

Metro Business Income Tax Administrative Rule 7.07 – 1090

7.07 – 1090 Apportionment of Gross Income from Business Activities Other than Sales of Tangible Personal Property

Passive, portfolio, personal service income, and all other items of gross income are apportioned to the location of the income producing activity. The term “income producing activity” applies to each separate item of income and means the transactions and activity directly engaged in by the taxpayer in the regular course of its business for the ultimate purpose of obtaining gain or profit.

Time spent in performing services includes the amount of time expended in the performance of a contract or other obligation which gives rise to such gross income. Personal service not directly connected with the performance of a contract or other obligation (for example, time expended in negotiating the contract) is excluded from the computations.

Income from transactions and activities performed on behalf of a business, such as those conducted on its behalf by an independent contractor, must be apportioned to the business’ domicile location. If a business taxpayer is domiciled within the Metro district (established by physical presence within the Metro district), and there is no jurisdiction to tax the income of the business taxpayer outside of the Metro district, then the business taxpayer must report and pay tax upon 100% of their business income.

Example 1:

Gross income from the performance of personal services is apportioned to the Metro district to the extent such services are performed in the Metro district. Gross income from services performed wholly within the Metro district must be apportioned wholly to the Metro district. Gross Income from services performed wholly outside the Metro district are wholly excluded from gross income apportioned to the Metro district. If services relating to a single item of income are performed partly within and partly without the Metro district, the gross income for the performance must be apportioned using the Hourly Method as described below.

Hourly Method: Gross income apportioned to the Metro district on income producing activity occurring partly within and partly without the Metro district is determined by multiplying the gross proceeds of such income producing activity by the ratio of time spent performing such services within the Metro district compared to the total time spent performing such services everywhere. This method shall generally apply on a contract-by-contract basis. However, if a taxpayer’s incomes are not determinable on such a basis, the taxpayer can determine on other reasonable bases (using logbooks, calendars or other such data) the percentage of time spent within and without the Metro district during the year and apply such ratio to the gross income of the full year.

Example 2:

A broker provides the service of matching a supplier with a purchaser of either tangible personal property (e.g., lumber, food products) or services (e.g., employment). Gross income for the performance of the service are apportioned to the Metro district to the extent such services are performed in the Metro district and is apportioned following the Hourly Method identified in

Example 1. If a broker has not established a taxable presence outside the Metro district, no apportionment will be allowed.

Example 3:

Gross income from the rental, leasing, sale, or licensing of real and personal property are apportioned to the Metro district if the property is located in the Metro district. Generally, transactions involving property are attributable to the situs of the property.

Example 4:

Gross income from interest, dividends, and other portfolio income items are apportioned to the Metro district if the administrative activities to select, record, and/or reconcile the portfolio investments are performed in the Metro district. Generally, portfolio activity is attributable to the commercial domicile of the business. Portfolio income may not be apportioned to the location of third party administrators or to any other jurisdictions in which the income would not be taxable because neither the business or owners of the business have established a taxable domicile in such jurisdiction.

Example 5:

Gross income from royalties, patents, customer lists and other intangibles are apportioned to the Metro district if the commercial domicile of the business is in the Metro district. There must be significant costs of performance away from the commercial domicile to apportion the income elsewhere.

Example 6:

Gross income from sale of franchises located in the Metro district and gross income of franchise fees or royalties from Metro district sources are apportioned to the Metro district. Due to the nature of franchise agreements, a minimum connection between the franchisor and the Metro district exists when a franchisor takes advantage of the economic milieu of the Metro district. This minimum connection is satisfied by entering into franchising or licensing agreements; selling or otherwise disposing of franchises and licenses; or selling or otherwise transferring tangible personal property pursuant to such franchises or licenses within the Metro district.

Additional minimum connection may be found in the use or allowance of copyrights, trademarks, licenses, patents or other intangible assets within the Metro district. Other minimum connections may also be in the form of an employee coming to Metro district to solicit the sale of franchises, copyrights, trademarks, licenses, patents or other intangible assets, inspect franchisee operations, coordinate joint advertising, etc., or to perform after the sale activities in the Metro district for the franchisee.

Note 1: This rule sunsets 12/31/2022 and does not apply to tax years beginning on or after 1/1/2023.

XX-XX-2023

Date

Amended XX-XX-2023

DRAFT