
[DISCUSSION DRAFT 6/7/23]

•• **Reg. IV.18.(e). Special Rules: Airlines.** [Adopted July 14, 1983]

The following special rules are established with respect to airlines:

(1) **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 Article IV. of the Multistate Tax Compact except as modified by this regulation.

(2) **Apportionment of Business Income.**

(i) **General Definitions.**

The following definitions are applicable to the terms used in the apportionment factor descriptions.

A. "Value" of owned real and tangible personal property shall mean its original cost.(See Article IV.11. and Regulation IV.11(a).)

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

C. "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 IV.11(a).)

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

E. 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 Regulation IV.11(b).)

F. "Net annual rental rate" means the annual rental rate paid by the taxpayer.

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

H. "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.

I. "Revenue service" means the use of aircraft ready for flight for the production of revenue.

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

J. (a) "Passenger transportation revenue" means revenue earned by an airline from:

I. selling air transportation services to transport passengers and their baggage, including the sale of capacity to transport passengers on the airline's aircraft to other parties; and

II. selling or renting property or services to be used or consumed by passengers during the course of air transportation, including the sale of food or liquor, the sale of on-flight services such as entertainment and Wi-Fi, and the rental of pet crates,

whether or not the aircraft used to transport the passengers is owned or operated by the airline selling the transportation services.

J. (b) "Freight transportation revenue" means revenue earned by an airline from:

I. selling air transportation services to transport freight or mail, including the sale of capacity to transport freight on the airline's aircraft to other parties; and

II. selling or renting property or services to be consumed or used during the course of an aircraft flight,

whether or not the aircraft used to transport the property is owned or operated by the airline selling the transportation services.

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

(ii) Property Factor

A. 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 Article IV.11. and Regulation IV.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.

B. 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 aircraft ready for flight shall be included in the numerator of the property factor in accordance with Article IV.10.-.12, inclusive. Aircraft ready for flight shall be included in the numerator of the property factor in the ratio calculated as follows:

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.

(iii) The Payroll Factor

The denominator of the payroll factor is the total compensation paid everywhere by the taxpayer during the income year. (See Article 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 non-flight personnel, compensation paid to such employees shall be included in the numerator as provided in Article IV.13-.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.

(iv) Sales Receipts (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 revenue factor. (See Article IV.1. and Regulation IV.1.) 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 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:~~

~~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.~~

A. Denominator. The denominator of the receipts factor consists of all passenger transportation revenue and all freight transportation revenue derived from transactions and activities in the regular course of the taxpayer's trade or business, plus other receipts properly included in the receipts factor. (See Article IV.1. and Regulation IV.1.) Passive income items such

as interest, rental income, and dividends are not included in the denominator nor are proceeds or net gains or losses from the sale of aircraft included in the denominator.

B. Numerator. The numerator of the receipts factor consists of the total revenue of the taxpayer in this state during the income year. The total revenue of the taxpayer in this state is the sum of:

I. the taxpayer's passenger transportation revenue in this state during the income year;

II. the taxpayer's freight transportation revenue in this state during the income year; and

III. any other receipts attributable to this state during the income year (see Art. IV.1 and Regulation IV.1).

C. The taxpayer's transportation revenue in this state is determined as follows:

I. If the taxpayer maintains records in the ordinary course of business that show receipts by passenger or item of freight transported, then the taxpayer may use these records to attribute revenue in this state based on the location of original departure by passengers or freight.

II. If the taxpayer does not maintain records sufficient to determine revenue by passenger or item of freight transported, then the taxpayer may reasonably approximate the revenue attributable to this state by:

multiplying its passenger transportation revenue everywhere by the ratio of the number of its originating passengers in this state to the number of its originating passengers everywhere, plus

multiplying its freight transportation revenue everywhere by the ratio of originating tons of freight in this state to originating tons of freight everywhere.

(3) 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.

**EXAMPLES OF THE MANNER IN WHICH THE MULTISTATE TAX COMMISSION
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	<u>40,000,000</u>
Total	\$100,000,000
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 state X:

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 (.15x\$40,000,000)	\$6,000,000
7. State X has a corporate tax rate of 10%.

The airline's tax liability to state X would be determined as follows:

Property Factor:

$$\frac{43,200,000 \text{ (747s)} + 80,000,000 \text{ (727s)} + 10,000,000 \text{ (n.t.p.)}}{432,000,000 + 400,000,000 + 200,000,000} = \frac{133,200,000}{1,032,000,000} = .1291$$

Sales Factor:

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$$\frac{43,200,000 \text{ (747s)} + 80,000,000 \text{ (727s)}}{432,000,000 + 400,000,000} = \frac{123,200,000}{832,000,000} = .1481$$

Payroll Factor:

$$\frac{6,000,000 \text{ (n.p.)} + 8,880,000 \text{ (.148x60,000,000)(flight)}}{100,000,000} = \frac{14,880,000}{100,000,000} = .1488$$

Average ratio: $(.1291 + .1481 + .1488)/3 = .4260/3 = .1420$

Taxable Income in State X: $.1420 \times \$1,000,000 = \$142,000$

Tax Liability to State X: $.10 \times \$142,000 = \$14,200$

Example 2: Same facts except that paragraphs 6 and 7 are changed to read:

6. It has the following within state Y:

a. 6% of its 747 flight departures (.6 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 (.07x\$40,000,000)	\$2,800,000

7. State Y has a corporate tax rate of 6.5%.

The airline's tax liability to state Y would be determined as follows:

Property Factor:

$$\frac{25,920,000 \text{ (747s)} + 124,000,000 \text{ (727s)} + 6,000,000 \text{ (n.t.p.)}}{432,000,000 + 400,000,000 + 200,000,000} = \frac{155,920,000}{1,032,000,000} = .1511$$

Sales Factor:

$$\frac{25,920,000 \text{ (747s)} + 124,000,000 \text{ (727s)}}{432,000,000 + 400,000,000} = \frac{149,920,000}{832,000,000} = .1802$$

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Payroll Factor:

$$\frac{2,800,000 \text{ (n.p.)} + 10,812,000 \text{ (.1802x60,000,000)(flight)}}{40,000,000 + 60,000,000} = \frac{13,612,000}{100,000,000} = .1361$$

Average ratio: $(.1511 + .1802 + .1361)/3 = .4674/3 = .1558$

Taxable Income in State Y: $.1558 \times \$1,000,000 = \$155,800$

Tax Liability to State Y: $.65 \times \$155,800 = \$10,127$
