

§ 105-262.1. Rules to exercise authority under G.S. 105-130.5A.

(a) Purpose and Scope. – It is the policy of the State to provide necessary guidance on a timely basis to corporate taxpayers subject under G.S. 105-130.5A to have their net income adjusted or to be required to file a combined return. Except for a voluntary redetermination as allowed under G.S. 105-130.5A(c), the Secretary may not redetermine the State net income of a corporation properly attributable to its business carried on in the State under G.S. 105-130.5A until a rule adopted by the Secretary in accordance with this section becomes effective. This section provides an expedited procedure for the adoption of rules needed to administer G.S. 105-130.5A. The Secretary may not interpret G.S. 105-130.5A in the form of a bulletin or directive under G.S. 105-264.

The Secretary is exempt from G.S. 150B-21.1 through G.S. 150B-21.4 of Part 2 of Article 2A of Chapter 150B of the General Statutes but is subject to the expedited procedure for the adoption of rules as established by this section. The Secretary is exempt from Part 3 of Article 2A of Chapter 150B of the General Statutes but is subject to the expedited review procedure as established by this section.

(b) Definitions. – The definitions in G.S. 150B-2 apply in this section.

(c) Fiscal Note. – The Secretary must prepare a fiscal note for a proposed new rule or a proposed change to a rule that has a substantial economic impact. The fiscal note must be submitted with the proposed rule when the rule is submitted to the Codifier of Rules, and the Codifier of Rules must publish the fiscal note with the proposed rule on the Internet. The Secretary must accept a written comment on the fiscal note in the same manner the Secretary accepts written comments on the proposed rule. The Secretary is not subject to the fiscal note requirement under G.S. 105-262(c). For purposes of this section, a "substantial economic impact" has the same meaning as defined in G.S. 150B-21.4(b1).

(d) Adoption. – The Secretary may adopt a rule under this section by using the procedure for adoption of a temporary rule set forth in G.S. 150B-21.1(a3). The Secretary must provide electronic notification of the adoption of a rule to persons on the mailing list maintained in accordance with G.S. 150B-21.2(d) and any other interested parties, including those originally given notice of the rule making and those who provided comment on the rule. If the Secretary receives written comment objecting to the rule and requesting review by the Commission, the rule must be reviewed in accordance with subsections (e) through (i) of this section. A person may object to the rule and request review by the Commission at any point following the agency's adoption of the rule and by 5:00 P.M. on the third business day following electronic notification from the Secretary of the adoption of a rule. If the Secretary receives no written comment objecting to the rule and requesting review by the Commission, the Secretary must deliver the rule to the Codifier of Rules. The Codifier of Rules must enter the rule into the North Carolina Administrative Code upon receipt of the rule.

(e) Review. – If the Secretary receives written comment objecting to the rule and requesting review by the Commission, the Secretary must submit the rule to the Commission for review. The Commission may not consider questions relating to the quality or efficacy of the rule but must restrict its review to a determination of whether the rule meets all of the following criteria:

- (1) It is within the authority delegated to the agency by the General Assembly.
- (2) It is clear and unambiguous.
- (3) It is reasonably necessary to implement or interpret an enactment of the General Assembly, or of Congress, or a regulation of a federal agency. The Commission must consider the cumulative effect of all rules adopted by the agency related to the specific purpose for which the rule is proposed.
- (4) It was adopted in accordance with this section.

(f) Manner of Review. – When the Commission reviews a rule under this section, the time limits in subsections (b) and (b1) of G.S. 150B-21.1 apply. The Commission must review the rule to determine whether the rule meets the standards in subsection (e) of this section. The Commission must direct a member of its staff who is an attorney licensed to practice law in North Carolina to review the rule. The staff member must make a recommendation to the Commission or its designee. The Commission's designee must be a panel of at least three members of the Commission. The staff member, Commission's designee, or the Commission may also request technical changes as allowed in G.S. 150B-21.10. In reviewing the rule, the Commission may consider any information submitted by the Secretary or another person.

(g) Objection. – If the Commission or its designee finds that the rule does not meet the standards in subsection (e) of this section and objects to the rule, the Commission or its designee must send the Secretary a written statement of the objection and the reason for the objection within one business day. The Secretary must take one of the following actions:

- (1) Change the rule to satisfy the Commission's objection and submit the revised rule to the Commission.
- (2) Submit a written response to the Commission indicating that the Secretary has decided not to change the rule.

(h) Changes. – When the Secretary changes a rule in response to an objection by the Commission, the Commission must determine whether the change satisfies the Commission's objection. If it does, the Commission must approve the rule. If it does not, the Commission must send the Secretary a written statement of the Commission's continued objection and the reason for the continued objection.

(i) Approval. – If the Commission or its designee finds that the rule meets the standards in subsection (e) of this section, the Commission or its designee must approve the rule and deliver the rule to the Codifier of Rules. The Codifier of Rules must enter the rule into the North Carolina Administrative Code upon receipt from the Commission or its designee.

(j) Return of Rule. – A rule to which the Commission has objected remains under review by the Commission until the Secretary decides not to satisfy the Commission's objection and makes a written request to the Commission to return the rule to the Secretary. When the Commission returns a rule to the Secretary in accordance with this section, the Secretary may file an action for declaratory judgment in Wake County Superior Court pursuant to Article 26 of Chapter 1 of the General Statutes.

(k) Effective Date. – G.S. 150B-21.3 does not apply to a rule adopted under this section. A rule adopted under this section becomes effective on the last day of the month the Codifier of Rules enters the rule in the North Carolina Administrative Code. (2012-43, s. 2; 2013-414, s. 48.)