NCDOR | NORTH CAROLINA DEPARTMENT OF REVENUE

STATE OF NORTH CAROLINA

COUNTY OF WAKE

BEFORE THE SECRETARY OF REVENUE

IN THE MATTER OF:

The Petition of [redacted] for an alternative method of apportionment formula for corporate income tax purposes for the tax year ending December 31, 2014 and subsequent years.	))))	**ADMINISTRATIVE DECISION NUMBER 2015-02**

This matter was heard before Secretary of Revenue, Lyons Gray, on September 28, 2015 in the Revenue Building in the City of Raleigh, North Carolina upon a petition filed on May 21, 2015 by [redacted] ("Company") concerning the apportionment of Company's corporate income for tax year 2014 and for subsequent tax years pursuant to G.S. 105-130.4(t1).

The Secretary of Revenue presided over the conference with Jeffrey Epstein, Chief Operating Officer, Daniel Garner, General Counsel, Lennie Collins, Director of the Income Tax Division, and Brian Puckett, Administration Officer, participating. [redacted] attended the conference on behalf of Company.

Company, an S Corporation headquartered in [redacted] is the parent of a number of corporations and has interests in several limited liability companies. Each of Company's operating subsidiaries is treated as a Qualified Subchapter S Subsidiary ("Q Sub"). Company and affiliates engage in various business activities in North Carolina and elsewhere, one of which is classified as [redacted], a sub sector of [redacted] of the North American Industrial Classification System ("NAICS"). Company asserts in its petition that because of the disregarded status of its Q Subs, it is effectively required to combine all of its operations for North Carolina income tax purposes, resulting in both [redacted] activities and [redacted] activities being subject to apportionment as an excluded corporation. Company asserts that application of the statutory formula attributes a greater portion of its income to this State than is reasonably attributable to its business in North Carolina.

After review of the petition and consideration of testimony and supporting documentation provided by Company during the conference, the Secretary of Revenue rendered his decision and entered the following order:

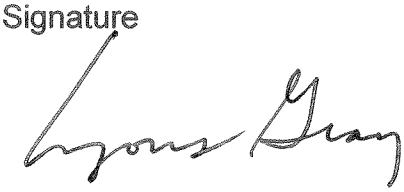
IT IS HEREBY ORDERED BY THE SECRETARY OF REVENUE that Company shall be authorized to determine its net income taxable to North Carolina for income tax purposes for the income years ended December 31, 2014, December 31, 2015, and December 31, 2016 in accordance with the following procedure:

1. Company's business operations shall be grouped in one of two categories:
   a. [redacted] – This category shall include all of Company's business operations categorized in industry [redacted] of NAICS, including but not limited to, [redacted]
   b. [redacted] – This category shall include all of Company's business operations categorized by any NAICS industry sector other than [redacted] including but not limited to, [redacted]
2. Company's apportionable income derived from its [redacted] category shall be apportioned to North Carolina by multiplying the income by the sales factor in accordance with G.S. 105-130.4(l). Only sales from the [redacted] category will be used to compute the factor.
3. Company's apportionable income derived from its [redacted] shall be apportioned to North Carolina by multiplying the income by the three factor formula as prescribed in G.S, 105-130.4(i). Only property, payroll and sales of the [redacted] category will be used to compute the factors.
4. Any non-apportionable income derived by either of Company's categories shall be allocated to North Carolina in accordance with subsections (c) – (h) of G.S. 105-130.4.
5. The sum of the amounts determined in 2 through 4 above shall represent the portion of the net income of Company's North Carolina operations that is attributable to North Carolina.

This Order shall apply only for income tax purposes for tax years ending December 31, 2014, December 31, 2015, and December 31, 2016, and is entered without prejudice to the right of Company to file a petition pursuant to G.S. 105-130.4(tl) with respect to the allocation of net income for income tax purposes for any subsequent years. The statute authorizes a corporation to use either the alternative method prescribed by the Secretary or the statutory method to apportion its income. If in any year subject to this Order Company elects to apportion its income by the statutory method, this Order is rescinded for any remaining years subject to this Order. The relief granted to Company is made subject to audit and review by the North Carolina Department of Revenue.

Made and entered into this the 5th day of October, 2015.

Signature



Lyons Gray, Secretary of Revenue