STATE OF NORTH CAROLINA **BEFORE THE SECRETARY OF REVENUE**

COUNTY OF WAKE

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 March 31, 2015, March 31, 2016 and March 31, 2017.	)))))	**ADMINISTRATIVE DECISION NUMBER 2017-01**

Key: Petitioner – [redacted]
Distributor – [redacted]
Manufacturer – [redacted]
Parent – [redacted]

This matter was heard before Secretary of Revenue, Jeffrey M. Epstein, on August 24, 2016 in the Revenue Building in the City of Raleigh, North Carolina upon a petition filed on April 13, 2016 by Petitioner concerning the apportionment of its corporate income and franchise tax for tax years ending March 31, 2015, March 31, 2016 and March 31, 2017 pursuant to G.S. 105-122(c1)(2) and 105-130.4(t1).

[redacted] attended the conference on behalf of Petitioner.

Petitioner, a Delaware C Corporation, is the parent of Distributor, also a Delaware C Corporation. Manufacturer, a foreign corporation and an affiliate of Petitioner and Distributor, manufactures for sale a variety of products. Distributor distributes these products in the United States and holds most of its inventory at its warehouse and distribution center in North Carolina. The balance of its inventory is held on consignment at a customer location in another state.

In 2007, Petitioner was incorporated for the sole purpose of facilitating the acquisition of Distributor by Parent. Petitioner historically has had no operational revenue other than distributions received from Distributor, no employees or payroll or owned any property. The sole asset on Petitioner's balance sheet has been its investment in Distributor and the amount has remained consistent since 2007. Petitioner was the conduit for distributions issued by Distributor. Because Petitioner has no bank account, distributions were made on its behalf by Distributor. Petitioner's corporate address is the same address as Distributor's in North Carolina.

During the tax year ended in 2015, Distributor made a cash distribution to Petitioner that it believed was a tax-free dividend. It was later determined that the distribution exceeded the basis that Petitioner had in Distributor and should have been treated as a taxable capital gain to petitioner.

Application of the statutory apportionment formula would require Petitioner to apportion 100% of its corporate income and capital stock base to North Carolina. Petitioner asserts that such application does not fairly represent the corporation's business activity in the State, given its "significant number of non-North Carolina operations." As an alternative, Petitioner proposes that the Secretary grant permission to use one of two methodologies:

1) File returns in North Carolina based on the apportionment method utilizing the residence of Petitioner's board of directors and officers as the determination of income to apportion to North Carolina; or

2) File returns in North Carolina based on the apportionment method of using the apportionment of Distributor based on that entity's business within North Carolina.

After review of the petition and consideration of testimony and supporting documentation provided by Petitioner during and after the conference, the Secretary of Revenue finds that Petitioner is a separate legal entity with its sole operation being that of a holding company in North Carolina with no business operations elsewhere to justify the apportionment of its income or its capital stock base.

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 tax for the referenced tax years is denied. Petitioner has not shown by clear, cogent, and convincing proof that the proposed alternative method is a better method of determining the amount of the corporation's income or capital attributable to the corporation's business in this State than the statutory apportionment factor.

Made and entered into this the 25th day of April, 2017.

Signature

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Jocelyn S. Andrews, Chief Operating Officer
North Carolina Department of Revenue