

VIRGINIA ACTS OF ASSEMBLY -- 2018 SESSION

CHAPTER 807

An Act to amend and reenact §§ 58.1-408 and 58.1-416 of the Code of Virginia and to amend the Code of Virginia by adding a section numbered 58.1-422.3, relating to income tax; apportionment of sales for debt buyers.

[H 798]

Approved April 9, 2018

Be it enacted by the General Assembly of Virginia:

1. That §§ 58.1-408 and 58.1-416 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding a section numbered § 58.1-422.3 as follows:

§ 58.1-408. What income apportioned and how.

The Virginia taxable income of any corporation, except those subject to the provisions of § 58.1-417, 58.1-418, 58.1-419, 58.1-420, 58.1-422, 58.1-422.1, ~~or~~ 58.1-422.2, *or* 58.1-422.3, excluding income allocable under § 58.1-407, shall be apportioned to the Commonwealth by multiplying such income by a fraction, the numerator of which is the property factor plus the payroll factor, plus twice the sales factor, and the denominator of which is four; however, where the sales factor does not exist, the denominator of the fraction shall be the number of existing factors and where the sales factor exists but the payroll factor or the property factor does not exist, the denominator of the fraction shall be the number of existing factors plus one.

§ 58.1-416. When certain other sales deemed in the Commonwealth.

A. Sales, other than sales of tangible personal property, are in the Commonwealth if:

1. The income-producing activity is performed in the Commonwealth; or
2. The income-producing activity is performed both in and outside the Commonwealth and a greater proportion of the income-producing activity is performed in the Commonwealth than in any other state, based on costs of performance.

B. *For debt buyers, as defined in § 58.1-422.3, sales, other than sales of tangible personal property, are in the Commonwealth if they consist of money recovered on debt that a debt buyer collected from a person who is a resident of the Commonwealth or an entity that has its commercial domicile in the Commonwealth. Such rule shall apply regardless of the location of a debt buyer's business.*

C. *The taxes under this article on the sales described under subsection B are imposed to the maximum extent permitted under the Constitutions of Virginia and the United States and federal law. For the collection of such taxes on such sales, it is the intent of the General Assembly that the Tax Commissioner and the Department assert the taxpayer's nexus with the Commonwealth to the maximum extent permitted under the Constitutions of Virginia and the United States and federal law.*

D. *If necessary information is not available to the taxpayer to determine whether a sale other than a sale of tangible personal property is in the Commonwealth pursuant to the provisions of subsections B and C, the taxpayer may estimate the dollar value or portion of such sale in the Commonwealth, provided that the taxpayer can demonstrate to the satisfaction of the Tax Commissioner that (i) the estimate has been undertaken in good faith, (ii) the estimate is a reasonable approximation of the dollar value or portion of such sale in the Commonwealth, and (iii) in using an estimate the taxpayer did not have as a principal purpose the avoidance of any tax due under this article. The Department may implement procedures for obtaining its approval to use an estimate. The Department shall adopt remedies and corrective procedures for cases in which the Department has determined that the sourcing rules for sales other than sales of tangible personal property have been abused by the taxpayer, which may include reliance on the location of income-producing activity and direct costs of performance as described in subsection A.*

§ 58.1-422.3. Debt buyers; apportionment.

A. *As used in this section, "debt buyer" means an entity and its affiliated entities that purchase nonperforming loans from unaffiliated commercial entities that (i) are in default for at least 120 days or (ii) are in bankruptcy proceedings. "Debt buyer" does not include an entity that provides debt collection services for unaffiliated entities.*

B. *For taxable years beginning on and after January 1, 2019, the Virginia taxable income of a debt buyer, excluding income allocable under § 58.1-407, shall be apportioned within and without the Commonwealth by multiplying such income by the sales factor. For debt buyers, only money recovered on debt that a debt buyer collected from a person who is a resident of the Commonwealth or an entity that has its commercial domicile in the Commonwealth shall be apportioned to the Commonwealth for income tax purposes.*

2. That the Department of Taxation shall develop and make publicly available guidelines implementing the provisions of this act. In developing such guidelines, the Department of Taxation

shall not be subject to the provisions of the Administrative Process Act (§ 2.2-4000 et seq. of the Code of Virginia) for guidelines promulgated on or before December 31, 2021, but shall cooperate with and seek the counsel of interested groups and shall not promulgate any guidelines, preliminary or final, without first seeking such counsel and conducting a public hearing. Preliminary guidelines shall be promulgated and made publicly available no later than December 31, 2018, and final guidelines shall be promulgated and made publicly available no later than December 31, 2019. Subsequent to December 31, 2019, the guidelines shall next be updated by December 31, 2021, under the same procedures as required for the preliminary and final guidelines. After December 31, 2021, the guidelines shall be subject to the Administrative Process Act and accorded the weight of regulations under § 58.1-205 of the Code of Virginia.