

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) ADMINISTRATIVE DECISION
 for franchise tax purposes for the tax year ending) **Number: 2015-01**
 December 31, 2015, December 31, 2016 and)
 December 31, 2017)

This matter was heard before Secretary of Revenue, Lyons Gray, on January 27, 2015 at 1:00 PM in the Revenue Building in the City of Raleigh, North Carolina upon a petition dated November 4, 2014 by [REDACTED] ("Company") concerning the apportionment of Company's franchise tax for the tax years ending December 31, 2015 ("2015"), December 31, 2016 ("2016"), and December 31, 2017 ("2017") pursuant to N.C. Gen. Stat. 105-122(c1)(2). Pursuant to N.C. Gen. Stat. 105-114(a3), franchise tax levied under N.C. Gen. Stat. 105-122 are for the income year of the corporation in which the taxes become due. Therefore, franchise taxes for the years 2015 and 2016 are payable with the 2014 and 2015 income tax forms, respectively.

The Secretary of Revenue presided over the conference with Jocelyn Andrews, Assistant Secretary of Tax Administration, Daniel Garner, General Counsel for the Department of Revenue, and Lennie Collins, Director of the Income Tax Division, participating. [REDACTED]

[REDACTED] represented Company. [REDACTED] employees of Company, participated by telephone.

At the request of the Secretary, Company provided additional information in an email dated February 4, 2015.

After review of the petition and consideration of testimony and supporting documentation provided by Company, the Secretary of Revenue rendered his decision and entered the following order:

IT IS HEREBY ORDERED BY THE SECRETARY OF REVENUE that the petitioner's written request to employ an alternative method of apportionment for the purpose of determining its North Carolina franchise tax for tax years 2015 and 2016 is granted. The request to employ an alternative method of apportionment for the purpose of determining its North Carolina franchise tax for tax year 2017 is denied. The petitioner shall determine its North Carolina franchise tax liability for tax years

2015 and 2016 by combining all entities in its affiliated group as defined under G.S. 105-130.5A(j) ("combined group"). This is the same combined group defined in the [REDACTED] executed by the Department and Company in August 2013 relative to Company's income tax filing for tax years 2012 and beyond. In determining its Capital Stock, Surplus and Undivided Profits base, amounts such as total capital stock, treasury stock, paid-in or capital surplus, and retained earnings shall be taken from Company's consolidated balance sheet in its annual report, which will negate the need for adjustments regarding affiliated indebtedness or other related party adjustments because intercompany amounts are eliminated in the annual report balance sheets. Other adjustments required under N.C. Gen. Stat. 105-122 such as other surplus, deferred or unearned income, allowance for bad debts, and reserves will be determined on a combined basis from Company's consolidated general ledger accounts. The apportionment factor for determining the portion of Company's Capital Stock Base attributable to North Carolina shall be the same as the apportionment factor computed pursuant to the [REDACTED] for income tax purposes. In accordance with the provisions of N.C. Gen. Stat. 105-122(d), the amount of the combined capital stock, surplus and undivided profits shall not be less than 55% of the appraised value as determined for ad valorem taxation of all the real and tangible personal property in this State nor less than its total actual investment in tangible property in this State.

Although Company's North Carolina franchise tax liability will be computed on a combined basis, each separate entity doing business in North Carolina must file a separate form and report its proportionate share of the liability. Each separate return must have the "combined return" indicator on page one marked. The methodology for determining each entity's proportionate share of the combined group will be determined in accordance with Exhibit A, which is attached to this order. When completing the separate entity franchise tax schedules, the amount in Column D of Exhibit A will be shown on Sch C, Line 11 of form CD-405. The amount in Column E of Exhibit A will be shown on Sch C, Line 12. The amount in Column D of Exhibit A will be shown on Sch C, Line 13 and on Sch A, Line 1. The amount in Column H of Exhibit A will be shown on Sch A, Line 5. Each separate return must include the name and federal identification number of the principal reporting member of the group.

In the event that Company desires to file under extension, each separate entity will be required to file its own extension and remit tax expected to be due by the original due date of the return pursuant to N.C. Gen. Stat. 105-263(b).

Tax credits generated by members of the group and elected to be taken against franchise tax may be allocated among the members of the group; however, the provision that limits a credit to 50%

of the taxpayer's liability must be respected at the single entity level.

This reporting methodology may be used for tax years 2015 and 2016 unless one of the following occurs:

- a. The North Carolina General Assembly enacts legislation that repeals the Secretary's authority to enter into voluntary redeterminations or to provide alternative apportionment relief.
- b. The North Carolina General Assembly adopts combined or consolidated reporting.
- c. There is a final determination by a North Carolina Appellate Court that is not subject to further review that the Secretary does not have the authority to permit a taxpayer to file under the methodology set out in this Order.
- d. The parties mutually agree to modify the methodology in this Order.
- e. Company notifies the Secretary in writing prior to the filing of its franchise tax return that it will no longer file under the terms of this Order, in which case, statutory apportionment will be required.

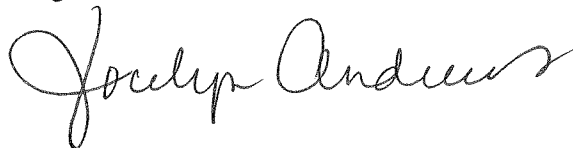
This Order will be subject to review in the event of the reporting of a material change for income tax purposes.

The relief granted to Company is made subject to audit and review by the North Carolina Department of Revenue.

Effective for income tax years beginning on or after January 1, 2016, the [REDACTED] as amended and executed in August 2013 is null and void. Company will file separate entity income and franchise tax returns pursuant to the provisions of Article 3 and Article 4 of Chapter 105.

Made and entered into this the 21st day of April, 2015.

Signature



Jocelyn Andrews
Assistant Secretary for Tax Administration
North Carolina Department of Revenue