

**CHAPTER 109. NONRESIDENT INDIVIDUALS**

Sec.	
109.1.	Taxable income of nonresident individuals.
109.2.	Husband and wife.
109.3.	Business carried on wholly within this Commonwealth.
109.4.	Business carried on partly within and partly without this Commonwealth.
109.5.	Apportionment and allocation of income from a business carried on partly within and partly without this Commonwealth.
109.6.	Rentals and gains from the sale or exchange of real property.
109.7.	Earnings of salesmen.
109.8.	Earnings of nonresident employes or casual employes and officers.
109.9.	Other methods of allocation.

**Cross References**

This chapter cited in 61 Pa. Code § 103.2 (relating to tax imposed on nonresidents).

**§ 109.1. Taxable income of nonresident individuals.**

The income of a nonresident individual subject to taxation shall be that part of his income from sources within this Commonwealth. In determining what is income from sources within this Commonwealth reference should be made to § 101.8 (relating to income from sources within this Commonwealth).

**§ 109.2. Husband and wife.**

(a) *Both nonresidents subject to tax.* If separate returns are filed by a husband and wife both of whom are nonresidents and subject to tax, then their income from sources within this Commonwealth shall also be separately determined.

(b) *Both nonresidents but only one subject to tax.* If only one nonresident spouse is subject to tax, then only the income of that spouse from sources in this Commonwealth shall be subject to tax.

(c) *One spouse is a nonresident.* The following requirements apply:

(1) *Separate returns.* If either husband or wife is a nonresident and the other a resident, they shall determine their tax based on their own separate incomes and their tax liabilities shall be separate. Reference should be made to § 117.1 (relating to general requirements of a return).

(2) *Joint returns.* If both spouses elect to file a joint income tax return, then their income shall be determined as if they were residents and their tax liability shall be joint and several.

**§ 109.3. Business carried on wholly within this Commonwealth.**

A business, trade, profession or occupation, as distinguished from personal services as an employe or casual employe, is carried on by a nonresident wholly within this Commonwealth, if the activities described in § 101.8 (relating to income from sources within this Commonwealth) are carried on solely within this Commonwealth and none of the activities are carried on outside of this Common-

wealth though the nonresident or his representative travels outside of this Commonwealth for purpose of buying, selling, financing or performing duties in connection with the business, and even though sales may be made to, or services performed for, or on behalf of, persons or corporations located outside of this Commonwealth. If a nonresident individual carries on a business, trade, profession or occupation wholly within this Commonwealth, all his items of income, gain, loss and deduction attributable to the business shall be deemed from sources within this Commonwealth.

**Authority**

The provisions of this § 109.3 amended under section 354 of the Tax Reform Code of 1971 (72 P. S. § 7354).

**Source**

The provisions of this § 109.3 amended December 10, 1999, effective December 11, 1999, 29 Pa.B. 6249. Immediately preceding text appears at serial pages (205371) to (205372).

**Cross References**

This section cited in 61 Pa. Code § 101.8 (relating to income tax sources within this Commonwealth).

**§ 109.4. Business carried on partly within and partly without this Commonwealth.**

A business, trade, profession or occupation, as distinguished from personal services as an employe or casual employe, is carried on partly within and partly without this Commonwealth if one or more of the activities described in § 101.8 (relating to income from sources within this Commonwealth), is systematically and regularly carried on within this Commonwealth and one or more of the activities is systematically and regularly carried on outside of this Commonwealth or if one or more of the activities is systematically and regularly carried on both within and without this Commonwealth.

**Authority**

The provisions of this § 109.4 amended under section 354 of the Tax Reform Code of 1971 (72 P. S. § 7354).

**Source**

The provisions of this § 109.4 amended December 10, 1999, effective December 11, 1999, 29 Pa.B. 6249. Immediately preceding text appears at serial page (205372).

**§ 109.5. Apportionment and allocation of income from a business carried on partly within and partly without this Commonwealth.**

(a) If a nonresident individual, or a partnership of which a nonresident individual is a member, carries on a business, trade, profession, or occupation both within and without this Commonwealth, the items of income, gain, loss and

deduction attributable to such business, trade, profession, or occupation shall be apportioned and allocated to this Commonwealth on a fair and equitable basis in accordance with approved methods of accounting.

(b) If the books of the business are kept so as to disclose to the satisfaction of the Department the proportion of the net amount of the items of income, gain, loss and deduction derived from or connected with Commonwealth sources, the return of the taxpayer shall disclose the total amount of such items, the net amount of such items allocated to the Commonwealth, and the basis upon which such allocation is made.

(c) If the books and records of the business do not disclose to the satisfaction of the Department the proportion of the net amount of the items of income, gain, loss and deduction attributable to the activities of the business carried on in this Commonwealth, the proportion shall, except as provided in § 109.6 (relating to rentals and gains from sale or exchange of real property), be determined by multiplying the net amount of the items of income, gain, loss and deduction of the business by the average of the following percentages:

(1) *Property percentage.* The property percentage shall be computed as follows:

(i) *General.* The percentage shall be computed by dividing the average of values, at the beginning and end of the taxable year, of real and tangible personal property connected with the business and located within this Commonwealth, by the average of the values, at the beginning and end of the taxable year, of all real and tangible personal property connected with the business and located both within and without this Commonwealth. For this purpose, real property shall include real property rented to the taxpayer and used in the business. Real property, the income or gain from which is allocated pursuant to § 109.6, shall be disregarded in computing the property percentage described in this subparagraph. Property owned by taxpayer shall be valued at original cost. The average value of property shall be determined by averaging the values at the beginning and ending of the tax period but the Department may require the averaging of monthly values during the tax period if reasonably required to reflect properly the average value of the property of the taxpayer.

(ii) *Rented real property.* The rented real property percentage shall be determined as follows:

(A) The fair market value of real property, both within and without this Commonwealth, which is rented to the taxpayer shall be determined by multiplying the gross rents payable during the taxable year by eight.

(B) Gross rents as used in this clause shall be the actual sum of money or other consideration payable directly or indirectly by the taxpayer or for its benefit for the use or possession of the property and includes the following:

(I) Any amount payable for the use or possession of real property, or any part thereof, whether designated as a fixed sum of money or as a percentage of sales, profits or otherwise.

(II) Any amount payable as additional rent or in lieu of rent such as interest, taxes, insurance, repairs or any other amount required to be paid by the terms of a lease or other arrangement.

(III) A proportionate part of the cost of any improvement to real property made by or on behalf of the taxpayer which reverts to the owner or lessor upon termination of a lease or other arrangement, based on the unexpired term of the lease commencing with the date the improvement is completed (or the life of the improvement if its life expectancy is less than the unexpired term of the lease). But if a building is erected on leased land by or on behalf of the taxpayer, the value of the land shall be determined by multiplying the gross rent by eight, and the value of the building shall be determined in the same manner as if owned by the taxpayer. The proportionate part of the cost of an improvement (other than a building on leased land) is generally equal to the amount of amortization allowed in computing Pennsylvania net income, whether the lease does or does not contain an option of renewal.

(C) Gross rents shall not include the following:

(I) Any portion of a payment or credit to the proprietor of the business or to a partner in the partnership conducting the business for the use of real property.

(II) Amounts payable as separate charges for water and electric service furnished by the lessor.

(III) Amounts payable for storage if no designated space under the control of the taxpayer as a tenant is rented for storage purposes.

(IV) That portion of any rental payment which, in the discretion of the Department, is applicable to property subleased by the taxpayer and not used by him or it in the carrying on of the business.

(2) *Payroll percentage.* The payroll percentage shall be determined as follows:

(i) The percentage computed by dividing the total wages, salaries and other personal service compensation paid or incurred during the taxable year to employes or casual employes in connection with the business carried on within this Commonwealth, by the total of all wages, salaries and other personal service compensation paid or incurred during the taxable year to employes or casual employes in connection with the business carried on both within and without this Commonwealth.

(ii) Compensation shall be paid in connection with business carried on in this Commonwealth if one of the following occurs:

(A) The service of the individual is performed entirely within this Commonwealth.

(B) The service of the individual is performed both within and without this Commonwealth, but the service performed without this Commonwealth is incidental to the service of the individual within this Commonwealth.

(C) Some of the service is performed in this Commonwealth and the base of operations or if there is no base of operations, the place from which the service is directed or controlled is in this Commonwealth, or the base of operations or the place from which the service is directed or controlled is not in any state in which some part of the service is performed, but the residence of the individual is in this Commonwealth.

(3) *Sales percentage.* The sales percentage shall be determined as follows:

(i) The sales factor is a fraction, the numerator of which shall be the total sales of the taxpayer in this Commonwealth during the tax period, and the denominator of which shall be the total sales of the taxpayer everywhere during the tax period.

(ii) Sales of tangible personal property shall be in this Commonwealth if the property is delivered or shipped from outside this Commonwealth into this Commonwealth to a purchaser, other than the United States Government, regardless of the f.o.b. point or other conditions of the sale; or the property is shipped from this Commonwealth to any place and the purchaser is the United States Government, or the property is shipped from the Commonwealth to another state, and the taxpayer is not taxable in the state of the purchaser.

(iii) For purposes of apportioning business income, a person shall be taxable in another state if in that state he is subject to a net income tax, a franchise tax measured by net income, or a franchise tax for the privilege of doing business. Also, a person shall be taxable in another state if that state has jurisdiction to subject him to a net income tax regardless of whether, in fact, the state does not impose such tax.

(iv) Sales, other than sales of tangible personal property, shall be in this Commonwealth if one of the following occur:

(A) The income producing activity is performed in this Commonwealth.

(B) The income producing activity is performed both in and outside this Commonwealth and a greater proportion of the income producing activity is performed in this Commonwealth than in any other state, based on costs of performance.

#### Authority

The provisions of this § 109.5 amended under sections 354, 408 and 603 of the Tax Reform Code of 1971 (72 P. S. §§ 7354, 7408 and 7603).

**Source**

The provisions of this § 109.5 amended December 10, 1999, effective December 11, 1999, 29 Pa.B. 6249. Immediately preceding text appears at serial pages (205372) to (205375).

**Cross References**

This section cited in 61 Pa. Code § 109.6 (relating to rentals and gains from the sale or exchange of real property).

**§ 109.6. Rentals and gains from the sale or exchange of real property.**

Income from and deductions connected with the rental of real property, and gain and loss from the sale, exchange, or other disposition of real property shall not be subject to allocation under § 109.5 (relating to apportionment and allocation of income from a business carried on partly within and partly without this Commonwealth), but considered as entirely derived from or connected with the state in which such real property is located.

**Cross References**

This section cited in 61 Pa. Code § 109.5 (relating to apportionment and allocation of income from a business, carried on partly within and partly without this Commonwealth).

**§ 109.7. Earnings of salesmen.**

If the commission for sales made or other compensation for services performed by a nonresident traveling salesman, agent or other employe or casual employe depends directly upon the volume of business transacted by him, his items of income derived from or connected with Commonwealth sources include that proportion of the amount of the items attributable to the business which the volume of business transacted by him within this Commonwealth bears to the total volume of business transacted by him within and without this Commonwealth.

**Authority**

The provisions of this § 109.7 amended under section 354 of the Tax Reform Code of 1971 (72 P. S. § 7354).

**Source**

The provisions of this § 109.7 amended December 10, 1999, effective December 11, 1999, 29 Pa.B. 6249. Immediately preceding text appears at serial pages (205375) to (205376).

**Cross References**

This section cited in 61 Pa. Code § 109.8 (relating to earnings of nonresident employes or casual employes and officers).

**§ 109.8. Earnings of nonresident employes or casual employes and officers.**

If a nonresident employe or casual employe, including corporate officers but excluding employes or casual employes provided for in § 109.7 (relating to

earnings of salesmen) performs services for an employer or casual employer both within and without this Commonwealth, his income derived from Commonwealth sources includes that proportion of his total compensation for services rendered as an employe or casual employe which the total number of working days employed within this Commonwealth bears to the total number of working days employed both within and without this Commonwealth. However, any allowance claimed for days worked outside of this Commonwealth shall be based upon the performance of services which, of necessity, obligate the employe or casual employe to perform out-of-State duties in the service of his employer or casual employer. In making the allocation provided for in this section, no account may be taken of nonworking days, including Saturdays, Sundays, holidays, days of absence because of illness or personal injury, vacation or leave with or without pay.

**Authority**

The provisions of this § 109.8 amended under section 354 of the Tax Reform Code of 1971 (72 P. S. § 7354).

**Source**

The provisions of this § 109.8 amended December 10, 1999, effective December 11, 1999, 29 Pa.B. 6249. Immediately preceding text appears at serial page (205376).

**§ 109.9. Other methods of allocation.**

This chapter is designed to apportion and allocate to this Commonwealth in a fair and equitable manner the income of a nonresident from sources within this Commonwealth. If the methods provided under this chapter do not so allocate and apportion those items, the Department may require a taxpayer to apportion and allocate those items under such method as it will prescribe as long as the prescribed method results in a fair and equitable apportionment and allocation.

[Next page is 111-1.]

109-8

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