North Carolina Department of Revenue

Roy Cooper
Governor

Ronald G. Penny
Secretary

ADMINISTRATIVE DECISION NUMBER 2020-02
Request for Alternative Apportionment Factor
October 14, 2020

Pursuant to N.C. Gen. § 105-122(c1)(2), this matter was discussed with Anthony Edwards, Assistant Secretary for Tax Administration, on September 8, 2020 based on a petition filed on May 11, 2020 by [redacted] concerning the apportionment of its net worth for franchise tax purposes for the tax year ending December 31, 2019. Assistant Secretary Edwards participated in the discussion with John Seibert, Director of the Corporate Tax Division.

[redacted] is a financial institution commercially domiciled in North Carolina resulting from the merger between [redacted] and [redacted] that occurred [redacted]. Immediately thereafter, [redacted] merged into [redacted] or [redacted]). [redacted] and [redacted] were the surviving corporations of the two mergers. For federal income tax purposes, the [redacted] affiliated group was the surviving affiliated group. After the mergers, [redacted] changed its name to [redacted].

Prior to the merger, [redacted] was a North Carolina chartered bank commercially domiciled in North Carolina. [redacted] was a [redacted] chartered bank commercially domiciled in [redacted]. [redacted] had a much larger presence in North Carolina than [redacted], as reflected by their North Carolina apportionment factors. [redacted] is a North Carolina chartered bank and will continue to have a significant presence in North Carolina. [redacted] represents that its estimated North Carolina apportionment factor for tax year 2020 will be approximately 13.7%. This figure is consistent with the average of the apportionment factors of [redacted] and [redacted] for tax year 2018. However, because of the timing of the merger, the apportionment factor is comparatively more significant in 2019 when computed using the statutory method.

As a result of the merger, [redacted] will file a final 2019 North Carolina corporate tax return for its taxable year beginning [redacted] and ending [redacted] ("Final Return" for "Final Period"). The calculation of the corporate income tax liability will include the taxable income and apportionment factor of [redacted] for the Final Period, which consists of [redacted] days. Because franchise tax is paid in advance, no tax is due with the Final Return. Accordingly, [redacted] had no franchise tax liability on its Final Return.

[redacted] will file a 2019 North Carolina corporate tax return for taxable year [redacted] through [redacted]. The calculation of the corporate income tax liability will include the taxable income and apportionment factor of [redacted] for the entire year. It will also include the taxable income and apportionment factor of [redacted] for the period from [redacted] through [redacted], which consists of [redacted] days. Accordingly, [redacted] does not assert any distortion in the computation of its 2019 corporate income tax.

However, [redacted] contends that there is a misalignment for franchise tax purposes. The calculation of the franchise tax liability includes the combined net worth of both [redacted] and [redacted] for the entire year. The net worth base is apportioned by the same statutory apportionment formula used for income tax purposes. As a result, one hundred percent (100%) of [redacted]'s net worth will be included in the net worth base; however, only [redacted] days of its sales will be included in the apportionment factor. For this reason, [redacted] asserts that utilizing the statutory apportionment method for sales for a small portion of the year but applied against the full net worth as of December 31, 2019 results in a sixty-four percent (64%) franchise tax increase than calculated on an annual basis. Thus, [redacted] asserts that a significantly greater portion of its net worth than reasonably attributable to its business in North Carolina is being subject to franchise tax.

After review of the petition and consideration of information provided therein, the Secretary of Revenue renders his decision and enters the following order:

IT IS HEREBY ORDERED BY THE SECRETARY OF REVENUE that [redacted] is authorized to apportion its net worth to North Carolina for franchise tax purposes for the corporate tax return ended December 31, 2019 in accordance with the following procedure:

> [redacted] shall utilize an alternative apportionment formula by which the full year of [redacted] sales would be included in the calculation of the sales factor for purposes of computing the franchise net worth base. More specifically, the sales of [redacted] for the period prior to the merger ([redacted] days) and the sales of [redacted] for the period subsequent to the merger ([redacted] days) will be included in [redacted]'s sales factor. The computed alternative sales factor will be applied as a replacement for the sales factor for purposes of apportioning [redacted]'s net worth.

This Order will apply only for franchise tax purposes for the corporate tax return ending December 31, 2019. The Company may use the alternative apportionment formula or the statutory method. The relief granted to [redacted] is made subject to audit and review by the North Carolina Department of Revenue.

Made and entered into this the 14th day of October, 2020.

Signature

[redacted]

Anthony Edwards
Assistant Secretary for Tax Administration