

SINGLE BUSINESS TAX ACT (EXCERPT)
Act 228 of 1975

***** 208.19 THIS SECTION IS REPEALED BY ACT 325 OF 2006 EFFECTIVE DECEMBER 31, 2007

208.19 Tax base of foreign person.

Sec. 19. (1) Except as otherwise provided in this section, for tax years that begin on or after January 1, 2000, except for a taxpayer that calculates tax base under section 22a, the tax base of a foreign person includes the sum of business income and the adjustments under section 9 that are related to United States business activity, whether or not the foreign person is subject to taxation under the internal revenue code.

(2) A foreign person shall calculate business income under this section.

(3) A foreign person shall calculate compensation by reporting total compensation paid to employees, officers, and directors of the foreign person for services performed in the United States.

(4) Except as otherwise provided in this section, the tax base of a foreign person is subject to all adjustments and other provisions of this act.

(5) As used in this section:

(a) "Business income" means, for a foreign person, gross income attributable to the taxpayer's United States business activity and gross income derived from sources within the United States minus the deductions allowed under the internal revenue code that are related to that gross income. Gross income includes the proceeds from sales shipped or delivered to any purchaser within the United States and for which title transfers within the United States; proceeds from services performed within the United States; and a pro rata proportion of the proceeds from services performed both inside and outside the United States, based on cost of performance.

(b) "Compensation" means, for a foreign person, the daily compensation paid to each employee, officer, and director of the foreign person multiplied by the number of days that the employee, officer, or director has physical contact with the United States in the tax year. Physical contact with the United States for part of a day equals 1 day.

(c) "Permanent establishment" means that term as defined in section 35b(3)(a).

(d) "United States person" means that term as defined in section 7701(a)(30) of the internal revenue code.

(6) For tax years that begin after December 31, 1999 and before January 1, 2001, that portion of the tax base that is attributable to the international operation of aircraft by a foreign corporation whose gross income is exempt under section 883(a) of the internal revenue code is exempt from the tax imposed under this act.

(7) As used in this section and sections 46, 49, and 51, "foreign person" means either of the following:

(a) An individual who is not a United States resident, whether or not the individual is subject to taxation under the internal revenue code.

(b) A person formed under the laws of a foreign country or a political subdivision of a foreign country, whether or not the person is subject to taxation under the internal revenue code.

(8) To calculate business income and the adjustments under section 9 that are related to United States business activity, a foreign person that does not have a permanent establishment in the United States during the tax year or who is not subject to taxation under the internal revenue code for the tax year may use amounts that reasonably approximate the federal taxable income and the permitted deductions the person would have had had the person been subject to the internal revenue code, provided the foreign person does not in the ordinary course of its business maintain tax or financial accounting records in accordance with the tax accounting requirements of the internal revenue code. The tax base of a foreign person described in this subsection shall not include gross income from sales shipped or delivered to any purchaser within the United States and for which title transfers outside the United States.

(9) To calculate business income and the adjustments under section 9 that are related to United States business activity, a Canadian person that is subject to Canadian federal income tax under the income tax act (R.S.C. 1985, c. 1 (5th Supp)) may use amounts properly calculated under the income tax act (R.S.C. 1985, c. 1 (5th Supp)) to reasonably approximate business income and the adjustments under section 9 that are related to United States business activity. Amounts calculated under this subsection shall be presumed to reasonably approximate business income and the adjustments under section 9 that are related to United States business activity. The tax base of a Canadian person shall not include gross income from sales shipped or delivered to any purchaser within the United States and for which title transfers outside the United States.

(10) As used in subsection (9), "Canadian person" means a foreign person that does not have a permanent establishment in the United States during the tax year or that is not subject to taxation under the internal revenue code for the tax year and is either of the following:

- (a) An entity formed under the laws of Canada or a province of Canada.
- (b) An individual who is physically present in Canada in the aggregate exceeding 182 days in the tax year.

History: Add. 1999, Act 115, Imd. Eff. July 14, 1999;—Am. 2001, Act 278, Imd. Eff. Jan. 11, 2002;—Am. 2002, Act 442, Imd. Eff. June 14, 2002.

Compiler's note: Enacting section 1 of Act 442 of 2002 provides:

“Enacting section 1. This amendatory act is retroactive and is effective for tax years that begin after December 31, 1999.”