

701—54.1(422) Basis of corporate tax. Iowa Code section 422.33 imposes a tax on all corporations incorporated under the laws of Iowa and upon every foreign corporation doing business in Iowa. For tax years beginning on or after January 1, 1999, Iowa Code section 422.33 imposes a tax on all corporations doing business in Iowa. For corporations or other entities subject to the tax (as corporations), the tax is levied and collected only on such income as may accrue or be recognized to the corporation from business done or carried on in the state plus net income from certain sources without the state which by law follows the commercial domicile of the corporation.

If a corporation carries on its trade or business entirely within the state of Iowa, no allocation or apportionment of its income may be made. The corporation will be presumed to be carrying on its business entirely within the state of Iowa if its sales or other activities are carried on only in Iowa, even though it received income from sources outside the state in the form of interest, dividends, royalties and other sources of income from intangibles. For tax years beginning on or after January 1, 1995, an Iowa-domiciled corporation may apportion its income if it has income from intangibles that have acquired a business situs outside Iowa even if it has no other activities outside the state. For tax years beginning on or after January 1, 1999, an Iowa-domiciled corporation may apportion its income if the trade or business is carried on partly within and partly without the state or if income is derived from sources partly within and partly without the state, or if income is derived from trade or business and sources, all of which are not entirely in the state. (See 701—subrules 52.1(1) and 52.1(4).)

For tax years beginning on or after January 1, 1986, the income from the operation of a farm may be allocated and apportioned within and without the state if the business activities of the corporation are carried on partly within and partly without the state. For tax years beginning on or after January 1, 1995, an Iowa-domiciled corporation may apportion its income if it has income from intangibles that have acquired a business situs outside Iowa even if it has no other activities outside the state. For tax years beginning on or after January 1, 1999, an Iowa-domiciled corporation may apportion its income if the trade or business is carried on partly within and partly without the state or if income is derived from sources partly within and partly without the state, or if income is derived from trade or business and sources, all of which are not entirely in the state. (See 701—subrules 52.1(1) and 52.1(4).)

See subrule 54.1(4) for the definition of carrying on a trade or business partly within and partly without the state.

54.1(1) Definition—operation of a farm. A taxpayer is engaged in the operation of a farm if the taxpayer cultivates, operates, or manages a farm for gain or profit, either as owner or tenant. For the purpose of Iowa Code section 422.33(1), a taxpayer who receives a rental (either in cash or in kind) which is based upon farm production is engaged in the operation of a farm. However, a taxpayer who receives a fixed rental (without reference to production) is engaged in the operation of a farm only if the taxpayer participates to a material extent in the operation or management of the farm. A taxpayer engaged in forestry or the growing of timber is not thereby engaged in the operation of a farm. A taxpayer cultivating or operating a farm for recreation or pleasure rather than a profit is not engaged in the operation of a farm. For the purpose of this subrule, the term “farm” is used in its ordinary, accepted sense and includes stock, dairy, poultry, fruit, and truck farms, and also plantations, ranches, ranges, and orchards. A taxpayer is engaged in the operation of a farm if the taxpayer is a member of a partnership engaged in the operation of a farm. The operation of a farm includes the sale of products produced on the farm. The purchase of livestock for feeding purposes and subsequent resale is part of the operation of a farm.

54.1(2) Definition—property used in the operation of a farm. Property used in the operation of a farm means land and buildings which are used in the operation of a farm. The land must be used for the production of crops, fruits, or other agricultural products or for the sustenance of livestock. For the purposes of this subrule, the term livestock includes cattle, hogs, horses, mules, donkeys, sheep, goats, captive furbearing animals, chickens, turkeys, pigeons, and other poultry. It does not include fish, frogs, reptiles, and the like. Land used for the sustenance of livestock includes land used for grazing such livestock.

Property used in the operation of a farm means property used in the unitary operations of a farm whether or not the acreage is contiguous.

54.1(3) Definition—unitary operations of a farm. Unitary operations of a farm means the operation of one or more tracts of land or the conducting of one or more types of farming operations where the operation of a farm within Iowa is integrated with, dependent upon or contributes to the operations of a farm outside the state.

54.1(4) Definition—carrying on a trade or business partly within and partly without the state. Carrying on a trade or business partly within and partly without the state means having business activities in at least one other state sufficient to meet the minimum constitutional standards for doing business in a state under the due process and commerce clauses of the United States Constitution. The determination of whether a corporation is carrying on a trade or business partly within and partly without the state must be made on a tax-year-by-tax-year basis. The activities of a past or future tax year have no bearing on the current year.

The following nonexclusive list of activities on a non-de minimus basis determined by aggregating all activities if physically carried on in a regular, systematic, and continuing basis by corporate officers or employees or representatives in at least one other state would constitute the minimum activities which would meet the constitutional standards for doing business in a state under the due process and commerce clauses of the United States Constitution:

The term “representative” means independent contractors, agents, brokers, and other individuals or entities who act on behalf of or at the direction of the corporation. A person may be considered a “representative” even though that person may not be considered an employee for other purposes such as withholding of income tax from commissions.

- a. The free distribution of product samples, brochures, and catalogues which explain the use of or laud the product, or both.
- b. Negotiation of a price for a product.
- c. Demonstration of how the corporation’s product works.
- d. Delivery of goods to customers by the corporation in its own or leased vehicles.
- e. Audit of inventory levels.
- f. Recruitment, training, evaluation, and management of employees, officers, or representatives.
- g. Intervention/mediation in credit disputes between customers and Iowa-located corporate departments.
- h. Use of hotel rooms and homes for business meetings.
- i. Assistance to wholesalers in obtaining suitable displays for products.
- j. Furnishing of display racks at no charge.
- k. Advice to sellers on the art of displaying goods to the public.
- l. Rental of hotel rooms for short-term display of products.
- m. Mere forwarding of customer questions, concerns, or problems.
- n. Installation or assembly of the corporate product.
- o. Ownership or lease of real estate by the corporation and used for a business purpose.
- p. Solicitation of orders for, or sale of, services or real estate.
- q. Solicitation of sales or sale of tangible personal property (as opposed to solicitation of orders).
- r. Maintenance of a stock of inventory.
- s. Existence of an office or other business location.
- t. Managerial activities.
- u. Collections on regular or delinquent accounts.
- v. Technical assistance and training given to purchaser and user of corporate products.
- w. The repair or replacement of faulty or damaged goods.
- x. The pickup of damaged, obsolete, or returned merchandise from purchaser or user.
- y. Rectification of or assistance in rectifying any product complaints or shipping complaints, for example.
- z. Delivery of corporate merchandise inventory to corporation’s distributors or dealers on consignment.
- aa. Maintenance of personal property.

- ab.* Participation in recruitment, training, monitoring, or approval of servicing distributors, dealers, or others where purchasers of corporation's products can have such products serviced or repaired.
- ac.* Inspection or verification of faulty or damaged goods.
- ad.* Inspection of the customer's installation of the corporate product.
- ae.* Research.
- af.* Employees' or officers' use of part of their homes or other places as an office if the corporation pays for such use.
- ag.* The use of samples for replacement or sale; storage of such samples at home or in rented space.
- ah.* Removal of old or defective products.
- ai.* Verification of the destruction of damaged merchandise.
- aj.* Repair or warranty work on company goods or products after sale.
- ak.* Any other activities carried on in advancement, promotion, or fulfillment of the business of the corporation.

Some of the above activities may not create a tax liability in another state because of the protections afforded by Public Law 86-272, 15 USCA Sections 381-385, which prohibit the taxation of a corporation if its only activities in the state are the solicitation of orders which are approved and filled by shipment or delivery from outside the state. Irrespective of whether the corporation is taxable in another state, it may apportion its income if it carries on one or a combination of the above activities in a regular and continuing basis by corporate officers or employees in at least one other state.

The mere shipment of goods via common carrier or the United States Postal Service to non-Iowa destinations does not constitute doing business partly within and partly without the state. *Irvine Co. v. McColgan*, 26 Cal.2d 160, 157 P.2d 847 (1945); *W.J. Dickey & Sons, Inc. v. State Tax Commission*, 212 Md. 607, 131 A.2d 277 (1957); *State of Georgia v. Coca-Cola Bottling Co.*, 214 Ga. 316, 104 S.E.2d 574 (1958); *E.F. Johnson Company v. Commissioner of Taxation*, 224 N.W.2d 150 (Minnesota 1975); 1980 O.A.G. 588, and *Kuehn to Bair #85-5-53(L)*.

For tax years beginning on or after January 1, 1989, a corporation domiciled in this state whose trade or business is carried on partly within and partly without the state or whose income is derived from sources partly within and partly without the state may allocate and apportion its income within and without the state. "Income from sources partly within and partly without the state" means income from real or tangible property located or having a situs within and without the state.

The term "tangible property having a situs without the state" means that a tangible property is habitually present in a state other than Iowa or it maintains a fixed and regular route through another state sufficient that the other state could constitutionally under the 14th Amendment and Commerce Clause of the United States Constitution impose an apportioned ad valorem tax on the property. *Central R. Co. v. Pennsylvania*, 370 U.S. 607, 82 S.Ct. 1297, 8 L.Ed.2d (1962); *New York Central & H. Railroad Co. v. Miller*, 202 U.S. 584, 26 S.Ct. 714, 50 L.Ed. 155 (1906); *American Refrigerator Transit Company v. State Tax Commission*, 395 P.2d 127 (Or. 1964); *Upper Missouri River Corporation v. Board of Review*, Woodbury County, 210 N.W.2d 828.

For tax years beginning on or after January 1, 1995, a corporation whose trade or business is carried on partly within and partly without the state of Iowa or whose income is derived from sources partly within and partly without the state may allocate and apportion its income within and without the state. "Income from sources partly within and partly without the state" means income from real, tangible, or intangible property located or having situses within and without the state.

This rule is intended to implement Iowa Code section 422.33(1) as amended by 1999 Iowa Acts, chapter 151.