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**NORTH
CAROLINA
DEPARTMENT
OF REVENUE**

STATE OF NORTH CAROLINA

**BEFORE THE
SECRETARY OF REVENUE**

COUNTY OF WAKE

IN THE MATTER OF:

The Petition of [REDACTED]
[REDACTED] for an alternative method of)
apportionment formula for corporate income and)
franchise tax purposes for the tax year ending)
December 31, 2018, December 31, 2019 and)
December 31, 2020.)

**ADMINISTRATIVE DECISION
NUMBER 2018-01**

Key: Petitioners – [REDACTED]
Parent – [REDACTED]
Sub1 – [REDACTED]
Sub2 – [REDACTED]

This matter was heard before Anthony Edwards, Assistant Secretary for Tax Administration, on January 22, 2018 in the Revenue Building in the City of Raleigh, North Carolina upon a petition filed on July 26, 2017 by Petitioner concerning the apportionment of its corporate income and franchise tax for tax years ending December 31, 2018, December 31, 2019 and December 31, 2020 pursuant to N.C. Gen. Stat. §§ 105-122(c1)(2) and 105-130.4(t1).

Mr. Edwards presided over the conference with Lennie Collins, Director of the Corporate Tax Division, participating. [REDACTED] and [REDACTED], Director of State and Local Tax for Petitioners, attended the conference on behalf of Petitioners.

Parent is a publicly traded company domiciled outside North Carolina. Collectively, Petitioners design, develop, manufacture, and sell products within and without the United States. Parent owns inventory and personal property and has employees in North Carolina. Sub1 leases facilities in North Carolina and has employees in the State. Sub2, a non-US company, will own inventory in North Carolina beginning in 2018. All of Sub2's sales to unrelated parties are made to customers located outside the United States.

Petitioners assert that due to a recent change in the business operations of Petitioners in North Carolina, the standard filing methodology is inappropriate. The basis for the assertion is that the statutory apportionment method results in the imposition of income tax on intercompany sales within the unitary group, arguing that intercompany sales are not true profits in the economic sense and artificially increase the amount of tax imposed.

As an alternative, Petitioners propose that the Secretary grant permission to use the following method for calculating their sales factors:

- 1) Sales by Parent to unrelated third parties within North Carolina will be included in the numerator of its sales factor.
- 2) Sales between Sub1, Parent and Sub2 shall be excluded from the numerator of the sales factor of Sub1, Parent and Sub2 to the extent they are considered intercompany sales for federal tax and GAAP/IFRS purposes.

N.C. Gen. Stat. § 105-130.14 provides that “Any corporation electing or required to file a consolidated income tax return with the Internal Revenue Service must determine its State net income as if the corporation had filed a separate federal return...” North Carolina is a single entity filing state. As such, a corporation doing business in North Carolina must file an income and franchise tax return based on its own attributes. The computation of the sales factor for apportionment purposes must include all receipts of the corporation from whatever source unless the receipt is excludible pursuant to provisions of N.C. Gen. Stat. § 105-130.4(a)(7). Financial accounting rules for consolidation of a unitary group do not apply for these purposes.

After review of the petition and consideration of testimony and supporting documentation provided by Petitioners during and after the conference and the relevant North Carolina statutes, the Secretary of Revenue finds that Petitioners have not shown by clear, cogent, and convincing proof that the proposed alternative method is a better method of determining the amount of each of the corporations’ income or capital attributable to the corporations’ business in this State than the statutory apportionment factor.

It is hereby ordered that Petitioners’ written request to employ an alternate method of apportionment for the purpose of determining their North Carolina income and franchise tax for the referenced tax years is denied.

Made and entered into this the 22nd day of March, 2018.

Signature

Anthony Edwards
Assistant Secretary for Tax Administration
North Carolina Department of Revenue