

The House Passed 4/15 En. from 3/30 (p. 1211)

Senate File 2056

Ways and Means: Jochum, Chair; Hines, Bina, Pavich, West, Clark of Lee and Thompson.

FILED JAN 4

SENATE FILE 2056

BY COMMITTEE ON WAYS AND MEANS

Passed Senate, Date 2-10-78 (p. 285) Passed House, Date 4-13-78 (p. 1604)

Vote: Ayes 45 Nays 1 Vote: Ayes 96 Nays 1

Approved April 27 1978

A BILL FOR

1 An Act providing for the business and nonbusiness distinction
2 in allocating and apportioning corporate net income for
3 tax purposes and making the Act retroactive.

4 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

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Reintroduced 4/15 (p. 2804)

1 Section 1. Section four hundred twenty-two point thirty-
2 two (422.32), Code 1977, as amended by Acts of the Sixty-
3 seventh General Assembly, 1977 Session, chapter one hundred
4 nineteen (119), section nine (9), is amended by adding the
5 following new subsections:

6 NEW SUBSECTION. "Business income" means income arising
7 from transactions and activity in the regular course of the
8 taxpayer's trade or business and includes income from tangible
9 and intangible property if the acquisition, management, and
10 disposition of the property constitute integral parts of the
11 taxpayer's regular trade or business operations.

12 NEW SUBSECTION. "Nonbusiness income" means all income
13 other than business income.

14 NEW SUBSECTION. "Commercial domicile" means the principal
15 place from which the trade of business of the taxpayer is
16 directed or managed.

17 NEW SUBSECTION. "Taxable in another state". For purposes
18 of allocation and apportionment of income under this division,
19 a taxpayer is taxable in another state if:

20 a. In that state he or she is subject to a net income
21 tax, a franchise tax measured by net income, a franchise tax
22 for the privilege of doing business, or a corporate stock
23 tax; or

24 b. That state has jurisdiction to subject the taxpayer
25 to a net income tax regardless of whether, in fact, the state
26 does or does not.

27 NEW SUBSECTION. "State" means any state of the United
28 States, the District of Columbia, the Commonwealth of Puerto
29 Rico, any territory or possession of the United States, and
30 any foreign country or political subdivision thereof.

31 Sec. 2. Section four hundred twenty-two point thirty-three
32 (422.33), subsection one (1), Code 1977, as amended by Acts
33 of the Sixty-seventh General Assembly, 1977 Session, chapter
34 one hundred twenty-two (122), section one (1), is amended
35 by striking paragraph a and inserting in lieu thereof the

1 following:

2 a. Nonbusiness interest, dividends, rents and royalties,
3 less related expenses, shall be allocated within and without
4 the state in the following manner:

5 (1) Nonbusiness interest, dividends, and royalties from
6 patents and copyrights shall be allocable to this state if
7 the taxpayer's commercial domicile is in this state.

8 (2) Nonbusiness rents and royalties received from real
9 property located in this state are allocable to this state.

10 (3) Nonbusiness rents and royalties received from tangible
11 personal property are allocable to this state to the extent
12 that the property is utilized in this state; or in their
13 entirety if the taxpayer's commercial domicile is in this
14 state and the taxpayer is not taxable in the state in which
15 the property is utilized. The extent of utilization of
16 tangible personal property in a state is determined by
17 multiplying the rents and royalties by a fraction, the
18 numerator of which is the number of days of physical location
19 of the property in the state during the rental or royalty
20 period in the taxable year and the denominator of which is
21 the number of days of physical location of the property
22 everywhere during all rental or royalty periods in the taxable
23 year. If the physical location of the property during the
24 rental or royalty period is unknown, or unascertainable by
25 the taxpayer tangible personal property is utilized in the
26 state in which the property was located at the time the rental
27 or royalty payor obtained possession.

28 Sec. 3. Section four hundred twenty-two point thirty-three
29 (422.33), subsection one (1), paragraph b, Code 1977, is
30 amended to read as follows:

31 b. Net nonbusiness income of the above class having been
32 separately allocated and deducted as above provided, ~~the~~
33 ~~remainder~~ of the remaining net business income of the taxpayer
34 shall be allocated and apportioned as follows:

35 Business interest, dividends, rents, and royalties shall

1 be reasonably apportioned within and without the state under
2 rules adopted by the director pursuant to chapter seventeen
3 A (17A) of the Code.

4 Where income is derived from business other than the
5 manufacture or sale of tangible personal property, such income
6 shall be specifically allocated or equitably apportioned
7 within and without the state under rules of the director.

8 Where income is derived from the manufacture or sale of
9 tangible personal property, the part thereof attributable
10 to business within the state shall be in that proportion which
11 the gross sales made within the state bear to the total gross
12 sales.

13 The gross sales of the corporation within the state shall
14 be taken to be the gross sales from goods delivered or shipped
15 to a purchaser within the state regardless of the f.o.b. point
16 or other conditions of the sale, excluding deliveries for
17 transportation out of the state.

18 For the purpose of this section, the word "sale" shall
19 include exchange, and the word "manufacture" shall include
20 the extraction and recovery of natural resources and all
21 processes of fabricating and curing. the words "tangible
22 personal property" shall be taken to mean corporeal personal
23 property, such as machinery, tools, implements, goods, wares,
24 and merchandise, and shall not be taken to mean money deposits
25 in banks, shares of stock, bonds, notes, credits, or evidence
26 of an interest in property and evidences of debt.

27 Sec. 4. The provisions of sections one (1), two (2), and
28 three (3) of this Act are retroactive to January 1, 1977,
29 for tax years beginning on or after January 1, 1977 and to
30 this extent the provisions of sections one (1), two (2), and
31 three (3) of this Act are retroactive.

32 Sec. 5. This Act, being deemed of immediate importance,
33 shall take effect and be in force from and after its
34 publication in the Dallas County News, a newspaper published
35 in Adel, Iowa, and in the Cherokee Daily Times, a newspaper

1 published in Cherokee, Iowa.

2 EXPLANATION

3 The bill provides for a business-nonbusiness distinction
4 in allocating and apportioning corporate net income. This
5 has been done by the Department of Revenue under rules but
6 the Iowa Supreme Court recently, by certain dictum in its
7 opinion, seemed to indicate that the current law does not
8 provide for a business-nonbusiness concept, but that interest,
9 dividends, rents, and royalties be allocated within and without
10 the state purely on the basis of the particular source of
11 such income.

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SENATE FILE 2056
FISCAL NOTE

Date: February 9, 1978
Requested by: Senator Warren Curtis

In compliance with a written request received January 17, 1978, there is hereby submitted a Fiscal Note for Senate File 2056, pursuant to Joint Rule 16. Background information used in developing this Fiscal Note is available from the Legislative Fiscal Bureau, to members of the Legislature upon request.

Senate File 2056, An Act providing for the business and nonbusiness distinction in allocating and apportioning corporate net income for tax purposes and making the Act retroactive.

Senate File 2056 would provide that income received by a corporation is business income and subject to apportionment if the income constitutes an integral part of the taxpayer's trade or business. Nonbusiness income would be that income which is not an integral part of the taxpayer's trade or business and would be subject to allocation to a specific situs such as the location of the income producing property or the commercial domicile of the corporation. The Department of Revenue through its rules has interpreted current Iowa law to provide for a business-nonbusiness concept as contained in Senate File 2056. However, in view of certain dictum rendered by the Iowa Supreme Court in deciding the Moorman Manufacturing case and questions from various corporations, the validity of the current business-nonbusiness concept is in doubt. Senate File 2056 would specifically provide for a business-nonbusiness concept regarding the allocation of interest, dividends, rents and royalties.

The effect of this legislation were estimated based on tax returns filed in 1976 and as such to the extent that corporate income and tax liabilities have increased, the estimated revenue effects would be greater. The proposal will have no effect on corporations whose business activities are conducted wholly within Iowa. However, analysis of returns filed results in the estimation that approximately \$500,000 of the tax paid on returns filed in 1976 may not have been remitted if the current department rules had not been in effect. Further, it is known that a certain amount of tax which may be due the state from corporations domiciled out of Iowa has not been paid due to the uncertainty of the validity of the current rules. While it is not precisely known how such corporations might allocate their incomes under different department rules, it is possible to estimate the magnitude of the revenue currently not being collected. Based on 1976 returns, it is estimated that the amount of this additional tax which could be collected in the future if the legislation were enacted, would range from \$3 million to \$4 million.

Source: Iowa Department of Revenue

FILED
FEBRUARY 9, 1978

Gerry Rankin
FISCAL DIRECTOR
Legislative Fiscal Bureau

SENATE FILE 2056

AN ACT

PROVIDING FOR THE BUSINESS AND NONBUSINESS DISTINCTION
IN ALLOCATING AND APPORTIONING CORPORATE NET INCOME
FOR TAX PURPOSES AND MAKING THE ACT RETROACTIVE.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

Section 1. Section four hundred twenty-two point thirty-two (422.32), Code 1977, as amended by Acts of the Sixty-seventh General Assembly, 1977 Session, chapter one hundred nineteen (119), section nine (9), is amended by adding the following new subsections:

NEW SUBSECTION. "Business income" means income arising from transactions and activity in the regular course of the taxpayer's trade or business and includes income from tangible and intangible property if the acquisition, management, and disposition of the property constitute integral parts of the taxpayer's regular trade or business operations.

NEW SUBSECTION. "Nonbusiness income" means all income other than business income.

NEW SUBSECTION. "Commercial domicile" means the principal place from which the trade or business of the taxpayer is directed or managed.

NEW SUBSECTION. "Taxable in another state". For purposes of allocation and apportionment of income under this division, a taxpayer is taxable in another state if:

- a. In that state he or she is subject to a net income tax, a franchise tax measured by net income, a franchise tax for the privilege of doing business, or a corporate stock tax; or
- b. That state has jurisdiction to subject the taxpayer to a net income tax regardless of whether, in fact, the state does or does not.

NEW SUBSECTION. "State" means any state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, any territory or possession of the United States, and any foreign country or political subdivision thereof.

Sec. 2. Section four hundred twenty-two point thirty-three (422.33), subsection one (1), Code 1977, as amended by Acts of the Sixty-seventh General Assembly, 1977 Session, chapter one hundred twenty-two (122), section one (1), is amended by striking paragraph a and inserting in lieu thereof the following:

a. Nonbusiness interest, dividends, rents and royalties, less related expenses, shall be allocated within and without the state in the following manner:

(1) Nonbusiness interest, dividends, and royalties from patents and copyrights shall be allocable to this state if the taxpayer's commercial domicile is in this state.

(2) Nonbusiness rents and royalties received from real property located in this state are allocable to this state.

(3) Nonbusiness rents and royalties received from tangible personal property are allocable to this state to the extent that the property is utilized in this state; or in their entirety if the taxpayer's commercial domicile is in this state and the taxpayer is not taxable in the state in which the property is utilized. The extent of utilization of tangible personal property in a state is determined by multiplying the rents and royalties by a fraction, the numerator of which is the number of days of physical location of the property in the state during the rental or royalty period in the taxable year and the denominator of which is the number of days of physical location of the property everywhere during all rental or royalty periods in the taxable year. If the physical location of the property during the rental or royalty period is unknown, or unascertainable by the taxpayer tangible personal property is utilized in the state in which the property was located at the time the rental

or royalty payor obtained possession.

Sec. 3. Section four hundred twenty-two point thirty-three (422.33), subsection one (1), paragraph b, Code 1977, is amended to read as follows:

b. Net nonbusiness income of the above class having been separately allocated and deducted as above provided, ~~the remainder-of~~ the remaining net business income of the taxpayer shall be allocated and apportioned as follows:

Business interest, dividends, rents, and royalties shall be reasonably apportioned within and without the state under rules adopted by the director pursuant to chapter seventeen A (17A) of the Code.

Where income is derived from business other than the manufacture or sale of tangible personal property, such income shall be specifically allocated or equitably apportioned within and without the state under rules of the director.

Where income is derived from the manufacture or sale of tangible personal property, the part thereof attributable to business within the state shall be in that proportion which the gross sales made within the state bear to the total gross sales.

The gross sales of the corporation within the state shall be taken to be the gross sales from goods delivered or shipped to a purchaser within the state regardless of the f.o.b. point or other conditions of the sale, excluding deliveries for transportation out of the state.

For the purpose of this section, the word "sale" shall include exchange, and the word "manufacture" shall include the extraction and recovery of natural resources and all processes of fabricating and curing. The words "tangible personal property" shall be taken to mean corporeal personal property, such as machinery, tools, implements, goods, wares, and merchandise, and shall not be taken to mean money deposits in banks, shares of stock, bonds, notes, credits, or evidence of an interest in property and evidences of debt.

Sec. 4. The provisions of sections one (1), two (2), and three (3) of this Act are retroactive to January 1, 1977, for tax years beginning on or after January 1, 1977 and to this extent the provisions of sections one (1), two (2), and three (3) of this Act are retroactive.

Sec. 5. This Act, being deemed of immediate importance, shall take effect and be in force from and after its publication in the Dallas County News, a newspaper published in Adel, Iowa, and in the Cherokee Daily Times, a newspaper published in Cherokee, Iowa.

ARTHUR A. NEU
President of the Senate

DALE M. COCHRAN
Speaker of the House

I hereby certify that this bill originated in the Senate and is known as Senate File 2056, Sixty-seventh General Assembly.

KEVIN P. LIGHT
Acting Secretary of the Senate

Approved _____, 1978

ROBERT D. RAY
Governor