

**CHAPTER 821****APPORTIONMENT OF INCOME****§5210. Definitions**

As used in this chapter, unless the context otherwise indicates, the following terms have the following meanings. [PL 1981, c. 698, §187 (RPR).]

**1. Business income.**

[PL 1987, c. 841, §9 (RP).]

**2. Commercial domicile.**

[PL 1987, c. 841, §9 (RP).]

**3. Compensation.** "Compensation" means wages, salaries, commissions and any other form of remuneration paid to employees for personal services. "Compensation" includes amounts paid to an employee-leasing company for leased employees and amounts paid to a temporary services company for temporary employees, pursuant to a contract between the taxpayer and an employee-leasing company or temporary services company.

[PL 2001, c. 439, Pt. D, §6 (AMD); PL 2001, c. 439, Pt. D, §9 (AFF).]

**3-A. Employee-leasing company.** "Employee-leasing company" means a business that contracts with client companies to supply workers to perform services for the client companies, except that the term "employee-leasing company" does not include private employment agencies that provide workers to client companies on a temporary help basis.

[PL 2001, c. 439, Pt. D, §7 (NEW); PL 2001, c. 439, Pt. D, §9 (AFF).]

**3-B. Leased employee.** "Leased employee" means an individual who performs services for a client company pursuant to a contract between the client company and an employee-leasing company.

[PL 2001, c. 439, Pt. D, §7 (NEW); PL 2001, c. 439, Pt. D, §9 (AFF).]

**4. Nonbusiness income.**

[PL 1987, c. 841, §9 (RP).]

**5. Sales.** "Sales" means all gross receipts of the taxpayer.

[PL 1993, c. 670, §8 (AMD).]

**6. State.** "State" means any state of the United States, District of Columbia, the Commonwealth of Puerto Rico, any territory or possession of the United States, and any foreign country or political subdivision thereof.

[PL 1981, c. 698, §187 (NEW).]

**7. Temporary help.** "Temporary help" means employee services provided to client companies for a contractual period of less than 12 months.

[PL 2001, c. 439, Pt. D, §7 (NEW); PL 2001, c. 439, Pt. D, §9 (AFF).]

**8. Temporary services company.** "Temporary services company" means a private employment agency, other than an employee-leasing company, that provides workers to client companies on a temporary help basis.

[PL 2001, c. 439, Pt. D, §7 (NEW); PL 2001, c. 439, Pt. D, §9 (AFF).]

**SECTION HISTORY**

P&SL 1969, c. 154, §F1 (NEW). PL 1979, c. 541, §A236 (AMD). PL 1981, c. 698, §187 (RPR). PL 1987, c. 841, §9 (AMD). PL 1993, c. 670, §8 (AMD). PL 2001, c. 439, §§D6,7 (AMD). PL 2001, c. 439, §D9 (AFF).

### §5211. General

**1. Apportionment.** Any taxpayer, other than a resident individual, estate, or trust, having income from business activity which is taxable both within and without this State, other than the rendering of purely personal services by an individual, shall apportion his net income as provided in this section. Any taxpayer having income solely from business activity taxable within this State shall apportion his entire net income to this State.

[PL 1987, c. 841, §10 (AMD).]

**2. Taxpayer taxable in another state.** For purposes of apportionment of income under this section, a taxpayer is taxable in another state if in that state he is subject to a net income tax, a franchise tax measured by net income, a franchise tax for the privilege of doing business, or a corporate stock tax, or that state has jurisdiction to subject the taxpayer to a net income tax regardless of whether in fact, the state does or does not.

[PL 1987, c. 841, §10 (AMD).]

**3. Allocation of certain nonbusiness income.**

[PL 1987, c. 841, §11 (RP).]

**4. Rents and royalties:**

[PL 1987, c. 841, §11 (RP).]

**5. Capital gains and losses:**

[PL 1987, c. 841, §11 (RP).]

**6. Commercial domicile in this State.**

[PL 1987, c. 841, §11 (RP).]

**7. Patent and copyright royalties:**

[PL 1987, c. 841, §11 (RP).]

**8. Formula for apportionment of income to State.** All income shall be apportioned to this State by multiplying the income by the sales factor.

[PL 2007, c. 240, Pt. V, §2 (AMD); PL 2007, c. 240, Pt. V, §15 (AFF).]

**9. Property factor.** The property factor is a fraction, the numerator of which is the average value of the taxpayer's real and tangible personal property owned or rented and used in this State during the tax period and the denominator of which is the average value of all the taxpayer's real and tangible personal property owned or rented and used during the tax period.

[PL 2007, c. 627, §84 (REEN); PL 2007, c. 627, §96 (AFF).]

**10. Property valuation at original cost.** Property owned by the taxpayer is valued at its original cost. Property rented by the taxpayer is valued at 8 times the net annual rental rate. Net annual rental rate is the annual rental rate paid by the taxpayer.

[PL 2007, c. 627, §85 (REEN); PL 2007, c. 627, §96 (AFF).]

**11. Determination of average value of property.** The average value of property shall be determined by averaging the values at the beginning and ending of the tax period but the Tax Assessor may require the averaging of monthly values during the tax period if reasonably required to reflect properly the average value of the taxpayer's property.

[PL 2007, c. 627, §86 (REEN); PL 2007, c. 627, §96 (AFF).]

**12. Payroll factor.** The payroll factor is a fraction, the numerator of which is the total amount paid in this State during the tax period by the taxpayer for compensation, and the denominator of which is the total compensation paid everywhere during the tax period. Eighty-five percent of any amounts

paid pursuant to a contract by the taxpayer to an employee-leasing company for leased employees, and 100% of the amount paid pursuant to a contract to a temporary services company for temporary employees, must be included in the taxpayer's payroll factor. The payroll factor of an employee-leasing company or a temporary services company must exclude compensation paid to leased or temporary employees who are providing personal services to client companies.

[PL 2007, c. 627, §87 (REEN); PL 2007, c. 627, §96 (AFF).]

**13. When compensation paid in this State.** Compensation is paid in this State, if:

A. The individual's service is performed entirely within the State; or [PL 2007, c. 627, §88 (REEN); PL 2007, c. 627, §96 (AFF).]

B. The individual's service is performed both within and without the State, but the service performed without the state is incidental to the individual's service within the State; or [PL 2007, c. 627, §88 (REEN); PL 2007, c. 627, §96 (AFF).]

C. Some of the service is performed in the State and the base of operations or, if there is no base of operations, the place from which the service is directed or controlled is in the State, or 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 individual's residence is in this State. [PL 2007, c. 627, §88 (REEN); PL 2007, c. 627, §96 (AFF).]

[PL 2007, c. 627, §88 (REEN); PL 2007, c. 627, §96 (AFF).]

**14. Sales factor formula.** The sales factor is a fraction, the numerator of which is the total sales of the taxpayer in this State during the tax period, and the denominator of which is the total sales of the taxpayer everywhere during the tax period.

A. For purposes of calculating the sales factor, "total sales of the taxpayer" includes sales of the taxpayer and of any member of an affiliated group with which the taxpayer conducts a unitary business. [PL 2021, c. 181, Pt. E, §3 (NEW).]

B. The sales factor formula must exclude from both the numerator and the denominator sales of tangible personal property delivered or shipped by the taxpayer, regardless of F.O.B. point or other conditions of the sale, to a purchaser within a state in which the taxpayer is not taxable within the meaning of subsection 2, unless any member of an affiliated group with which the taxpayer conducts a unitary business is taxable in that state in the same manner as a taxpayer is taxable under subsection 2. [PL 2021, c. 181, Pt. E, §3 (NEW).]

[PL 2021, c. 181, Pt. E, §3 (AMD).]

**15. When sales of tangible personal property are in this State.** Sales of tangible personal property are in this State if:

A. The property is delivered or shipped to a purchaser, other than the United States Government, within this State regardless of the F.O.B. point or other conditions of the sale; or [P&SL 1969, c. 154, §F (NEW).]

B. The property is shipped from an office, store, warehouse, factory or other place of storage in this State and the purchaser is the United States Government. [PL 2009, c. 213, Pt. NN, §2 (AMD); PL 2009, c. 213, Pt. NN, §5 (AFF).]

[PL 2009, c. 213, Pt. NN, §2 (AMD); PL 2009, c. 213, Pt. NN, §5 (AFF).]

**16. When sales other than tangible personal property are in State.**

[PL 2007, c. 240, Pt. V, §8 (RP); PL 2007, c. 240, Pt. V, §15 (AFF).]

**16-A. Other sales.** Sales other than sales of tangible personal property are sourced as follows.

A. Except as otherwise provided by this subsection, receipts from the performance of services must be attributed to the state where the services are received. If the state where the services are received

is not readily determinable, the services are deemed to be received at the home of the customer or, in the case of a business, the office of the customer from which the services were ordered in the regular course of the customer's trade or business. If the ordering location cannot be determined, the services are deemed to be received at the home or office of the customer to which the services are billed. In instances in which the purchaser of the service is the Federal Government, the receipts are attributable to this State if a greater proportion of the income-producing activity is performed in this State than in any other state based on costs of performance. [PL 2009, c. 213, Pt. NN, §3 (AMD); PL 2009, c. 213, Pt. NN, §5 (AFF).]

B. Gross receipts from the license, sale or other disposition of patents, copyrights, trademarks or similar items of intangible personal property must be attributed to this State if the intangible property is used in this State by the licensee. If the intangible personal property is used by the licensee in more than one state, the income must be apportioned to this State according to the portion of use in this State. In instances in which the purchaser or licensee of the intangible personal property is the Federal Government, the receipts are attributable to this State if a greater proportion of the income-producing activity is performed in this State than in any other state based on costs of performance. [PL 2009, c. 213, Pt. NN, §4 (AMD); PL 2009, c. 213, Pt. NN, §5 (AFF).]

C. Receipts from the sale, lease, rental or other use of real property is sourced to this State if the real property is located in this State. [PL 2007, c. 240, Pt. V, §9 (NEW); PL 2007, c. 240, Pt. V, §15 (AFF).]

D. Receipts from the lease or rental of tangible personal property must be attributed to this State if the property is located in this State. [PL 2007, c. 240, Pt. V, §9 (NEW); PL 2007, c. 240, Pt. V, §15 (AFF).]

E. Receipts from items of income described in section 5206-E, subsection 2, paragraphs C to I must be sourced to this State as provided in those paragraphs. For purposes of this paragraph, section 5206-E, subsection 2, paragraphs G and H must include the related payment processing fees. [PL 2007, c. 240, Pt. V, §9 (NEW); PL 2007, c. 240, Pt. V, §15 (AFF).]

F. Gross receipts on the sale of a partnership interest must be sourced to this State in an amount equal to the gross receipts multiplied by the ratio obtained by dividing the original cost of partnership tangible property located in Maine by the original cost of partnership tangible property everywhere, determined at the time of the sale. Tangible property includes property owned or rented and is valued in accordance with subsection 10. If more than 50% of the value of the partnership's assets consists of intangible property, gross receipts from the sale of the partnership interest must be sourced to this State in accordance with the sales factor of the partnership for its first full tax period immediately preceding the tax period of the partnership during which the partnership interest was sold. For purposes of this paragraph, the sales factor of a partnership is determined in accordance with subsection 14, subsection 15 and subsection 16-A, paragraphs A to E. This paragraph does not apply to the sale of a limited partner's interest in an investment partnership when more than 80% of the value of the partnership's total assets consists of intangible personal property held for investment, except that such property cannot include an interest in a partnership unless that partnership is itself an investment partnership. [PL 2019, c. 401, Pt. C, §9 (RPR).]

[PL 2019, c. 401, Pt. C, §9 (AMD).]

**16-B. Sales factor formula for certain disaster period receipts.** The sales factor must exclude from the numerator sales receipts of a person whose only business activity in the State during the taxable year is the performance of services during a disaster period that are solely and directly related to a declared state disaster or emergency that were requested by the State, a county, city, town or political subdivision of the State or a registered business. [RR 2011, c. 2, §42 (COR).]

**17. Variations.** If the apportionment provisions of this section do not fairly represent the extent of the taxpayer's business activity in this State, the taxpayer may petition for, or the tax assessor may require, in respect to all or any part of the taxpayer's business activity, if reasonable:

A. Separate accounting; or [PL 2007, c. 240, Pt. V, §10 (AMD); PL 2007, c. 240, Pt. V, §15 (AFF).]

B. [PL 2007, c. 240, Pt. V, §11 (RP); PL 2007, c. 240, Pt. V, §15 (AFF).]

C. [PL 2007, c. 240, Pt. V, §12 (RP); PL 2007, c. 240, Pt. V, §15 (AFF).]

D. The employment of any other method to effectuate an equitable apportionment of the taxpayer's income. [PL 1987, c. 841, §13 (AMD).]

[PL 2007, c. 240, Pt. V, §§10-12 (AMD); PL 2007, c. 240, Pt. V, §15 (AFF).]

#### SECTION HISTORY

P&SL 1969, c. 154, §F1 (NEW). PL 1987, c. 841, §§10-13 (AMD). PL 1991, c. 502, §1 (AMD). PL 1991, c. 502, §2 (AFF). PL 1999, c. 708, §43 (AMD). PL 2001, c. 439, §D8 (AMD). PL 2001, c. 439, §D9 (AFF). PL 2005, c. 12, §MMMM2 (AMD). PL 2005, c. 12, §MMMM3 (AFF). PL 2007, c. 240, Pt. V, §§2-12 (AMD). PL 2007, c. 240, Pt. V, §15 (AFF). PL 2007, c. 627, §§84-88 (AMD). PL 2007, c. 627, §96 (AFF). PL 2009, c. 213, Pt. NN, §§1-4 (AMD). PL 2009, c. 213, Pt. NN, §5 (AFF). PL 2009, c. 571, Pt. GG, §1 (AMD). PL 2009, c. 571, Pt. GG, §2 (AFF). RR 2011, c. 2, §42 (COR). PL 2011, c. 622, §6 (AMD). PL 2011, c. 622, §7 (AFF). PL 2019, c. 401, Pt. C, §9 (AMD). PL 2021, c. 181, Pt. E, §3 (AMD).

#### **§5212. Apportionment of income of mutual fund service providers**

**(REPEALED)**

#### SECTION HISTORY

PL 1999, c. 754, §1 (NEW). PL 1999, c. 754, §2 (AFF). PL 2007, c. 240, Pt. V, §13 (AMD). PL 2019, c. 401, Pt. C, §10 (RP).

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