



## North Carolina Department of Revenue

Roy Cooper  
Governor

Ronald G. Penny  
Secretary

### **ADMINISTRATIVE DECISION NUMBER 2020-01 Request for Alternative Apportionment Factor September 9, 2020**

This matter was discussed with Anthony Edwards, Assistant Secretary for Tax Administration, on June 24, 2020 resulting from a petition filed on January 13, 2020 by [REDACTED] ("Company") concerning the apportionment of Company's net worth for franchise tax purposes for tax year ending December 31, 2018 pursuant to N.C. Gen. § 105-122(c1)(2). Assistant Secretary Edwards participated in the discussion with John Seibert, Director of the Corporate Tax Division.

Company is a C corporation incorporated and headquartered in North Carolina. Company is a [REDACTED] company operating in the Southeastern United States. During 2018, Company only operated in North Carolina and South Carolina. As a result, Company has historically maintained a significant amount of activity in North Carolina, thus generating a large apportionment percentage for its North Carolina corporate income and franchise tax reporting.

In 2018, Company created a new 100% owned limited liability company (LLC), [REDACTED]. Upon creation, [REDACTED] did not make any entity election, thus, [REDACTED] was treated as a disregarded entity and a division of Company for federal income and North Carolina corporate tax purposes. On December 12, 2018, Company and related companies made a significant asset purchase from [REDACTED]. Company purchased assets located in North Carolina and [REDACTED] purchased assets which were located in several jurisdictions outside the State.

Company's originally filed 2018 corporate income and franchise tax return was timely filed on extension on October 15, 2019. Given [REDACTED] status as a disregarded entity 100% owned by Company, [REDACTED] balance sheet and income amounts were properly included in Company's 2018 North Carolina return and in the calculation of Company's North Carolina apportionment percentage on that return.

The capital contribution and acquisition of [REDACTED] assets effectively added several hundred million dollars to Company's net worth for purposes of calculating its 2018 North Carolina franchise tax liability is based on the company's balance sheet as of December 31, 2018. This change in the company's net worth occurred with only 20 days left in the tax year. The apportionment factor reported on the 2018 return includes [REDACTED] activity in the sales factor denominator, but only for those 20 days. Company asserts that utilizing the statutory apportionment method for sales using the limited days for acquired company sales calculated against the full net worth as of December 31, 2018 results in over a 250%

franchise tax increase than would be calculated on an annual basis and attributes a greater portion of its net worth to this State than is reasonably attributable to its business in North Carolina.

After review of the petition and consideration of information provided in the telephone conference and supporting documentation provided by Company in subsequent correspondence dated April 30, 2020 and June 15, 2020, the Secretary of Revenue renders his decision and enters the following order:

IT IS HEREBY ORDERED BY THE SECRETARY OF REVENUE that Company is authorized to apportion its net worth to North Carolina for franchise tax purposes for the tax year ended December 31, 2018 in accordance with the following procedure:

Company shall utilize a property factor as of December 31, 2018 by applying the property in North Carolina during 2018, but computed in accordance with N.C. Gen. Stat. § 105-130.4(j) as in effect on December 31, 2017. The computed property factor will be applied as a replacement for the sales factor for purposes of apportioning Company's net worth. Company must utilize the average proportion of property in the state at the beginning of the year and the end of the year to compute the amount of net worth based on the balance sheet.

This Order will apply only for franchise tax purposes for tax year ending December 31, 2018. The Company may use the alternative apportionment formula or the statutory method. 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 9<sup>th</sup> day of September, 2020.

Sincerely,

A large black rectangular redaction box covers the signature of Anthony Edwards.

Anthony Edwards,  
Assistant Secretary for Tax Administration