

17 NCAC 05D .0109 REQUEST FOR ALTERNATIVE APPORTIONMENT FORMULA

The corporation shall file a request with the Secretary setting forth the facts upon which the corporation's belief is based and its argument with respect to the application of the allocation formula as set forth under G.S. 105-130.4(t1) or G.S. 105-122(c1)(2). The request:

- (1) shall be in a form generally used in legal drafting, setting forth sections containing the relevant facts, applicable statutory basis, and analysis supporting the request;
- (2) shall be subscribed to by an officer of the corporation having knowledge of the facts;
- (3) shall summarize the business operation of the corporation both within and without North Carolina;
- (4) shall state whether the request is for income tax purposes, for franchise tax purposes, or for both;
- (5) shall include the corporation's argument and contentions respecting the application of the formula prescribed by statute and the method of allocation requested referring to any legal references and other grounds upon which the corporation is basing its positions(s);
- (6) shall disclose the alternative apportionment method of allocation and apportionment being requested and indicate the effect of its application on the corporation's tax liability together with any supporting and supplementing information that will enable the Secretary to fully understand and consider the method of allocation and apportionment requested;
- (7) shall state the taxable periods to be reviewed;
- (8) shall, for income tax purposes, include statements of income and expenses, showing the net income of the corporation subject to apportionment for each taxable period to be reviewed;
- (9) shall, for franchise tax purposes, include statements showing the total net worth subject to apportionment for each taxable period to be reviewed;
- (10) shall include schedules for each taxable period showing the computation of the property, payroll, and sales factors as prescribed by statute in the determination of the apportionment factor as required by G.S. 105-130.4 and rules published by the Department of Revenue;
- (11) shall, for a separate accounting method of reporting the corporation's business operations in this State, submit as support operating statements showing the results of the corporation's operations within North Carolina computed on the separate accounting basis together with similar statements showing the results of the corporation's operations outside North Carolina for each taxable period to be reviewed. A full explanation and description of the separate accounting method employed in the computation must accompany the statements. If there are items of expense or income that are indirectly attributed to the separated operations, the basis for apportioning such items must be disclosed. General overhead expenses must be separately stated in documentation and explained when any portion of this expense is allocated to the separate net income attributed to this State under the requested method;
- (12) shall, for a separate accounting method, submit as support schedules reflecting the apportionment factors applicable to the operations that are conducted in whole or part in this State and the apportionment factor applicable to the business conducted outside of this State. The computations shall be made without regard to nexus requirements that would be considered if the operations were legal separate entities; and
- (13) shall contain any other information relevant to the apportionment formula or the requested method of allocation that the corporation deems appropriate under the circumstances.

History Note: Authority G.S. 105-122(c1)(2); 105-130.4(t1); 105-262;
Eff. February 1, 2008;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. August 19, 2017;
Amended Eff. May 1, 2018.