Real estate rental income as ‘business’ income for state tax purposes

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RENTAL INCOME AS 'BUSINESS' INCOME

REAL ESTATE RENTAL INCOME AS 'BUSINESS' INCOME FOR STATE TAX PURPOSES

From a state income tax perspective, characterization of a rental real estate fund's income as apportionable 'business' income is not always appropriate.

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By most media accounts, rental real estate is a "business." Whether it is a local report touting a successful commercial development or the measure of a politician's business acumen, real estate and the business of real estate are constantly in the public's eye.

From a state income tax perspective, however, characterization of a rental real estate fund's income as apportionable "business" income is not always appropriate. State-by-state variances in the apportionment or allocation of real estate rental income has the potential to subject a real estate fund's activity to an overall levy of state tax that exceeds 100% of its income.

Background

In general, most states do not levy an entity-level income tax on partnerships. Instead, the levy of income tax typically falls on the individual or corporate partners. In this setting, partnerships generally must disclose information to state agencies regarding their partners' distributive share of the operating business' activities in the given state. They may also be required to serve as withholding agent with regard to nonresident withholding tax.

Partners receive information from the partnership as to their respective share of income, deductions, and withholding tax paid on their behalf by the partnership. Based on this information, it is the partners' responsibility to interpret and potentially adjust their state taxable income computations, taking the information provided by the partnership and other sources into account. Practically speaking, however, the individual partners often directly allocate this reported partnership income on a state-by-state basis, using the income computations provided by the partnership, instead of considering whether applicable state tax provisions specific to their situation might create a different result. For instance, some states, such as Ohio, do not provide for an individual tax exemption that is taken into account in the partnership's computation of Ohio taxable income. Instead, individuals must file their own Ohio return in order to receive this exemption.[1]

The practical reality that individual investors depend on the partnership's calculations reinforces the degree of care that must be exercised by the partnership in applying state

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tax law. Tax rules specific to the real-estate industry, which often differ from state to state (examples of which are discussed below), add to this complexity.

Further complications in the partnership's determination of each state's share of taxable income arise from tiered partnership structures, unitary relationships between partnerships and their partners, and treatment of gain or loss from the disposition of real property, though these scenarios are beyond the scope of this discussion. This article will focus exclusively on the allocation to one state, or the apportionment among states, of rental income by a single partnership actively engaged in the rental real estate business.

Apportionable income in general

Determining "apportionable income" is a complex task for any business, including partnerships engaged in a commercial real estate rental businesses. The first step is to identify whether the activities of the partnership represent "business income." To do so, one must draw from the (often broad) statutory language at the particular state level, and then apply criteria derived from U.S. Supreme Court precedent.

In 1957, the Uniform Division of Income for Tax Purposes Act (UDITPA) was adopted by the American Bar Association and the Commissioners on Uniform State Laws, which wanted to create uniformity in state taxation. "Business income" was defined as "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."[2] Under UDITPA, business income is apportioned by applying a three-factor formula.[3] Nonbusiness income is defined as "all income other than business income"[4] and is directly allocated to a specific state. For example, under UDITPA, nonbusiness income derived from rentals of real estate and tangible assets are allocated (directly sitused) to the state in which the underlying property is located.

In 1967, the Multistate Tax Compact, introduced by various state officials, adopted UDITPA's definitions for business and nonbusiness income.[5] Many states have statutorily defined "business income" and referenced business income to determine income subject to apportionment based on these UDITPA provisions.[6]

Further complicating the business income determination, U.S. Supreme Court decisions have established a varying measure for determining when income is apportionable from a constitutional perspective. As a result, any state's statutory definition of apportionable business income must be applied in a manner consistent with the Court's analysis.

From a constitutional perspective, the Court has said that the character or source of income is not necessarily determinative as to whether income is apportionable or allocable. Rather, the relationship that gave rise to the income receipt is more determinative of whether an item may be considered "business income." In *Mobil Oil Corp. v. Commissioner of Taxes of Vermont*,[7] the taxpayer argued that Vermont's inclusion of dividends from foreign subsidiaries in the taxpayer's apportionable business income base was a violation of the Due Process Clause of the U.S. Constitution. Even though the foreign subsidiaries were in the same line of business as the taxpayer, the taxpayer argued that the dividends should be excluded from the apportionable business income base because no minimum

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connection existed between Vermont and the foreign subsidiaries, as is necessitated pursuant to the Due Process Clause. The taxpayer instead argued that the dividend income should be sitused to the taxpayer's state of commercial domicile, which was not Vermont. The taxpayer also contended that inclusion of this dividend income in the apportionable tax base created a burden on interstate commerce, thus violating the Commerce Clause of the U.S. Constitution.

In *Mobil,* the Supreme Court held that "[t]he argument that the source of the income precludes its taxability runs contrary to precedent."[8] Instead, "the linchpin of apportionability in the field of state income taxation is the unitary-business principle."[9] The Court found that the taxpayer failed to show that the foreign operations were not integrated into its overall petroleum enterprise and, thus, the foreign dividends may be included in the apportionable tax base. The Court stated:

> We do not mean to suggest that all dividend income received by corporations operating in interstate commerce is necessarily taxable in each State where that corporation does business. Where the business activities of the dividend payer have nothing to do with the activities of the recipient in the taxing State, Due Process considerations might well preclude apportionability, because there would be no underlying, unitary business."[10]

Thus, inclusion of the foreign dividends in the taxpayer's apportionable income base did not violate the Due Process Clause. Additionally, inclusion of the foreign dividends in the apportionable income base did not violate the Commerce Clause because Vermont's interest in taxing a proportionate share of Mobil's dividends is not overridden by any interest of the taxpayer's state of commercial domicile.[11]

The significance of a "unitary business" in the context of whether certain income streams were apportionable or allocable was also addressed in 1982 by the U.S. Supreme Court in *ASARCO v. Idaho State Tax Commission,* 458 U.S. 307 (1982).[12] In *ASARCO*, the taxpayer argued that the inclusion of intangible income arising from majority- and minority-owned investments in the apportionable tax base was improper. Both ASARCO and its investments were in the mining business, but each operated in separate and distinct parts of the world. The Supreme Court analyzed each investment to determine if ownership of the investment enhanced ASARCO's core operations through three criteria—functional integration, centralization of management, and economies of scale.

Distinguishing *Mobil*, the Supreme Court determined that ASARCO's ownership of subsidiaries did not provide for one functionally integrated business activity. Additionally, even though ASARCO owned the majority of a foreign subsidiary, it did not have management control over the subsidiary. ASARCO did not control the majority of the board, and protocols were in place to ensure that ASARCO did not have unilateral control of the subsidiary's other business decisions. Lastly, ASARCO did not receive preferential pricing or other economic benefit from the subsidiaries in question. The Supreme Court held that the subsidiaries were separate and distinct from ASARCO, and excluding income from the subsidiaries from the ASARCO's apportionable base was proper.

The "unitary business principle" has been considered in subsequent Supreme Court cases such as *F.W. Woolworth Co.,*[13] *Container Corporation of America,*[14] *Allied Signal, Inc.*[15] and *MeadWestvaco Corp.*[16] In each case, the Court examined whether or not the income in question arose from a unitary relationship as evidenced by functional integration, centralization of management, and economies of scale. While these cases did not involve the business of rental real estate, the same analysis may be applicable in that context.

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In each of the U.S. Supreme Court cases discussed above, the "taxpayer" was a corporation that was taxed at the entity level. Some uncertainty exists as to whether the same "business income" and "unitary business" principles apply to partnerships. However, a recent Supreme Court decision in *Comptroller of the Treasury v. Wynne*[17] could be interpreted as support for the proposition that constitutional distinctions do not exist relative to different legal entity characterization in the realm of state and local taxation.

The real estate fund

Rental real estate investments are often structured as partnerships because certain business and federal income tax advantages may exist. From a business perspective, partnerships can provide flexibility in the division of income based on the partners' business goals and roles in the partnership. For instance, one partner may actively engage in managing the rental real estate business, while another partner may have a more passive role. Rental real estate partnerships may also be structured to account for different partners having varying risk tolerances. For instance, one partner may seek to receive a steady stream of income with relatively lower risk, while another partner may accept a return on investment that is more subject to market volatility and project performance.

"Fund" is a non-tax term that relates to the pooling of resources for a specific objective.[18] In practice, real estate funds are often formed as partnerships in which various investors contribute capital (money, real property, etc.) to own an interest in a partnership that owns a portfolio of commercial real estate. Ownership of various properties in multiple states can provide diversification for the partnership's investors.

The partnership structure of a real estate fund can generate challenges in the application of unitary business and business / nonbusiness income concepts, including consideration of the assignment of rental income among states for income tax purposes.

Rent as apportionable income

The majority of states look to whether rental income would be treated as "business" income when considering whether to apportion or allocate it at the partnership level. Discussed below is the law in a sampling of states that may be of interest to real estate investors—California, Illinois, Ohio, and Michigan.

California.

California law provides that the California taxable income of a nonresident individual includes only the gross income from sources within California,[19] and the apportionment of income is treated similarly between partnership and corporate structures. California Personal Income Tax Regulation 17951-4(d) provides that if a nonresident is a partner in a partnership that carries on a unitary business across state lines, the partnership's income is apportioned at the partnership level in accordance with California's corporate statute. California utilizes a modified UDIPTA definition of "business income," which provides that "[b]usiness 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."[20]

California provides guidance for the determination of whether rental income would be considered "business income." The character of income does not determine whether it is "business income" in California.[21] Revenue of any type may be considered "business income" if it arises "from transactions and activity occurring in the regular course of a trade or business."[22] California Regulation 25120(a) provides that, when determining "business income," California looks to whether transactions and activities of a taxpayer are interdependent or contribute to the taxpayer's business operations as a whole.

A real estate partnership may be viewed as a single, unitary business in California for multiple reasons. California provides that a taxpayer is generally engaged in a single trade or business when all of its activities are in the same general function, such as rental of properties across state lines.[23] Strong centralized management is also indicative of a single business. For instance, "centralized management" might exist in the real estate partnership if the same individuals are involved in the management, accounting, lease negotiations, or financing of the group of real estate properties.[24]

Conversely, California Regulation 25120(c)(1) provides examples of when rental income is not "business income." One example involves a taxpayer that operates a multistate chain of grocery stores. The taxpayer purchased an office building in another state as an investment by using surplus funds. The office building is leased to third parties. Since the rental of the office building is not

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connected to the grocery store business, the rental income is "nonbusiness income."

Illinois.

Similar to California, partnerships that conduct rental activity within and without Illinois must apportion rental income to the state on behalf of their nonresident investors. Illinois broadly defines "business income" as "all income that may be treated as apportionable business income under the Constitution of the United States."[25] Similar to corporations operating within and without Illinois, nonresident individuals apportion their business income to the state using a ratio of sales sourced to the state versus overall sales.[26]

Unique in Illinois, a partnership may make an annual, binding election, to treat all income as "business income."[27] However, if a partnership does not make this binding election, rental income, under specific facts and circumstances, may be considered nonbusiness income and sitused to where the real property is located.[28]

Ohio.

Ohio, similar to California, defines business income as "income, including gain or loss, arising from transactions, activities, and sources in the regular course of a trade or business and includes income ... from real property ... if the acquisition, rental, management, and disposition of the property constitute integral parts of the regular course of a trade or business operation."[29]

In determining apportionable income, Ohio provides that all items of business income and business deductions are apportioned to Ohio by applying a three-factor apportionment formula consisting of property, payroll, and sales to business income.[30]

Ohio provides that nonbusiness rental income, however, will be sitused to Ohio if the underlying property is physically located in Ohio.[31]

Michigan.

Similar to the definitions noted above, a very broad definition of "business income" for Michigan individual income tax purposes[32] extends to the determination of apportionable business income measured at the partnership level.[33] The receipt of rental income by a real estate partnership that owns and manages multiple rental real estate properties would typically be included in the partnership's measure of business income, which for Michigan individual income tax purposes would then be subject to apportionment based on a single-factor, receipts-based apportionment formula.

For Michigan corporate income tax purposes, business income for apportionment purposes is based on "federal taxable income,"[34] with no distinction or allowances made for allocable income. Rental income received by a real estate partnership with partners that are Subchapter C corporations is characterized as business income and apportioned based on a single-factor, sales-based apportionment formula the same as for a partnership with partners that are individuals.[35]

'Separate accounting' as applied to real estate funds

While a preponderance of states (including those noted above) apply similar apportionment rules characterizing rental income as "business income" for corporate and individual taxpayers alike, a collection of states apply direct allocation regimes for non-corporate taxpayers invested in real estate. Examples of direct allocation states include New York, New Jersey, North Carolina, and Pennsylvania, each of which will be briefly considered below.

New York.

A nonresident of New York State is subject to taxation on his or her distributive share of New York-source partnership income, gain, loss, and deduction.[36] In general, there are no provisions for how a partnership sources income to New York State. Allocation and apportionment of partnership income are addressed as part of the individual regulations that describe how an individual sources business income, which includes income from partnerships that conduct business in New York State. If the books and records of the partnership are so kept that the Tax Commission would be satisfied that they adequately disclose the New York proportion of income, gain, loss, and deduction, partnership income is directly allocated to New York State.[37] The basis of the method of allocation must be disclosed to New York State.[38]

If the books and records of the business are not maintained to a level of segregation that supports a direct allocation of income, the total business income of the partnership may be apportioned to New York State using a three-factor formula. The three-factor apportionment factor is computed using an equal weighting of property, payroll, and sales within and without the state.[39]

However, in overriding the general business provisions that apply to partnership income, a nonresident individual's share of income derived from the rental of real property is connected with the situs of such real property.[40] Consequently, it is the state's position that all

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rental income received from property physically located in New York State should be allocated to New York.

New York State has also promulgated another layer of rules in computing individual nonresident partner's distributive share of New York income. New York Consolidated Laws §632(b) provides that in determining the sources of a nonresident individual partner's income, no effect shall be given to a provision in the entity's operating or partnership agreement, which would shift a disproportionate share of New York-source income or loss to one partner versus another. In practice, if a partnership has two rental properties, one in New York State and one outside of the state, and an individual partner receives 50% of the total federal allocation of rental income, then he or she must also receive 50% of the allocation of New York rental income.[41]

Similarly, if a modification is made to adjust the partnership's federal taxable income to New York State taxable income, the modification must be allocated between the partners in the same manner in which the federal event tied to the modification was allocated.[42] For instance, this consideration could apply to adjustments for depreciation due to federal and New York differences. If the partnership receives consent from the Tax Commission upon application, only then may it divide its New York rental income among the partners in a different ratio than the federal rental income allocation.[43]

If a partnership has both individual and corporate partners, it applies separate considerations for the computation of the partner's distributive share of New York income. The need for the partnership to compute New York income in two different ways, one for its individual and one for its corporate partners, is due to variances in the individual and corporate law, as there are no specific partnership provisions. A corporation that owns a partnership interest may compute its federal and New York taxable income using the "aggregate method."[44] In this method, the corporation includes in its taxable income its share of each partnership item of receipts, income, gain, loss, and deduction as allocated to it in accordance with IRC Section 704.[45]

The corporation that calculates its income using the "aggregate method" takes into account its distributive share of apportionment factors from the partnership, which it then uses to compute its New York share of all business income.[46] For corporations, New York defines "business income" as a corporation's entire net income, less its investment income and other exempt income.[47] Rental income is included in the apportionable base, and rental proceeds are included in the sales factor of the apportionment calculation. The rental proceeds are sitused to the state in which the property is located.[48]

In practice, the partnership will report its partners' New York-source income on two different forms: IT-204-IP for individual partners and IT-204-CP for corporate partners.[49] The individual partner's federal and New York distributive share of each income/deduction/state adjustment item type is disclosed on the IT-204-IP. The partnership withholds on the nonresident individual partners' share of New York distributive income, as calculated using the allocation methodology.[50]

Instead of a direct allocation of New York source amounts for each income/deduction/state adjustment item, the IT-204-CP

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provides corporate partners with apportionment factor data from the partnership. The partnership withholds on the corporate partners' share of New York distributive income, using the withholding base as calculated using the allocation methodology of individual taxpayers.[51] The disparity between the New York taxable income apportioned to the corporate partner and the withholding base should be noted. The difference may create situations where withholding computed for the corporate partner does not align with its share of New York taxable income.

New Jersey.

New Jersey law provides for direct allocation of rental income, similar to New York. New Jersey contains specific statutory guidance that requires a partnership's rental income derived from real property located in New Jersey to be directly allocated to the state. New Jersey Reg. 18:35-1.3(d)4.iv provides that "[p]artnership income or loss from rental real estate activities ... from ... real property located in New Jersey is sourced to New Jersey."

Unlike New York, New Jersey uses a single K-1 form to disseminate information to partnership investors.[52]

It should be noted that the New Jersey nonresident withholding income tax calculation, unlike the calculation of a nonresident partner's distributive share of New Jersey income, provides for the use of corporate apportionment methodology that does not follow the allocation rules previously discussed (including for rental property).[53] As in New York, for the corporate partner, this could create a disconnect in the amount of a nonresident partner's distributive share of income and the amount of nonresident withholding tax paid on the partner's behalf.

Pennsylvania.

As in New York, differences exist in apportionment and allocation of rental income between corporate and individual investors in Pennsylvania. For purposes of individual nonresident withholding, partnerships are required to directly allocate rental income attributable to real property located in Pennsylvania.[54]

Pennsylvania Partnership Information Return Form PA-20S/PA-65 instructions provide that an entity must allocate using separate accounting if "business operations within Pennsylvania and the business operations outside of Pennsylvania constitute independent profit centers" and "[t]he entity retains its books so that the amounts of revenues, costs, and expenses attributable to Pennsylvania operations can be properly disclosed."[55]

If these requirements are not met, an entity may use Pennsylvania's formula apportionment methodology.[56] Real estate funds may have separate sets of books and records for each property to separately track the investments and thus would be required to directly allocate income generated by the real property located in Pennsylvania. The form instructions provide for non-corporate partners that "[n]et rents and royalties from real and tangible personal property located in Pennsylvania are allocable to Pennsylvania."[57]

Corporate nonresident withholding is determined using a single sales factor apportionment formula applied to the partnership's entire income base.[58] Single sales factor formulary apportionment is the formula used in calculating a corporation's Pennsylvania income.[59] Corporations determine whether items of income are considered business income or nonbusiness income. Business income is broadly defined as "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, the management or disposition of the property constitutes an integral part of the taxpayer's regular trade or business operations."[60] Nonbusiness income is defined as "all income other than business income."[61] This distinction between apportionment and allocation methodologies for corporate and flow-through entities pose various challenges for both types of entities.

Pennsylvania law, unlike the law in many other states, requires the partnership to apply differing approaches in calculating taxable / distributive income with respect to corporate

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and individual partners. For corporate partners, business income is apportioned and nonbusiness income is allocated under the Pennsylvania corporate income tax regulations.[62] This methodology differs from that for individuals, which provides for allocation of rental income.

North Carolina.

North Carolina General Statutes §105-134.5(d) provides that for multistate partnerships with one or more nonresident partners, the partnership must apportion its income under corporate income tax provisions in G.S. §105-130.4. The Department of Revenue, in a 1991 memorandum, interpreted this statute to the effect that multistate partnerships must determine their income attributable to the state using the "apportionment formula applicable to corporations ... [w]here the business operations in North Carolina are unified and integrated within the business operations in other states."[63] Unlike the statute's interpretation applied to corporations, the memorandum further provided that "[i]f the partnership's business operations in North Carolina are not integrated and are segregated from business activities in other states, the partnership must separately account for the income earned in this State."[64] In 2014, the North Carolina Department of Revenue announced a change in policy regarding apportionment and allocation of income by a multistate partnership.[65]

Prior to tax years beginning on or after 1/1/14, when business segments could be compartmentalized, "separate accounting" was applied based on the North Carolina Department of Revenue's earlier interpretation of North Carolina General Statutes §105-134.5(d) and §105-130.4.[66] Per the 2013 North Carolina Instructions for Partnership Income Tax Return, "[i]f a partnership's business activities in North Carolina are segregated from its business activities in other states ..." the taxable income that is solely from those business activities is directly allocated to North Carolina.[67] The instructions note that "a partnership's business activities are not segregated if it does not employ a method of accounting that clearly reflects the income or loss of its separate activities."[68] For a real estate fund partnership, accounting books may be maintained on a property-by-property basis, which could permit identification of income or loss from the properties (held in joint ventures or single-member limited liability companies) solely located in North Carolina.

It should be noted that even though the partnership form and instructions were written to segregate business activities, the North Carolina Department of Revenue could apply more

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traditional apportionment methodologies on audit.[69] The North Carolina Department of Revenue could adjust partnership returns on which separate accounting was employed if the business activities were part of a "partnership's unitary business and integrated with the partnership's other business activities."[70]

Commencing with tax years beginning on or after 1/1/14, the North Carolina Department of Revenue, as a result of a change in policy, provides for an apportionable / non-apportionable methodology for partnership income calculations.[71] If a partnership has non-unitary income, that income would be excluded from its apportionable income base and the non-apportionable income would be allocated to North Carolina as applicable. The remaining unitary income will then be apportioned to North Carolina.

The impact of state apportionable and allocable variances

Consider the following: In a real estate fund, not all properties are necessarily subject to primary mortgages. If only certain properties had to be mortgaged to generate sufficient cash flow, a fund's managers could decide to mortgage only the properties specifically located in direct allocation states, thereby lessening the overall state tax burden based on the interest expense attributed to the property in the allocation state. Conversely, the direct allocation state's share of separately accounted income could be artificially high if overhead expenses that were reported at the overall partnership level were not attributed and allocated to the property level.

Conclusion

There are various state income tax issues to consider when measuring rental income across multistate jurisdictions. The real estate fund manager must be aware of the intricacies associated with preparing state partnership and nonresident withholding tax returns. Even though the fund partnerships are not taxpayers themselves, care is needed during return preparation. Individual investors generally will divide their distributive share of fund income among the states in the same manner in which the fund reports state taxable income.

Certain states, including those mentioned herein, statutorily require direct allocation of rental income. Other states require partnerships to directly allocate all income if the company keeps separate accounting or books and records that provide income and deductions for the specific properties in the state. The majority of states, however, look to the unitary business principle and the classification of income as either business or nonbusiness income to determine whether it is apportionable or directly allocable.

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[1] See Ohio Rev. Code Ann. §5733.40 for definition of a partnership's "adjusted qualifying amount" (i.e., the withholding base). See Ohio Rev. Code Ann. §§5747.02 and 5747.025, providing for personal exemptions that may be taken into account in computing an individual's Ohio taxable income and that are not included in Ohio Rev. Code Ann. §5733.40.

[2] National Conference of Commissioners on Uniform State Laws, "Uniform Division of Income for Tax Purposes Act" (UDITPA) §1(a), available at www.uniformlaws.org/shared/docs/uditpa/uditpa66.pdf.

[3] *Id.* at §9. UDITPA provides for an evenly weighted apportionment formula consisting of property, payroll and sales.

[4] Note 2, *supra.*

[5] Multistate Tax Commission, "Multistate Tax Compact," Article IV, §§1(a) and (e), available at www.mtc.gov/The-Commission/Multistate-Tax-Compact.

6 *Id.* at Article IV, §1(a)(i). Recommended amendments by member states in July of 2014 changed the term "business income" to "apportionable income" and defined it as "all income that is apportionable under the Constitution of the United States and is not allocated under the laws of this state, including: (A) income from transactions and activity in the regular course of the taxpayer's trade or business, and (B) income arising from tangible and intangible property if the acquisition, management, employment, development or disposition of the property is or was related to the operation of the taxpayer's trade or business...."

7 445 US 425 (1980).

8 *Id.* at 437.

9 *Id.* at 439.

10 *Id.* at 441-42.

11 *Id.* at 446.

12 458 U.S. 307 (1982).

13 458 U.S. 354 (1982).

14 463 U.S. 159 (1983).

15 504 U.S. 768 (1992).

16 553 U.S. 16 (2008).

17 135 S. Ct. 1787 (2015). The Court ruled that certain Maryland individual income tax provisions violated the Commerce Clause. It held that Commerce Clause preclusions against discriminating against interstate business activity apply equally to individuals, as well as corporations, engaged in an interstate business.

18 See Merriam-Webster.com, www.merriam-webster.com/dictionary/fund (last visited 10/16/16).

19 Cal. Rev. & Tax. Code §17951(a).

20 Cal. Rev. & Tax. Code §25120(a).

21 See generally Cal. Code Regs. tit. 18, 25120(a).

22 *Id.*

23 Cal. Code Regs. tit. 18, §25120(b)(1).

24 Cal. Code Regs. tit. 18, §25120(b)(3).

25 35 Ill. Comp. Stat. Ann. 5 / 1501(a)(1).

26 35 Ill. Comp. Stat. Ann. 5 / 304(a).

27 *Id.*

28 35 Ill. Comp. Stat. Ann. 5 / 303(c)(1).

29 Ohio Rev. Code Ann. §5747.01(A)(31)(b).

30 Ohio Rev. Code Ann. §5747.21(B). The Ohio three-factor apportionment weights the factors as follows: 60% sales, 20% payroll, 20% property.

31 Ohio Rev. Code Ann. §5747.20(B)(3)(a).

32 Mich. Comp. Laws. §206.4(4).

33 See, *Chocola v. Michigan Department of Treasury,* 369 N.W.2d 843 (1985).

34 Mich. Comp. Laws. §206.606(3).

35 A subchapter C corporation taxpayer that holds a "non-unitary" ownership interest in a partnership would, on its Michigan CIT return, "allocate" the Michigan apportioned distributive income received by virtue of its ownership in a non-unitary partnership. Mich. Comp. Laws §206.661(2). However, the characterization of rental income as "business income" at the partnership level (and apportioned based on a sales factor computed at the partnership level) would not change.

36 N.Y. Tax Law §631(a)(1)(A).

37 N.Y. Comp. Codes R. & Regs. tit. 20, §132.15(b) (2016).

38 *Id.*

39 N.Y. Comp. Codes R. & Regs. tit. 20, §132.15(c) (2016).

40 N.Y. Comp. Codes R. & Regs. tit. 20, §132.16 (2016).

41 N.Y. Tax Law §632(b)(2).

42 N.Y. Tax Law §632(c).

43 N.Y. Tax Law §632(d).

44 N.Y. Comp. Codes R. & Regs. tit. 20, §3-13.3 (2016).

45 *Id.*

46 N.Y. Comp. Codes R. & Regs. tit. 20, §4-6.5(a) (2016).

47 N.Y. Tax Law §208.8.

48 N.Y. Tax Law §210-A(3)(a).

49 New York Instructions for 2015 Form IT-204 "Partnership Return."

50 N.Y. Tax Law §658(c)(4).

51 *Id.*

52 2015 NJ 1065 Instructions "Partnership Return."

53 N.J. Stat. Ann. §54:10A-15.11(a).

54 61 Pa. Code §109.6 (2016).

55 Pennsylvania Instructions for Form PA-20S/PA-65, Page 14.

56 *Id.*

57 61 Pa. Code §109.6 (2016).

58 72 Pa. Cons. Stat. Ann. §7401(3)(2)(a)(9)(v).

59 *Id.*

60 72 Pa. Cons. Stat. Ann. §7401(3)2.(a)(1)(A).

61 72 Pa. Cons. Stat. Ann. §7401(3)2.(a)(1)(D).

62 61 Pa. Code §153.29.

63 Carolina Department of Revenue memorandum, 7/2/91.

64 *Id.*

65 North Carolina PD-14-02, 10/10/14.

66 *Id.*

67 *Id.*

68 *Id.*

69 *Id.*

70 *Id.*

71 *Id.*

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