

TITLE 4: ECONOMIC RESOURCES
DIVISION 1: REVENUE AND TAXATION

§ 1703. Nonretroactivity of Tax on Commonwealth Sourced Income.

In regard to the taxation under the NMTIT of income accruing on or prior to January 1, 1985, the NMTIT shall in all cases be interpreted as subjecting to the NMTIT only that income which is not “Commonwealth sourced income.”

(a) The introductory section of Section 61(a) of the NMTIT shall be construed as though it read: “General Definition.-- Except as otherwise provided in this subtitle, gross income means all income realized and received or accrued under the taxpayer’s method of accounting except Commonwealth sourced income accruing on or before January 1, 1985, with respect to transactions, events, or from whatever conduct taking place after December 31, 1984, from whatever source derived, including (but not limited to) the following items:”

(b) *Effective Date: Conforming Provisions.*

(1) *NMTIT Effective Date: Conforming Provisions.* To the extent necessary to assure that “Commonwealth sourced income” accruing prior to January 1, 1985, and after February 28, 1913, is not retroactively subject to the NMTIT and to the extent allowed by subsection (c) of this section, all Internal Revenue Code provisions drafted with reference to the inception date of a new tax and intended to assure that the IRC is not retroactively applied, and all authorities interpreting such provisions, shall be construed by replacing each reference to the inception date and the last day of the old United States tax regime with the words “January 1, 1985,” and “December 31, 1984,” appropriately.

(2) *IRC Effective Date: Conforming Provisions.* To the extent necessary to assure that all sources of income accruing prior to February 28, 1913, are not retroactively subject to the NMTIT, all IRC provisions drafted with reference to the inception date of a new tax and intended to assure that the IRC is not retroactively applied to any source of income, and all authorities interpreting such provisions, shall be construed by utilizing the dates specified within the IRC provisions, i.e., March 1, 1913, and February 28, 1913.

(3) *IRC Subpart F Effective Date: Conforming Provisions.* To the extent necessary to assure taxes imposed by Subpart F and related taxes on United States owners of certain controlled foreign corporations accruing prior to January 1, 1962, are not retroactively subject to the NMTIT, all IRC provisions drafted with reference to the inception date of taxes imposed by Subpart F and related taxes on United States owners of certain controlled foreign corporations and intended to assure that taxes imposed by Subpart F and related taxes on United States owners of certain controlled foreign corporations are not retroactively applied to any source of income, and all authorities interpreting such provisions, shall be construed by utilizing the dates specified within the IRC provisions, i.e., December 31, 1984, and January 1, 1985.

(c) *Basis Limitation; Qualified Fresh-Start Assets.*

(1) The basis for purposes of determining gain and allowance for depreciation, amortization and like purposes, of all qualified fresh-start assets shall be the higher of their basis as determined under the NMTIT, or their fair market value on January 1, 1985.

(2) “Qualified fresh-start assets” means:

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(i) All real property located in the Commonwealth;

(ii) All personal property owned, directly or indirectly, immediately prior to and on January 1, 1985, by an individual bona fide resident of the Commonwealth immediately prior to and on January 1, 1985, the amount realized from the actual sale of which would have been Commonwealth sourced income and would not have been subject to income taxation on December 31, 1984 by any of the following jurisdictions: the United States, the Virgin Islands, American Samoa, Puerto Rico, and Guam; and

(iii) All personal property owned, directly or indirectly, immediately prior to and on January 1, 1985, by a corporation incorporated in or under the laws of the Commonwealth, the amount realized from the actual sale of which would have been Commonwealth Sourced Income and would not have been subject to income taxation on December 31, 1984 by any of the following jurisdictions: the United States, the Virgin Islands, American Samoa, Puerto Rico, and Guam.

(3) For purposes of this section, personal property means all personal property wheresoever located, whether tangible or intangible, (including, but not limited to, installment sales contracts, annuity contracts, interests in employee benefit plans, whether vested or unvested, and inventory items).

(4) The fair market value of any qualified fresh-start asset shall be established at the taxpayer's election by:

(i) Independent appraisal;

(ii) Discounting its ultimate sales price back to the valuation date of January 1, 1985, using the appropriate discount factor, to be specified by the Governor, by regulation;

(iii) A pro rata allocation of the difference between its cost basis, as adjusted under NMTIT Section 1016, and its sales price, with respect to the periods it was held, before and after January 1, 1985, respectively; or

(iv) Any other method provided by the Governor by regulation.

(d) *Recapture*. If during any taxable year an asset is disposed of and a portion or all of the proceeds received from the disposition of the asset is not Commonwealth sourced income, the benefit of any deduction for depreciation, amortization, and like purposes previously claimed under this section attributable to such asset is to be recaptured and appropriately taxed. The secretary shall prescribe by regulations the method and manner by which any such deductions are to be recaptured for purposes of this subsection.

Source: PL 9-22, § 1 (§ 1703), modified (repealing PL 4-24, § 2); (c)(2)(ii) amended by PL 14-35, § 6(d); (c)(2)(iii) amended by PL 14-35, § 6(e).

Commission Comment: With respect to the references 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.

See the comment to 4 CMC § 1101 regarding PL 14-35.