

Sec. 12-711(c)-4. Allocation and apportionment of income from a business, trade, profession or occupation carried on partly within and partly without Connecticut

(a) **General.** If a nonresident individual, or a partnership of which a nonresident individual is a member, carries on a business, trade, profession or occupation (as distinguished from personal services as an employee) both within and without Connecticut, the items of income, gain, loss and deduction attributable to such business, trade, profession or occupation shall be allocated (as provided in subsection (b) of this section) or apportioned (as provided in subsection (c) of this section) to Connecticut on a fair and equitable basis in accordance with generally accepted accounting principles. Once an individual uses either method (allocation or apportionment), he or she shall continue to use that method unless, after application in writing to the Commissioner, the Commissioner determines that the method used no longer reflects income which is fairly attributable to Connecticut. See § 12-711(c)-5 of this Part for rules regarding the allocation and apportionment of compensation paid to nonresident employees and officers.

(b) **Allocation by books and records.** If the books of the business are kept so as regularly to disclose, to the satisfaction of the Commissioner, the proportion of the net amount of the items of income, gain, loss and deduction derived from or connected with Connecticut sources, the Connecticut nonresident income tax return of the nonresident individual shall disclose the total amount of such items, the net amount of such items allocated to Connecticut, and the basis upon which such allocation is made. If income is reported using this method, such individual shall consistently allocate the amounts of income on returns filed with any other states in which such individual carries on business, where such states permit allocation on the basis of separate books and records.

Example: A plumber, who is a resident of Rhode Island, carries on his business from an office in Danielson, Connecticut. He has maintenance contracts with housing authorities in the Worcester, Massachusetts area which require him to regularly perform his services at various locations in and around Worcester. Assume that this taxpayer allocated, on the basis of separate books and records, the income derived from his plumbing business on his Connecticut nonresident return as follows: 60% to Connecticut and 40% to Massachusetts. Therefore, on his Massachusetts return, this taxpayer shall also allocate 60% of this income to Connecticut and 40% to Massachusetts, since Massachusetts permits allocation on the basis of separate books and records.

(c) **Apportionment.** If the books and records of the business do not disclose, to the satisfaction of the Commissioner, the proportion of the net amount of the items of income, gain, loss and deduction attributable to the activities of the business carried on in Connecticut, such proportion shall, except as provided in § 12-711(b)-8 of this Part, be determined by multiplying the net amount of the items of income, gain, loss and deduction of the business by the average of the percentages described in subsections (d) to (f), inclusive, of this section.

(d) **Property percentage.**

(1) **General.** The property percentage is computed by dividing the average of the values, at the beginning and end of the taxable year, of real and tangible personal property connected with the business and located within Connecticut, by the average of the values, at the beginning and end of the taxable year, of all real and tangible personal property connected

with the business and located both within and without Connecticut. Property, the income or gain from the sale, exchange or other disposition of which is allocated pursuant to § 12-711(b)-8 of this Part, is disregarded in computing the property percentage described in this subsection. For purposes of this subsection, the term “property” includes real and tangible personal property rented to the taxpayer and used in the business, and, except as provided in subdivision (2) of this subsection, the term “value” means fair market value for real property and book value for tangible personal property.

(2) Rented Property.

(A) The value of property, both within and without Connecticut, which is rented to the nonresident individual is determined by multiplying the gross rents payable during the taxable year by eight.

(B) “Gross rent,” as used in this subdivision, is the actual sum of money or other consideration payable directly or indirectly by, or for the benefit of, the nonresident individual for the use or possession of the property, and includes:

(i) any amount payable for the use or possession of property, or any part thereof, whether designated as a fixed sum of money or as a percentage of sales, profits or otherwise;

(ii) any amount payable as additional rent or in lieu of rent, such as interest, taxes, insurance, repairs or any other amount required to be paid by the terms of a lease or other arrangement; and

(iii) a proportionate part of the cost of any improvement to real property made by or on behalf of the nonresident individual which reverts to the owner or lessor upon termination of a lease or other arrangement, based on the unexpired term of the lease commencing with the date the improvement is completed (or the life of the improvement if its life expectancy is less than the unexpired term of the lease); provided, however, that where a building is erected on leased land by or on behalf of the nonresident individual, the value of the land is determined by multiplying the gross rent by eight, and the value of the building is determined in the same manner as if owned by such individual. The proportionate part of the cost of an improvement (other than a building on leased land) is generally equal to the amount of amortization allowed in computing Connecticut adjusted gross income, whether the lease does or does not contain an option of renewal.

(C) “Gross rent” does not include:

(i) any portion of a payment or credit, to the nonresident individual as the proprietor of the business or as a partner in the partnership conducting the business, for the use of property;

(ii) amounts payable by the nonresident individual as separate charges for water and electric service furnished by the lessor;

(iii) amounts payable by the nonresident individual for storage, where no designated space under the control of such individual as a tenant is rented for storage purposes; or

(iv) that portion of any rental payment which is applicable to property subleased by the nonresident individual and not used by such individual in the carrying on of the business.

(3) The method that is provided in subdivision (1) of this subsection is presumed to result in fair and equitable valuations, and any nonresident individual, proposing an alternate method of valuation, shall bear the burden of establishing that the method that is provided in subdivision (1) of this subsection results in unfair and inequitable valuations. A request

for an alternative method may be made at the time the Connecticut nonresident income tax return to which the request relates is filed. A request is made by using, and fully explaining, the proposed method in the income tax return. Any request shall contain all facts with respect to the property forming the basis for the proposed valuation and also a computation of the value of the rented property based on gross rents in accordance with subdivision (2) of this subsection. Once approved by the Commissioner, such basis or such other method shall be used for subsequent years until the facts upon which it is based are materially changed.

(e) **Payroll percentage.** The payroll percentage is computed by dividing the total wages, salaries and other personal service compensation paid or incurred during the taxable year to employees in connection with business carried on within Connecticut, by the total of all wages, salaries and other personal service compensation paid or incurred during the taxable year to employees in connection with the business carried on both within and without Connecticut.

(f) **Gross income percentage.** The gross income percentage is computed by dividing the gross sales or charges for services performed by or through an office, branch, agency or other location of the business within Connecticut, by the total of all gross sales or charges for services performed within and without Connecticut. The sales or charges to be allocated to Connecticut include all sales negotiated or consummated, and charges for services performed, by an employee, agent, agency or independent contractor chiefly situated at, connected by contract or otherwise with, or sent out from, offices or branches of the business, or other agencies or locations, situated within Connecticut.

(Effective November 18, 1994)