12C-1.0153 Property Factor for Apportionment.

(1) For purposes of the property factor, the term “real and tangible personal property” includes land, buildings, machinery, stocks of goods, equipment, and other real and tangible personal property, but does not include coin or currency.

(2) Property shall be included in the property factor if it is actually used or is available for or capable of being used during the tax period.

(a) Property held as reserves or standby facilities or property held as a reserve source of materials shall be included in the factor. For example, a plant temporarily idle or raw material reserves not currently being processed are includible in the factor.

(b) Property or equipment under construction.

1. Property or equipment under construction during the tax period (except inventoriable goods-in-process) shall be excluded from the factor until such property is actually used for the production of income.

2. If the property is partially used for the production of income while under construction, the value of the property to the extent used shall be included in the property factor.

3. Construction companies shall include property under construction in the property factor. Regardless of the method of accounting used (percentage-of-completion or completed-contract methods), the costs of construction-in-progress are included in the property factor, to the extent the costs exceed progress billings.

(c) Property held for the production of income shall remain in the property factor until its permanent withdrawal is established by an identifiable event such as its sale or the lapse of five years during which time the property was held for sale.

(d) Any amount of property which is directly related to an amount of gross receipts or income which is deducted, subtracted, or otherwise excluded in determining adjusted federal income is excluded from both the numerator and denominator of the property factor.

2. Example: The taxpayer owns an apartment building. The income from the rentals is determined to be non-business income. The value of the apartment building is excluded from the property factor.

(e) Tangible property in the possession of customers is excluded from the property factor even though the taxpayer holds legal title under conditional sales contracts or chattel mortgages.

(f) Satellites used in the communications industry are in the denominator of the property factor. The numerator is based upon the ratio of earth stations serviced. For example, if a particular satellite that is owned by the taxpayer services earth stations located in Los Angeles, Chicago, New York and Miami, 25 percent of the cost of the satellite will be included in the numerator of the factor for this state.


(a) Property in transit between locations of the taxpayer to which it belongs shall be considered to be at the destination for purposes of the property factor.

(b) Property in transit between a buyer and a seller which is included in the denominator of the property factor in accordance with regular accounting practices shall be included in the numerator of the state of destination.

4. Mobile property.

(a) The value of mobile or movable property such as construction equipment, trucks, or licensed electronic equipment which is located within and without Florida during the tax period shall be determined for the purposes of the numerator of the factor on the basis of total time within Florida during the tax period.

(b) The value of vessels carrying passengers to international waters where passengers cannot disembark from the vessel at points other than the origination point (cruises to nowhere); fishing boats; or party boats will be measured upon the port day method. The port day method measures the ratio of days in port inside the state, including port days to stock the boat and clean the boat, to total port days. Only the time that a vessel is moored to a wharf or pier is considered in computing the days spent in port.

(c) An automobile assigned to a traveling employee shall be included in the numerator if the employee’s compensation is included in the numerator of the payroll factor or if the automobile is licensed in Florida.

(d) Aircraft leasing companies.

1. Corporations leasing aircraft to airlines that fly the aircraft into Florida must elect to measure property in Florida using one of the following methods:

a. The original cost of the leased aircraft multiplied by a fraction, the numerator of which is the actual revenue miles in Florida for the aircraft leased and the denominator of which is the actual revenue miles everywhere for the aircraft leased; or

b. The original cost of the leased aircraft multiplied by a fraction, the numerator of which is lessee’s revenue miles in Florida for
their fleet of similar aircraft and the denominator of which is the lessee’s revenue miles everywhere for their fleet of similar aircraft.

2. The phrase “revenue miles” is defined by Section 220.151(2), F.S., and paragraph 12C-1.0151(2)(b), F.A.C.

3. The method used (the actual revenue miles for the aircraft or the fleet average of the lessee) must be consistent with the method for determining the sales factor as described in subparagraph 12C-1.0155(2)(d)2., F.A.C. Once the valuation method is elected, the taxpayer must petition the Department of Revenue to change the method of valuation for subsequent taxable years. The taxpayer shall petition the Department for the change by filing, on or before the due date for filing of the return for the taxable year, with extension, either: a written request for a technical assistance advisement under Section 213.22, F.S., and Department of Revenue Chapter 12-11, F.A.C.; or a petition for a declaratory statement under Section 120.565, F.S.

5 Valuation of Owned Property. Property owned by the taxpayer shall be valued at its original cost.

(a) As a general rule “original cost” is deemed to be the basis of the property for federal income tax purposes (prior to any federal adjustments) at the time of acquisition by the taxpayer and adjusted by subsequent capital additions or improvements thereto and partial disposition thereof, by reason of sale, exchange, or abandonment, etc. Depreciation is not taken into account in determining the value of the property.

(b) Any taxpayer subject to the jurisdiction of a regulatory agency shall determine the original cost of its property in accordance with the system of accounts prescribed by the regulatory agency for such taxpayer.

(c) Example (1): The taxpayer acquired a factory building in this state at a cost of $500,000 and 18 months later expended $100,000 for major remodeling of the building. Taxpayer files its return for the current taxable year on the calendar year basis. A depreciation deduction in the amount of $22,000 was claimed on the building for its return for the current taxable year. The value of the building includible in the numerator and denominator of the property factor is $600,000 as the depreciation deduction is not taken into account in determining the value of the building for purposes of the factor.

(d) Example (2): During the current taxable year, X Corporation merges into Y Corporation in a tax-free reorganization under the Internal Revenue Code. At the time of the merger, X Corporation owns a factory which X built five years earlier at a cost of $1,000,000. X has been depreciating the factory at the rate of two percent per year, and its basis in X’s hand at the time of the merger if $900,000. Since the property is acquired by Y in a transaction in which, under the Internal Revenue Code, its basis in Y’s hands is the same as its basis in X’s, Y includes the property in Y’s property factor at X’s original cost, without adjustment for depreciation, i.e., $1,000,000.

(e) If the original cost of property is unascertainable, the property is included in the factor at its fair market value as of the date of acquisition by the taxpayer.

(f) Inventory of stock of goods shall be included in the factor in accordance with the valuation method used for federal income tax purposes.

6 Valuation of Rented Property. Property rented by the taxpayer is valued at eight times its net annual rental rate.

(a) The net annual rental rate for any item of rented property is the annual rate paid by the taxpayer for such property, less the aggregate annual subrental rates paid by subtenants of the taxpayer.

1. However, subrents are not deducted when the subrents constitute business income because the property which produces the subrents is used in the regular course of a trade or business of the taxpayer when it is producing such income. Accordingly, there is no reduction in its value.

2. If the subrents taken into account in determining the net annual rental rate produce a negative or clearly inaccurate value for any item of property, another method which will properly reflect the value of rented property may be required by the Department or requested by the taxpayer. In no case, however, shall such value be less than an amount which bears the same ratio to the annual rental paid by the taxpayer for such property as the fair market value of that portion of the property used by the taxpayer bears to the total fair market value of the rented property.

(b) If property owned by others is used by the taxpayer at no charge or rented by the taxpayer for a nominal rate, the net annual rental rate for such property shall be determined on the basis of a reasonable market rental rate for such property.

(c) Example (1): The taxpayer rents a 20-story office building and uses the lower two stories for its general corporation headquarters. The remaining 18 floors are subleased to others. The rental of the eighteen floors is not incidental to but rather is separate from the operation of the taxpayer’s trade or business. The subrents are to be deducted from the rent paid by the taxpayer.

(d) Example (2): The taxpayer rents a 10-story building at an annual rental rate of $1,000,000. Taxpayer occupies two stories and sublets eight stories for $1,000,000 a year. The net annual rental rate of the taxpayer must not be less than two-tenths of the taxpayer’s annual rental rate for the entire year or $200,000.
(e)1. “Annual rental rate” is the amount paid as rental for property for a 12-month period (i.e., the amount of the annual rent).

2. Where property is rented for less than a 12-month period, the rent paid for the actual period of rental shall constitute the “annual rental rate” for the tax period. However, where a taxpayer has rented property for a term of 12 or more months and the current tax period covers a period of less than 12 months (due, for example, to a reorganization or change of accounting period), the rent paid for the short tax period shall be annualized. If the rental term is for less than 12 months, the rent shall not be annualized beyond its term. When the rental term is on a month-to-month basis, rent shall not be annualized because of the uncertain duration.

3. Example (1): Taxpayer A which ordinarily files its returns based on a calendar year is merged into Taxpayer B on April 30. The net rent paid under a lease with 5 years remaining is $2,500 a month. The rent for the tax period January 1 to April 30 is $10,000. After the rent is annualized, the net rent is $30,000 ($2,500 X 12).

4. Example (2): Same facts as in Example (1) except that the lease would have terminated on August 31. In this case the annualized net rent is $20,000 ($2,500 X 8).

(7) “Annual rent” is the actual sum of money or other consideration payable, directly or indirectly, by the taxpayer or for its benefit for the use of the property and includes (A) any amount payable for the use of real or tangible personal property, or any part thereof, whether designated as a fixed sum of money or as a percentage of sales, profits, or otherwise; and (B) any amount payable as additional rent or in lieu of rents, such as interest, taxes, insurance, repairs, or any other items which are required to be paid by the terms of the lease or other arrangement, not including amounts paid as service charges, such as utilities, janitor services, etc. If a payment includes rent and other charges unsegregated, the amount of rent shall be determined by consideration of the relative values of the rent and the other items.

(a) Example (1): A taxpayer, pursuant to the terms of a lease, pays the lessor $12,000 a year rent plus taxes in the amount of $2,000 and interest on a mortgage in the amount of $1,000. The annual rent is $15,000.

(b) Example (2): A taxpayer stores part of its inventory in a public warehouse. The total charge for the year was $1,000 of which $700 was for the use of storage space and $300 for inventory insurance, handling and shipping charges, and C.O.D. collection. The annual rent is $700.

(c) Example (3): A taxpayer, pursuant to the terms of a lease, pays a lessor $1,000 per month as a base rental and at the end of the year pays the lessor one percent of its gross sales of $400,000. The annual rent is $16,000 ($12,000 plus one percent of $400,000 or $4,000).

(d) Rent paid in advance that is not an allowable deduction in the year of payment is not included in the property factor in that year. For example, if the first and last month’s rent of a five-year lease were paid during the first month, the last month’s rent would not be capitalized into the property factor until the fifth year, when it would be deductible.

(e) Items that are considered day-to-day expenses of the business are not included in the property factor. For example, daily “rents” for hotel rooms or motel rooms or the daily rental for use of an automobile are not included in the property factor. However, if these items are rented for more than 30 days, the rent is capitalized into the property factor.

(f) Rentals paid for the use of circuits in satellites in outer space will be capitalized as rents.

(g) Software rentals will be capitalized as rents if they are determined to be tangible personal property. Canned programs will be considered to be tangible personal property. It is important to distinguish between computer rentals and fees paid for computer services, which are not capitalized as rents. The rental of computer hardware is capitalized.

(8) Leasehold improvements shall, for the purposes of the property factor, be treated as property owned by the taxpayer regardless of whether the taxpayer is entitled to remove the improvements or the improvements revert to the lessor upon expiration of the lease. Hence, the original cost of leasehold improvements shall be included in the factor.

(9) A portion of a partnership’s real and tangible personal property, both owned or rented and used during the tax year in the regular course of such trade or business, is included in the denominator of a taxpayer’s property factor to the extent of the taxpayer’s interest in the partnership. The value of such property located in Florida is also included in the numerator of the property factor. The value of property that is rented or leased by the taxpayer to the partnership or vice versa is, with respect to the taxpayer, excluded from the property factor of the partnership or eliminated to the extent of the taxpayer’s interest in the partnership in order to avoid duplication. For purposes of inclusion in the Florida property factor, partnership property is allocated to each partner based on their interest in the partnership, or as designated in the partnership agreement.

(10)(a) Property factor for financial organizations. For tax years beginning after December 31, 1986, the property factor used by a financial organization also includes intangible personal property, except goodwill, which is owned and used in the business. The term “financial organization” as defined in subsection 220.15(6), F.S., includes brokerage companies.
(b) Secured loans. Where the loan is secured by multiple liens upon real or tangible personal property, part of which is within the state and part of which is without the state, the amount of the loan which is included in the numerator of the factor is based on a fraction, the numerator of which is the value of the secured property in Florida, and the denominator of which is the value of the secured property everywhere. The “value of the secured property” will be the fair market value of the property at the time of the loan.

(11) Averaging Property Values.
(a) As a general rule, the average value of property owned by the taxpayer shall be determined by averaging the values at the beginning and end of the tax period.
(b) However, the Department is authorized to require or allow averaging by monthly values if such method of averaging is required to properly reflect the average value of the taxpayer’s property for the tax period.

1. Averaging by monthly values will be applied if substantial fluctuations in the values of the property exist during the tax period or where property is acquired after the beginning of the tax period or disposed of before the end of the tax period.

2. Example: The monthly value of the taxpayer’s property was as follows:

<table>
<thead>
<tr>
<th>Month</th>
<th>Value</th>
</tr>
</thead>
<tbody>
<tr>
<td>January</td>
<td>$2,000</td>
</tr>
<tr>
<td>February</td>
<td>2,000</td>
</tr>
<tr>
<td>March</td>
<td>3,000</td>
</tr>
<tr>
<td>April</td>
<td>3,500</td>
</tr>
<tr>
<td>May</td>
<td>4,500</td>
</tr>
<tr>
<td>June</td>
<td>10,000</td>
</tr>
<tr>
<td>July</td>
<td>15,000</td>
</tr>
<tr>
<td>August</td>
<td>17,000</td>
</tr>
<tr>
<td>September</td>
<td>23,000</td>
</tr>
<tr>
<td>October</td>
<td>25,000</td>
</tr>
<tr>
<td>November</td>
<td>13,000</td>
</tr>
<tr>
<td>December</td>
<td>2,000</td>
</tr>
<tr>
<td>Total</td>
<td>$120,000</td>
</tr>
</tbody>
</table>

The average value of the taxpayer’s property includible in the property factor for the income year is determined as follows:

$120,000/12 = $10,000

(c) Averaging with respect to rented property is achieved automatically by the method of determining the net annual rental rate of such property as set forth in subsection (7).

Rulemaking Authority 213.06(1), 220.51 FS. Law Implemented 220.15, 220.152, 220.44 FS. History—New 5-17-94, Amended 3-18-96.