

Connecticut Department of Revenue Services



STATE OF CONNECTICUT DEPARTMENT OF REVENUE SERVICES

450 Columbus Blvd
Hartford CT 06103

SN 96(10)

1995 and 1996 Legislative Changes Affecting the Corporation Business Tax

PURPOSE: This Special Notice describes changes affecting the Corporation Business Tax Act made by 1995 Conn. Pub. Acts 160, §32; 1995 Conn. Pub. Acts 327; 1996 Conn. Pub. Acts 104, §1; 1996 Conn. Pub. Acts 111; 1996 Conn. Pub. Acts 139, §2; 1996 Conn. Pub. Acts 175, §1; 1996 Conn. Pub. Acts 180, §25; 1996 Conn. Pub. Acts 197, §§2 through 10, inclusive; 1996 Conn. Pub. Acts 253, §§7 and 9; and 1996 Conn. Pub. Acts 265, §4.

STATUTORY AUTHORITY: Conn. Gen. Stat. §§12-213, 12-214, 12-217, 12-218, 12-219a, 12-221a, 12-223a, and 12-242d, as amended.

EFFECTIVE DATES: As specified herein.

TAX RATE REDUCED: 1995 Conn. Pub. Acts 160, §32 amends Conn. Gen. Stat. §12-214 by reducing the rate of the corporation business tax as follows:

from	to	for income years commencing	
		on or after	but before
11%	10.75%	1/1/96	1/1/97
10.5%	10.5%	1/1/97	1/1/98*
10%	9.5%	1/1/98	1/1/99
10%	8.5%	1/1/99	1/1/00
10%	7.5%	1/1/00	

* For income years commencing on or after January 1, 1997, but before January 1, 1998, the rate of 10.5% was not changed by Conn. Pub. Acts 160.

SAFE HARBORS FOR ESTIMATED TAX PAYMENTS: 1995 Conn. Pub. Acts 327 amends Conn. Gen. Stat. §12-242d, Interest on unpaid installments, by establishing safe harbors for **all four** estimated tax installments. For estimated tax purposes, the **required annual payment** is the lesser of:

- 90% of the current year's tax, or
- 200% of the prior year's tax (for income years commencing in 1996)
- 175% of prior year's tax (for income years commencing in 1997)

- 150% of the prior year's tax (for income year commencing in 1998)
- 125% of the prior year's tax (for income years commencing in 1999) or
- 100% of the prior year's tax (for income years commencing in 2000 or later.)

Thirty percent of the required annual payment is due in the first installment, 40% in the second installment, 10% in the third installment, and 20% in the fourth installment.

If a company uses an estimate of its current year's tax to determine the required annual payment and such amount changes during the year, it may find that earlier installments of estimated tax were underpaid. The act provides that payments of estimated tax are credited first against underpaid installments in the order in which such installments are required to be paid.

The act also permits adoption of a regulation that would allow an overpayment of the preceding year's tax to be applied to the current year's estimated tax before the final return for the preceding year is filed. **This regulation has not yet been adopted; thus, an overpayment of the preceding year's tax may still not be applied to the current year's estimated tax before the final return for the preceding year is filed.**

These provisions of 1995 Conn. Pub. Acts 327 are applied to estimated corporation business taxes for income years beginning on or after January 1, 1996.

EXEMPTION FOR COMPANIES CONTRACTING WITH A COMMERCIAL PRINTER AT PREMISES IN CONNECTICUT: 1996 Conn. Pub. Acts 104, §1 amends Conn. Gen. Stat. §12-213 by exempting from the corporation business tax any company, whose only activity in Connecticut is contracting with a commercial printer with premises in Connecticut for the printing and distribution of printed material. Such a company will not be considered as carrying on or doing business in Connecticut for purposes of the Connecticut corporation business tax even if: (1) tangible or intangible personal property owned or leased by the company is located at the Connecticut premises of the commercial printer; (2) the company sells property of any kind produced or processed at or shipped or distributed from the Connecticut premises of the commercial printer; (3) the company has employees or agents at the Connecticut premises of the commercial printer which employees or agents engage only in activities related to quality control, distribution or printing services performed by the commercial printer; and (4) the commercial printer performs activities of any kind in Connecticut for or on behalf of the company. Such exemption is effective for income years beginning on or after January 1, 1996.

TECHNICAL AMENDMENTS TO CONN. GEN. STAT. 12-213: 1996 Conn. Pub. Acts 139, 180 and 197 amend Conn. Gen. Stat. §12-213 by assigning a subdivision number to each definition and substituting a reference to "the Internal Revenue Code of 1986 or any subsequent Internal Revenue Code of the United States from time to time amended and effective and in force on the last day of the income year" for any reference to "the federal corporation net income tax law."

REGULATIONS REGARDING REFUNDS FOR ERRONEOUS INCLUSION OF EXEMPT INCOME: 1995 Conn. Pub. Acts 2, §1 provides that the laws governing refunds of taxes should be clarified to ensure that any tax refunds based on the exclusion of revenue from gross income (such as interest on certain state and local obligations) are net of related expenses. Accordingly, emergency regulations were drafted to address, under the corporation business tax, the prohibition against double deductions and/or exclusions and adjustments to net income resulting from the subtraction of exempt income. The emergency regulations were approved by the Regulation Review Committee of the General Assembly on February 20, 1996. On June 18, 1996, the permanent regulations, Conn. Agencies Regs. §§12-213-2 and 12-225-2, were approved by the Regulation Review Committee. Those regulations were filed with the Office of the Secretary of State on June 20, 1996.

CLARIFICATION OF DISALLOWANCE OF EXPENSES RELATED TO NONTAXABLE INCOME: 1996 Conn. Pub. Acts 139, §1, amends Conn. Gen. Stat. §12-213 by clarifying that any expenses related to income, which the State of Connecticut is prohibited by law or constitution of the United States, as applied, or by the law or constitution of Connecticut, as applied, are not deductible from "gross income". The act further amends §12-213 by providing that no item may, directly or indirectly, be excluded or deducted from "gross income" more than once.

PHASE OUT OF IMPOSITION OF CORPORATION BUSINESS TAX ON S CORPORATIONS: 1996 Conn. Pub. Acts 175, §1 amends Conn. Gen. Stat. §12-217 by phasing out the corporation business tax on the net

income of S corporations over 5 years, starting with the income year beginning during 1997. The following decreasing percentages of an S corporation's net income, as defined in §12-217(c)(1), as amended, are taxable over the 5-year period:

Income years beginning	but before	%
On or after 1/1/97	1/1/98	90
On or after 1/1/98	1/1/99	75
On or after 1/1/99	1/1/00	55
On or after 1/1/00	1/1/01	30
On or after 1/1/01	---	0

S corporations carrying on or doing business in Connecticut remain subject to the alternate minimum tax under §12-219. Further, effective for the income years beginning on or after January 1, 1997, an S corporation which is subject in whole or in part to the corporation business tax on its net income shall not be eligible for any credit against its corporation business tax otherwise available to other taxpayers subject to the corporation business tax.

RULES OF TAXATION OF CORPORATE PARTNERS FOR PURPOSES OF THE CORPORATION BUSINESS

TAX: 1996 Conn. Pub. Acts 197 amends Conn. Gen. Stat. §§12-213, 12-214, 12-217 and 12-218, to provide special rules for the application of the corporation business tax to a company which owns an interest in a limited partnership or a general partnership. With respect to companies, other than insurance companies, which are partners in partnerships carrying on or doing business in Connecticut, there are now specific rules for determining when such companies are subject to the corporation business tax for the activities engaged in by the partnership and how such companies must apportion net income.

Limited liability companies and limited liability partnerships may be subject to these new rules. Specifically, for purposes of these new rules: (1) a partner is defined to include a member of a limited liability company that is treated as a partnership for federal income tax purposes ; (2) a limited partner is defined to include a member of a limited liability company that is treated as a partnership for federal income tax purposes and that is managed by managers, if such member is not a member-manager of such company; and (3) a general partner is defined to include (i) a partner of a limited liability partnership, and (ii) a member of a limited liability company that is treated as a partnership for federal income tax purposes, if the company is managed by managers and the member is a member-manager of such company, or if such company is not managed by managers. "Member-manager" is defined to mean a member of a limited liability company that is treated as a partnership for federal income tax purposes, which member is, alone or together with others, vested with the management of the business, property and affairs of the limited liability company.

Generally, a company which is **otherwise not carrying on or doing business in Connecticut** is considered to be carrying on or doing business in Connecticut and, thus subject to the corporation business tax, if it is a general partner or a limited partner in a partnership (other than an investment partnership, as defined by §12-213(a)(27), as amended by 1996 Conn. Pub. Acts 197, §2) that does business, owns or leases property or maintains an office in Connecticut.

1996 Conn. Pub. Acts 197 also provides specific rules for the apportionment of a company's net income from such partnerships. Generally, a company which is subject to the corporation business tax **solely** by virtue of the fact that it is a limited partner in a limited partnership, other than an investment partnership, must, **in lieu of** apportioning its net income in accordance with §12-218(b) or (c), pay the tax imposed under §12-214 **solely** on its distributive share as a partner of the income or loss of such partnership, to the extent such income or loss is derived from or connected with sources within the state. However, if the Commissioner of Revenue Services determines that the company and the partnership are, in substance, part of a unitary business engaged in a single business enterprise, then such company must apportion its net income as if it were a company taxable both within and without Connecticut, using three-factor apportionment (payroll, property and receipts [double-weighted] factors). The numerators and denominators of such factors must include the company's proportionate part, as a partner, of the partnership's payroll, property and receipts.

Any company which is **otherwise carrying on or doing business in Connecticut** and which is taxable within and without Connecticut, and which is **also a limited partner** either in an investment partnership or in a limited partnership (other than an investment partnership) that does business, owns or leases property or maintains an office in Connecticut, generally must apportion its net income, including its distributive share of partnership income and losses, by using the apportionment fraction set forth in §12-218(b) or (c), as the case may be. However, the numerator and denominator of the payroll, property and gross receipts factors shall include the company's proportionate part, as a partner, of the numerator and denominator of such partnership's payroll, property and receipts, respectively. Any company, whether or not otherwise carrying on business in Connecticut, which is a **general partner** in a partnership that does business, owns or leases property or maintains an office in Connecticut, shall apportion its net income, as if it were a company taxable both within and without Connecticut, using three-factor apportionment (payroll, property and receipts [double-weighted] factors). The numerators and denominators of such factors must include the company's proportionate part, as a partner, of the partnership's payroll, property and receipts.

1996 Conn. Pub. Acts 197 also amends Conn. Gen. Stat. §12-219a to provide the following rules for apportionment of the minimum tax for companies which are partners in general or limited partnerships:

1. Any company that is **otherwise carrying on or doing business in Connecticut** and that is a limited partner either in an investment partnership or in a limited partnership (other than an investment partnership) which does business, owns or leases property or maintains an office in Connecticut must apportion its minimum tax base, including the average value of its partnership interest, within and without Connecticut by using the apportionment fraction set forth in §12-219a(a), except that the numerator and denominator of its apportionment fraction shall include its proportionate part of the partnership's apportionment factors.
2. Any company that is **not otherwise carrying on or doing business in Connecticut** and that is a **limited partner** in a partnership (other than an investment partnership) which does business, owns or leases property or maintains an office within Connecticut must apportion the average value of its partnership interest within and without Connecticut by using the apportionment fraction set forth in §12-219a(a) except that the numerator and denominator of its apportionment fraction shall be its proportionate part of the partnership's apportionment factors. However, if the Commissioner of Revenue Services determines that the company and the partnership are, in substance, parts of a unitary business engaged in a single business enterprise, the Commissioner may require the company to use the apportionment fraction as discussed in (3).
3. Any company, whether or not otherwise carrying on or doing business in Connecticut, that is a **general partner** in a partnership which does business, owns or leases property or maintains an office within Connecticut must apportion its minimum tax base, including the average value of its partnership interest, within and without Connecticut by using the apportionment fraction set forth in §12-219a(a), except that the numerator and denominator of its apportionment fraction shall include its proportionate part of the partnership's apportionment factors.

With respect to income years beginning on or after January 1, 1996, a company may **elect** on its corporation business tax return for its income year beginning during 1996, on or before the due date or, if applicable, the extended due date, of such return, **not to apply** the new apportionment provisions of Conn. Gen. Stat. §§12-218 and 12-219. The company may revoke such election, but such revocation shall not become effective until its first income year beginning on or after January 1, 2001.

ELECTION FOR ALTERNATE APPORTIONMENT PROVISION FOR COMPANIES PROVIDING MANAGEMENT, DISTRIBUTION OR ADMINISTRATIVE SERVICES FOR REGULATED INVESTMENT COMPANIES AND FOR COMPANIES PROVIDING BROKERAGE SERVICES: 1996 Conn. Pub. Acts 111, §1 amends Conn. Gen. Stat. §12-218 by adding two new subsections, both of which are effective for income years beginning on or after January 1, 1996.

The first subsection allows companies that provide management, distribution, or administrative services (as defined in that subsection) to or on behalf of regulated investment companies, as defined in section 851 of the Internal Revenue Code, an election to apportion its net income that is derived from providing management, distribution or administrative services for or on behalf of the regulated investment company, solely by using a receipts fraction that, in essence, sources receipts based upon the domicile of shareholders of the regulated investment company. The election, once made, is irrevocable for five successive income years. Receipts for purposes of this apportionment fraction means receipts computed according to the method of accounting used by the company in computing its net income.

The numerator of the receipts factor is the average of the number of shares, on the first and last days of the regulated investment company's taxable year, for federal income tax purposes, owned by shareholders domiciled in Connecticut. The denominator is the average of the number of shares, on the first and last days of the regulated investment company's taxable year, for federal income tax purposes, owned by all shareholders.

A shareholder's domicile is presumed to be such shareholder's mailing address as shown in the records of the regulated investment company, except the company may elect, if the shareholder of record is an insurance company which holds the shares as depositor for the benefit of a separate account, to treat, as the shareholders, the contract owners or policyholders of the contracts or policies supported by such separate account.

This alternate apportionment fraction applies only to the net income of the company that is derived from providing the management, distribution or administrative services for or on behalf of the regulated investment company. All other net income must be apportioned as otherwise provided in Conn. Gen. Stat. §12-218.

The second subsection allows a company that provides securities brokerage services an election to apportion its net income that is derived, directly or indirectly, from rendering securities brokerage services (as defined in that subsection), solely by using a receipts fraction that, in essence, sources receipts based upon the domicile of the company's customers. The election, once made, is irrevocable for five successive income years.

The numerator of the apportionment fraction consists of the brokerage commissions and total margin interest paid by or on behalf of brokerage accounts owned by the company's customers domiciled in Connecticut during the company's income year. The denominator consists of the brokerage commissions and total margin interest paid by or on behalf of the company's customers, wherever domiciled, during the company's income year. Brokerage commissions and total margin interest paid on behalf of brokerage accounts shall be computed according to the method of accounting used by the company in computing its net income.

A customer's domicile is presumed to be such customer's mailing address as shown in the records of the company.

This alternate apportionment fraction applies only to the net income of the company that is derived, directly or indirectly, from rendering securities brokerage services. All other net income must be apportioned as otherwise provided in Conn. Gen. Stat. §12-218.

NEW APPORTIONMENT FOR MOTOR CARRIERS TRANSPORTING PROPERTY: 1996 Conn. Pub. Acts 265, §4 amends Conn. Gen. Stat. §12-218 by allowing, for income years beginning on or January 1, 1996, motor carriers which are taxable both within and without this state and which transport property for hire, to apportion their net income derived from carrying of property for hire to apportion such net income, solely by using a mileage fraction. The numerator is the total number of miles operated within Connecticut during the income year and the denominator is the total number of miles operated everywhere during the income year. All other net income must be apportioned as otherwise provided in Conn. Gen. Stat. §12-218.

REGULATIONS RELATING TO NET OPERATING LOSSES RELATING TO MERGERS AND CONSOLIDATIONS: 1996 Conn. Pub. Acts 197, §4 amends Conn. Gen. Stat. §12-217 by permitting the Commissioner of Revenue Services to adopt regulations relating to mergers or consolidations of corporations providing for the deduction, by the surviving or new corporation provided for in a plan of consolidation, of operating losses that were incurred by a merging or consolidated corporation, respectively, before the merger or consolidation, respectively. Such regulations may follow the provisions of the Internal Revenue Code of 1986 or any subsequent corresponding code, as from time to time amended and regulations thereunder. (In the past, the Connecticut Supreme Court has looked to the provisions of the Internal Revenue Code of 1939 in construing Conn. Gen. Stat. §12-217 because, like Conn. Gen. Stat. §12-217, the Internal Revenue Code of 1939 contained no express provision dealing with the treatment of post-merger or post-consolidation operating loss carryovers.)

ADDITIONAL TAX CLARIFIED TO BE A MINIMUM TAX: 1996 Conn. Pub. Acts 197 amends Conn. Gen. Stat. §12-219 by clarifying that the tax imposed by Conn. Gen. Stat. §12-219 is an alternate minimum tax and is imposed for the privilege of carrying on or doing business within Connecticut, whether or not a company is subject to the tax imposed on net income under §12-214. However, a company that is subject both to the tax on net income and to the minimum tax still pays only the larger of the two taxes.

INSURANCE AND FINANCIAL SERVICES EXPORT ZONE EXEMPTIONS: 1996 Conn. Pub. Act 253 creates an export zones in the City of Hartford in which corporations organized in Connecticut or qualified to do business in Connecticut and engaging in specified exempt activities are exempt from the corporation business tax. Such a company, however, must file annually a declaration with the Commissioner of Revenue Services affirming its status as an exempt company and describing the activities in which it engages. The company, however, shall not be required to report to the Commissioner of Revenue Services the earnings of its customers or policyholders or, in the case of an exempt mutual investment company, its owners.

The Commissioner of Revenue Services may adopt regulations as to the keeping of records and the contents and form of the declaration required and for monetary penalties and fines for noncompliance by exempt companies with the provisions of the act which is other than intentional or reckless. Further, the act provides that the Commissioner of Revenue Services, by regulation or notice, may require an exempt company to make the declaration required, render statements or records which the Commissioner may deem sufficient to show whether such person is liable under the general statutes for a tax or for the collection of a tax. The act authorizes the Commissioner of Revenue Services to examine the books, papers, records and equipment of any exempt person and investigate the activities of the exempt company in order to verify the accuracy of the required declaration, or if not return is made, to determine the amount required to be paid. The status of an exempt company may be revoked by the Department of Revenue Services in an action in the superior court of the judicial district of **Hartford-New Britain**.

EFFECT OF THIS DOCUMENT: A Special Notice is a document that announces a new policy or practice in response to changes in State or federal laws or regulations or to judicial decisions. A Special Notice indicates the Department's informal interpretation of Connecticut tax law and may be referred to for general guidance by taxpayers or tax practitioners.

EFFECT ON OTHER DOCUMENTS: None affected.

PLEASE NOTE THE FOLLOWING NEW INFORMATION ABOUT DRS.

FOR FURTHER INFORMATION: To order forms and publications or for further information, call the Department of Revenue Services at 860-297-5962 (Hartford area or out-of-state) or 1-800-382-9463 (in-state). Forms and publications may be ordered through voice-mail 24-hours a day by choosing Option 3 on your touch tone telephone.

Electronic Delivery Options: You can also obtain tax forms and publications 24-hours a day from our Web home page at <https://www.ct.gov/drs>. Telecommunications Device for the Deaf (TDD/TT) users only call 860-297-4911 during business hours.

SN 96(10)
Corporation business tax
Issued: 7/29/96