

**This notice was revoked on October 17, 2005 by
Revenue Notice # 05-10.**

Minnesota revenue notice

Revenue Notice # 94-17 Corporate Franchise Tax; Foreign Operating Corporation (FOC) Factors

Issue:

Whether a corporation which does not have both a property and payroll factor can qualify as a Foreign Operating Corporation (FOC) under Minnesota Statutes, Section 290.01, Subdivision 6(b).

A corporation cannot qualify as a FOC without both a property and payroll factor.

The statute in question requires that a corporation have the following characteristics to qualify as a FOC.

It must:

1. Be a domestic corporation;
2. Be a member of a unitary group, one of whose members is subject to Minnesota taxation; and
3. Either:
 - A. 'The average of the percentage of its property and payrolls assigned to locations inside the United States and the District of Columbia, excluding the Commonwealth of Puerto Rico and possessions of the United States, as determined under 290.191 or 290.20 is 20 percent or less,'; or
 - B. The corporation is an Internal Revenue Code Section 936 corporation.

The statute requires that two factors be averaged. Two factors cannot be averaged when only one is present. As the statute cannot require a mathematical impossibility, a corporation with only payroll or property, not both, cannot qualify as a FOC. A person claiming an exclusion from the general rule of taxation cannot strain the language of the statute to force the exclusion's application.

As a starting point in any analysis of a tax statute, it is necessary to determine the nature of the statutory provision in question. Minnesota Statutes, Section 290.01, Subdivision 6(b) provides for an exception from taxation to a corporation generally included as an entity subject to tax. Language relating to exceptions must be strictly construed in favor of the general application of the tax. In such an instance taxation is presumed, and the taxpayer must show by clear and express statutory language that it is entitled to the exclusion. Unclear or imprecise language cannot be interpreted to support a position excluding income or persons from taxation if they have previously, generally been defined as taxable. Ambiguity as to legislative intent does not fulfill the taxpayer's burden of persuasion, for any ambiguity as to the deduction, exemption or other exclusion from the general rule of taxation must be resolved in favor of taxation.

Dated: August 8, 1994

SEK