141.121 Special rules for apportioning business income -- Passenger airlines -- Management of a treasury function.

(1) As used in this section:

(a) "Kentucky revenue passenger miles" means the total revenue passenger miles within the borders of Kentucky for all flight stages that either originate or terminate in this state;

(b) "Liquid asset" means an asset, other than functional currency or funds held in bank accounts, held to provide a relatively immediate source of funds to satisfy the liquidity needs of the trade or business. "Liquid assets" include:

1. Foreign currency and trading positions therein, other than functional currency used in the regular course of the corporation's trade or business;

2. Marketable instruments, including stocks, bonds, debentures, options, warrants, and futures contracts; and

3. Mutual funds which hold liquid assets;

(c) "Marketable instrument" means an instrument that is traded in an established stock or securities market and is regularly quoted by brokers or dealers in making a market;

(d) "Overall net gain" means the total net gain from all transactions incurred at each treasury function for the entire taxable period. "Overall net gain" does not mean the net gain from a specific transaction if multiple transactions occur during the taxable period;

(e) "Passenger airline" means a person or corporation engaged primarily in the carriage by aircraft of passengers in interstate commerce;

(f) "Revenue passenger miles" means miles calculated in accordance with 14 C.F.R. Part 241; and

(g) "Treasury function" means the pooling and management of liquid assets for the purpose of satisfying the cash flow needs of the trade or business and includes the following situations:

1. Providing liquidity for a corporation's business cycle; and

2. Providing a reserve for business contingencies or business acquisitions.

(2) If a corporation holds liquid assets in connection with one (1) or more treasury functions of the corporation, and the liquid assets produce business income when sold, exchanged, or otherwise disposed of, the overall net gain from those transactions for each treasury function for the tax period shall be included in the sales factor. For purposes of this subsection:

(a) Each treasury function shall be considered separately; and

(b) A corporation principally engaged in the trade or business of purchasing and selling instruments or other items included in the definition of liquid assets is not performing a treasury function with respect to that income produced.

(3) For purposes of apportioning business income to this state, passenger airlines shall determine the property, payroll, and sales factors as follows:

(a) Except as modified by this subsection, the property factor shall be determined as provided in KRS 141.120(8)(a). Aircraft operated by a passenger airline shall be included in both the numerator and denominator of the property factor. Aircraft shall be included in the numerator of the property factor by determining the product of:

1. The total average value of the aircraft operated by the passenger airline; and
2. A fraction, the numerator of which is the Kentucky revenue passenger miles of the passenger airline for the taxable year and the denominator of which is the total revenue passenger miles of the passenger airline for the taxable year;

(b) Except as modified by this subsection, the payroll factor shall be determined as provided in KRS 141.120(8)(b). Compensation paid during the tax period by a passenger airline to flight personnel shall be included in the numerator of the payroll factor by determining the product of:

1. The total amount paid during the taxable year to flight personnel; and
2. A fraction, the numerator of which is the Kentucky revenue passenger miles of the passenger airline for the taxable year and the denominator of which is the total revenue passenger miles of the passenger airline for the taxable year; and

(c) Except as modified by this subsection, the sales factor shall be determined as provided in KRS 141.120(8)(c). Transportation revenues shall be included in the numerator of the sales factor by determining the product of:

1. The total transportation revenues of the passenger airline for the taxable year; and
2. A fraction, the numerator of which is the Kentucky revenue passenger miles for the taxable year and the denominator of which is the total revenue passenger miles for the taxable year.

Effective: July 15, 2008

History: Created 2008 Ky. Acts ch. 18, sec. 3, effective July 15, 2008.

Legislative Research Commission Note (7/15/2008). 2008 Ky. Acts ch. 18, sec. 4 provides that this section "shall apply to taxable periods beginning after December 31, 2007."