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**NORTH
CAROLINA
DEPARTMENT
OF REVENUE**

Roy Cooper
Governor

Ronald G. Penny
Secretary

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)	ADMINISTRATIVE DECISION
corporate income tax purposes for the tax year)	NUMBER 2021-01
ending December 31, 2020, December 31, 2021,)	
and December 31, 2022.)	

This matter was heard before Anthony Edwards, Assistant Secretary for Tax Administration, on July 16, 2021 upon a petition filed on December 14, 2020 by [REDACTED] (“Company”) concerning the apportionment of Company’s corporate income for tax years 2020, 2021, and 2022 pursuant to G.S. 105-130.4(t1). Company is requesting an extension of Administrative Decision 2018-02 rendered on June 27, 2018.

The Assistant Secretary for Tax Administration presided over the conference with John Seibert, Director of the Corporate Tax Division, participating. [REDACTED], Company’s Vice President, and [REDACTED], Company’s Senior Vice President of Finance, attended the conference on behalf of Company.

The facts are substantially unchanged from Administrative Decision 2018-02. Company, an S Corporation headquartered in [REDACTED], is the parent of a number of corporations and has interests in several limited liability companies. Each of Company’s operating subsidiaries is treated as a Qualified Subchapter S Subsidiary (“Q Sub”). Company and affiliates engage in various business activities in North Carolina and elsewhere, one of which is classified as highway construction, a subsector of Sector 23 of the North American Industrial Classification System (“NAICS”). Company asserts in its petition that because of the disregarded status of its Q Subs, it is effectively required to combine all of its operations for North Carolina income tax purposes, resulting in both construction activities and non-construction activities being subject to apportionment as an excluded corporation. Company asserts that application of the statutory formula attributes a greater portion of its income to this State than is reasonably attributable to its business in North Carolina.

After consideration of the Company's difficulties to modify its corporate structure during tax year 2020, as advised during the Administrative Decision 2018-02 review process, and review of the petition and consideration of testimony and supporting documentation provided by Company during the conference and in subsequent correspondence dated July 28, 2021, the Secretary of Revenue rendered his decision and entered the following order:

IT IS HEREBY ORDERED BY THE SECRETARY OF REVENUE that Company is allowed an extension to continue to determine its net income taxable to North Carolina for income tax purposes for an additional income year ended December 31, 2020 in accordance with the following procedure prescribed in Administrative Decision 2018-02:

1. Company, consisting of all divisions and qualified subchapter S Subsidiaries except [REDACTED] will compute its North Carolina taxable income in accordance with Article 4 of Chapter 105. Its sales factor will be computed in accordance with N.C. Gen. Stat. 105-130.4(l), excluding sales by [REDACTED].
2. [REDACTED], consisting of [REDACTED] and [REDACTED] will calculate its North Carolina taxable income and apportionment factor to North Carolina as a separate entity. Its sales factor will be computed in accordance with N.C. Gen. Stat. 105-130.4(l), including only those sales attributable to [REDACTED].

Similar to Administrative Decision 2018-02, this Order will apply only for income tax purposes for tax year ending December 31, 2020. Because the petitioner is not legally or otherwise restricted from modifying its tax structure to mitigate the harm which it claims, the written request to employ an alternate method of apportionment for the purpose of determining its North Carolina income for the referenced tax years ending December 31, 2021 and December 31, 2022 is denied. This order is entered without prejudice to the right of Company to file a petition pursuant to G.S. 105-130.4(t1) with respect to the apportionment and allocation of net income for income tax purposes for any subsequent years.

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.

Made and entered into this the 29TH day of September, 2021.

Signature



Anthony Edwards
Assistant Secretary for Tax Administration