



STATE OF DELAWARE  
DEPARTMENT OF FINANCE  
DIVISION OF REVENUE  
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**DIVISION OF REVENUE**

**TECHNICAL INFORMATION MEMORANDUM 93-3**

**April 30, 1993**

**SUBJECT:           IMPACT OF HOUSE BILL NO. 573 UPON  
NONRESIDENT SHAREHOLDERS OF AN S  
CORPORATION.**

**CODE SECTIONS: 30 DEL.C. §§ 1902(b)(9), 1902(b)(8),  
1124 and 1145**

**I. Background.**

Prior to amendment by House Bill 573, which was enacted into law in July of 1992, 30 Del. C. § 1902(b)(9) imposed Delaware corporate income tax upon an S corporation having any nonresident individual shareholders on the last day of a taxable year. House Bill No. 573 amended § 1902(b)(9) to provide complete exemption from Delaware corporate income tax for an S corporation without regard to whether any of its shareholders are nonresidents.

House Bill No. 573 also amended § 1124 to subject an individual nonresident shareholder of an S corporation to Delaware personal income tax on such shareholder's distributive share of the Delaware-source income of the S corporation. Prior to the amendments made to § 1124 by House Bill No. 573, the income of an S corporation was not considered Delaware-source income with respect to the nonresident individual shareholders of the S corporation.

For purposes of determining the source of an S corporation's income, § 1124(e), as amended by House Bill No. 573, provides that the rules contained in § 1145(a) and (c) shall apply in the same manner as if the S corporation were a partnership and its nonresident shareholders were nonresident partners. Under § 1145(a) and § 1124(b), a nonresident shareholder's distributive share of the items of income, gain, loss and deduction of an S corporation is considered to have a Delaware source if and only if such items are attributable to: (1) the ownership or disposition of any interest in real or tangible personal property in Delaware, (2) a "business, trade, commerce, profession or vocation" carried on in Delaware, or (3) "winnings from pari-mutuel wagering derived from the conduct of pari-mutuel activities within [Delaware]." Thus, a nonresident individual shareholder of an S corporation is not subject to Delaware personal income tax on his distributive share of the S corporation's income unless such income is attributable to one of the three enumerated Delaware sources.

II. Determination of the source State in the case of S corporation income from intangible personal property.

Section 1124(c) states:

"Income from intangible personal property, including annuities, dividends, interest and gains from the disposition of intangible personal property, shall constitute income derived from sources within [Delaware] only to the extent that such income is from property employed by the taxpayer in a business, trade, commerce, profession or vocation carried on in [Delaware]."

Whether an S corporation's income from intangible personal property is considered to be derived from Delaware sources depends

upon whether such intangible personal property is employed by the S corporation in a business, trade, etc., carried on by the S corporation within Delaware.

III. Application of House Bill No. 573 to S Corporations also exempt from taxation under § 1902(b)(8).

Thirty Del. C. § 1902(b)(8) provides exemption from Delaware corporate income tax for corporations whose activities within Delaware are limited to the maintenance and management of their intangible investments and related activities. An S corporation may qualify for exemption from Delaware corporate income tax under § 1902(b)(8) [as well as being exempt under § 1902(b)(9)]. House Bill No. 573 contained no provision that would preclude an S corporation from being a corporation described in § 1902(b)(8).

Corporations exempt from tax under § 1902(b)(8) as a result of confining their activities within Delaware to maintaining and managing their own investments shall not be considered to be using their investment assets in a "business, trade, commerce, profession, or vocation" within Delaware.

IV. Effective Date.

The changes in the Delaware taxation of S corporations and their nonresident individual shareholders made by House Bill No. 573 are effective for taxable years of S corporations beginning on or after January 1, 1992. Thus, a nonresident individual shareholder of an S corporation is subject to Delaware personal

income tax for 1992 on such shareholder's distributive share of the  
S corporation's Delaware-source income.

A handwritten signature in black ink, appearing to read "Robert W. Chastant". The signature is fluid and cursive, with a long horizontal stroke extending to the right from the end of the name.

Robert W. Chastant  
Director of Revenue