

**59-10-118 Division of income for tax purposes.**

- (1) As used in this section:
  - (a) "Business income" means income arising from transactions and activity in the regular course of a taxpayer's trade or business and includes income from tangible and intangible property if the acquisition, management, and disposition of the property constitutes 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 a taxpayer is directed or managed.
  - (c) "Nonbusiness income" means all income other than business income.
  - (d) "Sales" means all gross receipts of a taxpayer not allocated under Subsections (3) through (7).
  - (e) "State" means any state of the United States, the District of Columbia, the commonwealth of Puerto Rico, or any possession of the United States.
- (2) A taxpayer having business income that is taxable both within and without this state, shall allocate and apportion the taxpayer's net income as provided in this section.
- (3) 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 (4) through (7).
- (4)
  - (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:
    - (i) if and to the extent that the property is utilized in this state; or
    - (ii) 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.
- (5)
  - (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:
    - (i) the property has a situs in this state at the time of the sale; or
    - (ii) 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.
- (6) Interest and dividends are allocable to this state if the taxpayer's commercial domicile is in this state.
- (7)
  - (a) Patent and copyright royalties are allocable to this state:
    - (i) if and to the extent that the patent or copyright is utilized by the payer in this state; or
    - (ii) 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.
- (8) All business income shall be apportioned to this state using the same methods, procedures, and requirements of Sections 59-7-311 through 59-7-320.

Amended by Chapter 105, 2008 General Session

Amended by Chapter 389, 2008 General Session