

FRANCHISE TAX BOARD

TITLE 18, DIVISION 3, CALIFORNIA CODE OF REGULATIONS, AMEND CHAPTER 2.5, SUBCHAPTER 11, AT SECTION 17951-5; AND ADOPT NEW SECTION 17951-8

Text of Proposed Regulations

Chapter 2.5. Personal Income Tax (Taxable Years Beginning After 12-31-54)

Subchapter 11. Gross Income of Nonresidents

Proposed language additions are underlined. Proposed deletions are ~~stricken~~.

Section 17951-5 is amended to read:

§ 17951-5. Wages, Salaries and Other Compensation Received by Employees for Personal Services Performed in This State.

- (a) (1) The gross income from commissions earned by a nonresident traveling salesman, agent or other employee for services performed or sales made whose compensation depends directly on the volume of business transacted by him, includes that proportion of the compensation received which the volume of business transacted by such employee within the State of California bears to the total volume of business transacted by him within and without the State.
 - (2) Nonresident employees, including but not limited to, actors, singers, performers, entertainers, wrestlers, boxers, etc., must include in gross income as income from sources within this State the gross amount received for performances in this State.
 - (3) Nonresident professional employees, including but not limited to, attorneys, physicians, accountants, engineers, etc., even though not regularly engaged in carrying on their professions in this State, must include in gross income as income from sources within this State the entire amount of ~~fees or~~ compensation for services performed in this State on behalf of their employer's clients.
 - (4) If nonresident employees (including officers of corporations, but excluding employees, mentioned in (1) through (3) above) are employed continuously in this State for a definite portion of any taxable year, the gross income of the employees from sources within this State includes the total compensation for the period employed in this State.
- (b) If nonresident employees are employed in this State at intervals throughout the year, as would be the case if employed in operating trains, boats, planes, motor buses, trucks, etc., between this State and other states and foreign countries, and are paid on a daily, weekly or monthly basis, the gross income from sources within this State includes that portion of the total compensation for personal services which the total number of working days employed within the State bears

to the total number of working days both within and without the State. If the employees are paid on a mileage basis, the gross income from sources within this State includes that portion of the total compensation for personal services which the number of miles traversed in California bears to the total number of miles traversed within and without the State.

- (c) If the nonresident employees, including performers and professionals, are paid on some other basis, ~~the total that employment compensation for personal services~~ must be apportioned between this State and other States and foreign countries in such a manner as to allocate to California that portion of the total compensation which is reasonably attributable to personal services performed in this State.
- (d) Gross income from sources within this State does not include qualified retirement income, as defined in Section 17952.5 of the Revenue and Taxation Code received by a nonresident during a taxable year beginning on or after January 1, 1996.

Note: Authority cited: Section 19503, Revenue and Taxation Code.

Reference: Sections 17041, 17951 and 17952, Revenue and Taxation Code.

Section 17951-8 is adopted to read:

§ 17951-8. Compensation Received by Nonresident Nonemployee Directors

The gross income from fees or other compensation earned by a nonresident nonemployee director of a corporation for services performed in a fiduciary capacity for such corporation shall be income derived from sources within California if such corporation's commercial domicile, as that term is defined in Revenue and Taxation Section 25120, subdivision (b), is in California, regardless of where such services are performed.

Note: Authority cited: Sections 17954 and 19503, Revenue and Taxation Code.

Reference: Sections 17041, 17951 and, Revenue and Taxation Code.