

REFERENCE TITLE: corporate income tax; apportionable income

State of Arizona
Senate
Fifty-third Legislature
Second Regular Session
2018

SB 1479

Introduced by
Senators Mendez: Quezada

AN ACT

AMENDING SECTIONS 43-1139 AND 43-1147, ARIZONA REVISED STATUTES; RELATING
TO BUSINESS INCOME FOR TAX PURPOSES.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Section 43-1139, Arizona Revised Statutes, is amended to
3 read:

4 43-1139. Allocation of business income or apportionable
5 income

6 A. Except as provided in subsection B of this section, the taxpayer
7 shall elect to apportion all business income to this state for taxable
8 years beginning from and after:

9 1. December 31, 2006 through December 31, 2007 by either:

10 (a) Multiplying the income by a fraction, the numerator of which is
11 the property factor plus the payroll factor plus two times the sales
12 factor, and the denominator of which is four.

13 (b) Multiplying the income by a fraction, the numerator of which is
14 two times the property factor plus two times the payroll factor plus six
15 times the sales factor, and the denominator of which is ten.

16 2. December 31, 2007 through December 31, 2008 by either:

17 (a) Multiplying the income by a fraction, the numerator of which is
18 the property factor plus the payroll factor plus two times the sales
19 factor, and the denominator of which is four.

20 (b) Multiplying the income by a fraction, the numerator of which is
21 one and one-half times the property factor plus one and one-half times the
22 payroll factor plus seven times the sales factor, and the denominator of
23 which is ten.

24 3. December 31, 2008 through December 31, 2013 by either:

25 (a) Multiplying the income by a fraction, the numerator of which is
26 the property factor plus the payroll factor plus two times the sales
27 factor, and the denominator of which is four.

28 (b) Multiplying the income by a fraction, the numerator of which is
29 the property factor plus the payroll factor plus eight times the sales
30 factor, and the denominator of which is ten.

31 4. December 31, 2013 through December 31, 2014 by either:

32 (a) Multiplying the income by a fraction, the numerator of which is
33 the property factor plus the payroll factor plus two times the sales
34 factor, and the denominator of which is four.

35 (b) Multiplying the income by a fraction, the numerator of which is
36 seven and one-half times the property factor plus seven and one-half times
37 the payroll factor plus eighty-five times the sales factor, and the
38 denominator of which is one hundred.

39 5. December 31, 2014 through December 31, 2015 by either:

40 (a) Multiplying the income by a fraction, the numerator of which is
41 the property factor plus the payroll factor plus two times the sales
42 factor, and the denominator of which is four.

1 (b) Multiplying the income by a fraction, the numerator of which is
2 five times the property factor plus five times the payroll factor plus
3 ninety times the sales factor, and the denominator of which is one
4 hundred.

5 6. December 31, 2015 through December 31, 2016 by either:

6 (a) Multiplying the income by a fraction, the numerator of which is
7 the property factor plus the payroll factor plus two times the sales
8 factor, and the denominator of which is four.

9 (b) Multiplying the income by a fraction, the numerator of which is
10 two and one-half times the property factor plus two and one-half times the
11 payroll factor plus ninety-five times the sales factor, and the
12 denominator of which is one hundred.

13 7. December 31, 2016 THROUGH DECEMBER 31, 2017 by either:

14 (a) Multiplying the income by a fraction, the numerator of which is
15 the property factor plus the payroll factor plus two times the sales
16 factor, and the denominator of which is four.

17 (b) Multiplying the income by the sales factor.

18 8. DECEMBER 31, 2017 BY MULTIPLYING THE APPORTIONABLE INCOME BY THE
19 SALES FACTOR.

20 B. All business income of a taxpayer THAT IS engaged in air
21 commerce shall be apportioned to this state by multiplying the income by a
22 fraction, the numerator of which is the revenue aircraft miles flown
23 within this state for flights beginning or ending in this state and the
24 denominator of which is the total revenue aircraft miles flown by the
25 taxpayer's aircraft everywhere. This subsection applies to each taxpayer,
26 including a combined group filing a combined return or an affiliated group
27 electing to file a consolidated return under section 43-947, if fifty ~~per~~
28 ~~cent~~ PERCENT or more of that taxpayer's gross income is derived from air
29 commerce. For the purposes of this subsection:

30 1. "Air commerce" means transporting persons or property for hire
31 by aircraft in interstate, intrastate or international transportation.

32 2. "Revenue aircraft miles flown" has the same meaning prescribed
33 by the United States department of transportation uniform system of
34 accounts and reports for large certificated air carriers (14 Code of
35 Federal Regulations part 241).

36 Sec. 2. Section 43-1147, Arizona Revised Statutes, is amended to
37 read:

38 43-1147. Situs of sales or receipts of other than tangible
39 personal property; rules; definitions

40 A. FOR TAXABLE YEARS BEGINNING BEFORE DECEMBER 31, 2017, except as
41 provided by subsection B of this section, sales, other than sales of
42 tangible personal property, are in this state if either of the following
43 applies:

44 1. The ~~income-producing~~ INCOME-PRODUCING activity is performed in
45 this state.

1 2. The ~~income-producing~~ INCOME-PRODUCING activity is performed both
2 in and outside this state and a greater proportion of the ~~income-producing~~
3 INCOME-PRODUCING activity is performed in this state than in any other
4 state, based on costs of performance.

5 B. For taxable years beginning from and after December 31, 2013
6 THROUGH DECEMBER 31, 2017, a multistate service provider may elect to
7 treat sales from services as being in this state based on a combination of
8 ~~income-producing~~ INCOME-PRODUCING activity sales and market sales. If the
9 election under this subsection is made pursuant to subsection ~~E~~ F of this
10 section, the sales of services that are in this state shall be determined
11 for taxable years beginning from and after:

12 1. December 31, 2013 through December 31, 2014, by the sum of the
13 following:

14 (a) Eighty-five ~~per cent~~ PERCENT of the market sales.

15 (b) Fifteen ~~per cent~~ PERCENT of the ~~income-producing~~
16 INCOME-PRODUCING activity sales.

17 2. December 31, 2014 through December 31, 2015, by the sum of the
18 following:

19 (a) Ninety ~~per cent~~ PERCENT of the market sales.

20 (b) Ten ~~per cent~~ PERCENT of the ~~income-producing~~ INCOME-PRODUCING
21 activity sales.

22 3. December 31, 2015 through December 31, 2016, by the sum of the
23 following:

24 (a) Ninety-five ~~per cent~~ PERCENT of the market sales.

25 (b) Five ~~per cent~~ PERCENT of the ~~income-producing~~ INCOME-PRODUCING
26 activity sales.

27 4. December 31, 2016 THROUGH DECEMBER 31, 2017, by one hundred ~~per~~
28 cent PERCENT of the market sales.

29 C. FOR TAXABLE YEARS BEGINNING FROM AND AFTER DECEMBER 31, 2017,
30 SALES, OTHER THAN SALES OF TANGIBLE PERSONAL PROPERTY, ARE IN THIS STATE
31 IF THE TAXPAYER'S MARKET FOR THE SALES IS IN THIS STATE. THE TAXPAYER'S
32 MARKET FOR SALES IS IN THIS STATE IF AND TO THE EXTENT:

33 1. IN THE CASE OF SALE, RENTAL, LEASE OR LICENSE OF REAL PROPERTY,
34 THE PROPERTY IS LOCATED IN THIS STATE.

35 2. IN THE CASE OF RENTAL, LEASE OR LICENSE OF TANGIBLE PERSONAL
36 PROPERTY, THE PROPERTY IS LOCATED IN THIS STATE. THE LOCATION OF TANGIBLE
37 PERSONAL PROPERTY IS DETERMINED WHEN THE PROPERTY IS FIRST PLACED IN
38 SERVICE, EXCEPT THAT FOR TRANSPORTATION PROPERTY THE LOCATION IS IN THIS
39 STATE TO THE EXTENT THE PROPERTY IS USED IN THIS STATE. AIRCRAFT IS
40 CONSIDERED TO BE USED IN THIS STATE BASED ON A FRACTION THE NUMERATOR OF
41 WHICH IS THE NUMBER OF LANDINGS OF THE AIRCRAFT IN THIS STATE AND THE
42 DENOMINATOR OF WHICH IS THE TOTAL NUMBER OF LANDINGS OF THE AIRCRAFT.

43 3. IN THE CASE OF INTEREST, FEES AND PENALTIES IN CONNECTION WITH
44 LOANS SECURED BY REAL PROPERTY AND THE SALE OF THE LOANS SECURED BY REAL
45 PROPERTY, THE MARKET IS IN THIS STATE IF THE PROPERTY IS LOCATED IN THIS

1 STATE. THE DETERMINATION OF REAL PROPERTY SECURING A LOAN IS MADE AT THE
2 TIME OF THE ORIGINAL AGREEMENT WITHOUT REGARD TO SUBSEQUENT SUBSTITUTIONS
3 OF COLLATERAL.

4 4. IN THE CASE OF INTEREST, FEES, AND PENALTIES IN CONNECTION WITH
5 LOANS NOT SECURED BY REAL PROPERTY AND THE SALE OF THE LOANS NOT SECURED
6 BY REAL PROPERTY, THE MARKET IS IN THIS STATE IF THE BORROWER IS LOCATED
7 IN THIS STATE.

8 5. IN THE CASE OF INTEREST, DIVIDENDS AND OTHER INCOME FROM
9 INVESTMENT AND TRADING ASSETS AND ACTIVITIES, THE MARKET IS IN THIS STATE
10 IF THE ASSET IS PROPERLY ASSIGNED TO A REGULAR PLACE OF BUSINESS OF THE
11 TAXPAYER IN THIS STATE. AN ASSET IS PROPERLY ASSIGNED TO A REGULAR PLACE
12 OF BUSINESS IN THIS STATE IF THE TRADING POLICIES OR GUIDELINES WITH
13 RESPECT TO THE ASSET OR ACTIVITY ARE ESTABLISHED IN THIS STATE. THE
14 MARKET FOR THE SALE OF THE INVESTMENT OR TRADING ASSETS IS IN THIS STATE
15 IF THE CUSTOMER IS IN THIS STATE.

16 6. IN THE CASE OF SALE OF A SERVICE, THE SERVICE IS DELIVERED TO A
17 LOCATION IN THIS STATE.

18 7. IN THE CASE OF INTANGIBLE PROPERTY THAT IS:

19 (a) RENTED, LEASED OR LICENSED, THE PROPERTY IS USED IN THIS STATE,
20 PROVIDED THAT INTANGIBLE PROPERTY USED IN MARKETING A GOOD OR SERVICE TO A
21 CONSUMER IS USED IN THIS STATE IF THAT GOOD OR SERVICE IS PURCHASED BY A
22 CONSUMER WHO IS IN THIS STATE.

23 (b) SOLD, THE PROPERTY IS USED IN THIS STATE, PROVIDED THAT:

24 (i) A CONTRACT RIGHT, GOVERNMENT LICENSE OR SIMILAR INTANGIBLE
25 PROPERTY THAT AUTHORIZES THE HOLDER TO CONDUCT A BUSINESS ACTIVITY IN A
26 SPECIFIC GEOGRAPHIC AREA IS USED IN THIS STATE IF THE GEOGRAPHIC AREA
27 INCLUDES ALL OR PART OF THIS STATE.

28 (ii) RECEIPTS FROM INTANGIBLE PROPERTY SALES THAT ARE CONTINGENT ON
29 THE PRODUCTIVITY, USE OR DISPOSITION OF THE INTANGIBLE PROPERTY ARE
30 TREATED AS RECEIPTS FROM THE RENTAL, LEASE OR LICENSING OF SUCH INTANGIBLE
31 PROPERTY UNDER SUBDIVISION (a) OF THIS PARAGRAPH.

32 (iii) UNLESS OTHERWISE PROVIDED IN THIS SECTION, ALL OTHER RECEIPTS
33 FROM A SALE OF INTANGIBLE PROPERTY ARE EXCLUDED FROM THE NUMERATOR AND
34 DENOMINATOR OF THE SALES FACTOR.

35 D. IF THE STATE OR STATES OF ASSIGNMENT UNDER SUBSECTION C OF THIS
36 SECTION CANNOT BE DETERMINED, THE STATE OR STATES OF ASSIGNMENT SHALL BE
37 REASONABLY APPROXIMATED.

38 E. IF THE TAXPAYER IS NOT TAXABLE IN A STATE TO WHICH A RECEIPT IS
39 ASSIGNED UNDER SUBSECTION C OR D OF THIS SECTION, OR IF THE STATE OF
40 ASSIGNMENT CANNOT BE DETERMINED UNDER SUBSECTION C OF THIS SECTION OR
41 REASONABLY APPROXIMATED UNDER SUBSECTION D OF THIS SECTION, THE RECEIPT
42 SHALL BE EXCLUDED FROM THE DENOMINATOR OF THE SALES FACTOR.

43 ~~E.~~ F. A multistate service provider may elect to treat sales from
44 services as being in this state under subsection B of this section as
45 follows:

1 1. The election must be made on the taxpayer's timely filed
2 original income tax return. The election is:

3 (a) Effective retroactively for the full taxable year of the income
4 tax return on which the election is made.

5 (b) Binding on the taxpayer for at least five consecutive taxable
6 years, regardless of whether the taxpayer no longer meets the percentage
7 threshold of a multistate service provider during that time period, except
8 as provided by paragraph 2 of this subsection. To continue with the
9 election after the five consecutive taxable years, the taxpayer must meet
10 the qualifications to be considered a multistate service provider and
11 renew the election for another five consecutive taxable years.

12 2. During the election period, the election may be terminated as
13 follows:

14 (a) Without the permission of the department on the acquisition or
15 merger of the taxpayer.

16 (b) With the permission of the department before the expiration of
17 five consecutive taxable years.

18 ~~F.~~ G. For a multistate service provider under subsection ~~F~~ H,
19 paragraph 3, subdivision (b) of this section, an election under subsection
20 B of this section is limited to the treatment of sales for educational
21 services.

22 H. THE DIRECTOR SHALL ADOPT RULES PURSUANT TO SECTION 42-1005,
23 SUBSECTION A, PARAGRAPH 1 AS NECESSARY FOR THE PURPOSES OF THIS SECTION.

24 ~~F.~~ I. For the purposes of this section:

25 1. "~~Income-producing~~ INCOME-PRODUCING activity sales" means the
26 total sales from services that are sales in this state under subsection A
27 of this section.

28 2. "Market sales" means the total sales from services for which the
29 purchaser received the benefit of the service in this state.

30 3. "Multistate service provider" means either:

31 (a) A taxpayer that derives more than eighty-five ~~per cent~~ PERCENT
32 of its sales from services provided to purchasers who receive the benefit
33 of the service outside this state in the taxable year of election, and
34 includes all taxpayers required to file a combined report pursuant to
35 section 43-942 and all members of an affiliated group included in a
36 consolidated return pursuant to section 43-947. In calculating the
37 eighty-five ~~per cent~~ PERCENT, sales to students receiving educational
38 services at campuses physically located in this state shall be excluded
39 from the calculation.

40 (b) A taxpayer that is a regionally accredited institution of
41 higher education with at least one university campus in this state that
42 has more than two thousand students residing on the campus, and includes
43 all taxpayers required to file a combined report pursuant to section
44 43-942 and all members of an affiliated group included in a consolidated
45 return pursuant to section 43-947.

1 4. "Received the benefit of the service in this state" means the
2 services are received by the purchaser in this state. If the state where
3 the services are received cannot be readily determined, the services are
4 considered to be received at the home of the customer or, in the case of a
5 business, the office of the customer from which the services were ordered
6 in the regular course of the customer's trade or business. If the
7 ordering location cannot be determined, the services are considered to be
8 received at the home or office of the customer to which the services were
9 billed.

10 5. "Sales for educational services" means tuition and fees required
11 for enrollment and fees required for courses of instruction, transcripts
12 and graduation.