

TITLE 4: ECONOMIC RESOURCES
DIVISION 1: REVENUE AND TAXATION

§ 1202. Earnings Tax.

(a) There is imposed on every person a yearly tax on such person's total earnings.

(b) For purposes of this chapter, "earnings" shall mean:

(1) A gain as determined under NMTIT Section 1001 received from the sale of personal property, tangible or intangible, by a resident that was not in the course of carrying on a business.

(2) One half of the gain as determined under NMTIT section 1001 received from the sale of real property located in the Commonwealth that was not in the course of carrying on a business. Provided, however, that the sale of private real property to the Commonwealth government for a public purpose shall not be deemed a sale of real property for the purposes of this subsection.

(3) One half of the net income received from leasing of real property located in the Commonwealth, including the assignment of any lease that was not in the course of carrying on a business. For purposes of this subsection, "net income from leasing real property including the assignment of any lease," means the income less expenses from the rental of real property as determined under the NMTIT.

(4) [Repealed.]

(5) Gross winnings received from any gaming, lottery, raffle or other gambling activity in the Commonwealth.

(6) All other types of income that a resident individual must report in determining his NMTIT, except:

(i) Payments received by an employee or his beneficiary from a retirement plan, including the Commonwealth retirement plan, or as unemployment compensation. For purposes of this subsection, the term "retirement plan," other than the Commonwealth retirement plan means a plan that qualifies under Subchapter D, Subtitle A of the NMTIT.

(ii) Amounts received as alimony or separate maintenance payments as defined under Section 71 of NMTIT.

(iii) Unemployment compensation as defined under Section 85 of NMTIT.

(iv) Social security benefits as defined under Section 86 of NMTIT.

(v) Distributive shares of partnerships and S corporations to respective partners and shareholders.

In addition to the items included within subsections (i)-(iv) of this subsection, the secretary by ruling or regulation may exempt other income when the secretary determines that imposing the earnings tax would result in excessive taxation.

TITLE 4: ECONOMIC RESOURCES
DIVISION 1: REVENUE AND TAXATION

(c) The tax imposed under this section shall not apply to earnings from a de minimis transaction. The secretary shall prescribe regulations to determine whether a transaction is de minimis.

(d) In determining the total earnings, a person shall not reduce any earnings by any loss.

Source: PL 9-22, § 1 (§ 1202); amended by PL 9-59, § 2; PL 10-80, § 2; subsection (b)(2) amended by PL 11-36, § 2.

Commission Comment: With respect to the reference to the “secretary” of the Department of Finance, see Executive Order 94-3 (effective August 23, 1994), reorganizing the executive branch, changing agency names and official titles, and effecting other changes, set forth in the Commission comment to 1 CMC § 2001.

PL 10-80, § 2 repealed subsection (b)(4) of this section. PL 10-80 took effect on January 6, 1998. According to PL 10-80, § 1:

Section 1. Purpose. 4 CMC section 1202(b)(4), as amended by Public Law 9-22, imposes an “earnings tax” on interest, dividends, rents, royalties or similar income earned in and derived from a person in the Commonwealth and received by a resident not in the course of carrying on a business.” This tax, which was created by P.L. 9-22, imposes an undue burden on persons living on a fixed income, especially older people. It is therefore the purpose of this legislation to repeal the earnings tax currently imposed on interest type earnings in the Commonwealth.

PL 11-36, § 2 amended subsection (b)(2) of this section. PL 11-36 took effect on September 14, 1998, but the Act is to apply to all sales of private property to the Commonwealth government for a public purpose on or after January 1, 1994. According to PL 11-36, §§ 1, 3, 4, and 5:

Section 1. Findings and Purpose. The Legislature finds that there is an inherent unfairness in the tax consequences of land exchanges versus land acquisitions for a public purpose. Land exchanges are not subject to taxation while purchases of private lands by the government are subject to earnings tax. It is the purpose of this legislation to remedy this unequal treatment and exempt from taxation all transactions involving the purchase of private lands for a public purpose by the Commonwealth government.

. . .

Section 3. Severability. If any provision of this Act or the application of any such provision to any person or circumstance should be held invalid by a court of competent jurisdiction, the remainder of this Act or the application of its provisions to persons or circumstances other than those to which it is held invalid shall not be affected thereby.

Section 4. Application. This Act shall apply to all sales of private property to the Commonwealth Government for a public purpose on or after January 1, 1994.

Section 5. Savings Clause. This Act and any repealer contained herein shall not be construed as affecting any existing right acquired under

TITLE 4: ECONOMIC RESOURCES
DIVISION 1: REVENUE AND TAXATION

contract or acquired under statutes repealed or under any rule, regulation or order adopted under the statutes. Repealers contained in this Act shall not affect any proceeding instituted under or pursuant to prior law. The enactment of this Act shall not have the effect of terminating, or in any way modifying, any liability, civil or criminal, which shall already be in existence at the date this Act becomes effective.

2 CMC § 4745 states that any compensation received under the Land Compensation Act of 2002 shall not be subject to the earnings tax imposed under 4 CMC § 1202(b)(2).