

DEPARTMENT OF REVENUE

Taxation Division

ALLOCATION AND APPORTIONMENT FOR CORPORATE INCOME TAX UNDER MULTI-STATE TAX COMPACT

1 CCR 201-3

Reg. IV.10.(a). Property Factor: In General.

The property factor of the apportionment formula for each trade or business of the taxpayer shall include all real and tangible personal property owned or rented by the taxpayer and used during the tax period in the regular course of such trade or business. The term "real and tangible personal property" includes land, buildings, machinery, stocks of goods, equipment, and other real and tangible personal property but does not include coin or currency. Property used in connection with the production of nonbusiness income shall be excluded from the property factor. Property used both in the regular course of taxpayer's trade or business and in the production of nonbusiness income shall be included in the factor only to the extent the property is used in the regular course of taxpayer's trade or business. The method of determining that portion of the value to be included in the factor will depend upon the facts of each case. The property factor shall include the average value of property includable in the factor. (See Regulation IV.12.)

Reg. IV.10.(b). Property Factor: Property Used for the Production of Business Income.

Property shall be included in the property factor if it is actually used or is available for or capable of being used during the tax period in the regular course of the trade or business of the taxpayer. Property held as reserves or standby facilities or property held as a reserve source of materials shall be included in the factor. Property or equipment under construction during the tax period, (except inventoriable goods in process) shall be excluded from the factor until such property is actually used in the regular course of the trade or business of the taxpayer. If the property is partially used in the regular course of the trade or business of the taxpayer while under construction, the value of the property to the extent used shall be included in the property factor. Property used in the regular course of the trade or business of the taxpayer shall remain in the property factor until its permanent withdrawal is established by an identifiable event such as its conversion to the production of nonbusiness income, its sale, or the lapse of an extended period of time (normally, five years) during which the property is held for sale.

Reg.IV.10.(c). Property Factor: Consistency and Uniformity in Reporting.

- (1) **Year-to-Year consistency.** In filing returns with this state, if the taxpayer departs from or modifies the manner of valuing property, or of excluding or including property in the property factor, used in returns for prior years, the taxpayer shall disclose in the return for the current year the nature and extent of the modification.
- (2) **State-to-State uniformity.** If the returns or reports filed by the taxpayer with all states to which the taxpayer reports under Article IV of this Compact or the Uniform Division of Income for Tax

Deleted: REGULATION IV COLORADO MULTI-STATE COMPACT TAX REGULATION IV – APPLICABILITY¶

For tax years beginning prior to January 1, 2009 taxpayers may elect the multi-state tax apportionment option set forth in Article III and Article IV of the Multistate Tax Compact and the regulations thereunder as those regulations existed prior to January 1, 2009. For tax years beginning on or after January 1, 2009, taxpayers must file in accordance with sections 39-22-303.5 and 39-22-303.7, C.R.S. and any regulations thereunder.¶

Reg. IV.1.(a). Business and Nonbusiness Income Defined.¶

(1) Article IV. 1. (a) defines "business income" as 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. In essence, all income which arises from the conduct of trade or business operations of a taxpayer is business income. For purposes of administration of Article IV, the income of the taxpayer is business income unless clearly classifiable as nonbusiness income.¶

(2) Nonbusiness income means all income other than business income.¶

(3) The classification of income by the labels occasionally used, such as manufacturing income, compensation for services, sales income, interest, ...

Deleted: Reg. IV.2.(a). Definitions.¶

(1) "Taxpayer" means any corporation, partnership, firm, association, governmental unit or agency or person, acting as a business entity in more than one state.¶

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

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

(4) "Business activity" refers to the transactions and activity occurring in the regular course of a particular trade or business of a taxpayer.¶

Reg. IV.2.(b)(1). Application of Article IV: Apportionment.¶

If the business activity in respect to any trade or business of a taxpayer occurs both within and without this state, and if by reason of such business activity the taxpayer is taxable in another state, the portion of the net income (or net loss) arising from such trade or business which is derived from sources within this state shall be determined by apportionment in accordance with Article IV.9 through IV.17.¶

Reg. IV.2.(b)(2). Application of Article IV: Combined Report.¶

If a particular trade or business is carried on by a taxpayer and one or more affiliated corporations, nothing in Article IV or in these regulations shall preclude the use of a "combined report" whereby the entire business income of such trade or business is ...

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Purposes Act are not uniform in the valuation of property and in the exclusion or inclusion of property in the property factor, the taxpayer shall disclose in its return to this state the nature and extent of the variance.

Reg. IV.10.(d). Property Factor: Numerator.

The numerator of the property factor shall include the average value of the real and tangible personal property owned or rented by the taxpayer and used in this state during the tax period in the regular course of the trade or business of the taxpayer. Property in transit between locations of the taxpayer to which it belongs shall be considered to be at the destination for purposes of the property factor. Property in transit between a buyer and seller which is included by a taxpayer in the denominator of its property factor in accordance with its regular accounting practices shall be included in the numerator according to the state of destination. The value of mobile or movable property such as construction equipment, trucks or leased electronic equipment which are located within and without this state during the tax period shall be determined for purposes of the numerator of the factor on the basis of total time within the state during the tax period. An automobile assigned to a traveling employee shall be included in the numerator of the factor of the state to which the employee's compensation is assigned under the payroll factor or in the numerator of the state in which the automobile is licensed.

Reg. IV.11.(a). Property Factor: Valuation of Owned Property.

- (1) Property owned by the taxpayer shall be valued at its original cost. As a general rule "original cost" is deemed to be the basis of the property for federal income tax purposes (prior to any federal adjustments) at the time of acquisition by the taxpayer and adjusted by subsequent capital additions or improvements thereto and partial disposition thereof, by reason of sale, exchange, abandonment, etc.

If original cost of property is unascertainable, the property is included in the factor at its fair market value as of the date of acquisition by the taxpayer.

- (2) Inventory of stock of goods shall be included in the factor in accordance with the valuation method used for federal income tax purposes.
- (3) Property acquired by gift or inheritance shall be included in the factor at its basis for determining depreciation for federal income tax purposes.

Reg. IV.11.(b). Property Factor: Valuation of Rented Property.

- (1) **Multiplier.** Property rented by the taxpayer is valued at eight times its net annual rental rate. The net annual rental rate for any item of rented property is the annual rental rate paid by the taxpayer for such property, less the aggregate annual subrental rates paid by subtenants of the taxpayer. (See Regulation IV.18 (b) for special rules where the use of such net annual rental rate produces a negative or clearly inaccurate value or where property is used by the taxpayer at no charge or rented at a nominal rental rate.)

Subrentals. Subrents are not deducted when the subrents constitute business income because the property which produces the subrents is used in the regular course of a trade or business of the taxpayer when it is producing such income. Accordingly there is no reduction in its value.

- (2) "Annual rental rate" is the amount paid as rental for property for a 12-month period (i.e., the amount of the annual rent). Where property is rented for less than a 12-month period, the rent

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paid for the actual period of rental shall constitute the "annual rental rate" for the tax period. However, where a taxpayer has rented property for a term of 12 or more months and the current tax period covers a period of less than 12 months (due, for example, to a reorganization or change of accounting period), the rent paid for the short tax period shall be annualized. If the rental term is for less than 12 months, the rent shall not be annualized beyond its term. Rent shall not be annualized because of the uncertain duration when the rental term is on a month-to-month basis.

- (3) "Annual rent" is the actual sum of money or other consideration payable, directly or indirectly, by the taxpayer or for its benefit for the use of the property and includes:
 - (A) Any amount payable for the use of real or tangible personal property, or any part thereof, whether designated as a fixed sum of money or as a percentage of sales, profits or otherwise.
 - (B) Any amount payable as additional rent or in lieu of rents, such as interest, taxes, insurance, repairs or any other items which are required to be paid by the terms of the lease or other arrangement, not including amounts paid as service charges, such as utilities, janitor services, etc. If a payment includes rent and other charges unsegregated, the amount of rent shall be determined by consideration of the relative values of the rent and the other items.

"Annual rent" does not include incidental day-to-day expenses.

- (4) Leasehold improvements shall, for the purposes of the property factor, be treated as property owned by the taxpayer regardless of whether the taxpayer is entitled to remove the improvements or the improvements revert to the lessor upon expiration of the lease. Hence, the original cost of leasehold improvements shall be included in the factor.

Reg. IV.12. Property Factor: Averaging Property Values.

As a general rule the average value of property owned by the taxpayer shall be determined by averaging the values at the beginning and ending of the tax period. However, the executive director may require or allow averaging by monthly values if such method of averaging is required to properly reflect the average value of the taxpayer's property for the tax period.

Averaging by monthly values will generally be applied if substantial fluctuations in the values of the property exist during the tax period or where property is acquired after the beginning of the tax period or disposed of before the end of the tax period.

Example: The monthly value of the taxpayer's property was as follows:

| | | | |
|----------|---------|-----------|----------|
| January | \$2,000 | July | \$15,000 |
| February | 2,000 | August | 17,000 |
| March | 3,000 | September | 23,000 |
| April | 3,500 | October | 25,000 |
| May | 4,500 | November | 13,000 |

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| | | | |
|------|----------|----------|------------------|
| June | 10,000 | December | 2,000 |
| | ----- | | ----- |
| | \$25,000 | | \$95,000 |
| | | | Total \$120,000. |

The average value of the taxpayer's property includable in the property factor for the income year is determined as follows:

$$\frac{\$ 120,000}{12} = \$10,000$$

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Averaging with respect to rented property is achieved automatically by the method of determining the net annual rental rate of such property asset forth in Reg. IV.11.(b).

Reg. IV.13.(a). Payroll Factor: in General.

- (1) The payroll factor of the apportionment formula for each trade or business of the taxpayer shall include the total amount paid by the taxpayer in the regular course of its trade or business for compensation during the tax period.
- (2) The total amount "paid" to employees is determined upon the basis of the taxpayer's accounting method, if the taxpayer has adopted the accrual method of accounting, all compensation properly accrued shall be deemed to have been paid. Notwithstanding the taxpayer's method of accounting, at the election of the taxpayer, compensation paid to employees may be included in the payroll factor by use of the cash method if the taxpayer is required to report such compensation under such method for unemployment compensation purposes.
- (3) The compensation of any employee on account of activities which are connected with the production of nonbusiness income shall be excluded from the factor.
- (4) The term "compensation" means wages, salaries, commissions and any other form of remuneration paid to employees for personal services. Payments made to an independent contractor or any other person not properly classifiable as an employee are excluded. Only amounts paid directly to employees are included in the payroll factor. Amounts considered paid directly include the value of board, rent, housing, lodging, and other benefits or services furnished to employees by the taxpayer in return for personal services provided that such amounts constitute income to the recipient under the federal Internal Revenue Code. In the case of employees not subject to the federal Internal Revenue Code, e.g., those employed in foreign countries, the determination of whether such benefits or services would constitute income to the employees shall be made as though such employees were subject to the federal Internal Revenue Code.
- (5) The term "employee" means (A) any officer of a corporation, or (B) any individual who, under the usual common-law rules applicable in determining the employer-employee relationship, has the status of an employee. Generally, a person will be considered to be an employee if he is included by the taxpayer as an employee for purposes of the payroll taxes imposed by the Federal Insurance Contributions Act; except that, since certain individuals are included within the term

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“employees” in the Federal Insurance Contributions Act who would not be employees under the usual common-law rules, it may be established that a person who is included as an employee for purposes of the Federal Insurance Contributions Act is not an employee for purposes of this regulation.

(6) Consistency and Uniformity in Reporting.

- (A) **Year-to-Year Consistency.** In filing returns with this state, if the taxpayer departs from or modifies the treatment of compensation paid used in returns for prior years, the taxpayer shall disclose in the return for the current year the nature and extent of the modification.
- (B) **State-to-State uniformity.** If the returns or reports filed by the taxpayer with all states to which the taxpayer reports under Article IV of this Compact or the Uniform Division of Income for Tax Purposes Act are not uniform in the treatment of compensation paid, the taxpayer shall disclose in its return to this state the nature and extent of the variance.

Reg. IV.13.(b). Payroll Factor: Denominator.

The denominator of the payroll factor is the total compensation paid everywhere during the tax period. Accordingly, compensation paid to employees whose services are performed entirely in a state where the taxpayer is immune from taxation, for example, by Public Law 86-272, is included in the denominator of the payroll factor.

Reg. IV.13.(c). Payroll Factor: Numerator.

The numerator of the payroll factor is the total amount paid in this state during the tax period by the taxpayer for compensation. The tests in Article IV.14. to be applied in determining whether compensation is paid in this state are derived from the Model Unemployment Compensation Act. Accordingly, if compensation paid to employees is included in the payroll factor by use of the cash method of accounting or if the taxpayer is required to report such compensation under such method for unemployment compensation purposes, it shall be presumed that the total wages reported by the taxpayer to this state for unemployment compensation purposes constitute compensation paid in this state except for compensation excluded under Regulation IV.13.(a) through IV.14. The presumption may be overcome by satisfactory evidence that an employee's compensation is not properly reportable to this state for unemployment compensation purposes.

Reg. IV.14. Payroll Factor: Compensation Paid in this State.

Compensation is paid in this state if any one of the following tests, applied consecutively, are met:

- (1) The employee's service is performed entirely within the state.
- (2) The employee's service is performed both within and without the state, but the service performed without the state is incidental to the employee's service within the state. The word “incidental” means any service which is temporary or transitory in nature, or which is rendered in connection with an isolated transaction.
- (3) If the employee's services are performed both within and without this state, the employee's compensation will be attributed to this state:
 - (A) if the employee's base of operations is in this state; or

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- (B) if there is no base of operations in any state in which some part of the service is performed, but the place from which the service is directed or controlled is in this state; or
 - (C) if the base of operations or the place from which the service is directed or controlled is not in any state in which some part of the service is performed but the employee's residence is in this state.
- (4) The term "base of operations" is the place of more or less permanent nature from which the employee starts his work and to which he customarily returns in order to receive instructions from the taxpayer or communications from his customers or other persons or to replenish stock or other materials, repair equipment, or perform any other functions necessary to the exercise of his trade or profession at some other point or points.
- (5) The term "place from which the service is directed or controlled" refers to the place from which the power to direct or control is exercised by the taxpayer.

IV.18.(a). Special Rules.

- (1) In General. Article IV.18 of §24-60-1301, C.R.S. provides that, if the allocation and apportionment provisions of Article IV do not fairly represent the extent of the taxpayer's business activity in this state, the taxpayer may petition for or the executive director may require, in respect to all or any 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.
- (2) Art.IV.18. permits a departure from the allocation and apportionment provisions of Article IV only in limited and specific cases. Article IV.18 may be invoked only in specific cases where unusual fact situations produce incongruous results under the apportionment and allocation provisions contained in Article IV.
- (3) In the case of certain industries, the foregoing regulations in respect to the apportionment formula do not set forth appropriate procedures for determining the apportionment factors. Nothing in Article IV.18. or in this Regulation IV.18 shall preclude the executive director from establishing appropriate procedures under Article IV.10 through 17 for determining the apportionment factors for each such industry, but such procedures shall be applied uniformly.
- (4) Exclusion of factors amounts or factors
- (A) Any factor whose denominator is zero shall be excluded from the calculation of the average apportionment factor.

Deleted: Reg. IV.15.(a). Sales Factor.¶
(1) In General. Article IV 1.(g) defines the term "sales" to mean all gross receipts of the taxpayer not allocated under paragraphs (5) through (8) of Article IV. Thus, for the purposes of the sales factor of the apportionment formula for each trade or business of the taxpayer, the term "sales" means all gross receipts derived by the taxpayer from transactions and activity in the regular course of such trade or business. The following are rules for determining "sales" in various situations:¶

(A) In the case of a taxpayer engaged in manufacturing and selling or purchasing and reselling goods or products, "sales" includes all gross receipts from the sales of such goods or products (or other property of a kind which would properly be included in the inventory of the taxpayer if on hand at the close of the tax period) held by the taxpayer primarily for sale to customers in the ordinary course of its trade or business. Gross receipts for this purpose means gross sales less returns and allowances, and includes all interest income, service charges, carrying charges, or time-price differential charges incidental to such sales. Federal and state excise taxes (including sales taxes) shall be included as part of such receipts if such taxes are passed on to the buyer or included as part of the selling price of the product.¶

(B) In the case of cost-plus-fixed fee contracts, such as the operation of a government-owned plant for a fee, "sales" includes the entire reimbursed cost, plus the fee.¶

(C) In the case of a taxpayer engaged in providing services, such as the operation of an advertising agency, or the performance of equipment service contracts, research and development contracts, "sales" includes the gross receipts from the performance of such services including fees, commissions, and similar items.¶

(D) In the case of a taxpayer engaged in renting real or tangible property, "sales" includes the gross receipts from the rental, lease, or licensing the use of the property.¶

(E) In the case of a taxpayer engaged in the sale, assignment, or licensing of intangible personal property such as patents and copyrights, "sales" includes the gross receipts therefrom.¶

(F) If a taxpayer derives receipts from the sale of equipment used in its business, such receipts constitute "sales."¶

(2) **Exceptions.** In some cases certain gross receipts should be disregarded in determining the sales factor in order that the apportionment formula will operate fairly to apportion to this state the income of the taxpayer's trade or business (See Regulation IV.18(c).)¶

(3) **Consistency and Uniformity in Reporting.¶**
 (A) **Year-to-year consistency.** In filing returns with this state, if the taxpayer departs from or modifies the basis for excluding or including gross receipts in the sales factor used in returns for prior years, the taxpayer shall disclose in the return for the current year the nature and extent of the modification.¶

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- (B) Amounts in any factor of property, payroll, or sales that do not materially contribute to the generation of business income shall be excluded from the factor.

Reg. IV.18.(b). Special Rules: Property Factor.

The following special rules are established in respect to the property factor of the apportionment formula:

- (1) If the subrents taken into account in determining the net annual rental rate under Regulation IV.11.(b) produce a negative or clearly inaccurate value for any item of property, another method which will properly reflect the value of rented property may be required by the executive director or requested by the taxpayer.

In no case however shall such value be less than an amount which bears the same ratio to the annual rental rate paid by the taxpayer for such property as the fair market value of that portion of the property used by the taxpayer bears to the total fair market value of the rented property.

- (2) If property owned by others is used by the taxpayer at no charge or rented by the taxpayer for a nominal rate, the net annual rental rate for such property shall be determined on the basis of a reasonable market rental rate for such property.

Deleted: Reg. IV.18.(c). Special Rules: Sales Factor.¶

The following special rules are established in respect to the sales factor of the apportionment formula:¶

(1) Where substantial amounts of gross receipts arise from an incidental or occasional sale of a fixed asset used in the regular course of the taxpayer's trade or business, such gross receipts shall be excluded from the sales factor.¶

(2) Insubstantial amounts of gross receipts arising from incidental or occasional transactions or activities may be excluded from the sales factor unless such exclusion would materially affect the amount of income apportioned to this state.¶

(3) Where business income from intangible property cannot readily be attributed to any particular income-producing activity of the taxpayer, such income cannot be assigned to the numerator of the sales factor for any state and shall be excluded from the denominator of the sales factor.¶

(4) Where the income-producing activity in respect to business income from intangible personal property can be readily identified, such income is included in the denominator of the sales factor and, if the income-producing activity occurs in this state, in the numerator of the sales factor as well.¶