
••• **Reg.IV.18(h). Special Rules: Television and Radio Broadcasting**
[Adopted August 31, 1990; amended April 25, 1996]

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.

(1) **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 Article IV. of the Multistate Tax Compact and the regulations issued thereunder by this state, except as modified by this regulation.

(2) **Business and Nonbusiness Income.** For definitions, regulations and examples for determining whether income shall be classified as "business" or "nonbusiness" income, see Reg. IV.1.

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

(i) "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.

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.

(ii) "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.

(iii) "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.

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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.

(iv) "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 program 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 broadcast or, merely because it is previewed to prospective sponsors or purchasers.

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

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

(vii) "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 radio waves 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.

(4) Apportionment of Business Income.

(i) **In General.** The property factor shall be determined in accordance with Regulation IV.10 through 12., the payroll factor in accordance with Regulation IV.13. and 14., and the sales factor in accordance with Regulation IV.15. and 16., except as modified by this regulation.

(ii) The Property Factor.

A. In General

1. 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.

2. No value or cost attributable to any outerjurisdictional, film or radio programming property shall be included in the property factor at any time.

B. Property Factor Denominator.

1. 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.

2. 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.

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

C. Property Factor Numerator.

1. With the exception of outer-jurisdictional, film and 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 IV.10.(d).

2. 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 subparagraph C.1. 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:

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Value of property permanently in state:	\$2,000,000
Value of mobile and movable property: (100/365 or .2739 x \$4,000,000):	<u>\$1,095,600</u>
Total value of property to be included in the state's property factor numerator (outer-jurisdictional and film property excluded):	\$3,095,600
Total value of property to be used in the denominator (\$500,000,000-\$200,000,000)	\$300,000,000
Total property factor (\$3,095,600/\$300,000,000):	.0103

(iii) The Payroll Factor.**A. 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.

B. 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 Reg.IV.13. and 14.

(iv) The Sales Factor.**A. 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 Reg.IV.18.(c).

B. 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:

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

2. Gross receipts, including advertising revenue, from television film 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).

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. 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.

3. 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.

4. 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 Reg. IV. 16.