STATE OF NORTH CAROLINA

COUNTY OF WAKE

BEFORE THE SECRETARY OF REVENUE

IN THE MATTER OF:

The request of [redacted] for an alternative method of apportionment for franchise tax purposes for the tax year ending December 31, 2011, December 31, 2012, and December 31, 2013	)))))	**ADMINISTRATIVE DECISION Number: 2014-02**

This matter was heard before Chief Operating Officer, Jeffrey Epstein, as designee of the Secretary of Revenue, on October 1, 2013 at 2:00 PM in the Revenue Building in the City of Raleigh, North Carolina upon a request dated January 11, 2013 by [redacted] ("Company") concerning the apportionment of Company's franchise tax for the tax years ending December 31, 2011 ("2011"), December 31, 2012 ("2012"), and December 31, 2013 ("2013") pursuant to N. C. Gen. Stat. 105-122(c1)(2).

The Chief Operating Officer presided over the conference with Thomas L. Dixon, Jr., Assistant Secretary for Tax Administration, and Lennie Collins, Director of the Income Tax Division, participating. [redacted] represented Company.

At the request of the Department of Revenue, Company provided additional information in an email dated October 2, 2013.

After review of the request and consideration of evidence, contentions and arguments set forth in the request, the Secretary of Revenue rendered his decision and entered the following order:

IT IS HEREBY ORDERED BY THE SECRETARY OF REVENUE that Company's written request for authorization to use an alternative method of apportionment of its capital stock, surplus, and undivided profits for North Carolina franchise tax purposes for tax years 2011, 2012 and 2013 is denied. The Secretary notes that N.C. Gen. Stat. 105-122(c1) establishes a presumption that the statutory method of apportionment is the best method of determining the amount of a corporation's capital stock, surplus, and undivided profits attributable to its business in this State. In order to rebut this presumption, a taxpayer has the burden to show that the statutory method of apportionment subjects the taxpayer to tax on a greater portion of its capital stock, surplus, and undivided profits than

is reasonably attributable to its business in this State. Company did not produce clear, cogent and convincing proof that it is entitled to the relief requested; consequently, the Secretary will not grant Company permission to employ an alternate method of apportionment. Company is required to employ the applicable method of apportionment prescribed by North Carolina General Statutes for tax years 2011, 2012 and 2013.

An annual franchise tax is imposed on a corporation doing business in this State for the privilege of engaging in business. Each of the affiliated entities named in Company's request is a separate legal entity engaged in its own business activity. In its request, Company identified intercompany transactions, corporate services and financial dependency as reasons to justify combination of the separate entity books and records in order to determine the group's franchise tax liability. Although these facts may justify a combination for income tax purposes, those facts do not necessarily support an argument for combined franchise tax reporting. The Department of Revenue issued a technical advice memorandum regarding income and franchise reporting requirements for S Corporations and Qualified S Corporation Subsidiaries ("QSSS") on August 1, 1997. CTAM 97-13 announced that the North Carolina Department of Revenue would follow the provisions of the Federal Small Business Job Protection Act of 1996 in permitting an S corporation to elect to include its 100% owned subsidiaries in the S Corporation parent's return. The advice specifically directed each entity to file a franchise tax return based on its own attributes. No evidence was provided by Company to compel the Secretary to make an exception to that guidance.

Made and entered into this the 26th day of August, 2014.

Signature

Lyons Gray
Secretary North Carolina Department of Revenue