



Summary for Computing the Sales Factor Based on Market-Based Sourcing

INTRODUCTION

On November 8, 2019, Governor Roy Cooper signed into law Senate Bill 557 (S.L. 2019-246) that enacted market-based sourcing for multistate income tax apportionment. Administrative Code sections (“Rules”) for market-based sourcing principles were previously adopted by the Department of Revenue on January 4, 2017 as part of House Bill 259 (S.L. 2015-268) and were submitted to the Rules Review Commission on January 18, 2017. S.L. 2019-246 directed the Codifier of Rules to enter the Rules into the Administrative Code on the effective date of this statute. The Rules apply to taxable years beginning on or after January 1, 2020.

Under previous North Carolina law, receipts from services were sourced to North Carolina based on the income-producing activities that were performed in North Carolina. Under new law, services are sourced to North Carolina if and to the extent the service is delivered to a location in this State. The sourcing for services and some other types of receipts were clarified, modified, or changed under the market-based approach. However, the sourcing of receipts from the sale of real property remains based on whether the property is located in North Carolina, and the sourcing of receipts from the sale of tangible personal property remains based on the property received in North Carolina by the purchaser.

When a taxpayer cannot determine the state to which a sale should be sourced, the Rules provide for reasonable approximation. In certain cases, the receipt from the sale of a service where the source is unknown, is sourced in the same proportion as sales where the taxpayer knows the source of the receipts from similar services. A similar method applies to receipts from intangible property where the sale resembles the sale of tangible property or services. The statute generally provides that if a reasonable approximation cannot be determined, the sales are removed from the factor calculation.

The following tables are provided to generally summarize basic principles for market-based sourcing of receipts and to provide an easy reference tool. Please refer to the applicable statute or Rules for further detail.

I. GENERALLY APPLICABLE RULES

IN-PERSON SERVICES, OTHER THAN PROFESSIONAL SERVICES (DIRECTLY/INDIRECTLY PROVIDED BY THE TAXPAYER) [17 NCAC 05G .0802](#)

The receipt is from a service:	Source to North Carolina
Performed on the body of a person.	If the customer is located in North Carolina.
Performed in the physical presence of a customer.	If the customer is located in North Carolina.
Performed on real estate.	If the property is located in North Carolina.
Performed on non-shipped tangible personal property.	If the property is located in North Carolina.
Performed on shipped tangible personal property.	If the property is shipped/delivered to a customer located in North Carolina.

PROFESSIONAL SERVICES [17 NCAC 05G .1004](#), [17 NCAC 05G .1005](#)

The receipt is from a service:	Source to North Carolina
General – provided to an individual customer and less than five percent (< 5%) of the taxpayer’s sales of services are from the customer.	If North Carolina is the customer’s state of primary residence; or, if the primary residence is not identifiable, if the customer’s billing address is in North Carolina.
General – provided to an individual customer and greater than five percent (> 5%) of the taxpayer’s sales of services are from the customer.	If North Carolina is the customer’s primary state of residence (must identify).
General – provided to a business customer and less than five percent (< 5%) of the taxpayer’s sales of services are from the customer.	(i) if the customer principally manages the contract in North Carolina, (ii) if the place of customer management is not reasonably determinable, and the customer placed the order in North Carolina, (iii) if the place of order is not reasonably determinable, and the customer’s billing address is in North Carolina.
General – provided to a business customer and greater than five percent (> 5%) of the taxpayer’s sales of services are from the customer.	If the customer principally manages the contract in North Carolina (must determine).
General optional safe harbor– provided to an individual or business customer [if substantially similar service transactions with greater than 250 (> 250) customers and less than five percent (< 5%) of the taxpayer’s sales of services are from that customer].	If North Carolina is the customer’s billing address.

Architectural services – real estate improvements.	If the property is located or expected to be located in North Carolina.
Architectural services – other.	As required under the general professional services sourcing rules.
Engineering services – real and tangible personal property.	If the property is located or expected to be located in North Carolina.
Engineering services – other.	As required under the general professional services sourcing rules.
Financial institution services other than Banks – receipts not otherwise apportioned under G.S. § 105-130.4B.	As required under the general professional services sourcing rules.

NON-IN-PERSON AND NON-PROFESSIONAL SERVICES DELIVERED TO THE CUSTOMER, ON BEHALF OF THE CUSTOMER, OR DELIVERED ELECTRONICALLY THROUGH THE CUSTOMER

[17 NCAC 05G .0903](#), [17 NCAC 05G .0904](#), [17 NCAC 05G .0905](#)

The receipt is from a service:	Source to North Carolina
Delivery to or on behalf of a customer by physical means – individual or business customer.	If the service is delivered to a customer or on behalf of a customer in North Carolina; or, if not determinable, then reasonably approximated based upon information available regarding place of delivery.
Delivery to a customer by electronic transmission – individual customer.	To the extent the customer actually receives the service in North Carolina; or, if not determinable, by reasonable approximation as follows (in order of priority): (i) based upon sufficient information regarding the customer’s place of receipt; or (ii) if insufficient information regarding place of receipt, based upon the customer’s billing address.
Delivery to a customer by electronic transmission – business customer.	To the extent the service is directly used by the customer’s employees or designees in North Carolina; or, if not reasonably determinable, reasonably approximate as follows (in order of priority): (i) if sufficient information regarding location where directly used by the customer’s employees or designees, based upon the location where directly used by the customer’s employees or designees; (ii) if insufficient information regarding location where directly used by the customer’s employees or designees, use secondary approximation as follows (in order of priority: a. based upon where the contract is

	<p>principally managed by the customer, b. if not reasonably determinable, based upon the customer's place of order, or c. if not reasonably determinable, based upon the customer's billing address (but must use state where the customer principally managed the contract if more than 5% (> 5%) of sales of services are from that customer); or (iii) where engaged in substantially similar transactions with more than 250 customers (> 250), does not derive more than 5% (> 5%) of sales from the customer and cannot reasonably approximate under (i), may assign on the basis of the customer's billing address.</p>
<p>Optional safe harbor, electronic delivery of a service – provided to a business customer [if substantially similar service transactions with more than 250 (> 250) business or individual customers and less than five percent (< 5%) of the taxpayer's sales of services are from that customer].</p>	<p>If North Carolina is the customer's billing address.</p>
<p>Related entity delivery by electronic transmission – business customer.</p>	<p>To the extent the service is directly used by the customer's employees or designees in North Carolina; or, if not reasonably determinable, reasonably approximate if sufficient information regarding location where directly used by the customer's employees or designees, based upon the location where directly used by the customer's employees or designees. May use safe harbor, provided that sales may be aggregated to related parties in determining whether the sales exceed 5% of receipts from sales of all services.</p>
<p>Delivery through or on behalf of a customer through electronic transmission – general rule.</p>	<p>To the extent the end-user or other third-party recipient is actually in North Carolina; or, if not determinable, by reasonable approximation based upon sufficient information regarding place of delivery.</p>
<p>Delivery through or on behalf of a customer through electronic transmission – advertising service.</p>	<p>To the extent the audience for the advertising is in North Carolina; or, if insufficient information, reasonably approximate as follows (in order of priority): (i) based upon the location of the audience, (ii) if insufficient information, based upon a percentage that reflects a ratio of the North Carolina's subscribers in the specific geographic area where the advertising is delivered relative to the total subscribers in that area, or (iii), if less information about its audience, based upon a percentage that reflects the ratio of North Carolina's population in the specific geographic area in which the advertising is delivered relative to the total population in such area.</p>

<p>Delivery through or on behalf of a customer through electronic transmission – customer is a reseller.</p>	<p>To the extent the end-user or other third-party recipients receive such services in North Carolina; or, if not determinable, reasonably approximate as follows (in order of priority): (i) based upon sufficient information regarding place of delivery, or (ii) if insufficient information, based upon a percentage that reflects the ratio of the North Carolina’s population in the specific geographic area in which the customer’s intermediary resells such services, relative to the total population in such area.</p>
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LICENSE OR LEASE OF INTANGIBLE PROPERTY [17 NCAC 05G .1102](#), [17 NCAC 05G .1103](#), [17 NCAC 05G .1104](#), [17 NCAC 05G .1105](#)

The receipt is from:	Source to North Carolina
Marketing intangible with actual evidence.	To the extent receipts are attributable to North Carolina.
License/lease – marketing intangible without actual evidence and use relates to retail customers.	Using the following formula: fee multiplied by a percentage that reflects the ratio of the North Carolina population in the geographic area in which the licensee makes use of the intangible property to market goods/services relative to the total population in such area.
Marketing intangible without actual evidence and use relates to wholesale customers.	Using the following formula: fee multiplied by a percentage that reflects the ratio of the North Carolina population in the geographic area in which the licensee’s goods/services are ultimately marketed relative to the total population in such area.
Production intangible initial presumption.	If the customer’s state of commercial domicile is North Carolina (business licensee) or North Carolina is the customer’s state of primary residence (individual licensee), except to the extent the taxpayer can demonstrate the actual location of where a portion of the use takes place outside North Carolina.
Mixed marketing and production intangible (fees separately stated).	As required under the rule applicable to each revenue stream.
Mixed marketing and production intangible (fees not separately stated).	As required under the marketing intangible rules (except to the extent the Department or the taxpayer can establish otherwise).
Resembles a sale of goods/services.	As required under the rules pertaining to either: (i) the delivery to a customer by electronic transmission, or (ii) the delivery of services electronically through or on behalf of a customer.

SALE OF INTANGIBLE PROPERTY [17 NCAC 05G .1201](#)

The receipt is from:	Source to North Carolina
Contract right or government license that authorizes business activity in a specific geographic area.	To the extent the intangible property is used or is authorized to be used in North Carolina, or through reasonable approximation.
Sale that resembles a license.	As required under the license/lease of intangible property sourcing rules.
Sale that resembles a sale of goods/services.	As required under the license/lease of an intangible that resembles a sale of goods/services sourcing rules.
Excluded sales.	Exclude the following from the numerator and denominator of the sales factor: (i) business goodwill, (ii) agreement not to compete, (iii) other similar intangible value.

INTEREST INCOME RECEIVED BY A NON-BANK G.S. § [105-130.4](#)

The receipt is from:	Source to North Carolina
Interest – General (sale, rental, lease, or license of real, tangible, or intangible property).	As required under the applicable general sourcing rules.
Interest – On Loan Proceeds.	If agreement states loan proceeds must be used to acquire and develop property in North Carolina; or, if loan agreement does not state what loan proceeds are to be used for, then reasonably approximate to the extent that gross revenues are from property in North Carolina; or if neither the taxpayer nor the Department have method to reasonably approximate, exclude receipts from sales factor.

II. SPECIAL AND INDUSTRY SPECIFIC RULES

SPECIAL RULES [17 NCAC 05G .1301](#), G.S. § [105-130.4](#), G.S. § 105-130.4A, G.S. § 105-130.4B

The receipt is from:	Source to North Carolina
Software transferred via tangible medium.	As required under the tangible personal property sourcing rules.
Software all other cases.	Depending on the facts, as otherwise required under the sourcing rules for intangible property or for services delivered to a customer or on behalf of the customer, or delivered electronically through the customer.

Wholesale Content Distributors.	Special industry guidance is in G.S. § 105-130.4A. Detailed sourcing rules are provided for streams of income specific to Wholesale Content Distributors.
Banks.	Special industry guidance is in G.S. § 105-130.4B. Detailed sourcing rules are provided for certain streams of income specific to the banking industry.
Other Special Apportionment.	Information on other industries subject to special apportionment factors can be found in the Corporate Tax Bulletin.