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Corporation Business Tax

Sec. 12-218-1. Definitions

(a) “Entire net income” means net income apportioned to this state under section 12-218. Only a company which is taxable both within and without this state shall be entitled to apportion its net income to this state. In the case of a company which is not taxable both within and without this state, any reference to its entire net income means its net income.

(b) “Entire net loss” means the excess (of allowable deductions over gross income) apportioned to this state under section 12-218. Only a company which is taxable both within and without this state shall be entitled to apportion its excess (of allowable deductions over gross income) to this state. In the case of a company which is not taxable both within and without this state, any reference to its entire net loss means its excess of allowable deductions over gross income.

(c) The commissioner, in his discretion, may require a company which files its annual return as if it were “taxable both within and without this state” to submit an official ruling from a state (which purportedly has taxing jurisdiction over such company) concerning its jurisdiction to impose a net income tax, a franchise tax for the privilege of doing business or a corporate stock tax on such company. Such an official ruling shall in no event bind the commissioner or be deemed conclusive.

(d) The “principal place of business” of a company is deemed to be within this state if the nerve center from which its officers control and coordinate corporate activities in furtherance of corporate objectives is within this state, or if the location of its overall, active management is within this state.

(e) Interest income and intangible assets are “managed or controlled” by a company within this state if—

(1) an office separate and distinct (if applicable) from the principal place of business of such company and officers of such company, charged with or responsible for the administration of, and the routine corporate activities involving, this particular aspect (interest income and intangible assets) of business operations are within this state; or

(2) no such separate and distinct office (as described in subdivision (1)) exists within or without this state, but the principal place of business of such company is within this state.

(Effective July 21, 1982)

Sec. 12-218-2. Derivation of income or loss

(a) Whether or not the net income or loss of a company is derived from the manufacture, sale or use of tangible personal or real property shall be determined by examining its business wherever carried on and not just by examining its business carried on within this state.

(b) The primary derivation of net income or loss shall be controlling. If the net income or loss of a company is primarily derived from the manufacture, sale or use of tangible personal or real property and only secondarily derived from an activity not involving the manufacture, sale or use of tangible personal or real property, the net income or loss of such company shall be deemed to be derived from the manufacture, sale or use of tangible personal or real property.

(Effective July 21, 1982)

Sec. 12-218-3. Apportionment fraction

(a) If the net income or loss of a company is primarily derived from the manufacture, sale or use of tangible personal or real property, such net income or loss shall

be apportioned within and without this state by multiplying such net income or loss by the apportionment fraction, the numerator of which is described in subsection (b) and the denominator of which is described in subsection (c).

(b) The numerator of the apportionment fraction is the sum of the property factor, the payroll factor, and twice the receipts factor. These factors are defined in section 12-218 (b). If a company cannot compute a factor, e.g., if a company paid no wages, salaries or other compensation to employees, then a zero shall be substituted for the factor which cannot be computed.

(c) The denominator of the apportionment fraction is four, unless a company cannot compute a factor, as illustrated by the example in subsection (b). If a company cannot compute a factor, the denominator of the apportionment fraction is the sum of the following for the factors which it can compute: in the case of the property factor, one; in the case of the payroll factor, one; and in the case of the receipts factor, two. Thus, e.g., if a company cannot compute the payroll factor but can compute the property factor and the receipts factor, then the denominator of the apportionment fraction is three.

(Effective August 1, 1983)