

810-27-1-4-.18 Special Rules.

(1) *Special Rules: In General.* Section 40-27-1, Article IV.18 provides that, if the allocation and apportionment provisions of Section 40-27-1, Article IV do not fairly represent the extent of the taxpayer's business activity in this state, the taxpayer may petition for or the Commissioner 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.

(e) Section 40-27-1, Article IV.18, permits a departure from the allocation and apportionment provisions of Section 40-27-1, Article IV, only in limited and specific cases. Section 40-27-1, Article IV.18, may be invoked only in specific cases where unusual fact situations (which ordinarily will be unique and nonrecurring) produce incongruous results under the apportionment and allocation provisions contained in Section 40-27-1, Article IV.

(f) 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 Section 40-27-1, Article IV.18, or in this Regulation 810-27-1-4-.18 shall preclude the Commissioner from establishing appropriate procedures under Section 40-27-1, Article IV.10 to 17, inclusive, for determining the apportionment factors for each such industry, but such procedures shall be applied uniformly.

(2) *Special Rules: Property Factor.* The following special rules are established in respect to the property factor of the apportionment formula:

(a) If the subrents taken into account in determining the net annual rental rate under Regulation 810-27-1-4-.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 Commissioner or requested by the taxpayer.

1. In no case, however, shall the value be less than an amount which bears the same ratio to the annual rental rate paid by the taxpayer for the 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.

EXAMPLE: The taxpayer rents a 10-story building at an annual rental rate of \$1,000,000.

Taxpayer occupies two stories and sublets eight stories for \$1,000,000 a year. The net annual rental rate of the taxpayer must not be less than two-tenths of the taxpayer's annual rental rate for the entire year, or \$200,000.

(b) 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 the property shall be determined on the basis of a reasonable market rental rate for the property.

(3) *Special Rules: Sales Factor.* The following special rules are established in respect to the sales factor of the apportionment formula:

(a) 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, those gross receipts shall be excluded from the sales factor. For example, gross receipts from the sale of a factory or plant will be excluded.

(b) Insubstantial amounts of gross receipts arising from incidental or occasional transactions or activities may be excluded from the sales factor unless their exclusion would materially affect the amount of income apportioned to this state. For example, the taxpayer ordinarily may include in or exclude from the sales factor gross receipts from transactions such as the sale of office furniture, business automobiles, etc.

(4) *Special Regulation: Construction Contractors.* The following special rules are established in respect to the apportionment of income of long-term construction contractors:

(a) *In General.* When a taxpayer elects to use the percentage of completion method of accounting, or the completed contract method of accounting for long-term contracts (construction contracts covering a period in excess of one year from the date of execution of the contract to the date on which the contract is finally completed and accepted), and has income from sources both within and without this state from a trade or business, the amount of business income derived from such long-term contracts from sources within this state shall be determined pursuant to this regulation. In such cases, the first step is to determine which portion of the taxpayer's income constitutes "business income" and which portion constitutes "nonbusiness income" under Section 40-27-1, Article IV.1 and Regulation 810-27-1-4-.01 thereunder. Nonbusiness income is directly allocated to specific states pursuant to the provisions of Section 40-27-1, Article IV.5 to 8, inclusive. Business income is apportioned among the states in which the business is conducted pursuant to the property, payroll, and sales apportionment factors set forth in this regulation. The sum of (1) the items of nonbusiness income directly allocated to this state and (2) the amount of business income attributable to this state constitutes the amount of the taxpayer's entire net income which is subject to tax by this state.

(b) *Business and Nonbusiness Income.* For definitions, rules and examples for determining business and nonbusiness income, see Regulation 810-27-1-4-.01.

(c) *Methods of Accounting and Year of Inclusion.* For general rules of accounting, definitions and methods of accounting for long-term construction contracts see the provisions of Section 40-18-13 and the regulations thereunder.

(d) *Apportionment of Business Income.*

1. *In General.* All business income is apportioned to this state by use of the apportionment formula set forth in section 40-27-1, Article IV.9 and Regulation 810-27-1-4-.09 regardless of the method of accounting for long-term contracts elected by the taxpayer. The apportionment percentage is then applied to business income to determine the amount apportioned to this state.

2. *Percentage of Completion Method.* Under this method of accounting for long-term contracts, the amount to be included each year as business income from each contract is the amount by which the gross contract price which corresponds to the percentage of the entire contract which has been completed during the income year exceeds all expenditures made during the income year in connection with the contract. In so doing, account must be taken of the material and supplies on hand at the beginning and end of the income year for use in each such contract.

EXAMPLE: A taxpayer using the percentage of completion method of accounting for long-term contracts, entered into a long-term contract to build a structure for \$9,000,000. The contract allowed three years for completion and, as of the end of the second income year, the taxpayer's books of account, kept on the accrual method, disclosed the following:

	Receipts	Expenditures
End of 1st income year	\$2,500,000	\$2,400,000
End of 2nd income year	<u>4,500,000</u>	<u>4,100,000</u>
Totals	<u>\$7,000,000</u>	<u>\$6,500,000</u>

In computing the above expenditures, consideration was given to material and supplies on hand at the beginning and end of each income year. It was estimated that the contract was 30% completed at the end of the first income year and 80% completed at the end of the second income year. The amount to be included as business income for the first income year is \$300,000 (30% of \$9,000,000 or \$2,700,000 less expenditures of \$2,400,000 equals \$300,000). The amount to be included as business income for the second income year is \$400,000 (50% of \$9,000,000 or \$4,500,000 less expenditures of \$4,100,000 equals \$400,000).

3. *Completed Contract Method.* Under this method of accounting business income derived from long-term contracts is reported for the income year in which the contract is finally completed and accepted. Therefore, a special computation is required to compute the amount of business income attributable to this state from each completed

contract (see paragraph (4)(e) of this regulation). Thus, all receipts and expenditures applicable to such contracts whether complete or incomplete as of the end of the income year are excluded from business income derived from other sources, as for example, short-term contracts, interest, rents, royalties, etc., which is apportioned by the regular three-factor formula of property, payroll and sales.

4. *Property Factor.* In general the numerator and denominator of the property factor shall be determined as set forth in Section 40-27-1, Article IV.10 to 12, inclusive, and Regulations 810-27-1-4-.10, 810-27-1-4-.11, and 810-27-1-4-.12. However, the following special rules are also applicable:

(i) The average value of the taxpayer's cost (including materials and labor) of construction in progress, to the extent that such costs exceed progress billings (accrued or received, depending on whether the taxpayer is on the accrual or cash basis for keeping its accounts) shall be included in the denominator of the property factor. The value of any such construction costs attributable to construction projects in this state shall be included in the numerator of the property factor.

EXAMPLE 1: Taxpayer commenced a long-term construction project in this state as of the beginning of a given year. By the end of its second year, its equity in the costs of production to be reflected in the numerator and denominator of its property factor for such year is computed as follows:

	1st Year		2nd Year	
	Beginning	Ending	Beginning	Ending
Construction Costs .....	0	\$1,000,000		
Progress Billings .....		600,000		
Balance 12/31 - (1/1) .....		<u>\$ 400,000</u>	<u>\$ 400,000</u>	
Construction Costs: Total from beginning of Project .....				
\$5,000,000				
Progress billings: Total from beginning of Project .....				
4,000,000				
<u>Balance 12/31</u> .....				
1,000,000				
Balance beginning of Year .....				
<u>400,000</u>				
Total .....				
<u>\$1,400,000</u>				
Average (□) - Value used in property factor				<u>\$ 700,000</u>

Note: It may be necessary to use monthly averages if yearly averages do not properly reflect the average value of the taxpayer's equity; see Section 40-27-1, Article IV.12 and Regulation 810-27-1-4-.12.

EXAMPLE 2: Same facts as in EXAMPLE 1, except that progress billings exceeded construction costs. No value for the taxpayer's equity in the construction project is shown in the property factor.

(ii) Rent paid for the use of equipment directly attributable to a particular construction project is included in the property factor at eight times the net annual rental rate even though such rental expense may be capitalized into the cost of construction.

(iii) The property factor is computed in the same manner for all long-term contract methods of accounting and is computed for each income year even though under the completed contract method of accounting, business income is computed separately (see paragraph (4)(e) of this regulation).

5. *Payroll Factor.* In general the numerator and denominator of the payroll factor shall be determined as set forth in Section 40-27-1, Articles IV.13 and IV.14 and Regulations 810-27-1-4-.13 and 810-27-1-4-.14. However, the following special rules are also applicable:

(i) Compensation paid employees which is attributable to a particular construction project is included in the payroll factor even though capitalized into the cost of construction.

(ii) Compensation paid employees who in the aggregate perform most of their services in a state to which their employer does not report them for unemployment tax purposes, shall nevertheless be attributed to the state in which the services are performed.

EXAMPLE: A taxpayer engaged in a long-term contract in state X sends several key employees to that state to supervise the project. The taxpayer, for unemployment tax purposes, reports these employees to state Y where the main office is maintained and where the employees reside. For payroll factor purposes and in accordance with Section 40-27-1, Article IV.14 and Regulation 810-27-1-4-.14 thereunder, the compensation is assigned to the numerator of state X.

(iii) The payroll factor is computed in the same manner for all long-term contract methods of accounting and is computed for each income year even though, under the completed contract method of accounting, business income is computed separately (see paragraph (4)(e) of this regulation).

(iv) *Sales Factor.* In general, the numerator and denominator of the sales factor shall be determined as set forth in Section 40-27-1, Article IV.15 to 17, inclusive, and Regulations 810-27-1-4-.15, 810-27-1-4-.16, and 810-27-1-4-.17. However, the following special rules are also applicable:

(I) Gross receipts derived from the performance of a contract are attributable to this state if the construction project is located in this state. If the construction project is located partly within and partly without this state, the gross receipts attributable to this state are based upon the ratio which construction costs for the project in this state incurred during the income year bear to the total of construction costs for the entire project during the income year, or upon any other method, such as engineering cost estimates, which will provide a reasonable apportionment.

EXAMPLE 1: A construction project was undertaken in this state by a calendar year taxpayer which had elected one of the long-term contract methods of accounting. The following gross receipts (progress billings) were derived from the contract during the three income years that the contract was in progress.

	<i>1st Year</i>	<i>2nd Year</i>	<i>3rd Year</i>
Gross Receipts	<u>\$1,000,000</u>	<u>\$4,000,000</u>	<u>\$3,000,000</u>

The gross receipts to be reflected in both the numerator and denominator of the sales factor for each of the three years are the amounts shown.

EXAMPLE 2: A taxpayer contracts to build a dam on a river at a point which lies half within this state and half within state X. During the taxpayer's first income year, construction costs in this state were \$2,000,000. Total construction costs for the project during the income year were \$3,000,000. Gross receipts (progress billings) for the year were \$2,400,000. Accordingly, gross receipts of \$1,600,000 ( $\$2,000,000/\$3,000,000 \times \$2,400,000$ ) are included in the numerator of the sales factor.

(II) If the percentage of completion method is used, the sales factor includes only that portion of the gross contract price which corresponds to the percentage of the entire contract which was completed during the income year.

EXAMPLE 3: A taxpayer which had elected the percentage of completion method of accounting entered into a long-term construction contract. At the end of its current income year (the second since starting the project), it estimated that the project was 30% completed. The bid price for the project was \$9,000,000 and it had received \$2,500,000 from progress billings as of the end of its current income year. The amount of gross receipts to be included in the sales factor for the current income year is \$2,700,000 (30% of \$9,000,000), regardless of whether the taxpayer uses the accrual method or the cash method of accounting for receipts and disbursements.

(III) If the completed contract method of accounting is used, the sales factor includes the portion of the gross receipts (progress billings) received or accrued, whichever is applicable, during the income year attributable to each contract.

EXAMPLE 4: A taxpayer which had elected the completed contract method of accounting entered into a long-term construction contract. By the end of its current income year (the second since starting the project), it had billed and had accrued on its books a total of \$5,000,000 of which \$2,000,000 had accrued in the first year in which the contract was undertaken and \$3,000,000 had accrued in the current (second) year. The amount of gross receipts to be included in the sales factor for the current income year is \$3,000,000.

EXAMPLE 5: Same facts as in EXAMPLE 4 except that the taxpayer keeps its books on the cash basis and, as of the end of its current income year, had received only \$2,500,000

of the \$3,000,000 billed during the current year. The amount of gross receipts to be included in the sales factor for the current income year is \$2,500,000.

(IV) The sales factor, except as noted above in paragraphs (4)(d)5.(iv)(II) and (4)(d)5.(iv)(III) of this regulation, is computed in the same manner, regardless of which long-term method of accounting the taxpayer has elected, and is computed for each income year even though, under the completed contract method of accounting, business income is computed separately.

(V) *Apportionment Percentage.* The apportionment formula is set forth in section 40-27-1, Article IV.9 and Regulation 810-27-1-4-.09. The apportionment percentage is then applied to business income to establish the amount apportioned to this state.

(e) *Completed Contract Method - Special Computation.* The completed contract method of accounting requires that the reporting of income (or loss) be deferred until the year in which the construction project is completed or accepted. Accordingly, a separate computation is made for each such contract completed during the income year, regardless of whether the project is located within or without this state, in order to determine the amount of income which is attributable to sources within this state. The amount of income from each contract completed during the income year apportioned to this state plus other business income apportioned to this state by the regular three-factor formula such as interest income, rents, royalties, income from short-term contracts, etc. plus all nonbusiness income allocated to this state is the measure of tax for the income year.

(f) The amount of income (or loss) from each contract which is derived from sources within this state using the completed contract method of accounting is computed as follows:

1. In the income year in which the contract is completed, the income (or loss) therefrom is determined.

2. The income (or loss) determined at paragraph (4)(f)1. is apportioned to this state by the following method:

(i) A fraction is determined for each year during which the contract was in progress. The numerator is the amount of construction costs paid or accrued in each year during which the contract was in progress and the denominator is the total of all such construction costs for the project.

(ii) Each percentage determined in paragraph (4)(f)2.(i) above is multiplied by the apportionment formula percentage for that particular year as determined in paragraph (4)(d)5.(iv)(V) of this regulation above.

(iii) The percentages determined at paragraph (4) (f)2.(ii) for each year during

which the contract was in progress are totaled. The amount of total income (or loss) from the contract determined at paragraph (4)(f)1. of this regulation is multiplied by the total percentage. The resulting income (or loss) is the amount of business from such contract derived from sources within this state.

EXAMPLE 1: A taxpayer using the completed contract method of accounting for long-term contracts is engaged in three long-term contracts; Contract L in this state, Contract M in state X and Contract N in state Y. In addition, it has other business income (less expenses) during the income year 1972 from interests, rents and short-term contracts amounting to \$500,000, and nonbusiness income allocable to this state of \$8,000. During 1972, it completed Contract M in state X at a profit of \$900,000. Contracts L and N in this state and state Y, respectively, were not completed during the income year. The apportionment percentages of the taxpayer as determined in (paragraph (4)(d)5.(iv)(V) of this regulation and the percentages of contracts costs as determined in paragraph (4)(f)2. above for each year during which Contract M in state X was in progress as follows:

	1970	1971	1972
Apportionment percentages	30.0%	20.0%	40.0%
Percentages of Construction Costs of Contract M each year to total construction costs - (100%)	20.0%	50.0%	30.0%

The corporation's net income subject to tax in this state for 1972 is computed as follows:

Business Income	\$ <u>500,000</u>
Apportion 40% to this state	\$ 200,000
Add: Income from Contract M*	\$ <u>252,000</u>
Total business income derived from sources within this state	452,000
Add: Nonbusiness income allocated to this state	<u>8,000</u>
Net income subject to tax in this state	\$ <u>460,000</u>

\* Income from Contract M apportioned to this state:

	1970	1971	1972	Total
Apportionment percentage	30.0%	20.0%	40.0%	
Percent of Construction Costs	<u>20.0%</u>	<u>50.0%</u>	<u>30.0%</u>	<u>100.0%</u>
Product	<u>6.0%</u>	<u>10.0%</u>	<u>12.0%</u>	<u>28.0%</u>

28.0% of \$900,000 = \$252,000

EXAMPLE 2: Same facts as in EXAMPLE 1 except that Contract L was started in 1972 in this state, the first year in which the taxpayer was subject to tax in this state. Contract L in this state and Contract N in state Y are incomplete in 1972.

The corporation's net income subject to tax in this state for 1972 is computed as follows:

Business Income	\$ <u>500,000</u>
Apportion 40% to this state	\$ 200,000
Add: Income from Contract M*	<u>108,000</u>
Total business income derived from sources	

within this state	\$ 308,000
Add: Nonbusiness income allocated to this state	<u>8,000</u>
Net income subject to tax in this state	<u>\$ 316,000</u>

\* Income from Contract M apportioned to this state:

	1970	1971	1972	Total
Apportionment percentage	0.0%	0.0%	40.0%	
Percent of Construction Costs	20.0%	50.0%	30.0%	100.0%
Product	<u>0.0%</u>	<u>0.0%</u>	<u>12.0%</u>	<u>12.0%</u>

12.0% of \$900,000 = \$108,000.

Note: Only 12% is used to determine the income derived from sources within this state since the corporation was not subject to tax in this state prior to 1972.

EXAMPLE 3: Same facts as in example 1 except that the figures relate to Contract L in this state and 1972 is the first year the corporation was taxable in another state (see Section 40-27-1, Articles IV.2 and IV.3 and Regulations 810-27-1-4-.02(b)(1) and 810-27-1-4-.03. Contracts M and N in states X and Y were started in 1972 and are incomplete.

The corporation's net income subject to tax in this state for 1972 is computed as follows:

Business Income	\$ 500,000
Apportion 40% to this state	<u>\$ 200,000</u>
Add: Income from Contract L*	<u>\$ 738,000</u>
Total business income derived from sources within this state	\$ 938,000
Add: Nonbusiness income allocated to this state	<u>8,000</u>
Net income subject to tax in this state	<u>\$ 946,000</u>

\* Income from Contract L apportioned to this state:

	1970	1971	1972	Total
Apportionment percentage	100.0%	100.0%	40.0%	
Percentage of Construction Costs	20.0%	50.0%	30.0%	100.0%
Product	<u>20.0%</u>	<u>50.0%</u>	<u>12.0%</u>	<u>82.0%</u>

82.0% of \$900,000 = \$738,000.

(f) *Computation for Year of Withdrawal, Dissolution or Cessation of Business - Completed Contract Method.* Use of the completed contract method of accounting for long-term contracts requires that income derived from sources within this state from incomplete contracts in progress outside this state on the date of withdrawal, dissolution or cessation of business in this state be included in the measure of tax for the taxable year during which the corporation withdraws, dissolves or ceases doing business in this state.

(g) The amount of income (or loss) from each such contract to be apportioned to this state by the apportionment method set forth in paragraph (4)(f)2. of this regulation shall be determined as if the percentage of completion method of accounting were used for all such

contracts on the date of withdrawal, dissolution or cessation of business. The amount of business income (or loss) for each such contract shall be the amount by which the gross contract price from each such contract which corresponds to the percentage of the entire contract which has been completed from the commencement thereof to the date of withdrawal, dissolution or cessation of business exceeds all expenditures made during such period in connection with each such contract. In so doing, one must take into account the material and supplies on hand at the beginning and end of the income year for use in each such contract.

EXAMPLE: A construction contractor qualified to do business in this state had elected the completed contract method of accounting for long-term contracts. It was engaged in two long-term contracts. Contract L in this state was started in 1971 and completed at a profit of \$900,000 on 12/16/73. The taxpayer withdrew on 12/31/73. Contract M in state X was started in 1972 and was incomplete on 12/31/73. The apportionment percentages of the taxpayer, as determined at paragraph (4)(d) of this regulation, and percentages of construction costs, as determined in paragraph (4)(f)2. of this regulation, for each year during which Contract M in state X was in progress are as follows:

	1971	1972	1973	Total
Apportionment percentages	30.0%	20.0%	40.0%	
Percentages of Construction Costs:				
Contract L, this state	20.0%	50.0%	30.0%	100.0%
Contract M, state X	0.0%	10.0%	25.0%	35.0%

The corporation had other business income (net of expenses) of \$500,000 during 1972 and \$300,000 during 1973. The gross contract price of Contract M (state X) was \$1,000,000, and it was estimated to be 35% completed on 12/31/73. Total expenditures to date for Contract M (state X) were \$300,000 for the period ended 12/31/73.

The measure of tax for the taxable year ended 12/31/73 is computed as follows:

	<i>Taxable Year 1973</i>	
	<i>Income Year 1972</i>	<i>Income Year 1973</i>
Business Income	\$500,000	300,000
Apportionment % to this state	<u>20%</u>	<u>40%</u>
Amount Apportioned to this state	100,000	120,000
Add: Income from contracts:		
L (this state) *		252,000
M (state X) **		<u>6,000</u>
Total business income derived from sources within this state	<u>\$100,000</u>	<u>\$378,000</u>

\* Income from Contract L apportioned to this state:

	<i>1971</i>	<i>1972</i>	<i>1973</i>	<i>Total</i>
Apportionment percentage	30.0%	20.0%	40.0%	
Percentage of Construction Costs	20.0%	50.0%	30.0%	100.0%
Product	<u>6.0%</u>	<u>10.0%</u>	<u>12.0%</u>	<u>28.0%</u>

28.0% of \$900,000 = \$252,000.

\*\* Income from Contract M apportioned to this state:

	<i>1971</i>	<i>1972</i>	<i>1973</i>	<i>Total</i>
Apportionment percentage	0.0%	20.0%	40.0%	
Percentage of Construction Costs	0.0%	10.0%	25.0%	35.0%
Product	<u>0.0%</u>	<u>2.0%</u>	<u>10.0%</u>	<u>12.0%</u>

12.0% of 50,000\*\*\* = \$6,000

\*\*\* Computation of apportionable income from Contract M based on percentage of completion method:

Total Contract Price	<u>\$1,000,000</u>
Estimated to be 35% completed	<u>\$350,000</u>
Less: total expenditures to date	300,000
Apportionable income	<u>\$ 50,000</u>

(5) *Special Rules: Railroads.* The following special rules are established in respect to railroads:

(a) *In General.* Where a railroad has income from sources both within and without this state, the amount of business income from sources within this state shall be determined pursuant to this regulation. In such cases, the first step is to determine what portion of the railroad's income constitutes "business" income and which portion constitutes "nonbusiness" income under Section 40-27-1, Article IV.1 and Regulation 810-27-1-4-.01 thereunder. Nonbusiness income is directly allocable to specific states pursuant to the provisions of Section 40-27-1, Article IV.5 to 8, inclusive. Business income is apportioned among the states in which the business is conducted pursuant to the property, payroll and sales apportionment factors set forth in this regulation. The sum of (1) the items of nonbusiness income directly allocated to this state and (2) the amount of business income attributable to this state constitutes the amount of the taxpayer's entire net income which is subject to tax by this state.

(b) *Business and Nonbusiness Income.* For definitions, rules and examples for determining business and nonbusiness income, see Regulation 810-27-1-4-.01.

(c) *Apportionment of Business Income.*

1. *In General.* The property factor shall be determined in accordance with Regulations 810-27-1-4-.10, 810-27-1-4-.11, and 810-27-1-4-.12., the payroll factor in accordance with Regulation 810-27-1-4-.13., and the sales factor in accordance with Regulations 810-27-1-4-.14, 810-27-1-4-.15, 810-27-1-4-.16, and 810-27-1-4-.17, except as modified in this regulation.

2. *The Property Factor.*

(i) *Property Valuation.* Owned property shall be valued at its original cost and property rented from others shall be valued at eight (8) times the net annual rental rate in accordance with Section 40-27-1, Article IV.11 and Regulation 810-27-1-4-.11. Railroad cars owned and operated by other railroads and temporarily used by the taxpayer in its business and for which a per diem or mileage charge is made are not included in the property factor as rented property. Railroad cars owned and operated by the taxpayer and temporarily used by other railroads in their business and for which a per diem charge is made by the taxpayer are included in the property factor of the taxpayer.

(ii) *General Definitions.* The following definitions are applicable to the numerator and denominator of the property factor:

(l) "Original cost" is deemed to be the basis of the property for federal income tax purposes (prior to any federal income tax adjustments except for subsequent capital additions, improvements thereto or partial dispositions); or, if the property has no such basis, the valuation of such property for Interstate Commerce Commission purposes. If the

original cost of property is unascertainable under the foregoing valuation standards, the property is included in the property factor at its fair market value as of the date of acquisition by the taxpayer (Regulation 810-27-1-4-.11(a)).

(II) "Rent" does not include the per diem and mileage charges paid by the taxpayer for the temporary use of railroad cars owned or operated by another railroad.

(III) The "value" of owned real and tangible personal property shall mean its original cost. (See Section 40-27-1, Article IV.11 and Regulation 810-27-1-4-.11(a).)

(IV) "Average value" of property means the amount determined by averaging the values at the beginning and ending of the income tax year, but the Department of Revenue may require the averaging of monthly values during the income year or such averaging as necessary to effect properly the average value of the railroad's property. (See Section 40-27-1, Article IV.12 and Regulation 810-27-1-4-.12.)

(V) The "value" of rented real and tangible personal property means the product of eight (8) times the net annual rental rate. (See Section 40-27-1, Article IV.11 and Regulation 810-27-1-4-.11(b).)

(VI) "Net annual rental rate" means the annual rental rate paid by the taxpayer less any annual rental rate received by the taxpayer from subrentals.

(VII) "Property used during the income year" includes property which is available for use in the taxpayer's trade or business during the income year.

(VIII) A "locomotive-mile" is the movement of a locomotive (a self-propelled unit of equipment designed solely for moving other equipment) a distance of one mile under its own power.

(IX) A "car-mile" is a movement of a unit of car equipment a distance of one mile.

(iii) *The Denominator and Numerator of the Property Factor.* The denominator of the property factor shall be the average value of all of the taxpayer's real and tangible personal property owned or rented and used during the income year. The numerator of the property factor shall be the average value of the taxpayer's real and tangible personal property owned or rented and used in this state during the income year.

(I) In determining the numerator of the property factor, all property except mobile or movable property such as passenger cars, freight cars, locomotives and freight containers which are located within and without this state during the income year shall be included in the numerator of the property factor in accordance with Section 40-27-1, Article IV.10 to 12, inclusive, and Regulations 810-27-1-4-.10, 810-27-1-4-.11, and 810-27-1-4-.12.

(II) Mobile or movable property such as passenger cars, freight cars, locomotives

and freight containers which are located within and without this state during the income year shall be included in the numerator of the property factor in the ratio which "locomotive-miles" and "car-miles" in the state bear to the total everywhere.

3. *The Payroll Factor.* The denominator of the payroll factor is the total compensation paid everywhere by the taxpayer during the income year for the production of business income. (See Section 40-27-1, Articles IV.13 and IV.14 and Regulations 810-27-1-4-.13 and 810-27-1-4-.14.) The numerator of the payroll factor is the total amount paid in this state during the income year by the taxpayer for compensation. With respect to all personnel except enginemen and trainmen performing services on interstate trains, compensation paid to such employees shall be included in the numerator as provided in Section 40-27-1, Articles IV.13 and IV.14 and Regulations 810-27-1-4-.13 and 810-27-1-4-.14.

(i) With respect to enginemen and trainmen performing services on interstate trains, compensation paid to such employees shall be included in the numerator of the payroll factor in the ratio which their services performed in this state bear to their services performed everywhere. Compensation for services performed in this state should be deemed to be the compensation reported or required to be reported by such employees for determination of their income tax liability to this state.

4. *The Sales (Revenue) Factor.*

(i) *In General.* All revenue derived from transactions and activities in the regular course of the trade or business of the taxpayer which produces business income, except per diem and mileage charges which are collected by the taxpayer, is included in the denominator of the sales (revenue) factor. (See Section 40-27-1, Article IV.1 and Regulation 810-27-1-4-.01.)

(I) The numerator of the sales (revenue) factor is the total revenue of the taxpayer in this state during the income year. The total revenue of the taxpayer in this state during the income year, other than revenue from hauling freight, passengers, mail and express, shall be attributable to this state in accordance with Section 40-27-1, Article IV.15 to 17, inclusive, and Regulations 810-27-1-4-.15, 810-27-1-4-.16, and 810-27-1-4-.17.

(ii) *Numerator of Sales (Revenue) Factor From Freight, Mail and Express.* The total revenue of the taxpayer in this state during the income year for the numerator of the sales (revenue) factor from hauling freight, mail and express shall be attributable to this state as follows:

(I) *Intrastate.* All receipts from shipments which both originate and terminate within this state; and

(II) *Multistate.* That portion of the receipts from each movement or shipment passing through, into, or out of this state is determined by the ratio which the miles traveled

by such movement or shipment in this state bear to the total miles traveled by such movement or shipment from point of origin to destination.

(iii) *Numerator of Sales (Revenue) Factor from Passengers.* The numerator of the sales (revenue) factor shall include:

(I) *Intrastate.* All receipts from the transportation of passengers (including mail and express handled in passenger service) which both originate and terminate within this state; and

(II) *Multistate.* That portion of the receipts from the transportation of interstate passengers (including mail and express handled in passenger service) determined by the ratio which revenue passenger miles in this state bear to the total everywhere.

(6) *Special Rules: Airlines.* The following special rules are established with respect to airlines:

(a) *In General.* Where an airline has income from sources both within and without this state, the amount of business income from sources within this state shall be determined pursuant to Section 40-27-1, Article IV except as modified by this regulation.

(b) *Apportionment of Business Income.*

1. *General Definitions.* The following definitions are applicable to the terms used in the apportionment factor descriptions.

(i) "Value" of owned real and tangible personal property shall mean its original cost. (See Section 40-27-1, Article IV.11 and Regulation 810-27-1-4-.11(a).)

(ii) "Cost of aircraft by type" means the average original cost or value of aircraft by type which are ready for flight.

(iii) "Original cost" means the initial federal tax basis of the property plus the value of capital improvements to such property, except that, for this purpose, it shall be assumed that Safe Harbor Leases are not true leases and do not affect the original initial federal tax basis of the property. (See Regulation 810-27-1-4-.11(a).)

(iv) "Average value" of the property means the amount determined by averaging the values at the beginning and ending of the income year, but the Commissioner may require the averaging of monthly values during the income year if such averaging is necessary to reflect properly the average value of the airline's property. (See Section 40-27-1, Article IV.12 and Regulation 810-27-1-4-.12.)

(v) The "value" of rented real and tangible personal property means the product of eight (8) times the net annual rental rate. (See Section 40-27-1, Article IV.11 and

Regulation 810-27-1-4-.11(b).)

(vi) "Net annual rental rate" means the annual rental rate paid by the taxpayer.

(vii) "Property used during the income year" includes property which is available for use in the taxpayer's trade or business during the income year.

(viii) "Aircraft ready for flight" means aircraft owned or acquired through rental or lease (but not interchange) which are in the possession of the taxpayer and are available for service on the taxpayer routes.

(ix) "Revenue service" means the use of aircraft ready for flight for the production of revenue.

(x) "Transportation revenue" means revenue earned by transporting passengers, freight and mail as well as revenue earned from liquor sales, pet crate rentals, etc.

(xi) "Departures" means, for purposes of these regulations, all takeoffs, whether they be regularly scheduled or charter flights, that occur during revenue service.

## 2. *Property Factor.*

(i) *Property valuation.* Owned aircraft shall be valued at its original cost and rented aircraft shall be valued at eight (8) times the net annual rental rate in accordance with Section 40-27-1, Article IV.11 and Regulation 810-27-1-4-.11. The use of the taxpayer's owned or rented aircraft in an interchange program with another air carrier will not constitute a rental of such aircraft by the airlines to the other participating airline. Such aircraft shall be accounted for in the property factor of the owner. Parts and other expendables, including parts for use in contract overhaul work, will be valued at cost.

(ii) *The denominator and numerator of the property factor.* The denominator of the property factor shall be the average value of all of the taxpayer's real and tangible personal property owned or rented and used during the income year. The numerator of the property factor shall be the average value of the taxpayer's real and tangible personal property owned or rented and used in this state during the income year.

(l) In determining the numerator of the property factor, all property except aircraft ready for flight shall be included in the numerator of the property factor in accordance with Section 40-27-1, Article IV.10 to 12, inclusive. Aircraft ready for flight shall be included in the numerator of the property factor in the ratio calculated as follows:

I. Departures of aircraft from locations in this state weighted as to the cost and value of aircraft by type compared to total departures similarly weighted.

## 3. *The Payroll Factor.* The denominator of the payroll factor is the total

compensation paid everywhere by the taxpayer during the income year. (See Section 40-27-1, Articles IV.13 and IV.14.) The numerator of the payroll factor is the total amount paid in this state during the income year by the taxpayer for compensation. With respect to non-flight personnel, compensation paid to such employees shall be included in the numerator as provided in Section 40-27-1, Articles IV.13 and IV.14. With respect to flight personnel (the air crew aboard an aircraft assisting in the operations of the aircraft or the welfare of passengers while in the air), compensation paid to such employees shall be included in the ratio of departures of aircraft from locations in this state, weighted as to the cost and value of aircraft by type compared to total departures similarly weighted, multiplied by the total flight personnel compensation.

4. *Sales (Transportation Revenue) Factor.* The transportation revenue derived from transactions and activities in the regular course of the trade or business of the taxpayer and miscellaneous sales of merchandise, etc., are included in the denominator of the sales (transportation revenue) factor. (See Section 40-27-1, Article IV.1 and Regulation 810-27-1-4-.01.) Passive income items such as interest, rental income, dividends, etc., will not be included in the denominator nor will the proceeds or net gains or losses from the sale of aircraft be included. The numerator of the sales (transportation revenue) factor is the total revenue of the taxpayer in this state during the income year. The total revenue of the taxpayer in this state during the income year is the result of the following calculation:

(i) The ratio of departures of aircraft in this state weighted as to the cost and value of aircraft by type, as compared to total departures similarly weighted multiplied by the total transportation revenue. The product of this calculation is to be added to any non-flight revenues directly attributable to this state.

(c) *Records.* The taxpayer must maintain the records necessary to arrive at departures by type of aircraft as used in these regulations. Such records are to be subject to review by the respective state taxing authorities or their agents.

(d) *Examples.* Examples of the manner in which the airline regulation would apply to specific fact situations:

EXAMPLE 1: Assume the following facts for an airline for a tax year:

1. It has ten 747s ready for flight and in revenue service at an average cost per unit of \$40,000,000 for nine of the aircraft. It rents the tenth 747 from another airline for \$9,000,000 per year. At eight times rents, the latter is valued at \$72,000,000 for apportionment purposes. The total 747 valuation is, therefore, \$432,000,000 for property factor denominator purposes.

2. It has twenty 727s ready for flight in revenue service at an average cost per unit of \$20,000,000. The total 727 valuation is, therefore, \$400,000,000 for property factor denominator purposes.

3. It has nonflight tangible property (n.t.p.) valued at an original cost of \$200,000,000.

4. It has the following annual payroll:

Flight personnel	\$ 60,000,000
Nonflight personnel (n.p.)	40,000,000
Total	<u>\$ 100,000,000</u>

5. From its operations, it has total receipts of \$50,000,000, business net income of \$1,000,000, and no nonbusiness income.

6. It has the following within Alabama:

a.	10% of its 747 flight departures (.10 x \$432,000,000)	\$43,200,000
b.	20% of its 727 flight departures (.20 x \$400,000,000)	\$80,000,000
c.	5% of its n.t.p. (.05 x \$200,000,000)	\$10,000,000
d.	15% of its n.p. payroll (.15 x \$40,000,000)	\$6,000,000

The airline's business income apportioned to Alabama would be determined as follows:

	<i>Within AL</i>	<i>Everywhere</i>	
<i>Property Factor:</i>			
747s (.10 x \$432,000,000)	43,200,000	432,000,000	
727s (.20 x \$400,000,000)	80,000,000	400,000,000	
n.t.p. (.05 x \$200,000,000)	10,000,000	200,000,000	
	<u>133,200,000</u>	<u>1,032,000,000</u>	12.9070%
<i>Sales Factor:</i>			
747s (.10 x \$432,000,000)	43,200,000	432,000,000	
727s (.20 x \$400,000,000)	80,000,000	400,000,000	
	<u>123,200,000</u>	<u>832,000,000</u>	14.8077%
<i>Payroll Factor:</i>			
Flight personnel (.148077 x 60,000,000)	8,884,620	60,000,000	
Nonflight personnel (n.p.)	6,000,000	40,000,000	
	<u>14,884,620</u>	<u>100,000,000</u>	14.8846%
<u>Total of factor ratios</u>			<u>42.5993%</u>
			%
<u>3</u>			
Alabama apportionment ratio			<u>14.1998%</u>
Business income		<u>\$1,000,000</u>	
Amount apportioned to Alabama (.141998 x \$1,000,000)		<u>\$ 141,998</u>	

EXAMPLE 2: Same facts except that paragraph 6 is changed to read:

6. It has the following within Alabama:

a.	6% of its 747 flight departures (.06 x \$432,000,000)	\$25,920,000
b.	31% of its 727 flight departures (.31 x \$400,000,000)	\$124,000,000

c.	3% of its n.t.p. (.03 x \$200,000,000)	\$6,000,000
d.	7% of its n.p. payroll (.07 x \$40,000,000)	\$2,800,000

The airline's business income apportioned to Alabama would be determined as follows:

	<i>Within AL</i>	<i>Everywhere</i>	
<u>Property Factor:</u>			
747s (.06 x \$432,000,000)	25,920,000	432,000,000	
727s (.31 x \$400,000,000)	124,000,000	400,000,000	
n.t.p. (.03 x \$200,000,000)	6,000,000	200,000,000	
	<u>155,920,000</u>	<u>1,032,000,000</u>	15.1085%
<u>Sales Factor:</u>			
747s (.06 x \$432,000,000)	25,920,000	432,000,000	
727s (.31 x \$400,000,000)	124,000,000	400,000,000	
	<u>149,920,000</u>	<u>832,000,000</u>	18.0192%
<u>Payroll Factor:</u>			
Flight personnel (.180192 x 60,000,000)	10,812,520	60,000,000	
Nonflight personnel (n.p.)	2,800,000	40,000,000	
	<u>13,611,520</u>	<u>100,000,000</u>	13.6115%
<u>Total of factor ratios</u>			<u>46.7392%</u>
			%
<u>3</u>			
Alabama apportionment ratio			<u>15.5797%</u>
Business income		\$1,000,000	
Amount apportionment to Alabama (.155797 x \$1,000,000)		<u>\$ 155,797</u>	

(7) *Special Rules: Trucking Companies.* The following special rules are established with respect to trucking companies:

(a) *In General.* As used in this regulation, the term "trucking company" means a motor common carrier, a motor contract carrier, or an express carrier which primarily transports tangible personal property of others by motor vehicle for compensation. Where a trucking company has income from sources both within and without this state, the amount of business income from sources within this state shall be determined pursuant to this regulation. In such cases, the first step is to determine what portion of the trucking company's income constitutes "business" income and what portion constitutes "nonbusiness" income under Section 40-27-1, Article IV.1 and Regulation 810-27-1-4-.01 thereunder. Nonbusiness income is directly allocable to specific states pursuant to the provisions of Section 40-27-1, Article IV.5 to 8, inclusive. Business income is apportioned among the states in which the business is conducted and pursuant to the property, payroll, and sales apportionment factors set forth in this regulation. The sum of (i) the items of nonbusiness income directly allocated to this state and (ii) the amount of business income attributable to this state constitutes the amount of the taxpayer's entire net income which is subject to tax in this state.

(b) *Business and Nonbusiness Income.* For definitions, rules, and examples for determining business and nonbusiness income, see Regulation 810-27-1-4-.01.

(c) *Apportionment of Business Income*

1. *In General.* The property factor shall be determined in accordance with Regulations 810-27-1-4-.10, 810-27-1-4-.11, and 810-27-1-4-.12, the payroll factor in accordance with Regulations 810-27-1-4-.13 and 810-27-1-4-.14, and the sales factor in accordance with Regulations 810-27-1-4-.15, 810-27-1-4-.16, and 810-27-1-4-.17, except as modified by this regulation.

2. *The Property Factor*

(i) *Property Valuation.* Owned property shall be valued at its original cost and property rented from others shall be valued at eight (8) times the net annual rental rate in accordance with Section 40-27-1, Article IV.11 and Regulation 810-27-1-4-.11.

(ii) *General Definitions.* The following definitions are applicable to the numerator and denominator of the property factor, as well as other apportionment factor descriptions:

(I) "Average value" of property means the amount determined by averaging the values at the beginning and end of the income tax year, but the Department of Revenue may require the averaging of monthly values during the income year or such averaging as is necessary to reflect properly the average value of the trucking company's property. (See Section 40-27-1, Article IV.12 and Regulation 810-27-1-4-.12.)

(II) "Mobile property" means all motor vehicles, including trailers, engaged directly in the movement of tangible personal property.

(III) A "mobile property mile" is the movement of a unit of mobile property a distance of one mile whether loaded or unloaded.

(IV) "Original cost" is deemed to be the basis of the property for federal income tax purposes (prior to any federal income tax adjustments, except for subsequent capital additions, improvements thereto, or partial dispositions); or, if the property has no such basis, the valuation of such property for Interstate Commerce Commission purposes. If the original cost of property is unascertainable under the foregoing valuation standards, the property is included in the property factor at its fair market value as of the date of acquisition by the taxpayer. (Regulation 810-27-1-4-.11(a).)

(V) "Property used during the course of the income year" includes property which is available for use in the taxpayer's trade or business during the income year.

(VI) The "value" of owned real and tangible personal property means its original cost. (See Section 40-27-1, Article IV.11 and Regulation 810-27-1-4-.11(a).)

(VII) The "value" of rented real and tangible personal property means the product of

eight (8) times the net annual rental rate. (See Section 40-27-1, Article IV.11 and Regulation 810-27-1-4-.11(b).)

(iii) *The Denominator and Numerator of the Property Factor.* The denominator of the property factor shall be the average value of all of the taxpayer's real and tangible personal property owned or rented and used during the income year. The numerator of the property factor shall be the average value of the taxpayer's real and tangible personal property owned or rented and used in this state during the income year. In the determination of the numerator of the property factor, all property, except mobile property as defined in this regulation, shall be included in the numerator of the property factor in accordance with Section 40-27-1, Article IV.10 to 12, inclusive, and Regulations 810-27-1-4-.10, 810-27-1-4-.11, and 810-27-1-4-.12.

(I) Mobile property, as defined in this regulation, which is located solely within this state during the income year shall be included in the numerator of the property factor.

(II) Mobile property as defined in this regulation, which is located within and without this state during the income year shall be included in the numerator of the property factor in the ratio which mobile property miles in the state bear to the total mobile property miles.

3. *The Payroll Factor.* The denominator of the payroll factor is the compensation paid everywhere by the taxpayer during the income year for the production of business income. (See Section 40-27-1, Articles IV.13 and IV.14 and Regulations 810-27-1-4-.13 and 810-27-1-4-.14.) The numerator of the payroll factor is the total compensation paid in this state during the income year by the taxpayer. With respect to all personnel, except those performing services within and without this state, compensation paid to such employees shall be included in the numerator as provided in Section 40-27-1, Articles IV.13 and IV.14 and Regulations 810-27-1-4-.13 and 810-27-1-4-.14.

(i) With respect to personnel performing services within and without this state, compensation paid to such employees shall be included in the numerator of the payroll factor in the ratio which their services performed in this state bear to their services performed everywhere based on mobile property miles.

#### 4. *The Sales (Revenue) Factor*

(i) *In General.* All revenue derived from transactions and activities in the regular course of the taxpayer's trade or business which produce business income shall be included in the denominator of the sales (revenue) factor. (See Section 40-27-1, Article IV.1 and Regulation 810-27-1-4-.01.)

(I) The numerator of the revenue factor is the total revenue of the taxpayer in this state during the income year. The total state revenue of the taxpayer, other than revenue from hauling freight, mail, and express, shall be attributable to this state in accordance with Section 40-27-1, Article IV.15 to 17, inclusive, and Regulations 810-27-1-4-.15,

810-27-1-4-.16, and 810-27-1-4-.17.

(ii) *Numerator of the Sales (Revenue) Factor From Freight, Mail, and Express.* The total revenue of the taxpayer attributable to this state during the income year from hauling freight, mail, and express shall be:

(I) *Intrastate.* All receipts from any shipment which both originates and terminates within this state; and,

(II) *Multistate.* That portion of the receipts from movements or shipments passing through, into, or out of this state as determined by the ratio which the mobile property miles traveled by such movements or shipments in this state bear to the total mobile property miles traveled by movements or shipments from points of origin to destination.

(d) *Records.* The taxpayer shall maintain the records necessary to identify mobile property and to enumerate by state the mobile property miles traveled by such mobile property as those terms are used in this regulation. Such records are subject to review by the Department of Revenue or its agents.

(e) *De Minimis Nexus Standard.* Notwithstanding any provision contained herein, this Regulation 810-27-1-4-.18 (7) shall not apply to require the apportionment of income to this state if the trucking company during the course of the income tax year neither:

1. owns nor rents any real or personal property in this state, except mobile property; nor
2. makes any pick-ups or deliveries within this state; nor
3. travels more than twenty-five thousand mobile property miles within this state; provided that the total mobile property miles traveled within this state during the income tax year do not exceed three percent of the total mobile property miles traveled in all states by the trucking company during that period; nor
4. makes more than twelve trips into this state.

(8) *Special Rules: Television and Radio Broadcasting.* The following special rules are established in respect to the apportionment of income from television and radio broadcasting by a broadcaster that is taxable both in this state and in one or more other states.

(a) *In General.* When a person in the business of broadcasting film or radio programming, whether through the public airwaves, by cable, direct or indirect satellite transmission or any other means of communication, either through a network (including owned and affiliated stations) or through an affiliated, unaffiliated or independent television or radio broadcasting station, has income from sources both within and without this state,

the amount of business income from sources within this state shall be determined pursuant to Section 40-27-1, Article IV, and the regulations issued thereunder by this state, except as modified by this regulation.

(b) Business and Nonbusiness Income. For definitions, regulations and examples for determining whether income shall be classified as "business" or "nonbusiness" income, see Regulation 810-27-1-4-.01.

(c) Definitions. The following definitions are applicable to the terms contained in this regulation, unless the context clearly requires otherwise.

1. "Film" or "film programming" means any and all performances, events or productions telecast, on television, including but not limited to news, sporting events, plays, stories or other literary, commercial, educational or artistic works, through the use of video tape, disc or any other type of format or medium.

(i) Each episode of a series of films produced for television shall constitute a separate "film" notwithstanding that the series relates to the same principal subject and is produced during one or more tax periods.

2. "Outer-jurisdictional" property means certain types of tangible personal property, such as orbiting satellites, undersea transmission cables and the like, that are owned or rented by the taxpayer and used in the business of telecasting or broadcasting, but which are not physically located in any particular state.

3. "Radio" or "radio programming" means any and all performances, events or productions broadcast, on radio, including but not limited to news, sporting events, plays, stories or other literary, commercial, educational or artistic works, through the use of an audio tape, disc or any other format or medium.

(i) Each episode of a series of radio programming produced for radio broadcast shall constitute a separate "radio programming" notwithstanding that the series relates to the same principal subject and is produced during one or more tax periods.

4. "Release or in release

means the placing of film or radio programming into service. A film or radio program is placed into service when it is first broadcast to the primary audience for which the film was created. Thus, for example, a film is placed in service when it is first publicly telecast for entertainment, educational, commercial, artistic or other purpose. Each episode of a television or radio series is placed in service when it is first broadcast. A program is not placed in service merely because it is completed and therefore in a condition or state of readiness and availability for telecast or, merely because it is previewed to prospective sponsors or purchasers.

5. "Rent" shall include license fees or other payments or consideration provided in exchange for the broadcast or other use of television or radio programming.

6. A "subscriber" to a cable television system is the individual residence or other outlet which is the ultimate recipient of the transmission.

7. "Telecast" or "broadcast" (sometimes used interchangeably with respect to television) means the transmission of television or radio programming, respectively, by an electronic or other signal conducted by radiowaves or microwaves or by wires, lines, coaxial cables, wave guides, fiber optics, satellite transmissions directly or indirectly to viewers and listeners or by any other means of communications.

(d) Apportionment of Business Income.

1. In General. The property factor shall be determined in accordance with Regulations 810-27-1-4-.10, 810-27-1-4-.11, and 810-27-1-4-.12, the payroll factor in accordance with Regulations 810-27-1-4-.13 and 810-27-1-4-.14, and the sales factor in accordance with Regulations 810-27-1-4-.15, and 810-27-1-4-.16, except as modified by this regulation.

2. The Property Factor.

(i) In General

(I) In the case of rented studios, the net annual rental rate shall include only the amount of the basic or flat rental charge by the studio for the use of a stage or other permanent equipment such as sound recording equipment and the like; except that additional equipment rented from other sources or from the studio not covered in the basic or flat rental charge and used for one week or longer (even though rented on a day-to-day basis) shall be included. Lump-sum net rental payments for a period which encompasses more than a single income year shall be assigned ratably over the rental period.

(II) No value or cost attributable to any outer-jurisdictional, film or radio programming property shall be included in the property factor at any time.

(ii) Property Factor Denominator.

(I) All real property and tangible personal property (other than outer-jurisdictional and film or radio programming property), whether owned or rented, which is used in the business shall be included in the denominator of the property factor.

(II) Audio or video cassettes, discs or similar medium containing film or radio programming and intended for sale or rental by the taxpayer for home viewing or listening shall be included in the property factor at their original cost. To the extent that the taxpayer licenses or otherwise permits others to manufacture or distribute such cassettes, discs or other medium containing film or radio programming for home viewing or listening, the value of said cassettes, discs or other medium shall include the license, royalty or other fees

received by the taxpayer capitalized at a rate of eight times the gross receipts derived therefrom during the income year.

(III) Outer-jurisdictional, film and radio programming property shall be excluded from the denominator of the property factor.

(iii) Property Factor Numerator.

(I) With the exception of outer-jurisdictional and film or radio programming property, all real and tangible personal property owned or rented by the taxpayer and used in this state during the tax period shall be included in the numerator of the property factor as provided in Regulation 810-27-1-4-.01(d).

(II) Outer-jurisdictional, film and radio programming property shall be excluded from the numerator of the property factor.

EXAMPLE: XYZ Television Co. has a total value of all of its property everywhere of \$500,000,000, including a satellite valued at \$50,000,000 that was used to telecast programming into this state and \$150,000,000 in film property of which \$1,000,000's worth was located in this state the entire year. The total value of real and tangible personal property, other than film programming property, located in this state for the entire income year was valued at \$2,000,000; and the movable and mobile property described in paragraph (8)(d)2.(iii)(I) was determined to be of a value of \$4,000,000 and such movable and mobile property was used in this state for 100 days. The total value of property to be attributed to this state would be determined as follows:

Value of property permanently in state:	\$2,000,000
Value of mobile and movable property: $(100/365 \text{ or } .273973 \times \$4,000,000)$ :	\$1,095,892
Total value of property to be included in the state's property factor numerator (outer-jurisdictional and film property excluded):	<u>\$3,095,892</u>
Total value of property to be used in the denominator (\$500,000,000-\$200,000,000)	<u>\$300,000,000</u>
Total property factor percentage $(\$3,095,892 / \$300,000,000)$ :	<u>1.0320%</u>

3. The Payroll Factor.

(I) Payroll Factor Denominator. The denominator of the payroll factor shall include all compensation, including residual and profit participation payments, paid to employees during the income year, including that paid to directors, actors, newscasters and other talent in their status as employees.

(ii) Payroll Factor Numerator. Compensation for all employees shall be attributed to the state or states as may determined by the application of the provisions of Regulations 810-27-1-4-.13 and 810-27-1-4-.14.

#### 4. The Sales Factor.

(i) **Sales Factor Denominator.** The denominator of the sales factor shall include the total gross receipts derived by the taxpayer from transactions and activity in the regular course of its trade or business, except receipts excluded under Regulation 810-27-1-4-.18.(c).

(ii) **Sales Factor Numerator.** The numerator of the sales factor shall include all gross receipts of the taxpayer from sources within this state, including, but not limited to the following:

(I) Gross receipts, including advertising revenue, from television, film or radio programming in release to or by television and radio stations located in this state.

(II) Gross receipts, including advertising revenue, from television, films or radio programming in release to or by a television station (independent or unaffiliated) or network of stations for broadcast shall be attributed to this state in the ratio (hereafter "audience factor") that the audience for such station (or owned and affiliated stations in the case of networks) located in this state bears to the total audience for such station (or owned and affiliated stations in the case of networks).

I. The audience factor for television or radio programming shall be determined by the ratio that the taxpayer's in-state viewing (listening) audience bears to its total viewing (listening) audience.

II. Such audience factor shall be determined either by reference to the books and records of the taxpayer or by reference to published rating statistics, provided the method used by the taxpayer is consistently used from year to year for such purpose and fairly represents the taxpayer's activity in the state.

(III) Gross receipts from film programming in release to or by a cable television system shall be attributed to this state in the ratio (hereafter "audience factor") that the subscribers for such cable television system located in this state bears to the total subscribers of such cable television system. If the number of subscribers cannot be accurately determined from the books and records maintained by the taxpayer, such audience factor ratio shall be determined on the basis of the applicable year's subscription statistics located in published surveys, provided that the source selected is consistently used from year to year for that purpose.

(IV) Receipts from the sale, rental, licensing or other disposition of audio or video cassettes, discs, or similar medium intended for home viewing or listening shall be included in the sales factor as provided in Regulation 810-27-1-4-.16.

(9) *Reserved.*

(10) *Special Rules: Publishing.* The following special rules are established with respect to the apportionment of income derived from the publishing, sale, licensing or other distribution

of books, newspapers, magazines, periodicals, trade journals or other printed material.

(a) *In General.* Except as specifically modified by this regulation, when a person in the business of publishing, selling, licensing or distributing newspapers, magazines, periodicals, trade journals or other printed material has income from sources both within and without this state, the amount of business income from sources within this state from such business activity shall be determined pursuant to Section 40-27-1, Article IV and the regulations adopted thereunder.

(b) *Definitions.* The following definitions are applicable to the terms contained in this regulation, unless the context clearly requires otherwise.

1. "Outer-jurisdictional property" means certain types of tangible personal property, such as orbiting satellites, undersea transmission cables and the like, that are owned or rented by the taxpayer and used in the business of publishing, licensing, selling or otherwise distributing printed material, but which are not physically located in any particular state.

2. "Print or printed material" includes, without limitation, the physical embodiment or printed version of any thought or expression including, without limitation, a play, story, article, column or other literary, commercial, educational, artistic or other written or printed work. The determination of whether an item is or consists of print or printed material shall be made without regard to its content. Printed material may take the form of a book, newspaper, magazine, periodical, trade journal or any other form of printed matter and may be contained on any medium or property.

3. "Purchaser" and "Subscriber" mean the individual, residence, business or other outlet which is the ultimate or final recipient of the print or printed material. Neither of such terms shall mean or include a wholesaler or other distributor of print or printed material.

4. "Terrestrial facility" shall include any telephone line, cable, fiber optic, microwave, earth station, satellite dish, antennae or other relay system or device that is used to receive, transmit, relay or carry any data, voice, image or other information that is transmitted from or by any outer-jurisdictional property to the ultimate recipient thereof.

(c) *Apportionment of Business Income.*

1. *The Property Factor.*

(l) *Property Factor Denominator.*

(i) All real and tangible personal property, including outer-jurisdictional property, whether owned or rented, which is used in the business shall be included in the denominator of the property factor.

(ii) *Property Factor Numerator.*

(I) All real and tangible personal property owned or rented by the taxpayer and used in this state during the tax period shall be included in the numerator of the property factor.

(II) Outer-jurisdictional property owned or rented by the taxpayer and used in this state during the tax period shall be included in the numerator of the property factor in the ratio which the value of such property that is attributable to its use by the taxpayer in business activities in this state bears to the total value of such property that is attributable to its use in the taxpayer's business activities everywhere.

I. The value of outer-jurisdictional property to be attributed to the numerator of the property factor of this state shall be determined by the ratio that the number of uplinks and downlinks (sometimes referred to as "half-circuits") that were used during the tax period to transmit from this state and to receive in this state any data, voice, image or other information bears to the total number of uplinks and downlinks or half-circuits that the taxpayer used for transmissions everywhere.

II. Should information regarding such uplink and downlink or half-circuit usage not be available or should such measurement of activity not be applicable to the type of outer-jurisdictional property used by the taxpayer, the value of such property to be attributed to the numerator of the property factor of this state shall be determined by the ratio that the amount of time (in terms of hours and minutes of use) or such other measurement of use of outer-jurisdictional property that was used during the tax period to transmit from this state and to receive in this state any data, voice, image or other information bears to the total amount of time or other measurement of use that was used for transmissions everywhere.

(III) Outer-jurisdictional property shall be considered to have been used by the taxpayer in its business activities within this state when such property, wherever located, has been employed by the taxpayer in any manner in the publishing, sale, licensing or other distribution of books, newspapers, magazines or other printed material and any data, voice, image or other information is transmitted to or from this state either through an earth station or terrestrial facility located in this state.

EXAMPLE: One example of the use of outer-jurisdictional property is where the taxpayer either owns its own communications satellite or leases the use of uplinks, downlinks or circuits or time on a communications satellite for the purpose of sending messages to its newspaper printing facilities or employees in a state. The state or states in which any printing facility that receives the satellite communications is located and the state from which the communications were sent would, under this regulation, apportion the cost of the owned or rented satellite to their respective property factors based upon the ratio of the in-state use of said satellite to its total usage everywhere.

Assume that ABC Newspaper Co. owns a total of \$400,000,000 of property everywhere and that, in addition, it owns and operates a communication satellite for the purpose of sending news articles to its printing plant in this state, as well as for communicating with its printing

plants and facilities or news bureaus, employees and agents located in other states and throughout the world. Also assume that the total value of its real and tangible personal property that was permanently located in this state for the entire income year was valued at \$3,000,000. Assume also that the total original cost of the satellite is \$100,000,000 for the tax period and that of the 10,000 uplinks and downlinks of satellite transmissions used by the taxpayer during the tax period, 200 or 2% are attributable to its satellite communications received in and sent from this state. Assume further that the company's mobile property that was used partially within this state, consisting of 40 delivery trucks, were determined to have an original cost of \$4,000,000 and such mobile property was used in this state for 95 days. The total value of property to be attributed to this state would be determined as follows:

Value of property permanently in state:	\$3,000,000
Value of mobile property: $(95/365 \text{ or } .260274 \times \$4,000,000)$ :	1,041,096
Value of leased satellite property used in-state: $(.02 \times \$100,000,000)$ :	<u>2,000,000</u>
Total value of property attributable to state:	<u>\$6,041,096</u>
Total property factor percentage: $(\$6,041,096 / \$500,000,000)$ :	<u>1.2082%</u>

2. *The Payroll Factor.* The payroll factor shall be determined in accordance with Section 40-27-1, Article IV.14 and the regulations promulgated thereunder.

3. *The Sales Factor.*

(i) *Sales Factor Denominator.* The denominator of the sales factor shall include the total gross receipts derived by the taxpayer from transactions and activity in the regular course of its trade or business, except receipts that may be excluded under Regulations 810-27-1-4-.15, 810-27-1-4-.16, 810-27-1-4-.17, and 810-27-1-4-.18.

(ii) *Sales Factor Numerator.* The numerator of the sales factor shall include all gross receipts of the taxpayer from sources within this state, including, but not limited to, the following:

(I) Gross receipts derived from the sale of tangible personal property, including printed materials, delivered or shipped to a purchaser or a subscriber in this state.

(II) Except as provided in paragraph (10)(c)3.(ii)(III), gross receipts derived from advertising and the sale, rental or other use of the taxpayer's customer lists or any portion thereof shall be attributed to this state as determined by the taxpayer's "circulation factor" during the tax period. The circulation factor shall be determined for each individual publication by the taxpayer of printed material containing advertising and shall be equal to the ratio that the taxpayer's in-state circulation to purchasers and subscribers of its printed material bears to its total circulation to purchasers and subscribers everywhere.

I. The circulation factor for an individual publication shall be determined by reference to the rating statistics as reflected in such sources as Audit Bureau of Circulations or other comparable sources, provided that the source selected is consistently used from year to year for

such purpose. If none of the foregoing sources are available, or, if available, none is in form or content sufficient for such purposes, then the circulation factor shall be determined from the taxpayer's books and records.

(III) When specific items of advertisements can be shown, upon clear and convincing evidence, to have been distributed solely to a limited regional or local geographic area in which this state is located, the taxpayer may petition, or the Commissioner may require, that a portion of such receipts be attributed to the sales factor numerator of this state on the basis of a regional or local geographic area circulation factor and not upon the basis of the circulation factor provided by paragraph (10)(c)3.(ii)(II). Such attribution shall be based upon the ratio that the taxpayer's circulation to purchasers and subscribers located in this state of the printed material containing such specific items of advertising bears to its total circulation of such printed material to purchasers and subscribers located within such regional or local geographic area. This alternative attribution method shall be permitted only upon the condition that such receipts are not double counted or otherwise included in the numerator of any other state.

(IV) In the event that the purchaser or subscriber is the United States Government or that the taxpayer is not taxable in a State, the gross receipts from all sources, including the receipts from the sale of printed material, from advertising, and from the sale, rental or other use of the taxpayer's customer's lists, or any portion thereof that would have been attributed by the circulation factor to the numerator of the sales factor for such State, shall be included in the numerator of the sales factor of this State if the printed material or other property is shipped from an office, store, warehouse, factory, or other place of storage or business in this State.

Author: Verlon Frost, Jeff Taylor  
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