

REGULATION

830 CMR 63.38.2: Apportionment of Income of Airlines

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830 CMR: DEPARTMENT OF REVENUE

830 CMR 63.00: TAXATION OF CORPORATIONS

830 CMR 63.38.2 is repealed and replaced with the following:

830 CMR 63.38.2: *Apportionment of Income of Airlines*

(1) General

(2) Definitions

(3) Determining Property and Payroll Factors for Airline Corporations

(4) Determining the Sales Factor for Airlines

(5) Effective date

(1) General

If an airline has income derived from business carried on both within and outside Massachusetts, the Commissioner shall determine the amount of the airline's income derived from business carried on within Massachusetts pursuant to M.G.L. c. 63, § 38, and applicable regulations, in particular 830 CMR 63.38.1, except to the extent that the rules of that section and the applicable regulations are modified pursuant to this regulation. This regulation, 830 CMR 63.38.2, has been issued pursuant to the commissioner's authority under M.G.L. c. 63, § 38(j).

This regulation states rules for determining the property factor and the payroll factor of the apportionment formula that applies to airlines, because the apportionment provisions of M.G.L. c. 63, § 38 are not reasonably adapted under the Apportionment of Income regulation, 830 CMR 63.38.1, to approximate the net income derived from business carried on within Massachusetts by an airline with respect to the property and payroll factors. The rules for determining the sales factor for an airline under the Apportionment of Income regulation, 830 CMR 63.38.1(9), particularly at 830 CMR 63.38.1(9)(d)4.b.iii., however, are reasonably adapted to approximate such income with respect to the sales factor, and are thus not restated in the regulation. *See also*, 830 CMR 63.38.1(9)(d)1.h. (“Industry-Specific Alternative Apportionment Rules”).

Once the property and payroll factors of the apportionment formula for an airline are determined under the provisions of this regulation, a taxpayer will use those factors in calculating its apportionment percentage under the general rules at M.G.L. c. 63, § 38, and the applicable regulations.

A taxpayer may have characteristics of an airline, a courier and package delivery service, as defined in 830 CMR 63.38.4, and/or a motor carrier, as defined in 830 CMR 63.38.3, as in the example of a taxpayer that accepts and delivers a package using both air and ground transportation. In such cases, the Apportionment of Income of Courier and Package Delivery Services regulation, 830 CMR 63.38.4, applies.

(2) Definitions

Aircraft ready for flight, aircraft in the possession of the airline that are available for service on its routes.

Airline, any business entity that, for compensation, transports passengers or freight by air.

Departure, a take-off by an aircraft with passengers or freight.

Flight personnel, the air crew aboard an aircraft assisting in the operations of the aircraft or the welfare of passengers while in the air.

Nonflight personnel, all employees other than flight personnel.

(3) Determining Property and Payroll Factors for Airline Corporations

(a) *Property factor*. An airline's property factor is a fraction, the numerator and denominator of which are determined according to the following rules.

1. The denominator of the property factor is the average value of all of the airline's real and tangible personal property owned, rented, or leased, and used during the taxable year. All property values are determined according to the rules of M.G.L. c. 63, § 38, and 830 CMR 63.38.1.
2. The numerator of the property factor shall be the sum of the following two amounts:
 - a. the average value of the real and tangible personal property of the airline, other than aircraft ready for flight, situated in Massachusetts; and
 - b. the average value of the aircraft ready for flight owned or rented and used by the airline in Massachusetts.

3. The average value of the aircraft ready for flight owned or rented and used by the airline in Massachusetts shall be computed separately for each type of aircraft operated by the airline. For each type of aircraft, the value shall consist of the total average value of that type of aircraft ready for flight owned by the airline, multiplied by the percentage of departures of the airline, of that aircraft type, taking place within Massachusetts.

4. Property in the possession of an airline under the terms of a lease, which is treated as a lease for federal income tax purposes by operation of provisions contained or previously contained in section 168 of the Internal Revenue Code, shall be treated as owned, not rented, by the airline.

5. *Example 1.* During the taxable year, Wingit Airways owned real and tangible personal property, other than aircraft ready for flight, with an average value of \$20,000,000. Of this property, a portion with an average value of \$10,000,000 was located in Massachusetts. Wingit also owned 10 Boeing 727-200s and 5 Lockheed L1011-500s. The total average value of the 727-200s ready for flight was \$90,000,000 and the total average value of the L1011-500s ready for flight was \$150,000,000. Wingit's 727-200s made 2,000 departures during the taxable year, of which 1,000 occurred in Massachusetts, and Wingit's L1011-500s made 1200 departures during the taxable year, of which 800 occurred in Massachusetts. The numerator of Wingit's property factor consists of \$10,000,000 (the average value of the airline's real and tangible personal property other than aircraft ready for flight located in Massachusetts) plus \$45,000,000 (the total average value of Wingit's 727-200s ready for flight, multiplied by the proportion of the airline's departures of that aircraft type occurring in Massachusetts, namely 50%) plus \$100,000,000 (the total average value of Wingit's L1011-500s ready for flight, multiplied by the proportion of the airline's departures of that aircraft type occurring in Massachusetts, namely 66.67%). The denominator of the property factor is \$260,000,000, the total value of Wingit's real and tangible personal property, including aircraft ready for flight. Thus, Wingit's property factor equals:

$$\frac{\$10,000,000 + \$45,000,000 + \$100,000,000}{\$260,000,000}$$

or .5962.

(b) *Payroll factor.* An airline's payroll factor is a fraction, the numerator and denominator of which are determined according to the following rules.

1. The denominator of the payroll factor is the total compensation paid by the airline during the taxable year.
2. The numerator of the payroll factor is the sum of the following two amounts:
 - a. the compensation paid in Massachusetts to nonflight personnel during the taxable year, and
 - b. the compensation paid in Massachusetts to flight personnel during the taxable year.
3. The compensation paid in Massachusetts to flight personnel shall be computed by multiplying the airline's total payroll for flight personnel by the percentage of the airline's aircraft departures occurring in Massachusetts weighted, in a manner similar to that described in paragraph (a) of this subsection, by the values of the aircraft types operated by the airline.
4. *Example 2.* Wingit Airways, the airline described in Example 1, had a total payroll for nonflight personnel during the taxable year of \$25,000,000, of which \$10,000,000 was paid to nonflight personnel based in Massachusetts. The airline had a total payroll for flight personnel of \$20,000,000. Based on the aircraft values and departure figures set forth in Example 1, 60.44 percent of Wingit's payroll for flight personnel, or \$12,088,000, was paid in Massachusetts. Specifically:

90,000,000 [total value of 727-200s]

240,000,000 [total value of aircraft ready for flight]

x 50% [percentage of 727-200s departing from Massachusetts] = .1875

plus

150,000,000 [total value of L1011-500s]

240,000,000 [total value of aircraft ready for flight]

X 66.67% [percentage of L1011-500s departing from Massachusetts] = .4167

Equals .6042

Thus, Wingit's payroll factor equals:

\$10,000,000	[nonflight in MA]	+	\$12,084,000	[flight in MA]
\$25,000,000	[total nonflight personnel]	+	\$20,000,000	[total flight]

or .4908.

(4) Determining the Sales Factor for Airlines

The sales factor of an airline shall be determined according to the rules generally applicable to corporations under the Apportionment of Income regulation. *See generally* 830 CMR 63.38.1(9). *See also* 830 CMR 63.38.1(9)(d)4.b.iii. (“Transportation and Delivery Services”), 830 CMR 63.38.1(9)(d)1.h. (“Industry-Specific Alternative Apportionment Rules”).

(5) Effective date

This regulation, 830 CMR 63.38.2, is effective for taxable years beginning on or after January 1, 2014.

REGULATORY AUTHORITY

830 CMR 63.38.2: M.G.L. c. 14, § 6(1); M.G.L. c. 62C, § 3.

REGULATORY HISTORY

Date of Promulgation: 1/2/15