

7. Receipts from aviation services. (a) Air freight forwarding. Receipts of a taxpayer from the activity of air freight forwarding acting as principal and like indirect air carrier receipts arising from such activity shall be included in the numerator of the apportionment fraction as follows: one hundred percent of such receipts if both the pickup and delivery associated with such receipts are made in the state and fifty percent of such receipts if either the pickup or delivery associated with such receipts is made in this state. Such receipts, whether the pickup or delivery associated with the receipts is within or without the state, shall be included in the denominator of the apportionment fraction.

(b) Other aviation services. (1)(A) The portion of receipts of a taxpayer from aviation services (other than services described in paragraph (a) of this subdivision, but including the receipts of a qualified air freight forwarder) to be included in the numerator of the apportionment fraction shall be determined by multiplying its receipts from such aviation services by a percentage which is equal to the arithmetic average of the following three percentages:

(i) the percentage determined by dividing sixty percent of the aircraft arrivals and departures within this state by the taxpayer during the period covered by its report by the total aircraft arrivals and departures within and without this state during such period; provided, however, arrivals and departures solely for maintenance or repair, refueling (where no debarkation or embarkation of traffic occurs), arrivals and departures of ferry and personnel training flights or arrivals and departures in the event of emergency situations shall not be included in computing such arrival and departure percentage; provided, further, the commissioner may also exempt from such percentage aircraft arrivals and departures of all non-revenue flights including flights involving the transportation of officers or employees receiving air transportation to perform maintenance or repair services or where such officers or employees are transported in conjunction with an emergency situation or the investigation of an air disaster (other than on a scheduled flight); provided, however, that arrivals and departures of flights transporting officers and employees receiving air transportation for purposes other than specified above (without regard to remuneration) shall be included in computing such arrival and departure percentage;

(ii) the percentage determined by dividing sixty percent of the revenue tons handled by the taxpayer at airports within this state during such period by the total revenue tons handled by it at airports within and without this state during such period; and

(iii) the percentage determined by dividing sixty percent of the taxpayer's originating revenue within this state for such period by its total originating revenue within and without this state for such period.

(B) As used herein the term "aircraft arrivals and departures" means the number of landings and takeoffs of the aircraft of the taxpayer and the number of air pickups and deliveries by the aircraft of such taxpayer; the term "originating revenue" means revenue to the taxpayer from the transportation or revenue passengers and revenue property first received by the taxpayer either as originating or connecting traffic at airports; and the term "revenue tons handled" by the taxpayer at airports means the weight in tons of revenue passengers (at two hundred pounds per passenger) and revenue cargo first received either as originating or connecting traffic or finally discharged by the taxpayer at airports;

(2) All such receipts of a taxpayer from aviation services described in this paragraph are included in the denominator of the apportionment fraction.

(3) A corporation is a qualified air freight forwarder with respect to another corporation:

(A) if it owns or controls either directly or indirectly all of the capital stock of such other corporation, or if all of its capital stock is owned or controlled either directly or indirectly by such other corporation, or if all of the capital stock of both corporations is owned or controlled either directly or indirectly by the same interests,

(B) if it is principally engaged in the business of air freight forwarding, and

(C) if its air freight forwarding business is carried on principally with the airline or airlines operated by such other corporation.