

**79-1132. Same; payroll factor defined and described.** (a) *General.* The payroll factor is a fraction, the numerator of which is the total amount paid in this state during the taxable year by the taxpayer for compensation and the denominator of which is the total compensation paid for both within and without this state during the taxable year. The payroll factor shall include only that compensation which is included in the computation of the apportionable income tax base for the taxable year.

(b) *Compensation relating to nonbusiness income and independent contractors.* The compensation of any employee for services or activities which are connected with the production of nonbusiness income, income which is not includable in the apportionable income base, and payments made to any independent contractor or any other person not properly classifiable as an employee shall be excluded from both the numerator and denominator of the factor.

(c) *When compensation paid in this state.* Compensation is paid in this state if any one of the following tests, applied consecutively, is met:

(1) The employee's services are performed entirely within this state;

(2) the employee's services are performed both within and without the state, but the service performed without the state is incidental to the employee's service within the state. The term "incidental" means any service which is temporary or transitory in nature, or which is rendered in connection with an isolated transaction;

(3) if the employee's services are performed both within and without this state, the employee's compensation will be attributed to this state:

(A) If the employee's principal base of operations is within this state; or

(B) if there is no principal base of operations in any state in which some part of the services are performed, but the place from which the services are directed or controlled is in this state; or

(C) if the principal base of operations and the place from which the services are directed or controlled are not in any state in which some part of the service is performed but the employee's residence is in this state.

**History:** L. 1996, ch. 270, § 5; July 1.