fact that another state has lawfully taxed identical income in the hands of trustees operating in that state does not necessarily destroy a domiciliary state's right to tax the receipt of income by a resident beneficiary.[480]

Corporate Income Taxes: Foreign Corporations.—A tax based on the income of a foreign corporation may be determined by allocating to the state a proportion of the total,[481] unless the income attributed to the state is out of all appropriate proportion to the business transacted in the state.[482] Thus, a franchise tax on a foreign corporation may be measured by income, not just from business within the state, but also on net income from interstate and foreign business.[483] Because the privilege granted by a state to a foreign corporation of carrying on business supports a tax by that state, it followed that a Wisconsin privilege dividend tax could be applied to a Delaware corporation despite its having its principal offices in New York, holding its meetings and voting its dividends in New York, and drawing its dividend checks on New York bank accounts. The tax could be imposed on the "privilege of declaring and receiving dividends" out of income derived from property located and business transacted in Wisconsin, equal to a specified percentage of such dividends, the corporation being required to deduct the tax from dividends payable to resident and nonresident shareholders.[484]

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[480] Guaranty Trust Co. v. Virginia, 305 U.S. 19, 23 (1938). Likewise, even though a nonresident does no business in a state, the state may tax the profits realized by the nonresident upon his sale of a right appurtenant to membership in a stock exchange within its borders. New York ex rel. Whitney v. Graves, 299 U.S. 366 (1937).

[481] Underwood Typewriter Co. v. Chamberlain, 254 U.S. 113 (1920); Bass, Ratcliff & Gretton Ltd. v. Tax Comm'n, 266 U.S. 271 (1924). The Court has recently considered and expanded the ability of the states to use apportionment formulae to allocate to each state for taxing purposes a fraction of the income earned by an integrated business conducted in several states as well as abroad. Moorman Mfg. Co. v. Bair, 437 U.S. 267 (1978); Mobil Oil Corp. v. Commissioner of Taxes, 445 U.S. 425 (1980); Exxon Corp. v. Department of Revenue, 447 U.S. 207 (1980). *Exxon* refused to permit a unitary business to use separate accounting techniques that divided its profits among its various functional departments to demonstrate that a state's formulary apportionment taxes extraterritorial income improperly. Moorman Mfg. Co. v. Bair, 437 U.S. at 276–80, implied that a showing of actual multiple taxation was a necessary predicate to a due process challenge but might not be sufficient.

[482] Evidence may be submitted that tends to show that a state has applied a method that, although fair on its face, operates so as to reach profits that are in no sense attributable to transactions within its jurisdiction. Hans Rees' Sons v. North Carolina, 283 U.S. 123 (1931).

[483] Matson Nav. Co. v. State Board, 297 U.S. 441 (1936).

[484] Wisconsin v. J.C. Penney Co., 311 U.S. 435, 448–49 (1940). Dissenting, Justice Roberts, along with Chief Justice Hughes and Justices McReynolds and Reed, stressed the fact that the use and disbursement by the corporation at its home office of income derived from operations in many states does not depend on and cannot be controlled by, any law of Wisconsin. The act of disbursing such income as