

**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 Part (D) of this Subparagraph, 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 Part (B) of this Subparagraph, the state or states where the service is received. In these cases, the taxpayer may, in lieu of the rule stated in Part (C) of this Subparagraph, 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 Part (C) of this Subparagraph but may use the rule of

reasonable approximation in Part (B) of this Subparagraph, and the safe harbor in Part (D) of this Subparagraph. 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.

*History Note:* Authority G.S. 105-130.4; S.L. 2016-94;  
Eff. January 1, 2020 (See S.L. 2019-246, s. 3).