

Language of State Gains Taxation Statutes Related to the Sale of Partnership or PTP Interests*

State	Citation	General Tax on Gain or Recapture — (Provisions Addressing PTPs are in Italics)
California	Cal. Revenue and Tax Code §25125	<p>(a) Capital gains and losses from sales of real property located in this state are allocable to this state.</p> <p>(b) Capital gains and losses from sales of tangible personal property are allocable to this state if:</p> <ol style="list-style-type: none"> (1) The property had a situs in this state at the time of the sale, or (2) The taxpayer's commercial domicile is in this state and the taxpayer is not taxable in the state in which the property had a situs. <p>(c) Except in the case of the sale of a partnership interest, capital gains and losses from sales of intangible personal property are allocable to this state if the taxpayer's commercial domicile is in this state.</p> <p>(d) Gain or loss on the sale of a partnership interest is allocable to this state in the ratio of the original cost of partnership tangible property in the state to the original cost of partnership tangible property everywhere, determined at the time of the sale. In the event that more than 50 percent of the value of partnership's assets consist of intangibles, gain or loss from the sale of the partnership interest is allocated to this state in accordance with the sales factor of the partnership for its first full tax period immediately preceding the tax period of the partnership during which the partnership interest was sold.</p>
Hawaii	Hi. Rev. Stat. §235-26	<p>Allocation of capital gains and losses.</p> <p>(a) Capital gains and losses from sales of real property located in this State are allocable to this State.</p> <p>(b) Capital gains and losses from sales of tangible personal property are allocable to this State if:</p> <ol style="list-style-type: none"> (1) The property had a situs in this State at the time of the sale; or (2) The taxpayer's commercial domicile is in this State and the taxpayer is not taxable in the state in which the property had a situs. <p>(c) Except in the case of the sale of a partnership interest, capital gains and losses from sales of intangible personal property are allocable to this State if the taxpayer's commercial domicile is in this State.</p> <p>(d) Gain or loss from the sale of a partnership interest is allocable to this State in the ratio of the original cost of partnership tangible property in the State to the original cost of partnership tangible property everywhere, determined at the time of the sale. If more than fifty per cent of the value of a partnership's assets consists of intangibles, gain or loss from the sale of the partnership interest shall be allocated to this State in accordance with the sales factor of the partnership for its first full tax period immediately preceding its tax period during which the partnership interest was sold. [L 1967, c 33, pt of §1; HRS §235-26; am L 1989, c 19, §1]</p>

<p>Idaho</p>	<p>Id. Stat. Title 63, §3026A</p>	<p>63-3026A.Computing Idaho taxable income of part-year or nonresident individuals, trusts and estates.</p> <p>(1) For nonresident individuals, trusts, or estates the term “Idaho taxable income” includes only those components of Idaho taxable income as computed for a resident which are derived from or related to sources within Idaho. This is to be computed without the deductions for either the standard deduction or itemized deductions or personal exemptions except as provided in subsection (4) of this section.</p> <p>(2) For part-year resident individuals, trusts or estates the term “Idaho taxable income” includes the total of:</p> <p>(a) Idaho taxable income as computed for a resident for the portion of the tax period during which a taxpayer is domiciled in or is residing in Idaho, plus</p> <p>(b) those components of Idaho taxable income which are derived from or related to sources within Idaho for that portion of the tax period during which a taxpayer is not domiciled in and is not residing in Idaho. This is to be computed without the deductions for either the standard deduction or itemized deductions or personal exemptions except as provided in subsection (4) of this section.</p> <p>(3) For the purposes of subsections (1) and (2) of this section:</p> <p>(a) Income shall be considered derived from or relating to sources within Idaho when such income is attributable to or resulting from:....</p> <p>(vii) Gains or losses realized from the sale or other disposition of a partnership interest or stock in an S corporation to the extent of the partnership’s or S corporation’s Idaho apportionment factor in the taxable year immediately preceding the year of sale. <i>In the case of a nonresident individual who sells the nonresident’s interest in a publicly traded partnership defined in section 7704 of the Internal Revenue Code doing business in Idaho, the gains or losses shall be determined using the amount described in section 751 of the Internal Revenue Code, multiplied by the apportionment factor for the year in which the sale occurred.</i></p>
<p>Iowa</p>	<p>IA Rule 701 40.16(222)</p>	<p>701-40.16(9)b.</p> <p><i>Capital gains from sales or exchanges of interests in partnerships.</i> When a nonresident of Iowa sells or exchanges the individual's interest in a partnership, the nonresident is actually selling an intangible since the partnership can continue without the nonresident partner and the assets used by the partnership are legally owned by the partnership and an individual retains only an equitable interest in the assets of the partnership by virtue of the partner's ownership interest in the partnership. However, because of the unique attributes of partnerships, the owner's interest in a partnership is considered to be localized or “sourced” at the situs of the partnership's activities as a matter of law. <i>Arizona Tractor Co. v. Arizona State Tax Com'n.</i>, 566 P.2d 1348, 1350 (Ariz. App. 1997); Iowa Code chapter 486 (unique attributes of a partnership defined). Therefore, if a partnership conducts all of its business in Iowa, 100 percent of the gain on the sale or exchange of a partnership interest would be attributable to Iowa. On the other hand, if the partnership conducts 100 percent of its business outside of Iowa, none of the gain would be attributable to Iowa for purposes of the Iowa income tax. In the situation where a partnership conducts business both in and out of Iowa, the capital gain from the sale or exchange of an interest in the partnership would be allocated or apportioned in and out of Iowa based upon the partnership's activities in and out of Iowa in the year of the sale or exchange.</p> <p>Note that if a partnership is a publicly traded partnership and is taxed as a corporation for federal income tax purposes, any capital gains realized on the sale or exchange of a non-resident partner's interest in the partnership will receive the same tax treatment as the capital gain from the sale or exchange of an interest in a C corporation or an S corporation as specified in paragraph “a” of this subrule.</p>

<p>Massachusetts</p>	<p>Massachusetts, Reg. 830 CMR 62.5A.1</p>	<p>830CMR62.5A.1(3)(c)8 <i>Sale of a business or an interest in a business.</i> Income from a trade or business may include income that results from the sale of a business or an interest in a business.</p> <p>This rule generally applies to the sale of an interest in a sole proprietorship, general partnership, limited liability partnership, a general or limited partner's interest in a limited partnership (subject to the exception in the following sentence), or an interest in a limited liability company. It generally does not apply to the sale of a limited partner's interest in a publicly traded limited partnership, or to the sale of shares of stock in a C or S corporation, to the extent that the income from such gain is characterized for federal income tax purposes as capital gains. Nevertheless, gain from the disposition of a limited partner's interest in a publicly traded limited partnership or the disposition of shares of corporate stock will be considered Massachusetts source income if it is treated as compensation for federal income tax purposes. Such gain may also give rise to Massachusetts source income if, for example, the gain is otherwise connected with the taxpayer's conduct of a trade or business, including employment (as in a case where the stock is related to the taxpayer's compensation for services) or if the organizational form of a business is changed in anticipation of the disposition of one or more interests therein for the purpose of avoiding Massachusetts tax. Depending on the facts and circumstances of the case, gain from the sale of such corporate stock or limited partner's interest in a publicly traded limited partnership will be taxable to non-residents if it is determined that the taxpayer has engaged in a transaction or multiple transactions, the purpose of which is the avoidance of tax upon the gain (e.g. sham or step transaction, or prohibited assignment of income).</p>
<p>Maine</p>	<p>Me. Rev. Stat. Title 36, Part 8, Chapter 807 §5142.</p>	<p>3. Intangibles. 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 this State only to the extent that such income is from property employed in a business, trade, profession, or occupation carried on in this State.</p> <p>3-A. Gain or loss on sale of partnership interest. Notwithstanding subsection 3, the gain or loss on the sale of a partnership interest is sourced to this State in an amount equal to the gain or loss multiplied by the ratio obtained by dividing the original cost of partnership tangible property located in Maine by the original cost of partnership tangible property everywhere, determined at the time of the sale. Tangible property includes property owned or rented and is valued in accordance with section 5211, subsection 10. If more than 50% of the value of the partnership's assets consist of intangible property, gain or loss from the sale of the partnership interest is sourced to this State in accordance with the sales factor of the partnership for its first full tax period immediately preceding the tax period of the partnership during which the partnership interest was sold. For purposes of this subsection, the sales factor of a partnership is determined in accordance with section 5211, subsections 14, 15 and 16-A. This subsection does not apply to the sale of a limited partner's interest in an investment partnership where more than 80% of the value of the partnership's total assets consists of intangible personal property held for investment, except that such property cannot include an interest in a partnership unless that partnership is itself an investment partnership.</p> <p>If the apportionment provisions of this section do not fairly represent the extent of the partnership's business activity in this State, the taxpayer may petition for, or the State Tax Assessor may require, in respect to all or any part of the partnership's business activity the employment of any other method to effectuate an equitable apportionment to this State of the partner's income from the sale of the partnership interest.</p> <p>4. Deductions for losses. Deductions with respect to capital losses, net long-term</p>

		<p>capital gains, and net operating losses shall be based solely on income, gains, losses and deductions derived from or connected with sources in this State, under regulations to be prescribed by the assessor but otherwise shall be determined in the same manner as the corresponding federal deductions.</p>
<p>Minnesota</p>	<p>Minn. Stat. §290.17</p>	<p>290.17 GROSS INCOME, ALLOCATION TO STATE. Subdivision 1. Scope of allocation rules. (a) The income of resident individuals is not subject to allocation outside this state. The allocation rules apply to nonresident individuals, estates, trusts, nonresident partners of partnerships, nonresident shareholders of corporations treated as “S” corporations under section 290.9725, and all corporations not having such an election in effect. If a partnership or corporation would not otherwise be subject to the allocation rules, but conducts a trade or business that is part of a unitary business involving another legal entity that is subject to the allocation rules, the partnership or corporation is subject to the allocation rules. (b) Expenses, losses, and other deductions (referred to collectively in this paragraph as “deductions”) must be allocated along with the item or class of gross income to which they are definitely related for purposes of assignment under this section or apportionment under section 290.191, 290.20, or 290.36. Deductions definitely related to any item of gross income assigned under subdivision 2, paragraph (e), are assigned to the taxpayer’s domicile. (c) In the case of an individual who is a resident for only part of a taxable year, the individual’s income, gains, losses, and deductions from the distributive share of a partnership, S corporation, trust, or estate are not subject to allocation outside this state to the extent of the distributive share multiplied by a ratio, the numerator of which is the number of days the individual was a resident of this state during the tax year of the partnership, S corporation, trust, or estate, and the denominator of which is the number of days in the taxable year of the partnership, S corporation, trust, or estate.</p> <p>Subd. 2. Income not derived from conduct of a trade or business. The income of a taxpayer subject to the allocation rules that is not derived from the conduct of a trade or business must be assigned in accordance with paragraphs (a) to (f): (b) Income or gains from tangible property located in this state that is not employed in the business of the recipient of the income or gains must be assigned to this state. (c) Income or gains from intangible personal property not employed in the business of the recipient of the income or gains must be assigned to this state if the recipient of the income or gains is a resident of this state or is a resident trust or estate. Gain on the sale of a partnership interest is allocable to this state in the ratio of the</p>

		original cost of partnership tangible property in this state to the original cost of partnership tangible property everywhere, determined at the time of the sale. If more than 50 percent of the value of the partnership’s assets consists of intangibles, gain or loss from the sale of the partnership interest is allocated to this state in accordance with the sales factor of the partnership for its first full tax period immediately preceding the tax period of the partnership during which the partnership interest was sold.
Montana	Mt. Code Ann. §15-30-2101	<p>15-30-2101. Definitions. For the purpose of this chapter, unless otherwise required by the context, the following definitions apply:....</p> <p>(18) (a) “Montana source income” means:</p> <p>....</p> <p><i>(xvii) in the case of a nonresident who sells the nonresident’s interest in a publicly traded partnership doing business in Montana, the gain described in Internal Revenue Code, 26 U.S.C. 751, multiplied by the Montana apportionment factor. If the net gain or loss resulting from the use of the apportionment factor as provided in this subsection (18)(a)(xvii) does not fairly and equitably represent the nonresident taxpayer’s business activity interest, then the nonresident taxpayer may petition for, or the department may require with respect to any and all of the partnership interest, the employment of another method to effectuate an equitable allocation or apportionment of the nonresident’s income. This subsection (18)(a)(xvii) is intended to preserve the rights and privileges of a nonresident taxpayer and align those rights with taxpayers who are afforded the same rights under 15-1-601 and 15-31-312.</i></p>
New York	N.Y. Laws-TAX- Chapter 631 (b)(1)(A)(1)	<p>§ 631. New York source income of a nonresident individual. (a) General. The New York source income of a nonresident individual shall be the sum of the following:..</p> <p>(b) Income and deductions from New York sources.</p> <p>(1) Items of income, gain, loss and deduction derived from or connected with New York sources shall be those items attributable to:</p> <p>(A) the ownership of any interest in real or tangible personal property in this state; or</p> <p>(1) For purposes of this subparagraph, the term “real property located in this state” includes an interest in a partnership, limited liability corporation, S corporation, or non-publicly traded C corporation with one hundred or fewer shareholders (hereinafter the “entity”) that owns real property that is located in New York and has a fair market value that equals or exceeds fifty percent of all the assets of the entity on the date of sale or exchange of the taxpayer’s interest in the entity. Only those assets that the entity owned for at least two years before the date of the sale or exchange of the taxpayer’s interest in the entity are to be used in determining the fair market value of all the assets of the entity on the date of sale or exchange. The gain or loss derived from New York sources from the taxpayer’s sale or exchange of an interest in an entity that is subject to the provisions of this subparagraph is the total gain or loss for federal income tax purposes from that sale or exchange multiplied by a fraction, the numerator of which is the fair market value of the real property located in New York on the date of sale or exchange and the denominator of which is the fair market value of all the assets of the entity on the date of sale or exchange.</p>
North Dakota	N.D. Cen. Code §57-38.1-17.1.	<p>Gain or loss on the sale of a partnership. Gain or loss on the sale of a partnership interest is allocable to this state in the ratio of the original cost of partnership tangible property in the state to the original cost of partnership tangible property everywhere,</p>

		<p>determined at the time of the sale. In the event that more than fifty percent of the value of the assets of the partnership consist of intangibles, gain or loss from the sale of the partnership interest is allocated to this state in accordance with the ratio of total North Dakota income to total income of the partnership for its first full tax period immediately preceding the tax period of the partnership during which the partnership interest was sold.</p>
<p>Oklahoma</p>	<p>OK Stat. Title 68, Section 2358</p>	<p>Section 2358. For all tax years beginning after December 31, 1981, taxable income and adjusted gross income shall be adjusted to arrive at Oklahoma taxable income and Oklahoma adjusted gross income as required by this section.</p> <p>A. The taxable income of any taxpayer shall be adjusted to arrive at Oklahoma taxable income for corporations and Oklahoma adjusted gross income for individuals, as follows:</p> <p>4. Items of the following nature shall be allocated as indicated. Allowable deductions attributable to items separately allocable in subparagraphs a, b and c of this paragraph, whether or not such items of income were actually received, shall be allocated on the same basis as those items:</p> <p>b. Income from intangible personal property, such as interest, dividends, patent or copyright royalties, and gains or losses from sales of such property, shall be allocated in accordance with the domiciliary situs of the taxpayer, except that:</p> <p><i>(2) for taxable years beginning after December 31, 2003, capital or ordinary gains or losses from the sale of an ownership interest in a publicly traded partnership, as defined by Section 7704(b) of the Internal Revenue Code of 1986, as amended, shall be allocated to this state in the ratio of the original cost of such partnership's tangible property in this state to the original cost of such partnership's tangible property everywhere, as determined at the time of the sale; if more than fifty percent (50%) of the value of the partnership's assets consists of intangible assets, capital or ordinary gains or losses from the sale of an ownership interest in the partnership shall be allocated to this state in accordance with the sales factor of the partnership for its first full tax period immediately preceding its tax period during which the ownership interest in the partnership was sold; the provisions of this division shall only apply if the capital or ordinary gains or losses from the sale of an ownership interest in a partnership do not constitute qualifying gain receiving capital treatment as defined in subparagraph a of paragraph 2 of subsection F of this section,</i></p>
<p>Oregon</p>	<p>Ore. Rev. Stat. §314.635</p>	<p>314.635 Allocation to this state of capital gains and losses.</p> <p>(1) Capital gains and losses from sales of real property located in this state are allocable to this state.</p> <p>(2) Capital gains and losses from sales of tangible personal property are allocable to this state if</p> <p>(a) the property had a situs in this state at the time of the sale, or</p> <p>(b) the taxpayer's commercial domicile is in this state and the taxpayer is not taxable in the state in which the property had a situs.</p> <p>(3) Except in the case of the sale of a partnership interest, capital gains and losses from sales of intangible personal property are allocable to this state if the taxpayer's commercial domicile is in this state.</p> <p>(4) Gain or loss from the sale of a partnership interest is allocable to this state in the</p>

		ratio of the original cost of partnership tangible property in the state to the original cost of partnership tangible property everywhere, determined at the time of the sale. In the event that more than 50 percent of the value of a partnership's assets consists of intangibles, gain or loss from the sale of the partnership interest shall be allocated to this state in accordance with the sales factor of the partnership for its first full tax year immediately preceding its tax year during which the partnership interest was sold.
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* The above summary is intended to summarize those states that have been identified to have explicit guidance related to the sale of a partnership or publicly traded partnership interest and is intended to be utilized as a starting point for taxpayer sourcing determinations. **Taxpayers should consult with their advisors to determine applicable treatment in these and other jurisdictions as the sale of a partnership interest can be a complex state tax sourcing determination.**