Apportionment of Gross Income from Business Activities Other than Sales of Tangible Personal Property.

Passive, portfolio, personal service income, and all other items of gross income are apportioned to the location of the income producing activity. The term "income producing activity" applies to each separate item of income and means the transactions and activity directly engaged in by the taxpayer in the regular course of its trade or business for the ultimate purpose of obtaining gain or profit.

Time spent in performing services includes the amount of time expended in the performance of a contract or other obligation which gives rise to such gross income. Personal service not directly connected with the performance of a contract or other obligation, for example, time expended in negotiating the contract, is excluded from the computations.

Income from transactions and activities performed on behalf of a business, such as those conducted on its behalf by an independent contractor, must be apportioned to the business' domicile location.

Example 1: Gross income from the performance of personal services is apportioned to the City or County to the extent such services are performed in the City or County. If services relating to a single item of income are performed partly within and partly without the City or County, the gross income for the performance must be apportioned using the Hourly Method as described below.

Hourly Method. Over the course of the tax year, all hours for services performed within the City or County are logged. Total gross income apportioned to the City or County is measured by the ratio of time spent performing such services in the City or County vs. the total time spent in performing services everywhere.

For tax years beginning on or after January 1, 2006, the Project by Project method is no longer allowed.

Example 2: A broker provides the service of matching a supplier with a purchaser of either tangible personal property (e.g., lumber, food products) or services (e.g., employment). Gross income for the performance of the service are apportioned to the City or County to the extent such services are performed in the City or County and is apportioned following the Hourly Method identified in Example 1.

Example 3: Gross income from the rental, leasing, sale, or licensing of real and personal property are apportioned to the City or County if the property is located in the City or County. Generally, transactions involving property are attributable to the situs of the property.

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Example 4: Gross income from interest, dividends, and other portfolio income items are apportioned to the City or County if the administrative activities to select, record, and/or reconcile the portfolio investments are performed in the City or County. Generally, portfolio activity is attributable to the commercial domicile of the trade or business.

Example 5: Gross income from royalties, patents, customer lists and other intangibles are apportioned to the City or County if the commercial domicile of the business is in the City or County. There must be significant costs of performance away from the commercial domicile to apportion the income elsewhere.

Example 6: Gross income from sale of franchises located in the City or County and gross income of franchise fees or royalties from City or County sources are apportioned to the City or County. Due to the nature of franchise agreements, a minimum connection between the franchisor and the City or County exists when a franchisor takes advantage of the economic milieu of the City or County. This minimum connection is satisfied by entering into franchising or licensing agreements; selling or otherwise disposing of franchises and licenses; or selling or otherwise transferring tangible personal property pursuant to such franchises or licenses within the City or County. Additional minimum connection may be found in the use or allowance of copyrights, trademarks, licenses, patents or other intangible assets within the City or County. Other minimum connections may also be in the form of an employee coming to City or County to solicit the sale of franchises, copyrights, trademarks, licenses, patents or other intangible assets, inspect franchisee operations, coordinate joint advertising, etc., or to perform after the sale activities in the City or County for the franchisee.

Note: The amendments to this rule dated 1/10/06 are effective for all tax years that begin on or after January 1, 2006.

Adopted: 11/23/93

Amended: 4/17/00 (housekeeping changes), 1/10/06 (disallowance of Project by Project method), 8/10/09 (housekeeping changes)

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