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 taxes purposes for tax years ending December 31, 2017, December 31, 2018, and December 31, 2019

ADMINISTRATIVE DECISION
Number: 2016-01

This matter was heard before Secretary of Revenue, Jeffrey M. Epstein, on August 24, 2016 at 3:00 PM in the Revenue Building in the City of Raleigh, North Carolina upon a petition dated July 19, 2016 by [redacted] ("Company") concerning the apportionment of Company's corporate income and franchise taxes for the tax years ending December 31, 2017 ("2017"), December 31, 2018 ("2018"), and December 31, 2019 ("2019") pursuant to G.S. 105-130.4(tl). Company is requesting an extension of Administrative Decision 2013-02R rendered on November 5, 2013.

Mr. Epstein presided over the conference with Jocelyn Andrews, Chief Operating Officer, Daniel Garner, General Counsel, Anthony Edwards, Assistant Secretary for Tax Administration, and Lennie Collins, Director of the Income Tax Division, participating. [redacted] represented Company.

Company, the main U.S. operating subsidiary of [redacted] has its main office located in [redacted] and until its insolvency filings provided [redacted] In [redacted] Company filed under Chapter 11, Title 11 of the United States Code (the "Bankruptcy Code"); [redacted] filed for relief under the Companies' Creditors Arrangement Act in [redacted] and [redacted] were placed into administration in the [redacted]. Also in [redacted] Company (and other related entities) sold all of its businesses and its interests in Company's intellectual property through a series of sales conducted under the supervision of the courts overseeing the insolvency proceedings in [redacted] Proceeds from the dispositions were placed into separate escrow accounts pending the resolution of disputes related to such proceeds among the relevant sellers. As of the date of the petition, there was no agreement among the sellers related to the disputes related to the sales proceeds. Mandatory mediation that was going on between the bankruptcy estates of [redacted] in different international jurisdictions failed to resolve the allocation dispute. Litigation over the distributions of the proceeds commenced in [redacted] bankruptcy courts and resulted in a joint

determination issued in [redacted]. However, several parties have appealed the determination. As such, the sales proceeds remain in escrow and subject to the escrow agreements until the final resolution of the appeals. Because Company is no longer in normal business operations and because the uncertainty of events surrounding the sale proceeds, its impact on distribution of funds deductible under the federal tax code, and the result of North Carolina statutory apportionment of the possible state taxable income scenarios result in an insurmountable challenge to determining adequate cash tax reserves with specificity, its position is that the statutory apportionment formula will not effectuate an equitable apportionment of Company's income to North Carolina in the final phase of the bankruptcy process.

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

IT IS HEREBY ORDERED BY THE SECRETARY OF REVENUE that the petitioner's written request to employ an alternate method of apportionment for the purpose of determining its North Carolina income and franchise taxes for tax years 2017, 2018 and 2019 is granted. The petitioner shall compute a factor based on the historical North Carolina apportionment factors reported during tax years 2004 through 2008, inclusive, as set out in Attachment A of Company's petition and attached to this order. The relief granted herein is made subject to the right to audit and review tax returns filed for tax years 2017, 2018 and 2019 for matters other than the granted relief, subject to applicable statute of limitations for such years and Section 505 of the Bankruptcy Code.

Made and entered into this the 31st day of August, 2016.

Signature

Jocelyn Andrews, Chief Operating Officer



NOTE: The sales factor is double-weighted in North Carolina's apportionment factor for all periods listed above.