

Business Taxes, Our Bestest Best Friends – Forever

By John B. Goldhamer www.JohnGoldhamer.com

Glen Allen Virginia

Today, I will explain the exciting field of *Business Taxes*, but I left the boring details back at my office.

“I Know My Stuff!”

I have a J.D. Equivalent Legal Education, have taken the Bar Exam, and have been essentially a *Tax Attorney* for many years. For my last employer I wrote 330-pages of Position Papers, Impact Statements, and Tax Appeals. For the Virginia Department of Taxation, I wrote over 100-pages of Position Papers on Corporation Income Tax. For another company, I composed a *Sales and Use Tax, Training Guideline for Medical Supply Sales Representatives* that was sent to over 2,000 Representatives around the world.

The Main Legal Theory of Business Taxation is that since companies receive the *“Protection” of the Federal, State, and Local Governments* for Military, Police, Fire, and Courts they should pay for the costs. When companies pay these costs, Individuals benefit!

Corporation Income Tax

Did anyone move here from another state?

When you moved from North Carolina to Virginia, you had a Salary or Income in both states. Your Federal Income Tax was easy; it included the income from both states.

Both North Carolina and Virginia wanted to tax your Income, so they *“Apportioned,”* your income based on the *“Number of Days”* you spent in North Carolina compared to the *“Number of Days”* in Virginia.

If you spent 180 Days in North Carolina and 185 Days in Virginia out of 365 Days, then your Income would be *“Apportioned”* 49% to North Carolina and 51% to Virginia.

Corporations also pay State Income Tax, but their Income is *“Apportioned”* to each state based on the percentage of *“Property, Payroll, and Sales”* in each state compared to the total *“Property, Payroll, and Sales” “Everywhere,”* which means all the States.

For example, *Wal-Mart Stores*, a publically traded company, is the largest corporation in the world based on sales of about \$475 Billion and is number 1 on the Fortune 500 list of the largest U.S. companies. Wal-Mart had about \$118 Billion Income (*Sales less Expenses*) and the states want to tax a share of this income.

For companies like Wal-Mart, their *Income* is *“Apportioned”* based on the percentage of *“Property, Payroll, and Sales”* in Virginia compared to the total *“Property, Payroll, and Sales” “Everywhere.”* Then, each state that Wal-Mart does business in will receive a share of Wal-Mart’s Income; similar to the person who moved from North Carolina to Virginia.

Of course, it is not that easy. Every state has different Laws and Regulations covering Additions, Subtractions, and Credits. Each percentage category is called a *“Factor,”* such as the *“Sales Factor.”* Virginia and some other states *“Double Weight”* the *“Sales Factor,”* or count it twice so that if a company has greater sales in a state and less *“Property or Payroll,”* then it may pay more Corporation Income Tax. Some States like Kentucky and Ohio also have a Local Corporation Income Tax.

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Sales and Use Tax

Who made a purchase recently?

When you made the purchase, you were the “*Consumer*” of the merchandise and the Merchant charged you “*Sales Tax*,” which in Virginia is generally 5.3% of the sales price that is divided 4.3% for the state and 1% for the locality. Some states have a different Local Sales Tax Rate for each locality.

If you made that purchase online, you were also the “*Consumer*” of the merchandise or “*Tangible Personal Property*,” and the Merchant may charge you 5.3% of the sales price for Virginia “*Sales Tax*.” If the Merchant were not registered with Virginia to charge you “*Sales Tax*,” then by law you would be required to pay 5.3% of the sales price to the Virginia Department of Taxation. This is called “*Use Tax*” and it is at the same rate as “*Sales Tax*.” Generally, State Departments of Revenue and Taxation will not audit individuals for “*Sales and Use Tax*.”

In the 45 States or Tax Jurisdictions that have “*Sales and Use Tax Laws*,” companies also pay “*Sales and Use Tax*” when they are the “*Consumer*” of Merchandise and certain Services. These Tax Jurisdictions frequently audit large companies by examining Invoices for “*Sales Tax*” charged by a Merchant or Service Provider. Tax Auditors also examine “*Use Tax*” voluntarily paid to Tax Jurisdictions by the company being audited.

Payroll Taxes

Who works for living?

When your Employer pays you a Salary, they have an agreement with the Federal and the State Governments to take a little out of each paycheck for advance payment of your Individual Income Tax. This is called “*Withholding Tax*.” After the end of the year, your Employer sends you a statement, or a W-2 of how much “*Withholding Tax*” they held for you for your advance payment of your Individual Income Tax, *which is very nice of them, but also required by law.* “*What a Guy!*”

Each company that is incorporated also pays an advance payment of their Corporation Income Tax or “*Withholding Tax*” to the Federal and the State Governments.

In addition, each company that has employees also takes a little out of each employee’s paycheck to pay “*Social Security and Medicare Taxes*,” which are called “*FICA*” and “*OASDI*.” Employers also pay additional “*Social Security Tax and Medicare Taxes*” for each employee’s salary.

Employers *don’t stop there*, they also pay “*Unemployment Tax*” to the Federal and State Governments for each employee, but the Employee does not pay this Tax; so it is a free benefit if you are laid off by your Employer.

Some Localities such a Denver have a “*Head Tax*.” For every Employee that has a “*Head on their Shoulders*,” *even if they do not use it very often*, the Employer pays a tax.

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Personal Property Tax

Who owns furniture?

In Virginia, only Individuals pay Personal Property Tax to the Locality for their Cars, Boats, RV's, Trucks, and Trailers, but they do not pay Personal Property Tax on the other things that they own. In some other States, Localities require Individuals to pay Personal Property Tax on all their positions. The theory is that Personal Property Tax pays for "Protection" of the property by the Locality for Police, Fire, and the Courts.

In Virginia and most states, companies pay a "*Business Personal Property Tax*" based on the "*Cost Price*" of property they own in that locality. Personal Property is also called "*Tangible Personal Property*," which are items that *can* be "*Moved, Seen, Felt, Touched or Otherwise Perceived by the Senses*."

For example, like most companies, the Wal-Mart store in Henrico County pays the county "*Business Personal Property Tax*" because it owns "*Tangible Personal Property*" including *Furniture & Fixtures*, such as Shelves, Desks, Chairs, Tables, File Cabinets, Cubicles, etc. physically located in the county. In addition to *Computer Equipment*, the Wal-Mart store also has *Machinery & Equipment*, such as Conveyer Belts, Forklifts, Copiers, and other Equipment.

Wal-Mart also has *Software*, which is considered "*Intangible Property*," or items that *cannot* be "*Seen, Felt, or Touched*," which are *Exempt* of Personal Property Tax or not taxed.

For "*Leased Equipment*," the "*Tangible Personal Property*" is owned by another company, who pays the "*Business Personal Property Tax*" based on their "*Cost Price*."

Business Licenses

Who has a Drivers License?

In most states, after Individuals pass a required test they are issued a valid Driver's License to drive a Vehicle.

For "*Dangerous professions*" that require a high level of specialized skill, most states require a "*Professional License*," which after passing a test, it grants the authority to practice in that jurisdiction for professions such as Architects, Engineers, Nurses, and Tattoo Artists. Generally, companies will reimburse employees for required "*Professional Licenses*."

"*Business Professional Licenses*" are approved permits or licenses issued by a jurisdiction granting the authority for a business to provide professional services by licensed individuals.

For companies to do business locally, most counties and cities require a "*Business License*," which is a permit to conduct business within the geographical jurisdiction. Generally, it is a percentage of Gross Sales and no test is required, just "*A Good payment*."

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Annual Reports

Who has received a Report Card?

When companies want to “Qualify” to legally do business or operate within a state’s borders, generally they must register and file an “Annual Report” with the State’s Secretary of State or in Virginia, the *State Corporation Commission*, providing update information about the business, which typically include:

- Names and Addresses of Officers, Directors, Members, and Trustees
- Company Principal Business Office Address
- Name of the Company's Registered Agent
- Number of Shares of Stock the Corporation has Issued

A “Registered Agent” is generally a Lawyer, Law Firm, or Processing Company such as CT Corp who will accept Subpoenas issued by Courts in behalf of or for the company.

If the “Annual Report” filing is up to date and the fees paid, then the State will issue a “Certificate of Good Standing” for the company, which is similar to a Pass – Fail Report Card.

When a company is created or formed in one state but wants to do business in a second state it is called a “Foreign Company,” because it was formed outside the state; not because the company is outside the U.S. or someone at the company speaks French.

Unusual Business Taxes

Litter Tax

In Virginia, if a company manufactures or sells products that include anything disposable, then they must pay an annual Litter Tax for each location. The money is for the Litter Control and Recycling Fund, which is used to “Promote Litter Prevention.” Generally, State Excise Taxes, such as Egg Tax, Peanut Tax, and Forest Products Tax are to promote the products.

Heavy Highway Vehicle Use Tax

If a company operates Heavy Motor Vehicles over 55,000 pounds, such as *Trucks, Truck Tractors, and Buses on Public Highways* then a Federal “Heavy Highway Vehicle Use Tax” must be paid to the IRS. The tax is because these Heavy Vehicles severely contribute to the corrosion of nation's roads. Generally, Vans, Pickup Trucks, Panel Trucks, and similar trucks are not subject to the tax because they weigh less than 55,000 pounds.

Production of Nuclear Material Excise Tax

In Tennessee, if a company “Produces Nuclear Material,” then there is an Excise Tax on the Kilograms of *Separative Work Units*,” which is the effort necessary to separate Uranium 235 and Uranium 238. In addition, the sale of “Enriched Uranium” used in Nuclear Power Plants and for Nuclear Weapons must include Tennessee Sales Tax unless exempt of tax.

I do not think the Country of Iran has a Production of Nuclear Material Excise Tax.

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When companies pay these costs, Individuals benefit!

That is why:

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