which the five-per-cent tax rate shall apply.

(iii) Each taxpayer whose Connecticut adjusted gross income exceeds two hundred thousand dollars shall pay, in addition to the tax computed under the provisions of subparagraphs (D)(i) and (D)(ii) of this subdivision, an amount equal to seventy-five dollars for each five thousand dollars, or fraction thereof, by which the taxpayer's Connecticut adjusted gross income exceeds two hundred thousand dollars, up to a maximum payment of two thousand two hundred fifty dollars.

(E) For trusts or estates, the rate of tax shall be 6.70% of the Connecticut taxable income.

(9) The provisions of this subsection shall apply to resident trusts and estates and, wherever reference is made in this subsection to residents of this state, such reference shall be construed to include resident trusts and estates, provided any reference to a resident's Connecticut adjusted gross income derived from sources without this state or to a resident's Connecticut adjusted gross income shall be construed, in the case of a resident trust or estate, to mean the resident trust or estate's Connecticut taxable income derived from sources without this state and the resident trust or estate's Connecticut taxable income, respectively.

(b) There is hereby imposed on the Connecticut taxable income derived from or connected with sources within this state of each nonresident a tax which shall be the product of an amount equal to the tax computed as if such nonresident were a resident, multiplied by a fraction, the numerator of which is the nonresident's Connecticut adjusted gross income derived from or connected with sources within this state and the denominator of which is the nonresident's Connecticut adjusted gross income, provided, if the nonresident's Connecticut adjusted gross income is less than such nonresident's Connecticut adjusted gross income derived from or connected with sources within this state, (1) such nonresident's Connecticut adjusted gross income derived from or connected with sources within this state, reduced by the amount of the exemption provided in section 12-702, shall be such nonresident's Connecticut taxable income derived from or connected with sources within this state and shall be multiplied by the tax rate specified in subsection (a) of this section for the purposes of determining the tax pursuant to this

section and (2) such nonresident's Connecticut adjusted gross income derived from or connected with sources within this state shall be such nonresident's Connecticut adjusted gross income for the purposes of determining the credit pursuant to section 12-703. The provisions of this subsection shall also apply to nonresident trusts and estates and, wherever reference is made in this subsection to nonresidents of this state, such reference shall be construed to include nonresident trusts and estates, provided any reference to a nonresident's Connecticut adjusted gross income derived from sources within this state or to a nonresident's Connecticut adjusted gross income shall be construed, in the case of a nonresident trust or estate, to mean the nonresident trust or estate's Connecticut taxable income derived from sources within this state and the nonresident trust or estate's Connecticut taxable income, respectively.

(c) (1) There is hereby imposed on the Connecticut taxable income derived from or connected with sources within this state of each part-year resident a tax which shall be a product equal to the tax computed as if such part-year resident were a resident, multiplied by a fraction, the numerator of which is the part-year resident's Connecticut adjusted gross income derived from or connected with sources within this state, as described in subsection (a) of section 12-717, and the denominator of which is the part-year resident's Connecticut adjusted gross income, as described in subdivision (2) of this subsection, provided, if the part-year resident's Connecticut adjusted gross income is less than such part-year resident's Connecticut adjusted gross income derived from or connected with sources within this state, (A) such part-year resident's Connecticut adjusted gross income derived from or connected with sources within this state, reduced by the amount of the exemption provided in section 12-702, shall be such part-year resident's Connecticut taxable income derived from or connected with sources within this state and shall be multiplied by the tax rate specified in subsection (a) of this section for the purposes of determining the tax pursuant to this section and (B) such part-year resident's Connecticut adjusted gross income derived from or connected with sources within this state shall be such part-year resident's adjusted gross income for the purposes of determining the credit pursuant to section 12-703. The provisions of this subsection shall apply to part-year resident trusts and, wherever reference is made in this subsection to part-year residents, such reference shall be construed to include part-year resident trusts, provided any reference to a part-year resident's Connecticut adjusted gross income derived from sources within this state or a part-year resident's Connecticut adjusted gross income shall be construed, in the case of a part-year resident trust, to mean the part-year resident trust's Connecticut taxable income derived from sources within this state and the part-year resident trust's Connecticut taxable income, respectively.

(2) For purposes of subdivision (1) of this subsection and subsection (a), the Connecticut adjusted gross income of a part-year resident (A) changing his status from resident to nonresident shall be increased or decreased, as the case may be, by the items accrued under subdivision (1) of subsection (c) of section 12-717, to the extent not otherwise includable in Connecticut adjusted gross income for the taxable year and (B) changing his status from nonresident to resident shall be increased or decreased, as the case may be, by the items accrued under subdivision (2) of subsection (c) of section 12-717, to the extent included in Connecticut adjusted gross income for the taxable year.

(d) The provisions of this chapter shall be applicable with respect to any person, trust or estate. Whenever, in this chapter, "any person" appears without "trust or estate", the reference to any person shall be deemed to include any trust and any estate unless, in the context of the particular provision, the reference to any person could not be applicable in the case of a trust or in the case of an estate.

Credits

(1991, June Sp.Sess., P.A. 91-3, § 51; 1992, May Sp.Sess., P.A. 92-5, § 1; 1993, P.A. 93-74, § 63; 1993, P.A. 93-332, § 6; 1995, P.A. 95-160, § 30; 1996, P.A. 96-139, § 8, eff. May 29, 1996; 1997, P.A. 97-309, § 8; 1997, P.A. 97-322, § 5, eff. July 1, 1997; 2003, P.A. 03-2, § 22, eff. Feb. 28, 2003; 2009, June Sp.Sess., P.A. 09-3, § 119, eff. Sept. 8, 2009; 2011, P.A. 11-6, § 107, eff. May 4, 2011.)

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Notes of Decisions (5)

Footnotes

1 26 U.S.C.A. § 1 et seq.

C. G. S. A. § 12-700, CT ST § 12-700

Current through General Statutes of Connecticut, Revision of 1958, Revised to January 1, 2015.

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Connecticut General Statutes Annotated
Title 12. Taxation (Refs & Annos)
Chapter 229. Income Tax (Refs & Annos)

C.G.S.A. § 12-704

§ 12-704. Credits for income taxes paid to other states

Effective: June 7, 2010
Currentness

(a) (1) Any resident or part-year resident of this state shall be allowed a credit against the tax otherwise due under this chapter in the amount of any income tax imposed on such resident or part-year resident for the taxable year by another state of the United States or a political subdivision thereof or the District of Columbia on income derived from sources therein and which is also subject to tax under this chapter.

(2) In the case of a resident, the credit provided under this section shall not exceed the proportion of the tax otherwise due under this chapter that the amount of the taxpayer's Connecticut adjusted gross income derived from or connected with sources in the other taxing jurisdiction bears to such taxpayer's Connecticut adjusted gross income under this chapter. The provisions of this section shall also apply to resident trusts and estates and, wherever reference is made in this section to residents of this state, such reference shall be construed to include resident trusts and estates.

(3) In the case of a part-year resident, the credit provided under this section shall not exceed the proportion of the tax otherwise due during the period of residency under this chapter that the amount of the taxpayer's Connecticut adjusted gross income derived from or connected with sources in the other jurisdiction during the period of residency bears to such taxpayer's Connecticut adjusted gross income during the period of residency under this chapter. The provisions of this section shall also apply to part-year resident trusts and, wherever reference is made in this section to part-year residents of this state, such reference shall be construed to include part-year resident trusts.

(4) The allowance of the credit provided under this section shall not reduce the tax otherwise due under this chapter to an amount less than what would have been due if the income subject to taxation by such other jurisdiction were excluded from Connecticut adjusted gross income.

(b) (1) If, as a direct result of the change to or correction of a taxpayer's income tax return filed with another state of the United States or a political subdivision thereof or the District of Columbia by the tax officers or other competent authority of such jurisdiction, the amount of tax of such other jurisdiction that the taxpayer is finally required to pay is different from the amount used to determine the credit allowed to any taxpayer under this section for any taxable year, the taxpayer shall provide notice of such difference to the commissioner by filing, on or before the date that is ninety days after the final determination of such amount, an amended return under this chapter, and shall concede the accuracy of such determination or state wherein it is erroneous. The commissioner may redetermine, and the taxpayer shall be required to pay, the tax for any taxable year affected, regardless of any otherwise applicable statute of limitations.

(2) If, as a direct result of a taxpayer filing an amended income tax return with another state of the United States or a political subdivision thereof or the District of Columbia, the amount of tax of such other jurisdiction that the taxpayer is required to pay

is different from the amount used to determine the credit allowed to any taxpayer under this section for any taxable year, the taxpayer shall provide notice of such difference to the commissioner by filing, on or before the date that is ninety days after the final determination is made on such amended return by the tax officers or other competent authority of such other jurisdiction, an amended return under this chapter and shall give such information as the commissioner may require. The commissioner shall treat any such amended return under this chapter reporting a tax overpayment as containing sufficient required information after proof of such final determination on such amended income tax return of such other jurisdiction by the tax officers or other competent authority of such other jurisdiction is submitted to the commissioner. The commissioner may redetermine, and the taxpayer shall be required to pay, the tax for any taxable year affected, regardless of any otherwise applicable statute of limitations.

(3) The commissioner may by regulation prescribe such exceptions to the requirements of this subsection as he deems appropriate.

(c) A taxpayer shall not be allowed credit under this section if such taxpayer has claimed or will claim a credit against the income tax imposed by such other jurisdiction for the tax paid or payable under this chapter.

(d) Notwithstanding the provisions of subsection (c) of this section, if an individual is not domiciled in this state but maintains a permanent place of abode in this state and is in this state for an aggregate of more than one hundred eighty-three days of a taxable year and such individual is domiciled in another state of the United States, a political subdivision of such state, or the District of Columbia for the taxable year, such individual shall be allowed a credit under this section against the tax otherwise due under this chapter for income tax imposed by and paid to the qualifying jurisdiction in which such individual is domiciled on such individual's income from intangible personal property, to the extent such income is from property not employed in a business, trade, profession or occupation carried on in this state, and on such individual's income derived from or connected with sources within another state of the United States or the District of Columbia that does not impose an income tax on such income. This subsection shall apply only where the jurisdiction in which such individual is domiciled allows an income tax credit for the tax imposed by this state to an individual who is domiciled in this state for a taxable year but maintains a permanent place of abode in such jurisdiction and is in such jurisdiction for an aggregate of more than one hundred eighty-three days of the taxable year that is analogous to that provided in this subsection.

Credits

(1991, June Sp.Sess., P.A. 91-3, § 55; 1992, May Sp.Sess., P.A. 92-5, § 5; 1993, P.A. 93-74, § 40, eff. May 19, 1993; 1996, P.A. 96-94, § 1; 1997, P.A. 97-286, § 4, eff. June 26, 1997; 1998, P.A. 98-244, § 28, eff. June 8, 1998; 2001, June Sp.Sess., P.A. 01-6, § 68, eff. July 1, 2001; 2006, P.A. 06-196, § 92, eff. June 7, 2006; 2010, P.A. 10-188, § 12, eff. June 7, 2010.)

C. G. S. A. § 12-704, CT ST § 12-704

Current through General Statutes of Connecticut, Revision of 1958, Revised to January 1, 2015.

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West's Delaware Code Annotated
Title 30. State Taxes
Part II. Income, Inheritance and Estate Taxes
Chapter 11. Personal Income Tax
Subchapter I. General Provisions

30 Del.C. § 1102

§ 1102. Imposition and rate of tax; separate tax on lump-sum distributions

Effective: January 1, 2014
Currentness

(a)(1) For taxable years beginning before January 1, 1985, the amount of tax shall be determined as follows:

1.4% of the amount of taxable income not in excess of $1,000;

2.0% of the amount of taxable income in excess of $1,000, but not in excess of $2,000;

3.0% of the amount of taxable income in excess of $2,000, but not in excess of $3,000;

4.2% of the amount of taxable income in excess of $3,000, but not in excess of $4,000;

5.2% of the amount of taxable income in excess of $4,000, but not in excess of $5,000;

6.2% of the amount of taxable income in excess of $5,000, but not in excess of $6,000;

7.2% of the amount of taxable income in excess of $6,000, but not in excess of $8,000;

8.0% of the amount of taxable income in excess of $8,000, but not in excess of $10,000;

8.2% of the amount of taxable income in excess of $10,000, but not in excess of $15,000;

8.4% of the amount of taxable income in excess of $15,000, but not in excess of $20,000;

8.8% of the amount of taxable income in excess of $20,000, but not in excess of $25,000;

9.4% of the amount of taxable income in excess of $25,000, but not in excess of $30,000;

11.0% of the amount of taxable income in excess of $30,000, but not in excess of $40,000;

12.2% of the amount of taxable income in excess of $40,000, but not in excess of $50,000;

13.5% of the amount of taxable income in excess of $50,000.

(2) For taxable years beginning after December 31, 1984, and before January 1, 1986, the amount of tax shall be determined as follows:

1.3% of the amount of taxable income not in excess of $1,000;

1.8% of the amount of taxable income in excess of $1,000, but not in excess of $2,000;

2.7% of the amount of taxable income in excess of $2,000, but not in excess of $3,000;

3.8% of the amount of taxable income in excess of $3,000, but not in excess of $4,000;

4.7% of the amount of taxable income in excess of $4,000, but not in excess of $5,000;

5.6% of the amount of taxable income in excess of $5,000, but not in excess of $6,000;

6.5% of the amount of taxable income in excess of $6,000, but not in excess of $8,000;

7.2% of the amount of taxable income in excess of $8,000, but not in excess of $10,000;

7.4% of the amount of taxable income in excess of $10,000, but not in excess of $15,000;

7.6% of the amount of taxable income in excess of $15,000, but not in excess of $20,000;

7.9% of the amount of taxable income in excess of $20,000, but not in excess of $25,000;

8.5% of the amount of taxable income in excess of $25,000, but not in excess of $30,000;

9.9% of the amount of taxable income in excess of $30,000, but not in excess of $40,000;

10.7% of the amount of taxable income in excess of $40,000.

(3) For taxable years beginning after December 31, 1985, and before January 1, 1987, the amount of tax shall be determined as follows:

1.2% of the amount of taxable income not in excess of $1,000; 1.6% of the amount of taxable income in excess of $1,000, but not in excess of $2,000; 2.5% of the amount of taxable income in excess of $2,000, but not in excess of $3,000; 3.5% of the amount of taxable income in excess of $3,000, but not in excess of $4,000; 4.3% of the amount of taxable income in excess of $4,000, but not in excess of $5,000; 5.1% of the amount of taxable income in excess of $5,000, but not in excess of $6,000; 5.9% of the amount of taxable income in excess of $6,000, but not in excess of $8,000; 6.6% of the amount of taxable income in excess of $8,000, but not in excess of $10,000; 6.7% of the amount of taxable income in excess of $10,000, but not in excess of $15,000; 6.9% of the amount of taxable income in excess of $15,000, but not in excess of $20,000; 7.2% of the amount of taxable income in excess of $20,000, but not in excess of $25,000; 7.7% of the amount of taxable income in excess of $25,000, but not in excess of $30,000; 9.0% of the amount of taxable income in excess of $30,000, but not in excess of $40,000; 9.7% of the amount of taxable income in excess of $40,000.

(4) For taxable years beginning after December 31, 1986, and before January 1, 1988, the amount of tax shall be determined as follows:

1.0% of the amount of taxable income not in excess of $1,000; 1.4% of the amount of taxable income in excess of $1,000, but not in excess of $2,000; 2.3% of the amount of taxable income in excess of $2,000, but not in excess of $3,000;

3.2% of the amount of taxable income in excess of $3,000, but not in excess of $4,000; 3.9% of the amount of taxable income in excess of $4,000, but not in excess of $5,000; 4.6% of the amount of taxable income in excess of $5,000, but not in excess of $6,000; 5.4% of the amount of taxable income in excess of $6,000, but not in excess of $8,000; 6.0% of the amount of taxable income in excess of $8,000, but not in excess of $10,000; 6.1% of the amount of taxable income in excess of $10,000, but not in excess of $15,000; 6.3% of the amount of taxable income in excess of $15,000, but not in excess of $20,000; 6.5% of the amount of taxable income in excess of $20,000, but not in excess of $25,000; 7.0% of the amount of taxable income in excess of $25,000, but not in excess of $30,000; 8.2% of the amount of taxable income in excess of $30,000, but not in excess of $40,000; 8.8% of the amount of taxable income in excess of $40,000.

(5) For taxable years beginning after December 31, 1987, and before January 1, 1996, the amount of tax shall be determined as follows:

3.2% of taxable income in excess of $2,000, but not in excess of $5,000; 5.0% of taxable income in excess of $5,000, but not in excess of $10,000; 6.0% of taxable income in excess of $10,000, but not in excess of $20,000; 6.6% of taxable income in excess of $20,000, but not in excess of $25,000; 7.0% of taxable income in excess of $25,000, but not in excess of $30,000; 7.6% of taxable income in excess of $30,000, but not in excess of $40,000; 7.7% of taxable income in excess of $40,000.

(6) For taxable years beginning after December 31, 1995, and before January 1, 1997, the amount of tax shall be determined as follows:

3.2% of taxable income in excess of $2,000 but not in excess of $5,000;

5.0% of taxable income in excess of $5,000 but not in excess of $10,000;

6.0% of taxable income in excess of $10,000 but not in excess of $20,000;

6.35% of taxable income in excess of $20,000 but not in excess of $25,000;

6.65% of taxable income in excess of $25,000 but not in excess of $30,000;

7.1% of taxable income in excess of $30,000.

(7) For taxable years beginning after December 31, 1996, and before January 1, 1999, the amount of tax shall be determined as follows:

3.1% of taxable income in excess of $2,000 but not in excess of $5,000;

4.85% of taxable income in excess of $5,000 but not in excess of $10,000;

5.8% of taxable income in excess of $10,000 but not in excess of $20,000;

6.15% of taxable income in excess of $20,000 but not in excess of $25,000;

6.45% of taxable income in excess of $25,000 but not in excess of $30,000;

6.9% of taxable income in excess of $30,000.

(8) For taxable years beginning after December 31, 1998, and before January 1, 2000, the amount of tax shall be determined as follows:

2.60% of taxable income in excess of $2,000 but not in excess of $5,000;

4.30% of taxable income in excess of $5,000 but not in excess of $10,000;

5.20% of taxable income in excess of $10,000 but not in excess of $20,000;

and 5.60% of taxable income in excess of $20,000 but not in excess of $25,000.

(9) For taxable years beginning after December 31, 1998, and before January 1, 2000, the amount of tax shall be determined by reference to paragraph (a)(8) of this section and 5.95% of taxable income in excess of $25,000 but not in excess of $60,000; and 6.40% of taxable income in excess of $60,000.

(10) For taxable years beginning after December 31, 1999, and before January 1, 2010, the amount of tax shall be determined as follows: 2.2% of taxable income in excess of $2,000 but not in excess of $5,000; 3.9% of taxable income in excess of $5,000 but not in excess of $10,000; 4.8% of taxable income in excess of $10,000 but not in excess of $20,000; 5.2% of taxable income in excess of $20,000 but not in excess of $25,000; and 5.55% of taxable income in excess of $25,000 but not in excess of $60,000.

(11) For taxable years beginning after December 31, 1999, and before January 1, 2010, the amount of tax shall be determined by reference to paragraph (a)(10) of this section and 5.95% of taxable income in excess of $60,000.

(12) For taxable years beginning after December 31, 2009, and before January 1, 2012, the amount of tax shall be determined as follows: 2.2% of taxable income in excess of $2,000 but not in excess of $5,000; 3.9% of taxable income in excess of $5,000 but not in excess of $10,000; 4.8% of taxable income in excess of $10,000 but not in excess of $20,000; 5.2% of taxable income in excess of $20,000 but not in excess of $25,000; 5.55% of taxable income in excess of $25,000 but not in excess of $60,000; and 6.95% of taxable income in excess of $60,000.

(13) For taxable years beginning after December 31, 2011, and before January 1, 2014, the amount of tax shall be determined as follows: 2.2 % of taxable income in excess of $2,000 but not in excess of $5,000; 3.9 % of taxable income in excess of $5,000 but not in excess of $10,000; 4.8 % of taxable income in excess of $10,000 but not in excess of $20,000; 5.2 % of taxable income in excess of $20,000 but not in excess of $25,000; 5.55% of taxable income in excess of $25,000 but not in excess of $60,000; and 6.75% of taxable income in excess of $60,000.

(14) For taxable years beginning after December 31, 2013, the amount of tax shall be determined as follows:

2.2% of taxable income in excess of $2,000 but not in excess of $5,000;

3.9% of taxable income in excess of $5,000 but not in excess of $10,000;

4.8% of taxable income in excess of $10,000 but not in excess of $20,000;

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5.2% of taxable income in excess of $20,000 but not in excess of $25,000;

5.55% of taxable income in excess of $25,000 but not in excess of $60,000; and

6.6% of taxable income in excess of $60,000.

(b)(1) In addition to the tax imposed under subsection (a) of this section, there is hereby imposed a separate tax in the amount determined in paragraph (b)(2) of this section, on the ordinary income portion of a lump sum distribution received by every resident individual, estate or trust.

(2) The amount of the tax imposed by this subsection for any taxable year shall be an amount equal to the amount of the initial separate tax for such year, multiplied by a fraction, the numerator of which is the ordinary income portion of a lump sum distribution for the taxable year, and the denominator of which is the total taxable amount of such distribution for such year.

(3) The initial separate tax for any taxable year is an amount equal to 10 times the tax which would be imposed by subsection (a) of this section if the taxable income referred to were equal to one tenth of the total taxable amount of the lump sum distributed for the taxable year.

(4) The recipient of a lump-sum distribution shall be liable for the tax imposed by this subsection.

(5) For purposes of this subsection, the rules concerning multiple distributions and distributions of annuity contracts as specified in § 402(e)(2) of the Internal Revenue Code [26 U.S.C. § 402(e)(2)] shall be applicable.

(6) For purposes of this subsection, the definition and special rules applying to the tax on lump-sum distributions as specified in § 402(e)(4) of the Internal Revenue Code [26 U.S.C. § 402(e)(4)] shall be applicable.

(7) For purposes of this subsection, the rules relating to rollover as specified in § 402(c) and (e)(1)(B) of the Internal Revenue Code [26 U.S.C. § 402(c) and (e)(1)(B)] shall be applicable.

(c) The tax rates established by paragraph (a)(4) of this section shall be revoked effective January 1, 1988, unless the Secretary of Labor has, on or before June 10, 1987, made a written determination, submitted to the Governor, Speaker of the House and President Pro Tempore of the Senate, that the total full-time equivalent employment in the State, as regularly reported by the State Department of Labor, has averaged an annual increase of 6,000 full-time equivalent jobs in nonagricultural wage and salary employment as reported by the Delaware Department of Labor during the period from June 1, 1984, through May 31, 1987. Once the condition of this subsection has been satisfied, there shall be no revocation of the paragraph (a)(4) of this section rates by reason of this subsection. In the event of any revocation of the tax rates established by paragraph (a)(4) of this section, the following rates shall become effective:

1.0% of the amount of taxable income not in excess of $1,000;

1.4% of the amount of taxable income in excess of $1,000, but not in excess of $2,000;

2.3% of the amount of taxable income in excess of $2,000, but not in excess of $3,000;

3.2% of the amount of taxable income in excess of $3,000, but not in excess of $4,000;

3.9% of the amount of taxable income in excess of $4,000, but not in excess of $5,000;

4.6% of the amount of taxable income in excess of $5,000, but not in excess of $6,000;

5.4% of the amount of taxable income in excess of $6,000, but not in excess of $8,000;

6.0% of the amount of taxable income in excess of $8,000, but not in excess of $10,000;

6.1% of the amount of taxable income in excess of $10,000, but not in excess of $15,000;

6.3% of the amount of taxable income in excess of $15,000, but not in excess of $20,000;

6.5% of the amount of taxable income in excess of $20,000, but not in excess of $25,000;

7.0% of the amount of taxable income in excess of $25,000, but not in excess of $30,000;

8.2% of the amount of taxable income in excess of $30,000, but not in excess of $40,000;

9.2% of the amount of taxable income in excess of $40,000, but not in excess of $50,000;

10.1% of the amount of taxable income in excess of $50,000.

(d)(1) In lieu of the tax imposed by subsection (a) of this section there is imposed for each taxable year on the tax table income of every individual whose tax table income for the taxable year does not exceed $60,000, or such lesser amount as the Director may determine but in any event not less than $20,000, a tax determined under tables, applicable to such taxable years, which shall be prescribed by the Director of Revenue. The amounts of tax prescribed in such tables shall be computed on the basis of the rates prescribed by subsection (a) of this section.

(2) For purposes of this subsection, the term "tax table income" means Delaware taxable income as defined in § 1105 (residents) and § 1121 (nonresidents) of this title.

(3) This subsection shall not apply to an estate or trust.

(e) Where the rates of tax prescribed in subsection (a) of this section are changed during a taxable year, the Secretary of Finance shall prescribe such rules and regulations as are necessary to compute the increase in rates of tax on the proportion of income earned subsequent to the effective date of change in rate.

Credits

57 Laws 1970, ch. 737, § 1; 58 Laws 1971, ch. 300, §§ 1, 2, 4; 59 Laws 1973, ch. 152, § 1; 62 Laws 1979, ch. 23, § 1; 62 Laws 1979, ch. 56, § 1; 64 Laws 1984, ch. 317, § 1; 64 Laws 1984, ch. 325, §§ 2-4; 64 Laws 1984, ch. 376, §§ 1, 2; 65 Laws 1985, ch. 204, §§ 1-4; 65 Laws 1986, ch. 394, §§ 1-4; 66 Laws 1987, ch. 86, §§ 1, 2; 67 Laws 1990, ch. 407, § 1; 68 Laws 1991, ch. 82, § 1; 70 Laws 1995, ch. 117, §§ 1, 2, approved July 1, 1995; 70 Laws 1996, ch. 454, §§ 1-3, eff. July 8, 1996; 70 Laws 1996,

ch. 455, § 1, eff. July 8, 1996; 71 Laws 1998, ch. 347, §§ 1, 2, eff. Dec. 31, 1998; 71 Laws 1998, ch. 350, § 1, eff. Dec. 31, 1998; 72 Laws 1999, ch. 242, § 1, eff. Aug. 4, 1999; 72 Laws 1999, ch. 248, §§ 1, 2, eff. Aug. 4, 1999; 77 Laws 2009, ch. 77, §§ 1, 2, eff. Jan. 1, 2010; 78 Laws 2011, ch. 74, §§ 1, 2[1], 2[2], eff. July 1, 2011 [1]; 79 Laws 2013, ch. 10, § 1, eff. Jan. 1, 2014.

Codifications: 30 Del.C. 1953, § 1102

Footnotes

1 78 Laws 2011, ch. 74 contained two sections designated "Section 2."

30 Del.C. § 1102, DE ST TI 30 § 1102

Current through 80 Laws 2015, ch. 3. Revisions to 2015 Acts by the Delaware Code Revisors were unavailable at the time of publication.

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West's Delaware Code Annotated
Title 30. State Taxes
Part II. Income, Inheritance and Estate Taxes
Chapter 11. Personal Income Tax
Subchapter II. Resident Individuals

30 Del.C. § 1111

§ 1111. Credit for income tax paid to another state

Currentness

(a) Allowance of credit.--A resident individual shall be allowed a credit against the tax otherwise due under this chapter for the amount of any income tax imposed for the taxable year by another state of the United States, or the District of Columbia, on income derived from sources therein which is also subject to tax under this chapter.

(b) Limitation on credit.--The credit allowable under this section, with respect to the income tax imposed upon the taxpayer for the taxable year by each other taxing jurisdiction, shall not exceed the amount computed by multiplying the tax otherwise due under this chapter by a fraction, the numerator of which is the amount of the taxpayer's taxable income derived from sources in the other taxing jurisdiction (applying the rules of § 1122 of this title) and the denominator of which is the entire taxable income.

Credits

57 Laws 1970, ch. 737, § 1; 59 Laws 1973, ch. 64, § 1; 70 Laws 1995, ch. 186, § 1, eff. July 10, 1995.

Codifications: 30 Del.C. 1953, § 1111

Notes of Decisions (7)

30 Del.C. § 1111, DE ST TI 30 § 1111
Current through 80 Laws 2015, ch. 3. Revisions to 2015 Acts by the Delaware Code Revisors were unavailable at the time of publication.

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West's District of Columbia Code Annotated 2001 Edition
Division VIII. General Laws.
Title 47. Taxation, Licensing, Permits, Assessments, and Fees. (Refs & Annos)
Chapter 18. Income and Franchise Taxes. (Refs & Annos)
Subchapter VI. Tax on Residents and Nonresidents. (Refs & Annos)

DC ST § 47-1806.03
Formerly cited as DC ST 1981 § 47-1806.3

§ 47-1806.03. Tax on residents and nonresidents--Imposition and rates.

Effective: February 26, 2015
Currentness

(a)(1) In the case of a taxable year beginning after December 31, 1986, there is imposed on the taxable income of every resident a tax determined in accordance with the following table:

If the taxable income is:	*The tax is:*
Not over $10,000	6% of the taxable income.
Over $10,000 but not over $20,000	$600, plus 8% of the excess over $10,000.
Over $20,000	$1,400, plus 10% of the excess over $20,000.

(2) In the case of a taxable year beginning after December 31, 1987, there is imposed on the taxable income of every resident a tax determined in accordance with the following table:

If the taxable income is:	*The tax is:*
Not over $10,000	6% of the taxable income.
Over $10,000 but not over $20,000	$600, plus 8% of the excess over $10,000.
Over $20,000	$1,400, plus 9.5% of the excess over $20,000.

(3) In the case of a taxable year beginning after December 31, 1999, there is imposed on the taxable income of every resident a tax determined in accordance with the following table:

If the taxable income is:	*The tax is:*
Not over $10,000	5% of the taxable income.
Over $10,000 but not over $20,000	$500, plus 7.5% of the excess over $10,000.
Over $20,000	$1,250, plus 9.5% of the excess over $20,000.

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(4)(A) In the case of a taxable year beginning after December 31, 2000, there is imposed on the taxable income of every resident a tax determined in accordance with the following table:

If the taxable income is:	*The tax is:*
Not over $10,000..	5% of the taxable income.
Over $10,000 but not over $30,000..................................	$500, plus 7.5% of the excess over $10,000.
Over $30,000..	$2,000, plus 9.3% of the excess over $30,000.

(B) Repealed.

(5)(A) In the case of a taxable year beginning after December 31, 2003, there is imposed on the taxable income of every resident a tax determined in accordance with the following table:

If the taxable income is:	***The tax is:***
Not over $10,000..	5.0% of the taxable income.
Over $10,000 but not over $30,000..................................	$500, plus 7.5% of the excess over $10,000.
Over $30,000..	$2,000, plus 9.0% of the excess over $30,000.

(B) Subparagraph (A) of this paragraph shall not apply if:

(i) The certification by the Chief Financial Officer required by § 47-387.01 demonstrates that the accumulated general fund balance for the immediately preceding fiscal year is less than 5% of the general fund operating budget for the current fiscal year, the nominal GDP growth is less than or equal to 3.5%, or the real GDP growth is less than or equal to 1.7%; or

(ii) The Mayor demonstrates, and the Chief Financial Officer certifies, that a proposed budget will not be balanced as required by § 1-206.03(c) if the scheduled tax rate decrease under subparagraph (A) of this paragraph takes effect.

(6)(A) In the case of a taxable year beginning after December 31, 2004, there is imposed on the taxable income of every resident a tax determined in accordance with the following table:

If the taxable income is:	***The tax is:***
Not over $10,000..	4.5% of the taxable income.
Over $10,000 but not over $40,000..................................	$450, plus 7% of the excess over $10,000.
Over $40,000..	$2,550, plus 8.7% of the excess over $40,000.

(B) Subparagraph (A) of this paragraph shall not apply if:

(i) The certification by the Chief Financial Officer required by § 47-387.01 demonstrates that the accumulated general fund balance for the immediately preceding fiscal year is less than 5% of the general fund operating budget for the current fiscal year, the nominal GDP growth is less than or equal to 3.5%, or the real GDP growth is less than or equal to 1.7%; or

(ii) The Mayor demonstrates, and the Chief Financial Officer certifies, that a proposed budget will not be balanced as required by § 1-206.03(c) if the scheduled tax rate decrease under subparagraph (A) of this paragraph takes effect.

(C) If the rate reduction scheduled for the previous year was not implemented, the rate imposed by this paragraph shall be the last unimplemented percentage decrease scheduled for a previous year, instead of that prescribed by this paragraph.

(7)(A) In the case of a taxable year beginning after December 31, 2005, there is imposed on the taxable income of every resident a tax determined in accordance with the following table:

If the taxable income is:	*The tax is:*
Not over $10,000...	4% of the taxable income.
Over $10,000 but not over $40,000..................................	$400, plus 6% of the excess over $10,000.
Over $40,000...	$2,200, plus 8.5% of the excess over $40,000.

(B) Subparagraph (A) of this paragraph shall not apply if:

(i) The certification by the Chief Financial Officer required by § 47-387.01 demonstrates that the accumulated general fund balance for the immediately preceding fiscal year is less than 5% of the general fund operating budget for the current fiscal year, the nominal GDP growth is less than or equal to 3.5%, or the real GDP growth is less than or equal to 1.7%; or

(ii) The Mayor demonstrates, and the Chief Financial Officer certifies, that a proposed budget will not be balanced as required by § 1-206.03(c) if the scheduled tax rate decrease under subparagraph (A) of this paragraph takes effect.

(C) If the rate reduction scheduled for the previous year was not implemented, the rate imposed by this paragraph shall be the last unimplemented percentage decrease scheduled for a previous year, instead of that prescribed by this paragraph.

(8)(A) In the case of a taxable year beginning after December 31, 2011, there is imposed on the taxable income of every resident a tax determined in accordance with the following table:

If the taxable income is: The tax is:

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"Not over $10,000..	4% of the taxable income
"Over $10,000 but not over $40,000.........................	$400, plus 6% of the excess over $10, 000.
"Over $40,000 but not over $350,000.......................	$2,200, plus 8.5% of the excess over 40,000
"Over $350,000...	$28,550, plus 8.95% of the excess above $350,000.

(B) This paragraph shall expire on January 1, 2015.

(9) In the case of the taxable year beginning after December 31, 2014, there is imposed on the taxable income of every resident a tax determined in accordance with the following table:

"If the taxable income is:....	The tax is:
"Not over $ 10,000	4% of the taxable income.
"Over $ 10,000 but not over $ 40,000	$400, plus 6% of the excess over $ 10,000.
"Over $ 40,000 but not over $ 60,000	$2,200, plus 7% of the excess over $ 40,000.
"Over $ 60,000 but not over $ 350,000	$3,600, plus 8.5% of the excess over $ 60,000.
"Over $350,000	$28,250, plus 8.95% of the excess above $350,000.

(10)(A) In the case of taxable years beginning after December 31, 2015, there is imposed on the taxable income of every resident a tax determined in accordance with the following table:

"(A) "If the taxable income is:	The tax is:
"Not over $ 10,000	4% of the taxable income.
"Over $ 10,000 but not over $ 40,000	$400, plus 6% of the excess over $ 10,000; and

(B) Subject to availability of funding and in accordance with § 47-181,

"If the taxable income is:	The Tax is:
"Over $ 40,000 but not over $ 60,000	$2,200, plus 6.5% of the excess over $ 40,000.
"Over $ 60,000 but not over $ 350,000	$3,500, plus 8.5% of the excess over $ 60,000.
"Over $350,000 but not over $1,000,000	$28,150, plus 8.75% of the excess above $350,000.
"Over $1,000,000	$85,025, plus 8.95% of the excess above $1,000,000

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(C) Paragraph (9) of this subsection shall continue to apply for taxable years beginning after December 31, 2015, except where superseded by any funded provision of § 47-181, until subparagraph (B) of this paragraph is fully applicable.

(b) In lieu of the method of computation provided for in subsection (a) of this section, individuals may elect to compute the tax in accordance with a tax table prescribed by the Mayor for such taxable year, subject to such rules and regulations as the Mayor may prescribe. The amount of tax to be paid under the tax table prescribed by the Mayor shall be consistent with the tax rates provided for in subsection (a) of this section.

(c) An individual not living with a spouse or domestic partner on the last day of the taxable year, for the purposes of this chapter, shall be considered as a single person.

(d) This section shall not apply to any return filed by a fiduciary for an estate or trust or to any married (or domestic partner) resident living with his or her spouse (or domestic partner) at any time during the taxable year where such spouse (or domestic partner) files a return and computes the tax thereon without regard to this section.

(e) If a spouse or domestic partner living together file separate returns, each shall be treated as a single person for the purposes of this section.

Credits

(July 16, 1947, 61 Stat. 344, ch. 258, art. I, title VI, §§ 3, 4; May 27, 1949, 63 Stat. 132, ch. 146, title IV, § 413; May 18, 1954, 68 Stat. 117, ch. 218, title XII, § 1201; Mar. 31, 1956, 70 Stat. 70, ch. 154, §§ 7, 8; Sept. 4, 1957, 71 Stat. 606, Pub. L. 85-281, § 5; Sept. 30, 1966, 80 Stat. 858, Pub. L. 89-610, title VII, § 701; Aug. 2, 1968, 82 Stat. 612, Pub. L. 90-450, title II, § 201; June 30, 1970, 84 Stat. 366, Pub. L. 91-297, title IV, § 401; Oct. 21, 1975, D.C. Law 1-23, title VI, § 601(9), 22 DCR 2110; June 15, 1976, D.C. Law 1-70, title XII, § 1201(a), 23 DCR 564; June 11, 1982, D.C. Law 4-118, § 109, 29 DCR 1770; Oct. 1, 1987, D.C. Law 7-29, § 2(f)(2), 34 DCR 5097; enacted, Apr. 9, 1997, D.C. Law 11-254, § 2, 44 DCR 1575; Oct. 20, 1999, D.C. Law 13-38, § 2702(h), 46 DCR 6373; Oct. 1, 2002, D.C. Law 14-190, § 802(b), 49 DCR 6968; Mar. 14, 2007, D.C. Law 16-292, § 2(d), 54 DCR 1080; Sept. 12, 2008, D.C. Law 17-231, § 41(h), 55 DCR 6758; Sept. 20, 2012, D.C. Law 19-168, § 8009(b), 59 DCR 8025; Sept. 26, 2012, D.C. Law 19-171, § 37(c), 59 DCR 6190; Feb. 26, 2015, D.C. Law 20-155, § 7012(c)(5), 61 DCR 9990.)

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DC CODE § 47-1806.03
Current through March 25, 2015

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DC ST § 47-1806.04
Formerly cited as DC ST 1981 § 47-1806.4

§ 47-1806.04. Tax on residents and nonresidents--Credits--In general.

Effective: February 26, 2015
Currentness

(a) The amount of tax payable under this subchapter by a resident of the District in respect to the taxable year shall be reduced by a credit equal to the amount of individual income tax such individual is required to pay and, in fact, has paid to any state, territory or possession of the United States, or political subdivision thereof, upon income attributable to such state, territory or possession of the United States, or political subdivision thereof, for such taxable year or portion thereof while concurrently a resident of the District. The credit provided under this subsection shall not exceed the proportion of the tax otherwise due under this chapter that the amount of the individual's adjusted gross income received by him, or accrued to him if on an accrual basis, subject to tax in the other jurisdiction bears to his entire adjusted gross income received by him, or accrued to him, while he was concurrently a resident of the District. The Mayor may require satisfactory proof of the payment of such income taxes to another jurisdiction. The credit provided by this subsection shall not be allowed against any tax imposed under §§ 47-1808.01 through 47-1808.06. Beginning with any taxable year after December 31, 1990, no franchise tax, license tax, excise tax, unincorporated business tax, occupation tax, or any tax characterized as such by the other taxing jurisdiction, even if applied to earned or business income, shall qualify as a credit under this section.

(b) The amount deducted and withheld as tax under this chapter during any calendar year upon the wages of any individual shall be allowed as a credit to the recipient of the income against the tax imposed by this chapter, for taxable years beginning in such calendar year. If more than 1 taxable year begins in such calendar year such amount shall be allowed as a credit against the tax for the last taxable year so beginning.

(c)(1) If a return is filed for a full calendar or fiscal year beginning after December 31, 1988, an individual who incurs household and dependent care services necessary to engage in gainful employment and who is allowed a credit under § 21 of the Internal Revenue Code of 1986, shall be allowed, against the tax imposed by this chapter for the taxable year, an amount equal to 32% of the credit allowed under § 21 of the Internal Revenue Code of 1986, regardless of the amount of the credit actually used to offset federal tax liability.

(2) If a return is filed for a period of less than a full calendar or fiscal year beginning after December 31, 1988, the credit allowed under this subsection shall be the credit calculated according to the provisions of paragraph (1) of this subsection, multiplied times the ratio that the employment-related expenses, allowed under § 21 of the Internal Revenue Code of 1986 and incurred during the period of residency in the District, bear to the total employment-related expenses allowed under § 21 of the Internal Revenue Code of 1986, and incurred for the whole taxable year.

(3) In no event shall the credit allowed under paragraph (1) or (2) of this subsection exceed the amount of tax otherwise due without reference to this subsection.

(d) This section shall take effect in accordance with the provisions of § 1-206.02(c)(1) and shall apply to taxable years beginning after December 31, 1978.

(e)(1) The amount of tax payable under this subchapter by a resident of the District in respect to the taxable year shall be reduced by a low income credit designed to make the District's income tax threshold equal to the federal income tax threshold. For purposes of this subsection, the term "tax threshold" means the point at which a taxpayer begins to owe income tax after allowance of the standard deduction and all personal exemptions to which the taxpayer is entitled, but before application of any itemized deductions or credits. The credit shall be calculated in accordance with a table prescribed by the Mayor.

(2) The credit provided for in paragraph (1) of this subsection shall not be allowed to a resident who has a federal tax liability determined in accordance with section 55 of the Internal Revenue Code of 1986 or who has elected to claim the earned income tax credit provided for in subsection (f) of this section.

(3) In no event shall the credit allowed under paragraph (1) of this subsection exceed the amount of the tax otherwise due without reference to this section.

(4) The credit provided for in paragraph (1) of this subsection shall no longer be allowed upon the personal exemption being increased to conform to the federal level.

(f)(1)(A) If a return is filed for a full calendar or fiscal year beginning after December 31, 2004, an individual who is allowed an earned income tax credit under section 32 of the Internal Revenue Code of 1986 shall be allowed a credit against the tax imposed by this chapter for the taxable year in an amount equal to 40% of the earned income tax credit allowed under section 32 of the Internal Revenue Code of 1986; provided, that the credit shall not be allowed to a resident who has elected to claim the low income tax credit provided for in subsection (e) of this section.

(B) If a return is filed for a full calendar or fiscal year beginning after December 31, 2014, an individual with a qualifying child who is eligible for and claimed an earned income tax credit on their federal tax return under section 32 of the Internal Revenue Code of 1986 shall be allowed a credit against the tax imposed by this chapter for the taxable year in an amount equal to 40% of the earned income tax credit allowed under section 32 of the Internal Revenue Code of 1986.

(C)(i) If a return is filed for a full calendar or fiscal year beginning after December 31, 2014, an individual without a qualifying child who is eligible for an earned income tax credit on their federal tax return under section 32 of the Internal Revenue Code of 1986 (without regard to the limit in section 32(a)(2) of the Internal Revenue Code of 1986) shall be allowed a credit against the tax imposed by this chapter in an amount equal to the credit percentage of so much of a taxpayer's earned income as does not exceed the earned income amount.

(ii) The amount of the credit allowable to a taxpayer under sub-subparagraph (i) of this subparagraph for any taxable year shall not exceed the credit percentage of the earned income amount, over the phaseout percentage of 8.48% of so

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much of the adjusted gross income (or, if greater, the earned income) of the taxpayer for the taxable year as exceeds the phaseout amount of $17,235, increased annually by the cost-of-living adjustment.

(2) If a return is filed for a period of less than a full calendar or fiscal year beginning after December 31, 2004, the credit allowed under this subsection shall be reduced to the amount that bears the same ratio to the credit computed under the provisions of paragraph (1) of this subsection as the number of months in the period for which the return is made bears to 12 months.

(3) The credit allowed under this subsection shall be refundable to the resident claiming the credit.

(4) For the purposes of this subsection, credit percentage, earned income, earned income amount, and qualifying child shall have the same meanings as provided in section 32 of the Internal Revenue Code of 1986.

(g)(1) A taxpayer described in paragraph (2) of this subsection, and who otherwise would not qualify for the earned income tax credit under subsection (f)(1)(C) of this section or subsection 32(b) of the Internal Revenue Code of 1986, shall be allowed a credit equal to the credit allowed in subsection (f) of this section.

(2) To qualify for a credit as described in subsection (f) of this section, a taxpayer shall satisfy all the following requirements during the entire period for which the taxpayer seeks the credit:

(A) The taxpayer shall be a District resident taxpayer;

(B) The taxpayer shall be between the ages of 18 and 30;

(C) The taxpayer shall be the parent of a minor child with whom the taxpayer does not reside;

(D) A court order shall require the taxpayer to make child support payments, which are payable through a government-sponsored support collection unit, which order must have been in effect for at least one-half of the taxable year for which the taxpayer is seeking the credit; and

(E) The taxpayer shall have paid an amount in child support in the taxable year at least equal to the amount of current child support due during the taxable year for which the taxpayer is seeking the credit.

Credits

(July 16, 1947, 61 Stat. 345, ch. 258, art. I, title VI, § 5; Mar. 31, 1956, 70 Stat. 71, ch. 154, § 9; Apr. 19, 1977, D.C. Law 1-124, title IV, § 401(d)(1), 23 DCR 8749; Mar. 3, 1979, D.C. Law 2-146, §§ 2, 3, 25 DCR 6987; Mar. 6, 1979, D.C. Law 2-158, § 4, 25 DCR 7002; June 11, 1982, D.C. Law 4-118, § 110, 29 DCR 1770; June 24, 1987, D.C. Law 7-9, § 2(i), 34 DCR 3283; Oct. 1, 1987, D.C. Law 7-29, § 2(f)(3)-(5), 34 DCR 5097; May 10, 1989, D.C. Law 7-231, § 50, 36 DCR 492; Sept. 20, 1989, D.C. Law 8-25, § 3, 36 DCR 4721; Sept. 26, 1995, D.C. Law 11-52, § 114, 42 DCR 3684; enacted, Apr. 9, 1997, D.C. Law 11-254, § 2, 44 DCR 1575; Oct. 19, 2000, D.C. Law 13-172, § 2202, 47 DCR 6308; Sept. 6, 2001, D.C. Law 14-22, § 2, 48

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DCR 5751; Oct. 20, 2005, D.C. Law 16-33, § 1052, 52 DCR 7503; Aug. 16, 2008, D.C. Law 17-219, § 7002, 55 DCR 7598; Feb. 26, 2015, D.C. Law 20-155, § 7012(c)(6), 61 DCR 9990.)

Notes of Decisions (2)

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West's Code of Georgia Annotated
Title 48. Revenue and Taxation (Refs & Annos)
Chapter 7. Income Taxes (Refs & Annos)
Article 2. Imposition, Rate, and Computation; Exemptions (Refs & Annos)

Ga. Code Ann., § 48-7-20

§ 48-7-20. Rate of taxation of individuals

Currentness

(a) A tax is imposed upon every resident of this state with respect to the Georgia taxable net income of the taxpayer as defined in Code Section 48-7-27. A tax is imposed upon every nonresident with respect to such nonresident's Georgia taxable net income not otherwise exempted which is received by the taxpayer from services performed, property owned, proceeds of any lottery prize awarded by the Georgia Lottery Corporation, or from business carried on in this state. Except as otherwise provided in this chapter, the tax imposed by this subsection shall be levied, collected, and paid annually.

(b)(1) The tax imposed pursuant to subsection (a) of this Code section shall be computed in accordance with the following tables:

--SINGLE PERSON--

If Georgia Taxable Net Income Is:	The Tax Is:
Not over $ 750.00...	1%
Over $ 750.00 but not over $ 2,250.00..............................	$ 7.50 plus 2% of amount over $ 750.00
Over $ 2,250.00 but not over $ 3,750.00...........................	$ 37.50 plus 3% of amount over $ 2,250.00
Over $ 3,750.00 but not over $ 5,250.00...........................	$ 82.50 plus 4% of amount over $ 3,750.00
Over $ 5,250.00 but not over $ 7,000.00...........................	$ 142.50 plus 5% of amount over $ 5,250.00
Over $ 7,000.00..	$ 230.00 plus 6% of amount over $ 7,000.00

--MARRIED PERSON FILING A SEPARATE RETURN--

If Georgia Taxable Net Income Is:	The Tax Is:
Not over $ 500.00...	1%
Over $ 500.00 but not over $ 1,500.00..............................	$ 5.00 plus 2% of amount over $ 500.00
Over $ 1,500.00 but not over $ 2,500.00...........................	$ 25.00 plus 3% of amount over $ 1,500.00
Over $ 2,500.00 but not over $ 3,500.00...........................	$ 55.00 plus 4% of amount over $ 2,500.00
Over $ 3,500.00 but not over $ 5,000.00...........................	$ 95.00 plus 5% of amount over $ 3,500.00

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Over $ 5,000.00..	$ 170.00 plus 6% of amount over $ 5,000.00

--HEAD OF HOUSEHOLD AND MARRIED PERSONS FILING A JOINT RETURN--

If Georgia Taxable Net Income Is:	The Tax Is:
Not over $ 1,000.00...	1%
Over $ 1,000.00 but not over $ 3,000.00...........................	$ 10.00 plus 2% of amount over $ 1,000.00
Over $ 3,000.00 but not over $ 5,000.00...........................	$ 50.00 plus 3% of amount over $ 3,000.00
Over $ 5,000.00 but not over $ 7,000.00...........................	$ 110.00 plus 4% of amount over $ 5,000.00
Over $ 7,000.00 but not over $ 10,000.00.........................	$ 190.00 plus 5% of amount over $ 7,000.00
Over $ 10,000.00..	$ 340.00 plus 6% of amount over $ 10,000.00

(2) To facilitate the computation of the tax by those taxpayers whose federal adjusted gross income together with the adjustments set out in Code Section 48-7-27 for use in arriving at Georgia taxable net income is less than $10,000.00, the commissioner may construct tax tables which may be used by the taxpayers at their option. The tax shown to be due by the tables shall be computed on the bases of the standard deduction and the tax rates specified in paragraph (1) of this subsection. Insofar as practicable, the tables shall produce a tax approximately equivalent to the tax imposed by paragraph (1) of this subsection.

(c) The amount deducted and withheld by an employer from the wages of an employee pursuant to Article 5 of this chapter, relating to current income tax payments, shall be allowed the employee as a credit against the tax imposed by this Code section. Amounts paid by an individual as estimated tax under Article 5 of this chapter shall constitute payments on account of the tax imposed by this Code section. The amount withheld or paid during any calendar year shall be allowed as a credit or payment for the taxable year beginning in the calendar year in which the amount is withheld or paid.

(d) The tax imposed by this Code section applies to the Georgia taxable net income of estates and trusts, which shall be computed in the same manner as in the case of a single individual. The tax shall be computed on the Georgia taxable net income and shall be paid by the fiduciary.

Credits

Laws 1931, Ex. Sess., p. 3, § 24; Laws 1937, p. 109, § 2; Laws 1937-38, Ex. Sess., p. 150, § 2; Laws 1955, Ex. Sess., p. 27, § 1; Laws 1960, p. 1005, § 1; Laws 1971, p. 605, §§ 1, 2; Laws 1975, p. 857, § 1; Laws 1978, p. 309, § 2; Laws 1979, p. 5, § 62; Laws 1987, p. 191, § 2; Laws 1994, p. 597, § 2.

Formerly Code 1933, § 92-3101; Code 1933, § 91A-3601.

Notes of Decisions (7)

Ga. Code Ann., § 48-7-20, GA ST § 48-7-20

Current through Acts 2 to 8 and Act 10 of the 2015 Regular Session of the Georgia General Assembly

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West's Code of Georgia Annotated
Title 48. Revenue and Taxation (Refs & Annos)
Chapter 7. Income Taxes (Refs & Annos)
Article 2. Imposition, Rate, and Computation; Exemptions (Refs & Annos)

Ga. Code Ann., § 48-7-28

§ 48-7-28. Credits against taxes

Currentness

A resident individual who has an established business in another state, has investment in property having a taxable situs in another state, or engages in employment in another state may deduct from the tax due upon the entire net income of the resident individual the tax paid upon the net income of the business, investment, or employment in another state when the business, investment, or employment is in a state that levies a tax upon net income. In no case shall the credit permitted under this Code section exceed the tax which would be payable to this state upon a like amount of taxable income.

Credits

Laws 1931, Ex. Sess., p. 24, § 13; Laws 1957, p. 397, § 4; Laws 1962, p. 703, § 2; Laws 1963, p. 16, § 1; Laws 1978, p. 309, § 2; Laws 1987, p. 191, § 2.

Formerly Code 1933, § 92-3111; Code 1933, § 91A-3608.

Ga. Code Ann., § 48-7-28, GA ST § 48-7-28
Current through Acts 2 to 8 and Act 10 of the 2015 Regular Session of the Georgia General Assembly

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HRS § 235-4

§ 235-4. Income taxes by the State; residents, nonresidents, corporations, estates, and trusts

Currentness

(a) Residents. The tax imposed by this chapter applies to the entire income of a resident, computed without regard to source in the State.

(b) Nonresidents. In the case of a nonresident, the tax applies to the income received or derived from property owned, personal services performed, trade, or business carried on, and any and every other source in the State.

In the case of a nonresident spouse filing a joint return with a resident spouse, the tax applies to the entire income of the nonresident spouse computed without regard to source in the State.

(c) Change of status. Except where a joint return is filed, when the status of a taxpayer changes during the taxable year from resident to nonresident, or from nonresident to resident, the tax imposed by this chapter applies to the entire income earned during the period of residence in the manner provided in subsection (a) of this section and during the period of nonresidence the tax shall apply upon the income received or derived as a nonresident in the manner provided in subsection (b) of this section; provided that if it cannot be determined whether income was received or derived during the period of residence or during the period of nonresidence, there shall be attributed to the State such portion of the income as is determined by applying to such income for the whole taxable year the ratio which the period of residence in the State bears to the whole taxable year, unless the taxpayer shows to the satisfaction of the department of taxation that the result is to attribute to the state income, dependent upon residence, received or derived during the period of nonresidence, in which event the amount of income as to which such showing is made shall be excluded.

The apportionment of income provided by this subsection shall not apply where one spouse is a resident of this State and a joint return is filed with the nonresident spouse in which event the tax shall be computed on their aggregate income in the manner provided in section 235-52 without regard to source in the State. Where, however, both spouses change their status from resident to nonresident or from nonresident to resident, their income shall be apportioned in the manner provided in this subsection.

(d) A corporation, foreign or domestic, is taxable upon the income received or derived from property owned, trade or business carried on, and any and every other source in the State. In addition thereto a domestic corporation is taxable upon its income from property owned, trade or business carried on, and any and every other source outside the State, unless subjected to income tax thereon in any other jurisdiction. Subjection to federal tax does not constitute subjection to income tax in another jurisdiction. "Corporation" includes any professional corporation incorporated pursuant to chapter 415A or 416.

(e)(1) The income of a resident estate or trust shall be computed without regard to source in the State. The income of a nonresident estate or trust shall be that received or derived from sources in the State.

(2) A beneficiary of an estate or trust, or person treated as the owner of any portion of a trust, who is taxable upon income thereof under the Internal Revenue Code, shall be taxed thereon as herein provided, irrespective of the taxability of the estate or trust or whether it is required to make a fiduciary return under this chapter. If all such income consists of income which would be taxable under this chapter if received directly by the beneficiary or person, the beneficiary or person shall be taxed upon all of it. If some of it consists of income which would not be taxable if received directly by the beneficiary or person, then unless the trust instrument provides otherwise the income of each such beneficiary or person shall be conclusively presumed to have been received or derived out of each class of income of the estate or trust, and the beneficiary or person shall be taxed upon such part of it as would be taxable if received directly by the beneficiary or person.

(3) Each estate or trust shall include in its return all of the information necessary to determine the taxability of the income of the estate or trust, regardless of source. Only in the case of a nonresident estate or trust of which all the beneficiaries are nonresidents and no part of which is treated as owned by a resident shall the return be confined to income from sources in the State. This paragraph shall not cause income to be taxed to an estate or trust that otherwise would not have been so taxed.

Credits

Laws 1957, Sp. Sess., ch. 1, § 2; Laws 1959, 2nd Sp. Sess., ch. 1, § 16; 1965 Supp., § 121-3; H.R.S. § 235-4; Laws 1969, ch. 226, § 5; Laws 1974, ch. 9, § 1; Laws 1976, ch. 60, § 1; Laws 1978, ch. 95, § 1; Laws 1983, ch. 167, § 18; Laws 1983, ch. 206, § 1; Laws 1984, ch. 90, § 1; Laws 1985, ch. 270, § 4; Laws 1988, ch. 141, § 19.

Notes of Decisions (9)

H R S § 235-4, HI ST § 235-4
Current through the 2014 Regular and Special Sessions.

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HRS § 235-55

§ 235-55. Tax credits for resident taxpayers

Currentness

(a) Whenever an individual or person liable to the taxes imposed upon individuals, who is a resident of the State or who has filed a joint resident return under section 235-93, has become liable for income taxes to a state, or to the District of Columbia, Puerto Rico, or any other territory or possession of the United States, or to a foreign country upon any part of the individual's or person's taxable income for the taxable year, derived or received from sources without the State and taxed under the laws of such other jurisdiction irrespective of the residence or domicile of the recipient, there shall be credited against the tax payable by the individual or person under this chapter the tax so paid by the individual or person to the other jurisdiction upon the individual's or person's producing for the department of taxation satisfactory evidence:

(1) Of such tax payment; and

(2) That the laws of the other jurisdiction do not allow the individual or person a credit against the taxes imposed by such jurisdiction for the taxes paid or payable under this chapter, or do allow such credit in an amount which has been deducted in computing the amount of credit sought under this section.

(b) The application of such credit, however:

(1) Shall not be allowed with respect to any taxable income or any tax which under subchapter N of chapter 1 of the Internal Revenue Code of 1954 (which is applicable for federal purposes but not for state purposes) is or may be the subject of an exclusion, exemption, or tax credit; and

(2) Shall not operate to reduce the tax payable under this chapter to an amount less than that which would have been payable had the taxpayer been taxable only on the income from property owned, personal services performed, trade or business carried on, and other sources in the State.

(c) If any taxes paid to another jurisdiction for which a taxpayer has been allowed a credit under this section are at any time credited or refunded to the taxpayer, such fact shall be reported by the taxpayer to the department within twenty days after the credit or refund. Failure to make such report shall be deemed failure to make a return and subject to the penalties imposed by law in such cases. A tax equal to the credit allowed for the taxes so credited or refunded shall be due and payable from the taxpayer upon notice and demand from the department. If the amount of such tax is not paid within ten days from the date of the notice and demand, the taxpayer shall be subject to the usual penalties and interest for delinquency in payment.

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(d) Nothing in this section shall be construed to permit a credit against the taxes imposed by this chapter on account of federal income taxes.

Credits

Laws 1957, Sp. Sess., ch. 1, § 2; Laws 1959, ch. 277, § 9(a); Laws 1959, 2nd Sp. Sess., ch. 1, § 16; 1965 Supp., § 121-12; H.R.S. § 235-55; Laws 1984, ch. 90, § 1; Laws 1996, ch. 187, § 5.

H R S § 235-55, HI ST § 235-55
Current through the 2014 Regular and Special Sessions.

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West's Idaho Code Annotated
Title 63. Revenue and Taxation (Refs & Annos)
Chapter 30. Income Tax

I.C. § 63-3002

§ 63-3002. Declaration of intent

Currentness

It is the intent of the legislature by the adoption of this act, insofar as possible to make the provisions of the Idaho act identical to the provisions of the Federal Internal Revenue Code relating to the measurement of taxable income, to the end that the taxable income reported each taxable year by a taxpayer to the internal revenue service shall be the identical sum reported to this state, subject only to modifications contained in the Idaho law; to achieve this result by the application of the various provisions of the Federal Internal Revenue Code relating to the definition of income, exceptions therefrom, deductions (personal and otherwise), accounting methods, taxation of trusts, estates, partnerships and corporations, basis and other pertinent provisions to gross income as defined therein, resulting in an amount called "taxable income" in the Internal Revenue Code, and then to impose the provisions of this act thereon to derive a sum called "Idaho taxable income"; to impose a tax on residents of this state measured by Idaho taxable income wherever derived and on the Idaho taxable income of nonresidents which is the result of activity within or derived from sources within this state. All of the foregoing is subject to modifications in Idaho law including, without limitation, modifications applicable to unitary groups of corporations, which include corporations incorporated outside the United States.

Credits

S.L. 1959, ch. 299, § 2; S.L. 1969, ch. 319, § 1; S.L. 1970, ch. 222, § 1; S.L. 1993, ch. 284, § 1; S.L. 1995, ch. 111, § 1.

Notes of Decisions (3)

I.C. § 63-3002, ID ST § 63-3002
Current with emergency effective and retroactive legislation through Chapter 58 of the 2015 First Regular Session of the 63rd Idaho Legislature.

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West's Idaho Code Annotated
Title 63. Revenue and Taxation (Refs & Annos)
Chapter 30. Income Tax

I.C. § 63-3029

§ 63-3029. Credit for income taxes paid another state

Currentness

(1) A resident individual shall be allowed a credit against the tax otherwise due under this chapter for the amount of any income tax imposed on the individual, an S corporation, partnership, limited liability company, estate or trust of which the individual is a shareholder, partner, member, or beneficiary (to the extent attributable to the individual as a result of the individual's share of the S corporation's, partnership's, limited liability company's, estate's or trust's taxable income in another state), for the taxable year by another state on income derived from sources therein while domiciled in Idaho and that is also subject to tax under this chapter.

(2) For purposes of this section:

(a) "State" shall include any state of the United States, the District of Columbia, or any possession or territory of the United States.

(b) Except as provided in subsection (3)(a)(i) of this section, "individual" shall include estates and trusts.

(c) References to "domiciled in" shall mean "a resident of" for purposes of computing the credit for trusts and estates.

(3)(a) Except as provided in subsection (3)(b) of this section:

(i) The credit provided under this section to an individual shall not exceed the proportion of the tax otherwise due under this chapter that the amount of the adjusted gross income of the taxpayer derived from sources in the other state as modified by this chapter bears to the adjusted gross income of the taxpayer as modified by this chapter.

(ii) The credit provided under this section to an estate or trust shall not exceed the proportion of the tax otherwise due under this chapter that the amount of the federal total income of the estate or trust derived from sources in the other state and taxed by that state bears to the federal total income of the estate or trust. "Federal total income of the estate or trust derived from sources in the other state" shall be determined as provided under section 63-3026A, Idaho Code, as if the estate or trust was a nonresident.

(b) When tax is paid to another state on income of an S corporation, partnership, limited liability company, estate or trust, the limitation calculated in subsection (3)(a) of this section with respect to that income shall be based on the proportion that the individual taxpayer's share of the entity's taxable income correctly reported to the other state under the laws of the other

state bears to the individual's adjusted gross income, as modified by this chapter. This limitation shall apply whether the tax is paid to the other state by the individual or by the S corporation, partnership, limited liability company, estate or trust.

(c) The credit provided under this section shall further be limited to the tax paid to the other state.

(4) To substantiate the credit allowed under this section, the state tax commission may require a copy of any receipt showing payment of income taxes to the other state or a copy of any return or returns filed with such other state, or both.

(5) No credit allowed under this section shall be applied in calculating tax due under this chapter if the tax upon which the credit is based has been claimed as a deduction, unless the tax is restored to income on the Idaho return.

(6) The credit shall not be allowed if such other state allows a credit against taxes imposed by such state for taxes paid or payable under this chapter.

(7) For purposes of this section an income tax imposed on an S corporation, partnership, limited liability company, estate or trust includes:

(a) A direct tax imposed upon the income for the taxable year of the S corporation, partnership, limited liability company, estate or trust; and

(b) An excise or franchise tax that is measured by the income for the taxable year of the S corporation, partnership, limited liability company, estate or trust.

(8) For purposes of subsection (7) of this section, an excise or franchise tax is "measured by income" only if the statute imposing the excise or franchise tax provides that the base for the tax:

(a) Includes:

(i) Revenue from sales;

(ii) Revenue from services rendered; and

(iii) Income from investments; and

(b) Permits a deduction for one (1) or both of the following:

(i) The cost of goods, inventory or products with respect to revenue from sales; and

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(ii) The cost of services rendered with respect to revenue from services rendered.

(9) A part-year resident is entitled to a credit, determined in the manner prescribed by the state tax commission, for income taxes paid to another state in regard to income which is:

(a) Earned while the taxpayer is domiciled or residing in this state; and

(b) Subject to tax in such other state.

(10) If the interest in an S corporation, partnership, limited liability company, estate or trust was held for less than the entire taxable year, the share attributable to the individual shall be allocated in the same manner as for federal purposes.

Credits

S.L. 1959, ch. 299, § 29; S.L. 1961, ch. 328, § 12; S.L. 1970, ch. 222, § 6; S.L. 1975, ch. 106, § 1; S.L. 1980, ch. 12, § 1; S.L. 1982, ch. 8, § 1; S.L. 1995, ch. 111, § 30; S.L. 1996, ch. 422, § 1; S.L. 1998, ch. 10, § 1; S.L. 2007, ch. 191, § 1, eff. Mar. 26, 2007; S.L. 2008, ch. 315, § 1, eff. Mar. 31, 2008; S.L. 2009, ch. 216, § 1, eff. Jan. 1, 2009. Amended by S.L. 2012, ch. 222, § 1, eff. Jan. 1, 2012.

Notes of Decisions (7)

I.C. § 63-3029, ID ST § 63-3029

Current with emergency effective and retroactive legislation through Chapter 58 of the 2015 First Regular Session of the 63rd Idaho Legislature.

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35 ILCS 5/201
Formerly cited as IL ST CH 120 ¶2-201

5/201. Tax Imposed

Effective: July 16, 2014
Currentness

§ 201. Tax Imposed.

(a) In general. A tax measured by net income is hereby imposed on every individual, corporation, trust and estate for each taxable year ending after July 31, 1969 on the privilege of earning or receiving income in or as a resident of this State. Such tax shall be in addition to all other occupation or privilege taxes imposed by this State or by any municipal corporation or political subdivision thereof.

(b) Rates. The tax imposed by subsection (a) of this Section shall be determined as follows, except as adjusted by subsection (d-1):

(1) In the case of an individual, trust or estate, for taxable years ending prior to July 1, 1989, an amount equal to 2 1/2% of the taxpayer's net income for the taxable year.

(2) In the case of an individual, trust or estate, for taxable years beginning prior to July 1, 1989 and ending after June 30, 1989, an amount equal to the sum of (i) 2 1/2% of the taxpayer's net income for the period prior to July 1, 1989, as calculated under Section 202.3, and (ii) 3% of the taxpayer's net income for the period after June 30, 1989, as calculated under Section 202.3.

(3) In the case of an individual, trust or estate, for taxable years beginning after June 30, 1989, and ending prior to January 1, 2011, an amount equal to 3% of the taxpayer's net income for the taxable year.

(4) In the case of an individual, trust, or estate, for taxable years beginning prior to January 1, 2011, and ending after December 31, 2010, an amount equal to the sum of (i) 3% of the taxpayer's net income for the period prior to January 1, 2011, as calculated under Section 202.5, and (ii) 5% of the taxpayer's net income for the period after December 31, 2010, as calculated under Section 202.5.

(5) In the case of an individual, trust, or estate, for taxable years beginning on or after January 1, 2011, and ending prior to January 1, 2015, an amount equal to 5% of the taxpayer's net income for the taxable year.

(5.1) In the case of an individual, trust, or estate, for taxable years beginning prior to January 1, 2015, and ending after December 31, 2014, an amount equal to the sum of (i) 5% of the taxpayer's net income for the period prior to January 1, 2015, as calculated under Section 202.5, and (ii) 3.75% of the taxpayer's net income for the period after December 31, 2014, as calculated under Section 202.5.

(5.2) In the case of an individual, trust, or estate, for taxable years beginning on or after January 1, 2015, and ending prior to January 1, 2025, an amount equal to 3.75% of the taxpayer's net income for the taxable year.

(5.3) In the case of an individual, trust, or estate, for taxable years beginning prior to January 1, 2025, and ending after December 31, 2024, an amount equal to the sum of (i) 3.75% of the taxpayer's net income for the period prior to January 1, 2025, as calculated under Section 202.5, and (ii) 3.25% of the taxpayer's net income for the period after December 31, 2024, as calculated under Section 202.5.

(5.4) In the case of an individual, trust, or estate, for taxable years beginning on or after January 1, 2025, an amount equal to 3.25% of the taxpayer's net income for the taxable year.

(6) In the case of a corporation, for taxable years ending prior to July 1, 1989, an amount equal to 4% of the taxpayer's net income for the taxable year.

(7) In the case of a corporation, for taxable years beginning prior to July 1, 1989 and ending after June 30, 1989, an amount equal to the sum of (i) 4% of the taxpayer's net income for the period prior to July 1, 1989, as calculated under Section 202.3, and (ii) 4.8% of the taxpayer's net income for the period after June 30, 1989, as calculated under Section 202.3.

(8) In the case of a corporation, for taxable years beginning after June 30, 1989, and ending prior to January 1, 2011, an amount equal to 4.8% of the taxpayer's net income for the taxable year.

(9) In the case of a corporation, for taxable years beginning prior to January 1, 2011, and ending after December 31, 2010, an amount equal to the sum of (i) 4.8% of the taxpayer's net income for the period prior to January 1, 2011, as calculated under Section 202.5, and (ii) 7% of the taxpayer's net income for the period after December 31, 2010, as calculated under Section 202.5.

(10) In the case of a corporation, for taxable years beginning on or after January 1, 2011, and ending prior to January 1, 2015, an amount equal to 7% of the taxpayer's net income for the taxable year.

(11) In the case of a corporation, for taxable years beginning prior to January 1, 2015, and ending after December 31, 2014, an amount equal to the sum of (i) 7% of the taxpayer's net income for the period prior to January 1, 2015, as calculated under Section 202.5, and (ii) 5.25% of the taxpayer's net income for the period after December 31, 2014, as calculated under Section 202.5.

(12) In the case of a corporation, for taxable years beginning on or after January 1, 2015, and ending prior to January 1, 2025, an amount equal to 5.25% of the taxpayer's net income for the taxable year.

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(13) In the case of a corporation, for taxable years beginning prior to January 1, 2025, and ending after December 31, 2024, an amount equal to the sum of (i) 5.25% of the taxpayer's net income for the period prior to January 1, 2025, as calculated under Section 202.5, and (ii) 4.8% of the taxpayer's net income for the period after December 31, 2024, as calculated under Section 202.5.

(14) In the case of a corporation, for taxable years beginning on or after January 1, 2025, an amount equal to 4.8% of the taxpayer's net income for the taxable year. The rates under this subsection (b) are subject to the provisions of Section 201.5.

(c) Personal Property Tax Replacement Income Tax. Beginning on July 1, 1979 and thereafter, in addition to such income tax, there is also hereby imposed the Personal Property Tax Replacement Income Tax measured by net income on every corporation (including Subchapter S corporations), partnership and trust, for each taxable year ending after June 30, 1979. Such taxes are imposed on the privilege of earning or receiving income in or as a resident of this State. The Personal Property Tax Replacement Income Tax shall be in addition to the income tax imposed by subsections (a) and (b) of this Section and in addition to all other occupation or privilege taxes imposed by this State or by any municipal corporation or political subdivision thereof.

(d) Additional Personal Property Tax Replacement Income Tax Rates. The personal property tax replacement income tax imposed by this subsection and subsection (c) of this Section in the case of a corporation, other than a Subchapter S corporation and except as adjusted by subsection (d-1), shall be an additional amount equal to 2.85% of such taxpayer's net income for the taxable year, except that beginning on January 1, 1981, and thereafter, the rate of 2.85% specified in this subsection shall be reduced to 2.5%, and in the case of a partnership, trust or a Subchapter S corporation shall be an additional amount equal to 1.5% of such taxpayer's net income for the taxable year.

(d-1) Rate reduction for certain foreign insurers. In the case of a foreign insurer, as defined by Section 35A-5 of the Illinois Insurance Code, [1] whose state or country of domicile imposes on insurers domiciled in Illinois a retaliatory tax (excluding any insurer whose premiums from reinsurance assumed are 50% or more of its total insurance premiums as determined under paragraph (2) of subsection (b) of Section 304, except that for purposes of this determination premiums from reinsurance do not include premiums from inter-affiliate reinsurance arrangements), beginning with taxable years ending on or after December 31, 1999, the sum of the rates of tax imposed by subsections (b) and (d) shall be reduced (but not increased) to the rate at which the total amount of tax imposed under this Act, net of all credits allowed under this Act, shall equal (i) the total amount of tax that would be imposed on the foreign insurer's net income allocable to Illinois for the taxable year by such foreign insurer's state or country of domicile if that net income were subject to all income taxes and taxes measured by net income imposed by such foreign insurer's state or country of domicile, net of all credits allowed or (ii) a rate of zero if no such tax is imposed on such income by the foreign insurer's state of domicile. For the purposes of this subsection (d-1), an inter-affiliate includes a mutual insurer under common management.

(1) For the purposes of subsection (d-1), in no event shall the sum of the rates of tax imposed by subsections (b) and (d) be reduced below the rate at which the sum of:

(A) the total amount of tax imposed on such foreign insurer under this Act for a taxable year, net of all credits allowed under this Act, plus

(B) the privilege tax imposed by Section 409 of the Illinois Insurance Code,[2] the fire insurance company tax imposed by Section 12 of the Fire Investigation Act,[3] and the fire department taxes imposed under Section 11-10-1 of the Illinois Municipal Code,[4]

equals 1.25% for taxable years ending prior to December 31, 2003, or 1.75% for taxable years ending on or after December 31, 2003, of the net taxable premiums written for the taxable year, as described by subsection (1) of Section 409 of the Illinois Insurance Code. This paragraph will in no event increase the rates imposed under subsections (b) and (d).

(2) Any reduction in the rates of tax imposed by this subsection shall be applied first against the rates imposed by subsection (b) and only after the tax imposed by subsection (a) net of all credits allowed under this Section other than the credit allowed under subsection (i) has been reduced to zero, against the rates imposed by subsection (d).

This subsection (d-1) is exempt from the provisions of Section 250.

(e) Investment credit. A taxpayer shall be allowed a credit against the Personal Property Tax Replacement Income Tax for investment in qualified property.

(1) A taxpayer shall be allowed a credit equal to .5% of the basis of qualified property placed in service during the taxable year, provided such property is placed in service on or after July 1, 1984. There shall be allowed an additional credit equal to .5% of the basis of qualified property placed in service during the taxable year, provided such property is placed in service on or after July 1, 1986, and the taxpayer's base employment within Illinois has increased by 1% or more over the preceding year as determined by the taxpayer's employment records filed with the Illinois Department of Employment Security. Taxpayers who are new to Illinois shall be deemed to have met the 1% growth in base employment for the first year in which they file employment records with the Illinois Department of Employment Security. The provisions added to this Section by Public Act 85-1200 (and restored by Public Act 87-895) shall be construed as declaratory of existing law and not as a new enactment. If, in any year, the increase in base employment within Illinois over the preceding year is less than 1%, the additional credit shall be limited to that percentage times a fraction, the numerator of which is .5% and the denominator of which is 1%, but shall not exceed .5%. The investment credit shall not be allowed to the extent that it would reduce a taxpayer's liability in any tax year below zero, nor may any credit for qualified property be allowed for any year other than the year in which the property was placed in service in Illinois. For tax years ending on or after December 31, 1987, and on or before December 31, 1988, the credit shall be allowed for the tax year in which the property is placed in service, or, if the amount of the credit exceeds the tax liability for that year, whether it exceeds the original liability or the liability as later amended, such excess may be carried forward and applied to the tax liability of the 5 taxable years following the excess credit years if the taxpayer (i) makes investments which cause the creation of a minimum of 2,000 full-time equivalent jobs in Illinois, (ii) is located in an enterprise zone established pursuant to the Illinois Enterprise Zone Act[5] and (iii) is certified by the Department of Commerce and Community Affairs (now Department of Commerce and Economic Opportunity) as complying with the requirements specified in clause (i) and (ii) by July 1, 1986. The Department of Commerce and Community Affairs (now Department of Commerce and Economic Opportunity) shall notify the Department of Revenue of all such certifications immediately. For tax years ending after December 31, 1988, the credit shall be allowed for the tax year in which the property is placed in service, or, if the amount of the credit exceeds the tax liability for that year, whether it exceeds the original liability or the liability as later amended, such excess may be carried forward and applied to the tax liability of the 5 taxable years following the excess credit years. The credit shall be applied to the earliest year for which there is a liability. If there is credit from more than one tax year that is available to offset a liability, earlier credit shall be applied first.

(2) The term "qualified property" means property which:

(A) is tangible, whether new or used, including buildings and structural components of buildings and signs that are real property, but not including land or improvements to real property that are not a structural component of a building such as landscaping, sewer lines, local access roads, fencing, parking lots, and other appurtenances;

(B) is depreciable pursuant to Section 167 of the Internal Revenue Code, except that "3-year property" as defined in Section 168(c)(2)(A) of that Code is not eligible for the credit provided by this subsection (e);

(C) is acquired by purchase as defined in Section 179(d) of the Internal Revenue Code;

(D) is used in Illinois by a taxpayer who is primarily engaged in manufacturing, or in mining coal or fluorite, or in retailing, or was placed in service on or after July 1, 2006 in a River Edge Redevelopment Zone established pursuant to the River Edge Redevelopment Zone Act; and

(E) has not previously been used in Illinois in such a manner and by such a person as would qualify for the credit provided by this subsection (e) or subsection (f).

(3) For purposes of this subsection (e), "manufacturing" means the material staging and production of tangible personal property by procedures commonly regarded as manufacturing, processing, fabrication, or assembling which changes some existing material into new shapes, new qualities, or new combinations. For purposes of this subsection (e) the term "mining" shall have the same meaning as the term "mining" in Section 613(c) of the Internal Revenue Code. For purposes of this subsection (e), the term "retailing" means the sale of tangible personal property for use or consumption and not for resale, or services rendered in conjunction with the sale of tangible personal property for use or consumption and not for resale. For purposes of this subsection (e), "tangible personal property" has the same meaning as when that term is used in the Retailers' Occupation Tax Act, and, for taxable years ending after December 31, 2008, does not include the generation, transmission, or distribution of electricity.

(4) The basis of qualified property shall be the basis used to compute the depreciation deduction for federal income tax purposes.

(5) If the basis of the property for federal income tax depreciation purposes is increased after it has been placed in service in Illinois by the taxpayer, the amount of such increase shall be deemed property placed in service on the date of such increase in basis.

(6) The term "placed in service" shall have the same meaning as under Section 46 of the Internal Revenue Code.

(7) If during any taxable year, any property ceases to be qualified property in the hands of the taxpayer within 48 months after being placed in service, or the situs of any qualified property is moved outside Illinois within 48 months after being placed in service, the Personal Property Tax Replacement Income Tax for such taxable year shall be increased. Such increase shall be determined by (i) recomputing the investment credit which would have been allowed for the year in which credit for such property was originally allowed by eliminating such property from such computation and, (ii) subtracting such recomputed credit from the amount of credit previously allowed. For the purposes of this paragraph (7), a reduction of the

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basis of qualified property resulting from a redetermination of the purchase price shall be deemed a disposition of qualified property to the extent of such reduction.

(8) Unless the investment credit is extended by law, the basis of qualified property shall not include costs incurred after December 31, 2018, except for costs incurred pursuant to a binding contract entered into on or before December 31, 2018.

(9) Each taxable year ending before December 31, 2000, a partnership may elect to pass through to its partners the credits to which the partnership is entitled under this subsection (e) for the taxable year. A partner may use the credit allocated to him or her under this paragraph only against the tax imposed in subsections (c) and (d) of this Section. If the partnership makes that election, those credits shall be allocated among the partners in the partnership in accordance with the rules set forth in Section 704(b) of the Internal Revenue Code, and the rules promulgated under that Section, and the allocated amount of the credits shall be allowed to the partners for that taxable year. The partnership shall make this election on its Personal Property Tax Replacement Income Tax return for that taxable year. The election to pass through the credits shall be irrevocable.

For taxable years ending on or after December 31, 2000, a partner that qualifies its partnership for a subtraction under subparagraph (I) of paragraph (2) of subsection (d) of Section 203 or a shareholder that qualifies a Subchapter S corporation for a subtraction under subparagraph (S) of paragraph (2) of subsection (b) of Section 203 shall be allowed a credit under this subsection (e) equal to its share of the credit earned under this subsection (e) during the taxable year by the partnership or Subchapter S corporation, determined in accordance with the determination of income and distributive share of income under Sections 702 and 704 and Subchapter S of the Internal Revenue Code. This paragraph is exempt from the provisions of Section 250.

(f) Investment credit; Enterprise Zone; River Edge Redevelopment Zone.

(1) A taxpayer shall be allowed a credit against the tax imposed by subsections (a) and (b) of this Section for investment in qualified property which is placed in service in an Enterprise Zone created pursuant to the Illinois Enterprise Zone Act or, for property placed in service on or after July 1, 2006, a River Edge Redevelopment Zone established pursuant to the River Edge Redevelopment Zone Act. For partners, shareholders of Subchapter S corporations, and owners of limited liability companies, if the liability company is treated as a partnership for purposes of federal and State income taxation, there shall be allowed a credit under this subsection (f) to be determined in accordance with the determination of income and distributive share of income under Sections 702 and 704 and Subchapter S of the Internal Revenue Code. The credit shall be .5% of the basis for such property. The credit shall be available only in the taxable year in which the property is placed in service in the Enterprise Zone or River Edge Redevelopment Zone and shall not be allowed to the extent that it would reduce a taxpayer's liability for the tax imposed by subsections (a) and (b) of this Section to below zero. For tax years ending on or after December 31, 1985, the credit shall be allowed for the tax year in which the property is placed in service, or, if the amount of the credit exceeds the tax liability for that year, whether it exceeds the original liability or the liability as later amended, such excess may be carried forward and applied to the tax liability of the 5 taxable years following the excess credit year. The credit shall be applied to the earliest year for which there is a liability. If there is credit from more than one tax year that is available to offset a liability, the credit accruing first in time shall be applied first.

(2) The term qualified property means property which:

(A) is tangible, whether new or used, including buildings and structural components of buildings;

(B) is depreciable pursuant to Section 167 of the Internal Revenue Code, except that "3-year property" as defined in Section 168(c)(2)(A) of that Code is not eligible for the credit provided by this subsection (f);

(C) is acquired by purchase as defined in Section 179(d) of the Internal Revenue Code;

(D) is used in the Enterprise Zone or River Edge Redevelopment Zone by the taxpayer; and

(E) has not been previously used in Illinois in such a manner and by such a person as would qualify for the credit provided by this subsection (f) or subsection (e).

(3) The basis of qualified property shall be the basis used to compute the depreciation deduction for federal income tax purposes.

(4) If the basis of the property for federal income tax depreciation purposes is increased after it has been placed in service in the Enterprise Zone or River Edge Redevelopment Zone by the taxpayer, the amount of such increase shall be deemed property placed in service on the date of such increase in basis.

(5) The term "placed in service" shall have the same meaning as under Section 46 of the Internal Revenue Code.

(6) If during any taxable year, any property ceases to be qualified property in the hands of the taxpayer within 48 months after being placed in service, or the situs of any qualified property is moved outside the Enterprise Zone or River Edge Redevelopment Zone within 48 months after being placed in service, the tax imposed under subsections (a) and (b) of this Section for such taxable year shall be increased. Such increase shall be determined by (i) recomputing the investment credit which would have been allowed for the year in which credit for such property was originally allowed by eliminating such property from such computation, and (ii) subtracting such recomputed credit from the amount of credit previously allowed. For the purposes of this paragraph (6), a reduction of the basis of qualified property resulting from a redetermination of the purchase price shall be deemed a disposition of qualified property to the extent of such reduction.

(7) There shall be allowed an additional credit equal to 0.5% of the basis of qualified property placed in service during the taxable year in a River Edge Redevelopment Zone, provided such property is placed in service on or after July 1, 2006, and the taxpayer's base employment within Illinois has increased by 1% or more over the preceding year as determined by the taxpayer's employment records filed with the Illinois Department of Employment Security. Taxpayers who are new to Illinois shall be deemed to have met the 1% growth in base employment for the first year in which they file employment records with the Illinois Department of Employment Security. If, in any year, the increase in base employment within Illinois over the preceding year is less than 1%, the additional credit shall be limited to that percentage times a fraction, the numerator of which is 0.5% and the denominator of which is 1%, but shall not exceed 0.5%.

(g) (Blank).

(h) Investment credit; High Impact Business.

(1) Subject to subsections (b) and (b-5) of Section 5.5 of the Illinois Enterprise Zone Act,[6] a taxpayer shall be allowed a credit against the tax imposed by subsections (a) and (b) of this Section for investment in qualified property which is placed in service by a Department of Commerce and Economic Opportunity designated High Impact Business. The credit shall be .5% of the basis for such property. The credit shall not be available (i) until the minimum investments in qualified property set forth in subdivision (a)(3)(A) of Section 5.5 of the Illinois Enterprise Zone Act have been satisfied or (ii) until the time authorized in subsection (b-5) of the Illinois Enterprise Zone Act for entities designated as High Impact Businesses under subdivisions (a)(3)(B), (a)(3)(C), and (a)(3)(D) of Section 5.5 of the Illinois Enterprise Zone Act, and shall not be allowed to the extent that it would reduce a taxpayer's liability for the tax imposed by subsections (a) and (b) of this Section to below zero. The credit applicable to such investments shall be taken in the taxable year in which such investments have been completed. The credit for additional investments beyond the minimum investment by a designated high impact business authorized under subdivision (a)(3)(A) of Section 5.5 of the Illinois Enterprise Zone Act shall be available only in the taxable year in which the property is placed in service and shall not be allowed to the extent that it would reduce a taxpayer's liability for the tax imposed by subsections (a) and (b) of this Section to below zero. For tax years ending on or after December 31, 1987, the credit shall be allowed for the tax year in which the property is placed in service, or, if the amount of the credit exceeds the tax liability for that year, whether it exceeds the original liability or the liability as later amended, such excess may be carried forward and applied to the tax liability of the 5 taxable years following the excess credit year. The credit shall be applied to the earliest year for which there is a liability. If there is credit from more than one tax year that is available to offset a liability, the credit accruing first in time shall be applied first.

Changes made in this subdivision (h)(1) by Public Act 88-670 restore changes made by Public Act 85-1182 and reflect existing law.

(2) The term qualified property means property which:

(A) is tangible, whether new or used, including buildings and structural components of buildings;

(B) is depreciable pursuant to Section 167 of the Internal Revenue Code, except that “3-year property” as defined in Section 168(c)(2)(A) of that Code is not eligible for the credit provided by this subsection (h);

(C) is acquired by purchase as defined in Section 179(d) of the Internal Revenue Code; and

(D) is not eligible for the Enterprise Zone Investment Credit provided by subsection (f) of this Section.

(3) The basis of qualified property shall be the basis used to compute the depreciation deduction for federal income tax purposes.

(4) If the basis of the property for federal income tax depreciation purposes is increased after it has been placed in service in a federally designated Foreign Trade Zone or Sub-Zone located in Illinois by the taxpayer, the amount of such increase shall be deemed property placed in service on the date of such increase in basis.

(5) The term “placed in service” shall have the same meaning as under Section 46 of the Internal Revenue Code.

(6) If during any taxable year ending on or before December 31, 1996, any property ceases to be qualified property in the hands of the taxpayer within 48 months after being placed in service, or the situs of any qualified property is moved outside Illinois within 48 months after being placed in service, the tax imposed under subsections (a) and (b) of this Section for such taxable year shall be increased. Such increase shall be determined by (i) recomputing the investment credit which would have been allowed for the year in which credit for such property was originally allowed by eliminating such property from such computation, and (ii) subtracting such recomputed credit from the amount of credit previously allowed. For the purposes of this paragraph (6), a reduction of the basis of qualified property resulting from a redetermination of the purchase price shall be deemed a disposition of qualified property to the extent of such reduction.

(7) Beginning with tax years ending after December 31, 1996, if a taxpayer qualifies for the credit under this subsection (h) and thereby is granted a tax abatement and the taxpayer relocates its entire facility in violation of the explicit terms and length of the contract under Section 18-183 of the Property Tax Code, [7] the tax imposed under subsections (a) and (b) of this Section shall be increased for the taxable year in which the taxpayer relocated its facility by an amount equal to the amount of credit received by the taxpayer under this subsection (h).

(i) Credit for Personal Property Tax Replacement Income Tax. For tax years ending prior to December 31, 2003, a credit shall be allowed against the tax imposed by subsections (a) and (b) of this Section for the tax imposed by subsections (c) and (d) of this Section. This credit shall be computed by multiplying the tax imposed by subsections (c) and (d) of this Section by a fraction, the numerator of which is base income allocable to Illinois and the denominator of which is Illinois base income, and further multiplying the product by the tax rate imposed by subsections (a) and (b) of this Section.

Any credit earned on or after December 31, 1986 under this subsection which is unused in the year the credit is computed because it exceeds the tax liability imposed by subsections (a) and (b) for that year (whether it exceeds the original liability or the liability as later amended) may be carried forward and applied to the tax liability imposed by subsections (a) and (b) of the 5 taxable years following the excess credit year, provided that no credit may be carried forward to any year ending on or after December 31, 2003. This credit shall be applied first to the earliest year for which there is a liability. If there is a credit under this subsection from more than one tax year that is available to offset a liability the earliest credit arising under this subsection shall be applied first.

If, during any taxable year ending on or after December 31, 1986, the tax imposed by subsections (c) and (d) of this Section for which a taxpayer has claimed a credit under this subsection (i) is reduced, the amount of credit for such tax shall also be reduced. Such reduction shall be determined by recomputing the credit to take into account the reduced tax imposed by subsections (c) and (d). If any portion of the reduced amount of credit has been carried to a different taxable year, an amended return shall be filed for such taxable year to reduce the amount of credit claimed.

(j) Training expense credit. Beginning with tax years ending on or after December 31, 1986 and prior to December 31, 2003, a taxpayer shall be allowed a credit against the tax imposed by subsections (a) and (b) under this Section for all amounts paid or accrued, on behalf of all persons employed by the taxpayer in Illinois or Illinois residents employed outside of Illinois by a taxpayer, for educational or vocational training in semi-technical or technical fields or semi-skilled or skilled fields, which were deducted from gross income in the computation of taxable income. The credit against the tax imposed by subsections (a) and (b) shall be 1.6% of such training expenses. For partners, shareholders of subchapter S corporations, and owners of limited liability companies, if the liability company is treated as a partnership for purposes of federal and State income taxation, there shall be allowed a credit under this subsection (j) to be determined in accordance with the determination of income and distributive share of income under Sections 702 and 704 and subchapter S of the Internal Revenue Code.

Any credit allowed under this subsection which is unused in the year the credit is earned may be carried forward to each of the 5 taxable years following the year for which the credit is first computed until it is used. This credit shall be applied first to the earliest year for which there is a liability. If there is a credit under this subsection from more than one tax year that is available to offset a liability the earliest credit arising under this subsection shall be applied first. No carryforward credit may be claimed in any tax year ending on or after December 31, 2003.

(k) Research and development credit. For tax years ending after July 1, 1990 and prior to December 31, 2003, and beginning again for tax years ending on or after December 31, 2004, and ending prior to January 1, 2016, a taxpayer shall be allowed a credit against the tax imposed by subsections (a) and (b) of this Section for increasing research activities in this State. The credit allowed against the tax imposed by subsections (a) and (b) shall be equal to 6 1/2% of the qualifying expenditures for increasing research activities in this State. For partners, shareholders of subchapter S corporations, and owners of limited liability companies, if the liability company is treated as a partnership for purposes of federal and State income taxation, there shall be allowed a credit under this subsection to be determined in accordance with the determination of income and distributive share of income under Sections 702 and 704 and subchapter S of the Internal Revenue Code.

For purposes of this subsection, "qualifying expenditures" means the qualifying expenditures as defined for the federal credit for increasing research activities which would be allowable under Section 41 of the Internal Revenue Code and which are conducted in this State, "qualifying expenditures for increasing research activities in this State" means the excess of qualifying expenditures for the taxable year in which incurred over qualifying expenditures for the base period, "qualifying expenditures for the base period" means the average of the qualifying expenditures for each year in the base period, and "base period" means the 3 taxable years immediately preceding the taxable year for which the determination is being made.

Any credit in excess of the tax liability for the taxable year may be carried forward. A taxpayer may elect to have the unused credit shown on its final completed return carried over as a credit against the tax liability for the following 5 taxable years or until it has been fully used, whichever occurs first; provided that no credit earned in a tax year ending prior to December 31, 2003 may be carried forward to any year ending on or after December 31, 2003.

If an unused credit is carried forward to a given year from 2 or more earlier years, that credit arising in the earliest year will be applied first against the tax liability for the given year. If a tax liability for the given year still remains, the credit from the next earliest year will then be applied, and so on, until all credits have been used or no tax liability for the given year remains. Any remaining unused credit or credits then will be carried forward to the next following year in which a tax liability is incurred, except that no credit can be carried forward to a year which is more than 5 years after the year in which the expense for which the credit is given was incurred.

No inference shall be drawn from this amendatory Act of the 91st General Assembly in construing this Section for taxable years beginning before January 1, 1999.

(*l*) Environmental Remediation Tax Credit.

(i) For tax years ending after December 31, 1997 and on or before December 31, 2001, a taxpayer shall be allowed a credit against the tax imposed by subsections (a) and (b) of this Section for certain amounts paid for unreimbursed eligible remediation costs, as specified in this subsection. For purposes of this Section, "unreimbursed eligible remediation costs" means costs approved by the Illinois Environmental Protection Agency ("Agency") under Section 58.14 of the Environmental Protection Act [8] that were paid in performing environmental remediation at a site for which a No Further Remediation Letter was issued by the Agency and recorded under Section 58.10 of the Environmental Protection Act. [9] The credit must be claimed for the taxable year in which Agency approval of the eligible remediation costs is granted. The credit is not available to any taxpayer if the taxpayer or any related party caused or contributed to, in any material respect, a release of regulated

substances on, in, or under the site that was identified and addressed by the remedial action pursuant to the Site Remediation Program of the Environmental Protection Act. [10] After the Pollution Control Board rules are adopted pursuant to the Illinois Administrative Procedure Act [11] for the administration and enforcement of Section 58.9 of the Environmental Protection Act, [12] determinations as to credit availability for purposes of this Section shall be made consistent with those rules. For purposes of this Section, "taxpayer" includes a person whose tax attributes the taxpayer has succeeded to under Section 381 of the Internal Revenue Code and "related party" includes the persons disallowed a deduction for losses by paragraphs (b), (c), and (f)(1) of Section 267 of the Internal Revenue Code by virtue of being a related taxpayer, as well as any of its partners. The credit allowed against the tax imposed by subsections (a) and (b) shall be equal to 25% of the unreimbursed eligible remediation costs in excess of $100,000 per site, except that the $100,000 threshold shall not apply to any site contained in an enterprise zone as determined by the Department of Commerce and Community Affairs (now Department of Commerce and Economic Opportunity). The total credit allowed shall not exceed $40,000 per year with a maximum total of $150,000 per site. For partners and shareholders of subchapter S corporations, there shall be allowed a credit under this subsection to be determined in accordance with the determination of income and distributive share of income under Sections 702 and 704 and subchapter S of the Internal Revenue Code.

(ii) A credit allowed under this subsection that is unused in the year the credit is earned may be carried forward to each of the 5 taxable years following the year for which the credit is first earned until it is used. The term "unused credit" does not include any amounts of unreimbursed eligible remediation costs in excess of the maximum credit per site authorized under paragraph (i). This credit shall be applied first to the earliest year for which there is a liability. If there is a credit under this subsection from more than one tax year that is available to offset a liability, the earliest credit arising under this subsection shall be applied first. A credit allowed under this subsection may be sold to a buyer as part of a sale of all or part of the remediation site for which the credit was granted. The purchaser of a remediation site and the tax credit shall succeed to the unused credit and remaining carry-forward period of the seller. To perfect the transfer, the assignor shall record the transfer in the chain of title for the site and provide written notice to the Director of the Illinois Department of Revenue of the assignor's intent to sell the remediation site and the amount of the tax credit to be transferred as a portion of the sale. In no event may a credit be transferred to any taxpayer if the taxpayer or a related party would not be eligible under the provisions of subsection (i).

(iii) For purposes of this Section, the term "site" shall have the same meaning as under Section 58.2 of the Environmental Protection Act. [13]

(m) Education expense credit. Beginning with tax years ending after December 31, 1999, a taxpayer who is the custodian of one or more qualifying pupils shall be allowed a credit against the tax imposed by subsections (a) and (b) of this Section for qualified education expenses incurred on behalf of the qualifying pupils. The credit shall be equal to 25% of qualified education expenses, but in no event may the total credit under this subsection claimed by a family that is the custodian of qualifying pupils exceed $500. In no event shall a credit under this subsection reduce the taxpayer's liability under this Act to less than zero. This subsection is exempt from the provisions of Section 250 of this Act.

For purposes of this subsection:

"Qualifying pupils" means individuals who (i) are residents of the State of Illinois, (ii) are under the age of 21 at the close of the school year for which a credit is sought, and (iii) during the school year for which a credit is sought were full-time pupils enrolled in a kindergarten through twelfth grade education program at any school, as defined in this subsection.

"Qualified education expense" means the amount incurred on behalf of a qualifying pupil in excess of $250 for tuition, book fees, and lab fees at the school in which the pupil is enrolled during the regular school year.

"School" means any public or nonpublic elementary or secondary school in Illinois that is in compliance with Title VI of the Civil Rights Act of 1964 and attendance at which satisfies the requirements of Section 26-1 of the School Code, [14] except that nothing shall be construed to require a child to attend any particular public or nonpublic school to qualify for the credit under this Section.

"Custodian" means, with respect to qualifying pupils, an Illinois resident who is a parent, the parents, a legal guardian, or the legal guardians of the qualifying pupils.

(n) River Edge Redevelopment Zone site remediation tax credit.

(i) For tax years ending on or after December 31, 2006, a taxpayer shall be allowed a credit against the tax imposed by subsections (a) and (b) of this Section for certain amounts paid for unreimbursed eligible remediation costs, as specified in this subsection. For purposes of this Section, "unreimbursed eligible remediation costs" means costs approved by the Illinois Environmental Protection Agency ("Agency") under Section 58.14a of the Environmental Protection Act that were paid in performing environmental remediation at a site within a River Edge Redevelopment Zone for which a No Further Remediation Letter was issued by the Agency and recorded under Section 58.10 of the Environmental Protection Act. The credit must be claimed for the taxable year in which Agency approval of the eligible remediation costs is granted. The credit is not available to any taxpayer if the taxpayer or any related party caused or contributed to, in any material respect, a release of regulated substances on, in, or under the site that was identified and addressed by the remedial action pursuant to the Site Remediation Program of the Environmental Protection Act. Determinations as to credit availability for purposes of this Section shall be made consistent with rules adopted by the Pollution Control Board pursuant to the Illinois Administrative Procedure Act for the administration and enforcement of Section 58.9 of the Environmental Protection Act. For purposes of this Section, "taxpayer" includes a person whose tax attributes the taxpayer has succeeded to under Section 381 of the Internal Revenue Code and "related party" includes the persons disallowed a deduction for losses by paragraphs (b), (c), and (f)(1) of Section 267 of the Internal Revenue Code by virtue of being a related taxpayer, as well as any of its partners. The credit allowed against the tax imposed by subsections (a) and (b) shall be equal to 25% of the unreimbursed eligible remediation costs in excess of $100,000 per site.

(ii) A credit allowed under this subsection that is unused in the year the credit is earned may be carried forward to each of the 5 taxable years following the year for which the credit is first earned until it is used. This credit shall be applied first to the earliest year for which there is a liability. If there is a credit under this subsection from more than one tax year that is available to offset a liability, the earliest credit arising under this subsection shall be applied first. A credit allowed under this subsection may be sold to a buyer as part of a sale of all or part of the remediation site for which the credit was granted. The purchaser of a remediation site and the tax credit shall succeed to the unused credit and remaining carry-forward period of the seller. To perfect the transfer, the assignor shall record the transfer in the chain of title for the site and provide written notice to the Director of the Illinois Department of Revenue of the assignor's intent to sell the remediation site and the amount of the tax credit to be transferred as a portion of the sale. In no event may a credit be transferred to any taxpayer if the taxpayer or a related party would not be eligible under the provisions of subsection (i).

(iii) For purposes of this Section, the term "site" shall have the same meaning as under Section 58.2 of the Environmental Protection Act.

(*o*) For each of taxable years during the Compassionate Use of Medical Cannabis Pilot Program, a surcharge is imposed on all taxpayers on income arising from the sale or exchange of capital assets, depreciable business property, real property used in the trade or business, and Section 197 intangibles of an organization registrant under the Compassionate Use of Medical

Cannabis Pilot Program Act. The amount of the surcharge is equal to the amount of federal income tax liability for the taxable year attributable to those sales and exchanges. The surcharge imposed does not apply if:

(1) the medical cannabis cultivation center registration, medical cannabis dispensary registration, or the property of a registration is transferred as a result of any of the following:

(A) bankruptcy, a receivership, or a debt adjustment initiated by or against the initial registration or the substantial owners of the initial registration;

(B) cancellation, revocation, or termination of any registration by the Illinois Department of Public Health;

(C) a determination by the Illinois Department of Public Health that transfer of the registration is in the best interests of Illinois qualifying patients as defined by the Compassionate Use of Medical Cannabis Pilot Program Act;

(D) the death of an owner of the equity interest in a registrant;

(E) the acquisition of a controlling interest in the stock or substantially all of the assets of a publicly traded company;

(F) a transfer by a parent company to a wholly owned subsidiary; or

(G) the transfer or sale to or by one person to another person where both persons were initial owners of the registration when the registration was issued; or

(2) the cannabis cultivation center registration, medical cannabis dispensary registration, or the controlling interest in a registrant's property is transferred in a transaction to lineal descendants in which no gain or loss is recognized or as a result of a transaction in accordance with Section 351 of the Internal Revenue Code in which no gain or loss is recognized.

Credits

P.A. 76-261, § 201, eff. Aug. 1, 1969. Amended by P.A. 81-1, 1st Sp.Sess., § 2, eff. Aug. 14, 1979; P.A. 82-315, § 1, eff. Jan. 1, 1982; P.A. 82-783, Art. IV, § 42, eff. July 13, 1982; P.A. 82-1019, § 13, eff. Dec. 7, 1982; P.A. 83-14, Art. I, § 1-1, eff. July 2, 1983; P.A. 83-596, § 1, eff. Jan. 1, 1984; P.A. 83-1352, § 1, eff. Sept. 8, 1984; P.A. 83-1362, Art. II, § 132, eff. Sept. 11, 1984; P.A. 83-1503, § 11, eff. Dec. 27, 1984; P.A. 84-165, § 4, eff. Aug. 16, 1985; P.A. 84-166, § 4, eff. Aug. 16, 1985; P.A. 84-604, § 1, eff. Sept. 19, 1985; P.A. 84-769, § 2, eff. Jan. 1, 1986; P.A. 84-940, § 3, eff. Sept. 25, 1985; P.A. 84-1042, § 1, eff. Nov. 26, 1985; P.A. 84-1120, § 2, eff. May 9, 1986; P.A. 84-1124, § 4, eff. June 30, 1986; P.A. 84-1400, Art. I, § 1, eff. Sept. 18, 1986; P.A. 84-1405, § 1, eff. Jan. 1, 1987; P.A. 84-1440, § 3, eff. Jan. 2, 1987; P.A. 85-293, Art. II, § 15, eff. Sept. 8, 1987; P.A. 85-731, § 1, eff. Sept. 22, 1987; P.A. 85-973, § 1, eff. July 1, 1988; P.A. 85-1182, § 3, eff. Jan. 1, 1989; P.A. 85-1200, § 1, eff. Aug. 24, 1988; P.A. 85-1209, Art. II, § 2-81, eff. Aug. 30, 1988; P.A. 85-1290, § 1, eff. Jan. 1, 1989; P.A. 85-1440, Art. II, § 2-44, eff. Feb. 1, 1989; P.A. 86-18, § 2, eff. July 5, 1989; P.A. 86-44, Art. I, § 1-2, eff. July 13, 1989; P.A. 86-803, § 2, eff. Sept. 7, 1989; P.A. 86-988, § 1, eff. July 1, 1990; P.A. 86-1028, Art. II, § 2-74.1, eff. Feb. 5, 1990; P.A. 86-1475, Art. 3, § 3-59, eff. Jan. 10, 1991; P.A. 87-17, Art. 4, § 4-2, eff. July 25, 1991; P.A. 87-895, Art. 3, § 3-81, eff. Aug. 14, 1992; P.A. 88-45, Art. III, § 3-15, eff. July 6, 1993; P.A. 88-89, Art. 1, § 1-10, eff. July 14, 1993; P.A. 88-141, § 5, eff. Jan. 1, 1994; P.A. 88-547, § 5, eff. June 30, 1994; P.A. 88-670, Art. 2. § 2-19, eff. Dec. 2, 1994; P.A. 89-235, Art. 2, § 2-35, eff. Aug. 4, 1995; P.A. 89-519,

§ 5, eff. July 18, 1996; P.A. 89-591, § 10, eff. Aug. 1, 1996; P.A. 90-123, § 10, eff. July 21, 1997; P.A. 90-458, § 5, eff. Aug. 17, 1997; P.A. 90-605, § 3, eff. June 30, 1998; P.A. 90-655, § 41, eff. July 30, 1998; P.A. 90-717, § 5, eff. Aug. 7, 1998; P.A. 90-792, § 5, eff. Jan. 1, 1999; P.A. 91-9, § 5, eff. Jan. 1, 2000; P.A. 91-357, § 59, eff. July 29, 1999; P.A. 91-643, § 7, eff. Aug. 20, 1999; P.A. 91-644, § 3, eff. Aug. 20, 1999; P.A. 91-860, § 5, eff. June 22, 2000; P.A. 91-913, § 5, eff. Jan. 1, 2001; P.A. 92-12, § 918, eff. July 1, 2001; P.A. 92-16, § 32, eff. June 28, 2001; P.A. 92-651, § 23, eff. July 11, 2002; P.A. 92-846, § 5, eff. Aug. 23, 2002; P.A. 93-29, § 5, eff. June 20, 2003; P.A. 93-840, Art. 40, § 40-5, eff. July 30, 2004; P.A. 93-871, § 5, eff. Aug. 6, 2004; P.A. 94-1021, Art. 90, § 90-15, eff. July 12, 2006; P.A. 95-454, § 5, eff. Aug. 27, 2007; P.A. 96-115, § 5, eff. July 31, 2009; P.A. 96-116, § 5, eff. July 31, 2009; P.A. 96-937, § 5, eff. June 23, 2010; P.A. 96-1000, § 185, July 2, 2010; P.A. 96-1496, § 20, eff. Jan. 13, 2011; P.A. 97-2, § 10, eff. May 6, 2011; P.A. 97-636, § 15-10, eff. June 1, 2012; P.A. 97-905, § 10, eff. Aug. 7, 2012; P.A. 98-109, § 5-30, eff. July 25, 2013; P.A. 98-122, § 910, eff. Jan. 1, 2014; P.A. 98-756, § 170, eff. July 16, 2014.

Notes of Decisions (54)

Footnotes

1 215 ILCS 5/35A-5.
2 215 ILCS 5/409.
3 425 ILCS 25/12.
4 65 ILCS 5/11-10-1.
5 20 ILCS 655/1 et seq.
6 20 ILCS 655/5.5.
7 35 ILCS 200/18-183.
8 415 ILCS 5/58.14.
9 415 ILCS 5/58.10.
10 415 ILCS 5/1 et seq.
11 5 ILCS 100/1-1 et seq.
12 415 ILCS 5/58.9.
13 415 ILCS 5/58.2.
14 105 ILCS 5/26-1.

35 I.L.C.S. 5/201, IL ST CH 35 § 5/201
Current through P.A. 98-1174 of the 2014 Reg. Sess.

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West's Smith-Hurd Illinois Compiled Statutes Annotated
Chapter 35. Revenue (Refs & Annos)
Income Taxes
Act 5. Illinois Income Tax Act (Refs & Annos)
Article 6. Payments

35 ILCS 5/601
Formerly cited as IL ST CH 120 ¶6-601

5/601. Payment on Due Date of Return

Effective: August 23, 2011
Currentness

§ 601. Payment on Due Date of Return.

(a) In general. Every taxpayer required to file a return under this Act shall, without assessment, notice or demand, pay any tax due thereon to the Department, at the place fixed for filing, on or before the date fixed for filing such return (determined without regard to any extension of time for filing the return) pursuant to regulations prescribed by the Department. If, however, the due date for payment of a taxpayer's federal income tax liability for a tax year (as provided in the Internal Revenue Code [1] or by Treasury regulation, or as extended by the Internal Revenue Service) is later than the date fixed for filing the taxpayer's Illinois income tax return for that tax year, the Department may, by rule, prescribe a due date for payment that is not later than the due date for payment of the taxpayer's federal income tax liability. For purposes of the Illinois Administrative Procedure Act, [2] the adoption of rules to prescribe a later due date for payment shall be deemed an emergency and necessary for the public interest, safety, and welfare.

(b) Amount payable. In making payment as provided in this section there shall remain payable only the balance of such tax remaining due after giving effect to the following:

(1) Withheld tax. Any amount withheld during any calendar year pursuant to Article 7 [3] from compensation paid to a taxpayer shall be deemed to have been paid on account of any tax imposed by subsections 201(a) and (b) of this Act on such taxpayer for his taxable year beginning in such calendar year. If more than one taxable year begins in a calendar year, such amount shall be deemed to have been paid on account of such tax for the last taxable year so beginning.

(2) Estimated and tentative tax payments. Any amount of estimated tax paid by a taxpayer pursuant to Article 8 [4] for a taxable year shall be deemed to have been paid on account of the tax imposed by this Act for such taxable year.

(3) Foreign tax. The aggregate amount of tax which is imposed upon or measured by income and which is paid by a resident for a taxable year to another state or states on income which is also subject to the tax imposed by subsections 201(a) and (b) of this Act shall be credited against the tax imposed by subsections 201(a) and (b) otherwise due under this Act for such taxable year. For taxable years ending prior to December 31, 2009, the aggregate credit provided under this paragraph shall not exceed that amount which bears the same ratio to the tax imposed by subsections 201(a) and (b) otherwise due under this Act as the amount of the taxpayer's base income subject to tax both by such other state or states and by this State bears to his

total base income subject to tax by this State for the taxable year. For taxable years ending on or after December 31, 2009, the credit provided under this paragraph for tax paid to other states shall not exceed that amount which bears the same ratio to the tax imposed by subsections 201(a) and (b) otherwise due under this Act as the amount of the taxpayer's base income that would be allocated or apportioned to other states if all other states had adopted the provisions in Article 3 of this Act bears to the taxpayer's total base income subject to tax by this State for the taxable year. The credit provided by this paragraph shall not be allowed if any creditable tax was deducted in determining base income for the taxable year. Any person claiming such credit shall attach a statement in support thereof and shall notify the Director of any refund or reductions in the amount of tax claimed as a credit hereunder all in such manner and at such time as the Department shall by regulations prescribe.

(4) Accumulation and capital gain distributions. If the net income of a taxpayer includes amounts included in his base income by reason of Section 667 of the Internal Revenue Code [5] (relating to accumulation and capital gain distributions by a trust, respectively), the tax imposed on such taxpayer by this Act shall be credited with his pro rata portion of the taxes imposed by this Act on such trust for preceding taxable years which would not have been payable for such preceding years if the trust had in fact made distributions to its beneficiaries at the times and in the amounts specified in Sections 666 and 669 of the Internal Revenue Code. [6] The credit provided by this paragraph shall not reduce the tax otherwise due from the taxpayer to an amount less than that which would be due if the amounts included by reason of Section 667 of the Internal Revenue Code were excluded from his or her base income.

(c) Cross reference. For application against tax due of overpayments of tax for a prior year, see Section 909.

Credits

P.A. 76-261, § 601, eff. Aug. 1, 1969. Amended by P.A. 76-2403, § 1, eff. July 1, 1970; P.A. 81-1, 1st Sp.Sess., § 2, eff. Aug. 14, 1979; P.A. 81-1405, § 1, eff. Aug. 25, 1980; P.A. 82-609, § 1, eff. Sept. 24, 1981; P.A. 83-1352, § 1, eff. Sept. 8, 1984; P.A. 85-731, § 1, eff. Sept. 22, 1987; P.A. 92-826, § 10, eff. Aug. 21, 2002; P.A. 94-247, § 5, eff. Jan. 1, 2006; P.A. 96-468, § 5, eff. Aug. 14, 2009; P.A. 97-507, § 5, eff. Aug. 23, 2011.

Formerly Ill.Rev.Stat.1991, ch. 120, ¶ 6-601.

Notes of Decisions (8)

Footnotes

1 26 U.S.C.A. § 1 et seq.

2 5 ILCS 100/1-1 et seq.

3 35 ILCS 5/701 et seq.

4 35 ILCS 5/803 et seq.

5 26 U.S.C.A. § 667.

6 26 U.S.C.A. §§ 666 and 669 (repealed).

35 I.L.C.S. 5/601, IL ST CH 35 § 5/601

Current through P.A. 98-1174 of the 2014 Reg. Sess.

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West's Annotated Indiana Code
Title 6. Taxation
Article 3. Other State Income Taxes
Chapter 2. Imposition of Tax and Deductions

IC 6-3-2-1

6-3-2-1 Rate of tax

Effective: July 1, 2014
Currentness

Sec. 1. (a) Each taxable year, a tax at the following rate of adjusted gross income is imposed upon the adjusted gross income of every resident person, and on that part of the adjusted gross income derived from sources within Indiana of every nonresident person:

(1) For taxable years beginning before January 1, 2015, three and four-tenths percent (3.4%).

(2) For taxable years beginning after December 31, 2014, and before January 1, 2017, three and three-tenths percent (3.3%).

(3) For taxable years beginning after December 31, 2016, three and twenty-three hundredths percent (3.23%).

(b) Except as provided in section 1.5 of this chapter, each taxable year, a tax at the following rate of adjusted gross income is imposed on that part of the adjusted gross income derived from sources within Indiana of every corporation:

(1) Before July 1, 2012, eight and five-tenths percent (8.5%).

(2) After June 30, 2012, and before July 1, 2013, eight percent (8.0%).

(3) After June 30, 2013, and before July 1, 2014, seven and five-tenths percent (7.5%).

(4) After June 30, 2014, and before July 1, 2015, seven percent (7.0%).

(5) After June 30, 2015, and before July 1, 2016, six and five-tenths percent (6.5%).

(6) After June 30, 2016, and before July 1, 2017, six and twenty-five hundredths percent (6.25%).

(7) After June 30, 2017, and before July 1, 2018, six percent (6.0%).

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(8) After June 30, 2018, and before July 1, 2019, five and seventy-five hundredths percent (5.75%).

(9) After June 30, 2019, and before July 1, 2020, five and five-tenths percent (5.5%).

(10) After June 30, 2020, and before July 1, 2021, five and twenty-five hundredths percent (5.25%).

(11) After June 30, 2021, four and nine-tenths percent (4.9%).

(c) If for any taxable year a taxpayer is subject to different tax rates under subsection (b), the taxpayer's tax rate for that taxable year is the rate determined in the last STEP of the following STEPS:

STEP ONE: Multiply the number of months in the taxpayer's taxable year that precede the month the rate changed by the rate in effect before the rate change.

STEP TWO: Multiply the number of months in the taxpayer's taxable year that follow the month before the rate changed by the rate in effect after the rate change.

STEP THREE: Divide the sum of the amounts determined under STEPS ONE and TWO by twelve (12).

However, the rate determined under this subsection shall be rounded to the nearest one-hundredth of one percent (0.01%).

Credits

Amended by Acts 1979, P.L.68, SEC.1; Acts 1981, P.L.77, SEC.8; P.L.2--1982(ss), SEC.8; P.L.47--1987(ss), SEC.37; P.L.192--2002(ss), SEC.70; P.L.81-2004, SEC.20, eff. Jan. 1, 2005; P.L.172-2011, SEC.54; P.L.205-2013, SEC.82, eff. July 1, 2013; P.L.80-2014, SEC.9, eff. July 1, 2014.

Notes of Decisions (109)

I.C. 6-3-2-1, IN ST 6-3-2-1
The statutes and Constitution are current with all legislation of the 2015 First Regular Session of the 119th General Assembly effective through March 24, 2015.

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West's Annotated Indiana Code
Title 6. Taxation
Article 3. Other State Income Taxes
Chapter 3. Credits

IC 6-3-3-3

6-3-3-3 Taxes paid to other states

Currentness

Sec. 3. (a) Whenever a resident person has become liable for tax to another state upon all or any part of his income for a taxable year derived from sources without this state and subject to taxation under IC 6-3-2, the amount of tax paid by him to the other state shall be credited against the amount of the tax payable by him. Such credit shall be allowed upon the production to the department of satisfactory evidence of the fact of such payment, except that such application for credit shall not operate to reduce the tax payable under IC 6-3-2 to an amount less than would have been payable were the income from the other state ignored. The credit provided for by this subsection shall not be granted to a taxpayer when the laws of the other state, under which the adjusted gross income in question is subject to taxation, provides for a credit to the taxpayer substantially similar to that granted by subsection (b).

(b) Whenever a nonresident person has become liable for tax to the state where he resides upon his income for the taxable year derived from sources within this state and subject to taxation under IC 6-3-2, the proportion of tax paid by him to the state where he resides that his income subject to taxation under IC 6-3-2 bears to his income upon which the tax so payable to the other state was imposed shall be credited against the tax payable by him under IC 6-3-2, but only if the laws of the other state grant a substantially similar credit to residents of this state subject to income tax under the laws of such other state, or impose a tax upon the income of its residents derived from sources in this state and exempt from taxation the income of residents of this state. No credit shall be allowed against the amount of the tax on any adjusted gross income taxable under IC 6-3-2 that is exempt from taxation under the laws of the other state.

Credits
Amended by P.L.2-1988, SEC.10.

Notes of Decisions (2)

I.C. 6-3-3-3, IN ST 6-3-3-3
The statutes and Constitution are current with all legislation of the 2015 First Regular Session of the 119th General Assembly effective through March 24, 2015.

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I.C.A. § 422.5

422.5. Tax imposed--exclusions--alternative minimum tax

Effective: July 1, 2014
Currentness

1. A tax is imposed upon every resident and nonresident of the state which tax shall be levied, collected, and paid annually upon and with respect to the entire taxable income as defined in this division at rates as follows:

a. On all taxable income from zero through one thousand dollars, thirty-six hundredths of one percent.

b. On all taxable income exceeding one thousand dollars but not exceeding two thousand dollars, seventy-two hundredths of one percent.

c. On all taxable income exceeding two thousand dollars but not exceeding four thousand dollars, two and forty-three hundredths percent.

d. On all taxable income exceeding four thousand dollars but not exceeding nine thousand dollars, four and one-half percent.

e. On all taxable income exceeding nine thousand dollars but not exceeding fifteen thousand dollars, six and twelve hundredths percent.

f. On all taxable income exceeding fifteen thousand dollars but not exceeding twenty thousand dollars, six and forty-eight hundredths percent.

g. On all taxable income exceeding twenty thousand dollars but not exceeding thirty thousand dollars, six and eight-tenths percent.

h. On all taxable income exceeding thirty thousand dollars but not exceeding forty-five thousand dollars, seven and ninety-two hundredths percent.

i. On all taxable income exceeding forty-five thousand dollars, eight and ninety-eight hundredths percent.

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j. (1) The tax imposed upon the taxable income of a nonresident shall be computed by reducing the amount determined pursuant to paragraphs "a" through "i" by the amounts of nonrefundable credits under this division and by multiplying this resulting amount by a fraction of which the nonresident's net income allocated to Iowa, as determined in section 422.8, subsection 2, paragraph "a", is the numerator and the nonresident's total net income computed under section 422.7 is the denominator. This provision also applies to individuals who are residents of Iowa for less than the entire tax year.

(2)(a) The tax imposed upon the taxable income of a resident shareholder in an S corporation or of an estate or trust with a situs in Iowa that is a shareholder in an S corporation, which S corporation has in effect for the tax year an election under subchapter S of the Internal Revenue Code and carries on business within and without the state, may be computed by reducing the amount determined pursuant to paragraphs "a" through "i" by the amounts of nonrefundable credits under this division and by multiplying this resulting amount by a fraction of which the resident's or estate's or trust's net income allocated to Iowa, as determined in section 422.8, subsection 2, paragraph "b", is the numerator and the resident's or estate's or trust's total net income computed under section 422.7 is the denominator. If a resident shareholder, or an estate or trust with a situs in Iowa that is a shareholder, has elected to take advantage of this subparagraph (2), and for the next tax year elects not to take advantage of this subparagraph, the resident or estate or trust shareholder shall not reelect to take advantage of this subparagraph for the three tax years immediately following the first tax year for which the shareholder elected not to take advantage of this subparagraph, unless the director consents to the reelection. This subparagraph also applies to individuals who are residents of Iowa for less than the entire tax year.

(b) This subparagraph (2) shall not affect the amount of the taxpayer's checkoffs under this division, the credits from tax provided under this division, and the allocation of these credits between spouses if the taxpayers filed separate returns or separately on combined returns.

2. a. There is imposed upon every resident and nonresident of this state, including estates and trusts, the greater of the tax determined in subsection 1, paragraphs "a" through "j", or the state alternative minimum tax equal to seventy-five percent of the maximum state individual income tax rate for the tax year, rounded to the nearest one-tenth of one percent, of the state alternative minimum taxable income of the taxpayer as computed under this subsection.

b. The state alternative minimum taxable income of a taxpayer is equal to the taxpayer's state taxable income, as computed with the deductions in section 422.9, with the following adjustments:

(1) Add items of tax preference included in federal alternative minimum taxable income under section 57, except subsections (a)(1), (a)(2), and (a)(5), of the Internal Revenue Code, [1] make the adjustments included in federal alternative minimum taxable income under section 56, except subsections (a)(4), (b)(1)(C)(iii), and (d), of the Internal Revenue Code, and add losses as required by section 58 of the Internal Revenue Code. To the extent that any preference or adjustment is determined by an individual's federal adjusted gross income, the individual's federal adjusted gross income is computed in accordance with section 422.7, subsections 39, 39A, 39B, and 53. In the case of an estate or trust, the items of tax preference, adjustments, and losses shall be apportioned between the estate or trust and the beneficiaries in accordance with rules prescribed by the director.

(2) Subtract the applicable exemption amount as follows:

(a) Seventeen thousand five hundred dollars for a married person who files separately or for an estate or trust.

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(b) Twenty-six thousand dollars for a single person or a head of household.

(c) Thirty-five thousand dollars for a married couple which files a joint return.

(d) The exemption amount shall be reduced, but not below zero, by an amount equal to twenty-five percent of the amount by which the alternative minimum taxable income of the taxpayer, computed without regard to the exemption amount in this subparagraph (2), exceeds the following:

(i) Seventy-five thousand dollars in the case of a taxpayer described in subparagraph division (a).

(ii) One hundred twelve thousand five hundred dollars in the case of a taxpayer described in subparagraph division (b).

(iii) One hundred fifty thousand dollars in the case of a taxpayer described in subparagraph division (c).

(3) In the case of a net operating loss computed for a tax year beginning after December 31, 1982, which is carried back or carried forward to the current taxable year, the net operating loss shall be reduced by the amount of the items of tax preference arising in such year which was taken into account in computing the net operating loss in section 422.9, subsection 3. The deduction for a net operating loss for a tax year beginning after December 31, 1986, which is carried back or carried forward to the current taxable year shall not exceed ninety percent of the alternative minimum taxable income determined without regard for the net operating loss deduction.

c. The state alternative minimum tax of a taxpayer whose net capital gain deduction includes the gain or loss from the forfeiture of an installment real estate contract, the transfer of real or personal property securing a debt to a creditor in cancellation of that debt, or from the sale or exchange of property as a result of actual notice of foreclosure, where the fair market value of the taxpayer's assets exceeds the taxpayer's liabilities immediately before such forfeiture, transfer, or sale or exchange, shall not be greater than such excess, including any asset transferred within one hundred twenty days prior to such forfeiture, transfer, or sale or exchange.

d. In the case of a resident, including a resident estate or trust, the state's apportioned share of the state alternative minimum tax is one hundred percent of the state alternative minimum tax computed in this subsection 2. In the case of a resident or part-year resident shareholder in an S corporation which has in effect for the tax year an election under subchapter S of the Internal Revenue Code and carries on business within and without the state, a nonresident, including a nonresident estate or trust, or an individual, estate, or trust that is domiciled in the state for less than the entire tax year, the state's apportioned share of the state alternative minimum tax is the amount of tax computed under this subsection 2, reduced by the applicable credits in sections 422.10 through 422.12 and this result multiplied by a fraction with a numerator of the sum of state net income allocated to Iowa as determined in section 422.8, subsection 2, paragraph "a" or "b" as applicable, plus tax preference items, adjustments, and losses under subparagraph (1) attributable to Iowa and with a denominator of the sum of total net income computed under section 422.7 plus all tax preference items, adjustments, and losses under subparagraph (1). In computing this fraction, those items excludable under subparagraph (1) shall not be used in computing the tax preference items. Married taxpayers electing to file separate returns or separately on a combined return must allocate the minimum tax computed in this subsection in the proportion that each spouse's respective preference items, adjustments, and losses under subparagraph (1) bear to the combined preference items, adjustments, and losses under subparagraph (1) of both spouses.

3. a. The tax shall not be imposed on a resident or nonresident whose net income, as defined in section 422.7, is thirteen thousand five hundred dollars or less in the case of married persons filing jointly or filing separately on a combined return, heads of household, and surviving spouses or nine thousand dollars or less in the case of all other persons; but in the event that the payment of tax under this division would reduce the net income to less than thirteen thousand five hundred dollars or nine thousand dollars as applicable, then the tax shall be reduced to that amount which would result in allowing the taxpayer to retain a net income of thirteen thousand five hundred dollars or nine thousand dollars as applicable. The preceding sentence does not apply to estates or trusts. For the purpose of this subsection, the entire net income, including any part of the net income not allocated to Iowa, shall be taken into account. For purposes of this subsection, net income includes all amounts of pensions or other retirement income, except for military retirement pay excluded under section 422.7, subsection 31A, paragraph "a", or section 422.7, subsection 31B, paragraph "a", received from any source which is not taxable under this division as a result of the government pension exclusions in section 422.7, or any other state law. If the combined net income of a husband and wife exceeds thirteen thousand five hundred dollars, neither of them shall receive the benefit of this subsection, and it is immaterial whether they file a joint return or separate returns. However, if a husband and wife file separate returns and have a combined net income of thirteen thousand five hundred dollars or less, neither spouse shall receive the benefit of this paragraph, if one spouse has a net operating loss and elects to carry back or carry forward the loss as provided in section 422.9, subsection 3. A person who is claimed as a dependent by another person as defined in section 422.12 shall not receive the benefit of this subsection if the person claiming the dependent has net income exceeding thirteen thousand five hundred dollars or nine thousand dollars as applicable or the person claiming the dependent and the person's spouse have combined net income exceeding thirteen thousand five hundred dollars or nine thousand dollars as applicable.

b. In lieu of the computation in subsection 1 or 2, or in paragraph "a" of this subsection, if the married persons', filing jointly or filing separately on a combined return, head of household's, or surviving spouse's net income exceeds thirteen thousand five hundred dollars, the regular tax imposed under this division shall be the lesser of the maximum state individual income tax rate times the portion of the net income in excess of thirteen thousand five hundred dollars or the regular tax liability computed without regard to this sentence. Taxpayers electing to file separately shall compute the alternate tax described in this paragraph using the total net income of the husband and wife. The alternate tax described in this paragraph does not apply if one spouse elects to carry back or carry forward the loss as provided in section 422.9, subsection 3.

3A. Reserved.

3B. a. The tax shall not be imposed on a resident or nonresident who is at least sixty-five years old on December 31 of the tax year and whose net income, as defined in section 422.7, is thirty-two thousand dollars or less in the case of married persons filing jointly or filing separately on a combined return, heads of household, and surviving spouses or twenty-four thousand dollars or less in the case of all other persons; but in the event that the payment of tax under this division would reduce the net income to less than thirty-two thousand dollars or twenty-four thousand dollars as applicable, then the tax shall be reduced to that amount which would result in allowing the taxpayer to retain a net income of thirty-two thousand dollars or twenty-four thousand dollars as applicable. The preceding sentence does not apply to estates or trusts. For the purpose of this subsection, the entire net income, including any part of the net income not allocated to Iowa, shall be taken into account. For purposes of this subsection, net income includes all amounts of pensions or other retirement income, except for military retirement pay excluded under section 422.7, subsection 31A, paragraph "a", or section 422.7, subsection 31B, paragraph "a", received from any source which is not taxable under this division as a result of the government pension exclusions in section 422.7, or any other state law. If the combined net income of a husband and wife exceeds thirty-two thousand dollars, neither of them shall receive the benefit of this subsection, and it is immaterial whether they file a joint return or separate returns. However, if a husband and wife file separate returns and have a combined net income of thirty-two thousand dollars or less, neither spouse shall receive the benefit of this paragraph, if one spouse has a net operating loss and elects to carry back or carry forward the loss as provided in section 422.9, subsection 3. A person who is claimed as a dependent by another person as defined in section

422.12 shall not receive the benefit of this subsection if the person claiming the dependent has net income exceeding thirty-two thousand dollars or twenty-four thousand dollars as applicable or the person claiming the dependent and the person's spouse have combined net income exceeding thirty-two thousand dollars or twenty-four thousand dollars as applicable.

b. In lieu of the computation in subsection 1, 2, or 3, if the married persons', filing jointly or filing separately on a combined return, head of household's, or surviving spouse's net income exceeds thirty-two thousand dollars, the regular tax imposed under this division shall be the lesser of the maximum state individual income tax rate times the portion of the net income in excess of thirty-two thousand dollars or the regular tax liability computed without regard to this sentence. Taxpayers electing to file separately shall compute the alternate tax described in this paragraph using the total net income of the husband and wife. The alternate tax described in this paragraph does not apply if one spouse elects to carry back or carry forward the loss as provided in section 422.9, subsection 3.

c. This subsection applies even though one spouse has not attained the age of sixty-five, if the other spouse is at least sixty-five at the end of the tax year.

4. The tax herein levied shall be computed and collected as hereinafter provided.

5. The provisions of this division shall apply to all salaries received by federal officials or employees of the United States government as provided for herein.

6. Upon determination of the latest cumulative inflation factor, the director shall multiply each dollar amount set forth in subsection 1, paragraphs "a" through "i" by this cumulative inflation factor, shall round off the resulting product to the nearest one dollar, and shall incorporate the result into the income tax forms and instructions for each tax year.

7. The state income tax of a taxpayer whose net income includes the gain or loss from the forfeiture of an installment real estate contract, the transfer of real or personal property securing a debt to a creditor in cancellation of that debt, or from the sale or exchange of property as a result of actual notice of foreclosure where the fair market value of the taxpayer's assets exceeds the taxpayer's liabilities immediately before such forfeiture, transfer, or sale or exchange shall not be greater than such excess, including any asset transferred within one hundred twenty days prior to such forfeiture, transfer, or sale or exchange. For purposes of this subsection, in the case of married taxpayers, except in the case of a husband and wife who live apart at all times during the tax year, the assets and liabilities of both spouses shall be considered in determining if the fair market value of the taxpayer's assets exceed the taxpayer's liabilities.

8. In addition to the other taxes imposed by this section, a tax is imposed on the amount of a lump sum distribution for which the taxpayer has elected under section 402(e) of the Internal Revenue Code to be separately taxed for federal income tax purposes for the tax year. The rate of tax is equal to twenty-five percent of the separate federal tax imposed on the amount of the lump sum distribution. A nonresident is liable for this tax only on that portion of the lump sum distribution allocable to Iowa. The total amount of the lump sum distribution subject to separate federal tax shall be included in net income for purposes of determining eligibility under subsections 3 and 3B, as applicable.

9. In the case of income derived from the sale or exchange of livestock which qualifies under section 451(e) of the Internal Revenue Code because of drought, the taxpayer may elect to include the income in the taxpayer's net income in the tax year following the year of the sale or exchange in accordance with rules prescribed by the director.

10. If an individual's federal income tax was forgiven for a tax year under section 692 of the Internal Revenue Code, because the individual was killed while serving in an area designated by the president of the United States or the United States Congress as a combat zone, the individual was missing in action and presumed dead, or the individual was killed outside the United States in a terroristic or military action while the individual was a military or civilian employee of the United States, the individual's Iowa income tax is also forgiven for the same tax year.

11. If a taxpayer repays in the current tax year certain amounts of income that were subject to tax under this division in a prior year and a tax benefit would be allowed under similar circumstances under section 1341 of the Internal Revenue Code, a tax benefit shall be allowed on the Iowa return. The tax benefit shall be the reduced tax for the current tax year due to the deduction for the repaid income or the reduction in tax for the prior year or years due to exclusion of the repaid income. The reduction in tax shall qualify as a refundable tax credit on the return for the current year pursuant to rules prescribed by the director.

Credits

Amended by Acts 1953 (55 G.A.) ch. 204, § 1; Acts 1955 (56 G.A.) ch. 208, § 4; Acts 1965 (61 G.A.) ch. 360, § 4, eff. June 25, 1965; Acts 1967 (62 G.A.) ch. 348, § 14, eff. July 29, 1967; Acts 1969 (63 G.A.) ch. 111, § 5; Acts 1969 (63 G.A.) ch. 243, §§ 1, 4; Acts 1970 (63 G.A.) ch. 1200, § 1, eff. March 21, 1970; Acts 1971 (64 G.A.) ch. 165, § 35, eff. Jan. 1, 1971; Acts 1973 (65 G.A.) ch. 242, § 1; Acts 1975 (66 G.A.) ch. 207, § 1; Acts 1976 (66 G.A.) ch. 1106, § 5, eff. Jan. 1, 1977; Acts 1977 (67 G.A.) ch. 120, § 1; Acts 1979 (68 G.A.) ch. 93, §§ 2 to 4; Acts 1980 (68 G.A.) ch. 1012, § 48; Acts 1980 (68 G.A.) ch. 1129, § 2; Acts 1980 (68 G.A.) ch. 1131, § 1; Acts 1981 (69 G.A.) ch. 132, § 3; Acts 1982 (69 G.A.) ch. 1023, § 2, eff. March 26, 1982; Acts 1982 (69 G.A.) ch. 1064, § 1; Acts 1982 (69 G.A.) ch. 1226, §§ 1, 2; Acts 1983 (70 G.A.) ch. 101, § 86; Acts 1983 (70 G.A.) ch. 179, §§ 3, 20, 22; Acts 1985 (71 G.A.) ch. 243, §§ 1, 2; Acts 1986 (71 G.A.) ch. 1213, § 9, eff. June 12, 1986; Acts 1986 (71 G.A.) ch. 1232, § 1, eff. Jan. 1, 1986; Acts 1986 (71 G.A.) 1236, §§ 3, 4, eff. Jan. 1, 1986; Acts 1987 (72 G.A.) ch. 214, § 2; Acts 1987 (72 G.A.) 1st Ex.Sess. ch. 1, § 2, eff. July 6, 1987; Acts 1987 (72 G.A.) 2nd Ex.Sess. ch. 1, §§ 2, 3, eff. Oct. 28, 1987; Acts 1988 (72 G.A.) ch. 1028, §§ 5 to 11, eff. April 4, 1988; Acts 1989 (73 G.A.) ch. 228, §§ 4, 5; Acts 1989 (73 G.A.) ch. 251, § 11; Acts 1989 (73 G.A.) ch. 268, §§ 2, 3; Acts 1989 (73 G.A.) ch. 296, § 41; Acts 1991 (74 G.A.) ch. 159, § 7; Acts 1991 (74 G.A.) ch. 196, § 1, eff. May 22, 1991; Acts 1992 (74 G.A.) 2nd Ex.Sess., ch. 1001, §§ 217, 218, eff. July 1, 1992; Acts 1996 (76 G.A.) ch. 1166, § 3; Acts 1996 (76 G.A.) ch. 1197, §§ 14, 15, eff. May 29, 1996; Acts 1996 (76 G.A.) ch. 1219, § 27; Acts 1997 (77 G.A.) ch. 8, § 1, eff. Jan. 1, 1998; Acts 1997 (77 G.A.) ch. 111, § 2; Acts 1997 (77 G.A.) ch. 111, §§ 3, 4, eff. Jan. 1, 1998; Acts 1997 (77 G.A.) ch. 158, § 11; Acts 1999 (78 G.A.) ch. 151, § 4, eff. May 20, 1999; Acts 2003 (80 G.A.) ch. 139, § 4, eff. May 21, 2003; Acts 2006 (81 G.A.) ch. 1112, S.F. 2408, §§ 1, 3, eff. Jan. 1, 2007; Acts 2006 (81 G.A.) ch. 1112, S.F. 2408, § 2, as amended by Acts 2007 (82 G.A.) ch. 126, S.F. 333, § 112, eff. Jan. 1, 2009; Acts 2006 (81 G.A.) ch. 1158, H.F. 2794, §§ 8 to 10; Acts 2007 (82 G.A.) ch. 126, S.F. 333, § 65; Acts 2009 (83 G.A.) ch. 41, S.F. 446, § 263; Acts 2009 (83 G.A.) ch. 133, S.F. 449, § 135; Acts 2011 (84 G.A.) ch. 41, S.F. 512, § 17, eff. April 12, 2011; Acts 2012 (84 G.A.) ch. 1021, S.F. 2285, § 72; Acts 2013 (85 G.A.) ch. 140, S.F. 452, § 120, eff. June 20, 2013; Acts 2014 (85 G.A.) ch. 1116, S.F. 303, §§ 1, 2, eff. July 1, 2014.

Editors' Notes

APPLICATION

<Subsec. 3, par. a, and subsec. 3B, par. a, as amended by Acts 2014 (85 G.A.) ch. 1116, S.F. 303, apply retroactively to tax years beginning on or after Jan. 1, 2014, pursuant to Acts 2014 (85 G.A.) ch. 1116, S.F. 303, § 5.>

Notes of Decisions (14)

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Footnotes

1 Internal Revenue Code sections are found in Title 26 of U.S.C.A.

I. C. A. § 422.5, IA ST § 422.5

Current with immediately eff. legislation signed as of 3/9/2015 from the 2015 Reg.Sess.

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Iowa Code Annotated
Title X. Financial Resources [Chs. 421-454]
Subtitle 1. Revenues and Financial Management [Chs. 421-424] (Refs & Annos)
Chapter 422. Individual Income, Corporate, and Franchise Taxes (Refs & Annos)
Division II. Personal Net Income Tax (Refs & Annos)

I.C.A. § 422.8

422.8. Allocation of income earned in Iowa and other states

Effective: June 20, 2013
Currentness

Under rules prescribed by the director, net income of individuals, estates, and trusts shall be allocated as follows:

1. The amount of income tax paid to another state or foreign country by a resident taxpayer of this state on income derived from sources outside of Iowa shall be allowed as a credit against the tax computed under this chapter, except that the credit shall not exceed what the amount of the Iowa tax would have been on the same income which was taxed by the other state or foreign country. The limitation on this credit shall be computed according to the following formula: Income earned outside of Iowa and taxed by another state or foreign country shall be divided by the total income of the resident taxpayer of Iowa. This quotient multiplied times the net Iowa tax as determined on the total income of the taxpayer as if entirely earned in Iowa shall be the maximum tax credit against the Iowa net tax.

2. a. Nonresident's net income allocated to Iowa is the net income, or portion of net income, which is derived from a business, trade, profession, or occupation carried on within this state or income from any property, trust, estate, or other source within Iowa. However, income derived from a business, trade, profession, or occupation carried on within this state and income from any property, trust, estate, or other source within Iowa shall not include distributions from pensions, including defined benefit or defined contribution plans, annuities, individual retirement accounts, and deferred compensation plans or any earnings attributable thereto so long as the distribution is directly related to an individual's documented retirement and received while the individual is a nonresident of this state. If a business, trade, profession, or occupation is carried on partly within and partly without the state, only the portion of the net income which is fairly and equitably attributable to that part of the business, trade, profession, or occupation carried on within the state is allocated to Iowa for purposes of section 422.5, subsection 1, paragraph "j", and section 422.13 and income from any property, trust, estate, or other source partly within and partly without the state is allocated to Iowa in the same manner, except that annuities, interest on bank deposits and interest-bearing obligations, and dividends are allocated to Iowa only to the extent to which they are derived from a business, trade, profession, or occupation carried on within the state.

b. A resident's income, or the income of an estate or trust with a situs in Iowa, allocable to Iowa is the income determined under section 422.7 reduced by items of income and expenses from an S corporation that carries on business within and without the state when those items of income and expenses pass directly to the shareholders under provisions of the Internal Revenue Code. These items of income and expenses are increased by the greater of the following:

(1) The net income or loss of the corporation which is fairly and equitably attributable to this state under section 422.33, subsections 2 and 3.

(2) Any cash or the value of property distributions which are made only to the extent that they are paid from income upon which Iowa income tax has not been paid, as determined under rules of the director, reduced by the amount of any of these distributions that are made to enable the shareholder to pay federal income tax on items of income, loss, and expenses from the corporation.

3. Taxable income of resident and nonresident estates and trusts shall be allocated in the same manner as individuals.

4. The amount of minimum tax paid to another state or foreign country by a resident taxpayer of this state from preference items derived from sources outside of Iowa shall be allowed as a credit against the tax computed under this division except that the credit shall not exceed what the amount of state alternative minimum tax would have been on the same preference items which were taxed by the other state or foreign country. The limitation on this credit shall be computed according to the following formula: The total of preference items earned outside of Iowa and taxed by another state or foreign country shall be divided by the total of preference items of the resident taxpayer of Iowa. In computing this quotient, those items excludable under section 422.5, subsection 2, paragraph “b”, subparagraph (1), shall not be used in computing the preference items. This quotient multiplied times the net state alternative minimum tax as determined in section 422.5, subsection 2, on the total of preference items as if entirely earned in Iowa shall be the maximum tax credit against the Iowa alternative minimum tax. However, the maximum tax credit will not be allowed to the extent that the minimum tax imposed by the other state or foreign country is less than the maximum tax credit computed above.

5. a. The director may, in accordance with the provisions of this subsection, and when cost-efficient, administratively feasible, and of mutual benefit to both states, enter into reciprocal agreements with tax administration agencies of other states to further tax administration and eliminate duplicate withholding by exempting from Iowa taxation income earned from personal services in Iowa by residents of another state, if the other state provides a tax exemption for the same type of income earned from personal services by Iowa residents in the other state. For purposes of this subsection, “income earned from personal services” means wages, salaries, commissions, and tips, and earned income from other sources. This subsection does not authorize the department to withhold taxes on deferred compensation payments, pension distributions, and annuity payments when paid to a nonresident of the state of Iowa. All the terms of the agreements shall be described in the rules adopted by the department.

b. A reciprocal agreement entered into on or after April 4, 2002, with a tax administration agency of another state shall not take effect until such agreement has been authorized by a constitutional majority of each house of the general assembly and approved by the governor. A reciprocal agreement in effect on or after January 1, 2002, shall not be terminated by the state of Iowa unless the termination has been authorized by a constitutional majority of each house of the general assembly and approved by the governor. An amendment to an existing reciprocal agreement does not constitute a new agreement.

6. If the resident or part-year resident is a shareholder of an S corporation which has in effect an election under subchapter S of the Internal Revenue Code, subsections 1 and 3 do not apply to any income taxes paid to another state or foreign country on the income from the corporation which has in effect an election under subchapter S of the Internal Revenue Code.

Credits

Acts 1961 (59 G.A.) ch. 228, § 1. Amended by Acts 1967 (62 G.A.) ch. 342, § 74, eff. Aug. 15, 1967; Acts 1972 (64 G.A.) ch. 1105, § 1; Acts 1982 (69 G.A.) ch. 1226, § 3; Acts 1983 (70 G.A.) ch. 16, § 1; Acts 1985 (71 G.A.) ch. 243, § 3; Acts 1987 (72 G.A.) 2nd Ex.Sess., ch. 1, § 14, eff. Oct. 28, 1987; Acts 1988 (72 G.A.) ch. 1028, § 16, eff. April 4, 1988; Acts 1992 (74 G.A.) ch. 1224, §§ 1, 2, eff. May 26, 1992; Acts 1994 (75 G.A.) ch. 1149, § 1; Acts 1996 (76 G.A.) ch. 1197, §§ 16, 17; Acts 1997 (77 G.A.) ch. 111, §§ 5, 6, eff. Jan. 1, 1998; Acts 2002 (79 G.A.) ch. 1005, § 10; Acts 2002 (79 G.A.) ch. 1069, §

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5, eff. April 4, 2002; Acts 2009 (83 G.A.) ch. 133, S.F. 449, § 242; Acts 2011 (84 G.A.) ch. 25, S.F. 474, § 143; Acts 2013 (85 G.A.) ch. 140, S.F. 452, § 121, eff. June 20, 2013.

Editors' Notes

APPLICATION

<Subsec. 2, par. b, unnum. par. 1, as amended by Acts 2013 (85 G.A.) ch. 140, S.F. 452, applies retroactively to Jan. 1, 2013, for tax years beginning on or after Jan. 1, 2013, pursuant to Acts 2013 (85 G.A.) ch. 140, S.F. 452, § 124. >

Notes of Decisions (5)

I. C. A. § 422.8, IA ST § 422.8
Current with immediately eff. legislation signed as of 3/9/2015 from the 2015 Reg.Sess.

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K.S.A. 79-3220

79-3220. Requirements for individuals, corporations, fiduciaries and partnerships with regard to returns

Currentness

(a)(1) Each individual required to file a federal income tax return and any other individual whose gross income exceeds the sum of such individual's applicable Kansas standard deduction amount and Kansas personal exemption amount shall each make and sign a return or statement stating specifically such items as are required by the forms and rules and regulations of the secretary of revenue. If any individual is unable to make a return, the return shall be made by a duly authorized agent or by the guardian or other person charged with the care of the person or property of such taxpayer. Notwithstanding any provision of the Kansas income tax act to the contrary, all individuals not required to file a Kansas income tax return hereunder shall not be liable for any tax imposed pursuant to such act.

(2) In accordance with the provisions of K.S.A. 75-5151a, and amendments thereto, an individual who is required to file a return may file such return by electronic means in a manner approved by the secretary of revenue. A paid preparer who prepares 50 or more returns per year shall file by electronic means not less than 90% of such returns eligible for electronic filing. The requirements of this subsection may be waived by the secretary of revenue for a paid preparer if the paid preparer demonstrates a hardship in complying with the requirements of this subsection.

(b) Every corporation subject to taxation under this act, including, but not limited to, all farmers, fruit growers, or like associations organized and operated on a cooperative basis, except electric cooperative exclusively engaged in the manufacture or distribution of electric power for their members, shall make a return, or statement stating specifically such items as may be required by the forms and regulations of the secretary of revenue. The return shall be signed by the president, vice-president, treasurer, assistant treasurer, chief accounting officer, or any other officer so authorized to act. The fact that an individual's name is signed on a return shall be prima facie evidence that such individual is authorized to sign such return on behalf of such corporation. In cases where receivers, trustees in bankruptcy or assignees are operating the property or business of corporations, such receivers, trustees, or assignees shall make returns for such corporations in the same manner and form as corporations are required to make returns. Any tax due on the basis of such returns shall be collected in the same manner as if collected from the corporation for which the return is made.

(c) Every fiduciary, except a receiver appointed by authority of law in possession of part only of the property of an individual shall make and sign a return for each of the individuals, estates, or trusts for which the fiduciary acts, when such returns are required by the provisions of this act, stating specifically such items as may be required by the forms and regulations of the secretary of revenue. In the case of joint fiduciaries, whether residents or nonresidents, a return may be made by any one and shall be sufficient compliance with the above requirements. Any fiduciary required to make a return under this act shall be subject to all of the provisions of law which apply to individuals.

(d) Every partnership shall make a return for each taxable year, stating specifically such items as may be required by the forms and regulations of the secretary of revenue. The returns shall be signed by any one of the partners.

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Credits

Laws 1933, ch. 320, § 20; Laws 1935, ch. 312, § 11; Laws 1937, ch. 370, § 4; Laws 1943, ch. 304, § 1; Laws 1947, ch. 458, § 1; Laws 1949, ch. 480, § 4; Laws 1958, Budg. Sess., ch. 64, § 1; Laws 1963, ch. 486, § 1; Laws 1968, ch. 233, § 1; Laws 1971, ch. 307, § 1; Laws 1978, ch. 405, § 1; Laws 1980, ch. 316, § 1; Laws 1988, ch. 381, § 1; Laws 1992, ch. 113, § 1; Laws 2008, ch. 182, § 19, eff. July 1, 2008.

Notes of Decisions (3)

K. S. A. 79-3220, KS ST 79-3220

Statutes are current through laws enacted during the 2014 Regular Session of the Kansas Legislature and Chapter 1 of the 2015 Regular Session of the Kansas Legislature.

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K.S.A. 79-32,111

79-32,111. Credits against tax

Currentness

(a) The amount of income tax paid to another state by a resident individual, resident estate or resident trust on income derived from sources in another state, and included in Kansas adjusted gross income, shall be allowed as a credit against the tax computed under the provisions of this act. Such credit shall not be greater in proportion to the tax computed under this act than the Kansas adjusted gross income for such year derived in another state while such taxpayer is a resident of this state is to the total Kansas adjusted gross income of the taxpayer. As used in this subsection, "state" shall have the meaning ascribed thereto by subsection (h) of K.S.A. 79-3271, and amendments thereto. The credit allowable hereunder for income tax paid to a foreign country or political subdivision thereof shall not exceed the difference of such income tax paid less the credit allowable for such income tax paid by the federal internal revenue code. No redetermination of income tax paid for the purposes of determining the credit allowed by this subsection shall be required for the taxable year for which an income tax refund payment pursuant to the provisions of section 18 of article 10 of the Missouri constitution is made, but the income tax paid allowable for credit in the next following taxable year shall be reduced by the amount of such refund amount, except that, for tax year 1998, the income tax paid allowable for credit shall be reduced by the amount of such refunds made for all taxable years prior to tax year 1998.

(b) There shall be allowed as a credit against the tax computed under the provisions of the Kansas income tax act, and amendments thereto, on the Kansas taxable income of an individual, corporation or fiduciary the amount determined under the provisions of K.S.A. 79-32,153 to 79-32,158, and amendments thereto.

Credits

Laws 1967, ch. 497, § 4; Laws 1976, ch. 431, § 7; Laws 1997, ch. 126, § 48; Laws 1998, ch. 181, § 4; Laws 2012, ch. 135, § 11, eff. Jan. 1, 2013.

Notes of Decisions (4)

K. S. A. 79-32,111, KS ST 79-32,111
Statutes are current through laws enacted during the 2014 Regular Session of the Kansas Legislature and Chapter 1 of the 2015 Regular Session of the Kansas Legislature.

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Baldwin's Kentucky Revised Statutes Annotated
Title XI. Revenue and Taxation
Chapter 141. Income Taxes (Refs & Annos)

KRS § 141.020

141.020 Levy of income tax on individuals; rate of normal tax; tax credits; income of nonresidents subject to tax; election to pay tax imposed by KRS 141.023

Effective: June 25, 2013
Currentness

(1) An annual tax shall be paid for each taxable year by every resident individual of this state upon his entire net income as defined in this chapter. The tax shall be determined by applying the rates in subsection (2) of this section to net income and subtracting allowable tax credits provided in subsection (3) of this section.

(2) (a) For taxable years beginning before January 1, 2005, the tax shall be determined by applying the following rates to net income:

1. Two percent (2%) of the amount of net income up to three thousand dollars ($3,000);

2. Three percent (3%) of the amount of net income over three thousand dollars ($3,000) and up to four thousand dollars ($4,000);

3. Four percent (4%) of the amount of net income over four thousand dollars ($4,000) and up to five thousand dollars ($5,000);

4. Five percent (5%) of the amount of net income over five thousand dollars ($5,000) and up to eight thousand dollars ($8,000); and

5. Six percent (6%) of the amount of net income over eight thousand dollars ($8,000).

(b) For taxable years beginning after December 31, 2004, the tax shall be determined by applying the following rates to net income:

1. Two percent (2%) of the amount of net income up to three thousand dollars ($3,000);

2. Three percent (3%) of the amount of net income over three thousand dollars ($3,000) and up to four thousand dollars ($4,000);

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3. Four percent (4%) of the amount of net income over four thousand dollars ($4,000) and up to five thousand dollars ($5,000);

4. Five percent (5%) of the amount of net income over five thousand dollars ($5,000) and up to eight thousand dollars ($8,000);

5. Five and eight-tenths percent (5.8%) of the amount of net income over eight thousand dollars ($8,000) and up to seventy-five thousand dollars ($75,000); and

6. Six percent (6%) of the amount of net income over seventy-five thousand dollars ($75,000).

(3) (a) For taxable years beginning before January 1, 2014, the following tax credits, when applicable, shall be deducted from the result obtained under subsection (2) of this section to arrive at the annual tax:

1. Twenty dollars ($20) for an unmarried individual;

2. Twenty dollars ($20) for a married individual filing a separate return and an additional twenty dollars ($20) for the spouse of taxpayer if a separate return is made by the taxpayer and if the spouse, for the calendar year in which the taxable year of the taxpayer begins, had no Kentucky gross income and is not the dependent of another taxpayer; or forty dollars ($40) for married persons filing a joint return, provided neither spouse is the dependent of another taxpayer. The determination of marital status for the purpose of this section shall be made in the manner prescribed in Section 153 of the Internal Revenue Code [1] ;

3. Twenty dollars ($20) credit for each dependent. No credit shall be allowed for any dependent who has made a joint return with his spouse;

4. An additional forty dollars ($40) credit if the taxpayer has attained the age of sixty-five (65) before the close of the taxable year;

5. An additional forty dollars ($40) credit for taxpayer's spouse if a separate return is made by the taxpayer and if the taxpayer's spouse has attained the age of sixty-five (65) before the close of the taxable year, and, for the calendar year in which the taxable year of the taxpayer begins, has no Kentucky gross income and is not the dependent of another taxpayer;

6. An additional forty dollars ($40) credit if the taxpayer is blind at the close of the taxable year;

7. An additional forty dollars ($40) credit for taxpayer's spouse if a separate return is made by the taxpayer and if the taxpayer's spouse is blind, and, for the calendar year in which the taxable year of the taxpayer begins, has no Kentucky gross income and is not the dependent of another taxpayer;

8. In the case of nonresidents, the tax credits allowable under this subsection shall be the portion of the credits that are represented by the ratio of the taxpayer's Kentucky adjusted gross income as determined by KRS 141.010(10), without the adjustments contained in (f) and (g) of that subsection, to the taxpayer's adjusted gross income as defined in Section 62 of the Internal Revenue Code [2]. However, in the case of a married nonresident taxpayer with income from Kentucky sources, whose spouse has no income from Kentucky sources, the taxpayer shall determine allowable tax credit(s) by either:

a. The method contained above applied to the taxpayer's tax credit(s), excluding credits for a spouse and dependents; or

b. Prorating the taxpayer's tax credit(s) plus the tax credits for the taxpayer's spouse and dependents by the ratio of the taxpayer's Kentucky adjusted gross income as determined by KRS 141.010(10), without the adjustments contained in (f) and (g) of that subsection, to the total joint federal adjusted gross income of the taxpayer and the taxpayer's spouse;

9. In the case of an individual who becomes a resident of Kentucky during the taxable year, the tax credits allowable under this subsection shall be the portion of the credits represented by the ratio of the taxpayer's Kentucky adjusted gross income as determined by subsection (10) of KRS 141.010, without the adjustments contained in paragraphs (f) and (g) of that subsection, to the taxpayer's adjusted gross income as defined in Section 62 of the Internal Revenue Code;

10. In the case of a fiduciary, other than an estate, the allowable tax credit shall be two dollars ($2);

11. In the case of an estate, the allowable tax credit shall be twenty dollars ($20); and

12. An additional twenty dollars ($20) credit shall be allowed if the taxpayer is a member of the Kentucky National Guard at the close of the taxable year.

(b) 1. For taxable years beginning on or after January 1, 2014, the following tax credits, when applicable, shall be deducted from the result obtained under subsection (2) of this section to arrive at the annual tax:

a. Ten dollars ($10) for an unmarried individual;

b. Ten dollars ($10) for a married individual filing a separate return and an additional ten dollars ($10) for the spouse of taxpayer if a separate return is made by the taxpayer and if the spouse, for the calendar year in which the taxable year of the taxpayer begins, had no Kentucky gross income and is not the dependent of another taxpayer; or twenty dollars ($20) for married persons filing a joint return, provided neither spouse is the dependent of another taxpayer. The determination of marital status for the purpose of this section shall be made in the manner prescribed in Section 153 of the Internal Revenue Code;

c. Ten dollars ($10) credit for each dependent. No credit shall be allowed for any dependent who has made a joint return with his spouse;

d. An additional forty dollars ($40) credit if the taxpayer has attained the age of sixty-five (65) before the close of the taxable year;

e. An additional forty dollars ($40) credit for taxpayer's spouse if a separate return is made by the taxpayer and if the taxpayer's spouse has attained the age of sixty-five (65) before the close of the taxable year, and, for the calendar year in which the taxable year of the taxpayer begins, has no Kentucky gross income and is not the dependent of another taxpayer;

f. An additional forty dollars ($40) credit if the taxpayer is blind at the close of the taxable year;

g. An additional forty dollars ($40) credit for taxpayer's spouse if a separate return is made by the taxpayer and if the taxpayer's spouse is blind, and, for the calendar year in which the taxable year of the taxpayer begins, has no Kentucky gross income and is not the dependent of another taxpayer;

h. In the case of a fiduciary, other than an estate, the allowable tax credit shall be two dollars ($2);

i. In the case of an estate, the allowable tax credit shall be ten dollars ($10); and

j. An additional twenty dollars ($20) credit shall be allowed if the taxpayer is a member of the Kentucky National Guard at the close of the taxable year.

2. In the case of nonresidents, the tax credits allowable under this subsection shall be the portion of the credits that are represented by the ratio of the taxpayer's Kentucky adjusted gross income as determined by KRS 141.010(10), without the adjustments contained in paragraphs (f) and (g) of that subsection, to the taxpayer's adjusted gross income as defined in Section 62 of the Internal Revenue Code. However, in the case of a married nonresident taxpayer with income from Kentucky sources, whose spouse has no income from Kentucky sources, the taxpayer shall determine allowable tax credit(s) by either:

a. The method contained above applied to the taxpayer's tax credit(s), excluding credits for a spouse and dependents; or

b. Prorating the taxpayer's tax credit(s) plus the tax credits for the taxpayer's spouse and dependents by the ratio of the taxpayer's Kentucky adjusted gross income as determined by KRS 141.010(10), without the adjustments contained in paragraphs (f) and (g) of that subsection, to the total joint federal adjusted gross income of the taxpayer and the taxpayer's spouse.

3. In the case of an individual who becomes a resident of Kentucky during the taxable year, the tax credits allowable under this subsection shall be the portion of the credits represented by the ratio of the taxpayer's Kentucky adjusted gross income as determined by KRS 141.010(10), without the adjustments contained in paragraphs (f) and (g) of that subsection, to the taxpayer's adjusted gross income as defined in Section 62 of the Internal Revenue Code.

(4) An annual tax shall be paid for each taxable year as specified in this section upon the entire net income except as herein provided, from all tangible property located in this state, from all intangible property that has acquired a business situs in this state, and from business, trade, profession, occupation, or other activities carried on in this state, by natural persons not residents of this state. A nonresident individual shall be taxable only upon the amount of income received by the individual from labor performed, business done, or from other activities in this state, from tangible property located in this state, and from intangible property which has acquired a business situs in this state; provided, however, that the situs of intangible personal property shall be at the residence of the real or beneficial owner and not at the residence of a trustee having custody or possession thereof. The remainder of the income received by such nonresident shall be deemed nontaxable by this state.

(5) Subject to the provisions of KRS 141.081, any individual may elect to pay the annual tax imposed by KRS 141.023 in lieu of the tax levied under this section.

(6) An individual who becomes a resident of Kentucky during the taxable year is subject to taxation as prescribed in subsection (4) of this section prior to establishing residence and as prescribed in subsection (1) of this section following the establishment of residence.

(7) An individual who becomes a nonresident of Kentucky during the taxable year is subject to taxation, as prescribed in subsection (1) of this section, during that portion of the taxable year that the individual is a resident and, as prescribed in subsection (4) of this section, during that portion of the taxable year when the individual is a nonresident.

Credits

HISTORY: 2013 c 119, § 16, eff. 6-25-13; 2005 c 168, § 5, eff. 3-18-05; 1990 c 476, § 632, eff. 4-11-90; 1976 c 77, Pt I, § 1; 1974 c 362, § 1; 1972 c 84, Pt II, § 2; 1970 c 216, § 5; 1966 c 176, Pt I, § 3; 1964 c 76, § 1; 1962 c 124, § 2; 1960 c 5, Art III, § 2; 1958 c 3, § 1; 1956 4th ex s, c 4, § 2; 1954 c 79, § 2; 1952 c 124, § 1; 1948 c 93, § 2; 1946 c 234, § 6; 1942 c 208, § 1; KS 4281b-14

LRC NOTES

Legislative Research Commission Note (3-18-05): 2005 Ky. Acts ch. 168, sec. 165, provides that this section shall apply to tax years beginning on or after January 1, 2005.

Notes of Decisions (15)

Footnotes

1 26 U.S.C.A. § 153.

2 26 U.S.C.A. § 62.

KRS § 141.020, KY ST § 141.020

Current with immediately eff. legislation signed as of 3/19/15

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LSA-R.S. 47:31

§ 31. Individuals, corporations and trusts subject to tax

Currentness

There shall be levied, collected, and paid for each taxable year a tax upon the net income of residents and nonresidents, estates, trusts and corporations, as hereinafter provided.

(1) Resident individuals. Every person residing within the state, or the personal representative in the event of death, shall pay a tax on net income from whatever source derived, except as hereinafter exempted.

Every natural person domiciled in the state, and every other natural person who maintains a permanent place of abode within the state or who spends in the aggregate more than six months of the taxable year within the state, shall be deemed to be a resident of this state for the purpose of determining liability for income taxes under this Chapter.

(2) Nonresident individuals. Every nonresident shall pay a tax upon such net income as is derived from property located, or from services rendered, or from business transacted within the state, or from sources within the state, except as hereinafter exempted.

(3) Corporations. Corporations shall be taxed on net income from sources within the state, as hereinafter set out.

(4) Domestic real estate investment trusts. Trusts shall be taxed on net income from whatever source derived, except as otherwise exempted.

(5) Foreign real estate investment trusts. Foreign real estate investment trusts shall be taxed on net income from sources within the state, as hereinafter set out.

Credits

Amended by Acts 1962, No. 315, § 1; Acts 1968, No. 106, § 1.

Notes of Decisions (46)

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LSA-R.S. 47:31, LA R.S. 47:31
Current through the 2014 Regular Session.

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West's Louisiana Statutes Annotated
Louisiana Revised Statutes
Title 47. Revenue and Taxation (Refs & Annos)
Subtitle II. Provisions Relating to Taxes Collected and Administered by the Collector of Revenue (Refs & Annos)
Chapter 1. Income Tax (Refs & Annos)
Part I. General Provisions
Subpart B. Tax Levy; Rates of Tax

LSA-R.S. 47:33

§ 33. Credit for taxes paid in other states

Currentness

A. Subject to the following conditions, resident individuals shall be allowed a credit against the taxes imposed by this Chapter for net income taxes imposed by and paid to another state on income taxable under this Chapter, provided that:

(1) The credit shall be allowed only for taxes paid to the other state on income which is taxable under its law irrespective of the residence or domicile of the recipient.

(2) If accrued taxes when paid differ from the amounts claimed as credits by the taxpayer, or if any tax paid is refunded in whole or in part, the taxpayer shall notify the secretary who shall redetermine the amount of the tax for the year or years affected, and the amount of tax due upon such redetermination, if any, shall be paid by the taxpayer upon notice and demand by the secretary, or the amount of tax overpaid, if any, shall be credited or refunded to the taxpayer in accordance with the provisions of R.S. 47:261 et seq. In the case of such tax accrued but not paid, the secretary as a condition precedent to the allowance of this credit may require the taxpayer to give a bond with sureties approved by the secretary in such sum as the secretary may require, conditioned upon the payment by the taxpayer of any amount of tax found due upon any such redetermination, and the bonds herein prescribed shall contain such further conditions as the secretary may require.

(3) The credits provided for in this Section shall be allowed only for the same taxable period as that for which the tax liability to the other state arose, irrespective of the method of accounting employed by the taxpayer. No deduction shall be allowed under R.S. 47:55 for any net income taxes paid to another state if any portion of such tax has been claimed as a credit under this Section.

B. Terminated July 1, 2000, by Acts 1998, No. 53, § 3.

Credits

Amended by Acts 1950, No. 445, § 1; Acts 1958, No. 169, § 2; Acts 1968, No. 106, § 3; Acts 1998, No. 53, § 1.

Notes of Decisions (2)

LSA-R.S. 47:33, LA R.S. 47:33
Current through the 2014 Regular Session.

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Maine Revised Statutes Annotated
Title 36. Taxation (Refs & Annos)
Part 8. Income Taxes (Refs & Annos)
Chapter 803. Imposition of Tax on Individuals (Refs & Annos)

36 M.R.S.A. § 5111

§ 5111. Imposition and rate of tax

Effective: June 26, 2013
Currentness

A tax is imposed for each taxable year beginning on or after January 1, 2000, on the Maine taxable income of every resident individual of this State. The amount of the tax is determined as provided in this section.

1. Repealed.

1-A. Single individuals and married persons filing separate returns; tax years beginning 2000, 2001. For tax years beginning in 2000 or 2001, for single individuals and married persons filing separate returns:

If Maine taxable income is:	The tax is:
Less than $4,150	2% of the Maine taxable income
At least $4,150 but less than $8,250	$83 plus 4.5% of the excess over $4,150
At least $8,250 but less than $16,500	$268 plus 7% of the excess over $8,250
$16,500 or more	$846 plus 8.5% of the excess over $16,500

1-B. Single individuals and married persons filing separate returns; tax years from 2002 to 2012. For tax years beginning on or after January 1, 2002 but not later than December 31, 2012, for single individuals and married persons filing separate returns:

If Maine Taxable income is:	The tax is:
Less than $4,200	2% of the Maine taxable income
At least $4,200 but less than $8,350	$84 plus 4.5% of the excess over $4, 200
At least $8,350 but less than $16,700	$271 plus 7% of the excess over $8, 350
$16,700 or more	$856 plus 8.5% of the excess over $16,700

1-C. Single individuals and married persons filing separate returns; tax year 2013. For tax years beginning on or after January 1, 2013 but not later than December 31, 2013, for single individuals and married persons filing separate returns:

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If Maine Taxable income is:	The tax is:
At least $5,000 but less than $19,950	6.5% of the excess over $5,000
$19,950 or more	$972 plus 7.95% of the excess over $19,950

1-D. Single individuals and married persons filing separate returns; tax years beginning 2014. For tax years beginning on or after January 1, 2014, for single individuals and married persons filing separate returns:

If Maine Taxable income is:	The tax is:
At least $5,200 but less than $20,900	6.5% of the excess over $5, 200
$20,900 or more	$1,021 plus 7.95% of the excess over $20,900

2. Repealed.

2-A. Heads of households; tax years beginning 2000, 2001. For tax years beginning in 2000 or 2001, for unmarried individuals or legally separated individuals who qualify as heads of households:

If Maine taxable income is:	The tax is:
Less than $6,200	2% of the Maine taxable income
At least $6,200 but less than $12,400	$124 plus 4.5% of the excess over $6,200
At least $12,400 but less than $24,750	$403 plus 7% of the excess over $12,400
$24,750 or more	$1,268 plus 8.5% of the excess over $24,750

2-B. Heads of households; tax years from 2002 to 2012. For tax years beginning on or after January 1, 2002 but not later than December 31, 2012, for unmarried individuals or legally separated individuals who qualify as heads of households:

If Maine Taxable income is:	The tax is:
Less than $6,300	2% of the Maine taxable income
At least $6,300 but less than $12,500	$126 plus 4.5% of the excess over $6, 300
At least $12,500 but less than $25,050	$405 plus 7% of the excess over $12, 500
$25,050 or more	$1,284 plus 8.5% of the excess over $25,050

2-C. Heads of households; tax year 2013. For tax years beginning on or after January 1, 2013 but not later than December 31, 2013, for unmarried individuals or legally separated individuals who qualify as heads of households:

If Maine Taxable income is:	The tax is:

At least $7,500 but less than $29,900	6.5% of the excess over $7,500
$29,900 or more	$1,456 plus 7.95% of the excess over $29,900

2-D. Heads of households; tax years beginning 2014. For tax years beginning on or after January 1, 2014, for unmarried individuals or legally separated individuals who qualify as heads of households:

If Maine Taxable income is:	The tax is:
At least $7,850 but less than $31,350	6.5% of the excess over $7, 850
$31,350 or more	$1,528 plus 7.95% of the excess over $31,350

3. Repealed.

3-A. Individuals filing married joint return or surviving spouses; tax years beginning 2000, 2001. For tax years beginning in 2000 or 2001, for individuals filing married joint returns or surviving spouses permitted to file a joint return:

If Maine taxable income is:	The tax is:
Less than $8,250	2% of the Maine taxable income
At least $8,250 but less than $16,500	$165 plus 4.5% of the excess over $8,250
At least $16,500 but less than $33,000	$536 plus 7% of the excess over $16,500
$33,000 or more	$1,691 plus 8.5% of the excess over $33,000

3-B. Individuals filing married joint return or surviving spouses; tax years from 2002 to 2012. For tax years beginning on or after January 1, 2002 but not later than December 31, 2012, for individuals filing married joint returns or surviving spouses permitted to file a joint return:

If Maine Taxable income is:	The tax is:
Less than $8,400	2% of the Maine taxable income
At least $8,400 but less than $16,700	$168 plus 4.5% of the excess over $8, 400
At least $16,700 but less than $33,400	$542 plus 7% of the excess over $16, 700
$33,400 or more	$1,711 plus 8.5% of the excess over $33,400

3-C. Individuals filing married joint return or surviving spouses; tax year 2013. For tax years beginning on or after January 1, 2013 but not later than December 31, 2013, for individuals filing married joint returns or surviving spouses permitted to file a joint return:

If Maine Taxable income is:	The tax is:
At least $10,000 but less than $39,900	6.5% of the excess over $10,000
$39,900 or more	$1,944 plus 7.95% of the excess over $39,900

3-D. Individuals filing married joint return or surviving spouses; tax years beginning 2014. For tax years beginning on or after January 1, 2014, for individuals filing married joint returns or surviving spouses permitted to file a joint return:

If Maine Taxable income is:	The tax is:
At least $10,450 but less than $41,850	6.5% of the excess over $10, 450
$41,850 or more	$2,041 plus 7.95% of the excess over $41,850

4. Additional tax. Additionally, a tax is imposed for each taxable year on the Maine adjusted gross income of every nonresident individual. The amount of the tax equals the tax computed under this section and chapter 805 as if the nonresident individual were a resident individual, multiplied by the ratio of the nonresident individual's Maine adjusted gross income, as defined in section 5102, subsection 1-C, paragraph B, to the nonresident individual's entire federal adjusted gross income, as modified by section 5122.

5. Repealed. Laws 2009, c. 434, § 63.

Credits

1969, c. 154 (P. & S.L.), § F, 1; 1975, c. 660, § 6; 1975, c. 661, eff. April 30, 1976; 1977, c. 686, § 7; 1981, I.B. 2, § 1; 1983, c. 3, § 1, eff. Jan. 14, 1983; 1983, c. 571, § 18; 1985, c. 535, § 14; 1985, c. 783, §§ 19, 20; 1987, c. 504, § 7; 1987, c. 819, § 2; 1989, c. 495, § 1; 1989, c. 596, §§ J, 1, 2; 1991, c. 528, §§ YY-1 to YY-6, ZZ-1, RRR; 1991, c. 591, §§ YY-1 to YY-6, ZZ-1; 1991, c. 824, §§ A-76 to A-78, A-92, eff. April 6, 1992; 1999, c. 521, § B-1; 1999, c. 731, §§ T-1 to T-7; 2009, c. 434, §§ 62, 63; 2011, c. 380, §§ N-1 to N-6, eff. June 20, 2011; 2013, c. 368, §§ Q-3 to Q-8, eff. June 26, 2013.

Notes of Decisions (5)

36 M. R. S. A. § 5111, ME ST T. 36 § 5111
Current with emergency legislation through Chapter 3 of the 2015 First Regular Session of the 127th Legislature. The First Regular Session convened December 3, 2014.

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36 M.R.S.A. § 5217-A

§ 5217-A. Income tax paid to other taxing jurisdiction

Currentness

A resident individual is allowed a credit against the tax otherwise due under this Part, excluding the tax imposed by section 5203-C, for the amount of income tax imposed on that individual for the taxable year by another state of the United States, a political subdivision of any such state, the District of Columbia or any political subdivision of a foreign country that is analogous to a state of the United States with respect to income subject to tax under this Part that is derived from sources in that taxing jurisdiction. In determining whether income is derived from sources in another jurisdiction, the assessor may not employ the law of the other jurisdiction but shall instead assume that a statute equivalent to section 5142 applies in that jurisdiction. The credit, for any of the specified taxing jurisdictions, may not exceed the proportion of the tax otherwise due under this Part, excluding the tax imposed by section 5203-C, that the amount of the taxpayer's Maine adjusted gross income derived from sources in that taxing jurisdiction bears to the taxpayer's entire Maine adjusted gross income; except that, when a credit is claimed for taxes paid to both a state and a political subdivision of a state, the total credit allowable for those taxes does not exceed the proportion of the tax otherwise due under this Part, excluding the tax imposed by section 5203-C, that the amount of the taxpayer's Maine adjusted gross income derived from sources in the other state bears to the taxpayer's entire Maine adjusted gross income.

Credits

1987, c. 769, § A, 160, eff. April 26, 1987; 1991, c. 528, §§ N-16, RRR; 1991, c. 591, § N-16, eff. July 17, 1991; 2003, c. 391, § 9; 2003, c. 673, § JJ-4.

Notes of Decisions (1)

36 M. R. S. A. § 5217-A, ME ST T. 36 § 5217-A
Current with emergency legislation through Chapter 3 of the 2015 First Regular Session of the 127th Legislature. The First Regular Session convened December 3, 2014.

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MD Code, Tax - General, § 10-102

§ 10-102. Tax imposed on income of individuals and corporations

Currentness

Except as provided in § 10-104 of this subtitle, a tax is imposed on the Maryland taxable income of each individual and of each corporation.

Credits

Added by Acts 1988, c. 2, § 1, eff. Jan. 1, 1989. Amended by Acts 1992, 1st Sp. Sess., c. 1, § 6.

Formerly Art. 81, § 288.

Notes of Decisions (42)

MD Code, Tax - General, § 10-102, MD TAX GENERAL § 10-102
Current through chapters 1 and 2 of the 2015 Regular Session of the General Assembly

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MD Code, Tax - General, § 10-703

§ 10-703. Tax credit for taxes paid to other state

Currentness

Credit allowed

(a) Except as provided in subsection (b) of this section, a resident may claim a credit only against the State income tax for a taxable year in the amount determined under subsection (c) of this section for State tax on income paid to another state for the year.

Exceptions

(b) A credit under subsection (a) of this section is not allowed to:

(1) a resident other than a fiduciary, if the laws of the other state allow the resident a credit for State income tax paid to this State;

(2) a resident fiduciary, if the fiduciary claims, and the other state allows, a credit for State income tax paid to this State;

(3) a resident for less than the full taxable year for tax on income that is paid to another state during residency in that state; or

(4) a nonresident.

Amount of credit for resident

(c)(1) Except as provided in paragraph (2) of this subsection, the credit allowed a resident under subsection (a) of this section is the lesser of:

(i) the amount of allowable tax on income that the resident paid to another state; or

(ii) an amount that does not reduce the State income tax to an amount less than would be payable if the income subjected to tax in the other state were disregarded.

(2) If the credit allowed a resident under subsection (a) of this section is based on tax that an S corporation pays to another state, the credit allowable to a shareholder:

(i) may not exceed that shareholder's pro rata share of the tax; and

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(ii) will be allowed for another state's income taxes or taxes based on income.

Credits

Added by Acts 1988, c. 2, § 1, eff. Jan. 1, 1989. Amended by Acts 1992, 1st Sp. Sess., c. 1, § 6; Acts 1993, c. 262; Acts 1995, c. 134, § 1, eff. June 1, 1995.

Formerly Art. 81, §§ 279, 290, 291.

Notes of Decisions (11)

MD Code, Tax - General, § 10-703, MD TAX GENERAL § 10-703
Current through chapters 1 and 2 of the 2015 Regular Session of the General Assembly

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Massachusetts General Laws Annotated
Part I. Administration of the Government (Ch. 1-182)
Title IX. Taxation (Ch. 58-65c)
Chapter 62. Taxation of Incomes (Refs & Annos)

M.G.L.A. 62 § 2

§ 2. Gross income, adjusted gross income and taxable income defined; classes

Effective: January 1, 2010
Currentness

(a) Massachusetts gross income shall mean the federal gross income, modified as required by section six F, with the following further modifications:--

(1) The items to be added thereto are:--

(A) Interest on governmental obligations excluded under section one hundred and three of the Code, [1] other than interest from any such obligation issued by the commonwealth, any political subdivision thereof, or any agency or instrumentality of either of the foregoing, which is exempt from taxation under any provision of law.

<[There is no subparagraph (B).]>

(C) Earned income from foreign sources excluded under section nine hundred and eleven of the Code. [2]

<[There are no subparagraphs (D) or (E).]>

(F) Amounts included in or considered to be Massachusetts gross income under any other provision of this chapter.

(G) Amounts excluded under section one hundred and twenty-eight of the Code. [3]

<[There is no subparagraph (H).]>

(*I*) Amounts contributed on behalf of the taxpayer pursuant to subdivision (10) of section twenty-two of chapter thirty-two or pursuant to paragraph (i) of section sixty-five D of said chapter thirty-two or pursuant to section forty of chapter fifteen A and not included in the federal gross income; provided, however, that nothing herein shall be deemed to impair the status for tax purposes of any such amount as provided under section nineteen of chapter thirty-two, or subparagraph (4) of paragraph (a) of Part B of section three of chapter sixty-two.

(2) The items to be deducted therefrom are:--

(A) Interest on obligations of the United States exempt from state income taxation to the extent included in federal gross income, and dividends received from a regulated investment company qualified under section eight hundred and fifty-one of the Federal Internal Revenue Code [4] to the extent such dividends are attributable to interest on obligations of the United States exempt from state income taxation and are so identified in a written notice mailed to the shareholders of such regulated investment company not later than sixty days after the close of its tax year.

<[There is no subparagraph (B).]>

(C) Income received from any trustee or other fiduciary, which income is taxable under this chapter to the trustee or other fiduciary.

(D) Dividends received from a corporate trust subject to taxation under section 8, as in effect on December 31, 2008, to the extent that they are derived from earnings and profits previously taxed to the trust under said section 8, but only to the extent that the trust properly filed returns and paid all taxes due.

(E) Income from any contributory annuity, pension, endowment or retirement fund of the United States government or the commonwealth or any political subdivision thereof including the optional retirement system established by section forty of chapter fifteen A, to which the employee has contributed, or any income received from the United States government as retirement pay for a retired member of the Uniformed Services of the United States, as defined in 10 U.S.C. section 1072, regardless of whether the retiree contributed to the retirement system, or any income received from the United States government as survivorship benefits under 10 U.S.C. sections 1431 to 1460, inclusive.

(F) Income from annuity, stock bonus, pension, profit-sharing, annuity or deferred-payment plans or contracts described in sections four hundred and three (b) or four hundred and four of the Code [5] or individual retirement accounts, individual retirement annuities or retirement bonds described in sections four hundred and eight or four hundred and nine of the Code [6], until an aggregate amount of such income has been deducted under this subparagraph equal to the aggregate of all amounts previously subjected to taxation under this chapter; provided, that this subparagraph shall not apply to income from the optional retirement system established by section forty of chapter fifteen A.

(G) The commissioner of energy resources may approve United States patents, which have been issued to Massachusetts residents or applied for by Massachusetts residents as useful for energy conservation and related purposes or as useful for alternative energy development and related purposes, provided that such patents are determined by said commissioner to be of economic value, practicable, and necessary for the convenience and welfare of the Commonwealth and its citizens. Any income received from the sale, lease or other transfer of a patent so approved by the commissioner of energy resources, including royalty income, and any income received from the sale, lease, or other transfer of tangible, intangible, personal or real property or materials manufactured in the Commonwealth subject to such patent shall be deducted. Said deduction shall extend for a period no longer than 5 years from the date of issuance of the United States patent or the date of approval by the commissioner of energy resources, whichever first expires.

(H) Social security benefits included in federal gross income under section eighty-six of the Code. [7]

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(*I*) Dividends received from a regulated investment company qualified under section eight hundred and fifty-one of the Federal Internal Revenue Code which are exempt interest dividends under section eight hundred and fifty-two of said Code [8] but only to the extent of the portion of such exempt interest dividends directly attributable to interest from obligations issued by the commonwealth, any political subdivision thereof, or any agency or instrumentality of either of the foregoing, that is exempt from taxation under any provision of law, and provided that such portion is identified in a written notice mailed to the shareholders of such regulated investment company not later than sixty days after the close of its tax year.

(J) Dividends received from a regulated investment company qualified under section eight hundred and fifty-one of the code which are capital gain dividends under section eight hundred and fifty-two of said Code but only to the extent of the portion of such capital gain dividends attributable to gain from obligations issued by the commonwealth, any political subdivision thereof, or any agency of instrumentality of either of the foregoing, that is exempt from taxation under any provision of law, and provided such portion is identified in a written notice to the shareholders of such regulated investment company not later than sixty days after the close of its tax year.

(K) The following items, to the extent included in federal gross income:

(i) distributions or payments, including interest, if any, made to an individual because of his status as a victim of persecution for racial or religious reasons by Nazi Germany or any other Axis regime or as an heir of such victim and

(ii) income, attributable to, derived from or in any way related to assets stolen from, hidden from, or otherwise lost to Germany or any other Axis regime immediately prior to, during, and immediately after World War II, including but not limited to, payments of compensation or reparation, and interest on and the proceeds of insurance under policies issued to a victim of persecution for racial or religious reasons by Nazi Germany or any other Axis regime by European insurance companies immediately prior to and during World War II; provided, however, this deduction from federal gross income shall not apply to assets acquired with such assets or with the proceeds from the sale of such assets; provided, further, this paragraph shall only apply to a taxpayer who was the first recipient of such assets after their recovery and who was a victim of persecution for racial or religious reasons by Nazi Germany or any other Axis regime or as an heir of such a victim.

(L) Amounts, whether in a single sum or otherwise, paid by an employer by reason of the death of an employee who is a specified terrorist victim, as defined in section 25 of this chapter; provided, however, subject to such rules as the commissioner may prescribe from time to time, that this section shall not apply to (i) amounts which would have been payable after death if the individual had died other than as said specified terrorist victim; and (ii) incidental death benefits paid from a plan described in the provisions of section 401(a) of the Internal Revenue Code [9] and exempt from tax under the provisions of section 501(a) of the Internal Revenue Code. [10] For purposes of this section, the term “employee” shall include a self-employed individual as defined under section 401(c)(1) of the Internal Revenue Code. [11]

(M) Any amount which, but for this section, would be included in gross income by reason of the discharge, in whole or in part, of indebtedness of any taxpayer if the discharge is by reason of the death of an individual incurred as the result of the terrorist attacks against the United States on September 11, 2001, or as the result of illness incurred as a result of an attack involving anthrax occurring on or after September 11, 2001, and before January 1, 2002.

(N) Any amount received by an individual as a qualified disaster relief payment.

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(i) For purposes of this section, the term "qualified disaster relief payment" means an amount paid to or for the benefit of an individual (a) to reimburse or pay reasonable and necessary personal, family, living, or funeral expenses incurred as a result of a qualified disaster, (b) to reimburse or pay reasonable and necessary expenses incurred for the repair or rehabilitation, of a personal residence or repair or replacement of its contents to the extent that the need for such repair, rehabilitation, or replacement is attributable to a qualified disaster, (c) by a person engaged in the furnishing or sale of transportation as a common carrier by reason of the death or personal physical injuries incurred as a result of a qualified disaster, or (d) if such amount is paid by the United States or a state or local government, or agency or instrumentality thereof, in connection with a qualified disaster in order to promote the general welfare, but only to the extent any expense compensated by such payment is not otherwise compensated for by insurance or otherwise.

(ii) For purposes of this section, the term "qualified disaster" means (a) a disaster which results from a terroristic or military action as defined in section 692(c)(2) of the Internal Revenue Code [12] as in effect for the current taxable year, (b) a Presidentially declared disaster as defined in section 1033(h)(3) of the Internal Revenue Code [13] as in effect for the current taxable year, (c) a disaster which results from an accident involving a common carrier, or from any other event, which is determined by the commissioner to be of a catastrophic nature, or (d) with respect to amounts described in subclause (d) of clause (i) of this subparagraph, a disaster which is determined by the applicable United States or state authority to warrant assistance from the United States or a state or agency or instrumentality thereof.

(iii) This section shall not apply with respect to any individual identified by the attorney general of the United States to have been a participant or conspirator in a terroristic action as specified in section 25 of this chapter or a representative of such individual.

(*O*) Any amount received as payment under section 406 of the Air Transportation Safety and System Stabilization Act, [14] so-called.

(P) Amounts received by an individual as disability income attributable to injuries incurred as a direct result of a terroristic or military action as defined in section 692(c)(2) of the Internal Revenue Code in effect for the current taxable year.

(Q) If an employee participates in an employer-provided health insurance plan, any amount which, but for this section, would be included in gross income of the employee by reason of coverage under the plan of any person other than the employee, to the extent such coverage is mandated by law.

(3) Notwithstanding this chapter:

(A) In the case of a distribution within the meaning of subsection (d)(3) of section 408A of the Code [15] as amended and in effect for the taxable year, any amount included as income for federal tax purposes under said section 408A by reason of such distribution shall be included in gross income and, to the extent such distribution is included in adjusted gross income under subsection (c), shall be taken into account in determining taxable income under this chapter in the same manner as under subparagraph (A) of said subsection (d)(3) of said section 408A of said Code. [16]

(B) Gain from the sale of a principal residence included in federal gross income under section 121 of the Code in effect on January 1, 1988, but excluded from federal gross income under section 121 of the Internal Revenue Code in effect for the taxable year, shall not be included in Massachusetts adjusted gross income. Notwithstanding any other provision of this chapter, the amount of gain from the sale of a principal residence excluded from Massachusetts adjusted gross income shall not be less than the exclusion allowed under section 121 of the Code [17] in effect on January 1, 2002.

(C) Effective on and after January 1, 2002, any contributions, including employer contributions, employee deferrals and rollover contributions, allocations under or distributions from stock bonus, pension, profit-sharing, annuity or deferred payment plans or contracts or employee stock ownership plans described in sections 401(a), 402, 403, 404, 409 or 457 of the Code, [18] or simplified employee pensions under section 408(k) of the Code, [19] shall be included in gross income of a taxpayer only to the extent includible in the taxpayer's gross income for federal income tax purposes under the Code.

(b) Massachusetts gross income shall be divided into three Parts:

(1) Part A gross income shall be the total interest, dividends and capital gain income included in Massachusetts gross income, other than:--

(A) Interest and dividends from savings deposits, including term and time deposits having a principal amount of less than one hundred thousand dollars, savings accounts, share or share savings accounts in any savings or cooperative bank, trust company or credit union incorporated in or chartered by the commonwealth; in any national bank, federal savings and loan association, federal savings bank or federal credit union located in the commonwealth; in any banking company or Morris Plan company subject to chapter one hundred and seventy-two A; in any savings or loan association or banking partnership under the supervision of the commissioner of banks.

(B) Interest from loans made in the course of business by persons subject to the provisions of sections seventy to eighty-five, inclusive, of chapter one hundred and forty.

(C) Gain income from the sale or exchange of capital assets held for more than one year, with such holding period beginning on January 1, 1995 but not including gain income from the sale or exchange of property defined under section four hundred and eight (m)(2) of the Code, [20] as amended and in effect for the taxable year.

(2) Part B gross income shall be Massachusetts gross income not included in Part A or Part C gross income; provided, however, that Part B gross income shall include bribes, corrupt gifts and any income gained through illegal activities.

(3) Part C gross income shall be capital gain income which equals the gains from the sale or exchange of capital assets held for more than 1 year.

For purposes of this subsection, property acquired prior to January 1, 1996 shall be deemed to have been acquired on January 1, 1995 or on the date of actual acquisition, whichever is later.

(c) Part A adjusted gross income shall be the Part A gross income less the following deductions in the following order:

(1) Any excess of the deductions allowable under subsection (d) over the Part B gross income, but the amount deductible under this paragraph shall only reduce an item of Part A gross income which is effectively connected with the active conduct of a trade or business of the taxpayer.

(2)(a) Losses from the sale or exchange of capital assets held for 1 year or less, provided that the excess, if any, of the Part A net capital loss for the year over the Part A net capital gain for the year, but not more than the amount allowed under paragraph (4), shall be applied against Part A interest and dividends; provided, however, that any remaining excess of the Part A net capital loss for the year shall be applied against capital gains included in Part C gross income. If Part A net capital loss for the year exceeds the Part C net capital gain for the year, then the excess, if any, of Part A net capital loss, after accounting for any deduction against interest and dividend income, shall be a Part A capital loss under this paragraph in the succeeding taxable year.

(b) The excess, if any, of the Part C net capital losses for the year over the Part C net capital gains for the year shall be applied against capital gains included in Part A gross income. If Part C net capital losses for the year exceed the Part A net capital gain for the year, then the excess, if any, of Part C net capital losses over Part A net capital gain, but not more than the amount allowed under paragraph (4), shall be applied against any interest and dividends included in Part A gross income, provided that the aggregate amount of the deduction allowed in this subparagraph against any interest and dividends shall not be more than the amount allowed under paragraph (4). The excess, if any, of the Part C net capital loss over the Part A net capital gain, after accounting for any deduction against interest and dividend income, shall be a Part C capital loss in the succeeding taxable year.

(3) A deduction equal to 50 per cent of the gain income from the sale or exchange of property defined under section 408(m)(2) of the Code, as amended and in effect for the taxable year, and held for more than 1 year, after reduction by any losses in paragraph (2).

(4) Notwithstanding any other provisions of this chapter, not more than an aggregate amount of $2,000 in Part A capital loss and Part C capital loss shall be applied against any interest and dividends included in Part A gross income.

(d) Part B adjusted gross income shall be the Part B gross income less the following deductions:--

(1) The deductions allowable under section sixty-two and four hundred and four, [21] without regard to section two hundred and sixty-five, of the Code; [22] provided, however, that the following deductions shall not be allowed:--

(A) The deductions allowed to life tenants and income beneficiaries by section sixty-two (a)(5) of the Code [23] insofar as such deductions are allowed to a trust or estate subject to taxation under this chapter.

(B) Any deduction relating or allocable to any income not included in Massachusetts gross income or a proportionate part of any deduction which is in part so relating or allocable.

(C) Any net operating loss deduction allowed by section one hundred and seventy-two of the Code. [24]

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(D) In the case of an individual who is an employee within the meaning of section four hundred and one (c)(1) of the Code, the deductions allowed by section four hundred and four of the Code to the extent attributable to contributions made on behalf of such individual; provided, however, that no contribution on behalf of such individual shall be treated as an excess contribution under this chapter unless treated as an excess contribution for federal tax purposes in the year made.

(E) The deduction allowed by section one thousand three hundred and seventy-nine (b)(3) of the Code. [25]

(F) The deduction allowed by section two hundred and nineteen of the Code [26] relating to certain retirement savings.

(G) The deduction allowed by section four hundred and two (e)(3) of the Code [27] relating to the ordinary income portion of a lump sum distribution.

(H) The deduction allowed by section one hundred and sixty-five of the Code [28] relating to forfeitures because of premature withdrawal of funds to the extent that the income represented by such forfeiture was not included in Massachusetts gross income.

(*I*) The deduction allowed by section one hundred and sixty-two (h) of the Code. [29]

<[There is no subparagraph (J).]>

(K) The deduction allowed by section one hundred and sixty-four (f) of the Code. [30]

(L) The deduction for any amount paid or incurred in connection with:

(i) influencing legislation;

(ii) participation in, or intervention in, any political campaign on behalf of or in opposition to any candidate for public office;

(iii) any attempt to influence the general public, or segments thereof, with respect to elections, legislative matters, or referendums; or

(iv) any direct communication with a covered executive branch official in an attempt to influence the official actions or positions of such official;

within the meaning of the code, as amended and in effect on January first, nineteen hundred and ninety-four and including the exceptions and definitions set forth in section 162(e) of said Code, [31] as amended and in effect on January first, nineteen hundred and ninety-four.

(M) The deduction allowed by section sixty-two (a)(3) of the Code. [32]

(N) The deduction allowed by section 168(k) of the Internal Revenue Code, [33] as amended and in effect for the current tax year.

(*O*) The deduction allowed by section 199 of the Code, as amended and in effect for the current tax year.

(P) The deduction described in section 163(e)(5) [36] of the Code to the extent increased by amendments to section 163(e)(5)(F) and section 163(i)(1) inserted by section 1232 of the American Recovery and Reinvestment Act of 2009. [37]

(2) An amount equal to the deductions allowed by Part VI of the Code [34] which (i) consist of expenses of travel, meals and lodging while away from home, or expenses of transportation paid or incurred by the taxpayer in connection with the performance by him of services as an employee; or (ii) are attributable to a trade or business carried on by the taxpayer, if such trade or business consists of the performance of services by the taxpayer as an employee and if such trade or business is to solicit, away from the employer's place of business, business for the employer; provided, however, that the taxpayer itemizes deductions on his federal income tax return and the deductions under clauses (i) and (ii) are allowed as itemized deductions under subsection (a) of section sixty-seven of the Code. [35] No deduction shall be allowed under this paragraph to a taxpayer who files a joint federal income tax return with his spouse unless a joint return is also filed under this chapter.

(3)(a) For purposes of the depreciation deduction allowed under sections 62(a)(1) and 168 of the Federal Internal Revenue Code, as amended and in effect for the taxable year, a taxpayer that is required to comply with section 26G ½ of chapter 148 of the General Laws and that has so complied, may classify an automatic sprinkler system having a situs in the commonwealth, and used exclusively in the trade or business of such taxpayer, as 5-year property as defined under section 168(e)(3) of the Federal Internal Revenue Code. The term “automatic sprinkler system” means the system installed pursuant to the provisions of said section 26G ½ and in accordance with the state building code.

(b) Such depreciation deduction for the automatic sprinkler system shall be allowed only upon the condition that the net income for the taxable year and all succeeding taxable years be computed without any depreciation deduction upon the property other than the deduction allowed by this section.

(e) Part C adjusted gross income shall be the Part C gross income less the following deductions:

(1) Losses from the sale or exchange of capital assets held for more than 1 year. The amount of any class of net capital loss reduced by the amount of such loss that is deducted under subparagraph (b) of paragraph (2) of subsection (c), shall be Part C capital loss in the succeeding taxable year.

(2) Part C net gains shall be reduced by any remaining excess of the deductions allowable under subsection (d) over the Part B gross income after applying such excess Part B deductions against Part A gross income in accordance with paragraph (1) of subsection (c). The amount deductible under this paragraph shall not exceed the amount of Part C gross income which is effectively connected with the active conduct of a trade or business of the taxpayer. Excess Part B deductions shall not be applied to increase the amount of any net capital losses and may not reduce the amount of any net capital gain below zero. The resulting amount of net capital gain shall comprise Part C adjusted gross income.

(3) Where a taxpayer has any unused Class B net loss, Class C net loss, Class D net loss, Class E net loss, Class F net loss or Class G net loss on April 30, 2002, the aggregate amount of such net losses shall be taken into account after April 30, 2002 as a loss on the sale or exchange of a capital asset held for more than 1 year.

(f) The Part A taxable income shall be the Part A adjusted gross income less the deductions and exemptions allowable under Part A of section three.

(g) The Part B taxable income shall be the Part B adjusted gross income less the deductions and exemptions allowable under Part B of section three.

(h) The Part C taxable income shall be the Part C adjusted gross income less the deductions and exemptions allowable under Part C of section three.

(i) Massachusetts adjusted gross income shall be the sum of Part A adjusted gross income, Part B adjusted gross income and Part C adjusted gross income.

Credits

Added by St.1973, c. 723, § 2. Amended by St.1974, c. 77, § 1; St.1975, c. 684, §§ 38, 39; St.1977, c. 599, §§ 2 to 4; St.1979, c. 409, § 2; St.1979, c. 796, § 8; St.1983, c. 233, §§ 12 to 16; St.1985, c. 583; St.1985, c. 593, §§ 3, 4; St.1986, c. 488, §§ 24 to 28; St.1987, c. 697, § 118; St.1988, c. 106, §§ 4 to 8; St.1988, c. 202, §§ 2 to 4; St.1989, c. 287, §§ 47 to 49; St.1989, c. 341, § 46; St.1989, c. 730, § 32; St.1990, c. 150, § 348; St.1992, c. 133, §§ 389 to 391; St.1993, c. 50, § 18; St.1993, c. 495, §§ 17 to 20; St.1994, c. 43, § 45; St.1994, c. 195, §§ 6 to 18; St.1996, c. 450, §§ 109, 110; St.1997, c. 139, § 1; St.1998, c. 175, §§ 8, 9; St.1999, c. 127, §§ 64, 67; St.2000, c. 79, § 1; St.2000, c. 236, §§ 13 to 16; St.2000, c. 313, §§ 27, 28; St.2002, c. 96, § 2; St.2002, c. 184, § 59; St.2002, c. 186, §§ 4 to 8; St.2002, c. 364, §§ 3 to 7; St.2004, c. 304, § 3, eff. Nov. 15, 2004; St.2004, c. 466, § 1, eff. Jan. 3, 2005; St.2007, c. 205, § 6, eff. Nov. 29, 2007; St.2008, c. 173, §§ 12 to 15, eff. July 3, 2008; St.2009, c. 27, § 27, eff. July 1, 2009; St.2009, c. 28, § 59, eff. Jan. 1, 2010.

Notes of Decisions (259)

Footnotes

1 26 U.S.C.A. § 103.
2 26 U.S.C.A. § 911.
3 26 U.S.C.A. § 128.
4 26 U.S.C.A. § 851.
5 26 U.S.C.A. §§ 403(b), 404.
6 26 U.S.C.A. §§ 408, 409.
7 26 U.S.C.A. § 86.
8 26 U.S.C.A. § 852.
9 26 U.S.C.A. § 401(a).
10 26 U.S.C.A. § 501(a).
11 26 U.S.C.A. § 401(c)(1).

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12 Reserved.
13 26 U.S.C.A. § 1033(h)(3).
14 See 49 U.S.C.A. § 40101 note.
15 26 U.S.C.A. § 408A(d)(3).
16 26 U.S.C.A. § 121.
17 26 U.S.C.A. § 1034.
18 26 U.S.C.A. §§ 401(a), 402, 403, 404, 409, 457.
19 26 U.S.C.A. § 408(k).
20 26 U.S.C.A. § 408(m)(2).
21 26 U.S.C.A. §§ 62, 404.
22 26 U.S.C.A. § 265.
23 26 U.S.C.A. § 62(a)(5).
24 26 U.S.C.A. § 172.
25 26 U.S.C.A. § 1379(b)(3).
26 26 U.S.C.A. § 219.
27 26 U.S.C.A. § 402(e)(3).
28 26 U.S.C.A. § 165.
29 26 U.S.C.A. § 162(h).
30 26 U.S.C.A. § 164(f).
31 26 U.S.C.A. § 162(e).
32 26 U.S.C.A. § 62(a)(3).
33 26 U.S.C.A. § 168(k).
34 26 U.S.C.A. § 161 et seq.
35 26 U.S.C.A. § 67(a).
36 26 U.S.C.A. § 163(e)(5).
37 Pub.L. 111-5, Div. B, Title I, § 1232.

M.G.L.A. 62 § 2, MA ST 62 § 2

Current through Chapter 9 of the 2015 1st Annual Session

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Massachusetts General Laws Annotated
Part I. Administration of the Government (Ch. 1-182)
Title IX. Taxation (Ch. 58-65c)
Chapter 62. Taxation of Incomes (Refs & Annos)

M.G.L.A. 62 § 6

§ 6. Credits

Effective: December 31, 2018 to December 31, 2018
Currentness

The following credits shall be allowed against the tax imposed by this chapter:

(a) A credit shall be allowed against taxes imposed by this chapter to a resident for taxes due any other state, territory or possession of the United States, or the Dominion of Canada or any of its provinces on account of any item of Massachusetts gross income subject to the following restrictions and limitations: (i) the amount of such taxes due on such income shall exclude interest and penalties; (ii) the amount of such taxes due shall be reduced by any federal credit therefor allowable on the resident's federal income tax return; and (iii) the amount of the credit allowable shall be the lesser of such taxes as reduced by (i) and (ii), or the amount of tax imposed by this chapter multiplied by a fraction the numerator of which is such item of Massachusetts Part A, Part B or Part C income and the denominator of which is the total Massachusetts Part A, Part B or Part C income, as the case may be. The credit hereunder shall be allowed to estates of residents and to trustees or other fiduciaries described in subsection (c) of section ten.

In the case of dividends received out of tax-free earnings and profits of a corporate trust previously subject to tax under this chapter, shareholders of the corporate trust shall be entitled to a credit for income taxes paid to other jurisdictions on those earnings and profits, either by the corporate trust or by the shareholders, as otherwise calculated under this subsection.

<[There is no subsection (b) or (c).]>

(d) any owner or tenant of residential property located in the commonwealth who is not a dependent of another taxpayer and who occupies said property as his principal residence, shall be allowed a credit equal to fifteen per cent of the net expenditure for a renewable energy source property or one thousand dollars, whichever is lesser; provided, however, that in the case of a newly constructed residence the credit shall be available to the original owner/occupant. Any taxpayer entitled to this credit for any taxable year, the amount of which exceeds his total tax due for the then current taxable year, may carry over the excess amount, as reduced from year to year, and apply it to his tax liability for any one or more of the next succeeding three taxable years; provided, however, that in no taxable year may the amount of the credit allowed exceed the total tax due of the taxpayer for the relevant taxable year. Joint owners of a residential property shall share any credit available to the property under this subsection in the same proportion as their ownership interest.

As used in this section the following words shall have the following meanings:

(I) "Renewable energy source property", property, including materials and component parts thereof, separately purchased and assembled by such residential property owner;

(A) which, when installed in connection with a dwelling, transmits or uses:

(1) solar energy or any other form of renewable energy which the commissioner specified by regulations, for the purpose of heating or cooling such dwelling or providing hot water for use within such dwelling, or produces electricity for such purposes, or

(2) wind energy for nonbusiness residential purposes;

(B) the original use of which begins with the taxpayer;

(C) which can reasonably be expected to remain in operation for at least five years; and

(D) which meets the performance and quality standards, if any, which:

(i) have been prescribed by the commissioner by regulation; and

(ii) are in effect at the time of the acquisition of the property.

(II) “Net expenditure”, the total of the purchase price for any renewable energy source property, plus installation cost less any credits received pursuant to the Internal Revenue Code and less grants or rebates received from the United States Department of Housing and Urban Development.

(e) Any owner of a residential premises who pays for the containment or abatement of any paint, plaster or other accessible structural materials containing dangerous levels of lead or who pays for the replacement of one or more window units in a dwelling unit constructed prior to nineteen hundred and seventy-eight for the purpose of bringing a dwelling unit into full compliance with the provisions of sections one hundred and eighty-nine A to one hundred and ninety-nine B, inclusive, of chapter one hundred and eleven concerning materials containing dangerous levels of lead shall be allowed a credit in the amount of the cost of said removal, containment or replacement or one thousand five hundred dollars per dwelling unit, whichever is less. Any owner of a residential premises who pays for the containment or abatement of any paint, plaster or other accessible structural materials containing dangerous levels of lead or who pays for the replacement of one or more window units in a dwelling unit constructed prior to nineteen hundred and seventy-eight in pursuit of an emergency lead management plan and letter of interim control, as provided for in subsection (b) of section one hundred and ninety-seven of chapter one hundred and eleven concerning materials containing dangerous levels of lead shall be allowed a credit in the amount of one-half the cost of said removal, containment, or replacement or five hundred dollars per dwelling unit, whichever is less, provided that any costs claimed as part of such credit must be certified by a licensed inspector to be costs necessary to achieving ultimate full compliance; and provided, further, that any credit received for interim control shall be considered as part of the maximum credit allowable per unit for any owner pursuing full compliance. Tax credits for full compliance or interim controls shall include window replacement done for the purposes of lead abatement. Such credits shall be allowed for the containment, abatement or replacement of any paint, plaster or other accessible structural materials containing dangerous levels of lead only if (i) the presence of lead is established by an inspector licensed by the childhood lead poisoning prevention program, and (ii) following such removal, the owner obtains a letter of compliance or interim control from a licensed inspector pursuant to subsections (b), (c) and (d) of section one hundred and ninety-seven of chapter one hundred and eleven and files with the department of

revenue such letter of compliance or interim control and a certification, in recordable form, stating the number of dwelling units, as defined in the state sanitary code for which such credit is being claimed. Any taxpayer eligible for the foregoing tax credit for the then taxable year may carry forward any such unused credit or any unused portions thereof and apply it to his tax liability in any one or more of the succeeding seven taxable years. The commissioner shall, in consultation with the director of the childhood lead poisoning prevention program and the director of labor and workforce development, promulgate regulations to implement the provisions of this section.

(f) There is hereby established a credit for businesses offering health insurance to their employees. For the purposes of this section, the term "businesses" shall include professions, sole proprietorships, trades, businesses, or partnerships.

Any business which (a) has one or more full-time equivalent employees unrelated to its owners or partners but no more than fifty of such employees calculated on an average annual basis, (b) in any period of three consecutive years beginning after December thirty-first, nineteen hundred and eighty-four and before April twenty-first, nineteen hundred and eighty-eight makes no expenditure for the full or partial payment of premiums for a health insurance plan covering any of its then employees, and (c) makes qualifying health insurance premium expenditures for a health insurance plan covering its employees in each year beginning after such three year period, including any year in which a credit is taken pursuant to this section, shall be allowed a credit against its income tax due under this chapter in two consecutive tax years.

The amount of such credit in the first tax year in which it is taken shall be twenty per cent of the entire amount of the qualifying health insurance premium expenditure made by such business in such tax year. The amount of such credit in the second tax year in which it is taken shall be ten per cent of the entire amount of such qualifying health insurance premium expenditure made by such business in such tax year. To qualify for such credits, the health insurance premium expenditure of such business must equal at least fifty per cent of the total cost of the premiums for such health insurance plan and such health insurance plan must be available at least to all of the full-time employees of such business. For the purposes of this section, "unrelated" shall mean not having the familial relationship of spouse, mother, father, or child.

Credits pursuant to this subsection shall be available only in tax years beginning on or after January first, nineteen hundred and ninety and ending on or before December thirty-first, nineteen hundred and ninety-two. This subsection shall expire on December thirty-first, nineteen hundred and ninety-two.

<[First paragraph of paragraph (1) of subsection (g) effective until August 13, 2014. For text effective August 13, 2014, see below.]>

(g) (1) A credit shall be allowed against the tax liability imposed by this chapter, to the extent authorized by the economic assistance coordinating council established in section 3B of chapter 23A, up to an amount equal to 50 per cent of such liability in any taxable year; provided, however, that the 50 per cent limitation shall not apply where the credit is refundable under paragraph (5): (i) for certified expansion projects and certified enhanced expansion projects, as defined in sections 3A and 3F of said chapter 23A, an amount up to 10 per cent, and (ii) for certified manufacturing retention projects, as defined in said sections 3A and 3F of said chapter 23A, an amount up to 40 per cent of the cost of property that would qualify for the credit allowed by section 31A of chapter 63 if the property were purchased by a manufacturing corporation or a business corporation engaged primarily in research and development and used exclusively in a certified project as defined in said sections 3A and 3F of said chapter 23A. A lessee may be eligible for a credit pursuant to this subsection for real property leased pursuant to an operating lease. If such property is disposed of or ceases to be in qualified use within the meaning of section 31A or ceases to be used exclusively in a certified project before the end of the certified project's certification period, or if a certified project's certification is revoked, the recapture provisions of subsection (e) of section 31A shall apply. If such property is disposed of after the certified project's certification period but before the end of such property's useful life, the recapture provisions of subsection (e) of section 31A shall apply. The expiration of a certified project's certification shall not require the application of the recapture provisions of subsection (e) of section 31A.

<[First paragraph of paragraph (1) of subsection (g) as amended by 2014, 287, Sec. 41 effective August 13, 2014. For text effective until August 13, 2014, see above.]>

(g) (1) A credit shall be allowed against the tax liability imposed by this chapter, to the extent authorized by the economic assistance coordinating council established in section 3B of chapter 23A, up to an amount equal to 50 per cent of such liability in any taxable year; provided, however, that the 50 per cent limitation shall not apply where the credit is refundable under paragraph (5): (i) for certified expansion projects and certified enhanced expansion projects, as defined in sections 3A and 3F of said chapter 23A, an amount up to 10 per cent, (ii) for certified manufacturing retention projects, as defined in said sections 3A and 3F of said chapter 23A, an amount up to 40 per cent of the cost of property that would qualify for the credit allowed by section 31A of chapter 63 if the property were purchased by a manufacturing corporation or a business corporation engaged primarily in research and development and used exclusively in a certified project as defined in said sections 3A and 3F of said chapter 23A; and, (iii) for certified job creation projects, as defined in said sections 3A and 3F of said chapter 23A, an amount up to $1,000 per job created, or up to $5,000 per job created in a gateway municipality as defined by section 3A of chapter 23A or within a city or town whose average seasonally adjusted unemployment rate, as reported by the executive office of labor and workforce development, is higher than the average seasonally adjusted unemployment rate of the commonwealth; provided, however, that the total award per project shall be no more than $1,000,000; and further provided that a credit under this clause (iii) shall be allowed only for the year subsequent to that in which the jobs are created. A lessee may be eligible for a credit pursuant to this subsection for real property leased pursuant to an operating lease. Notwithstanding any contrary provisions in section 3F of chapter 23A, if such property is disposed of or ceases to be in qualified use within the meaning of section 31A or ceases to be used exclusively in a certified project before the end of the certified project's certification period, or if a project's certification is revoked, the recapture provisions of subsection (e) of section 31A shall apply; the revocation shall take effect on the first day of the tax year in which a material variance or material misrepresentation occurred as determined by the EACC. If such property is disposed of after the certified project's certification period but before the end of such property's useful life, the recapture provisions of subsection (e) of section 31A shall apply. The expiration of a certified project's certification shall not require the application of the recapture provisions of subsection (e) of section 31A.

<[Second paragraph of paragraph (1) of subsection (g) effective until August 13, 2014. For text effective August 13, 2014, see below.]>

The total amount of credits that may be authorized by the economic assistance coordinating council in a calendar year pursuant to this section and section 38N of chapter 63 shall not exceed an annual cap equal to $25,000,000 minus the credits granted and carryforwards of credits from prior years pursuant to subsection (q)(5) of section of 6 of this chapter and section 38BB(5) of said chapter 63, and shall include: (1) refundable credits granted during the year pursuant to this section or said section 38N of said chapter 63; (2) nonrefundable credits granted during the year pursuant to this section or said section 38N of said chapter 63, to the extent that such nonrefundable credits are estimated by the commissioner to offset tax liabilities during the year; and (3) carryforwards of credits from prior years under this section or said section 38N of said chapter 63, to the extent that such credit carryforwards are estimated by the commissioner to offset tax liabilities during the year. Of these allowable credits, the economic assistance coordinating council may award not more than $5,000,000 in a calendar year to certified enhanced expansion projects as defined in sections 3A and 3F of chapter 23A, and not more than $10,000,000 for certified manufacturing retention projects as defined in said sections 3A and 3F of said chapter 23A. Any portion of the annual cap not awarded by the economic assistance coordinating council in a calendar year shall not be applied to awards in a subsequent year. The economic assistance coordinating council shall provide the commissioner of revenue with any documentation that the commissioner deems necessary to confirm compliance with the annual cap and the commissioner shall provide a report confirming compliance with the annual cap to the secretary of administration and finance and the secretary of housing and economic development.

<[Second paragraph of paragraph (1) of subsection (g) as amended by 2014, 359, Sec. 16 effective August 13, 2014. See 2014, 359, Sec. 78. For text effective until August 13, 2014, see above.]>

The total amount of credits that may be authorized by the economic assistance coordinating council in a calendar year pursuant to this section and section 38N of chapter 63 shall not exceed an annual cap equal to $30,000,000 minus the credits granted and carryforwards of credits from prior years pursuant to subsection (q)(5) of section of 6 of this chapter and section 38BB(5) of said chapter 63, and shall include: (1) refundable credits granted during the year pursuant to this section or said section 38N of said chapter 63; (2) nonrefundable credits granted during the year pursuant to this section or said section 38N of said chapter 63, to the extent that such nonrefundable credits are estimated by the commissioner to offset tax liabilities during the year; and (3) carryforwards of credits from prior years under this section or said section 38N of said chapter 63, to the extent that such credit carryforwards are estimated by the commissioner to offset tax liabilities during the year. Of these allowable credits, the economic assistance coordinating council may award not more than $5,000,000 in a calendar year to certified enhanced expansion projects as defined in sections 3A and 3F of chapter 23A, and not more than $10,000,000 for certified manufacturing retention projects as defined in said sections 3A and 3F of said chapter 23A. Any portion of the annual cap not awarded by the economic assistance coordinating council in a calendar year shall not be applied to awards in a subsequent year. The economic assistance coordinating council shall provide the commissioner of revenue with any documentation that the commissioner deems necessary to confirm compliance with the annual cap and the commissioner shall provide a report confirming compliance with the annual cap to the secretary of administration and finance and the secretary of housing and economic development.

<[Third paragraph of paragraph (1) of subsection (g) effective until August 13, 2014. For text effective August 13, 2014, see below.]>

As used in this paragraph, "EACC" shall mean the economic assistance coordinating council established in section 3B of chapter 23A. A credit allowed under this section may be taken only after the taxpayer completes a report signed by an authorized representative of the corporation and files the report with the EACC within 2 years after the initial project certification by the EACC and annually thereafter. The report shall contain pertinent employment data needed to determine whether the taxpayer has reasonably satisfied the employment projections set forth in its original project proposal granted pursuant to section 3F of said chapter 23A. Paragraph (3) of section 3F of said chapter 23A shall apply to tax benefits awarded under this section. Nothing in this section shall limit the authority of the commissioner to make adjustments to a corporation's liability upon audit.

<[Third paragraph of paragraph (1) of subsection (g) as amended by 2014, 287, Sec. 42 effective August 13, 2014. For text effective until August 13, 2014, see above.]>

As used in this paragraph, "EACC" shall mean the economic assistance coordinating council established in section 3B of chapter 23A. A credit allowed under this section may be taken only after the taxpayer completes a report signed by an authorized representative of the corporation and files the report with the EACC within 2 years after the initial project certification by the EACC and annually thereafter. The report shall contain pertinent employment data needed to determine whether the taxpayer has reasonably satisfied the employment projections set forth in its original project proposal granted pursuant to section 3F of said chapter 23A. To the extent applicable, paragraph (2) of section 3F of said chapter 23A shall apply to tax benefits awarded under this section. Nothing in this section shall limit the authority of the commissioner to make adjustments to a corporation's liability upon audit.

<[Paragraph (2) of subsection (g) effective until August 13, 2014. For text effective August 13, 2014, see below.]>

(2) Any taxpayer entitled to a credit under this subsection for any taxable year may carry over and apply to the tax for any one or more of the next succeeding ten taxable years, the portion, as reduced from year to year, of those credits which exceed the tax for the taxable year; provided, however, that in no event shall the taxpayer apply the credit to the tax for any taxable year beginning more than five years after the certified project or economic opportunity area ceases to qualify as such under the provisions of chapter twenty-three A.

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<[Paragraph (2) of subsection (g) as amended by 2014, 287, Sec. 43 effective August 13, 2014. For text effective until August 13, 2014, see above.]>

(2) Any taxpayer entitled to a credit under this subsection for any taxable year may, to the extent authorized by the economic assistance coordinating council established in section 3B of chapter 23A, carry over and apply to the tax for any one or more of the next succeeding ten taxable years, the portion, as reduced from year to year, of those credits which exceed the tax for the taxable year; provided, however, that in no event shall the taxpayer apply the credit to the tax for any taxable year beginning more than five years after the certified project or economic opportunity area ceases to qualify as such under the provisions of chapter 23A. Notwithstanding the foregoing, the EACC may limit or restrict carry-over of credits as set forth in paragraph (5) of section 3F of said chapter 23A.

(3) For purposes of this subsection, the commissioner of revenue may aggregate the activities of all entities, whether or not incorporated, under common control as defined in subsection (f) of section forty-one of the Code.

(4) The commissioner of revenue shall promulgate such rules and regulations necessary to implement the provisions of this subsection. Such rules and regulations may provide for the adjustment of prices and elimination of transactions between related taxpayers to ensure that all amounts upon which the credit is based reasonably reflect fair market value. In addition, such rules and regulations shall include provisions to prevent the generation of multiple credits with respect to the same property.

<[Paragraph (5) of subsection (g) effective until August 13, 2014. For text effective August 13, 2014, see below.]>

(5) If a credit allowed under clause (ii) of paragraph (1) for certified manufacturing retention projects exceeds the tax otherwise due under this chapter, 100 per cent of the balance of such credit may, at the option of the taxpayer and to the extent authorized pursuant to the economic assistance coordinating council, be refundable to the taxpayer for the taxable year in which qualified property giving rise to that credit is placed in service. If such credit balance is refunded to the taxpayer, the credit carryover provisions of paragraph (2) shall not apply.

<[Paragraph (5) of subsection (g) as amended by 2014, 287, Sec. 44 effective August 13, 2014. For text effective until August 13, 2014, see above.]>

(5) If a credit allowed under clauses (ii) and (iii) of paragraph 1 for a certified manufacturing retention project or a certified job creation project exceeds the tax otherwise due under this chapter, 100 per cent of the balance of such credit may, at the option of the taxpayer and to the extent authorized by the economic assistance coordinating council, be refundable to the taxpayer. Such refund shall be for the taxable year in which the qualified property giving rise to that credit is placed in service, in the case of a manufacturing retention project, or for the taxable year subsequent to the year in which the required jobs are added, in the case of a job creation project. If such credit balance is refunded to the taxpayer, the credit carryover provisions of paragraph (2) shall not apply.

(h) A taxpayer shall be allowed a credit against the taxes imposed by this chapter if such person qualified for and claimed the earned income credit, so called, allowed under the provisions of section 32 of the Code, as amended and in effect for the taxable year. With respect to a person who is a nonresident for all or part of the taxable year, the credit shall be limited to 15 per cent of the federal credit multiplied by a fraction the numerator of which shall be the earned income of the nonresident from Massachusetts sources and the denominator of which shall be the earned income of the nonresident from all sources. The credit allowed by this subsection shall equal 15 per cent of the federal credit received by the taxpayer for the taxable year. If other

credits allowed under this section are utilized by the taxpayer for the taxable year, the credit afforded by this subsection shall be applied last. If the amount of the credit allowed hereunder exceeds the taxpayer's liability, the commissioner shall treat such excess as an overpayment and shall pay the taxpayer the amount of such excess, without interest.

(i) Any owner of residential property located in the commonwealth who is not a dependent of another taxpayer and who occupies said property as his principal residence, shall be allowed a credit equal to 40 per cent of the expenditures for design and construction expenses for the repair or replacement of a failed cesspool or septic system pursuant to the provisions of Title V as promulgated by the department of environmental protection in 1995. Said expenditures shall be the actual cost to the taxpayer or $15,000, whichever is less; provided, however, that said credit shall be available to eligible taxpayers beginning in the tax year in which the repair or replacement of said cesspool or septic system was completed; and provided, further, that said credit shall not exceed $1,500 in any tax year and any excess credit may be applied over the following five subsequent tax years up to an aggregate maximum of $6,000. The amount of any such credit shall be reduced by an amount equal to the total interest subsidy or grant received from the commonwealth, whether directly or indirectly, toward the cost of said expenditures. The department shall promulgate such rules and regulations as are necessary to administer the credit afforded by this subsection, including, but not limited to, a notification system by the commonwealth to recipients of said interest subsidy or grant of the amount of the total subsidy provided by the commonwealth.

(j)(1) A taxpayer or nonprofit organization which commences and diligently pursues an environmental response action on or before August 5, 2018, and who achieves and maintains a permanent solution or remedy operation status in compliance with chapter 21E and the regulations promulgated pursuant thereto which includes an activity and use limitation shall, at the time such permanent solution or remedy operation status is achieved, be allowed a base credit of 25 per cent of the net response and removal costs incurred between August 1, 1998, and January 1, 2019, for any property it owns or leases for business purposes and which is located within an economically-distressed area as defined in section 2 of chapter 21E. Such costs shall be not less than 15 per cent of the assessed value of the property prior to response action on or before remediation and the site shall be reported to the department of environmental protection. A credit of 50 per cent of such costs shall be allowed for any such taxpayer or nonprofit organization which achieves and maintains a permanent solution or remedy operation status in compliance with said chapter 21E and the Massachusetts Contingency Plan at 310 CMR 40.00, as amended, which does not include an activity and use limitation. Only a taxpayer or nonprofit organization that is an eligible person, as defined in section 2 of said chapter 21E, and not subject to any enforcement action brought pursuant to said chapter 21E shall be allowed a credit.

Any credit allowed under this subsection may be taken only after a response action outcome statement or remedy operation status submittal has been filed with the department of environmental protection as set forth in said Massachusetts Contingency Plan.

(2) If the taxpayer ceases to maintain the remedy operation status or the permanent solution in violation of the Massachusetts Contingency Plan prior to the sale of the property or the termination of the lease, the difference between the credit taken and the credit allowed for maintaining the remedy shall be added back as additional taxes due in the year the taxpayer fails to maintain the remedy operation status or permanent solution. The amount of the credit allowed for maintaining the remedy shall be determined by multiplying the original credit by the ratio of the number of months the remedy was adequately maintained over the number of months of useful life of the property. For the purposes of this paragraph, the useful life of the property shall be the same as that used by corporations for depreciation purposes when computing federal income tax liability; provided, however, that in the case of real property that is not depreciable, the useful life shall be deemed to be 12 months.

(3) Notwithstanding the provisions of this subsection, the maximum amount of credits otherwise allowable in any taxable year to a taxpayer shall not exceed 50 per cent of its excise imposed by this chapter. Any taxpayer entitled to a credit under this subsection for any taxable year may carry over and apply to its tax liability for any subsequent taxable year, not to exceed 5 taxable years, the portion of those credits, as reduced from year to year, which were not allowed under this subparagraph;

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provided, however, that in no event shall the taxpayer apply the credit in any taxable year in which it has ceased to maintain the remedy operation status or the permanent solution for which the credit was granted.

(4) For the purposes of this section, net response and removal costs shall be expenses paid by the taxpayer for the purpose of achieving a permanent solution or remedy operation status in compliance with chapter 21E. No credit shall be allowed under this section for the amount of state financial assistance received from the Redevelopment Access to Capital program established pursuant to section 60 of chapter 23A or from the Brownfields Redevelopment Fund, established in section 29A of chapter 23G. For the purposes of the Redevelopment Access to Capital program, the amount of state financial assistance shall be calculated as the amount of state funds paid on behalf of the borrower for participation in the program and not the amount of the loan guaranteed but, if the loan guarantee is invoked, any credit taken for the amount of the loan shall be added back as taxes due in the year the loan is paid.

(5) All or any portion of tax credits issued in accordance with this subsection may be transferred, sold or assigned to a taxpayer with a liability under this chapter or chapter 63 or to a nonprofit organization. A taxpayer or nonprofit organization desiring to make a transfer, sale or assignment shall submit to the commissioner a statement which describes the amount of the Massachusetts environmental response action tax credit for which the transfer, sale or assignment of Massachusetts environmental response action tax credit is eligible. The taxpayer or nonprofit organization shall provide to the commissioner appropriate information so that the environmental response action tax credit can be properly allocated. The commissioner shall issue a certificate to the party receiving the environmental response action tax credit reflecting the amount of the tax credit received, a copy of which shall be attached by the party receiving the environmental response action tax credit to each tax return in which the tax credits are used.

(6) The commissioner shall annually, not later than September 1, file a report with the house and senate committees on ways and means, the chairs of the joint committee on community development and small businesses and the chairs of the joint committee on economic development and emerging technologies identifying the total amount of tax credits claimed pursuant to this subsection and the total amount of tax credits transferred, sold or assigned pursuant to paragraph (5) for the preceding fiscal year.

(k) (1) As used in this subsection, the following words shall have the following meanings:--

“Cost-of-housing adjustment”, for any calendar year, the percentage, if any, by which the average assessed value for a single-family home in the commonwealth for the preceding calendar year, as calculated by the department of revenue, exceeds the average assessed value for a single-family home in the commonwealth for calendar year 2004, as reported by the department.

“Cost-of-living adjustment”, for any calendar year, the percentage, if any, by which the CPI for the preceding calendar year exceeds the CPI for calendar year 1999.

“CPI”, the consumer price index for any calendar year as defined in section 1 of the Code.

“Head of household”, as defined in section 2(b) of the Code.

“Real estate tax payment”, the real estate tax levied pursuant to chapter 59 on the taxpayer's residence and actually paid by the taxpayer during the taxable year, including water and sewer debt service charges assessed pursuant to subsection (n) of section 21C of chapter 59, exclusive of special assessments and delinquent interest, and less any abatement granted. For owners of residential property located in communities which have not exercised the option to assess water or sewer debt service charges pursuant to subsection (n) of section 21C of chapter 59, the real estate tax payment to be considered for purposes of calculating

this credit shall also include 50 per cent of the owner's water and sewer charges actually paid in the taxable year for which the credit is sought. In the case of a multi-unit dwelling, a land area in excess of one acre or a multi-purpose building or land area, the real estate tax payment, including the water and sewer charges as applicable, shall constitute that portion of the real estate tax levied and paid, and that portion of applicable water and sewer charges actually paid, on the entire building or area, which corresponds to the portion of the area or building used and occupied as the residence of the taxpayer, in accordance with procedures established by the commissioner.

"Rent constituting real estate tax payment", 25 per cent of the rent actually paid by the taxpayer, under a good faith rental agreement, for the right of occupancy of the residence during the taxable year or a portion thereof.

"Residence", the building or portion thereof, including a mobile home, owned or rented and actually occupied by the taxpayer as the taxpayer's primary dwelling during the taxable year and located within the commonwealth, together with so much of the land surrounding it, not to exceed one acre, as is reasonably necessary to the use of the dwelling as a home. A residence may consist of a part of a multi-unit or multi-purpose building.

"Taxpayer's total income", the sum of the taxpayer's Part A adjusted gross income, Part B adjusted gross income and Part C adjusted gross income, as defined in section 2, increased by, to the extent they are excluded or subtracted from adjusted gross income, the following: the total amount of income and receipts from social security, retirement, pension, or annuities, cash, but not in-kind, public assistance, tax-exempt interest and dividends, net capital losses deducted pursuant to paragraph (2) of subsection (c) of section 2, net losses in any class of Part C adjusted gross income as defined in subsection (e) of section 2, capital gains deducted pursuant to subparagraph (K) of paragraph (1) of subsection (d) of section 2, income from a partnership or trust not included therein and gross receipts from any other source other than assistance received by this subsection; and reduced by the total amount of the exemptions allowed by subparagraphs (B) and (C) of paragraph (1), subparagraphs (B) and (C) of paragraph (1A), subparagraphs (B) and (C) of paragraph (2), and paragraph (3), of subsection (b) of section 3.

(2) An owner or tenant of residential property located in the commonwealth, who is 65 years of age or older, who is not a dependent of another taxpayer and who occupies said property as his principal residence, shall be allowed a credit equal to the amount by which the real estate tax payment or the rent constituting real estate tax payment exceeds 10 per cent of the taxpayer's total income, but the credit shall not exceed $750.

(3) The credit shall be available only if:

(i) the taxpayer's total income does not exceed $40,000 for a single individual who is not the head of a household, $50,000 for a head of household, and $60,000 for a husband and wife filing a joint return; and

(ii) the assessed valuation of the residence does not exceed $600,000.

(4) For a taxable year beginning on or after January 1, 2001 and before January 1, 2005, the income, valuation and credit limits in this subsection shall be increased by amounts equal to such income, valuation and credit limits multiplied by the cost-of-living adjustment for the calendar year in which such taxable year begins. For a taxable year beginning on or after January 1, 2005, the income and credit limits in this subsection shall be increased by amounts equal to such income and credit limits multiplied by the cost-of-living adjustment for the calendar year in which such taxable year begins, and the valuation limit in this subsection shall be increased by an amount equal to such valuation limit multiplied by the cost-of-housing adjustment for the calendar year in which such taxable year begins. If any such increase in an income or valuation limit is not a multiple of $1,000, such increase shall be rounded to the next lowest multiple of $1,000. If the increase in the credit limit is not a multiple of $10, such increase shall be rounded to the next lowest multiple of $10.

(5) No credit shall be allowed for a married individual unless a joint return is filed.

(6) No credit shall be allowed by this subsection with respect to the real estate tax payment or rent constituting a real estate tax payment on more than one residence of any taxpayer during any taxable year, but a taxpayer whose principal place of residence changes during the course of the year may claim a credit for the real estate tax payment or rent constituting a real estate tax payment with respect to each such principal residence actually occupied during the year.

(7) The credit allowed by this subsection shall be allowed against the taxes imposed by this chapter for the taxable year, reduced by the other credits permitted by this section. If the credit exceeds the tax as so reduced, the commissioner shall treat such excess as an overpayment and shall pay the taxpayer, without interest, the amount of such excess. Any person entitled to claim any credit pursuant to this subsection and not otherwise required to file a return under section 6 of chapter 62C may obtain a refund in the amount of such credit by filing a return and claiming a refund.

(8) Any credit provided by this subsection shall not be counted as income in determining eligibility or benefits under any other means-tested assistance program, including but not limited to all such cash, food, medical, housing, energy and educational assistance programs.

(9) No credit shall be provided by this subsection if the state or federal government subsidizes the claimant's rent through any rental assistance program.

<[Subsection (l) applicable as provided by 2005, 158, Sec. 9 as amended by 2007, 63, Sec. 15.]>

(*l*)(1) As used in this subsection the following words shall, unless the context clearly requires otherwise, have the following meanings:--

"Motion picture", a feature-length film, video, digital media project, television series defined as a season not to exceed 27 episodes, or a commercial made in the commonwealth, in whole or in part, for theatrical or television viewing or as a television pilot. The term "motion picture" shall not include a production featuring news, current events, weather and financial market reports, talk show, game show, sporting events, awards show or other gala event, a production whose sole purpose is fundraising, a long-form production that primarily markets a product or service, a production containing obscene material or performances.

"Motion picture production company", a company including any subsidiaries engaged in the business of producing motion pictures, videos, television series, or commercials intended for a theatrical release or for television viewing. The term "motion picture production company" shall not mean or include any company which is more than 25 per cent owned, affiliated, or controlled, by any company or person which is in default on a loan made by the commonwealth or a loan guaranteed by the commonwealth.

"Massachusetts production expense", a production expense for the motion picture clearly and demonstrably incurred in the commonwealth.

"Principal photography", the phase of production during which the motion picture is actually filmed. The term shall not include preproduction or postproduction.

“Production expense” or “production cost”, preproduction, production and postproduction expenditures directly incurred in the production of a motion picture. Said term includes wages and salaries paid to individuals employed in the production of the motion picture; the costs of set construction and operation, editing and related services, photography, sound synchronization, lighting, wardrobe, make-up and accessories; film processing, transfer, sound mixing, special and visual effects; music; location fees and the cost of purchase or rental of facilities and equipment or any other production expense as may be determined by the department of revenue to be an eligible production expense. The term shall not include costs incurred in marketing or advertising a motion picture, any costs related to the transfer of tax credits or any amounts paid to persons or businesses as a result of their participation in profits from the exploitation of the production.

“Secretary”, the secretary of economic development.

(2) A taxpayer engaged in the making of a motion picture shall be allowed a credit against the taxes imposed by this chapter for the employment of persons within the commonwealth in connection with the filming or production of 1 or more motion pictures in the commonwealth within any consecutive 12 month period. The credit shall be equal to 25 per cent of the total aggregate payroll paid by a motion picture production company that constitutes Massachusetts source income, when total production costs incurred in the commonwealth equal or exceed $50,000 during the taxable year. For purposes of this subsection, the term “total aggregate payroll” shall not include the salary of any employee whose salary is equal to or greater than $1,000,000.

(3) A taxpayer shall be allowed an additional credit against the taxes imposed by this chapter equal to 25 per cent of all Massachusetts production expenses, not including the payroll expenses used to claim a credit pursuant to paragraph (2), where the motion picture is also eligible for a credit pursuant to paragraph (2) and either Massachusetts production expenses exceed 50 per cent of the total production expenses for a motion picture or at least 50 per cent of the total principal photography days of the film take place in the commonwealth.

(4) The tax credit shall be taken against the taxes imposed under this chapter and shall, at the election of the taxpayer, be refundable to the extent provided for in section 6L. Any amount of the tax credit that exceeds the tax due for a taxable year may be carried forward by the taxpayer to any of the 5 subsequent taxable years.

<[Subparagraph (i) of paragraph (5) of subsection (l) effective for tax years beginning on or after January 1, 2006 and before January 1, 2013. See 2005, 167, Sec. 5.]>

(5)(i) All or any portion of tax credits issued in accordance with this subsection may be transferred, sold or assigned to other taxpayers with tax liabilities under this chapter or chapter 63. Any tax credit that is transferred, sold or assigned and taken against taxes imposed by this chapter or said chapter 63 shall not be refundable. Any amount of the tax credit that exceeds the tax due for a taxable year may be carried forward by the transferee, buyer or assignee to any of the 5 subsequent taxable years from which a certificate is initially issued by the department of revenue.

(ii) An owner or transferee desiring to make a transfer, sale or assignment shall submit to the commissioner a statement which describes the amount of tax credit for which the transfer, sale or assignment of tax credit is eligible. The owner or transferee shall provide to the commissioner information as the commissioner may require for the proper allocation of the credit. The commissioner shall provide to the taxpayer a certificate of eligibility to transfer, sell or assign the tax credits. The commissioner shall not issue a certificate to a taxpayer that has an outstanding tax obligation with the commonwealth in connection with any motion picture for any prior taxable year. A tax credit shall not be transferred, sold or assigned without a certificate.

<[There is no paragraph (6) of subsection (l).]>

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(7) The commissioner, in consultation with the secretary, shall promulgate regulations necessary for the administration of this subsection.

<[Paragraph (8) of subsection (l) applicable as provided by 2009, 27, Sec. 158. See 2009, 27, Sec. 161.]>

(8) Notwithstanding any other provision of this section, aggregate salary and compensation amounts including all per diems, housing and other allowances, paid to, or for the services of, an individual shall not qualify for the credit under this subsection or for the credit under section 38X of chapter 63 to the extent that such amounts exceed $2,000,000.

<[Subsections (m) and (n) effective until December 31, 2018. Deleted by 2008, 130, Sec. 18. See 2008, 130, Sec. 54 as amended by 2011, 9, Sec. 25 and 2013, 46, Sec. 57. See also, 2011, 9, Sec. 56 and 2013, 46, Sec. 87.]>

<[Introductory paragraph of paragraph (1) of subsection (m) effective for tax years beginning on or after January 1, 2011. See 2011, 68, Sec. 211.]>

(m)(1) As used in this subsection and subsections (n) and (r), the following words shall, unless the context clearly requires otherwise, have the following meanings:--

"Life sciences", advanced and applied sciences that expand the understanding of human physiology and have the potential to lead to medical advances or therapeutic applications including, but not limited to, agricultural biotechnology, biogenerics, bioinformatics, biomedical engineering, biopharmaceuticals, biotechnology, chemical synthesis, chemistry technology, diagnostics, genomics, image analysis, marine biology, marine technology, medical devices, nanotechnology, natural product pharmaceuticals, proteomics, regenerative medicine, RNA interference, stem cell research and veterinary science.

"Person", a natural person, corporation, association, partnership or other legal entity.

"Primarily", more than 50 per cent.

"Research and development costs", in-house research expenses within the meaning of section 41(b)(2) of the Internal Revenue Code.

"Taxpayer", a certified life sciences company or person subject to the taxes imposed by chapters 62, 63, 64H or 64*I*.

"User fees", the monetary amount actually paid by a taxpayer to the U.S. F.D.A. that constitutes the fee due upon the submission of a human drug application or supplement pursuant to 21 U.S.C. section 379h(a)(1) for a human drug, the research and development costs of which, were primarily incurred in the commonwealth.

"U.S.F.D.A.", the United States Food and Drug Administration.

(2) A taxpayer may, to the extent authorized pursuant to the life sciences tax incentive program established by section 5 of chapter 23*I*, take a credit against the taxes imposed by this chapter in an amount equal to 10 per cent of the cost of qualifying property acquired, constructed, reconstructed or erected during the taxable year and used exclusively in the commonwealth.

Qualifying property shall be tangible personal property and other tangible property including buildings and structural components of buildings acquired by purchase, as defined by section 179(d) of the Internal Revenue Code, as amended and in

effect for the taxable year, but not including property that is taxable under chapter 60A; provided, however, that such property shall be depreciable under section 167 of the Internal Revenue Code and have a useful life of 4 years or more. With respect to property which is disposed of or ceases to be in qualified use prior to the end of the taxable year in which the credit is to be taken, the amount of the credit shall be that portion of the credit provided for in this paragraph which represents the ratio which the months of qualified use bear to the months of useful life. If property on which credit has been taken is disposed of or ceases to be in qualified use prior to the end of its useful life, the difference between the credit taken and the credit allowed for actual use must be added back as additional taxes due in the year of disposition; provided, however, if such property is disposed of or ceases to be in qualified use after it has been in qualified use for more than twelve consecutive years, it shall not be necessary to add back the credit, as provided in this paragraph. The amount of credit allowed for actual use shall be determined by multiplying the original credit by the ratio which the months of qualified use bear to the months of useful life. For the purposes of this paragraph, useful life of property shall be the same as that used by the corporation for depreciation purposes when computing federal income tax liability.

A taxpayer taking a credit allowed under this subsection may not take the credit allowed by subsection (g) except to such extent, not to exceed 2 per cent of the cost of any qualifying property, as may be provided in a certification pursuant to said section 5 of chapter 23*I*.

Nothing in this section shall limit the authority of the commissioner to make adjustments to a taxpayer's liability upon audit or limit any other legal remedies available to the commissioner or the commonwealth against said taxpayer.

(3) Any taxpayer entitled to a credit under this section for any taxable year may, to the extent authorized pursuant to the life sciences tax incentive program established by said section 5 of said chapter 23*I*, carry over and apply to its tax for any 1 or more of the next succeeding 10 taxable years, the portion, as reduced from year to year, of those credits which exceed the tax for the taxable year.

(4) The commissioner in consultation with the Massachusetts Life Sciences Center established by section 3 of chapter 23*I*, shall promulgate regulations necessary for the administration of this subsection; provided, further, that said regulations may provide the adjustment of intercompany prices and elimination of intercompany transactions to ensure that all amounts upon which the credit is based reasonably reflect fair market value; and provided, further, that said regulations shall include provisions to prevent the generation of multiple credits with respect to the same property.

(5) If a credit allowed under this subsection, or such credit as may be allowed under subsection (g) as limited in this subsection, exceeds the tax otherwise due under chapter 62, 90 per cent of the balance of such credit may, at the option of the taxpayer and to the extent authorized pursuant to the life sciences tax incentive program established by section 5 of chapter 23*I*, be refundable to the taxpayer for the taxable year in which qualified property giving rise to that credit is placed in service. If such credit balance is refunded to the taxpayer, then the credit carryover provisions of paragraph (3), and paragraph (2) of subsection (g), shall not apply.

(n)(1) Except as otherwise limited by paragraph (4), a taxpayer may, to the extent authorized pursuant to the life sciences tax incentive program established by said section 5 of said chapter 23*I*, be allowed a refundable credit against the tax liability imposed under this chapter in an amount equal to 100 per cent of the cost of user fees paid by such taxpayer.

(2) A taxpayer shall claim the credit in the taxable year in which its application for the licensure of an establishment to manufacture the human drug in the commonwealth is approved by the U.S.F.D.A.

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(3) If a credit allowed to a taxpayer exceeds the tax otherwise due under chapter 62, 90 per cent of the balance of that credit may, to the extent authorized pursuant to the life sciences tax incentive program established by section 5 of said chapter 23*I*, be refundable to the taxpayer for the taxable year in which the credit is claimed.

(4) The deduction from gross income that may be taken with respect to any expenditures qualifying for the credit under this section shall be disallowed to the extent of the credit.

(5) Only user fees paid by a taxpayer to the U.S.F.D.A. on or after the effective date of this section shall be eligible for the credit.

(o)(1) There shall be established a dairy farmer tax credit program under which a taxpayer who holds a certificate of registration as a dairy farmer pursuant to section 16A of chapter 94 may be allowed a refundable income tax credit based on the amount of milk produced and sold. The credit shall be claimed against the taxes due pursuant to chapter 62. The credit shall be established to offset the cyclical downturns in milk prices paid to dairy farmers and shall be based on the United States Federal Milk Marketing Order for the applicable market such that if the United States Federal Milk Marketing Order price drops below a trigger price anytime during the taxable year such taxpayer may receive the tax credit.

(2) The commissioner of agricultural resources, in consultation with the commissioner of revenue, shall adopt regulations for the implementation, administration and enforcement of this subsection, including the establishment of the trigger price, which shall take into account the operating costs of milk production, including hired labor and some portion of the value of unpaid labor, and the amount of the tax credit which shall be based upon volume of milk production. Said regulations shall provide that when the board of food and agriculture, established pursuant to section 1 of chapter 20, determines that an error has been made in calculating the trigger price or in reporting or collecting data used in the calculation of the trigger price or the tax credit, the commissioner shall recalculate, with or without amendments, the trigger price or tax credit.

(3) The total cumulative value of the credits authorized pursuant to this section and section 38Z of chapter 63 shall not exceed $4,000,000 annually.

(4) If the amount of the credit allowed hereunder exceeds the taxpayer's liability, the commissioner of revenue shall treat such excess as an overpayment and shall pay the taxpayer 100 per cent of the amount of such excess, without interest. The commissioner of agricultural resources shall certify to the department of revenue whether a dairy farmer claiming credits under this section has met the eligibility requirements provided in this subsection and the amount of credit to which any such eligible applicant is entitled.

<[Subsection (p) effective for tax years beginning on and after January 1, 2011. See 2008, 509, Sec. 4.]>

(p)(1) As used in this subsection, the following words shall have the following meanings:-

"Bargain sale", the sale of an interest in real property by a taxpayer at a cost below appraised market value, when a portion of the value of the interest in real property is a qualified donation, as such term is defined herein and which meets the requirements of section 1011(b) of the Internal Revenue Code of 1986, as amended.

"Certified land", an interest in real property, the donation or bargain sale of which has first been determined by the secretary of energy and environmental affairs to be in the public interest for natural resource protection including, but not limited to,

drinking water supplies, wildlife habitat and biological diversity, agricultural and forestry production, recreational opportunities, or scenic and cultural values; provided, however, that the secretary of energy and environmental affairs shall assure that all certified lands are protected in perpetuity.

"Interest in real property", any right in real property in the commonwealth, with or without improvements thereon, or water including, but not limited to, fee simple, life estate, restriction, easement, covenant, condition, partial interest, remainder, future interest, lease, license, mineral right, riparian right or other interest or right in real property that may be conveyed concerning the power to transfer property.

"Public or private conservation agency", the commonwealth, or any subdivision thereof, or any municipality, or private nonprofit corporation organized for the purposes of land conservation, which is authorized to do business in the commonwealth, and which has tax-exempt status as a nonprofit charitable organization as described in Section 501(c)(3) of the Internal Revenue Code of 1986, as amended.

"Qualified donation", a donation, or the donated portion of a bargain sale, made in perpetuity of a fee interest in real property or a less-than-fee interest in real property, including a conservation restriction, agricultural preservation restriction or watershed preservation restriction, pursuant to chapter 184, provided that such less-than-fee interest meets the requirements of qualified conservation contributions under section 170(h) of the Internal Revenue Code of 1986.

"Taxpayer", a taxpayer subject to the income tax under this chapter.

<[Paragraph (2) of subsection (p) effective until August 13, 2014. For text effective until August 13, 2014, see below.]>

(2) A taxpayer making a qualified donation of certified land to a public or private conservation agency shall be allowed a refundable credit against the taxes imposed by this chapter. The credit shall be equal to 50 per cent of the fair market value of the qualified donation. The amount of the credit that may be claimed by a taxpayer for each qualified donation shall not exceed $50,000.

<[Paragraph (2) of subsection (p) as amended by 2014, 286, Sec. 14 effective August 13, 2014. For text effective until August 13, 2014, see above.]>

(2) A taxpayer making a qualified donation of certified land to a public or private conservation agency shall be allowed a refundable credit against the taxes imposed by this chapter. The credit shall be equal to 50 per cent of the fair market value of the qualified donation. The amount of the credit that may be claimed by a taxpayer for each qualified donation shall not exceed $75,000.

<[Paragraphs (3) and (4) of subsection (p) effective for tax years beginning on and after January 1, 2011. See 2010, 409, Sec. 40.]>

(3) The fair market value of a qualified donation of certified land shall be substantiated by a qualified appraisal, as defined in United States Treasury Regulation section 1.170A- 13(c)(3), and shall be prepared by a qualified appraiser, as defined in United States Treasury Regulation section 1.170A-13(c)(5). For a taxpayer to qualify for the credit provided for in this subsection, the taxpayer shall, as part of the certification process, file with the secretary of energy and environmental affairs a summary of a qualified appraisal or, if requested by the secretary, the taxpayer shall submit the appraisal itself. The secretary shall transmit the summary or the qualified appraisal itself and certification to the commissioner, upon request. For purposes of determining

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the credit under this subsection, the fair market value of a qualified donation shall be subject to review by the commissioner under chapter 62C.

(4) If the amount of the credit allowed under this subsection exceeds the taxpayer's tax liability, the commissioner shall treat the excess as an overpayment and shall pay the taxpayer the entire amount of the excess.

(5) All or any tax credits issued in accordance with this section may be in addition to any charitable deductions claimed on the taxpayer's federal income tax return for the same qualified donations of certified lands.

(6) Any taxpayer claiming a state income tax or excise tax credit under this section may not claim an additional state income tax credit or deduction during any one tax year for costs related to the same interest in certified lands.

(7) Any tax credits which arise under this section from the qualified donation of certified land by a pass-through tax entity such as a trust, estate, partnership, corporation, limited partnership, limited liability partnership, limited liability corporation, subchapter S organization, or other fiduciary, shall be used either by such entity in the event it is the taxpayer on behalf of such entity or by the member, partner, shareholder, or beneficiary, as the case may be, in proportion to its interest in such entity in the event that income, deductions, and tax liability passes through such entity to such member, partner, shareholder, or beneficiary. Such tax credits may not be claimed by both the entity and the member, partner, shareholder, or beneficiary, for the same conveyance.

(8) Any tax credits which arise under this chapter from the qualified donations of certified land by a married couple shall be used only if the spouses file a joint return, if both spouses are required to file Massachusetts income tax returns. If only one spouse is required to file a Massachusetts income tax return, that spouse may claim the credit allowed by this chapter on a separate return.

<[Paragraph (9) of subsection (p) effective for tax years beginning on and after January 1, 2011. See 2010, 409, Sec. 40.]>

(9) The secretaries of energy and environmental affairs and administration and finance, acting jointly and in writing, shall authorize tax credits under this subsection together with section 38AA of chapter 63. The total cumulative value of the tax credits authorized pursuant to this section and said section 38AA of said chapter 63 shall not exceed $2,000,000 annually. No credits shall be allowed under this subsection except to the extent authorized in this paragraph. The commissioner, after consulting with the secretaries concerning, among other things, the land conservation objectives of this section, shall adopt regulations governing applications for and other administration of the tax credits.

(q)(1) A credit shall be allowed against the tax liability imposed by this chapter, to the extent awarded by the department of housing and community development established in chapter 23B, hereinafter referred to as "DHCD", for a certified housing development project, as defined in chapter 40V, in an amount up to ten per cent of the cost of qualified substantial rehabilitation expenditures of the market rate units within the projects, as defined in section 1 of chapter 40V. The credit under this subsection shall be allowed for the taxable year in which department of housing and community development gives the commissioner written notification of completion of the certified housing development project.

(2) Taxpayers eligible for the this credit may, with prior notice to and under regulations adopted by the commissioner of revenue, transfer the credits, in whole or in part, to any individual or entity, and the transferee shall be entitled to apply the credits against

the tax with the same effect as if the transferee had incurred the qualified rehabilitation expenditures itself. If the sponsor of the certified housing development project is a partnership or a limited liability company taxed as a partnership, the credit, if transferred must be transferred by the partnership or the limited liability company. If the credits allowed to a partnership, a limited liability company taxed as a partnership or multiple owners of property are not transferred they shall be passed through to the persons designated as partners, members or owners, respectively, pro rata or pursuant to an executed agreement among the persons designated as partners, members or owners documenting an alternative distribution method without regard to their sharing of other tax or economic attributes of the entity. Credits passed through to individual partners and members are not transferable.

(3) If the credit allowable for any taxable year exceeds the taxpayer's tax liability for that tax year, the taxpayer may carry forward and apply in any subsequent taxable year, the portion, as reduced from year to year, of those credits which exceed the tax for the taxable year; provided, however, that in no event shall the taxpayer apply the credit to the tax for any taxable year beginning more than 5 years after the taxable year in which department of housing and community development gives the commissioner written notification of completion of the certified housing development project. If the credit is transferred by the taxpayer, the carry over provisions applicable to the transferee apply.

A transferee shall use the credit in the year it is transferred. If the credit allowable for any taxable year exceeds the transferee's tax liability for that tax year, the transferee may carry forward and apply in any subsequent taxable year, the portion, as reduced from year to year, of those credits which exceed the tax for the taxable year; provided, however, that in no event shall the transferee apply the credit to the tax for any taxable year beginning more than 5 years after the taxable year in which DHCD gives the commissioner written notification of completion of the certified housing development project.

(4) For any certified housing development project, qualified rehabilitation expenditures applicable to this credit shall be treated for purposes of this subsection as made on the date that DHCD gives the Commissioner written notification of completion of the certified housing development project.

<[Paragraph (5) of subsection (q) effective until January 1, 2015. For text effective January 1, 2015, see below.]>

(5) The total amount of credits that may be authorized by DHCD in a calendar year pursuant to this subsection and section 38BB of chapter 63 shall not exceed $5,000,000 and shall include: (1) credits granted during the year pursuant to this subsection or said section 38BB of said chapter 63; (2) carry forwards of credits from prior years pursuant to this subsection or said section 38BB of said chapter 63, to the extent that such credit carry forwards are estimated by the commissioner to offset tax liabilities during the year. Any portion of the $5,000,000 annual cap not awarded by the DHCD in a calendar year shall not be applied to awards in a subsequent year. The DHDC shall provide the commissioner of revenue with any documentation that the commissioner deems necessary to confirm compliance with the annual cap and the commissioner shall provide a report confirming compliance with the annual cap to the secretary of administration and finance and the secretary of housing and economic development.

<[Paragraph (5) of subsection (q) as amended by 2014, 287, Secs. 45 and 47 effective January 1, 2015. See 2014, 287, Sec. 122. For text effective until January 1, 2015, see above.]>

(5) The total amount of credits that may be authorized by DHCD in a calendar year pursuant to this subsection and section 38BB of chapter 63 shall not exceed $10,000,000 and shall include: (1) credits granted during the year pursuant to this subsection or said section 38BB of said chapter 63; (2) carry forwards of credits from prior years pursuant to this subsection or said section 38BB of said chapter 63, to the extent that such credit carry forwards are estimated by the commissioner to offset tax liabilities during the year. Any portion of the $10,000,000 annual cap not awarded by the DHCD in a calendar year shall not be applied to awards in a subsequent year. The DHDC shall provide the commissioner of revenue with any documentation that

the commissioner deems necessary to confirm compliance with the annual cap and the commissioner shall provide a report confirming compliance with the annual cap to the secretary of administration and finance and the secretary of housing and economic development. (6) The commissioner, in consultation with the DHDC, shall prescribe regulations necessary to carry out this subsection.

(6) The commissioner, in consultation with the DHDC, shall prescribe regulations necessary to carry out this subsection.

<[Subsection (r) effective for tax years beginning on or after January 1, 2011. See 2011, 68, Sec. 211.]>

(r) (1) A taxpayer, to the extent authorized by the life sciences tax incentive program established in section 5 of chapter 23*I*, may be allowed a refundable jobs credit against the tax liability imposed under this chapter in an amount determined by the Massachusetts Life Sciences Center in consultation with the department.

(2) A taxpayer taking a credit under this subsection shall commit to the creation of a minimum of 50 net new permanent full-time positions in the commonwealth.

(3) A credit allowed under this subsection shall reduce the liability of the taxpayer under this chapter for the taxable year. If a credit claimed under this subsection by a taxpayer exceeds the taxpayer's liability as otherwise determined under this chapter for the taxable year, 90 per cent of such excess credit, to the extent authorized by the life sciences tax incentive program shall be refundable to the taxpayer. Excess credit amounts shall not be carried forward to other taxable years.

<[Paragraph (4) of subsection (r) effective until August 13, 2014. For text effective August 13, 2014, see below.]>

(4) The department shall issue the refundable portion of the jobs credit without further appropriation and in accordance with the cumulative amount, including the current year costs of incentives allowed in previous years, which shall not exceed $25,000,000 annually as set forth in subsection (d) of said section 5 of said chapter 23*I*.

<[Paragraph (4) of subsection (r) as amended by 2014, 287, Sec. 49 and 2014, 359, Sec. 18 effective August 13, 2014. See 2014, 359, Sec. 78. For text effective until August 13, 2014, see above.]>

(4) The department shall issue the refundable portion of the jobs credit without further appropriation and in accordance with the cumulative amount, including the current year costs of incentives allowed in previous years, which shall not exceed $25,000,000 annually as set forth in subsection (d) of said section 5 of said chapter 23*I*.

<[Subsection (s) added by 2014, 287, Sec. 50 effective August 13, 2014 applicable for tax years beginning on or after January 1, 2015. See 2014, 287, Sec. 123.]>

(s)(1) A taxpayer primarily engaged in agriculture or farming, as defined in section 1A of chapter 128, on land zoned pursuant to section 3 of chapter 40A or engaged in commercial fishing, which shall include only those landing a minimum of 5,000 pounds of fish per year and possessing either a state or federal fishing permit shall be allowed a credit as provided in this paragraph against the tax liability imposed by this chapter. The amount of the credit shall be 3 per cent of the cost or other basis for federal income tax purposes of qualifying property acquired, constructed, reconstructed or erected during the taxable year after deduction therefrom of any federally authorized tax credit taken with respect to the property. "Qualifying property" shall be tangible personal property and other tangible property, including buildings and structural components of buildings:

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(i) acquired by purchase as defined in 26 U.S.C. § 179(d), as amended and in effect for the taxable year; (ii) used solely in agriculture, farming or fishing; (iii) not taxable pursuant to chapter 60A; (iv) used by the taxpayer in the commonwealth; (v) situated in the commonwealth on the last day of the taxable year; and (vi) depreciable under 26 U.S.C. § 167 and with a useful life of at least 4 years.

(2) A taxpayer primarily engaged in agriculture or farming, as defined in said section 1A of said chapter 128, on land zoned pursuant to said section 3 of said chapter 40A or in commercial fishing, which shall include only those landing a minimum of 5,000 pounds of fish per year and possessing either a state or federal fishing permit shall be allowed a credit as provided in this paragraph against the tax liability imposed by this chapter. The amount of the credit shall be 3 per cent of the lessor's adjusted basis in qualifying property for federal income tax purposes at the beginning of the lease term, multiplied by a fraction, the numerator of which shall be the number of days of the taxable year during which the lessee leases the qualifying property and the denominator of which shall be the number of days in the useful life of the property. "Useful life" shall be the same as that used by the lessor for depreciation purposes when computing federal income tax liability. "Operating lease" shall be any contract or agreement to lease or rent or for a license to use qualifying property. "Qualifying property" shall be tangible personal property and other personal property, including buildings and structural components of buildings: (i) leased, and not a purchase as defined under 26 U.S.C. § 179(d), as amended and in effect for the taxable year; (ii) used solely in agriculture, farming or fishing; (iii) not taxable under chapter 60A; (iv) used by the lessee in the commonwealth; (v) situated in the commonwealth throughout the entire lease term; and (vi) depreciable by the lessor under 26 U.S.C. § 167 and with a useful life of at least 4 years. The credit shall not be available to a lessee if the lessor has previously received a credit with respect to the leased tangible personal property.

(3) The commissioner shall by regulation require documentation of the lessor and lessee to substantiate a credit claimed pursuant to paragraph (2).

(4) A taxpayer shall not receive a credit under paragraphs (1) or (2) with respect to tangible personal property and other tangible property, including buildings and structural components of buildings, which it leases as a lessor. For the purposes of this paragraph, a contract or agreement to lease or rent or for a license to use such property shall be considered a lease. This paragraph shall not apply to equine-based businesses where care and boarding of horses is a function of the agricultural activity.

(5) With respect to property that is disposed of or ceases to be in qualified use prior to the end of the taxable year in which the credit is to be taken, the amount of the credit shall be that portion of the credit provided for in paragraphs (1) or (2) which represents the ratio which the months of qualified use bear to the months of useful life. If property on which credit has been taken is disposed of or ceases to be in qualified use prior to the end of its useful life, the difference between the credit taken and the credit allowed for actual use must be added back as additional taxes due in the year of disposition; provided, however, that if the property is disposed of or ceases to be in qualified use after it has been in qualified use for more than 12 consecutive years, it shall not be necessary to add back the credit as provided in this subsection. The amount of credit allowed for actual use shall be determined by multiplying the original credit by the ratio which the months of qualified use bear to the months of useful life. For the purposes of this subsection, "useful life of property" shall be the same as that used by the individual for depreciation purposes.

(6) A taxpayer entitled to a credit for any taxable year in accordance with paragraphs (1) to (5), inclusive, may carry over and apply to its tax liability imposed by this chapter for any 1 or more of the next succeeding 3 taxable years the portion, as reduced from year to year, of its credit which exceeds its tax liability imposed by this chapter for the taxable year.

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Credits

Added St.1973, c. 723, § 2. Amended by St.1976, c. 415, § 6; St.1978, c. 403, § 1; St.1979, c. 796, § 9; St.1980, c. 485; St.1980, c. 577, § 2A; St.1983, c. 233, § 25; St.1983, c. 518, § 2; St.1987, c. 677, §§ 1, 2; St.1987, c. 773, § 4; St.1988, c. 23, § 28; St.1988, c. 106, § 11; St.1988, c. 236, § 41; St.1989, c. 341, § 47; St.1993, c. 19, § 16; St.1993, c. 482, § 2; St.1994, c. 195, §§ 23, 24; St.1997, c. 43, § 63; St.1998, c. 161, § 291; St.1998, c. 175, § 18; St.1998, c. 206, § 34; St.1999, c. 127, §§ 79 to 81; St.2000, c. 159, §§ 120, 121; St.2003, c. 141, § 20, eff. Nov. 26, 2003; St.2005, c. 136, §§ 2 to 4, eff. Nov. 20, 2005; St.2005, c. 158, § 1, eff. Feb. 21, 2006; St.2005, c. 167, § 3, eff. Feb. 21, 2006; St.2006, c. 123, § 49, eff. July 13, 2006; St.2006, c. 123, § 50, eff. June 24, 2006; St.2007, c. 63, §§ 1 to 4, eff. July 20, 2007; St.2008, c. 130, § 17, eff. Jan. 1, 2009; St.2008, c. 130, § 18, eff. Dec. 31, 2018; St.2008, c. 173, §§ 17, 18, eff. July 3, 2008; St.2008, c. 310, § 3, eff. Aug. 14, 2008; St.2008, c. 509, § 1, eff. Jan. 14, 2009; St.2009, c. 27, §§ 28, 29, eff. July 1, 2009; St.2009, c. 166, §§ 21, 22, eff. Nov. 24, 2009; St.2010, c. 240, §§ 112, 115, eff. Jan. 1, 2011; St.2010, c. 240, §§ 113, 114, eff. Aug. 1, 2010; St.2010, c. 409, §§ 4 to 7, eff. Jan. 3, 2011; St.2010, c. 454, § 37, eff. Jan. 14, 2011; St.2011, c. 68, §§ 63 to 65, eff. July 1, 2011; St.2013, c. 38, §§ 53, 54, eff. July 1, 2013; St.2014, c. 286, § 14, eff. Aug. 13, 2014; St.2014, c. 287, §§ 41 to 44, 49, 50, eff. Aug. 13, 2014; St.2014, c. 287, §§ 45, 47, eff. Jan. 1, 2015; St.2014, c. 359, §§ 16, 18, eff. Aug. 13, 2014.

M.G.L.A. 62 § 6, MA ST 62 § 6
Current through Chapter 9 of the 2015 1st Annual Session

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M.C.L.A. 206.51

206.51. Tax rate on taxable income of person other than corporation; percentages of revenues deposited in state school aid fund; imposition of annualized rates; computation of taxable income of nonresident; resident beneficiary of trust; tax credit; including items of income and deductions from trust in taxable income; intent

Effective: June 29, 2012
Currentness

Sec. 51. (1) For receiving, earning, or otherwise acquiring income from any source whatsoever, there is levied and imposed under this part upon the taxable income of every person other than a corporation a tax at the following rates in the following circumstances:

(a) Before May 1, 1994, 4.6%.

(b) After April 30, 1994 and before January 1, 2000, 4.4%.

(c) For tax years that begin on and after January 1, 2000 and before January 1, 2002, 4.2%.

(d) For tax years that begin on and after January 1, 2002 and before January 1, 2003, 4.1%.

(e) On and after January 1, 2003 and before July 1, 2004, 4.0%.

(f) On and after July 1, 2004 and before October 1, 2007, 3.9%.

(g) On and after October 1, 2007 and before October 1, 2012, 4.35%.

(h) Beginning on and after October 1, 2012, 4.25%.

(2) The following percentages of the net revenues collected under this section shall be deposited in the state school aid fund created in section 11 of article IX of the state constitution of 1963:

(a) Beginning October 1, 1994 and before October 1, 1996, 14.4% of the gross collections before refunds from the tax levied under this section.

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(b) After September 30, 1996 and before January 1, 2000, 23.0% of the gross collections before refunds from the tax levied under this section.

(c) Beginning January 1, 2000, that percentage of the gross collections before refunds from the tax levied under this section that is equal to 1.012% divided by the income tax rate levied under this section.

(3) The department shall annualize rates provided in subsection (1) as necessary for tax years that end after April 30, 1994. The applicable annualized rate shall be imposed upon the taxable income of every person other than a corporation for those tax years.

(4) The taxable income of a nonresident shall be computed in the same manner that the taxable income of a resident is computed, subject to the allocation and apportionment provisions of this part.

(5) A resident beneficiary of a trust whose taxable income includes all or part of an accumulation distribution by a trust, as defined in section 665 of the internal revenue code, [1] shall be allowed a credit against the tax otherwise due under this part. The credit shall be all or a proportionate part of any tax paid by the trust under this part for any preceding taxable year that would not have been payable if the trust had in fact made distribution to its beneficiaries at the times and in the amounts specified in section 666 of the internal revenue code. [2] The credit shall not reduce the tax otherwise due from the beneficiary to an amount less than would have been due if the accumulation distribution were excluded from taxable income.

(6) The taxable income of a resident who is required to include income from a trust in his or her federal income tax return under the provisions of 26 USC 671 to 679, shall include items of income and deductions from the trust in taxable income to the extent required by this part with respect to property owned outright.

(7) It is the intention of this section that the income subject to tax of every person other than corporations shall be computed in like manner and be the same as provided in the internal revenue code subject to adjustments specifically provided for in this part.

(8) As used in this section:

(a) "Person other than a corporation" means a resident or nonresident individual or any of the following:

(*i*) A partner in a partnership as defined in the internal revenue code.

(*ii*) A beneficiary of an estate or a trust as defined in the internal revenue code.

(*iii*) An estate or trust as defined in the internal revenue code.

(b) "Taxable income" means taxable income as defined in this part subject to the applicable source and attribution rules contained in this part.

Credits

Amended by P.A.1982, No. 155, § 1, Imd. Eff. May 17; P.A.1983, No. 15, § 1, Imd. Eff. March 29; P.A.1984, No. 221, § 1, Imd. Eff. July 26; P.A.1986, No. 16, § 1, Eff. March 26; P.A.1990, No. 283, § 1, Imd. Eff. Dec. 14, 1990; P.A.1993, No. 328, § 1, Eff. April 1, 1994; P.A.1995, No. 194, § 1, Imd. Eff. Nov. 7, 1995; P.A.1999, No. 1, Imd. Eff. Feb. 25, 1999; P.A.1999, No. 6, Imd. Eff. Feb. 25, 1999; P.A.2007, No. 94, Imd. Eff. Oct. 1, 2007; P.A.2011, No. 38, Eff. Oct. 1, 2011; P.A.2012, No. 223, Imd. Eff. June 29, 2012.

Notes of Decisions (18)

Footnotes

1 26 U.S.C.A. § 665.

2 26 U.S.C.A. § 666.

M. C. L. A. 206.51, MI ST 206.51

The statutes are current through P.A.2015, No. 9, of the 2015 Regular Session, 98th Legislature.

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M.C.L.A. 206.255

206.255. Credit for tax imposed by another state, District of Columbia, or Canadian province

Effective: January 1, 2012
Currentness

Sec. 255. (1) A resident individual or resident estate or trust is allowed a credit against the tax due under this part for the amount of an income tax imposed on the resident individual or resident estate or trust for the tax year by another state of the United States, a political subdivision of another state of the United States, the District of Columbia, or a Canadian province, on income derived from sources outside this state that is also subject to tax under this part or the amount determined under subsection (3), whichever is less. For purposes of the Canadian provincial credit, the credit is allowed for only that portion of the provincial tax not claimed as a credit for federal income tax purposes. It is presumed that the Canadian federal income tax is claimed first. The provincial tax claimed as a carryover deduction as provided in the internal revenue code [1] is not allowed as a credit under this section.

(2) The Canadian provincial credit shall be allowed for the 1978 tax year and for each tax year after 1978.

(3) The credit under this section shall not exceed an amount determined by dividing income that is subject to taxation both in this state and in another jurisdiction by taxable income and then multiplying that result by the taxpayer's tax liability before any credits are deducted.

Credits

Amended by P.A.1982, No. 515, § 1; P.A.1987, No. 254, § 1, Imd. Eff. Dec. 28; P.A.1996, No. 484, § 1, Eff. Jan. 1, 1997; P.A.2011, No. 38, Eff. Jan. 1, 2012.

Notes of Decisions (7)

Footnotes

1 26 U.S.C.A. § 1 et seq.

M. C. L. A. 206.255, MI ST 206.255

The statutes are current through P.A.2015, No. 9, of the 2015 Regular Session, 98th Legislature.

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Minnesota Statutes Annotated
Various State Taxes and Programs (Ch. 289A-295)
Chapter 290. Income and Franchise Taxes

M.S.A. § 290.03

290.03. Income tax; imposition, classes of taxpayers

Currentness

An annual tax for each taxable year, computed in the manner and at the rates hereinafter provided, is hereby imposed upon the taxable income for such year of the following classes of taxpayers:

(1) Resident and nonresident individuals;

(2) Estates of decedents, dying domiciled within or without this state;

(3) Trusts (except those taxable as corporations) however created by residents or nonresidents or by domestic or foreign corporations.

Credits

Amended by Laws 1945, c. 410, § 1; Law 1957, Ex.Sess., c. 1, art. 3, § 1; Laws 1963, c. 587, § 1, eff. May 11, 1963; Laws 1967, c. 577, § 1, eff. May 19, 1967; Laws 1971, c. 769, § 2; Laws 1973, c. 711, § 3; Laws 1975, c. 349, § 29; Laws 1977, c. 376, § 13, eff. Jan. 1, 1977; Laws 1980, c. 419, § 2, eff. April 1, 1980; Laws 1982, c. 523, art. 1, § 5; Laws 1987, c. 268, art. 1, § 25.

Notes of Decisions (20)

M. S. A. § 290.03, MN ST § 290.03
Current with laws of the 2015 Regular Session, Chapters 1 to 4 and 6

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M.S.A. § 290.06

290.06. Rates of tax; credits

Effective: March 21, 2014
Currentness

Subdivision 1. Computation, corporations. The franchise tax imposed upon corporations shall be computed by applying to their taxable income the rate of 9.8 percent.

Subd. 1a. Repealed by Laws 1990, c. 604, art. 2, § 21.

Subd. 2. Repealed by Laws 1971, Ex.Sess., c. 31, art. 18, § 6.

Subd. 2a. Repealed by Laws 1967, Ex.Sess., c. 32, art. 14, § 12.

Subd. 2b. Repealed by Laws 1980, c. 419, § 46.

Subd. 2c. Schedules of rates for individuals, estates, and trusts. (a) The income taxes imposed by this chapter upon married individuals filing joint returns and surviving spouses as defined in section 2(a) of the Internal Revenue Code [1] must be computed by applying to their taxable net income the following schedule of rates:

(1) On the first $35,480, 5.35 percent;

(2) On all over $35,480, but not over $140,960, 7.05 percent;

(3) On all over $140,960, but not over $250,000, 7.85 percent;

(4) On all over $250,000, 9.85 percent.

Married individuals filing separate returns, estates, and trusts must compute their income tax by applying the above rates to their taxable income, except that the income brackets will be one-half of the above amounts.

(b) The income taxes imposed by this chapter upon unmarried individuals must be computed by applying to taxable net income the following schedule of rates:

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(1) On the first $24,270, 5.35 percent;

(2) On all over $24,270, but not over $79,730, 7.05 percent;

(3) On all over $79,730, but not over $150,000, 7.85 percent;

(4) On all over $150,000, 9.85 percent.

(c) The income taxes imposed by this chapter upon unmarried individuals qualifying as a head of household as defined in section 2(b) of the Internal Revenue Code must be computed by applying to taxable net income the following schedule of rates:

(1) On the first $29,880, 5.35 percent;

(2) On all over $29,880, but not over $120,070, 7.05 percent;

(3) On all over $120,070, but not over $200,000, 7.85 percent;

(4) On all over $200,000, 9.85 percent.

(d) In lieu of a tax computed according to the rates set forth in this subdivision, the tax of any individual taxpayer whose taxable net income for the taxable year is less than an amount determined by the commissioner must be computed in accordance with tables prepared and issued by the commissioner of revenue based on income brackets of not more than $100. The amount of tax for each bracket shall be computed at the rates set forth in this subdivision, provided that the commissioner may disregard a fractional part of a dollar unless it amounts to 50 cents or more, in which case it may be increased to $1.

(e) An individual who is not a Minnesota resident for the entire year must compute the individual's Minnesota income tax as provided in this subdivision. After the application of the nonrefundable credits provided in this chapter, the tax liability must then be multiplied by a fraction in which:

(1) the numerator is the individual's Minnesota source federal adjusted gross income as defined in section 62 of the Internal Revenue Code and increased by the additions required under section 290.01, subdivision 19a, clauses (1), (5), (6), (7), (8), (9), and (11) to (14), and reduced by the Minnesota assignable portion of the subtraction for United States government interest under section 290.01, subdivision 19b, clause (1), and the subtractions under section 290.01, subdivision 19b, clauses (8), (9), (13), (14), (16), and (17), after applying the allocation and assignability provisions of section 290.081, clause (a), or 290.17; and

(2) the denominator is the individual's federal adjusted gross income as defined in section 62 of the Internal Revenue Code of 1986, increased by the amounts specified in section 290.01, subdivision 19a, clauses (1), (5), (6), (7), (8), (9), and (11) to (14), and reduced by the amounts specified in section 290.01, subdivision 19b, clauses (1), (8), (9), (13), (14), (16), and (17).

Subd. 2d. Inflation adjustment of brackets. (a) For taxable years beginning after December 31, 2013, the minimum and maximum dollar amounts for each rate bracket for which a tax is imposed in subdivision 2c shall be adjusted for inflation by the percentage determined under paragraph (b). For the purpose of making the adjustment as provided in this subdivision all of the rate brackets provided in subdivision 2c shall be the rate brackets as they existed for taxable years beginning after December 31, 2012, and before January 1, 2014. The rate applicable to any rate bracket must not be changed. The dollar amounts setting forth the tax shall be adjusted to reflect the changes in the rate brackets. The rate brackets as adjusted must be rounded to the nearest $10 amount. If the rate bracket ends in $5, it must be rounded up to the nearest $10 amount.

(b) The commissioner shall adjust the rate brackets and by the percentage determined pursuant to the provisions of section 1(f) of the Internal Revenue Code, except that in section 1(f)(3)(B) the word "2012" shall be substituted for the word "1992." For 2014, the commissioner shall then determine the percent change from the 12 months ending on August 31, 2012, to the 12 months ending on August 31, 2013, and in each subsequent year, from the 12 months ending on August 31, 2012, to the 12 months ending on August 31 of the year preceding the taxable year. The determination of the commissioner pursuant to this subdivision shall not be considered a "rule" and shall not be subject to the Administrative Procedure Act contained in chapter 14.

No later than December 15 of each year, the commissioner shall announce the specific percentage that will be used to adjust the tax rate brackets.

Subd. 2e. Repealed by Laws 1984, c. 502, art. 2, § 17.

Subd. 2f. Repealed by Laws 1986, 1st Sp., c. 1, art. 8, § 19, eff. Jan. 1, 1986.

Subd. 3. Repealed by Laws 1967, Ex.Sess., c. 32, art. 14, § 12.

Subds. 3a, 3b. Repealed by Laws 1980, c. 419, § 46, eff. April 1, 1980.

Subd. 3c. Repealed by Laws 1982, c. 523, art. 1, § 72.

Subds. 3d, 3e. Repealed by Laws 1985, 1st Sp., c. 14, art. 1, § 59(a).

Subds. 3f, 3g. Repealed by Laws 1987, c. 268, art. 1, § 127.

Subd. 4. Repealed by Laws 1971, Ex.Sess., c. 31, art. 6, § 2.

Subd. 5. Deleted as expired in St.1965.

Subd. 6. Repealed by Laws 1971, Ex.Sess., c. 31, art. 6, § 2.

Subd. 7. Deleted as expired in St.1965.

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Subd. 8. Repealed by Laws 1967, Ex. Sess., c. 32, art. 2, § 1.

Subds. 9, 9a. Repealed by Laws 1983, c. 342, art. 1, § 44.

Subd. 10. Repealed by Laws 2011, c. 112, art. 5, § 8, eff. June 1, 2011.

Subd. 11. Repealed by Laws 1987, c. 268, art. 1, § 127.

Subd. 12. Repealed by Laws 1979, c. 303, art. 1, § 23.

Subd. 13. Repealed by Laws 1984, c. 502, art. 14, § 20.

Subd. 14. Repealed by Laws 1985, 1st Sp., c. 14, art. 1, § 59(a).

Subd. 15. Repealed by Laws 1986, 1st Sp., c. 1, art. 3, § 21.

Subds. 16 to 19. Repealed by Laws 1985, 1st Sp., c. 14, art. 1, § 59(a).

Subd. 20. Repealed by Laws 1988, c. 719, art. 1, § 21.

Subd. 21. Repealed by Laws 1996, c. 471, art. 9, § 16, subd. 3.

Subd. 22. Credit for taxes paid to another state. (a) A taxpayer who is liable for taxes based on net income to another state, as provided in paragraphs (b) through (f), upon income allocated or apportioned to Minnesota, is entitled to a credit for the tax paid to another state if the tax is actually paid in the taxable year or a subsequent taxable year. A taxpayer who is a resident of this state pursuant to section 290.01, subdivision 7, paragraph (b), and who is subject to income tax as a resident in the state of the individual's domicile is not allowed this credit unless the state of domicile does not allow a similar credit.

(b) For an individual, estate, or trust, the credit is determined by multiplying the tax payable under this chapter by the ratio derived by dividing the income subject to tax in the other state that is also subject to tax in Minnesota while a resident of Minnesota by the taxpayer's federal adjusted gross income, as defined in section 62 of the Internal Revenue Code, modified by the addition required by section 290.01, subdivision 19a, clause (1), and the subtraction allowed by section 290.01, subdivision 19b, clause (1), to the extent the income is allocated or assigned to Minnesota under sections 290.081 and 290.17.

(c) If the taxpayer is an athletic team that apportions all of its income under section 290.17, subdivision 5, the credit is determined by multiplying the tax payable under this chapter by the ratio derived from dividing the total net income subject to tax in the other state by the taxpayer's Minnesota taxable income.

(d) The credit determined under paragraph (b) or (c) shall not exceed the amount of tax so paid to the other state on the gross income earned within the other state subject to tax under this chapter, nor shall the allowance of the credit reduce the taxes paid under this chapter to an amount less than what would be assessed if such income amount was excluded from taxable net income.

(e) In the case of the tax assessed on a lump-sum distribution under section 290.032, the credit allowed under paragraph (a) is the tax assessed by the other state on the lump-sum distribution that is also subject to tax under section 290.032, and shall not exceed the tax assessed under section 290.032. To the extent the total lump-sum distribution defined in section 290.032, subdivision 1, includes lump-sum distributions received in prior years or is all or in part an annuity contract, the reduction to the tax on the lump-sum distribution allowed under section 290.032, subdivision 2, includes tax paid to another state that is properly apportioned to that distribution.

(f) If a Minnesota resident reported an item of income to Minnesota and is assessed tax in such other state on that same income after the Minnesota statute of limitations has expired, the taxpayer shall receive a credit for that year under paragraph (a), notwithstanding any statute of limitations to the contrary. The claim for the credit must be submitted within one year from the date the taxes were paid to the other state. The taxpayer must submit sufficient proof to show entitlement to a credit.

(g) For the purposes of this subdivision, a resident shareholder of a corporation treated as an "S" corporation under section 290.9725, must be considered to have paid a tax imposed on the shareholder in an amount equal to the shareholder's pro rata share of any net income tax paid by the S corporation to another state. For the purposes of the preceding sentence, the term "net income tax" means any tax imposed on or measured by a corporation's net income.

(h) For the purposes of this subdivision, a resident partner of an entity taxed as a partnership under the Internal Revenue Code must be considered to have paid a tax imposed on the partner in an amount equal to the partner's pro rata share of any net income tax paid by the partnership to another state. For purposes of the preceding sentence, the term "net income" tax means any tax imposed on or measured by a partnership's net income.

(i) For the purposes of this subdivision, "another state":

(1) includes:

(i) the District of Columbia; and

(ii) a province or territory of Canada; but

(2) excludes Puerto Rico and the several territories organized by Congress.

(j) The limitations on the credit in paragraphs (b), (c), and (d), are imposed on a state by state basis.

(k) For a tax imposed by a province or territory of Canada, the tax for purposes of this subdivision is the excess of the tax over the amount of the foreign tax credit allowed under section 27 of the Internal Revenue Code. In determining the amount of the

foreign tax credit allowed, the net income taxes imposed by Canada on the income are deducted first. Any remaining amount of the allowable foreign tax credit reduces the provincial or territorial tax that qualifies for the credit under this subdivision.

Subd. 22a. Repealed by Laws 2013, c. 143, art. 6, § 34, eff. Jan. 1, 2013.

Subd. 23. Refund of contributions to political parties and candidates. (a) A taxpayer may claim a refund equal to the amount of the taxpayer's contributions made in the calendar year to candidates and to a political party. The maximum refund for an individual must not exceed $50 and for a married couple, filing jointly, must not exceed $100. A refund of a contribution is allowed only if the taxpayer files a form required by the commissioner and attaches to the form a copy of an official refund receipt form issued by the candidate or party and signed by the candidate, the treasurer of the candidate's principal campaign committee, or the chair or treasurer of the party unit, after the contribution was received. The receipt forms must be numbered, and the data on the receipt that are not public must be made available to the campaign finance and public disclosure board upon its request. A claim must be filed with the commissioner no sooner than January 1 of the calendar year in which the contribution was made and no later than April 15 of the calendar year following the calendar year in which the contribution was made. A taxpayer may file only one claim per calendar year. Amounts paid by the commissioner after June 15 of the calendar year following the calendar year in which the contribution was made must include interest at the rate specified in section 270C.405.

(b) No refund is allowed under this subdivision for a contribution to a candidate unless the candidate:

(1) has signed an agreement to limit campaign expenditures as provided in section 10A.322;

(2) is seeking an office for which voluntary spending limits are specified in section 10A.25; and

(3) has designated a principal campaign committee.

This subdivision does not limit the campaign expenditures of a candidate who does not sign an agreement but accepts a contribution for which the contributor improperly claims a refund.

(c) For purposes of this subdivision, “political party” means a major political party as defined in section 200.02, subdivision 7, or a minor political party qualifying for inclusion on the income tax or property tax refund form under section 10A.31, subdivision 3a.

A “major party” or “minor party” includes the aggregate of that party's organization within each house of the legislature, the state party organization, and the party organization within congressional districts, counties, legislative districts, municipalities, and precincts.

“Candidate” means a candidate as defined in section 10A.01, subdivision 10, except a candidate for judicial office.

“Contribution” means a gift of money.

(d) The commissioner shall make copies of the form available to the public and candidates upon request.

(e) The following data collected or maintained by the commissioner under this subdivision are private: the identities of individuals claiming a refund, the identities of candidates to whom those individuals have made contributions, and the amount of each contribution.

(f) The commissioner shall report to the campaign finance and public disclosure board by each August 1 a summary showing the total number and aggregate amount of political contribution refunds made on behalf of each candidate and each political party. These data are public.

(g) The amount necessary to pay claims for the refund provided in this section is appropriated from the general fund to the commissioner of revenue.

(h) For a taxpayer who files a claim for refund via the Internet or other electronic means, the commissioner may accept the number on the official receipt as documentation that a contribution was made rather than the actual receipt as required by paragraph (a).

Subd. 24. Repealed by Laws 2012, c. 294, art. 2, § 43, eff. Aug. 1, 2012.

Subd. 25. Repealed by Laws 2001, 1st Sp., c. 5, art. 7, § 66, par. (d).

Subd. 26. Repealed by Laws 2001, 1st Sp., c. 5, art. 9, § 30, par. (b).

Subd. 27. Tax paid to another state; corporations. (a) A credit is allowed against the tax imposed under subdivision 1 for tax paid to another state based on net income. The credit must be claimed in a manner prescribed by the commissioner.

(b) The amount of the credit equals the amount of qualifying tax paid to the other state for the taxable year, multiplied by the taxpayer's apportionment percentage under section 290.191. If the item of income or gain is assigned to Minnesota as nonbusiness income, the entire amount of the qualifying tax is allowed as a credit. The maximum amount of the credit is limited to the tax liability under subdivision 1 for the taxable year and, in no case, may the credit exceed the reduction in the amount of tax under subdivision 1 if the item of income or gain were excluded from net income.

(c) For purposes of this subdivision, "qualifying tax" means the amount of tax paid to another state on an item of income or gain for the taxable year, if:

(1) the law of another state requires and the taxpayer assigns the entire amount of the income or gain to one other state; and

(2) the income or gain is included in the measure of the exercise of the corporate franchise that is taxable under subdivision 1.

(d) The amount of tax paid to another state on an item of income or gain is the difference between the tax paid to the state and the amount of tax that would have been paid to the state if the item of income or gain had not been included in the net income of that state.

(e) The taxpayer must report to the commissioner of revenue any change in tax in the other state, the change in qualifying tax, and a copy of the final determination of the tax by the taxing authority of the other state. A taxpayer who claims the credit consents to extend the period of limitation for the commissioner to recompute the credit and reassess the tax due, including a refund, for a period of one year following a report by the taxpayer of a final determination of tax by the state in which the entire amount of income or gain is reported, notwithstanding any period of limitations to the contrary, or within any applicable period of limitations, whichever is longer. If a taxpayer fails to report as required by this paragraph, the commissioner may recompute the tax, including a refund, based on the information available to the commissioner. The tax may be recomputed within six years after the report should have been filed, notwithstanding any period of limitations to the contrary.

Subd. 28. Credit for transit passes. A taxpayer may take a credit against the tax due under this chapter equal to 30 percent of the expense incurred by the taxpayer to provide transit passes, for use in Minnesota, to employees of the taxpayer. As used in this subdivision, "transit pass" has the meaning given in section 132(f)(5)(A) of the Internal Revenue Code. If the taxpayer purchases the transit passes from the transit system operator, and resells them to the employees, the credit is based on the amount of the difference between the price paid for the passes by the employer and the amount charged to employees.

Subd. 29. Job opportunity building zone job credit. A taxpayer that is a qualified business, as defined in section 469.310, subdivision 11, is allowed a credit as determined under section 469.318 against the tax imposed by this chapter.

Subds. 30, 31. Repealed by Laws 2014, c. 308, art. 9, § 94, par. (e), eff. January 1, 2014.

Subd. 32. Repealed by Laws 2012, c. 294, art. 2, § 43, eff. Aug. 1, 2012.

Subd. 33. Bovine testing credit. (a) An owner of cattle in Minnesota may take a credit against the tax due under this chapter for an amount equal to: (1) for corporate filers, including shareholders of an S corporation under section 290.9725, 25 percent of the expenses incurred during the taxable year to conduct tuberculosis testing on those cattle; and (2) for all other filers, one-half the expenses incurred during the taxable year to conduct tuberculosis testing on those cattle.

(b) If the amount of credit which the taxpayer is eligible to receive under this subdivision exceeds the taxpayer's tax liability under this chapter, the commissioner of revenue shall refund the excess to the taxpayer.

(c) The amount necessary to pay claims for the refund provided in this subdivision is appropriated from the general fund to the commissioner of revenue.

(d) Expenses incurred in a calendar year in which tuberculosis testing of cattle in Minnesota is not federally required are not allowed in claiming the credit under paragraph (a).

Subd. 34. Repealed by Laws 2010, c. 216, § 62, par. (a), eff. Jan. 1, 2010.

Subd. 35. Seed capital investment credit. (a) An individual, estate, or trust is allowed a credit against the tax imposed by this chapter for investments in a qualifying business certified under section 116J.8732, subdivision 3. The credit equals 45 percent

of the amount invested by the taxpayer in qualified businesses during the taxable year. The credit must not exceed $112,500 for each taxable year.

(b) A pass-through entity that invests in a qualified business must be considered to be the taxpayer for purposes of the investment limitations in this subdivision and the amount of the credit allowed with respect to a pass-through entity's investment in a qualified business must be determined at the pass-through entity level. The amount of the total credit determined at the pass-through entity level must be allowed to the members in proportion to their respective interests in the pass-through entity.

(c) An investment made in a qualified business from the assets of a retirement plan is deemed to be the retirement plan participant's investment for the purpose of this subdivision if a separate account is maintained for the plan participant and the participant directly controls where the account assets are invested.

(d) The investment must be made on or after the certification effective date and must be at risk in the business to be eligible for the tax credit under this subdivision. An investment for which a credit is received under this subdivision must remain in the qualified business for at least three years. Investments placed in escrow do not qualify for the credit.

(e) The entire amount of an investment for which a credit is claimed under this subdivision must be expended by the qualified business for plant, equipment, research and development, marketing and sales activity, or working capital for the qualified business.

(f) A taxpayer who owns a controlling interest in the qualified business or who receives more than 50 percent of the taxpayer's gross annual income from the qualified business is not entitled to a credit under this subdivision. A member of the immediate family of a taxpayer disqualified by this subdivision is not entitled to the credit under this subdivision. For purposes of this subdivision, "immediate family" means the taxpayer's spouse, parent, sibling, or child or the spouse of any such person.

(g) The commissioner may disallow any credit otherwise allowed under this subdivision if any representation by a business in the application for certification as a qualified business proves to be false or if the taxpayer or qualified business fails to satisfy any conditions under this subdivision or section 116J.8732 or any conditions consistent with those requirements otherwise determined by the commissioner. The commissioner has four years after the due date of the return or after the return was filed, whichever period expires later, to audit the credit and assess additional tax that may be found due to failure to comply with the provisions of this subdivision and section 116J.8732. The amount of any credit disallowed by the commissioner that reduced the taxpayer's income tax liability for any or all applicable tax years, plus penalty and interest as provided under chapter 289A, must be paid by the taxpayer.

(h) If the amount of the credit under this subdivision for any taxable year exceeds the limitations under paragraph (a), the excess is a credit carryover to each of the four succeeding taxable years. The entire amount of the excess unused credit for the taxable year must be carried first to the earliest of the taxable years to which the credit may be carried. The amount of the unused credit that may be added under this paragraph may not exceed the taxpayer's liability for tax, less the credit for the taxable year. Each year, the aggregate amount of seed capital investment tax credit allowed for investments under this subdivision is limited to allocations that a border city has available for tax reductions in border city enterprise zones under section 469.169. The city must annually notify the commissioner of the amount of its section 469.169 allocations that it wishes to use to provide credits under this paragraph and the commissioner, after verifying the available allocation, shall implement the limit under this paragraph. If investments in qualified businesses reported to the commissioner exceed the limit on credits for investments imposed by this

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subdivision, the credit must be allowed to taxpayers in the chronological order of their investments in qualified businesses as determined from the forms filed under section 116J.8732.

Subd. 36. Greater Minnesota internship credit. (a) A taxpayer who is an eligible employer may take a credit against the tax due under this chapter equal to the lesser of:

(1) 40 percent of the compensation paid to an intern qualifying under the program established under section 136A.129, but not to exceed $2,000 per intern; or

(2) the amount certified to the taxpayer by an eligible institution out of the institution's allocation of credits for the calendar year, as provided in section 136A.129.

(b) Credits allowed to a partnership, a limited liability company taxed as a partnership, an S corporation, or multiple owners of property are passed through to the partners, members, shareholders, or owners, respectively, pro rata to each partner, member, shareholder, or owner based on their share of the entity's income for the taxable year.

(c) If the amount of credit which the taxpayer is eligible to receive under this subdivision exceeds the taxpayer's tax liability under this chapter, the commissioner of revenue shall refund the excess to the taxpayer.

(d) An amount necessary to pay claims for refund provided in this subdivision is appropriated from the general fund to the commissioner of revenue.

(e) An amount equal to one percent of the total amount of the credits authorized under section 136A.129, subdivision 4, for an administrative fee for the Office of Higher Education and participating eligible institutions is appropriated from the general fund to the commissioner of revenue, for a transfer to the Office of Higher Education.

(f) For purposes of this subdivision, the terms “eligible employer” and “eligible institution” have the meanings given in section 136A.129.

Credits

Amended by Laws 1945, c. 604, § 3; Laws 1947, c. 635, § 4; Laws 1949, c. 642, § 13; Laws 1949, c. 734, § 4; Laws 1951, c. 605, §§ 1, 2; Laws 1951, c. 676, § 1; Laws 1953, c. 667, §§ 1, 2; Laws 1955, c. 84, § 1; Laws 1957, c. 847, § 1; Laws 1957, Ex.Sess., c. 1, art. 1, § 1; Laws 1957, Ex.Sess., c. 1, art. 2, § 1; Laws 1957, Ex.Sess., c. 1, art. 7, § 2; Laws 1959, Ex.Sess., c. 70, art. 3, §§ 1 to 5; Laws 1961, Ex.Sess., c. 91, art. 1, §§ 1, 2; Laws 1961, Ex.Sess., c. 91, art. 5, §§ 1, 3, 4; Laws 1961, Ex.Sess., c. 91, art. 6, § 1; Laws 1963, c. 835, § 1; Laws 1963, c. 886, §§ 1 to 4; Laws 1965, c. 884, art. 1, §§ 1 to 4, eff. May 28, 1965; Laws 1967, Ex.Sess., c. 32, art. 12, § 1; Laws 1967, Ex.Sess., c. 32, art. 14, §§ 1 to 5; Laws 1969, c. 399, §§ 25, 26, eff. July 1, 1969; Laws 1969, c. 881, §§ 2 to 5; Laws 1969, c. 1000, § 1; Laws 1971, c. 35, § 1; Laws 1971, c. 794, §§ 1, 2; Laws 1971, Ex.Sess., c. 2, §§ 1 to 4; Laws 1971, Ex.Sess., c. 31, art. 6, § 1; Laws 1971, Ex.Sess., c. 31, art. 18, §§ 1 to 4; Laws 1973, c. 22, § 1; Laws 1973, c. 582, § 3; Laws 1973, c. 650, art. 22, § 1; Laws 1974, c. 470, § 35; Laws 1974, c. 556, § 3; Laws 1975, c. 349, §§ 8, 9; Laws 1975, c. 355, § 1; Laws 1975, c. 437, art. 9, § 2; Laws 1976, c. 2, § 103; Laws 1977, c. 250, § 1; Laws 1977, c. 386, § 2; Laws 1977, c. 423, art. 1, §§ 4, 5; Laws 1978, c. 463, § 106; Laws 1978, c. 721, art. 2, § 1; Laws 1978, c. 721, art. 3, § 1; Laws 1978, c. 721, art. 4, § 1; Laws 1978, c. 721, art. 7, § 1; Laws 1978, c. 721, art. 8, § 1; Laws 1978, c. 721, art. 9, § 1; Laws 1979, c. 59, § 7; Laws 1979, c. 303, art. 1, §§ 5 to 10; Laws 1979, c. 303, art. 4, §§ 1 to 3; Laws 1979, c. 303, art. 5,

§§ 1 to 3; Laws 1979, art. 10, § 6; Laws 1980, c. 509, §§ 113, 114; Laws 1980, c. 607, art. 1, §§ 3 to 7, 32; Laws 1980, c. 607, art. 9, § 1; Laws 1981, c. 29, art. 7, § 30; Laws 1981, c. 60, § 2; Laws 1981, c. 178, §§ 12 to 16; Laws 1981, c. 343, § 3; Laws 1981, c. 356, § 192; Laws 1981, 1st Sp., c. 1, art. 1, §§ 1, 2; Laws 1981, 3rd Sp., c. 2, art. 3, §§ 3, 4; Laws 1982, c. 424, § 130; Laws 1982, c. 523, art. 1, §§ 8, 9; Laws 1982, c. 523, art. 10, § 1; Laws 1982, c. 523, art. 29, § 1; Laws 1982, c. 523, art. 40, § 14; Laws 1982, 3rd Sp., c. 1, art. 5, § 3; Laws 1983, c. 15, §§ 4 to 7; Laws 1983, c. 207, § 43; Laws 1983, c. 216, art. 2, § 6, eff. May 28, 1983; Laws 1983, c. 289, § 115, subd. 1, eff. July 1, 1983; Laws 1983, c. 301, § 178; Laws 1983, c. 342, art. 1, §§ 6, 7, 9 to 11, 43; Laws 1984, c. 502, art. 2, §§ 5, 6; Laws 1984, c. 514, art. 1, § 8; Laws 1984, c. 514, art. 2, §§ 9 to 12, 14; Laws 1984, c. 640, § 32, eff. May 3, 1984; Laws 1984, c. 644, §§ 52 to 54; Laws 1985, c. 210, art. 2, § 1; Laws 1985, 1st Sp., c. 14, art. 1, §§ 15 to 20; Laws 1986, c. 444; Laws 1986, 1st Sp., c. 1, art. 1, § 9; Laws 1986, 1st Sp., c. 1, art. 3, § 2; Laws 1987, c. 268, art. 1, §§ 30 to 34; Laws 1987, c. 384, art. 3, § 11; Laws 1988, c. 719, art. 1, §§ 7, 8; Laws 1988, c. 719, art. 2, §§ 19, 20; Laws 1988, c. 719, art. 3, § 12; Laws 1989, c. 28, §§ 10, 11, 25; Laws 1989, 1st Sp., c. 1, art. 10, §§ 13 to 16; Laws 1990, c. 604, art. 2, §§ 4, 5, 16; Laws 1990, c. 608, art. 3, § 28; Laws 1991, c. 291, art. 6, §§ 21 to 23; Laws 1991, c. 291, art. 6, § 24, eff. June 1, 1991; Laws 1991, c. 291, art. 6, § 46; Laws 1991, c. 291, art. 7, § 10, eff. June 1, 1991; Laws 1991, c. 350, art. 1, § 18; Laws 1992, c. 511, art. 6, §§ 13, 19; Laws 1992, c. 517, art. 1, § 11; Laws 1993, c. 318, art. 2, § 50, eff. May 21, 1993; Laws 1993, c. 375, art. 8, § 14; Laws 1994, c. 587, art. 1, §§ 12, 24; Laws 1995, c. 264, art. 1, § 4; Laws 1996, c. 471, art. 1, §§ 4, 5; Laws 1997, c. 31, art. 1, § 15; Laws 1997, c. 202, art. 2, § 63; Laws 1997, c. 231, art. 5, § 5, eff. June 3, 1997; Laws 1997, c. 231, art. 6, § 12; Laws 1998, c. 389, art. 6, § 6; Laws 1998, c. 389, art. 7, § 6. Amended by Laws 1999, c. 220, §§ 49, 50; Laws 1999, c. 243, art. 2, §§ 8 to 11; Laws 2000, c. 263, § 1; Laws 2000, c. 490, art. 4, §§ 12, 13; Laws 2000, c. 490, art. 4, § 14, eff. May 16, 2000; Laws 2000, c. 490, art. 4, §§ 15, 16; Laws 2001, 1st Sp., c. 5, art. 7, §§ 34, 35; Laws 2001, 1st Sp., c. 5, art. 9, § 10; Laws 2003, c. 127, art. 3, § 10; Laws 2003, c. 127, art. 14, § 4; Laws 2003, 1st Sp., c. 21, art. 1, § 5; Laws 2003, 1st Sp., c. 21, art. 1, § 6, eff. June 9, 2003; Laws 2003, 1st Sp., c. 21, art. 2, §§ 4, 5; Laws 2005, c. 151, art. 2, § 17; Laws 2005, c. 151, art. 6, § 15; Laws 2005, 1st Sp., c. 3, art. 4, § 10; Laws 2005, 1st Sp., c. 3, art. 10, § 4; Laws 2005, 1st Sp., c. 3, art. 10, § 5, eff. July 14, 2005; Laws 2006, c. 259, art. 1, § 1; Laws 2007, c. 138, § 11, eff. Aug. 1, 2007; Laws 2008, c. 152, art. 3, § 2, eff. Jan. 1, 2009; Laws 2008, c. 154, art. 4, § 6, eff. Jan. 1, 2007; Laws 2008, c. 154, art. 11, § 13, eff. Jan. 1, 2008; Laws 2008, c. 366, art. 4, § 7, eff. Jan. 1, 2009; Laws 2008, c. 366, art. 5, § 9, eff. July 1, 2008; Laws 2009, c. 88, art. 1, § 8, eff. Jan. 1, 2009; Laws 2010, c. 389, art. 3, § 12, eff. May 28, 2010; Laws 2011, c. 112, art. 6, § 3, eff. Jan. 1, 2008; Laws 2012, c. 294, art. 2, § 11, eff. Aug. 1, 2012; Laws 2013, c. 143, art. 6, §§ 10 to 12, eff. Jan. 1, 2014; Laws 2014, c. 150, art. 1, § 14, eff. Jan. 1, 2013.

Notes of Decisions (10)

Footnotes

1 All text references to Internal Revenue Code sections are to Title 26 of U.S.C.A.

M. S. A. § 290.06, MN ST § 290.06

Current with laws of the 2015 Regular Session, Chapters 1 to 4 and 6

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West's Annotated Mississippi Code
Title 27. Taxation and Finance
Chapter 7. Income Tax and Withholding
Article 1. Income Tax

Miss. Code Ann. § 27-7-5

§ 27-7-5. Tax imposition

Currentness

(1) There is hereby assessed and levied, to be collected and paid as hereinafter provided, for the calendar year 1983 and fiscal years ending during the calendar year 1983 and all taxable years thereafter, upon the entire net income of every resident individual, corporation, association, trust or estate, in excess of the credits provided, a tax at the following rates:

On the first Five Thousand Dollars ($5,000.00) of taxable income, or any part thereof, at the rate of three percent (3%);

On the next Five Thousand Dollars ($5,000.00) of taxable income, or any part thereof, at the rate of four percent (4%); and

On all taxable income in excess of Ten Thousand Dollars ($10,000.00), at the rate of five percent (5%).

(2) An S corporation, as defined in Section 27-8-3(1)(g), shall not be subject to the income tax imposed under this section.

(3) A like tax is hereby imposed to be assessed, collected and paid annually, except as hereinafter provided, at the rate specified in this section and as hereinafter provided, upon and with respect to the entire net income, from all property owned or sold, and from every business, trade or occupation carried on in this state by individuals, corporations, partnerships, trusts or estates, not residents of the State of Mississippi.

(4) In the case of taxpayers having a fiscal year beginning in the calendar year 1982 and ending after the first day of January 1983, the tax due for that taxable year shall be determined by:

(a) Computing for the full fiscal year the amount of tax that would be due under the rates in effect for the calendar year 1982; and

(b) Computing for the full fiscal year the amount of tax that would be due under the rates in effect for the calendar year 1983; and

(c) Applying to the tax computed under paragraph (a) the ratio which the number of months falling within the earlier calendar year bears to the total number of months in the fiscal year; and

(d) Applying to the tax computed under paragraph (b) the ratio which the number of months falling within the later calendar year bears to the total number of months within the fiscal year; and

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(e) Adding to the tax determined under paragraph (c) the tax determined under paragraph (d) the sum of which shall be the amount of tax due for the fiscal year.

Credits

Laws 1934, Ch. 120, § 1; Laws 1938, Ch. 115, § 1; Laws 1940, Ch. 111, § 1; Laws 1942, Ch. 124, § 1; Laws 1944, Ch. 125, § 1; Laws 1952, Ch. 402, § 3; Laws 1960, Ch. 456, § 1; Laws 1960, Ch. 457, § 1; Laws 1968, Ch. 580, § 26; Laws 1982, 1st Ex. Sess., Ch. 17, § 31; Laws 1984, 1st Ex. Sess., Ch. 10, § 1; Laws 1992, Ch. 484, § 7; Laws 1993, Ch. 456, § 12, eff. January 1, 1994.

Notes of Decisions (12)

Miss. Code Ann. § 27-7-5, MS ST § 27-7-5
The Statutes and Constitution are current through 2015 Regular Session.

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West's Annotated Mississippi Code
Title 27. Taxation and Finance
Chapter 7. Income Tax and Withholding
Article 1. Income Tax

Miss. Code Ann. § 27-7-77

§ 27-7-77. Crediting payment of income taxes

Currentness

(1) Individual resident taxpayers of Mississippi whose gross income is derived from sources both within and without the State of Mississippi shall be allowed a tax credit for income tax paid to another state, territory of the United States, or the District of Columbia against the amount of tax found to be due to the State of Mississippi.

(2) This tax credit shall be limited in amount, however, as provided below:

(a) The tax credit may not exceed the amount of income tax due the State of Mississippi.

(b) The tax credit may not exceed the amount of income tax actually paid to the other state.

(c) The tax credit may not exceed an amount computed by applying the highest Mississippi rates to the net taxable income reported to the other state. The net taxable income reported to the other state shall be computed on the basis of the provisions contained in the income tax laws and regulations of said other state. Highest rates are meant to mean the highest rates at which the net taxable income reported to the other state is taxable by the State of Mississippi.

(3) Before an individual resident taxpayer of Mississippi may claim the credit allowed under this section, he shall file with his tax return a certificate showing amounts of gross income, net income, and net taxable income derived from sources without this state, together with the amount of tax paid or to be paid on such income.

Credits

Laws 1934, Ch. 120, § 31; Laws 1940, Ch. 124, § 1; Laws 1944, Ch. 123, § 2; Laws 1952, Ch. 402, § 37; Laws 1954, Ch. 371, § 1; Laws 1966, Ch. 633, § 1, eff. July 1, 1966.

Notes of Decisions (4)

Miss. Code Ann. § 27-7-77, MS ST § 27-7-77
The Statutes and Constitution are current through 2015 Regular Session.

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Vernon's Annotated Missouri Statutes
Title X. Taxation and Revenue
Chapter 143. Income Tax (Refs & Annos)
Imposition of Tax

V.A.M.S. 143.011

143.011. Resident individuals--tax rates--reduction in top rate, when--adjustment of brackets for inflation, when--definitions

Effective: August 28, 2014
Currentness

1. A tax is hereby imposed for every taxable year on the Missouri taxable income of every resident. The tax shall be determined by applying the tax table or the rate provided in section 143.021, which is based upon the following rates:

If the Missouri taxable income is:	**The tax is:**
Not over $1,000.00	1 ½ % of the Missouri taxable income
Over $1,000 but not over $2,000	$15 plus 2% of excess over $1,000
Over $2,000 but not over $3,000	$35 plus 2 ½ % of excess over $2,000
Over $3,000 but not over $4,000	$60 plus 3% of excess over $3,000
Over $4,000 but not over $5,000	$90 plus 3 ½ % of excess over $4,000
Over $5,000 but not over $6,000	$125 plus 4% of excess over $5,000
Over $6,000 but not over $7,000	$165 plus 4 ½ % of excess over $6,000
Over $7,000 but not over $8,000	$210 plus 5% of excess over $7,000
Over $8,000 but not over $9,000	$260 plus 5 ½ % of excess over $8,000
Over $9,000	$315 plus 6% of excess over $9,000

2. (1) Beginning with the 2017 calendar year, the top rate of tax under subsection 1 of this section may be reduced over a period of years. Each reduction in the top rate of tax shall be by one-tenth of a percent and no more than one reduction shall occur in a calendar year. The top rate of tax shall not be reduced below five and one-half percent. Reductions in the rate of tax shall take effect on January first of a calendar year and such reduced rates shall continue in effect until the next reduction occurs.

(2) A reduction in the rate of tax shall only occur if the amount of net general revenue collected in the previous fiscal year exceeds the highest amount of net general revenue collected in any of the three fiscal years prior to such fiscal year by at least one hundred fifty million dollars.

(3) Any modification of tax rates under this subsection shall only apply to tax years that begin on or after a modification takes effect.

(4) The director of the department of revenue shall, by rule, adjust the tax tables under subsection 1 of this section to effectuate the provisions of this subsection. The bracket for income subject to the top rate of tax shall be eliminated once the top rate of tax has been reduced to five and one-half of a percent.

3. Beginning with the 2017 calendar year, the brackets of Missouri taxable income identified in subsection 1 of this section shall be adjusted annually by the percent increase in inflation. The director shall publish such brackets annually beginning on or after October 1, 2016. Modifications to the brackets shall take effect on January first of each calendar year and shall apply to tax years beginning on or after the effective date of the new brackets.

4. As used in this section, the following terms mean:

(1) **"CPI"**, the Consumer Price Index for All Urban Consumers for the United States as reported by the Bureau of Labor Statistics, or its successor index.

(2) **"CPI for the preceding calendar year"**, the average of the CPI as of the close of the twelve month period ending on August thirty-first of such calendar year;

(3) **"Percent increase in inflation"**, the percentage, if any, by which the CPI for the preceding calendar year exceeds the CPI for the year beginning September 1, 2014, and ending August 31, 2015;

Credits

(L.1972, S.B. No. 549, p. 699, § A, eff. Jan. 1, 1973. Amended by L.2014, S.B. Nos. 509 & 496, § A, eff. Aug. 28, 2014. [1])

Notes of Decisions (31)

Footnotes

1 **Revisor's note:** S.B. 509 & 496 was vetoed 5-1-14. The veto was overridden on 5-6-14.

V. A. M. S. 143.011, MO ST 143.011

Statutes are current through the end of the 2014 Second Regular Session of the 97th General Assembly. Constitution is current through the November 4, 2014 General Election.

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Vernon's Annotated Missouri Statutes
Title X. Taxation and Revenue
Chapter 143. Income Tax (Refs & Annos)
Imposition of Tax

V.A.M.S. 143.081

143.081. Credit for income tax paid to another state

Currentness

1. A resident individual, resident estate, and resident trust shall be allowed a credit against the tax otherwise due pursuant to sections 143.005 to 143.998 for the amount of any income tax imposed for the taxable year by another state of the United States (or a political subdivision thereof) or the District of Columbia on income derived from sources therein and which is also subject to tax pursuant to sections 143.005 to 143.998. For purposes of this subsection, the phrase "income tax imposed" shall be that amount of tax before any income tax credit allowed by such other state or the District of Columbia if the other state or the District of Columbia authorizes a reciprocal benefit for residents of this state.

2. The credit provided pursuant to this section shall not exceed an amount which bears the same ratio to the tax otherwise due pursuant to sections 143.005 to 143.998 as the amount of the taxpayer's Missouri adjusted gross income derived from sources in the other taxing jurisdiction bears to the taxpayer's Missouri adjusted gross income derived from all sources. In applying the limitation of the previous sentence to an estate or trust, Missouri taxable income shall be substituted for Missouri adjusted gross income. If the tax of more than one other taxing jurisdiction is imposed on the same item of income, the credit shall not exceed the limitation that would result if the taxes of all the other jurisdictions applicable to the item were deemed to be of a single jurisdiction.

3. For the purposes of this section, in the case of an S corporation, each resident S shareholder shall be considered to have paid a tax imposed on the shareholder in an amount equal to the shareholder's pro rata share of any net income tax paid by the S corporation to a state which does not measure the income of shareholders on an S corporation by reference to the income of the S corporation or where a composite return and composite payments are made in such state on behalf of the S shareholders by the S corporation.

4. For purposes of subsection 3 of this section, in the case of an S corporation that is a bank chartered by a state, the Office of Thrift Supervision, [1] or the comptroller of currency, each Missouri resident S shareholder of such out-of-state bank shall qualify for the shareholder's pro rata share of any net tax paid, including a bank franchise tax based on the income of the bank, by such S corporation where bank payment of taxes are made in such state on behalf of the S shareholders by the S bank to the extent of the tax paid.

Credits

(L.1972, S.B. No. 549, p. 699, § A, eff. Jan. 1, 1973. Amended by L.1993, S.B. Nos. 66 & 20, § C, eff. Jan. 1, 1994; L.1999, H.B. No. 701, § A; L.2002, S.B. No. 895, § A; L.2004, S.B. No. 1394, § A, eff. Jan. 1, 2005.)

Notes of Decisions (5)

Footnotes

1 **Revisor's Note:** Office of Thrift Supervision, U.S. Department of the Treasury.

V. A. M. S. 143.081, MO ST 143.081

Statutes are current through the end of the 2014 Second Regular Session of the 97th General Assembly. Constitution is current through the November 4, 2014 General Election.

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MCA 15-30-2103

15-30-2103. Rate of tax

Currentness

(1) There must be levied, collected, and paid for each tax year upon the taxable income of each taxpayer subject to this tax, after making allowance for exemptions and deductions as provided in this chapter, a tax on the brackets of taxable income as follows:

(a) on the first $2,300 of taxable income or any part of that income, 1%;

(b) on the next $1,800 of taxable income or any part of that income, 2%;

(c) on the next $2,100 of taxable income or any part of that income, 3%;

(d) on the next $2,200 of taxable income or any part of that income, 4%;

(e) on the next $2,400 of taxable income or any part of that income, 5%;

(f) on the next $3,100 of taxable income or any part of that income, 6%;

(g) on any taxable income in excess of $13,900 or any part of that income, 6.9%.

(2) By November 1 of each year, the department shall multiply the bracket amount contained in subsection (1) by the inflation factor for that tax year and round the cumulative brackets to the nearest $100. The resulting adjusted brackets are effective for that tax year and must be used as the basis for imposition of the tax in subsection (1) of this section.

Credits

Enacted by Laws 1933, ch. 181, § 2. Amended by Ex. Laws 1933, ch. 40, § 1; reenacted Revised Code of Montana 1935, § 2295.2; amended by Laws 1957, ch. 228, § 1; amended by Laws 1959, ch. 265, § 1; amended by Laws 1965, ch. 281, § 1; amended by Ex. Laws 1967, ch. 5, § 1; amended by Ex. Laws 1969, ch. 10, § 1; Revised Code of Montana 1947, 84-4902; amended approved Nov. 4, 1980, Initiative Measure No. 86, § 2; amended by Laws 1993 (voided by Initiative Referendum No. 112, Nov. 8, 1994), ch. 634, § 2; amended by Laws 2003, ch. 544, § 43; MCA 2007, 15-30-103; redesignated 15-30-2103 by Code Commissioner, pursuant to Laws 2009, Ch. 147, § 1.

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Notes of Decisions (27)

MCA 15-30-2103, MT ST 15-30-2103
Current through chapters effective February 27, 2015, 2015 session. Statutory changes are subject to classification and revision by the Code Commissioner. Court Rules in the Code are current with amendments received through August 1, 2014.

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West's Montana Code Annotated
Title 15. Taxation (Refs & Annos)
Chapter 30. Individual Income Tax (Refs & Annos)
Part 23. Specific Tax Credits and Tax Checkoffs

MCA 15-30-2302

15-30-2302. Credit allowed resident taxpayers for income taxes imposed by foreign states or countries

Currentness

(1) Subject to the conditions provided in subsections (2) through (6), a resident of this state is allowed a credit against the taxes imposed by this chapter for:

(a) income taxes imposed by and paid to another state or country on income taxable under this chapter;

(b) the resident's pro rata share of any income tax imposed by and paid to another state or country by an S. corporation of which the resident is a shareholder; and

(c) the resident's distributive share, whether separately or nonseparately stated, of any income tax imposed by and paid to another state or country by a partnership of which the resident is a partner.

(2) The credit is allowed only for taxes paid to another state or country on income derived from sources within the other state or country that is taxable under the laws of the other state or country regardless of the residence or domicile of the taxpayer.

(3) The credit is not allowed if the other state or country allows residents of this state a credit against the taxes imposed by the other state or country for taxes paid or payable under this chapter.

(4) The credit is not allowed on taxes imposed by a foreign country to the extent that a credit for the taxes imposed by the foreign country was claimed for federal income tax purposes.

(5) The allowable credit must be computed by a formula prescribed by the department.

(6) For the purposes of the credit under subsections (1)(b) and (1)(c):

(a) "income tax" has the same meaning as provided in Article II of 15-1-601;

(b) the S. corporation must have made and have in effect on the last day of its tax year a valid election under subchapter S. of Chapter 1 of the Internal Revenue Code; and

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(c) the credit applies only to taxes paid by the S. corporation or partnership on income taxable under this chapter.

Credits

Enacted by Laws 1941, ch. 28, § 2. Amended by Laws 1959, ch. 253, § 7; amended by Laws 1973, ch. 516, § 181; Revised Code of Montana 1947, 84-4937; amended by Laws 2001, ch. 143, § 8; amended by Laws 2003, ch. 544, § 47; amended by Laws 2005, ch. 95, § 1; MCA 2007, 15-30-124; redesignated 15-30-2302 by Code Commissioner, pursuant to Laws 2009, ch. 147, § 1.

MCA 15-30-2302, MT ST 15-30-2302

Current through chapters effective February 27, 2015, 2015 session. Statutory changes are subject to classification and revision by the Code Commissioner. Court Rules in the Code are current with amendments received through August 1, 2014.

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West's Revised Statutes of Nebraska Annotated
Chapter 77. Revenue and Taxation
Article 27. Sales and Income Tax
(c) Income Tax

Neb.Rev.St. § 77-2715

77-2715. Income tax; rate; credits; refund

Currentness

(1) A tax is hereby imposed for each taxable year on the entire income of every resident individual and on the income of every nonresident individual and partial-year resident individual which is derived from sources within this state, except that any individual who has additions to adjusted gross income pursuant to section 77-2716 of less than five thousand dollars shall not have an individual income tax liability after nonrefundable credits under the Nebraska Revenue Act of 1967 that exceeds his or her individual income tax liability before credits under the Internal Revenue Code of 1986.

(2)(a) For taxable years beginning or deemed to begin before January 1, 2014, the tax for each resident individual shall be a percentage of such individual's federal adjusted gross income as modified in sections 77-2716 and 77-2716.01, plus a percentage of the federal alternative minimum tax and the federal tax on premature or lump-sum distributions from qualified retirement plans. The additional taxes shall be recomputed by (i) substituting Nebraska taxable income for federal taxable income, (ii) calculating what the federal alternative minimum tax would be on Nebraska taxable income and adjusting such calculations for any items which are reflected differently in the determination of federal taxable income, and (iii) applying Nebraska rates to the result. The federal credit for prior year minimum tax, after the recomputations required by the act, shall be allowed as a reduction in the income tax due.

(b) For taxable years beginning or deemed to begin on or after January 1, 2014, the tax for each resident individual shall be a percentage of such individual's federal adjusted gross income as modified in sections 77-2716 and 77-2716.01, plus a percentage of the federal tax on premature or lump-sum distributions from qualified retirement plans. The additional taxes shall be recomputed by substituting Nebraska taxable income for federal taxable income and applying Nebraska rates to the result.

(3) The tax for each nonresident individual and partial-year resident individual shall be the portion of the tax imposed on resident individuals which is attributable to the income derived from sources within this state. The tax which is attributable to income derived from sources within this state shall be determined by subtracting from the liability to this state for a resident individual with the same total income the credit for personal exemptions and multiplying the result by a fraction, the numerator of which is the nonresident individual's or partial-year resident individual's Nebraska adjusted gross income as determined by section 77-2733 or 77-2733.01 and the denominator of which is his or her total federal adjusted gross income, after first adjusting each by the amounts provided in section 77-2716. If this determination attributes more or less tax than is reasonably attributable to income derived from sources within this state, the taxpayer may petition for or the Tax Commissioner may require the employment of any other method to attribute an amount of tax which is reasonable and equitable in the circumstances.

(4) The tax for each estate and trust, other than trusts taxed as corporations under the Internal Revenue Code of 1986, shall be as determined under section 77-2717.

(5) A refund shall be allowed to the extent that the income tax paid by the individual, estate, or trust for the taxable year exceeds the income tax payable, except that no refund shall be made in any amount less than two dollars.

Credits

Laws 1967, ch. 487, § 15, p. 1576; Laws 1969, ch. 684, § 2, p. 2652; Laws 1972, LB 1367, § 2; Laws 1973, LB 526, § 1; Laws 1974, LB 632, § 1; Laws 1975, LB 430, § 1; Laws 1977, LB 30, § 1; Laws 1977, LB 219, § 1; Laws 1980, LB 44, § 1; Laws 1981, LB 197, § 1; Laws 1982, LB 799, § 5; Laws 1983, LB 124, § 8; Laws 1983, LB 363, § 2; Laws 1984, LB 372, § 15; Laws 1985, LB 273, § 49; Laws 1986, LB 1027, § 207; Laws 1987, LB 773, § 5; Laws 1987, LB 523, § 19; Laws 1989, LB 458, § 1; Laws 1989, LB 459, § 2; Laws 1993, LB 240, § 2; Laws 1994, LB 977, § 10; Laws 2013, LB 308, § 1, eff. Sept. 6, 2013.

Notes of Decisions (24)

Neb. Rev. St. § 77-2715, NE ST § 77-2715
Current through End of 2014 Regular Session

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West's Revised Statutes of Nebraska Annotated
Chapter 77. Revenue and Taxation
Article 27. Sales and Income Tax
(c) Income Tax

Neb.Rev.St. § 77-2715.07

77-2715.07. Income tax credits

Currentness

(1) There shall be allowed to qualified resident individuals as a nonrefundable credit against the income tax imposed by the Nebraska Revenue Act of 1967:

(a) A credit equal to the federal credit allowed under section 22 of the Internal Revenue Code; and

(b) A credit for taxes paid to another state as provided in section 77-2730.

(2) There shall be allowed to qualified resident individuals against the income tax imposed by the Nebraska Revenue Act of 1967:

(a) For returns filed reporting federal adjusted gross incomes of greater than twenty-nine thousand dollars, a nonrefundable credit equal to twenty-five percent of the federal credit allowed under section 21 of the Internal Revenue Code of 1986, as amended;

(b) For returns filed reporting federal adjusted gross income of twenty-nine thousand dollars or less, a refundable credit equal to a percentage of the federal credit allowable under section 21 of the Internal Revenue Code of 1986, as amended, whether or not the federal credit was limited by the federal tax liability. The percentage of the federal credit shall be one hundred percent for incomes not greater than twenty-two thousand dollars, and the percentage shall be reduced by ten percent for each one thousand dollars, or fraction thereof, by which the reported federal adjusted gross income exceeds twenty-two thousand dollars;

(c) A refundable credit as provided in section 77-5209.01 for individuals who qualify for an income tax credit as a qualified beginning farmer or livestock producer under the Beginning Farmer Tax Credit Act for all taxable years beginning or deemed to begin on or after January 1, 2006, under the Internal Revenue Code of 1986, as amended;

(d) A refundable credit for individuals who qualify for an income tax credit under the Angel Investment Tax Credit Act, the Nebraska Advantage Microenterprise Tax Credit Act, or the Nebraska Advantage Research and Development Act; and

(e) A refundable credit equal to ten percent of the federal credit allowed under section 32 of the Internal Revenue Code of 1986, as amended.

(3) There shall be allowed to all individuals as a nonrefundable credit against the income tax imposed by the Nebraska Revenue Act of 1967:

(a) A credit for personal exemptions allowed under section 77-2716.01;

(b) A credit for contributions to certified community betterment programs as provided in the Community Development Assistance Act. Each partner, each shareholder of an electing subchapter S corporation, each beneficiary of an estate or trust, or each member of a limited liability company shall report his or her share of the credit in the same manner and proportion as he or she reports the partnership, subchapter S corporation, estate, trust, or limited liability company income;

(c) A credit for investment in a biodiesel facility as provided in section 77-27,236;

(d) A credit as provided in the New Markets Job Growth Investment Act; and

(e) A credit as provided in the Nebraska Job Creation and Mainstreet Revitalization Act.

(4) There shall be allowed as a credit against the income tax imposed by the Nebraska Revenue Act of 1967:

(a) A credit to all resident estates and trusts for taxes paid to another state as provided in section 77-2730;

(b) A credit to all estates and trusts for contributions to certified community betterment programs as provided in the Community Development Assistance Act; and

(c) A refundable credit for individuals who qualify for an income tax credit as an owner of agricultural assets under the Beginning Farmer Tax Credit Act for all taxable years beginning or deemed to begin on or after January 1, 2009, under the Internal Revenue Code of 1986, as amended. The credit allowed for each partner, shareholder, member, or beneficiary of a partnership, corporation, limited liability company, or estate or trust qualifying for an income tax credit as an owner of agricultural assets under the Beginning Farmer Tax Credit Act shall be equal to the partner's, shareholder's, member's, or beneficiary's portion of the amount of tax credit distributed pursuant to subsection (4) of section 77-5211.

(5)(a) For all taxable years beginning on or after January 1, 2007, and before January 1, 2009, under the Internal Revenue Code of 1986, as amended, there shall be allowed to each partner, shareholder, member, or beneficiary of a partnership, subchapter S corporation, limited liability company, or estate or trust a nonrefundable credit against the income tax imposed by the Nebraska Revenue Act of 1967 equal to fifty percent of the partner's, shareholder's, member's, or beneficiary's portion of the amount of franchise tax paid to the state under sections 77-3801 to 77-3807 by a financial institution.

(b) For all taxable years beginning on or after January 1, 2009, under the Internal Revenue Code of 1986, as amended, there shall be allowed to each partner, shareholder, member, or beneficiary of a partnership, subchapter S corporation, limited liability company, or estate or trust a nonrefundable credit against the income tax imposed by the Nebraska Revenue Act of 1967 equal to the partner's, shareholder's, member's, or beneficiary's portion of the amount of franchise tax paid to the state under sections 77-3801 to 77-3807 by a financial institution.

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(c) Each partner, shareholder, member, or beneficiary shall report his or her share of the credit in the same manner and proportion as he or she reports the partnership, subchapter S corporation, limited liability company, or estate or trust income. If any partner, shareholder, member, or beneficiary cannot fully utilize the credit for that year, the credit may not be carried forward or back.

Credits

Laws 1987, LB 773, § 6; Laws 1989, LB 739, § 2; Laws 1993, LB 5, § 3; Laws 1993, LB 121, § 503; Laws 1993, LB 240, § 4; Laws 1993, LB 815, § 23; Laws 1994, LB 977, § 12; Laws 1996, LB 898, § 5; Laws 1998, LB 1028, § 2; Laws 1999, LB 630, § 1; Laws 2001, LB 433, § 4; Laws 2005, LB 312, § 12; Laws 2006, LB 968, § 8; Laws 2006, LB 990, § 1; Laws 2007, LB 343, § 3; Laws 2007, LB 367, § 20; Laws 2007, LB 456, § 1; Laws 2009, LB 165, § 12, eff. April 9, 2009; Laws 2011, LB 389, § 12, eff. Jan. 1, 2011; Laws 2012, LB 1128, § 22, eff. Jan. 1, 2012; Laws 2014, LB 191, § 17, eff. July 18, 2014.

Neb. Rev. St. § 77-2715.07, NE ST § 77-2715.07
Current through End of 2014 Regular Session

End of Document

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New Jersey Statutes Annotated
Title 54a. New Jersey Gross Income Tax Act
Chapter 2. Imposition of Tax

N.J.S.A. 54A:2-1

54A:2-1. Imposition of tax

Effective: July 7, 2004
Currentness

There is hereby imposed a tax for each taxable year (which shall be the same as the taxable year for federal income tax purposes) on the New Jersey gross income as herein defined of every individual, estate or trust (other than a charitable trust or a trust forming part of a pension or profit- sharing plan), subject to the deductions, limitations and modifications hereinafter provided, determined in accordance with the following tables with respect to taxpayers' taxable income:

a. For married individuals filing a joint return and individuals filing as head of household or as surviving spouse for federal income tax purposes:

(1) for taxable years beginning on or after January 1, 1991 but before January 1, 1994:

If the taxable income is:	The tax is:
Not over $20,000.00	2% of taxable income
Over $20,000.00 but not over $50,000.00	$400.00 plus 2.5% of the excess over $20,000.00
Over $50,000.00 but not over $70,000.00	$1,150.00 plus 3.5% of the excess over $50,000.00
Over $70,000.00 but not over $80,000.00	$1,850.00 plus 5.0% of the excess over $70,000.00
Over $80,000.00 but not over $150,000.00	$2,350.00 plus 6.5% of the excess over $80,000.00
Over $150,000.00	$6,900.00 plus 7.0% of the excess over $150,000.00

(2) for taxable years beginning on or after January 1, 1994 but before January 1, 1995:

If the taxable income is:	The tax is:
Not over $20,000.00	1.900% of taxable income
Over $20,000.00 but not over $50,000.00	$380.00 plus 2.375% of the excess over $20,000.00

Over $50,000.00 but not over $70,000.00................................	$1,092.50 plus 3.325% of the excess over $50,000.00
Over $70,000.00 but not over $80,000.00................................	$1,757.50 plus 4.750% of the excess over $70,000.00
Over $80,000.00 but not over $150,000.00..............................	$2,232.50 plus 6.175% of the excess over $80,000.00
Over $150,000.00..	$6,555.00 plus 6.650% of the excess over $150,000.00

(3) for taxable years beginning on or after January 1, 1995 but before January 1, 1996:

If the taxable income is:	**The tax is:**
Not over $20,000.00..	1.700% of taxable income
Over $20,000.00 but not over $50,000.00................................	$340.00 plus 2.125% of the excess over $20,000.00
Over $50,000.00 but not over $70,000.00................................	$977.50 plus 2.975% of the excess over $50,000.00
Over $70,000.00 but not over $80,000.00................................	$1,572.50 plus 4.250% of the excess over $70,000.00
Over $80,000.00 but not over $150,000.00..............................	$1,997.50 plus 6.013% of the excess over $80,000.00
Over $150,000.00..	$6,206.60 plus 6.580% of the excess over $150,000.00

(4) for taxable years beginning on or after January 1, 1996 but before January 1, 2004:

If the taxable income is:	**The tax is:**
Not over $20,000.00..	1.400% of taxable income
Over $20,000.00 but not over $50,000.00................................	$280.00 plus 1.750% of the excess over $20,000.00
Over $50,000.00 but not over $70,000.00................................	$805.00 plus 2.450% of the excess over $50,000.00
Over $70,000.00 but not over $80,000.00................................	$1,295.50 plus 3.500% of the excess over $70,000.00
Over $80,000.00 but not over $150,000.00..............................	$1,645.00 plus 5.525% of the excess over $80,000.00
Over $150,000.00..	$5,512.50 plus 6.370% of the excess over $150,000.00

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(5) for taxable years beginning on or after January 1, 2004:

If the taxable income is:	The tax is:
Not over $20,000.00	1.400% of taxable income
Over $20,000.00 but not over $50,000.00	$280.00 plus 1.750% of the excess over $20,000.00
Over $50,000.00 but not over $70,000.00	$805.00 plus 2.450% of the excess over $50,000.00
Over $70,000.00 but not over $80,000.00	$1,295.50 plus 3.500% of the excess over $70,000.00
Over $80,000.00 but not over $150,000.00	$1,645.00 plus 5.525% of the excess over $80,000.00
Over $150,000.00 but not over $500,000.00	$5,512.50 plus 6.370% of the excess over $150,000.00
Over $500,000.00	$27,807.50 plus 8.970% of the excess over $500, 000.00

b. For married individuals filing separately, unmarried individuals other than individuals filing as head of household or as a surviving spouse for federal income tax purposes, and estates and trusts:

(1) for taxable years beginning on or after January 1, 1991 but before January 1, 1994:

If the taxable income is:	The tax is:
Not over $20,000.00	2% of taxable income
Over $20,000.00 but not over $35,000.00	$400.00 plus 2.5% of the excess over $20,000.00
Over $35,000.00 but not over $40,000.00	$775.00 plus 5.0% of the excess over $35,000.00
Over $40,000.00 but not over $75,000.00	$1,025.00 plus 6.5% of the excess over $40,000.00
Over $75,000.00	$3,300.00 plus 7.0% of the excess over $75,000.00

(2) for taxable years beginning on or after January 1, 1994 but before January 1, 1995:

If the taxable income is:	The tax is:
Not over $20,000.00	1.900% of taxable income
Over $20,000.00 but not over $35,000.00	$380.00 plus 2.375% of the excess over $20,000.00
Over $35,000.00 but not over $40,000.00	$736.25 plus 4.750% of the

	excess over $35,000.00
Over $40,000.00 but not over $75,000.00................................	$973.75 plus 6.175% of the excess over $40,000.00
Over $75,000.00...	$3,135.00 plus 6.650% of the excess over $75,000.00

(3) for taxable years beginning on or after January 1, 1995 but before January 1, 1996:

If the taxable income is:	The tax is:
Not over $20,000.00...	1.700% of taxable income
Over $20,000.00 but not over $35,000.00................................	$340.00 plus 2.125% of the excess over $20,000.00
Over $35,000.00 but not over $40,000.00................................	$658.75 plus 4.250% of the excess over $35,000.00
Over $40,000.00 but not over $75,000.00................................	$871.25 plus 6.013% of the excess over $40,000.00
Over $75,000.00...	$2,975.80 plus 6.580% of the excess over $75,000.00

(4) for taxable years beginning on or after January 1, 1996 but before January 1, 2004:

If the taxable income is:	The tax is:
Not over $20,000.00...	1.400% of taxable income
Over $20,000.00 but not over $35,000.00................................	$280.00 plus 1.750% of the excess over $20,000.00
Over $35,000.00 but not over $40,000.00................................	$542.50 plus 3.500% of the excess over $35,000.00
Over $40,000.00 but not over $75,000.00................................	$717.50 plus 5.525% of the excess over $40,000.00
Over $75,000.00...	$2,651.25 plus 6.370% of the excess over $75,000.00

(5) for taxable years beginning on or after January 1, 2004:

If the taxable income is:	The tax is:
Not over $20,000.00...	1.400% of taxable income
Over $20,000.00 but not over $35,000.00................................	$280.00 plus 1.750% of the excess over $20,000.00

Over $35,000.00 but not over $40,000.00................................	$542.50 plus 3.500% of the excess over $35,000.00
Over $40,000.00 but not over $75,000.00................................	$717.50 plus 5.525% of the excess over $40,000.00
Over $75,000.00 but not over $500,000.00..............................	$2,651.25 plus 6.370% of the excess over $75,000.00
Over $500,000.00...	$29,723.75 plus 8.970% of the excess over $500, 000.00

c. For the purposes of this section, an individual who would be eligible to file as a head of household for federal income tax purposes but for the fact that such taxpayer is a nonresident alien, shall determine tax pursuant to subsection a. of this section.

Credits

L.1976, c. 47, § 54A:2-1, eff. July 8, 1976, operative Aug. 30, 1976. Amended by L.1982, c. 229, § 1, eff. Dec. 31, 1982; L.1990, c. 61, § 12, eff. Jan. 1, 1991; L.1994, c. 2, § 1; L.1994, c. 69, § 1, eff. July 6, 1994; L.1995, c. 165, § 1, eff. July 4, 1995; L.2004, c. 40, § 17.

Editors' Notes

ASSEMBLY POLICY AND RULES COMMITTEE STATEMENT

Assembly, No. 100--L.1995, c. 165

The Assembly Policy and Rules Committee favorably reports Assembly, No. 100.

Assembly, No. 100 reduces the State gross income tax rates for 1996 and the tax years thereafter.

Coupled with the rate reductions provided under P.L. 1994, c.2 and P.L. 1994, c.69, the rate reductions authorized under this bill will result in cumulative decreases from the 1993 tax year of 30%, 15%, and 9% depending on the taxpayer's income and filing status.

The 30% cumulative rate reduction will be experienced by: (1) married individuals filing a joint return and by individuals filing either as head of household or surviving spouse who have an annual gross income of less than $80,000, and (2) married individuals filing separately, unmarried individuals (other than those filing as head of household or surviving spouse), and trusts and estates having an annual income of less than $40,000.

The 15% cumulative rate reduction applies to: (1) married individuals filing a joint return and individuals filing either as head of household or surviving spouse whose annual gross incomes are between $80,000 and $150,000, and (2) married individuals filing separately, unmarried individuals (other than those filing as head of household or surviving spouse), and trust and estates having annual incomes between $40,000 and $75,000.

The 9% cumulative rate reduction affects: (1) married individuals filing joint returns and unmarried individuals filing as either head of household or surviving spouse who have annual gross incomes above $150,000, and (2) married individuals filing separately, unmarried individuals (other than those filing as head of household or surviving spouse), and trusts and estates having annual incomes of over $75,000.

SENATE BUDGET AND APPROPRIATIONS COMMITTEE STATEMENT

Assembly, No. 10--L.1994, c. 69

The Senate Budget and Appropriations Committee reports favorably Assembly Bill No. 10.

Assembly Bill No. 10 reduces gross income tax rates for 1995 and thereafter. These rate reductions combined with the 5% rate reductions for all rate brackets made pursuant to P.L.1994, c.2, will result in cumulative decreases from the 1993 taxable year levels of 15%, 7.5% and 6% for certain taxable income levels.

Beginning with taxable year 1995, this bill reduces gross income tax rates by a total of 15% from 1993 rates for annual gross incomes of less than $80,000 for married individuals filing a joint return, and individuals filing as head of household or as surviving spouse for federal income tax purposes, and for annual gross incomes of less than $40,000 for married individuals filing separately, unmarried individuals other than individuals filing as head of household or as a surviving spouse for federal income tax purposes, and estates and trusts.

The bill reduces the marginal gross income tax rate for incomes between $80,000 to $150,000 by a total of 7.5% from the 1993 rates for married individuals filing a joint return and individuals filing as head of household or as surviving spouse for federal income tax purposes and the marginal rate for incomes between $40,000 and $75,000 for married individuals filing separately, unmarried individuals other than individuals filing as head of household or as a surviving spouse for federal income tax purposes, and estates and trusts.

The bill reduces the marginal gross income tax rate for incomes above $150,000 by a total of 6% from the 1993 rates for married individuals filing a joint return and individuals filing as head of household or as surviving spouse for federal income tax purposes and the marginal rate for incomes above $75,000 for married individuals filing separately, unmarried individuals other than individuals filing as head of household or as a surviving spouse for federal income tax purposes, and estates and trusts.

As reported, this bill is identical to Senate Bill No. 6 of 1994.

FISCAL IMPACT

It is estimated that the enactment of this bill will result in a decrease in State revenues of $332.0 million to $349.0 million for taxable year 1995. Combined with the prior 5 percent reduction in rates made by P.L.1994, c.2, the total decrease in State revenues resulting from the reduction in gross income tax rates is estimated to be $606.0 million to $637.0 million for taxable year 1995.

The fiscal year impact will differ from the taxable year impact due to the six month overlap between fiscal and taxable years and certain cash flow considerations.

Notes of Decisions (14)

N. J. S. A. 54A:2-1, NJ ST 54A:2-1
Current with laws effective through L.2015, c. 32.

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N.J.S.A. 54A:4-1

54A:4-1. Resident credit for tax of another state

Currentness

(a) A resident taxpayer shall be allowed a credit against the tax otherwise due under this act for the amount of any income tax or wage tax imposed for the taxable year by another state of the United States or political subdivision of such state, or by the District of Columbia, with respect to income which is also subject to tax under this act, except as provided by subsections (c) and (d) of this section.

(b) The credit provided under this section shall not exceed the proportion of the tax otherwise due under this act that the amount of the taxpayer's income subject to tax by the other jurisdiction bears to his entire New Jersey income.

(c) No credit shall be allowed against the tax otherwise due under this act for the amount of any income tax or wage tax imposed for the taxable year on S corporation income allocated to this State.

(d) No credit shall be allowed for the amount of any taxes paid or accrued for the taxable year on or measured by profits or income imposed on or paid on behalf of a person other than the taxpayer, whether or not the taxpayer may be held liable for the tax.

(e) Readjustment of the tax of another state or political subdivision thereof--if the taxpayer is allowed credit under this section for more or less of the tax of another state or political subdivision thereof than he is finally required to pay, the taxpayer shall send notice of the difference to the director who shall redetermine the tax for any years affected regardless of any otherwise applicable statute of limitations.

Credits

L.1976, c. 47, § 54A:4-1, eff. July 8, 1976, operative Aug. 30, 1976. Amended by L.1993, c. 173, § 7.

Notes of Decisions (59)

N. J. S. A. 54A:4-1, NJ ST 54A:4-1
Current with laws effective through L.2015, c. 32.

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West's New Mexico Statutes Annotated
Chapter 7. Taxation
Article 2. Income Tax General Provisions (Refs & Annos)

N. M. S. A. 1978, § 7-2-3

§ 7-2-3. Imposition and levy of tax

Currentness

A tax is imposed at the rates specified in the Income Tax Act upon the net income of every resident individual and upon the net income of every nonresident individual employed or engaged in the transaction of business in, into or from this state, or deriving any income from any property or employment within this state.

Credits
L. 1965, Ch. 202, § 3; L. 1979, Ch. 92, § 2; L. 1981, Ch. 37, § 14.

Formerly 1953 Comp., § 72-15A-3.

Notes of Decisions (11)

NMSA 1978, § 7-2-3, NM ST § 7-2-3
Current through all 2014 legislation, and including Ch. 5 of the 1st Regular Session of the 52nd Legislature (2015)

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West's New Mexico Statutes Annotated
Chapter 7. Taxation
Article 2. Income Tax General Provisions (Refs & Annos)

N. M. S. A. 1978, § 7-2-13

§ 7-2-13. Credit for taxes paid other states by resident individuals

Effective: July 1, 2013
Currentness

When a resident individual is liable to another state for tax upon income derived from sources outside this state but also included in net income under the Income Tax Act as income allocated or apportioned to New Mexico pursuant to Section 7-2-11 NMSA 1978, the individual, upon filing with the secretary satisfactory evidence of the payment of the tax to the other state, shall receive a credit against the tax due this state in the amount of the tax paid the other state with respect to income that is required to be either allocated or apportioned to New Mexico. However, in no case shall the credit exceed the amount of the taxpayer's New Mexico income tax liability on that portion of income that is required to be either allocated or apportioned to New Mexico on which the tax payable to the other state was determined. The credit provided by this section does not apply to or include income taxes paid to any municipality, county or other political subdivision of a state.

Credits
L. 1965, Ch. 202, § 11; L. 1970, Ch. 34, § 1; L. 1973, Ch. 133, § 1; L. 1974, Ch. 56, § 2; L. 1981, Ch. 37, § 23; L. 1990, Ch. 49, § 7; L. 1992, Ch. 78, § 1; L. 2013, Ch. 179, § 1, eff. July 1, 2013.

Formerly 1953 Comp., § 72-15A-11.

NMSA 1978, § 7-2-13, NM ST § 7-2-13
Current through all 2014 legislation, and including Ch. 5 of the 1st Regular Session of the 52nd Legislature (2015)

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McKinney's Consolidated Laws of New York Annotated
Tax Law (Refs & Annos)
Chapter Sixty. Of the Consolidated Laws
Article 22. Personal Income Tax (Refs & Annos)
Part I. General

McKinney's Tax Law § 601

§ 601. Imposition of tax

Effective: March 28, 2013
Currentness

(a) Resident married individuals filing joint returns and resident surviving spouses. There is hereby imposed for each taxable year on the New York taxable income of every resident married individual who makes a single return jointly with his spouse under subsection (b) of section six hundred fifty-one and on the New York taxable income of every resident surviving spouse a tax determined in accordance with the following tables:

(1)(A) For taxable years beginning after two thousand eleven and before two thousand eighteen:

If the New York taxable income is:	The tax is:
Not over $16,000	4% of taxable income
Over $16,000 but not over $22,000	$640 plus 4.5% of excess over $16,000
Over $22,000 but not over $26,000	$910 plus 5.25% of excess over $22,000
Over $26,000 but not over $40,000	$1,120 plus 5.90% of excess over $26,000
Over $40,000 but not over $150,000	$1,946 plus 6.45% of excess over $40,000
Over $150,000 but not over $300,000	$9,041 plus 6.65% of excess over $150,000
Over $300,000 but not over $2,000,000	$19,016 plus 6.85% of excess over $300,000
Over $2,000,000	$135,466 plus 8.82% of excess over $2,000,000

(B) For taxable years beginning after two thousand seventeen, the following brackets and dollar amounts shall apply, as adjusted by the cost of living adjustment prescribed in section six hundred one-a of this part for tax years two thousand thirteen through two thousand seventeen:

If the New York taxable income is:	The tax is:
Not over $16,000	4% of taxable income
Over $16,000 but not over $22,000	$640 plus 4.5% of excess over $16,000
Over $22,000 but not over $26,000	$910 plus 5.25% of excess over $22,000

Over $26,000 but not over $40,000	$1,120 plus 5.90% of excess over $26,000
Over $40,000	$1,946 plus 6.85% of excess over $40,000

(1-a) For taxable years beginning after two thousand eight and before two thousand twelve:

If the New York taxable income is:	The tax is:
Not over $16,000	4% of the New York taxable income
Over $16,000 but not over $22,000	$640 plus 4.5% of excess over $16,000
Over $22,000 but not over $26,000	$910 plus 5.25% of excess over $22,000
Over $26,000 but not over $40,000	$1,120 plus 5.9% of excess over $26,000
Over $40,000 but not over $300,000	$1,946 plus 6.85% of excess over $40,000
Over $300,000 but not over $500,000	$19,756 plus 7.85% of excess over $300,000
Over $500,000	$35,456 plus 8.97% of excess over $500,000

(2) For taxable years beginning after two thousand five and before two thousand nine:

If the New York taxable income is:	**The tax is:**
Not over $16,000	4% of the New York taxable income
Over $16,000 but not over $22,000	$640 plus 4.5% of excess over $16,000
Over $22,000 but not over $26,000	$910 plus 5.25% of excess over $22,000
Over $26,000 but not over $40,000	$1,120 plus 5.9% of excess over $26,000
Over $40,000	$1,946 plus 6.85% of excess over $40,000

(3) For taxable years beginning in two thousand five:

If the New York taxable income is:	**The tax is:**
Not over $16,000	4% of the New York taxable income
Over $16,000 but not over $22,000	$640 plus 4.5% of excess over $16,000
Over $22,000 but not over $26,000	$910 plus 5.25% of excess over $22,000
Over $26,000 but not over $40,000	$1,120 plus 5.9% of excess over $26,000
Over $40,000 but not over $150,000	$1,946 plus 6.85% of excess over $40,000
Over $150,000 but not over $500,000	$9,481 plus 7.25% of excess over $150,000

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Over $500,000	$34,856 plus 7.7% of excess over $500,000

(4) For taxable years beginning in two thousand four:

If the New York taxable income is:	**The tax is:**
Not over $16,000	4% of the New York taxable income
Over $16,000 but not over $22,000	$640 plus 4.5% of excess over $16,000
Over $22,000 but not over $26,000	$910 plus 5.25% of excess over $22,000
Over $26,000 but not over $40,000	$1,120 plus 5.9% of excess over $26,000
Over $40,000 but not over $150,000	$1,946 plus 6.85% of excess over $40,000
Over $150,000 but not over $500,000	$9,481 plus 7.375% of excess over $150,000
Over $500,000	$35,294 plus 7.7% of excess over $500,000

(5) For taxable years beginning in two thousand three:

If the New York taxable income is:	**The tax is:**
Not over $16,000	4% of the New York taxable income
Over $16,000 but not over $22,000	$640 plus 4.5% of excess over $16,000
Over $22,000 but not over $26,000	$910 plus 5.25% of excess over $22,000
Over $26,000 but not over $40,000	$1,120 plus 5.9% of excess over $26,000
Over $40,000 but not over $150,000	$1,946 plus 6.85% of excess over $40,000
Over $150,000 but not over $500,000	$9,481 plus 7.5% of excess over $150,000
Over $500,000	$35,731 plus 7.7% of excess over $500,000

(6) For taxable years beginning after nineteen hundred ninety-six and before two thousand three:

If the New York taxable income is:	**The tax is:**
Not over $16,000	4% of the New York taxable income
Over $16,000 but not over $22,000	$640 plus 4.5% of excess over $16,000
Over $22,000 but not over $26,000	$910 plus 5.25% of excess over $22,000
Over $26,000 but not over $40,000	$1,120 plus 5.9% of excess over $26,000
Over $40,000	$1,946 plus 6.85% of excess over $40,000

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(7) For taxable years beginning in nineteen hundred ninety-six:

If the New York taxable income is:	The tax is:
Not over $11,000	4% of the New York taxable income
Over $11,000 but not over $16,000	$440 plus 5% of excess over $11,000
Over $16,000 but not over $22,000	$690 plus 6% of excess over $16,000
Over $22,000	$1,050 plus 7% of excess over $22,000

(8) For taxable years beginning in nineteen hundred ninety-five:

If the New York taxable income is:	The tax is:
Not over $13,000	4.55% of the New York taxable income
Over $13,000 but not over $19,000	$592 plus 5.55% of excess over $13,000
Over $19,000 but not over $25,000	$925 plus 6.55% of excess over $19,000
Over $25,000	$1,318 plus 7.5% of excess over $25,000

(9) For taxable years beginning after nineteen hundred eighty-nine and before nineteen hundred ninety-five:

If the New York taxable income is:	The tax is:
Not over $11,000	4% of the New York taxable income
Over $11,000 but not over $16,000	$440 plus 5% of excess over $11,000
Over $16,000 but not over $22,000	$690 plus 6% of excess over $16,000
Over $22,000 but not over $26,000	$1,050 plus 7% of excess over $22,000
Over $26,000	$1,330 plus 7.875% of excess over $26,000

(b) Resident heads of households. There is hereby imposed for each taxable year on the New York taxable income of every resident head of a household a tax determined in accordance with the following tables:

(1)(A) For taxable years beginning after two thousand eleven and before two thousand eighteen:

If the New York taxable income is:	The tax is:
Not over $12,000	4% of taxable income

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Over $12,000 but not over $16,500	$480 plus 4.5% of excess over $12,000
Over $16,500 but not over $19,500	$683 plus 5.25% of excess over $16,500
Over $19,500 but not over $30,000	$840 plus 5.90% of excess over $19,500
Over $30,000 but not over $100,000	$1,460 plus 6.45% of excess over $30,000
Over $100,000 but not over $250,000	$5,975 plus 6.65% of excess over $100,000
Over $250,000 but not over $1,500,000	$15,950 plus 6.85% of excess over $250,000
Over $1,500,000	$101,575 plus 8.82% of excess over $1,500,000

(B) For taxable years beginning after two thousand seventeen, the following brackets and dollars amounts shall apply, as adjusted by the cost of living adjustment prescribed in section six hundred one-a of this part for tax years two thousand thirteen through two thousand seventeen:

If the New York taxable income is:	The tax is:
Not over $12,000	4% of taxable income
Over $12,000 but not over $16,500	$480 plus 4.5% of excess over $12,000
Over $16,500 but not over $19,500	$683 plus 5.25% of excess over $16,500
Over $19,500 but not over $30,000	$840 plus 5.90% of excess over $19,500
Over $30,000	$1,460 plus 6.85% of excess over $30,000

(1-a) For taxable years beginning after two thousand eight and before two thousand twelve:

If the New York taxable income is:	The tax is:
Not over $11,000	4% of the New York taxable income
Over $11,000 but not over $15,000	$440 plus 4.5% of excess over $11,000
Over $15,000 but not over $17,000	$620 plus 5.25% of excess over $15,000
Over $17,000 but not over $30,000	$725 plus 5.9% of excess over $17, 000
Over $30,000 but not over $250,000	$1,492 plus 6.85% of excess over $30,000
Over $250,000 but not over $500,000	$16,562 plus 7.85% of excess over $250,000
Over $500,000	$36,187 plus 8.97% of excess over $500,000

(2) For taxable years beginning after two thousand five and before two thousand nine:

If the New York taxable income is:	The tax is:
Not over $11,000	4% of the New York taxable income
Over $11,000 but not over $15,000	$440 plus 4.5% of excess over $11,000
Over $15,000 but not over $17,000	$620 plus 5.25% of excess over $15,000
Over $17,000 but not over $30,000	$725 plus 5.9% of excess over $17,000
Over $30,000	$1,492 plus 6.85% of excess over $30,000

(3) For taxable years beginning in two thousand five:

If the New York taxable income is:	The tax is:
Not over $11,000	4% of the New York taxable income
Over $11,000 but not over $15,000	$440 plus 4.5% of excess over $11,000
Over $15,000 but not over $17,000	$620 plus 5.25% of excess over $15,000
Over $17,000 but not over $30,000	$725 plus 5.9% of excess over $17,000
Over $30,000 but not over $125,000	$1,492 plus 6.85% of excess over $30,000
Over $125,000 but not over $500,000	$8,000 plus 7.25% of excess over $125,000
Over $500,000	$35,187 plus 7.7% of excess over $500,000

(4) For taxable years beginning in two thousand four:

If the New York taxable income is:	The tax is:
Not over $11,000	4% of the New York taxable income
Over $11,000 but not over $15,000	$440 plus 4.5% of excess over $11,000
Over $15,000 but not over $17,000	$620 plus 5.25% of excess over $15,000
Over $17,000 but not over $30,000	$725 plus 5.9% of excess over $17,000
Over $30,000 but not over $125,000	$1,492 plus 6.85% of excess over $30,000
Over $125,000 but not over $500,000	$8,000 plus 7.375% of excess over $125,000
Over $500,000	$35,656 plus 7.7% of excess over $500,000

(5) For taxable years beginning in two thousand three:

If the New York taxable income is:	The tax is:

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Not over $11,000	4% of the New York taxable income
Over $11,000 but not over $15,000	$440 plus 4.5% of excess over $11,000
Over $15,000 but not over $17,000	$620 plus 5.25% of excess over $15,000
Over $17,000 but not over $30,000	$725 plus 5.9% of excess over $17,000
Over $30,000 but not over $125,000	$1,492 plus 6.85% of excess over $30,000
Over $125,000 but not over $500,000	$8,000 plus 7.5% of excess over $125,000
Over $500,000	$36,125 plus 7.7% of excess over $500,000

(6) For taxable years beginning after nineteen hundred ninety-six and before two thousand three:

If the New York taxable income is:	The tax is:
Not over $11,000	4% of the New York taxable income
Over $11,000 but not over $15,000	$440 plus 4.5% of excess over $11,000
Over $15,000 but not over $17,000	$620 plus 5.25% of excess over $15,000
Over $17,000 but not over $30,000	$725 plus 5.9% of excess over $17,000
Over $30,000	$1,492 plus 6.85% of excess over $30,000

(7) For taxable years beginning in nineteen hundred ninety-six:

If the New York taxable income is:	The tax is:
Not over $7,500	4% of the New York taxable income
Over $7,500 but not over $11,000	$300 plus 5% of excess over $7,500
Over $11,000 but not over $15,000	$475 plus 6% of excess over $11,000
Over $15,000	$715 plus 7% of excess over $15,000

(8) For taxable years beginning in nineteen hundred ninety-five:

If the New York taxable income is:	**The tax is:**
Not over $9,000	4.55% of the New York taxable income
Over $9,000 but not over $14,000	$410 plus 5.55% of excess over $9,000
Over $14,000 but not over $19,000	$687 plus 6.55% of excess over $14,000
Over $19,000	$1,015 plus 7.5% of excess over $19,000

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(9) For taxable years beginning after nineteen hundred eighty-nine and before nineteen hundred ninety-five:

If the New York taxable income is:	The tax is:
Not over $7,500	4% of the New York taxable income
Over $7,500 but not over $11,000	$300 plus 5% of excess over $7,500
Over $11,000 but not over $15,000	$475 plus 6% of excess over $11,000
Over $15,000 but not over $17,000	$715 plus 7% of excess over $15,000
Over $17,000	$855 plus 7.875% of excess over $17,000

(c) Resident unmarried individuals, resident married individuals filing separate returns and resident estates and trusts. There is hereby imposed for each taxable year on the New York taxable income of every resident individual who is not a married individual who makes a single return jointly with his spouse under subsection (b) of section six hundred fifty-one or a resident head of a household or a resident surviving spouse, and on the New York taxable income of every resident estate and trust a tax determined in accordance with the following tables:

(1)(A) For taxable years beginning after two thousand eleven and before two thousand eighteen:

If the New York taxable income is:	The tax is:
Not over $8,000	4% of taxable income
Over $8,000 but not over $11,000	$320 plus 4.5% of excess over $8,000
Over $11,000 but not over $13,000	$455 plus 5.25% of excess over $11,000
Over $13,000 but not over $20,000	$560 plus 5.90% of excess over $13,000
Over $20,000 but not over $75,000	$973 plus 6.45% of excess over $20,000
Over $75,000 but not over $200,000	$4,521 plus 6.65% of excess over $75,000
Over $200,000 but not over $1,000,000	$12,833 plus 6.85% of excess over $200,000
Over $1,000,000	$67,633 plus 8.82% of excess over $1,000,000

(B) For taxable years beginning after two thousand seventeen, the following brackets and dollars amounts shall apply, as adjusted by the cost of living adjustment prescribed in section six hundred one-a of this part for tax years two thousand thirteen through two thousand seventeen:

If the New York taxable income is:	The tax is:
Not over $8,000	4% of taxable income

Over $8,000 but not over $11,000	$320 plus 4.5% of excess over $8,000
Over $11,000 but not over $13,000	$455 plus 5.25% of excess over $11,000
Over $13,000 but not over $20,000	$560 plus 5.90% of excess over $13,000
Over $20,000	$973 plus 6.85% of excess over $20,000

(1-a) For taxable years beginning after two thousand eight and before two thousand twelve:

If the New York taxable income is:	The tax is:
Not over $8,000	4% of the New York taxable income
Over $8,000 but not over $11,000	$320 plus 4.5% of excess over $8,000
Over $11,000 but not over $13,000	$455 plus 5.25% of excess over $11,000
Over $13,000 but not over $20,000	$560 plus 5.9% of excess over $130,000
Over $20,000 but not over $200,000	$973 plus 6.85% of excess over $20,000
Over $200,000 but not over $500,000	$13,303 plus 7.85% of excess over $200,000
Over $500,000	$36,853 plus 8.97% of excess over $500,000

(2) For taxable years beginning after two thousand five and before two thousand nine:

If the New York taxable income is:	The tax is:
Not over $8,000	4% of the New York taxable income
Over $8,000 but not over $11,000	$320 plus 4.5% of excess over $8,000
Over $11,000 but not over $13,000	$455 plus 5.25% of excess over $11,000
Over $13,000 but not over $20,000	$560 plus 5.9% of excess over $13,000
Over $20,000	$973 plus 6.85% of excess over $20,000

(3) For taxable years beginning in two thousand five:

If the New York taxable income is:	The tax is:
Not over $8,000	4% of the New York taxable income
Over $8,000 but not over $11,000	$320 plus 4.5% of excess over $8,000
Over $11,000 but not over $13,000	$455 plus 5.25% of excess over $11,000
Over $13,000 but not over $20,000	$560 plus 5.9% of excess over $13,000

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Over $20,000 but not over $100,000	$973 plus 6.85% of excess over $20,000
Over $100,000 but not over $500,000	$6,453 plus 7.25% of excess over $100,000
Over $500,000	$35,453 plus 7.7% of excess over $500,000

(4) For taxable years beginning in two thousand four:

If the New York taxable income is:	The tax is:
Not over $8,000	4% of the New York taxable income
Over $8,000 but not over $11,000	$320 plus 4.5% of excess over $8,000
Over $11,000 but not over $13,000	$455 plus 5.25% of excess over $11,000
Over $13,000 but not over $20,000	$560 plus 5.9% of excess over $13,000
Over $20,000 but not over $100,000	$973 plus 6.85% of excess over $20,000
Over $100,000 but not over $500,000	$6,453 plus 7.375% of excess over $100,000
Over $500,000	$35,953 plus 7.7% of excess over $500,000

(5) For taxable years beginning in two thousand three:

If the New York taxable income is:	The tax is:
Not over $8,000	4% of the New York taxable income
Over $8,000 but not over $11,000	$320 plus 4.5% of excess over $8,000
Over $11,000 but not over $13,000	$455 plus 5.25% of excess over $11,000
Over $13,000 but not over $20,000	$560 plus 5.9% of excess over $13,000
Over $20,000 but not over $100,000	$973 plus 6.85% of excess over $20,000
Over $100,000 but not over $500,000	$6,453 plus 7.5% of excess over $100,000
Over $500,000	$36,453 plus 7.7% of excess over $500,000

(6) For taxable years beginning after nineteen hundred ninety-six and before two thousand three:

If the New York taxable income is:	The tax is:
Not over $8,000	4% of the New York taxable income
Over $8,000 but not over $11,000	$320 plus 4.5% of excess over $8,000
Over $11,000 but not over $13,000	$455 plus 5.25% of excess over $11,000

Over $13,000 but not over $20,000	$560 plus 5.9% of excess over $13,000
Over $20,000	$973 plus 6.85% of excess over $20,000

(7) For taxable years beginning in nineteen hundred ninety-six:

If the New York taxable income is:	The tax is:
Not over $5,500	4% of the New York taxable income
Over $5,500 but not over $8,000	$220 plus 5% of excess over $5,500
Over $8,000 but not over $11,000	$345 plus 6% of excess over $8,000
Over $11,000	$525 plus 7% of excess over $11,000

(8) For taxable years beginning in nineteen hundred ninety-five:

If the New York taxable income is:	The tax is:
Not over $6,500	4.55% of the New York taxable income
Over $6,500 but not over $9,500	$296 plus 5.55% of excess over $6,500
Over $9,500 but not over $12,500	$462 plus 6.55% of excess over $9,500
Over $12,500	$659 plus 7.5% of excess over $12,500

(9) For taxable years beginning after nineteen hundred eighty-nine and before nineteen hundred ninety-five:

If the New York taxable income is:	The tax is:
Not over $5,500	4% of the New York taxable income
Over $5,500 but not over $8,000	$220 plus 5% of excess over $5,500
Over $8,000 but not over $11,000	$345 plus 6% of excess over $8,000
Over $11,000 but not over $13,000	$525 plus 7% of excess over $11,000
Over $13,000	$665 plus 7.875% of excess over $13,000

(d) Tax table benefit recapture. For taxable years beginning after nineteen hundred ninety, there is hereby imposed a supplemental tax in addition to the tax imposed under subsections (a), (b) and (c) of this section for the purpose of recapturing the benefit of the tax tables contained in such subsections or section six hundred ninety-nine of this article, as the case may be. The supplemental tax shall be an amount equal to the sum of the tax table benefits in paragraphs one, two and three of this subsection multiplied by their respective fractions in such paragraphs provided, however, that paragraph two of this subsection shall not apply to taxpayers that are not subject to the second highest rate of tax.

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(1) Resident married individuals filing joint returns, resident surviving spouses, resident heads of households, resident unmarried individuals, resident married individuals filing separate returns and resident estates and trusts. (A) The tax table benefit is the difference between (i) the amount of taxable income set forth in the tax table in subsection (a), (b) or (c), of this section, as the case may be, or in section six hundred ninety-nine, as the case may be, not subject to the 6.85 percent rate of tax for the taxable year multiplied by such rate and (ii) the dollar denominated tax for such amount of taxable income set forth in the tax table applicable to the taxable year in subsection (a), (b) or (c) of this section, as the case may be, or section six hundred ninety-nine, as the case may be.

(B) The fraction is computed as follows: the numerator is the lesser of fifty thousand dollars or the excess of New York adjusted gross income for the taxable year over one hundred thousand dollars and the denominator is fifty thousand dollars.

(2) Resident married individuals filing joint returns, surviving spouses, resident heads of households, resident unmarried individuals, resident married individuals filing separate returns and resident estates and trusts. (A) The tax table benefit is the difference between (i) the amount of taxable income set forth in the tax table in subsection (a), (b) or (c) of this section, as the case may be, not subject to the second highest rate of tax for the taxable year multiplied by such rate and (ii) the second highest dollar denominated tax for such amount of taxable income set forth in the tax table applicable to the taxable year in subsection (a), (b) or (c) of this section, as the case may be, less the tax table benefit in paragraph one of this subsection.

(B) For taxable years beginning after two thousand two and before two thousand six, the fraction is computed as follows: the numerator is the lesser of fifty thousand dollars or the excess of New York adjusted gross income for the taxable year over one hundred fifty thousand dollars and the denominator is fifty thousand dollars. For taxable years beginning after two thousand eight and before two thousand twelve, the fraction is computed as follows: the numerator is the lesser of fifty thousand dollars or the excess of New York adjusted gross income for the taxable year over three hundred thousand dollars and the denominator is fifty thousand dollars.

(C) This paragraph shall only apply to taxable years beginning after two thousand two and before two thousand six and after two thousand eight and before two thousand twelve.

(3) Resident married individuals filing joint returns, surviving spouses, resident heads of households, resident unmarried individuals, resident married individuals filing separate returns and resident estates and trusts. (A) The tax table benefit is the difference between (i) the amount of taxable income set forth in the tax table in subsection (a), (b) or (c) of this section, as the case may be, not subject to the highest rate of tax for the taxable year multiplied by such rate and (ii) the highest dollar denominated tax set forth in the tax table applicable to the taxable year in subsection (a), (b) or (c) of this section, as the case may be, less the sum of the tax table benefits in paragraphs one and two of this subsection.

(B) For such taxpayers with adjusted gross income over five hundred thousand dollars, for taxable years beginning after two thousand eight and before two thousand twelve, the fraction is computed as follows: the numerator is the lesser of fifty thousand dollars or the excess of New York adjusted gross income for the taxable year over five hundred thousand dollars and the denominator is fifty thousand dollars. Provided, however, that the total tax prior to the application of any tax credits shall not exceed the highest rate of tax set forth in the tax table in subsection (a) of this section multiplied by the taxpayer's taxable income.

(C) This paragraph shall only apply to taxable years beginning after two thousand two and before two thousand six and after two thousand eight and before two thousand twelve.

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(d-1) Alternative tax table benefit recapture. Notwithstanding the provisions of subsection (d) of this section, for taxable years beginning after two thousand eleven and before two thousand eighteen, there is hereby imposed a supplemental tax in addition to the tax imposed under subsections (a), (b) and (c) of this section for the purpose of recapturing the benefit of the tax tables contained in such subsections. During these taxable years, any reference in this chapter to subsection (d) of this section shall be read as a reference to this subsection.

(1) For resident married individuals filing joint returns and resident surviving spouses, the supplemental tax shall be an amount equal to the sum of the tax table benefits described in subparagraphs (A), (B), (C) and (D) of this paragraph multiplied by their respective fractions in such subparagraphs.

(A) The tax table benefit is the difference between (i) the amount of taxable income set forth in the tax table in paragraph one of subsection (a) of this section not subject to the 6.45 percent rate of tax for the taxable year multiplied by such rate and (ii) the dollar denominated tax for such amount of taxable income set forth in the tax table applicable to the taxable year in paragraph one of subsection (a) of this section. The fraction for this subparagraph is computed as follows: the numerator is the lesser of fifty thousand dollars or the excess of New York adjusted gross income for the taxable year over one hundred thousand dollars and the denominator is fifty thousand dollars.

(B) The tax table benefit is the difference between (i) the amount of taxable income set forth in the tax table in paragraph one of subsection (a) of this section not subject to the 6.65 percent rate of tax for the taxable year multiplied by such rate and (ii) the dollar denominated tax for such amount of taxable income set forth in the tax table applicable to the taxable year in paragraph one of subsection (a) of this section less the tax table benefit in subparagraph (A) of this paragraph. The fraction for this subparagraph is computed as follows: the numerator is the lesser of fifty thousand dollars or the excess of New York adjusted gross income for the taxable year over one hundred fifty thousand dollars and the denominator is fifty thousand dollars. Provided, however, this subparagraph shall not apply to taxpayers who are not subject to the 6.65 percent tax rate.

(C) The tax table benefit is the difference between (i) the amount of taxable income set forth in the tax table in paragraph one of subsection (a) of this section not subject to the 6.85 percent rate of tax for the taxable year multiplied by such rate and (ii) the dollar denominated tax for such amount of taxable income set forth in the tax table applicable to the taxable year in paragraph one of subsection (a) of this section less the sum of the tax table benefit in subparagraphs (A) and (B) of this paragraph. The fraction for this subparagraph is computed as follows: the numerator is the lesser of fifty thousand dollars or the excess of New York adjusted gross income for the taxable year over three hundred thousand dollars and the denominator is fifty thousand dollars. Provided, however, this subparagraph shall not apply to taxpayers who are not subject to the 6.85 percent tax rate.

(D) The tax table benefit is the difference between (i) the amount of taxable income set forth in the tax table in paragraph one of subsection (a) of this section not subject to the 8.82 percent rate of tax for the taxable year multiplied by such rate and (ii) the dollar denominated tax for such amount of taxable income set forth in the tax table applicable to the taxable year in paragraph one of subsection (a) of this section less the sum of the tax table benefits in subparagraphs (A), (B) and (C) of this paragraph. The fraction for this subparagraph is computed as follows: the numerator is the lesser of fifty thousand dollars or the excess of New York adjusted gross income for the taxable year over two million dollars and the denominator is fifty thousand dollars. This subparagraph shall apply only to taxable years beginning on or after January first, two thousand twelve and before January first, two thousand eighteen.

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(E) Provided, however, the total tax prior to the application of any tax credits shall not exceed the highest rate of tax set forth in the tax tables in subsection (a) of this section multiplied by the taxpayer's taxable income.

(2) For resident heads of households, the supplemental tax shall be an amount equal to the sum of the tax table benefits described in subparagraphs (A), (B) and (C) of this paragraph multiplied by their respective fractions in such subparagraphs.

(A) The tax table benefit is the difference between (i) the amount of taxable income set forth in the tax table in paragraph one of subsection (b) of this section not subject to the 6.65 percent rate of tax for the taxable year multiplied by such rate and (ii) the dollar denominated tax for such amount of taxable income set forth in the tax table applicable to the taxable year in paragraph one of subsection (b) of this section. The fraction for this subparagraph is computed as follows: the numerator is the lesser of fifty thousand dollars or the excess of New York adjusted gross income for the taxable year over one hundred thousand dollars and the denominator is fifty thousand dollars.

(B) The tax table benefit is the difference between (i) the amount of taxable income set forth in the tax table in paragraph one of subsection (b) of this section not subject to the 6.85 percent rate of tax for the taxable year multiplied by such rate and (ii) the dollar denominated tax for such amount of taxable income set forth in the tax table applicable to the taxable year in paragraph one of subsection (b) of this section less the tax table benefit in subparagraph (A) of this paragraph. The fraction for this subparagraph is computed as follows: the numerator is the lesser of fifty thousand dollars or the excess of New York adjusted gross income for the taxable year over two hundred fifty thousand dollars and the denominator is fifty thousand dollars. Provided, however, this subparagraph shall not apply to taxpayers who are not subject to the 6.85 percent tax rate.

(C) The tax table benefit is the difference between (i) the amount of taxable income set forth in the tax table in paragraph one of subsection (b) of this section not subject to the 8.82 percent rate of tax for the taxable year multiplied by such rate and (ii) the dollar denominated tax for such amount of taxable income set forth in the tax table applicable to the taxable year in paragraph one of subsection (b) of this section less the sum of the tax table benefits in subparagraphs (A) and (B) of this paragraph. The fraction for this subparagraph is computed as follows: the numerator is the lesser of fifty thousand dollars or the excess of New York adjusted gross income for the taxable year over one million five hundred thousand dollars and the denominator is fifty thousand dollars. This subparagraph shall apply only to taxable years beginning on or after January first, two thousand twelve and before January first, two thousand eighteen.

(D) Provided, however, the total tax prior to the application of any tax credits shall not exceed the highest rate of tax set forth in the tax tables in subsection (b) of this section multiplied by the taxpayer's taxable income.

(3) For resident unmarried individuals, resident married individuals filing separate returns and resident estates and trusts, the supplemental tax shall be an amount equal to the sum of the tax table benefits described in subparagraphs (A), (B) and (C) of this paragraph multiplied by their respective fractions in such subparagraphs.

(A) The tax table benefit is the difference between (i) the amount of taxable income set forth in the tax table in paragraph one of subsection (c) of this section not subject to the 6.65 percent rate of tax for the taxable year multiplied by such rate and (ii) the dollar denominated tax for such amount of taxable income set forth in the tax table applicable to the taxable year in paragraph one of subsection (c) of this section. The fraction is computed as follows: the numerator is the lesser of fifty thousand dollars or the excess of New York adjusted gross income for the taxable year over one hundred thousand dollars and the denominator is fifty thousand dollars.

(B) The tax table benefit is the difference between (i) the amount of taxable income set forth in the tax table in paragraph one of subsection (c) of this section not subject to the 6.85 percent rate of tax for the taxable year multiplied by such rate and (ii) the dollar denominated tax for such amount of taxable income set forth in the tax table applicable to the taxable year in paragraph one of subsection (c) of this section less the tax table benefit in subparagraph (A) of this paragraph. The fraction for this subparagraph is computed as follows: the numerator is the lesser of fifty thousand dollars or the excess of New York adjusted gross income for the taxable year over two hundred thousand dollars and the denominator is fifty thousand dollars. Provided, however, this subparagraph shall not apply to taxpayers who are not subject to the 6.85 percent tax rate.

(C) The tax table benefit is the difference between (i) the amount of taxable income set forth in the tax table in paragraph one of subsection (c) of this section not subject to the 8.82 percent rate of tax for the taxable year multiplied by such rate and (ii) the dollar denominated tax for such amount of taxable income set forth in the tax table applicable to the taxable year in paragraph one of subsection (c) of this section less the sum of the tax table benefits in subparagraphs (A) and (B) of this paragraph. The fraction for this subparagraph is computed as follows: the numerator is the lesser of fifty thousand dollars or the excess of New York adjusted gross income for the taxable year over one million dollars and the denominator is fifty thousand dollars. This subparagraph shall apply only to taxable years beginning on or after January first, two thousand twelve and before January first, two thousand eighteen.

(D) Provided, however, the total tax prior to the application of any tax credits shall not exceed the highest rate of tax set forth in the tax tables in subsection (c) of this section multiplied by the taxpayer's taxable income.

(d-2) Tax table benefit recapture for tax years after two thousand seventeen. For taxable years beginning after two thousand seventeen, there is hereby imposed a supplemental tax in addition to the tax imposed under subsections (a), (b) and (c) of this section for the purpose of recapturing the benefit of the tax tables contained in such subsections. The supplemental tax shall be an amount equal to the table benefit in paragraph one of this subsection multiplied by the fraction in such paragraph. During these taxable years, any reference in this chapter to subsection (d) of this section shall be read as a reference to this subsection.

(1) Resident married individuals filing joint returns, resident surviving spouses, resident heads of households, resident unmarried individuals, resident married individuals filing separate returns and resident estates and trusts.

(A) The tax table benefit is the difference between (i) the amount of taxable income set forth in the tax table in subsection (a), (b) or (c), of this section, not subject to the 6.85 percent rate of tax for the taxable year multiplied by such rate and (ii) the dollar denominated tax for such amount of taxable income set forth in the tax table applicable to the taxable year in subsection (a), (b) or (c) of this section.

(B) The fraction is computed as follows: the numerator is the lesser of fifty thousand dollars or the excess of New York adjusted gross income for the taxable year over one hundred thousand dollars (as such amount is adjusted by the cost of living adjustment prescribed in section six hundred one-a of this part for tax years two thousand thirteen through two thousand seventeen) and the denominator is fifty thousand dollars.

(e) Nonresidents and part-year residents. (1) General. There is hereby imposed for each taxable year on the taxable income which is derived from sources in this state of every nonresident and part-year resident individual and trust and every nonresident estate a tax which shall be equal to the tax base multiplied by the New York source fraction.

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(2) Tax base. The tax base is the tax computed under subsections (a) through (d) of this section, as the case may be, reduced by the credits permitted under subsections (b), (c), (d) and (m) of section six hundred six, as if such nonresident or part-year resident individual, estate or trust were a resident subject to the provisions of part II of this article.

(3) New York source fraction. The New York source fraction is a fraction the numerator of which is such individual's, estate's or trust's New York source income determined in accordance with part III of this article and the denominator of which is such individual's New York adjusted gross income determined in accordance with part II of this article or such estate's or trust's New York adjusted gross income determined under paragraph four of this subsection.

(4) New York adjusted gross income of an estate or trust. New York adjusted gross income of an estate or trust means its federal adjusted gross income, determined under subsection (e) of section sixty-seven of the internal revenue code, [1] with the modifications provided in section six hundred eighteen, other than that portion of the modification provided in subsection three thereof which relates to section six hundred fifteen.

(f) Partners and partnerships. A partnership as such shall not be subject to tax under this article. Persons carrying on business as partners shall be liable for tax under this article only in their separate or individual capacities. As used in this article, the term “partnership” shall include, unless a different meaning is clearly required, a subchapter K limited liability company. The term “subchapter K limited liability company” shall mean a limited liability company classified as a partnership for federal income tax purposes. The term “limited liability company” means a domestic limited liability company or a foreign limited liability company, as defined in section one hundred two of the limited liability company law, a limited liability investment company formed pursuant to section five hundred seven of the banking law, or a limited liability trust company formed pursuant to section one hundred two-a of the banking law.

(g) Associations taxable as corporations. An association, trust or other unincorporated organization which is taxable as a corporation for federal income tax purposes shall not be subject to tax under this article.

(h) Exempt trusts and organizations. A trust or other unincorporated organization which by reason of its purposes or activities is exempt from federal income tax shall be exempt from tax under this article (regardless of whether subject to federal and state income tax on unrelated business taxable income).

(i) Cross references. For definitions of New York taxable income of:

(1) Resident individual, see section six hundred eleven.

(2) Resident estate or trust, see section six hundred eighteen.

Credits

(Added L.1960, c. 563 § 2. Amended L.1970, c. 1005, §§ 2, 26; L.1972, c. 1, § 1; L.1978, c. 70, § 1; L.1985, c. 29, § 17; L.1987, c. 28, § 3; L.1987, c. 333, §§ 5 to 7; L.1988, c. 44, § 1; L.1988, c. 384, § 1; L.1990, c. 190, § 154; L.1991, c. 166, §§ 139 to 141; L.1991, c. 410, § 10; L.1992, c. 55, §§ 1 to 9; L.1993, c. 57, §§ 1 to 9; L.1994, c. 170, §§ 95 to 103, 274; L.1994, c. 576, § 40; L.1995, c. 2, §§ 2, 3; L.1995, c. 637, § 9; L.1997, c. 248, § 10, eff. July 21, 1997; L.2003, c. 62, pt. Y3, § 1, eff. May 15,

2003; L.2003, c. 63, pt. R, §§ 1, 2, eff. May 15, 2003; L.2009, c. 57, pt. Z-1, §§ 1 to 3, eff. April 7, 2009; L.2011, c. 56, pt. A, §§ 1 to 8, eff. Dec. 9, 2011; L.2013, c. 59, pt. FF, §§ 1 to 9, eff. March 28, 2013.)

Notes of Decisions (16)

Footnotes

1 26 USCA § 67.

McKinney's Tax Law § 601, NY TAX § 601

Current through L.2015, chapters 1 to 13

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McKinney's Consolidated Laws of New York Annotated
Tax Law (Refs & Annos)
Chapter Sixty. Of the Consolidated Laws
Article 22. Personal Income Tax (Refs & Annos)
Part II. Residents (Refs & Annos)

McKinney's Tax Law § 620

§ 620. Credit for income tax of another state

Currentness

(a) General. A resident shall be allowed a credit against the tax otherwise due under this article for any income tax imposed for the taxable year by another state of the United States, a political subdivision of such state, the District of Columbia or a province of Canada, upon income both derived therefrom and subject to tax under this article. The term "income tax imposed" in the previous sentence shall not include the portion of such tax (determined in the manner provided for in section six hundred twenty-A) which is imposed upon the ordinary income portion (or part thereof) of a lump sum distribution which is subject to the separate tax imposed by section six hundred one-C.

(b) Limitations.

(1) The credit under this section shall not exceed the percentage of the tax otherwise due under this article determined by dividing the portion of the taxpayer's New York income subject to taxation by such other jurisdiction by the total amount of the taxpayer's New York income.

(2) The credit under this section shall not reduce the tax otherwise due under this article to an amount less than would have been due if the income subject to taxation by such other jurisdiction were excluded from the taxpayer's New York income.

(3) In the case of a taxpayer who elects to claim the foreign tax credit for federal income tax purposes, the credit under this section for income tax imposed by a province of Canada shall be allowed for that portion of the provincial tax not claimed for federal purposes for the taxable year or a preceding taxable year, provided however, to the extent the provincial tax is claimed for federal purposes for a succeeding taxable year, the credit under this section must be added back in such succeeding taxable year. The provincial tax shall be deemed to be claimed last for federal income tax purposes and for purposes of this subsection.

(c) Definition. For purposes of this section New York income means:

(1) the New York adjusted gross income of an individual, or

(2) the amount of the income of an estate or trust, determined as if the estate or trust were an individual computing his New York adjusted gross income under section six hundred twelve.

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(d) S corporation shareholders. In the case of a shareholder of an S corporation, the term “income tax” in subsection (a) of this section shall not include any such tax imposed upon or payable by the corporation, but shall include any such tax with respect to the income of the corporation imposed upon or payable by the shareholder, without regard to whether an election independent of the federal S election was required to effect such imposition upon the shareholder.

Credits

(Added L.1960, c. 563, § 2. Amended L.1962, c. 2, § 2; L.1978, c. 607, § 3; L.1987, c. 274, §§ 1, 2; L.1991, c. 166, § 4.)

Notes of Decisions (4)

McKinney's Tax Law § 620, NY TAX § 620
Current through L.2015, chapters 1 to 13

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West's North Carolina General Statutes Annotated
Chapter 105. Taxation
Subchapter I. Levy of Taxes (Refs & Annos)
Article 4. Income Tax (Refs & Annos)
Part 2. Individual Income Tax (Refs & Annos)

N.C.G.S.A. § 105-153.2

§ 105-153.2. Purpose

Effective: January 1, 2014
Currentness

The general purpose of this Part is to impose a tax for the use of the State government upon the taxable income collectible annually:

(1) Of every resident of this State.

(2) Of every nonresident individual deriving income from North Carolina sources attributable to the ownership of any interest in real or tangible personal property in this State, deriving income from a business, trade, profession, or occupation carried on in this State, or deriving income from gambling activities in this State.

Credits

Amended by Laws 1953, c. 1302, § 4; Laws 1955, c. 1350, § 18; Laws 1957, c. 1340, § 3; Laws 1959, c. 1259, § 4; Laws 1963, c. 1169, § 2; Laws 1963, c. 1186; Laws 1967, c. 1110, § 3; Laws 1989, c. 728, § 1.2; S.L. 1998-98, § 69, eff. Aug. 14, 1998; S.L. 2005-276, § 31.1(dd), eff. July 1, 2005; S.L. 2005-344, § 10.3, eff. Aug. 31. 2005. Recodified from § 105-134 by S.L. 2013-316, § 1.1(a), eff. Jan. 1, 2014.

N.C.G.S.A. § 105-153.2, NC ST § 105-153.2
The statutes and Constitution are current through Chapter 1 of the 2015 Regular Session of the General Assembly.

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West's North Carolina General Statutes Annotated
Chapter 105. Taxation
Subchapter I. Levy of Taxes (Refs & Annos)
Article 4. Income Tax (Refs & Annos)
Part 2. Individual Income Tax (Refs & Annos)

N.C.G.S.A. § 105-153.9

§ 105-153.9. Tax credits for income taxes paid to other states by individuals

Effective: January 1, 2014
Currentness

(a) An individual who is a resident of this State is allowed a credit against the taxes imposed by this Part for income taxes imposed by and paid to another state or country on income taxed under this Part, subject to the following conditions:

(1) The credit is allowed only for taxes paid to another state or country on income that is derived from sources within that state or country and is taxed under its laws irrespective of the residence or domicile of the recipient, except that whenever a taxpayer who is considered a resident of this State under this Part is considered a resident of another state or country under the laws of that state or country, the Secretary may allow a credit against the taxes imposed by this Part for taxes imposed by and paid to the other state or country on income taxed under this Part.

(2) The fraction of the gross income, as modified as provided in G.S. 105-153.5 and G.S. 105-153.6, that is subject to income tax in another state or country shall be ascertained, and the North Carolina net income tax before credit under this section shall be multiplied by that fraction. The credit allowed is either the product thus calculated or the income tax actually paid the other state or country, whichever is smaller.

(3) Receipts showing the payment of income taxes to another state or country and a true copy of a return or returns upon the basis of which the taxes are assessed shall be filed with the Secretary when the credit is claimed. If credit is claimed on account of a deficiency assessment, a true copy of the notice assessing or proposing to assess the deficiency, as well as a receipt showing the payment of the deficiency, shall be filed.

(b) If any taxes paid to another state or country for which a taxpayer has been allowed a credit under this section are at any time credited or refunded to the taxpayer, a tax equal to that portion of the credit allowed for the taxes so credited or refunded is due and payable from the taxpayer and is subject to the penalties and interest provided in Subchapter I of this Chapter.

Credits

Amended by Laws 1943, c. 400, § 4; Laws 1957, c. 1340, § 4; Laws 1963, c. 1169, § 2; Laws 1967, c. 1110, § 3; Laws 1973, c. 476, § 193; Laws 1989, c. 728, § 1.5; Laws 1989 (Reg. Sess., 1990), c. 814, § 17; S.L. 1998-98, § 92, eff. Aug. 14, 1998. S.L. 2013-414, § 5(b), eff. Jan. 1, 2012. Recodified from § 105-151 by S.L. 2013-316, § 1.1(a), eff. Jan. 1, 2014. Amended by S.L. 2013-316, § 1.3(d), eff. Jan. 1, 2014.

N.C.G.S.A. § 105-153.9, NC ST § 105-153.9
The statutes and Constitution are current through Chapter 1 of the 2015 Regular Session of the General Assembly.

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West's North Dakota Century Code Annotated
Title 57. Taxation
Chapter 57-38. Income Tax

NDCC, 57-38-30.3

§ 57-38-30.3. Individual, estate, and trust income tax

Currentness

1. A tax is hereby imposed for each taxable year upon income earned or received in that taxable year by every resident and nonresident individual, estate, and trust. A taxpayer computing the tax under this section is only eligible for those adjustments or credits that are specifically provided for in this section. Provided, that for purposes of this section, any person required to file a state income tax return under this chapter, but who has not computed a federal taxable income figure, shall compute a federal taxable income figure using a pro forma return in order to determine a federal taxable income figure to be used as a starting point in computing state income tax under this section. The tax for individuals is equal to North Dakota taxable income multiplied by the rates in the applicable rate schedule in subdivisions a through d corresponding to an individual's filing status used for federal income tax purposes. For an estate or trust, the schedule in subdivision e must be used for purposes of this subsection.

a. Single, other than head of household or surviving spouse.

If North Dakota taxable income is:	The tax is equal to:
Not over $36,250	1.22%
Over $36,250 but not over $87,850	$442.25 plus 2.27% of amount over $36, 250
Over $87,850 but not over $183,250	$1,613.57 plus 2.52% of amount over $87, 850
Over $183,250 but not over $398,350	$4,017.65 plus 2.93% of amount over $ 183,250
Over $398,350	$10,320.08 plus 3.22% of amount over $398,350

b. Married filing jointly and surviving spouse.

If North Dakota taxable income is:	The tax is equal to:
Not over $60,650	1.22%
Over $60,650 but not over $146,400	$739.93 plus 2.27% of amount over $60, 650
Over $146,400 but not over $223,050	$2,686.46 plus 2.52% of amount over $ 146,400
Over $223,050 but not over $398,350	$4,618.04 plus 2.93% of amount over $ 223,050
Over $398,350	$9,754.33 plus 3. 22% of amount over $398,350

c. Married filing separately.

If North Dakota taxable income is:	The tax is equal to:
Not over $30,325	1.22%
Over $30,325 but not over $73,200	$369.97 plus 2.27% of amount over $30, 325
Over $73,200 but not over $111,525	$1,343.23 plus 2.52% of amount over $73, 200
Over $111,525 but not over $199,175	$2,309.02 plus 2.93% of amount over $ 111,525
Over $199,175	$4,877.17 plus 3.22% of amount over $199,175

d. Head of household.

If North Dakota taxable income is:	The tax is equal to:
Not over $48,600	1.22%
Over $48,600 but not over $125,450	$592.92 plus 2.27% of amount over $48, 600
Over $125,450 but not over $203,150	$2,337.42 plus 2.52% of amount over $ 125,450
Over $203,150 but not over $398,350	$4,295.46 plus 2.93% of amount over $ 203,150
Over $398,350	$10,014.82 plus 3.22% of amount over $398,350

e. Estates and trusts.

If North Dakota taxable income is:	The tax is equal to:
Not over $2,450	1.22%
Over $2,450 but not over $5,700	$29. 89 plus 2.27% of amount over $2,450
Over $5,700 but not over $8,750	$ 103.67 plus 2.52% of amount over $5,700
Over $8,750 but not over $11,950	$ 180.53 plus 2.93% of amount over $8,750
Over $11,950	$274.29 plus 3.22% of amount over $11,950

f. For an individual who is not a resident of this state for the entire year, or for a nonresident estate or trust, the tax is equal to the tax otherwise computed under this subsection multiplied by a fraction in which:

(1) The numerator is the federal adjusted gross income allocable and apportionable to this state; and

(2) The denominator is the federal adjusted gross income from all sources reduced by the net income from the amounts specified in subdivisions a and b of subsection 2.

In the case of married individuals filing a joint return, if one spouse is a resident of this state for the entire year and the other spouse is a nonresident for part or all of the tax year, the tax on the joint return must be computed under this subdivision.

g. The tax commissioner shall prescribe new rate schedules that apply in lieu of the schedules set forth in subdivisions a through e. The new schedules must be determined by increasing the minimum and maximum dollar amounts for each income bracket for which a tax is imposed by the cost-of-living adjustment for the taxable year as determined by the secretary of the United States treasury for purposes of section 1(f) of the United States Internal Revenue Code of 1954, as amended. For this purpose, the rate applicable to each income bracket may not be changed, and the manner of applying the cost-of-living adjustment must be the same as that used for adjusting the income brackets for federal income tax purposes.

h. The tax commissioner shall prescribe an optional simplified method of computing tax under this section that may be used by an individual taxpayer who is not entitled to claim an adjustment under subsection 2 or credit against income tax liability under subsection 7.

2. For purposes of this section, "North Dakota taxable income" means the federal taxable income of an individual, estate, or trust as computed under the Internal Revenue Code of 1986, as amended, adjusted as follows:

a. Reduced by interest income from obligations of the United States and income exempt from state income tax under federal statute or United States or North Dakota constitutional provisions.

b. Reduced by the portion of a distribution from a qualified investment fund described in section 57-38-01 which is attributable to investments by the qualified investment fund in obligations of the United States, obligations of North Dakota or its political subdivisions, and any other obligation the interest from which is exempt from state income tax under federal statute or United States or North Dakota constitutional provisions.

c. Reduced by the amount equal to the earnings that are passed through to a taxpayer in connection with an allocation and apportionment to North Dakota under section 57-38-01.35.

d. Reduced by forty percent of:

(1) The excess of the taxpayer's net long-term capital gain for the taxable year over the net short-term capital loss for that year, as computed for purposes of the Internal Revenue Code of 1986, as amended. The adjustment provided by this subdivision is allowed only to the extent the net long-term capital gain is allocated to this state.

(2) Qualified dividends as defined under Internal Revenue Code section 1(h)(11), added by section 302(a) of the Jobs and Growth Tax Relief Reconciliation Act of 2003 [Pub. L. 108-27; 117 Stat. 752; 2 U.S.C. 963 et seq.], but only if taxed at a federal income tax rate that is lower than the regular federal income tax rates applicable to ordinary income. If, for any taxable year, qualified dividends are taxed at the regular federal income tax rates applicable to ordinary income, the

reduction allowed under this subdivision is equal to thirty percent of all dividends included in federal taxable income. The adjustment provided by this subdivision is allowed only to the extent the qualified dividend income is allocated to this state.

e. Increased by the amount of a lump sum distribution for which income averaging was elected under section 402 of the Internal Revenue Code of 1986 [26 U.S.C. 402], as amended. This adjustment does not apply if the taxpayer received the lump sum distribution while a nonresident of this state and the distribution is exempt from taxation by this state under federal law.

f. Increased by an amount equal to the losses that are passed through to a taxpayer in connection with an allocation and apportionment to North Dakota under section 57-38-01.35.

g. Reduced by the amount received by the taxpayer as payment for services performed when mobilized under title 10 United States Code federal service as a member of the national guard or reserve member of the armed forces of the United States. This subdivision does not apply to federal service while attending annual training, basic military training, or professional military education.

h. Reduced by income from a new and expanding business exempt from state income tax under section 40-57.1-04.

i. Reduced by interest and income from bonds issued under chapter 11-37.

j. Reduced by up to ten thousand dollars of qualified expenses that are related to a donation by a taxpayer or a taxpayer's dependent, while living, of one or more human organs to another human being for human organ transplantation. A taxpayer may claim the reduction in this subdivision only once for each instance of organ donation during the taxable year in which the human organ donation and the human organ transplantation occurs but if qualified expenses are incurred in more than one taxable year, the reduction for those expenses must be claimed in the year in which the expenses are incurred. For purposes of this subdivision:

(1) “Human organ transplantation” means the medical procedure by which transfer of a human organ is made from the body of one person to the body of another person.

(2) “Organ” means all or part of an individual's liver, pancreas, kidney, intestine, lung, or bone marrow.

(3) “Qualified expenses” means lost wages not compensated by sick pay and unreimbursed medical expenses as defined for federal income tax purposes, to the extent not deducted in computing federal taxable income, whether or not the taxpayer itemizes federal income tax deductions.

k. Increased by the amount of the contribution upon which the credit under section 57-38-01.21 is computed, but only to the extent that the contribution reduced federal taxable income.

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l. Reduced by the amount of any payment received by a veteran or beneficiary of a veteran under section 37-28-03 or 37-28-04.

m. Reduced by the amount received by a taxpayer that was paid by an employer under paragraph 4 of subdivision a of subsection 2 of section 57-38-01.25 to hire the taxpayer for a hard-to-fill position under section 57-38-01.25, but only to the extent the amount received by the taxpayer is included in federal taxable income. The reduction applies only if the employer is entitled to the credit under section 57-38-01.25. The taxpayer must attach a statement from the employer in which the employer certifies that the employer is entitled to the credit under section 57-38-01.25 and which specifically identified the type of payment and the amount of the exemption under this section.

n. Reduced by the amount up to a maximum of five thousand dollars, or ten thousand dollars if a joint return is filed, for contributions made under a higher education savings plan administered by the Bank of North Dakota, pursuant to section 6-09-38.

o. Reduced by the amount of income of a taxpayer, who resides anywhere within the exterior boundaries of a reservation situated in this state or situated both in this state and in an adjoining state and who is an enrolled member of a federally recognized Indian tribe, from activities or sources anywhere within the exterior boundaries of a reservation situated in this state or both situated in this state and in an adjoining state.

p. For married individuals filing jointly, reduced by an amount equal to the excess of the recomputed itemized deductions or standard deduction over the amount of the itemized deductions or standard deduction deducted in computing federal taxable income. For purposes of this subdivision, "itemized deductions or standard deduction" means the amount under section 63 of the Internal Revenue Code that the married individuals deducted in computing their federal taxable income and "recomputed itemized deductions or standard deduction" means an amount determined by computing the itemized deductions or standard deduction in a manner that replaces the basic standard deduction under section 63(c)(2) of the Internal Revenue Code for married individuals filing jointly with an amount equal to double the amount of the basic standard deduction under section 63(c)(2) of the Internal Revenue Code for a single individual other than a head of household and surviving spouse. If the married individuals elected under section 63(e) of the Internal Revenue Code to deduct itemized deductions in computing their federal taxable income even though the amount of the allowable standard deduction is greater, the reduction under this subdivision is not allowed. Married individuals filing jointly shall compute the available reduction under this subdivision in a manner prescribed by the tax commissioner.

3. The same filing status used when filing federal income tax returns must be used when filing state income tax returns.

4. a. A resident individual, estate, or trust is entitled to a credit against the tax imposed under this section for the amount of income tax paid by the taxpayer for the taxable year by another state or territory of the United States or the District of Columbia on income derived from sources in those jurisdictions that is also subject to tax under this section.

b. For an individual, estate, or trust that is a resident of this state for the entire taxable year, the credit allowed under this subsection may not exceed an amount equal to the tax imposed under this section multiplied by a ratio equal to federal adjusted gross income derived from sources in the other jurisdiction divided by federal adjusted gross income less the amounts under subdivisions a and b of subsection 2.

c. For an individual, estate, or trust that is a resident of this state for only part of the taxable year, the credit allowed under this subsection may not exceed the lesser of the following:

(1) The tax imposed under this chapter multiplied by a ratio equal to federal adjusted gross income derived from sources in the other jurisdiction received while a resident of this state divided by federal adjusted gross income derived from North Dakota sources less the amounts under subdivisions a and b of subsection 2.

(2) The tax paid to the other jurisdiction multiplied by a ratio equal to federal adjusted gross income derived from sources in the other jurisdiction received while a resident of this state divided by federal adjusted gross income derived from sources in the other states.

d. The tax commissioner may require written proof of the tax paid to another state. The required proof must be provided in a form and manner as determined by the tax commissioner.

5. Individuals, estates, or trusts that file an amended federal income tax return changing their federal taxable income figure for a year for which an election to file state income tax returns has been made under this section shall file an amended state income tax return to reflect the changes on the federal income tax return.

6. The tax commissioner may prescribe procedures and guidelines to prevent requiring income that had been previously taxed under this chapter from becoming taxed again because of the provisions of this section and may prescribe procedures and guidelines to prevent any income from becoming exempt from taxation because of the provisions of this section if it would otherwise have been subject to taxation under the provisions of this chapter.

7. A taxpayer filing a return under this section is entitled to the following tax credits:

a. Family care tax credit under section 57-38-01.20.

b. Renaissance zone tax credits under sections 40-63-04, 40-63-06, and 40-63-07.

c. Agricultural business investment tax credit under section 57-38.6-03.

d. Seed capital investment tax credit under section 57-38.5-03.

e. Planned gift tax credit under section 57-38-01.21.

f. Biodiesel fuel or green diesel fuel tax credits under sections 57-38-01.22 and 57-38-01.23.

g. Internship employment tax credit under section 57-38-01.24.

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h. Workforce recruitment credit under section 57-38-01.25.

i. Angel fund investment tax credit under section 57-38-01.26.

j. Microbusiness tax credit under section 57-38-01.27.

k. Marriage penalty credit under section 57-38-01.28.

l. Homestead income tax credit under section 57-38-01.29.

m. Commercial property income tax credit under section 57-38-01.30.

n. Research and experimental expenditures under section 57-38-30.5.

o. Geothermal energy device installation credit under section 57-38-01.8.

p. Long-term care partnership plan premiums income tax credit under section 57-38-29.3.

q. Employer tax credit for salary and related retirement plan contributions of mobilized employees under section 57-38-01.31.

<Text of subdivision effective for the first three taxable years beginning after December 31, 2012.>

r. Automating manufacturing processes tax credit under section 57-38-01.33.

8. A taxpayer filing a return under this section is entitled to the exemption provided under section 40-63-04.

9. a. If an individual taxpayer engaged in a farming business elects to average farm income under section 1301 of the Internal Revenue Code [26 U.S.C. 1301], the taxpayer may elect to compute tax under this subsection. If an election to compute tax under this subsection is made, the tax imposed by subsection 1 for the taxable year must be equal to the sum of the following:

(1) The tax computed under subsection 1 on North Dakota taxable income reduced by elected farm income.

(2) The increase in tax imposed by subsection 1 which would result if North Dakota taxable income for each of the three prior taxable years were increased by an amount equal to one-third of the elected farm income. However, if other provisions of this chapter other than this section were used to compute the tax for any of the three prior years, the same provisions in effect for that prior tax year must be used to compute the increase in tax under this paragraph. For purposes

of applying this paragraph to taxable years beginning before January 1, 2001, the increase in tax must be determined by recomputing the tax in the manner prescribed by the tax commissioner.

b. For purposes of this subsection, "elected farm income" means that portion of North Dakota taxable income for the taxable year which is elected farm income as defined in section 1301 of the Internal Revenue Code of 1986 [26 U.S.C. 1301], as amended, reduced by the portion of an exclusion claimed under subdivision d of subsection 2 that is attributable to a net long-term capital gain included in elected farm income.

c. The reduction in North Dakota taxable income under this subsection must be taken into account for purposes of making an election under this subsection for any subsequent taxable year.

d. The tax commissioner may prescribe rules, procedures, or guidelines necessary to administer this subsection.

10. The tax commissioner may prescribe tax tables, to be used in computing the tax according to subsection 1, if the amounts of the tax tables are based on the tax rates set forth in subsection 1. If prescribed by the tax commissioner, the tables must be followed by every individual, estate, or trust determining a tax under this section.

Credits

S.L. 1981, ch. 594, § 1; S.L. 1983, ch. 624, § 2; S.L. 1983, ch. 632, § 4; S.L. 1985, ch. 634, § 1; S.L. 1985, ch. 635, § 1; S.L. 1986, Sp. Sess., ch. 695, § 2; R.M. approved March 18, 1987; S.L. 1987, ch. 73, § 39; S.L. 1989, ch. 708, § 4; S.L. 1989, ch. 710, § 2; R.M. disapproved Dec. 5, 1989; S.L. ch. 710, § 2; S.L. 1991, ch. 740; S.L. 1991, ch. 671, § 3; S.L. 1993, ch. 72, § 10; S.L. 1993, ch. 269, § 3; S.L. 1997, ch. 490, §§ 6, 7; S.L. 1997, ch. 492, § 2; S.L. 1999, ch. 31, § 6; S.L. 1999, ch. 369, § 11; S.L. 1999, ch. 512, § 1; S.L. 2001, ch. 488, § 53; S.L. 2001, ch. 522, § 2; S.L. 2001, ch. 526, § 1; S.L. 2001, ch. 527, § 1; S.L. 2001, ch. 528, § 1; S.L. 2003, ch. 96, § 20; S.L. 2003, ch. 524, § 4; S.L. 2003, ch. 526, § 2; S.L. 2003, ch. 527, § 2; S.L. 2003, ch. 529, § 2; S.L. 2003, ch. 530, § 1; S.L. 2005, ch. 94, § 4; S.L. 2005, ch. 317, § 10; S.L. 2005, ch. 557, § 2; S.L. 2005, ch. 558, § 2; S.L. 2005, ch. 560, §§ 3, 4; S.L. 2005, ch. 561, § 1; S.L. 2005, ch. 562, § 1; S.L. 2007, ch. 18, § 46, eff. Jan. 1, 2007; S.L. 2007, ch. 89, § 3, eff. Jan. 1, 2007; S.L. 2007, ch. 513, § 2, eff. Jan. 1, 2007; S.L. 2007, ch. 519, § 2, eff. Jan. 1, 2007; S.L. 2007, ch. 520, § 8, eff. Jan. 1, 2007; S.L. 2007, ch. 521, § 2, eff. Jan. 1, 2007; S.L. 2007, ch. 522, § 1, eff. Jan. 1, 2007; S.L. 2007, ch. 523, § 1, eff. Jan. 1, 2007; S.L. 2009, ch. 535, § 5, eff. Jan. 1, 2009; S.L. 2009, ch. 545, § 26, eff. Jan. 1, 2009; S.L. 2009, ch. 549, § 2, eff. Jan. 1, 2009; S.L. 2009, ch. 550, § 2, eff. Jan. 1, 2009; S.L. 2009, ch. 551, § 1, eff. Jan. 1, 2009; S.L. 2009, ch. 552, § 1, eff. Jan. 1, 2009; S.L. 2011, ch. 50, § 13, eff. Jan. 1, 2013; S.L. 2011, ch. 398, § 7, eff. Jan. 1, 2011; S.L. 2011, ch. 457, § 7, eff. Jan. 1, 2011; S.L. 2011, ch. 459, § 8, eff. Jan. 1, 2011; S.L. 2011, ch. 460, § 10, eff. July 1, 2011; S.L. 2011, ch. 462, § 1, eff. Jan. 1, 2011; S.L. 2011, ch. 463, § 1, eff. Jan. 1, 2011; S.L. 2013, ch. 449, § 12, eff. Jan. 1, 2013; S.L. 2013, ch. 451, § 4, eff. Jan. 1, 2013.

NDCC 57-38-30.3, ND ST 57-38-30.3
Current through all 2013 legislation and HB 1104 and HB 1105 of the 2015 Regular Session of the 64th Legislative Assembly

End of Document

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NDCC, 57-59-01

§ 57-59-01. Multistate tax compact

Currentness

The multistate tax compact is hereby entered into law and entered into with all jurisdictions legally joining therein, in the form substantially as follows:

MULTISTATE TAX COMPACT

ARTICLE I--PURPOSES
The purposes of this compact are to:

1. Facilitate proper determination of state and local tax liability of multistate taxpayers, including the equitable apportionment of tax bases and settlement of apportionment disputes.

2. Promote uniformity or compatibility in significant components of tax systems.

3. Facilitate taxpayer convenience and compliance in the filing of tax returns and in other phases of tax administration.

4. Avoid duplicative taxation.

ARTICLE II--DEFINITIONS
As used in this compact:

1. “Capital stock tax” means a tax measured in any way by the capital of a corporation considered in its entirety.

2. “Gross receipts tax” means a tax, other than a sales tax, which is imposed on or measured by the gross volume of business, in terms of gross receipts or in other terms, and in the determination of which no deduction is allowed which would constitute the tax an income tax.

3. “Income tax” means a tax imposed on or measured by net income including any tax imposed on or measured by an amount arrived at by deducting expenses from gross income, one or more forms of which expenses are not specifically and directly related to particular transactions.

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4. “Sales tax” means a tax imposed with respect to the transfer for a consideration of ownership, possession, or custody of tangible personal property or the rendering of services measured by the price of the tangible personal property transferred or services rendered and which is required by state or local law to be separately stated from the sales price by the seller, or which is customarily separately stated from the sales price, but does not include a tax imposed exclusively on the sale of a specifically identified commodity or article or class of commodities or articles.

5. “State” means a state of the United States, the District of Columbia, the commonwealth of Puerto Rico, or any territory or possession of the United States.

6. “Subdivision” means any governmental unit or special district of a state.

7. “Tax” means an income tax, capital stock tax, gross receipts tax, sales tax, use tax, and any other tax which has a multistate impact, except that the provisions of articles III, IV, and V of this compact shall apply only to the taxes specifically designated therein and the provisions of article IX of this compact shall apply only in respect to determinations pursuant to article IV.

8. “Taxpayer” means any corporation, partnership, firm, association, governmental unit, or agency or person acting as a business entity in more than one state.

9. “Use tax” means a nonrecurring tax, other than a sales tax, which (a) is imposed on or with respect to the exercise or enjoyment of any right or power over tangible personal property incident to the ownership, possession, or custody of that property or the leasing of that property from another including any consumption, keeping, retention, or other use of tangible personal property, and (b) is complementary to a sales tax.

ARTICLE III--ELEMENTS OF INCOME TAX LAWS

Taxpayer Option, State and Local Taxes.

1. Any taxpayer subject to an income tax whose income is subject to apportionment and allocation for tax purposes pursuant to the laws of a party state or pursuant to the laws of subdivisions in two or more party states may elect to apportion and allocate the taxpayer's income in the manner provided by the laws of such state or by the laws of such states and subdivisions without reference to this compact, or may elect to apportion and allocate in accordance with article IV. This election for any tax year may be made in all party states or subdivisions thereof or in any one or more of the party states or subdivisions thereof without reference to the election made in the others. For the purposes of this subsection, taxes imposed by subdivisions shall be considered separately from state taxes and the apportionment and allocation also may be applied to the entire tax base. In no instance wherein article IV is employed for all subdivisions of a state may the sum of all apportionments and allocations to subdivisions within a state be greater than the apportionment and allocation that would be assignable to that state if the apportionment or allocation were being made with respect to a state income tax.

Taxpayer Option, Short Form.

2. Each party state or any subdivision thereof which imposes an income tax shall provide by law that any taxpayer required to file a return, whose only activities within the taxing jurisdiction consist of sales and do not include owning or renting real estate or tangible personal property, and whose dollar volume of gross sales made during the tax year within the state or subdivision, as the case may be, is not in excess of one hundred thousand dollars may elect to report and pay any tax due on the basis of a percentage of such volume, and shall adopt rates which shall produce a tax which reasonably approximates the tax otherwise due. The multistate tax commission, not more than once in five years, may adjust the one hundred thousand dollar

figure in order to reflect such changes as may occur in the real value of the dollar, and such adjusted figure, upon adoption by the commission, shall replace the one hundred thousand dollar figure specifically provided herein. Each party state and subdivision thereof may make the same election available to taxpayers additional to those specified in this subsection.

Coverage.

3. Nothing in this article relates to the reporting or payment of any tax other than an income tax.

ARTICLE IV--DIVISION OF INCOME

1. As used in this article, unless the context otherwise requires:

(a) “Business income” means income arising from transactions and activity in the regular course of the taxpayer's trade or business and includes income from tangible and intangible property if the acquisition, management, and disposition of the property constitute integral parts of the taxpayer's regular trade or business operations.

(b) “Commercial domicile” means the principal place from which the trade or business of the taxpayer is directed or managed.

(c) “Compensation” means wages, salaries, commissions, and any other form of remuneration paid to employees for personal services.

(d) “Financial organization” means any bank, trust company, savings bank, industrial bank, land bank, safe deposit company, private banker, savings and loan association, credit union, cooperative bank, small loan company, sales finance company, investment company, or any type of insurance company.

(e) “Nonbusiness income” means all income other than business income.

(f) “Public utility” means any business entity (1) which owns or operates any plant, equipment, property, franchise, or license for the transmission of communications, transportation of goods or persons, except by pipeline, or the production, transmission, sale, delivery, or furnishing of electricity, water, or steam; and (2) whose rates of charges for goods or services have been established or approved by a federal, state, or local government or governmental agency.

(g) “Sales” means all gross receipts of the taxpayer not allocated under subsections of this article.

(h) “State” means any state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, any territory or possession of the United States, and any foreign country or political subdivision thereof.

(i) “This state” means the state in which the relevant tax return is filed or, in the case of application of this article to the apportionment and allocation of income for local tax purposes, the subdivision or local taxing district in which the relevant tax return is filed.

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2. Any taxpayer having income from business activity which is taxable both within and without this state, other than activity as a financial organization or public utility or the rendering of purely personal services by an individual, shall allocate and apportion that taxpayer's net income as provided in this article. If a taxpayer has income from business activity as a public utility but derives the greater percentage of the taxpayer's income from activities subject to this article, the taxpayer may elect to allocate and apportion the taxpayer's entire net income as provided in this article.

3. For purposes of allocation and apportionment of income under this article, a taxpayer is taxable in another state if (a) in that state the taxpayer is subject to a net income tax, a franchise tax measured by net income, a franchise tax for the privilege of doing business, or a corporate stock tax, or (b) that state has jurisdiction to subject the taxpayer to a net income tax regardless of whether, in fact, the state does or does not.

4. Rents and royalties from real or tangible personal property, capital gains, interest, dividends, or patent or copyright royalties, to the extent that they constitute nonbusiness income, shall be allocated as provided in subsections 5 through 8 of this article.

5. (a) Net rents and royalties from real property located in this state are allocable to this state.

(b) Net rents and royalties from tangible personal property are allocable to this state: (1) if and to the extent that the property is utilized in this state, or (2) in their entirety if the taxpayer's commercial domicile is in this state and the taxpayer is not organized under the laws of or taxable in the state in which the property is utilized.

(c) The extent of utilization of tangible personal property in a state is determined by multiplying the rents and royalties by a fraction, the numerator of which is the number of days of physical location of the property in the state during the rental or royalty period in the taxable year and the denominator of which is the number of days of physical location of the property everywhere during all rental or royalty periods in the taxable year. If the physical location of the property during the rental or royalty period is unknown or unascertainable by the taxpayer, tangible personal property is utilized in the state in which the property was located at the time the rental or royalty payer obtained possession.

6. (a) Capital gains and losses from sales of real property located in this state are allocable to this state.

(b) Capital gains and losses from sales of tangible personal property are allocable to this state if (1) the property had a situs in this state at the time of the sale, or (2) the taxpayer's commercial domicile is in this state and the taxpayer is not taxable in the state in which the property had a situs.

(c) Capital gains and losses from sales of intangible personal property are allocable to this state if the taxpayer's commercial domicile is in this state.

7. Interest and dividends are allocable to this state if the taxpayer's commercial domicile is in this state.

8. (a) Patent and copyright royalties are allocable to this state: (1) if and to the extent that the patent or copyright is utilized by the payer in this state, or (2) if and to the extent that 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 this state.

(b) 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 the basis of receipts from patent royalties does not permit allocation to states or if the accounting procedures do not reflect states of utilization, the patent is utilized in the state in which the taxpayer's commercial domicile is located.

(c) A copyright is utilized in a state to the extent that printing or other publication originates in the state. If the basis of receipts from copyright royalties does not permit allocation to states or if the accounting procedures do not reflect states of utilization, the copyright is utilized in the state in which the taxpayer's commercial domicile is located.

9. All business income shall be apportioned to this state by multiplying the income by a fraction, the numerator of which is the property factor plus the payroll factor plus the sales factor, and the denominator of which is three.

10. The property factor is a fraction, the numerator of which is the average value of the taxpayer's real and tangible personal property owned or rented and used in this state during the tax period and the denominator of which is the average value of all the taxpayer's real and tangible personal property owned or rented and used during the tax period.

11. Property owned by the taxpayer is valued at its original cost. Property rented by the taxpayer is valued at eight times the net annual rental rate. Net annual rental rate is the annual rental rate paid by the taxpayer less any annual rental rate received by the taxpayer from subrentals.

12. The average value of property shall be determined by averaging the values at the beginning and ending of the tax period but the tax administrator may require the averaging of monthly values during the tax period if reasonably required to reflect properly the average value of the taxpayer's property.

13. The payroll factor is a fraction, the numerator of which is the total amount paid in this state during the tax period by the taxpayer for compensation and the denominator of which is the total compensation paid everywhere during the tax period.

14. Compensation is paid in this state if:

(a) The individual's service is performed entirely within the state;

(b) The individual's service is performed both within and without the state, but the service performed without the state is incidental to the individual's service within the state; or

(c) Some of the service is performed in the state and (1) the base of operations or, if there is no base of operations, the place from which the service is directed or controlled is in the state, or (2) the base of operations or the place from which

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the service is directed or controlled is not in any state in which some part of the service is performed, but the individual's residence is in this state.

15. 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 of the taxpayer everywhere during the tax period.

16. Sales of tangible personal property are in this state if:

(a) The property is delivered or shipped to a purchaser, other than the United States government, within this state regardless of the f.o.b. point or other conditions of the sale; or

(b) The property is shipped from an office, store, warehouse, factory, or other place of storage in this state and (1) the purchaser is the United States government, or (2) the taxpayer is not taxable in the state of the purchaser.

17. Sales, other than sales of tangible personal property, are in this state if:

(a) The income-producing activity is performed in this state; or

(b) 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.

18. If the allocation and apportionment provisions of this article do not fairly represent the extent of the taxpayer's business activity in this state, the taxpayer may petition for or the tax administrator may require, in respect to all or any part of the taxpayer's business activity, if reasonable:

(a) Separate accounting;

(b) The exclusion of any one or more of the factors;

(c) The inclusion of one or more additional factors which will fairly represent the taxpayer's business activity in this state; or

(d) The employment of any other method to effectuate an equitable allocation and apportionment of the taxpayer's income.

ARTICLE V--ELEMENTS OF SALES AND USE TAX LAWS

Tax Credit.

1. Each purchaser liable for a use tax on tangible personal property shall be entitled to full credit for the combined amount or amounts of legally imposed sales or use taxes paid by the purchaser with respect to the same property to another state and any subdivision thereof. The credit shall be applied first against the amount of any use tax due the state, and any unused portion of the credit shall then be applied against the amount of any use tax due a subdivision.

Exemption Certificates, Vendors May Rely.

2. Whenever a vendor receives and accepts in good faith from a purchaser a resale or other exemption certificate or other written evidence of exemption authorized by the appropriate state or subdivision taxing authority, the vendor shall be relieved of liability for a sales or use tax with respect to the transaction.

ARTICLE VI--THE COMMISSION

Organization and Management.

1. (a) The multistate tax commission is hereby established. It shall be composed of one "member" from each party state who shall be the head of the state agency charged with the administration of the types of taxes to which this compact applies. If there is more than one such agency the state shall provide by law for the selection of the commission member from the heads of the relevant agencies. State law may provide that a member of the commission be represented by an alternate but only if there is on file with the commission written notification of the designation and identity of the alternate. The attorney general of each party state or the attorney general's designee, or other counsel if the laws of the party state specifically provide, shall be entitled to attend the meetings of the commission, but shall not vote. Such attorneys general, designees, or other counsel shall receive all notices of meetings required under subdivision e of subsection 1 of this article.

(b) Each party state shall provide by law for the selection of representatives from its subdivisions affected by this compact to consult with the commission member from that state.

(c) Each member shall be entitled to one vote. The commission shall not act unless a majority of the members are present, and no action shall be binding unless approved by a majority of the total number of members.

(d) The commission shall adopt an official seal to be used as it may provide.

(e) The commission shall hold an annual meeting and such other regular meetings as its bylaws may provide and such special meetings as its executive committee may determine. The commission bylaws shall specify the dates of the annual and any other regular meetings, and shall provide for the giving of notice of annual, regular, and special meetings. Notices of special meetings shall include the reasons therefor and an agenda of the items to be considered.

(f) The commission shall elect annually, from among its members, a chairman, a vice chairman, and a treasurer. The commission shall appoint an executive director who shall serve at its pleasure, and it shall fix the executive director's duties and compensation. The executive director shall be secretary of the commission. The commission shall make provision for the bonding of such of its officers and employees as it may deem appropriate.

(g) Irrespective of the civil service, personnel, or other merit system laws of any party state, the executive director shall appoint or discharge such personnel as may be necessary for the performance of the functions of the commission and shall fix their duties and compensation. The commission bylaws shall provide for personnel policies and programs.

(h) The commission may borrow, accept, or contract for the services of personnel from any state, the United States, or any other governmental entity.

(i) The commission may accept for any of its purposes and functions any and all donations and grants of money, equipment, supplies, materials, and services, conditional or otherwise, from any governmental entity, and may utilize and dispose of the same.

(j) The commission may establish one or more offices for the transacting of its business.

(k) The commission shall adopt bylaws for the conduct of its business. The commission shall publish its bylaws in convenient form, and shall file a copy of the bylaws and any amendments thereto with the appropriate agency or officer in each of the party states.

(l) The commission annually shall make to the governor and legislature of each party state a report covering its activities for the preceding year. Any donation or grant accepted by the commission or services borrowed shall be reported in the annual report of the commission, and shall include the nature, amount, and conditions, if any, of the donation, gift, grant, or services borrowed and the identity of the donor or lender. The commission may make additional reports as it may deem desirable.

Committees.

2. (a) To assist in the conduct of its business when the full commission is not meeting, the commission shall have an executive committee of seven members, including the chairman, vice chairman, treasurer, and four other members elected annually by the commission. The executive committee subject to the provisions of this compact and consistent with the policies of the commission, shall function as provided in the bylaws of the commission.

(b) The commission may establish advisory and technical committees, membership on which may include private persons and public officials, in furthering any of its activities. Such committees may consider any matter of concern to the commission, including problems of special interest to any party state and problems dealing with particular types of taxes.

(c) The commission may establish such additional committees as its bylaws may provide.

Powers.

3. In addition to powers conferred elsewhere in this compact, the commission shall have power to:

(a) Study state and local tax systems and particular types of state and local taxes.

(b) Develop and recommend proposals for an increase in uniformity or compatibility of state and local tax laws with a view toward encouraging the simplification and improvement of state and local tax law and administration.

(c) Compile and publish information as in its judgment would assist the party states in implementation of the compact and taxpayers in complying with state and local tax laws.

(d) Do all things necessary and incidental to the administration of its functions pursuant to this compact.

Finance.

4. (a) The commission shall submit to the governor or designated officer or officers of each party state a budget of its estimated expenditures for such period as may be required by the laws of that state for presentation to the legislature thereof.

(b) Each of the commission's budgets of estimated expenditures shall contain specific recommendations of the amounts to be appropriated by each of the party states. The total amount of appropriations requested under any such budget shall be apportioned among the party states as follows: one-tenth in equal shares; and the remainder in proportion to the amount of revenue collected by each party state and its subdivisions from income taxes, capital stock taxes, gross receipts taxes, and sales and use taxes. In determining such amounts, the commission shall employ such available public sources of information as, in its judgment, present the most equitable and accurate comparisons among the party states. Each of the commission's budgets of estimated expenditures and requests for appropriations shall indicate the sources used in obtaining information employed in applying the formula contained in this subsection.

(c) The commission shall not pledge the credit of any party state. The commission may meet any of its obligations in whole or in part with funds available to it under subdivision i of subsection 1 of this article; provided, that the commission takes specific action setting aside such funds prior to incurring any obligation to be met in whole or in part in such manner. Except where the commission makes use of funds available to it under subdivision i of subsection 1, the commission shall not incur any obligation prior to the allotment of funds by the party states adequate to meet the same.

(d) The commission shall keep accurate accounts of all receipts and disbursements. The receipts and disbursements of the commission shall be subject to the audit and accounting procedures established under its bylaws. All receipts and disbursements of funds handled by the commission shall be audited yearly by a certified or licensed public accountant and the report of the audit shall be included in and become part of the annual report of the commission.

(e) The accounts of the commission shall be open at any reasonable time for inspection by duly constituted officers of the party states and by any persons authorized by the commission.

(f) Nothing contained in this article shall be construed to prevent commission compliance with laws relating to audit or inspection of accounts by or on behalf of any government contributing to the support of the commission.

ARTICLE VII--UNIFORM REGULATIONS AND FORMS

1. Whenever any two or more party states, or subdivisions of party states, have uniform or similar provisions of law relating to an income tax, the commission may adopt uniform regulations for any phase of the administration of such law, including assertion of jurisdiction to tax, or prescribing uniform tax forms. The commission may also act with respect to the provisions of article IV of this compact.

2. Prior to the adoption of any regulation, the commission shall:

(a) As provided in its bylaws, hold at least one public hearing on due notice to all affected party states and subdivisions thereof and to all taxpayers and other persons who have made timely request of the commission for advance notice of its regulation-making proceedings.

(b) Afford all affected party states and subdivisions and interested persons an opportunity to submit relevant written data and views, which shall be considered fully by the commission.

3. The commission shall submit any regulations adopted by it to the appropriate officials of all party states and subdivisions to which they might apply. Each such state and subdivision shall consider any such regulation for adoption in accordance with its own laws and procedures.

ARTICLE VIII--INTERSTATE AUDITS

1. This article shall be in force only in those party states that specifically provide therefor by statute.

2. Any party state or subdivision thereof desiring to make or participate in an audit of any accounts, books, papers, records, or other documents may request the commission to perform the audit on its behalf. In responding to the request, the commission shall have access to and may examine, at any reasonable time, such accounts, books, papers, records, and other documents and any relevant property or stock of merchandise. The commission may enter into agreements with party states or their subdivisions for assistance in performance of the audit. The commission shall make charges, to be paid by the state or local government or governments for which it performs the service, for any audits performed by it in order to reimburse itself for the actual costs incurred in making the audit.

3. The commission may require the attendance of any person within the state where it is conducting an audit or part thereof at a time and place fixed by it within such state for the purpose of giving testimony with respect to any account, book, paper, document, other record, property, or stock of merchandise being examined in connection with the audit. If the person is not within the jurisdiction, the person may be required to attend for such purpose at any time and place fixed by the commission within the state of which the person is a resident; provided, that such state has adopted this article.

4. The commission may apply to any court having power to issue compulsory process for orders in aid of its powers and responsibilities pursuant to this article and any and all such courts shall have jurisdiction to issue such orders. Failure of any person to obey any such order shall be punishable as contempt of the issuing court. If the party or subject matter on account of which the commission seeks an order is within the jurisdiction of the court to which application is made, such application may be to a court in the state or subdivision on behalf of which the audit is being made or a court in the state in which the object of the order being sought is situated. The provisions of this subsection apply only to courts in a state that has adopted this article.

5. The commission may decline to perform any audit requested if it finds that its available personnel or other resources are insufficient for the purpose or that, in the terms requested, the audit is impracticable of satisfactory performance. If the commission, on the basis of its experience, has reason to believe that an audit of a particular taxpayer, either at a particular time or on a particular schedule, would be of interest to a number of party states or their subdivisions, it may offer to make the audit or audits, the offer to be contingent on sufficient participation therein as determined by the commission.

6. Information obtained by any audit pursuant to this article shall be confidential and available only for tax purposes to party states, their subdivisions, or the United States. Availability of information shall be in accordance with the laws of the states or subdivisions on whose account the commission performs the audit, and only through the appropriate agencies or officers of such states or subdivisions. Nothing in this article shall be construed to require any taxpayer to keep records for any period not otherwise required by law.

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7. Other arrangements made or authorized pursuant to law for cooperative audit by or on behalf of the party states or any of their subdivisions are not superseded or invalidated by this article.

8. In no event shall the commission make any charge against a taxpayer for an audit.

9. As used in this article, "tax", in addition to the meaning ascribed to it in article II, means any tax or license fee imposed in whole or in part for revenue purposes.

ARTICLE IX--ARBITRATION

1. Whenever the commission finds a need for settling disputes concerning apportionments and allocations by arbitration, it may adopt a regulation placing this article in effect, notwithstanding the provisions of article VII.

2. The commission shall select and maintain an arbitration panel composed of officers and employees of state and local governments and private persons who shall be knowledgeable and experienced in matters of tax law and administration.

3. Whenever a taxpayer who has elected to employ article IV, or whenever the laws of the party state or subdivision thereof are substantially identical with the relevant provisions of article IV, the taxpayer, by written notice to the commission and to each party state or subdivision thereof that would be affected, may secure arbitration of an apportionment or allocation, if the taxpayer is dissatisfied with the final administrative determination of the tax agency of the state or subdivision with respect thereto on the ground that it would subject the taxpayer to double or multiple taxation by two or more party states or subdivisions thereof. Each party state and subdivision thereof hereby consents to the arbitration as provided herein, and agrees to be bound thereby.

4. The arbitration board shall be composed of one person selected by the taxpayer, one by the agency or agencies involved, and one member of the commission's arbitration panel. If the agencies involved are unable to agree on the person to be selected by them, such person shall be selected by lot from the total membership of the arbitration panel. The two persons selected for the board in the manner provided by the foregoing provisions of this subsection shall jointly select the third member of the board. If they are unable to agree on the selection, the third member shall be selected by lot from among the total membership of the arbitration panel. No member of a board selected by lot shall be qualified to serve if that member is an officer or employee or is otherwise affiliated with any party to the arbitration proceeding. Residence within the jurisdiction of a party to the arbitration proceeding shall not constitute affiliation within the meaning of this subsection.

5. The board may sit in any state or subdivision party to the proceeding, in the state of the taxpayer's incorporation, residence, or domicile, in any state where the taxpayer does business, or in any place that it finds most appropriate for gaining access to evidence relevant to the matter before it.

6. The board shall give due notice of the times and places of its hearings. The parties shall be entitled to be heard, to present evidence, and to examine and cross-examine witnesses. The board shall act by majority vote.

7. The board shall have power to administer oaths, take testimony, subpoena, and require the attendance of witnesses and the production of accounts, books, papers, records, and other documents, and issue commissions to take testimony. Subpoenas

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may be signed by any member of the board. In case of failure to obey a subpoena, and upon application by the board, any judge of a court of competent jurisdiction of the state in which the board is sitting or in which the person to whom the subpoena is directed may be found may make an order requiring compliance with the subpoena, and the court may punish failure to obey the order as a contempt. The provisions of this subsection apply only in states that have adopted this article.

8. Unless the parties otherwise agree the expenses and other costs of the arbitration shall be assessed and allocated among the parties by the board in such manner as it may determine. The commission shall fix a schedule of compensation for members of arbitration boards and of other allowable expenses and costs. No officer or employee of a state or local government who serves as a member of a board shall be entitled to compensation therefor unless that person is required on account of that person's service to forego the regular compensation attaching to that person's public employment, but any such board member shall be entitled to expenses.

9. The board shall determine the disputed apportionment or allocation and any matters necessary thereto. The determinations of the board shall be final for purposes of making the apportionment or allocation, but for no other purpose.

10. The board shall file with the commission and with each tax agency represented in the proceeding: the determination of the board; the board's written statement of its reasons therefor; the record of the board's proceedings; and any other documents required by the arbitration rules of the commission to be filed.

11. The commission shall publish the determinations of boards together with the statements of the reasons therefor.

12. The commission shall adopt and publish rules of procedure and practice and shall file a copy of such rules and of any amendment thereto with the appropriate agency or officer in each of the party states.

13. Nothing contained herein shall prevent at any time a written compromise of any matter or matters in dispute, if otherwise lawful, by the parties to the arbitration proceeding.

ARTICLE X--ENTRY INTO FORCE AND WITHDRAWAL

1. This compact shall enter into force when enacted into law by any seven states. Thereafter, this compact shall become effective as to any other state upon its enactment thereof. The commission shall arrange for notification of all party states whenever there is a new enactment of the compact.

2. Any party state may withdraw from this compact by enacting a statute repealing the same. No withdrawal shall affect any liability already incurred by or chargeable to a party state prior to the time of such withdrawal.

3. No proceeding commenced before an arbitration board prior to the withdrawal of a state and to which the withdrawing state or any subdivision thereof is a party shall be discontinued or terminated by the withdrawal, nor shall the board thereby lose jurisdiction over any of the parties to the proceeding necessary to make a binding determination therein.

ARTICLE XI--EFFECT ON OTHER LAWS AND JURISDICTION

Nothing in this compact shall be construed to:

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1. Affect the power of any state or subdivision thereof to fix rates of taxation, except that a party state shall be obligated to implement subsection 2 of article III of this compact.

2. Apply to any tax or fixed fee imposed for the registration of a motor vehicle or any tax on motor fuel, other than a sales tax; provided, that the definition of "tax" in subsection 9 of article VIII may apply for the purposes of that article and the commission's powers of study and recommendation pursuant to subsection 3 of article VI may apply.

3. Withdraw or limit the jurisdiction of any state or local court or administrative officer or body with respect to any person, corporation, limited liability company, or other entity or subject matter, except to the extent that such jurisdiction is expressly conferred by or pursuant to this compact upon another agency or body.

4. Supersede or limit the jurisdiction of any court of the United States.

ARTICLE XII--CONSTRUCTION AND SEVERABILITY

This compact shall be liberally construed so as to effectuate the purposes thereof. The provisions of this compact shall be severable and if any phrase, clause, sentence, or provision of this compact is declared to be contrary to the constitution of any state or of the United States or the applicability thereof to any government, agency, person, or circumstance is held invalid, the validity of the remainder of this compact and the applicability thereof to any government, agency, person, or circumstance shall not be affected thereby. If this compact shall be held contrary to the constitution of any state participating therein, the compact shall remain in full force and effect as to the remaining party states and in full force and effect as to the state affected as to all severable matters.

Credits

S.L. 1969, ch. 537, § 1; S.L. 1993, ch. 54, § 106.

NDCC 57-59-01, ND ST 57-59-01

Current through all 2013 legislation and HB 1104 and HB 1105 of the 2015 Regular Session of the 64th Legislative Assembly

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68 Okl.St.Ann. § 2355

§ 2355. Tax imposed--Classes of taxpayers

Currentness

A. Individuals. For all taxable years beginning after December 31, 1998, and before January 1, 2006, a tax is hereby imposed upon the Oklahoma taxable income of every resident or nonresident individual, which tax shall be computed at the option of the taxpayer under one of the two following methods:

1. METHOD 1.

a. Single individuals and married individuals filing separately not deducting federal income tax:

(1) 1/2% tax on first $1,000.00 or part thereof,

(2) 1% tax on next $1,500.00 or part thereof,

(3) 2% tax on next $1,250.00 or part thereof,

(4) 3% tax on next $1,150.00 or part thereof,

(5) 4% tax on next $1,300.00 or part thereof,

(6) 5% tax on next $1,500.00 or part thereof,

(7) 6% tax on next $2,300.00 or part thereof, and

(8) (a) for taxable years beginning after December 31, 1998, and before January 1, 2002, 6.75% tax on the remainder,

(b) for taxable years beginning on or after January 1, 2002, and before January 1, 2004, 7% tax on the remainder, and

(c) for taxable years beginning on or after January 1, 2004, 6.65% tax on the remainder.

b. Married individuals filing jointly and surviving spouse to the extent and in the manner that a surviving spouse is permitted to file a joint return under the provisions of the Internal Revenue Code and heads of households as defined in the Internal Revenue Code [1] not deducting federal income tax:

(1) 1/2% tax on first $2,000.00 or part thereof,

(2) 1% tax on next $3,000.00 or part thereof,

(3) 2% tax on next $2,500.00 or part thereof,

(4) 3% tax on next $2,300.00 or part thereof,

(5) 4% tax on next $2,400.00 or part thereof,

(6) 5% tax on next $2,800.00 or part thereof,

(7) 6% tax on next $6,000.00 or part thereof, and

(8) (a) for taxable years beginning after December 31, 1998, and before January 1, 2002, 6.75% tax on the remainder,

(b) for taxable years beginning on or after January 1, 2002, and before January 1, 2004, 7% tax on the remainder, and

(c) for taxable years beginning on or after January 1, 2004, 6.65% tax on the remainder.

2. METHOD 2.

a. Single individuals and married individuals filing separately deducting federal income tax:

(1) 1/2% tax on first $1,000.00 or part thereof,

(2) 1% tax on next $1,500.00 or part thereof,

(3) 2% tax on next $1,250.00 or part thereof,

(4) 3% tax on next $1,150.00 or part thereof,

(5) 4% tax on next $1,200.00 or part thereof,

(6) 5% tax on next $1,400.00 or part thereof,

(7) 6% tax on next $1,500.00 or part thereof,

(8) 7% tax on next $1,500.00 or part thereof,

(9) 8% tax on next $2,000.00 or part thereof,

(10) 9% tax on next $3,500.00 or part thereof, and

(11) 10% tax on the remainder.

b. Married individuals filing jointly and surviving spouse to the extent and in the manner that a surviving spouse is permitted to file a joint return under the provisions of the Internal Revenue Code and heads of households as defined in the Internal Revenue Code deducting federal income tax:

(1) 1/2% tax on the first $2,000.00 or part thereof,

(2) 1% tax on the next $3,000.00 or part thereof,

(3) 2% tax on the next $2,500.00 or part thereof,

(4) 3% tax on the next $1,400.00 or part thereof,

(5) 4% tax on the next $1,500.00 or part thereof,

(6) 5% tax on the next $1,600.00 or part thereof,

(7) 6% tax on the next $1,250.00 or part thereof,

(8) 7% tax on the next $1,750.00 or part thereof,

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(9) 8% tax on the next $3,000.00 or part thereof,

(10) 9% tax on the next $6,000.00 or part thereof, and

(11) 10% tax on the remainder.

B. Individuals. For all taxable years beginning on or after January 1, 2008, and ending any tax year which begins after December 31, 2015, for which the determination required pursuant to Sections 4 and 5 of this act is made by the State Board of Equalization, a tax is hereby imposed upon the Oklahoma taxable income of every resident or nonresident individual, which tax shall be computed as follows:

1. Single individuals and married individuals filing separately:

(a) 1/2% tax on first $1,000.00 or part thereof,

(b) 1% tax on next $1,500.00 or part thereof,

(c) 2% tax on next $1,250.00 or part thereof,

(d) 3% tax on next $1,150.00 or part thereof,

(e) 4% tax on next $2,300.00 or part thereof,

(f) 5% tax on next $1,500.00 or part thereof,

(g) 5.50% tax on the remainder for the 2008 tax year and any subsequent tax year unless the rate prescribed by subparagraph (h) of this paragraph is in effect, and

(h) 5.25% tax on the remainder for the 2009 and subsequent tax years. The decrease in the top marginal individual income tax rate otherwise authorized by this subparagraph shall be contingent upon the determination required to be made by the State Board of Equalization pursuant to Section 2355.1A of this title.

2. Married individuals filing jointly and surviving spouse to the extent and in the manner that a surviving spouse is permitted to file a joint return under the provisions of the Internal Revenue Code and heads of households as defined in the Internal Revenue Code:

(a) 1/2% tax on first $2,000.00 or part thereof,

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(b) 1% tax on next $3,000.00 or part thereof,

(c) 2% tax on next $2,500.00 or part thereof,

(d) 3% tax on next $2,300.00 or part thereof,

(e) 4% tax on next $2,400.00 or part thereof,

(f) 5% tax on next $2,800.00 or part thereof,

(g) 5.50% tax on the remainder for the 2008 tax year and any subsequent tax year unless the rate prescribed by subparagraph (h) of this paragraph is in effect, and

(h) 5.25% tax on the remainder for the 2009 and subsequent tax years. The decrease in the top marginal individual income tax rate otherwise authorized by this subparagraph shall be contingent upon the determination required to be made by the State Board of Equalization pursuant to Section 2355.1A of this title.

C. Individuals. For all taxable years beginning on or after January 1, 2016, and for which the determination required pursuant to Sections 4 and 5 of this act is made by the State Board of Equalization, a tax is hereby imposed upon the Oklahoma taxable income of every resident or nonresident individual, which tax shall be computed as follows:

1. Single individuals and married individuals filing separately:

(a) 1/2% tax on first $1,000.00 or part thereof,

(b) 1% tax on next $1,500.00 or part thereof,

(c) 2% tax on next $1,250.00 or part thereof,

(d) 3% tax on next $1,150.00 or part thereof,

(e) 4% tax on next $2,300.00 or part thereof,

(f) 5% tax on the remainder if the State Board of Equalization makes a determination pursuant to Section 4 of this act or four and eighty-five hundredths (4.85%) tax on the remainder if the State Board of Equalization makes a determination pursuant to Section 5 of this act.

2. Married individuals filing jointly and surviving spouse to the extent and in the manner that a surviving spouse is permitted to file a joint return under the provisions of the Internal Revenue Code and heads of households as defined in the Internal Revenue Code:

(a) 1/2% tax on first $2,000.00 or part thereof,

(b) 1% tax on next $3,000.00 or part thereof,

(c) 2% tax on next $2,500.00 or part thereof,

(d) 3% tax on next $2,300.00 or part thereof,

(e) 4% tax on next $2,400.00 or part thereof,

(f) 5% tax on the remainder if the State Board of Equalization makes a determination pursuant to Section 4 of this act or four and eighty-five hundredths percent (4.85%) tax on the remainder if the State Board of Equalization makes a determination pursuant to Section 5 of this act.

No deduction for federal income taxes paid shall be allowed to any taxpayer to arrive at taxable income.

D. Nonresident aliens. In lieu of the rates set forth in subsection A above, there shall be imposed on nonresident aliens, as defined in the Internal Revenue Code, a tax of eight percent (8%) instead of thirty percent (30%) as used in the Internal Revenue Code, with respect to the Oklahoma taxable income of such nonresident aliens as determined under the provision of the Oklahoma Income Tax Act.

Every payer of amounts covered by this subsection shall deduct and withhold from such amounts paid each payee an amount equal to eight percent (8%) thereof. Every payer required to deduct and withhold taxes under this subsection shall for each quarterly period on or before the last day of the month following the close of each such quarterly period, pay over the amount so withheld as taxes to the Tax Commission, and shall file a return with each such payment. Such return shall be in such form as the Tax Commission shall prescribe. Every payer required under this subsection to deduct and withhold a tax from a payee shall, as to the total amounts paid to each payee during the calendar year, furnish to such payee, on or before January 31, of the succeeding year, a written statement showing the name of the payer, the name of the payee and the payee's social security account number, if any, the total amount paid subject to taxation, and the total amount deducted and withheld as tax and such other information as the Tax Commission may require. Any payer who fails to withhold or pay to the Tax Commission any sums herein required to be withheld or paid shall be personally and individually liable therefor to the State of Oklahoma.

E. Corporations. For all taxable years beginning after December 31, 1989, a tax is hereby imposed upon the Oklahoma taxable income of every corporation doing business within this state or deriving income from sources within this state in an amount equal to six percent (6%) thereof.

There shall be no additional Oklahoma income tax imposed on accumulated taxable income or on undistributed personal holding company income as those terms are defined in the Internal Revenue Code.

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F. Certain foreign corporations. In lieu of the tax imposed in the first paragraph of subsection D of this section, for all taxable years beginning after December 31, 1989, there shall be imposed on foreign corporations, as defined in the Internal Revenue Code, a tax of six percent (6%) instead of thirty percent (30%) as used in the Internal Revenue Code, where such income is received from sources within Oklahoma, in accordance with the provisions of the Internal Revenue Code and the Oklahoma Income Tax Act.

Every payer of amounts covered by this subsection shall deduct and withhold from such amounts paid each payee an amount equal to six percent (6%) thereof. Every payer required to deduct and withhold taxes under this subsection shall for each quarterly period on or before the last day of the month following the close of each such quarterly period, pay over the amount so withheld as taxes to the Tax Commission, and shall file a return with each such payment. Such return shall be in such form as the Tax Commission shall prescribe. Every payer required under this subsection to deduct and withhold a tax from a payee shall, as to the total amounts paid to each payee during the calendar year, furnish to such payee, on or before January 31, of the succeeding year, a written statement showing the name of the payer, the name of the payee and the payee's social security account number, if any, the total amounts paid subject to taxation, the total amount deducted and withheld as tax and such other information as the Tax Commission may require. Any payer who fails to withhold or pay to the Tax Commission any sums herein required to be withheld or paid shall be personally and individually liable therefor to the State of Oklahoma.

G. Fiduciaries. A tax is hereby imposed upon the Oklahoma taxable income of every trust and estate at the same rates as are provided in subsection B or C of this section for single individuals. Fiduciaries are not allowed a deduction for any federal income tax paid.

H. Tax rate tables. For all taxable years beginning after December 31, 1991, in lieu of the tax imposed by subsection A, B or C of this section, as applicable there is hereby imposed for each taxable year on the taxable income of every individual, whose taxable income for such taxable year does not exceed the ceiling amount, a tax determined under tables, applicable to such taxable year which shall be prescribed by the Tax Commission and which shall be in such form as it determines appropriate. In the table so prescribed, the amounts of the tax shall be computed on the basis of the rates prescribed by subsection A, B or C of this section. For purposes of this subsection, the term “ceiling amount” means, with respect to any taxpayer, the amount determined by the Tax Commission for the tax rate category in which such taxpayer falls.

Credits

Laws 1971, c. 137, § 5, emerg. eff. May 11, 1971; Laws 1971, pp. 1042, 1043, H.J.R. No. 1026, §§ 2A3 to 2A6, 3A, emerg. eff. June 22, 1971; Laws 1977, c. 53, § 1, eff. Jan. 1, 1979; Laws 1979, c. 195, § 2, emerg. eff. May 24, 1979; Laws 1980, c. 288, § 4, eff. July 1, 1980; Laws 1985, c. 179, § 93, operative July 1, 1985; Laws 1985, c. 200, § 1, operative July 1, 1985; Laws 1988, c. 204, § 12, operative July 1, 1988; Laws 1989, 1st Ex.Sess., c. 2, § 99, operative Jan. 1, 1990; Laws 1992, c. 311, § 1, eff. Sept. 1, 1992; Laws 1998, c. 427, § 2, eff. Jan. 1, 1999; Laws 2001, c. 383, § 2, eff. July 1, 2001; Laws 2004, c. 322, § 13, eff. Dec. 1, 2004; Laws 2005, c. 413, § 4, eff. July 1, 2005; Laws 2006, c. 16, § 63, emerg. eff. March 29, 2006; Laws 2006, 2nd Ex.Sess., c. 42, § 3, eff. Jan. 1, 2007; Laws 2007, c. 136, § 7, eff. Jan. 1, 2008; Laws 2013, c. 253, § 2, eff. July 1, 2013; Laws 2014, c. 195, §§ 1, 2.

<A system of composite numbers initiated in 1963 under which each section number was preceded by an article number and a dash was abolished by Laws 1965, c. 215, § 2.>

Notes of Decisions (72)

Footnotes

1 26 U.S.C.A. § 1 et seq.

68 Okl. St. Ann. § 2355, OK ST T. 68 § 2355

Current through Chapter 430 (End) of the Second Session of the 54th Legislature (2014)

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68 Okl.St.Ann. § 2357

§ 2357. Credits against tax

Currentness

A. The withheld taxes and estimated taxes paid shall be allowed as credits as provided by law.

B. 1. There shall be allowed as a credit against the tax imposed by Section 2355 of this title the amount of tax paid another state by a resident individual, as defined in paragraph 4 of Section 2353 of this title, upon income received as compensation for personal services in such other state; provided, such credit shall not be allowed with respect to any income specified in Section 114 of Title 4 of the United States Code, 4 U.S.C., Section 114, upon which a state is prohibited from imposing an income tax. The credit shall not exceed such proportion of the tax payable under Section 2355 of this title as the compensation for personal services subject to tax in the other state and also taxable under Section 2355 of this title bears to the Oklahoma adjusted gross income as defined in paragraph 13 of Section 2353 of this title.

2. For tax years beginning after December 31, 2007, there shall be allowed to a resident individual or part-year resident individual or nonresident individual member of the Armed Forces as a credit against the tax imposed by Section 2355 of this title twenty percent (20%) of the credit for child care expenses allowed under the Internal Revenue Code of the United States[1] or five percent (5%) of the child tax credit allowed under the Internal Revenue Code, whichever amount is greater. Neither credit authorized by this paragraph shall exceed the tax imposed by Section 2355 of this title. The maximum child care credit allowable on the Oklahoma income tax return shall be prorated on the ratio that Oklahoma adjusted gross income bears to the federal adjusted gross income. The credit authorized by this paragraph shall not be claimed by any taxpayer if the federal adjusted gross income reflected on the Oklahoma return for the taxpayer is in excess of One Hundred Thousand Dollars ($100,000.00).

C. No additions to tax shall be made in Oklahoma income tax returns by reason of the recapture or restoration of credits under the Internal Revenue Code, and no other credits against tax shall be allowed in Oklahoma income tax returns except with respect to credits provided in this section.

Credits

Laws 1971, c. 137, § 7, emerg. eff. May 11, 1971; Laws 1971, p. 1042, H.J.R. No. 1026, §§ 2A7, 8, emerg. eff. June 22, 1971; Laws 1977, c. 3, § 1, emerg. eff. Feb. 8, 1977; Laws 1977, c. 47, § 1, emerg. eff. May 11, 1977; Laws 1978, c. 214, § 1, emerg. eff. April 19, 1978; Laws 1980, c. 224, § 1, eff. July 1, 1980; Laws 1987, c. 113, § 23, operative Jan. 1, 1987; Laws 1996, c. 289, § 8, eff. July 1, 1996; Laws 1997, c. 294, § 22, eff. July 1, 1997; Laws 2007, c. 136, § 8, eff. Jan. 1, 2008; Laws 2010, c. 327, § 3, eff. July 1, 2010; Laws 2013, c. 363, § 1, eff. Jan. 1, 2014.

<A system of composite numbers initiated in 1963 under which each section number was preceded by an article number and a dash was abolished by Laws 1965, c. 215, § 2.>

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Notes of Decisions (54)

Footnotes

1 26 U.S.C.A. § 1 et seq.

68 Okl. St. Ann. § 2357, OK ST T. 68 § 2357

Current through Chapter 430 (End) of the Second Session of the 54th Legislature (2014)

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West's Oregon Revised Statutes Annotated
Title 29. Revenue and Taxation
Chapter 316. Personal Income Tax (Refs & Annos)
General Provisions (Refs & Annos)

O.R.S. § 316.007

316.007. Policy

Currentness

It is the intent of the Legislative Assembly, by the adoption of this chapter, insofar as possible, to:

(1) Make the Oregon personal income tax law identical in effect to the provisions of the Internal Revenue Code relating to the measurement of taxable income of individuals, estates and trusts, modified as necessary by the state's jurisdiction to tax and the revenue needs of the state;

(2) Achieve this result by the application of the various provisions of the Internal Revenue Code relating to the definition of income, exceptions and exclusions therefrom, deductions (business and personal), accounting methods, taxation of trusts, estates and partnerships, basis, depreciation and other pertinent provisions relating to gross income as defined therein, modified as provided in this chapter, resulting in a final amount called "taxable income"; and

(3) Impose a tax on residents of this state measured by taxable income wherever derived and to impose a tax on the income of nonresidents that is ascribable to sources within this state.

Credits

Laws 1969, c. 493, § 2; Laws 1971, Sp.Sess. c. 4, § 1; Laws 1987, c. 293, § 1; Laws 1989, c. 625, § 1; Laws 2003, c. 46, § 34.

Notes of Decisions (27)

O. R. S. § 316.007, OR ST § 316.007
Current with emergency legislation through Ch. 22 of the 2015 Reg. Sess. Revisions to Acts made by the Oregon Reviser were unavailable at the time of publication.

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West's Oregon Revised Statutes Annotated
Title 29. Revenue and Taxation
Chapter 316. Personal Income Tax (Refs & Annos)
Credits (Refs & Annos)

O.R.S. § 316.082

316.082. Taxes paid another state

Currentness

(1) A resident individual shall be allowed a credit against the tax otherwise due under this chapter for the amount of any income tax imposed on the individual, or on an Oregon S corporation or Oregon partnership of which the individual is a member (to the extent of the individual's pro rata share of the S corporation or distributive share of the partnership), for the tax year by another state on income derived from sources therein and that is also subject to tax under this chapter.

(2) The credit provided under this section shall not exceed the proportion of the tax otherwise due under this chapter that the amount of the modified adjusted gross income of the taxpayer derived from sources in the other state bears to the entire modified adjusted gross income of the taxpayer.

(3) The Department of Revenue shall provide by rule the procedure for obtaining credit provided by this section and the proof required. The requirement of proof may be waived partially, conditionally or absolutely, as provided under ORS 315.063.

(4) No credit allowed under this section or ORS 316.292 shall be applied in calculating tax due under this chapter if the tax upon which the credit is based has been claimed as a deduction, unless the tax upon which the credit is based is restored to income on the Oregon return.

(5) Credit shall not be allowed under this section for income taxes paid to a state that allows a nonresident a credit against the income taxes imposed by that state for taxes paid or payable to the state of residence. It is the purpose of this subsection to avoid duplicative taxation through use of a nonresident, rather than a resident, credit for taxes paid or payable to another state.

(6) The Department of Revenue may adopt rules under this section that provide a credit against the tax imposed by this chapter when the department considers the credit necessary to avoid taxation of the same income by this state and another state.

(7) As used in this section:

(a) "Modified adjusted gross income" means federal adjusted gross income as modified by this chapter and the other laws of this state applicable to personal income taxation.

(b) "Oregon partnership" means an entity that is treated as a partnership for Oregon excise and income tax purposes.

(c) "Oregon S corporation" means a corporation that has elected S corporation status for Oregon excise and income tax purposes.

(d) "State" means a state, district, territory or possession of the United States.

(8) For purposes of this section:

(a) A direct tax imposed upon income of an Oregon S corporation is an income tax imposed on the Oregon S corporation.

(b) An excise tax that is measured by income of an Oregon S corporation is an income tax imposed on the Oregon S corporation.

(c) An excise tax is measured by income only if the statute imposing the excise tax provides that the base for the excise tax:

(A) Includes revenue from sales and from services rendered, and income from investments; and

(B) Permits a deduction for the cost of goods sold and the cost of services rendered.

Credits

Laws 1969, c. 493, § 17; Laws 1981, c. 801, § 3; Laws 1987, c. 647, § 11; Laws 1991, c. 838, § 6; Laws 1993, c. 726, § 28a; Laws 1995, c. 54, § 7; Laws 1999, c. 74, § 5; Laws 2001, c. 9, § 1.

Notes of Decisions (2)

O. R. S. § 316.082, OR ST § 316.082

Current with emergency legislation through Ch. 22 of the 2015 Reg. Sess. Revisions to Acts made by the Oregon Reviser were unavailable at the time of publication.

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Purdon's Pennsylvania Statutes and Consolidated Statutes
Title 72 P.S. Taxation and Fiscal Affairs
Chapter 5. Tax Reform Code of 1971
Article III. Personal Income Tax (Refs & Annos)
Part II. Imposition of Tax

72 P.S. § 7302

§ 7302. Imposition of tax

Effective: December 23, 2003
Currentness

(a) Every resident individual, estate or trust shall be subject to, and shall pay for the privilege of receiving each of the classes of income hereinafter enumerated in section 303, [1] a tax upon each dollar of income received by that resident during that resident's taxable year at the rate of three and seven hundredths per cent.

(b) Every nonresident individual, estate or trust shall be subject to, and shall pay for the privilege of receiving each of the classes of income hereinafter enumerated in section 303 from sources within this Commonwealth, a tax upon each dollar of income received by that nonresident during that nonresident's taxable year at the rate of three and seven hundredths per cent.

Credits

1971, March 4, P.L. 6, No. 2, art. III, § 302, added 1991, Aug. 4, P.L. 97, No. 22, § 8, retroactive effective July 1, 1991. Amended 2003, Dec. 23, P.L. 250, No. 46, § 7, imd. effective.

Notes of Decisions (5)

Footnotes

1 72 P.S. § 7303.

72 P.S. § 7302, PA ST 72 P.S. § 7302
Current through end of the 2014 Regular Session

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Purdon's Pennsylvania Statutes and Consolidated Statutes
Title 72 P.S. Taxation and Fiscal Affairs
Chapter 5. Tax Reform Code of 1971
Article III. Personal Income Tax (Refs & Annos)
Part VI. Credits Against Tax

72 P.S. § 7314

§ 7314. Income taxes imposed by other states

Effective: July 9, 2013
Currentness

(a) A resident taxpayer before allowance of any credit under section 312 [1] shall be allowed a credit against the tax otherwise due under this article for the amount of any income tax, wage tax or tax on or measured by gross or net earned or unearned income imposed on him or on a Pennsylvania S corporation in which he is a shareholder, to the extent of his pro rata share thereof determined in accordance with section 307.9, [2] by another state with respect to income which is also subject to tax under this article. For purposes of this subsection, the term "state" shall only include a state of the United States, the District of Columbia, the Commonwealth of Puerto Rico and any territory or possession of the United States.

(b) The credit provided under this section shall not exceed the proportion of the tax otherwise due under this article that the amount of the taxpayer's income subject to tax by the other jurisdiction bears to his entire taxable income.

Credits
1971, March 4, P.L. 6, No. 2, art. III, § 314, added 1971, Aug. 31, P.L. 362, No. 93, § 4. Amended 1983, Dec. 23, P.L. 370, No. 90, § 5, effective Jan. 1, 1984; 2013, July 9, P.L. 270, No. 52, § 11, imd. effective.

Notes of Decisions (2)

Footnotes
1 72 P.S. § 7312.
2 72 P.S. § 7307.9.
72 P.S. § 7314, PA ST 72 P.S. § 7314
Current through end of the 2014 Regular Session

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West's General Laws of Rhode Island Annotated
Title 44. Taxation
Chapter 30. Personal Income Tax
Part I. General

Gen.Laws 1956, § 44-30-1

§ 44-30-1. Persons subject to tax

Currentness

(a) Imposition of tax. A Rhode Island personal income tax determined in accordance with the rates set forth in § 44-30-2 is imposed for each taxable year (which shall be the same as the taxable year for federal income tax purposes) on the Rhode Island income of every individual, estate, and trust.

(b) Partners and partnerships. A partnership as such shall not be subject to the Rhode Island personal income tax. Persons carrying on business as partners shall be liable for the Rhode Island personal income tax only in their separate or individual capacities.

(c) Associations taxable as corporations. An association, trust, or other unincorporated organization, which is taxable as a corporation under the provisions of chapter 11 of this title, shall not be subject to the Rhode Island personal income tax.

(d) Exempt trusts and organizations. A trust or other unincorporated organization, which by reason of its purposes or activities is exempt from federal income tax, shall be exempt from the Rhode Island personal income tax, except with respect to its unrelated business taxable income.

(e) Cross references. For definitions of Rhode Island income of:

(1) Resident individuals, see § 44-30-12.

(2) Resident estate or trust, see § 44-30-16.

(3) Nonresident individual, see § 44-30-32.

(4) Nonresident estate or trust, see § 44-30-35.

Credits
P.L. 1971, ch. 8, art. 1, § 1; P.L. 1971, ch. 204, art. 3, § 1; P.L. 2005, ch. 410, § 33.

Notes of Decisions (6)

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Gen. Laws, 1956, § 44-30-1, RI ST § 44-30-1
The statutes and Constitution are current through Chapter 555 of the January 2014 session.

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West's General Laws of Rhode Island Annotated
Title 44. Taxation
Chapter 30. Personal Income Tax
Part II. Residents

Gen.Laws 1956, § 44-30-18

§ 44-30-18. Credit for income taxes of other states

Currentness

(a) General. A resident shall be allowed a credit, against the Rhode Island personal income tax otherwise due for the taxable year, for the aggregate of net income taxes imposed on him or her for the taxable year by other states (including the District of Columbia) of the United States if the taxes are imposed irrespective of the residence or domicile of the taxpayer.

(b) Limitation of credit. The credit shall not exceed the proportion of the taxpayer's Rhode Island personal income tax that the taxpayer's Rhode Island income derived from the other taxing states bears to his or her entire Rhode Island income for the same taxable year. The source of income shall be determined in accordance with the rules prescribed in § 44-30-32.

(c) Readjustment of another state's tax. If the taxpayer is allowed credit under this section for more or less of another state's tax than the taxpayer is finally required to pay, the taxpayer shall send notice of the difference to the tax administrator who shall re-determine the tax for any years affected regardless of any otherwise applicable statute of limitations.

(d) Double residence. If the taxpayer is regarded as a resident both of Rhode Island and of another state for purposes of both their net income tax laws, the portion of Rhode Island tax allocable on average to the income taxed twice by reason solely of dual residence shall be reduced by the "appropriate percentage" of the lower of the two (2) state taxes allocable on average to the income taxed twice, if the other state also allows a similar reduction of its tax. The "appropriate percentage" shall be the percentage, which the Rhode Island tax is of the combined taxes of the two (2) states, allocable on average to the income taxed twice.

Credits

P.L. 1971, ch. 8, art. 1, § 1; P.L. 1971, ch. 204, art. 3, § 1; P.L. 1972, ch. 155, art. 1, § 1.

Gen. Laws, 1956, § 44-30-18, RI ST § 44-30-18
The statutes and Constitution are current through Chapter 555 of the January 2014 session.

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Code 1976 § 12-6-510

§ 12-6-510. Tax rates for individuals, estates, and trusts for taxable years after 1994.

Currentness

(A) For taxable years beginning after 1994, a tax is imposed on the South Carolina taxable income of individuals, estates, and trusts and any other entity except those taxed or exempted from taxation under Sections 12-6-530 through 12-6-550 computed at the following rates with the income brackets indexed in accordance with Section 12-6-520:

Not over $2,220	2.5 percent of taxable income
Over $2,220 but not over $4,440	$56 plus 3 percent of the excess over $2,220;
Over $4,440 but not over $6,660	$123 plus 4 percent of the excess over $4,440;
Over $6,660 but not over $8,880	$212 plus 5 percent of the excess of $6,660;
Over $8,880 but not over $11,100	$323 plus 6 percent of the excess over $8,880;
Over $11,100	$456 plus 7 percent of the excess over $11,100.

(B) The department may prescribe tax tables consistent with the rates set pursuant to subsection (A).

Credits
HISTORY: 1995 Act No. 76, § 1.

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Code 1976 § 12-6-510, SC ST § 12-6-510
Current through Acts 1 and 3 of the 2015 session.

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Code of Laws of South Carolina 1976 Annotated
Title 12. Taxation (Refs & Annos)
Chapter 6. South Carolina Income Tax Act (Refs & Annos)
Article 25. Credits

Code 1976 § 12-6-3400

§ 12-6-3400. Credit for income tax paid by South Carolina resident to another state.

Currentness

(A)(1) Resident individuals are allowed a credit against the taxes imposed by this chapter for income taxes paid to another state on income from sources within that state which is taxed under both this chapter and the laws of that state regardless of the taxpayer's residence.

(2) The credit allowed is the lesser of:

(a) the product of the fraction in which the numerator is total South Carolina income which is subject to income tax in another state and the denominator is total federal income adjusted by the modifications provided in Article 9 of this chapter and subject to allocation and apportionment as provided in Article 17 of this chapter, multiplied by South Carolina income tax before the credit allowed by this section; or

(b) the income tax actually paid to the other state on income taxed under this chapter.

(3) A copy of the income tax return filed with the other state must be filed with the South Carolina tax return at the time credit is claimed. If the credit is claimed because of a deficiency assessment notice, a copy of the notice and a receipt showing the payment must be filed.

(B) If a taxpayer is refunded or credited taxes paid to another state for which a credit has been allowed under this section, then a tax equal to that portion of the credit allowed is due and payable from the taxpayer within sixty days from the date the refund or the notice of the credit is received. If the amount of the tax is not paid within sixty days of receipt or notice, the taxpayer is subject to penalties and interest for failure to pay provided in Chapter 54 of this title.

(C) When a taxpayer is considered a resident of this State and is also considered a resident of another state under the laws of the other state, the department may, at its discretion, allow a credit against South Carolina income taxes for those taxes paid to the other state on income taxed under this chapter.

Credits

HISTORY: 1995 Act No. 76, § 1.

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Code 1976 § 12-6-3400, SC ST § 12-6-3400
Current through Acts 1 and 3 of the 2015 session.

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West's Utah Code Annotated
Title 59. Revenue and Taxation
Chapter 10. Individual Income Tax Act
Part 1. Determination and Reporting of Tax Liability and Information (Refs & Annos)

U.C.A. 1953 § 59-10-104

§ 59-10-104. Tax basis--Tax rate--Exemption

Currentness

(1) For taxable years beginning on or after January 1, 2008, a tax is imposed on the state taxable income of a resident individual as provided in this section.

(2) For purposes of Subsection (1), for a taxable year, the tax is an amount equal to the product of:

(a) the resident individual's state taxable income for that taxable year; and

(b) 5%.

(3) This section does not apply to a resident individual exempt from taxation under Section 59-10-104.1.

Credits

Laws 1976, c. 27, § 1; Laws 1979, c. 204, § 1; Laws 1979, c. 206, § 1; Laws 1981, c. 232, § 1; Laws 1987, c. 2, § 165; Laws 1988, 2nd Sp.Sess., c. 3, § 1; Laws 1989, 2nd Sp.Sess., c. 4, § 1; Laws 1996, c. 333, § 1, eff. Jan. 1, 1996; Laws 2001, c. 323, § 1, eff. Jan. 1, 2002; Laws 2001, c. 324, § 1, eff. April 30, 2001; Laws 2006, 4th Sp.Sess., c. 2, § 2, eff. Jan. 1, 2007; Laws 2007, c. 288, § 6, eff. Jan. 1, 2008; Laws 2008, c. 389, § 24, eff. May 5, 2008.

Codifications C. 1953, § 59-14A-5.

Notes of Decisions (1)

U.C.A. 1953 § 59-10-104, UT ST § 59-10-104
Current through 2014 General Session.

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West's Utah Code Annotated
Title 59. Revenue and Taxation
Chapter 10. Individual Income Tax Act
Part 10. Nonrefundable Tax Credit Act

U.C.A. 1953 § 59-10-1003

§ 59-10-1003. Tax credit for tax paid by individual to another state

Currentness

(1) Except as provided in Subsection (2), a claimant, estate, or trust may claim a nonrefundable tax credit against the tax otherwise due under this chapter equal to the amount of the tax imposed:

(a) on that claimant, estate, or trust for the taxable year;

(b) by another state of the United States, the District of Columbia, or a possession of the United States; and

(c) on income:

(i) derived from sources within that other state of the United States, District of Columbia, or possession of the United States; and

(ii) if that income is also subject to tax under this chapter.

(2) A tax credit under this section may only be claimed by a:

(a) resident claimant;

(b) resident estate; or

(c) resident trust.

(3) The application of the tax credit provided under this section may not operate to reduce the tax payable under this chapter to an amount less than would have been payable were the income from the other state disregarded.

(4) The tax credit provided by this section shall be computed and claimed in accordance with rules prescribed by the commission.

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Credits

Laws 2006, c. 223, § 25, eff. May 1, 2006.

Notes of Decisions (1)

U.C.A. 1953 § 59-10-1003, UT ST § 59-10-1003
Current through 2014 General Session.

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West's Vermont Statutes Annotated
Title Thirty-Two. Taxation and Finance
Subtitle 2. Taxation
Part 3. Income and Franchise Taxes
Chapter 151. Income Taxes
Subchapter 2. Taxation of Individuals, Trusts, and Estates

32 V.S.A. § 5822

§ 5822. Tax on income of individuals, estates, and trusts

Currentness

(a) A tax is imposed for each taxable year upon the taxable income earned or received in that year by every individual, estate, and trust, subject to income taxation under the laws of the United States, in an amount determined by the following tables, and adjusted as required under this section:

(1) Married individuals filing joint returns and surviving spouses:

If taxable income is:	**The tax is:**
Not over $56,700.00	3.55% of taxable income
Over $56,700.00 but not over $137,050.00	$2,013.00 plus 7.0% of the amount of taxable income over $56,700.00
Over $137,050.00 but not over $208,850.00	$7,637.00 plus 8.25% of the amount of taxable income over $137,050.00
Over $208,850.00 but not over $372,950.00	$13,561.00 plus 8.9% of the amount of taxable income over $208,850.00
Over $372,950.00	$28,166.00 plus 9.40% of the amount of taxable income over $372,950.00

(2) Heads of households:

If taxable income is:	**The tax is:**
Not over $45,500.00	3.55% of taxable income

Over $45,500.00 but not over $117,450.00	$1,615.00 plus 7.0% of the amount of taxable income over $45,500.00
Over $117,450.00 but not over $190,200.00	$6,652.00 plus 8.25% of the amount of taxable income over $117,450.00
Over $190,200.00 but not over $372,950.00	$12,654.00 plus 8.90% of the amount of taxable income over $190,200.00
Over $372,950.00	$28,918.00 plus 9.40% of the amount of taxable income over $372,950.00

(3) Unmarried individuals (other than surviving spouse or head of household):

If taxable income is:	**The tax is:**
Not over $33,950.00	3.55% of taxable income
Over $33,950.00 but not over $82,250.00	$1,205.00 plus 7.0% of the amount of taxable income over $33,950.00
Over $82,250.00 but not over $171,550.00	$4,586.00 plus 8.25% of the amount of taxable income over $82,250.00
Over $171,550.00 but not over $372,950.00	$11,953.00 plus 8.90% of the amount of taxable income over $171,550.00
Over $372,950.00	$29,878.00 plus 9.40% of the amount of taxable income over $372,950.00

(4) Married individuals filing separate returns:

If taxable income is:	**The tax is:**
Not over $28,350.00	3.55% of taxable income
Over $28,350.00 but not over $68,525.00	$1006.00 plus 7.0% of the amount of taxable income over $28,350.00
Over $68,525.00 but not over $104,425.00	$3,819.00 plus 8.25% of the amount of taxable income over $68,525.00

Over $104,425.00 but not over $186,475.00	$6,780.00 plus 8.90% of the amount of taxable income over $104,425.00
Over $186,475.00	$14,083.00 plus 9.40% of the amount of taxable income over $186,475.00

(5) Estates and trusts:

If taxable income is:	**The tax is:**
$2,300.00 or less	3.55% of taxable income
Over $2,300.00 but not over $5,350.00	$82.00 plus 7.0% of the amount of taxable income over $2,300.00
Over $5,350.00 but not over $8,200.00	$295.00 plus 8.25% of the amount of taxable income over $5,350.00
Over $8,200.00 but not over $11,150.00	$530.00 plus 8.90% of the amount of taxable income over $8,200.00
Over $11,150.00	$793.00 plus 9.40% of the amount of taxable income over $11,150.00

(b) For purposes of this section:

(1) "Married individuals", "surviving spouse", "head of household", "unmarried individual", "estate" and "trust" have the same meaning as that under the Internal Revenue Code.

(2) The amounts of taxable income shown in the tables in this section shall be adjusted annually for inflation by the commissioner of taxes, using the Consumer Price Index adjustment percentage, in the manner prescribed for inflation adjustment of federal income tax tables for the taxable year by the Commissioner of Internal Revenue, beginning with taxable year 2003.

(c) The amount of tax determined under subsection (a) of this section shall be:

(1) increased by 24 percent of the taxpayer's federal tax liability for the taxable year for the following:

(A) additional taxes on qualified retirement plans, including individual retirement accounts and medical savings accounts and other tax-favored accounts;

(B) recapture of federal investment tax credit and increased by 76 percent of the Vermont-property portion of the business solar energy investment tax credit component of the federal investment tax credit recapture for the taxable year;

(C) tax on qualified lump-sum distributions of pension income not included in federal taxable income; and

(2) decreased by 24 percent of the reduction in the taxpayer's federal tax liability due to farm income averaging.

<Text of subsec. (d) applicable to credits related to investments made on or after January 1, 2009 and before January 1, 2012>

(d)(1) A taxpayer shall be entitled to a credit against the tax imposed under this section of 24 percent of each of the credits allowed against the taxpayer's federal income tax for the taxable year as follows: credit for people who are elderly or permanently totally disabled, investment tax credit attributable to the Vermont-property portion of the investment, and child care and dependent care credits.

(2) A taxpayer shall also be entitled to a credit against the tax imposed under this section of 76 percent of the Vermont-property portion of the business solar energy investment tax credit component of the federal investment tax credit allowed against the taxpayer's federal income tax for the taxable year under Section 48 of the Internal Revenue Code.

(3) Any unused business solar energy investment tax credit under this section may be carried forward for no more than five years following the first year in which the credit is claimed.

(4) Solar energy tax credit. The solar energy tax credit provided for in this section shall be taken in accordance with the provisions of section 5930z of this title.

<Text of subsec. (d) applicable to credits related to investments made on or after January 1, 2012>

(d)(1) A taxpayer shall be entitled to a credit against the tax imposed under this section of 24 percent of each of the credits allowed against the taxpayer's federal income tax for the taxable year as follows: credit for people who are elderly or permanently totally disabled, investment tax credit attributable to the Vermont-property portion of the investment, and child care and dependent care credits.

(2) Any unused business solar energy investment tax credit under this section may be carried forward for no more than five years following the first year in which the credit is claimed.

(e) The tax determined under subsections (a) through (d) of this section shall be reduced by a percentage equal to the portion of adjusted gross income which is not Vermont income; provided, however, that if a taxpayer's Vermont income exceeds the taxpayer's adjusted gross income, no reduction shall be made and provided, further, that if a taxpayer has zero or negative Vermont income and the taxpayer's Vermont income computed without regard to the reductions in subsection 5823(a) of this chapter does not equal or exceed the taxpayer's adjusted gross income, no tax shall be due under this section.

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Credits

1966, Sp. Sess., No. 61, § 1; 1967, No. 121, § 4; 1979, No. 70, § 1; 1979, Adj. Sess., No. 84, § 1; 1981, Adj. Sess., No. 170, § 15; 1983, Adj. Sess., No. 144, § 4; 1985, Adj. Sess., No. 213, § 2; 1987, No. 82, § 2; 1987, Adj. Sess., No. 259, §§ 1, 2; 1989, No. 119, § 26; 1991, No. 32, § 2; 1993, No. 14, § 1; 1999, No. 49, § 35; 2001, No. 67, § 4; 2001, Adj. Sess., No. 140, § 5; 2003, No. 66, § 305; 2005, No. 75, § 15; 2007, Adj. Sess., No. 92, § 27, eff. July 1, 2008; 2009, No. 45, §§ 9, 9b, eff. May 27, 2009; 2009, No. 54, §§ 97, 99, eff. June 1, 2009; 2009, Sp. Sess., No. 3, § 11, eff. June 10, 2009; 2009, Adj. Sess., No. 159, § 10, eff. June 4, 2010; 2013, Adj. Sess., No. 96, § 196, eff. July 1, 2014.

Notes of Decisions (9)

32 V.S.A. § 5822, VT ST T. 32 § 5822

Current through the laws of the Adjourned Session of the 2013-2014 Vermont General Assembly (2014).

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West's Vermont Statutes Annotated
Title Thirty-Two. Taxation and Finance
Subtitle 2. Taxation
Part 3. Income and Franchise Taxes
Chapter 151. Income Taxes
Subchapter 2. Taxation of Individuals, Trusts, and Estates

32 V.S.A. § 5825

§ 5825. Credit for taxes paid to other states and provinces

Currentness

(a) A taxpayer of this state who was a resident individual, estate or trust during any portion of a taxable year shall receive credit against the tax imposed, for that taxable year, by section 5822 of this title for income taxes imposed by, and paid to, another state or territory of the United States, the District of Columbia, or a province of Canada, upon the taxpayer's income earned or received from sources within that state, territory, district or province during that portion of that taxable year. In no case shall the credit allowed by this section exceed the portion of Vermont income tax, otherwise imposed by this chapter, attributable to the adjusted gross income earned or received from sources within such other state, territory, district or province.

(b) For purposes of this section, when a taxpayer domiciled in another jurisdiction is deemed to be a resident of Vermont as provided by subdivision 5811(11)(A)(ii) of this title, income from intangibles not employed in a business, trade or profession shall be deemed to be derived from sources within the jurisdiction of domicile. However, notwithstanding the provisions of this subsection, no credit will be allowed against the tax imposed unless the jurisdiction of domicile provides for a similar credit.

Credits

1966, Sp. Sess., No. 61, § 1; 1981, Adj. Sess., No. 134, § 1; 1991, No. 67, § 26; 1991, Adj. Sess., No. 186, § 12; 1997, No. 50, § 16; 2001, Adj. Sess., No. 140, § 8.

Notes of Decisions (7)

32 V.S.A. § 5825, VT ST T. 32 § 5825
Current through the laws of the Adjourned Session of the 2013-2014 Vermont General Assembly (2014).

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VA Code Ann. § 58.1-320

§ 58.1-320. Imposition of tax

Currentness

A tax is hereby annually imposed on the Virginia taxable income for each taxable year of every individual as follows:

Two percent on income not exceeding $3,000;

Three percent on income in excess of $3,000, but not in excess of $5,000;

Five percent on income in excess of $5,000, but not in excess of $12,000 for taxable years beginning before January 1, 1987;

Five percent on income in excess of $5,000 but not in excess of $14,000 for taxable years beginning January 1, 1987, through December 31, 1987;

Five percent on income in excess of $5,000 but not in excess of $15,000 for taxable years beginning January 1, 1988, through December 31, 1988;

Five percent on income in excess of $5,000 but not in excess of $16,000 for taxable years beginning January 1, 1989, through December 31, 1989;

Five percent on income in excess of $5,000 but not in excess of $17,000 for taxable years beginning January 1, 1990;

Five and three-quarters percent on income in excess of $12,000 for taxable years beginning before January 1, 1987;

Five and three-quarters percent on income in excess of $14,000 for taxable years beginning January 1, 1987, through December 31, 1987;

Five and three-quarters percent on income in excess of $15,000 for taxable years beginning January 1, 1988, through December 31, 1988;

Five and three-quarters percent on income in excess of $16,000 for taxable years beginning January 1, 1989, through December 31, 1989; and

Five and three-quarters percent on income in excess of $17,000 for taxable years beginning on and after January 1, 1990.

Credits
Acts 1984, c. 675; Acts 1987, c. 9.

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VA Code Ann. § 58.1-320, VA ST § 58.1-320
Current through the End of 2014 Reg. Sess. and the End of the 2014 Sp. S. I and includes 2015 Reg. Sess. cc. 1, 7, 8, 39, 61, 67 and 89.

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VA Code Ann. § 58.1-332

§ 58.1-332. Credits for taxes paid other states

Currentness

A. Whenever a Virginia resident has become liable to another state for income tax on any earned or business income or any gain on the sale of a capital asset (within the meaning of § 1221 of the Internal Revenue Code), not including an asset used in a trade or business, to the extent that such gain is included in federal adjusted gross income, for the taxable year, derived from sources outside the Commonwealth and subject to taxation under this chapter, the amount of such tax payable by him shall, upon proof of such payment, be credited on the taxpayer's return with the income tax so paid to the other state.

However, no franchise tax, license tax, excise tax, unincorporated business tax, occupation tax or any tax characterized as such by the taxing jurisdiction, although applied to earned or business income, shall qualify for a credit under this section, nor shall any tax which, if characterized as an income tax or a commuter tax, would be illegal and unauthorized under such other state's controlling or enabling legislation qualify for a credit under this section.

The credit allowable under this section shall not exceed: (i) such proportion of the income tax otherwise payable by him under this chapter as his income upon which the tax imposed by the other state was computed bears to his Virginia taxable income upon which the tax imposed by this Commonwealth was computed or (ii) the income tax otherwise payable under this chapter in the event that the income upon which the tax imposed by the other state is computed is less than the Virginia taxable income upon which the tax imposed by this Commonwealth is computed and all income derived from sources outside the Commonwealth and subject to taxation under this chapter is earned income or business income reported on federal form Schedule C from a single state contiguous to Virginia. The credit provided for by this section shall not be granted to a resident individual when the laws of another state, under which the income in question is subject to tax assessment, provide a credit to such resident individual substantially similar to that granted by subsection B of this section.

B. Whenever a nonresident individual of this Commonwealth has become liable to the state where he resides for income tax upon his Virginia taxable income for the taxable year, derived from Virginia sources and subject to taxation under this chapter, the amount of such tax payable under this chapter shall be credited with such proportion of the tax so payable by him to the state where he resides, upon proof of such payment, as his income subject to taxation under this chapter bears to his entire income upon which the tax so payable to such other state was imposed. The credit, however, shall be allowed only if the laws of such state: (i) grant a substantially similar credit to residents of Virginia subject to income tax under such laws or (ii) impose a tax upon the income of its residents derived from Virginia sources and exempt from taxation the income of residents of this Commonwealth. No credit shall be allowed against the amount of the tax on any income taxable under this chapter which is exempt from taxation under the laws of such other state.

C. For purposes of this section, the amount of any state income tax paid by an electing small business corporation (S corporation) shall be deemed to have been paid by its individual shareholders in proportion to their ownership of the stock of such corporation.

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Credits

Acts 1984, c. 675; Acts 1985, c. 466; Acts 1991, c. 362; Acts 1991, c. 456; Acts 1992, c. 317; Acts 1994, c. 195; Acts 1998, c. 291; Acts 1999, c. 317.

Notes of Decisions (4)

VA Code Ann. § 58.1-332, VA ST § 58.1-332

Current through the End of 2014 Reg. Sess. and the End of the 2014 Sp. S. I and includes 2015 Reg. Sess. cc. 1, 7, 8, 39, 61, 67 and 89.

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West's Annotated Code of West Virginia
Chapter 11. Taxation
Article 21. Personal Income Tax
Part I. General

W. Va. Code, § 11-21-3

§ 11-21-3. Imposition of tax; persons subject to tax

Effective: July 10, 2009
Currentness

(a) *Imposition of tax.*

(1) *Primary tax*. -- A tax determined in accordance with the rates hereinafter set forth in this article is hereby imposed for each taxable year on the West Virginia taxable income of every individual, estate and trust.

(2) *Minimum tax*. -- In addition to the primary tax imposed by this section, there is imposed a minimum tax, which shall be the excess, if any, by which an amount equal to twenty-five percent of any federal minimum tax or alternative minimum tax for the taxable year exceeds the primary tax imposed by this section for the taxable year.

(3) *Effective date*. -- The minimum tax herein imposed and made effective on and after April 1, 1983, shall expire, be nullified and of no further force or effect whatsoever for tax years beginning on and after January 1, 2010.

(b) *Partners and partnerships*. -- A partnership as such shall not be subject to tax under this article. Persons carrying on business as partners shall be liable for tax under this article only in their separate or individual capacities.

(c) *Associations taxable as corporations*. -- An association, trust or other unincorporated organization which is taxable as a corporation for federal income tax purposes, shall not be subject to tax under this article.

(d) *Exempt trusts and organizations*. -- A trust or other unincorporated organization which by reason of its purposes or activities is exempt from federal income tax shall be exempt from tax under this article (regardless of whether subject to federal income tax on unrelated business taxable income).

(e) *Cross references*. -- For definitions of West Virginia taxable income of:

(1) Resident individual, see section eleven.

(2) Resident estate or trust, see section eighteen.

(3) Nonresident individual, see section thirty.

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(4) Nonresident estate or trust, see section thirty-eight.

Credits

Acts 1961, c. 155; Acts 1983, c. 176; Acts 2009, c. 212, eff. July 10, 2009.

Notes of Decisions (3)

W. Va. Code, § 11-21-3, WV ST § 11-21-3
Current with laws of the 2015 Regular Session, H.B. 2212

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W. Va. Code, § 11-21-20

§ 11-21-20. Credit for income tax of another state

Currentness

(a) General.--A resident shall be allowed a credit against the tax otherwise due under this article for any income tax imposed for the taxable year by another state of the United States or by the District of Columbia, upon income both derived therefrom and subject to tax under this article.

(b) Limitations.--(1) The credit under this section shall not exceed the percentage of the tax otherwise due under this article determined by dividing the portion of the taxpayer's West Virginia income subject to taxation by such other jurisdiction by the total amount of the taxpayer's West Virginia income.

(2) The credit under this section shall not reduce the tax otherwise due under this article to an amount less than would have been due if the income subject to taxation by such other jurisdiction were excluded from the taxpayer's West Virginia income.

(c) Exception.--No credit shall be allowed under this section for a tax of a jurisdiction which allows residents of this State a credit against the taxes imposed by such other jurisdiction for the tax under this article, if such other credit is substantially similar to the credit granted by section forty.

(d) Definition.--For purposes of this section West Virginia income means:

(1) The West Virginia adjusted gross income of an individual, or

(2) The amount of the income of an estate or trust, determined as if the estate or trust were an individual computing his West Virginia adjusted gross income under section twelve.

Credits
Acts 1961, c. 155.

W. Va. Code, § 11-21-20, WV ST § 11-21-20
Current with laws of the 2015 Regular Session, H.B. 2212

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W.S.A. 71.02

71.02. Imposition of tax

Effective: October 27, 2007
Currentness

(1) For the purpose of raising revenue for the state and the counties, cities, villages and towns, there shall be assessed, levied, collected and paid a tax on all net incomes of individuals and fiduciaries, except fiduciaries of nuclear decommissioning trust or reserve funds subject to the tax under s. 71.23(2), by every natural person residing within the state or by his or her personal representative in case of death, and trusts resident within the state; by every nonresident natural person and trust of this state, upon such income as is derived from property located or business transacted within the state including, but not limited by enumeration, income derived from a limited partner's distributive share of partnership income, income derived from a limited liability company member's distributive share of limited liability company income, income derived from a covenant not to compete to the extent that the covenant was based on a Wisconsin-based activity, the state lottery under ch. 565, any multijurisdictional lottery under ch. 565 if the winning lottery ticket or lottery share was purchased from a retailer, as defined in s. 565.01(6), located in this state or from the department, winnings from a casino or bingo hall that is located in this state and that is operated by a Native American tribe or band and pari-mutuel wager winnings or purses under ch. 562, and also by every nonresident natural person upon such income as is derived from the performance of personal services within the state, except as exempted under s. 71.05(1) to (3). Every natural person domiciled in the state shall be deemed to be residing within the state for the purposes of determining liability for income taxes and surtaxes. A single-owner entity that is disregarded as a separate entity under section 7701 of the Internal Revenue Code is disregarded as a separate entity under this chapter, and its owner is subject to the tax on the entity's income.

(2) In determining whether or not an individual resides within this state for purposes of this section, the following are not relevant:

(a) Contributions made to charitable organizations in this state.

(b) Directorships in corporations operating in this state.

(c) Accounts, as defined in s. 710.05(1)(a), held in financial institutions, as defined in s. 710.05(1)(c), located in this state.

(d) Corpuses of trusts, in which the individual is a trustee or a beneficiary, located in this state.

(e) Retention of professional services of brokers, as defined in s. 408.102 (1) (c), and of attorneys and accountants located in this state.

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(3) This section shall not be construed to prevent or affect the correction of errors or omissions in the assessments of income for former years under s. 71.74 (1) and (2).

Credits

<<For credits, see Historical Note field.>>

Notes of Decisions (51)

W. S. A. 71.02, WI ST 71.02
Current through 2015 Act 1, published 3/10/2015

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W.S.A. 71.77

71.77. Statutes of limitations, assessments and refunds; when permitted

Currentness

(1) Additional assessments and corrections of assessments by office audit or field investigation may be made of income of any taxpayer if notice under s. 71.74(11) is given within the time specified in this section.

(2) With respect to assessments of a tax or an assessment to recover all or part of any tax credit under this chapter in any calendar year or corresponding fiscal year, notice shall be given within 4 years of the date the income tax or franchise tax return was filed.

(2m) Notwithstanding sub. (2), the department of revenue may assess a deficiency related to a contribution to the capital of the taxpayer, as defined in section 118(c) of the Internal Revenue Code, within 4 years after the department receives notice by the taxpayer, in the manner that the department prescribes, of any of the following:

(a) The amount of the expenditure under section 118(c)(2)(A) of the Internal Revenue Code.

(b) The intent of the person against whom the deficiency is to be assessed not to make the expenditure under section 118(c)(2)(A) of the Internal Revenue Code.

(c) Expiration of the time period under section 118(c)(2)(B) of the Internal Revenue Code and failure of the person against whom the deficiency is to be assessed to make the expenditure under section 118(c)(2)(B) of the Internal Revenue Code.

(3) Irrespective of sub. (2), if any person has filed an incorrect income tax or franchise tax return for any year with intent to defeat or evade the income tax or franchise tax assessment provided by law, or has failed to file any income tax or franchise tax return for any of such years, income of any such year may be assessed when discovered. The department of revenue shall assess the taxes owed for taxable years beginning before January 1, 1990, by using the definition of "Internal Revenue Code" that applied to the year for which the assessment was made, as modified by P.L. 104-188 and P.L. 105-34 if P.L. 104-188 or P.L. 105-34 applied for federal purposes for that year.

(4) Irrespective of sub. (3), if additional assessments are made for any period more than 6 years before the year in which the assessment is made, the burden of proof shall rest with the state to prove its case by a preponderance of the evidence.

(5) The limitation periods provided in this section may be extended by written agreement between the taxpayer and the department prior to the expiration of such limitation periods or any extension of such limitation periods. During any such extension period, the department may issue an assessment or a refund, and the taxpayer may file a claim for a refund, relating

to the year which the extension covers. Subsection (4) shall not apply to any assessment made in any such extended period. The department of revenue shall assess the taxes owed or compute the refund due for taxable years beginning before January 1, 1990, by using the definition of "Internal Revenue Code" that applied to the year for which the assessment was made, as modified by P.L. 104-188 and P.L. 105-34 if P.L. 104-188 or P.L. 105-34 applied for federal purposes for that year.

(6) Section 990.06 shall have no application to the provisions of this section.

(7) Notwithstanding any other limitations expressed in this chapter, an assessment or refund may be made:

(a) If notice of assessment is given within 6 years after a return was filed and if on that return the taxpayer reported for taxation, or the taxpayers jointly reported for taxation, less than 75% of the net income properly assessable, except that no assessment of additional income may be made under this subsection for any year beyond the period specified in sub. (2) unless the aggregate of the taxes on the additional income of such year is in excess of $100 in the case of a return other than a joint return or $200 in the case of a joint return.

(b) If notice of assessment or refund is given to the taxpayer within 90 days of the date on which the department receives a report from the taxpayer under s. 71.76 or within such other period specified in a written agreement entered into prior to the expiration of such 90 days by the taxpayer and the department. If the taxpayer does not report to the department as required under s. 71.76, the department may make an assessment against the taxpayer or refund to the taxpayer within 4 years after discovery by the department.

(8) For purposes of this section, a return filed on or before the last day prescribed by law for the filing of the return shall be considered as filed on such last day, and a return filed after the last day prescribed by law shall be considered as filed on the date that the return is received by the department of revenue.

Credits

<<For credits, see Historical Note field.>>

Editors' Notes

COMMENTS--1997 ACT 291, § 7

Note: This provision removes an ambiguity in s. 71.77 (7) (a) as to whether the 6-year statute of limitations on notice of assessments applies to corporations. If a corporation reports less than 75% of its net income and the taxes on the additional income are more than $100, DOR may assess additional taxes or issue a refund within 6 years after the return is filed.

LEGISLATIVE COUNCIL COMMITTEE SUPPLEMENTAL NOTES RELATING TO 1985 ACTS 29 AND 37

[Former § 71.11(21)(g)1 amendment (see, now, § 71.77(7)(a))] permits the department of revenue to utilize an extended period of 6 years to send a notice of assessment where there is a substantial understatement of income on joint returns as well as on individual or separate returns, but increases the minimum threshold for understatement of the tax to $200 for a joint return (in contrast to $100 for an individual or separate return).

Notes of Decisions (10)

W. S. A. 71.77, WI ST 71.77
Current through 2015 Act 1, published 3/10/2015

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229 W.Va. 190
Supreme Court of Appeals of
West Virginia.

Craig A. GRIFFITH, West Virginia State Tax Commissioner, Respondent Below, Petitioner
v.
CONAGRA BRANDS, INC.,
Petitioner Below, Respondent.

No. 11–0252. | Submitted April 18, 2012. | Decided May 24, 2012. | Concurring Opinion of Justice Benjamin May 30, 2012.

Synopsis
Background: Alleged taxpayer appealed assessments of corporation net income tax and business franchise tax. The Circuit Court, Berkeley County, Christopher C. Wilkes, J., reversed. Tax Commissioner appealed.

[Holding:] The Supreme Court of Appeals, Ketchum, C.J., held that assessments did not satisfy purposeful direction under the Due Process Clause or significant economic presence under the Commerce Clause.

Affirmed.

Benjamin, J., concurred and filed opinion.

West Headnotes (8)

[1] **Taxation**
Questions of fact
Taxation
Scope and extent of review in general
On review of Tax Commissioner's decisions, findings of fact by the administrative law judge are accorded deference, unless the reviewing court concludes the findings to be clearly wrong.

Cases that cite this headnote

[2] **Taxation**
Trial de novo
Taxation
Scope and extent of review in general
On review of Tax Commissioner's decisions, questions of law are reviewed de novo.

1 Cases that cite this headnote

[3] **Taxation**
Scope and Extent of Review
Taxation
Scope and extent of review in general
In an administrative appeal from the decision of the West Virginia Office of Tax Appeals, Supreme Court of Appeals will review the final order of the circuit court pursuant to the standards of review in the State Administrative Procedures Act. West's Ann.W.Va.Code, 29A–5–4(g).

1 Cases that cite this headnote

[4] **Internal Revenue**
Trial de novo
Taxation
Trial de novo
Taxation
Questions of fact
Taxation
Scope and extent of review in general
In an administrative appeal from the decision of the West Virginia Office of Tax Appeals, findings of fact of the administrative law judge will not be set aside or vacated unless clearly wrong; and, although administrative interpretation of State tax provisions will be afforded sound consideration, Supreme Court of Appeals will review questions of law de novo.

2 Cases that cite this headnote

[5] **Commerce**
Taxation in General
A state tax on interstate commerce will not be sustained unless it: (1) has a substantial nexus with the State, (2) is fairly apportioned, (3) does not discriminate, and (4) is fairly related to the

services provided by the State. U.S.C.A. Const. Art. 1, § 8, cl. 3.

Cases that cite this headnote

[6] **Commerce**
Taxation in General

Rather than a physical presence standard, a significant economic presence test is a better indicator of whether substantial nexus exists for purposes of analyzing a state tax for validity under Commerce Clause; a substantial economic presence standard incorporates due process purposeful direction towards a state while examining the degree to which a company has exploited a local market, and involves an examination of both the quality and quantity of the company's economic presence. U.S.C.A. Const. Art. 1, § 8, cl. 3.

1 Cases that cite this headnote

[7] **Commerce**
Taxation in General

Under significant economic presence test for whether substantial nexus exists for purposes of analyzing a state tax for validity under Commerce Clause, purposeful direction towards a state is analyzed as it is for Due Process Clause purposes; Commerce Clause analysis requires the additional examination of the frequency, quantity, and systematic nature of a taxpayer's economic contacts with a state. U.S.C.A. Const. Art. 1, § 8, cl. 3; U.S.C.A. Const.Amend. 14.

1 Cases that cite this headnote

[8] **Commerce**
Corporate Franchises and Privileges
Commerce
Income taxes
Constitutional Law
Franchise taxes
Constitutional Law
Income taxes
Taxation
Apportionment of assessment
Taxation
Apportionment of income

Assessments against alleged taxpayer for corporation net income and business franchise tax, on royalties earned from the nation-wide licensing of food industry trademarks and trade names, satisfied neither purposeful direction under the Due Process Clause nor significant economic presence under the Commerce Clause, where alleged taxpayer, with no physical presence in West Virginia, did not sell or distribute food-related products or provide services in West Virginia, all products were manufactured solely by alleged taxpayer's unrelated or affiliated licensees outside of West Virginia, alleged taxpayer did not direct or dictate how its licensees distributed the products, and the licensees, operating no retail stores in West Virginia, sold the products only to wholesalers and retailers in West Virginia. U.S.C.A. Const. Art. 1, § 8, cl. 3; U.S.C.A. Const.Amend. 14.

Cases that cite this headnote

****75 *191 *Syllabus by the Court***

1. In an administrative appeal from the decision of the West Virginia Office of Tax Appeals, this Court will review the final order of the circuit court pursuant to the standards of review in the State Administrative Procedures Act set forth in *W.Va.Code,* 29A–5–4(g) [1988]. Findings of fact of the administrative law judge will not be set aside or vacated unless clearly wrong, and, although administrative interpretation of State tax provisions will be afforded sound consideration, this Court will review questions of law *de novo.*

2. "A state tax on interstate commerce will not be sustained unless it: '(1) has a substantial nexus with the State; (2) is fairly apportioned; (3) does not discriminate; and (4) is fairly related to the services provided by the State.' *Maryland v. Louisiana,* 451 U.S. 725, 754, 101 S.Ct. 2114, 2133, 68 L.Ed.2d 576, 600 (1981)." Syl. pt. 1, *Western Maryland Railway Co. v. Goodwin, Comm'r,* 167 W.Va. 804, 282 S.E.2d 240 (1981).

3. Assessments against a foreign licensor for West Virginia corporation net income and business franchise tax, on royalties earned from the nation-wide licensing of food industry trademarks and trade names, satisfied neither "purposeful direction" under the Due Process Clause nor "significant economic presence" under the Commerce Clause, where the foreign licensor, with no physical presence in this State, did not sell or distribute food-related products or provide services in West Virginia and where: (1) all products bearing the trademarks and trade names were manufactured solely by unrelated or affiliated licensees of the foreign licensor outside of West Virginia, (2) the foreign licensor did not direct or dictate how its licensees distributed the products and (3) the licensees, operating no retail stores in West Virginia, sold the products only to wholesalers and retailers in this State.

Attorneys and Law Firms

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Opinion

KETCHUM, C.J.

This case is before this Court upon the appeal of the West Virginia State Tax Commissioner from the final order of the Circuit Court of Berkeley County which set aside the decision of the West Virginia Office of Tax Appeals. The Office of Tax Appeals rejected the challenge of ConAgra Brands, Inc. ("ConAgra Brands") to assessments for unpaid corporation net income tax and business franchise tax. The assessments were imposed on apportioned royalties ConAgra Brands received from the licensing of its intangible trademarks and trade names for use throughout the United States, including West Virginia. In setting aside the decision of the Office of Tax Appeals, the circuit court held that ConAgra Brands' licensing transactions did not constitute doing business in West Virginia and that the assessments failed to meet the requirements of the Due Process and Commerce Clauses of the Constitution of the United States. [1]

****76 *192** The State Tax Commissioner seeks reinstatement of the assessments for corporation net income tax and business franchise tax.

This Court has carefully reviewed the record-appendix, the briefs and argument of the parties and the law relevant to this matter and is of the opinion that the order setting aside the decision of the Office of Tax Appeals and invalidating the assessments should not be disturbed. Accordingly, the final order of the Circuit Court of Berkeley County is affirmed.

I.

Factual Background

The principal facts are not in dispute and may be summarized from the stipulations of the parties and the adjudicated findings below as follows:

ConAgra Foods, Inc., ("CA Foods") and its affiliates owned a large number of trademarks and trade names in the food products industry. In 1997, CA Foods established ConAgra Brands for the purpose of centralizing the management and protection of its trademark and trade name portfolio. ConAgra Brands, a Nebraska corporation, was a wholly-owned subsidiary of CA Foods.

CA Foods and its affiliates transferred the trademarks and trade names to ConAgra Brands and agreed, through license agreements, to pay royalties to ConAgra Brands for the use of the trademarks and trade names. ConAgra Brands acquired additional trademarks and trade names from unrelated entities.

Through the execution of licensing agreements, ConAgra Brands began collecting royalty payments for the use of its trademarks and trade names by various unrelated, third party licensees and CA Foods affiliated licensees. The trademarks and trade names, to name but a few, included familiar brands, such as Armour, Butterball, Country Skillet, Healthy Choice, Kid Cuisine, Morton, Swift and Swift Premium. The royalties were collected by ConAgra Brands from the sale by the licensees of food products bearing the trademarks and trade names to clients and customers throughout the United States, including West Virginia. [2]

Items bearing ConAgra Brands' trademarks and trade names were found in many, if not in most, retail grocery stores in this State. As subsequently observed by the West Virginia Office of Tax Appeals, the items included "prepared poultry, such as turkey and chicken, processed and smoked meats, breads, pastas, canned food, boxed processed dishes, frozen food, jarred food, sandwich spreads, pre-packaged meals, entrees and side dishes, dairy products, desserts, condiments and canned, bottled and frozen drinks." ConAgra Brands did not manufacture or sell the products. All products in question were manufactured by the licensees in facilities outside West Virginia. As the circuit court determined, ConAgra Brands conducted its business of licensing and protecting the value of its trademarks and trade names entirely outside of this State.

ConAgra Brands did not own or rent any offices, warehouses or other facilities in West Virginia and did not maintain any inventory or sell or distribute merchandise in this State. ConAgra Brands had no employees or agents in West Virginia. Various licensees sold or distributed products bearing the trademarks and trade names to wholesalers and retailers located in West Virginia, and the licensees provided services in West Virginia to those clients and customers. ConAgra Brands provided no services in that regard and, *as stipulated,* did not direct or dictate how the licensees distributed the products bearing the trademarks and trade names. Nevertheless, ConAgra Brands paid all expenses in defending its trademarks and trade ***193 **77** names against infringement and in overseeing national marketing by developing marketing strategies and purchasing advertisements with national media outlets.

During the audit period, ConAgra Brands obtained substantial royalties related to product sales in West Virginia. As subsequently confirmed by the Office of Tax Appeals, four principal licensees made between $19,269,000 and $46,247,000 in sales in West Virginia of ConAgra Brand trademarked or trade named products. Those sales earned royalties for ConAgra Brands during the audit period of approximately $1,156,000. [3]

II.

Procedural Background

Following a field audit, which included a Multistate Tax Commission Audit Report, the Director of the Auditing Division of the State Tax Division, in July 2006, issued a notice of assessment for the period June 1, 2000, through May 31, 2003, stating that ConAgra Brands failed to pay corporation net income tax on income apportioned to West Virginia. The amount of the assessment was $44,012.00 in tax plus $16,789.00 in interest for a total assessed liability of $60,801.00. At that time, corporation net income tax was imposed in this State pursuant to *W.Va.Code,* 11–24–1 [1967] *et seq.* [4] Also in July 2006, the Director issued a notice of assessment for the same audit period stating that ConAgra Brands failed to pay business franchise tax as apportioned to West Virginia. The amount of the assessment was $12,501.00 in tax plus $4,541.00 in interest for a total assessed liability of $17,042. Business franchise tax is imposed in this State pursuant to *W.Va.Code,* 11–23–1 [1985] *et seq.* In both assessments, interest was computed through August 2006.

ConAgra Brands filed petitions for reassessment alleging that it was subject to neither corporation net income tax nor business franchise tax in West Virginia. In March 2009, an evidentiary hearing on the petitions was conducted before the Office of Tax Appeals followed by the submission of briefs. [5]

By decision dated January 6, 2010, the Office of Tax Appeals upheld the two assessments.

The Office of Tax Appeals concluded that the corporation net income tax and business franchise tax assessments were consistent with the requirements of Due Process since, during the audit period, ConAgra Brands had minimum contacts with West Virginia, and the royalty income attributed to West Virginia for tax purposes was rationally related to benefits provided by this State. The decision stated: "The Petitioner [ConAgra Brands] receives royalty payments from the licensees, primarily based on the amount of sales. Thus, it benefits from the sale of its licensed products in the State of West Virginia. Therefore, the Petitioner has availed itself of the economic forum of the State of West Virginia."

In addition, the Office of Tax Appeals concluded that neither assessment violated the Commerce Clause since: (1) ConAgra Brands had a substantial nexus with West Virginia, (2) the taxes as assessed were fairly apportioned, (3) the taxes did not discriminate against interstate commerce and (4) the taxes were fairly related to the benefits provided to ConAgra Brands by this State. The ***194 **78** decision stated in reference to the Commerce Clause:

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> The Petitioner not only knows that its licensees will penetrate the economic markets of various states, it expects it and readily accepts the benefit therefrom. As described herein, the rights and benefits owned by the Petitioner in its trademarks and trade names are inseparable from the rights and duties of its licensees. * * * [The audit] figures demonstrate the frequency, quantity and systematic nature of [ConAgra Brands'] contacts with West Virginia. * * * Advertising in all of its forms demonstrates all of these factors. The presence of its licensees demonstrates the systematic nature of its contacts with the State. That the Petitioner has a "substantial economic presence" in the State of West Virginia is beyond question.

ConAgra Brands filed an appeal in the Circuit Court of Berkeley County from the decision of the Office of Tax Appeals.[6] Additional briefs were submitted, and on January 10, 2011, the circuit court entered a final order setting aside the decision of the Office of Tax Appeals. Concluding that ConAgra Brands was not doing business in West Virginia during the audit period for purposes of either the corporation net income tax or the business franchise tax, the Circuit Court stated:

> As to the products, bearing labels imprinted with the trademarks and trade names licensed by ConAgra Brands to its licensees, when in West Virginia, either in the hands of those licensees, or the licensees' retailer customers, neither the third-party suppliers of ingredients to the licensees for the products, nor the third-party suppliers of those labels, nor ConAgra Brands, Inc., have, purely by virtue of supplying those ingredients or labels, or licensing the use of those trademarks and trade names, the minimum, much less the substantial connection, with West Virginia to satisfy either the Due Process or Commerce Clauses or, thus, to allow West Virginia to impose its [corporation net income tax and/or business franchise tax] on them.
>
> In so holding, the circuit court further stated:
>
> All manufacturing processes, utilized by the licensees to produce and to ensure the quality and taste of the finished products, occurred at the licensees' manufacturing facilities located outside of West Virginia, and the licensees did not operate retail stores in West Virginia.
>
> ConAgra Brands, Inc., reported and paid income tax to states in which it owned or rented property, provided services or made sales to customers through its employees or agents.

The State Tax Commissioner appeals to this Court from the January 10, 2011, order of the circuit court.

III.

Standards of Review

[1] **[2]** In syllabus point 3 of *Frymier–Halloran v. Paige, Comm'r,* 193 W.Va. 687, 458 S.E.2d 780 (1995), this Court held that the standard of review applicable to decisions of the State Tax Commissioner are the same as those set out in the State Administrative Procedures Act. *See, Kanawha Eagle Coal v. Tax Comm'r,* 216 W.Va. 616, 619, 609 S.E.2d 877, 880 (2004) (indicating that, in appeals ***195** ****79** from tax assessments, review by a circuit court, and subsequently by this Court, is governed by the provisions of *W.Va.Code,* 29A–5–4 [1998]). As a component of that standard, findings of fact by the administrative law judge are accorded deference, unless the reviewing court concludes the findings to be clearly wrong. Moreover, questions of law are reviewed *de novo. See, Hartley Marine Corporation v. Mierke, Comm'r,* 196 W.Va. 669, 677, 474 S.E.2d 599, 607 (1996), *cert. denied,* 519 U.S. 1108, 117 S.Ct. 942, 136 L.Ed.2d 832 (1997) (The determination of whether state legislation violates the Commerce Clause is reviewed *de novo*); *Appalachian Power Company v. State Tax Dept.,* 195 W.Va. 573, 582, 466 S.E.2d 424, 433 (1995) (indicating that, even where review is *de novo,* interpretation based on administrative expertise and discretion should be examined).

[3] **[4]** Those standards of review should apply to the final order of a circuit court concerning an appeal from the Office of Tax Appeals as well as a final order of a circuit court concerning an appeal from the State Tax Commissioner. In this case, review of the validity of the assessments against ConAgra was subject to the State Administrative Procedures Act, with the *de novo* element, at both the Office

of Tax Appeals and circuit court levels. *See,* n. 5 and n. 6, *supra.* It follows, therefore, and this Court holds that, in an administrative appeal from the decision of the West Virginia Office of Tax Appeals, this Court will review the final order of the circuit court pursuant to the standards of review in the State Administrative Procedures Act set forth in *W.Va.Code,* 29A–5–4(g) [1988]. Findings of fact of the administrative law judge will not be set aside or vacated unless clearly wrong, and, although administrative interpretation of State tax provisions will be afforded sound consideration, this Court will review questions of law *de novo.*

IV.

Discussion

During the audit period, corporation net income tax was imposed in this State pursuant to *W.Va.Code,* 11–24–1 [1967] *et seq.* As provided in *W.Va.Code,* 11–24–4(3) [1988], the tax was imposed "on the West Virginia taxable income of every domestic or foreign corporation engaging in business in this state or deriving income from property, activity or other sources in this state[.]" The phrase *engaging in business* was defined, generally, in *W.Va.Code,* 11–24–3a(7) [1991], as follows: "The term 'engaging in business' or 'doing business' means any activity of a corporation which enjoys the benefits and protection of government and laws in this state."

Business franchise tax during the audit period was imposed in this State pursuant to *W.Va.Code,* 11–23–1 [1985] *et seq.* As provided in *W.Va.Code,* 11–23–6(a) [1996], a business franchise tax was imposed "on the privilege of doing business in this state and in respect of the benefits and protection conferred. Such tax shall be collected from ... every foreign or domestic corporation owning or leasing real or tangible personal property located in this state or doing business in this state[.]" In the context of business franchise tax, the phrase *doing business* was defined, generally, in *W.Va.Code,* 11–23–3(b)(8) [1991], as "any activity of a corporation or partnership which enjoys the benefits and protection of the government and laws of this state [.]" *See,* CSR § 110–23–3.10 [1992] (similar definition).

As to both this State's corporation net income tax and business franchise tax, the phrase *business income* was defined as meaning:

> income arising from transactions and activity in the regular course of the taxpayer's trade or business and includes income from tangible and intangible property if the acquisition, management and disposition of the property or the rendering of services in connection therewith constitute integral parts of the taxpayer's regular trade or business operations.

W.Va.Code, 11–24–3a(1) [1991]; *W.Va.Code,* 11–23–3(b)(1) [1991]. *See,* CSR § 110–23–3.3 [1992] (similar definition). Moreover, as to both types of tax, the phrase *income-producing activity,* under the respective apportionment provisions, was defined as including the "sale, licensing or other use of intangible personal property." ***196 **80** *W.Va.Code,* 11–24–7(f)(4) [1998]; *W.Va.Code,* 11–23–5(n)(4) [1991]. [7]

The circuit court concluded that ConAgra Brands had not done business in West Virginia during the audit period for purposes of the corporation net income tax or the business franchise tax. In invalidating the assessments, the circuit court described the various entities involved in the licensees' manufacturing process. The circuit court underscored its conclusion that neither the supplying of ingredients or labels by third-parties for the products, nor the licensing by ConAgra Brands of the trademarks and trade names, had any association with West Virginia sufficient to impose the assessments on ConAgra Brands. As the circuit court pointed out, all manufacturing processes conducted by the licensees occurred at facilities outside of West Virginia. None of the licensees operated any retail stores in West Virginia. Thus, the circuit court determined, *a fortiori,* that ConAgra Brands had neither the minimum contacts with this State required under the Due Process Clause, nor the substantial nexus required under the Commerce Clause, to warrant the assessments.

The State Tax Commissioner asserts, however, that since various licensees made between $19 million and $46 million in sales in West Virginia, and ConAgra Brands earned over $1 million in royalties, those business entities, no doubt, worked in concert during the audit period toward a common economic goal. By way of consumer recognition, the trademarks and trade names were as important to sales as the quality of the product itself. Moreover, ConAgra Brands retained an interest in the quality of the products through the license agreements. Consequently, the trademarks and trade names produced

income in West Virginia, thereby subjecting ConAgra Brands to corporation net income and business franchise tax, and whether ConAgra Brands had a "physical presence" in this State is irrelevant. According to the State Tax Commissioner, ConAgra Brands, thus, purposefully directed its intangible assets toward West Virginia, thereby satisfying the minimum contacts standard of the Due Process Clause, and established a significant economic presence in this State, thus satisfying the substantial nexus component pertaining to the Commerce Clause. As a result, the Commissioner seeks reinstatement of the assessments.

[5] In *Complete Auto Transit, Inc. v. Brady,* 430 U.S. 274, 97 S.Ct. 1076, 51 L.Ed.2d 326 (1977), the Supreme Court of the United States confirmed that interstate commerce is not immune from state taxation. As the Court indicated, however, that principle is subject to various limitations. In syllabus point 1 of *Western Maryland Railway Co. v. Goodwin, Comm'r,* 167 W.Va. 804, 282 S.E.2d 240 (1981), this Court confirmed: "A state tax on interstate commerce will not be sustained unless it: '(1) has a substantial nexus with the State; (2) is fairly apportioned; (3) does not discriminate; and (4) is fairly related to the services provided by the State.' *Maryland v. Louisiana,* 451 U.S. 725, 754, 101 S.Ct. 2114, 2133, 68 L.Ed.2d 576, 600 (1981)." *In accord, Hartley Marine Corporation, supra,* 196 W.Va. at 677, 474 S.E.2d at 607.

Subsequently, in *Quill Corp. v. North Dakota,* 504 U.S. 298, 112 S.Ct. 1904, 119 L.Ed.2d 91 (1992), the Supreme Court of the United States distinguished Due Process from Commerce Clause concerns with regard to state taxation of foreign corporations as follows:

> Due Process centrally concerns the fundamental fairness of governmental activity. Thus, at the most general level, the due process nexus analysis requires that we ask whether an individual's connections with a State are substantial enough to legitimate the State's exercise of power over him. We have, therefore, often identified "notice" or "fair warning" as the analytic touchstone of due process nexus analysis. In contrast, the Commerce Clause and its nexus requirement are informed not so much by concerns about fairness for the individual defendant as by structural concerns about the effects of ***197 **81** state regulation on the national economy. * * *
>
> The *Complete Auto* analysis reflects these concerns about the national economy. The second and third parts of that analysis, which require fair apportionment and non-discrimination, prohibit taxes that pass an unfair share of the tax burden onto interstate commerce. The first and fourth prongs, which require a substantial nexus and a relationship between the tax and state-provided services, limit the reach of state taxing authority so as to ensure that state taxation does not unduly burden interstate commerce. Thus, the "substantial nexus" requirement is not, like due process' "minimum contacts" requirement, a proxy for notice, but rather a means for limiting burdens on interstate commerce. Accordingly, contrary to the State's suggestion, *a corporation may have the "minimum contacts" with a taxing State as required by the Due Process Clause, and yet lack the "substantial nexus" with that State as required by the Commerce Clause.*

504 U.S. at 312, 313, 112 S.Ct. at 1913–14, 119 L.Ed.2d at 106, 107. (emphasis added)

Of particular importance in the current matter is this Court's decision in *Tax Comm'r v. MBNA America Bank,* 220 W.Va. 163, 640 S.E.2d 226 (2006), *cert. denied,* 551 U.S. 1141, 127 S.Ct. 2997, 168 L.Ed.2d 719 (2007).[8] In *MBNA,* the taxpayer, a Delaware corporation in the business of issuing and servicing VISA and MasterCard credit cards, sought refunds from the West Virginia State Tax Commissioner for corporation net income and business franchise taxes it paid for the years 1998 and 1999. Although the taxpayer promoted its business to West Virginia customers via mail and telephone solicitation, it had no employees or property in this State. The sole issue in *MBNA* was whether the imposition of the taxes, on a foreign corporate taxpayer with no physical presence in West Virginia, violated the Commerce Clause. Finding that the taxpayer, nevertheless, had a substantial nexus with this State during the audit period, the Circuit Court of Kanawha County upheld the taxes. Upon appeal, this Court affirmed.

[6] [7] As the Supreme Court of the United States did in *Quill,* this Court, in *MBNA,* distinguished the Due Process analysis concerning state taxation from an analysis under the Commerce Clause. The opinion confirmed that, whereas a Due Process analysis involves the requirement of some minimum connection between the state and the activity sought to be taxed, coupled with traditional notions of fairness, an analysis of the validity of a state tax under the Commerce Clause is more concerned with whether a state-imposed tax unduly burdens interstate commerce or affects the national economy. Moreover, in considering the type of "substantial nexus" required under *Complete Auto* and *Maryland v. Louisiana,* as a component of a Commerce Clause analysis, this Court determined that a "significant

economic presence" test would be an appropriate measure. The opinion in *MBNA* explains:

> Rather than a physical presence standard, this Court believes that a significant economic presence test is a better indicator of whether substantial nexus exists for Commerce Clause purposes. At least one legal commentator has suggested such a test and to some degree defined its parameters. *See* Edson, 49 Tax Lawyer at 943. According to this commentator, a substantial economic presence standard "incorporates due process 'purposeful direction' towards a state while examining the degree to which a company has exploited a local market." *Id.* Further, "[a] substantial economic presence analysis involves an examination of both the quality and quantity of the company's economic presence." *Id.,* 49 Tax Law. at 944. Finally, under this test, "[p]urposeful direction towards a state is analyzed as it is for Due Process Clause purposes," and the Commerce Clause analysis requires the additional examination of "the frequency, quantity and systematic nature of a taxpayer's economic contacts ***198 **82** with a state." *Id.,* 49 Tax Law. at 945. We find this rationale persuasive and will apply it in determining the constitutionality of the taxes at issue.

220 W.Va. at 171, 640 S.E.2d at 234.

Upholding the corporation net income and business franchise taxes, this Court concluded, in *MBNA,* that physical presence in West Virginia was not a requirement, for Commerce Clause purposes, in the circumstances pertaining to the taxpayer.[9] This Court noted, however, that the record demonstrated that "*MBNA* continuously and systematically engaged in direct mail and telephone solicitation and promotion in West Virginia." 220 W.Va. at 172, 640 S.E.2d at 235.

In the current matter, ConAgra Brands did not engage in the solicitation noted in *MBNA.*[10] In contrast, while physical presence in this State is not a requirement concerning the validity of the two assessments, it is worth drawing attention to the many joint stipulations in this case favorable to the taxpayer, i.e., ConAgra Brands did not own or rent any offices, warehouses or other facilities in West Virginia and did not maintain any inventory or sell or distribute merchandise in this State. ConAgra Brands had no employees or agents in West Virginia. The licensees, rather than ConAgra Brands, sold or distributed the products bearing the trademarks and trade names to wholesalers and retailers located in West Virginia, and the licensees provided services in West Virginia to those clients and customers. ConAgra Brands provided no services in that regard *and did not direct or dictate how the licensees distributed the products bearing the trademarks and trade names.* Nevertheless, ConAgra Brands paid all expenses in defending its trademarks and trade names against infringement and in overseeing national marketing by developing marketing strategies and purchasing advertisements with national media outlets. With regard to defending against infringement, the final order of the circuit court stated in part:

> Even if arising, entirely or in part, from conduct occurring in West Virginia, actions to protect ConAgra Brands, Inc.'s rights in its trademarks and trade names would be brought exclusively in the courts of the United States under the provisions of the laws of the United States protecting such intellectual property.

ConAgra Brands asserts as follows:

> The Respondent [ConAgra Brands] conducts its business of licensing and protecting the value of its trademarks and trade names entirely outside of West Virginia. * * * None of the licensees have retail stores in West Virginia. Instead, they sell their products to wholesalers and distributors who, in turn, sell those products to retailers in various states throughout the United States, including West Virginia.

A further matter of controversy in this case is whether the placement of the trademarks and trade names by ConAgra Brands in the "stream of commerce" through the licensees' products was sufficient to warrant the tax assessments imposed on ConAgra Brands in West Virginia. An element of confusion, however, surrounds the lack of consensus within the leading case on that point: *Asahi Metal Industry Co. v. Superior Court of California,* 480 U.S. 102, 107 S.Ct. 1026, 94 L.Ed.2d 92 (1987). ConAgra Brands relies on the opinion of Justice O'Connor, in *Asahi,* which states in part: "The placement of a product into the stream of commerce, without more, is not an act of ***199 **83** the defendant purposefully directed toward the forum State." 480 U.S. at 112, 107 S.Ct. at 1032, 94 L.Ed.2d at 104. On the other hand, citing *Asahi,* this Court held in syllabus point 2 of *Hill v. Showa Denko, K.K.,* 188 W.Va. 654, 425 S.E.2d 609 (1992), *cert. denied,* 508 U.S. 908, 113 S.Ct. 2338, 124 L.Ed.2d 249 (1993):

> Personal jurisdiction "premised on the placement of a product into the stream of commerce is consistent with the

Due Process Clause" and can be exercised without the need to show additional conduct by the defendant aimed at the forum state. *Asahi Metal Industry Co. v. Superior Court of California,* 480 U.S. 102, 117, 107 S.Ct. 1026 [1035], 94 L.Ed.2d 92 [108] (1987).

The principle thus set forth in *Hill* was based upon the separate opinion of Justice Brennan in *Asahi.* [11] The remaining Justices were split, with some variation, between the opinions of Justices O'Connor and Brennan.

In any event, *Hill* concerned the question of whether the exercise of personal jurisdiction in West Virginia over a drug manufacturer located in Japan satisfied the requirements of Due Process where one of the manufacturer's over-the-counter medications was allegedly contaminated and injured the plaintiff. Following Justice Brennan's opinion in *Asahi,* this Court, in *Hill,* found jurisdiction in West Virginia to be proper since the Japanese manufacturer derived substantial revenue in West Virginia from the purchase of its medications in this State. Important to the decision in *Hill,* however, was the fact that the manufacturer's sole American distributor was its wholly owned subsidiary. Referring to the subsidiary as a "shell corporation," this Court noted that the manufacturer was able to run all distribution of its product in the United States through its subsidiary and that the manufacturer had the authority to direct the subsidiary to halt the distribution. 188 W.Va. at 660, 661, 425 S.E.2d at 615, 616.

The record in this case, however, demonstrates that ConAgra Brands was not a shell corporation created solely for tax avoidance purposes. It is undisputed that, prior to the creation of ConAgra Brands, CA Foods and its affiliates experienced inconsistent, disjointed and inefficient trademark management which made it difficult to maintain and protect a uniform brand image. Thus, as both the Office of Tax Appeals and the circuit court determined: "ConAgra Brands, Inc., was created to centrally manage and provide for uniformity in brand image and brand presentation for the highly valued trademarks and trade names used by ConAgra Foods, Inc., and its subsidiaries." [12] Moreover, it is also undisputed that, in addition to executing agreements with CA Foods and its affiliates, ConAgra Brands acquired trademarks and trade names from unrelated entities and, through licensing agreements, earned royalty payments from unrelated entities. Consequently, the two assessments cannot be upheld upon the allegation that ConAgra Brands was a shell corporation.

The case decisions from other jurisdictions cited by the State Tax Commissioner are not dispositive. Although many of those cases suggest that the assessments in the matter now to be determined would be upheld, the narrative momentum of those authorities is mitigated by the circumstantial detail. In *Geoffrey, Inc. v. South Carolina Tax Commission* ***200 **84** 313 S.C. 15, 437 S.E.2d 13, *cert. denied,* 510 U.S. 992, 114 S.Ct. 550, 126 L.Ed.2d 451 (1993), the Supreme Court of South Carolina held that a tax on a foreign corporation's apportioned income from royalty payments violated neither the Due Process Clause nor the Commerce Clause. Geoffrey, Inc., a Delaware corporation, was a wholly-owned subsidiary of the Toys R Us company. Geoffrey licensed to the Toys R Us company the trade name "Toys R Us," plus Geoffrey's "merchandising skill, techniques, and 'know-how' in connection with marketing, promotion, advertising, and sale of products[.]" 437 S.E.2d at 15. The license agreement covered a number of states, and, although Geoffrey, Inc., had no physical presence in South Carolina, the Toys R Us company expanded into South Carolina and engaged in business there. In upholding the tax on the royalty payments received by Geoffrey, the Supreme Court of South Carolina found purposeful direction by Geoffrey and minimum contacts for Due Process purposes and substantial nexus, as required under *Complete Auto,* for purposes of the Commerce Clause.

The *Geoffrey* case, however, did not address the licensing of a trade name by a foreign licensor to a foreign manufacturer which assembles and packages the product out of state for sale to wholesalers and retailers in the forum state. Moreover, *Geoffrey* did not address the situation where the wholly-owned subsidiary, as licensor, entered into licensing agreements not only with its affiliates but also with separate corporations or entities.

In *KFC Corporation v. Iowa Department of Revenue,* 792 N.W.2d 308 (Iowa 2010), *cert. denied,* ––– U.S. ––––, 132 S.Ct. 97, 181 L.Ed.2d 26 (2011), the Supreme Court of Iowa rejected a challenge under the Commerce Clause to an income tax assessment against KFC Corporation, a Delaware corporation. KFC's primary business was licensing its KFC trademark "and related system" to independent franchisees, including franchisees operating restaurants in Iowa. The Supreme Court of Iowa, in *KFC Corporation,* indicated that the assessment did not offend the Commerce Clause since intangibles owned by KFC were utilized in a fast-food business by franchisees "firmly anchored within the state." 792 N.W.2d at 324. Moreover, the Iowa court noted: "In

order to comply with applicable standards, Iowa franchisees were required to purchase equipment, supplies, paper goods, and other products from only KFC-approved manufacturers and distributors." 792 N.W.2d at 311. The facts in *KFC Corporation* are, therefore, unlike the circumstances now before us.

Admittedly, the field of constitutional challenge to state taxation of foreign corporations with its varying levels of abstraction does not lend itself to black-letter law. There is no "one size fits all" line of precedent. Nevertheless, the distinction made in *Quill* and *MBNA* between the Due Process Clause and the Commerce Clause is not theoretical. Rather, the distinction is derivative of the organic law of the land. As recognized in *Quill,* a corporation may have the "minimum contacts" with a taxing state required by the Due Process clause but lack the "substantial nexus" with that state required under the Commerce Clause.

[8] Upon all of the above, this Court holds that assessments against a foreign licensor for West Virginia corporation net income and business franchise tax, on royalties earned from the nation-wide licensing of food industry trademarks and trade names, satisfied neither "purposeful direction" under the Due Process Clause nor "significant economic presence" under the Commerce Clause, where the foreign licensor, with no physical presence in this State, did not sell or distribute food-related products or provide services in West Virginia and where: (1) all products bearing the trademarks and trade names were manufactured solely by unrelated or affiliated licensees of the foreign licensor outside of West Virginia, (2) the foreign licensor did not direct or dictate how its licensees distributed the products and (3) the licensees, operating no retail stores in West Virginia, sold the products only to wholesalers and retailers in this State. In so holding, this Court observes in accord with the principles of *Quill* and *MBNA* that, assuming *arguendo* the elements of the Due Process Clause were satisfied, the assessments against ConAgra ***201** ****85** Brands would fail under the substantial nexus component of the Commerce Clause.

V.

Conclusion

The final order of the Circuit Court of Berkeley County invalidating the assessments for corporation net income tax and business franchise tax for the audit period June 1, 2000, through May 31, 2003, is affirmed.

Affirmed.

Justice BENJAMIN concurs and reserves the right to file a concurring opinion.

BENJAMIN, J., concurring:

(Filed May 30, 2012)

I concur with the majority opinion which affirms the circuit court's ruling that ConAgra Brands' licensing transactions do not constitute doing business in West Virginia and that the tax assessments fail to meet the requirements of the Due Process and Commerce Clauses of the Constitution of the United States.

I write separately to reiterate my objections to *Tax Comm'r v. MBNA Am. Bank,* 220 W.Va. 163, 640 S.E.2d 226 (2006), which the Court discusses in the majority opinion in the instant case. In *MBNA,* the majority of this Court found tax liability for an out-of-state corporation with no tangible or intangible presence in this State on income realized out-of-state from accounts kept out of state. The Court based its finding of tax liability on what it termed "a significant economic presence test," *MBNA,* 220 W.Va. at 171, 640 S.E.2d at 234, to determine whether a substantial nexus existed for Commerce Clause purposes. In the instant opinion, the Court distinguishes *MBNA* by finding that ConAgra Brands did not engage in solicitation of the type conducted by the taxpayer in *MBNA.* While I certainly agree with this distinction, I would take the opportunity presented in this case to overrule *MBNA.* Otherwise, *MBNA* will continue to linger like a dormant virus in our body of law, threatening to erupt into a full-blown infection every time this Court is presented with a tax case like the instant one. [1]

I am fully aware that *MBNA* is only six years old, and the doctrine of *stare decisis* usually prohibits overruling such recent precedent. This Court has explained the importance of *stare decisis* as follows:

> The doctrine of *stare decisis* rests upon the principle that law by which men are governed should be fixed, definite, and known, and that, when the law

> is declared by court of competent jurisdiction authorized to construe it, such declaration, in absence of palpable mistake or error, is itself evidence of the law until changed by competent authority.

In re Proposal to Incorporate Town of Chesapeake, 130 W.Va. 527, 536, 45 S.E.2d 113, 118 (1947) (quotation marks and citation omitted). However, the doctrine of *stare decisis* is not sacrosanct, and in rare instances there are valid reasons to depart from it. For example, in the recent case of *State ex rel. W.Va. Dep't of Transp. v. Reed,* No. 11–1358, slip op. (W. Va. Feb. 10, 2012), this Court overruled a 2006 opinion of the Court after finding that the earlier opinion was legally incorrect. In doing so, the Court opined that while "this Court is loathe to overturn a decision so recently rendered, it is preferable to do so where a prior decision was not a correct statement of law." *Reed,* slip op. at 5–6 (quoting *Murphy v. Eastern Am. Energy Corp.,* 224 W.Va. 95, 101, 680 S.E.2d 110, 116 (2009)). This Court expounded in *Reed* that "a precedent-creating opinion that contains no extensive analysis of an important issue is more vulnerable to being overruled than an opinion which demonstrates that the court was aware of conflicting decisions and gave at least some persuasive discussion as to why the old law must be changed." *Reed,* slip op. at 6 (quoting ***202 **86** *State v. Guthrie,* 194 W.Va. 657, 679 n. 28, 461 S.E.2d 163, 185 n. 28 (1995)). Similarly, the U.S. Supreme Court has articulated several crucial functions served by *stare decisis.*

> Very weighty considerations underlie the principle that courts should not lightly overrule past decisions. Among these are the desirability that the law furnish a clear guide for the conduct of individuals, to enable them to plan their affairs with assurance against untoward surprise; the importance of furthering fair and expeditious adjudication by eliminating the need to relitigate every relevant proposition in every case; and the necessity of maintaining public faith in the judiciary as a source of impersonal and reasoned judgments. The reasons for rejecting any established rule must always be weighed against these factors.

Moragne v. States Marine Lines, Inc., 398 U.S. 375, 403, 90 S.Ct. 1772, 26 L.Ed.2d 339 (1970). The Supreme Court noted that "[t]he first factor[ ] [is] often considered the mainstay of *stare decisis.*" *Id.*

A proper analysis of the precedential value of *MBNA* using the factors set forth above compels the conclusion that *MBNA* should be overturned. First, *MBNA* is an incorrect statement of the law. As I commented in my dissent in *MBNA,*

> by endorsing a nexus standard which permits West Virginia to assess a tax on an out-of-state corporation with no property, tangible or intangible, in this state on income realized from credit accounts maintained and serviced in another state, the majority merges the nexus requirements of the Due Process Clause and the Commerce Clause and effectively returns to the merged nexus jurisprudence of 1967, in *[National] Bellas Hess [Inc.,] [v. Department of Revenue,* 386 U.S. 753, 87 S.Ct. 1389, 18 L.Ed.2d 505 (1967), *overruled, in part, by Quill Corp. v. North Dakota,* 504 U.S. 298, 112 S.Ct. 1904, 119 L.Ed.2d 91 (1992)], albeit with the minimal due process requirements now carrying the day for nexus determination rather than the physical presence requirement of *Bellas Hess.*

MBNA, 220 W.Va. at 175, 640 S.E.2d at 238 (Benjamin, J., dissenting). Second, *MBNA* contains no extensive analysis. The majority in *MBNA* completely failed to consider that the Supreme Court "has never held in any state tax case that the nexus requirements of the Commerce Clause can be satisfied in the absence of a taxpayer's physical presence in the taxing state." *MBNA,* 220 W.Va. at 176, 640 S.E.2d at 239 (Benjamin, J., dissenting). Moreover, there is no precedential support whatsoever for the majority's holding in *MBNA.* In my dissent in that case, I explained that

> the majority ... boldly goes where no court has gone before. In doing so, the majority relies not on bedrock constitutional principles or on established legal precedent, but rather

> on legal commentaries with thinly veiled state-favoring taxing agendas, a strained and inaccurate reading of the United States Supreme Court's decision in *Quill Corp. v. North Dakota,* 504 U.S. 298, 112 S.Ct. 1904, 119 L.Ed.2d 91 (1992), and a unilateral restatement of the important policy considerations which led to the inclusion of the Commerce Clause within the United States Constitution because, according to the majority opinion, the framers could not possibly have foreseen the future.

MBNA, 220 W.Va. at 173–74, 640 S.E.2d at 236–37 (Benjamin, J., dissenting).

Finally, the first consideration of *stare decisis* which is the desirability that the law furnish a clear guide for the conduct of individuals, is wholly absent in *MBNA.* While the majority in *MBNA* announced a significant economic presence test, it failed to define such a test with any specificity. Notably, despite the fact that the decision in *MBNA* hinges on the significant economic presence test, the majority only briefly attempts to define such a test and does so simply by alluding to general factors such as purposeful direction, the degree to which a company has exploited a local market, both the quality and quantity of a company's economic presence, and the frequency, quantity, and systematic nature of a taxpayer's economic contacts with the State. I submit that such an amorphous test is practically useless in aiding an out-of-state entity in planning for its tax liability ***203 **87** arising from its economic contact with this State.

In sum, I believe this Court should have taken the opportunity in the instant case to overrule *MBNA* because it is not a correct statement of the law, it does not contain an extensive analysis of the relevant law, and it provides no clear guidance for individuals or entities to enable them to plan their affairs with assurance against untoward surprise. Otherwise, I concur with the majority opinion.

Parallel Citations

728 S.E.2d 74

Footnotes

1 *See,* U.S. Const. amend. XIV, § 1 (No State shall "deprive any person of life, liberty, or property without due process of law.") and U.S. Const. art. 1, § 8, cl. 3 (Congress shall have the power to "regulate Commerce with foreign Nations, and among the several States.")

2 In one license agreement, for example, ConAgra Brands granted Hunt–Wesson, Inc., a non-exclusive right to use certain trademarks, including the trademark Healthy Choice, in connection with the development, manufacture, promotion, distribution, marketing and sale of various food products. The agreement provided that Hunt–Wesson, Inc., would make royalty payments to ConAgra Brands for the use of the trademarks.

3 It should be noted that ConAgra Brands has ceased doing business and no longer exists. The trademarks and trade names it owned were transferred to ConAgra Foods RDM [research, development and marketing], Inc., an entity with additional functions beyond those exercised by ConAgra Brands.

4 Statutory citations in this opinion will relate to the time periods under discussion. Some statutes remain in effect without change, and others have been amended. In the latter case, subsequent amendments are not relevant.

5 Article 10A of chapter 11 on state taxation concerns the West Virginia Office of Tax Appeals. Pursuant to *W.Va.Code,* 11–10A–10(b) [2002], hearings before the Office of Tax Appeals (to be heard *de novo*) shall be conducted pursuant to the contested cases procedure set forth in *W.Va.Code,* 29A–5–1 [1964] *et seq.,* of the State Administrative Procedures Act, to the extent not inconsistent with the provisions of article 10A. Pursuant to *W.Va.Code,* 11–10A–10(c) [2002], the Office of Tax Appeals "is not bound by the rules of evidence as applied in civil cases in the circuit courts of this State." *See,* C.S.R. § 121–1–1 [2003] *et seq.,* concerning rules of practice and procedure before the Office of Tax Appeals.

6 An appeal to circuit court from the Office of Tax Appeals is provided by *W.Va.Code,* 11–10A–19(a) [2002]. Subsection (f) of that statute states that the circuit court shall hear the appeal as provided in *W.Va.Code,* 29A–5–4, of the State Administrative Procedures Act. *See,* C.S.R. § 121–1–85.1 and 85.3.1 [2003]. As *W.Va.Code,* 29A–5–4(g) [1998], provides:

> The court may affirm the order or decision of the agency or remand the case for further proceedings. It shall reverse, vacate or modify the order or decision of the agency if the substantial rights of the petitioner or petitioners have been prejudiced because the administrative findings, inferences, conclusions, decision or order are:
>
> (1) In violation of constitutional or statutory provisions; or
>
> (2) In excess of the statutory authority or jurisdiction of the agency; or

(3) Made upon unlawful procedures; or
(4) Affected by other error of law; or
(5) Clearly wrong in view of the reliable, probative and substantial evidence on the whole record; or
(6) Arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion.

7 Currently, the phrase *intangible property* is defined in *W.Va.Code,* 11–24–3a(a)(19) [2009], as including trademarks, trade names and similar types of assets.

8 This Court filed the opinion in *MBNA* in November 2006 subsequent to the issuance of the assessments for corporation net income and business franchise tax against ConAgra Brands. Nevertheless, *MBNA* was addressed below by the parties, the Office of Tax Appeals and the circuit court.

9 Recognizing other forms of state taxation, this Court indicated in syllabus point 2 of *MBNA* that an entity's physical presence, required to meet the "substantial nexus" prong of *Complete Auto,* applies only to "state sales and use taxes" and not to corporation net income and business franchise taxes. Syl. pt. 2, *MBNA,* in part.

10 The brief filed by ConAgra Brands in this Court states:

> That the Respondent [ConAgra Brands] earned its income by charging royalties to licensee / manufacturers for the use of its intangible personal property, while the taxpayer in *MBNA* earned its income by charging interest and service fees to retail customers for the use of money, hardly makes their business comparable for any purpose. Moreover, what is most meaningful to the issue of their respective taxability here is that *none* of the parties with which the Respondent [ConAgra Brands] conducts its business were in West Virginia, while *all* of the customers, with which MBNA conducted its taxable business here, were in West Virginia. (emphasis in original)

11 In his separate opinion, in *Asahi,* Justice Brennan stated:

> The stream of commerce refers not to unpredictable currents or eddies, but to the regular and anticipated flow of products from manufacture to distribution to retail sale. As long as a participant in this process is aware that the final product is being marketed in the forum State, the possibility of a lawsuit there cannot come as a surprise.

480 U.S. at 117, 107 S.Ct. at 1034, 94 L.Ed.2d at 107.

12 ConAgra Brands stated before the Office of Tax Appeals:

> Without the formation of the new legal entity, the proper management of the various trade names and trademarks would have been managed separately by the affiliates resulting in differences and duplication (or multiplication) of many procedures. It was highly efficient and effective to have all the control functions from across the independent operating companies placed in a single entity. ConAgra should not be penalized for managing their trade names and trademarks in the most efficient manner.

1 In *AccuZIP, Inc. v. Dir., Div. of Taxation,* 25 N.J.Tax 158 (2009), the Tax Court of New Jersey declined to follow this Court's opinion in *MBNA.* In doing so, the Tax Court quoted the assertion in my *MBNA* dissent that the U.S. Supreme Court has never held in any state tax case that the nexus requirements of the Commerce Clause can be satisfied in the absence of a taxpayer's physical presence in the taxing state.

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313 S.C. 15
Supreme Court of South Carolina.

GEOFFREY, INC., Appellant,
v.
SOUTH CAROLINA TAX COMMISSION, Respondent.

No. 23886. | Heard April 7, 1993. | Decided July 6, 1993. | Certiorari Denied Nov. 29, 1993. | See 114 S.Ct. 550.

Taxpayer sued state Tax Commission, seeking reimbursement of tax paid under protest. The Circuit Court, Greenville County, Larry R. Patterson, J., entered judgment for Commission and appeal was taken. The Supreme Court, Harwell, C.J., held that: (1) royalty income of foreign corporation, obtained from trademark licenses issued to affiliate could be taxed without violating due process clause, and (2) tax could be imposed without violating interstate commerce clause.

Affirmed.

West Headnotes (8)

[1] **Taxation**
Construction and operation in general

Statute covering income taxation of foreign corporations is intended to extend to limits of Federal Constitution the state's authority to tax those entities. Code 1976, § 12–7–230.

Cases that cite this headnote

[2] **Constitutional Law**
Income taxes
Taxation
Validity of Statutes and Ordinances

Due process clause requires definite link and minimum connection between state and person, property or transaction it seeks to tax, and requires that income attributed to state for tax purposes be rationally related to values connected with taxing state. U.S.C.A. Const.Amend. 14, § 1.

1 Cases that cite this headnote

[3] **Constitutional Law**
Income taxes
Taxation
Residence of taxpayer; corporations

For purposes of imposing income tax on foreign corporation, nexus requirement of due process clause can be satisfied even when corporation does not have physical presence in taxing state, if corporation has purposely directed its activity at state's economic forum. U.S.C.A. Const.Amend. 14, § 1.

15 Cases that cite this headnote

[4] **Constitutional Law**
Income taxes
Taxation
Residence and source of income

Imposition of state income tax on foreign corporation engaged in ownership, licensing and management of trademarks, trade names, and franchises of its corporate parent, satisfied due process clause requirement of a link or connection between state and corporation, based upon affiliated company's sale of trademarked items within state, and license fee paid by affiliate to corporation, even though corporation claimed that affiliate had no stores in state at time licensing agreement was entered into, and that it was act of affiliate in opening stores within state that provided connection between state and corporation. Code 1976, § 12–7–230; U.S.C.A. Const.Amend. 14, § 1.

7 Cases that cite this headnote

[5] **Constitutional Law**
Income taxes
Taxation
Residence and source of income

Due process requirement that there be minimum connections between state and taxpayer was

satisfied, in connection with imposition of state income tax on foreign corporation which was licensor of trademarks and franchisor with respect to such marks; sales of toys in state by affiliate created an account receivable for corporate taxpayer which was intangible property located within the state, sustaining state's right to impose income tax. Code 1976, § 12–7–230; U.S.C.A. Const.Amend. 14, § 1.

10 Cases that cite this headnote

[6] **Constitutional Law**
Income taxes
Taxation
Residence and source of income

Due process clause requirement, that income taxation of foreign corporation involve rational relation to values connected with taxing state, was satisfied in connection with imposition of tax upon royalty income earned by foreign corporation as licensor of trademarks to affiliate, based upon sales of products in question in state; by providing orderly society in which affiliate conducted business, state had made it possible for taxpayer to earn income pursuant to royalty agreement. Code 1976, § 12–7–230; U.S.C.A. Const.Amend. 14, § 1.

9 Cases that cite this headnote

[7] **Commerce**
Income taxes
Taxation
Residence and source of income

State taxation on income of foreign corporation will survive challenge under commerce clause, so long as it is applied to an activity with substantial nexus within taxing state, is fairly apportioned, does not discriminate against interstate commerce and is fairly related to services provided by state. U.S.C.A. Const. Art. 1, § 8, cl. 3; Amend. 14, § 1.

7 Cases that cite this headnote

[8] **Commerce**
Income taxes
Taxation
Residence and source of income

Presence of intangible property within state is sufficient to provide a nexus between state imposing income tax and foreign corporate taxpayer sufficient to satisfy interstate commerce clause. U.S.C.A. Const. Art. 1, § 8, cl. 3; Amend. 14, § 1.

15 Cases that cite this headnote

Attorneys and Law Firms

****14 *16** Cary H. Hall, Jr. of Wyche, Burgess, Freeman & Parham, P.A., Greenville, for appellant.

Chief Deputy Atty. Gen. Ray N. Stevens and Deputy Atty. Gen. Ronald W. Urban, Columbia, for respondent.

Opinion

****15** HARWELL, Chief Justice:

Geoffrey, Inc. (Geoffrey), a foreign corporation, appeals from a ruling that requires it to pay South Carolina income tax and business license fees. We affirm.

I. *FACTS*

Geoffrey is a wholly-owned, second-tier subsidiary of Toys R Us, Inc. (Toys R Us) incorporated in Delaware with its principal offices in that state. It has no employees or offices in South Carolina and owns no tangible property here.

In 1984, Geoffrey became the owner of several valuable trademarks and trade names, including "Toys R Us." Later ***17** that year, Geoffrey executed a License Agreement (Agreement) that allows Toys R Us to use the "Toys R Us" trade name, as well as other trademarks and trade names, in all states except New York, Texas, Pennsylvania, Massachusetts, and New Jersey. The Agreement further grants Toys R Us a right to use Geoffrey's merchandising skills, techniques, and "know-how" in connection with marketing, promotion, advertising, and sale of products covered by the Agreement.

As consideration for the licenses granted by the Agreement, Geoffrey receives a royalty of one percent "of the net sales by

[Toys R Us], or any of its affiliated, associated, or subsidiary companies, of the Licensed Products sold or the Licensed Services rendered under the Licensed Mark." Toys R Us reports the aggregate sales of all stores to Geoffrey in a single figure on a monthly basis. The royalty payment is made annually via wire transfer from a Toys R Us account in Pennsylvania to a Geoffrey account in New York. [1]

Toys R Us began doing business in South Carolina in 1985 and has since then made royalty payments to Geoffrey based on South Carolina sales. In 1986 and 1987, Toys R Us deducted the royalty payments made to Geoffrey from its South Carolina taxable income. The South Carolina Tax Commission (Commission) initially disallowed the deduction, but later took the position that Toys R Us was entitled to the deduction and that Geoffrey was required to pay South Carolina income tax on the royalty income. The Commission also held that Geoffrey was required to pay the South Carolina corporate license fee.

Geoffrey paid the taxes under protest and filed this action for a refund, claiming, among other things, that it did not do business in South Carolina and that it did not have a sufficient ***18** nexus with South Carolina for its royalty income to be taxable here. The trial judge upheld the Commission's assessment of taxes against Geoffrey. Geoffrey appealed.

II. *DISCUSSION*

[1] S.C.Code Ann. § 12–7–230 (Supp.1992), pursuant to which both foreign and domestic corporations are taxed, provides:

> [E]xcept as otherwise provided, every foreign corporation transacting, conducting, doing business, or having an income within the jurisdiction of this State, whether or not the corporation is engaged in or the income derived from intrastate, interstate, or foreign commerce, shall make a return and shall pay annually an income tax equivalent to five percent of a proportion of its entire net income, to be determined as provided in this chapter. The term "transacting", "conducting", or "doing business", as used in this section, includes the engaging in or the transacting of any activity in this State for the purpose of financial profit or gain.

Section 12–7–230 levies a tax on the income of foreign corporations "transacting, conducting, doing business, or having an income *within the jurisdiction of this State,*" which "includes," but is not limited to, "the ****16** engaging in or the transacting of any activity in this State for the purpose of financial profit or gain." We construe this language as extending to the limits of the constitution South Carolina's authority to tax foreign corporations. Here, Geoffrey contends that the Due Process Clause, U.S. Const. amend. XIV, § 1, and the Commerce Clause, U.S. Const. art. I, § 8, cl. 3, prohibit the taxation of its royalty income by South Carolina. We disagree.

A. *Due Process*

[2] The Due Process Clause requires "some definite link, some minimum connection, between a state and the person, property or transaction it seeks to tax," and that the "income attributed to the state for tax purposes must be rationally related to values connected with the taxing State." ***19** *Quill Corp. v. North Dakota,* 504 U.S. 298, —— – ——, 112 S.Ct. 1904, 1909–10, 119 L.Ed.2d 91, 102 (1992). Geoffrey argues that the Commission has failed to satisfy both of these requirements. We disagree.

[3] **[4]** The nexus requirement of the Due Process Clause can be satisfied even where the corporation has no physical presence in the taxing state if the corporation has purposefully directed its activity at the state's economic forum. *Quill,* 504 U.S. at ——, 112 S.Ct. at 1909–10, 119 L.Ed.2d at 104. Geoffrey asserts that it has not purposefully directed its activities toward South Carolina. To support its position, Geoffrey points out that Toys R Us had no South Carolina stores when it entered into the Agreement and urges, therefore, that Toys R Us's subsequent expansion into South Carolina was unilateral activity that cannot create the minimum connection between Geoffrey and South Carolina required by due process.

In our view, Geoffrey has not been unwillingly brought into contact with South Carolina through the unilateral activity of an independent party. Geoffrey's business is the ownership, licensing, and management of trademarks, trade names, and franchises. By electing to license its trademarks and trade names for use by Toys R Us in many states,

Geoffrey contemplated and purposefully sought the benefit of economic contact with those states. Geoffrey has been aware of, consented to, and benefitted from Toys R Us's use of Geoffrey's intangibles in South Carolina. Moreover, Geoffrey had the ability to control its contact with South Carolina by prohibiting the use of its intangibles here as it did with other states. We reject Geoffrey's claim that it has not purposefully directed its activities toward South Carolina's economic forum and hold that by licensing intangibles for use in South Carolina and receiving income in exchange for their use, Geoffrey has the "minimum connection" with this State that is required by due process. *See American Dairy Queen Corp. v. Taxation and Revenue Dep't,* 93 N.M. 743, 605 P.2d 251 (1979); *AAMCO Transmissions, Inc. v. Taxation and Revenue Dep't,* 93 N.M. 389, 600 P.2d 841, *cert. denied,* 93 N.M. 205, 598 P.2d 1165 (1979).

[5] In addition to our finding that Geoffrey purposefully directed its activities toward South Carolina, we find that the "minimum connection" required by due process also is satisfied by the presence of Geoffrey's intangible ***20** property in this State. Geoffrey's Secretary, a certified public accountant, agreed during cross examination that sales by Toys R Us in South Carolina create an account receivable for Geoffrey. In addition, the trial judge found that Geoffrey had a franchise in South Carolina.[2] That the presence of these intangibles is sufficient to sustain a tax is settled law. In *Virginia v. Imperial Coal Sales Co., Inc.,* 293 U.S. 15, 20, 55 S.Ct. 12, 14, 79 L.Ed. 171, 175 (1934), the United States Supreme Court stated:

> It is not the character of the property that makes it subject to such a tax, but the fact that the property has a situs within the ****17** state and that the owner should give appropriate support to the government that protects it. That duty is not less when the property is intangible than when it is tangible. Nor are we able to perceive any sound reason for holding that the owner must have real estate or tangible property within the state in order to subject its intangible property within the state to taxation.[3]

Geoffrey asserts that under the doctrine of *mobilia sequuntur personam,* the situs of its intangibles is its corporate headquarters in Delaware, not South Carolina. However, in *Mobil Oil Corp. v. Comm'r of Taxes of Vermont,* 445 U.S. 425, 100 S.Ct. 1223, 63 L.Ed.2d 510 (1980), the United States Supreme Court rejected the view that the constitution requires taxation of intangibles by allocation to a *single* situs, ***21** finding no adequate justification for preferring that rule over taxation by apportionment. The High Court concluded that:

> [a]lthough a fictionalized situs of intangible property sometimes has been invoked to avoid multiple taxation of ownership, there is nothing talismanic about the concepts of "business situs" or "commercial domicile" that automatically renders those concepts applicable when taxation of income from intangibles is at issue. The Court has observed that the maxim *mobilia sequuntur personam,* upon which these fictions of situs are based, "states a rule without disclosing the reasons for it." ... The Court has also recognized that "the reason for a single place of taxation no longer obtains" when the taxpayer's activities with respect to the intangible property involve relations with more than one jurisdiction.... Even for property or franchise taxes, apportionment of intangible values is not unknown.... Moreover, cases upholding allocation to a single situs for property tax purposes have distinguished income tax situations where the apportionment principle prevails. (Citations omitted).

Id. at 445, 100 S.Ct. at 1235, 63 L.Ed.2d at 525–26. *See also Wheeling Steel Corp. v. Fox,* 298 U.S. 193, 56 S.Ct. 773, 80 L.Ed. 1143 (1936) (intangibles may acquire a situs for taxation other than at the domicile of the owner if they have become integral parts of some local business); *Southern Express Co. v. Spigener,* 118 S.C. 413, 110 S.E. 403 (1920) (the situs of intangible property is within this State if the right afforded by it is exercised here); Dexter, *Taxation of Income from Intangibles of Multistate–Multinational Corporations,* 29 Vand.L.Rev. 401 (1976); J. Hellerstein & W. Hellerstein, *State Taxation,* Para. 9.08–.09 (2d ed. 1992). We reject Geoffrey's claim that its intangible assets are located exclusively in Delaware. Accordingly, we find that Geoffrey's purposeful direction of activity toward South Carolina as well as its possessing intangible property here provide a definite link between South Carolina and the income derived by Geoffrey from the use of its trademarks and trade names in this State.

[6] We also find that the second prong of *Quill* test has been met. Contrary to Geoffrey's assertion, South Carolina has conferred benefits upon Geoffrey to which the ***22** challenged tax is rationally related. As the United States Supreme Court recognized in *Curry v. McCanless,* 307 U.S. 357, 365–66, 59 S.Ct. 900, 905, 83 L.Ed. 1339, 1347 (1939):

> Very different considerations, both theoretical and practical, apply to

> the taxation of intangibles, that is, rights which are not related to physical things. Such rights are but relationships between persons, natural or corporate, which the law recognizes by attaching to them certain sanctions enforceable in courts. The power of government over them and the protection which it gives them cannot be exerted through control of a physical thing. *They can be made effective only through control over and protection afforded to those persons whose relationships are the origin of the rights* .... Obviously, as sources of actual or **18 potential wealth —which is an appropriate measure of any tax imposed on ownership or its exercise—*they cannot be dissociated from the persons from whose relationships they are derived.* (Citations omitted). (Emphasis added).

The real source of Geoffrey's income is not a paper agreement, but South Carolina's Toys R Us customers. *Cf. Avco Financial Services Consumer Discount Co. v. Director, Division of Taxation,* 100 N.J. 27, 494 A.2d 788 (1985). By providing an orderly society in which Toys R Us conducts business, South Carolina has made it possible for Geoffrey to earn income pursuant to the royalty agreement. *See, e.g., Allied–Signal v. Comm'r of Finance,* 79 N.Y.2d 73, 580 N.Y.S.2d 696, 588 N.E.2d 731 (1991) (benefits afforded to an in-state corporation inure to non-resident shareholders). That Geoffrey has received protection, benefits, and opportunities from South Carolina is manifested by the fact that it earns income in this state. *Accord AAMCO,* 93 N.M. at 393, 600 P.2d at 845 (quoting *Besser Co. v. Bureau of Revenue,* 74 N.M. 377, 394 P.2d 141 (1964)). That the tax is rationally related to these protections, benefits, and opportunities is evidenced by the fact that the State seeks to tax only that portion of Geoffrey's income generated within its borders. Based on the foregoing reasons, we hold that the Due Process Clause does not prohibit South Carolina's taxation of Geoffrey's royalty income.

23 B. *Commerce Clause

[7] A tax will survive challenge under the Commerce Clause so long as it 1) is applied to an activity with a substantial nexus with the taxing state, 2) is fairly apportioned, 3) does not discriminate against interstate commerce, and 4) is fairly related to the services provided by the State. *Complete Auto Transit, Inc. v. Brady,* 430 U.S. 274, 279, 97 S.Ct. 1076, 1079, 51 L.Ed.2d 326, 331 (1977). Relying on *Nat'l Bellas Hess, Inc. v. Dep't of Revenue of Ill.,* 386 U.S. 753, 87 S.Ct. 1389, 18 L.Ed.2d 505 (1967), Geoffrey contends that it does not have a substantial nexus with South Carolina because it is not physically present in this state. In our view, Geoffrey's reliance on the physical presence requirement of *Bellas Hess* is misplaced. [4]

[8] It is well settled that the taxpayer need not have a tangible, physical presence in a state for income to be taxable there. The presence of intangible property alone is sufficient to establish nexus. *American Dairy Queen,* 93 N.M. at 747, 605 P.2d at 255. *See also Int'l Harvester Co. v. Wisconsin Dep't of Taxation,* 322 U.S. 435, 441–442, 64 S.Ct. 1060, 1063–64, 88 L.Ed. 1373, 1379 (1944) (a state may tax such part of the income of a non-resident as is fairly attributable either to property located in the state or to events or transactions which, occurring there, are within the protection of the state and entitled to the numerous other benefits which its confers); J. Hellerstein & W. Hellerstein, *supra,* at 6.08 (any corporation that regularly exploits the markets of a state should be subject to its jurisdiction to impose an income tax even though not physically present). A taxpayer who is domiciled in one state but carries on business in another is subject to taxation measured by the value of the intangibles used in his business. *Curry,* 307 U.S. at 368, 59 S.Ct. at 906, 83 L.Ed. at 1348. We hold that by licensing intangibles for use in this State and deriving income ***24** from their use here, Geoffrey has a "substantial nexus" with South Carolina. [5]

Geoffrey finally contends that even if it is subject to South Carolina income tax, all of its royalty income would be allocated or apportioned to Delaware pursuant to S.C.Code Ann. §§ 12–7–1120(5) or 12–7–1140 (1977 and Supp.1992). These statutes are inapplicable to the income received by Geoffrey. Section 12–7–1120(5) allocates gains or losses from ****19** the sale of intangible personal property not connected with the business of the taxpayer, other than any intangible personal property held for sale to customers in the regular course of business. Section 12–7–1140 apportions the income of taxpayers whose principal business in this State is (a) manufacturing or any form of collecting, buying,

assembling or processing goods and materials within this State, or (b) selling, distributing or dealing in tangible personal property within this State.

In conclusion, we hold that the taxation of Geoffrey's royalty income pursuant to section 12–7–230 is not prohibited by the Due Process Clause or the Commerce Clause of the United States Constitution. Our finding that Geoffrey may be taxed pursuant to section 12–7–230 settles the question whether Geoffrey must pay the corporate license fee. All corporations subject to section 12–7–230 are required to do so. *See* S.C.Code Ann. §§ 12–19–20, 12–19–70 (1977 & Supp.1992). The order of the trial judge is

AFFIRMED.

CHANDLER, FINNEY, TOAL and MOORE, JJ., concur.

Parallel Citations

437 S.E.2d 13

Footnotes

1 The net effect of this corporate structure has been the production of "nowhere" income that escapes all state income taxation. *See* Rosen, *Use of a Delaware Holding Company to Save State Income Taxes,* 20 Tax Adviser 180 (1989). One commentator has recognized such income as the "product of a divide and conquer strategy that some members of the corporate world have exercised effectively for decades." Corrigan, *Interstate Corporate Income Taxation—Recent Revolutions and a Modern Response,* 29 Vand.L.Rev. 423, 429 (1976). The strategy's effectiveness is unquestionable. In 1990, Geoffrey, without any full-time employees, had an income of approximately $55 million and paid no income taxes to any state.

2 "In its simplest terms, a franchise is a license from the owner of a trademark or trade name permitting another to sell a product or service under that name or mark. More broadly stated, a 'franchise' has evolved into an elaborate agreement under which the franchisee undertakes to conduct a business or sell a product or service in accordance with methods and procedures prescribed by the franchisor, and the franchisor undertakes to assist the franchisee through advertising, promotion, and other advisory services." *Black's Law Dictionary* 592 (5th ed. 1979). Geoffrey has not challenged the trial judge's finding that the Agreement created a franchise.

3 Although the tax at issue in *Imperial Coal* was an *ad valorem* property tax imposed upon the accounts receivable of a Virginia corporation, we do not find that fact distinguishing. Authority to tax the property extends to income produced by the property. "That [a state] may tax the land but not the crop, the tree but not the fruit, the mine or well but not the product, the business but not the profit derived from it is wholly inadmissible." *Shaffer v. Carter,* 252 U.S. 37, 49–50, 40 S.Ct. 221, 225, 64 L.Ed. 445 (1920).

4 The U.S. Supreme Court recently revisited the physical presence requirement of *Bellas Hess* and, while reaffirming its vitality as to *sales and use taxes,* noted that the physical presence requirement had not been extended to other types of taxes. *Quill,* 504 U.S. at ——, 112 S.Ct. at 1914, 119 L.Ed.2d at 108.

5 Further discussion of the remaining requirements of the Commerce Clause is unnecessary. Our Due Process analysis of the benefits conferred upon Geoffrey applies with equal force here and need not be repeated. Moreover, Geoffrey raised no constitutional claim that the challenged tax is not fairly apportioned or discriminates against interstate commerce.

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2009 WL 427425 (N.Y.Tax.App.Trib.)

Tax Appeals Tribunal

State of New York

IN THE MATTER OF THE PETITION OF GABRIEL S. AND FRANCES B. BAUM
for Redetermination of a Deficiency or for Refund of New York State
Personal Income Tax under Article 22 of the Tax Law for the Year 2001
IN THE MATTER OF THE PETITION OF CHRISTIAN M. BOEGNER AND JOANNA TOWNSHEND
for Redetermination of a Deficiency or for Refund of New York State
Personal Income Tax under Article 22 of the Tax Law for the Year 2001

DTA Nos. 820837 and 820838
February 12, 2009

HEARING DECISION

***1** The Division of Taxation filed an exception to the determination of the Administrative Law Judge issued on December 20, 2007 in the matter of the petitions of Gabriel S. Baum and Frances B. Baum, and Christian M. Boegner and Joanna Townshend. Petitioners appeared by Hodgson Russ, LLP (Jack Trachtenberg, Esq. and Christopher L. Doyle, Esq., of counsel). The Division of Taxation appeared by Daniel Smirlock, Esq. (Kevin R. Law, Esq., of counsel).

The Division of Taxation filed a brief in support of its exception. Petitioners filed a brief in opposition. The Division of Taxation filed a reply brief. A brief *amicus curiae* in support of petitioners was filed on behalf of Edward Watkins, Kristina W. Watkins and Curtis G. Watkins, II by McDermott, Will & Emery (Peter L. Faber, Esq. and Jeffrey S. Reed, Esq., of counsel). Oral argument, at the request of the Division of Taxation, was held on July 9, 2008 in Troy, New York.

After reviewing the entire record in this matter, the Tax Appeals Tribunal renders the following decision.

ISSUES

I. Whether the Division of Taxation (hereinafter the "Division") may properly include, in a nonresident taxpayer's income, the gain from the sale of that taxpayer's shares of a New York S corporation to an acquiring corporation, which sale is deemed, pursuant to an Internal Revenue Code (IRC) § 338(h)(10) election, to be a sale of the S corporation's assets.

II. Whether the Division may disallow a nonresident taxpayer's claimed loss on a deemed liquidation of that taxpayer's New York S corporation's stock, which is treated as a stock sale as the result of such IRC § 338(h)(10) election, on the basis that such loss was not derived from or connected with New York sources because the proceeds of the deemed liquidation resulting in the loss arose from amounts paid for an intangible (stock) not employed in a trade or business in New York State.

III. Whether the Division's disallowance of a nonresident New York S corporation shareholder's claimed loss arising from the deemed liquidation as a result of an IRC § 338(h)(10) election violates the Privileges and Immunities Clause of the United States Constitution.

FINDINGS OF FACT

We find the facts as determined by the Administrative Law Judge. These facts are set forth below.

Petitioners, Christian M. Boegner, Joanna Townshend, Gabriel S. Baum and Frances B. Baum, were nonresidents of New York during the year 2001. [1]

***2** During 2001, petitioners were shareholders of SBS International of New York, Inc. (SBS). SBS was incorporated under the laws of the State of New York on September 1, 1977, and reported taxes on a fiscal year spanning September 1 through August 31.

During the fiscal year ended August 31, 2001, SBS was taxable as an S corporation for federal and New York State tax purposes. During the fiscal year ended August 31, 2001, Christian M. Boegner owned 27.66% of the stock of SBS, and Gabriel S. Baum owned 16.69% of the stock of SBS.

On July 26, 2001, the shareholders of SBS sold all of their shares of stock of the corporation to an unrelated party, the Boeing Company (Boeing). In connection with this stock sale, the shareholders of SBS and Boeing made an election under section 338(h)(10) of the Internal Revenue Code to treat the transaction for federal income tax purposes as if SBS had sold all of its assets to Boeing (the deemed asset sale), followed by a liquidation and distribution of the sales proceeds to the selling shareholders in exchange for the shareholders' stock under section 331 of the Internal Revenue Code (the deemed liquidation).

The deemed asset sale resulted in federal taxable gain to the SBS shareholders of $21,282,038.00. SBS reported this gain on line 4e(2) of Schedule K of its Federal S Corporation Income Tax Return (Form 1120S) for the fiscal year ended July 26, 2001.

The New York State business allocation percentage (BAP) of SBS at the time of the section 338(h)(10) transaction was 76.1667%.

For the fiscal year ended July 26, 2001, SBS issued a Form K-1 (Shareholder's Share of Income, Credits, Deductions, etc.) to each of its shareholders. Each Form K-1 reported, on line 4e(2), the respective shareholder's pro rata share of gain resulting, for federal income tax purposes, from the deemed asset sale. This amount was calculated by multiplying the total deemed asset sale gain of $21,282,038.00 by the particular shareholder's ownership interest in SBS. Thus, as reported at line 4e(2) on their respective forms K-1, Christian M. Boegner's gain from the deemed asset sale was $5,886,612.00 (i.e., $21,282,038.00 x .2766), and Gabriel S. Baum's gain from the deemed asset sale was $3,551,972.00 (i.e., $21,282,038.00 x .1669).

Christian M. Boegner was deemed to have received cash proceeds in the amount of $4,054,880.00 upon the deemed liquidation of SBS, and Gabriel S. Baum was deemed to have received cash proceeds in the amount of $1,322,025.00 upon the deemed liquidation of SBS.

At the time of the deemed liquidation, Christian M. Boegner's adjusted basis in the stock that he was treated as selling pursuant to the deemed liquidation was $5,767,033.00, and all of that basis was attributable to the $5,886,612.00 of gain that flowed through to Christian M. Boegner from SBS as a result of the deemed asset sale. Likewise, at the time of the deemed liquidation, Gabriel S. Baum's adjusted basis in the stock that he was treated as selling pursuant to the deemed liquidation was $3,687,818.00, and $3,551,972.00 of that basis was attributable to the gain that flowed through to Gabriel S. Baum from SBS as a result of the deemed asset sale. For purposes of this proceeding, it is assumed that the remainder of the basis was not attributable in any way to New York sources.

***3** For the year 2001, Christian M. Boegner filed a Form IT-203 (New York State Nonresident and Part-Year Resident Income Tax Return). On the federal Schedule D (Capital Gains and Losses) attached to this return, Mr. Boegner reported on line 12 the $5,886,612.00 gain from the deemed asset sale, and reported the $1,712,153.00 loss that he recognized for federal income tax purposes upon the deemed liquidation of his SBS stock. The claimed loss was calculated by subtracting Mr. Boegner's $5,767,033.00 adjusted basis in his SBS stock from the $4,054,880.00 of cash proceeds that he was deemed to have received on the deemed liquidation. The net effect of this reporting position for federal income tax purposes was a gain to Mr. Boegner from the stock sale and section 338(h)(10) election in the amount of $4,174,159.00. [2] Christian M. Boegner allocated this amount

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to New York based upon the 76.1667% BAP of SBS, and therefore treated $3,179,319.00 of his gain as New York source income. This resulted in a reported income percentage (Line 43 to Form IT-203) of 72.77% and a reported total tax due to New York of $163,284.00.

For the year 2001, Gabriel S. Baum filed a Form IT-203 (New York State Nonresident and Part-Year Resident Income Tax Return). On the federal Schedule D (Capital Gains and Losses) attached to this return, Mr. Baum reported on line 12 the $3,551,972.00 gain from the deemed asset sale, and reported the $2,365,793.00 loss that he recognized for federal income tax purposes upon the deemed liquidation of his SBS stock. The claimed loss was calculated by subtracting Mr. Baum's $3,687,818.00 adjusted basis in his SBS stock from the $1,322,025.00.00 of cash proceeds that he was deemed to have received on the deemed liquidation. The net effect of this reporting position for federal income tax purposes was a gain to Mr. Baum from the stock sale and section 338(h)(10) election in the amount of $1,186,179.00. Gabriel S. Baum allocated this amount to New York based upon the 76.1667% BAP of SBS, and therefore treated $903,473.00 of his gain as New York source income. This resulted in a reported income percentage (Line 43 to Form IT-203) of 48.65% and a reported total tax due to New York of $30,399.00.

The Division audited petitioners' nonresident returns for the year 2001 and concluded that petitioners had improperly offset their respective gains from the deemed asset sale by their respective losses recognized upon the deemed liquidation of SBS. As a result, the Division disallowed Christian M. Boegner's claimed loss on the deemed liquidation and issued an audit adjustment that allocated 76.1667% of Mr. Boegner's $5,886,612.00 deemed asset sale gain to New York based upon the BAP of SBS. Thus, $4,483,638.10 of such gain was treated as New York source income, resulting in total tax due to New York in the amount of $252,274.48. In the same fashion, the Division disallowed Gabriel M Baum's claimed loss on the deemed liquidation and issued an audit adjustment that allocated 76.1667% of Mr. Baum's $3,551,972.00 deemed asset sale gain to New York based upon the BAP of SBS. Thus, $2,705,419.86 of such gain was treated as New York source income, resulting in total tax due to New York in the amount of $152,140.55.

***4** On July 19, 2004, the Division issued a separate Notice of Deficiency to each petitioner. The notice issued to Christian M. Boegner asserts additional personal income tax due for the year 2001 in the amount of $88,990.48, plus interest in the amount of $12,907.31. The notice issued to Gabriel S. Baum asserts additional personal income tax due for the year 2001 in the amount of $121,741.55, plus interest in the amount of $17,657.58. The additional tax asserted as due per the respective notices results solely from the Division's disallowance of the loss that each petitioner recognized upon the deemed liquidation of SBS.

If Christian B. Boegner had been a resident of New York State during the year of the stock sale and section 338(h)(10) election, his New York State personal income tax liability would have been $224,384.00. If Gabriel S. Baum had been a resident of New York State during the year of the stock sale and section 338(h)(10) election, his New York State personal income tax liability would have been $62,485.00.

As noted in the findings of fact above, Christian M. Boegner and Gabriel S. Baum paid New York State personal income tax for the year 2001 in the respective amounts of $163,284.00 and $30,399.00, based upon the respective reported income percentages (at line 43 of their returns) of 72.77% and 48.65%. In contrast, the Division's notices of deficiency assert additional personal income tax against Christian M. Boegner and Gabriel S. Baum based on income percentages of 112.43% and 245.39%, respectively.

THE DETERMINATION OF THE ADMINISTRATIVE LAW JUDGE

In his determination, the Administrative Law Judge noted that at issue was whether petitioners' pro rata shares of the gain from the deemed asset sale were properly includible in the numerator of their New York source fractions as New York source income or, rather, whether the gain must be excluded as resulting from the nonresident petitioners' sale of an intangible, i.e., petitioners' shares in SBS.

The Administrative Law Judge stated that a New York subchapter S corporation is subject to tax on the higher of the tax that would be computed by a C corporation on its entire net income base or the fixed dollar minimum reduced by the article 22 tax equivalent, but no less than the fixed dollar amount (***see***, Tax Law § 210[1][g]). The Administrative Law Judge turned to Tax Law § 208(9) for guidance, as such section addresses the calculation of entire net income with respect to a subchapter S corporation.

The Administrative Law Judge explained that a plain reading of the statute requires that an S corporation compute its entire net income as if it had not made a subchapter S election. In other words, the statute requires SBS to compute its entire net income as if it were a C corporation. The Administrative Law Judge reasoned that the IRC § 338(h)(10) election is not available to a C corporation that is not a member of a selling consolidated or affiliated group of corporations and, as such, SBS would not be able to make a valid section 338(h)(10) election at the State level. Thus, the Administrative Law Judge stated that the gain from the deemed asset sale may not be included in the entire net income of the New York S corporation for purposes of determining its State franchise tax under Article 9-A.

***5** The Administrative Law Judge held that petitioners' gain from the sale of SBS resulted from the sale of their respective stock and, as nonresidents of New York State, petitioners were not required to include such gain as New York source income for income tax purposes.

ARGUMENTS ON EXCEPTION

The Division argues that the Administrative Law Judge erred in his determination. Specifically, the Division points out that the Administrative Law Judge should have started with the shareholder's actual Federal adjusted gross income, which is the starting point for determining New York adjusted gross income. Thus, the Division states that Tax Law § 632 is the controlling section of the statute and that Tax Law § 208(9) has no bearing on whether section 632 can be disregarded.

Additionally, the Division maintains that the only reference in Article 22 to Article 9-A is in how to determine an allocation percentage. The Division relies on Tax Law § 617 in support of its position that a nonresident shareholder of a New York S corporation is taxed on the deemed asset sale gain entering into his Federal adjusted gross income and is sourced to New York according to the corporation's business allocation percentage.

In response, petitioners state that the Administrative Law Judge properly held that the gain was not included in petitioners' income as income from New York sources. Petitioners also focus on Tax Law § 632 as a starting point. Specifically, petitioners emphasize subsection (a)(2) of section 632 which limits the amount of flow-through income a nonresident shareholder of an S corporation must treat as New York sourced. Petitioners point out that such section imposes upon the Commissioner the duty to promulgate apportionment regulations as guidance as to how the New York source portion of such S corporation income is to be determined. However, petitioners state that the Commissioner has failed to promulgate regulations consistent with the Article 9-A's apportionment and allocation rules.

Petitioners argue that under Article 9-A, income is allocated to New York by applying allocation percentages to entire net income. Thus, in defining entire net income, petitioners point out that Tax Law § 208(9)(ii) states that it is the income that the S corporation would have been required to report at the federal level if the valid section 338(h)(10) election had not been made. Petitioners agree with the Administrative Law Judge that in reading both Tax Law § 632(a)(2) and Tax Law § 208(9)(ii), the deemed asset sale did not occur and SBS did not recognize gain to be apportioned using SBS's business allocation percentage. Thus, petitioners argue that the Administrative Law Judge properly held that the gain was from petitioners' sales of stock in the S corporation, and since petitioners were nonresidents of New York, such gain was not included in petitioners' New York source income.

OPINION

We affirm the determination of the Administrative Law Judge.

***6** In reviewing the record of this matter, it is important to note that the transaction at issue is a sale of stock. It was the valid election made by petitioners under IRC § 338(h)(10) that is confusing the appearance of the transaction. As noted by the Administrative Law Judge, there was no sale of the S corporation's assets. The question is whether such an election, available under the federal rules and allowing for a transaction to be treated in a fictitious manner so as to allow calculations providing for an advantageous federal tax result, can change the nature and source of the income, gain, loss or deduction resulting from what actually occurred, a stock sale by a nonresident. We find that it cannot.

When a valid section 338(h)(10) election is made, the target corporation recognizes gain or loss as if it sold all of its assets in a single transaction at the close of the acquisition date to itself as a separate corporation and then distributed the deemed sale proceeds in complete liquidation (Treas. Reg. §§ 1.338[h][10]-1[d][3], 1.338[h][10]-1[d][4]). The gain or loss on the deemed asset sale is included in the tax return of the selling consolidated or affiliated group or of the S corporation shareholders, but no gain or loss is recognized on the sale of the target stock.

The federal election was designed to provide very specific and limited federal tax consequences. Such election does not affect the substance of the transaction which, in this case, is a stock sale. Thus, the question before us is whether the resulting deemed federal transactions from the valid election cause petitioners' sales of their shares of stock to be taxable in New York.

A New York subchapter S corporation is subject to tax on the higher of the tax that would be computed by a C corporation on its entire net income base or the fixed dollar minimum reduced by the “article twenty-two tax equivalent” but not less than the fixed dollar amount (Tax Law § 210[1][g]). Tax Law § 208(9) impacts the calculation of entire net income with regard to a subchapter S corporation by providing, in relevant part, as follows:
The term “entire net income” means total net income from all sources, which shall be presumably the same as entire taxable income (but not alternative minimum taxable income),

(i) which the taxpayer is required to report to the United State treasury department, or

(ii) which the taxpayer would have been required to report to the United States treasury department *if it had not made an election under subchapter s of chapter one of the internal revenue code*, or

(iii) which the taxpayer, in the case of a corporation which is exempt from federal income tax (other than the tax on unrelated business taxable income imposed under section 511 of the internal revenue code) but which is subject to tax under this article, would have been required to report to the United States treasury department but for such exemptions .... (emphasis added).

***7** From a plain reading of the above-quoted statute, it is clear that S corporations must compute their income for New York tax purposes as if the section 338(h)(10) election had not been made. Thus, the fictitious deemed asset sale and the deemed distribution in complete liquidation is not applicable to the sale of SBS to Boeing for New York purposes. As such, the gain from the deemed asset sale may not be included in the entire net income of SBS for purposes of determining its New York State franchise tax under Article 9-A, nor may the same be passed through, pro rata, as New York source income to the shareholders of SBS.

As stated at the outset, this is a simple stock sale. Thus, petitioners' gain from the sale of stock in SBS is not included as New York source income to them, since they are nonresident individuals. This conclusion renders moot the remaining issues.

Accordingly, it is ORDERED, ADJUDGED and DECREED that:

1. The exception of the Division of Taxation is denied;

2. The determination of the Administrative Law Judge is sustained;

3. The petitions of Gabriel S. and Frances B. Baum, and Christian M. Boegner and Joanna Townshend, are hereby granted; and

4. The notices of deficiency dated July 19, 2004 are cancelled and the Division is directed to refund to petitioners the amounts specified and agreed to in the findings of fact together with such interest as may be due thereon.

DATED: Troy, New York

Charles H. Nesbitt
President
Carroll R. Jenkins
Commissioner

Footnotes

1 Joanna Townshend and Frances B. Baum appear as petitioners in these matters solely by virtue of having filed joint New York State nonresident and part-year resident income tax returns with their respective spouses, Christian M. Boegner and Gabriel S. Baum. All items of income and loss at issue were recognized by Christian M. Boegner and Gabriel S. Baum (in their individual respective share or percentage amounts). Accordingly, unless otherwise indicated or required by context, all plural references to petitioners shall be to the two petitioners Christian M. Boegner and Gabriel S. Baum, and all singular references to petitioner shall be to either petitioner Christian M. Boegner or to petitioner Gabriel S. Baum, as is contextually appropriate.

2 The net gain amount of $4,174,159.00 set forth in the parties' stipulation is $300.00 less than the amount that results from subtracting the claimed loss from the gain on the deemed asset sale (i.e., $5,886,612.00 less $1,712,153.00 equals $4,174,459.00). This small difference is not explained and presumably results from transcription error.

2009 WL 427425 (N.Y.Tax.App.Trib.)

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423 Mass. 617
Supreme Judicial Court of Massachusetts,
Suffolk.

COMMISSIONER OF REVENUE
v.
Paul R. DUPEE, Jr., & another. [1]

Argued Nov. 9, 1995. | Decided Sept. 25, 1996.

Nonresident taxpayer filed application for abatement of individual nonresident income tax on capital gain from sale of portion of interest in domestic Subchapter S corporation. The Commissioner of Revenue denied application, and taxpayer petitioned for review. The Appellate Tax Board granted abatement, and Commissioner appealed. Matter was transferred, and the Supreme Judicial Court, Suffolk County, O'Connor, J., held that: (1) taxpayer had to personally carry on business that was source of gain for gain to be taxable; (2) pass-through feature of Subchapter S corporation did not permit trade or business of corporation to be treated as trade or business of taxpayer; (3) step-transaction doctrine did not apply to collapse transactions by which corporation's assets were transferred to partnership; and (4) taxpayer was not carrying on trade or business when he held assets of liquidated corporation momentarily for purpose of transferring them to partnership.

Affirmed.

West Headnotes (8)

[1] Taxation
Residence of Taxpayer

For nonresident taxpayer's gain on sale of interest in domestic corporation to be subject to income tax, on ground that it derived from or was effectively connected with "any trade or business, including any employment carried on by the taxpayer in the commonwealth," taxpayer personally had to carry on business which was source of gain; legislature's failure to position comma between words "employment" and "carried" as they appeared in gross income statute did not denote legislature's intent to tax all nonresident income from commonwealth sources regardless of whether taxpayer personally carried on that business. M.G.L.A. c. 62, § 5A(a).

2 Cases that cite this headnote

[2] Statutes
Plain Language; Plain, Ordinary, or Common Meaning
Statutes
Statute as a Whole; Relation of Parts to Whole and to One Another

Statute must be interpreted according to intent of legislature ascertained from all its words construed by ordinary and approved usage of language, considered in connection with cause of its enactment, mischief or imperfection to be remedied, and main object to be accomplished, to the end that purpose of its framers may be effectuated.

3 Cases that cite this headnote

[3] Statutes
Relative and qualifying terms and provisions, and their relation to antecedents

Last antecedent rule, pursuant to which qualified phrases are to be applied to words or phrases immediately preceding and not to be construed as extending to others more remote, is only a rule of construction to ascertain legislative intent, and it does not apply where there is something in subject matter or in expression of dominant purpose that requires different interpretation.

1 Cases that cite this headnote

[4] Taxation
Construction and operation

Ambiguities in taxing statutes are to be resolved in favor of taxpayer.

1 Cases that cite this headnote

[5] Taxation
Residence of Taxpayer

Pass-through feature of Subchapter S corporations did not permit trade or business of corporation to be treated as trade or business of shareholder, so that gain realized from nonresident shareholder's sale of interest in corporation would be subject to tax as income derived from or effectively connected with trade or business carried on by taxpayer in commonwealth. M.G.L.A. c. 62, §§ 5A(a), 17A; Mass.Regs. Code title 830, § 62.17A.1(6)(b).

1 Cases that cite this headnote

[6] **Taxation**
Residence of Taxpayer

Liquidation of corporation, distribution to nonresident shareholder of his interest in corporation's assets, and shareholder's acquisition of interest in new partnership to which corporation's assets were transferred all had independent economic significance, and therefore, step-transaction doctrine did not apply to collapse liquidation, distribution, and new partnership transactions, so that nonresident shareholder could be taxed on his "distributive share" of assets of liquidated corporation. M.G.L.A. c. 62, § 5A(a).

3 Cases that cite this headnote

[7] **Taxation**
Persons Liable

Taxpayer has legal right to decrease amount of what otherwise would be his taxes, or altogether avoid them, by means which law permits.

Cases that cite this headnote

[8] **Taxation**
Residence of Taxpayer

Nonresident taxpayer was not carrying on trade or business in commonwealth when he held assets of former Subchapter S corporation momentarily for purpose of transferring them to partnership, as would make gain on sale of interest in corporation subject to income tax. M.G.L.A. c. 62, § 5A(a).

2 Cases that cite this headnote

Attorneys and Law Firms

****174 *617** Kristin E. McIntosh, Assistant Attorney General, for plaintiff.

Roger M. Ritt, Boston (Gary P. Brady with him), for defendants.

Before LIACOS, C.J., WILKINS, ABRAMS, O'CONNOR and GREANEY, JJ.

Opinion

O'CONNOR, Justice.

The Commissioner of Revenue (commissioner) denied Paul R. Dupee, Jr., and Lizbeth Schiff's application for abatement of individual nonresident income tax for 1986 on their capital gain of $16,712,072 from the sale of a portion of Dupee's interest in Boston Celtics, Inc. (BCI). Dupee and Schiff (taxpayers) filed a petition for review with the Appellate Tax Board (board). The board concluded that the gain realized by Dupee was not subject to tax in Massachusetts and, accordingly, granted an abatement to the taxpayers in the sum for which they had applied, $835,604. The commissioner appealed pursuant to G.L. c. 58A, § 13 (1994 ed.), and we transferred the case here on our own initiative. We affirm the board's decision.

****175 *618** The case was submitted to the board on a statement of agreed facts and a stipulation with attached exhibits. In addition, one witness testified. On the basis of those documents and the witness's testimony, the board made its findings, which we summarize: The taxpayers were nonresidents of Massachusetts at all relevant times. In 1986, Dupee owned thirty-two per cent of the stock in BCI, the Massachusetts corporation which held the franchise from the National Basketball Association (NBA) to organize and operate the Boston Celtics basketball team. For Federal income tax purposes, BCI was treated as a Subchapter S corporation. BCI became a Subchapter S corporation for Massachusetts tax purposes beginning with its taxable year commencing on July 1, 1986. BCI maintained offices in Boston, where employees handled BCI's day-to-day operations, including acquiring players, selling game tickets, negotiating contracts, and hiring staff. Dupee, who

was vice chairman of the board of directors and secretary, "did not actively, regularly, or continuously participate in any capacity in the activities constituting the regular operations of [BCI]," nor did he maintain any office, employees, or place of business in Massachusetts, or purchase goods or services in connection with a trade or business in Massachusetts.

Dupee and the other shareholders of BCI agreed to liquidate BCI and transfer ownership of its assets, including the franchise, to a partnership, which would allow members of the public to obtain interests in the franchise. On December 11, 1986, BCI liquidated in a tax-free exchange under a now defunct provision [2] of the Internal Revenue Code (I.R.C.), 26 U.S.C. §§ 1 et seq. (1994), distributing to the shareholders their undivided percentage interests in BCI's assets. Upon receiving an undivided 32 per cent interest in the assets, Dupee made a tax-free exchange under I.R.C. § 721(a) of 14.72 per cent of his assets for an equivalent percentage interest in the new partnership. In an additional transaction rendered tax free under I.R.C. § 351, Dupee exchanged .28 per cent of his interest in the assets for an interest in Celtics, Inc., a new ***619** Delaware Subchapter S corporation formed to serve as the general partner of the partnership. The taxability of Dupee's gain on the sale of his remaining interest in BCI's assets to the partnership for $18,602,675, resulting in a long-term capital gain of $16,712,072, is at issue.

General Laws c. 62, § 5A(*a*), as amended through St.1983, c. 233, § 24, applicable to the relevant tax year, provided as follows:

> "The amount of the Part A taxable income and the Part B taxable income of any non-resident of the commonwealth derived from the Massachusetts gross income of such person shall be taxed in accordance with the provisions of section four. The Massachusetts gross income shall be determined solely with respect to items of gross income from sources within the commonwealth of such person and in determining the adjusted gross income of each Part only those deductions shall be allowed which are attributable to items included in Massachusetts gross income as so determined. *Items of gross income from sources within the commonwealth are items of gross income derived from or effectively connected with (1) any trade or business, including any employment carried on by the taxpayer in the commonwealth;* (2) the participation in any lottery or wagering transaction within the commonwealth; or (3) the ownership of any interest in real or tangible personal property located in the commonwealth. In computing the taxable income of each Part, the non-resident shall be allowed the deductions and exemptions provided as to each Part in section three" (emphasis added).

General Laws c. 62, § 5A(*a*), sets forth the statutory scheme for income taxation of nonresidents of Massachusetts. At issue in this case is the proper construction of the portion we have emphasized above. The board ruled, favorably to the taxpayers, that, in ****176** order for Dupee's capital gain to be taxable by the Commonwealth, the source of the gain would have to have been a trade or business personally "carried on by the taxpayer in the commonwealth" [c. 62, § 5A(*a*)(1)]. The board concluded that the source of Dupee's gain was not a trade or business "carried on by the taxpayer in the commonwealth," and that, therefore, the taxpayers were entitled to the abatement for which they had applied.

[1] ***620** The commissioner contended before the board, and contends here, that the plain language of G.L. c. 62, § 5A(*a*)(1), requires only that Dupee's gain on the sale of his BCI interest be "derived from" or "effectively connected with" a Massachusetts trade or business and contains no requirement that the nonresident personally conduct the Massachusetts business giving rise to the income. In addition, the commissioner points to a rule of statutory construction known as the "last antecedent rule," which would limit the application of the words in c. 62, § 5A (*a*)(1), "carried on by the taxpayer," to the immediately preceding words, "any employment." The commissioner argues that the applicability of the last antecedent rule to § 5A(*a*)(1) is supported by the lack of a comma between the words "employment" and "carried" in that provision ("[1] any trade or business, including any employment carried on by the taxpayer in the commonwealth"). If we were to apply the last antecedent rule, the words "carried on by the taxpayer" would not modify the words "any trade or business." The capital gain at issue would be taxable simply because its source, BCI, was a business carried on by someone, not necessarily Dupee, in Massachusetts. See *Russell v. Boston Wyman, Inc.,* 410 Mass. 1005, 1006, 574 N.E.2d 379 (1991), quoting *United States v. Ven–Fuel, Inc.,* 758 F.2d 741, 751 (1st Cir.1985) ("last antecedent rule" is that "qualifying phrases are to be applied to the words or phrase immediately preceding and are not to be construed as extending to others more remote").

[2] **[3]** "The general and familiar rule is that a statute must be interpreted according to the intent of the Legislature ascertained from all its words construed by the ordinary and approved usage of the language, considered in connection

with the cause of its enactment, the mischief or imperfection to be remedied and the main object to be accomplished, to the end that the purpose of its framers may be effectuated." *Industrial Fin. Corp. v. State Tax Comm'n,* 367 Mass. 360, 364, 326 N.E.2d 1 (1975), quoting *Hanlon v. Rollins,* 286 Mass. 444, 447, 190 N.E. 606 (1934). The last antecedent rule "is only a rule of construction to ascertain the legislative intent." *Selectmen of Topsfield v. State Racing Comm'n,* 324 Mass. 309, 312, 86 N.E.2d 65 (1949). It does not apply where "there is something in the subject matter or in the expression of the dominant purpose that requires a different interpretation." *Id.*

***621** Contrary to the commissioner's argument, the Legislature's failure to position a comma between the words "employment" and "carried" as they appear in G.L. c. 62, § 5A(*a*), does not denote the Legislature's intent to tax all nonresident income from Massachusetts sources regardless of whether the taxpayer personally carries on that business. See *Costanzo v. Tillinghast,* 287 U.S. 341, 344, 53 S.Ct. 152, 153, 77 L.Ed. 350 (1932) ("It has often been said that punctuation is not decisive of the construction of a statute," citing several cases). We construe the relevant portion of the statute to mean that "[i]tems of gross income from sources within the commonwealth are items of gross income derived from or effectively connected with (1) any trade or business ... carried on by the taxpayer in the commonwealth." Our reading of the statute is consistent with regulations the Department of Revenue promulgated pursuant to the statute, a letter ruling the commissioner issued, and instructions relative to tax forms for the year at issue.

Title 830 Code Mass.Regs. § 62.5A.1(4)(a) (1993) specifically provides that a nonresident, defined in 830 Code Mass.Regs. § 62.5A.1(2) (1993) as an individual whose domicil is outside Massachusetts, carries on a trade or business in Massachusetts

> "1. [i]f the non-resident, directly or through agents or employees, maintains or operates or shares in maintaining or operating a desk, a room, an office, a shop, a store, a warehouse, a factory, or any other place in Massachusetts where the business ****177** affairs are systematically and regularly conducted; or 2. If the non-resident, directly or through agents or employees, is present for business in Massachusetts as either an employee, sole proprietor, or other self-employed individual."

The board's conclusion that Dupee does not satisfy the criteria in 830 Code Mass.Regs. § 62.5A.1(4) is correct, especially in light of the commissioner's own stipulation that Dupee "did not actively, regularly, or continuously participate in any capacity in the activities constituting the regular operation of [BCI]."

Letter Ruling 83–23, 2 Official Mass Tax Guide at 647 (West 1996) states:

> " ***622** Massachusetts General Laws Chapter 62, Section 5A, provides that the Massachusetts gross income of a nonresident is determined solely with respect to items of gross income from sources within the Commonwealth. Such items are those which are derived from or effectively connected with any trade of business *carried on by the taxpayer in the Commonwealth* or derived from the ownership of any interest in real or tangible personal property located in the Commonwealth. Dividend income from a Massachusetts corporation is income from intangible personal property and is not taxable to nonresidents" (emphasis added).

Finally, the instructions to Form 1–NR for 1986 explicitly state that "nonresident is only subject to tax on items of income derived from or effectively connected with ... any *trade or business he or she carries on in [Massachusetts]* " (emphasis added). We recently stated in *Commissioner of Revenue v. Baybank Middlesex,* 421 Mass. 736, 740, 659 N.E.2d 1186 (1996):

> "With respect to taxation, the commissioner to one extent or another is bound by a variety of informal policymaking devices [including] letter rulings.... Instructions that explain and guide the taxpaying public through the revenue laws are no different. 830 Code Mass.Regs. § 62C.3.1(9) (1993). Cf. *First Fed. Sav. & Loan Ass'n v. State Tax Comm'n,* 372 Mass. 478, 485 [363 N.E.2d 474] (1977) (tax return instructions express commissioner's view), aff'd, 437 U.S. 255 [98 S.Ct. 2333, 57 L.Ed.2d 187] (1978)."

[4] The board's ruling on this issue, with which we agree, respects the principle that “ambiguities in taxing statutes are to be resolved in favor of the taxpayer.” *McCarthy v. Commissioner of Revenue,* 391 Mass. 630, 633, 462 N.E.2d 1357 (1984), quoting *Cabot v. Commissioner of Corps. & Taxation,* 267 Mass. 338, 340, 166 N.E. 852 (1929). See *Grady v. Commissioner of Revenue,* 421 Mass. 374, 377, 657 N.E.2d 751 (1995), quoting *Commissioner of Revenue v. AMIWoodbroke, Inc.,* 418 Mass. 92, 94, 634 N.E.2d 114 (1994) (“[t]axing statutes are to be construed strictly against the taxing authority, and all doubts resolved in favor of the taxpayer”). Furthermore, the board's decision avoids the far-reaching result the commissioner's interpretation of the statute would entail, which would be to tax nonresidents having no business activity in ***623** Massachusetts on their gains from sales of stock in Massachusetts corporations. For all these reasons, we reject the commissioner's argument that the board erred in ruling that the statute did not subject Dupee to nonresident income tax on income derived from or connected with a Massachusetts business where he did not personally carry on a Massachusetts trade or business.

[5] The commissioner also argues that, even if, for Dupee's gain to be taxable, Dupee must have personally carried on the business which was the source of his gain, the board erred in failing to hold that the business of BCI, a Subchapter S corporation, passed through to Dupee, one of its shareholders, and therefore was carried on by Dupee. As authority for his contention that the pass-through feature of Subchapter S corporations permits the trade or business of BCI to be treated as the trade or business of Dupee, the commissioner cites the following language appearing in G.L. c. 62, § 17A (1994 ed.):

> “The character of any item of income, loss, deduction or credit included in a shareholder's distributive share shall be determined as if such item were realized or incurred directly by the shareholder from the source from which realized by the corporation....”

****178** The commissioner also argues that his position is supported by 830 Code Mass.Regs. § 62.17A.1(6)(b), which was promulgated in 1990 and interprets G.L. c. 62, § 17A as providing:

> “The trade or business of the Massachusetts S corporation is treated as the trade or business of the shareholder in determining the taxation of interest, dividends, and capital gains as Massachusetts source income.”

The board was correct in ruling that G.L. c. 62, § 17A, and the authorities interpreting it are inapplicable to Dupee's gain on the sale of his BCI interest. The gain was not the corporation's gain. The gain inured to Dupee outside the S corporation, rather than passing through BCI to him as a “distributive share” of a gain to the S corporation.

[6] [7] The commissioner argues that the step-transaction doctrine ***624** applies to collapse the liquidation, distribution, and new partnership transactions of December 11, 1986, and allows the Commonwealth to tax Dupee on his “distributive share” of the assets of the liquidated BCI. As explained in 11 Mertens, § 43.253 at 347 (1995), the step-transaction doctrine

> “requires any series of interrelated transactions to be treated, for tax purposes, as a single integrated event.... As such, the step transaction doctrine presents a corollary to the general principle that taxation depends upon the substance of a transaction rather than its form.”

In Rev.Rul. 79–250, 1979–2 C.B. 156, the Internal Revenue Service stated that the step-transaction doctrine does not apply to steps that have independent economic significance:

> “The Internal Revenue service has indicated on several occasions that threshold steps will not be disregarded under a step transaction analysis if such preliminary activity results in a permanent alteration of a previous bona fide business relationship. Thus, the substance of each of a series of steps will be recognized and the step transaction doctrine will not apply, if each such step demonstrates independent economic significance, is not subject to attack as a sham, and was undertaken for valid business purposes and not mere avoidance of taxes.”

We conclude that the board properly found that the steps in the subject transaction “had independent economic significance

and were undertaken for a valid business purpose ... [which was] to provide a vehicle for making a public offering of interests in the Boston Celtics franchise." As the board noted, the liquidation of the Subchapter S corporation (BCI) and creation of the limited partnership holding the franchise enabled public investment in the Celtics because I.R.C. § 1361(b)(1)(A) limits Subchapter S corporations to thirty-five shareholders. Although, as Dupee recognizes in his brief, the liquidation of BCI could have been structured in another manner, we uphold Dupee's asserted "legal right [as] a taxpayer to decrease the amount of what otherwise would be ***625** his taxes, or altogether avoid them, by means which the law permits." *Gregory v. Helvering,* 293 U.S. 465, 469, 55 S.Ct. 266, 267, 79 L.Ed. 596 (1935).

[8] Finally, the commissioner contends that Dupee's direct ownership of the BCI assets on liquidation was sufficient to impute the business of the Celtics to him. We agree with the board, however, that Dupee was not carrying on a trade or business when he held assets of the former BCI momentarily for the purpose of transferring them to the partnership. See *Commissioner v. Groetzinger,* 480 U.S. 23, 35, 107 S.Ct. 980, 987, 94 L.Ed.2d 25 (1987) (activities constituting a trade or business must be pursued "with continuity and regularity"); *Keenan v. Commissioner,* 57 Tax Ct.Mem.Dec. (CCH) 762, 771, 1989 WL 65299 (1989) (taxpayer does not engage in trade or business merely by acquiring a business asset); *Graves v. Commissioner,* 11 Tax Ct.Mem.Dec. (CCH) 467, 1952 WL 247 (1952) (taxpayer employed at mill was not subject to taxation on gain from sale of mill assets owned, as he was not a dealer in those goods but merely sought to liquidate them quickly).

Decision of the Appellate Tax Board affirmed.

Parallel Citations

670 N.E.2d 173

Footnotes

1 Lizbeth Schiff. The defendants are husband and wife. They filed a Massachusetts joint income tax return for 1986.

2 Section § 333 of the I.R.C., which was repealed on October 22, 1986, by Pub.L. 99–514, Title VI, § 631(e)(3), 100 Stat. 2273, allowed the corporation to make a liquidating distribution of appreciated assets to its shareholders without the shareholders recognizing the gain immediately. See 26 U.S.C. § 333 (1982).

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220 W.Va. 163
Supreme Court of Appeals of
West Virginia.

TAX COMMISSIONER OF the STATE of
West Virginia, Petitioner Below, Appellee
v.
MBNA AMERICA BANK, N.A.,
Respondent Below, Appellant.

No. 33049. | Submitted Sept. 19, 2006. | Decided Nov. 21, 2006. | Dissenting Opinion of Justice Benjamin Jan. 2, 2007. | Concurring Opinion of Chief Justice Davis Jan. 8, 2007.

Synopsis
Background: Foreign credit card company, having its principal place of business and commercial domicile in Delaware, sought refund of West Virginia business franchise tax and corporation net income tax. The Tax Commissioner denied refund, and appealed subsequent administrative decision granting refund. The Circuit Court, Kanawha County, Louis H. Bloom, J., reversed the administrative decision, ruling that imposition of West Virginia business franchise tax and corporation net income tax on foreign company did not violate the Commerce Clause. Foreign credit card company appealed.

Holdings: The Supreme Court of Appeals, Maynard, J., held that:

[1] requirement that an entity have a physical presence in a state in order for there to be a substantial nexus supporting state tax on interstate commerce applies only to use and sales taxes and not to business franchise and corporation net income taxes;

[2] substantial nexus would be determined under substantial economic presence analysis; and

[3] company had a substantial economic presence in West Virginia, thus establishing a substantial nexus supporting imposition of state business franchise and corporation net income taxes.

Affirmed.

Benjamin, J., dissented and filed opinion.

Davis, C.J., concurred and filed opinion.

West Headnotes (4)

[1] **Commerce**
Taxation in General

A state tax on interstate commerce will not be sustained under the Commerce Clause unless it: (1) has a substantial nexus with the State; (2) is fairly apportioned; (3) does not discriminate; and (4) is fairly related to the services provided by the State. U.S.C.A. Const. Art. 1, § 8, cl. 3.

3 Cases that cite this headnote

[2] **Commerce**
Corporate Franchises and Privileges
Commerce
Sales and Use Taxes
Commerce
Income Taxes

Requirement that an entity have a physical presence in a state in order for there to be a substantial nexus supporting state tax on interstate commerce, for Commerce Clause purposes, applies only to use and sales taxes and not to business franchise and corporation net income taxes. U.S.C.A. Const. Art. 1, § 8, cl. 3; West's Ann.W.Va.Code, 11-23-1 et seq., 11-24-1 et seq.

7 Cases that cite this headnote

[3] **Commerce**
Corporate Franchises and Privileges
Commerce
Income Taxes

Existence of a substantial nexus supporting imposition of state business franchise and corporation net income taxes on interstate commerce, for Commerce Clause purposes, would be determined by reference to

a substantial economic presence analysis. U.S.C.A. Const. Art. 1, § 8, cl. 3; West's Ann.W.Va.Code, 11-23-1 et seq., 11-24-1 et seq.

6 Cases that cite this headnote

[4] **Commerce**
Corporate Franchises and Privileges
Commerce
Income Taxes
Taxation
Corporations and Corporate Stock and Property
Taxation
Residence of Taxpayer; Corporations

Foreign credit card company, having its principal place of business and commercial domicile in Delaware, had a substantial economic presence in West Virginia, thus establishing a substantial nexus supporting, for Commerce Clause purposes, West Virginia's imposition of state business franchise and corporation net income taxes on company; company continuously and systematically engaged in direct mail and telephone solicitation and promotion in West Virginia, and company had significant gross receipts attributable to its West Virginia customers. U.S.C.A. Const. Art. 1, § 8, cl. 3; West's Ann.W.Va.Code, 11-23-1 et seq., 11-24-1 et seq.

3 Cases that cite this headnote

227 *164 ***Syllabus by the Court*

1. "A state tax on interstate commerce will not be sustained unless it: '(1) has a substantial nexus with the State; (2) is fairly apportioned; (3) does not discriminate; and (4) is fairly related to the services provided by the State.' *Maryland v. Louisiana,* [451] U.S. [725], [754], 101 S.Ct. 2114, 2133, 68 L.Ed.2d 576 (1981)." Syllabus Point 1, *Western Maryland Ry. Co. v. Goodwin,* 167 W.Va. 804, 282 S.E.2d 240 (1981).

2. The United States Supreme Court's determination in *Quill Corp. v. North Dakota,* 504 U.S. 298, 112 S.Ct. 1904, 119 L.Ed.2d 91 (1992), that an entity's physical presence in a state is required to meet the "substantial nexus" prong of *Complete Auto Transit, Inc. v. Brady,* 430 U.S. 274, 97 S.Ct. 1076, 51 L.Ed.2d 326 (1977), applies only to state sales and use taxes and not to state business franchise and corporation net income taxes.

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Opinion

MAYNARD, Justice:

Appellant MBNA America Bank appeals the June 27, 2005, order of the Circuit Court of Kanawha County that ruled that imposition of West Virginia's business franchise tax and corporation net income tax on MBNA, a Delaware Corporation, for tax years 1998 and 1999, does not violate the Commerce Clause. For the reasons that follow, we affirm the circuit court.

I.

FACTS

Appellant MBNA America Bank is a foreign corporation which has its principal place of business and commercial domicile in Wilmington, Delaware. During the two years in question, 1998 and 1999, MBNA had no real or tangible personal property and no employees located in West Virginia. The principal business of MBNA at the relevant times in this case was issuing and servicing VISA and MasterCard credit cards. This business included the extension of unsecured credit to customers who use these credit cards. MBNA promoted its business in West Virginia via mail and telephone solicitation.

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As noted above, the two tax years at issue are 1998 and 1999. In 1998, MBNA's gross receipts attributable to West Virginia customers amounted to $8,419,431.00, and in 1999, its gross receipts amounted to ****228** ***165** $10,163,788.00. For tax year 1998, MBNA paid a West Virginia Business Franchise Tax [1] of $32,010.00 and a West Virginia Corporation Net Income tax [2] of $168,034.00. For tax year 1999, MBNA paid a Business Franchise Tax in the amount of $42,339.00 and a Corporation Net Income Tax in the amount of $220,897.00.

Thereafter, MBNA filed refund claims with the State Tax Commissioner seeking the return of the business franchise and corporation net income taxes paid for 1998 and 1999, on the basis that the Tax Commissioner lacked jurisdiction over MBNA. The Commissioner denied the refunds based on its finding that MBNA regularly engaged in business in West Virginia under the applicable statutes. [3]

MBNA subsequently filed an appeal from the Tax Commissioner's decision with the Office of Tax Appeals (hereafter "OTA"). By decision dated October 22, 2004, the Chief Administrative Law Judge (hereafter "ALJ") of the OTA ruled in favor of MBNA and authorized refunds to MBNA of its 1998 and 1999 franchise and corporation net income taxes. The ALJ reasoned that under the Commerce Clause, a state may not subject an activity to a tax unless that activity has a "substantial nexus" with the taxing state. The ALJ further reasoned that a substantial nexus requires a finding that the putative taxpayer has a physical presence in the taxing state, and mere economic exploitation of the market is not sufficient. Because it was agreed that MBNA does not have a physical presence in West Virginia, the ALJ concluded that the State's business franchise and corporation net income taxes could not be imposed on MBNA's activity within the State.

The Tax Commissioner appealed the ALJ's decision to the Circuit Court of Kanawha County. The circuit court reversed the decision of the ALJ. According to the circuit court, physical presence is not necessary in order to show a substantial nexus for purposes of state taxation of foreign corporations. Rather, the circuit court found that MBNA's significant business in the state is sufficient to meet the substantial nexus standard. Therefore, concluded the circuit court, MBNA had a substantial nexus with West Virginia during the tax years in question so that imposition of the State's business franchise and corporate net income taxes on MBNA did not violate the Commerce Clause. MBNA now appeals the circuit court's order.

II.

STANDARD OF REVIEW

The Court has previously recognized that a lower court's determination of whether a state tax violates the Commerce Clause is reviewed *de novo*. *See Hartley Marine Corp. v. Mierke,* 196 W.Va. 669, 474 S.E.2d 599 (1996) (explaining that review of lower court judgment on whether state legislation interferes with free flow of interstate commerce is *de novo*).

III.

DISCUSSION

The single issue [4] raised in this appeal is whether application of West Virginia's business ***166** ****229** franchise and corporation net income taxes to MBNA, a business with no physical presence in this state, violates the Commerce Clause of the United States Constitution. [5] In Article 1, § 8 of the United States Constitution, Congress is expressly granted the authority "[t]o regulate Commerce with foreign Nations, and among the several States." [6] The Supreme Court has determined that the Commerce Clause, in addition to being a positive grant of power to Congress, also acts to prevent certain state regulation that interferes with interstate commerce. *See South Carolina State Highway Dept. v. Barnwell Bros., Inc.,* 303 U.S. 177, 58 S.Ct. 510, 82 L.Ed. 734 (1938). This prohibition on state action is known as the "negative" or "dormant" Commerce Clause.

[1] The Supreme Court's interpretation of the dormant Commerce Clause "has evolved substantially over the years, particularly as that Clause concerns limitations on state taxation powers." *Quill Corp. v. North Dakota,* 504 U.S. 298, 309, 112 S.Ct. 1904, 1911, 119 L.Ed.2d 91 (1992) (citation omitted). In tracing this evolution, the Court has explained:

> Our early cases, beginning with *Brown v. Maryland,* 12 Wheat. 419, 6 L.Ed. 678 (1827), swept broadly, and in *Leloup v. Port of Mobile,* 127 U.S. 640, 648, 8 S.Ct. 1380, 1384, 32 L.Ed. 311 (1888), we declared that "no State has the right to lay a tax on interstate commerce in any form." We later narrowed that rule

> and distinguished between direct burdens on interstate commerce, which were prohibited, and indirect burdens, which generally were not. *See, e.g., Sanford v. Poe,* 69 F. 546 (C.A.6 1895), *aff'd sub. nom., Adams Express Co. v. Ohio State Auditor,* 165 U.S. 194, 220, 17 S.Ct. 305, 41 L.Ed. 683 (1897). ****230 *167** *Western Live Stock v. Bureau of Revenue,* 303 U.S. 250, 256-258, 58 S.Ct. 546, 549-550, 82 L.Ed. 823 (1938), and subsequent decisions rejected this formal, categorical analysis and adopted a " multiple-taxation doctrine" that focused not on whether a tax was "direct" or " indirect" but rather on whether a tax subjected interstate commerce to a risk of multiple taxation. However, in *Freeman v. Hewit,* 329 U.S. 249, 256, 67 S.Ct. 274, 278, 91 L.Ed. 265 (1946), we embraced again the formal distinction between direct and indirect taxation, invalidating Indiana's imposition of a gross receipts tax on a particular transaction because that application would "impos [e] a direct tax on interstate sales."

Quill, 504 U.S. at 309-310, 112 S.Ct. at 1911. The Court subsequently abandoned formal distinctions in favor of looking at the practical effects of state taxing statutes. In *Complete Auto Transit, Inc. v. Brady,* 430 U.S. 274, 97 S.Ct. 1076, 51 L.Ed.2d 326 (1977), the Court set forth the current test for determining whether a state tax violated the Commerce Clause. This Court recognized the *Complete Auto* test in Syllabus Point 1 of *Western Maryland Ry. Co. v. Goodwin,* 167 W.Va. 804, 282 S.E.2d 240 (1981), where we held that,

> A state tax on interstate commerce will not be sustained unless it: "(1) has a substantial nexus with the State; (2) is fairly apportioned; (3) does not discriminate; and (4) is fairly related to the services provided by the State." *Maryland v. Louisiana,* [451] U.S. [725], [754], 101 S.Ct. 2114, 2133, 68 L.Ed.2d 576 (1981).[7] (Footnote added).

[2] The current issue deals solely with the "substantial nexus" prong of the *Complete Auto* test. Specifically, we are asked to decide whether the substantial nexus standard can only be met by showing that the putative taxpayer has an actual physical presence in the taxing state. In answering this question, we must consider the Supreme Court's decisions in *National Bellas Hess, Inc. v. Department of Revenue,* 386 U.S. 753, 87 S.Ct. 1389, 18 L.Ed.2d 505 (1967), *overruled, in part, Quill supra,*[8] and *Quill,* the Court's most recent pronouncement on state tax jurisdiction.

Bellas Hess involved an attempt by Illinois to require a mail-order business to collect and pay use taxes on goods purchased within the state. National Bellas Hess (hereinafter "National") was incorporated in Delaware and had its principal place of business in Missouri. It had neither outlets nor employees in Illinois. Twice a year, National mailed catalogues to the company's customers in Illinois. Orders for merchandise were mailed by customers to National's Missouri plant, and the ordered items were mailed to the customers either by mail or common carrier. National challenged the Illinois use tax levied against it on the basis, *inter alia,* that it created an unconstitutional burden on interstate commerce. The Supreme Court held that Illinois had no power to impose the use tax on National. The Court based its decision in part on the undue burden placed on interstate commerce by compliance with a host of administrative regulations governing the collection of sales and use taxes.

In 1992, the Supreme Court reaffirmed in *Quill* its *Bellas Hess* holding to the extent that *Bellas Hess* held that a showing of the taxpayer's physical presence in the taxing state was necessary to sustain a sales and use tax against a challenge under the Commerce Clause.[9] Quill was a Delaware corporation with offices and warehouses in Illinois, California, and Georgia. It sold office equipment and supplies, and solicited business through catalogs, flyers, advertisements in national periodicals, and telephone calls. Customers received their ordered merchandise from Quill through mail or common carrier. Despite the fact that Quill had no employees in North Dakota, and that its ***168 **231** tangible property in North Dakota was "either insignificant or nonexistent," 504 U.S. at 302, 112 S.Ct. at 1907, Quill was required to collect a use and sales tax from its North Dakota customers and remit it to the state. Quill challenged imposition of the tax on the ground that North Dakota did not have the power to compel it to collect a use tax from its North Dakota customers.

In addressing this issue, the Supreme Court first indicated that in determining the propriety of a state use tax on an out-of-state corporation "the nexus requirements of the Due Process and Commerce Clauses are not identical." 504 U.S. at 312, 112 S.Ct. at 1913.[10] The analysis under the Due Process Clause, explained the Court, is comparable to that used in determining whether a State can exercise personal jurisdiction over a person. Specifically, there must be "some definite link, some minimum connection, between a state and the person, property, or transaction it seeks to tax." 504 U.S. at 306, 112 S.Ct. at 1909 (*quoting Miller Brothers Co. v. Maryland,*

347 U.S. 340, 344-345, 74 S.Ct. 535, 539, 98 L.Ed. 744 (1954)). This is in order to ensure that imposition of a duty to collect a use tax on an out-of-state corporation does not offend traditional notions of fairness. Further, the Court found that the minimum connection is satisfied where the business "is engaged in continuous and widespread solicitation of business within a State [ ] [because] [s]uch a corporation clearly has fair warning that [its] activity may subject [it] to the jurisdiction of the foreign sovereign." 504 U.S. at 308, 112 S.Ct. at 1911 (internal quotation marks and citations omitted). The Court concluded that the Due Process Clause does not require physical presence in a State for the imposition of a duty to collect a use tax.

The Commerce Clause and its nexus requirement, in contrast, explained the Court, "are informed not so much by concerns about fairness for the individual defendant as by structural concerns about the effects of state regulation on the national economy.... Accordingly, we have ruled that [the Commerce] Clause ... bars state regulations that unduly burden interstate commerce." 504 U.S. at 312, 112 S.Ct. at 1913. (Citations omitted). "Thus, 'the substantial nexus' requirement is ... a means for limiting state burdens on interstate conference." 504 U.S. at 313, 112 S.Ct. at 1913. The *Quill* Court ultimately concluded that for purposes of imposing on an out-of-state business the duty of collecting use and sales taxes on in-state customers, the *Complete Auto* substantial nexus prong would best be determined by application of a "bright-line, physical-presence requirement." 504 U.S. at 317, 112 S.Ct. at 1916.

The major question left open by the Supreme Court's opinion in *Quill* is the one that now confronts us: Does the physical presence requirement applicable to determining the constitutionality of requiring out-of-state mail-order houses to collect use taxes on in-state sales under the Commerce Clause extend to other types of state taxes? MBNA's position is that *Quill* extends to the business franchise and corporation net income taxes at issue. The Tax Commissioner posits, on the other hand, that physical presence is not a requirement of the substantial nexus standard in regards to the taxes at issue. [11]

****232 *169** After careful consideration of the parties' arguments, the relevant legal authority, and the Court's reasoning in *Quill,* we conclude that *Quill's* physical-presence requirement for showing a substantial Commerce Clause nexus applies only to use and sales taxes and not to business franchise and corporation net income taxes. There are several reasons for our conclusion. First, we agree with the Tax Commissioner that a close reading of *Quill* indicates that its reaffirmation of the *Bellas Hess* physical-presence test for use and sales taxes under the Commerce Clause is grounded primarily on *stare decisis.* For example, the Court in *Quill* notes that "[w]hile contemporary Commerce Clause jurisprudence might not dictate the same result were the issue to arise for the first time today, *Bellas Hess* is not inconsistent with *Complete Auto* and our recent cases." *Quill,* 504 U.S. at 311, 112 S.Ct. at 1912. The Court further indicated that "the *Bellas Hess* rule has engendered substantial reliance and has become part of the basic framework of a sizable industry. The interest in stability and orderly development of the law that undergirds the doctrine of *stare decisis* therefore counsels adherence to settled precedent." *Id.,* 504 U.S. at 317, 112 S.Ct. at 1916 (internal quotations and citation omitted). Finally, the Court concluded that "the continuing value of a bright-line rule in this area and the doctrine and principles of *stare decisis* indicate that the *Bellas Hess* rule remains good law." *Id.*

This reasoning is supported by several legal commentators. *See* John A. Swain, *State Income Tax Jurisdiction: A Jurisprudential and Policy Perspective,* 45 Wm. & Mary L.Rev. 319 (October 2003) (arguing that the *Quill* Court relied on *stare decisis* rather than defending the physical presence test on the merits); Richard D. Pomp & Michael J. McIntyre, *State Taxation of Mail-Order Sales of Computers After Quill: An Evaluation of MTC Bulletin 95-1,* 11 State Tax Notes 177, 179-80 (July 15, 1996) (maintaining that *Quill* is essentially a political decision responding to concerns about retroactivity and the practical consequences of overruling *Bellas Hess*); Michael T. Fatale, *State Tax Jurisdiction and the Mythical "Physical Presence" Constitutional Standard,* 54 Tax Lawyer 105, 113 (Fall, 2000) (opining that "[a] primary basis for the [*Quill*] holding was the Court's conclusion that the mail order industry had grown in large part in reliance on *Bellas Hess*[,] [and] [b]ecause the *Bellas Hess* rule had become the 'basic framework' of a sizable industry") (footnotes omitted). Thus, because *Quill's* physical-presence test for sales and use taxes was based in large part on the mail order industry's reliance on *Bellas Hess,* we are not compelled to apply *Quill's* physical presence standard to the present circumstances.

Second, the Supreme Court appears to have expressly limited *Quill's* scope to sales and use taxes. First, the *Quill* Court noted that "[a]lthough we have not, in our review of other types of taxes, articulated the same physical-presence requirement that *Bellas Hess* established for sales and use taxes, that silence does not imply repudiation of the *Bellas*

Hess rule." *Quill,* 504 U.S. at 314, 112 S.Ct. at 1914. Also, the Court commented that "although in our cases subsequent to *Bellas Hess* and concerning other types of taxes we have not adopted a similar bright-line, physical-presence requirement, our reasoning in those cases does not compel that we now reject the rule that *Bellas Hess* established in the area of sales and use taxes." *Id.,* 504 U.S. at 317, 112 S.Ct. at 1916. We believe that a reasonable construction of this language clearly implies that *Quill* applies only to sales and use taxes and not to other types of state taxes. [12]

****233 *170** Third, the *Bellas Hess* and *Quill* courts based their decisions in part on the fact that compliance with administrative regulations in the collection of sales and use taxes places an undue burden on interstate commerce. Specifically, the *Bellas Hess* Court explained:

> In order to uphold the power of Illinois to impose use tax burdens on National in this case, we would have to repudiate totally the sharp distinction ... between mail order sellers with retail outlets, solicitors, or property within a State, and those who do no more than communicate with customers in the State by mail or common carrier as part of a general interstate business. But this basic distinction, which until now has been generally recognized by the state taxing authorities, is a valid one, and we decline to obliterate it.
>
> ... For if Illinois can impose such burdens, so can every other State, and so, indeed, can every municipality, every school district, and every other political subdivision throughout the Nation with power to impose sales and use taxes. The many variations in rates of tax, in allowable exemptions, and in administrative and record-keeping requirements could entangle National's interstate business in a virtual welter of complicated obligations to local jurisdictions with no legitimate claim to impose a fair share of the cost of the local government.
>
> The very purpose of the Commerce Clause was to ensure a national economy free from such unjustifiable local entanglements. Under the Constitution, this is a domain where Congress alone has the power of regulation and control.

Bellas Hess, 386 U.S. at 758-760, 87 S.Ct. at 1392-1393 (internal quotation marks and footnotes omitted). According to the Court, at the time *Bellas Hess* was decided, local sales taxes were imposed by over 2,300 localities, many of them accompanied by a use tax, utilizing several different rates. *Id.,* 386 U.S. at 759 fn. 12 and fn. 13, 87 S.Ct. at 1393 fn. 12 and fn. 13. [13]

The *Quill* Court likewise recognized the potential burden on interstate commerce posed by North Dakota's sales and use taxes.

> North Dakota's use tax illustrates well how a state tax might unduly burden interstate commerce. On its face, North Dakota law imposes a collection duty on every vendor who advertises in the State three times in a single year. Thus, absent the *Bellas Hess* rule, a publisher who included a subscription card in three issues of its magazine, a vendor whose radio advertisements were heard in North Dakota on three occasions, and a corporation whose telephone sales force made three calls into the State, all would be subject to the collection duty. What is more significant, similar obligations might be imposed by the Nation's 6,000-plus taxing jurisdictions.

Quill, 504 U.S. at 313 fn. 6, 112 S.Ct. at 1913 fn. 6, *citing Bellas Hess,* 386 U.S. at 759-760, 87 S.Ct. at 1393 (noting that the "many variations in rates of tax, in allowable exemptions, and in administrative and record-keeping requirements could entangle [a mail-order house] in a virtual welter of complicated obligations") (additional citation omitted).

In contrast to the sales and use taxes described in *Bellas Hess* and *Quill,* the franchise and income taxes at issue in this case do not appear to cause the same degree of compliance burdens. As noted above, the task of collecting taxes and remitting them to the government demands knowledge of a multitude of administrative regulations, including various deductions and tax rates, as well as record-keeping requirements. Also, as a general matter, sales and use taxes must be remitted to the government on a more frequent basis than income and franchise taxes. For example, in West Virginia vendors are charged with the duty of collecting from purchasers the consumer sales and service tax and paying the tax to the Tax Commissioner on a monthly basis. This entails making out and mailing to the Commissioner a return for the preceding month on a prescribed form showing the total gross proceeds of the vendor's business during that

***171 **234** time, the gross proceeds of the vendor's business upon which the tax is based, the amount of the tax for which the vendor is liable, and any further information necessary in the computation and collection of the tax which the Commissioner may require. *See* W.Va.Code § 11-15-16 (2003). In contrast, income and franchise taxes are paid by the business entity itself so that no collection duties are involved. Also, income and franchise taxes are generally paid annually. *See e.g.,* W.Va.Code § 11-23-9 (1996) (persons subject to business franchise tax shall make and file an annual return) and W.Va.Code § 11-24-13 (1993) [14] (requiring annual filing of corporation net income tax return). [15]

Finally, we believe that the *Bellas Hess* physical-presence test, articulated in 1967, makes little sense in today's world. In the previous almost forty years, business practices have changed dramatically. When *Bellas Hess* was decided, it was generally necessary that an entity have a physical presence of some sort, such as a warehouse, office, or salesperson, in a state in order to generate substantial business in that state. This is no longer true. The development and proliferation of communication technology exhibited, for example, by the growth of electronic commerce now makes it possible for an entity to have a significant economic presence in a state absent any physical presence there. For this reason, we believe that the mechanical application of a physical-presence standard to franchise and income taxes is a poor measuring stick of an entity's true nexus with a state.

Accordingly, we now hold that the United States Supreme Court's determination in *Quill Corp. v. North Dakota,* 504 U.S. 298, 112 S.Ct. 1904, 119 L.Ed.2d 91 (1992), that an entity's physical presence in a state is required to meet the "substantial nexus" prong of *Complete Auto Transit, Inc. v. Brady,* 430 U.S. 274, 97 S.Ct. 1076, 51 L.Ed.2d 326 (1977), applies only to state sales and use taxes and not to state business franchise and corporation net income taxes.

[3] Rather than a physical presence standard, this Court believes that a significant economic presence test is a better indicator of whether substantial nexus exists for Commerce Clause purposes. At least one legal commentator has suggested such a test and to some degree defined its parameters. *See* Edson, 49 Tax Lawyer at 943. According to this commentator, a substantial economic presence standard "incorporates due process 'purposeful direction' towards a state while examining the degree to which a company has exploited a local market." *Id.* Further, "[a] substantial economic presence analysis involves an examination of both the quality and quantity of the company's economic presence." *Id.,* 49 Tax Law. at 944. Finally, under this test, "[p]urposeful direction towards a state is analyzed as it is for Due Process Clause purposes," and the Commerce Clause analysis requires the additional examination of "the frequency, quantity and systematic nature of a taxpayer's economic contacts with a state." *Id.,* 49 Tax Law. at 945. We find this rationale persuasive and will apply it in determining the constitutionality of the taxes at issue.

First, however, we must address several objections proffered by MBNA to the application of any standard other than physical presence. Initially, MBNA contends that a greater nexus requirement should be applied to the imposition of direct taxes such as those at issue because such taxes are actually more burdensome. This is because sales and use taxes merely require an entity to collect the tax from consumers and remit the tax money to the government, thus suffering the administrative complications and inconvenience but not the cost of the tax. In sharp contrast, says MBNA, franchise and income taxes not only have compliance burdens but also must be paid from the entity's own pocket. For support, MBNA cites ***172 **235** *National Geographic Society v. California Bd. of Equalization,* 430 U.S. 551, 97 S.Ct. 1386, 51 L.Ed.2d 631 (1977), in which the Supreme Court distinguished between a use tax and a direct tax and implied that a higher Commerce Clause standard would be required to support the imposition of a direct tax. [16]

We do not agree with MBNA's argument on this issue. Notably, the Supreme Court's comment in *National Geographic Society* was dicta in that it was not necessary to the decision in that case. In contrast, the *Bellas Hess* and *Quill* Courts placed significant weight on the fact that there are substantial compliance burdens attached to the collection of sales and use taxes. Therefore, we reject MBNA's claim that the imposition of direct taxes is a greater burden than the duty to collect taxes so that the *Bellas Hess/ Quill* physical-presence test should also apply to the imposition of the direct taxes at issue. [17]

MBNA also argues that adoption of any substantial nexus requirement short of showing actual physical presence is in fact simply applying a Due Process minimum contacts standard in violation of *Quill* which expressly held that the Due Process and Commerce Clause analyses are separate. We disagree. The Due Process Clause requires merely some minimum connection between a state and the person, property or transaction it seeks to tax. In contrast, a substantial nexus

under the Commerce Clause requires that an entity's contacts with the taxing state be more frequent and systematic in nature. Additionally, an entity's exploitation of the market must be greater in degree than under the Due Process standard so that its economic presence can be characterized as significant or substantial. In sum, although a substantial economic presence standard is by nature more elastic than the bright-line physical presence test, we are convinced that when properly applied, a greater nexus is required under the substantial economic presence standard that under the minimum contacts analysis.

Finally, MBNA avers that the only case from a foreign jurisdiction that is factually on point with the instant case is *J.C. Penney Nat'l Bank v. Johnson,* 19 S.W.3d 831 (Tenn.Ct.App.1999), in which the Tennessee appellate court applied the physical-presence test to Tennessee's attempted imposition of income taxes on an out-of-state credit card company. While we acknowledge that *J.C. Penney* is factually on point and addresses the same issue as the one before us, for the reasons set forth above we reject the reasoning in *J.C. Penney,* and decline to apply it to the instant case. [18]

[4] We now turn our attention to the facts of the instant case to determine whether MBNA had a substantial nexus with this State during the time period in question. The record shows that MBNA continuously and systematically engaged in direct mail and telephone solicitation and promotion in West Virginia. Further, in tax year 1998, ***173** ****236** MBNA had significant gross receipts attributable to West Virginia customers in the amount of $8,419,431. 00, and in tax year 1999, MBNA had significant gross receipts attributable to its West Virginia customers in the amount of $10,163,788.00. In light of these facts, this Court has no trouble concluding that MBNA's systematic and continuous business activity in this State produced significant gross receipts attributable to its West Virginia customers which indicate a significant economic presence sufficient to meet the substantial nexus prong of *Complete Auto.* [19]

Finally, prior to concluding, we simply wish to acknowledge the great challenge in applying the Commerce Clause to the ever-evolving practices of the marketplace. James Madison, Benjamin Franklin, and the other Framers at the Constitutional Convention who adopted the Commerce Clause lived in a world that is impossible for people living today to imagine. The Framers' concept of commerce consisted of goods transported in horse-drawn, wooden-wheeled wagons or ships with sails. They lived in a world with no electricity, no indoor plumbing, no automobiles, no paved roads, no airplanes, no telephones, no televisions, no computers, no plastic credit cards, no recorded music, and no iPods. Likewise, it would have been impossible for the Framers to imagine our world. When they fashioned the Commerce Clause, they could not possibly have foreseen the complex and varied ways that commerce is conducted today, especially via the internet and electronic commerce. It would be nonsense to suggest that they could foresee or fathom a time in which a person's telephone call to his or her local credit card company would be routinely answered by a person in Bombay, India, or that a consumer could purchase virtually any product on a computer with the click of a mouse without leaving home. This recognition of the staggering evolution in commerce from the Framers' time up through today suggests to this Court that in applying the Commerce Clause we must eschew rigid and mechanical legal formulas in favor of a fresh application of Commerce Clause principles tempered with healthy doses of fairness and common sense. This is what we have attempted to do herein.

IV.

CONCLUSION

In conclusion, for the reasons set forth above, we affirm the June 27, 2005, order of the Circuit Court of Kanawha County and conclude that West Virginia's imposition of its business franchise and corporation net income taxes on MBNA for the tax years 1998 and 1999, did not violate the Commerce Clause.

Affirmed.

BENJAMIN, Justice, dissenting:

(Filed January 2, 2007)

In its opinion finding tax liability for an out-of-state corporation with no presence, tangible or intangible, [1] in West Virginia on income realized out-of-state by that corporation from accounts kept out-of-state, the majority, in its opinion, boldly goes where no court has gone before. In doing so, the majority relies not on bedrock constitutional principles or on established legal precedent, but rather on

legal commentaries with thinly veiled state-favoring taxing agendas, a strained and inaccurate reading of the United States Supreme Court's decision in *Quill Corp. v. North Dakota,* 504 U.S. 298, 112 S.Ct. 1904, 119 L.Ed.2d 91 (1992), and a unilateral restatement of the important policy ***174 **237** considerations which led to the inclusion of the Commerce Clause within the United States Constitution because, according to the majority opinion, the framers could not possibly have foreseen the future. The majority opinion gives legal sanction to a state taxing scheme which impermissibly burdens the interstate commerce of the nation. I therefore dissent.

There is no precedential support whatsoever for the conclusions reached by the majority decision. None. None at the state level. None at the federal level. Ignoring that our consideration here should be the effect of the tax in question on interstate commerce, rather than the type of tax it is, none of the rhetoric raised by the majority opinion explains why a state's imposition of a tax on an out-of-state corporation with no presence, tangible or intangible, on income realized from an out-of-state account does not adversely affect the nation's interstate commerce, an analysis identified by the United States Supreme Court as the cornerstone of constitutional jurisprudence. *Id.*; *Allied-Signal, Inc. v. Director, Div. of Taxation,* 504 U.S. 768, 112 S.Ct. 2251, 119 L.Ed.2d 533 (1992). The only state court decision on point with the specific credit card issues raised herein determined that the State of Tennessee exceeded its taxing jurisdiction in attempting to collect taxes from an out-of-state corporation on income generated by out-of-state credit accounts. *J.C. Penney National Bank v. Johnson,* 19 S.W.3d 831 (Tenn.Ct.App.1999), *cert. denied,* 531 U.S. 927, 121 S.Ct. 305, 148 L.Ed.2d 245 (2000);

State taxation of companies engaged in interstate commerce must comport with the Due Process and Commerce Clauses of the United States Constitution. In *Quill,* the United States Supreme Court emphasized that separate constitutional analyses are required in evaluating the validity of state taxes under each provision. *Quill,* 504 U.S. at 305, 112 S.Ct. 1904 ("The two constitutional requirements differ fundamentally [and] reflect different constitutional concerns."). Though both the Due Process Clause and the Commerce Clause require an out-of-state taxpayer to have established a meaningful nexus with a given state to be the proper subject of taxation of that state, imposition of a tax on an out-of-state taxpayer may meet the less stringent nexus requirements of the Due Process Clause, yet fail to meet the more substantial nexus requirements of the Commerce Clause. *Id.* ("[W]hile a State may, consistent with the Due Process Clause, have the authority to tax a particular taxpayer, imposition of the tax may nonetheless violate the Commerce Clause.")

Among the most fundamental precepts of state taxation from a Commerce Clause perspective is that there must be a "substantial nexus" between the interstate activity sought to be taxed and the taxing State. *Complete Auto Transit, Inc. v. Brady,* 430 U.S. 274 97 S.Ct. 1076, 51 L.Ed.2d 326 (1977). Under *Complete Auto,* a state tax is permitted under the Commerce Clause if it (1) is applied to an activity with a substantial nexus with the taxing state, (2) is fairly apportioned, (3) does not discriminate against interstate commerce, and (4) is fairly related to the services provided by the state. 430 U.S. at 279, 97 S.Ct. 1076. [2] While I agree with my colleagues that the "substantial nexus" prong of this test is ripe for clarification by the United States Supreme Court, I disagree with them to the extent that the majority opinion finds insufficient guidance in the existing jurisprudence of the United States Supreme Court to conclude that the State's present attempt to levy a tax on income realized outside the State by an out-of-state corporation with no presence, tangible or intangible, in the State violates the Commerce Clause.

Three years after deciding *Complete Auto,* the Supreme Court noted in *Mobil Oil Corp. v. Commissioner of Taxes,* 445 U.S. 425, 100 S.Ct. 1223, 63 L.Ed.2d 510 (1980), that for an ***175 **238** application of state tax jurisdiction to be constitutional under the Due Process Clause, there must be: (1) nexus or some *minimal* connection between the taxing state and the activity from which the income is derived; and (2) a rational relationship between the income attributed to the taxing state and the interstate values of the enterprise. 445 U.S. at 436-7, 100 S.Ct. 1223. These constitutional requirements were subsequently confirmed in *D.H. Holmes Co. v. McNamara,* 486 U.S. 24, 108 S.Ct. 1619, 100 L.Ed.2d 21 (1988), *Allied-Signal,* and *Quill.*

Reading *Complete Auto* and *Mobil Oil* together, one discerns two aspects to the consideration of nexus. First, there must be an adequate connection between the taxing state and the out-of-state corporation upon which a tax is being assessed; *i.e.,* a "presence" consideration. Second, there must also be an adequate connection between the taxing state and the event which gives rise to the claimed tax; *i.e.,* a "transaction" consideration.

Prior to the United States Supreme Court's decisions in *Allied-Signal* and *Quill,* some argued for a merging of the Due Process and Commerce Clause nexus considerations through application of a so-called "economic exploitation" nexus consideration. *Quill* establishes that, for Commerce Clause purposes, a higher presence nexus is required than the minimal nexus connection required for Due Process purposes. In other words, a corporation's "presence" may suffice for taxing jurisdiction under the minimal Due Process nexus test, but fail to meet the "substantial" higher presence nexus test required by the Commerce Clause.

We must assume that the United States Supreme Court chose its words carefully in setting forth the first prong of the *Complete Auto* test, that the tax in question is sought by the taxing state to be applied "to an activity" with a substantial nexus with the taxing state. Even if the majority opinion was correct, which I believe it was not, that MBNA's interstate activities constitute a sufficiently high showing of presence to permit taxing jurisdiction under the "substantial" nexus test of the Commerce Clause, the majority opinion simply reaches the question of whether the State of West Virginia may seek to tax MBNA as an out-of-state corporation. The majority opinion completely fails to consider the effect of the tax on interstate commerce. On this second question of whether a state can impose tax on income generated out-of-state, the majority opinion likewise fails. Here, there is no question but that the credit card accounts which give rise to MBNA's income are located outside West Virginia.

I must admit to being intrigued by the majority opinion's description of its nexus requirement as a "significant economic presence test" as much for its vagueness as for its embodiment as the antithesis of the "bright line" standards set forth by the United States Supreme Court in *Quill* and *National Bellas Hess v. Department of Revenue of Illinois,* 386 U.S. 753, 87 S.Ct. 1389, 18 L.Ed.2d 505 (1967), *overruled, in part, by Quill*. The reality is that by endorsing a nexus standard which permits West Virginia to assess a tax on an out-of-state corporation with no property, tangible or intangible, in this state on income realized from credit accounts maintained and serviced in another state, the majority merges the nexus requirements of the Due Process Clause and the Commerce Clause and effectively returns to the merged nexus jurisprudence of 1967, in *Bellas Hess,* albeit with the minimal due process requirements now carrying the day for nexus determination rather that the physical presence requirement of *Bellas Hess.* While MBNA may meet the minimal nexus requirement for it to be on notice from a due process basis that it may be subject to taxation, the majority opinion fails to show how the out-of-state credit account, which is the basis for the income sought to be taxed, meets the substantial nexus requirements of *Complete Auto* and *Quill.* Indeed, one might seriously question the due process basis for West Virginia's attempted actions herein. [3]

****239 *176** The majority opinion attempts mightily to distinguish between forms of taxes, such as sales and use taxes on the one hand, and income and franchise taxes on the other hand, in attempting to defend its disregard for the substantial nexus standards required in *Quill.* The majority's argument appears to be that because the instant case concerns the taxation of income realized by an out-of-state corporation from accounts in Delaware and because *Quill* instead involved use and sales taxes from purchases made by purchasers within the taxing state with delivery of goods to occur also within the taxing state, this Court is at liberty to disregard those parts of *Quill* with which it disagrees. This argument is not persuasive. In so disregarding the substantial nexus requirements of *Quill* because *Quill* involved use and sales taxes, it is interesting that the majority opinion nevertheless fully embraces the precedent of the United States Supreme Court in *Complete Auto,* a case which also involved use and sales taxes-not income taxes. Perhaps the real dichotomy here may not be between sales and income taxes, with the relevant question being when is a tax not a tax, but how the limitations set forth in the United States Constitution can be avoided to provide the State with a better opportunity to expand its taxing opportunities.

The reality is that the United States Supreme Court has not generally treated the question of state authority to tax interstate commerce as turning on the specific type of tax involved. Rather, the United States Supreme Court has focused instead on the effect of the tax which the taxing state seeks to levy on interstate commerce, regardless of the type of tax. [4] Indeed, there is no immediately clear doctrinal foundation which can be observed for distinguishing sales and use tax collection on sales between states from income taxes sought to be collected from out-of-state companies for income realized from out-of-state intangible accounts simply because the out-of-state corporation availed itself of the United States mails and other forms of interstate communication. [5]

The jurisprudential reality is that the United States Supreme Court has never held in any state tax case that the nexus requirements of the Commerce Clause can be satisfied in the absence of a taxpayer's physical presence in the taxing

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state. The principles of *stare decisis* are no less relevant to state taxes in general, than they are to sales and use taxes particularly, when Congress has the ultimate power to prescribe the appropriate law in this area. *See, Quill,* 504 U.S. at 316-17, 112 S.Ct. 1904. Cases decided by the United States Supreme Court both before and after *Quill* have made it clear that a substantial nexus is required for the imposition of *any* state tax on an out-of-state corporation. *See, Allied-Signal,* 504 U.S. at 778, 112 S.Ct. 2251 ("The constitutional question in a case such as *Quill Corp.* is whether the State has the authority to tax the corporation at all."); *Commonwealth Edison Co. v. Montana,* 453 U.S. 609, 626, 101 S.Ct. 2946, 69 L.Ed.2d 884 (1981) ("Under this threshold test, the interstate business must have a substantial nexus with the State before *any* tax may be levied on it.") It would be a strange constitutional doctrine that would countenance one nexus standard for sales and use taxes under the Commerce Clause, ***177** ****240** and a more relaxed nexus standard for corporate net income and other state taxes. [6]

In the first place, it does not appear that the differences between the use tax collection obligation and liability for income taxation are so significant as to justify different rules under the Commerce Clause. It is certainly difficult to see distinctions that give effect to physical presence as a necessary element for "substantial nexus" for some taxes and not for others. Arguably, the collection of use and sales taxes involves no more complexity than the determination of individual state income tax liability for a multistate corporation involved in interstate commerce where each taxing state has separate laws and seeks to maximize the definition of that which each such state contends may be taxed from out-of-state. [7] Arguably, if taxes should be treated differently under the Commerce Clause based on what the taxing state claims to tax rather than on the tax's actual impact on interstate commerce, one might well argue that something more than a due process minimal nexus standard should be considered for non-transactional taxes such as income taxes. Under such an argument, one might be tempted to argue that the minimum nexus standard for due process considerations in cases such as *Quill,* which involved transactions which had a tangible connection with a given state, were not intended to also apply to income taxes which a taxing state sought to apply to income generated by accounts located outside the taxing state. As this endeavor demonstrates, the same speculation which the majority employs to attempt to differentiate "substantial nexus" standards based on tax types could be alternatively applied in any number of ways not so attractive to taxing states. Absent precedential support for differentiating "substantial nexus" standards based upon tax types, this Court should resist the State's invitation for us to speculate based on semantics and, instead, focus on the effect which the state tax has on interstate commerce-here, attempting to levy an income tax on an out-of-state corporation with no property, tangible or intangible, in West Virginia where the income in question was generated from credit accounts held outside of this state.

The majority opinion also claims that a variety of changes-changes which it claims were not of a type which could be foreseen by the framers of the United States Constitution-support their extension of state tax jurisdiction into a realm considered by all others to be unconstitutional. Initially, I note some measure of foreboding anytime a court invokes the "foreseeability of the framers' " as a basis for a decision-fear not because the rule of *stare decisis* is about to be followed by the court, but rather because the court is about to engage in some form of legislative activism for which the only support is political, not legal. [8] Here, the rationale for the majority's "economic exploitation" nexus approach, which ***178** ****241** might more accurately be termed a "tax it if you can follow it, even if it is earned in another state" nexus approach, rings remarkably like the arguments set forth in Justice Fortas' dissent in *Bellas Hess.* In his dissent to the 1967 case, Justice Fortas advocated for an "economic exploitation nexus" test for state taxing jurisdiction. *Bellas Hess,* 386 U.S. at 761-62, 87 S.Ct. 1389. Justice Fortas argued that Bellas Hess should be subject to the taxing jurisdiction of Illinois because of its "large-scale, systematic, continuous solicitation and exploitation of the Illinois consumer market." *Id.,* at 761, 87 S.Ct. 1389. Furthermore, Justice Fortas argued that Bellas Hess enjoyed "... the benefits of, and profits from the facilities nurtured by, the State of Illinois as fully as if it were a retail store or maintained salesmen therein." *Id.,* at 762, 87 S.Ct. 1389. I find it remarkable that our Court now endorses this same position-a position which the United States Supreme Court has rejected.

Yet our Court has not been the only court to embrace Justice Fortas' arguments. So too did the North Dakota Supreme Court, in its decision in *Quill.* Therein, that state supreme court, also claiming changes in society and economy, stated that "... within the context of contemporary society and commercial practice, we conclude that the concept of nexus encompasses more than mere physical presence within the state, and that the determination of nexus should take into consideration all connections between the out-of-state seller and the state, all benefits and opportunities provided by

the State, and should stress economic realities rather than artificial benchmarks." *State By and Through Heitkamp v. Quill Corp.,* 470 N.W.2d 203, 215 (N.D.1991), *rev'd,* 504 U.S. 298, 112 S.Ct. 1904, 119 L.Ed.2d 91 (1992). As *Quill* demonstrates, when given the chance to again consider the "economic exploitation" nexus argument, the United States Supreme Court once again declined.

While the majority herein apparently believes, as did the North Dakota Supreme Court in *Quill,* that it may disregard the actual nexus decisions of the United States Supreme Court in favor of a theoretical nexus argument which favors the State's ability to reach out and tax income generated out-of-state by an out-of-state corporation with no presence, tangible or intangible, in West Virginia, I believe the sage reminder of Justice Scalia (joined in by Justices Kennedy and Thomas) should serve as a reminder of our duty in considering this case:

> We have recently told lower courts that "[i]f a precedent of this Court has direct application in a case, yet appears to rest on reasons rejected in some other line of decisions, [they] should follow the case which directly controls, leaving to this Court the prerogative of overruling its own decisions." *Rodriguez de Quijas v. Shearson/American Express, Inc.,* 490 U.S. 477, 109 S.Ct. 1917, 1921, 104 L.Ed.2d 526 (1989).

Quill, 504 U.S. at 321, 112 S.Ct. 1904. We would do well to follow the precedent that is applicable herein and not attempt to anticipate an overruling by the United Supreme Court of its prior jurisprudence. The taxes in question are unconstitutional.

DAVIS, Chief Justice, concurring:

(Filed January 8, 2007)

In this case, MBNA, an out-of-state credit card company disputed the imposition of business franchise and corporation net income taxes on its profits [1] generated from West Virginia residents in the years 1998 and 1999. The majority opinion, applying sound legal analysis, determined that the application of the taxes did not violate the Commerce Clause because MBNA's business activity in this State constituted a significant economic presence sufficient to meet the substantial nexus standard. I fully concur in the majority decision and its analysis. I have chosen to write separately to emphasize the correctness of the legal analysis articulated in the majority decision and, further, to respond to several misconceptions contained in the dissenting opinion.

In the lone dissenting opinion, my colleague chastises the majority and states that "[t]here is no precedential support whatsoever for the conclusions reached by the majority decision. None. None at the state level. None at the federal level." *See* Dissenting ***179 **242** opinion, pgs. 173-74, 640 S.E.2d pgs. 236-37. The critical point that the dissent fails to acknowledge is that there is no established precedent, either way, from the United States Supreme Court. The sole decision on this topic is from the Tennessee Court of Appeals. *See generally J.C. Penney Nat'l Bank v. Johnson,* 19 S.W.3d 831 (Tenn.Ct.App.1999). It has long been held that "[i]n considering and deciding the constitutionality of a tax imposed and collected by this state, in the light of a provision of the Constitution of the United States, this Court is bound by applicable decisions of the Supreme Court of the United States [.]" Syl. pt. 2, in part, *State ex rel Battle v. B.D. Bailey & Sons, Inc.,* 150 W.Va. 37, 146 S.E.2d 686 (1965). However, no such requirement exists as to decisions rendered by other state courts. Moreover, it is expressly left to each state to regulate commerce inside its borders, within the confines of constitutional directives.

The majority opinion performed a critical analysis of the United States Supreme Court decision in *Quill Corp. v. North Dakota,* 504 U.S. 298, 112 S.Ct. 1904, 119 L.Ed.2d 91 (1992). The *Quill* opinion considered the Commerce Clause in connection with use and sale taxes, not the types of taxes at issue in the present case. Therefore, while the *Quill* opinion is instructive, it is not exactly on point with the case *sub judice.* The majority opinion succinctly interpreted the *Quill* decision, which determined that a physical presence was needed prior to imposing in-state sales taxes on an out-of-state mail-order house under the Commerce Clause. In its analysis, the majority of this Court correctly observed that physical presence is not a requirement of the substantial nexus standard with regard to the taxes at issue herein. Taking into account the realism of today's world, the majority astutely recognized that *Quill's* physical presence requirement for showing a substantial nexus under the Commerce Clause applies only to use and sales taxes and not to business franchise and corporation net income taxes, which are the taxes at issue in the present case. Such an interpretation was invited by the *Quill* Court when it noted that it has not adopted a bright line, physical presence requirement in any area except sales and use taxes. *See* Majority opinion, p. 169, 640 S.E.2d p. 232. In its interpretation of *Quill,* the majority opinion correctly

recognized the legal differences between the Due Process Clause and the Commerce Clause, as well as the even finer distinctions between the application of sales and use taxes as opposed to business franchise and corporation net income taxes. The majority opinion articulates and appreciates these distinctions; the dissenting opinion does not.

Further, the dissenting opinion, in its discussion regarding the physical presence component of the substantial nexus prong, strays from the issue before this Court by discussing at length the minimum contacts required under the Due Process Clause. In so doing, the dissenting opinion accuses the majority of merging Due Process and Commerce Clause nexus requirements. However, the majority opinion correctly addresses this argument, which was first raised by MBNA, by recognizing the contact requirements under both doctrines. The majority opinion concludes that "although a substantial economic presence standard is by nature more elastic than the bright-line physical presence test, we are convinced that when properly applied, a greater nexus is required under the substantial economic presence standard [than] under the minimum contacts analysis." *See* Majority opinion, p. 172, 640 S.E.2d p. 235.

Moreover, the dissenting opinion's lengthy discussion of the Due Process Clause is unwarranted and prone to create confusion. The application of the Due Process Clause is not the issue presented for resolution in this case nor does it play any role in the decision reached by the majority of the Court. The question that was brought for our review was, solely, "whether application of West Virginia's business franchise and corporation net income taxes to MBNA, a business with no physical presence in this state, violates the Commerce Clause of the United States Constitution." Majority opinion, p. 166, 640 S.E.2d p. 229 (footnote omitted). Significantly, as recognized by the majority opinion, the requirements for satisfying the Due Process Clause and the Commerce Clause are different. *See* Majority opinion, p. 168, 640 S.E.2d p. 231 ("In addressing this issue, the Supreme Court first indicated that in determining ***180 **243** the propriety of a state use tax on an out-of-state corporation 'the nexus requirements of the Due Process and Commerce Clauses are not identical.' " (internal citation omitted)). The Due Process Clause is concerned with notions of fairness, while the Commerce Clause is aimed at the effects of state regulation on the national economy. Thus, the dissenter's analysis under the Due Process Clause is wholly irrelevant and inapplicable to the issue before the Court in this case.

The final point I wish to address is the dissent's unexplained and rigid adherence to a physical presence requirement for all types of taxes. The dissenting opinion argues that the taxing scheme at issue impermissibly burdens interstate commerce, yet it fails to explain how such an impermissible scheme occurs. *See* Syl. pt. 3, *Battle,* 150 W.Va. 37, 146 S.E.2d 686 ("A tax imposed pursuant to an act of the legislature of this state will not be held to contravene the commerce clause of Article I, Section 8 of the Constitution of the United States unless the imposition of the tax discriminates against or imposes an undue burden on interstate commerce. Such a tax will not be held to violate the commerce clause merely because it relates to or affects interstate commerce in some indirect, incidental and inconsequential manner."). When a company, whether out-of-state or in-state, earns millions of dollars [2] directly as a result of its dealings with West Virginia customers, should it not be compelled to pay taxes? [3] If not, then all companies would only deal with out-of-state customers so as to avoid all business franchise and corporation net income taxes. Such a result is perverse, especially when considering the climate of today's business world where new technology has made it possible for businesses to span the globe. I see no reason why a small "mom and pop" store in the State of West Virginia, with gross receipts in the thousands, should be compelled to pay business franchise and corporation net income taxes due to its physical presence in the State, while a large corporation, like MBNA, who makes millions of dollars from West Virginia's economy, would be exempt from such taxes simply because it has no physical presence here. As the majority shrewdly points out, in today's world, a business does not necessarily need a physical presence anywhere. MBNA's significant economic presence in this State meets the substantial nexus standard; thus, it should not be exempt from state taxation.

Because the majority correctly addressed and resolved the issues in this case, I respectfully concur with the opinion of the Court.

Parallel Citations

640 S.E.2d 226

Footnotes

1 The West Virginia Business Franchise Tax is found in W.Va.Code §§ 11-23-1, *et seq.* According to W.Va.Code § 11-23-1 (1985) the tax is imposed on corporations and partnerships for the privilege of doing business in this state.

2 The West Virginia Corporation Net Income Tax is found in W.Va.Code §§ 11-24-1, *et seq.*

3 The statutory nexus required for the business franchise tax is found in W.Va.Code § 11-23-5a(d) (1996), which states in part:

> A financial organization that has its commercial domicile in another state is presumed to be regularly engaging in business in this state if during any year it obtains or solicits business with twenty or more persons within this state, or if the sum of the value of its gross receipts attributable to sources in this state equals or exceeds one hundred thousand dollars.

The statutory nexus required for the West Virginia corporation net income tax is found in W.Va.Code § 11-24-7b(d) (1996), which provides in part:

> A financial organization that has its commercial domicile in another state is presumed to be regularly engaging in business in this state if during any year it obtains or solicits business with twenty or more persons within this state, or if the sum of the value of its gross receipts attributable to sources in this state equals or exceeds one hundred thousand dollars.

4 In its petition for appeal to this Court, MBNA also raised an assignment of error concerning fair apportionment of the taxes at issue. However, MBNA subsequently abandoned this assignment of error.

5 We are mindful that our task herein is a difficult one. The United States Supreme Court has acknowledged that its dormant Commerce Clause law "is something of a 'quagmire' and the 'application of constitutional principles to specific state statutes leaves much room for controversy and confusion and little in the way of precise guides to the States in the exercise of their indispensable power of taxation.' " *Quill Corp. v. North Dakota,* 504 U.S. 298, 315-316, 112 S.Ct. 1904, 1915, 119 L.Ed.2d 91 (1992) (*quoting Northwestern States Portland Cement Co. v. Minnesota,* 358 U.S. 450, 457-458, 79 S.Ct. 357, 362, 3 L.Ed.2d 421 (1959)). Likewise, this Court has characterized this area of the law as "nebulous at best," *Hartley Marine Corp.,* 196 W.Va. at 677, 474 S.E.2d at 607, and commented that,

> It would be a Herculean, if not impossible task, to review and harmonize the myriad decisions of the Supreme Court of the United States on the subject of interstate commerce and exactly what incidents thereof may be constitutionally taxed by the States. The dissenting opinions in many of those cases make clear that the task of reconciling all the decisions is more difficult than was the task of Theseus as he threaded his way through the famous Cretan Labyrinth in search of the Minotaur.

J.C. Penney Co., Inc. v. Hardesty, 164 W.Va. 525, 527, 264 S.E.2d 604, 607 (1979) (*quoting Roy Stone Transfer Corp. v. Messner,* 377 Pa. 234, 243-44, 103 A.2d 700, 705 (1954)).

6 An example of Congress's regulation of interstate commerce is found in 15 U.S.C. § 381(a) (2000), which provides that,

> No State, or political subdivision thereof, shall have power to impose, for any taxable year ending after September 14, 1959, a net income tax on the income derived within such State by any person from interstate commerce if the only business activities within such State by or on behalf of such person during such taxable year are either, or both, of the following:
>
> (1) the solicitation of orders by such person, or his representative, in such State for sales of tangible personal property, which orders are sent outside the State for approval or rejection, and, if approved, are filled by shipment or delivery from a point outside the State; and
>
> (2) the solicitation of orders by such person, or his representative, in such State in the name of or for the benefit of a prospective customer of such person, if orders by such customer to such person to enable such customer to fill orders resulting from such solicitation are orders described in paragraph (1).

Of relevance to the instant case is the fact that in the last two years bills have been introduced in both houses of Congress to amend 15 U.S.C. § 381 to apply to, in addition to tangible property, all other forms of property, services, and other transactions fulfilled from a point outside the State. *See* H.R. 1956, 109th Congress (April 28, 2005); H.R. 4845, 109th Congress (March 2, 2006); S. 2721, 109th Congress (May 4, 2006). These bills have not been enacted into law.

7 This test is referred to in *Maryland v. Louisiana* as the *Complete Auto* test and is generally known by that name. Therefore, we refer to it as the *Complete Auto* test in this opinion.

8 *Quill* overruled *Bellas Hess* to the extent that *Bellas Hess* held that a showing of the taxpayer's physical presence in the taxing state was necessary to sustain the constitutionality of a sales and use tax against a challenge under the Due Process clause.

9 *See* fn. 8, *supra.*

10 "*Quill* ... was the first [Supreme Court] decision to bifurcate the Due Process and Commerce Clause analyses used to determine a state's jurisdiction to tax under the U.S. Constitution." Christina R. Edson, *Quill's Constitutional Jurisprudence And Tax Nexus Standards In An Age Of Electronic Commerce* 49 Tax Lawyer 893, 894 (Summer 1996).

11 The Tax Commissioner cites several cases to this Court in support of its position that *Quill's* physical-presence requirement applies only to sales and use taxes including *Lanco, Inc. v. Director of Taxation,* 379 N.J.Super. 562, 879 A.2d 1234 (2005); *A & F Trademark, Inc. v. Tolson,* 167 N.C.App. 150, 605 S.E.2d 187 (2004), *cert. denied,* 546 U.S. 821, 126 S.Ct. 353, 163 L.Ed.2d 62 (2005); *Secretary, Dep't of Revenue, State of La. v. Gap (Apparel), Inc.,* 886 So.2d 459 (La.App.2004); and *Geoffrey, Inc. v. S.C. Tax Com'n,* 313 S.C.

15, 437 S.E.2d 13 (1993). We find the persuasiveness of these cases to be limited, however, because the primary issue in each case is whether a state has jurisdiction to impose a state income tax on foreign corporations with no physical presence in the taxing state but whose intangibles, such as a trademark, are used in the state by a licensee. These courts reason, in part, that the intangibles located in the state provide a sufficient nexus for income tax purposes. In the instant case, there is no claim that MBNA has intangibles in West Virginia that provide a sufficient nexus for tax purposes.

12 One legal commentator has interpreted these portions of the *Quill* opinion to mean that,

> the Commerce Clause's physical presence requirement was not necessarily applicable to other tax types nor dictated by sound Commerce Clause jurisprudence and that the Court was motivated by principles of stare decisis flowing from *Bellas Hess.* It appears the Court intentionally left itself open for future decisions involving other types of taxes. Therefore, *Quill's* physical presence requirement may not apply to future non-use tax collection decisions.

Edson, 49 Tax Lawyer at 925.

13 In Edson, 49 Tax Lawyer at 911, it is noted that in 1996, when that article was written, there were over 6,100 state and local jurisdictions that imposed sales taxes using varied tax rates.

14 We note, however, that taxpayers whose liability for these taxes exceeds a specified amount are charged with paying estimated taxes for the taxable year on a quarterly basis. *See* W.Va.Code § 11-23-13 (1987).

15 Of course, administrative regulations involved in the payment of any type of tax most likely would not be a concern today due to the common use of computers and the availability of specialized software.

16 Specifically, the Court in *National Geographic Society* reasoned that,

> The case for the validity of the imposition upon the out-of-state seller enjoying such services of a duty to collect a use tax is even stronger. The out-of-state seller runs no risk of double taxation. The consumer's identification as a resident of the taxing State is self-evident. The out-of-state seller becomes liable for the tax only by failing or refusing to collect the tax from that resident consumer. Thus, the sole burden imposed upon the out-of-state seller by statutes [imposing a use tax] is the administrative one of collecting it.

430 U.S. at 558, 97 S.Ct. at 1391 (citations omitted).

17 MBNA notes that in *Western Maryland Ry. Co. v. Goodwin,* 167 W.Va. 804, 826 n. 3, 282 S.E.2d 240, 253 n. 3 (1981), this Court quoted with approval a party's brief for the proposition that "the form of the tax is irrelevant to the due process questions of nexus and state benefits." This statement does not inform our present analysis for several reasons. First, it is dicta. Second, it was prior to the Supreme Court's bifurcation of Due Process and Commerce Clause analyses. Finally, it was prior to the distinction made by the *Quill* Court between the test to be used in determining the constitutionality of sales and use taxes versus other types of state taxes.

18 MBNA also argues that physical presence has been a base-line fact in every tax nexus case decided by the Supreme Court since *Complete Auto.* In other words, says MBNA, the Supreme Court has never upheld a finding of nexus in any case involving a state tax where the putative taxpayer had no in-state presence. It is equally true, however, as noted by the Commissioner, that no Supreme Court decision has applied the *Bellas Hess* physical presence requirement to a state income tax. Thus, we are not persuaded by MBNA's argument.

19 MBNA also asserts that the circuit court confused the first prong of the *Complete Auto* test with the fourth prong in determining the validity of the taxes at issue. We need not decide this issue because this Court's analysis is based entirely on the "substantial nexus" prong of *Complete Auto.* It is axiomatic that "[t]his Court may, on appeal, affirm the judgment of the lower court when it appears that such judgment is correct on any legal ground disclosed by the record, regardless of the ground, reason or theory assigned by the lower court as the basis for its judgment." Syllabus Point 3, *Barnett v. Wolfolk,* 149 W.Va. 246, 140 S.E.2d 466 (1965).

1 See Majority Opinion, 220 W.Va. 163, page 164, 640 S.E.2d page 227 ("... MBNA had no real or tangible personal property ... in West Virginia.") and Note 11, page 168, 640 S.E.2d pgs. 231-32 (In the instant case, there is no claim that MBNA has intangibles in West Virginia "that provide a sufficient nexus for tax purposes.")

2 There is often overlap in the consideration of these four requirements. The "substantial nexus" requirement is said to protect against undue burdens on interstate commerce while fair apportionment is understood to guard against taxes which have the effect of "pass[ing] an unfair share of the tax burden onto interstate commerce." *Quill,* 504 U.S. at 313, 112 S.Ct. 1904. In practical effect, the exercise of multiple taxation by several states under the apportionment standard may lead to apportionment issues which likewise should be considered under the "substantial nexus" standard.

3 One might well argue that the State of West Virginia, under the facts of this case, is attempting to engage in extraterritorial taxation. "Under both the Due Process and the Commerce Clauses of the Constitution, a State may not, when imposing an income-based tax, 'tax value earned outside its borders.' " *Container Corp. of America v. Franchise Tax Bd.,* 463 U.S. 159, 164, 103 S.Ct. 2933, 2939, 77 L.Ed.2d 545, 552 (1983) (quoting *ASARCO Inc. v. Idaho State Tax Comm'n,* 458 U.S. 307, 315, 102 S.Ct. 3103, 3108, 73 L.Ed.2d 787, 794 (1982)).

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4 In *Tyler Pipe Industries v. Washington State Department of Revenue,* 479 U.S. 1015, 107 S.Ct. 664, 93 L.Ed.2d 717 (1986), the tax in question was a business and occupation tax. The Court framed the nexus question as whether the activities performed in the taxing state on behalf of Tyler Pipe was significantly associated with Tyler Pipe's ability to establish and maintain a market for its sales. This case involved the imposition of a direct tax, similar to the income tax at issue herein.

5 In *Quill,* the Supreme Court while noting that it had not "in our review of other types of taxes, articulated the same physical presence requirement that *Bellas Hess* established for sales and use taxes," stated that "silence does not imply repudiation of the *Bellas Hess* rule." *Quill,* 504 U.S. at 314, 112 S.Ct. 1904. In *Bellas Hess,* the Supreme Court described its decision in *Scripto, Inc. v. Carson,* 362 U.S. 207, 80 S.Ct. 619, 4 L.Ed.2d 660 (1960), a case involving a corporation physically present in the taxing state, as the Court's "furthest constitutional reach to date" of subjecting a corporation to state taxing. *Bellas Hess,* 386 U.S. at 757, 87 S.Ct. 1389.

6 Contrary to the apparent contempt held by some for the benefits of "bright line" rules which avoid undue burdens on interstate commerce by the demarcation of a discrete realm of commercial activity that is free from interstate taxation, one might consider not only the settled expectations of taxpayers, but also the benefit to the national economy that such "bright lines" have been in the development of that economy over the last several decades. Surely interstate commerce is as worthy of protection from improper income and other taxes as it is from sales and use taxes. *See, Quill,* 504 U.S. at 315, 112 S.Ct. 1904.

7 Assume for the moment that a Delaware bank maintains a credit account for a customer with a Weirton, West Virginia mailing address. Assume further that that customer travels to Steubenville, Ohio and, using his credit account, makes a sizeable electronic purchase with the intent of paying for his purchase over several months. At the end of the month, the customer electronically pays a portion of his credit account balance from his place of employment using funds he has in his Pittsburgh, Pennsylvania bank account. In such a scenario, which fully involves the interstate nature of today's economy, how should the Delaware bank maintain its records for determination of income taxes?

8 I must admit to some disdain for the rather elite nature of "foreseeability of the framers" arguments. Frequently, such invocations serve no purpose other than an attempt to excuse legislating from the bench. Other times, such invocations simply serve as the argument of last resort by courts searching for a legal basis to justify result-based decision-making. Caution should by necessity be the watchword when any court seeks to expand the power of the State on the basis of the "foreseeability of the framers" argument.

1 In 1998, MBNA had gross profits of $8,419,431.00 from its West Virginia customers. In 1999, the gross profits were $10,163,788.00. *See* Majority opinion, pgs. 164-65, 640 S.E.2d pgs. 227-28.

2 *See* note 1, *supra.*

3 On its multimillion dollar gross profits, *see* note 1, *supra,* MBNA was required to pay, in 1998, a business franchise tax of $32,010.00 and a corporation net income tax of $168,034.00. In 1999, MBNA was required to pay a business franchise tax of $42,339.00 and a corporation net income tax of $220,897.00. *See* Majority opinion, p. 165, 640 S.E.2d p. 228.

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453 Mass. 1
Supreme Judicial Court of Massachusetts,
Suffolk.

CAPITAL ONE BANK & another [1]
v.
COMMISSIONER OF REVENUE.

Argued Oct. 7, 2008. | Decided Jan. 8, 2009.

Synopsis
Background: Taxpayers, which were banks commercially domiciled in Virginia, appealed from Appellate Tax Board order that denied the abatement of financial institution excises (FIET).

[Holding:] The Supreme Judicial Court, Suffolk Spina, J., held that imposition of FIET on out-of-state financial institutions did not violate commerce clause.

Affirmed.

West Headnotes (6)

[1] **Commerce**
Income taxes
Taxation
Residence of taxpayer; corporations

Imposition of financial institution excises (FIET) on out-of-state financial institutions did not violate Commerce Clause, although institutions did not have a physical presence in Massachusetts; substantial nexus existed between state and the institutions' activities with state, including consumer lending, soliciting and conducting of significant credit card business, providing financial services for which banks received interest, fees, and finance charges, and use of Massachusetts court system to recover delinquent accounts. U.S.C.A. Const. Art. 1, § 8; M.G.L.A. c. 63, § 2.

4 Cases that cite this headnote

[2] **Constitutional Law**
Fairness in general

Due process focuses on the fundamental fairness of governmental activity and requires consideration whether an individual's connections with a state are substantial enough to legitimate the state's exercise of power over him. U.S.C.A. Const.Amend. 14.

Cases that cite this headnote

[3] **Constitutional Law**
Taxation
Constitutional Law
Property Taxes

The due process clause requires some definite link, some minimum connection, between a state and the person, property or transaction it seeks to tax. U.S.C.A. Const.Amend. 14.

Cases that cite this headnote

[4] **Commerce**
Taxation in General
Constitutional Law
Taxation

Consistent with the due process clause, a state may have the authority to impose a tax based on minimum contacts, but the imposition of such a tax may unconstitutionally burden interstate commerce because the taxpayer lacks a substantial nexus with the taxing state. U.S.C.A. Const. Art. 1, § 8, cl. 3; U.S.C.A. Const.Amend. 14.

3 Cases that cite this headnote

[5] **Commerce**
Taxation in General
Commerce
Discrimination
Commerce
Multiple taxation; apportionment

Consistent with the Commerce Clause, a state may impose a tax on a business engaged in interstate commerce where the tax (1) is applied

to an activity with a substantial nexus with the taxing state, (2) is fairly apportioned, (3) does not discriminate against interstate commerce, and (4) is fairly related to the services provided by the state. U.S.C.A. Const. Art. 1, § 8, cl. 3.

4 Cases that cite this headnote

[6] **Commerce**
Taxation in General
To satisfy the requirement that a taxed entity's activities have a substantial nexus with the taxing state, the business must have some constitutionally sufficient degree of contact with the taxing state before the state can impose any tax on it. U.S.C.A. Const. Art. 1, § 8, cl. 3.

1 Cases that cite this headnote

Attorneys and Law Firms

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Shirley K. Sicilian & Sheldon H. Laskin, of the District of Columbia, for Multistate Tax Commission, amicus curiae, submitted a brief.

Todd A. Lard & Frederick J. Nicely, of the District of Columbia, & Kathleen King Parker, for Council on State Taxation, amicus curiae, submitted a brief.

Present: MARSHALL, C.J., IRELAND, SPINA, COWIN, CORDY, & BOTSFORD, JJ.

Opinion

SPINA, J.

***2** The present appeal is from a decision of the Appellate Tax Board (board) affirming the denial by the Commissioner of Revenue (commissioner) of applications by the taxpayers, Capital One Bank (Capital One) and Capital One F.S.B. (FSB) (collectively, Capital banks), for the abatement of financial institution excises (FIET).[2] Capital One sought abatement for the tax years 1995 through 1998, and FSB sought abatement for the tax years 1996 through 1998. At issue is whether, consistent with the Federal commerce clause of the United States Constitution art. 1, § 8, the Commonwealth can impose the FIET, pursuant to G.L. c. 63, § 2, on financial institutions[3] that do not have a physical presence in Massachusetts. We granted the Capital ***3** banks' application for direct appellate review, and now affirm the board's decision.[4]

The board found the following facts, based on the parties' detailed stipulation of facts and the testimony and exhibits introduced at the hearing. See G.L. c. 58A, § 13 ("The decision of the board shall be final as to findings of fact"); *United Church of Religious Science v. Assessors of Attleboro*, 372 Mass. 280, 281, 361 N.E.2d 1254 (1977).

In 1994, Capital One was established as a wholly owned subsidiary of Capital One Financial Corporation (COFC), a Delaware corporation. Capital One is a Virginia-chartered credit card bank that offers credit card products. FSB was established in 1996, also as a wholly owned subsidiary of COFC. It is a federally chartered savings bank that offers consumer lending and deposit products, including secured and unsecured credit cards, to individuals and small businesses. FSB also makes unsecured installment loans and has a consumer home loan business.

The commercial domicil for each bank is Virginia, where credit approval activities occurred. During the tax years at issue, the Capital banks neither owned nor leased any real property in the Commonwealth. Further, the board assumed, ****78** based on the record before it, that the Capital banks owned no other Massachusetts property,[5] and no employee, agent, or independent contractor of the Capital banks was located in Massachusetts during the tax years at issue. As credit card issuers doing business in the Commonwealth, the Capital banks had been required to file quarterly credit card issuer's reports with the Massachusetts division of banks. See G.L. c. 140, § 114C, inserted by St.1987, c. 595, § 1.[6]

COFC is the owner of the trademark "Capital One," which it ***4** provided to the Capital banks, without license or royalty, for placement on their credit cards. Using a system called "Information–Based Strategy," which employs statistical modeling techniques to segment potential customer lists based on credit scores, demographics, and other characteristics, the Capital banks targeted specific potential customers nationwide, including customers in the

Commonwealth. As pertinent here, the Capital banks then entered into agreements with Massachusetts residents for the issuance of "general purpose" credit cards branded with the "Capital One" trademark and the logo of either Visa U.S.A. Inc. (Visa), or MasterCard International (MasterCard).[7] Pursuant to these agreements, the Capital banks would advance funds on behalf of their customers for transactions in which the customers used a "Capital One" Visa-branded or MasterCard-branded credit card to make purchases of goods and services from merchants nationwide. The Capital banks also would allow customers to obtain cash advances at Capital banks nationwide displaying the Visa or MasterCard logo, or at bank automated teller machine (ATM) kiosks displaying the Visa or MasterCard logo, or at ATM kiosks displaying the PLUS or CIRRUS logo, if such logo also appeared on the credit card.[8] The Capital banks' customers agreed to repay the advanced funds, subject to finance charges and other fees set forth in their credit card agreements.

***5** As members of the Visa and MasterCard associations, the Capital banks paid ****79** fees to those associations relating to credit card transactions nationwide, including transactions by the Capital banks' Massachusetts customers. In return, the Capital banks received numerous benefits from the Visa and MasterCard associations, including technology and equipment necessary to process credit card transactions. On a larger scale, the Capital banks were able to access a nationwide interconnected credit infrastructure that provided enormous value both to their own businesses and to the Capital banks' customers.

A typical credit card transaction proceeded as follows. When a Massachusetts customer presented a "Capital One" Visa-branded or MasterCard-branded credit card in payment for goods or services, the cardholder or merchant would "swipe" the card through a card reader located at the merchant's place of business. The credit card information would be relayed to an "acquiring bank" with which the merchant had contracted for the handling of credit card transactions. The acquiring bank verified, processed, and transmitted the credit card information to Visa or MasterCard, which, in turn, relayed the transaction information to the cardholder's "issuing bank" (here, the Capital banks), which then checked the cardholder's credit line and account status. Assuming that the cardholder had sufficient credit, the issuing bank approved the transaction, and such approval was sent by the issuing bank through the association network to the acquiring bank, which relayed the approval to the merchant at the point of sale. This process occurred in one rapid series of events. Subsequently, payment requests were sent by the merchant to the acquiring bank, which forwarded them to the issuing bank for reimbursement. The issuing bank paid the acquiring bank the amount requested, less an "interchange fee." The acquiring bank then retained its own processing fee from the amount received, and paid the remainder to the merchant.[9] During the tax years at ***6** issue, the Capital banks received interchange fees related to Massachusetts customers ranging between $4.2 million and $6.8 million annually.

By issuing credit cards with the "Capital One" logo to Massachusetts customers, the Capital banks essentially were guaranteeing payment to merchants of the amounts charged by those customers, if approved. The Capital banks bore the risk of a cardholder's nonpayment. In the event of such nonpayment, the Capital banks worked with collection agencies[10] and Massachusetts attorneys to collect delinquent accounts, which included the filing of civil actions on behalf of the Capital banks in Massachusetts courts. When necessary, the Capital banks obtained garnishments or liens against their customers' personal property, and, on two occasions, secured writs of execution against Massachusetts real property. If legal proceedings were commenced in Virginia against Massachusetts residents under the Virginia long-arm statute, Va.Code Ann. § 8.01–328.1 (2007), the resulting judgments were, at times, domesticated to Massachusetts for further enforcement proceedings. In addition, ****80** the Massachusetts Attorney General's office, through its consumer complaints and information section, helped resolve disputes between the Capital banks and Massachusetts residents during the tax years at issue.

As a result of the Capital banks' marketing efforts in the Commonwealth, the number of Massachusetts residents carrying Capital One credit cards rose from 196,645 in 1995 to 465,571 in 1998, and the number of Massachusetts residents carrying FSB credit cards rose from 3,845 in 1996 to 7,363 in 1998. In total, the Capital banks spent more than $20 million, through its marketing efforts, to acquire Commonwealth residents as customers during the tax years at issue. Capital One's outstanding receivables from accounts held by Massachusetts cardholders grew from $72,162,796 in 1995 to $113,655,624 in 1998. FSB's outstanding receivables from accounts held by Massachusetts cardholders grew from $11,457,826 in 1996 to $16,588,914 in 1998. Capital One's income, derived from interest, fees, and penalties associated with the use of its credit cards by Massachusetts residents, rose from $22,319,653 in 1995 to $57,941,377 in 1998.

FSB's ***7** income, derived from the same sources, rose from $1,534,525 in 1996 to $3,483,093 in 1998.

On February 28, 2000, in response to notification from the commissioner that they had not filed FIET returns for the tax years at issue, the Capital banks provided the Department of Revenue (department) with apportionment and other relevant information. On August 6, 2000, the department issued to the Capital banks separate notices of intention to assess, followed shortly thereafter by notices of assessment for the tax years at issue. The amounts of the assessments were $1,758,454 for Capital One, and $159,075.25 for FSB. The Capital banks filed timely applications for abatement of the FIET. See G.L. c. 62C, § 37. The commissioner denied the applications, and the Capital banks appealed to the board pursuant to G.L. c. 62C, § 39.

In affirming the commissioner's denial of the abatements, the board stated that the Capital banks' activities in Massachusetts constituted a "substantial nexus" with the Commonwealth that justified imposition of the FIET for the tax years at issue. In particular, the board based its determination on the Capital banks' purposeful, targeted marketing of their credit card business to Massachusetts customers; their required filing of quarterly credit card issuer's reports with the Massachusetts division of banks; their use of the Massachusetts court system and the Massachusetts Attorney General's office to collect delinquent accounts and resolve disputes; their use of sophisticated networks, including the Visa and MasterCard associations and Massachusetts acquiring banks, which linked the Capital banks with Massachusetts customers and merchants, and by which the Capital banks, through their customers' use of "Capital One" branded credit cards, guaranteed payment to the merchants on behalf of the customers; and their receipt of hundreds of millions of dollars in income from millions of transactions involving Massachusetts residents and merchants. [11] The board stated that, ****81** pursuant to its reading of *Quill Corp. v. North Dakota,* 504 U.S. 298, 112 S.Ct. 1904, 119 L.Ed.2d 91 (1992) (*Quill*), a ***8** financial institution's "physical presence" in the taxing State was not required to establish "substantial nexus" for purposes of the State's imposition of an income-based tax on that institution. Consequently, the board concluded that the Commonwealth's assessment of the FIET on the Capital banks was constitutional under the Federal commerce clause. [12]

A decision by the board will not be modified or reversed if the decision "is based on both substantial evidence and a correct application of the law." *Boston Professional Hockey Ass'n v. Commissioner of Revenue,* 443 Mass. 276, 285, 820 N.E.2d 792 (2005). We presume that a tax is constitutionally valid unless the party challenging it establishes its invalidity "beyond a rational doubt." *Andover Sav. Bank v. Commissioner of Revenue,* 387 Mass. 229, 235, 439 N.E.2d 282 (1982). While we give deference to the board's expertise in interpreting the tax laws of the Commonwealth, see *French v. Assessors of Boston,* 383 Mass. 481, 482, 419 N.E.2d 1372 (1981), we apply our independent judgment as to both the law and the facts on constitutional issues. See *Opinion of the Justices,* 328 Mass. 679, 687, 106 N.E.2d 259 (1952).

[1] The thrust of the Capital banks' appeal is that the board erroneously limited to the sales and use tax context the United States Supreme Court's holding in *Quill, supra* at 317–318, 112 S.Ct. 1904, that the Federal commerce clause precludes a State from imposing tax obligations on an out-of-State corporation that has no physical presence in the taxing State. In the Capital banks' view, this physical presence requirement should be equally applicable to a State's assessment of an income-based excise, like the FIET. The Capital banks contend that the board disregarded the reasons stated in *Quill* for upholding a "bright-line" test for tax liability and the benefits of such a clear standard. Contrary to the board's determination, the Capital banks continue, sales and use taxes do not impose a more significant burden on interstate commerce ***9** than income-based taxes such that the two types of taxes should be treated differently under the commerce clause. For these reasons, the Capital banks argue that the FIET should be deemed unconstitutional as inconsistent with the Federal commerce clause. We disagree.

Pursuant to G.L. c. 63, § 2, "every financial institution engaged in business in the commonwealth shall pay, on account of each taxable year, an excise measured by its net income determined to be taxable under [G.L. c. 63, § 2A,] at the [designated] rate." [13] The Capital banks have not asserted that they are not "financial institutions" for purposes of imposition of the FIET. See G.L. c. 63, § 1 (defining "[f]inancial ****82** institution"). As pertinent to the factual circumstances here, the phrase "engaged in business in the commonwealth" includes "regularly engaging in transactions with customers in the commonwealth that involve intangible property and result in income flowing to the taxpayer from residents of the commonwealth." *Id.* These activities "shall be presumed, subject to rebuttal, to be conducted on a regular basis within the commonwealth, if any of such activities

are conducted with one hundred or more residents of the commonwealth during any taxable year or if the taxpayer has ten million dollars or more of assets attributable to sources within the commonwealth, or has in excess of five hundred thousand dollars in receipts attributable to sources within the commonwealth." *Id.* The Capital banks have challenged the imposition of the FIET only on constitutional grounds; they have not rebutted the statutory presumption that they have regularly engaged in business in Massachusetts.

[2] **[3]** **[4]** A State's ability to tax businesses like the Capital banks, that operate in interstate commerce, "is constrained by the Federal government's broad power to regulate interstate commerce under the commerce clause." [14] *Aloha Freightways, Inc. v. Commissioner of Revenue,* 428 Mass. 418, 421, 701 N.E.2d 961 (1998). The commerce ***10** clause authorizes Congress to "regulate Commerce ... among the several States." Art. 1, § 8. The United States Supreme Court has consistently held that the commerce clause includes "a further, negative command, known as the dormant Commerce Clause, prohibiting certain state taxation even when Congress has failed to legislate on the subject." *Oklahoma Tax Comm'n v. Jefferson Lines, Inc.,* 514 U.S. 175, 179, 115 S.Ct. 1331, 131 L.Ed.2d 261 (1995). See *Quill, supra* at 309–312, 112 S.Ct. 1904 ****83** (discussing evolution of dormant commerce clause).

[5] Consistent with the commerce clause, a State may impose a tax on a business engaged in interstate commerce where the tax "[1] is applied to an activity with a substantial nexus with the taxing State, [2] is fairly apportioned, [3] does not discriminate against interstate commerce, and [4] is fairly related to the services provided by the State." *Complete Auto Transit, Inc. v. Brady,* 430 U.S. 274, 279, 97 S.Ct. 1076, 51 L.Ed.2d 326 (1977) (*Complete Auto*). See ***11** *Truck Renting & Leasing Ass'n v. Commissioner of Revenue,* 433 Mass. 733, 740, 746 N.E.2d 143 (2001). By permitting States to tax purely interstate commerce, the United States Supreme Court affirmed the principle that "interstate commerce may be made to pay its way." *Complete Auto, supra* at 281, 284, 97 S.Ct. 1076. See *Commonwealth Edison Co. v. Montana,* 453 U.S. 609, 623–624, 101 S.Ct. 2946, 69 L.Ed.2d 884 (1981), quoting *Colonial Pipeline Co. v. Traigle,* 421 U.S. 100, 108, 95 S.Ct. 1538, 44 L.Ed.2d 1 (1975) ("It was not the purpose of the commerce clause to relieve those engaged in interstate commerce from their just share of [the] state tax burden even though it increases the cost of doing business").

[6] The Capital banks' challenge to the constitutionality of the FIET focuses solely on the first prong of the *Complete Auto* test, namely whether the Capital banks' activities had a "substantial nexus" with Massachusetts. [15] To satisfy this requirement, "[t]he business must have some constitutionally sufficient degree of contact with the taxing State before the State can impose any tax on it." *Aloha Freightways, Inc. v. Commissioner of Revenue, supra*. It is a standard that is designed to prevent overreaching by States. *Id.* at 423, 701 N.E.2d 961. "[T]he 'substantial nexus' requirement is not, like due process' 'minimum contacts' requirement, a proxy for notice, but rather a means for limiting state burdens on interstate commerce." *Quill, supra* at 313, 112 S.Ct. 1904.

The roots of a "physical presence" requirement under commerce clause analysis were firmly established in *National Bellas Hess, Inc. v. Department of Revenue of Ill.,* 386 U.S. 753, 87 S.Ct. 1389, 18 L.Ed.2d 505 (1967) (*Bellas Hess*), which involved a constitutional challenge to a State's assessment of a use tax on goods purchased for use in the taxing State from an out-of-State mail order merchant that had no in-State retail outlets, sales representatives, or property. The United States Supreme Court concluded that a State's assessment of a use tax in such circumstances created an unconstitutional burden on interstate commerce because the merchant's only connections with the taxing State were by mail or common carrier. *Id.* at 758–759, 87 S.Ct. 1389. The Court's reasoning for its decision was based, in significant part, on the fact that the many local variations in rates of use tax, in allowable exemptions, and in administrative ***12** requirements would impede the free conduct of interstate business. *Id.* at 759–760, 87 S.Ct. 1389. The very purpose of the commerce clause, the Court stated, "was to ensure a national economy free from such unjustifiable local entanglements." *Id.* at 760, 87 S.Ct. 1389.

Twenty-five years later, the United States Supreme Court reaffirmed in *Quill, supra* at 317–318, 112 S.Ct. 1904, that, with respect to the imposition of sales and ****84** use taxes, the constitutionally sustainable measure of contact required for substantial nexus under the commerce clause was "physical presence" in the taxing State. The Court made a point of stating that "[w]hile contemporary Commerce Clause jurisprudence might not dictate the same result were the issue to arise for the first time today," *id.* at 311, 87 S.Ct. 1389, the *Bellas Hess* bright-line physical presence requirement was not inconsistent with the four-part *Complete Auto* test, which the Court described as "continu[ing] to govern the validity of state taxes under the Commerce Clause." *Quill, supra* at

310, 112 S.Ct. 1904. Nothing, however, in *Quill* suggested that physical presence is required for the imposition of other types of taxes, including an income-based excise such as the FIET. To the contrary, while not repudiating the *Bellas Hess* rule, the Supreme Court stated in *Quill* that it had not, "in [its] review of other types of taxes, articulated the same physical-presence requirement that *Bellas Hess* established for sales and use taxes." *Id.* at 314, 112 S.Ct. 1904 (stating that Court's commerce clause jurisprudence "now favors more flexible balancing analyses"). Moreover, when summarizing the precedent established in *Bellas Hess*, the Court reiterated that, in cases "subsequent to *Bellas Hess* and concerning other types of taxes, [it had] not adopted a similar bright-line, physical-presence requirement." *Id.* at 317, 87 S.Ct. 1389. See *Truck Renting & Leasing Ass'n v. Commissioner of Revenue, supra* at 740 n. 13, 746 N.E.2d 143 (noting that, in *Quill*, Supreme Court did not extend physical presence requirement for imposition of use or sales tax on out-of-State vendor to other types of taxes). Cf. *Borden Chems. & Plastics v. Zehnder,* 312 Ill.App.3d 35, 44, 244 Ill.Dec. 477, 726 N.E.2d 73 (2000) (declining to extend *Quill* 's physical presence requirement to income-based taxation, but recognizing that such requirement would have been satisfied by taxpayer at issue); *Couchot v. State Lottery Comm'n,* 74 Ohio St.3d 417, 425, 659 N.E.2d 1225, cert. denied, 519 U.S. 810, 117 S.Ct. 55, 136 L.Ed.2d 18 (1996) (same).

The language of the Supreme Court's decision in *Quill* ***13** explicitly emphasized, on more than one occasion, a narrow focus on sales and use taxes for the physical presence requirement, and suggested that this requirement was limited to those specific assessments and did not apply to the imposition of other types of State taxes. We will not expand the Court's reasoning beyond its articulated boundaries, particularly where the Court, itself, has limited its holding to a particular form of taxation.

In a case similar to the present one, the West Virginia Supreme Court of Appeals considered in *Tax Comm'r of W. Va. v. MBNA Am. Bank, N.A.,* 220 W.Va. 163, 164–166, 640 S.E.2d 226 (2006), cert. denied sub nom. *FIA Card Services, N.A. v. Tax Comm'r of W. Va.,* 551 U.S. 1141, 127 S.Ct. 2997, 168 L.Ed.2d 719 (2007) (*MBNA*), whether imposition of that State's business franchise and corporation net income taxes on MBNA America Bank, a Delaware corporation with no physical presence in West Virginia, violated the substantial nexus requirement of the commerce clause. The principal business of MBNA America Bank was issuing and servicing Visa and MasterCard credit cards, which it promoted in West Virginia by mail and telephone solicitation. *Id.* at 164, 640 S.E.2d 226. After considering the evolution of the Supreme Court's interpretation of the dormant commerce clause, the court in *MBNA* concluded that "*Quill* 's physical-presence requirement for showing a substantial Commerce Clause nexus applie[d] only to use and sales taxes and not to business franchise and corporation net ****85** income taxes." *Id.* at 169, 640 S.E.2d 226. [16]

In reaching its conclusion, the West Virginia Supreme Court of Appeals opined that (1) the United States Supreme Court's decision in *Quill* was based primarily on stare decisis and on the fact that the precedent established in *Bellas Hess* had engendered substantial reliance by the mail order industry, circumstances that did not compel application beyond the context ***14** of sales and use taxes; (2) the Supreme Court appeared to have expressly limited the scope of *Quill* to sales and use taxes; and (3) the Supreme Court's decisions in *Bellas Hess* and *Quill* were based, in part, on the fact that compliance with specific administrative regulations associated with the collection of sales and use taxes unduly burdened interstate commerce, but that the collection of franchise and income taxes did not appear to cause similar compliance burdens. [17] ****86** *Id.* at 169–170, 640 S.E.2d 226. The court further stated that the physical presence test "makes little sense in today's world" where, for example, "electronic commerce now makes it ***15** possible for an entity to have a significant economic presence in a state absent any physical presence there." [18] *Id.* at 171, 640 S.E.2d 226. The analysis set forth in *MBNA* is persuasive. [19]

Like the West Virginia court, we conclude that the constitutionality, under the commerce clause, of the Commonwealth's imposition of the FIET is determined not by *Quill* 's physical presence test, but by the "substantial nexus" test articulated in *Complete Auto*. Accordingly, we turn to the facts of the present case to determine whether Capital One and FSB had a substantial nexus with this Commonwealth during the tax years at issue.

While the concept of "substantial nexus" is more elastic than "physical presence," it plainly means a greater presence, both qualitatively and quantitatively, than the minimum connection between a State and a taxpayer that would satisfy a due process inquiry. See note 14, *supra*. Simply put, the test is "substantial" nexus, not "minimal" nexus. In addition to their consumer lending ***16** activities, the Capital banks were soliciting and conducting significant credit card

business in the Commonwealth with hundreds of thousands of Massachusetts residents, generating millions of dollars in income for the Capital banks. In essence, the Capital banks were providing valuable financial services to Massachusetts consumers, for which the Capital banks were compensated in the form of interest payments, interchange fees, and finance charges. They could not provide such services in the Commonwealth without using Massachusetts banking and credit facilities. In addition, the Capital banks addressed customer complaints with the assistance of the Massachusetts ****87** Attorney General's office, and, when necessary, they used the Massachusetts court system to recover payment for delinquent accounts. Based on the findings of the board, we conclude that the Capital banks' activities in Massachusetts established a substantial nexus with the Commonwealth and, therefore, the assessment of the FIET on the Capital banks comported with the Federal commerce clause.

Decision of the Appellate Tax Board affirmed.

Parallel Citations

899 N.E.2d 76

Footnotes

1 Capital One F.S.B.

2 The Appellate Tax Board (board) noted that G.L. c. 63, § 2, imposes an excise, not a tax, on financial institutions. For an extensive discussion of the historical differences between a tax and an excise, see P. Nichols, Taxation in Massachusetts 15–17 (3d ed. 938). Here, for consistency and ease of reference, we, like the parties and the board, shall refer to the excise at issue as the financial institution excise tax (FIET).

3 A "[f]inancial institution" includes "any bank, banking association, trust company, federal or state savings and loan association, including all banks for cooperatives organized under the United States Farm Credit Act of 1933, whether of issue or not, existing by authority of the United States, or any state, or a foreign country, or any law of the commonwealth." G.L. c. 63, § 1.

4 We acknowledge the amicus brief filed by Multistate Tax Commission in support of the board, and the amicus brief filed by the Council on State Taxation in support of Capital One Bank and Capital One F.S.B.

5 The board noted that it was unclear whether credit card readers used by merchants were the property of the Capital banks, the merchants, or some other entity. Further, the record was not clear as to whether the cardholders, the Capital banks, or both had ownership of the credit cards themselves. The board stated that because its decision was not dependent on the Capital banks' ownership of property or other physical presence in Massachusetts, the ownership of the credit cards and the card readers was immaterial.

6 In 1996, the filing requirement for a credit card issuer's reports was changed from quarterly to semiannually. See St.1996, c. 359, § 2. Subsequent legislation deleted this filing requirement from G.L. c. 140, § 114C, altogether. See St.2002, c. 455, § 1.

7 Visa and MasterCard are structured as open associations whose members issue Visa-branded or MasterCard-branded payment cards, acquire merchants that will accept such payment cards, or do both. Visa and MasterCard provide services for their members, including the authorization, settlement, and clearance of transactions. With certain limited exceptions, Visa's membership is open to any institution that is eligible for Federal Deposit Insurance Corporation deposit insurance or share insurance. As of 2005, Visa had approximately 14,000 members in the United States, including over 12,000 Visa card issuers (and had similar membership numbers during the tax years at issue). MasterCard's membership is generally open to any organization that is authorized to engage in financial transactions under the laws or government regulations of the country in which it is organized or principally engaged in business, subject to additional requirements set out in MasterCard bylaws and rules.

8 The PLUS name is a trademark owned by Visa International Service Association and licensed to Visa. The CIRRUS name is a trademark owned by MasterCard.

9 To put these fees in perspective, the board noted that in a typical Visa or MasterCard transaction, the issuing bank retained an "interchange fee" of approximately 1.4 per cent of the transaction price, and the acquiring bank retained an additional fee of approximately .6 per cent. Consequently, a total of approximately 2.0 per cent of the transaction amount, known as the "merchant discount," would be paid to the issuing and acquiring banks. See *United States v. Visa U.S.A., Inc.,* 344 F.3d 229, 235 (2d Cir.2003).

10 None of the collection agencies used during the tax years at issue was located in Massachusetts.

11 The Capital banks contend that the record does not show that they actually filed any credit card issuer's reports with the Massachusetts division of banks or initiated contact with the Attorney General's office. The Capital banks may not, in fact, have filed any reports pursuant to G.L. c. 140, § 114C, but the statutory language suggests that they were required to do so. In addition, even if the Capital banks did not initiate any contact with the Attorney General's office, Massachusetts consumers filed complaints against them with that office, and the Capital banks responded to those complaints.

12 The board also concluded that the privileges associated with the Capital banks' right to do business in Massachusetts and the Capital banks' sale of financial services in the Commonwealth were “commodities,” and that the FIET was a “reasonable” excise on such commodities under the Massachusetts Constitution. See Part 2, c. 1, § 1, art. 4, of the Constitution of the Commonwealth. The Capital banks have not challenged this determination in the present appeal, so we need not consider it further.

13 General Laws c. 63, § 2A (*b*), provides that “[i]f the financial institution has income from business activity which is taxable both within and without this commonwealth, its net income shall be apportioned to this commonwealth by multiplying its net income by the apportionment percentage.”

14 Because the Capital banks have challenged the constitutionality of the FIET under only the commerce clause, that is the focus of our consideration. Nonetheless, we point out that a State's ability to tax businesses operating in interstate commerce also is constrained by the due process clause of the Fourteenth Amendment to the United States Constitution. Although unconstitutional taxation claims under the due process and commerce clauses are closely related, see *National Bellas Hess, Inc. v. Department of Revenue of Ill.,* 386 U.S. 753, 756, 87 S.Ct. 1389, 18 L.Ed.2d 505 (1967), they are separate and “pose distinct limits on the taxing powers of the States.” *Quill Corp. v. North Dakota,* 504 U.S. 298, 305, 112 S.Ct. 1904, 119 L.Ed.2d 91 (1992) (*Quill*). The due process clause and the commerce clause address different constitutional concerns. Due process focuses on “the fundamental fairness of governmental activity” and requires consideration “whether an individual's connections with a State are substantial enough to legitimate the State's exercise of power over him.” *Id.* at 312, 112 S.Ct. 1904. Thus, the due process clause requires “some definite link, some minimum connection, between a state and the person, property or transaction it seeks to tax.” *Miller Bros. v. Maryland,* 347 U.S. 340, 344–345, 74 S.Ct. 535, 98 L.Ed. 744 (1954). See *International Harvester Co. v. Wisconsin Dep't of Taxation,* 322 U.S. 435, 441–442, 64 S.Ct. 1060, 88 L.Ed. 1373 (1944) (“A state may tax such part of the income of a non-resident as is fairly attributable either to property located in the state or to events or transactions which, occurring there, are subject to state regulation and which are within the protection of the state and entitled to the numerous other benefits which it confers”). See also *Truck Renting & Leasing Ass'n v. Commissioner of Revenue,* 433 Mass. 733, 736, 746 N.E.2d 143 (2001). “In contrast, the Commerce Clause and its nexus requirement are informed not so much by concerns about fairness for the individual defendant as by structural concerns about the effects of state regulation on the national economy.” *Quill, supra*. Consistent with the due process clause, a State may have the authority to impose a tax based on minimum contacts, but the imposition of such a tax may unconstitutionally burden interstate commerce because the taxpayer lacks a “substantial nexus” with the taxing State. See *id.* at 308, 313, 112 S.Ct. 1904.

15 Because the Capital banks' challenge to the constitutionality of the FIET under the commerce clause pertains only to the first prong of the *Complete Auto* test, we limit our discussion to that requirement.

16 Contrast *J.C. Penney Nat'l Bank v. Johnson,* 19 S.W.3d 831, 842 (Tenn.Ct.App.1999), cert. denied, 531 U.S. 927, 121 S.Ct. 305, 148 L.Ed.2d 245 (2000) (stating that, while it was not court's purpose “to decide whether ‘physical presence’ is required under the Commerce Clause,” lack of substantial nexus did not justify assessment of franchise and excise taxes on out-of-State credit card company), questioned in *America Online, Inc. v. Johnson,* No. M2001–00927COA–R3–CV, 2002 WL 1751434 (Tenn.Ct.App. July 30, 2002) (noting that in *J.C. Penney Nat'l Bank v. Johnson, supra,* it might have been more accurate for court to say that “the Supreme Court had rejected state taxes on interstate commerce where no activities had been carried on in the taxing state *on the taxpayer's behalf* ” [emphasis in original]).

17 Contrary to the Capital banks' assertion, the board's finding that sales and use taxes impose special burdens on interstate commerce was not based on faulty logic. In its discussion of these burdens with respect to an out-of-State mail order company, the United States Supreme Court observed in *National Bellas Hess, Inc. v. Department of Revenue of Ill.,* 386 U.S. 753, 759, 87 S.Ct. 1389, 18 L.Ed.2d 505 (1967), that if one State can impede “the free conduct of [such company's] interstate business,” then “so can every other State, and so, indeed, can every municipality, every school district, and every other political subdivision throughout the Nation with power to impose sales and use taxes.” As a result, the Court stated, “[t]he many variations in rates of tax, in allowable exemptions, and in administrative and record-keeping requirements could entangle [the mail order company] in a virtual welter of complicated obligations to local jurisdictions with no legitimate claim to impose ‘a fair share of the cost of the local government.’ ” *Id.* at 759–760, 87 S.Ct. 1389, quoting *Freeman v. Hewit,* 329 U.S. 249, 253, 67 S.Ct. 274, 91 L.Ed. 265 (1946). Similarly, in *Quill, supra* at 313 n. 6, 112 S.Ct. 1904, the Supreme Court noted that upholding one State's imposition of a use tax on an out-of-State mail order company could unduly burden interstate commerce where “similar obligations might be imposed by the Nation's 6,000–plus taxing jurisdictions.” Such burdens associated with the imposition of sales and use taxes are not inconsequential. An income-based excise, on the other hand, typically is paid only once a year (except when quarterly estimated taxes are required), to one taxing jurisdiction at the State level, and the payment of such an excise does not entail collection obligations vis-à-vis consumers. See *Tax Comm'r of W. Va. v. MBNA Am. Bank, N.A.,* 220 W.Va. 163, 170–171, 640 S.E.2d 226 (2006), cert. denied sub nom. *FIA Card Servs., N.A. v. Tax Comm'r of W. Va.,* 551 U.S. 1141, 127 S.Ct. 2997, 168 L.Ed.2d 719 (2007). Determinations about whether the Capital banks are subject to the FIET, in the first instance, and how to apportion income from business activity that is taxable within the Commonwealth are the sorts of decisions that, more broadly, can confront all taxpayers, local or out-of-State, when calculating, reporting, and paying

taxes on their income. While the making of these determinations is certainly more complex for large corporate taxpayers, it is part of the cost of doing business and is not, in our opinion, unduly burdensome on interstate commerce, particularly where such taxpayers, like the Capital banks, are earning substantial income from their business activities in Massachusetts and where the common usage of computer technology and specialized software has eased the administrative burdens of tax compliance.

18 In a separate opinion in *Quill*, Justice White stated: "Perhaps long ago a seller's 'physical presence' was a sufficient part of a trade to condition imposition of a tax on such presence. But in today's economy, physical presence frequently has very little to do with a transaction a State might seek to tax. Wire transfers of money involving billions of dollars occur every day; purchasers place orders with sellers by fax, phone, and computer linkup; sellers ship goods by air, road, and sea through sundry delivery services without leaving their place of business.... [A]n out-of-state direct marketer derives numerous commercial benefits from the State in which it does business [and the Court should not, under the commerce clause,] attempt to justify an anachronistic notion of physical presence in economic terms." *Quill, supra* at 327–328, 112 S.Ct. 1904 (White, J., concurring in part and dissenting in part). This observation is even more true today than it was in 1992.

19 In its determination, the board cited several post-*Quill* decisions that upheld the imposition of income-based taxes on out-of-State corporations that had no tangible physical presence in the taxing State. See, e.g., *Geoffrey, Inc. v. South Carolina Tax Comm'n,* 313 S.C. 15, 23–24 & n. 4, 437 S.E.2d 13, cert. denied, 510 U.S. 992, 114 S.Ct. 550, 126 L.Ed.2d 451 (1993) (stating that *Quill* did not extend physical presence requirement beyond sales and use taxes, and concluding that licensing intangible property for use in taxing State established substantial nexus for imposition of income-based tax). See also *Lanco, Inc. v. Director, Div. of Taxation,* 188 N.J. 380, 383, 908 A.2d 176 (2006) (per curiam), cert. denied, 551 U.S. 1131, 127 S.Ct. 2974, 168 L.Ed.2d 702 (2007); *Kmart Props., Inc. v. Taxation & Revenue Dep't,* 139 N.M. 177, 185–186, 131 P.3d 27 (Ct.App.2001), rev'd on other grounds, 139 N.M. 172, 131 P.3d 22 (2005); *A & F Trademark, Inc. v. Tolson,* 167 N.C.App. 150, 159–163, 605 S.E.2d 187 (2004), cert. denied, 546 U.S. 821, 126 S.Ct. 353, 163 L.Ed.2d 62 (2005). While these cases are instructive with respect to their analysis of *Quill*, they are not directly on point factually, because all involved foreign corporations with intangible property (trademarks, trade names, and service marks) that was being used in the taxing State by a licensee.

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792 N.W.2d 308
Supreme Court of Iowa.

KFC CORPORATION, Appellant,
v.
IOWA DEPARTMENT OF REVENUE, Appellee.

No. 09–1032. | Dec. 30, 2010.

Synopsis
Background: Foreign corporate taxpayer sought review of Iowa Department of Revenue's (IDOR) imposition of an income tax assessment. The District Court, Polk County, Don C. Nickerson, J., affirmed. Taxpayer appealed.

Holdings: The Supreme Court, Appel, J., held that:

[1] intangibles owned by out-of-state corporate taxpayer, but utilized by taxpayer's franchisees within Iowa, had a sufficient connection to Iowa to amount to a physical presence to support income tax assessment;

[2] physical presence in Iowa of out-of-state corporate taxpayer was not required under dormant Commerce Clause in order for taxpayer to be assessed income tax on revenue earned from use of its intangibles by franchisees located within Iowa; and

[3] income out-of-state corporation derived from intangible property located within Iowa was subject to state income tax.

Affirmed.

West Headnotes (7)

[1] **Commerce**
Income taxes
Taxation
Residence of taxpayer; corporations

Intangibles owned by out-of-state corporate taxpayer, but utilized in a fast-food business by taxpayer's franchisees that were firmly anchored within Iowa, had a sufficient connection to Iowa to amount to the functional equivalent of a physical presence to support an income tax on revenue generated by the use of the intangibles within Iowa without violating the dormant Commerce Clause. U.S.C.A. Const. Art. 1, § 8, cl. 3.

1 Cases that cite this headnote

[2] **Commerce**
Income taxes
Taxation
Residence of taxpayer; corporations

Physical presence in Iowa of out-of-state corporate taxpayer was not required under the dormant Commerce Clause in order for taxpayer to be assessed income tax in Iowa on revenue earned from the use of its intangibles by franchisees located within Iowa; by licensing franchises within Iowa, corporate taxpayer received the benefit of an orderly society within the state and, as a result, was subject to the payment of income taxes that otherwise met the requirements of the dormant Commerce Clause. U.S.C.A. Const. Art. 1, § 8, cl. 3.

4 Cases that cite this headnote

[3] **Commerce**
Income taxes
Taxation
Residence of taxpayer; corporations

A physical presence is not required under the dormant Commerce Clause of the United States Constitution in order for the Iowa legislature to impose an income tax on revenue earned by an out-of-state corporation arising from the use of its intangibles by franchisees located within the State of Iowa. U.S.C.A. Const. Art. 1, § 8, cl. 3.

4 Cases that cite this headnote

[4] **Taxation**
Residence of taxpayer; corporations

Income out-of-state corporation derived from intangible property located within Iowa was subject to state income tax; corporation's trademarks and trade names that were used by franchisees in Iowa provided a business situs for

purposes of taxation even though the corporation had no physical presence or other contact with Iowa. I.C.A. § 422.33(1); Iowa Admin.Code r.701—52.1(4).

Cases that cite this headnote

[5] **Taxation**
Decisions reviewable, right of review and presentation of grounds of review
Corporate taxpayer failed to preserve for review on appeal claims that a policy letter issued by Iowa Department of Revenue (IDOR) was contrary to the position IDOR had taken in the case and that IDOR erred by assessing penalties against taxpayer for its failure to pay the asserted taxes, where taxpayer failed to file required motion for rehearing after agency issued final order that did not address the claims.

Cases that cite this headnote

[6] **Administrative Law and Procedure**
Preservation of Questions Before Administrative Agency
When an agency fails to address an issue in its ruling and a party fails to point out the issue in a motion for rehearing, error on those issues has not been preserved for appellate review. I.C.A. § 17A.16(2).

2 Cases that cite this headnote

[7] **Administrative Law and Procedure**
Preservation of Questions Before Administrative Agency
Just as the Supreme Court does not entertain issues that were not ruled upon by the district court and that were not brought to the district court's attention through a proper posttrial motion, the Court declines to entertain issues not ruled upon by an agency when the aggrieved party fails to follow available procedures to alert the agency of the issue. I.C.A. § 17A.16(2).

3 Cases that cite this headnote

Attorneys and Law Firms

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Thomas J. Miller, Attorney General, Donald D. Stanley, Jr., Special Assistant ***310** Attorney General, and Marcia E. Mason, Assistant Attorney General, for appellee.

Opinion

APPEL, Justice.

In this case, we must determine whether the State of Iowa may impose an income tax on revenue received by a foreign corporation that has no tangible physical presence within the state but receives revenues from the use of the corporation's intangible property within the state. After the Iowa Department of Revenue (IDOR) imposed an income tax assessment against the out-of-state corporation, the taxpayer filed a protest with the agency on constitutional and statutory grounds. IDOR rejected the protest. On review of the agency's action, the district court affirmed. KFC appealed. For the reasons expressed below, we affirm the judgment of the district court.

I. Factual and Procedural Background.

KFC Corporation (KFC) is a Delaware corporation with its principal place of business in Louisville, Kentucky. Its primary business is the ownership and licensing of the KFC trademark and related system. KFC licenses its system to independent franchisees who own approximately 3400 restaurants throughout the United States. While KFC also licenses its system to related entities—including KFC National Management Company—all KFC restaurants in Iowa are owned by independent franchisees. KFC owns no restaurant properties in Iowa and has no employees in Iowa.

On October 19, 2001, IDOR issued to KFC an assessment in the amount of $284,658.08 for unpaid corporate income taxes, penalties, and interest for 1997, 1998, and 1999. KFC filed a timely protest of the assessment. IDOR answered the protest, and the matter was assigned by the Iowa Department of Inspections and Appeals to an administrative law judge (ALJ). Both sides filed motions for summary judgment.

In its motion for summary judgment, IDOR asserted that the requirements of the Commerce Clause were satisfied. IDOR argued that the "physical presence" requirement established in *National Bellas Hess, Inc. v. Department of Revenue of Illinois,* 386 U.S. 753, 87 S.Ct. 1389, 18 L.Ed.2d 505 (1967), as reaffirmed in *Quill Corp. v. North Dakota,* 504 U.S. 298, 112 S.Ct. 1904, 119 L.Ed.2d 91 (1992), was not necessary when a franchisor licensed intellectual property that generated income for the franchisor within the state from operations of independent franchisees. IDOR asserted that KFC's royalty income based on its franchisees' Iowa transactions was "taxable because it is derived from Iowa customers and is made possible by Iowa's infrastructure and legal protection of the Iowa marketplace." IDOR further argued that the imposition of the income tax was consistent with Iowa Code section 422.33(1) (1997) and its implementing administrative rules.

KFC resisted and filed a summary judgment motion of its own. KFC argued that its receipt of royalty income was not subject to tax by the State of Iowa. KFC observed that in *Quill,* the United States Supreme Court held that a use tax could not be imposed on a foreign corporation that had no physical contact with the taxing state. KFC noted that the *Quill* Court "did not state that its holding is limited to use tax collection obligations." KFC argued that, because it had no physical presence in Iowa, the state could not constitutionally impose the income tax. In the alternative, KFC pressed a statutory claim. KFC asserted that under Iowa Code section 422.33(1), KFC was not subject ***311** to tax because it lacked property "located or having a situs in this state."

KFC did not raise any issue related to penalties in its motion for summary judgment. In its memorandum of points and authorities, however, KFC asserted that the penalty assessed by IDOR should be waived under applicable statutes because it had substantial authority to rely upon its position. *See* Iowa Code § 421.27(1)(*h*), (2)(*f*), (3)(*d*).

The ALJ issued a detailed ruling in IDOR's favor. The ALJ found that KFC owned, managed, protected, and licensed KFC marks and system during the years in question. As part of its business, KFC entered into franchise agreements with franchisees in Iowa who remitted royalty and/or license income to KFC for the use of KFC marks and system at a rate of four percent of gross revenues for each month, with a minimum royalty amount adjusted for increases in the Consumer Price Index. Throughout the period, KFC had the right to control the use of its marks by Iowa franchises and the right to control the nature and quality of goods sold under the marks by them.

Further, the ALJ found that Iowa franchisees were required by their franchise agreements to adhere to KFC's requirements regarding menu items, advertising, marketing, and physical facilities. In order to comply with applicable standards, Iowa franchisees were required to purchase equipment, supplies, paper goods, and other products from only KFC-approved manufacturers and distributors. Quality assurance activities were performed in Iowa on behalf of KFC by employees of KFC's affiliates. The ALJ also found that KFC franchisees in Iowa could deduct from their taxable income the royalty payments made to KFC.

Applying law to these facts, the ALJ held that the IDOR assessment did not violate the Commerce Clause or Iowa law. With respect to the Commerce Clause question, the ALJ concluded that "physical presence" is not required when a state imposes taxation on income. Further, the ALJ concluded IDOR demonstrated that KFC had a sufficient nexus to Iowa to support IDOR's assessment. According to the ALJ, the franchise right was an intangible with a direct connection to Iowa. The imposition of tax on income generated by a franchisor within a state was not an undue burden on commerce, but rather a payment to government that provided the economic climate for the business to prosper.

On the state law question, the ALJ found that KFC was "deriving income from sources within this state" as required by Iowa Code section 422.33(1). According to the ALJ, KFC received such income when it received royalty and/or license income from franchisees located within the state. The ALJ determined that the provision of Iowa Code section 422.33(1) requiring a "situs in this state" did not require a physical situs, but, citing Webster's dictionary, included "the place where some thing exists or originates; the place where something (as a right) is held to be located in law." The ALJ did not make a ruling of any kind or refer in any way to the issue of penalties in the decision.

On appeal, the director of IDOR affirmed the ALJ. The director characterized the issue on appeal as whether "KFC ha[d] sufficient nexus with Iowa to be subject to Iowa corporation income tax?" The director adopted and incorporated the findings of fact of the ALJ without revisions. The director also adopted the conclusions of law made by the ALJ with additions and modifications. With respect to the Commerce Clause issue, the director noted that several

states have held that an economic presence satisfies the ***312** "substantial nexus" requirement for corporate income tax purposes. The director also found that, under Iowa law, KFC owed corporate income tax under Iowa Code section 422.33(1). Like the ALJ, the director made no findings on the penalty issue.

KFC sought judicial review of the agency's decision in district court. The district court affirmed the director on the Commerce Clause issue, finding that "physical presence" was not required under the Commerce Clause for the imposition of state income tax. The district court further found that, because KFC's marks and trademarks were "an integral part of business activity occurring regularly in Iowa," the income derived from the use of that property was taxable under Iowa law. On the issue of penalties, the district court found the issue was not preserved because KFC did not obtain a ruling on the issue from the agency and also because KFC did not seek a ruling on the issue in its motion for summary judgment.

II. Standard of Review.

The Iowa Administrative Procedure Act governs judicial review of decisions of the Iowa Department of Revenue. *See* Iowa Code ch. 17A; *AOL LLC v. Iowa Dep't of Revenue,* 771 N.W.2d 404, 407 (Iowa 2009). With respect to the constitutional questions in this case, the parties agree that our review is de novo. *See State v. Taeger,* 781 N.W.2d 560, 564 (Iowa 2010).

The parties contest the standard of review on the statutory issue presented in this case. KFC contends that the district court erred in granting deference to IDOR's legal conclusion on state law issues under Iowa Code section 422.33(1) and that our review of IDOR's legal determinations is for errors at law. IDOR contends that it has been clearly vested with discretion to interpret the applicable provisions of law and that, as a result, its determinations may be reversed only if "irrational, illogical, or wholly unjustifiable." *See Renda v. Iowa Civil Rights Comm'n,* 784 N.W.2d 8, 12–14 (Iowa 2010) (noting that the question of whether the legislature has clearly vested an agency with discretion to determine applicable provisions of law is generally to be based upon an analysis of individual provisions of law, not upon a wholesale conclusion regarding chapters of the Code); *Iowa AG Constr. Co. v. Iowa State Bd. of Tax Review,* 723 N.W.2d 167, 173 (Iowa 2006) (holding broad rule-making authority may give rise to deference to administrative interpretations).

In this case, however, we need not reach the issue of whether IDOR is entitled to deference in its interpretation of Iowa Code section 422.33(1) because, even if deference were not afforded, we conclude, for the reasons expressed in this opinion, that IDOR correctly interpreted the applicable statutes.

III. The Dormant Commerce Clause Claim.

A. Introduction to Dormant Commerce Clause Issues Presented in This Case. In *Bellas Hess* and later in *Quill,* the United States Supreme Court held under the dormant Commerce Clause that, in order for a state to require an out-of-state entity to collect sales and use taxes on transactions with in-state residents, the entity must have some "physical presence" within the taxing jurisdiction. *Bellas Hess,* 386 U.S. at 756–59, 87 S.Ct. at 1391–93, 18 L.Ed.2d at 508–10; *Quill,* 504 U.S. at 317–18, 112 S.Ct. at 1916, 119 L.Ed.2d at 110. In this case, two questions arise in light of *Bellas Hess* and *Quill.* The first question is whether the State of Iowa satisfied the "physical presence" test of *Bellas Hess* and *Quill* in this case. The second question is whether the "physical ***313** presence" test in *Bellas Hess* and *Quill* applies at all to cases involving state income taxation.

We begin our discussion with a survey of the dormant Commerce Clause cases of the United States Supreme Court. In our survey, we focus on the nature of dormant Commerce Clause analysis and the struggle between formalistic approaches and approaches that emphasize economic substance in the context of both sales and use taxes and state income taxes. We then examine state court cases after *Quill* grappling with the issues presented in this case. Using these authorities to illuminate our discussion, we analyze the dormant Commerce Clause issues presented in this case.

B. Approach of the United States Supreme Court to the Dormant Commerce Clause.

1. *Evolution of Supreme Court "dormant" Commerce Clause doctrine prior to* Bellas Hess *and* Quill. The United States Constitution expressly authorizes Congress to "regulate Commerce ... among the several States." U.S. Const. art. I, § 8, cl. 3. Since the nineteenth century, the United States Supreme Court has interpreted the Commerce Clause as more than merely an affirmative grant of power, finding a negative sweep to the Clause as well. *See Brown v. Maryland,* 25 U.S. (12 Wheat.) 419, 448–49, 6 L.Ed. 678, 688–89 (1827); *Gibbons v. Ogden,* 22 U.S. (9 Wheat.) 1, 72–78, 6 L.Ed. 23,

70–78 (1824). As a result, the Supreme Court has applied the "negative" or "dormant" Commerce Clause to limit state taxation powers notwithstanding the absence of congressional legislation.

Over time, the Supreme Court's approach to state taxation under the dormant Commerce Clause has evolved from a relatively strong prohibition toward a more practical assessment that recognizes the needs of the states to raise revenue. The early view of the Supreme Court was that "no state ha[d] the right to lay a tax on interstate commerce in any form." *Leloup v. Port of Mobile,* 127 U.S. 640, 648, 8 S.Ct. 1380, 1384, 32 L.Ed. 311, 314 (1888). The Supreme Court later chiseled this broad prohibition into one that only precluded the states from levying taxes that imposed "direct" burdens on interstate commerce. *See, e.g., Adams Express Co. v. Ohio State Auditor,* 165 U.S. 194, 220, 17 S.Ct. 305, 309, 41 L.Ed. 683, 695 (1897); *see also Freeman v. Hewit,* 329 U.S. 249, 257–58, 67 S.Ct. 274, 279, 91 L.Ed. 265, 274–75 (1946); *Felt & Tarrant Mfg. Co. v. Gallagher,* 306 U.S. 62, 66–68, 59 S.Ct. 376, 378, 83 L.Ed. 488, 491–92 (1939).

The "direct" vs. "indirect" distinction, however, was subject to strong attack by Justice Stone. In a classic dissent, Justice Stone attacked the distinction as unrealistic and opined that, "[i]n ... making use of the expressions, 'direct' and 'indirect interference' with commerce, we are doing little more than using labels to describe a result rather than any trustworthy formula by which it is reached." *Di Santo v. Pennsylvania,* 273 U.S. 34, 44, 47 S.Ct. 267, 271, 71 L.Ed. 524, 530 (1927) (Stone, J., dissenting), *overruled by California v. Thompson,* 313 U.S. 109, 116, 61 S.Ct. 930, 934, 85 L.Ed. 1219, 1223 (1941). Eventually, the Supreme Court, apparently heeding Justice Stone's call for a more realistic and less formalistic approach, began to analyze the validity of state taxes by applying a "nexus" doctrine under the Due Process and dormant Commerce Clauses.

Applying the "nexus" doctrine, the Supreme Court upheld sales and use taxes when the taxpayer had some minimal physical presence within the jurisdiction, even though the transactions leading up to ***314** the imposition of the tax were not linked to the physical presence. *See Scripto, Inc. v. Carson,* 362 U.S. 207, 209–11, 80 S.Ct. 619, 620–22, 4 L.Ed.2d 660, 663–64 (1960) (upholding use tax based on the physical presence of ten advertising brokers conducting continuous solicitation in the taxing state); *Nelson v. Sears, Roebuck & Co.,* 312 U.S. 359, 364, 61 S.Ct. 586, 588–89, 85 L.Ed. 888, 892 (1941) (upholding use tax on mail-order sales when the taxpayer had retail outlets in the state, even though the retail outlets were not connected with mail-order sales). While none of these cases held that physical presence was required in order for a state to require an out-of-state entity to collect sales and use taxes from customers, the fact of physical presence in these sales and use tax cases played a significant role in the analysis.

While "physical presence" may have been a significant feature, if not a requirement, in the Supreme Court's dormant Commerce Clause analysis in early sales and use tax cases, "physical presence" in the narrow sense does not appear as an important factor in cases involving state income taxation. *See Nw. States Portland Cement Co. v. Minnesota,* 358 U.S. 450, 464, 79 S.Ct. 357, 365–66, 3 L.Ed.2d 421, 431 (1959) (observing that income tax could be supported if the "activities form a sufficient 'nexus between such a tax and transactions within a state for which the tax is an exaction' ") (quoting *Wisconsin v. J.C. Penney Co.,* 311 U.S. 435, 445, 61 S.Ct. 246, 250, 85 L.Ed. 267, 271 (1940)); *Int'l Harvester Co. v. Wis. Dep't of Taxation,* 322 U.S. 435, 441, 64 S.Ct. 1060, 1064, 88 L.Ed. 1373, 1379 (1944) (stating that "[p]ersonal presence within the state of the stockholder-taxpayers is not essential to the constitutional levy of a tax taken out of so much of the corporation's Wisconsin earnings as is distributed to them"); *J.C. Penney Co.,* 311 U.S. at 444, 61 S.Ct. at 250, 85 L.Ed. at 270 (holding that the income-tax test under the dormant Commerce Clause is whether the state has "exerted its power in relation to opportunities which it has given, to protection which it has afforded, to benefits which it has conferred by the fact of being an orderly, civilized society"); *New York ex rel. Whitney v. Graves,* 299 U.S. 366, 372, 57 S.Ct. 237, 238, 81 L.Ed. 285, 288 (1937) (holding that, with respect to intangible property such as a seat on the New York Stock Exchange, the business situs of the intangible property may "grow out of the actual transactions of a localized business"). In these cases involving challenges to state income taxes, the Supreme Court has not adopted a mechanical or formalistic approach to the dormant Commerce Clause nexus requirement but, instead, has emphasized a flexible approach based on economic reality and the nature of the activity giving rise to the income that the state seeks to tax.

2. *Emergence of the* Bellas Hess *physical presence test for sales and use taxes arising from mail-order sales.* In *Bellas Hess,* the Supreme Court considered a challenge to an Illinois statutory requirement that an out-of-state entity collect and remit the use tax owed by consumers who purchased goods for use within Illinois. *Bellas Hess,* 386 U.S. at 755, 87 S.Ct.

at 1390, 18 L.Ed.2d at 507–08. The out-of-state entity was a mail-order merchant that had no in-state retail outlets, sales representatives, or property. *Id.* at 753–54, 87 S.Ct. at 1389–90, 18 L.Ed.2d at 507. In *Bellas Hess,* the Supreme Court by a six-to-three vote concluded that the use tax could not be constitutionally applied under the dormant Commerce Clause if the taxpayer did not have physical presence in the taxing jurisdiction. *Id.* at 759–60, 87 S.Ct. at 1392–93, 18 L.Ed.2d at 510–11.

***315** The *Bellas Hess* majority first noted that the nexus requirements under the Due Process and dormant Commerce Clauses were "closely related" and "similar." *Id.* at 756, 87 S.Ct. at 1391, 18 L.Ed.2d at 508. The *Bellas Hess* Court observed that the "same principles have been held applicable in determining the power of a State to impose the burdens of collecting use taxes upon interstate sales." *Id.* Thus, at the time of *Bellas Hess,* there was no material distinction between the nexus required by due process and the nexus required by the dormant Commerce Clause. *See id.*

Turning to whether Illinois met its burden of showing an adequate nexus, the *Bellas Hess* majority noted that the Court had "never held that a State may impose the duty of use tax collection and payment upon a seller whose only connection with customers in the State is by common carrier or the United States mail." *Id.* at 758, 87 S.Ct. at 1392, 18 L.Ed.2d at 509. The *Bellas Hess* majority emphasized that over 2300 jurisdictions could impose sales and use taxes and that, with many local variations in rates of use tax and allowable exemptions, the administrative burdens could impede interstate business. *Id.* at 759–760 & n. 12, 87 S.Ct. at 1392–93 & n. 12, 18 L.Ed.2d at 510 & n. 12. In addition, the Illinois statute imposed the burden of requiring the vendor to provide each purchaser with a receipt showing payment of the tax, as well as keep "such records, receipts, invoices and other pertinent books, documents, memoranda and papers as the [State] shall require in such form as the [State] shall require." *Id.* at 755, 87 S.Ct. at 1390, 18 L.Ed.2d at 508. Before the state could impose the administrative burdens of determining, collecting, and documenting the myriad different taxes from the thousands of jurisdictions that could be imposed, the *Bellas Hess* majority held that some sort of physical nexus with the taxing state was required. *Id.* at 758, 87 S.Ct. at 1392, 18 L.Ed.2d at 509–10.

Justice Fortas, joined by Justices Black and Douglas, dissented. *Id.* at 760, 87 S.Ct. at 1393, 18 L.Ed.2d at 511 (Fortas, J., dissenting). Justice Fortas stated that "large-scale, systematic, continuous solicitation and exploitation of the Illinois consumer market" was a sufficient basis for supporting the tax. *Id.* at 761–62, 87 S.Ct. at 1394, 18 L.Ed.2d at 511. On the question of benefits from the state, Justice Fortas asserted that, if Bellas Hess had a retail store in Illinois, or maintained resident sales personnel in the state, the benefit it received from the State of Illinois would not be affected. *Id.* at 762–64, 87 S.Ct. at 1394–95, 18 L.Ed.2d at 512–13. Conversely, the burden on Bellas Hess is no different than on a local retailer with comparable sales. *Id.* at 766, 87 S.Ct. at 1396, 18 L.Ed.2d at 514. Justice Fortas presciently warned that the approach of the majority would open a sizable "haven of immunity" that would increase dramatically in the future. *Id.* at 764, 87 S.Ct. at 1395, 18 L.Ed.2d at 513.

Nothing in *Bellas Hess,* however, altered the relationship between the Due Process and dormant Commerce Clause nexus requirements or explicitly overruled the principles expressed in the state income tax nexus cases. Instead, *Bellas Hess* seems to represent the development of a strand of authority under the dormant Commerce Clause with at least some formalism in its categorical approach to the dormant Commerce Clause nexus requirement in the field of sales and use taxes.

After *Bellas Hess,* the Supreme Court considered the nexus issue in a number of cases. In general, the cases stand for the proposition that constitutionally required "physical presence" (1) is not "the slightest physical presence," but nonetheless need ***316** not be very substantial to satisfy the requirements of both due process and the dormant Commerce Clause, and (2) need not be related to the transaction giving rise to tax liability. *See, e.g., Trinova Corp. v. Mich. Dep't of Treasury,* 498 U.S. 358, 373–74, 384–87, 111 S.Ct. 818, 829, 835–37, 112 L.Ed.2d 884, 904–05, 911–13 (1991) (upholding a value added tax imposed on entities having "business activity" within the state and noting that the nexus requirement under the dormant Commerce Clause "encompasses" the due process requirement); *Nat'l Geographic Soc'y v. Cal. Bd. of Equalization,* 430 U.S. 551, 556, 97 S.Ct. 1386, 1390, 51 L.Ed.2d 631, 637 (1977) (rejecting "slightest presence test," but holding California could impose use tax on mail-order sales of an out-of-state vendor who maintained two offices within the state, even though the offices had nothing to do with mail-order operations); *Standard Pressed Steel Co. v. Wash. Dep't of Revenue,* 419 U.S. 560, 563–64, 95 S.Ct. 706, 709, 42 L.Ed.2d 719, 723–24 (1975) (holding in-state presence of one

full-time employee sufficient to support imposition of gross receipts tax on sales to out-of-state entity).

3. Complete Auto*: The demise of formalism in favor of a multifactor test.* After *Bellas Hess,* the United States Supreme Court revisited the requirements of the dormant Commerce Clause in *Complete Auto Transit, Inc. v. Brady,* 430 U.S. 274, 97 S.Ct. 1076, 51 L.Ed.2d 326 (1977). In *Complete Auto,* the Supreme Court, in an opinion by Justice Blackmun, repeated the observation by Justice Holmes that "interstate commerce may be made to pay its way" through the imposition of state taxes. *Complete Auto,* 430 U.S. at 281, 284, 97 S.Ct. at 1080, 1082, 51 L.Ed.2d at 332, 334. In order for such taxes to pass Commerce Clause muster, however, Justice Blackmun concluded that the tax must be (1) applied to an activity having a "substantial nexus" with the taxing state, (2) be "fairly apportioned," (3) not "discriminate against interstate commerce," and (4) be "fairly related to the services provided by the State." *Id.* at 279, 97 S.Ct. at 1079, 51 L.Ed.2d at 331.

Justice Blackmun's opinion in *Complete Auto* has emerged as a landmark in dormant Commerce Clause jurisprudence. What precisely was meant by the term "substantial nexus" was unclear and left for further case law development. The *Complete Auto* opinion, however, emphasizes the practical effects of state taxing statutes on interstate commerce and avoids formal distinctions and abstractions. *Id.* The dormant Commerce Clause worm seemed to have turned once again in *Complete Auto* in favor of utilization of a realistic assessment of economic impacts rather than formal doctrinal categories.

Additional dormant Commerce Clause cases after *Complete Auto* confronted the nexus issue. For instance, in *Tyler Pipe Industries, Inc. v. Washington State Department of Revenue,* 483 U.S. 232, 107 S.Ct. 2810, 97 L.Ed.2d 199 (1987), the Supreme Court, in a challenge to a state's business and occupation tax, rejected the notion that the actions of sales representatives within a state could not be attributed to the out-of-state taxpayer for purposes of determining substantial nexus because they were independent contractors. *Tyler Pipe Indus., Inc.,* 483 U.S. at 250, 107 S.Ct. at 2821, 97 L.Ed.2d at 215. The Supreme Court further cited with approval the observation made by the Washington Supreme Court that "the crucial factor governing nexus is whether the activities performed in this state on behalf of the taxpayer are significantly associated with the taxpayer's ability to establish and maintain a market in this state for the sales." *Id.*

***317** 4. *Post-*Bellas Hess *developments in due process.* In *Complete Auto,* the Court imported into the Commerce Clause analysis the same kind of thinking reflected in the evolving due process cases. Originally, under *Pennoyer v. Neff,* 95 U.S. (5 Otto) 714, 723–24, 24 L.Ed. 565, 569 (1877), physical presence was central in determining whether a party had sufficient minimum contacts with a forum to submit to its jurisdiction. The physical presence test was famously abandoned by Justice Stone in *International Shoe Co. v. Washington,* 326 U.S. 310, 66 S.Ct. 154, 90 L.Ed. 95 (1945). In *International Shoe,* the Supreme Court rejected any requirement of physical presence in favor of minimum contacts that allowed the assertion of state judicial power consistent with " 'traditional notions of fair play and substantial justice.' " *Int'l Shoe,* 326 U.S. at 316, 66 S.Ct. at 158, 90 L.Ed. at 102 (quoting *Milliken v. Meyer,* 311 U.S. 457, 463, 61 S.Ct. 339, 343, 85 L.Ed. 278, 283 (1940)).

In rejecting the physical presence test, Justice Stone noted in *International Shoe* that the "corporate personality" was a fiction of the law because a corporation is not physically present anywhere. *Id.* Yet, citing Learned Hand, Justice Stone observed that "the terms 'present' or 'presence' are used merely to symbolize those activities of the corporation's agent within the state which courts will deem to be sufficient to satisfy the demands of due process." *Id.* at 316–17, 66 S.Ct. at 158, 90 L.Ed. at 102 (citing *Hutchinson v. Chase & Gilbert,* 45 F.2d 139, 141 (2d Cir.1930)). In *International Shoe,* the activities carried on within Washington "in behalf" of the corporate respondent were "systematic and continuous" and therefore sufficient to satisfy due process. *Id.* at 320, 66 S.Ct. at 160, 90 L.Ed. at 104.

Cases decided after *International Shoe* further reinforced the pragmatic nature of the due process question and lessened the role of "physical presence." *See Burger King Corp. v. Rudzewicz,* 471 U.S. 462, 476, 105 S.Ct. 2174, 2184, 85 L.Ed.2d 528, 543 (1985) (holding that jurisdiction under due process may not be avoided merely because the defendant "did not *physically* enter the forum State"); *World-Wide Volkswagen Corp. v. Woodson,* 444 U.S. 286, 297–98, 100 S.Ct. 559, 567, 62 L.Ed.2d 490, 502 (1980) (finding that due process was satisfied when an out-of-state corporation "delivers its products into the stream of commerce with the expectation that they will be purchased by consumers in the forum State"); *McGee v. Int'l Life Ins. Co.,* 355 U.S. 220, 223, 78 S.Ct. 199, 201, 2 L.Ed.2d 223, 226 (1957) (finding sufficient minimum contacts for purposes of due process when the suit was based on a contract that had substantial

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connection with the forum state even though there was no evidence of physical presence in the forum state). Citing prior case law, the *Burger King* Court declared that the Court had long ago abandoned "mechanical tests" based on " 'conceptualistic ... theories of the place of contracting or of performance.' " *Burger King,* 471 U.S. at 478–79, 105 S.Ct. at 2185, 85 L.Ed.2d at 544–45 (quoting *Hoopeston Canning Co. v. Cullen,* 318 U.S. 313, 316, 63 S.Ct. 602, 605, 87 L.Ed. 777, 782 (1943)).

5. *Squaring* Bellas Hess *with* Complete Auto *and evolving due process precedent:* Quill. After *Complete Auto* and *Burger King,* a substantial question that emerged was whether the life blood had been drained from *Bellas Hess* by subsequent developments. The mail-order industry had grown rapidly and, much as Justice Fortas had feared in his *Bellas Hess* dissent, a large tax haven had been created. *See Bellas Hess,* 386 U.S. at 762–64, 87 S.Ct. at 1394–95, 18 L.Ed.2d at 512–13 (Fortas, J., dissenting). Indeed, mail-order sales amounted to only $2.4 billion ***318** four years prior to *Bellas Hess,* but had grown to $150 billion by 1983. *See* Martin L. McCann, Note, *Use Tax, Mail Order Sales, and the Constitution: Recent Developments in Connecticut,* 12 U. Bridgeport L.Rev. 137, 149 (1991). The question arose whether the Court in *Bellas Hess* had inadvertently opened a tax avoidance scheme that needed to be closed. Further, technological developments made the physical presence requirement look rather quaint. Out-of-state mail order marketers now availed themselves of sophisticated technology to sell their products. *Id.* at 151–52. In addition, the Supreme Court in its personal jurisdiction cases, such as *International Shoe, McGee, World-Wide Volkswagen*, and *Burger King,* had eviscerated the physical presence requirement for due process, which for all practical purposes was thought to be coextensive with any restraints under the dormant Commerce Clause. *Id.* at 153. Finally, although there had been a number of twists and turns, it seemed that the era of formalism or mechanical tests under the dormant Commerce Clause was over after *Complete Auto.* In light of these factors, many observers thus heard, or at least hoped they heard, a death rattle for the "physical presence" holding of *Bellas Hess. See* Paul J. Hartman, *Collection of the Use Tax on Out-of-State Mail-Order Sales,* 39 Vand. L.Rev. 993, 1006–14 (1986); Sandra B. McCray, *Overturning* Bellas Hess*: Due Process Considerations,* 1985 BYU L.Rev. 265, 295–96 (1985); Donald P. Simet, *The Concept of "Nexus" and State Use and Unapportioned Gross Receipts Taxes,* 73 Nw. U.L.Rev. 112, 112–14 (1978).

Certainly the North Dakota Supreme Court was prepared to give *Bellas Hess* a decent burial. In *State ex rel. Heitkamp v. Quill Corp.,* 470 N.W.2d 203 (N.D.1991), the North Dakota Supreme Court considered the validity of the imposition of a use tax on an out-of-state seller who lacked physical presence in the state. *Heitkamp,* 470 N.W.2d at 204–05, *overruled by Quill,* 504 U.S. at 301–02, 112 S.Ct. at 1907, 119 L.Ed.2d at 99–100. The North Dakota Supreme Court declared that the "economic, social, and commercial landscape upon which *Bellas Hess* was premised no longer exist[ed]," which made it inappropriate to follow *Bellas Hess. Id.* at 208–09. The North Dakota Supreme Court cited the staggering growth in the mail-order business and the advance in computer technology, which made compliance more practical. *Id.* Further, the North Dakota Supreme Court noted that the legal environment had changed in light of *Complete Auto* and its progeny, which indicated that the United States Supreme Court was moving in a direction away from the "physical presence" test in favor of a more flexible approach. *Id.* at 209–13. Applying the test of *Complete Auto,* the North Dakota Supreme Court found the test was satisfied in light of the fact that North Dakota provided an "economic climate that fostere[d] demand" for Quill products and maintained a legal system that supported business within the state. *Id.* at 218.

The United States Supreme Court granted certiorari and reversed the North Dakota Supreme Court. Justice Stevens wrote for the majority that "[w]hile we agree with much of the state court's reasoning," the Supreme Court nonetheless was required to reverse. *Quill,* 504 U.S. at 302, 112 S.Ct. at 1907, 119 L.Ed.2d at 99.

Justice Stevens began the substantive discussion by canvassing the existing case law regarding due process and concluding that "physical presence" was not required to support taxation if a corporation "purposefully avails itself of the benefits of an economic market in the forum State." *Id.* at 307, 112 S.Ct. at 1910, 119 L.Ed.2d at 103. Thus, to the extent *Bellas Hess* required ***319** "physical presence" to satisfy due process, it was overruled. *See id.*

Justice Stevens then turned to the dormant Commerce Clause issue. After reviewing the evolution of the dormant Commerce Clause doctrine, Justice Stevens observed that, "[w]hile contemporary Commerce Clause jurisprudence might not dictate the same result were the issue to arise for the first time today," the *Bellas Hess* approach to Commerce Clause nexus was not inconsistent with *Complete Auto. Id.* at 311, 112 S.Ct. at 1912, 119 L.Ed.2d at 105. In order to

reach that result, Justice Stevens concluded the "minimum contacts" test under due process and the "substantial nexus" test under the Commerce Clause, "[d]espite the similarity in phrasing," were "not identical." *Id.* at 312, 112 S.Ct. at 1913, 119 L.Ed.2d at 106. Unlike the Due Process Clause, the nexus requirement under the Commerce Clause does not serve as "a proxy for notice, but rather a means for limiting state burdens on interstate commerce." *Id.* at 313, 112 S.Ct. at 1913, 119 L.Ed.2d at 107. In a footnote, Justice Stevens noted, absent the physical presence rule of *Bellas Hess,* a vendor might be required to comply with tax obligations in 6000-plus taxing jurisdictions with many variations in rate of tax, allowable exemptions, and in administrative duties. *See id.* at 313 n. 6, 112 S.Ct. at 1914 n. 6, 119 L.Ed.2d at 107 n. 6.

Turning to the decision of the North Dakota Supreme Court on the Commerce Clause issue, Justice Stevens recognized the state supreme court's emphasis on the Supreme Court's " 'retreat from the formalistic constrictions of a stringent physical presence test in favor of a more flexible substantive approach.' " *Id.* at 314, 112 S.Ct. at 1914, 119 L.Ed.2d at 107 (quoting *Heitkamp,* 470 N.W.2d at 214). Yet, Justice Stevens concluded that, "[a]lthough we agree with the state court's assessment of the evolution of our cases, we do not share its conclusion that this evolution indicates that the Commerce Clause ruling of *Bellas Hess* is no longer good law." *Id.* at 314, 112 S.Ct. at 1914, 119 L.Ed.2d at 107–08.

Justice Stevens recognized that "we have not, in our review of other types of taxes, articulated the same physical-presence requirement." *Id.* But, Justice Stevens reasoned that the "silence does not imply repudiation of the *Bellas Hess* rule." *Id.* at 314, 112 S.Ct. at 1914, 119 L.Ed.2d at 108.

Justice Stevens then considered justifications for the continued application of the *Bellas Hess* approach. He noted that *Bellas Hess* created a "discrete realm of commercial activity that is free from interstate taxation" and a "safe harbor" for vendors from state-imposed duties to collect sales and use taxes. *Id.* at 315, 112 S.Ct. at 1914, 119 L.Ed.2d at 108. While he recognized that the physical-presence rule, like all bright-line rules, "appears artificial at its edges," the artificiality was offset by the benefits of a "clear rule." *Id.* at 315, 112 S.Ct. at 1914–15, 119 L.Ed.2d at 108.

Justice Stevens further emphasized that one of the benefits in affirming *Bellas Hess* was that reaffirmance of the established rule "encourages settled expectations." *Id.* at 316, 112 S.Ct. at 1915, 119 L.Ed.2d at 109. According to Justice Stevens, it is not unlikely that the dramatic growth of the mail-order industry "is due in part to the bright-line exemption from state taxation created from *Bellas Hess.*" *Id.* As a result, Justice Stevens concluded that the *Bellas Hess* rule "has engendered substantial reliance and has become part of the basic framework of a sizeable industry." *Id.* at 317, 112 S.Ct. at 1916, 119 L.Ed.2d at 110. According to Justice Stevens, the value of a bright-line test and the doctrine and principles of stare decisis indicate ***320** that *Bellas Hess* remains good law. *See id.*

Justice Stevens closed his opinion by noting that the decision, apparently a difficult one, was "made easier" by the fact Congress, which "may be better qualified to resolve" the issue, could have the last word. *Id.* at 318, 112 S.Ct. at 1916, 119 L.Ed.2d at 110. In light of the reversal of the due process holding of *Bellas Hess,* Congress is "now free to decide whether, when, and to what extent the States may burden interstate mail-order concerns with a duty to collect use taxes." *Id.*

Justice Scalia, joined by Justices Kennedy and Thomas, concurred in part and concurred in the judgment. *Id.* at 319, 112 S.Ct. at 1923, 119 L.Ed.2d at 111 (Scalia, J., concurring). Justice Scalia concurred in the majority opinion regarding due process. *Id.* On the Commerce Clause question, Justice Scalia noted that Congress had the power to change the result of *Bellas Hess* through legislation. *Id.* at 320, 112 S.Ct. at 1923, 119 L.Ed.2d at 111–12. As a result, Justice Scalia further noted that stare decisis applies with special force where Congress retains the power to override a court decision. *Id.* Justice Scalia would not have engaged in any revisiting of the merits of the holding. *Id.*

Justice White concurred in part and dissented in part. *Id.* at 321, 112 S.Ct. at 1916, 119 L.Ed.2d at 112 (White, J., concurring in part and dissenting in part). He agreed that physical presence was not required for due process, but also asserted that it was not required under the Commerce Clause. *Id.* at 321–22, 112 S.Ct. at 1916–17, 119 L.Ed.2d at 113. In particular, Justice White noted that, in *National Geographic Society,* the Court decoupled any notion of transactional nexus from the inquiry and focused solely on whether there were sufficient contacts with the jurisdiction imposing the tax. *Id.* at 323–24, 112 S.Ct. at 1918, 119 L.Ed.2d at 114. Further, Justice White concluded that cases subsequent to *Bellas Hess* undermine its continued vitality and that the rule should be abandoned in its entirety. *Id.* at 326–27, 112 S.Ct. at 1919–20, 119 L.Ed.2d at 115–16. Justice White

would jettison the formalism in the physical presence test for the functionality of Justice Rutledge's concurring opinion in *Freeman. Id.* at 325–27, 112 S.Ct. at 1918–20, 119 L.Ed.2d at 115–16 (citing *Freeman,* 329 U.S. at 259, 67 S.Ct. at 280, 91 L.Ed. at 275 (Rutledge, J., concurring)). He noted the illogic of imposing a tax on a small, out-of-state vendor with one employee residing in the taxing state, while allowing a large vendor with no employees to escape the tax. *Id.* at 328–29, 112 S.Ct. at 1920, 119 L.Ed.2d at 117.

6. *Post-*Quill *developments.* After *Quill,* the Supreme Court has generally avoided Commerce Clause cases involving the authority of states to impose taxes other than sales and use taxes on out-of-state entities with or without "physical presence." While there have been a number of cases in which the question has been squarely posed, the Supreme Court has repeatedly denied certiorari on them. *See, e.g., A & F Trademark, Inc. v. Tolson,* 167 N.C.App. 150, 605 S.E.2d 187, 194–95 (2004), *cert. denied,* 546 U.S. 821, 126 S.Ct. 353, 163 L.Ed.2d 62 (2005); *Geoffrey, Inc. v. S.C. Tax Comm'n,* 313 S.C. 15, 437 S.E.2d 13, 18–19 (S.C.), *cert. denied,* 510 U.S. 992, 114 S.Ct. 550, 126 L.Ed.2d 451 (1993); *J.C. Penney Nat'l Bank v. Johnson,* 19 S.W.3d 831, 836–42 (Tenn.Ct.App.1999), *cert. denied,* 531 U.S. 927, 121 S.Ct. 305, 148 L.Ed.2d 245 (2000).

C. Approach of State Appellate Courts to Nexus Requirement Under Dormant Commerce Clause for State Taxation of Income. *Geoffrey* is the first state case considering the question of ***321** whether "physical presence" was required for the imposition of state taxes other than sales or use taxes. *Geoffrey,* 437 S.E.2d at 18 & n. 4. In *Geoffrey,* the South Carolina Supreme Court considered whether state income taxes could be imposed on out-of-state franchisors who earned income based on franchise activities within the state. *Id.* at 15. In concluding that a state had such power, the *Geoffrey* court relied upon the notion that intangible property acquired a "business situs" in a state where it is used by a local business. *Id.* at 18–19; *see also Wheeling Steel Corp. v. Fox,* 298 U.S. 193, 210, 56 S.Ct. 773, 777, 80 L.Ed. 1143, 1148 (1936). Further, the *Geoffrey* court cited *International Harvester* for the proposition that a state may impose a tax on

> such part of the income of a non-resident as is fairly attributable either to property located in the state or to events or transactions which, occurring there, are within the protection of the state and entitled to the numerous other benefits which it[ ] confers.

Geoffrey, 437 S.E.2d at 18 (citing *Int'l Harvester,* 322 U.S. at 441–42, 64 S.Ct. at 1063–64, 88 L.Ed. at 1379).

As an alternative ground, the *Geoffrey* court, in summary fashion, concluded that the physical presence requirement of *Bellas Hess* and *Quill* was not required. *Id.* According to *Geoffrey,* "any corporation that regularly exploits the markets of a state should be subject to its jurisdiction to impose an income tax even though not physically present." *Id.; see* I Jerome R. Hellerstein & Walter Hellerstein, *State Taxation* ¶ 6.11, at 6-54 to -83 (3d ed.2006). Further, the *Geoffrey* court concluded that the presence of intangible property of the taxpayer within the state was a sufficient nexus to support the imposition of state income taxes under the Commerce Clause. *Geoffrey,* 437 S.E.2d at 18.

While the reasoning of *Geoffrey* has been criticized as cursory and conclusory, *see* Richard H. Kirk, Note, *Supreme Court Refuses to Re-Examine Whether Physical Presence is a Prerequisite to State Income Tax Jurisdiction:* Geoffrey, Inc. v. South Carolina Tax Commission, 48 Tax Law. 271, 276 (1994), the result has been embraced by other state courts considering whether the licensing of intangible property, such as trademarks and business methods, for use within a state provides a sufficient nexus for income taxation. For example, in *A & F Trademark,* the court emphasized that the language of *Quill* is cramped and limiting, that *Quill* was driven largely by considerations of stare decisis that were inapplicable outside the sales and use tax context, and that the burdens of sales and use taxes are more substantial than other taxes, such as state income taxes. *A & F Trademark,* 605 S.E.2d at 194–95; *see also Comptroller of the Treasury v. SYL, Inc.,* 375 Md. 78, 825 A.2d 399, 416–17 (2003) (citing *Geoffrey* with approval); *Lanco, Inc. v. Dir., Div. of Taxation,* 188 N.J. 380, 908 A.2d 176, 177 (2006), *cert. denied,* 551 U.S. 1131, 127 S.Ct. 2974, 168 L.Ed.2d 702 (2007) (interpreting *Quill* narrowly and noting that the *Quill* Court "carefully limited its language to a discussion of sales and use taxes").

A number of state courts have gone even further than the cases dealing with intangible property and have held that even banking transactions within a state satisfy the nexus demands of the Commerce Clause for purposes of imposition of state taxes other than those on sales and use. *See Capital One Bank v. Comm'r of Revenue,* 453 Mass. 1, 899 N.E.2d 76, 84–87 (2009) (adopting flexible economic substance analysis rather than physical presence test in context of financial institution

excise taxes); *Tax Comm'r v. MBNA Am.* ***322** *Bank, N.A.,* 220 W.Va. 163, 640 S.E.2d 226, 234–36 (2006) (adopting an economic presence analysis in context of franchise and income taxes). These cases represent the frontier of state assertions of nexus to tax out-of-state entities in contexts other than sales or use taxes.

While most state courts limit *Quill* to the specific context of sales and use taxes, a few state court cases seem more sympathetic to applying *Quill* outside the sales and use tax context. In *Johnson,* the Tennessee Court of Appeals considered the validity of franchise and excise taxes imposed against an out-of-state corporation engaged in credit card activities within the taxing jurisdiction. *Johnson,* 19 S.W.3d at 832. While there is language in *Johnson* that indicated there was no basis for distinguishing between sales and use taxes and the franchise and excise taxes involved in the case, the court declined to determine "whether 'physical presence' is required under the Commerce Clause." *Id.* at 842. A subsequent unpublished opinion of the same court expresses doubt on the issue. *See Am. Online, Inc. v. Johnson,* No. M2001-00927-COA-R3-CV, 2002 WL 1751434, at *2 (Tenn.Ct.App. July 30, 2002). Further, it is not clear how the *Johnson* court would have treated a case involving use of intellectual property such as trade names and trademarks, which arguably have a stronger nexus to the host jurisdiction than credit cards and other lending transactions.

In *Rylander v. Bandag Licensing Corp.,* 18 S.W.3d 296 (Tex.App.2000), the court considered the validity of a tax based solely on the taxpayer's possession of a license to do business in Texas. *Rylander,* 18 S.W.3d at 298. As in *Johnson,* the court noted that it saw no principled basis for distinguishing between the sales and use taxes and other types of state taxes. *Id.* at 299–300. The court, however, did not consider whether income taxes could be imposed on an out-of-state corporation from income related to royalty payments arising from the licensing of intangibles. *See id.*

On the precise issue of whether licensing of intangibles for use in a state that produces income within a state for an out-of-state corporation is subject to income tax, the weight of state authority is that it does, either on the ground that physical presence has been satisfied or that the physical presence requirement does not apply outside the context of sales or use taxes. In both *Bellas Hess* and *Quill,* however, the Supreme Court reversed judgments of state supreme courts that expansively applied the "substantial nexus test" of *Complete Auto* through an economic impact analysis. Further, it might be argued that state supreme courts are inherently more sympathetic to robust taxing powers of states than is the United States Supreme Court.

D. Analysis of Constitutionality Under Dormant Commerce Clause of State Income Tax Assessments in this Case.

1. *Introduction.* At the outset, it is important to identify our task in this case. Our function is to determine, to the best of our ability, how the United States Supreme Court would decide this case under its case law and established dormant Commerce Clause doctrine. In performing this task, we do not engage in independent constitutional adjudication, and we do not seek to improve or clarify Supreme Court doctrine. We simply do our best to predict how the Supreme Court would decide the issues presented in this case.

Based upon our analysis of the above authorities and our understanding of the underlying constitutional purposes of the dormant Commerce Clause, we conclude ***323** that the district court, in light of the available Supreme Court precedents, adopted a sound approach when it held that the dormant Commerce Clause is not offended by the imposition of Iowa income tax on KFC's royalties earned from the use of its intangibles within the State of Iowa. We reach this conclusion for the reasons expressed below.

[1] 2. *Application of* Quill *"physical presence" test to use of intangible property to revenue within a state for an out-of-state entity.* We first consider whether the *Quill* "physical presence" test is satisfied in this case. Unlike in *Quill,* where the only presence in the state, except for "title to 'a few floppy diskettes,' " resulted from the use of United States mail and common carriers, this case involves the use of KFC's intangible property within the State of Iowa to produce royalty income for KFC. *See Quill,* 504 U.S. at 315 n. 8, 112 S.Ct. at 1914 n. 8, 119 L.Ed.2d at 108 n. 8.

The United States Supreme Court has not considered this precise question post-*Quill.* In *Quill,* the majority dismissively referred to the vendor's "title to 'a few floppy diskettes' " but recognized that the diskettes "might constitute some minimal nexus." *Id.* Apparently, the Court believed that the minimal physical presence presented by title to a few floppy diskettes was not "substantial" enough to satisfy *Complete Auto. See id.*

Here, however, the nexus presented by the use of KFC's intangible property within the State of Iowa strikes us as

far more than title to a few floppy diskettes. In this case, KFC has licensed its valuable intellectual property for use within the geographic boundaries of the State of Iowa to produce income. This case thus does not involve the arguably "slightest presence" of intangible property within Iowa, but a far greater involvement with the forum state.

Under the applicable pre-*Quill* case law, the use of intangibles within a state to generate revenue for an out-of-state entity was generally regarded as a sufficient nexus under the dormant Commerce Clause to support the imposition of a state income tax. For instance, in *Whitney,* noted above, the Court upheld a Commerce Clause challenge to the taxation of profits made from the sale of a seat on the New York Stock Exchange. *Whitney,* 299 U.S. at 374, 57 S.Ct. at 239, 81 L.Ed. at 289. Although the taxpayer had no physical presence in New York, the Court reasoned intangibles may be sufficiently localized "to bring it within the taxing power" of the state. *Id.* We view the intangibles in this case to be sufficiently "localized" under *Whitney* to provide a "business situs" sufficient to support an income tax on revenue generated by the use of the intangibles within Iowa. *See id.; see also Mobil Oil Corp. v. Comm'r of Taxes,* 445 U.S. 425, 445–46, 100 S.Ct. 1223, 1235–36, 63 L.Ed.2d 510, 526 (1980) (holding intangibles may be located in more than one state depending upon their use); *Wheeling Steel Corp.,* 298 U.S. at 213–14, 56 S.Ct. at 778–79, 80 L.Ed. at 1149–50 (1936) (concluding that accounts receivable and bank deposits have business situs in host state); Sheldon H. Laskin, *Only a Name? Trademark Royalties, Nexus, and Taxing That Which Enriches,* 22 Akron Tax J. 1, 16–21 (2007) [hereinafter Laskin].

Similarly, the presence of transactions within the state that give rise to KFC's revenue provide a sufficient nexus under established Supreme Court precedent. In *International Harvester,* the Court considered whether Wisconsin could impose an income tax on dividends received by out-of-state stockholders. ***324** *Int'l Harvester,* 322 U.S. at 438, 64 S.Ct. at 1062, 88 L.Ed. at 1377. The Court concluded that personal presence within the state is not essential, and that:

> A state may tax such part of the income of a non-resident as is fairly attributable either to property located in the state *or to events or transactions* which, occurring there, are subject to state regulation and which are within the protection of the state and entitled to the numerous other benefits which it confers.

Id. at 441–42, 64 S.Ct. at 1064, 88 L.Ed. at 1379 (emphasis added); *see also Curry v. McCanless,* 307 U.S. 357, 368, 59 S.Ct. 900, 906, 83 L.Ed. 1339, 1348 (1939) (reasoning that income may be taxed on the basis of source as well as residence); *Shaffer v. Carter,* 252 U.S. 37, 57, 40 S.Ct. 221, 227, 64 L.Ed. 445, 458–59 (1920) (same); Jerome R. Hellerstein & Walter Hellerstein, *State and Local Taxation: Cases and Materials* 368–69 (7th ed.2001) [hereinafter Hellerstein & Hellerstein, *State and Local Taxation*] (citing *Curry,* 307 U.S. at 368, 59 S.Ct. at 906, 83 L.Ed. at 1348).

As a result, we conclude that the Supreme Court would likely find intangibles owned by KFC, but utilized in a fast-food business by its franchisees that are firmly anchored within the state, would be regarded as having a sufficient connection to Iowa to amount to the functional equivalent of "physical presence" under *Quill.* Furthermore, the fact that the transactions that produced the revenue were based upon use of the intangibles in Iowa also provides a sufficient basis to support the tax under the Commerce Clause.

[2] 3. *Extension of "physical presence" nexus requirement to state taxation of income based on use of intangibles within forum state.* In the alternative, even if the use of intangibles within the state in a franchised business does not amount to "physical presence" under *Quill,* the question arises whether the Supreme Court would extend the *Quill* "physical presence" requirement to prevent a state from imposing, on out-of-state residents, an income tax based on revenue generated from the use of intangibles within the taxing jurisdiction. For the reasons expressed below, we do not believe the Supreme Court would extend the rule beyond its established moorings in *Quill.*

The lynchpin of the Supreme Court's opinion in *Quill* was not logic, or the developing Commerce Clause jurisprudence, but stare decisis. *See Quill,* 504 U.S. at 317, 112 S.Ct. at 1915–16, 119 L.Ed.2d at 109–10. The prior *Bellas Hess* standard created an incentive for consumers to purchase goods from an out-of-state entity, an incentive which in turn contributed to the dramatic growth of the mail-order business. *See* Michael T. Fatale, Geoffrey *Sidesteps* Quill*: Constitutional Nexus, Intangible Property and the State Taxation of Income,* 23 Hofstra L.Rev. 407, 409–10 (1994) [hereinafter Fatale]. The *Quill* Court was unwilling to upset the settled expectations of a huge mail-order industry after its growth was spawned by a prior court decision. *See Quill,* 504 U.S. at 316, 112

S.Ct. at 1915, 119 L.Ed.2d at 109. Despite this, the Supreme Court repeatedly recognized that the tides of due process and Commerce Clause jurisprudence tugged strongly in the opposite direction and that the issue may have been decided differently if it was one of first impression. *Id.* at 311, 112 S.Ct. at 1912, 119 L.Ed.2d at 105.

Further, it appears that the Court may have been concerned about the potential of retroactive application if *Bellas Hess* were reversed. *See id.* at 318 n. 10, 112 S.Ct. at 1916 n. 10, 119 L.Ed.2d at 110 n. 10. This prospect may have been particularly daunting in *Quill,* as a reversal of *Bellas Hess* could have created a huge tax liability imposed upon out-of-state vendors for ***325** their failure to collect sales and use taxes owed by others. Here, however, there is no vicarious liability for taxes that should have been imposed on third parties. Instead, in the income-tax context, the tax is either owed by the taxpayer or it is not. *See* 2 Paul J. Hartman & Charles A. Trost, *Federal Limitations on State & Local Taxation 2d* § 10:7, at 12–13 (Supp.2010).

In this case, there is simply no similar reliance interest. With respect to state taxation of income whose source is the employment of intangibles within the taxing jurisdiction, there is simply no *Bellas Hess* precedent that gives rise to reliance interests. As demonstrated by the income-tax nexus cases discussed above, the majority in *Quill* correctly noted that "we have not, in our review of other types of taxes, articulated the same physical-presence requirement that *Bellas Hess* established for sales and use taxes." *Quill,* 504 U.S. at 314, 112 S.Ct. at 1914, 119 L.Ed.2d at 108. To the extent there are any antecedents for state income taxes, they are *International Harvester* and *Whitney,* which do not require physical presence. Although these cases are due process cases, they were decided at a time when the nexus requirements of the Due Process Clause and the dormant Commerce Clause were thought to be interchangeable.

In addition, the Supreme Court in *Quill* sought to defend its Commerce Clause based physical-presence test with a burdens-type analysis, noting that if a state could be required to collect and remit use taxes, it might be required to comply with potentially differing requirements in 6000 or more jurisdictions. *Id.* at 313 n. 6, 112 S.Ct. at 1914 n. 6, 119 L.Ed.2d at 107 n. 6. The burden of state income taxation, however, is substantially less when far fewer jurisdictions are involved, when the taxpayer does not become a virtual agent of the state in collecting taxes from thousands of individual customers, and when tax assessments are only made periodically. Indeed, in cases involving income taxes, the Court has not seemed overly concerned with the compliance burdens. *See Barclays Bank PLC v. Franchise Tax Bd.,* 512 U.S. 298, 313–14, 114 S.Ct. 2268, 2277–78, 129 L.Ed.2d 244, 259–60 (1994); *Nw. States Portland Cement Co.,* 358 U.S. at 462–63, 79 S.Ct. at 364–65, 3 L.Ed.2d at 429–30.

Advocates of extension of the physical presence test to income taxes stress the potential burdens on small out-of-state sellers. A hypothetical often cited is the author of a book whose work is sold within a state where the author has never had a physical presence. To impose income tax on royalties earned by such a transaction, according to some, would be absurd.

The hypothetical fails for several reasons. First, slight presence in a state has never been held sufficient to establish a "substantial nexus" under the dormant Commerce Clause, and a truly *de minimis* economic presence by a book author should not be subject to tax. *See Nat'l Geographic Soc'y,* 430 U.S. at 556, 97 S.Ct. at 1390, 51 L.Ed.2d at 637. Moreover, royalties earned by an author of a book are ordinarily paid by a publisher to the author, not by a local retailer. The income from a book deal thus arises out of the contract between the publisher and the author. The relationship between the publisher and the local retailer has no relevance for purposes of income taxation. *See* Fatale, 23 Hofstra L.Rev. at 450; Laskin, 22 Akron Tax J. at 25–26. Further, if states become overly aggressive in their tax policy, Congress has the express authority to intervene under the Commerce Clause.

We also doubt that the Supreme Court would extend the "physical presence" rule ***326** outside the sales and use tax context of *Quill.* The use of a "physical presence" test does, of course, limit the power of the state to tax out-of-state taxpayers, but it does so in an irrational way. For example, while in *Quill* the Court was concerned about the undue burden on interstate commerce caused by enforcement of sales and use taxes, "physical presence" within the state does not reduce that burden. *See* John A. Swain, *State Sales and Use Tax Jurisdiction: An Economic Nexus Standard for the Twenty-First Century,* 38 Ga. L.Rev. 343, 361–62 (2003) [hereinafter Swain]. Further, the "physical presence" test may protect small vendors, but it also protects large vendors who are not unduly burdened. *Id.* at 363.

In fact, "physical presence" in today's world is not "a meaningful surrogate for the economic presence sufficient

to make a seller the subject of state taxation." *Id.* at 392. "Physical presence" often reflects more the manner in which a company does business rather than the degree to which the company benefits from the provision of government services in the taxing state. Does it really make sense to require Barnes and Noble to collect and remit use taxes, but not impose the same obligation on Amazon.com, based on the difference in their business methods? *See* H. Beau Baez III, *The Rush to the Goblin Market: The Blurring of* Quill*'s Two Nexus Tests,* 29 Seattle U.L.Rev. 581, 582 n. 8 (2006) [hereinafter Baez]; Bradley W. Joondeph, *Rethinking the Role of the Dormant Commerce Clause in State Tax Jurisdiction,* 24 Va. Tax Rev. 109, 135 (2004).

It also seems that, to the extent the Court desired to achieve a "bright line," it may not have achieved its objective. As Justice White predicted in his separate opinion in *Quill,* the "physical presence" test has not put an end to dormant Commerce Clause litigation in the sales and use tax area. *Quill,* 504 U.S. at 329–30, 112 S.Ct. at 1921, 119 L.Ed.2d at 118. *Quill* clearly established that a small sales force, plant, or office is enough to satisfy the nexus test under the dormant Commerce Clause. *See id.* at 315, 112 S.Ct. at 1914–15, 119 L.Ed.2d at 108. Nevertheless, the question of how much "physical presence" is required to establish a "substantial nexus" has still proven problematic. *Compare Orvis Co. v. Tax Appeals Tribunal,* 86 N.Y.2d 165, 630 N.Y.S.2d 680, 654 N.E.2d 954, 961 (N.Y.) (holding that occasional traveling personnel entering jurisdiction is sufficient), *cert. denied sub nom. Vt. Info. Processing, Inc. v. Comm'r,* 516 U.S. 989, 116 S.Ct. 518, 133 L.Ed.2d 426 (1995), *with Johnson,* 19 S.W.3d at 840 & n. 18 (reasoning that physical presence of thousands of credit cards was "constitutionally insignificant"). Many other cases grapple with the question of what amounts to sufficient physical presence to satisfy *Quill.*[1] *See* Hellerstein & Hellerstein, *State and Local Taxation* at 352–54 (citing cases); *see also* Baez, 29 Seattle U.L.Rev. at 595–600; Matthew T. Troyer, Note, *Mail Order Retailers and Commerce Clause Nexus: A Bright Line Rule or an Opaque Standard?,* 30 Ind. L.Rev. 881, 897 (1997) (asserting " '[s]ubstantial ***327** nexus' is too vague to function as a bright-line rule").

There is also the difficult question of when the physical presence of third parties should be attributed to an out-of-state party for purposes of establishing a substantial nexus under *Complete Auto.* The cases are hardly uniform. *Compare Syms Corp. v. Comm'r of Revenue,* 436 Mass. 505, 765 N.E.2d 758, 766 (2002) (precluding deduction from taxable income royalty payments made to a passive investment company), *with Sherwin–Williams Co. v. Comm'r of Revenue,* 438 Mass. 71, 778 N.E.2d 504, 518–19 (2002) (permitting deduction from taxable income royalty payments made to a passive investment company). *See generally* Laskin, 22 Akron Tax J. at 7 n. 24, 8–13.

Moreover, if a "bright line" test is needed in the income tax arena, it may not be physical location but something else, particularly when taxation is based upon the source of the income. For example, the three-factor formula behind the Uniform Division of Income for Tax Purposes Act has been called "something of a benchmark." *Container Corp. of Am. v. Franchise Tax Bd.,* 463 U.S. 159, 170, 103 S.Ct. 2933, 2943, 77 L.Ed.2d 545, 556 (1983).

We also note that the *Quill* decision impliedly suggests a desire on the part of the Supreme Court to defer to Congress on most nexus issues. We find significant the holding of the *Quill* Court that the imposition of sales and use taxes by states on out-of-state residents who utilize only mail and common carriers did not violate due process. By removing the due process impediment to state taxation of mail-order sales when physical presence was lacking, the *Quill* Court opened the door to congressional action.

It seems clear that the *Quill* majority recognized that difficult issues of determining the extent to which the states should be allowed to impose tax obligations on comparatively remote entities was infused with policy and legislative-type judgments that could not be resolved in the context of judicial determination of a particular case. Certainly Justice Scalia and Justice Thomas would not extend the line drawing under the dormant Commerce Clause outside what is required by stare decisis. *See, e.g., Am. Trucking Ass'ns v. Scheiner,* 483 U.S. 266, 304, 107 S.Ct. 2829, 2851, 97 L.Ed.2d 226, 256 (1987) (Scalia, J., dissenting) (asserting judicial intervention under dormant Commerce Clause should be limited to cases involving discrimination against interstate commerce).

We recognize that a counterargument could be made that aggressive judicial intervention is required to prevent states from shifting tax burdens onto out-of-state parties who lack political power in the taxing jurisdiction. We question, however, whether out-of-state entities are as powerless in the halls of state legislatures as they once were in light of the growth of national advocacy groups that protect the local interests of their members and the involvement of national political parties in state political affairs. In addition, in this

case, the in-state presence of franchisees, whose interest in tax matters are likely to be aligned with the franchisor, are well positioned to participate in the local political process. We further note that the mechanism to control any improper shifting of tax burdens onto out-of-state taxpayers is enforcement of the discrimination and apportionment prongs of *Complete Auto,* not the nexus requirement.

Another factor that suggests the physical-presence test should not be extended outside its sales and use tax confines is the potential for tax evasion that the test engenders. Obviously, this concern did not carry the day in *Quill.* But experience ***328** should be instructive; namely, the result in *Bellas Hess* created a huge loophole in the tax structure that, twenty-five years later was practically impossible to close. Further, extension of the "physical presence" approach in *Quill* would be an incentive for entity isolation in which potentially liable taxpayers create wholly owned affiliates without physical presence in order to defeat potential tax liability. *See* Swain, 38 Ga. L.Rev. at 366–68. We doubt that the Supreme Court would want to extend such form-over-substance activity into the income tax arena where substance over form has been the traditional battle cry. *Scripto, Inc.,* 362 U.S. at 211, 80 S.Ct. at 622, 4 L.Ed.2d at 664 (noting that to permit the fine distinction between employees and independent contractors to control the result of taxation under the Commerce Clause would "open the gates to a stampede of tax avoidance").

Finally, we think taxation of the income here is most consistent with the now prevailing substance-over-form approach embraced in most of the modern cases decided by the Supreme Court under the dormant Commerce Clause. When a company earns hundreds of thousands of dollars from sales to Iowa customers arising from the licensing of intangibles associated with the fast-food business, we conclude that the Supreme Court would engage in a realistic substance-over-form assessment that would allow a state legislature to require the payment of the company's fair share of taxes without violating the dormant Commerce Clause.

[3] For the above reasons, we hold that a physical presence is not required under the dormant Commerce Clause of the United States Constitution in order for the Iowa legislature to impose an income tax on revenue earned by an out-of-state corporation arising from the use of its intangibles by franchisees located within the State of Iowa. We hold that, by licensing franchises within Iowa, KFC has received the benefit of an orderly society within the state and, as a result, is subject to the payment of income taxes that otherwise meet the requirements of the dormant Commerce Clause. As a result, the district court judgment on the dormant Commerce Clause issues in this case is affirmed.

IV. State Law Claims.

[4] A. State Law Claim Under Iowa Code Section 422.33. In the alternative to its constitutional attack under the dormant Commerce Clause, KFC argues that the imposition of tax in this case is not authorized by the provisions of Iowa law and related administrative regulations that authorize the imposition of income tax on corporations because of the lack of physical presence within Iowa.

We do not agree. The applicable provision of the Code, Iowa Code section 422.33(1) (1997), imposes an income tax on each corporation "doing business in this state, or deriving income from sources within this state." Iowa Code § 422.33(1). Iowa Code section 422.33(1) further provides that "income from sources within the state" includes "income from real, tangible, or intangible property located or having a situs in the state." *Id.* § 422.33(1)(*d*). The reference to "intangible property" located or "having a situs in the state" is a clear reference to the applicable case law dealing with taxation of income arising from the use of intangibles in connection with transactions within a state. *See, e.g., Nw. States Portland Cement Co.,* 358 U.S. at 464–65, 79 S.Ct. at 365–66, 3 L.Ed.2d at 430–31; *Int'l Harvester,* 322 U.S. at 442, 64 S.Ct. at 1064, 88 L.Ed. at 1379–80; *Whitney,* 299 U.S. at 371–72, 57 S.Ct. at 238, 81 L.Ed. at 287–88. Therefore, the tax at issue in this case falls squarely ***329** within the intended scope of Iowa Code section 422.33.

This interpretation is not diminished by, nor is there anything invalid about, the administrative regulations promulgated pursuant to the statute. IDOR has promulgated regulations implementing Iowa Code section 422.33(1). Under the applicable rules, the statutory phrase "intangible property located or having a situs in this state" is further defined to include intangible property that "has become an integral part of some business activity occurring regularly in Iowa." Iowa Admin. Code r. 701–52.1(1)(d), (4) (1997). Citing *Geoffrey,* the rules specifically provide that, if a corporation owns trademarks and trade names that are used in Iowa, a business situs for purposes of taxation may be present even though the corporation has no physical presence or other contact with Iowa. *See* Iowa Admin. Code r. 701–52.1(4) (Example 4); *see also Geoffrey,* 437 S.E.2d at 18–19. The administrative regulations are simply a logical interpretation of the statute

with citation to the evolving case law on the taxation of revenues earned or arising out of intangible property.

B. Other State Law Claims. KFC raises two other state law claims on appeal. First, it claims that a policy letter issued by IDOR is contrary to the position IDOR has taken in this case and that IDOR has not provided an adequate explanation for its departure from its established policy. Second, KFC claims that IDOR erred by assessing penalties against KFC for its failure to pay the asserted taxes.

[5] Neither of these issues, however, has been preserved for our review. KFC claims that the issues were properly raised before the agency. Even if the issues were properly raised before the agency, KFC was required to file a motion for rehearing under Iowa Code section 17A.16(2) (2009) to preserve the issues when the agency issued a final order that did not address them. This KFC did not do. As a result, when KFC filed its appeal of the administrative action with the district court, there was no ruling on the policy letter or penalty issues for the district court to review.

[6] **[7]** When an agency fails to address an issue in its ruling and a party fails to point out the issue in a motion for rehearing, we find that error on these issues has not been preserved. Our respect for agency processes in administrative proceedings is comparable to that afforded to district courts in ordinary civil proceedings. Just as we do not entertain issues that were not ruled upon by the district court and that were not brought to the district court's attention through a proper posttrial motion, *Meier v. Senecaut,* 641 N.W.2d 532, 540 (Iowa 2002), we decline to entertain issues not ruled upon by an agency when the aggrieved party failed to follow available procedures to alert the agency of the issue. *See Soo Line R.R. v. Iowa Dep't of Transp.,* 521 N.W.2d 685, 688 (Iowa 1994) (stating that the scope of administrative review is limited to questions that were actually considered by the agency); *Chi. & Nw. Transp. Co. v. Iowa Transp. Regulation Bd.,* 322 N.W.2d 273, 276 (Iowa 1982) (finding that an issue first raised in motion for rehearing and considered by the agency is preserved); *Charles Gabus Ford, Inc. v. Iowa State Highway Comm'n,* 224 N.W.2d 639, 647 (Iowa 1974) (discussing requirement of exhaustion of administrative remedies when agency has primary or exclusive jurisdiction over controversy).

V. Conclusion.

For the above reasons, we conclude that the assessment of income tax liability ***330** made by IDOR against KFC does not violate the dormant Commerce Clause or any provision of Iowa law. We further conclude that the issues related to the policy letter and the assessment of penalties have not been preserved. As a result, we affirm the judgment of the district court upholding the action of IDOR in all respects.

AFFIRMED.

All justices concur except WIGGINS, J., who concurs in result.

Footnotes

1 In a pre-*Quill* case, we grappled with the problem of physical presence when an Illinois retailer's contact with Iowa was incidental general advertising and occasional deliveries via employee-driven, company-owned trucks. *Good's Furniture House, Inc. v. Iowa State Bd. of Tax Review,* 382 N.W.2d 145, 146–47 (Iowa), *cert. denied,* 479 U.S. 817, 107 S.Ct. 76, 93 L.Ed.2d 32 (1986). We concluded that the requisite physical presence under *Bellas Hess* was established. *Id.* at 150. Our ruling was criticized for eroding the physical presence nexus standard. *See* Chris M. Amantea, *Use Tax Collection Jurisdiction: Retail Stores on a State Border Held Hostage,* 63 Chi.-Kent L.Rev. 747, 759–64 (1987).

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371 Ill.App.3d 108
Appellate Court of Illinois,
First District, Sixth Division.

The MEAD CORPORATION, an Ohio Corporation, Plaintiff–Appellant,
v.
The DEPARTMENT OF REVENUE, Glen L. Bower, Director of the Department of Revenue, and Judith Baar Topinka, Treasurer of the State of Illinois, Defendants–Appellees.

No. 1–03–1160. | Jan. 12, 2007.

Synopsis

Background: After paying, under protest, income tax and interest pursuant to notices of deficiency relating to Illinois combined unitary income tax return filed by taxpayer, the taxpayer, an Ohio corporation, brought action against Department of Revenue, its Director, and State Treasurer, challenging Department's classification of sales gain, for sale of corporate divisions, as Illinois apportionable business income, and challenging Department's calculation of sales factor denominator for combined apportionment formula. The Circuit Court, Cook County, Alexander P. White, J., granted summary judgment to defendants as to sales factor issue, and after proceedings which included testimony from numerous witnesses, entered judgment for defendants on apportionable business income issue. Taxpayer appealed.

Holdings: The Appellate Court, Fitzgerald Smith, P.J., held that:

[1] finding that nondomiciliary corporate division sold by taxpayer was operational asset of taxpayer was not against manifest weight of evidence;

[2] gain from sale of corporate division was apportionable business income; and

[3] taxpayer was required to use net gain from sale of financial instruments, rather than gross receipts from sale of financial instruments, in denominator of sales apportionment factor for taxation of multistate business.

Affirmed.

West Headnotes (22)

[1] **Appeal and Error**
Mixed questions of law and fact

Where the fact finder examines the legal effect of a given set of facts, it decides a mixed question of law and fact which is subject to an intermediate standard of review, and under such circumstances, the decision is based on fact-finding that is inseparable from the application of law to fact and is reviewed under a clearly erroneous standard.

Cases that cite this headnote

[2] **Appeal and Error**
Clearly erroneous findings

The clearly erroneous standard of review is largely deferential to the decision maker.

Cases that cite this headnote

[3] **Appeal and Error**
Clearly erroneous findings

Under the clearly erroneous standard of review, a finding of the lower court may be reversed only if, after careful review of the entire record in light of the applicable rule of law, the reviewing court is left with the definite and firm conviction that the finding is in error.

Cases that cite this headnote

[4] **Appeal and Error**
Manifest weight

Purely factual findings are entitled to deference and are reversed only if they are contrary to the manifest weight of the evidence.

Cases that cite this headnote

[5] **Administrative Law and Procedure**
Taxation

Taxation

Scope and extent of review in general

On appeal from circuit court's review of Department of Revenue's decision, pure questions of law are reviewed de novo, giving deference to Department's interpretation of its governing statutes and its regulations.

Cases that cite this headnote

[6] **Taxation**
Evidence

Because all of a business's income is presumed to be "business income" for purposes of the Illinois Income Tax Act, an entity claiming that its income is nonbusiness income bears the burden of clearly proving this fact. 35 ILCS 5/1501(a)(1) (2002 Bar Ed.).

Cases that cite this headnote

[7] **Commerce**
Taxation in General
Constitutional Law
Taxation

Under the Commerce Clause and the Due Process Clause, a taxpayer must have some minimum connection to the taxing body and the tax must be rationally related to values connected with the taxing state. U.S.C.A. Const. Art. 1, § 8, cl. 3; U.S.C.A. Const.Amend. 14.

Cases that cite this headnote

[8] **Commerce**
Taxation in General
Constitutional Law
Taxation

The Due Process Clause and the Commerce Clause prohibit a state from taxing value earned outside its borders, and instead require that there be some definite link, some minimum connection, between a state and the transaction it seeks to tax. U.S.C.A. Const. Art. 1, § 8, cl. 3; U.S.C.A. Const.Amend. 14.

Cases that cite this headnote

[9] **Commerce**
Income taxes
Constitutional Law
Income taxes

Under the Due Process Clause and the Commerce Clause, States are permitted to tax the multistate income of a nondomiciliary corporation, where some minimal connection exists between the taxing State and the corporation's business activities, and where a rational relationship exists between the income attributed to the taxing State and the intrastate value of the corporate business. U.S.C.A. Const. Art. 1, § 8, cl. 3; U.S.C.A. Const.Amend. 14.

Cases that cite this headnote

[10] **Commerce**
Taxation in General
Constitutional Law
Due process
Constitutional Law
Due process

The taxpayer has the distinct burden of showing by clear and cogent evidence that the State tax results in the taxation of extraterritorial values, in violation of the Due Process Clause and the Commerce Clause. U.S.C.A. Const. Art. 1, § 8, cl. 3; U.S.C.A. Const.Amend. 14.

Cases that cite this headnote

[11] **Commerce**
Income taxes
Constitutional Law
Income taxes

A State's apportionment of multistate income from a capital or nontangible transaction of a nondomiciliary corporation is constitutional, under the Due Process Clause and the Commerce Clause, in two circumstances: where there is a unitary business relationship between the payor and the payee or where the intangible asset served an operational rather than an investment function. U.S.C.A. Const. Art. 1, § 8, cl. 3; U.S.C.A. Const.Amend. 14.

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Cases that cite this headnote

[12] **Commerce**
Income taxes
Constitutional Law
Income taxes

Under the unitary relationship test, a single State, without violating the Due Process Clause or the Commerce Clause, may tax all the income earned and apportioned from a capital or nontangible transaction, even where a multistate nondomiciliary business has subsidiaries, divisions, or common ownership of other businesses that operate in different jurisdictions, if the businesses have common managerial or operational resources that produce economies of scale and a substantial sharing of values. U.S.C.A. Const. Art. 1, § 8, cl. 3; U.S.C.A. Const.Amend. 14.

Cases that cite this headnote

[13] **Commerce**
Income taxes
Constitutional Law
Income taxes

Under the operational function test relating to taxation of multistate income earned and apportioned from capital or nontangible transaction of nondomiciliary business, even where no unitary relationship exists, a State, without violating the Due Process Clause or the Commerce Clause, may apportion income when the capital transaction serves an operational function rather than an investment function, and the relevant inquiry focuses on the objective characteristics of the asset's use and its relation to the taxpayer and its activities within the taxing State. U.S.C.A. Const. Art. 1, § 8, cl. 3; U.S.C.A. Const.Amend. 14.

Cases that cite this headnote

[14] **Commerce**
Income taxes
Constitutional Law
Income taxes
Taxation
Apportionment of income

Finding that nondomiciliary corporate division which was engaged in online database businesses, and which was sold by nondomiciliary corporate parent which before acquiring division's assets was engaged in producing and selling paper, packaging, and school and office supply products, was operational asset of parent, was not against manifest weight of evidence, for purposes of operational function test relating to taxation of multistate nondomiciliary businesses, under which test a State, without violating Due Process Clause or Commerce Clause, may apportion income when capital transaction serves operational function rather than investment function; division represented significant business segment of parent, parent considered division in parent's strategic planning, particularly with respect to allocating capital resources, and parent manipulated division's business organization, treating it as either a division or a corporate subsidiary, depending on what was more beneficial to parent. U.S.C.A. Const. Art. 1, § 8, cl. 3; U.S.C.A. Const.Amend. 14; 35 ILCS 5/1501 (2002 Bar Ed.).

Cases that cite this headnote

[15] **Evidence**
Matters directly in issue

Expert witnesses may not testify with respect to legal conclusions or give testimony amounting to statutory interpretations.

Cases that cite this headnote

[16] **Taxation**
Apportionment of income

Under transactional test to determine if income is business income for purposes of apportionment under Illinois Income Tax Act, if the income is attributable to a type of business transaction in which the taxpayer regularly engages, it is

business income. 35 ILCS 5/1501(a)(1) (2002 Bar Ed.).

Cases that cite this headnote

[17] **Taxation**
Apportionment of income

Under functional test to determine if income is business income for purposes of apportionment under Illinois Income Tax Act, all gain from disposition of capital asset is considered business income if the asset disposed of was used by taxpayer in its regular trade or business operations. 35 ILCS 5/1501(a)(1) (2002 Bar Ed.).

Cases that cite this headnote

[18] **Taxation**
Apportionment of income

Under functional test to determine if income is business income for purposes of apportionment under Illinois Income Tax Act, gain realized by nondomiciliary corporate parent, from sale of nondomiciliary corporate division, was business income which was apportionable business income for purposes of taxation of multistate business, rather than nonbusiness income from sale of assets; parent remained in business after the sale and reinvested the gain in its ongoing business by using one-third of net proceeds after federal taxes to buy back stock and by using about two-thirds of net proceeds to reduce its debt level and thereby increase parent's working capital. 35 ILCS 5/304(a) (1998 Bar Ed.); 35 ILCS 5/1501(a)(1) (2002 Bar Ed.).

1 Cases that cite this headnote

[19] **Commerce**
Income taxes

Constitutional Law
Income taxes

Taxation
Apportionment of income

Inclusion, when calculating nondomiciliary corporate parent's Illinois apportionable business income, of gain of about $1 billion from sale of nondomiciliary corporate division did not make parent's Illinois apportionable business income grossly disproportionate to its Illinois income or activities, as would violate Due Process Clause and Commerce Clause; parent reported Illinois sales of more than $338 million in year in which division was sold, with more than $46 million of such sales attributable to the division. U.S.C.A. Const. Art. 1, § 8, cl. 3; U.S.C.A. Const.Amend. 14; 35 ILCS 5/304(a) (1998 Bar Ed.); 35 ILCS 5/1501(a)(1) (2002 Bar Ed.).

Cases that cite this headnote

[20] **Taxation**
Apportionment of income

Nondomiciliary corporation was required to use net gain from sale of financial instruments, rather than gross receipts from sale of financial instruments, in denominator of sales apportionment factor for Illinois' taxation of multistate business; use of gross receipts would not result in fair representation of corporation's business activity in Illinois, because gross receipts would add about $4.8 billion to sales factor denominator but corporation actually earned only about $1.9 million in interest income on those financial instruments. S.H.A. 35 ILCS 5/1501(a)(21); 35 ILCS 5/304 (a, f) (1998 Bar Ed.); 86 Ill.Admin. 100.3380(b)(6) (1996).

Cases that cite this headnote

[21] **Taxation**
Administrative agencies and regulations

The Department of Revenue has authority to make reasonable regulations, which have the force and effect of law.

Cases that cite this headnote

[22] **Administrative Law and Procedure**
Determination of validity; presumptions

Administrative Law and Procedure
Construction

An administrative regulation, which is construed under the same standards governing the construction of statutes, is presumed to be valid,

and the burden of establishing the regulation is unconstitutional is charged to the party challenging its validity.

Cases that cite this headnote

Attorneys and Law Firms

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Opinion

Presiding Justice FITZGERALD SMITH delivered the opinion of the court:

*****569** ***111** Plaintiff Mead Corporation, an Ohio corporation (Mead or plaintiff), appeals three orders of the circuit court concerning the classification and calculation of sales gain reported on its 1994 Illinois tax return, granting judgment in favor of defendants Illinois Department of Revenue (Department), Glen L. Bower, Director of the Illinois Department of Revenue,[1] and Judith *****570** ****1135** Baar Topinka, Treasurer of the State of Illinois (collectively, defendants). Mead filed a combined unitary Illinois income tax return for the 1994 tax year, including Mead Data Central, Inc., Lexis, Inc., and Nexis, Inc. (collectively, Lexis/Nexis), as members of its unitary business group, and including in its Illinois combined apportionable business income the 1994 income earned by Lexis/Nexis, but excluding the gain of more than $1 billion from the sale of Lexis/Nexis that year. Mead also included its gross receipts from the sale of interest-bearing financial instruments in its sales factor denominator of the combined apportionment formula. The Department determined that the Lexis/Nexis sale gain constituted apportionable business income and the net income, rather than the gross receipts from the sale of the financial instruments, should be used to compute Mead's sales factor denominator. After the Department issued notices of deficiencies for more than $4 million in income tax and interest, which Mead paid under protest, Mead challenged the Department's classification of the sales gain as apportionable business income and its calculation of the sales factor denominator. We affirm.

This case presents a voluminous record. However, the facts, as set forth below, are essentially undisputed.

Mead is an Ohio corporation which transacts business in Illinois. In 1968, when Mead was a producer and seller of paper, packaging, and school and office supplies, it purchased Data Corporation for $6 million. At the time, Data Corporation was developing, among other things, ink-jet printing technologies and a computerized full text information retrieval system. The latter, by 1973, evolved into Lexis/Nexis. Over the years, Mead made capital contributions to Lexis/Nexis, which become profitable only by the end of the 1970s.

During its ownership of Lexis/Nexis, Mead treated Lexis/Nexis variously as a corporate division or as a subsidiary. In 1980, Lexis/Nexis was merged into Mead as a division; in 1985, Lexis/Nexis was reincorporated separately. In December 1993, Mead and Lexis/Nexis merged again, with Lexis/Nexis again becoming a division of the parent ***112** company. During the years of ownership, Mead continued to approve major capital expenditures for Lexis/Nexis, including a 1984 expansion of the Lexis/Nexis computer center and central processing units. In 1993, at the time of the second merger, Mead's board of directors approved a capital expenditure of nearly $13 million for the improvement of Lexis/Nexis' search system. Again, the following year, the Mead board approved significant expenditures for Lexis/Nexis.

Mead and Lexis/Nexis maintained separate day-to-day business operations, and they did not share personnel or make joint purchases. Since 1980, Lexis/Nexis had its own building about 15 miles from Mead's Dayton headquarters. There was no centralized manufacturing or warehousing of products, and Mead and Lexis/Nexis were described as having different corporate cultures. There were no favorable intercompany transactions. However, Mead made nightly a cash sweep of Lexis/Nexis bank accounts, investing the funds with benefits accruing to Lexis/Nexis, but in a manner decided by Mead.

Since 1988, the Department had asserted that Mead and Lexis/Nexis were a unitary business. Although Mead disagreed, to settle disputed audit findings, Mead included Lexis/Nexis in its unitary business group from 1988 through 1994. According *****571** ****1136** to Mead's 1993 annual

report, Mead was not only "one of the world's largest manufacturers of paper," and a leader in packaging, but it was "the developer of the world's leading electronic information retrieval services for law, patents, accounting, finance, news and business information." Lexis/Nexis was included as one of Mead's business segments, but not in Mead's discussion of its "investees." Mead filed a 10–K form with the Securities and Exchange Commission (SEC) for the year ending December 31, 1993, in which Mead described itself as a company engaged in the manufacture and sale of paper and wood products, and school and office supplies, and engaged in electronic publishing.

In May 1994, Mead announced its plan to sell Lexis/Nexis, stating in its press release that it had "grown" Lexis/Nexis "since 1968 from a small legal database into the world's premier provider of online legal information and the pioneer in computer-assisted news retrieval." On December 2, 1994, Mead sold the assets of Lexis/Nexis to Reed Elsevier, plc, for approximately $1.5 billion. In describing the divestiture in its 1994 annual report, Mead again stated that had "grow[n] this business" but decided to use approximately $350,000 of the gain to buy back stock. Mead also used the proceeds to reduce its short- and long-term debt levels.

For the 1994 tax year, Mead and its subsidiaries filed an Illinois combined unitary income tax return, in which it listed Lexis/Nexis as a unitary subsidiary, as it had done from 1988–93. Mead reported its ***113** base income as $1,074,709,139 and its Illinois sales in 1994 as $338,309,666, of which Lexis/Nexis contributed $46,912,518. Mead reported as nonbusiness income $1,056,001,948 in gain from the sale of its Lexis/Nexis division. The reported nonbusiness income was a gain on "goodwill" realized from the Lexis/Nexis sale. Mead also included Lexis/Nexis' assets in its Illinois apportionment factors on its 1994 Illinois return. Mead included in its computation of the denominator of the sales apportionment factor $4,846,382,229 as gross receipts from the sale of financial instruments, of which $1,967,953.61 was interest income earned by those investments.

The Department audited Mead's Illinois income tax returns for the 1993 and 1994 tax years and issued two notices of deficiencies for the 1994 tax year. The deficiency notices resulted from two audit findings: (1) the $1,056,001,948 gain from the Lexis/Nexis sale was improperly classified as nonbusiness income and (2) Mead could include only the $1,967,953.61 that was interest income in its sales factor denominator rather than the $4,846,382,229 gross receipts from the sale of financial instruments. The Department found that Mead owed $3,149,222 in Illinois income tax and $1,049,017 in interest.

Mead protested, but paid the amount into the protest fund (see 30 ILCS 230/1 *et seq.* (West 2002)). In January 2001, Mead filed an amended verified complaint, seeking injunctive and declaratory relief. In the amended complaint, Mead challenged the Department's classification of the gain from the Lexis/Nexis sale as apportionable business income and the Department's calculation of its sales factor denominator.

In March 2002, proceedings on the former issue, which included the testimony of numerous witnesses, were held before the circuit court, while the latter issue was decided on the parties' cross-motions for partial summary judgment. As to the latter issue, the computation of the sales factor, the circuit court initially granted Mead's motion, and the Department filed a motion for reconsideration. On December 2, 2002, the court issued a memorandum *****572** ****1137** decision, judgment and order, reversing the partial summary judgment in Mead's favor, denying Mead's motion for partial summary judgment, and granting the Department's motion for the same.

On March 18, 2003, the court issued a memorandum decision, judgment and order deciding the classification issue. In its order, the court found, among other things, that Mead and Lexis/Nexis were not unitary, the sale of Lexis/Nexis represented a liquidation in the business of electronic publishing, and, because the property disposed of in the liquidation was "essential to the taxpayer's regular trade or operations," the gain therefrom was apportionable business income.

***114** On March 25, 2003, the court issued a final judgment order, finding that all issues in plaintiff's first amended verified complaint had been resolved in favor of defendants (based on the findings of fact and conclusions of law set forth in the orders of December 2, 2002, and March 18, 2003) and that no remand to the Department was necessary. The court dissolved preliminary injunctions that had been entered in 1999 and 2001, ordered judgment to be entered in defendants' favor in the amount of $4,238,221, representing the 1999 and 2000 payments by plaintiff made under protest, ordered the State Treasurer to transfer the protest payments from the protest fund to the appropriate state fund, and stated that the order represented a complete disposition of all issues.

Mead appeals from the December 2, 2002, and March 18 and 25, 2003, orders.

On appeal, Mead first contends that the gain from the 1994 sale of Lexis/Nexis should be allocated rather than classified as apportionable Illinois income.

[1] **[2]** Initially, we note that the parties appear to agree on the standard of review. Both agree that the circuit court heard substantial testimony and considered documents and stipulated facts, but that, for the most part, the facts of this case were undisputed. The parties further recognize that, where the fact finder examines the legal effect of a given set of facts, it decides a mixed question of law and fact which is subject to an intermediate standard of review. See *Carpetland U.S.A., Inc. v. Illinois Department of Employment Security,* 201 Ill.2d 351, 369, 267 Ill.Dec. 29, 776 N.E.2d 166 (2002); *City of Belvidere v. Illinois State Labor Relations Board,* 181 Ill.2d 191, 205, 229 Ill.Dec. 522, 692 N.E.2d 295 (1998). Under such circumstances, the decision is based on fact-finding that is inseparable from the application of law to fact and is reviewed under a clearly erroneous standard. *Carpetland U.S.A., Inc.,* 201 Ill.2d at 369, 267 Ill.Dec. 29, 776 N.E.2d 166; see *AFM Messenger Service, Inc. v. Department of Employment Security,* 198 Ill.2d 380, 391, 261 Ill.Dec. 302, 763 N.E.2d 272 (2001). This standard is largely deferential to the decision maker. *AFM Messenger Service, Inc.,* 198 Ill.2d at 395, 261 Ill.Dec. 302, 763 N.E.2d 272; *Zebra Technologies Corp. v. Topinka,* 344 Ill.App.3d 474, 480, 278 Ill.Dec. 860, 799 N.E.2d 725 (2003).

[3] **[4]** **[5]** Under the clearly erroneous standard, a finding of the lower court may be reversed only if, after careful review of the entire record in light of the applicable rule of law, the reviewing court is left with the " 'definite and firm conviction' " that the finding is in error. *Carpetland* ***115** *U.S.A., Inc.,* 201 Ill.2d at 369, 267 Ill.Dec. 29, 776 N.E.2d 166, quoting *AFM Messenger Service, Inc.,* 198 Ill.2d at 395, 261 Ill.Dec. 302, 763 N.E.2d 272; *Zebra Technologies Corp.,* 344 Ill.App.3d at 481, 278 Ill.Dec. 860, 799 N.E.2d 725. Purely factual findings are entitled to deference and are reversed only if they are contrary to the manifest weight of the evidence (*Carpetland* *****573** ****1138** *U.S.A., Inc.,* 201 Ill.2d at 369, 267 Ill.Dec. 29, 776 N.E.2d 166; *Zebra Technologies Corp.,* 344 Ill.App.3d at 480, 278 Ill.Dec. 860, 799 N.E.2d 725), while pure questions of law are reviewed *de novo* (*Carpetland U.S.A., Inc.,* 201 Ill.2d at 369, 267 Ill.Dec. 29, 776 N.E.2d 166; *Zebra Technologies Corp.,* 344 Ill.App.3d at 480, 278 Ill.Dec. 860, 799 N.E.2d 725), giving deference to the Department's interpretation of its governing statutes and its regulations (see *Automatic Data Processing, Inc. v. Department of Revenue,* 313 Ill.App.3d 433, 443–44, 246 Ill.Dec. 246, 729 N.E.2d 897 (2000)).

The Illinois Income Tax Act (Act) provides that a corporate taxpayer conducting a multistate business in Illinois use the formula apportionment method of taxation. 35 ILCS 5/304(a) (West 2002) [2]; *Automatic Data Processing, Inc.,* 313 Ill.App.3d at 438–39, 246 Ill.Dec. 246, 729 N.E.2d 897. Under the formula set forth in section 304(a), three factors, which are calculated in fractions, were used to apportion income: Illinois property in proportion to all property; Illinois payroll in proportion to all payroll; and Illinois sales in proportion to all sales. 35 ILCS 5/304(a) (West 2002); *Automatic Data Processing, Inc.,* 313 Ill.App.3d at 439, 246 Ill.Dec. 246, 729 N.E.2d 897. The sales factor was double weighted. 35 ILCS 5/304(a) (West 2002); *Automatic Data Processing, Inc.,* 313 Ill.App.3d at 439, 246 Ill.Dec. 246, 729 N.E.2d 897.

[6] The Act defines business income as "income arising from transactions and activity in the regular course of the taxpayer's trade or business," which includes "income from tangible and intangible property if the acquisition, management, and disposition of the property constitute integral parts of the taxpayer's regular trade or business." 35 ILCS 5/1501(a)(1) (West 2002); see also *Texaco–Cities Service Pipeline Co. v. McGaw,* 182 Ill.2d 262, 267, 230 Ill.Dec. 991, 695 N.E.2d 481 (1998). Because all of a business's income is presumed to be "business income" (see *Borden, Inc. v. Department of Revenue,* 295 Ill.App.3d 1001, 1010, 230 Ill.Dec. 169, 692 N.E.2d 1335 (1998)), an "entity claiming that its income is nonbusiness income bears the burden of clearly proving this fact" (*Texaco–Cities,* 182 Ill.2d at 268, 230 Ill.Dec. 991, 695 N.E.2d 481).

Mead contends that the income from the Lexis/Nexis sale was nonbusiness income, subject to allocation rather than apportionment, and that apportionment was unconstitutional. The Department counters that apportionment here passes constitutional muster because the requisite nexus to Illinois and rational relationship to Mead's business activities in Illinois existed. We agree.

[7] **[8]** **[9]** **[10]** Under the United States Constitution, the taxpayer must have " 'some minimum connection' " to the taxing body and the tax must be " 'rationally related to "values connected with the taxing ***116** [s]tate." ' " *Hercules, Inc. v.*

Department of Revenue, 324 Ill.App.3d 329, 335, 257 Ill.Dec. 223, 753 N.E.2d 418 (2001), quoting *Quill Corp. v. North Dakota,* 504 U.S. 298, 306, 112 S.Ct. 1904, 1909–10, 119 L.Ed.2d 91, 102 (1992), quoting *Moorman Manufacturing Co. v. Bair,* 437 U.S. 267, 273, 98 S.Ct. 2340, 2344, 57 L.Ed.2d 197, 204 (1978). The due process and commerce clauses of the United States Constitution prohibit a state from taxing value earned " outside its borders" (*Home Interiors & Gifts, Inc. v. Department of Revenue,* 318 Ill.App.3d 205, 210, 251 Ill.Dec. 820, 741 N.E.2d 998 (2000), citing *Allied–Signal,* *****574** ****1139** *Inc. v. Director, Division of Taxation,* 504 U.S. 768, 112 S.Ct. 2251, 119 L.Ed.2d 533 (1992); *Hormel Foods Corp. v. Zehnder,* 316 Ill.App.3d 1200, 1203, 250 Ill.Dec. 181, 738 N.E.2d 145 (2000)), but instead require that there be " ' "some definite link, some minimum connection, between a state and the * * * transaction it seeks to tax" ' " (*Hercules, Inc.,* 324 Ill.App.3d at 336, 257 Ill.Dec. 223, 753 N.E.2d 418, quoting *Quill Corp.,* 504 U.S. at 306, 112 S.Ct. at 1909, 119 L.Ed.2d at 102, quoting *Miller Brothers Co. v. Maryland,* 347 U.S. 340, 344–45, 74 S.Ct. 535, 539, 98 L.Ed. 744, 748 (1954)). States are permitted, however, to tax the multistate income of a nondomiciliary corporation where such minimal connection exists between the taxing state and the corporation's business activities and where a rational relationship exists between " 'the income attributed to the taxing State and the intrastate value of the corporate business.' " *Hercules, Inc.,* 324 Ill.App.3d at 336, 257 Ill.Dec. 223, 753 N.E.2d 418, quoting *Allied–Signal, Inc.,* 504 U.S. at 772, 112 S.Ct. at 2255, 119 L.Ed.2d at 542. Further, the taxpayer has " 'the distinct burden of showing by clear and cogent evidence that [the state tax] results' in the taxation of 'extraterritorial values.' " *Hercules, Inc.,* 324 Ill.App.3d at 336, 257 Ill.Dec. 223, 753 N.E.2d 418, quoting *Container Corp. of America v. Franchise Tax Board,* 463 U.S. 159, 164, 103 S.Ct. 2933, 2939, 77 L.Ed.2d 545, 554 (1983).

[11] **[12]** A state's apportionment of income of a multistate nondomiciliary corporation from a capital or nontangible transaction is constitutional in two circumstances: where there is a unitary business relationship between the payor and the payee or where the intangible asset served an operational rather than an investment function. *Hercules, Inc.,* 324 Ill.App.3d at 336, 257 Ill.Dec. 223, 753 N.E.2d 418; see also *Allied–Signal, Inc.,* 504 U.S. at 787, 112 S.Ct. at 2263, 119 L.Ed.2d at 552. Under the unitary relationship test, a single state may tax all the income earned and apportioned, even where a business has subsidiaries, divisions, or common ownership of other businesses that operate in different jurisdictions, if the businesses have common managerial or operational resources that "produce economies of scale and a substantial sharing of values." *Hercules, Inc.,* 324 Ill.App.3d at 336, 257 Ill.Dec. 223, 753 N.E.2d 418; see also *Container Corp. of America,* 463 U.S. at 179, 103 S.Ct. at 2947, 77 L.Ed.2d at 562.

[13] ***117** Under the operational function test, even where no unitary relationship exists, a state may apportion income when the capital transaction serves an operational function rather than an investment function. *Hercules, Inc.,* 324 Ill.App.3d at 337, 257 Ill.Dec. 223, 753 N.E.2d 418; see also *Allied–Signal, Inc.,* 504 U.S. at 787, 112 S.Ct. at 2263, 119 L.Ed.2d at 552. There, the relevant inquiry focuses on the " 'objective characteristics of the asset's use and its relation to the taxpayer and its activities within the taxing State.' " *Hercules, Inc.,* 324 Ill.App.3d at 337, 257 Ill.Dec. 223, 753 N.E.2d 418, quoting *Allied–Signal, Inc.,* 504 U.S. at 785, 112 S.Ct. at 2262, 119 L.Ed.2d at 550.

[14] Mead does not dispute that Lexis/Nexis had the requisite connection, or nexus, with Illinois. Rather, it contends that taxation of the intangible income, including the gain on goodwill, from the Lexis/Nexis sale was unconstitutional because Mead and Lexis/Nexis were not unitary (as the circuit court found) and because its ownership of Lexis/Nexis did not serve an operational function, but merely an investment function. In response, the Department argues that the court erred by finding there was no unitary relationship and that, in any event, Mead failed its *****575** ****1140** burden of proving that Lexis/Nexis was not an operational asset. Because we agree with the latter contention, we do not address the Department's claim of error as to the "lack of unitary business" finding.

Here, among its findings of contested facts, the circuit court found that Mead's investment in Lexis/Nexis "did serve an operational purpose, in that Lexis/Nexis represented a significant business segment of Mead." The court recognized that although, according to testimony of two of Mead's witnesses, there was no functional integration of the companies, the court also found it was "not clear that there was no operational purpose." For that conclusion, the court relied upon the fact that Mead considered Lexis/Nexis in its strategic planning, particularly in the allocation of its resources. It concluded that the "operational purpose allowed Mead to limit the growth of Lexis/Nexis if only to limit its ability to expand or to contract through its control of capital investment."

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In its challenge to that finding, Mead relies almost exclusively upon *Hercules, Inc.* and *ASARCO Inc. v. Idaho State Tax Comm'n,* 458 U.S. 307, 102 S.Ct. 3103, 73 L.Ed.2d 787 (1982), which is cited therein. In *Hercules, Inc.,* the court reversed a decision that all capital gains from a second corporation owned by the plaintiff corporation constituted apportionable business income because the court determined there was no operational purpose in the plaintiff corporation's investment in the second corporation. *Hercules, Inc.,* 324 Ill.App.3d at 343–44, 257 Ill.Dec. 223, 753 N.E.2d 418. However, the facts of *Hercules, Inc.* are readily distinguishable from those in the instant case. There, the gain at issue resulted ***118** from the plaintiff Hercules Corporation's sale of its minority stake in Himont, which had been formed by Hercules in a joint venture with a foreign corporation. The court rejected the argument that Hercules' investment in Himont served an operational purpose, based in part on Himont's "stand alone" status. *Hercules, Inc.,* 324 Ill.App.3d at 338, 257 Ill.Dec. 223, 753 N.E.2d 418. Hercules never owned a majority share of Himont and it did not exercise management control over Himont.

Here, in contrast to Hercules' minority (38.7%) ownership and lack of management control over its subsidiary corporation, Mead was 100% owner of Lexis/Nexis. Although Mead did not have day-to-day control over Lexis/Nexis, its involvement with Lexis/Nexis was more than merely passive. Mead developed Lexis/Nexis by contributing capital support until it become profitable. Further, Mead continued to approve major capital expenditures by Lexis/Nexis. It also manipulated Lexis/Nexis' business organization, treating it as either a division or a corporate subsidiary, depending on what was more beneficial to Mead. Additionally, Mead retained tax benefits and control over Lexis/Nexis' excess cash.

Moreover, in its own 1993 annual report, Mead identified itself as "the developer of the world's leading electronic information retrieval services for law, patents, accounting, finance, news and business information"; likewise, in its 1993 10–K form, Mead described itself as engaged in electronic publishing and included Lexis/Nexis in its discussion of business segments rather than its "investees." Compare *Allied–Signal, Inc.,* 504 U.S. at 788, 112 S.Ct. at 2263, 119 L.Ed.2d at 552 (company's 20.6% ownership of subsidiary's stock did not establish operational relationship); *ASARCO Inc.,* 458 U.S. at 321–22, 102 S.Ct. at 3111–12, 73 L.Ed.2d at 798–99 (bare majority ownership of stock not enough to show operational relationship in light of lack of ability to control subsidiary).

****1141 ***576 [15]** Mead also relies heavily in its challenge to the court's finding of operational purpose upon its assertion that the court improperly considered the annual report and the 10–K form in making that finding. However, Mead presents no relevant legal authority to support such assertion. Additionally, for the same point, Mead relies upon the testimony of its experts, particularly that of Dr. Ferdinand Schoettle, an economist, and Professor Richard Pomp, a tax law expert. However, experts may not testify with respect to legal conclusions or give testimony amounting to statutory interpretations. *LID Associates v. Dolan,* 324 Ill.App.3d 1047, 1058, 258 Ill.Dec. 592, 756 N.E.2d 866 (2001); *Coyne v. Robert H. Anderson & Associates, Inc.,* 215 Ill.App.3d 104, 112, 158 Ill.Dec. 750, 574 N.E.2d 863 (1991). Therefore, Mead has not established that the court's finding of an operational purpose was against the manifest ***119** weight of the evidence (see *Zebra Technologies Corp.,* 344 Ill.App.3d at 480, 278 Ill.Dec. 860, 799 N.E.2d 725), nor has it established as clearly erroneous the conclusion that the gain was nonbusiness income (see *Texaco–Cities,* 182 Ill.2d at 268, 230 Ill.Dec. 991, 695 N.E.2d 481).

Next, Mead contends the gain was nonbusiness income under *Blessing/White, Inc. v. Zehnder,* 329 Ill.App.3d 714, 263 Ill.Dec. 572, 768 N.E.2d 332 (2002), because it resulted from the liquidation of an entire line of business. The Department responds that Mead did not prove that the gain was not business income. [3] We agree.

[16] [17] As previously set forth, the Act defines business income as "income arising from transactions and activity in the regular course of the taxpayer's trade or business," which includes "income from tangible and intangible property if the acquisition, management, and disposition of the property constitute integral parts of the taxpayer's regular trade or business." 35 ILCS 5/1501(a)(1) (West 2002). Two tests, corresponding to the two clauses in section 1501(a)(1), are applied to determine if income from the disposition of a capital asset is "business income." See *Texaco–Cities Service Pipeline Co.,* 182 Ill.2d at 268, 230 Ill.Dec. 991, 695 N.E.2d 481. Under the first, the "transactional test," if the income is " 'attributable to a type of business transaction in which [the] taxpayer regularly engages,' " it is business income. *Texaco–Cities Service Pipeline Co.,* 182 Ill.2d at 269, 230 Ill.Dec. 991, 695 N.E.2d 481, quoting *National Realty & Investment Co. v. Department of Revenue,* 144 Ill.App.3d 541, 554, 98

Ill.Dec. 802, 494 N.E.2d 924 (1986). Under the second test, the "functional test," all gain from the disposition of a capital asset is considered business income if the asset disposed of was " 'used by the taxpayer in its regular trade or business operations.' " *Texaco–Cities Service Pipeline Co.,* 182 Ill.2d at 269, 230 Ill.Dec. 991, 695 N.E.2d 481, quoting *National Realty & Investment Co.,* 144 Ill.App.3d at 554, 98 Ill.Dec. 802, 494 N.E.2d 924.

[18] In the instant case, while Mead asserts that the gain did not satisfy either the transactional or the functional test, the conclusion reached as to the former test is undisputed. Therefore, we do not consider *****577 **1142** the transactional test, but only the functional test. Mead claims that the gain qualifies as nonbusiness income under a "modified" form of the functional test set forth in *Blessing/White Inc.,* 329 Ill.App.3d 714, 263 Ill.Dec. 572, 768 N.E.2d 332.

***120** There, the corporate taxpayer sold substantially all its assets, ceased doing business in Illinois, and distributed the proceeds to its individual shareholders. The court held that the functional test is satisfied in such cases only where the property and the liquidation of assets, *i.e.,* the disposition, are essential to the taxpayer's regular trade or operations. *Blessing/White, Inc.,* 329 Ill.App.3d at 726, 263 Ill.Dec. 572, 768 N.E.2d 332. Further, the court found significant that the proceeds were "not used to support any ongoing business concerns but, instead, disbursed in their entirety to the company's shareholders." *Blessing/White, Inc.,* 329 Ill.App.3d at 728, 263 Ill.Dec. 572, 768 N.E.2d 332. [4]

Here, in contrast, there was no such disbursement to shareholders. Rather, Mead remained in business and reinvested the gain in its ongoing business. Mead paid federal taxes on the gain, then used about one-third of the proceeds to buy back stock and about two-thirds to reduce its debt level. While Mead argues that such actions increased the value of its shares, and thus benefitted its shareholders, we find such contention unpersuasive in this context. Mead reduced its debt levels and the company's long-term debt to capital ratio from 46% to 30.5%, and, using the Lexis/Nexis sale gain, increased its working capital to $807 million compared to $380 million the previous year. Further, unlike the Department's treatment of the taxpayer as two separate corporations under section 338(h)(10) of the Internal Revenue Code in *American States Insurance Co.,* 352 Ill.App.3d at 531–32, 287 Ill.Dec. 692, 816 N.E.2d 659, the Department here claimed that Mead and Lexis/Nexis were unitary.

Mead also relies upon cases from foreign jurisdictions for its contention that the business liquidation exception should apply here. See, *e.g., Lenox, Inc. v. Tolson,* 353 N.C. 659, 548 S.E.2d 513 (2001); *Laurel Pipe Line Co. v. Commonwealth,* 537 Pa. 205, 642 A.2d 472 (1994); *May Department Stores Co. v. Indiana Department of State Revenue,* 749 N.E.2d 651 (2001). For its part, the Department, recognizing its failure to raise such argument before the court below normally would result in waiver of the issue, nonetheless contends that *Blessing/White, Inc.* is contrary to Illinois law and provides inconsistent precedent with the "business liquidation exception" to the functional test for business income. On that basis, it asks ***121** this court to address that doctrine. However, having concluded that the Lexis/Nexis sale does not fall within the business liquidation exception, set forth in *Blessing/White, Inc.,* to the functional test for business income, we need not consider foreign authorities or address the validity of the business liquidation exception. Rather, because Mead reinvested the sale proceeds in its ongoing business, the court properly concluded that the gain satisfied the functional test and was properly identified as business income.

[19] Finally, Mead contends that the inclusion of the Lexis/Nexis sale gain in its Illinois apportionable business income is *****578 **1143** unconstitutional because it is disproportionate to Mead's activities in Illinois. The Department responds that Mead never sought alternative apportionment (see 35 ILCS 5/304(f) (West 2002) (party seeking alternative apportionment must petition Director for it)) and that Mead has not proved by the clear and cogent evidence required that the income attributable to Illinois is " 'out of all appropriate proportions to the business transacted' " in Illinois (*Container Corp. of America,* 463 U.S. at 170, 103 S.Ct. at 2942, 77 L.Ed.2d at 556, quoting *Hans Rees' Sons, Inc. v. North Carolina ex rel. Maxwell,* 283 U.S. 123, 135, 51 S.Ct. 385, 389, 75 L.Ed. 879, 908 (1931)). We agree and note the Department's point that, in the case upon which Mead relies almost exclusively, *Hans Rees' Sons, Inc. v. North Carolina ex rel. Maxwell,* 283 U.S. 123, 51 S.Ct. 385, 75 L.Ed. 879 (1931), a challenge to the three-factor formula (like the one used by the Department) was rejected by the United States Supreme Court, which held that such formula does not distort income attributable to the State. *Container Corp. of America,* 463 U.S. at 182–84, 103 S.Ct. at 2949–50, 77 L.Ed.2d at 564–65 (no unconstitutional distortion even where combined apportionment converted net losses into substantial profits). See also *Pennzoil Co. v. Department of Revenue,*

332 Or. 542, 550 n. 4, 33 P.3d 314, 318–19 n. 4 (2001) (finding "*Hans Rees'* is of limited value" in the states using a multifactor apportionment).

Moreover, as the Department maintains, Mead did not establish that either it or Lexis/Nexis did not do substantial business in Illinois. As the Department notes, Mead's 1994 tax return indicates that the contrary is true: Mead reported Illinois sales of more than $338 million, of which over $46 million were attributable to Lexis/Nexis. Mead also relies upon a conclusion by its accounting expert, Kennion Yano, of distortion, but that testimony was considered by the circuit court, along with the auditor's criticism of Yano's evidence. The court ultimately struck Yano's conclusion. Mead has not proven clearly and cogently that the apportionment of the Lexis/Nexis gain was grossly disproportionate to its Illinois income or activities. For the reasons ***122** stated above, Mead has not established as clearly erroneous the court's conclusion that the gain from the sale of Lexis/Nexis was apportionable business income.

[20] Mead also contends that the gross receipts from the sale of financial instruments should be included in the calculation of its sales factor on its 1994 Illinois tax return.

This issue of whether the Department properly excluded from the sales factor denominator the $4.8 billion that Mead reported in gross receipts of financial instruments was decided on the parties' cross-motions for summary judgment. Accordingly, because the issue was resolved on motions for summary judgment, which is granted where the pleadings, depositions, admissions, and affidavits, if any, show that there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law, review is *de novo.* 735 ILCS 5/2–1005(c) (West 2002); *Arangold Corp. v. Zehnder,* 204 Ill.2d 142, 146, 272 Ill.Dec. 600, 787 N.E.2d 786 (2003).

As previously noted, section 304 of the Act, which governs business income of persons other than residents, provides in subsection (a) an apportionment formula for corporations conducting business in Illinois. 35 ILCS 5/304(a) (West 2002). As set forth in section 304(a), one of the factors used in calculating this formula is the "sales factor," which is "a fraction, the numerator of which is the total of sales of *****579** ****1144** the person in this State during the taxable year, and the denominator of which is the total sales of the person everywhere during the taxable year." 35 ILCS 5/ 304(a)(3)(A) (West 2002). Section 304 also explicitly allows for alternative allocation upon petition of either the taxpayer or the Director of the Department if the apportionment provisions "do not fairly represent the extent of [the taxpayer's] business activity in this State." 35 ILCS 5/304(f) (West 2002).

Mead relies on the definition in section 1501(a)(21) of the Act which states that " 'sales' means all gross receipts of the taxpayer not allocated under Sections 301, 302, and 303" (35 ILCS 5/1501(a)(21) (West 2002)) for its claim that the gross receipts from the sale of financial instruments should be included in the calculation of its sales factor on its 1994 Illinois tax return. Yet, section 1501 ("Definitions") provides generally that the stated definition applies "in this Act, where not otherwise distinctly expressed or manifestly incompatible with the intent thereof" (35 ILCS 5/1501(a) (West 2002)), but, as noted, section 304, which addresses the "sales factor," explicitly allows for alternative allocation upon petition of either the taxpayer or the Director (35 ILCS 5/304(f) (West 2002)). Although "sales," then, may mean all gross receipts of the taxpayer that otherwise qualify as business income (see 35 ILCS 5/1501(a)(21) (West 2002)), under the standard ***123** apportionment formula, section 304 explicitly provides for modification of the apportionment provisions (35 ILCS 5/304(f) (West 2002)); therefore, we reject Mead's argument that the plain language of the statute requires the inclusion of the disputed gross receipts in the calculation of the sales factor.

Rather, in accordance with the authority granted by section 304(f), section 100.3380 of the Department's regulations was enacted. See 86 Ill. Adm.Code § 100.3380 (1996).[5] Section 100.3380(b)(6) provides special rules for computing the sales factor; one of those rules governs the sale of business intangibles and provides that "[i]n the case of sales of business intangibles * * * gross receipts shall be disregarded and only the net gain (loss) therefrom shall be included in the sales factor." 86 Ill. Adm.Code § 100.3380(b)(6) (1996).

[21] **[22]** Mead asserts that the Department cannot "circumvent" the meaning of the statute by adopting a regulation. However, the Department has proper authority to make reasonable regulations, which have the force and effect of law. *Exhibits, Inc. v. Sweet,* 303 Ill.App.3d 423, 427, 237 Ill.Dec. 250, 709 N.E.2d 236 (1998). The regulation, which is construed under the same standards governing the construction of statutes, is presumed to be valid, and the burden of establishing the regulation is unconstitutional is charged to the party challenging its validity. *Exhibits, Inc.,* 303 Ill.App.3d at 427, 237 Ill.Dec. 250, 709 N.E.2d 236.

In its challenge to the validity of the regulation at issue, Mead relies primarily upon the testimony of its experts and a general principle concerning administrative rules. See *Canteen Corp. v. Department of Revenue,* 123 Ill.2d 95, 108, 121 Ill.Dec. 267, 525 N.E.2d 73 (1988) (administrative rules can neither limit nor extend the scope of a statute).[6] While the Department *****580** ****1145** questions the competency of the testimony of Mead's experts (see, *e.g., LID Associates,* 324 Ill.App.3d at 1058, 258 Ill.Dec. 592, 756 N.E.2d 866), we do not find Mead's argument persuasive and, in any event, believe that section ***124** 304(f) of the Act and section 100. 3380 were correctly applied here.

Again, section 304(f) explicitly provides for modification of the apportionment provisions to avoid unfair representation of the extent of the taxpayer's business activity in Illinois. 35 ILCS 5/304(f) (West 2002). The inclusion of the gross receipts from the sale of financial instruments in Mead's sales factor denominator would not have resulted in a fair representation of its business activity; the gross receipts add approximately $4.8 billion to Mead's sales factor denominator when it actually earned only about $1.9 million on those investments. Accordingly, we believe summary judgment was properly granted in favor of the Department on this issue.

Therefore, we affirm the judgment of the circuit court as set forth in its orders of December 2, 2002, and March 18 and 25, 2003.

Affirmed.

McNULTY and O'MALLEY, JJ., concur.

Parallel Citations

371 Ill.App.3d 108, 861 N.E.2d 1131

Footnotes

1 Defendants note that the current Director, Brian Hamer, may be substituted for Bower, who is the former Director.

2 The Department notes that, starting in 1999, a single factor apportionment method based solely on sales has been applied. See 35 ILCS 5/304(h), 1501(a)(27) (West 2002).

3 We note the Department's citation, as supplemental authority, of the 2004 amendment of the definition of business income in section 1501(a)(1), to now read that "the term 'business income' means all income that may be treated as apportionable business income under the Constitution of the United States." 35 ILCS 5/1501(a)(1) (West 2004). The Department contends that the amendment eliminated the language in section 1501(a)(1) that was relied upon in *Blessing/White, Inc.* to recognize the business liquidation exception to the functional test for business income.

4 The parties filed an agreed motion, which was granted, to cite as supplemental authority the decision, rendered after the briefs in this case were filed, in *American States Insurance Co. v. Hamer,* 352 Ill.App.3d 521, 287 Ill.Dec. 692, 816 N.E.2d 659 (2004). In that case, the gain from the sale of a foreign corporation was properly treated as a deemed sale of assets, or nonbusiness income, rather than apportionable business income. *American States Insurance Co. v. Hamer,* 352 Ill.App.3d at 532, 287 Ill.Dec. 692, 816 N.E.2d 659.

5 The Department notes that, in 2002, section 100.3380 was amended to state more explicitly that it was enacted in fulfillment of section 304(f) of the Act. See 26 Ill. Reg. 15304, 15314 (eff. October 9, 2002), codified, at 86 Ill. Adm.Code § 100.3380.

6 We note the additional foreign authority cited by the Department, including its supplemental authority, *Toys "R" Us, Inc. v. Franchise Tax Board,* 138 Cal.App.4th 339, 41 Cal.Rptr.3d 285 (2006), *Microsoft Corp. v. Franchise Tax Board,* 39 Cal.4th 750, 139 P.3d 1169, 47 Cal.Rptr.3d 216 (2006), and *General Motors Corp. v. Franchise Tax Board,* 39 Cal.4th 773, 139 P.3d 1183, 47 Cal.Rptr.3d 233 (2006), in support of the exclusion of the gross receipts from the sale of financial instruments from the taxpayer's sales factor denominator.

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55 So.3d 273
Court of Civil Appeals of Alabama.

James E. PRINCE, Jr.
v.
STATE DEPARTMENT OF REVENUE.

2080634. | May 7, 2010.

Synopsis

Background: Nonresident shareholder in a resident S corporation sought review of the State Department of Revenue's final income-tax assessment against him based on income received through the sale of the resident corporation's assets. Parties filed cross-motions for summary judgment. The Circuit Court, Montgomery County, No. CV–06–2766, Charles Price, J., entered summary judgment in favor of the Department. Taxpayer appealed.

Holdings: The Court of Civil Appeals, Thompson, P.J., held that:

[1] parties to the merger made a valid election under federal tax law to treat the merger as a sale of the corporation's assets;

[2] gain realized through the merger was income attributable to the individual shareholders;

[3] as a matter of first impression, taxing nonresident shareholder did not violate due process;

[4] the Department of Revenue had a statutory basis on which to levy the tax; and

[5] imposing the tax did not violate the Commerce Clause.

Application for rehearing overruled; affirmed.

Bryan, J., filed a dissenting opinion.

Certiorari denied, Ala., 55 So.3d 287.

West Headnotes (6)

[1] Taxation
Corporations in general

Alabama law recognizes “S” corporations and, like federal law, treats them for taxing purposes as pass-through entities. Code 1975, § 40–18–160 et seq.

Cases that cite this headnote

[2] Internal Revenue
Election as to recognition of gain

Parties to corporate merger transaction made a valid election under federal tax law to treat the merger, for tax purposes, as a sale of the S corporation's assets, rather than as a sale of shareholders' stock, even though corporation's informational tax return did not include Form 8023 for making the election; corporation's three shareholders received payment under the “cash option” of merger agreement, which depended on the election, all necessary parties executed the pertinent tax form making the election, instructions to the form indicated that failure to include the form with corporation's tax return did not invalidate the election, and the corporation reported receipt of income consistent with the election. 26 U.S.C.A. § 338; 26 C.F.R. § 1.338(h)(10)–1(c)(3).

1 Cases that cite this headnote

[3] Taxation
Sales of stocks or securities

Gain realized through a valid election, under federal tax law, to treat the merger of an Alabama S corporation as a sale of the corporation's assets, rather than as a sale of shareholders' stock, was income attributable, for Alabama income-tax purposes, to the individual shareholders of the corporation, and was not, for Alabama income-tax purposes, a sale of shareholders' stock; the sale of assets generated income that passed through the corporation to shareholders.

26 U.S.C.A. § 338; Code 1975, §§ 40–18–8(j), 40–18–160(a).

1 Cases that cite this headnote

[4] **Constitutional Law**
Income taxes
Taxation
Residence of taxpayer; corporations
A minimum connection existed, between the state and a nonresident shareholder of a resident S corporation, to support the imposition of state tax on the income that the nonresident shareholder received through the sale of the resident corporation's assets, without depriving nonresident shareholder of right to due process under the federal constitution; shareholder's receipt of the income was sufficient connection. U.S.C.A. Const.Amend. 14; 26 U.S.C.A. § 338.

Cases that cite this headnote

[5] **Taxation**
Residence of taxpayer; corporations
Department of Revenue had a statutory basis on which to levy a tax on the income that nonresident shareholder received through the sale of the resident S corporation's assets, pursuant to statutory provision of imposing an income tax on every nonresident individual receiving income from property owned or business transacted in Alabama. Code 1975, § 40–18–2(a)(6).

Cases that cite this headnote

[6] **Commerce**
Income taxes
Taxation
Residence of taxpayer; corporations
Imposition of state tax on the income that nonresident shareholder received through the sale of a resident S corporation's assets did not violate the Commerce Clause of the federal constitution, notwithstanding nonresident shareholder's contention that there was no substantial nexus between interstate activity and the state; the merger transaction involved the sale of all the corporation's assets, not merely the sale of nonresident's shares. U.S.C.A. Const. Art. 1, § 8, cl. 3.

Cases that cite this headnote

Attorneys and Law Firms

***274** Jeff Patterson, Montgomery; and Richard C. Litwin of The Litwin Law Firm, P.C., Atlanta, Georgia, for appellant.

Ron Bowden, chief counsel, and Gwendolyn B. Garner, asst. counsel, Alabama Department of Revenue, for appellee.

On Application for Rehearing

THOMPSON, Presiding Judge.

The opinion of January 22, 2010, is withdrawn, and the following is substituted therefor.

James E. Prince, Jr., appeals from the summary judgment of the Montgomery Circuit Court affirming the State Department of Revenue's final income-tax assessment against him. For the reasons stated herein, we affirm.

[1] In 1996, two Alabama residents formed a corporation called Zebra.Net, Inc. ("Zebra.net"), an Alabama corporation. The Alabama residents elected to have Zebra.net treated as an "S corporation" for federal income-tax purposes. This court recently described such a corporation as follows:

> ***275** "[A]n S corporation is a corporation that makes a valid election to be taxed under Subchapter S of Chapter 1 of the Internal Revenue Code. ... [A]n S corporation generally pays no corporate income taxes on its profits. Instead, the shareholders in the S corporation pay income taxes on their proportionate shares of the profits of the S corporation. *See Coggin Auto. Corp. v. Commissioner,* 292 F.3d 1326 (11th Cir.2002), in which the United States Court of Appeals for the Eleventh Circuit discussed the difference between a C corporation and an S corporation:
>
>> " 'Simply speaking, under Subchapter C of the Internal Revenue Code, the income of a C corporation is subject to corporate tax and any distributions it makes to its shareholders will be subject to a second, individual tax. Under Subchapter S, certain C corporations are

> permitted to elect to be S corporations. While the S corporation determines taxable income at the corporate level, this corporate income is passed through to the S shareholders and taxed to them at their individual rates.'

"292 F.3d at 1327 n. 3 (internal citations omitted)."

Giardina v. Giardina, 987 So.2d 606, 612 (Ala.Civ.App.2008). Alabama law recognizes S corporations and, like federal law, treats them for taxing purposes as pass-through entities. *See* § 40–18–160 et seq., Ala.Code 1975.

After the two Alabama residents formed Zebra.net, they approached Prince, a Mississippi resident, about investing in it. Prince agreed to do so, and, after making an investment, he became a shareholder in Zebra.net, owning one-third of the shares of Zebra.net. The two Alabama residents managed Zebra.net's day-to-day operations; Prince did not engage in the operation or management of the company.

In 1999, the three shareholders of Zebra.net entered into a "Merger Agreement and Plan of Reorganization" ("the merger agreement") for the purpose of merging Zebra.net with another company ("the merger transaction"). As part of the merger agreement, the stock in Zebra.net was converted into a right to receive payment from the company acquiring Zebra.net. The form of the payment, which was to total approximately $6.6 million, less certain of Zebra.net's liabilities, was based on whether Zebra.net's shareholders would agree to have the acquisition of Zebra.net treated, under 26 U.S.C. § 338(h)(10), as an acquisition of all Zebra.net's assets.[1] If they did not do so, the ***276** shareholders would receive 80% of their payment as stock in the parent corporation of the company acquiring Zebra.net and the remaining 20% as cash. If they agreed to make such an election, however, they would receive the entire payment as cash. With regard to the election under 26 U.S.C. § 338(h)(10), the merger agreement provided:

> "In the event that an election is made pursuant to Section 1.2(d) hereof, as soon as practicable after the Closing, Parent and Stockholders shall make a joint election under Section 338(h)(10) of the Code and Treasury Regulation Section 1.338(h)(10)–1 (and any comparable election under state or local law) with respect to the purchase (an 'Election'). At the Closing, the parties will execute and deliver a Form 8023 in form and substance agreed to by the parties. Parent and Stockholders will cooperate with each other to take all actions necessary and appropriate (including filing such additional forms, returns, elections, schedules and other documents as may be required) to effect and preserve a timely Election in accordance with the provision of Treasury Regulation Section 1.338(h)(10)–1 (or any comparable provisions of state or local law) or any successor provisions. Parent and Stockholders shall report the transactions contemplated by this Agreement in a manner consistent with the Election and shall take no position inconsistent therewith in any tax return or any proceeding before any taxing authority or otherwise."
>
> The merger agreement was dated September 15, 1999, and was signed by all three of Zebra.net's shareholders, including Prince, as well as by representatives of the company acquiring Zebra.net and that company's parent corporation. The merger transaction was consummated at a law firm located in Georgia.

Although, as noted above, an S corporation does not pay income tax but, instead, passes that liability through to its shareholders, an S corporation must still file an informational tax return with the Alabama Department of Revenue ("the Department"), as well as with the Internal Revenue Service. Zebra.net filed such a return with the Department on June 29, 2000, for the 1999 tax year, the year of the merger transaction. Zebra.net's return indicated that it had income of $5,133,333. Attached to Zebra.net's return was a "Shareholder's Statement of Income & Deductions" (known as a "Schedule K–1") for Prince. That form indicated that Prince's distributive share of Zebra.net's income was $1,711,109 in 1999, or approximately one-third of Zebra.net's total income.

Prince paid income tax on his distribution from Zebra.net in Mississippi, his state of residence. He did not pay income tax to the State of Alabama. The Department, having received a Schedule K–1 for Prince indicating that Zebra.net had distributed $1,711,109 to him from the sale of its assets and from other income, assessed income tax, with penalties and interest, against Prince in the amount of $141,245.87. Prince appealed that assessment to the Department's administrative law division, which upheld the fact of the assessment but lowered the amount of the assessment, with penalties and interest, to $108,822.92 to take into account certain net operating losses sustained by Zebra.net in the years preceding 1999. Prince paid the assessment under protest and filed a timely ***277** appeal to the Montgomery Circuit Court ("the trial court").

As part of his appeal to the trial court, Prince filed a three-count complaint against the Department, which he subsequently amended. First, he asserted that the income

he received from the merger transaction could not be taxed under Alabama law because the merger involved only the sale of his shares of stock in Zebra.net, which he owned in Mississippi, and the sale of which occurred in Georgia. According to Prince, the only basis for the imposition of income tax under Alabama law on a nonresident individual is for income derived from "property owned or business transacted in Alabama." In his second count, Prince asserted that Alabama's taxation of his income from the merger transaction violated his right to due process under the United States Constitution. In his third count, Prince asserted that Alabama's taxation of the income he derived from the merger transaction violated the Commerce Clause of the United States Constitution.

Subsequent to the Department's filing an answer denying the assertions in Prince's complaint, the parties filed cross-motions for a summary judgment. In his motion, Prince contended that, under Alabama law, nonresidents could be taxed only on income from property owned or business transacted in Alabama. He argued that, because he owned his stock in Zebra.net in Mississippi and did not transact any business in Alabama, he was not subject to Alabama income tax. He next argued that the Due Process Clause of the Fourteenth Amendment to the United States Constitution requires that an individual have minimum contacts with a state before that state can exercise jurisdiction to levy a tax on that individual. He argued that he had no such minimum contacts with the State of Alabama. Finally, he contended that the Commerce Clause of the United States Constitution, art. I, § 8, cl. 3, prohibits a state from imposing a tax on an activity that has little or no nexus with that state. In this case, Prince argued, there was no substantial nexus between the sale of his stock in Zebra.net and Alabama because he owned his Zebra.net stock in Mississippi and sold it in Georgia.

In its summary-judgment motion, the Department argued that Zebra.net's shareholders, including Prince, exercised the option to treat, under 26 U.S.C. § 338, the merger transaction as the sale of all Zebra.net's assets rather than the sale of their stock in Zebra.net. Thus, argued the Department, the fact that Prince owned his Zebra.net shares in Mississippi was of no consequence; the income he received was not based on a sale of his stock but, rather, on the distributive share of income that he received from the sale of Zebra.net's assets, assets that were located in Alabama. As a result, the Department asserted, the minimum contacts and nexus requirements of the federal constitution had been satisfied, and Alabama was not barred from imposing income tax on Prince's distributive share of Zebra.net's income. Prince responded to the Department's motion by arguing, among other things, that the parties had not validly elected to treat the merger transaction as a sale of Zebra.net's assets, rather than as a sale of the shareholders' stock in Zebra.net, and that, as a result, the Department's legal argument was without merit.

The trial court conducted a hearing subsequent to which it entered a judgment in favor of the Department, upholding the assessment against Prince. In its judgment, the trial court found that Zebra.net's shareholders had made a valid election under 26 U.S.C. § 338 to treat the merger ***278** agreement as a sale of all Zebra.net's assets. The trial court concluded that "[i]t would be illogical to allow [Prince] to treat the sale as an asset sale for federal tax purposes, yet claim it was a stock sale on a state return in order to obtain tax benefits where they suit him in either system." Thus, the trial court entered a summary judgment in favor of the Department. Prince filed a timely appeal to this court.

[2] Prince contends that the only thing he owned with regard to Zebra.net was stock in the company and that, as a result, the only thing he could have sold in the merger transaction was that stock. Because he owned that stock in Mississippi, he argues, the income he derived from its sale was not taxable by Alabama. Prince argues that the parties did not make a valid election under 26 U.S.C. § 338 to treat the merger transaction, for tax purposes, as a sale to the acquiring company of all Zebra.net's assets. To make such an election, he argues, the parties to the transaction were required to have filed a federal Form 8023 with the Internal Revenue Service, and, he contends, there is no evidence of any such filing. Prince asserts that the Department stipulated in the trial court that it had on file a complete copy of Zebra.net's federal income-tax return for 1999, and he points out that there is no Form 8023 attached to that return.

The Department contends, in effect, that the parties to the merger transaction made a valid election under § 338 and that, as a result, the merger transaction involved, for tax purposes, the sale of Zebra.net's assets, which generated income that passed through the corporation to Prince, rather than the sale of Zebra.net's shareholders' stock. In support of its contention, the Department points out that Zebra.net's three shareholders received the amount of cash called for under the "cash option" of the merger agreement, which option provided that an election under 26 U.S.C. § 338 was required to have been made. The Department also notes that, under the merger agreement, if the cash option was

selected such that a 26 U.S.C. § 338 election was required to be made, the companies involved in the merger "shall report the transactions contemplated by this Agreement in a manner consistent with the election and shall take no position inconsistent therewith in any tax return or any proceeding before any taxing authority or otherwise." The Department argues that Prince, by this language in the merger agreement, is estopped from arguing that a 26 U.S.C. § 338 election was not made. The Department also points out that all the necessary parties, including Prince, executed a Form 8023 making the 26 U.S.C. § 338 election.[2] The Department points out that Zebra.net, itself, reported the sale of its assets in its 1999 informational tax return as part of the merger transaction and that it indicated, in the K–1 forms attached to its return, that it had passed through that income to Prince and the other two shareholders.

In response to Prince's argument that the Department stipulated, in effect, that a Form 8023 had not been filed with Zebra.net's informational tax return, the Department argues that it was stipulating only to the fact that the documents presented were all that it had on file as to the referenced tax returns; it states that it "did not and cannot stipulate as to what ***279** was actually filed with the Internal Revenue Service." Moreover, the Department argues, the instructions to Form 8023 indicate that the failure to file a copy of Form 8023 with the target company's tax return does not invalidate the § 338 election.

26 U.S.C. § 338(g)(2) provides that an election under that section "shall be made in such manner as the Secretary [of the United States Treasury Department] shall by regulations prescribe." Treasury Regulation 26 C.F.R. § 1.338(h)(10)–1(c)(3) provides that an election under § 338 is made "on Form 8023 in accordance with the instructions to the form." At the time of the merger transaction, the instructions to Form 8023 provided, in relevant part:

> "*Persons making elections under section 338 must file Form 8023.*
>
> "Generally, a purchasing corporation must file Form 8023 for the target. *If a section 338(h)(10) election is made for a target, Form 8023 must be filed jointly by the purchasing corporation and the* common parent of the selling consolidated group (or the selling affiliate or *S corporation shareholder(s)*).
>
> "....
>
> "*File Form 8023 by the 15th day of the 9th month beginning after the acquisition date to make a section 338 election for the target corporation. File Form 8023 with the District Director (Attention: Chief of Examination) for the Internal Revenue district where the main corporate office (headquarters) of the purchasing corporation is located* (or, if the purchasing corporation is a member of a consolidated group, with the District Director (as identified above) of the common parent of the consolidated group). If an affiliated group that does not file consolidated returns makes its QSP [(qualified stock purchase)] of the target through more than one member, a section 338 election for the target is made by filing Form 8023 with the District Director (as identified above) of the affiliate that acquired the largest percentage (by value) of the target stock in the QSP (or, if there is more than one such affiliate, file Form 8023 with the District Director of any one such affiliate).
>
> "*A copy of Form 8023 must be attached to the final income tax return of the old target,* to the first income tax return of the new target, and to the income tax return of the purchasing corporation for its tax year that includes the acquisition date; *but failure to do so will not invalidate a section 338 election.* If a section 338(h)(10) election is made, a copy of Form 8023 is considered to be attached to the final income tax return of the old target if a copy of Form 8023 is attached to the income tax return of the selling consolidated group (or the selling affiliate) for the tax year of the seller that includes the acquisition date (or, in the case of a target that is an S corporation, attach Form 8023 to the final income tax return of the S corporation with the additional copies distributed to each electing S corporation shareholder with his or her Schedule K–1 (Form 1120S))."

(Emphasis added.)

There is no direct evidence indicating whether the parties to the merger transaction filed a Form 8023 with the appropriate district director of the Internal Revenue Service in order to effect an election under 26 U.S.C. § 338. However, circumstantial evidence disclosed by the record indicates that such an election was, in fact, made. Prince and the other Zebra.net shareholders received compensation under the merger agreement in an amount indicating that a 26 U.S.C. § 338 election was intended by the parties to the merger transaction; Prince admits that he and all ***280** the other relevant parties executed a Form 8023 for the purpose of making an election under 26 U.S.C. § 338; Zebra.net reported the receipt of income from the sale of

its assets as though a valid 26 U.S.C. § 338 election had been made; and Zebra.net reported distributing that income to its shareholders, including Prince, which, again, was in keeping with a sale by Zebra.net of its assets rather than a sale by its shareholders of their Zebra.net stock. The fact that a copy of the Form 8023 was not attached to Zebra.net's informational tax return is not evidence indicating that form was not filed with the appropriate Internal Revenue Service district director because, as quoted above, the instructions to Form 8023 indicate that the failure to attach a copy of the form to the appropriate tax returns does not invalidate an election under 26 U.S.C. § 338.

The circumstantial evidence in the record, which is essentially undisputed by the parties, indicates that the parties to the merger transaction made an election under 26 U.S.C. § 338 to treat the transaction as a sale of all Zebra.net's assets. In light of this evidence, and because there is no evidence, direct or circumstantial, tending to indicate that the parties did not make a 26 U.S.C. § 338 election, we conclude that evidence supports the trial court's determination that such an election was made.

[3] Prince contends that, even if a valid election under 26 U.S.C. § 338 was made, Alabama law does not provide that his gain from the merger transaction is subject to the imposition of an income tax by the State of Alabama. Prince argues that, although Alabama law acknowledges elections under 26 U.S.C. § 338, it does so only to the extent of determining the amount of gain received by the corporation being acquired, not to the extent of determining the source of that income. He argues that, because the income he received was from the sale of stock that he owned in Mississippi and not from the sale of Zebra.net's assets, that income is taxable in his state of residence, Mississippi, and not in Alabama. We disagree.

Alabama has adopted, for state income-tax purposes, the federal income-tax treatment of a company that elects, under 26 U.S.C. § 338, to treat a stock sale as an asset sale. Alabama law specifically provides that "[i]f a valid election under 26 U.S.C. § 338 is made, the amount of gain recognized by the target corporation shall be determined in accordance with 26 U.S.C. § 338." § 40–18–8(j), Ala.Code 1975. The regulation promulgated based on § 40–18–8(j) provides that "[i]f an acquiring corporation makes a valid election under 26 U.S.C. § 338, the amount of gain recognized by the target corporation shall be determined in accordance with 26 U.S.C. § 338. For interpretation of federal statutes adopted by the Alabama Legislature see Rule 810–3–1.1–.01." Rule 810–3–8–.13, Ala. Admin. Code (Department of Revenue). In Revenue Ruling No. 94–005 (Alabama Dep't of Revenue, June 14, 1994), the Department addressed the question whether the state follows the federal treatment afforded to a target corporation, such as Zebra.net, as a result of an election under 26 U.S.C. § 338(h)(10). The Department wrote:

> "Alabama tax will be paid by [the target corporation] on its gain from the deemed asset sale as provided in § 40–18–8([j]). Like its federal counterpart, § 40–18–8([j]) is designed to afford to a stock sale the same income tax treatment as would be produced by an asset sale followed by a complete liquidation of the [target corporation], but without forcing the parties to go through the intricacies of transferring assets piecemeal."

***281** Prince argues that, although § 40–18–8(j) sets forth the *measure* of gain to be recognized by a target corporation upon an election under 26 U.S.C. § 338, it does not provide for the *characterization* of that gain as either a stock sale or an asset sale. Prince's argument ignores, however, the fact that an election under 26 U.S.C. § 338 deals with treating a stock sale, in which a corporation *would not* recognize any gain, as an asset sale, in which the corporation *would* recognize gain. By indicating the amount of the gain recognized by the target corporation, § 40–18–8(j) presupposes that the target corporation would, in fact, be receiving a gain as a result of the sale. Furthermore, because the corporation does not own the shareholders' shares of stock, its gain in the transaction can be recognized only from the sale of that which it does own, i.e., its assets.

Under Alabama law, an S corporation is not subject to Alabama corporate income tax. § 40–18–160(a), Ala.Code 1975. Instead, the individual shareholders of the S corporation are liable for paying taxes on the S corporation's income. § 40–18–162(a). Section 40–18–162(a) provides:

> "(a) In determining the tax of a shareholder for the shareholder's taxable year in which the taxable year of the Alabama S corporation ends, or for the final taxable year of a shareholder who dies or of a trust or estate that terminates before the end of the corporation's taxable year, there shall be taken into account the shareholder's pro rata share of the corporation's:

"(1) Items of income, including tax-exempt income, loss, deduction, or credit the separate treatment of which could affect the liability for tax of any shareholder, including charitable contributions, and

"(2) Nonseparately computed income or loss. The term 'nonseparately computed income or loss' means gross income minus the deductions allowed to the corporation under this article, determined by excluding all items described in subdivision (1) of this subsection."

The character of the items attributed to the shareholders of an S corporation for income-tax purposes is set forth in § 40–18–162(b), which provides:

"(b) The character of any item included in a shareholder's pro rata share under subsection (a) of this section shall be determined as if the item were realized directly from the source from which realized by the corporation, or incurred in the same manner as incurred by the corporation."

Because Alabama recognizes an election under § 338 and treats the sale occurring under such an election as a sale of assets, and because the characterization of an S corporation's income occurs at the corporate level rather than at the shareholder level, the sale at issue was of Zebra.net's assets, the income from which is attributable, for Alabama income-tax purposes, to the individual shareholders of Zebra.net; it was not, for Alabama income-tax purposes, a sale of the shareholders' stock in Zebra.net. [3]

***282 [4]** Prince next contends that the Due Process Clause of the Fourteenth Amendment to the United States Constitution prohibits the Department's imposition of tax on the income Prince derived from the merger transaction. The United States Supreme Court has indicated that, with regard to the imposition of a tax, a "fundamental requirement" of the Due Process Clause is "that there be 'some definite link, some minimum connection, between a state and the person, property or transaction it seeks to tax.' " *Allied–Signal, Inc. v. Director, Div. of Taxation,* 504 U.S. 768, 777, 112 S.Ct. 2251, 119 L.Ed.2d 533 (1992) (quoting *Miller Bros. Co. v. Maryland,* 347 U.S. 340, 344–45, 74 S.Ct. 535, 98 L.Ed. 744 (1954)). Thus, the question before this court with regard to due process is whether there is a minimum connection between Alabama and Prince, a nonresident shareholder of the resident S corporation that generated the income on which Alabama seeks to levy a tax.

Although the appellate courts of this state have never addressed the precise issue, courts from other jurisdictions that have addressed the issue have concluded that the imposition of a tax on the income received by a nonresident shareholder from a resident S corporation does not violate the Due Process Clause. For example, in *Agley v. Tracy,* 87 Ohio St.3d 265, 267, 719 N.E.2d 951, 953 (1999), the Ohio Supreme Court wrote:

"Appellants also argue that taxation of nonresident shareholders of an S corporation violates their due process rights.... The Due Process Clause 'requires some definite link, some minimum connection, between a state and the person, property or transaction it seeks to tax.' *Miller Bros. Co. v. Maryland* (1954), 347 U.S. 340, 344–345.... In other words, a state must have minimum contacts with the entity in order to tax it. ...

"....

"Appellants have admitted that their S corporations conducted business in Ohio. Thus, it is evident that the S corporations have utilized the protections and benefits of Ohio by carrying on business here. This income was then passed through to the appellants as personal income. Thus, the appellants, through their S corporations, have also availed themselves of Ohio's benefits, protections, and opportunities by earning income in Ohio through their respective S corporations. We find that this provides Ohio the 'minimum contacts' with the appellants to justify taxing appellants on their distributive share of income."

87 Ohio St.3d at 267, 719 N.E.2d at 953. In *Mandell v. Auditing Division of the Utah State Tax Commission,* 186 P.3d 335, 345 (Utah 2008), the Utah Supreme Court wrote:

***283** "To withstand a due process challenge to the imposition of a tax, a 'definite link' or 'minimum connection' must exist between the state and the person, property, or transaction sought to be taxed.... A deemed asset sale of a Utah S corporation that does all of its business within Utah provides a sufficient link or connection for Utah to constitutionally assert

> taxing jurisdiction over a nonresident shareholder of that corporation. As previously discussed, courts have consistently affirmed the right of states to tax nonresident shareholders of S corporations for business transactions conducted within the taxing state."

See also Valentino v. Franchise Tax Bd., 87 Cal.App.4th 1284, 1293 n. 11, 105 Cal.Rptr.2d 304, 311 n. 11 (2001) ("However, the law is settled that there is no constitutional bar to imposing the [income] tax [on nonresident shareholders of an S corporation]."); *General Accessory Mfg. Co. v. Oklahoma Tax Comm'n,* 122 P.3d 476, 480 (Okla.Civ.App.2005) ("The power to tax a non-resident's income derived from sources within the state, or accruing from activity having a situs within the state, cannot be questioned."); and *Kulick v. Department of Revenue,* 290 Or. 507, 518, 624 P.2d 93, 99 (1981) ("[I]n demanding that [nonresident] shareholders of a closely held corporation instead of the corporation contribute to this state a tax on financial gains derived from sources within the state, the state is not demanding the shareholders' property without the due process of law commanded by the 14th amendment."). [4]

It is undisputed that, at the time of the merger transaction, Zebra.net was an Alabama S corporation that operated solely in Alabama. Moreover, as we have previously discussed, the merger transaction generated income to Zebra.net, a portion of which was passed through to Prince. We conclude that Prince's receipt of income generated by Zebra.net, through the sale of its assets, constitutes a sufficient connection with the State of Alabama to allow the Department, consistent with principles of federal due process, to levy a tax specifically on that income.

Our conclusion that the tax at issue in this case does not violate the Due Process Clause is not altered by our consideration of the plurality opinion in *Lanzi v. Alabama Department of Revenue,* 968 So.2d 18 (Ala.Civ.App.2006), on which Prince relies. *Lanzi* was issued per curiam, with two judges concurring in the main opinion, one judge concurring in the result, and two judges dissenting. In *Lanzi,* a plurality of the court ruled that Alabama's attempted levy of an income tax on a nonresident ***284** limited partner's distributive share of partnership income from an Alabama limited partnership violated the Due Process Clause because the nonresident limited partner had no contacts with Alabama other than his ownership of a limited interest in the limited partnership. The plurality opinion relied on *Shaffer v. Heitner,* 433 U.S. 186, 97 S.Ct. 2569, 53 L.Ed.2d 683 (1977), in which the United States Supreme Court held that a nonresident shareholder's ownership of stock in a corporation, standing alone, does not constitute the sufficient contact necessary to subject the nonresident to the judicial jurisdiction of the state in which the corporation had its corporate residence. The plurality opinion also relied on opinions from other jurisdictions that held that a nonresident limited partner's ownership interest in a partnership, standing alone, is not sufficient to subject that partner to the state's in personam judicial jurisdiction.

The dissent in *Lanzi* reflected the view that when the basis for the exercise of the taxing jurisdiction of a state over a nonresident limited partner is, itself, the nonresident's limited-partnership interest (as opposed to a basis unrelated to that interest), the limited-partnership interest constitutes a contact with the state sufficient for the state's exercise of its taxing jurisdiction over the nonresident consistent with due process. In support, the dissent relied on, among other things, cases from other jurisdictions that held that a state, consistent with due process, could levy an income tax on a nonresident shareholder in a resident S corporation on the basis that an S corporation, like a partnership, is a "flow-through" entity.

We agree with Prince that the facts in *Lanzi* are not easily distinguishable from the facts in the present case with regard to due-process analysis. However, because *Lanzi* is a plurality opinion, it does not constitute binding authority. *See Waddell v. Waddell,* 904 So.2d 1275, 1285 (Ala.Civ.App.2004). To the extent that the plurality opinion in *Lanzi* suggests that the imposition of a tax on the income Prince derived from the sale of Zebra.net's assets violates the Due Process Clause, we reject that view as inconsistent with our understanding of the Due Process Clause as requiring only " 'some definite link, some minimum connection, between a state and the person, property or transaction it seeks to tax.' " *Allied–Signal,* 504 U.S. at 777, 112 S.Ct. 2251.

[5] Prince next contends that the Department lacks a statutory basis on which to levy a tax on the income at issue in this case because he is not a resident of Alabama. Section 40–18–2(a)(6), Ala.Code 1975, imposes an income tax on "[e]very nonresident individual receiving income from property owned or business transacted in Alabama." Prince argues that this section does not apply to him because, he argues, the income he received was derived from his sale of Zebra.net stock rather than from Zebra.net's receipt of the income generated by the sale of its assets. Specifically,

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he argues that he owned the stock in Mississippi, and the transaction involving the sale of the stock occurred in Georgia.

As discussed above, for tax purposes, the income Prince received is appropriately characterized as having been generated by Zebra.net's sale of its assets, rather than by the sale of Prince's Zebra.net stock. Prince does not argue, and, thus, he has failed to demonstrate, that, when so characterized, the income he received was not derived "from property owned or business transacted in Alabama." Thus, he has failed to demonstrate that § 40–18–2(a)(6) does not provide a statutory basis for the Department's levy of a tax on the income at issue in this case.

***285** **[6]** Finally, Prince contends that the Department's imposition of a tax on the income he received as a result of the merger transaction violates the Commerce Clause of the United States Constitution, art. I, § 8, cl. 3. As Prince notes, the United States Supreme Court stated in *Complete Auto Transit, Inc. v. Brady,* 430 U.S. 274, 97 S.Ct. 1076, 51 L.Ed.2d 326 (1977), that for a tax on an interstate activity to pass muster under the Commerce Clause, among other things, the activity must have a "substantial nexus" with that state. 430 U.S. at 279, 97 S.Ct. 1076. Prince repeats his earlier assertion that the merger transaction occurred in Georgia and involved only the sale of his Zebra.net stock, which he owned in Mississippi. Thus, he concludes, the transaction did not have a substantial nexus with Alabama.

The Department responds by arguing that, for purposes of determining whether the income a nonresident shareholder receives from a resident S corporation is subject to an income tax by the S corporation's state, the activity of the S corporation is attributable to the corporate shareholders, such that a nexus between the state of the S corporation and its nonresident shareholders exists. It cites numerous cases in which the courts of other jurisdictions have concluded that the imposition of a tax on a nonresident shareholder does not violate the federal constitution.

Prince's sole citation to legal authority in his argument, *Complete Auto Transit,* supra, stands for the general proposition that a "substantial nexus" must exist between the taxing state and the transaction to be taxed. He cites no legal authority applying the general rule in a manner that would demonstrate the appropriate outcome in the present case. As such, his argument is not sufficient to justify reversal of the trial court's determination. *See Beachcroft Props., LLP v. City of Alabaster,* 901 So.2d 703, 708 (Ala.2004) ("Authority supporting only 'general propositions of law' does not constitute a sufficient argument for reversal."). Moreover, Prince's contention is predicated on his argument that the merger transaction involved only the sale of his Zebra.net shares rather than Zebra.net's sale of all of its assets. Because, at least for taxing purposes, we have rejected such a characterization of the merger transaction, Prince has failed to demonstrate that the Department's imposition of a tax on the income Prince derived from the merger transaction violated the Commerce Clause of the United States Constitution.

Based on the foregoing, we conclude that Prince has failed to demonstrate error with regard to the trial court's affirmance of the Department's income-tax assessment against him. As a result, we affirm the trial court's summary judgment in favor of the Department.

APPLICATION OVERRULED; OPINION OF JANUARY 22, 2010, WITHDRAWN; OPINION SUBSTITUTED; AFFIRMED.

PITTMAN, THOMAS, and MOORE, JJ., concur.

BRYAN, J., dissents, with writing.

BRYAN, Judge, dissenting.

The main opinion explains the procedure for making an election pursuant to 26 U.S.C. § 338:

> "26 U.S.C. § 338(g)(2) provides that an election under that section 'shall be made in such manner as the Secretary [of the United States Treasury Department] shall by regulations prescribe.' Treasury Regulation 26 C.F.R. § 1.338(h)(10)–1(c)(3) provides that an election under § 338 is made 'on Form 8023 in accordance with the instructions to the form.' At the time of the merger ***286** transaction, the instructions to Form 8023 provided, in relevant part:
>
> > " 'Persons making elections under section 338 must file Form 8023.
> >
> > " 'Generally, a purchasing corporation must file Form 8023 for the target. If a section 338(h)(10) election is made for a target, Form 8023 must be filed jointly by the purchasing corporation and the common parent of the selling consolidated group (or the selling affiliate or S corporation shareholder(s)).

" '....

" '*File Form 8023 by the 15th day of the 9th month beginning after the acquisition date to make a section 338 election for the target corporation. File Form 8023 with the District Director (Attention: Chief of Examination) for the Internal Revenue district where the main corporate office (headquarters) of the purchasing corporation is located....*' "

55 So.3d at 279 (some emphasis omitted).

The record on appeal contains evidence indicating that the parties to the transaction in this case intended to make an election under 26 U.S.C. § 338. However, there is no direct evidence indicating that a Form 8023 was filed pursuant to the applicable regulation. A Form 8023 must be properly filed in order to make a valid election under § 338. Therefore, I believe that the trial court erred in concluding that the parties to the transaction made a valid election under § 338 to treat the transaction as a sale of the assets of Zebra.Net, Inc. ("Zebra.net"). Because such an election was not made, the transaction in this case should be treated as the sale of stock owned by Zebra.net's shareholders. Section 40–18–2(a)(6), Ala.Code 1975, imposes an income tax on "[e]very nonresident individual receiving income from property owned or business transacted in Alabama." James E. Prince, Jr., owned his Zebra.net stock in Mississippi, his state of residence, and the sale of that stock occurred in Georgia. Because Prince, a nonresident of Alabama, did not own his stock in Alabama and did not transact any business in Alabama, he was not subject to Alabama income tax. Accordingly, I would reverse the trial court's summary judgment affirming the income-tax assessment made by the State Department of Revenue ("the Department") against Prince.

Moreover, even if the parties to the transaction made a valid election under § 338, I believe that the facts of this case are materially indistinguishable from the facts in *Lanzi v. Alabama Department of Revenue,* 968 So.2d 18 (Ala.Civ.App.2006). In *Lanzi,* a plurality of this court concluded that Alabama lacked jurisdiction to impose income tax on a nonresident whose only connection with Alabama was his limited-partnership interest in an Alabama limited partnership. Like the nonresident in *Lanzi,* Prince lacks the minimum contacts with Alabama needed to subject him to Alabama jurisdiction under the Due Process Clause of the Fourteenth Amendment to the United States Constitution. I recognize that a court is obligated to avoid addressing constitutional questions unless doing so is essential to the proper disposition of a case. *See Lowe v. Fulford,* 442 So.2d 29, 33 (Ala.1983). However I cite *Lanzi* as only an alternative basis for reversing the judgment of the trial court if a valid election was not actually made under § 338.[5]

Footnotes

1 The purpose and effect of an election under 26 U.S.C. § 338 has been described as follows:

"Sometimes, the parties to an acquisition may wish to structure it as a stock sale rather than an asset sale for non-tax reasons (e.g., a stock sale is generally easier to structure mechanically), but may wish to have the transaction treated as an asset sale for tax purposes (e.g., so that the buyer will receive a stepped-up basis in the purchased assets). In order to achieve this goal, the parties may consider making an election under I.R.C. § 338(h)(10).

"Generally, an I.R.C. § 338(h)(10) election is permitted where (i) there is a taxable purchase of at least 80% of the target's stock, (ii) either the seller is a corporation owning at least 80% of the target's stock or the target is an S corporation, (iii) the buyer is a corporation unrelated to the seller, (iv) the target is a U.S. corporation, and (v) the election is made by both the buyer and seller. Under I.R.C. § 338(h)(10), the stock sale is treated as if the target had sold its assets in a taxable transaction and liquidated tax-free into its parent under I.R.C. § 332 (or to its Subchapter S shareholders). The sale of the target's stock is disregarded for federal income tax purposes. Thus, the only tax that is imposed is on a deemed sale by the target subsidiary of its assets."

Michael T. Petrik and Ethan D. Millar, *State & Local Tax Aspects of Corporate Acquisitions,* Practising Law Institute, Tax Law and Estate Planning Course Handbook Series, PLI Order No. 14322 (October–December 2008) (footnotes omitted).

2 Prince argues that the Department did not properly authenticate the copy of the Form 8023 that it submitted to the trial court. He candidly admits in his appellate briefs, however, that the parties to the merger transaction, including himself, signed the Form 8023 and that, during the course of discovery in this action, he provided the copy of the Form 8023 to the Department that the Department then submitted to the trial court.

3 Courts in other states that addressed this issue under their respective states' laws have arrived at the same conclusion. *See, e.g., General Accessory Mfg. Co. v. Oklahoma Tax Comm'n,* 122 P.3d 476, 480 (Okla.Civ.App.2005) ("For federal tax purposes, Taxpayers elected to treat the sale of stock in their Oklahoma corporation as a sale of corporate assets, and their federal election is binding for state tax

purposes. As the business situs of the corporation with income derived from sources within the State, the sale of its assets constituted a state taxable event, and permissibly subjected the non-resident Taxpayers to liability for Oklahoma income tax."); and *Mandell v. Auditing Div. of the Utah State Tax Comm'n,* 186 P.3d 335, 344 (Utah 2008) ("All of HAU's shareholders elected to characterize the sale as a deemed asset sale under I.R.C. § 338(h)(10). As a result, the gains realized through the sale were taxable as if the corporation had sold assets rather than stock. *See id.* § 338(h)(10). The gains from the sale passed through to the shareholders, who bore the responsibility of paying taxes on those gains in proportion to their ownership interests. *See id.* § 1366(b); *see also* Utah Code Ann. § 59–7–701. The gains recognized from this deemed asset sale constitute Utah source income under Utah Code sections 59–10–118(1)(a), which defines business income, and 59–7–114(4), which creates a rebuttable presumption that the gain on a deemed sale of assets under a section 338 election constitutes business income. They are therefore taxable under Utah Code section 59–10–117(2)(d)." (footnote omitted)). *See, generally,* James A. Amdur, Annotation, *State Tax Consequences of Election Under § 338 of Internal Revenue Code (26 U.S.C.A. § 338)* §§ 4–6, 26 A.L.R.6th 219 (2007).

4 *See, generally,* James A. Amdur, Annotation, *State Income Tax Treatment of S Corporations & Their Shareholders* § 24, 118 A.L.R.5th 597 (2004); Jerome R. Hellerstein, *State Taxation* ¶ 20.08[2][a][iii] (2003) ("The cases have consistently sustained the states' efforts to tax nonresident S corporation shareholders on their share of S corporation income attributable to the state."); James E. Maule, *State Taxation of S Corporations,* Tax Management, Multistate Tax Portfolios, § 1510.05D.2.b. (BNA 2006) (stating that "[a] state should have jurisdiction to tax S corporation income in the hands of the shareholders, even if they are nonresidents, if it has jurisdiction to tax the S corporation with respect to its income," indicating that that proposition, however, was "not without doubt," and discussing four separate arguments in support of the taxation of nonresident S corporation shareholders); Prentiss Willson and Mark Windfeld–Hansen, *State Taxation of Pass–Through Entities: General Principles,* Tax Management, Multistate Tax Portfolios, § 1500.11A.2. (BNA 2002) ("Nonresident S corporation shareholders have on several occasions sought to set aside such state taxes on the ground that the U.S. Constitution precludes a state from taxing nonresident shareholders based solely on the activities of their S corporations in the taxing state. As yet, however, no court has upheld such a challenge.").

5 This case provides an example of why people may become easily frustrated by government action. In 2000, Prince paid income tax in Mississippi on the gain received from the transaction in this case. Zebra.net filed its informational tax return with the Department in June 2000. However, the Department did not initially assess income tax on Prince until November 2004. The Department contends that Prince may claim a credit in Mississippi for income tax paid to Alabama. However, Mississippi law provides a three-year limitations period for income-tax refund claims, Miss.Code Ann. § 27–73–5 (2009); that limitations period has long since expired. Consequently, it now appears that Prince will have to pay state income tax in both Mississippi and Alabama, arguably through no fault of his own.

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87 Cal.App.4th 1284, 105 Cal.Rptr.2d 304, 01 Cal. Daily Op. Serv. 2403, 2001 Daily Journal D.A.R. 2983

GENE VALENTINO et al., Plaintiffs and Appellants,
v.
FRANCHISE TAX BOARD,
Defendant and Respondent.

No. D036034.
Court of Appeal, Fourth District, Division 1, California.
Mar. 23, 2001.

SUMMARY

The trial court entered judgment in favor of the state Franchise Tax Board after denying plaintiff taxpayers' motion for summary judgment on their complaint for refund of income taxes. Plaintiffs were out-of-state residents, and the income at issue was derived from the ownership of stock from a foreign S corporation that was qualified to do business in California. (Superior Court of San Diego, No. GIC739989, Ronald S. Prager, Judge.)

The Court of Appeal affirmed the judgment. The court held that California source income of a foreign S corporation doing business in California, passed through to nonresident taxpayers, was subject to California tax. California has essentially adopted federal tax law regarding the treatment of subchapter S corporations (Rev. & Tax. Code, § 23800, subd. (a)), and under federal law, the character of a shareholder's pro rata share of S corporation income is determined as if the income were realized directly from the source from which realized by the corporation. This principle, known as the conduit rule, was intended by Congress to be the same as the partnership rule. As with nonresident partners, nonresident S corporation shareholders may be taxed by a state to the extent the income claimed to be subject to tax is fairly attributable to activities of the S corporation in the taxing state. Since the conduit principle characterized plaintiffs' pro rata share of corporate income as if the income were realized directly from the source from which the corporation realized it, they were treated as though they conducted business wholly within California in their individual capacities. An S corporation shareholder's income is characterized by reference to the corporate-incomeproducing activity and, once characterized, the items are then sourced according to the particular rule applicable to each type of income. Consequently, plaintiffs were required to report their share of the corporation's income as gross income from sources within California. (Opinion by Work, Acting P. J., with Huffman and Haller, JJ., concurring.)

HEADNOTES

Classified to California Digest of Official Reports

(1)
Income Taxes § 11--Special Classes of Taxpayers--Nonresidents-- California Source Income of S Corporations.
California source income of a foreign S corporation doing business in California, passed through to nonresident taxpayers, was subject to California tax. Rev. & Tax. Code, § 17041, subd. (b), imposes a tax on the entire taxable income of every nonresident to the extent it is derived from sources in this state. California has essentially adopted federal tax law regarding the treatment of subchapter S corporations (Rev. & Tax. Code, § 23800, subd. (a)), and under federal law, the character of a shareholder's pro rata share of S corporation income is determined as if the income were realized directly from the source from which the corporation realized it (26 U.S.C. § 1366(b)). This principle, known as the conduit rule, was intended by Congress to be the same as the partnership rule. As with nonresident partners, nonresident S corporation shareholders may be taxed by a state to the extent the income claimed to be subject to tax is fairly attributable to activities of the S corporation in the taxing state. Since the conduit principle characterized plaintiffs' pro rata share of corporate income as if the income were realized directly from the source from which the corporation realized it, they were treated as though they conducted business wholly within California in their individual capacities. An S corporation shareholder's income is characterized by reference to the corporate-income-producing activity and, once characterized, the items are then sourced according to the particular rule applicable to each type of income. Consequently, plaintiffs were required to report their share of the corporation's income as gross income from sources within California.

[See 9 Witkin, Summary of Cal. Law (9th ed. 1989) Taxation, § 285.]

COUNSEL
Cruse & Hough and Kyle A. Cruse for Plaintiffs and Appellants.
Bill Lockyer, Attorney General, Gregory S. Price and Leslie Branman Smith, Deputy Attorneys General, for Defendant and Respondent. ***1286**

WORK, Acting P. J.

The sole issue presented by this appeal is whether California source income of an S corporation, passed through to a nonresident, is subject to California tax. Gene and Maureen Valentino (the Valentinos) appeal a judgment in favor of the State of California Franchise Tax Board (the Board) entered after the trial court denied the Valentinos' motion for summary judgment on their complaint for refund of taxes and, on stipulated facts, found in favor of the Board. The Valentinos contend that the income the Board seeks to tax was derived from the ownership of stock, and under Revenue and Taxation Code [1] section 17952, the income must be classified as an "intangible" which is taxed by the state of residence of the shareholder (Florida), rather than the state in which the corporation conducts business (California). The Board contends the Legislature intended to tax subchapter S corporations and their shareholders in the same manner as partnerships are taxed and thus it properly demanded payment of taxes from the Valentinos on income derived from their ownership of Cellular 2000 Telephone Company, Inc. (Cellular 2000) stock. As we shall explain, we conclude California source income of an S corporation, passed through to a nonresident shareholder, is subject to California tax. Accordingly, we affirm the judgment.

Factual and Procedural Background

The Valentinos are married and reside in Pensacola, Florida. They at all relevant times owned stock in Cellular 2000, a Delaware corporation qualified to do business in California. Cellular 2000 did business in California and was taxed as an S corporation for federal and California tax purposes. It filed a form 100S, California S corporation Franchise or Income Tax Return for income years ending December 31, 1993, December 31, 1994, and December 31, 1995. The income earned by it was derived from California sources for the income years relevant to this matter. Cellular 2000 paid the California franchise tax of 2.5 percent on its net income derived from sources within the state for income year ending December 31, 1993. It further paid a California franchise tax of 1.5 percent on its net income derived from sources within the state for income years ending December 31, 1994, and December 31, 1995. (§ 23802, subd. (b)(1).)

The Valentinos filed form 540NR, California Nonresident or Part-Year Resident Income Tax Return, for taxable years 1993 and 1994 with the Board. They filed form 540NR for taxable year 1995, but did not report California income or identify any California tax liability. Later, they filed ***1287** amended returns with the Board to eliminate all income from Cellular 2000 and to request a refund of all tax paid for taxable years 1993 and 1994. The Board issued the refunds as requested and started an audit to determine if the refunds for taxable years 1993 and 1994 were proper. Upon completion of the audit, the Board issued notices of proposed assessment for taxable years 1993 and 1994, as well as for taxable year 1995. The Valentinos protested the proposed assessments, which were later affirmed by the Board. Notices of action affirming the assessments were issued on March 30, 1998. They paid the tax and interest amounts for tax years 1993, 1994 and 1995 as referenced in the notices of action on May 27. Later, they were billed and they paid additional interest due for the three tax years in the amount of $708.78. The total amounts of payments they made to the Board were $7,247.47 for 1993; $16,207.93 for 1994; $25,236.75 for 1995; and the additional payment for all three years of $708.78.

On June 7, 1999, the Valentinos filed a claim for refund with the Board. Because it failed to mail notice of action on the claim for refund within six months after the claims were filed, the Valentinos considered them disallowed and proceeded to file this action for refund of taxes on December 8, 1999. The Board then refunded again the money to the Valentinos, while also sending a notice denying the refund to them. The Board later demanded the Valentinos return the money, claiming the refund was erroneous and that it intended to deny their claim for refund. The Valentinos complied.

On May 19, 2000, the Valentinos' motion for summary judgment was denied and the telephonic ruling of the court was affirmed. A week later, a trial on stipulated facts was held and the court took the matter under submission. On June 14, the court entered judgment in favor of the Board, reasoning:

"[The Valentinos] cite to Revenue and Taxation Code section 17952 and *Christman v. FTB*, 64 Cal.App.3d 751 [134 Cal.Rptr. 725] (1976), and in *Appeal of Ronnie C. and Patricia S. Childs*, August 1, 1980, for the proposition that California follows the doctrine of *mobilia sequuntur personam* (movables follow the law of the person) as to intangible property such as stocks. Plaintiffs therefore argue that nonresidents of the State are not required to pay a tax on income derived from stock of a foreign S corporation doing business in California unless the intangible property itself, i.e., the stock, acquires a business situs in California.

"S corporations, however, are treated more like partnerships (pass through taxation) by California law than like ordinary corporations. In addition, Plaintiffs' cited sources precede the passage of law recognizing S corporations in California. Indeed, when the Legislature enacted ***1288** Revenue and Taxation Code section 18535, it allowed nonresident shareholders deriving income from an S corporation doing business in California to file a composite nonresident return to report their pro rata share of income from California sources. The Legislature also enacted section 23801(b), requiring nonresident shareholders of S corporations that do business in California to file a consent to be subject to the jurisdiction of the State of California to enable the State to tax the nonresident shareholders' pro rata share of 'income attributable to California sources.' Therefore, it appears that with regard to S corporations, the Legislature intended to look directly at the source of the income (not the situs of the stock) to determine whether the [non]residents shareholders' pro rata share of the income is taxable by California.

"The Court notes that Revenue and Taxation Code section 23801 conforms to Internal Revenue Code section 1366(b), which also states that the character of the shareholders' pro rata share of S corporation income is determined as if the income were realized directly from the source from which realized by the corporation. Any other interpretation renders the phrase 'realized directly from the source from which realized by the corporation' meaningless. Therefore, California law provides that the source of the income, not just the income itself, derived by the shareholders from S corporations is passed through to the shareholders themselves. The source of the income is not the stock. It is the location of the income producing activity creating the income. The *mobilia* doctrine has nothing to do with the new S corporation regulations. Lastly, this ruling is entirely consistent with the tax treatment afforded subchapter S corporations by other states, which have adopted Internal Revenue Code section 1366(b), to nonresident shareholders of S corporations doing business in those states." The Valentinos timely appealed.

Historical Overview-Treatment of S Corporations Under Federal and California Tax Law

Under federal income tax law, there are two distinct types of corporations, C and S corporations so named because of their governing subchapters under chapter 1, subtitle A of the Internal Revenue Code. The former constitutes a separate entity which pays corporate income taxes based upon its net income. (§ 23151, subd. (a).) The latter, however, generally does not pay taxes as an entity. (26 C.F.R. § 1.1363-1 (1993).) "Rather, the S corporation files only an informational return reporting for the taxable year its gross income (or loss) and deductions, its shareholders, and the shareholders' pro rata shares of each item. (26 U.S.C. § 6037(a).) The items are then 'passed through' on a pro rata basis to the shareholders, who report them on their personal income tax returns. [Citations.] 'The S corporation is, in effect, a ***1289** Code-created hybrid combining traits of both corporations and partnerships.' [Citation.]" (*Heller v. Franchise Tax Bd.* (1994) 21 Cal.App.4th 1730, 1733 [27 Cal.Rptr.2d 88], quoting *Beard v. U.S.* (11th Cir. 1993) 992 F.2d 1516, 1518.)

California did not distinguish between C corporations and S corporations for state tax purposes before 1987, instead treating all corporations as C corporations. (2 Plant & Eager, Cal. Tax Analysis (CCH 1995) § 45.121 [2], p. IV-1715.) However, commencing that year, California changed its tax law so that "Subchapter S of Chapter 1 of Subtitle A of the Internal Revenue Code, relating to the tax treatment of 'S corporations' and their shareholders, shall apply, except as otherwise provided." (§ 23800, subd. (a); see 2 California Taxes (Cont.Ed.Bar 2d ed. 1996) § 4.101, p. 226.) One notable difference between federal and California law regarding the treatment of S corporations is that under the former, with certain exceptions not relevant here, S corporations do not pay federal income tax (26 U.S.C. § 1363(a); 26 C.F.R. § 1.1363-1 (1993)), while under California law a state tax is imposed upon the net income of the reporting S corporation (§ 23802, subds. (a), (b)(1)). (*Heller v. Franchise Tax Bd.*, *supra*, 21 Cal.App.4th at p. 1734.) From the perspective of the shareholder, C corporations are taxed upon their income as separate entities, and their distributions of earnings and profits to their shareholders are generally taxable to the shareholders as dividends. In contrast, S corporation shareholders are taxed on their pro rata share of the corporation's income, regardless of whether it makes any distributions. (*Ibid.*)

At the same time California adopted federal S corporation rules, it enacted statutes governing the assessment and collection of tax from nonresident shareholders. Section 23801, subdivision (b)(1) requires every nonresident shareholder of an electing S corporation to consent to the jurisdiction of California to tax his or her share of S corporation income from California sources. (See 2 California Taxes, *supra*, § 4.106, p. 230.) Former section 23801, subdivision (b)(2) required an S corporation to pay estimated tax on California source income of its nonresident

shareholders. To simplify the filing of nonresident income tax returns, section 18535 permitted nonresident shareholders of an S corporation doing business in California or deriving income from California sources to file a single composite nonresident return reporting their share of S corporation income derived from California sources. [2] ***1290**

California Source Income of an S Corporation, Passed through to a Nonresident, Is Subject to California Tax [3]

([1]) California imposes a tax on the entire taxable income of every nonresident to the extent it is derived from sources in this state. (§ 17041, subd. (b).) As summarized above, California has essentially adopted federal tax law regarding the treatment of subchapter S corporations. (§ 23800, subd. (a).) Thus, following federal tax law, the character of a shareholder's pro rata share of S corporation income is determined as if the income were realized directly from the source from which realized by the corporation. (26 U.S.C. § 1366(b).) [4] This principle is known as the "conduit rule" and was intended by Congress to be the same as the partnership rule. (Sen.Rep. No. 97-640, 2d Sess. (1982), reprinted in 1982-2 C.B. 718, 725; Eustice & Kuntz, Federal Income Taxation of S corporations (3d ed. 1993) ¶ 7.07 [5], p. 7-97; Rev. Rul. 87-121, 1987-2 C.B. 217; Christian & Grant, Subchapter S Taxation (4th ed. 2000) ¶ 16.10, p. 16-27.) "As in the case of nonresident partners, nonresident S corporation shareholders may be taxed by a state only to the extent the income claimed to be subject to tax is fairly attributable to activities of the S corporation in the taxing state." (Willson & Windfeld, Tax Management Multistate Tax Portfolios-State Taxation of Pass-Through Entities: General Principles, No. 1500 (BNA 1998) p. 43.)

Under section 17951, [5] the gross income of nonresident taxpayers thus includes only the gross income from sources within this state. Where a nonresident's business, trade or profession is conducted wholly within California, the entire gross income must be reported. (***1291** Cal. Code Regs., tit. 18, § 17951-4.) [6] It is undisputed that Cellular 2000 income was derived from business conducted within California. Because the conduit principle cited above characterizes the Valentinos' pro rata share of Cellular 2000 income as if the income were realized directly from the source from which realized by the corporation, the Valentinos are treated as though they conducted business wholly within California in their individual capacities. (Christian & Grant, Subchapter S Taxation, *supra*, ¶ 1.17, pp. 1-24, 1-25; see 1 Cal. Tax Rptr. (CCH) ¶ 12-051, p. 1181; 2001 Guidebook to California Taxes (CCH 2000) ¶ 232, p. 240.) This attribution of business activity parallels the treatment of nonresident aliens as being engaged in a trade or business within the United States where the partnership of which such individual is a member is so engaged. (26 U.S.C. § 875(1); see also Rev. Rul. 87-121, 1987-2 C.B. 217.) Thus, an S corporation shareholder's income is characterized by reference to the corporate-income-producing activity and, once characterized, the items are then sourced according to the particular sourcing rule applicable to each type of income. Consequently, the Valentinos were required to report their share of Cellular 2000 income as gross income from sources within California.

Relying on section 17952 [7] and the doctrine of *mobilia sequuntur personam* (movables follow the law of the person), the Valentinos assert that because their income is from Cellular 2000 stock the source of the income is determined by looking to their residence. They note there is no authority for limiting the scope of section 17952 to essentially C corporation stock. Granted, section 17952 and the *mobilia* doctrine provide that income of nonresidents from intangibles, such as stock, does not generally have a source in California. However, Internal Revenue Code section 1366(b) characterizes S corporation income as to the shareholder by reference to its character as to the corporation, not as income from stock. In other words, a shareholder of a C corporation is taxed on income received from the corporation, while a shareholder of an S corporation is taxed on income received by the corporation as if he or she received it. As such, a shareholder's pro rata share of corporate income is not income from stock in the same sense as dividends and gain from the sale of stock. Indeed, it cannot be characterized as income from stock unless the corporate income itself is derived from stock. Rather, such income is corporate income derived directly from corporate activities and passed through and taxed at the shareholder level as if the shareholder earned the income in his or her individual ***1292** capacity. (Christian & Grant, Subchapter S Taxation, *supra*, ¶ 1.17, p. 1-25; see 1 Cal. Tax Rptr. (CCH) ¶ 12-051, p. 1181.) Here, the attribution of Cellular 2000 income to the Valentinos was determined by their percentage of ownership of the outstanding shares, income that was derived from the tangible sources from which the corporation received it and not from the intangible shares themselves. Consequently, section 17952 never applies to a shareholder's share of S corporation income unless the corporate income itself is derived from intangibles. (See § 17952; Cal. Code Regs., tit. 18, § 17952, subd. (c).) [8]

The Valentinos' reliance on *Miller v. McColgan* (1941) 17 Cal.2d 432, 437 [110 P.2d 419, 134 A.L.R. 1424], and *Christman v. Franchise Tax Bd.* (1976) 64 Cal.App.3d 751, 758-759 [134 Cal.Rptr. 725], for the propositions that the source of the income to the shareholder is the corporate stock and that the source of the income from the stock is the state where the owner resides under the *mobilia* doctrine unless it acquires a business situs elsewhere, is misplaced. These cases are distinguishable in that both involved the source of dividends received, not a pro rata share of S corporation income, and taxable years *before* California adopted S corporation rules. Granted, the *Christman* corporation was an S corporation for Georgia income tax purposes; however, it was a C corporation for California purposes. Within this earlier context, the *Miller* court aptly pointed out: "[I]t appears that there is in the beginning an income to the corporation, and that part of such income in turn is passed on to the shareholder in the form of dividends. *As such it represents in law an income to the shareholder quite distinct from the income to the corporation*. Therefore, in the absence of an express statutory mandate to the contrary, it logically follows that the source of the income to the shareholder ... is the corporate stock." (*Miller v. McColgan*, *supra*, 17 Cal.2d at p. 437, italics added.) [9]

The Valentinos assert the Board's interpretation of Internal Revenue Code section 1366(b) is erroneous, as the provision only deals with the "character" ***1293** of an item of income and does not address the source or location of the income passing through to the shareholder. They assert this makes perfect sense in the context of the federal taxation scheme, because the source or location of income is not an issue when considering federal taxes. That is, the source of income for a United States resident shareholder of a United States recognized S corporation will always be the United States. However, the Board counters, asserting that sourcing shareholder income by reference to corporate-income-producing activity constitutes the logical result of applying the cited characterization rule and California Code of Regulations, title 18, section 17951-4. The Board contends it would be absurd to characterize the income by reference to the underlying corporate activities and then source it by reference to another characterization (i.e., income from intangibles [stock]).

That the Legislature intended the income be sourced to locations where the corporation conducted business is evident by its enacting sections 18535 and 23801, subdivision (b)(1). Section 18535 allows nonresident shareholders of an S corporation doing business or deriving income from California to file a single composite nonresident return reporting their shares of S corporation income from California sources. This enactment demonstrates the Legislature considered that nonresident S corporation shareholders were subject to taxation on corporate income generated in California by providing them a mechanism to simplify the reporting of such income. If the income had a source in the shareholder's state of residence and not where the corporate-income-producing activities occurred, then a nonresident shareholder of an S corporation would never be taxed on his or her share of S corporation California income, rendering the provision a nullity. Similarly, section 23801, subdivision (b)(1) requires each nonresident shareholder of an electing S corporation to file a consent with the Board to be subject to the jurisdiction of California to tax his or her "pro rata share of the income attributable to California sources." [10] Again, if the source of such income were the shareholder's state of residence, the filing of this consent would be meaningless. It facilitates California taxation of income attributable to California sources. [11] To limit the application of Internal Revenue Code section 1366(b) and to apply section 17952 as suggested by the Valentinos would ***1294** result in the income being sourced outside the state. [12] (See also *Isaacson v. Iowa State Tax Commission* (Iowa 1971) 183 N.W.2d 693, 695 [under similar circumstances, the Iowa Legislature intended to subject nonresident shareholders of S corporations doing business in Iowa to Iowa tax on the shareholder's distributive share of Iowa source income].) [13]

The Board admits that, within the context of Internal Revenue Code section 1366(b), the Valentinos' assertion that sourcing is not an issue for federal tax purposes is partly correct. Although sourcing income is necessary under federal law to determine a nonresident alien's tax liability as a general matter (26 U.S.C. § 861 et seq.), an S corporation cannot by definition have a nonresident alien shareholder (26 U.S.C. § 1361(b)(1)(C)). However, this does not mean that for federal purposes the source of S corporation pass through income is not determined by reference to corporate activities. Indeed, for purposes of determining income from sources outside the United States, the source of such income is determined by reference to where the corporation conducted business. (26 U.S.C. §§ 1373, 875, 871.) Rather, its exclusion from Internal Revenue Code section 1366(b) is simply because as to nonresident aliens the sourcing rule is irrelevant given an S corporation cannot have them as shareholders.

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Mindful of the substantial similarity between the federal partnership and S corporation provisions (compare Int.Rev. Code, subtit. A, ch. 1, subch. C with Int.Rev. Code, subtit. A, ch. 1, subch. S.) and that California conforms to these provisions in all material respects (§§ 17951, 23800), our interpretation is fully consistent with the long-standing treatment of partnerships by the federal government and this state for tax purposes. As previously noted, ***1295** the rules set forth in the Subchapter S Revision Act of 1982 for taxing S corporations were by design to follow generally the rules governing the taxation of partners with regard to items of partnership income and loss. Consequently, the conduit rule of Internal Revenue Code section 1366(b) was intended by Congress to be the same as the partnership rule, Internal Revenue Code section 702(b). (Sen.Rep. No. 97-640, 2d Sess. (1982), reprinted in 1982-2 C.B. 718, 725; Eustice & Kuntz, Federal Income Taxation of S corporations, *supra,* ¶ 7.07 [5], p. 7-97; Christian & Grant, Subchapter S Taxation, *supra*, ¶ 16.10, p. 16-27; Rev. Rul. 87-121, 1987-2 C.B. 217.) The similarity in treatment between partners and S corporation shareholders extends to sourcing matters as well. (See Willson & Windfeld, Tax Management Multistate Tax Portfolios-State Taxation of Pass-Through Entities: General Principles, No. 1500, *supra*, p. 43.) Internal Revenue Code section 1373(a) provides that for purposes relating to income from sources outside the United States, an S corporation shall be treated as a partnership and its shareholders shall be treated as partners of such partnership. The source of a partner's distributive share of partnership income is determined at the partnership level. Consequently, if the partnership is conducting business entirely within a single state, the partner's distributive share is sourced where the partnership property is located and where the partnership business activity is carried on. (*Appeal of Ahmanson* (1965) 65 SBE 013, [Cal. Tax Rptr. (CCH) ¶ 202-855].) California Code of Regulations, title 18, section 17951-1, subdivision (b) provides that the gross income of a nonresident who is a member of a partnership includes his or her distributive share of the taxable income of the partnership to the extent it is derived from sources within California. “Partnerships, like S corporations, are 'pass-through' entities. Partnership interests are intangible property, just as are shares of an S corporation. Taxation of partners is imposed in California by reference to the corresponding provisions of the Internal Revenue Code. Nonetheless, and despite there being no explicit exemption for partnership intangible interests in section 17952, [the State Board of Equalization], by long-standing Regulation has held that pass-through partnership income received by a non-resident is subject to California tax where the source of the partnership's income is in this state. (See 18 California Code of Regulations, § 17951-1.)” (*Appeal of Manter, supra,* 99 SBE 008 [Cal. Tax Rptr. (CCH) ¶ 403-067].)

The Valentinos challenge the notion the Legislature and regulatory agencies intended to treat S corporation shareholders in the same manner as partners in a partnership as to sourcing. Relying on California Code of Regulations, title 18, section 17951-1, subdivision (b) cited above providing that the source of partnership income passes through to the individual partners, they suggest the regulation makes clear that the Legislature and ***1296** administrative agencies know how to expressly make the source of income of a business entity pass-through as the source of income to nonresidents when they so intend. Thus, the Valentinos reason that the fact they have not done so regarding an S corporation leads to the inevitable conclusion they did not intend to pass the source through from the corporation to the shareholders. Given the universal recognition of the similarity in treatment between the taxation of partnerships and S corporations, we are unpersuaded. The fact that the *Board* has not amended its regulations so as to specifically address sourcing as to an S corporation shareholder should not be interpreted as evidence the *Legislature* did not intend to assign a source to pass through income by reference to corporate activities. Casting aside the fact it is not the Legislature's function to amend a regulation, to do so is unnecessary in light of the foregoing analysis and interpretation of statutory provisions addressing the taxation of nonresident shareholders.

In summary, guided by the cardinal rules governing statutory interpretation, we conclude the Legislature intended the source of S corporation pass through income be determined by reference to corporate-income-producing activities. That is, the source of a shareholder's pro rata share of S corporation income is first characterized by reference to corporate-income-producing activities under Internal Revenue Code section 1366(b), and then as characterized is sourced to locations according to the rule that applies to that type of income. Our interpretation is predicated upon the Legislature's actions to require nonresident shareholders' consent to the taxing jurisdiction of California as a condition to allowing a corporation to elect S corporation status, to formerly require S corporations to pay estimated tax on the California source income of nonresident shareholders, to allow nonresident partners of an S corporation to file a single composite return to report their share of S corporation income from California sources, and to allow shareholders

to claim a credit against California tax for taxes paid to another state on income having a source in the latter state. Moreover, our interpretation harmonizes Internal Revenue Code section 1366(b) with section 17952, by applying the latter to income characterized at the corporate level as income from intangibles. In other words, section 17952 is not displaced by Internal Revenue Code section 1366(b), because it continues to apply in those situations it did before the enactment of the S corporation provisions-that is, to determine the source of stock dividends and income from the sale of stock. [14] ***1297**

Disposition

The judgment is affirmed.

Huffman, J., and Haller, J., concurred. ***1298**

Footnotes

1 All statutory references are to the Revenue and Taxation Code, unless otherwise specified.

2 To avoid double taxation when a California resident shareholder pays tax to another state where the S corporation derives income, sections 18001 and 18006 were amended to provide relief in the form of a credit for taxes imposed by the other state against California taxes paid by the shareholder.

3 The parties agree the interpretation and application of the statutory scheme in controversy to an undisputed set of facts constitutes a question of law subject to de novo review on appeal. (*Rudd v. California Casualty Gen. Ins. Co.* (1990) 219 Cal.App.3d 948, 951 [268 Cal.Rptr. 624].) In interpreting the statutory scheme, our primary function is to ascertain the intent of the Legislature so as to effectuate the purpose of the law. To do so, we look first to the words of the statute itself, endeavoring to accord them their usual and ordinary meaning. We construe the language in the context of the statutory framework as a whole, always mindful of the policies and purposes underlying the enactment and endeavoring to read the language so as to conform to its spirit. (*Id.* at p. 952.)

4 Internal Revenue Code section 1366(b) provides: "The character of any item included in a shareholder's pro rata share under paragraph (1) of subsection (a) shall be determined as if such item were realized directly from the source from which realized by the corporation, or incurred in the same manner as incurred by the corporation."

5 Section 17951 provides: "In the case of nonresident taxpayers the gross income includes only the gross income from sources within this State."

FN6 California Code of Regulations, title 18, section 17951-4, subdivision (a) provides: "If a nonresident's business, trade or profession is carried on entirely without the state, no portion of the gross income therefrom should be reported. If, on the other hand, the nonresident's business, trade or profession is conducted wholly within the state the entire gross income therefrom must be reported."

7 Section 17952 pertinently provides: "Income of nonresidents from stocks, bonds, notes, or other intangible personal property is not income from sources within this State unless the property has acquired a business situs in this State...."

8 For example, assume hypothetically that an S corporation obtains income from the sale of real estate in California. Under Internal Revenue Code section 1366(b), that income as to the shareholder is characterized as if it were realized directly from the source from which it was realized by the corporation, that is from the sale of real estate. The source of the income is California because the real estate is located here. Section 17952 thus does not apply, because the corporate income is not income from intangibles.

9 To place this matter in full context, Cellular 2000 could have elected to be taxed as a C corporation in California and any dividends paid to the Valentinos would not have been subject to California income tax. However, the corporation chose to avoid the 9.3 percent franchise tax imposed on C corporations doing business in California, opting for the reduced rate of 1.5 percent applied to S corporations. As a consequence, the Valentinos are liable for tax on their share of Cellular 2000 income derived from California sources, but not on any dividends received.

10 Section 23801, subdivision (b)(2) requires an S corporation to include in its return for each taxable year a list of shareholders as prescribed by the Board.

11 It has been suggested this consent requirement of section 23801, subdivision (b)(1) was adopted due to a concern the state lacked the constitutional jurisdiction to tax nonresident S corporation shareholders on income from business activities sourced within the state. However, the law is settled that there is no constitutional bar to imposing the tax. (*Meyer v. Charnes* (Colo.Ct.App. 1985) 705 P.2d 979, 983; *Kulick v. Department of Revenue* (1981) 290 Or. 507 [624 P.2d 93, 98-99] [concluding that Oregon had the power to tax S corporation distributions to nonresident shareholders]; see *Wisconsin v. J. C. Penney Co.* (1940) 311 U.S. 435 [61 S.Ct. 246, 85 L.Ed. 267, 130 A.L.R. 1229] [concluding that states may require corporations to withhold state tax on dividends paid to nonresident shareholders]; Willson & Windfeld, Tax Management Multistate Tax Portfolios-State Taxation of Pass-Through Entities: General

Principles, No. 1500, *supra*, pp. 41-42; *Appeal of Manter* (1999) 99 SBE 008 [Cal. Tax Rptr. (CCH) ¶ 403-067], fn. 3; see also *Wisne v. Department of Treasury* (2001) 244 Mich.App. 342 [625 N.W.2d 401] [Mich. Tax Rptr. (CCH) ¶ 400-863].)

12 We note that former section 23801, subdivision (b)(2) required an S corporation to pay estimated tax on California source income of its nonresident shareholders. If the source of that income were determined by reference to the shareholder's residence rather than by the location of the corporate activities, such payments would not have been required.

13 Further, sections 18001 and 18006 allow a California resident shareholder of an S corporation a credit against California tax for taxes paid to another state on S corporation income taxed by that state. This scenario arises when an S corporation conducts business in another state and the California shareholder incurs tax liability in that state. Sections 18001 and 18006 allow the credit, however, only if the income has a source in the other state according to California's sourcing rules. (*Christman v. Franchise Tax Board*, *supra*, 64 Cal.App.3d at p. 759.) If the source of S corporation income were determined by reference to the shareholder's residence, California would never allow the credit because the source of the income would be California and not the other state.

14 We note that jurisdictions that have addressed this issue have likewise concluded the source of a nonresident shareholder's pro rata share of S corporation income is determined by reference to the location of corporate activity. (See generally Ala. Reg. 810-3-162-.01; Del. Technical Information Mem. 93-3, Apr. 30, 1993, Del. Tax Rptr. (CCH) ¶ 200-501; Hawaii Reg., § 18-235-122; Ind. Reg., Ind. Admin. Code tit. 45, T.3.1-1-67; Ky. Admin. Releases, Rev. Circular 40C010, Ky. Tax Rptr. (CCH) ¶ 18-215; Ky. Rev. Stat. Ann. § 141.206; Mass. Gen. Laws ch. 62, § 17A(b); Me. Reg., Code Me. R. § 806, Nonresident Individual Income Tax, Me. Tax Rptr. (CCH) ¶ 18-015; Miss. Reg. 803, Election of Certain Small Business Corporations (S corporations), Miss. Tax Rptr. (CCH) ¶ 18-450; Mo. Reg., 12 C.S.R. 10-2.190, Mo. Tax Rptr. (CCH) ¶ 19-136; Neb. Reg. 22.003.01E(1), Neb. Tax Rptr. (CCH) ¶ 18-037; N.Y. Tax Law §§ 601(e), 631(a), 632(a)(2); N.Y.S. Dept. of Tax & Fin., Pub. 35, New York Tax Treatment of S corporations and Their Shareholders (Feb. 1996); N.D., N.D. Cent. Code § 57-38-01.4; S.C. Rev. Proc. #92-5, June 1, 1992, S.C. Tax Rptr. (CCH) ¶ 310-003; Va. Code § 58.1-325B; Va. Rul. of Commissioner, P.D. 93-57, Mar. 5, 1993, Va. Tax Rptr. (CCH) ¶ 202-270; W. Va. Code, §§ 11-21-71a(b)(1), 11-21-32, 11-21-71a(e); All States Tax Guide (RIA) ¶ 222-C. Income Tax Treatment of S corporations; 1 Multistate Corporate Income Tax Guide (CCH) ¶ 63, S corporations.)

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290 Or. 507
Supreme Court of Oregon, En Banc. *

Leonard KULICK, Sidney Kulick, Howard Shirvan and Stanley Shirvan, Appellants,
v.
DEPARTMENT OF REVENUE, State of Oregon, Respondent.

TC 1195 to TC 1198; SC 26841. | Argued and Submitted Oct. 6, 1980. | Decided Feb. 18, 1981.

Nonresident taxpayers appealed from a decision of the Oregon Tax Court, Carlisle B. Roberts, J., affirming assessments against them of personal income taxes on their shares of both the distributed and undistributed income of corporation. The Supreme Court, Linde, J., held that state's action in levying against nonresident shareholders in Oregon corporation personal income taxes on their shares of both the distributed and undistributed income of the corporation did not violate the due process clause of the Fourteenth Amendment, since, in demanding that shareholders of closely held corporation instead of the corporation itself contribute a tax on the financial gains derived from sources within the state, state was not demanding the shareholders' property without due process of law.

Affirmed.

West Headnotes (2)

[1] Taxation
Corporations in General

Under Oregon's tax laws, once corporation and its shareholders have chosen federal Subchapter S tax treatment, distributed and undistributed taxable income of corporation derived from or connected with sources in Oregon likewise is taxed as income of the individual shareholders rather than corporate income, notwithstanding fact that the shareholder or his own property is not employed in business, trade, or an occupation in Oregon. 26 U.S.C.A. §§ 1371-1378; ORS 316.127.

7 Cases that cite this headnote

[2] Constitutional Law
Income Taxes

Taxation
Residence and Source of Income

State's action in levying against nonresident shareholders in Oregon corporation personal income taxes on their shares of both the distributed and undistributed income of the corporation did not violate the due process clause of the Fourteenth Amendment, since, in demanding that shareholders of closely held corporation instead of the corporation itself contribute a tax on the financial gains derived from sources within the state, state was not demanding the shareholders' property without due process of law. ORS 314.417, 314.419, 314.430, 314.440; ORS 314.460 (Repealed); U.S.C.A.Const. Amend. 14.

8 Cases that cite this headnote

Attorneys and Law Firms

***508 **93** Eli Uncyk, New York City, argued the cause for appellants. On the brief were Bodie, Minturn, Van Voorhees, Larson & Dixon, Prineville, and Simon, Sussman, Uncyk, Forseter & Borenkind, New York City.

Ira W. Jones, Sr. Asst. Atty. Gen., Salem, argued the cause for respondent. With him on the brief was James M. Brown, Atty. Gen.

Opinion

***509** LINDE, Justice.

Taxpayers, residents of New Jersey and shareholders in an Oregon corporation, appeal from a decision of the Oregon Tax Court that affirmed assessments against them of personal income taxes on their shares of both the distributed and the undistributed income of the corporation. The issue is whether such an exertion of the state's taxing power over nonresident individuals exceeds the state's reach and seeks to take their property without due process of law, contrary to the 14th

amendment. We conclude that Oregon may validly levy the tax and therefore affirm.

The Oregon Tax Court stated the case as follows:

> "The defendant assessed Oregon personal income taxes, interest and penalties **94 on each plaintiff's pro rata share of the distributed and undistributed taxable income of Timber Investors, Inc., an Oregon corporation, for the tax years 1973, 1974 and 1975. By agreement of the parties, the four cases were consolidated for purposes of briefing and oral argument.
>
> "During the years in question, the four plaintiffs were equal shareholders in Timber Investors, Inc., an Oregon corporation which had elected, through its shareholders, to be taxed under the Subchapter S provisions of the federal Internal Revenue Code of 1954. During the years in question, none of the plaintiffs (all of whom are residents of New Jersey) filed Oregon personal income tax returns.
>
> "The defendant's Orders Nos. I 77-23, I 77-24, I 77-25, and I 77-26, denying the plaintiffs' petitions for abatement of the taxes, interest and penalties, were issued on July 28, 1977. Plaintiffs appealed to this court pursuant to ORS 314.460 (1975 Replacement Part)."

Kulick et al. v. Dept. of Rev., 7 OTR 471, 472 (1978).[1]

***510 [1]** The federal Subchapter S provisions to which the tax court referred permit a qualified "small business corporation" and its shareholders to elect personal taxation of the shareholders in lieu of the corporate income tax. 26 U.S.C.A. ss 1371-1378.[2] Under Oregon's tax laws, once a ***511** corporation and its shareholders have chosen federal Subchapter S tax treatment, the distributed and undistributed taxable income of **95 the corporation "derived from or connected with sources in this state" likewise is taxed as income of the individual shareholders rather than corporate income, notwithstanding the fact that the shareholder or his own property is not employed in business, trade, or an occupation in Oregon.[3]

Taxpayers concede that even as nonresidents, they could constitutionally be reached by an Oregon tax on income derived from their own business or occupational activities in the state. This was settled in Shaffer v. Carter, 252 U.S. 37, 40 S.Ct. 221, 64 L.Ed. 445 (1920), which sustained an Oklahoma income tax levied against an Illinois resident's income from an oil and gas business in Oklahoma. They point out, however, that not they but only the corporation, Timber Investors, Inc., did business in Oregon. Conceding further that Oregon could tax the income they derived from this Oregon business while still in the hands of the corporation, as Wisconsin did by "privilege" or withholding taxes sustained in ***512** Wisconsin v. J. C. Penney Co., 311 U.S. 435, 61 S.Ct. 246, 85 L.Ed.2d 267 (1940), and International H. Co. v. Wisconsin Dept. of Taxn., 322 U.S. 435, 64 S.Ct. 1060, 88 L.Ed. 1373 (1944), plaintiffs argue that Oregon's law has not availed itself of these or other devices,[4] and that the mere fact that the corporation's income accrues to their benefit or is distributed to them does not give the state a sufficient tie in order to tax nonresident shareholders.

Plaintiffs seek support for this view in what they perceive to be stricter standards for the extraterritorial exercise of state power in United States Supreme Court decisions concerning the jurisdiction of state courts, most recently Rush v. Savchuk, 444 U.S. 320, 100 S.Ct. 571, 62 L.Ed.2d 516 (1980); World-Wide Volkswagen Corp. v. Woodson, 444 U.S. 286, 100 S.Ct. 580, 62 L.Ed.2d 490 (1980); and Kulko v. California Superior Court, 436 U.S. 84, 98 S.Ct. 1690, 56 L.Ed.2d 132 (1978). The Department of Revenue, on the other hand, places continued reliance on the previously cited decisions sustaining the Wisconsin dividend taxes. The department also contends that by virtue of their own choice of Subchapter S taxation the shareholders have placed themselves in sufficient "contact" with Oregon to support the state's power to tax them on the corporation's income derived from this state. The tax court followed its earlier decision in O'Neil v. Dep't of Rev., 6 OTR 467 (1976), which sustained the tax on nonresident shareholders under the Supreme Court's J. C. Penney Co. and Harvester Co. precedents, supra, adding the observation that the Court's willingness to disregard form for substance meanwhile had been demonstrated when **96 Spector Motor Service v. O'Connor, 340 U.S. 602, 71 S.Ct. 508, 95 L.Ed. 573 (1951) was overruled in Complete Auto Transit, Inc. v. Brady, 430 U.S. 274, 97 S.Ct. 1076, 51 L.Ed.2d 326 (1977).

It must be recognized that the laws sustained in the J. C. Penney Co. and Harvester Co. decisions can be distinguished insofar as they asserted the state's power to collect the tax from the corporation rather than the shareholders. ***513** It should be recognized also that the bounds within which the federal Constitution confines the reach of the state's taxing power have long been a body of law in search of a theory. The problem of territorial limits on taxation, as on other legislation

or on adjudication, antedate and exist independently of the 14th amendment and its due process clause. See Tharalson v. State Dept. of Rev., 281 Or. 9, 17-21, 573 P.2d 298 (1978). Since analysis of the problem has been placed under that protean rubric, the question of theory is how much survives of the original concern with territoriality as such and how much now concerns due process in the sense of fairness and considerations of economic reality.

In answer, Wisconsin v. J. C. Penney Co., supra, often is quoted for what it said as much as for what it held. Justice Frankfurter wrote for the Court:

> "A state is free to pursue its own fiscal policies, unembarrassed by the Constitution, if by the practical operation of a tax the state has exerted its power in relation to opportunities which it has given, to protection which it has afforded, to benefits which it has conferred by the fact of being an orderly civilized society.
>
> "Constitutional provisions are often so glossed over with commentary that imperceptibly we tend to construe the commentary rather than the text. We cannot, however, be too often reminded that the limits on the otherwise autonomous powers of the states are those in the Constitution and not verbal weapons imported into it. 'Taxable event,' 'jurisdiction to tax,' 'business situs,' 'extraterritoriality,' are all compendious ways of implying the impotence of state power because state power has nothing on which to operate. These tags are not instruments of adjudication but statements of result in applying the sole constitutional test for a case like the present one. That test is whether property was taken without due process of law, or, if paraphrase we must, whether the taxing power exerted by the state bears fiscal relation to protection, opportunities and benefits given by the state. The simple but controlling question is whether the state has given anything for which it can ask return...."

311 U.S. at 444, 61 S.Ct. at 250.[5] The Supreme Court of Louisiana, in a case somewhat analogous to ours, quoted these paragraphs to ***514** sustain that state's taxation of a gain imputed to a nonresident when he received a distribution of Louisiana assets of a Delaware corporation headquartered in Indiana. Johnson v. Collector of Revenue, 246 La. 540, 165 So.2d 466, 477 (1964). The court rejected the argument that the undoubted "protection, opportunities and benefits" afforded those assets in Louisiana ****97** were extended to their corporate owner rather than to the stockholder who upon liquidation became the beneficiary of their gain in value.

It may be that due process requires some minimal "nexus" or connection of the taxpayer with the taxing state over and above the economic connection of the taxable income itself. If neither the individual nor the legal entity through which his income is earned has this requisite nexus with the taxing state, neither might be taxed. In recent times the required nexus has been discussed mostly in the context of a nondomiciliary state's taxes on portions of a corporation's income from interstate commerce, where it is intertwined with concern about undue burdens on that commerce. See, e. g., Exxon Corp. v. Wisconsin Dept. of Revenue, 447 U.S. 207, 100 S.Ct. 2109, 65 L.Ed.2d 66 (1980); Mobil Oil Corp. v. Commissioner of Taxes, 445 U.S. 425, 436-442, 100 S.Ct. 1223, 63 L.Ed.2d 510 (1980); National Bellas Hess, Inc. v. Department of Revenue, 386 U.S. 753, 87 S.Ct. 1389, 18 L.Ed.2d 505 (1967). This court found a lessee's use of railroad cars within Oregon a sufficient nexus to tax a ***515** portion of the rental income received by the lessor corporation. Amer. Refrig. Transit Co. v. Tax Com., 238 Or. 340, 395 P.2d 127 (1964). Compare Hamilton Corp. v. Tax Com., 253 Or. 602, 609-610, 457 P.2d 486 (1969).

This case differs insofar as no issue of interstate commerce is presented, and the putative taxpayers are nonresident individuals. As such, they invoke the phraseology of "minimum contacts" employed since International Shoe Co. v. Washington, 326 U.S. 310, 66 S.Ct. 154, 90 L.Ed. 95 (1945), in decisions on state jurisdiction to render valid judgments against nonresidents rather than "jurisdiction" to tax them.

We cannot say that "nexus" intrinsically means anything different from "minimum contacts." Verbally, each term is no more than an inexact approach to dealing with the fact that geographic boundaries define the states as political entities, but they do not prevent outside events and acts from having effects within a state that justify application of the state's law, nor do they keep economic assets and opportunities within the state from enriching persons outside that may fairly be expected to share the accompanying social costs. Although "nexus" and "contacts" may be verbally synonymous, however, it need not follow that they are functionally identical in defining the conditions under which a state may tax and those under which it may adjudicate.

A summons to a nonresident to appear in a state's court is an individualized assertion of that state's power, usually on behalf of a private plaintiff, to accomplish a purpose that otherwise may be accomplished in some other court. When that assertion of jurisdiction is challenged, the due process issue concerns not the nonresident's substantive obligation, which theoretically should be the same in whatever court tries the case, but rather the legitimacy of that state's putting the nonresident to the inconvenience, the possible procedural drawbacks of trial, and the judgment of what is asserted to be an inappropriate forum. A tax law, by contrast, is addressed to a general class of persons on whom the state means to place the substantive obligation to contribute to its revenues. It is not at all clear that the "contacts" that due process demands for the first ***516** purpose are identical with the "nexus" required for the second.

The distinction between the two issues in fact appears in Shaffer v. Carter, supra,[6] ****98** and also in International Shoe Co. itself, where only the state's ability to collect from the taxpayer by a suit and judgment in personam was treated as problematic, while the taxpayer's liability for the tax itself was cursorily affirmed. See also International H. Co. v. Wisconsin Dept. of Taxn., supra, 322 U.S. at 443-444, 64 S.Ct. at 1064-1065. The due process clause plays yet another role when it is cited to exclude from a state's reach a part of the income of a taxpayer who is unquestionably subject to collection of the tax on the remainder. See, e. g., Norfolk & Western R. Co. v. Missouri Tax Com., 390 U.S. 317, 88 S.Ct. 995, 19 L.Ed.2d 1201 (1968); Hans Rees' Sons, Inc. v. North Carolina, 283 U.S. 123, 5 S.Ct. 385, 75 L.Ed. 879 (1931). In still different contexts, such as state efforts to make out-of-state sellers collect a use tax from customers within the taxing state, one can find language pointing either way. Compare National Geographic Soc'y v. California Equal. Bd., 430 U.S. 551, 97 S.Ct. 1386, 51 L.Ed.2d 631 (1977), with National Bellas Hess v. Department of Revenue, supra, and Miller Bros. v. Maryland, 347 U.S. 340, 74 S.Ct. 535, 98 L.Ed.2d 744 (1954). The only certain lesson is that in matters of state taxation, "due process" objections must be handled with caution.

***517** **[2]** The case before us does not present the issue of the state's ability to collect the challenged taxes by means of enforceable personal judgments against the nonresident plaintiffs. The department has not attempted to do so. Plaintiffs petitioned the department to abate the taxes and, upon denial of these petitions, plaintiffs invoked review by the Oregon Tax Court. The cases on state court jurisdiction from which plaintiffs quote are therefore of doubtful relevance. The only issue here is the validity of the tax itself, when assessed directly against nonresident shareholders upon income derived through their corporation from Oregon sources.

We doubt that the validity of the tax rests on the taxpayers' election of "Subchapter S" status, as the department contends, at least not in the sense that the act of election itself constitutes a "contact" with Oregon or a voluntary submission to an otherwise questionable authority. Once the choice to be taxed under Subchapter S is made with respect to the federal Internal Revenue Code, Oregon automatically applies the tax treatment prescribed by ORS 316.127(5) and ORS 317.320, supra note 2, though of course a taxpayer can avoid this effect by foregoing the federal Subchapter S option. The state's authority does not hinge upon this "consent."[7]

We think, however, that if a state's legitimate fiscal reach in the federal system indeed is more a matter of economic realities than of formal technicalities, as the Supreme Court's opinions tell us, then the state has not overreahed its authority here. Sixty years ago, when nonresidents attacked Oklahoma's income tax as "a personal tax, or a 'subjective tax imposing personal liability upon the recipient of the income' " beyond the state's authority to impose upon a nonresident, the Court wrote:

> "This argument, upon analysis, resolves itself into a mere question of definitions, and has no legitimate bearing upon any question raised under the Federal Constitution. For, where the question is whether a state taxing law contravenes rights secured by that instrument, the decision must ***518** depend not upon any mere question of form, construction, or definition, but ****99** upon the practical operation and effect of the tax imposed...."

Shaffer v. Carter, supra, 252 U.S. at 55, 40 S.Ct. at 226. The practical effect of the tax imposed here is identical as if it were imposed on the shareholder's gains in the hands of the corporation, as plaintiffs concede it could be under Wisconsin v. J. C. Penney Co., supra, or by one of the "jurisdictional" devices employed by other states. The "fiscal relation" to the opportunities and benefits available in Oregon as an "orderly,

civilized society," in the language of J. C. Penney Co., is exactly the same.

The effective collection of an income tax from nonresident shareholders can give rise to different issues, but there is no need to anticipate them here. On the record and briefs before us, plaintiffs' attack is directed at the tax itself, not at the enforcement of any resulting lien or debt, see supra note 1, and we express no view on the latter question. All we hold is that in demanding that shareholders of a closely held corporation instead of the corporation contribute to this state a tax on the financial gains derived from sources within the state, the state is not demanding the shareholders' property without the due process of law commanded by the 14th amendment.

Affirmed.

Parallel Citations

624 P.2d 93

Footnotes

* Howell, J., retired November 30, 1980.

1 Under then ORS 314.460, cited by the tax court, a taxpayer's appeal was taken "from the determination of the department upon the application made by the taxpayer for refund or revision of any tax" under a preceding section governing appeals to the department for such refund or revision.

Other sections provided that an income tax assessment, if unpaid, "shall be a lien" on the taxpayer's property, ORS 314.417, enforceable by foreclosure, ORS 314.419; and the tax might also be collected under a warrant issued by the department, ORS 314.430, or as a debt, ORS 314.440. Plaintiffs' present constitutional attack is not on the use of any of these means of enforcing collection of the tax but on the tax itself.

2 At the time of assessments here at issue, relevant sections provided:

26 U.S.C. s 1371 (1976):

"(a) Small business corporation

For purposes of this subchapter, the term 'small business corporation' means a domestic corporation which is not a member of an affiliated group (as defined in section 1504) and which does not

(1) have (except as provided in subsection (e)) more than 10 shareholders;

(2) have as a shareholder a person (other than an estate and other than a trust described in subsection (f)) who is not an individual;

(3) have a nonresident alien as a shareholder; and

(4) have more than one class of stock."

26 U.S.C. s 1372 (1976):

"(a) Eligibility

Except as provided in subsection (f), any small business corporation may elect, in accordance with the provisions of this section, not to be subject to the taxes imposed by this chapter. Such election shall be valid only if all persons who are shareholders in such corporation

(1) on the first day of the first taxable year for which such election is effective, if such election is made on or before such first day, or

(2) on the day on which the election is made, if the election is made after such first day,

consent to such election.

"(b) Effect

If a small business corporation makes an election under subsection (a), then

(1) with respect to the taxable years of the corporation for which such election is in effect, such corporation shall not be subject to the taxes imposed by this chapter (other than as provided by section 58(d)(2) and by section 1378) and, with respect to such taxable years and all succeeding taxable years, the provisions of section 1377 shall apply to such corporation, and

(2) with respect to the taxable years of a shareholder of such corporation in which or with which the taxable years of the corporation for which such election is in effect and, the provisions of sections 1373, 1374, and 1375 shall apply to such shareholder, and with respect to such taxable years and all succeeding taxable years, the provisions of section 1376 shall apply to such shareholder."

26 U.S.C. s 1373(a) (1976):

> "The undistributed taxable income of an electing small business corporation for any taxable year shall be included in the gross income of the shareholders of such corporation in the manner and to the extent set forth in this section."

3 ORS 316.127:

"(1) The adjusted gross income of a nonresident derived from sources within this state is the sum of the following:

"(3) Income from intangible personal property, including annuities, dividends, interest and gains from the disposition of intangible personal property, constitutes income derived from sources within this state only to the extent that such income is from property employed in a business, trade, profession or occupation carried on in this state.

"(5) Notwithstanding subsection (3) of this section the distributed and undistributed taxable income of an electing small business corporation for federal income tax purposes derived from or connected with sources in this state does constitute income derived from sources within this state for a nonresident individual who is a shareholder of such a corporation, and a net operating loss of such corporation derived from or connected with sources in this state does constitute a loss or deduction connected with sources in this state for such a nonresident individual."

ORS 317.320:

> "Distributed and undistributed taxable income of an electing small business corporation under section 1373 of the Internal Revenue Code, shall be deductible from gross income under this chapter and net operating losses of such corporation, to the extent attributed or made available to a shareholder, shall not be used by the corporation for further tax benefit."

4 Taxpayers note that some states, for instance, extend a tax option comparable to Subchapter S to small business corporations only if nonresident shareholders agree to pay their proportionate shares of the tax on the undistributed taxable income, see, e. g., Okl.St.Ann. ch. 68 s 2365 (1978-79 Supp.); Kan.St.Ann. ch. 79 s 79-32, 139 (1980 Supp.).

5 The opinion continued:

> "Ambiguous intimations of general phrases in opinions torn from the significance of concrete circumstances, or even occasional deviations over a long course of years, not unnatural in view of the confusing complexities of tax problems, do not alter the limited nature of the function of this Court when state taxes come before it. At best, the responsibility for devising just and productive sources of revenue challenges the wit of legislators. Nothing can be less helpful than for courts to go beyond the extremely limited restrictions that the Constitution places upon the states and to inject themselves in a merely negative way into the delicate processes of fiscal policy-making. We must be on guard against imprisoning the taxing power of the states within formulas that are not compelled by the Constitution but merely represent judicial generalizations exceeding the concrete circumstances which they profess to summarize."

311 U.S. at 445, 61 S.Ct. at 250. This was still in the early flush of the Roosevelt Court's efforts to excavate the buried constitutional premises and to free government from rigid judicial formulations of the due process and commerce clauses, six years before Frankfurter, J., led a return to one such formula in Freeman v. Hewit, 329 U.S. 249, 67 S.Ct. 274, 91 L.Ed. 265 (1946).

6 "Under the 'due process of law' provision appellant makes two contentions: first, that the state is without jurisdiction to levy a tax upon the income of nonresidents; and, secondly, that the lien is invalid because imposed upon all his property, real and personal, without regard to its relation to the production of his income.

"These are separate questions, and will be so treated. The tax might be valid, although the measures adopted for enforcing it were not. Governmental jurisdiction in matters of taxation, as in the exercise of the judicial function, depends upon the power to enforce the mandate of the state by action taken within its borders, either in personam or in rem, according to the circumstances of the case, as by arrest of the person, seizure of goods or lands, garnishment of credits, sequestration of rents and profits, forfeiture of franchise, or the like; and the jurisdiction to act remains even though all permissible measures be not resorted to. (Citations omitted.)

"It will be convenient to postpone the question of the lien until all questions as to the validity of the tax have been disposed of."

252 U.S. at 49, 40 S.Ct. at 224.

7 If a search for "jurisdictional contacts" is needed, a more likely candidate in this instance might be found in the fact that Timber Investors, Inc., was an Oregon corporation, so that the shareholders' interests in its assets before or at the time of distribution have a taxable situs in this state.

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246 La. 540
Supreme Court of Louisiana.

Daniel M. and Valerie JOHNSON et al.
v.
COLLECTOR OF REVENUE.

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Consolidated cases contesting income tax deficiencies. The Nineteenth Judicial District Court, Parish of East Baton Rouge, Elmo E. Lear, J., reversed order of Board of Tax Appeals and disallowed taxes, penalties and interest assessed by Louisiana Collector of Revenue and Collector appealed. The Supreme Court, Sanders, J., held that statute providing that stock surrendered for property in Louisiana shall for purposes of determining taxable gain be deemed to have its taxable situs in Louisiana to extent that property of corporation distributed in liquidation is located in state was not unconstitutional with respect to imposition of income tax on gain in value of Louisiana oil producing lands distributed to nonresident stockholders upon surrender of their stock, where gain in value of lands reflected protection and opportunity that state had afforded.

Judgment of District Court reversed and suit dismissed.

Hamiter, Hamlin and Summers, JJ., dissented.

West Headnotes (11)

[1] **Taxation**
Construction and operation in general

Court must consider provisions of revised statutes chapter dealing with income tax together so as to give meaning to all of them, if it can reasonably do so. LSA–R.S. 47:159, subd. H, 47:241 to 47:243.

1 Cases that cite this headnote

[2] **Statutes**
Conflict

Construction that raises conflict between provisions of statute should be avoided when court can reasonably effectuate will of legislature, especially where statutory provisions were enacted together.

2 Cases that cite this headnote

[3] **Taxation**
Property or income and expenses allocable to state

"Taxable situs" within statute to effect that stock surrendered for property in state shall for purposes of determining taxable gain be deemed to have its taxable situs in state to extent that property of corporation distributed in liquidation is located in state means business situs. LSA–R.S. 47:159, subd. H, 47:243.

1 Cases that cite this headnote

[4] **Taxation**
Property or income and expenses allocable to state

Gain to nonresident from liquidation-surrender of stock for Louisiana property must be allocated to state where securities have their business situs if they have been so used in connection with taxpayer's business as to acquire business situs or in absence of business situs the legal domicile of taxpayer. LSA–R.S. 47:159, subd. H, 47:243.

1 Cases that cite this headnote

[5] **Taxation**
Property or income and expenses allocable to state

Statute providing that stock surrendered for property in Louisiana shall for purposes of determining taxable gain be deemed to have its taxable situs in state to extent that property of corporation distributed in liquidation is located within state applied to stock surrendered by nonresidents who upon liquidation of corporation received interest in Louisiana lands. LSA–R.S. 47:159, subd. H, 47:243.

1 Cases that cite this headnote

[6] **Constitutional Law**

Clearly, positively, or unmistakably unconstitutional

Court must sustain statute unless it clearly violates organic law.

3 Cases that cite this headnote

[7] **Statutes**

Presumptions and Construction as to Validity

Any doubt must be resolved in favor of validity of solemn expression of legislative will.

5 Cases that cite this headnote

[8] **Property**

What law governs

Intangible property can have no physical location and its situs must be fixed by law.

Cases that cite this headnote

[9] **Taxation**

Shares of stockholders

Where there is reasonable basis in fact, situs of stock of nonresident may be fixed in state for tax purposes.

Cases that cite this headnote

[10] **Taxation**

Residence and source of income

Statute providing that stock surrendered for property in Louisiana shall for purposes of determining taxable gain be deemed to have its taxable situs in Louisiana to extent that property of corporation distributed in liquidation is located in state was not unconstitutional with respect to imposition of income tax in gain in value of Louisiana oil producing lands distributed to nonresident stockholders upon surrender of their stock, where gain in value of lands reflected protection and opportunity that state had afforded. LSA–R.S. 47:159, subd. H, 47:243.

3 Cases that cite this headnote

[11] **Taxation**

Tax period and income attributable thereto

Constitution did not require that income tax imposed upon gain in value of Louisiana lands distributed to nonresident stockholders upon liquidation of corporation be postponed until property was sold. LSA–R.S. 47:159, subd. H, 47:243.

1 Cases that cite this headnote

Attorneys and Law Firms

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Opinion

HAMITER, Justice.

The plaintiffs in these consolidated cases are contesting income tax deficiencies assessed against them by the Collector of Revenue of the State of Louisiana. They urge that the Louisiana Income Tax statute, Chapter 1, Title 47, of the Louisiana Revised Statutes of 1950, does not authorize the assessments; and that, if it does, the statute ***544** is in violation and in contravention of the due process clause of the Constitution of the United States.

The Louisiana Board of Tax Appeals, following a hearing before it, approved the levying of the deficiencies. Plaintiffs, thereupon, obtained a review of that ruling in the district court. It held that while the provisions of LRS 47:159, subd. H (relied on by the collector) authorized the assessments the said section offends the due process clause of the federal constitution insofar as it affects these non-resident plaintiffs. Accordingly, it reversed the order of the Board of Tax Appeals, and rendered judgment in favor of plaintiffs disallowing in full the taxes, penalties and interest assessed. The collector is appealing from that judgment.

The case was submitted to the district court on the record of the hearing previously had before the Board of Tax Appeals wherein the pertinent facts were stipulated. From

the stipulation it appears that plaintiffs, who are not now and have never been residents of Louisiana, were the owners of all of the stock (at no time ever physically located in this state) in the Edward Mead Johnson Corporation, a Delaware entity, the principal place of business of which was in Evansville, Indiana, where the management of its affairs occurred. However, the corporation was qualified to do business in the State of Louisiana, its registered office having been the law offices of its legal counsel in New Orleans. It owned an undivided interest ***545** in certain lands situated in Plaquemines Parish, Louisiana, which, over the years, had enhanced considerably in value.

In 1951 the corporation was completely dissolved by a liquidation made pursuant to the provisions of Section 112(b)(7) of the United States Internal Revenue Code. In the liquidation the assets were exchanged to the plaintiff shareholders for their stock in proportion to their respective ownerships. As a result of the increase in the market value of the Louisiana Lands, owned ****468** by the corporation and distributed to the shareholders in exchange for their stock, a gain was imputed to each plaintiff.

Contending that under the provisions of LRS 47:159, subd. H the gain imputed to the shareholders was allocable to this state and taxable here, the Louisiana Collector of Revenue assessed the contested deficiencies against plaintiffs individually. These deficiencies, including taxes, interest and penalties, amounted to the total sum of $17,256.34.

In 1951 (when the liquidation occurred) Section 159, subd. H, appearing in Sub-part B of Part II of Chapter 1 of Sub-title II of LRS Title 47, provided: 'Situs of stock cancelled or redeemed in liquidation. In cases where property located in Louisiana is received by a shareholder in the liquidation of a corporation, the stock cancelled or redeemed in the liquidation shall, for purposes of determining taxable gain under ***546** this chapter, be deemed to have its taxable situs in this state to the extent that the property of the corporation distributed in liquidation is located in Louisiana. If only a portion of the property distributed in liquidation is located in Louisiana, only a corresponding portion of the gain realized by a shareholder shall be considered to be derived from Louisiana sources. * * *'

The Collector of Revenue recognizes that the taxes were, to quote from his brief to this court, 'imposed upon the stockholders rather than the corporation itself.' And he virtually concedes that but for the language of such section relied on, which assertedly places the situs of the stock in Louisiana, there would be no basis for levying the taxes claimed. Thus, again quoting from his brief, he states: '* * * In the absence of the provisions in R.S. 47:159H that portion of the distribution of Louisiana property which went to non-residents would totally escape the incidence of the tax. * * *'

The plaintiffs agree that if such section stood alone it would fit the situation which exists here, and that they would be subject to the taxes levied. However, they contend that since they have always been and are now non-residents of Louisiana any taxes imposed on them must be computed under the provisions of Part II, Sub-part F of the Income Tax law, particularly the provisions contained in LRS 47:241—243 which relate specifically to the computation ***547** of income of (and which are found under the heading entitled) 'Nonresident Individuals and Foreign Corporations.' In those sections the following pertinent recitations occur: 'Net income subject to tax—The net income of a nonresident individual or foreign corporation subject to the tax imposed by this Chapter shall be the sum of the net allocable income earned within or derived from sources within this state, As defined in R.S. 47:243, * * *.' Section 241. 'Segregation of items of gross income—All items of gross income not otherwise exempted in this Chapter, shall be segregated into two general classes as follows: (1) The class of gross income to be designated as 'allocable income' shall include the following: * * * (b) Profits from sales or exchanges of capital assets; * * *.' Section 242. 'Computation of net allocable income from Louisiana sources—Items of gross allocable income shall be allocated directly to the states from which such items of income are derived, on the following bases: * * * (3) Other interest, dividends, and Profits from sales and Exchanges of capital assets consisting of incorporeal property or rights, shall be allocated to the state in which the securities or credits producing such income Have their situs, which shall be at the business situs of such securities or credits, if they have been so used in connection with the taxpayer's business as to acquire a business situs, or in the absence of such a business situs, Shall be at the ***548** legal domicile of the taxpayer in the case of an individual or at the commercial domicile of the taxpayer in the case of a corporation; * * *.' Section 243. (Italics ours.)

[1] According to these unequivocal provisions the situs of an incorporeal upon ****469** which a non-resident individual realizes a profit as the result of a sale or an exchange thereof is deemed to be at the domicile of the owner of that intangible, and the profit is allocable to the state of such domicile for income tax purposes unless the incorporeal has acquired a business situs elsewhere. This was the interpretation that we placed on these provisions in United Gas Corporation v.

Fontenot, 241 La. 488, 129 So.2d 748. Therein we said: 'Thus it may be seen from these provisions that the legislature has provided in clear and unambiguous language that whether the taxpayer is a nonresident individual or a foreign corporation, the only portion of the income derived from intangibles that are allocated to other states are: * * (2) interest (other than that derived from the notes and accounts of foreign customers), dividends, and profits from sales and exchanges of capital assets consisting of incorporeal property or rights where the securities and credits producing such income have acquired a situs in another state. In the event the income is derived from such securities or credits, then the allocation is to be (a) to the state where they have acquired a 'business situs' and, if ***549** they have not acquired a 'business situs' in another state, then (b) to the state of legal domicile if the taxpayer is an individual, and (c) the state of 'commercial domicle' if the taxpayer is a corporation.

'* * * If the income is other interest, dividends, and profits from securities or credits that have acquired a 'business situs' in another state, then that income is allocated to the state of 'business situs' whether received by a nonresident individual or a foreign corporation. If no such 'business situs' has been established in another state under the latter condition, then the income in the case of the individual is allocated to his legal domicile; * * *.

'To say it another way, all of the gross income from the intangible assets of a nonresident individual or a foreign corporation deemed to be earned within or derived from sources within Louisiana is allocated to the legal domicile of the former and the 'commercial domicile' of the latter unless * * * derived from securities or credits having a 'business situs' in another state, in which events, the gross income from such source is allocated to these respective states.'

In the United Gas Corporation case we concluded that the plaintiff's income from its intangibles were properly allocable to this state only because of the finding that such corporate taxpayer, which owned the intangibles and realized profits therefrom, ***550** had its commercial (and its actual legal) domicile here. The plaintiffs in the present case, on the other hand, are nonresident individuals; and under the above quoted statutory provisions of LRS 47:241—243 the situs of the stock is deemed to be at their respective domiciles in the absence of a business situs in some other state.

Therefore, it clearly appears that these last mentioned provisions are in direct and irreconcilable conflict with those of LRS 47:159, subd. H, and we must determine which take precedence in and govern the instant dispute. And, as in almost all cases involving statutory conflict, the resolution is not without some difficulty. However, in view of certain well recognized rules of statutory construction, as well as of the history and of certain other provisions of the Income Tex statute itself, we have concluded that the special provisions of Subpart F of Part II (LRS 47:241—243) are controlling.

The original Income Tax statute, Act 21 of 1934 (which has been amended on innumerable occasions), provided for the taxation of income of non-residents derived from sources within and without this state (see Section 34 thereof). 'Supplement F' of that Act (Sections 62—68) set forth special rules peculiar only to foreign corporations. And stipulations relative to 'Distributions by Corporations', generally, were contained in Section 32 thereof.

***551** The 1934 Act was almost in the same form (insofar as the issue involved here is concerned) when Act 158 of 1944 amended the ****470** mentioned Section 32 by adding thereto a sub-section '(h)', the provisions of which are substantially those carried into the Revised Statutes of 1950 as Section 159, subd. H of Title 47.

But in 1948 the Legislature, by Act 354, made changes in 'Supplement F' which had formerly dealt solely with the exceptions and variations as to foreign corporations. The sections comprising 'Supplement F' (62 to 68) were rewritten so as to set out a complete system for computing allocable and apportionable income and deductions for Non-resident individuals, as well as for foreign corporations. And Section 34(b) was amended so as to provide that with respect to a non-resident individual or foreign corporation The net income was to be computed as provided in 'Supplement F' of such Act.

Among the revisions of 'Supplement F' were provisions contained in Section 64 of the 1948 statute that '* * * profits from sales and exchanges of capital assets consisting of incorporeal property or rights, shall be allocated to the state in which the securities or credits producing such income have their situs, which shall be at the business situs of such securities or credits, if they have been so used in connection with the taxpayer's business as to acquire a business situs, or, in the absence of such a business ***552** situs, shall be at the legal domicile of the taxpayer in the case of an individual or at the commercial domicile of the taxpayer in the case of a corporation; * * *.'

'Supplement F' of the 1948 Act later because 'Sub-part F' of the Revised Statutes of 1950 (LRS 47:241—248); and it

was entitled, as aforeshown, 'Non-resident Individuals and Foreign Corporations'.

[2] From the foregoing history of the income tax statute it is obvious that the Legislature by Act 354 of 1948 intended to deal with the entire subject matter of computing taxable income of special classes, namely, Non-resident individuals and foreign corporations; and it seems clear that such legislation, therefore, should take precedence over all prior provisions on the subject.

[3] Of course, LRS 47:159, subd. H was also included in the 1950 Revised Statutes. Nevertheless, its general provisions are in conflict with those specific ones of LRS 47:241—243, and in resolving this conflict the intention of the Legislature is most important.

[4] **[5]** The general rule with regard to such a conflict in the same legislation is, as set forth in 82 C.J.S. verbo Statutes s 347b, page 720, as follows: 'General and special provisions in a statute should stand together, if possible, and be read together and, if possible, harmonized with a view to ***553** giving effect to a consistent legislative policy. Where, however, general provisions, terms, or expressions in one part of a statute are inconsistent with more specific or particular provisions in another part, the particular provisions must govern or control, as a clearer and more definite expression of the legislative will, unless the statute as a whole clearly shows a legislative intention to the contrary, or some other canon of statutory construction compels a contrary conclusion. * * *' See also Crawford on Statutory Construction, page 267, Section 167.

Moreover, in construing the intent of the entire tax law, as enacted into the Revised Statutes, particular reference must be made to LRS 47:161 (the second section following that relied on by the collector) that: 'In the case of a nonresident individual or foreign corporation, items of gross income, expenses, losses and deductions, from whatever source receive or incurred, not otherwise exempted by this Chapter, shall be included in the taxpayer's return; but, for the purpose of this Chapter, the amount of tax shall be computed only upon the net income earned within or derived from sources within this state, Such net income to be computed as provided in Sub-part F of Part II of this Chapter.' (Italics ours.)

****471** Also, LRS 47:22, entitled 'Special Classes of Taxpayers', provides: 'The application of the general provisions of Part, I, and Sub-parts A and B of Part II of this Subtitle ***554** to each of the following special classes of taxpayers, shall be subject to the exceptions and additional provisions found in Part II of this Sub-title applicable to such class, as follows:

'(4) Foreign corporations, Sub-part G of Part II.' (Note:—Sub-parts A and B of Part II include Sections 121 through 167. Further, the reference to Sub-part G of Part II is obviously a typographical error and was intended as Sub-part F of Part II, this being shown by its source: Act 21 of 1934.)

[6] Therefore, out conclusion is that in carrying the income tax statute (with its conficting amendments) into the Revised Statutes the Legislature particularly exhibited its intention that the Sections of Part II, Sub-part F should continue to comprise the law with respect to the special classes to whom it refers—Non-resident individuals and foreign corporations—in computing income tax assessments; and that any conflict between the provisions thereof and those contained in Sub-parts A and B of Part II (where LRS 47:159, subd. H is found) should be resolved in favor of Subpart F.

[7] Having concluded that plaintiffs' net taxable income should be computed according to the provisions of Sub-part F, we further hold that the imputed gain is not allocable to Louisiana and hence not subject ***555** to the attempted tax assessments. This is because the shares of stock on which the gain was realized had not acquired a business situs here and the owners thereof were domiciled elsewhere.

There is no evidence whatever in the record from which it could even be inferred that such a business situs had been acquired in Louisiana; in fact, the stipulation entered into by the parties tends to negative such a finding. Furthermore, the Collector of Revenue has never suggested, through these entire proceedings, that there was any basis for such a finding; and, in recognizing that if LRS 47:159, subd. H be inapplicable the imputed gain would be nontaxable, he has virtually conceded that no business situs in Louisiana for the shares of stock could have been shown. Of course, if he had established that such shares had acquired a business situs here, the gain could and would have been allocated to Louisiana under the provisions of Sub-part F (LRS 47:241 et seq.) and taxable in this state.

In a supplemental brief filed in this court the collector insists that the provisions of 159, subd. H are special and, for that reason, they should take precedence over the conflicting specific ones found in LRS 47:241—243. However, he

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overlooks those provisions contained in LRS 47:22 and 161, quoted above.

***556** **[8]** But conceding arguendo that Section 159, subd. H is special in nature, as contended, there still remains a conflict between the two sets of specific provisions in question, for each set would place the situs of the shares of stock at a different location insofar as these plaintiffs are concerned. And this being true we must give recognition to the rule of construction relative to taxing statutes that '* * * where the intent or meaning of tax statutes, or statutes levying taxes, is doubtful, they are, unless a contrary legislative intention appears, to be construed most strongly against the government and in a favor of the taxpayer or citizen. Any doubts as to their meaning are to be resolved against the taxing authority and in favor of othe taxpayer, or, as it is sometimes put, the person upon whom it is sought to impose the burden. * * *' 51 American Jurisprudence, verbo Taxation, page 366, Section 316. See also 51 American Jurisprudence, verbo Taxation, page 616, Section 650; 47 C.J.S. verbo Internal Revenue s 53a, page 173, and ****472** Crawford on Statutory Construction, page 502, Section 257.

Our holding that LRS 47:159, subd. H. does not authorize the imposition of the assessments contested herein makes unnecessary a determination of the question of the constitutionality of that section insofar as these plaintiffs are concerned.

***557** For the reasons assigned the judgment of the district court, which reversed the order of the Board of Tax Appeals and disallowed the taxes, penalties and interest assessed by the Louisiana Collector of Revenue against these plaintiffs, is affirmed.

McCALEB, Justice (dissenting).

The majority opinion effects a judicial repeal of R.S. 47:159, subd. H on the ground that it is so inconsistent with and contrary to the provisions of R.S. 47:241—243 as to render it inoperative. To this I cannot agree.

Preliminarily, it is apt to observe that R.S. 17:159, subd. H is clear and unequivocal in its terms and fits exactly the situation obtaining in this case. Under the general provisions of our Income Tax Law (see Sub-part B of the Part I of R.S. 47:31(2)), all non-resident individuals are required to pay a tax on net income derived from property located or from business transacted or from sources within the State except as thereinafter exempted. And in Part II of the supplemental provisions of the statute, which deal with capital gains and losses (see Sub-part B, Sections 131—167) and apply to non-residents as well as residents, it is provided by Section 159, subd. C that amounts distributed in complete liquidation of a corporation (domestic or foreign) shall be treated as in full payment in exchange for the stock. Section 159, subd. H, with ***558** which we are here concerned, applying to non-residents of this State, reads:

'H. Situs of stock cancelled or redeemed in liquidation. In cases where property located in Louisiana is received by a shareholder in the liquidation of a corporation, The stock cancelled or redeemed in the liquidation shall, for purposes of determining taxable gain under this chapter, Be deemed to have its taxable situs in this state to the extent that the property of the corporation distributed in liquidation is located in Louisiana. If only a portion of the property distributed in liquidation is located in Louisiana, only a corresponding portion of the gain realized by a shareholder shall be considered to be derived from Louisiana sources. * * *' (Italics mine.)

Since the foregoing provision is admittedly clear and unambiguous, it appears to me that this Court violates the fundamental canon of statutory construction (Article 13 of the Civil Code) in disregarding the letter of the law under the pretext of pursuing its spirit. But the majority say that its action is justified because other provisions of the Income Tax Law, particularly those of R.S. 47:241—243 contained in Sub-part F of Part, II, relating to the computation of income of non-resident individuals and foreign corporations, are in direct conflict with the letter of R.S. 47:159, subd. H.

***559** I doubt the validity of the resolution that a conflict exists but, if it does, I believe that any asserted inconsistency in the provisions can be harmonized and reconciled by proper construction of the statute as a whole. We are duty bound to adopt a construction which gives effect to all provisions of the law as this will carry out the true intent of the Legislature and is in keeping with the principle that repeals by implication are not favored by law particularly when the alleged conflicting provisions are part of the same statute. See City of New Orleans v. Board of Supervisors, 216 La. 116, 43 So.2d 237 and authorities there cited. See also Chappuis v. Reggie, 222 La. 35, 62 So.2d 92.

The majority concludes that R.S. 47:159, subd. H is inconsistent with the provisions of R.S. 47:241—243 in that Section 243 declares that, in computing net allocable income ****473** from Louisiana sources by sales and exchanges of capital assets consisting of incorporeal property or rights,

allocation shall be made to the State in which the securities have their situs '* * * which shall be at the business situs of such securities or credits, if they have been so used in connection with the taxpayer's business as to acquire a business situs, or, in the absence of such a business situs, shall be at the legal domicile of the taxpayer in the case of an individual or at the commercial domicile of the taxpayer in the case of a corporation; * * *'. It is then reasoned that, inasmuch ***560** as the business situs of the liquidating corporation was in Evansville, Indiana, where the taxpayers resided and the stock certificates were located, there was no legal business situs in Louisiana and that, therefore, the contrary provisions of R.S. 47:159, subd. H, fixing the taxable situs of stock in this State when it is used in exchange for Louisiana property distributed in liquidation of a corporation, cannot be applied.

The basic error I find in this resolution is that it fails to take into account and give full consideration to all of the provisions of R.S. 47:243(3). That section, after stating that the profits from sales and exchanges of capital assets consisting of incorporeal property or rights shall be allocated to the State in which the securities producing such income have their situs, declares, '* * * which shall be at the business situs of such securities or credits, If they have been so used in connection with the taxpayer's business as to acquire a business situs * * *'. (Italics mine.)

Thus, in the case at bar, as long as the taxpayers' stock certificates remained in Indiana the stock evidenced thereby, under the fictional maxim 'mobilia sequuntur personam', had a taxable situs in Indiana. But, when these securities were used in the liquidation of the corporation for the purpose of exchanging them in part for real property owned by the corporation, the taxpayers themselves employed this stock In connection with their business in procuring ***561** Louisiana property so that it Acquired a business situs in Louisiana for the purpose of effecting the exchange insofar as such exchange transferred to the taxpayers the Louisiana property. This is precisely what R.S. 47:159, subd. H provides and, therefore, far from being in conflict with the provisions of R.S. 47:243, it is consonant therewith and renders the profit derived by these taxpayers amendable to Louisiana law.

In fine, I do not perceive the claimed inconsistency between R.S. 47:159, subd. H and the other provisions of the statute relied on by the taxpayers. But, if there by any doubt as to the interpretation to be given the various provisions, this Court, in my humble opinion, is not warranted in concluding that the clear and unambiguous letter of R.S. 47:159, subd. H, which deals with a special situation of exchanges of stock for property in Louisiana upon liquidation of a foreign corporation, has been impliedly repealed by the same Legislature that passed it on the theory that it is so utterly inconsistent with the other provisions of the Act so as to require the holding that those general provisions override the special provision with which the Court is presently confronted.

I respectfully dissent.

SANDERS, Justice (dissenting).

In this income tax proceeding, the state seeks to invoke LSA-R.S. 47:159, subd. H ***562** declaring the situs of stock exchanged for Louisiana property in the liquidation of a corporation to be in Louisiana. The majority holds that the section is in conflict with LSA-R.S. 47:243, relating to the computation of income of non-residents, and hence must fall. I am unable to agree with this holding.

Both sections were incorporated in the Revised Statutes of 1950. Both sections have received legislative attention from time to time. See Act No. 445 of 1950, Act No. 170 of 1958, and Act No. 443 of 1958.

Under general principles of statutory construction, the Court should give meaning ****474** and effect to both sections, if it can reasonably do so. As I view it, LSA-R.S. 47:159, subd. H is a special provision covering the taxable gain from the distribution of property in corporate liquidation. LSA-R.S. 47:243 is the general provision for the computation of the income of non-residents. Under the special circumstances of corporate liquidation, such as the instant case, LSA-R.S. 47:159, subd. H applies. I express no opinion as to its constitutionality at this time.

For the reasons assigned, I respectfully dissent.

FOURNET, Chief Justice (dissenting).

I cannot agree with the majority holding that the State of Louisiana, in levying assessments against non-resident shareholders ***563** of a foreign corporation on the capital gains realized by them cannot take into consideration the stock cancelled or redeemed In the liquidation of that corporation for which they received real property in Louisiana as a consideration, as is clearly and specifically provided by R.S. 47:159(H),[1] such holding being predicated on this section's purported conflict with R.S. 47:241—243—general provisions governing the computation of the taxable Net

income of non-resident individuals and foreign corporations earned in Louisiana.

In so holding, the majority has not only repealed R.S. 47:159(H) by implication, contrary to the jurisprudence holding 'there is a strong presumption against implied repeal,' and where two acts relating to the same subject are passed at the same legislative session, 'they are to be construed together, if possible, so as to reconcile them, giving effect to each,' but also the jurisprudence pointing out that the 'Revised Statutes constitute a single act of the Legislature, adopted as a whole,' and different ***564** sections 'should be regarded not as separate acts, but as simultaneous expressions of the legislative will, and all provisions should be construed together and reconciled whenever possible.' Moreover, in reaching the conclusion it has, the majority disregarded the cannon of statutory construction with respect to our Revised Statutes, to the effect that we should 'not search through the history of the acts carried into the Revised Statutes for defects, when a reading of the sections, disassociated from their history, presents no insuperable difficulty of construction.'[2]

As a matter of fact, one of the very authorities relied on by the majority supports this jurisprudence, for it is pointed out in a quoted portion from Crawford on Statutory Construction that 'Where * * * general provisions, terms, or expressions in one part of a statute are inconsistent with more specific or particular provisions in another part, The particular provisions must govern or control, as a clear and more definite expression of the legislative will, unless ***565** less the statute as a whole clearly shows a legislative intention to the contrary, or some other canon of statutory construction compels a contrary conclusion.' Section 167, at page 267. (The emphasis has been supplied by me.)

****475** It is my opinion that the legislature in adopting R.S. 47:159(H) intended to, and did in fact, in clear and unambiguous language, deal with a specific subject not covered by the general provisions as set forth in R.S. 47:241—43, that is, to provide that when property is received for the redemption of shares of stock In the liquidation of a corporation, if that property is located in Louisiana, the stock is deemed to have its situs here. It should be given that effect. It can be given that effect without in any manner conflicting with the provisions of R.S. 47:241—243, Dealing with the annual income realized in Louisiana by non-resident individuals or foreign corporations, as these provisions are clearly distinguishable. This has been very ably demonstrated in the dissenting opinion of Mr. Justice McCaleb.

On Rehearing

SANDERS, Justice.

We granted a rehearing in these consolidated cases to review our holding that the gain realized by the non-resident taxpayers who, in the liquidation of a corporation, received property of enhanced value located in Louisiana for the cancellation of their ***566** stock was not taxable under the Louisiana Income Tax Law. To reach this result, we held that LSA-R.S. 47:241—243 (dealing with the income of non-resident individuals) was applicable and that LSA-R.S. 47:159, subd. H (dealing with the situs of stock surrendered in the liquidation of a corporation for property in Louisiana) was not applicable.

The pertinent facts may be restated briefly. The non-resident plaintiffs were the sole stockholders of the Edward Mead Johnson Corporation, organized in the State of Delaware. The management of the business affairs of the corporation was conducted from Evansville, Indiana. The corporation was duly authorized to do business in Louisiana and maintained its registered office in New Orleans. The sole investment of the corporation was an interest in lands in Plaquemines Parish, Louisiana. Because of the development of oil and gas production on these lands, they increased substantially in value.

In 1951, the Edward Mead Johnson Corporation was liquidated. The plaintiffs surrendered their stock certificates (which were never physically located in Louisiana) and received an interest in the Louisiana lands. Based upon the increase in market value of these lands, the Louisiana Collector of Revenue imputed a gain to each plaintiff and assessed a tax on it under the provisions of LSA-R.S. 47:159, subd. H. These deficiency ***567** assessments aggregated $17,256.34. LSA-R.S. 47:159, subd. H provides:

> 'In cases where property located in Louisiana is received by a shareholder in the liquidation of a corporation, the stock cancelled or redeemed in the liquidation shall, for purposes of determining taxable gain under this chapter, be deemed to have its taxable situs in this state to the extent that the property of the corporation distributed in liquidation is located in Louisiana. If only a portion of the property distributed in liquidation is located in Louisiana,

> only a corresponding portion of the gain realized by a shareholder shall be considered to be derived from Louisiana sources. * * *'

While recognizing that if the above section stood alone it would be applicable to the tax situation here, we held that Sub-part F (LSA-R.S. 47:241—245) contained the 'complete system' for computing the income of non-residents and that LSA-R.S. 47:159, subd. H, on which the Commissioner had relied, must yield to it. We are now of the view that we erred in so holding.

It is true that Sub-part F deals with the allocation and apportionment of the income of non-residents. However, it does not purport to be complete in itself. Clear indicia that the Sub-part is not to be isolated from ***568** the other provisions of the Chapter are found in its sections. For example, LSA-R.S. 47:242 refers to gross income 'not otherwise ****476** exempted in this Chapter.' LSA-R.S. 47:243 refers to expenses, losses and other deductions 'allowable under this Chapter.' LSA-R.S. 47:244 likewise refers to tax provisions outside the Sub-part. As we now view it, the complete system is the entire chapter, with its interrelated provisions.

[1] [2] Under familiar rules of statutory construction, the court must consider the provisions of the chapter together so as to give meaning to all of them, if it can reasonably do so. A construction that raises a conflict between the provisions should be avoided when the court can reasonably effectuate the will of the legislature. These rules are particularly applicable here since the statutory provisions with which we are concerned were enacted together in the Louisiana Revised Statutes of 1950. [1]

Sub-part F contains the general provisions governing the allocation of the income of non-residents. LSA-R.S. 47:243(3) provides, among other things, that the profits from the sale or exchange of incorporeal property shall be allocated to the state where the securities have their business situs 'if they have been so used in connection with the taxpayer's business as ***569** to acquire a business situs, or, in the absence of such a business situs, shall be at the legal domicile of the taxpayer * * *.' [2]

[3] LSA-R.S. 47:159, subd. H is a specific provision applying to the redemption of stock in the liquidation of corporations. The section provides that stock surrendered for property in Louisiana 'shall, for purposes of determining taxable gain under this chapter, be deemed to have its taxable situs in this state to the extent that the property of the corporation distributed in liquidation is located in Louisiana.' When used in reference to stock owned by a non-resident, taxable situs means business situs.

[4] Thus considered together, Sections 243 and 159, subd. H form a consistent pattern. Section 159, subd. H places the gain to a non-resident from the liquidation-surrender of stock for Louisiana property within the income allocation structure of Section 243.

[5] We conclude, as did the district court, that LSA-R.S. 47:159, subd. H applies to the stock surrendered by the plaintiffs in the liquidation of the Edward Mead Johnson Corporation.

[6] [7] Remaining for consideration is the constitutionality of LSA-R.S. 47:159, ***570** subd. H. The plaintiffs have strenuously attacked the statute throughout this proceeding. The court, of course, has a duty to sustain it unless it clearly violates the organic law. Any doubt must be resolved in favor of the validity of a solemn expression of the legislative will.

The district court found that the Edward Mead Johnson Corporation conducted no business in Louisiana and that the assignment of a Louisiana situs to the stock was wholly fictitious and arbitrary, rendering the statute unconstitutional. We cannot agree with this holding.

[8] [9] Intangible property can have no physical location. Its situs must be fixed by law. [3] We readily assume that a state cannot arbitrarily assign the situs of stock owned by a non-resident to the state for income tax purposes. The converse of this assumption, however, is a sound principle of law. When there is a reasonable basis in fact, the situs of the stock of a non-resident may be fixed in the state for tax purposes.

****477** The Supreme Court of the United States has laid down the test in State of Wisconsin v. J. C. Penney Company: [4]

'* * * A state is free to pursue its own fiscal policies, unembarrassed ***571** by the Constitution, if by the practical operation of a tax the state has exerted its power in relation to opportunities which it has given, to protection which it has afforded, to benefits which it has conferred by the fact of being an orderly, civilized society.

'Constitutional provisions are often so glossed over with commentary that imperceptibly we tend to construe the commentary rather than the text. We cannot, however, be too often reminded that the limits on the otherwise autonomous powers of the states are those in the Constitution and not verbal weapons imported into it. 'Taxable event', 'jurisdiction to tax', 'business situs,' 'extraterritoriality', are all compendious ways of implying the impotence of state power because state power has nothing on which to operate. These tags are not instruments of adjudication but statements of result in applying the sole constitutional test for a case like the present one. That test is whether property was taken without due process of law, or, if paraphrase we must, whether the taxing power exerted by the state bears fiscal relation to protection, opportunities and benefits given by the state. The simple but controlling question ***572** is whether the state has given anything for which it can ask return.'

To apply the test, whether the state has given anything for which it can ask return, requires an examination of the facts in relation to the practical operation of the income tax statute. **[10]** **[11]** The corporation owned Louisiana lands, upon which oil and gas production was developed. As a result of the mineral development, the value of the land substantially increased in the hands of the corporation. If the corporation had sold or exchanged the lands to a party other than a stockholder, the corporation would have paid a Louisiana income tax on the gain arising from the increased value. [5] LSA-R.S. 47:159, subd. H is designed to apply when the corporation, instead of selling the lands in an arms-length transaction, conveys them in liquidation to the stockholders for the redemption of their stock. In the absence of LSA-R.S. 47:159, subd. H, the gain passed on to the stockholders in the liquidation would escape the income tax. [6] The legislative policy is clear: The gain is to be taxed whether it arises from an armslength sale by the corporation or from the vesting of the property in the stockholders in redemption of their stock.

***573** Clearly, such a gain from oil-producing lands in Louisiana reflects the protection and opportunities that the state has afforded. It is true that the state opened its doors to the business of the corporation. But the privilege of doing business in Louisiana is not the important thing here. The state also did some things in reference to the property: State laws protected the ownership, maintenance, and development of lands; the exploration and production of minerals took place under the aegis of a conservation program created by state law and administered by state personnel; [7] finally, the vesting of the title of these lands in the plaintiffs was accomplished under Louisiana law.

The plaintiffs attempt to discount these benefits on the theory that they accrued to the corporation, who then owned the lands, rather than to the taxpaying stockholders. ****478** We cannot accept this theory. It overlooks the fact that the land itself benefitted as evidenced by its substantial increase in value. ***574** The stockholders realized the gain when they surrendered their stock and received the property.

The taxing power exerted by the state in the present case bears a substantial fiscal relation to the protection, opportunities, and benefits provided by the state. In short, the state has given something for which it can ask a return. We conclude that LSA-R.S. 47:159, subd. H is constitutional. [8]

For the reasons assigned, the judgment of the district court is reversed, the demands of the plaintiffs are rejected, and the suit is dismissed at plaintiffs' costs.

HAMITER, J., dissents, adhering to the reasons originally assigned by him.

HAMLIN, J., dissents, adhering to the reasons assigned with original opinion herein.

SUMMERS, J., dissents, adhering to the original opinion.

Parallel Citations

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Footnotes

1 R.S. 47:159, under the heading 'Distributions by corporations,' provides, in subsection (H), with the sub-title 'Situs of stock cancelled or redeemed in liquidation,' that 'In cases where property located in Louisiana is received by a shareholder In the liquidation of a corporation, the stock cancelled or redeemed in the liquidation shall, for purposes of determining taxable gain under this chapter, Be deemed to have its taxable situs in this state to the extent that the property of the corporation distributed in liquidation is located in

Louisiana. If only a portion of the property distributed in liquidation is located in Louisiana, only a corresponding portion of the gain realized by a shareholder shall be considered to be derived from Louisiana sources.' (The emphasis has been supplied by me.)

2 See, State v. Shushan, 206 La. 415, 19 So.2d 185; City of New Orleans v. Board of Supervisors of Elections, 216 La. 116, 43 So.2d 237; Chappuis v. Reggie, 222 La. 35, 62 So.2d 92; and State ex rel. Fudickar v. Heard, 223 La. 127, 65 So.2d 112.

1 See Chappuis v. Reggie, 222 La. 35, 62 So.2d 92 and City of New Orleans v. Board of Supervisors, 216 La. 116, 43 So.2d 237.

2 Prior to Act No. 170 of 1958.

3 See Sugar et ux. v. State of Louisiana, Collector of Revenue, 243 La. 217, 142 So.2d 401 and United Gas Corporation v. Fontenot, Collector of Revenue, 241 La. 488, 129 So.2d 748.

4 311 U.S. 435, 61 S.Ct. 246, 85 L.Ed. 267, 270—271.

5 LSA-R.S. 47:243.

6 The plaintiffs suggest that the tax would be collected when the property was later sold. This presupposes, of course, that the stockholders would sell it. The constitution does not require the tax be postponed.

7 See LSA-R.S. 30:1—63.

8 See International Harvester Co. v. Wisconsin Department of Taxation, 322 U.S. 435, 64 S.Ct. 1060 88 L.Ed. 1373; State of Wisconsin v. J. C. Penney Co., 311 U.S. 435, 61 S.Ct. 246, 85 L.Ed. 267; Curry v. McCanless, 307 U.S. 357, 59 S.Ct. 900, 83 L.Ed. 1339, 123 A.L.R. 162; and Shaffer v. Carter, 252 U.S. 37, 40 S.Ct. 221, 64 L.Ed. 445.

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