

**§ 105-130.4. Allocation and apportionment of income for corporations.**

- (a) Definitions. – The following definitions apply in this section:
- (1) Apportionable income. – All income that is apportionable under the United States Constitution, including income that arises from either of the following:
    - a. Transactions and activities in the regular course of the taxpayer's trade or business.
    - b. Tangible and intangible property if the acquisition, management, employment, development, or disposition of the property is or was related to the operation of the taxpayer's trade or business.
  - (2) Business activity. – Any activity by a corporation that would establish nexus, except as limited by 15 U.S.C. § 381.
  - (3) Casual sale of property. – The sale of any property that was not purchased, produced, or acquired primarily for sale in the corporation's regular trade or business.
  - (4) Commercial domicile. – The principal place from which the trade or business of the taxpayer is directed or managed.
  - (5) Compensation. – Wages, salaries, commissions and any other form of remuneration paid to employees for personal services.
  - (6) Nonapportionable income. – All income other than apportionable income.
  - (7) Sales. – All gross receipts of the corporation except for the following receipts:
    - a. Receipts from a casual sale of property.
    - b. Receipts allocated under subsections (c) through (h) of this section.
    - c. Receipts exempt from taxation.
    - d. The portion of receipts realized from the sale or maturity of securities or other obligations that represents a return of principal.
    - e. The portion of receipts from financial swaps and other similar financial derivatives that represents the notional principal amount that generates the cash flow traded in the swap agreement.
    - f. Receipts in the nature of dividends subtracted under G.S. 105-130.5(b)(3a), (3b), and dividends excluded for federal tax purposes.
  - (8) State. – A state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, any territory or possession of the United States, and any foreign country or political subdivision thereof.
- (b) Multistate Corporations. – A corporation having income from business activity which is taxable both within and without this State shall allocate and apportion its net income or net loss as provided in this section. For purposes of allocation and apportionment, a corporation is taxable in another state if either of the following applies:
- (1) The corporation's business activity in that state subjects it to a net income tax or a tax measured by net income.
  - (2) That state has jurisdiction based on the corporation's business activity in that state to subject the corporation to a tax measured by net income regardless whether that state exercises its jurisdiction.
- (c) Nonapportionable Income. – Rents and royalties from real or tangible personal property, gains and losses, interest, dividends, patent and copyright royalties and other kinds of income, to the extent that they constitute nonapportionable income, less related expenses shall be allocated as provided in subsections (d) through (h) of this section.
- (d) Rents and Royalties. – Net rents and royalties are allocable to this State as follows:
- (1) Net rents and royalties from real property located in this State are allocable to this State.

- (2) Net rents and royalties from tangible personal property are allocable to this State:
    - a. If and to the extent that the property is utilized in this State, or
    - b. In their entirety if the corporation's commercial domicile is in this State and the corporation is not organized under the laws of, or is not taxable in, the state in which the property is utilized.
  - (3) The extent of utilization of tangible personal property in a state is determined by multiplying the rents and royalties by a fraction, the numerator of which is the number of days of physical location of the property in the state during the rental or royalty period in the income year and the denominator of which is the number of days of physical location of the property everywhere during all rental or royalty periods in the income year. If the physical location of the property during the rental or royalty period is unknown or unascertainable by the corporation, tangible personal property is utilized in the state in which the property was located at the time the rental or royalty payer obtained possession.
- (e) Gains and Losses. – Gains and losses are allocable to this State as follows:
- (1) Gains and losses from sales or other disposition of real property located in this State are allocable to this State.
  - (2) Gains and losses from sales or other disposition of tangible personal property are allocable to this State if
    - a. The property had a situs in this State at the time of the sale, or
    - b. The corporation's commercial domicile is in this State and the corporation is not taxable in the state in which the property has a situs.
  - (3) Gains and losses from sales or other disposition of intangible personal property are allocable to this State if the corporation's commercial domicile is in this State.
- (f) Interest and Net Dividends. – Interest and net dividends are allocable to this State if the corporation's commercial domicile is in this State. For purposes of this section, the term "net dividends" means gross dividend income received less related expenses.
- (g) Intangible Property. – Intangible property is allocable to this State as follows:
- (1) Royalties or similar income received from the use of patents, copyrights, secret processes and other similar intangible property are allocable to this State:
    - a. If and to the extent that the patent, copyright, secret process or other similar intangible property is utilized in this State, or
    - b. If and to the extent that the patent, copyright, secret process or other similar intangible property is utilized in a state in which the taxpayer is not taxable and the taxpayer's commercial domicile is in this State.
  - (2) A patent, secret process or other similar intangible property is utilized in a state to the extent that it is employed in production, fabrication, manufacturing, processing, or other use in the state or to the extent that a patented product is produced in the state. If the basis of receipts from such intangible property does not permit allocation to states or if the accounting procedures do not reflect states of utilization, the intangible property is utilized in the state in which the taxpayer's commercial domicile is located.
  - (3) A copyright is utilized in a state to the extent that printing or other publication originates in the state. If the basis of receipts from copyright royalties does not permit allocation to states or if the accounting procedures do not reflect states

of utilization, the copyright is utilized in the state in which the taxpayer's commercial domicile is located.

(h) Other Income. – The income less related expenses from any other activities producing nonapportionable income or investments not otherwise specified in this section is allocable to this State if the business situs of the activities or investments is located in this State.

(i) Apportionable Income. – Except as otherwise provided in this section, all apportionable income of corporations shall be apportioned to this State by multiplying the income by the sales factor as determined under subsection (l) of this section.

(j) Repealed by Session Laws 2015-241, s. 32.14(d), as amended by Session Laws 2015-268, s. 10.1(c), effective for taxable years beginning on or after January 1, 2018.

(k) Repealed by Session Laws 2015-241, s. 32.14(d), as amended by Session Laws 2015-268, s. 10.1(c), effective for taxable years beginning on or after January 1, 2018.

(l) Sales Factor. – The sales factor is a fraction, the numerator of which is the total sales of the corporation in this State during the income year, and the denominator of which is the total sales of the corporation everywhere during the income year. Notwithstanding any other provision under this Part, the receipts from any casual sale of property shall be excluded from both the numerator and the denominator of the sales factor. Where a corporation is not taxable in another state on its apportionable income but is taxable in another state only because of nonapportionable income, all sales shall be treated as having been made in this State.

Receipts are in this State if the taxpayer's market for the receipts is in this State. If the market for a receipt cannot be determined, the state or states of assignment shall be reasonably approximated. In a case in which a taxpayer cannot ascertain the state or states to which receipts of a sale are to be assigned through the use of a method of reasonable approximation, the receipts must be excluded from the denominator of a taxpayer's sales factor. Except as otherwise provided by this section, a taxpayer's market for receipts is in this State as provided below:

- (1) In the case of sale, rental, lease, or license of real property, if and to the extent the property is located in this State.
- (2) In the case of rental, lease, or license of tangible personal property, if and to the extent the property is located in this State.
- (3) In the case of sale of tangible personal property, if and to the extent the property is received in this State by the purchaser. In the case of delivery of goods by common carrier or by other means of transportation, including transportation by the purchaser, the place at which the goods are ultimately received after all transportation has been completed is considered the place at which the goods are received by the purchaser. Direct delivery into this State by the taxpayer to a person or firm designated by a purchaser from within or without the State constitutes delivery to the purchaser in this State.
- (4) In the case of sale of a service, if and to the extent the service is delivered to a location in this State.
- (5) In the case of intangible property that is rented, leased, or licensed, if and to the extent the property is used in this State. Intangible property utilized in marketing a good or service to a consumer is "used in this State" if that good or service is purchased by a consumer who is in this State.
- (6) In the case of intangible property that is sold, if and to the extent the property is used in this State. A contract right, government license, or similar intangible property that authorized the holder to conduct a business activity in a specific geographic area is "used in this State" if the geographic area includes all or part of this State. Receipts from a sale of intangible property that is contingent on the productivity, use, or disposition of the intangible property shall be treated as receipts from the rental, lease, or licensing of the intangible property

as provided under subdivision (5) of this subsection. All other receipts from a sale of intangible property shall be excluded from the numerator and denominator of the sales factor.

(11) Wholesale Content Distributors. – A wholesale content distributor's market for receipts is in this State as provided in G.S. 105-130.4A. In no event may the amount of receipts sourced to this State be less than the amount determined under this subsection. The amount determined under this subsection is the total domestic gross receipts of the wholesale content distributor from advertising and licensing activities multiplied by two percent (2%). For purposes of this section, the term "wholesale content distributor" has the same meaning as defined in G.S. 105-130.4A.

(12) Banks. – A bank's market for receipts is in this State as provided in G.S. 105-130.4B. For purposes of this section, the term "bank" has the same meaning as defined in G.S. 105-130.4B.

(m) Railroad Company. – All apportionable income of a railroad company shall be apportioned to this State by multiplying the income by a fraction, the numerator of which is the "railway operating revenue" from business done within this State and the denominator of which is the "total railway operating revenue" from all business done by the company as shown by its records kept in accordance with generally accepted accounting principles.

If the Secretary of Revenue finds, with respect to any particular company, that its accounting records are not kept so as to reflect with exact accuracy such division of revenue by State lines as to each transaction involving interstate revenue, the Secretary of Revenue may adopt such regulations, based upon averages, as will approximate with reasonable accuracy the proportion of interstate revenue actually earned upon lines in this State. Provided, that where a railroad is being operated by a partnership which is treated as a corporation for income tax purposes and pays a net income tax to this State, or if located in another state would be so treated and so pay as if located in this State, each partner's share of the net profits shall be considered as dividends paid by a corporation for purposes of this Part and shall be so treated for inclusion in gross income, deductibility, and separate allocation of dividend income.

The following definitions apply in this subsection:

- (1) Equal mileage proportion. – The proportion which the distance of movement of property and passengers over lines in this State bears to the total distance of movement of property and passengers over lines of the company receiving such revenue.
- (2) Interstate business. – Railroad operating revenue from the interstate transportation of persons or property into, out of, or through this State.
- (3) Railway operating revenue from business done within this State. – Railroad operating revenue from business wholly within this State, plus the equal mileage proportion within this State of each item of railway operating revenue received from the interstate business of the company.

(n) Repealed by Session Laws 2017-204, s. 1.5, effective for taxable years beginning on or after January 1, 2017.

(o) Motor Carrier. – All apportionable income of a motor carrier of property or a motor carrier of people shall be apportioned by multiplying the income by a fraction, the numerator of which is the number of vehicle miles in this State and the denominator of which is the total number of vehicle miles of the company everywhere. The words "vehicle miles" shall mean miles traveled by vehicles owned or operated by the company based upon one of the following:

- (1) Miles on a scheduled route.
- (2) Miles hauling property for a charge.
- (3) Miles carrying passengers for a fare.

(p), (q) Repealed by Session Laws 2017-204, s. 1.5, effective for taxable years beginning on or after January 1, 2017.

(r) Repealed by Session Laws 2015-241, s. 32.14(d), as amended by Session Laws 2015-268, s. 10.1(c), effective for taxable years beginning on or after January 1, 2018.

(s) Transportation Corporation. – All apportionable income of an air transportation corporation or a water transportation corporation shall be apportioned by a fraction, the numerator of which is the corporation's revenue ton miles in this State and the denominator of which is the corporation's revenue ton miles everywhere. A qualified air freight forwarder shall use the revenue ton mile fraction of its affiliated air carrier. The following definitions apply in this subsection:

- (1) Air carrier. – A corporation engaged in the business of transporting any combination of passengers or property of any kind in interstate commerce, and the majority of the corporation's revenue ton miles everywhere are attributed to transportation by aircraft.
- (2) Air transportation corporation. – One or more of the following:
  - a. An air carrier that carries any combination of passengers or property of any kind.
  - b. A qualified air freight forwarder.
- (3) Qualified air freight forwarder. – A corporation that is an affiliate of an air carrier and whose air freight forwarding business is primarily carried on with the affiliated air carrier.
- (4) Revenue ton mile. – One ton of passengers, freight, mail, or other cargo carried one mile by the air transportation corporation or water transportation corporation by aircraft, motor vehicle, or vessel. In making this computation, a passenger is considered to weigh two hundred pounds.

(s1) Repealed by Session Laws 2015-241, s. 32.14(d), as amended by Session Laws 2015-268, s. 10.1(c), effective for taxable years beginning on or after January 1, 2018.

(s2) Pipeline Company. – Receipts from the transportation or transmission of petroleum-based liquids or natural gas by a company subject to rate regulation by the Federal Energy Regulatory Commission shall be apportioned by multiplying the income by a fraction, the numerator of which is the number of traffic units in this State during the tax year and the denominator of which is the total number of traffic units everywhere during the tax year. For purposes of this section, the term "traffic unit" means one or more of the following:

- (1) Barrel mile. – One barrel of liquid property transported one mile.
- (2) Cubic foot mile. – One cubic foot of gaseous property transported one mile.

(s3) Electric Power Company. – All apportionable income of an electric power company shall be apportioned by a fraction, the numerator of which is the average value of the real and tangible personal property owned or rented and used in this State by the electric power company during the income year and the denominator of which is the average value of all the real and tangible personal property owned or rented and used by the electric power company during the income year. For purposes of this subsection, the term "electric power company" is a company, including any of its wholly owned noncorporate limited liability companies, primarily engaged in the business of supplying electricity for light, heat, current, or power to persons in this State and that is subject to control of one or more of the following entities: the North Carolina Utilities Commission or the Federal Energy Regulatory Commission.

For purposes of this subsection, the average value of real and tangible personal property owned or rented by an electric power company is determined as follows:

- (1) The average value of property shall be determined by averaging the values at the beginning and end of the income year, but in all cases the Secretary may require the averaging of monthly or other periodic values during the income

year if reasonably required to reflect properly the average value of the corporation's property.

- (2) An electric power company that ceases its operations in this State before the end of its income year because of its intention to dissolve or to relinquish its certificate of authority, or because of a merger, conversion, or consolidation, or for any other reason whatsoever shall use the real estate and tangible personal property values as of the first day of the income year and the last day of its operations in this State in determining the average value of property, but the Secretary may require averaging of monthly or other periodic values during the income year if reasonably required to reflect properly the average value of the electric power company's property.
- (3) Property owned by an electric power company is valued at its original cost.
- (4) Property rented by an electric power company is valued at eight times the net annual rental rate.
- (5) Net annual rental rate is the annual rental rate paid by an electric power company less any annual rental rate received by the electric power company from sub-rentals except that sub-rentals shall not be deducted when they constitute apportionable income.
- (6) Any property under construction and any property the income from which constitutes nonapportionable income shall be excluded from the computation of the average value of an electric power company's real and tangible personal property.

(t) Repealed by Session Laws 2007-491, s. 2, effective January 1, 2008. For applicability, see Editor's note.

(t1) Alternative Apportionment Method. – A corporation that believes the statutory apportionment method that otherwise applies to it under this section subjects a greater portion of its income to tax than is attributable to its business in this State may make a written request to the Secretary for permission to use an alternative method. The request must set out the reasons for the corporation's belief and propose an alternative method.

The statutory apportionment method that otherwise applies to a corporation under this section is presumed to be the best method of determining the portion of the corporation's income that is attributable to its business in this State. A corporation has the burden of establishing by clear, cogent, and convincing proof that the proposed alternative method is a better method of determining the amount of the corporation's income attributable to the corporation's business in this State.

The Secretary must issue a written decision on a corporation's request for an alternative apportionment method. If the decision grants the request, it must describe the alternative method the corporation is authorized to use and state the tax years to which the alternative method applies. A decision may apply to no more than three tax years. A corporation may renew a request to use an alternative apportionment method by following the procedure in this subsection. A decision of the Secretary on a request for an alternative apportionment method is final and is not subject to administrative or judicial review. A corporation authorized to use an alternative method may apportion its income in accordance with the alternative method or the statutory method. A corporation may not use an alternative apportionment method except upon written order of the Secretary, and any return in which any alternative apportionment method, other than the method prescribed by statute, is used without permission of the Secretary is not a lawful return.

(t2) Repealed by Session Laws 2011-330, s. 5, effective June 27, 2011.

(t3) State Net Loss Apportionment Election. – Notwithstanding subdivision (l)(4) of this section, a taxpayer with a State net loss balance as of the end of its 2019 taxable year may elect to apportion receipts from services based on the percentage of its income-producing activities

performed in this State. The election must be made on the 2020 tax year return and must be in the form prescribed by the Secretary and contain any supporting documentation the Secretary may require. The election is binding and irrevocable until the earlier of the tax year in which (i) the existing State net loss balance is fully utilized or (ii) all of the existing State net loss balance has expired, as determined by applying the limitations set forth in G.S. 105-130.8A(b). A taxpayer must apportion receipts from services in accordance with subdivision (l)(4) of this section for tax years beginning on and after the tax year that the existing State net loss is fully utilized.

For purposes of this subsection, a taxpayer's State net loss balance is the total amount of State net losses computed under G.S. 105-130.8A for taxable years beginning before January 1, 2020, and available to carry forward to taxable years beginning on or after January 1, 2020. A State net loss balance does not include a State net loss created in a taxable year beginning on or after January 1, 2020. A State net loss created in a taxable year beginning on or after January 1, 2020, must be determined using the apportionment rules in G.S. 105-130.4(l). (1939, c. 158, s. 311; 1941, c. 50, s. 5; 1943, c. 400, s. 4; 1945, c. 752, s. 3; 1953, c. 1302, s. 4; 1955, c. 1350, s. 18; 1957, c. 1340, s. 4; 1959, c. 1259, s. 4; 1963, c. 1169, s. 2; c. 1186; 1967, c. 1110, s. 3; 1973, c. 476, s. 193; c. 1287, s. 4; 1981 (Reg. Sess., 1982), c. 1212; 1987, c. 804, s. 2; 1987 (Reg. Sess., 1988), c. 994, s. 1; 1993, c. 532, s. 12; 1995, c. 350, s. 3; 1996, 2nd Ex. Sess., c. 14, s. 5; 1998-98, s. 69; 1999-369, s. 5.4; 2000-126, s. 5; 2001-327, s. 1(c); 2002-126, s. 30G.1(a); 2003-349, ss. 1.2, 1.3; 2003-416, ss. 5(a)-5(h); 2004-170, s. 15; 2005-435, s. 53; 2007-491, ss. 2, 12; 2009-54, ss. 1, 2, 6; 2009-445, ss. 4, 5; 2010-89, s. 2(a), (b); 2011-330, s. 5; 2013-414, s. 2(b); 2015-241, s. 32.14(a)-(d); 2015-268, s. 10.1(c); 2016-5, ss. 1.3(a), 1.6(a), 5.5(b); 2016-92, s. 1.1; 2017-204, s. 1.5(a); 2018-5, s. 38.2(c); 2018-97, s. 11.2(a); 2019-246, s. 3(a); 2020-58, s. 5.2(a).)