

Department of Revenue

Revenue Notice # 08-08: Individual Income and Corporate Franchise Tax – Credits and Additions to Federal Taxable Income – Net Income Taxes Paid to Another State

Introduction

Minnesota Statutes, section 290.06, subdivision 22, provides a credit for “taxes based on net income” paid to another state by resident individuals, estates, and trusts.

For individuals, estates, and trusts, *Minnesota Statutes*, section 290.01, subdivision 19a(4), requires an addition to federal taxable income for “taxes based on net income” paid to another state or any province or territory of Canada.

For corporations, *Minnesota Statutes*, section 290.01, subdivision 19c(1), requires an addition to federal taxable income for “taxes based on net income” paid by a corporation to another state, a political subdivision of another state, the District of Columbia, or any foreign country or possession of the United States. This revenue notice does not address what constitutes “related minimum taxes” pursuant to section 290.01, subdivision 19c(1).

Regarding “taxes based on net income,” taxes paid to another state that are not based on net income do not qualify for the credit under *Minnesota Statutes*, section 290.06, subdivision 22, nor the addition to federal taxable income under either *Minnesota Statutes*, section 290.01, subdivision 19a(4) or subdivision 19c(1).

Department Position

The department’s positions below regarding the Ohio Commercial Activity Tax (CAT), Texas business margin tax, and Wisconsin recycling surcharge, were determined as of the date of this Revenue Notice. If the Ohio, Texas, or Wisconsin laws are modified, the department’s positions may change.

1. Ohio Commercial Activity Tax

Under *Ohio Revised Code*, chapter 5751, the CAT is imposed on business gross receipts, including receipts from the sale or rental of property or realized by the performance of services. It is the department’s position that the Ohio CAT is not a tax based on net income.

2. Texas Business Margin Tax


Under *Texas Tax Code*, section 171.101, starting in 2007 Texas imposed a “business margin tax” on the lesser of 70 percent of business gross receipts or business gross receipts less deductions. Although the latter calculation provides some deductions for compensation and cost-of-goods-sold, it does not provide other deductions such as interest, depreciation, and most other business expenses generally associated with a computation of net income. It is the department’s position that the Texas business margin tax is not a tax based on net income.

3. Wisconsin Recycling Surcharge

Under *Wisconsin Statutes*, chapter 77, subchapter VII, Wisconsin imposes a recycling surcharge on all taxpayers engaged in a trade or business that have gross receipts for the taxable year exceeding a specified amount. The surcharge is calculated as the greater of either \$25 or a percentage of "gross tax liability," "net income," or "net business income," depending on the type of entity engaged in the trade or business. "Gross tax liability," "net income," and "net business income," are calculated as gross income less deductions under the *Internal Revenue Code*, which is a calculation based on net income, with specified additions and subtractions.

When the amount of tax paid is \$25, it is the department's position that the Wisconsin recycling surcharge is not a tax based on net income.

When the amount of tax paid is greater than \$25, it is the department's position that the Wisconsin recycling surcharge is a tax based on net income. For shareholders of an S corporation, because the Wisconsin recycling surcharge is paid at the entity level, the value of the credit under *Minnesota Statutes*, section 290.06, subdivision 22, and the additions under *Minnesota Statutes*, section 290.01, subdivisions 19a(4) and 19c(1), are based on the shareholder's pro-rata share of the Wisconsin recycling surcharge paid by the S corporation.



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