

SUBCHAPTER 05D - ALTERNATIVE APPORTIONMENT METHOD

17 NCAC 05D .0101	PRELIMINARY STATEMENT
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History Note: Authority G.S. 105-163.25; 105-163.27; 105-163.30; 105-163.32; 105-163.33; 105.262;
Eff. February 1, 1976;
Amended Eff. January 1, 1978;
Repealed Eff. October 31, 1981.

17 NCAC 05D .0107 PURPOSE

The Secretary of Revenue or his designee will consider requests from corporate taxpayers for use of an alternative apportionment formula in determining tax bases for franchise and income taxes.

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.

17 NCAC 05D .0108 WHO MAY SUBMIT REQUEST

(a) Any C-Corporation, S-Corporation, or Limited Liability Company electing to be treated as either a C-Corporation or S-Corporation for federal income tax purposes, which believes that the method of allocation or apportionment as administered by the Secretary of Revenue has operated or will so operate as to subject it to taxation on a greater portion of its income than is reasonably attributable to business or earnings may request an alternative apportionment method.

(b) Any C-Corporation, S-Corporation, or Limited Liability Company electing to be treated as a C-Corporation for federal income tax purposes, which believes that the method of allocation or apportionment as administered by the Secretary of Revenue has operated or will so operate as to subject it to taxation on a greater portion of its capital stock, surplus and undivided profits than is reasonably attributed to business within the state may also request an alternative apportionment method.

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.

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.

17 NCAC 05D .0110 TIME FOR FILING

The request shall be filed with the Secretary not later than 90 days after the regular or extended due date of the tax return.

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.

17 NCAC 05D .0111 NOTICE OF CONFERENCE

The Secretary shall schedule a conference to hear the corporation's request and will give notice of the time, date and place of the conference to the taxpayer at least 30 days prior thereto. Notice will be by United States Mail sent to the taxpayer's last known address. The date set for the conference must be within 90 days after the timely request of the conference or at a later date mutually agreed upon by the Taxpayer and the Secretary. The date set for the conference may be postponed once at the request of the Taxpayer and once at the request of the Secretary for up to 90 days or for a longer period mutually agreed upon by the Taxpayer and the Secretary.

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.

17 NCAC 05D .0112 WHO SHALL ATTEND THE CONFERENCE

The Secretary or their designee and the Director of the Corporate Tax Division or their designee, along with any other Department personnel the Secretary or Director shall deem appropriate, shall attend any conference pursuant to a request for an alternative apportionment formula. The taxpayer is not required to personally appear or be represented at the conference. Legal counsel or other tax practitioner may appear with or without the taxpayer on the taxpayer's behalf.

History Note: Authority G.S. 105-122(c1)(2); 105-130.4(t1); 105-262;
Eff. February 1, 2008;

Readopted Eff. May 1, 2018.

17 NCAC 05D .0113 CONDUCT OF THE CONFERENCE

- (a) If the corporation or its representative fails to appear after proper service of notice, the Secretary may proceed with the conference and make his decision in the absence of the party.
- (b) The taxpayer shall be given an opportunity to present arguments on issues of law and policy and an opportunity to present evidence on issues of fact.
- (c) The rules of evidence as applied in the trial division of the General Court of Justice do not apply.
- (d) An informal record containing in substance the evidence, contentions and arguments presented at the conference shall be made.

*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.*

17 NCAC 05D .0114 REMEDY

- (a) If the Secretary finds that the statutory formula does not fairly represent the corporation's business activity in North Carolina, he may require:
 - (1) separate accounting;
 - (2) the exclusion of any one or more of the factors;
 - (3) the inclusion of one or more additional factors which will fairly represent the taxpayer's business activity in this State, or
 - (4) the employment of any other method to effectuate and equitable allocation and apportionment of the taxpayer's income.
- (b) In the case of a request for relief from the statutory apportionment formula for both franchise tax and income tax, the Secretary shall make separate determinations as to whether an alternative apportionment method is warranted.

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

17 NCAC 05D .0115 FINAL DECISION

A final decision shall be furnished to the requesting corporation within 60 days from the date of the conference or within 60 days after the date any additional information requested by the Secretary during the conference is provided.

*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.*