## BUSINESS AND NONBUSINESS INCOME

## REGULATION 39-22-303.5.1(A)

(1) Section 39-22-303.5(1)(a) defines "business income" as income arising from transactions and activity in the regular course of the taxpayer's trade or business and includes income from tangible and intangible property if the acquisition, management, and disposition of the property constitute integral parts of the taxpayer's regular trade or business operations. All income that arises from the conduct of trade or business operations of a taxpayer is business income. The income of the taxpayer is business income unless clearly classifiable as nonbusiness income under the standards set forth in this regulation, under constitutional law or otherwise as explicitly provided by law.

(2) The classification of income by the labels occasionally used, such as manufacturing income, compensation for services, sales income, interest, dividends, rents, royalties, gains, operating income, non-operating income, etc., is of no aid in determining whether income is business or nonbusiness income. Income of any type or class and from any source is business income if it arises from transactions and activity occurring in the regular course of a trade or business. Accordingly, the critical element in determining whether income is "business income" or "nonbusiness income" is the identification of the transactions and activities that are the elements of a particular trade or business. In general all transactions and activities of the taxpayer that are dependent upon or contribute to the operation of the taxpayer's economic enterprise as a whole constitute the taxpayer's trade or business and will be transactions and activity arising in the regular course of, and will constitute integral parts of, a trade or business. (See paragraph (3) of regulation 39-22-303.11(c) concerning the calculation of income when a taxpayer engages in more than one line of business.)

(3) Business and Nonbusiness Income: Application of Definitions. The following are rules for determining whether particular income is business or nonbusiness income:

(a) Rents from real and tangible personal property. Rental income from real and tangible property is business income if the property with respect to which the rental income was received is used in the taxpayer's trade or business or is incidental thereto.

(b) Gains or losses from sales of assets.

(i) Gain or loss from the sale, exchange or other disposition of real or tangible or intangible personal property constitutes business income if the property while owned by the taxpayer was used in the taxpayer's trade or business. However, if such property was utilized exclusively for the production of nonbusiness income the gain or loss will constitute nonbusiness income. If the property was used both for the production of business income and nonbusiness income then the gain from the sale is business income. If the property was held for sale after having been used for the production of business income, the gain or loss shall be business income.

(ii) Gain or loss from the sale, exchange or other disposition of property shall be included in business income if such property is actually used or is available for or capable of being used during the tax period in the regular course of the trade or business of the taxpayer. Gain or loss from the disposition of property held as reserves or standby facilities or property held as a reserve source of materials shall be included in business income. Gain or loss from the disposition of property or equipment under construction during the tax period shall be included

in business income if such property was intended to be used in the regular course of the trade or business of the taxpayer.

(c) Interest**.** Interest income is business income where the intangible with respect to which the interest was received arises out of, is used, or was created in the regular course of the taxpayer's trade or business operations or where the purpose for acquiring and holding the intangible is related to or incidental to such trade or business operations.

(d) Dividends**.** Dividends are business income where the stock with respect to which the dividends are received arises out of or was acquired in the regular course of the taxpayer's trade or business operations or where the purpose for acquiring and holding the stock is related to or incidental to such trade or business operations.

(e) Patent and copyright royalties. Patent and copyright royalties are business income where the patent or copyright with respect to which the royalties were received arises out of or was created in the regular course of the taxpayer's trade or business operations or where the purpose for acquiring and holding the patent or copyright is related to or incidental to such trade or business operations.

(4) Proration of Deductions**.**

(a) In most cases an allowable deduction of a taxpayer will be applicable only to the business income arising from a particular trade or business or to a particular item of nonbusiness income. In some cases an allowable deduction may be applicable to the business incomes of more than one trade or business and/or to several items of nonbusiness income. In such cases the deduction shall be prorated among such trades or businesses and such items of nonbusiness income in a manner that fairly distributes the deduction among the classes of income to which it is applicable.

(b) Consistency and uniformity in reporting.

(i) Year-to-Year consistency**.** In filing returns with this state, if the taxpayer departs from or modifies the manner of prorating any such deduction used in returns for prior years, the taxpayer shall disclose in the return for the current year the nature and extent of the modifications.

(ii) State-to-State uniformity**.** If the returns or reports filed by a taxpayer with all states to which the taxpayer reports under this section, Article IV of the Multistate Tax Compact or the Uniform Division of Income for Tax Purposes Act are not uniform in the application or proration of any deduction then the taxpayer shall disclose in its return to this state the nature and extent of the variance or variances, except where such non-uniformity in reporting is a direct and necessary consequence of differences between the law of this state and the law of another state.