

••• **Reg. IV.18.(f). Special Rules: Railroads.** [Adopted July 16, 1981]

The following special rules are established in respect to railroads:

(1) **In General.** Where a railroad has income from sources both within and without this state, the amount of ~~business income~~apportionable 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 apportionable" income and which portion constitutes "~~nonbusiness nonapportionable~~" income under Article IV.1 and Regulation IV.1 thereunder. ~~Nonbusiness—Nonapportionable~~ income is directly allocable to specific states pursuant to the provisions of Article IV.5 to .8, inclusive. ~~Business income~~Apportionable income is apportioned among the states in which the business is conducted pursuant to the property, payroll and ~~sales receipts~~ apportionment factors set forth in this regulation. The sum of (1) the items of ~~nonbusiness income~~apportionable income directly allocated to this state and (2) the amount of ~~business income~~apportionable income attributable to this state constitutes the amount of the taxpayer's entire net income which is subject to tax by this state.

(2) ~~Business—Apportionable~~ and ~~Nonbusiness—Income~~apportionable income. For definitions, rules and examples for determining business and ~~nonbusiness income~~apportionable income, see Reg. IV.1.

(3) **Apportionment of ~~Business Income~~Apportionable income.**

(i) **In General.** The property factor shall be determined in accordance with Reg. IV.10.-.12., inclusive, the payroll factor in accordance with Reg. IV.13., and the ~~sales factor~~receipts factor in accordance with Reg. IV.14.-.17, inclusive, except as modified in this regulation.

(ii) **The Property Factor.**

A. 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 Article IV.11. and Reg. IV.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.

B. General Definitions. The following definitions are applicable to the numerator and denominator of the property factor:

1. "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 (Reg.

IV.11.(a)).

2. "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.

3. The "value" of owned real and tangible personal property shall mean its original cost. (See Article IV.11 and Reg. IV.11(a).)

4. "Average value" of property means the amount determined by averaging the values at the beginning and ending of the income tax year, but the [insert here the appropriate title of the administrative agency] 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 Article IV.12. and Reg. IV.12.)

5. The "value" of rented real and tangible personal property means the product of eight (8) times the net annual rental rate. (See Article IV.11. and Reg. IV.11(b).)

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

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

8. 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.

9. A "car-mile" is a movement of a unit of car equipment a distance of one mile.

C. 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 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 Article IV.10.-.12., inclusive, and Regulation IV.10.-.12, inclusive.

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.

(iii) 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~~apportionable income. (See Article IV.13.-14. and Reg. IV.13.-.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 Article IV.13.-.14 and Reg. IV.13.-.14.

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.

(iv) The ~~Sales (Revenue)~~Receipts Factor.

A. 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~~apportionable income, except per diem and mileage charges which are collected by the taxpayer, is included in the denominator of the revenue factor. (See Article IV.1. and Reg. IV.1.)

The numerator of the 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 Article IV.15.-.17. and Regulation IV.15.-.17.

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

1. All receipts from shipments which both originate and terminate within this state; and
2. 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.

C. Numerator of ~~Sales (Revenue)~~Receipts Factor from Passengers. The numerator of the ~~sales~~receipts ~~(revenue)~~-factor shall include:

1. All receipts from the transportation of passengers (including mail and express handled in passenger service) which both originate and terminate within this state; and
2. 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.