



## North Carolina Department of Revenue

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### Written Determinations and Letters of General Applicability

#### Written Determinations Offering Specific Tax Advice

In response to a request for specific advice, the Department may issue a written determination. The Department's response to a request for specific advice is binding on the Department and relieves a taxpayer from tax, penalties, and interest otherwise due if the written advice is erroneous. For the purposes of this policy, "taxpayer" includes a duly authorized representative of the taxpayer, including an attorney or tax professional. The Department must have an executed Power of Attorney for the authorized representative.

Written determinations include the following:

- An alternative apportionment ruling issued pursuant to N.C. Gen. Stat. § 105-122(c1) or N.C. Gen. Stat. § 105-130.4(t1)
- A private letter ruling issued pursuant to N.C. Gen. Stat. § 105-264(b)
- A redetermination private letter ruling issued pursuant to N.C. Gen. Stat. § 105-130.5A

An "alternative apportionment ruling" is a written decision issued by the Secretary to a taxpayer subsequent to receipt of a written request to use an apportionment methodology other than that prescribed by statute to apportion its taxable income for corporate income tax or its net worth for franchise tax purposes. An alternative apportionment ruling may apply to no more than three tax years.

A "private letter ruling" is written advice issued by the Secretary to a taxpayer pursuant to a written request by the taxpayer for specific advice. An "expedited private letter ruling" is written advice issued by the Department to a taxpayer that requests a private letter ruling response be issued by the Department within 90 days. For purposes of an expedited private letter ruling, the ninety-day (90) period will begin upon receipt of all necessary information required pursuant to this policy.

A "redetermination private letter ruling"<sup>1</sup> is written advice issued by the Secretary to a taxpayer subsequent to receipt of a written request by a taxpayer regarding whether a redetermination of a corporation's State net income or a combined return would be required by the Secretary due to the fact that certain of the corporation's intercompany transactions lack economic substance or are not at fair market value. The term also includes an agreement made jointly between the Secretary and a corporation to an alternative filing methodology that accurately reports State net income without

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<sup>1</sup> N. C. Gen. Stat. § 105-130.5A

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the finding of the Secretary that certain transactions lack economic substance or are not at fair market value. Due to the complexity of the facts and circumstances, the Department cannot accept a taxpayer's request for an expedited redetermination private letter ruling.

N.C. Gen. Stat. § 105-264(d) provides that “[t]he Secretary may charge a fee for providing specific written advice at the request of a taxpayer. . . . The Secretary may adopt a tiered fee structure based on the taxpayer’s income or gross receipts, the relative complexity of the advice requested, or the tax schedule for which advice is requested. The fee shall not be less than one hundred dollars (\$100.00) or more than five thousand dollars (\$5,000.00). The fee may be waived by the Secretary.”

The Secretary adopts the following amended fee structure for a request for a written determination mailed on or after the effective date of the amended policy:

- Alternative apportionment ruling - \$5,000.00
- Private letter ruling - \$500.00 per tax type, per tax issue
- Expedited private letter ruling - \$5,000.00 per tax type, per tax issue
- Redetermination private letter ruling - \$5,000.00

The Department reserves the right to refuse to issue a private letter ruling or an expedited private letter ruling if it determines a written response is not in the best interest of the State or if the Department lacks sufficient resources to prepare a response. If the Department declines a request, the taxpayer will be advised in writing and the fee will be refunded to the taxpayer.

If the Department accepts a request for an expedited private letter ruling and is unable to issue a written response within ninety (90) days of receipt of all required information, the Department will refund four thousand five hundred dollars (\$4,500.00) and issue the ruling as soon as possible.

A taxpayer that requests a private letter ruling, expedited private letter ruling, or redetermination private letter ruling, must submit the request and all supporting information in writing. A taxpayer that requests an alternative apportionment request must follow the rules set out in Chapter 5, Subchapter D of Title 17 of the North Carolina Administrative Code.

The following provisions apply to all requests for written determination:

1. The Department will not issue a written determination to an unidentified taxpayer. A taxpayer must provide its full legal name, address, phone number, and the social security number and/or taxpayer identification number. Whenever possible, the taxpayer should also identify any other parties interested in the transaction the taxpayer is inquiring about and provide their addresses, phone numbers, and taxpayer identification numbers.
2. A taxpayer must inquire about matters affecting its own tax liability or reporting requirements.

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3. A taxpayer must specify its interpretation of the applicable law and supporting authority.
  4. A taxpayer must identify all material facts and provide copies of all relevant documents. For example, the Department will not issue a written determination if the taxpayer fails to provide a copy of a relevant contract underlying the taxpayer's inquiry or if the facts in the taxpayer's inquiry are too vague or speculative.
  5. The Department may use information the taxpayer provides for any purpose permitted by law.
  6. A taxpayer must inquire about a single tax type in each request for a private letter ruling, expedited private letter ruling, or a redetermination private letter ruling. If a taxpayer has questions concerning multiple tax types, a separate written request for each tax type must be submitted to the Department. A taxpayer that requests an alternative apportionment ruling may request that the alternative methodology apply to income tax, franchise tax or both.
  7. A taxpayer must inquire about a single issue in each request for a written determination. For a redetermination private letter ruling, all intercompany transactions are considered a single issue.
  8. The Department will not issue a written determination concerning matters currently under audit, under review, or in litigation. A taxpayer must state in writing whether it is under audit or review by the Department, or in litigation with the Department. A taxpayer must specify the subject matter of the audit, review or litigation.
  9. A written determination has no binding effect on the Department with regard to any person other than the taxpayer who requested and received the written determination. No person other than the taxpayer who requested and received the written determination can rely on it.
  10. The Department may revise a written determination in accordance with N.C. Gen. Stat. § 105-264 and provide written notice of the revised interpretation to the taxpayer. A written determination is void if the facts underlying the written determination change significantly, if the taxpayer failed to accurately describe or disclose all facts, if a final court decision affects the outcome, or if any applicable statute is amended or repealed.

N.C. Gen. Stat. § 105-264.2 requires the Department to publish written determinations on its web site within 90 days of the date the written determination is provided to the taxpayer. Before publication, the Department is required by statute to redact the following information from the written determination:

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- The names, addresses, and other identifying details of the taxpayer to whom the written determination pertains
  - The names, addresses, and other identifying details of any other person referenced in the written determination
  - Information specifically exempted from disclosure by State or federal law
  - Trade secrets and commercial or financial information obtained from a person that is privileged or confidential

A taxpayer that requests a written determination may provide with its request a redacted version of the statement of facts for the Department's consideration in preparation of the document for publication.

**Mail a request for a Letter Ruling to:**

*Name of Taxing Division*

*(i.e. Excise Tax; Corporate Income Tax; Personal Taxes; Sales and Use Tax, etc.)*

*North Carolina Department of Revenue*

*PO Box 871*

*Raleigh, N.C. 27602-0871*

Form NC-481, Request for Written Determination, and a check or money order payable to the Department of Revenue must accompany a written determination request. If a taxpayer requests a written determination but the request does not meet all of the requirements set forth herein, the Department will inform the taxpayer and will not issue the determination until the requirements are met.

**Written Responses Offering Information About Tax Issues of General Applicability**

If a taxpayer, an association of taxpayers, or a tax professional asks for general information about a tax issue of general applicability, the Department may respond in writing. A response by the Department to such a request is not binding on the Department and will not relieve a taxpayer from tax, penalty, and interest otherwise due. This type of response is a "Letter of General Applicability." The Department does not charge a fee to issue a Letter of General Applicability.

A tax issue of general applicability includes: (1) questions about applicable tax rates; and (2) questions about tax matters *specifically* addressed in a statute, regulation, technical bulletin or Departmental or IRS publication.

If a written response requires the Department to interpret the law in a manner not specifically addressed in a statute, regulation, or Departmental or IRS publication, the Department should advise the person requesting the written response to follow the procedure for requesting a Letter Ruling.

**Mail a request for a Letter of General Applicability to:**

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*N.C. Department of Revenue  
Taxpayer Assistance Division  
c/o Business Technical Unit (Sales and Use Tax or Withholding Tax)  
c/o Income Technical Unit (Personal Taxes or Corporate Tax)  
Post Office Box 871  
Raleigh, North Carolina 27602*