

CHAPTER 8017
DEPARTMENT OF REVENUE
INCOME AND FRANCHISE TAXES
ALLOCATION AND APPORTIONMENT OF INCOME

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8017.3000 [Repealed, L 1987 c 268 art 1 s 128]

8017.4000 PETITION FOR APPLICATION OF OTHER THAN PRESCRIBED APPORTIONMENT METHOD.

The general rule is that the specific statutory methods prescribed in Minnesota Statutes, section 290.19 shall be employed in the determination of net income allocable to this state. However, any taxpayer feeling aggrieved by the application, to the taxpayer's case, of the method so prescribed may petition the commissioner of revenue for determination of such taxable net income on some other basis, including separate accounting.

The petition so filed should state:

- A. the name and address of the taxpayer;
- B. in a case of a corporation, the state of incorporation and the principal office or place of business;
- C. designation of the year involved;
- D. a statement of the kind, or kinds, of business in which the taxpayer is engaged, from which the income was derived for the taxable year stated in the petition;
- E. a detailed statement of the manner in which sales are effected within this state;
- F. a computation of Minnesota taxable net income in accordance with the method of assignment of income petitioned for; and
- G. a summary statement of the facts upon which the taxpayer relies to sustain the taxpayer's view that the application of the methods prescribed by Minnesota Statutes, section 290.19 will be unjust as applied to the taxpayer's case and that the method proposed will fairly reflect the taxable net income properly assignable to this state.

A petition within the meaning of Minnesota Statutes, section 290.20 shall be deemed to have been filed by the taxpayer if the taxpayer in a return uses a method other than the methods prescribed by Minnesota Statutes, section 290.19 and attaches to the return a statement setting forth the reasons for the use of such other method.

Statutory Authority: *MS s 290.52*

History: *17 SR 1279*

8017.5000 THE MULTISTATE TAX COMPACT.

Subpart 1. **In general.** Taxpayers who elect to be taxed under the apportionment and allocation provisions of Article IV of the Multistate Tax Compact, in accordance with Minnesota Statutes, section 290.171, are subject to the following regulations as found in Multistate Tax Commission Allocation and Apportionment Regulations, revised February 21, 1973, which is incorporated by reference. Copies of the regulations are available at the Minnesota State Law Library, 25 Constitution Avenue, Saint Paul, MN 55155, and other law libraries. The regulations have also been printed in State and Local Taxes, volume 1, All States Unit, Prentice Hall, Inc., Englewood Cliffs, New Jersey. All references to Article IV refer to Minnesota Statutes, section 290.171, article IV. Taxpayers who elect to apportion their income to Minnesota pursuant to Minnesota Statutes, chapter 290, without regard to Minnesota Statutes, section 290.171, article IV, are subject to Minnesota Rules, chapter 8019.

A. Regulation IV.1.(a), except that references to Regulations IV.1.(c) and IV.1.(b) shall be deleted;

B. Regulation IV.1.(d);

C. Regulation IV.2.(a)(1), in which case "taxpayer" means any corporation, partnership, firm, association, governmental unit, or agency or person acting as a business entity in more than one state;

D. Regulation IV.2.(a)(2);

E. Regulation IV.2.(a)(3);

F. Regulation IV.2.(a)(4);

G. Regulation IV.2.(b)(1), except that the portion of the net income (or net loss) arising from such trade or business which is derived from sources within this state shall be determined in accordance with Minnesota Statutes, section 290.171, article IV.4 to IV.12;

H. Regulation IV.2.(b)(2), except that the combined report shall reflect income only from corporations created or organized in the United States or under the laws of the United States or of any state, the District of Columbia, the commonwealth of Puerto Rico, any possession of the United States, or any political subdivision of any of the foregoing and except that "Article IV.9 to IV.17" is amended to read "Minnesota Statutes, section 290.171, article IV.4 to IV.12";

I. Regulation IV.2.(b)(3), except that "Article IV.4. to IV.8" is amended to read "Minnesota Statutes, section 290.171, article IV." Nonbusiness income shall be allocated in accordance with Minnesota Statutes, sections 290.17 and 290.19;

J. Regulation IV.2.(c);

K. Regulation IV.3.(a);

L. Regulation IV.3.(b), except that the term "tax administrator" is amended to read "commissioner of revenue" wherever it occurs;

M. Regulation IV.3.(c);

N. Regulation IV.9, except that "Article IV.9" is amended to read "Minnesota Statutes, section 290.171, article IV.4";

O. Regulation IV.10.(a);

P. Regulation IV.10.(b);

Q. Regulation IV.10.(c);

R. Regulation IV.10.(d);

S. Regulation IV.11.(a);

T. Regulation IV.11.(b);

U. Regulation IV.12;

V. Regulation IV.13.(a);

W. Regulation IV.13.(b);

X. Regulation IV.13.(c), except that "Article IV.14" is amended to read "Minnesota Statutes, section 290.171, article IV.9";

Y. Regulation IV.14;

Z. Regulation IV.15.(a), except that in paragraph (1) "paragraphs (5) through (8) of Article IV" is amended to read "Minnesota Statutes, section 290.171, article IV";

AA. Regulation IV.15.(b);

BB. Regulation IV.15.(c);

CC. Regulation IV.16.(a);

DD. Regulation IV.16.(b);

EE. Regulation IV.17, except that in paragraph (1) "Article IV.17" is amended to read "Minnesota Statutes, section 290.171, article IV.12";

FF. Regulation IV.18.(a), except that if combined reporting is used, the combined report shall reflect income only from corporations created or organized in the United States or under the laws of the United States or of any state, the District of Columbia, the commonwealth of Puerto Rico, any possession of the United States, or any political subdivision of any

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of the foregoing, and except that "Article IV.18" is amended to read "Minnesota Statutes, section 290.171, article IV.13" and "Article IV.10 to .17" is amended to read "Minnesota Statutes, section 290.171, article IV.5 to .12";

GG. Regulation IV.18.(b); and

HH. Regulation IV.18.(c).

Subp. 2. Construction contractors. Long-term construction contractors who elect to be taxed under the apportionment and allocation provisions of Article IV of the Multistate Tax Compact, in accordance with Minnesota Statutes, section 290.171, shall be subject to the Multistate Tax Commission Construction Contractor Regulation IV.18.(d), adopted July 10, 1980, with the following modifications:

A. In the second sentence of clause (1), "Regulation IV.1." is amended to read "Regulation IV.1.(a) and (d)."

B. In the third sentence of clause (1), "Article IV.5 to .8" is amended to read "Minnesota Statutes, section 290.171, article IV";

C. Clause (2), Business and nonbusiness income, is amended to read: "For definitions, rules, and examples for determining business and nonbusiness income see Regulation IV.1.(a) and (d)."

D. Clause (3), Methods of accounting and year of inclusion, is amended to read: "For general rules of accounting, definitions, and methods of accounting for long-term construction contracts see Minnesota Statutes, sections 290.01, subdivision 20, and 290.07."

E. In paragraph (4)(iv), "Article IV.10 to .12 inclusive" is amended to read "Minnesota Statutes, section 290.171, article IV.5 to .7 inclusive."

F. In paragraph (4)(v), "Article IV.13 and .14" is amended to read "Minnesota Statutes, section 290.171, article IV.8 and .9."

G. In paragraph (4)(vi), the reference to "Article IV.15 - .17 inclusive" is amended to read "Article IV.10 - .12, inclusive of the Multistate Tax Compact, in accordance with Minnesota Statutes, section 290.171."

Subp. 3. Railroads. Railroads which elect to be taxed under the apportionment and allocation provisions of Article IV of the Multistate Tax Compact, in accordance with Minnesota Statutes, section 290.171, shall be subject to Regulation IV.18.(f), adopted July 16, 1981, with the following modifications:

A. In the second sentence of clause (1), "Regulation IV.1" is amended to read "Regulation IV.1.(a) and (d)."

B. In the third sentence of clause (1), "Article IV.5 to .8, inclusive" is amended to read "Minnesota Statutes, section 290.171, article IV."

C. Clause (2), Business and nonbusiness income, is amended to read: "For definitions, rules, and examples for determining business and nonbusiness income, see Regulation IV.1.(a) and (d)."

D. In clause (3)(ii)A, "Article IV.11" is amended to read "Minnesota Statutes, section 290.171, article IV.6."

E. In clause (3)(ii)B.3, "Article IV.11" is amended to read "Minnesota Statutes, section 290.171, article IV.6."

F. In clause (3)(ii)B.4, "Article IV.12" is amended to read "Minnesota Statutes, section 290.171, article IV.7."

G. In clause (3)(ii)B.5, "Article IV.11" is amended to read "Minnesota Statutes, section 290.171, article IV.6."

H. In clause (3)(ii)C., "Article IV.10 - .12 inclusive," is amended to read "Minnesota Statutes, section 290.171, article IV.5-7, inclusive."

I. In clause (3)(ii)C.(iii), "Article IV.13 - .14" is amended to read "Minnesota Statutes, section 290.171, article IV.8-9."

J. In the second paragraph of clause (3)(ii)C.(iv)A., "Article IV.15 - .17" is amended to read "Minnesota Statutes, section 290.171, article IV.10-12."

Statutory Authority: *MS s 290.52*

History: *10 SR 478*

8017.6000 APPORTIONMENT OF NET INCOME OF AIR CARRIERS.

Subpart 1. **General information.** Minnesota Statutes, section 290.17, subdivision 3, provides that the net income of a trade or business carried on partly in and partly out of this state must be apportioned between this state and other states. Minnesota Statutes, section 290.191, provides general rules for the apportionment of the net income of a trade or business carried on partly in and partly out of this state. Minnesota Statutes, section 290.20, provides that if the methods prescribed by Minnesota Statutes, section 290.191, do not fairly reflect the net income allocable to this state, the commissioner of revenue may require the use of another method. The nature of the air carrier business requires use of a method other than those prescribed by Minnesota Statutes, section 290.191.

Subp. 2. **Definitions.** The definitions in this subpart apply to this part.

A. "Air carrier" means a person engaged in the paid carriage of passengers, cargo, or mail on regularly scheduled flights of aircraft.

B. "Aircraft" means a contrivance used or designed for the navigation of flight in the air.

C. "Airport-to-airport mileage" means the mileage, as determined by the United States Department of Transportation, between airports that are the point of origination and termination of a flight in service.

D. "Cargo ton mile" means the paid carriage of one ton of cargo for one mile.

E. "Departures" means departures of an aircraft while operating a flight in revenue service.

F. "Fixed property and payroll" means all property and payroll not defined as flight property or flight payroll.

G. "Fleet type" means each series within an aircraft model.

H. "Flight in revenue service" means the flight of an aircraft for the paid carriage of cargo, mail, or passengers.

I. "Flight payroll" means the payroll of persons engaged as staff, such as pilots and flight attendants, on the air carrier's aircraft.

J. "Flight property" means aircraft ready for flight, spare engines, and spare parts inventory that rotates into aircraft. Inventory that rotates is inventory that consists of aircraft parts that are replacements for defective or worn parts and may be placed into an aircraft for use more than one time.

K. "Mail ton mile" means the paid carriage of one ton of mail for one mile.

L. "Minnesota cargo ton mile" means the paid carriage of one ton of cargo for one Minnesota plane mile.

M. "Minnesota departures" means departures of aircraft from Minnesota facilities for flights in revenue service.

N. "Minnesota mail ton mile" means the paid carriage of one ton of mail for one Minnesota plane mile.

O. "Minnesota passenger ton mile" means the paid carriage of one ton of passengers for one Minnesota plane mile.

P. "Minnesota plane mile ratio" means the resultant ratio of Minnesota plane miles divided by total plane miles. A separate plane mile ratio must be computed for each fleet type.

Q. "Minnesota plane miles" means the number of miles on completed flights in revenue service using airport-to-airport mileage flown from a departure point in Minnesota to the border of the state or flown from the border of Minnesota to a destination within the state. Minnesota plane miles are calculated by multiplying the airport-to-airport mileage by the percentage resulting from the division of the Minnesota distance by total distance for each flight in revenue service. The Minnesota plane miles of a flight in revenue service from a Minnesota departure point to a Minnesota destination is the airport-to-airport mileage.

(1) Minnesota distance is the distance from the Minnesota airport to the Minnesota border and the Minnesota border to the Minnesota airport measured on a straight line between the originating airport and the destination airport.

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(2) Total distance is the distance from the originating airport to the destination airport on a straight line using the same map that was used to measure Minnesota distance.

(3) Minnesota distance and total distance must be measured on a conformal conic projection map, used for aviation purposes, meeting the standards for accuracy of the Global Navigation and Planning Chart, United States Defense Mapping Agency, Lambert Conformal Conic Projection Map.

R. "Passenger ton mile" means the paid carriage of one ton of passengers for one mile. For this purpose, each passenger is considered to weigh 200 pounds.

S. "Plane miles" means the number of miles flown on completed flights in revenue service using airport-to-airport mileage. Plane miles must be accumulated on a fleet type basis.

Subp. 3. Formula. Except as provided in this part, the method of apportionment prescribed in Minnesota Statutes, section 290.191, governs the apportionment of the net income of air carriers by this state.

Subp. 4. Property factor. Items A to D govern inclusion of property for purposes of the property factor in Minnesota Statutes, section 290.191.

A. The denominator of the property factor must include the property permitted to be included under Minnesota Statutes, section 290.191, subdivisions 9 and 10.

B. Fixed property owned or rented and actually used by the air carrier in this state in carrying on business in this state must be included in the numerator of the property factor.

C. All flight property owned or rented by the taxpayer must be included in the numerator of the property factor by multiplying the original cost of the flight property by the Minnesota plane mile ratio. This calculation must be made on a fleet type basis.

D. Fixed and flight property that is rented by an air carrier is valued at eight times the net annual rental, as set forth in Minnesota Statutes, section 290.191, subdivision 10, paragraph (e).

Subp. 5. Payroll factor. The payroll factor must be determined under Minnesota Statutes, section 290.191, subdivision 12, except that flight payroll must be included in the numerator by multiplying the total flight payroll times the Minnesota plane mile ratio. This calculation must be made on a fleet type basis.

Subp. 6. Receipts factor. Items A and B govern inclusion of receipts for purposes of the receipts factor in Minnesota Statutes, section 290.191.

A. The denominator of the receipts factor includes all receipts from the paid carriage of passengers, cargo, and mail.

B. The numerator must be 85 percent of the sum of the amounts calculated in subitem (1) plus 15 percent of the sum of the amounts calculated in subitem (2). The Minnesota passenger, cargo, and mail revenue must be determined on a fleet type basis by:

(1)(i) multiplying the total gross revenue from the carriage of passengers by the ratio of Minnesota passenger ton miles to total passenger ton miles; (ii) multiplying the total gross revenue from the carriage of cargo by the ratio of Minnesota cargo ton miles to total cargo ton miles; and (iii) multiplying the total gross revenue from the carriage of mail by the ratio of Minnesota mail ton miles to total mail ton miles;

(2)(i) multiplying the total gross revenue from the carriage of passengers by the ratio of Minnesota departures to total revenue departures; (ii) multiplying the total gross revenue from the carriage of cargo by the ratio of Minnesota departures to total departures; and (iii) multiplying the total gross revenue from the carriage of mail by the ratio of Minnesota departures to total departures; and

(3) if records of either actual passenger revenue, freight revenue, or mail revenue generated by fleet type are not maintained, for purposes of subitems (1) and (2), passenger revenue, cargo revenue, and mail revenue must be allocated to aircraft types based on the ratios of the passenger ton miles, cargo ton miles, and mail ton miles of that fleet type to total system passenger, cargo, and mail ton miles. The computation for each fleet type is as follows:

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<u>Passenger Ton Miles for that Fleet Type</u>	X	Total Passenger Revenue	=	Passenger Revenue for that Fleet Type
Total Passenger Ton Miles for all Fleet Types				

<u>Cargo Ton Miles for that Fleet Type</u>	X	Total Cargo Revenue	=	Cargo Revenue for that Fleet Type
Total Cargo Ton Miles for all Fleet Types				

<u>Mail Ton Miles for that Fleet Type</u>	X	Total Mail Revenue	=	Mail Revenue for that Fleet Type
Total Mail Ton Miles for all Fleet Types				

Statutory Authority: *MS s 270.06*

History: *17 SR 95*