

REFERENCE TITLE: corporate tax; business income; allocation

State of Arizona
House of Representatives
Fifty-sixth Legislature
Second Regular Session
2024

HB 2296

Introduced by
Representative De Los Santos

AN ACT

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

(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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

42 (b) Multiplying the income by a fraction, the numerator of which is
43 five times the property factor plus five times the payroll factor plus
44 ninety times the sales factor, and the denominator of which is one
45 hundred.

1 6. December 31, 2015 through December 31, 2016 by either:
2 (a) Multiplying the income by a fraction, the numerator of which is
3 the property factor plus the payroll factor plus two times the sales
4 factor, and the denominator of which is four.
5 (b) Multiplying the income by a fraction, the numerator of which is
6 two and one-half times the property factor plus two and one-half times the
7 payroll factor plus ninety-five times the sales factor, and the
8 denominator of which is one hundred.
9 7. December 31, 2016 **THROUGH DECEMBER 31, 2024** 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 the sales factor.
14 **8. DECEMBER 31, 2024 BY MULTIPLYING THE INCOME BY A FRACTION, THE**
15 **NUMERATOR OF WHICH IS THE PROPERTY FACTOR PLUS THE PAYROLL FACTOR PLUS TWO**
16 **TIMES THE SALES FACTOR, AND THE DENOMINATOR OF WHICH IS FOUR.**
17 B. All business income of a taxpayer engaged in air commerce shall
18 be apportioned to this state by multiplying the income by a fraction, the
19 numerator of which is the revenue aircraft miles flown within this state
20 for flights beginning or ending in this state and the denominator of which
21 is the total revenue aircraft miles flown by the taxpayer's aircraft
22 everywhere. This subsection applies to each taxpayer, including a
23 combined group filing a combined return or an affiliated group electing to
24 file a consolidated return under section 43-947, if fifty ~~per cent~~ **PERCENT**
25 or more of that taxpayer's gross income is derived from air commerce. For
26 the purposes of this subsection:
27 1. "Air commerce" means transporting persons or property for hire
28 by aircraft in interstate, intrastate or international transportation.
29 2. "Revenue aircraft miles flown" has the same meaning prescribed
30 by the United States department of transportation uniform system of
31 accounts and reports for large certificated air carriers (14 Code of
32 Federal Regulations part 241).
33 Sec. 2. Section 43-1147, Arizona Revised Statutes, is amended to
34 read:
35 **43-1147. Situs of sales of other than tangible personal**
36 **property; rules; definitions**
37 A. **FOR TAXABLE YEARS BEGINNING BEFORE DECEMBER 31, 2024**, except as
38 provided by subsection B of this section, sales, other than sales of
39 tangible personal property, are in this state if either of the following
40 applies:
41 1. The income-producing activity is performed in this state.
42 2. The income-producing activity is performed both in and outside
43 this state and a greater proportion of the income-producing activity is
44 performed in this state than in any other state, based on costs of
45 performance.

B. For taxable years beginning from and after December 31, 2013 THROUGH DECEMBER 31, 2024, a multistate service provider may elect to treat sales from services as being in this state based on a combination of income-producing activity sales and market sales. If the election under this subsection is made pursuant to subsection ~~E~~ F of this section, the sales of services that are in this state shall be determined for taxable years beginning from and after:

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

(a) Eighty-five percent of the market sales.

(b) Fifteen percent of the income-producing activity sales.

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

(a) Ninety percent of the market sales.

(b) Ten percent of the income-producing activity sales.

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

(a) Ninety-five percent of the market sales.

(b) Five percent of the income-producing activity sales.

4. December 31, 2016 THROUGH DECEMBER 31, 2024, by one hundred percent of the market sales.

C. FOR TAXABLE YEARS BEGINNING FROM AND AFTER DECEMBER 31, 2024, SALES, OTHER THAN SALES OF TANGIBLE PERSONAL PROPERTY, ARE IN THIS STATE IF THE TAXPAYER'S MARKET FOR THE SALES IS IN THIS STATE. THE TAXPAYER'S MARKET FOR SALES IS IN THIS STATE AS FOLLOWS:

1. FOR THE SALE, RENTAL, LEASE OR LICENSE OF REAL PROPERTY, IF AND TO THE EXTENT THE PROPERTY IS LOCATED IN THIS STATE.

2. FOR THE RENTAL, LEASE OR LICENSE OF TANGIBLE PERSONAL PROPERTY, IF AND TO THE EXTENT THE PROPERTY IS LOCATED IN THIS STATE. EXCEPT FOR TRANSPORTATION PROPERTY, THE LOCATION OF THE PROPERTY IS DETERMINED WHEN THE PROPERTY IS FIRST PLACED IN SERVICE BY THE LESSEE. FOR TRANSPORTATION PROPERTY, THE PROPERTY IS LOCATED IN THIS STATE TO THE EXTENT THE PROPERTY IS USED IN THIS STATE. AN AIRCRAFT IS DEEMED TO BE USED IN THIS STATE BASED ON A FRACTION, THE NUMERATOR OF WHICH IS THE NUMBER OF LANDINGS OF THE AIRCRAFT IN THIS STATE AND THE DENOMINATOR OF WHICH IS THE TOTAL NUMBER OF LANDINGS OF THE AIRCRAFT.

3. FOR INTEREST, FEES AND PENALTIES IN CONNECTION WITH LOANS SECURED BY REAL PROPERTY AND THE SALE OF THE LOANS SECURED BY REAL PROPERTY, THE MARKET IS IN THIS STATE IF THE PROPERTY IS LOCATED IN THIS STATE. THE DETERMINATION OF REAL PROPERTY SECURING A LOAN IS MADE AT THE TIME OF THE ORIGINAL AGREEMENT WITHOUT REGARD TO SUBSEQUENT SUBSTITUTIONS OF COLLATERAL.

4. FOR INTEREST, FEES AND PENALTIES IN CONNECTION WITH LOANS NOT SECURED BY REAL PROPERTY AND THE SALE OF THE LOANS NOT SECURED BY REAL

1 PROPERTY, THE MARKET IS IN THIS STATE IF THE BORROWER IS LOCATED IN THIS
2 STATE.

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

11 6. FOR THE SALE OF A SERVICE, IF AND TO THE EXTENT THE SERVICE IS
12 DELIVERED TO A LOCATION IN THIS STATE.

13 7. FOR INTANGIBLE PROPERTY THAT IS:

14 (a) RENTED, LEASED OR LICENSED, IF AND TO THE EXTENT THE PROPERTY
15 IS USED IN THIS STATE, EXCEPT THAT INTANGIBLE PROPERTY USED IN MARKETING A
16 GOOD OR SERVICE TO A CONSUMER IS USED IN THIS STATE IF THAT GOOD OR
17 SERVICE IS PURCHASED BY A CONSUMER WHO IS IN THIS STATE.

18 (b) SOLD, IF AND TO THE EXTENT THE PROPERTY IS USED IN THIS STATE,
19 EXCEPT THAT:

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

24 (ii) RECEIPTS FROM INTANGIBLE PROPERTY SALES THAT ARE CONTINGENT ON
25 THE PRODUCTIVITY, USE OR DISPOSITION OF THE INTANGIBLE PROPERTY SHALL BE
26 TREATED AS RECEIPTS FROM THE RENTAL, LEASE OR LICENSING OF SUCH INTANGIBLE
27 PROPERTY UNDER SUBDIVISION (a) OF THIS PARAGRAPH.

28 (iii) UNLESS OTHERWISE PROVIDED IN THIS SECTION, ALL OTHER RECEIPTS
29 FROM A SALE OF INTANGIBLE PROPERTY SHALL BE EXCLUDED FROM THE NUMERATOR
30 AND DENOMINATOR OF THE SALES FACTOR.

31 D. IF THE STATE OR STATES OF ASSIGNMENT UNDER SUBSECTION C OF THIS
32 SECTION CANNOT BE DETERMINED, THE STATE OR STATES OF ASSIGNMENT SHALL BE
33 REASONABLY APPROXIMATED.

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

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

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

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

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

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

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

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

~~D.~~ G. For a multistate service provider under subsection ~~E~~ I, paragraph 3, subdivision (b) of this section, an election under subsection B of this section is limited to the treatment of sales for educational services. For a multistate service provider under subsection ~~E~~ I, paragraph 3, subdivision (c) of this section, an election under subsection B of this section is limited to the treatment of sales for support services, the payment for which is a percentage of the sales for educational services generated by a regionally accredited institution of higher education.

H. THE DEPARTMENT SHALL ADOPT RULES AS NECESSARY FOR THE PURPOSES OF THIS SECTION.

~~E.~~ I. For the purposes of this section:

1. "Income-producing activity sales" means the total sales from services that are sales in this state under subsection A of this section.

2. "Market sales" means the total sales from services and sales ~~of~~ FROM intangibles, as defined in paragraph 3, subdivision (a) of this subsection, for which the purchaser received the benefit of the service or intangibles in this state.

3. "Multistate service provider" means any of the following:

(a) A taxpayer that derives more than eighty-five percent of its sales from services or sales from intangibles provided to purchasers who receive the benefit of the service or intangibles outside this state in the taxable year of election, and includes all taxpayers required to file a combined report pursuant to section 43-942 and all members of an affiliated group included in a consolidated return pursuant to section 43-947. In calculating the eighty-five percent, sales to students receiving educational services at campuses physically located in this state shall be excluded from the calculation. For the purposes of this subdivision, "sales from intangibles" means sales derived from credit and charge card receivables, including fees, merchant discounts, interchanges, interest and related revenue.

1 (b) A taxpayer that is a regionally accredited institution of
2 higher education with at least one university campus in this state that
3 has more than two thousand students residing on the campus, and includes
4 all taxpayers required to file a combined report pursuant to section
5 43-942 and all members of an affiliated group included in a consolidated
6 return pursuant to section 43-947.

7 (c) A taxpayer that has more than two thousand employees in this
8 state and that derives more than eighty-five percent of its sales from
9 support services provided to a regionally accredited institution of higher
10 education, and includes all taxpayers required to file a combined report
11 pursuant to section 43-942 and all members of an affiliated group included
12 in a consolidated return pursuant to section 43-947.

13 4. "Received the benefit of the service in this state" means the
14 services are received by the purchaser in this state. If the state where
15 the services are received cannot be readily determined, the services are
16 considered to be received at the home of the customer or, in the case of a
17 business, the office of the customer from which the services were ordered
18 in the regular course of the customer's trade or business. If the
19 ordering location cannot be determined, the services are considered to be
20 received at the home or office of the customer to which the services were
21 billed. In the case of a multistate service provider under paragraph 3,
22 subdivision (c) of this subsection, the benefit of support services shall
23 be deemed received at the billing address of the student to which the
24 services relate.

25 5. "Sales for educational services" means tuition and fees required
26 for enrollment and fees required for courses of instruction, transcripts
27 and graduation.