



# *The Commonwealth of Massachusetts*

*Department of Revenue*

*Leverett Saltonstall Building,*

*100 Cambridge Street, Boston 02204*

L. JOYCE HAMPERS  
COMMISSIONER

February 18, 1981

You inquire about the allocation of corporate net income to Massachusetts under the following circumstances:

("Corporation") is a closely-held foreign corporation. It is a partner with a California corporation in the operation of a Massachusetts motel. All of its income is derived from the Massachusetts partnership, but it is subject to a net income tax in another state.

The Corporation is owned by three shareholders, two of whom are officers. From 1964 to 1972, the two officers actively managed the motel business within Massachusetts; each devoted about 80 hours per week to the business.

The officers have since moved out of Massachusetts. One is now a resident of Florida and one a resident of Vermont. The Florida resident now devotes about ten hours per week to the business. All of his services are performed outside Massachusetts, except that he makes two or three trips per year to Massachusetts to visit the motel and to discuss its operation with its on-site manager.

The Vermont resident devotes about five hours per week to the operation of the business. All of his services are performed outside Massachusetts, except that he makes "a limited number" of trips to Massachusetts each year for business purposes.

The two officer-shareholders at present receive nominal salaries, but the Corporation is considering raising their salaries to about \$10,000 per officer-shareholder.

The partnership includes in its expenses a "management fee," which it pays to the Corporation in addition to its share of the partnership's income. The Corporation passes on the entire amount of the fee to the officer-shareholder who resides in Florida. He retains 25 per cent of the fee, and pays the remaining 75 per cent to the on-site manager as compensation for his services.

The two officer-shareholders have the right to direct and control the on-site manager in the details of his work and in the means and methods by which he accomplishes it.

You inquire how the "management fee" and any salaries paid to the officer-shareholders are to be treated in allocating the Corporation's income to Massachusetts.

Under Massachusetts General Laws Chapter 63, Section 38(c), the taxable net income of a corporation having income from business activity which is taxable both within and without Massachusetts must be apportioned to Massachusetts by multiplying its taxable net income by a fraction, the numerator of which is the property factor plus the payroll factor plus twice the sales factor, and the denominator of which is four. Section 38(g) of Chapter 63 describes how this formula must be modified where one or more of the three factors is not applicable.

The payroll factor is a fraction, the numerator of which is the total amount paid in Massachusetts during the taxable year by the corporation for compensation, and the denominator of which is the total compensation paid everywhere during the taxable year. Chapter 63, Section 38(e). "Compensation" means wages, salaries, commissions, and any other form of remuneration paid to employees for personal services, and compensation is paid in Massachusetts if:

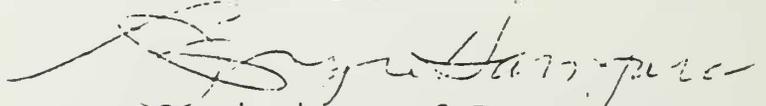
- "1. the employee's service is performed entirely within this commonwealth; or
2. the employee's service is performed both within and without this commonwealth, but the service performed without this commonwealth is incidental to the employee's service within this commonwealth; or
3. some of the service is performed in

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this commonwealth and (i) the base of operations or, if there is no base of operations, the place from which the service is directed or controlled is in this commonwealth, or (ii) the base of operations or the place from which the service is directed or controlled is not in any state in which some part of the service is performed, but the employee's residence is in this commonwealth." Chapter 63, Section 38(e).

Based on the foregoing, it is ruled that the entire amount of the "management fee" as well as salaries paid the officer-shareholders constitute compensation paid in Massachusetts for purposes of the allocation formula.

Very truly yours,



Commissioner of Revenue

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