North Carolina Department of Revenue

Beverly Eaves Perdue
Governor

David W. Hoyle
Secretary

December 28, 2012

[redacted]

Re: [redacted]

Dear [redacted]:

This ruling is limited to the parties to whom it is directed. Because of the unique nature of the broadcasting industry, this ruling has no application to and may not be relied upon by other taxpayers.

I have received your letter dated [redacted] requesting information on the sourcing of advertising and license fee revenues received by broadcasters and distributors for purposes of calculating the sales factor of North Carolina's apportionment formula.

This letter is directed to you on behalf of: (1) [redacted] (the "Association"), (2) its member companies (the "Members"), and (3) the Members' respective parent companies and their direct and indirect subsidiaries, including corporate and non-corporate entities in which they have a controlling or non-controlling interest (collectively, the "Member Companies"). The Members and their respective parent companies are identified on Exhibit A.

As used in this letter:

(1) The term "broadcaster" means a television or radio station licensed by the Federal Communications Commission, a television or radio broadcast network, a cable program network or any other distributor of television and/or radio programming. The term "broadcaster" does not include a cable system operator as defined in NCGS 105-164.3(1m) or a direct broadcast satellite system operator.

(2) The term "cable program network" means an organization which produces programs available for simultaneous transmission by a cable or direct broadcast satellite system operator.

(3) The term "distributor" means a provider of television and/or radio programming to other parties in any medium and through any means. The term "distributor" does not include a cable system operator as defined in NCGS 105-164.3(1m) or a direct broadcast satellite system operator.

The Member Companies, directly or through their affiliates, conduct broadcasting and content distribution activities. Broadcasters derive receipts from advertisers for including the advertisers' commercial messages in their programs and distributing them through broadcasting, over the internet and through other means. Broadcasters also derive receipts from licensing content to other parties in exchange for license or other distribution fees.

North Carolina's general apportionment formula defines the sales factor as a fraction the numerator of which is the taxpayer's total sales in North Carolina and the denominator of which is the taxpayer's total sales everywhere. N.C. Gen. Stat. §105-130.4(l)(1). The statute provides that receipts from the performance of services are sourced to North Carolina if the income-producing activities are in North Carolina. *See*, N.C. Gen. Stat. §105-130.4(l)(3)c. The statute provides that receipts from intangible property are sourced to North Carolina if they are received from sources within North Carolina. *See*, N.C. Gen. Stat. §105-130.4(l)(3)b.

Fees received from advertisers are receipts for services and are attributable to this State if the income-producing activities that give rise to such receipts are performed in this State. The income-producing activities that give rise to advertising receipts are the solicitation, negotiation and execution of the advertising services agreement with the advertiser and the transmission of the advertisements and the programs in which they are incorporated.

License fees received from licensees or other parties are receipts from intangible property and are attributable to this State if received from sources within this State. License fees are received from sources within this State if the fees are received pursuant to a contract approved by the executive management of the licensee or other party (i.e., the payor) in this State.

The following examples illustrate the application of this advice:

Example 1: Taxpayer A is a national broadcast network. Taxpayer A sells advertising services to a national consumer products manufacturer. The solicitation, negotiation and execution of the advertising services agreement and the transmission of the advertisements and programs in which they are incorporated take place outside North Carolina. Because none of Taxpayer A's income-producing activities that give rise to the advertising receipts are performed in North Carolina, Taxpayer A's advertising receipts are not attributable to this State and are not included in the numerator of Taxpayer A's sales factor.

Example 2: Taxpayer C is a national cable program network. Taxpayer C licenses programming to cable system operators X and Y. In each case, Taxpayer C has a direct contractual relationship with the cable system operator. Both of the cable system operators have subscribers in North Carolina. Cable system operator X's executive management approved the contract with Taxpayer C in New York. Cable system operator Y's executive management approved the contract with Taxpayer C in North Carolina. The license fees received pursuant to the contract with cable system operator X are not attributable to this State, because cable system operator X's executive management approved the contract pursuant to which the fees are paid outside North Carolina, and such receipts are not included in the numerator of Taxpayer C's sales factor. The license fees received from cable system operator Y are attributable to this State, because cable system operator Y's executive management approved the contract pursuant to which the fees are paid in this State, and such receipts are included in the numerator of Taxpayer C's sales factor.

Example 3: Taxpayer D is a national cable program network. Taxpayer D licenses programming to a cable system operator pursuant to a contract approved by the cable system operator's executive management in New York. The cable system operator has subscribers in North Carolina and other states. Taxpayer D has a direct contractual relationship with the cable system operator. Taxpayer D also operates a local cable franchise and, as a provider of cable services to subscribers in North Carolina, receives subscriber fees from its subscribers. The license fees received from the cable system operator are not attributable to this State, because the cable system operator's executive management approved the contract pursuant to which the fees are paid outside North Carolina, and such receipts are not included in the numerator of Taxpayer D's sales factor. The subscriber fees received by Taxpayer D from its cable service subscribers in North Carolina are sourced under the rules applicable to cable system operators.

This information contained herein constitutes written specific advice pursuant to G.S. 105-264. The advice provided is based on the facts presented and any material difference in the facts does not afford the taxpayer the ability to rely on the advice given. The advice contained in this letter is binding on the Department and relieves the taxpayer from tax, penalties and interest otherwise due if the advice is erroneous. The advice contained in this letter is an interpretation of existing law and applies to all open taxable periods as well as future taxable periods, subject to any applicable changes in the law and subject to the other limitations set forth in G.S. 105-264.

If you have any questions or require additional information, please let me know.

Very truly yours,

[redacted]

EXHIBIT A

[redacted]

Members and Parent Companies

Member	Parent Company
[redacted]	[redacted]