

CHAPTER 05 - CORPORATE FRANCHISE, INCOME, AND INSURANCE TAXES

SUBCHAPTER 05G – MARKET-BASED SOURCING FOR APPORTIONMENT OF INCOME

SECTION .0100 – GENERAL RULES

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17 NCAC 05G .0101 SCOPE

The rules in this Subchapter shall not apply to receipts from the sale of tangible personal property. Other receipts are in North Carolina when the taxpayer's market for the sales is in North Carolina. The rules of this Subchapter establish uniform rules for:

- (1) determining to what extent the market for a sale is in North Carolina;
- (2) reasonably approximating the state or states of assignment where the state or states cannot be determined;
- (3) excluding receipts from the sale of intangible property from the numerator and denominator of the sales factor pursuant to G.S. 105-130.4(1); and
- (4) excluding receipts from the denominator of the sales factor where the state or states of assignment cannot be determined or reasonably approximated.

History Note: Authority G.S. 105-130.4; S.L. 2016-94.

17 NCAC 05G .0102 DEFINITIONS

In addition to the definitions in G.S. 105-130.4, as used in this Subchapter, the following definitions shall apply:

- (1) "Billing address" means the location stated in the books and records of the taxpayer as the primary mailing address relating to a customer's account as of the time of the transaction as kept in good faith in the regular course of business and not for tax avoidance purposes.
- (2) "Business customer" means a customer that is a business operating in any form, including a sole proprietorship. Sales to a non-profit organization; a trust; the U.S. Government; a foreign, state or local government; or to an agency or instrumentality of that government are treated as sales to a business customer.
- (3) "Code" means as defined in G.S. 105-228.90.
- (4) "Department" means the North Carolina Department of Revenue.
- (5) "Good faith" means a state of mind consisting in honesty in belief or purpose, faithfulness to one's duty or obligation, observance of reasonable commercial standards of fair dealing in a given trade or business, or absence of intent to defraud or to seek unconscionable advantage.
- (6) "Individual customer" means a customer that is not a business customer.
- (7) "Intangible property" means property that is not physical or whose representation by physical means is incidental and includes:
 - (a) copyrights;
 - (b) patents;
 - (c) trademarks;
 - (d) trade names;
 - (e) brand names;
 - (f) franchises;
 - (g) licenses;
 - (h) trade secrets;
 - (i) trade dress;
 - (j) information;
 - (k) know-how;
 - (l) methods;
 - (m) programs;
 - (n) procedures;
 - (o) systems;
 - (p) formulae;
 - (q) processes;
 - (r) technical data;
 - (s) designs;
 - (t) literary,
 - (u) musical, or artistic compositions;
 - (v) information;
 - (w) ideas;
 - (x) contract rights including broadcast rights;
 - (y) agreements not to compete;

- (z) goodwill and going concern value;
 - (aa) securities; and
 - (bb) except as otherwise provided in these Rules, computer software.
- (8) "Place of order" means the physical location where a customer places an order for a sale from a taxpayer, resulting in a contract with the taxpayer.
- (9) "Population" means the most recent population data maintained by the U.S. Census Bureau for the year in question as of the close of the taxable period. Census data is hereby incorporated by reference, including subsequent amendments or additions, and is available free of charge at census.gov/topics/population.html.
- (10) "Reasonable" or "reasonably" means agreeable to reason; just; proper; ordinary or usual.
- (11) "Related entity" means as defined in G.S. 105-130.7A.
- (12) "Secretary" means the Secretary of Revenue.
- (13) "State where a contract of sale is principally managed by the customer" means the primary location where an employee or other representative of a customer serves as the primary contact person for the taxpayer with respect to the day-to-day execution and performance of a contract entered into by the taxpayer with the customer.

History Note: Authority G.S. 105-130.4; S.L. 2016-94.

SECTION .0200 – GENERAL PRINCIPLES OF APPLICATION

17 NCAC 05G .0201 ASSIGNMENT OF RECEIPTS FROM SALES OF OTHER THAN TANGIBLE PERSONAL PROPERTY

A taxpayer's assignment of receipts from sales other than of tangible personal property shall comply with the following:

- (1) A taxpayer shall apply the rules set forth in this Subchapter based on objective criteria and shall consider all sources of information reasonably available to the taxpayer at the time of its tax filing including the taxpayer's books and records kept in the regular course of business. A taxpayer shall determine its method of assigning receipts in good faith, and apply it consistently with respect to similar transactions. A taxpayer shall retain contemporaneous records that explain the determination and application of its method of assigning its receipts, including its underlying assumptions, and shall provide those records to the Secretary upon request, as provided in Article 9 of G.S. 105.
- (2) This Subchapter provides assignment rules that apply sequentially in a hierarchy. For each sale to which a hierarchical rule applies, a taxpayer shall make a reasonable effort to apply the primary rule applicable to the sale before seeking to apply the next rule in the hierarchy and shall continue to do so with each succeeding rule in the hierarchy.
- (3) A taxpayer's method of assigning its receipts shall reflect an attempt to obtain the most accurate assignment of receipts consistent with the rules set forth in this Subchapter, rather than an attempt to lower the taxpayer's tax liability.

History Note: Authority G.S. 105-130.4; S.L. 2016-94.

SECTION .0300 – RULES OF REASONABLE APPROXIMATION

17 NCAC 05G .0301 IN GENERAL

The rules of this Subchapter set forth the process of reasonable approximation that apply if the state or states of assignment cannot be determined. In some instances, the reasonable approximation shall be made in accordance with specific rules of approximation prescribed in this Subchapter. In other cases, the applicable rules in this Subchapter permit a taxpayer to reasonably approximate the state or states of assignment to obtain a result similar to those made using a specific rule of approximation.

History Note: Authority G.S. 105-130.4; S.L. 2016-94.

17 NCAC 05G .0302 APPROXIMATION BASED UPON KNOWN SALES

When, by applying the rules set forth in Sections .0900 through .1000 of this Subchapter, a taxpayer can ascertain the state or states of assignment of a substantial portion of its receipts from sales of substantially similar services and the taxpayer reasonably believes that the geographic distribution of the remainder of its sales tracks that of the assigned receipts, the taxpayer shall include the receipts from those sales in its sales factor in the same proportion as its assigned receipts. This Rule applies in the context of licenses and sales of intangible property where the substance of the transaction resembles a sale of goods or services.

History Note: Authority G.S. 105-130.4; S.L. 2016-94.

17 NCAC 05G .0303 RELATED ENTITY TRANSACTIONS

Where a taxpayer has receipts subject to this Subchapter from transactions with a related entity customer, information that the customer has regarding the sourcing of receipts from these transactions shall be imputed to the taxpayer.

History Note: Authority G.S. 105-130.4; S.L. 2016-94.

SECTION .0400 – EXCLUSION OF RECEIPTS FROM THE SALES FACTOR

17 NCAC 05G .0401 ALLOCATED GROSS RECEIPTS

The sales factor includes only gross receipts of the taxpayer that are not allocated under G.S. 105-130.4, and are received from transactions and activity in the regular course of the taxpayer's trade or business. Receipts addressed in G.S. 105-130.4(a)(7) shall be excluded.

History Note: Authority G.S. 105-130.4; 105-130.4(a)(7); S.L. 2016-5; S.L. 2016-94.

17 NCAC 05G .0402 UNASSIGNABLE GROSS RECEIPTS

When a taxpayer is unable to ascertain the state or states where receipts of a sale are to be assigned pursuant to the rules set forth in this Subchapter using a reasonable amount of effort undertaken in good faith, the receipts shall be excluded from the denominator of the taxpayer's sales factor pursuant to this Subchapter.

History Note: Authority G.S. 105-130.4; S.L. 2016-94.

SECTION .0500 - CHANGES IN METHODOLOGY

17 NCAC 05G .0501 ALTERNATIVE APPORTIONMENT

Nothing in this Subchapter limits the application of G.S. 105-122(c1)(2) or G.S. 105-130.4(t1). If the application of this Subchapter results in the assignment of receipts to the taxpayer's sales factor that the taxpayer believes does not fairly represent the extent of the taxpayer's business activity in North Carolina, the taxpayer may request the use of a different method for assigning those receipts.

History Note: Authority G.S. 105-130.4; S.L. 2016-94.

17 NCAC 05G .0502 ORIGINAL RETURNS

When a taxpayer files an original return for a taxable year where it properly assigns its receipts using a method of assignment, including a method of reasonable approximation, in accordance with the rules in this Subchapter, the application of such method of assignment shall be deemed to be a correct determination by the taxpayer of the state or states of assignment to which the method is properly applied. In those cases, neither the Secretary nor the taxpayer may modify the taxpayer's methodology as applied for assigning those receipts for the taxable year, through the form of an audit adjustment, amended return, or abatement application. However, the Secretary and the taxpayer may each subsequently correct factual errors or calculation errors with respect to the taxpayer's application of its filing methodology.

History Note: Authority G.S. 105-130.4; S.L. 2016-94.

17 NCAC 05G .0503 SECRETARY'S AUTHORITY TO ADJUST A TAXPAYER'S RETURN

The Secretary's ability to review and adjust a taxpayer's assignment of receipts on a return to assign receipts consistent with the rules of this Subchapter, includes each of the following potential actions:

- (1) when a taxpayer fails to properly assign receipts from a sale in accordance with the rules set forth in this Subchapter, including the failure to apply a hierarchy of rules consistent with the principles of Rule .0201(2) of this Subchapter, the Secretary shall adjust the assignment of the receipts in accordance with the applicable rules in this Subchapter;
- (2) when a taxpayer uses a method of approximation to assign its receipts and the Secretary determines that the method of approximation employed by the taxpayer is not reasonable, the Secretary shall either substitute a method of approximation that the Secretary determines is appropriate, as provided in Article 9 of G.S. 105, or exclude the receipts from the taxpayer's numerator and denominator;
- (3) when the Secretary determines that a taxpayer's method of approximation has not been applied in a consistent manner with respect to similar transactions or year to year, the Secretary may require that the taxpayer apply its method of approximation in a consistent manner;
- (4) when a taxpayer excludes receipts from the denominator of its sales factor on the basis that the assignment of the receipts cannot be reasonably approximated, the Secretary may determine that the exclusion of those receipts is not appropriate, and may instead substitute a method of approximation that the Secretary determines is appropriate, as provided in Article 9 of G.S. 105;
- (5) when a taxpayer fails to retain contemporaneous records that explain the determination and application of its method of assigning its receipts, including its underlying assumptions, or fails to provide those records to the Secretary upon request, the Secretary shall treat the taxpayer's assignment of receipts as unsubstantiated, and shall adjust the assignment of the receipts in a manner consistent with the applicable rules in this Subchapter; or
- (6) when the Secretary concludes that a customer's billing address was selected by the taxpayer for tax avoidance purposes, the Secretary shall adjust the assignment of receipts from sales to that customer in a manner consistent with the applicable rules in this Subchapter.

History Note: Authority G.S. 105-130.4; S.L. 2016-94.

17 NCAC 05G .0504 TAXPAYER AUTHORITY TO CHANGE A METHOD OF ASSIGNMENT ON A PROSPECTIVE BASIS

A taxpayer that seeks to change its method of assigning its receipts shall disclose, in the original return filed for the year of the change, the fact that the taxpayer has made the change. If a taxpayer fails to disclose the change, the Secretary may disregard the taxpayer's change and substitute an assignment method that the Secretary determines is appropriate, as provided in Article 9 of G.S. 105.

History Note: Authority G.S. 105-130.4; S.L. 2016-94.

SECTION .0600 - FURTHER GUIDANCE

17 NCAC 05G .0601 EXAMPLES

(a) The Secretary shall publish on the Department's website examples demonstrating the application of rules set forth in this Subchapter. The document shall be available at www.ncdor.gov.

(b) The Secretary may issue further public written statements with respect to the rules set forth in this Subchapter. These statements may include guidance with respect to:

- (1) what constitutes a reasonable method of approximation within the meaning of the rules, and
- (2) the circumstances when a filing change for a taxpayer's method of reasonable approximation will be deemed appropriate.

History Note: Authority G.S. 105-130.4; S.L. 2016-94.

SECTION .0700 – SALE OF A SERVICE

17 NCAC 05G .0701 IN GENERAL

(a) The receipts from a sale of a service shall be in North Carolina to the extent that the service is delivered to a location in North Carolina. The term "delivered to a location" refers to the location of the taxpayer's market for the service, which may not be the location of the taxpayer's employees or property.

(b) The rules to determine the location of the delivery of a service in the context of several specific types of service transactions are set forth in Sections .0700 through .1000 of this Subchapter.

History Note: Authority G.S. 105-130.4; S.L. 2016-94.

SECTION .0800 – SALE OF IN-PERSON SERVICES

17 NCAC 05G .0801 IN GENERAL

(a) Except as otherwise provided in this Section, "in-person services" are services that are physically provided in person by the taxpayer, where the customer or the customer's real or tangible property upon which the services are performed is in the same location as the service provider at the time the services are performed. This Section includes situations where the services are provided on behalf of the taxpayer by a third-party contractor.

(b) Examples of in-person services include:

- (1) warranty and repair services;
- (2) cleaning services;
- (3) plumbing services;
- (4) carpentry;
- (5) construction contractor services;
- (6) pest control;
- (7) landscape services;
- (8) medical and dental services, including medical testing, x-rays, and mental health care and treatment;
- (9) child care;
- (10) hair cutting and salon services;
- (11) live entertainment and athletic performances; and
- (12) in-person training or lessons.

(c) In-person services include services within the description of this Rule that are performed at

- (1) a location that is owned or operated by the service provider; or
- (2) a location of the customer, including the location of the customer's real or tangible personal property.

(d) Professional services as described in Section .1000 of this Subchapter shall not be treated as in-person services within the meaning of this Section.

History Note: Authority G.S. 105-130.4; S.L. 2016-94.

17 NCAC 05G .0802 ASSIGNMENT OF RECEIPTS FROM SALE OF IN-PERSON SERVICES

Receipts from a sale of in-person services shall be assigned to North Carolina to the extent the customer received the service in North Carolina. The taxpayer shall determine the location where a service is received as follows:

- (1) if the service is performed with respect to the body of an individual customer in North Carolina, such as hair cutting or x-ray services, or in the physical presence of the customer in North Carolina, such as live entertainment or athletic performances, the service is received in North Carolina;
- (2) if the service is performed with respect to the customer's real estate in North Carolina or if the service is performed with respect to the customer's tangible personal property at the customer's residence or in the customer's possession in North Carolina, the service is received in North Carolina; or

- (3) if the service is performed with respect to the customer's tangible personal property and the tangible personal property is to be shipped or delivered to the customer, whether the service is performed within or outside North Carolina, the service is received in North Carolina if the property is shipped or delivered to the customer in North Carolina.

History Note: Authority G.S. 105-130.4; S.L. 2016-94.

17 NCAC 05G .0803 REASONABLE APPROXIMATION

When the taxpayer cannot determine the state or states where a service was received pursuant to Rule .0802 of this Section, but the taxpayer has information regarding the location of receipt from which the taxpayer can reasonably approximate the state or states where the service is received, the taxpayer shall reasonably approximate such state or states.

History Note: Authority G.S. 105-130.4; S.L. 2016-94.

Examples

Note that for purposes of the examples it is irrelevant whether the services are performed by an employee of the taxpayer or by an independent contractor acting on the taxpayer's behalf.

Example (i). Salon Corp has retail locations in North Carolina and in other states where it provides hair cutting services to individual and business customers, the latter of whom are paid for through the means of a company account. The receipts from sales of services provided at Salon Corp's North Carolina locations are North Carolina sales. The receipts from sales of services provided at Salon Corp's locations outside North Carolina, even when provided to residents of North Carolina, are not North Carolina sales.

Example (ii). Landscape Corp provides landscaping and gardening services in North Carolina and in neighboring states. Landscape Corp provides landscaping services at the North Carolina vacation home of an individual who is a resident of another state and who is located outside North Carolina at the time the services are performed. The receipts from the sale of services provided at the North Carolina location are North Carolina sales.

Example (iii). Same facts as in Example (ii), except that Landscape Corp provides the landscaping services to Retail Corp, a corporation with retail locations in several states, and the services are with respect to those locations of Retail Corp that are in North Carolina and in other states. The receipts from the sale of services provided to Retail Corp are in North Carolina to the extent the services are provided in North Carolina.

Example (iv). Camera Corp provides camera repair services at a North Carolina retail location to walk-in individual and business customers. In some cases, Camera Corp actually repairs a camera that is brought to its North Carolina location at a facility that is in another state. In these cases, the repaired camera is then returned to the customer at Camera Corp's in-state location. The receipts from sale of these services are in North Carolina.

Example (v). Same facts as in Example (iv), except that a customer located in North Carolina mails the camera directly to the out-of-state facility owned by Camera Corp to be fixed, and receives the repaired camera back in North Carolina by mail. The receipts from sale of the service are in North Carolina.

Example (vi). Teaching Corp provides seminars in North Carolina to individual and business customers. The seminars and the materials used in connection with the seminars are prepared outside the state, the teachers who teach the seminars include teachers that are resident outside North Carolina, and the students who attend the seminars include students that are resident outside North Carolina. Because the seminars are taught in North Carolina the receipts from sales of the services are in North Carolina.

SECTION .0900 - SERVICES DELIVERED TO A CUSTOMER OR ON BEHALF OF THE CUSTOMER, OR DELIVERED ELECTRONICALLY THROUGH THE CUSTOMER

17 NCAC 05G .0901 IN GENERAL

(a) If the service provided by the taxpayer is not an in-person service as defined in Rule .0801 of this Subchapter or a professional service as defined in Rule .1001 of this Subchapter, and the service is delivered to or on behalf of the customer, or delivered electronically through the customer, the receipts from a sale are in North Carolina to the extent that the service is delivered in North Carolina.

(b) For purposes of this Section, a service:

- (1) "delivered to a customer" is a service where the customer and not a third party is the recipient of the service;
- (2) "delivered on behalf of a customer" is one where a customer contracts for a service but one or more third parties, rather than the customer, is the recipient of the service. This includes fulfillment services, or the direct or indirect delivery of advertising to the customer's intended audience; and
- (3) "delivered electronically through a customer" is a service that is delivered electronically to a customer for purposes of resale and subsequent electronic delivery in substantially identical form to an end user or other third-party recipient.

(c) A service may be delivered to or on behalf of a customer by physical means or through electronic transmission.

History Note: Authority G.S. 105-130.4; S.L. 2016-94.

17 NCAC 05G .0902 ASSIGNMENT OF RECEIPTS FROM SALES OF SERVICES DELIVERED TO THE CUSTOMER OR ON BEHALF OF THE CUSTOMER, OR DELIVERED ELECTRONICALLY THROUGH THE CUSTOMER

(a) The assignment of receipts to a state or states when a sale of a service is delivered to the customer or on behalf of the customer, or delivered electronically through the customer, shall depend upon the method of delivery of the service and the nature of the customer. Separate rules of assignment shall apply to services delivered by physical means and services delivered by electronic transmission. For purposes of this Section, a service delivered by an electronic transmission is not a delivery by a physical means.

(b) If a rule of assignment set forth in this Section depends upon whether the customer is an individual or a business customer, and the taxpayer acting in good faith cannot reasonably determine whether the customer is an individual or a business customer, the taxpayer shall treat the customer as a business customer.

History Note: Authority G.S. 105-130.4; S.L. 2016-94.

17 NCAC 05G .0903 DELIVERY TO OR ON BEHALF OF A CUSTOMER BY PHYSICAL MEANS, WHETHER TO AN INDIVIDUAL OR BUSINESS CUSTOMER

(a) Services delivered to a customer or on behalf of a customer through a physical means include:

- (1) product delivery services where property is delivered to the customer or to a third party on behalf of the customer;
- (2) delivery of brochures, fliers, or other direct mail services;
- (3) delivery of advertising or advertising-related services to the customer's intended audience in the form of a physical medium; and
- (4) sale of custom software, such as where software is developed for a specific customer in a case where the transaction is properly treated as a service transaction for purposes of corporate taxation where the taxpayer installs the custom software at the customer's site.

(b) The following rules shall apply whether the taxpayer's customer is an individual customer or a business customer:

- (1) **Rule of Determination.** In assigning the receipts from a sale of a service delivered to a customer or on behalf of a customer through a physical means, a taxpayer shall determine the state or states where the service is delivered. If the taxpayer is able to determine the state or states where the service is delivered, it shall assign the receipts to that state or states.
- (2) **Rule of Reasonable Approximation.** If the taxpayer is unable to determine the state or states where the service is delivered, but has sufficient information regarding the place of delivery that the taxpayer may reasonably approximate the state or states where the service is delivered, it shall reasonably approximate the state or states.

History Note: Authority G.S. 105-130.4; S.L. 2016-94.

Examples

Example (i). Direct Mail Corp, a corporation based outside North Carolina, provides direct mail services to its customer, Business Corp. Business Corp transacts with Direct Mail Corp to deliver printed fliers to a list of customers that is provided to it by Business Corp. Some of Business Corp's customers are in North Carolina and some of those customers are in other states. Direct Mail Corp will use the postal service to deliver the printed fliers to Business Corp's customers. The receipts from the sale of Direct Mail Corp's services to Business Corp are assigned to North Carolina to the extent that the services are delivered on behalf of Business Corp to North Carolina customers (i.e., to the extent that the fliers are delivered on behalf of Business Corp to Business Corp's intended audience in North Carolina).

Example (ii). Ad Corp is a corporation based outside North Carolina that provides advertising and advertising-related services in North Carolina and in neighboring states. Ad Corp enters into a contract at a location outside North Carolina with an individual customer who is not a North Carolina resident to design advertisements for billboards to be displayed in North Carolina, and to design fliers to be mailed to North Carolina residents. All of the design work is performed outside North Carolina. The receipts from the sale of the design services are in North Carolina because the service is physically delivered on behalf of the customer to the customer's intended audience in North Carolina.

Example (iii). Same facts as example (ii), except that the contract is with a business customer that is based outside North Carolina. The receipts from the sale of the design services are in North Carolina because the services are physically delivered on behalf of the customer to the customer's intended audience in North Carolina.

Example (iv). Fulfillment Corp, a corporation based outside North Carolina, provides product delivery fulfillment services in North Carolina and in neighboring states to Sales Corp, a corporation located outside North Carolina that sells tangible personal property through a mail order catalog and over the Internet to customers. In some cases when a customer purchases tangible personal property from Sales Corp to be delivered in North Carolina, Fulfillment Corp will, pursuant to its contract with Sales Corp, deliver that property from its fulfillment warehouse located outside North Carolina. The receipts from the sale of the fulfillment services of Fulfillment Corp to Sales Corp are assigned to North Carolina to the extent that Fulfillment Corp's deliveries on behalf of Sales Corp are to recipients in North Carolina.

Example (v). Software Corp, a software development corporation, enters into a contract with a business customer, Buyer Corp, which is physically located in North Carolina, to develop custom software to be used in Buyer Corp's business. Software Corp develops the custom software outside North Carolina, and then physically installs the software on Buyer Corp's computer hardware located in North Carolina. The development and sale of the custom software is properly characterized as a service transaction, and the receipts from the sale are assigned to North Carolina because the software is physically delivered to the customer in North Carolina.

Example (vi). Same facts as Example (v), except that Buyer Corp has offices in North Carolina and several other states, but is commercially domiciled outside North Carolina and orders the software from a location outside North Carolina. The receipts from the development and sale of the custom software service are assigned to North Carolina because the software is physically delivered to the customer in North Carolina.

17 NCAC 05G .0904 DELIVERY TO CUSTOMER BY ELECTRONIC TRANSMISSION

(a) Services delivered by electronic transmission include services that are transmitted through the means of wire, lines, cable, fiber optics, electronic signals, satellite transmission, audio or radio waves, or other similar means, whether or not the service provider owns, leases, or otherwise controls the transmission equipment.

(b) When a service is delivered by electronic transmission to a customer, the following rules apply:

- (1) Services Delivered By Electronic Transmission to an Individual Customer.
 - (A) Rule of Determination. When a service is delivered to an individual customer by electronic transmission, the service is delivered in North Carolina to the extent that the taxpayer's customer received the service in North Carolina. If the taxpayer is able to determine the state or states where the service is received, it shall assign the receipts from that sale to that state or states.
 - (B) Rules of Reasonable Approximation. If the taxpayer is unable to determine the state or states where the customer received the service, but has sufficient information regarding the place of receipt to reasonably approximate the state or states where the service is received, it shall reasonably approximate the state or states. If a taxpayer does not have sufficient information to determine or reasonably approximate the state or states where the service is received, it shall reasonably approximate the state or states using the customer's billing address.
- (2) Services Delivered By Electronic Transmission to a Business Customer.
 - (A) Rule of Determination. When a service is delivered to a business customer by electronic transmission, the service is delivered in North Carolina to the extent that the taxpayer's customer received the service in North Carolina. If the taxpayer can determine the state or states where the service is received, it shall assign the receipts from that sale to the state or states. For purposes of this Rule, the state or states where the service is received shall reflect the location where the service was directly used by the employees or designees of the customer.
 - (B) Rule of Reasonable Approximation. If the taxpayer is unable to determine the state or states where the customer received the service, but has sufficient information regarding the place of receipt to reasonably approximate the state or states where the service is received, it shall reasonably approximate the state or states.
 - (C) Secondary Rule of Reasonable Approximation. When a service is delivered to a business customer by electronic transmission where a taxpayer does not have sufficient information to determine or reasonably approximate the state or states where the service is received, the taxpayer shall reasonably approximate the state or states as set forth in this Rule. In these cases, unless the taxpayer uses the safe harbor set forth in Sub-Item (2)(D) of this Rule, the taxpayer shall reasonably approximate the state or states where the service is received as follows: first, by assigning the receipts from the sale to the state where the contract of sale is principally managed by the customer; second, if the state where the customer principally manages the contract is not reasonably determinable, by assigning the receipts from the sale to the customer's place of order; and third, if the customer's place of order is not reasonably determinable, by assigning the receipts from the sale using the customer's billing address. However, if the taxpayer derives more than five percent of its receipts from sales of services from any single customer, the taxpayer shall identify the state where the contract of sale is principally managed by that customer.
 - (D) Safe Harbor. When a service is delivered to a business customer by electronic transmission, a taxpayer may not be able to determine, or reasonably approximate under Sub-Item (2)(B) of this Rule, the state or states where the service is received. In these cases, the taxpayer may, in lieu of the rule stated in Sub-Item (2)(C) of this Rule, apply the safe harbor stated in this Sub-Item. Under this safe harbor, a taxpayer may assign its receipts from sales to a particular customer based upon the customer's billing address in a taxable year where the taxpayer engages in substantially similar service transactions with more than 250 customers, whether business or individual, and does not derive more than five percent of its receipts from sales of all services from that customer.
 - (E) Related Entity Transactions. When a service is delivered by electronic transmission to a business customer that is a related entity, the taxpayer may not use the secondary rule of reasonable approximation in Sub-Item (2)(C) of this Rule but may use the rule of reasonable approximation in Sub-Item (2)(B) of this Rule, and the safe harbor in Sub-Item (2)(D) of this Rule. The Secretary may aggregate sales to related entities in determining whether the sales exceed five percent of receipts from sales of all services under that safe harbor provision.

Examples

In these examples, unless otherwise stated, assume that the taxpayer is not related to the customer to which the service is delivered. Also, assume if relevant, unless otherwise stated, that the safe harbor set forth in Rule .0904(b)(2)(D) does not apply.

Example (i). Support Corp, a corporation that is based outside North Carolina, provides software support and diagnostic services to individual and business customers that have previously purchased certain software from third-party vendors. These individual and business customers are located in North Carolina and other states. Support Corp supplies its services on a case by case basis when directly contacted by its customer. Support Corp generally provides these services through the Internet but sometimes provides these services by phone. In all cases, Support Corp verifies the customer's account information before providing any service. Using the information that Support Corp verifies before performing a service, Support Corp can determine where its services are received, and therefore must assign its receipts to these locations. The receipts from sales made to Support Corp's individual and business customers are in North Carolina to the extent that Support Corp's services are received in North Carolina.

Example (ii). Online Corp, a corporation based outside North Carolina, provides web-based services through the means of the Internet to individual customers who are resident in North Carolina and in other states. These customers access Online Corp's web services primarily in their states of residence, and sometimes, while traveling, in other states. For a substantial portion of its receipts from the sale of services, Online Corp can either determine the state or states where the services are received, or, where it cannot determine the state or states, it has sufficient information regarding the place of receipt to reasonably approximate the state or states. However, Online Corp cannot determine or reasonably approximate the state or states of receipt for all of the sales of its services. Assuming that Online Corp reasonably believes, based on all available information, that the geographic distribution of the receipts from sales for which it cannot determine or reasonably approximate the location of the receipt of its services generally tracks those for which it does have this information, Online Corp must assign to North Carolina the receipts from sales for which it does not know the customers' location in the same proportion as those receipts for which it has this information.

Example (iii). Same facts as in Example (ii), except that Online Corp reasonably believes that the geographic distribution of the receipts from sales for which it cannot determine or reasonably approximate the location of the receipt of its web-based services do not generally track the sales for which it does have this information. Online Corp must assign the receipts from sales of its services for which it lacks information as provided to its individual customers using the customers' billing addresses.

Example (iv). Net Corp, a corporation based outside North Carolina, provides web-based services to a business customer, Business Corp, a company with offices in North Carolina and two neighboring states. Particular employees of Business Corp access the services from computers in each Business Corp office. Assume that Net Corp determines that Business Corp employees in North Carolina were responsible for 75% of Business Corp's use of Net Corp's services, and Business Corp employees in other states were responsible for 25% of Business Corp's use of Net Corp's services. In this case, 75% of the receipts from the sale are received in North Carolina. Assume alternatively that Net Corp lacks sufficient information regarding the location or locations where Business Corp's employees used the services to determine or reasonably approximate the location or locations. Under these circumstances, if Net Corp derives 5% or less of its receipts from sales to Business Corp, Net Corp must assign the receipts to the state where Business Corp principally managed the contract, or if that state is not reasonably determinable, to the state where Business Corp placed the order for the services, or if that state is not reasonably determinable, to the state of Business Corp's billing address. If Net Corp derives more than 5% of its receipts from sales of services to Business Corp, Net Corp is required to identify the state in which its contract of sale is principally managed by Business Corp and must assign the receipts to that state.

Example (v). Net Corp, a corporation based outside North Carolina, provides web-based services through the means of the Internet to more than 250 individual and business customers in North Carolina and in other states. Assume that for each customer Net Corp cannot determine the state or states where its web services are actually received, and lacks sufficient information regarding the place of receipt to reasonably approximate the state or states. Also assume that Net Corp does not derive more than 5% of its receipts from sales of services to a single customer. Net Corp may apply the safe harbor stated in Rule .0904(b)(2)(D), and may assign its receipts using each customer's billing address.

17 NCAC 05G .0905 SERVICES DELIVERED ELECTRONICALLY THROUGH OR ON BEHALF OF AN INDIVIDUAL OR BUSINESS CUSTOMER

When a service is delivered electronically "on behalf of" or "through" a customer as defined in Rule .0901 of this Subchapter, the methodology provided under this Rule applies.

- (1) Rule of Determination. In the case of the delivery of a service by electronic transmission, where the service is delivered electronically to end users or other third-party recipients through or on behalf of the customer, the service is delivered in North Carolina to the extent that the end users or other third-party recipients are in North Carolina. For example, in the case of the direct or indirect delivery of advertising on behalf of a customer to the customer's intended audience by electronic means, the service is delivered in North Carolina to the extent that the audience for the advertising is in North Carolina. In the case of the delivery of a service to a customer that acts as an intermediary in reselling the service in substantially identical form to third-party recipients, the service is delivered in North Carolina to the extent that the

end users or other third-party recipients receive the services in North Carolina. The provisions in this Sub-Item apply whether the taxpayer's customer is an individual customer or a business customer and whether the end users or other third-party recipients to which the services are delivered through or on behalf of the customer are individuals or businesses.

- (2) **Rule of Reasonable Approximation.** If the taxpayer cannot determine the state or states where the services are actually delivered to the end users or other third-party recipients either through or on behalf of the customer, but has sufficient information regarding the place of delivery that the taxpayer may reasonably approximate the state or states where the services are delivered, it shall reasonably do so.
- (3) **Select Secondary Rules of Reasonable Approximation.**
 - (a) If a taxpayer's service is the direct or indirect electronic delivery of advertising on behalf of its customer to the customer's intended audience, and if the taxpayer lacks sufficient information regarding the location of the audience that the taxpayer may determine or reasonably approximate that location, the taxpayer shall reasonably approximate the audience in a state for the advertising using the following secondary rules of reasonable approximation. If a taxpayer is delivering advertising directly or indirectly to a known list of subscribers, the taxpayer shall reasonably approximate the audience for advertising in a state using a percentage that reflects the ratio of the state's subscribers in the specific geographic area where the advertising is delivered relative to the total subscribers in that area. For a taxpayer with less information about its audience, the taxpayer shall reasonably approximate the audience in a state using the percentage that reflects the ratio of the state's population in the specific geographic area where the advertising is delivered relative to the total population in that area.
 - (b) If a taxpayer's service is the delivery of a service to a customer that then acts as the taxpayer's intermediary in reselling that service to end users or other third party recipients, and the taxpayer lacks sufficient information regarding the location of the end users or other third party recipients that the taxpayer may determine or reasonably approximate that location, the taxpayer shall reasonably approximate the extent to which the service is received in a state by using the percentage that reflects the ratio of the state's population in the specific geographic area where the taxpayer's intermediary resells the services, relative to the total population in that area.
 - (c) When using the secondary reasonable approximation methods provided in Sub-items (3)(a) or (b), the relevant specific geographic area of delivery includes only the areas where the service was substantially and materially delivered or resold. Unless the taxpayer demonstrates the contrary, it shall be presumed that the area where the service was substantially and materially delivered or resold does not include areas outside the United States.

History Note: Authority G.S. 105-130.4; S.L. 2016-94.

Examples

Example (i). Cable TV Corp, a corporation that is based outside of North Carolina, has two revenue streams. First, Cable TV Corp sells advertising time to business customers pursuant to which the business customers' advertisements will run as commercials during Cable TV Corp's televised programming. Some of these business customers, though not all of them, have a physical presence in North Carolina. Second, Cable TV Corp sells monthly subscriptions to individual customers in North Carolina and in other states. The receipts from Cable TV Corp's sale of advertising time to its business customers are assigned to North Carolina to the extent that the audience for Cable TV Corp's televised programming during which the advertisements run is in North Carolina. If Cable TV Corp is unable to determine the actual location of its audience for the programming, and lacks sufficient information regarding audience location to reasonably approximate the location, Cable TV Corp must approximate its North Carolina audience using the percentage that reflects the ratio of its North Carolina subscribers in the geographic area in which Cable TV Corp's televised programming featuring the advertisements is delivered relative to its total number of subscribers in that area. To the extent that Cable TV Corp's sales of monthly subscriptions represent the sale of a service, the receipts from these sales are properly assigned to North Carolina in any case in which the programming is received by a customer in North Carolina. In any case in which Cable TV Corp cannot determine the actual location where the programming is received, and lacks sufficient information regarding the location of receipt to reasonably approximate the location, the receipts from these sales of Cable TV Corp's monthly subscriptions are assigned to North Carolina where its customer's billing address is in North Carolina. Note that whether and to the extent that the monthly subscription fee represents a fee for a service or for a license of intangible property does not affect the analysis or result as to the state or states to which the receipts are properly assigned.

Example (ii). Network Corp, a corporation that is based outside of North Carolina, sells advertising time to business customers pursuant to which the customers' advertisements will run as commercials during Network Corp's televised programming as distributed by unrelated cable television and satellite television transmission companies. The receipts from Network Corp's sale of advertising time to its business customers are assigned to North Carolina to the extent that the audience for Network Corp's televised programming during which the advertisements will run is in North Carolina. If Network Corp cannot determine the actual location of the audience for its programming during which the advertisements will run, and lacks sufficient information regarding audience location to reasonably approximate the location, Network Corp must approximate the receipts from sales of advertising that constitute North Carolina sales by multiplying the amount of

advertising receipts by a percentage that reflects the ratio of the North Carolina population in the specific geographic area in which the televised programming containing the advertising is run relative to the total population in that area.

Example (iii). Web Corp, a corporation that is based outside North Carolina, provides Internet content to viewers in North Carolina and other states. Web Corp sells advertising space to business customers pursuant to which the customers' advertisements will appear in connection with Web Corp's Internet content. Web Corp receives a fee for running the advertisements that is determined by reference to the number of times the advertisement is viewed or clicked upon by the viewers of its website. The receipts from Web Corp's sale of advertising space to its business customers are assigned to North Carolina to the extent that the viewers of the Internet content are in North Carolina, as measured by viewings or clicks. If Web Corp is unable to determine the actual location of its viewers, and lacks sufficient information regarding the location of its viewers to reasonably approximate the location, Web Corp must approximate the amount of its North Carolina receipts by multiplying the amount of receipts from sales of advertising by a percentage that reflects the North Carolina population in the specific geographic area in which the content containing the advertising is delivered relative to the total population in that area.

Example (iv). Retail Corp, a corporation that is based outside of North Carolina, sells tangible property through its retail stores located in North Carolina and other states, and through a mail order catalog. Answer Co, a corporation that operates call centers in multiple states, contracts with Retail Corp to answer telephone calls from individuals placing orders for products found in Retail Corp's catalogs. In this case, the phone answering services of Answer Co are being delivered to Retail Corp's customers and prospective customers. Therefore, Answer Co is delivering a service electronically to Retail Corp's customers or prospective customers on behalf of Retail Corp, and must assign the proceeds from this service to the state or states from which the phone calls are placed by the customers or prospective customers. If Answer Co cannot determine the actual locations from which phone calls are placed, and lacks sufficient information regarding the locations to reasonably approximate the locations, Answer Co must approximate the amount of its North Carolina sales by multiplying the amount of its fee from Retail Corp by a percentage that reflects the North Carolina population in the specific geographic area from which the calls are placed relative to the total population in that area.

Example (v). Web Corp, a corporation that is based outside of North Carolina, sells tangible property to customers via its Internet website. Design Co. designed and maintains Web Corp's website, including making changes to the site based on customer feedback received through the site. Design Co.'s services are delivered to Web Corp, the proceeds from which are assigned pursuant to Rule .0904(b). The fact that Web Corp's customers and prospective customers incidentally benefit from Design Co.'s services, and may even interact with Design Co. in the course of providing feedback, does not transform the service into one delivered "on behalf of" Web Corp to Web Corp's customers and prospective customers.

Example (vi). Wholesale Corp, a corporation that is based outside North Carolina, develops an Internet-based information database outside North Carolina and enters into a contract with Retail Corp whereby Retail Corp will market and sell access to this database to end users. Depending on the facts, the provision of database access may be either the sale of a service or the license of intangible property or may have elements of both. Assume that on the particular facts applicable in this example Wholesale Corp is selling database access in transactions properly characterized as involving the performance of a service. When an end user purchases access to Wholesale Corp's database from Retail Corp, Retail Corp in turn compensates Wholesale Corp in connection with that transaction. In this case, Wholesale Corp's services are being delivered through Retail Corp to the end user. Wholesale Corp must assign its receipts from sales to Retail Corp to the state or states in which the end users receive access to Wholesale Corp's database. If Wholesale Corp cannot determine the state or states where the end users actually receive access to Wholesale Corp's database, and lacks sufficient information regarding the location from which the end users access the database to reasonably approximate the location, Wholesale Corp must approximate the extent to which its services are received by end users in North Carolina by using a percentage that reflects the ratio of the North Carolina population in the specific geographic area in which Retail Corp regularly markets and sells Wholesale Corp's database relative to the total population in that area. Note that it does not matter for purposes of the analysis whether Wholesale Corp's sale of database access constitutes a service or a license of intangible property, or some combination of both.

SECTION .1000 - PROFESSIONAL SERVICES

17 NCAC 05G .1001 IN GENERAL

(a) Except as otherwise provided in this Subchapter, "professional services" are services that require specialized knowledge and may require a professional certification, license, or degree. These services include the performance of technical services that require the application of specialized knowledge.

(b) Professional services include:

- (1) management services;
- (2) bank and financial services;
- (3) financial custodial services;
- (4) investment and brokerage services;
- (5) fiduciary services;
- (6) tax preparation;
- (7) payroll and accounting services;

- (8) lending services;
- (9) credit card services, including credit card processing services;
- (10) data processing services;
- (11) legal services;
- (12) consulting services;
- (13) video production services;
- (14) graphic and other design services;
- (15) engineering services; and
- (16) architectural services.

History Note: Authority G.S. 105-130.4; S.L. 2016-94.

17 NCAC 05G .1002 OVERLAP WITH OTHER CATEGORIES OF SERVICES

(a) Certain services that fall within the definition of "professional services" set forth in this Section shall be treated as "in-person services" within the meaning of Section .0800 of this Subchapter, and shall be assigned under the rules of that Section. Specifically, professional services that are physically provided in person by the taxpayer such as carpentry, certain medical and dental services, or child care services when the customer or the customer's real or tangible property upon which the services are provided is in the same location as the service provider at the time the services are performed are "in-person services" and shall be assigned as such, notwithstanding that they may also be considered to be "professional services."

(b) Professional services where the service is of an intellectual or intangible nature, such as legal, accounting, financial, and consulting services, shall be assigned as professional services under the rules of this Section, notwithstanding the fact that these services may involve some amount of in-person contact.

(c) Professional services may include the transmission of documents or other communications by mail or by electronic means. In these cases, the assignment rules that apply are those set forth in this Section, and not those set forth in Section .0900 of this Subchapter, pertaining to services delivered to a customer or through or on behalf of a customer.

History Note: Authority G.S. 105-130.4; S.L. 2016-94.

17 NCAC 05G .1003 ASSIGNMENT OF RECEIPTS

The location of delivery of professional services shall not be determined by a general rule of determination, but shall be reasonably approximated. The assignment of receipts from a sale of a professional service depends on whether the customer is an individual or a business customer. When the taxpayer, acting in good faith, cannot reasonably determine whether the customer is an individual or a business customer, the taxpayer shall treat the customer as a business customer. For purposes of assigning the receipts from a sale of a professional service, a taxpayer's customer is the person that contracts for the service, irrespective of whether another person pays for or also benefits from the taxpayer's services.

History Note: Authority G.S. 105-130.4; S.L. 2016-94.

17 NCAC 05G .1004 PROFESSIONAL SERVICES OTHER THAN ARCHITECTURAL OR ENGINEERING SERVICES

Receipts from sales of professional services other than those services described in Rules .1005 - .1006 of this Section, shall be assigned as follows:

- (1) Professional Services Delivered to Individual Customers. Except as otherwise provided in Section .1000 of this Subchapter, in any instance where the service provided is a professional service and the taxpayer's customer is an individual customer, the state or states where the service is delivered shall be reasonably approximated as set forth in this Rule. The taxpayer shall assign the receipts from a sale to the customer's state of primary residence, or, if the taxpayer cannot reasonably identify the customer's state of primary residence, to the state of the customer's billing address. However, when the taxpayer derives more than five percent of its receipts from sales of all services from an individual customer, the taxpayer shall identify the customer's state of primary residence and assign the receipts from the service or services provided to that customer to that state.
- (2) Professional Services Delivered to Business Customers. When the taxpayer provides a professional service to a business customer, the state or states where the service is delivered shall be reasonably approximated as set forth in this Rule. Unless the taxpayer uses the safe harbor set forth in Item (3) of this Rule, the taxpayer shall assign the receipts from the sale as follows:
 - (a) by assigning the receipts to the state where the contract of sale is principally managed by the customer;
 - (b) if the place of customer management is not reasonably determinable, to the customer's place of order; and
 - (c) if the customer place of order is not reasonably determinable, to the customer's billing address.

When the taxpayer derives more than five percent of its receipts from sales of all services from a customer, the taxpayer is required to identify the state where the contract of sale is principally managed by the customer.
- (3) Safe Harbor; Large Volume of Transactions. Notwithstanding the rules set forth in Items (1) and (2) of this Rule, a taxpayer may assign its receipts from sales to a particular customer based on the customer's billing address in any taxable year when the taxpayer engages in substantially similar service transactions with more than 250 customers, whether individual or business, and does not derive more than five percent of its receipts from sales of all services from that customer.

History Note: Authority G.S. 105-130.4; S.L. 2016-94.

17 NCAC 05G .1005 ARCHITECTURAL OR ENGINEERING SERVICES WITH RESPECT TO REAL OR TANGIBLE PERSONAL PROPERTY

(a) Architectural and engineering services with respect to real or tangible personal property shall be professional services within the meaning of this Section. The receipts from a sale of an architectural service shall be assigned to a state or states to the extent that the services are with respect to real estate improvements located, or expected to be located, in the state or states. The receipts from a sale of an engineering service shall be assigned to a state or states to the extent that the services are with respect to tangible or real property located in the state or states, including real estate improvements located in, or expected to be located in, the state or states.

(b) This Rule shall apply whether or not the customer is an individual or business customer. In any instance in which architectural or engineering services are not described in this Rule, the receipts from a sale of these services shall be assigned under Rule .1004 of this Section.

History Note: Authority G.S. 105-130.4; S.L. 2016-94.

17 NCAC 05G .1006 RELATED ENTITY TRANSACTIONS

When the professional service is sold to a related entity, rather than applying the rule for professional services delivered to business customers in Rule .1004(2) of this Section, the state or states where the service is assigned is the place of receipt by the related entity as reasonably approximated using the following hierarchy:

- (1) if the service primarily relates to specific operations or activities of a related entity conducted in one or more locations, then to the state or states where those operations or activities are conducted in proportion to the related entity's payroll at the locations to which the service relates in the state or states; or
- (2) if the service does not primarily relate to specific operations or activities of a related entity conducted in particular locations, but instead relates to the operations of the related entity generally, then to the state or states where the related entity has employees, in proportion to the related entity's payroll in those states. The taxpayer may use the safe harbor provided by Rule .1004(3) of this Section.

History Note: Authority G.S. 105-130.4; S.L. 2016-94.

Examples

Assume in each of these examples, where relevant that the customer is not a related entity and that the safe harbor set forth in Rule .1004(3) does not apply.

Example (i). Broker Corp provides securities brokerage services to individual customers who are resident in North Carolina and in other states. Assume that Broker Corp knows the state of primary residence for many of its customers, and where it does not know this state of primary residence, it knows the customer's billing address. Also assume that Broker Corp does not derive more than 5% of its receipts from sales of all services from any one individual customer. If Broker Corp knows its customer's state of primary residence, it shall assign the receipts to that state. If Broker Corp does not know its customer's state of primary residence, but rather knows the customer's billing address, it shall assign the receipts to that state.

Example (ii). Same facts as in Example (i), except that Broker Corp has several individual customers from whom it derives, in each instance, more than 5% of its receipts from sales of all services. Receipts from sales to customers from whom Broker Corp derives 5% or less of its receipts from sales of all services must be assigned as described in Example (i). For each customer from whom it derives more than 5% of its receipts from sales of all services, Broker Corp is required to determine the customer's state of primary residence and must assign the receipts from the services provided to that customer to that state. In any case in which a 5% customer's state of primary residence is North Carolina, receipts from a sale made to that customer must be assigned to North Carolina; in any case in which a 5% customer's state of primary residence is not North Carolina receipts from a sale made to that customer are not assigned to North Carolina.

Example (iii). Architecture Corp provides building design services as to buildings located, or expected to be located, in North Carolina to individual customers who are resident in North Carolina and other states, and to business customers that are based in North Carolina and other states. The receipts from Architecture Corp's sales are assigned to North Carolina because the locations of the buildings to which its design services relate are in North Carolina, or are expected to be in North Carolina. For purposes of assigning these receipts, it is not relevant where, in the case of an individual customer, the customer primarily resides or is billed for the services, and it is not relevant where, in the case of a business customer, the customer principally manages the contract, placed the order for the services, or is billed for the services. Further, these receipts are assigned to North Carolina even if Architecture Corp's designs are either physically delivered to its customer in paper form in a state other than North Carolina or are electronically delivered to its customer in a state other than North Carolina.

Example (iv). Law Corp provides legal services to individual clients who are resident in North Carolina and in other states. In some cases, Law Corp may prepare one or more legal documents for its client as a result of these services and/or the legal work may be related to litigation or a legal matter that is ongoing in a state other than where the client is resident. Assume that Law Corp knows the state of primary residence for many of its clients, and where it does not know the state of primary residence, it knows the client's billing address. Also assume that Law Corp does not derive more than 5% of its receipts from sales of all

services from any one individual client. If Law Corp knows its client's state of primary residence, it shall assign the receipts to that state. If Law Corp does not know its client's state of primary residence, but rather knows the client's billing address, it shall assign the receipts to that state. For purposes of the analysis it is irrelevant whether the legal documents relating to the service are mailed or otherwise delivered to a location in another state, or the litigation or other legal matter that is the underlying predicate for the services is in another state.

Example (v). Law Corp provides legal services to several multistate business clients. In each case, Law Corp knows the state in which the agreement for legal services that governs the client relationship is principally managed by the client. In one case, the agreement is principally managed in North Carolina; in the other cases, the agreement is principally managed in a state other than North Carolina. If the agreement for legal services is principally managed by the client in North Carolina the receipts from sale of the services are assigned to North Carolina; in the other cases, the receipts are not assigned to North Carolina. In the case of receipts that are assigned to North Carolina, the receipts are so assigned even if (1) the legal documents relating to the service are mailed or otherwise delivered to a location in another state, or (2) the litigation or other legal matter that is the underlying predicate for the services is in another state.

Example (vi). Consulting Corp, a company that provides consulting services to law firms and other customers, is hired by Law Corp in connection with legal representation that Law Corp provides to Client Co. Specifically, Consulting Corp is hired to provide expert testimony at a trial being conducted by Law Corp on behalf of Client Co. Client Co pays for Consulting Corp's services directly. Assuming that Consulting Corp knows that its agreement with Law Co is principally managed by Law Corp in North Carolina, the receipts from the sale of Consulting Corp's services are assigned to North Carolina. It is not relevant for purposes of the analysis that Client Co is the ultimate beneficiary of Consulting Corp's services, or that Client Co pays for Consulting Corp's services directly.

Example (vii). Investment Co provides financial custodial services to 100 individual customers who are resident in North Carolina and in other states, including the safekeeping of some of its customers' financial assets. Assume for purposes of this example that Investment Co knows the state of primary residence for many of its customers, and where it does not know this state of primary residence, it knows the customer's billing address. Also assume that Investment Co does not derive more than 5% of its receipts from sales of all of its services from any single customer. Note that because Investment Co does not have more than 250 customers, it may not apply the safe harbor for professional services stated in Rule .1004(3). If Investment Co knows its customer's state of primary residence, it must assign the receipts to that state. If Investment Co does not know its customer's state of primary residence, but rather knows the customer's billing address, it must assign the receipts to that state. Investment Co's receipts are assigned to North Carolina if the customer's state of primary residence (or billing address, in cases where it does not know the customer's state of primary residence) is in North Carolina, even if Investment Co's financial custodial work, including the safekeeping of the customer's financial assets, takes place in a state other than North Carolina.

Example (viii). Same facts as Example (vii), except that Investment Co has more than 250 customers, individual or business. Investment Co may apply the safe harbor for professional services stated in Rule .1004(3), and may assign its receipts from sales to a state or states using each customer's billing address.

Example (ix). Same facts as Example (viii), except that Investment Co derives more than 5% of its receipts from sales from a single individual customer. As to the sales made to this customer, Investment Co is required to determine the individual customer's state of primary residence and must assign the receipts from the service or services provided to that customer to that state. Receipts from sales to all other customers are assigned as described in Example (viii).

Example (x). Advisor Corp, a corporation that provides investment advisory services, provides these advisory services to Investment Co. Investment Co is a multistate business client of Advisor Corp that uses Advisor Corp's services in connection with investment accounts that it manages for individual clients, who are the ultimate beneficiaries of Advisor Corp's services. Assume that Investment Co's individual clients are persons that are resident in numerous states, which may or may not include North Carolina. Assuming that Advisor Corp knows that its agreement with Investment Co is principally managed by Investment Co in North Carolina, receipts from the sale of Advisor Corp's services are assigned to North Carolina. It is not relevant for purposes of the analysis that the ultimate beneficiaries of Advisor Corp's services may be Investment Co's clients, who are residents of numerous states.

Example (xi). Advisor Corp provides investment advisory services to Investment Fund LP, a partnership that invests in securities and other assets. Assuming that Advisor Corp knows that its agreement with Investment Fund LP is principally managed by Investment Fund LP in North Carolina, receipts from the sale of Advisor Corp's services are assigned to North Carolina. Note that it is not relevant for purposes of the analysis that the partners in Investment Fund LP are residents of numerous states.

Example (xii). Design Corp is a corporation based outside North Carolina that provides graphic design and similar services in North Carolina and in neighboring states. Design Corp enters into a contract at a location outside North Carolina with an individual customer to design fliers for the customer. Assume that Design Corp does not know the individual customer's state of primary residence and does not derive more than 5% of its receipts from sales of services from the individual customer. All of the design work is performed outside North Carolina. Receipts from the sale are in North Carolina if the customer's billing address is in North Carolina.

SECTION .1100 – LICENSE OR LEASE OF INTANGIBLE PROPERTY

17 NCAC 05G .1101 IN GENERAL

(a) The receipts from the license of intangible property shall be assigned to North Carolina to the extent the intangible is used in North Carolina. The term "use" shall refer to the location of the taxpayer's market for the use of the intangible property that is being licensed and shall not refer to the location of the property or payroll of the taxpayer. This Section sets forth the rules to determine the location of the use of intangible property for several specific types of licensing transactions.

(b) A license of intangible property that conveys all substantial rights in that property shall be treated as a sale of intangible property for purposes of these rules. For purposes of Sections .1100 and .1200, a sale or exchange of intangible property shall be treated as a license of that property where the receipts from the sale or exchange derive from payments that are contingent on the productivity, use, or disposition of the property.

(c) Intangible property licensed as part of the sale or lease of tangible property shall be treated under these rules as the sale or lease of tangible property.

(d) Nothing in this Section shall be construed to allow or require inclusion of sales in the sales factor that are not included in the definition of "sales" pursuant to G.S. 105-130.4, or that are excluded from the numerator and the denominator of the sales factor pursuant to G.S. 105-130.4(1)(6). To the extent that the transfer of either a security or business "goodwill" or similar intangible value, including "going concern value" or "workforce in place," is characterized as a license or lease of intangible property, receipts from such transaction shall be excluded from the numerator and the denominator of the taxpayer's sales factor.

History Note: Authority G.S. 105-130.4; S.L. 2016-94.

17 NCAC 05G .1102 LICENSE OF A MARKETING INTANGIBLE

(a) If a license is granted for the right to use intangible property in connection with the sale, lease, license, or other marketing of goods, services, or other items, such as a marketing intangible, to a consumer, the royalties or other licensing fees paid by the licensee for that marketing intangible shall be assigned to North Carolina to the extent that those fees are attributable to the sale or other provision of goods, services, or other items purchased or otherwise acquired by consumers in North Carolina.

(b) License of a marketing intangible includes the following when it is intended to promote consumer sales:

- (1) the license of a service mark, trademark, or trade name;
- (2) copyrights;
- (3) the license of a film, television or multimedia production or event for commercial distribution; and
- (4) a franchise agreement.

(c) In the case of the license of a marketing intangible, where a taxpayer has actual evidence of the amount or proportion of its receipts that is attributable to North Carolina, it shall assign that amount or proportion to North Carolina. In the absence of actual evidence of the amount or proportion of the licensee's receipts that are derived from North Carolina consumers, the portion of the licensing fee to be assigned to North Carolina shall be reasonably approximated by multiplying the total fee by a percentage that reflects the ratio of the North Carolina population in the specific geographic area where the licensee makes material use of the intangible property to regularly market its goods, services, or other items relative to the total population in that area.

(d) If the license of a marketing intangible is for the right to use the intangible property in connection with sales or other transfers at wholesale rather than directly to retail customers, the portion of the licensing fee to be assigned to North Carolina shall be reasonably approximated by multiplying the total fee by a percentage that reflects the ratio of the North Carolina population in the specific geographic area where the licensee's goods, services, or other items are ultimately and materially marketed using the intangible property relative to the total population of that area. Unless the taxpayer demonstrates that the marketing intangible is materially used in the marketing of items outside the United States, the fees from licensing that marketing intangible shall be presumed to be derived from within the United States.

History Note: Authority G.S. 105-130.4; S.L. 2016-94.

17 NCAC 05G .1103 LICENSE OF A PRODUCTION INTANGIBLE

(a) Where a license is granted for the right to use intangible property, other than in connection with the sale, lease, license, or other marketing of goods, services, or other items, and the license will be used in a production capacity (a "production intangible"), the licensing fees paid by the licensee for that right shall be assigned to North Carolina to the extent that the use for which the fees are paid takes place in North Carolina.

(b) License of a production intangible includes the license of a patent, a copyright, or trade secrets to be used in a manufacturing process, where the value of the intangible lies predominately in its use in that process.

(c) Where the actual use of intangible property pursuant to a license of a production intangible takes place in part in North Carolina, the entire use shall be in this State except to the extent that the taxpayer is able to demonstrate that the actual location of a portion of the use takes place outside North Carolina.

(d) When a license of a production intangible to a related entity, the taxpayer shall assign the receipts to where the intangible property is actually used. When a license of a production intangible to a party other than a related entity where the location of actual use is unknown, the use of the intangible property takes place in the state of the licensee's commercial domicile when a business, or the licensee's state of primary residence when an individual.

History Note: Authority G.S. 105-130.4; S.L. 2016-94.

17 NCAC 05G .1104 LICENSE OF A MIXED INTANGIBLE

Where a license of intangible property includes both a license of a marketing intangible and a license of a production intangible (a "mixed intangible") and the fees to be paid in each instance are separately and reasonably stated in the licensing contract, the Secretary shall accept that separate statement for purposes of these Rules. If a license of intangible property includes both a license of a marketing intangible and a license of a production intangible and the fees to be paid in each instance are not separately and reasonably stated in the contract, the licensing fees were paid entirely for the license of the marketing intangible, except to the extent that the taxpayer can reasonably establish otherwise.

History Note: Authority G.S. 105-130.4; S.L. 2016-94.

17 NCAC 05G .1105 LICENSE OF INTANGIBLE PROPERTY WHEN SUBSTANCE OF THE TRANSACTION RESEMBLES A SALE OF GOODS OR SERVICES

(a) When the license of intangible property resembles the sale of an electronically-delivered good or service, rather than the license of a marketing intangible or production intangible, the receipts shall be assigned by applying Rules .0904 and .0905 of this Subchapter. Transactions to be assigned under this Rule include the license of:

- (1) database access;
- (2) access to information;
- (3) digital goods; and
- (4) certain software, where the transaction is not the license of pre-written software treated as the sale of tangible personal property.

(b) Sublicenses. The provisions of Rule .0905 of this Subchapter shall apply where a taxpayer licenses intangible property to a customer that in turn sublicenses the intangible property to end users as if the transaction were a service delivered electronically through a customer to end users. Rule .0905 of this Subchapter shall apply to services delivered electronically to a customer for purposes of resale and subsequent electronic delivery in substantially identical form to end users or other recipients shall also apply with respect to licenses of intangible property for purposes of sublicense to end users. For this purpose, the intangible property sublicensed to an end user shall not fail to be substantially identical to the property that was licensed to the sublicensor where the sublicense transfers a reduced bundle of rights with respect to that property, such as when the sublicensee's rights are limited to its own use of the property and do not include the ability to grant a further sublicense, or because that property is bundled with additional services or items of property.

History Note: Authority G.S. 105-130.4; S.L. 2016-94.

Examples

In these examples, assume that the customer is not a related entity.

Example (i). Crayon Corp and Dealer Co enter into a license contract under which Dealer Co as licensee is permitted to use trademarks that are owned by Crayon Corp in connection with Dealer Co's sale of certain products to retail customers. Under the contract, Dealer Co is required to pay Crayon Corp a licensing fee that is a fixed percentage of the total volume of monthly sales made by Dealer Co of products using the Crayon Corp trademarks. Under the contract, Dealer Co is permitted to sell the products at multiple store locations, including store locations that are both within and without North Carolina. Further, the licensing fees that are paid by Dealer Co are broken out on a per-store basis. The licensing fees paid to Crayon Corp by Dealer Co represent fees from the license of a marketing intangible. The portion of the fees to be assigned to North Carolina are determined by multiplying the fees by a percentage that reflects the ratio of Dealer Co's receipts that are derived from its North Carolina stores relative to Dealer Co's total receipts.

Example (ii). Program Corp, a corporation that is based outside North Carolina, licenses programming that it owns to licensees, such as cable networks, that in turn will offer the programming to their customers on television or other media outlets in North Carolina and in all other U.S. states. Each of these licensing contracts constitutes the license of a marketing intangible. For each licensee, assuming that Program Corp lacks evidence of the actual number of viewers of the programming in North Carolina, the component of the licensing fee paid to Program Corp by the licensee that constitutes Program Corp's North Carolina receipts is determined by multiplying the amount of the licensing fee by a percentage that reflects the ratio of the North Carolina audience of the licensee for the programming relative to the licensee's total U.S. audience for the programming. Note that the analysis and result as to the state or states to which receipts are properly assigned would be the same to the extent that the substance of Program Corp's licensing transactions may be determined to resemble a sale of goods or services, instead of the license of a marketing intangible.

Example (iii). Moniker Corp enters into a license contract with Wholesale Co. Pursuant to the contract Wholesale Co is granted the right to use trademarks owned by Moniker Corp to brand sports equipment that is to be manufactured by Wholesale Co or an unrelated entity, and to sell the manufactured equipment to unrelated companies that will ultimately market the equipment to consumers in a specific geographic region, including a foreign country. The license agreement confers a license of a marketing intangible, even though the trademarks in question will be affixed to property to be manufactured. In addition, the license of the marketing intangible is for the right to use the intangible property in connection with sales to be made at wholesale rather than directly to retail customers. The component of the licensing fee that constitutes the North Carolina receipts of Moniker Corp is determined by multiplying the amount of the fee by a percentage that reflects the ratio of the North Carolina population in the specific geographic region relative to the total population in that region. If Moniker Corp is able to reasonably establish that the

marketing intangible was materially used throughout a foreign country, then the population of that country will be included in the population ratio calculation. However, if Moniker Corp is unable to reasonably establish that the marketing intangible was materially used in the foreign country in areas outside a particular major city, then none of the foreign country's population beyond the population of the major city is included in the population ratio calculation.

Example (iv). Formula, Inc and Appliance Co enter into a license contract under which Appliance Co is permitted to use a patent owned by Formula, Inc to manufacture appliances. The license contract specifies that Appliance Co is to pay Formula, Inc a royalty that is a fixed percentage of the gross receipts from the products that are later sold. The contract does not specify any other fees. The appliances are both manufactured and sold in North Carolina and several other states. Assume the licensing fees are paid for the license of a production intangible, even though the royalty is to be paid based upon the sales of a manufactured product (i.e., the license is not one that includes a marketing intangible). Because the actual use of the intangible property takes place in part in North Carolina, the royalty is assigned based to the location of that use rather than to the location of the licensee's commercial domicile, in accordance with Rule .1101. It is presumed that the entire use is in North Carolina except to the extent that the taxpayer can demonstrate that the actual location of some or all of the use takes place outside North Carolina. Assuming that Formula, Inc can demonstrate the percentage of manufacturing that takes place in North Carolina using the patent relative to the manufacturing in other states, that percentage of the total licensing fee paid to Formula, Inc under the contract will constitute Formula, Inc's North Carolina receipts.

Example (v). Axel Corp enters into a license agreement with Biker Co in which Biker Co is granted the right to produce motor scooters using patented technology owned by Axel Corp, and also to sell the scooters by marketing the fact that the scooters were manufactured using the special technology. The contract is a license of both a marketing and production intangible, i.e., a mixed intangible. The scooters are manufactured outside North Carolina. Assume that Axel Corp lacks actual information regarding the proportion of Biker Co.'s receipts that are derived from North Carolina customers. Also assume that Biker Co is granted the right to sell the scooters in a U.S. geographic region in which the North Carolina population constitutes 25% of the total population during the period in question. The licensing contract requires an upfront licensing fee to be paid by Biker Co to Axel Corp and does not specify what percentage of the fee derives from Biker Co's right to use Axel Corp's patented technology. Because the fees for the license of the marketing and production intangible are not separately and reasonably stated in the contract, it is presumed that the licensing fees are paid entirely for the license of a marketing intangible, unless the taxpayer reasonably establishes otherwise. Assuming the taxpayer does not establish otherwise, 25% of the licensing fee constitutes North Carolina receipts.

Example (vi). Same facts as Example (v), except that the license contract specifies separate fees to be paid for the right to produce the motor scooters and for the right to sell the scooters by marketing the fact that the scooters were manufactured using the special technology. The licensing contract constitutes both the license of a marketing intangible and the license of a production intangible. Assuming that the separately stated fees are reasonable, (1) no part of the licensing fee paid for the production intangible will be assigned to North Carolina, and (2) 25% of the licensing fee paid for the marketing intangible will be assigned to North Carolina.

Example (vii). Better Burger Corp, which is based outside North Carolina, enters into franchise contracts with franchisees that agree to operate Better Burger restaurants as franchisees in various states. Several of the Better Burger Corp franchises are in North Carolina. In each case, the franchise contract between the individual and Better Burger provides that the franchisee is to pay Better Burger Corp an upfront fee for the receipt of the franchise and monthly franchise fees, which cover, among other things, the right to use the Better Burger name and service marks, food processes and cooking know-how, as well as fees for management services. The upfront fees for the receipt of the North Carolina franchises constitute fees paid for the licensing of a marketing intangible. These fees constitute North Carolina receipts because the franchises are for the right to make North Carolina sales. The monthly franchise fees paid by North Carolina franchisees constitute fees paid for (1) the license of marketing intangibles (the Better Burger name and service marks), (2) the license of production intangibles (food processes and know-how) and (3) personal services (management fees). The fees paid for the license of the marketing intangibles and the production intangibles constitute North Carolina receipts because in each case the use of the intangibles is to take place in North Carolina. The fees paid for the personal services are to be assigned pursuant to Rule .0701.

Example (viii). Online Corp, a corporation based outside North Carolina, licenses an information database through the means of the Internet to individual customers that are resident in North Carolina and in other states. These customers access Online Corp's information database primarily in their states of residence, and sometimes, while traveling, in other states. The license is a license of intangible property that resembles a sale of goods or services and are assigned in accordance with Rule .1105. If Online Corp can determine or reasonably approximate the state or states where its database is accessed, it must do so. Assuming that Online Corp cannot determine or reasonably approximate the location where its database is accessed, Online Corp must assign the receipts made to the individual customers using the customers' billing addresses to the extent known. Assume for purposes of this example that Online Corp knows the billing address for each of its customers. In this case, Online Corp's receipts from sales made to its individual customers are in North Carolina in any case in which the customer's billing address is in North Carolina.

Example (ix). Net Corp, a corporation based outside North Carolina, licenses an information database through the means of the Internet to a business customer, Business Corp, a company with offices in North Carolina and two neighboring states. The license is a license of intangible property that resembles a sale of goods or services and are assigned in accordance with Rule .1105. Assume that Net Corp cannot determine where its database is accessed but reasonably approximates that 75% of Business Corp's

database access took place in North Carolina, and 25% of Business Corp's database access took place in other states. In that case, 75% of the receipts from database access are in North Carolina. Assume alternatively that Net Corp lacks sufficient information regarding the location where its database is accessed to reasonably approximate the location. Under these circumstances, if Net Corp derives 5% or less of its receipts from database access from Business Corp, Net Corp must assign the receipts under Rule .0904(b)(2)(C) to the state where Business Corp principally managed the contract, or if that state is not reasonably determinable to the state where Business Corp placed the order for the services, or if that state is not reasonably determinable to the state of Business Corp's billing address. If Net Corp derives more than 5% of its receipts from database access from Business Corp, Net Corp is required to identify the state in which its contract of sale is principally managed by Business Corp and must assign the receipts to that state.

Example (x). Net Corp, a corporation based outside North Carolina, licenses an information database through the means of the Internet to more than 250 individual and business customers in North Carolina and in other states. The license is a license of intangible property that resembles a sale of goods or services and receipts from that license are assigned in accordance with Rule .1105. Assume that Net Corp cannot determine or reasonably approximate the location where its information database is accessed. Also assume that Net Corp does not derive more than 5% of its receipts from sales of database access from any single customer. Net Corp may apply the safe harbor stated in Rule .0904(b)(2)(D), and may assign its receipts to a state or states using each customer's billing address.

Example (xi). Web Corp, a corporation based outside of North Carolina, licenses an Internet-based information database to business customers who then sublicense the database to individual end users that are resident in North Carolina and in other states. These end users access Web Corp's information database primarily in their states of residence, and sometimes, while traveling, in other states. Web Corp's license of the database to its customers includes the right to sublicense the database to end users, while the sublicenses provide that the rights to access and use the database are limited to the end users' own use and prohibit the individual end users from further sublicensing the database. Web Corp receives a fee from each customer based upon the number of sublicenses issued to end users. The license is a license of intangible property that resembles a sale of goods or services and are assigned by applying the methodology set forth in Rule .0905. If Web Corp can determine or reasonably approximate the state or states where its database is accessed by end users, it must do so. Assuming that Web Corp lacks sufficient information from which it can determine or reasonably approximate the location where its database is accessed by end users, Web Corp must approximate the extent to which its database is accessed in North Carolina using a percentage that represents the ratio of the North Carolina population in the specific geographic area in which Web Corp's customer sublicenses the database access relative to the total population in that area.

SECTION .1200 – SALE OF INTANGIBLE PROPERTY

17 NCAC 05G .1201 ASSIGNMENT OF RECEIPTS

The assignment of receipts to a state or states in the instance of a sale or exchange of intangible property depends upon the nature of the intangible property sold. For purposes of this Section, a sale or exchange of intangible property includes a license of that property where the transaction is treated for tax purposes as a sale of all substantial rights in the property and the receipts from the transaction are not contingent on the productivity, use, or disposition of the property.

- (1) In the case of a sale or exchange of intangible property where the property sold or exchanged is a contract right, government license, or similar intangible property that authorizes the holder to conduct a business activity in a specific geographic area, the receipts from the sale shall be assigned to a state to the extent that the intangible property is used or is authorized to be used within the state. If the intangible property is used or may be used only in this State, the taxpayer shall assign the receipts from the sale to North Carolina. If the intangible property is used or is authorized to be used in North Carolina and one or more other states, the taxpayer shall assign the receipts from the sale to North Carolina to the extent that the intangible property is used in or authorized for use in North Carolina, through the means of a reasonable approximation.
- (2) In the case of a sale or exchange of intangible property where the receipts from the sale or exchange are contingent on the productivity, use, or disposition of the property, the receipts from the sale shall be assigned by applying the rules set forth in Section .1100 of this Subchapter.
- (3) In the case of a sale or exchange of intangible property where the substance of the transaction resembles a sale of goods or services and where the receipts from the sale or exchange do not derive from payments contingent on the productivity, use, or disposition of the property, the receipts from the sale shall be assigned by applying the rules set forth in Rule .1105 of this Subchapter.
- (4) Receipts from the sale of intangible property shall not be included in the sales factor in any case when the sale does not give rise to receipts within the meaning of Rule .0401 of this Subchapter. In addition, in any case where the sale of intangible property results in receipts within the meaning of Section .0400 of this Subchapter, those receipts shall be excluded from the numerator and the denominator of the taxpayer's sales factor if the receipts are not referenced in G.S. 105.130.4(1). The sale of intangible property that is excluded from the numerator and denominator of the taxpayer's sales factor under this provision includes the sale of business "goodwill," the sale of an agreement not to compete, or similar intangible value.

History Note: Authority G.S. 105-130.4; S.L. 2016-94.

Examples

Example (i). Airline Corp, a corporation based outside North Carolina, sells its rights to use several gates at an airport located in North Carolina to Buyer Corp, a corporation that is based outside North Carolina. The contract of sale is negotiated and signed outside of North Carolina. The receipts from the sale are in North Carolina because the intangible property sold is a contract right that authorizes the holder to conduct a business activity solely in North Carolina.

Example (ii). Wireless Corp, a corporation based outside North Carolina, sells a license issued by the Federal Communications Commission (FCC) to operate wireless telecommunications services in a designated area in North Carolina to Buyer Corp, a corporation that is based outside North Carolina. The contract of sale is negotiated and signed outside of North Carolina. The receipts from the sale are in North Carolina because the intangible property sold is a government license that authorizes the holder to conduct business activity solely in North Carolina.

Example (iii). Same facts as in Example (ii) except that Wireless Corp sells to Buyer Corp an FCC license to operate wireless telecommunications services in a designated area in North Carolina and an adjacent state. Wireless Corp must attempt to reasonably approximate the extent to which the intangible property is used in or may be used in North Carolina. For purposes of making this reasonable approximation, Wireless Corp may rely upon credible data that identifies the percentage of persons that use wireless telecommunications in the two states covered by the license.

Example (iv). Sports League Corp, a corporation that is based outside North Carolina, sells the rights to broadcast the sporting events played by the teams in its league in all 50 U.S. states to Network Corp. Although the games played by Sports League Corp will be broadcast in all 50 states, the games are of greater interest in the eastern region of the country, including North Carolina. Because the intangible property sold is a contract right that authorizes the holder to conduct a business activity in a specified geographic area, Sports League Corp must attempt to reasonably approximate the extent to which the intangible property is used in or may be used in North Carolina. For purposes of making this reasonable approximation, Sports League Corp may rely upon audience measurement information that identifies the percentage of the audience for its sporting events in North Carolina and the other states.

Example (v). Inventor Corp, a corporation that is based outside North Carolina, sells patented technology that it has developed to Buyer Corp, a business customer that is based in North Carolina. Assume that the sale is not one in which the receipts derive from payments that are contingent on the productivity, use, or disposition of the property. Inventor Corp understands that Buyer Corp is likely to use the patented technology in North Carolina, but the patented technology can be used anywhere (i.e., the rights sold are not rights that authorize the holder to conduct a business activity in a specific geographic area). The receipts from the sale of the patented technology are excluded from the numerator and denominator of Inventor Corp's sales factor.

SECTION .1300 – SPECIAL RULES

17 NCAC 05G .1301 SOFTWARE TRANSACTIONS

(a) A license or sale of pre-written software for purposes other than commercial reproduction, or other exploitation of the intellectual property rights, transferred on a tangible medium shall be treated as the sale of tangible personal property, rather than as either the license or sale of intangible property or the performance of a service. In these cases, the receipts shall be in North Carolina as determined under the rules for the sale of tangible personal property set forth under G.S. 105-130.4 and the rules of this Subchapter.

(b) In all other cases, the receipts from a license or sale of software shall be assigned to North Carolina as determined otherwise under this Subchapter. This determination shall be based on the facts, and:

- (1) the development and sale of custom software as set forth in Section .0900 of this Subchapter;
- (2) the license of a marketing intangible, as set forth in Rule .1102 of this Subchapter;
- (3) the license of a production intangible, as set forth in Rule .1103 of this Subchapter;
- (4) the license of intangible property where the substance of the transaction resembles a sale of goods or services, as set forth in Rule .1105 of this Subchapter; or
- (5) as a sale of intangible property, as set forth in Rule .1201 of this Subchapter.

History Note: Authority G.S. 105-130.4; S.L. 2016-94.

17 NCAC 05G .1302 SALES OR LICENSES OF DIGITAL GOODS AND SERVICES

The receipts from the sale or license of digital goods or services, including the sale of video, audio, and software products or similar transactions, shall be assigned by applying the same provisions set forth in Rules .0904 or .0905 of this Subchapter, as if the transaction was a service delivered to an individual or business customer, or delivered through or on behalf of an individual or business customer. For purposes of the analysis, the terms of the contractual relationship or the characterization of the sale or the license shall not be relevant.

History Note: Authority G.S. 105-130.4; S.L. 2016-94.

17 NCAC 05G .1303 TELECOMMUNICATIONS COMPANIES

(a) When a taxpayer that provides telecommunications or ancillary services that are subject to Multistate Tax Commission Reg. IV.18(i), receipts from the sale or license of digital goods or services not otherwise assigned for apportionment purposes pursuant to that Regulation shall be assigned pursuant to this Rule. The taxpayer shall apply Rules .0904 or .0905 of this Subchapter as if the transaction were a service delivered to an individual or business customer or delivered through or on behalf of an individual or business customer.

Multistate Tax Commission Reg. IV.18(i) is hereby incorporated by reference, including subsequent amendments or additions, and is available free of charge at <http://www.mtc.gov/Uniformity/Adopted-Uniformity-Recommendations>.

(b) In applying these Rules, if the taxpayer cannot determine the state or states where a customer received the purchased product, the taxpayer may reasonably approximate this location using the customer's place of "primary use" of the purchased product, applying the definition of "primary use" set forth in MTC Model Regulation for Sourcing Sales of Telecommunications and Ancillary Services, MTC Reg. IV.18(i).

History Note: Authority G.S. 105-130.4; S.L. 2016-94.