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 and franchise tax purposes for the tax year ending December 31, 2014, December 31, 2015 and December 31, 2016.	)))))	ADMINISTRATIVE DECISION NUMBER 2015-03

This matter was heard before Secretary of Revenue, Lyons Gray, on February 6, 2015 in the Revenue Building in the City of Raleigh, North Carolina upon a petition filed on December 12, 2014 by [redacted] ("Company") concerning the apportionment of Company's corporate income and franchise tax for tax year 2014, 2015 and 2016 pursuant to G.S. 105-130.4(t1).

The Secretary of Revenue presided over the conference with Daniel Garner, General Counsel, and Lennie Collins, Director of the Income Tax Division, participating. [redacted] attended the conference on behalf of Company. [redacted] participated by telephone.

Company, a Corporation headquartered in the United States in [redacted] is focused on [redacted] Company currently has one [redacted] approved for use in the United States. The [redacted] is designed for the [redacted] Beginning in 2014, Company entered into an agreement to make [redacted] a third party [redacted] based in [redacted] its exclusive [redacted] Under the [redacted] the entire stock of [redacted] is sold to [redacted] at which time [redacted] becomes responsible for quality control and proper storage and handling of the inventory. [redacted] sells and delivers the [redacted] from [redacted] to patients located across the country. [redacted] then provides Company with information indicating the number of state-by-state shipments of [redacted].

Company asserts that application of the statutory formula, which would source 100% of sales to North Carolina, attributes a greater portion of its income and capital stock, surplus, and undivided profits to tax in 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 and after 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 apportion its capital stock, surplus and undivided profits to North Carolina for franchise tax purposes for the years ended December 31, 2014, December 31, 2015, and December 31, 2016 in accordance with the following procedure:

1. Company's apportionment factor will be weighted according to the statutory apportionment formula: property, payroll, and double-weighted sales.
2. The numerator of the sales factor will include sales made directly by Company or by [redacted] or any other third party [redacted] The denominator shall include sales by Company everywhere and sales of [redacted] by [redacted]
3. The numerator of the payroll factor will include payroll costs that are incurred by [redacted] in North Carolina in the distribution and other activities related to [redacted] as proposed in Company's letter dated May 5, 2015. (copy attached) The denominator shall include all payroll of Company and payroll of [redacted] associated with the sale of [redacted]
4. The numerator of the property factor will include the cost of North Carolina property owned or leased by [redacted] that is employed in distribution and any other activities related to [redacted] as proposed in Company's letter dated May 5, 2015. The denominator will include all property of Company and property of [redacted] associated with the sale of [redacted]

Company's request to apply an alternative methodology for the computation of its North Carolina income tax liability is denied. Company shall apply the statutory apportionment provisions set out in N.C. Gen. Stat. 105-130.4.

This Order shall apply for tax years ending December 31, 2014, December 31, 2015, and December 31, 2016. 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. In the event of a material change in the facts as presented in Company's petition, Company shall notify the Secretary prior to filing the return for the year in which the change occurred in order for the Secretary to determine if the order shall remain in force.

Made and entered into this the 14th day of December, 2015.

Signature

Lennie Collins, Director
Income Tax Division