

2010 INSTRUCTIONS FOR SCHEDULE 500A
ALLOCATION AND APPORTIONMENT OF INCOME
(References are to the Code of Virginia, unless otherwise noted)

GENERAL

I. Allocation and apportionment of income. — A Corporation having income from business activity which is taxable both within and without this state must allocate and apportion its Virginia taxable income as provided in *Va. Code* §§ 58.1-302 through 58.1-420. (*Va. Code* § 58.1-406.) “State” means any state, territory or possession of the United States, District of Columbia, Commonwealth of Puerto Rico and any foreign country. (*Va. Code* § 58.1-302.)

II. Corporation taxable in another state. — For purposes of allocation and apportionment of income under *Va. Code* §§ 58.1-302 through 58.1-420, a corporation is taxable in another state if it is subject to a net income tax, a franchise tax measured by net income, or a franchise tax for the privilege of doing business in such other state.

A corporation is not taxable in another state if that state is prohibited from imposing an income tax on the corporation because its business activity in the state does not exceed minimum standards set forth in Public Law 86-272. (15 USC Sec. 381-384.)

III. Corporation transacting or conducting entire business within this state is not entitled to use Schedule 500A. — No corporation, whether chartered under the laws of Virginia or the laws of another state, is entitled to use Schedule 500A where the entire business of the corporation was transacted or conducted within Virginia.

If the entire business of a corporation was transacted or conducted within Virginia, the Virginia income tax is imposed upon the entire net income of the corporation for the taxable year. The entire business of a corporation is deemed to have been transacted or conducted within Virginia if the corporation was not subject in any other state to a net income tax, a franchise tax measured by net income, or a franchise tax for the privilege of doing business. (*Va. Code* § 58.1-405.)

IV. Pass-through entities. — S corporations, partnerships, and limited liability companies will use Schedule 502A to determine the income from Virginia sources that a nonresident shareholder, partner, or member must report on Form 502.

V. For Additional Information. — Call 804-367-8037 or write to Department of Taxation, P.O. Box 1115, Richmond, VA 23218-1115. Obtain most Virginia income tax forms at www.tax.virginia.gov.

A. ALLOCABLE INCOME

Line 1 Dividends: Dividends received to the extent included in Virginia taxable income are allocable to the state of commercial domicile of the taxpaying corporation. “Commercial domicile” means the principal place from which the trade or business of the taxpayer is directed or managed. (Sec. 58.1-407.)

B. APPORTIONABLE INCOME

All income of the corporation except the class of income allocable as specified above is apportioned to this state in accordance with items below. (*Va. Code* § 58.1-408.)

Line 2 Motor carriers: Motor carriers of property or passengers, using highways of this state, must, unless they meet one of the two exceptions referred to in the following paragraph, apportion their net apportionable income to Virginia using the ratio of vehicle miles in this state to total vehicle miles everywhere. “Vehicle miles” means miles traveled by vehicles, owned or operated, hauling property or carrying passengers for a charge or fare.

A carrier meeting either of the exceptions set forth below is not required to apportion income to Virginia. In such cases a return must be filed but it is necessary only to enter name and address on appropriate lines, to enter a zero on line 8a, Form 500, and to complete line 2 of Schedule 500A.

Exception 1: A carrier which neither owns nor rents real or tangible personal property inside this state except vehicles, makes no pickups or deliveries inside this state, and travels no more than 50,000 “vehicle miles” inside this state; provided that the Virginia “vehicle miles” are less

than 5% of total vehicle miles.

Exception 2: A carrier which neither owns nor rents real or tangible personal property inside this state except vehicles, and which makes no more than twelve round trips into this state during the taxable year, either hauling property or carrying passengers; provided that the Virginia “vehicle miles” are less than 5% of total vehicle miles traveled during the taxable year.

Line 3 Railway companies: Railway companies shall determine their net apportionable income to this state by multiplying Virginia taxable income of such company, excluding the income allocable under *Va. Code* § 58.1-407, by the use of the ratio of revenue car miles in this state to total revenue car miles of the corporation everywhere.

For the purposes of this section the words “revenue car mile” in the case of railway carriers of property or passengers shall mean the movement of a unit of loaded car equipment a distance of one mile. The loaded car miles shall be determined in accordance with the Uniform System of Accounts for Railroad Companies of the Interstate Commerce Commission. (*Va. Code* § 58.1-420.)

Line 4 Financial corporations: A financial corporation is one that is not exempted from the imposition of tax under the provisions of *Va. Code* § 58.1-401, which derives more than seventy percent of its gross income from the classes of income enumerated in items 1 through 4 below, without reference to the state where the income is earned, including, but not limited to, small loan companies, sales finance companies, brokerage companies and investment companies:

1. Fees, commissions, other compensation for financial services rendered;
2. Gross profits from trading in stocks, bonds, or other securities;
3. Interest; and
4. Dividends that are included in Virginia taxable income.

In computing the amounts referred to in items 1 through 4 above, any amount received by a member of an affiliated group (determined under Section 1504(a) of the Internal Revenue Code but without reference to whether any such corporation is an includible corporation under Section 1505(b) of the Internal Revenue Code) from another member of such group will be included only to the extent the amount exceeds related expenses of the recipient.

The Virginia taxable income of a financial corporation, as defined in *Va. Code* § 58.1-402, excluding income allocable under *Va. Code* § 58.1-407, shall be apportioned within and without this state in the ratio that the business within Virginia is to total business of the corporation. Business within this state shall be based on cost of performance in Virginia over cost of performance everywhere. (*Va. Code* § 58.1-418.)

“Cost of Performance Factor”

(a) The cost of performance is the cost of all activities directly performed by the taxpayer for the ultimate purpose of obtaining gains or profit, except activities performed by the taxpayer for the ultimate purpose of obtaining dividends allocable under the provisions of *Va. Code* § 58.1-407.

(i) Such activities do not include those performed on behalf of a taxpayer, such as performed by an independent contractor.

(ii) The cost of performance does not include the cost of funds (interest, etc.), but does include the cost of activities required to procure loans or other financing.

(b) Activities constituting the cost of performance are deemed performed at the situs of real and tangible personal property or the place at which or from which activities are performed by employees of a taxpayer.

(c) Cost of performance of a financial institution within and without Virginia shall be determined without regard to the location of borrowers, location of property in which the financial corporation has only a security interest, or the cost to the financial corporation of the funds which it lends.

Line 5 Construction corporations: Construction companies which have elected to report income on the completed contract basis shall apportion income within and without this state in the ratio that the business within this state is to total business of the corporation. The business within and without this state is based upon "sales" as defined by *Va. Code* § 58.1-302, to the extent included in taxable income, and is determined as provided by *Va. Code* §§ 58.1-414 through 58.1-419.

Three-Factor Formula -Multistate corporations are generally required to use a three-factor formula of property, payroll and double-weighted sales. The sum of the property factor, payroll factor and twice the sales factor is divided by four to arrive at the final apportionment factor. See specific instructions that follow.

Line 6 Property factor: The property factor is a fraction, the numerator of which is the average value of the corporation's real and tangible personal property owned and used or rented and used in this state during the taxable year, and the denominator of which is the average value of all the corporation's real and tangible property owned and used or rented and used during the taxable year and located everywhere; to the extent that such property is used to produce Virginia taxable income and is effectively connected with the conduct of a trade or business within the United States and income derived is includible in federal taxable income. (*Va. Code* § 58.1-409.)

Property owned by the corporation is valued at its original cost plus the cost of additions and improvements. Property rented by the corporation is valued at eight times the annual rental rate. (*Va. Code* § 58.1-410.)

The average value of property is determined by averaging the value at the beginning and ending of the tax period, but the Department of Taxation may require the averaging of monthly values during the tax period if reasonably required to reflect properly the average value of the corporation's property. (*Va. Code* § 58.1-411.)

Line 7 Payroll factor: The payroll factor is a fraction, the numerator of which is the total amount paid or accrued in this state during the tax period by the corporation for compensation, and the denominator of which is the total compensation paid or accrued everywhere during the tax period; to the extent that such payroll is used to produce Virginia taxable income and is effectively connected with the conduct of a trade or business within the United States and income derived is includible in federal taxable income. (*Va. Code* § 58.1-412.)

"Compensation" means wages, salaries, commissions and any other form of remuneration paid or accrued to employees for personal services. (*Va. Code* § 58.1-302.)

Compensation is paid or accrued in this state if:

- (a) the employee's service is performed entirely within the state; or
- (b) the employee's service is performed both within and without the state, but the service performed without the state is incidental to the employee's service within the state; or
- (c) some of the service is performed in the state and:
 - (i) the base of operations or, if there is no base of operations, the place from which the service is directed or controlled is in the state; or

- (ii) 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 employee's residence is in this state. (*Va. Code* § 58.1-413.)

Line 8 Sales factor: The sales factor is a double-weighted element in the three factor formula of sales, property and payroll. Enter the sales percentage computed on line 8(a). The sales factor is a fraction, the numerator of which is the total sales of the corporation in this state during the tax period, and the denominator of which is the total sales of the corporation everywhere during the tax period, to the extent that such sales are used to produce Virginia taxable income and are effectively connected with the conduct of a trade or business within the United States and income derived is includible in federal taxable income. (*Va. Code* § 58.1-414.) "Sales" means all gross receipts of the corporation other than dividends; except that in the case of the sale or other disposition of intangible property only the net gain is included. Net gain is determined on a per transaction basis. (*Va. Code* § 58.1-302.)

Sales of tangible personal property are in this state if the property is received in this state by the purchaser. In the case of delivery by common carrier or other means of transportation, the place at which such property is ultimately received after all transportation has been completed is considered the place at which such property is received by the purchaser. Direct delivery in this state, other than for purposes of transportation, to a person or firm designated by a purchaser, constitutes delivery to the purchaser in this state, and such direct delivery outside this state to a person or firm designated by the purchaser does not constitute delivery to the purchaser in this state, regardless of where title passes, or other conditions of sale. (*Va. Code* § 58.1-415.)

Sales, other than sales of tangible personal property, are in Virginia if: (a) the income-producing activity is performed in Virginia; or (b) the income-producing activity is performed in and outside of Virginia and a greater proportion of this activity is performed in Virginia than in any other state, based on costs of performance. (*Va. Code* § 58.1-416.)

Alternate method of allocation or apportionment. — If any corporation believes that the method of allocation or apportionment administered by the Department of Taxation will subject it to taxation on a greater portion of its net income than is reasonably attributable to business or sources within this state, it is entitled to file with the Department of Taxation a statement of its objections and of such alternative method of allocation or apportionment as it believes to be proper under the circumstances with such detail and proof and within such time as the Department of Taxation may reasonably prescribe. If the Department of Taxation concludes that the method of allocation or apportionment employed is, in fact, inapplicable or inequitable, it shall redetermine the taxable income by such other method of allocation or apportionment as seems best calculated to assign to the state for taxation the portion of the income reasonably attributable to business and sources within the state, not exceeding, however, the amount which would be arrived at by application of the statutory rules for allocation or apportionment. (*Va. Code* § 58.1-421.)

A corporation requesting permission to use an alternative method of allocation or apportionment of income must comply with Virginia Corporation Income Tax Regulation 23 Virginia Administrative Code (VAC) 10-120-130. The policy of the Department of Taxation is that the statutory method is the most equitable method of determining the portion of a multistate corporation's income that is attributable to business activity in Virginia. Permission to use an alternative method of allocation and apportionment will be granted only in extraordinary circumstances.