

REQUEST FOR TECHNICAL CHANGE

AGENCY: Department of Revenue

RULE CITATION: 17 NCAC 05G .0101

DEADLINE FOR RECEIPT: Friday, February 10, 2017

PLEASE NOTE: This request when viewed on computer extends several pages. Please be sure you have reached the end of the document.

The Rules Review Commission staff has completed its review of this rule prior to the Commission's next meeting. The Commission has not yet reviewed this rule and therefore there has not been a determination as to whether the rule will be approved. You may call this office to inquire concerning the staff recommendation.

In reviewing these rules, the staff determined that the following technical changes need to be made. Approval of any rule is contingent upon making technical changes as set forth in G.S. 150B-21.10.

Line 6, does "rules" here mean a regulation in the Administrative Code, which for purposes of this entire set of adoptions, should be a capitalized "R" or does it mean the primary question in the hierarchical review of the market-based sourcing principles? Since those principles are also referred to as "rules," the agency should capitalize the term referring to the content in the Administrative Code and uncapitalize the term referring to the market-based sourcing principles. Throughout the remaining technical change requests, the inquiry will simply be "is this a capitalized Rule in the Code or an uncapitalized rule in the hierarchical review of the market-based sourcing principles?" by asking the agency to please review.

Line 6, replace "do" with "shall"

Line 6, what is meant by "other receipts"? Please clarify. It could be that "are" should be "shall be" if the attempt is to distinguish that all other receipts are not subject to the market-based sourced principles.

Line 7, for the term "Rules" this appears to be referencing this Rule in the Administrative Code, but please verify.

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

Abigail M. Hammond
Commission Counsel
Date submitted to agency: Friday, January 27, 2017

1 17 NCAC 05G .0101 is adopted as published in 31:07 NCR 619-630 as follows:

2

3

SECTION .0100 – GENERAL RULES

4

17 NCAC 05G .0101 SCOPE

6 The rules in this Subchapter do not apply to receipts from the sale of tangible personal property. Other receipts are in
7 North Carolina when the taxpayer's market for the sales is in North Carolina. The rules of this Subchapter establish
8 uniform rules for:

9

(1) determining to what extent the market for a sale is in North Carolina;

10

(2) reasonably approximating the state or states of assignment where the state or states cannot be
11 determined;

11

12

(3) excluding receipts from the sale of intangible property from the numerator and denominator of the
13 sales factor pursuant to G.S. 105-130.4(1); and

13

14

(4) excluding receipts from the denominator of the sales factor where the state or states of assignment
15 cannot be determined or reasonably approximated.

15

16

17 *History Note: Authority G.S. 105-130.4; S.L. 2016-94.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Department of Revenue

RULE CITATION: 17 NCAC 05G .0102

DEADLINE FOR RECEIPT: Friday, February 10, 2017

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In reviewing these rules, the staff determined that the following technical changes need to be made. Approval of any rule is contingent upon making technical changes as set forth in G.S. 150B-21.10.

Line 4, add "In addition to the definitions in G.S. 105-130.4," before "As"

Line 4, uncapitalize "As"

Line 19, define or delete "merely"

Line 19, change the comma after "includes" to a semicolon

Lines 20 through page 2, line 10, realizing this would require reflecting a significant amount of change, should this list be provided in alphabetical order? Please review.

Page 2, line 9, should the "and" be an "or"?

Page 2, lines 14 thru 15, please incorporate the census data in compliance with [G.S. 150B-21.6](#). The text is missing a clear statement that something is being incorporated and whether subsequent amendments and editions are to be incorporated. Here is an example:

Census data is hereby incorporated by reference, including subsequent amendments or additions, and is available free of charge at...

Page 2, line 16 defines "reasonable" but should it also include a reference to "reasonably" as these terms appear to be used interchangeably throughout the rules?

Page 2, line 16, change the period after "proper" to a semicolon

Page 2, line 19, define or delete "principally" Is this term defined in another statute or rule? Please clarify.

Abigail M. Hammond
Commission Counsel
Date submitted to agency: Friday, January 27, 2017

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

Abigail M. Hammond
Commission Counsel
Date submitted to agency: Friday, January 27, 2017

1 17 NCAC 05G .0102 is adopted as published in 31:07 NCR 619-630 as follows:

2
3 **17 NCAC 05G .0102 DEFINITIONS**

4 As used in this Subchapter, the following definitions shall apply:

5 (1) "Billing address" means the location stated in the books and records of the taxpayer as the primary
6 mailing address relating to a customer's account as of the time of the transaction as kept in good
7 faith in the regular course of business and not for tax avoidance purposes.

8 (2) "Business customer" means a customer that is a business operating in any form, including a sole
9 proprietorship. Sales to a non-profit organization; a trust; the U.S. Government; a foreign, state or
10 local government; or to an agency or instrumentality of that government are treated as sales to a
11 business customer.

12 (3) "Code" means as defined in G.S. 105-228.90.

13 (4) "Department" means the North Carolina Department of Revenue.

14 (5) "Good faith" means a state of mind consisting in honesty in belief or purpose, faithfulness to one's
15 duty or obligation, observance of reasonable commercial standards of fair dealing in a given trade
16 or business, or absence of intent to defraud or to seek unconscionable advantage.

17 (6) "Individual customer" means a customer that is not a business customer.

18 (7) "Intangible property" means property that is not physical or whose representation by physical means
19 is merely incidental and includes,

20 (a) copyrights;

21 (b) patents;

22 (c) trademarks;

23 (d) trade names;

24 (e) brand names;

25 (f) franchises;

26 (g) licenses;

27 (h) trade secrets;

28 (i) trade dress;

29 (j) information;

30 (k) know-how;

31 (l) methods;

32 (m) programs;

33 (n) procedures;

34 (o) systems;

35 (p) formulae;

36 (q) processes;

37 (r) technical data;

- 1 (s) designs;
- 2 (t) literary,
- 3 (u) musical, or artistic compositions;
- 4 (v) information;
- 5 (w) ideas;
- 6 (x) contract rights including broadcast rights;
- 7 (y) agreements not to compete;
- 8 (z) goodwill and going concern value;
- 9 (aa) securities; and,
- 10 (bb) except as otherwise provided in these Rules, computer software.
- 11 (8) "Place of order" means the physical location where a customer places an order for a sale from a
- 12 taxpayer, resulting in a contract with the taxpayer.
- 13 (9) "Population" means the most recent population data maintained by the U.S. Census Bureau for the
- 14 year in question as of the close of the taxable period. Census data is available free of charge at
- 15 census.gov/topics/population.html.
- 16 (10) "Reasonable" means agreeable to reason; just; proper. Ordinary or usual.
- 17 (11) "Related entity" means as defined in G.S. 105-130.7A.
- 18 (12) "Secretary" means the Secretary of Revenue.
- 19 (13) "State where a contract of sale is principally managed by the customer" means the primary location
- 20 where an employee or other representative of a customer serves as the primary contact person for
- 21 the taxpayer with respect to the day-to-day execution and performance of a contract entered into by
- 22 the taxpayer with the customer.

24 *History Note: Authority G.S. 105-130.4; S.L 2016-94.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Department of Revenue

RULE CITATION: 17 NCAC 05G .0201

DEADLINE FOR RECEIPT: Friday, February 10, 2017

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In reviewing these rules, the staff determined that the following technical changes need to be made. Approval of any rule is contingent upon making technical changes as set forth in G.S. 150B-21.10.

Lines 9 and 16, for the term "rules," these both appear to be hierarchical, but please verify. Are these terms a capitalized Rule in the Code or an uncapitalized rule in the hierarchical review of the market-based sourcing principles?

Line 10, define or delete "reasonably" Consider technical change request to the defined term of "reasonable" as providing a definition for "reasonably"

Line 12, define or delete "consistently"

Line 15, when may the Secretary request the records? Please clarify the types of triggers for the request

Line 18, delete "applicable"

Line 21, replace "standards" with "rules" This appears that it would be a hierarchical "rule"

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

Abigail M. Hammond
Commission Counsel
Date submitted to agency: Friday, January 27, 2017

1 17 NCAC 05G .0201 is adopted as published in 31:07 NCR 619-630 as follows:

2
3 **SECTION .0200 – GENERAL PRINCIPLES OF APPLICATION**

4
5 **17 NCAC 05G .0201 ASSIGNMENT OF RECEIPTS FROM SALES OF OTHER THAN TANGIBLE**
6 **PERSONAL PROPERTY**

7 A taxpayer's assignment of receipts from sales of other than tangible personal property shall comply with the
8 following:

- 9 (1) A taxpayer shall apply the rules set forth in this Subchapter based on objective criteria and shall
10 consider all sources of information reasonably available to the taxpayer at the time of its tax filing
11 including the taxpayer's books and records kept in the regular course of business. A taxpayer shall
12 determine its method of assigning receipts in good faith, and apply it consistently with respect to
13 similar transactions. A taxpayer shall retain contemporaneous records that explain the determination
14 and application of its method of assigning its receipts, including its underlying assumptions, and
15 shall provide those records to the Secretary upon request.
- 16 (2) This Subchapter provides assignment rules that apply sequentially in a hierarchy. For each sale to
17 which a hierarchical rule applies, a taxpayer shall make a reasonable effort to apply the primary rule
18 applicable to the sale before seeking to apply the next rule in the hierarchy and shall continue to do
19 so with each succeeding rule in the hierarchy.
- 20 (3) A taxpayer's method of assigning its receipts shall reflect an attempt to obtain the most accurate
21 assignment of receipts consistent with the standards set forth in this Subchapter, rather than an
22 attempt to lower the taxpayer's tax liability.

23
24 *History Note: Authority G.S. 105-130.4; S.L. 2016-94.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Department of Revenue

RULE CITATION: 17 NCAC 05G .0301

DEADLINE FOR RECEIPT: Friday, February 10, 2017

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In reviewing these rules, the staff determined that the following technical changes need to be made. Approval of any rule is contingent upon making technical changes as set forth in G.S. 150B-21.10.

Lines 8 and 10, for the term "rules," these appear to be hierarchical, but please verify. Are these terms a capitalized Rule in the Code or an uncapitalized rule in the hierarchical review of the market-based sourcing principles?

Lines 8 and 10, delete "applicable"

Lines 8, the second "rule" should be plural

Lines 8 thru 10, is this third sentence of the Rule necessary? Could it be simplified as follows:

In other cases, the rules in this Subchapter permits a taxpayer to reasonably approximate the state or states of assignment to obtain results similar to those made in accordance with specific rules of approximation.

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

Abigail M. Hammond
Commission Counsel
Date submitted to agency: Friday, January 27, 2017

1 17 NCAC 05G .0301 is adopted as published in 31:07 NCR 619-630 as follows:

2

3

SECTION .0300 – RULES OF REASONABLE APPROXIMATION

4

17 NCAC 05G .0301 IN GENERAL

6 The Rules of this Subchapter set forth the process of reasonable approximation that apply if the state or states of

7 assignment cannot be determined. In some instances, the reasonable approximation shall be made in accordance with

8 specific rules of approximation prescribed in this Subchapter. In other cases, the applicable rule in this Subchapter

9 permits a taxpayer to reasonably approximate the state or states of assignment, using a method that reflects an effort

10 to approximate the results that would be obtained under the applicable rules or standards set forth in this Subchapter.

11

12 *History Note: Authority G.S. 105-130.4; S.L. 2016-94.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Department of Revenue

RULE CITATION: 17 NCAC 05G .0302

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In reviewing these rules, the staff determined that the following technical changes need to be made. Approval of any rule is contingent upon making technical changes as set forth in G.S. 150B-21.10.

Line 4, delete "applicable"

*Line 5, define or delete "substantially" " Is this term defined in another statute or rule?
Please clarify*

Line 6, define or delete "reasonably believes"

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

Abigail M. Hammond
Commission Counsel
Date submitted to agency: Friday, January 27, 2017

1 17 NCAC 05G .0302 is adopted with changes as published in 31:07 NCR 619-630 as follows:

2

3 **17 NCAC 05G .0302 APPROXIMATION BASED UPON KNOWN SALES**

4 When, by applying the applicable rules set forth in Sections .0900 through ~~.1200~~ .1000 of this Subchapter, a taxpayer
5 can ascertain the state or states of assignment of a substantial portion of its receipts from sales of substantially similar
6 services and the taxpayer reasonably believes that the geographic distribution of the remainder of its sales tracks that
7 of the assigned receipts, the taxpayer shall include the receipts from those sales in its sales factor in the same proportion
8 as its assigned receipts. This Rule applies in the context of licenses and sales of intangible property where the
9 substance of the transaction resembles a sale of goods or services.

10

11 *History Note: Authority G.S. 105-130.4; S.L. 2016-94.*

1 17 NCAC 05G .0303 is adopted as published in 31:07 NCR 619-630 as follows:

2

3 **17 NCAC 05G .0303 RELATED ENTITY TRANSACTIONS**

4 Where a taxpayer has receipts subject to this Subchapter from transactions with a related entity customer, information
5 that the customer has regarding the sourcing of receipts from these transactions shall be imputed to the taxpayer.

6

7 *History Note: Authority G.S. 105-130.4; S.L. 2016-94.*

1 17 NCAC 05G .0401 is adopted as published in 31:07 NCR 619-630 as follows:
2

3 **SECTION .0400 – EXCLUSION OF RECEIPTS FROM THE SALES FACTOR**
4

5 **17 NCAC 05G .0401 ALLOCATED GROSS RECEIPTS**

6 The sales factor includes only gross receipts of the taxpayer that are not allocated under G.S. 105-130.4, and are
7 received from transactions and activity in the regular course of the taxpayer's trade or business. Receipts addressed
8 in G.S. 105-130.4(a)(7) shall be excluded.
9

10 *History Note: Authority G.S. 105-130.4; G.S. 105-130.4(a)(7); S.L. 2016-5; S.L. 2016-94.*

REQUEST FOR TECHNICAL CHANGE

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In reviewing these rules, the staff determined that the following technical changes need to be made. Approval of any rule is contingent upon making technical changes as set forth in G.S. 150B-21.10.

Line 5, for the term "rules," this appears to be hierarchical, but please verify.

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

Abigail M. Hammond
Commission Counsel
Date submitted to agency: Friday, January 27, 2017

1 17 NCAC 05G .0402 is adopted as published in 31:07 NCR 619-630 as follows:

2

3 **17 NCAC 05G .0402 UNASSIGNABLE GROSS RECEIPTS**

4 When a taxpayer is unable to ascertain the state or states where receipts of a sale are to be assigned pursuant to the
5 rules set forth in this Subchapter using a reasonable amount of effort undertaken in good faith, the receipts shall be
6 excluded from the denominator of the taxpayer's sales factor pursuant to this Subchapter.

7

8 *History Note: Authority G.S. 105-130.4; S.L. 2016-94.*

1 17 NCAC 05G .0501 is adopted as published in 31:07 NCR 619-630 as follows:

2

3

SECTION .0500 - CHANGES IN METHODOLOGY

4

17 NCAC 05G .0501 ALTERNATIVE APPORTIONMENT

6 Nothing in this Subchapter limits the application of G.S. 105-122(c1)(2) or G.S. 105-130.4(t1). If the application of
7 this Subchapter results in the assignment of receipts to the taxpayer's sales factor that the taxpayer believes does not
8 fairly represent the extent of the taxpayer's business activity in North Carolina, the taxpayer may request the use of a
9 different method for assigning those receipts.

10

11 *History Note: Authority G.S. 105-130.4; S.L. 2016-94.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Department of Revenue

RULE CITATION: 17 NCAC 05G .0502

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In reviewing these rules, the staff determined that the following technical changes need to be made. Approval of any rule is contingent upon making technical changes as set forth in G.S. 150B-21.10.

Line 4, replace "in which" with "where"

Lines 4 and 7, define or delete "properly" Is "properly" like "reasonably"? "Proper" is used to define "reasonable" in Rule .0102. Please clarify the definition, if necessary.

Line 5, for the term "rules" this appears to be hierarchical, but please verify.

Line 10, define or delete "subsequently" Is the term even necessary for this sentence? Please review.

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

Abigail M. Hammond
Commission Counsel
Date submitted to agency: Friday, January 27, 2017

1 17 NCAC 05G .0502 is adopted as published in 31:07 NCR 619-630 as follows:

2

3 **17 NCAC 05G .0502 ORIGINAL RETURNS**

4 When a taxpayer files an original return for a taxable year in which it properly assigns its receipts using a method of
5 assignment, including a method of reasonable approximation, in accordance with the rules in this Subchapter, the
6 application of such method of assignment shall be deemed to be a correct determination by the taxpayer of the state
7 or states of assignment to which the method is properly applied. In those cases, neither the Secretary nor the taxpayer
8 may modify the taxpayer's methodology as applied for assigning those receipts for the taxable year, through the form
9 of an audit adjustment, amended return, or abatement application. However, the Secretary and the taxpayer may each
10 subsequently correct factual errors or calculation errors with respect to the taxpayer's application of its filing
11 methodology.

12

13 *History Note: Authority G.S. 105-130.4; S.L. 2016-94.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Department of Revenue

RULE CITATION: 17 NCAC 05G .0503

DEADLINE FOR RECEIPT: Friday, February 10, 2017

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In reviewing these rules, the staff determined that the following technical changes need to be made. Approval of any rule is contingent upon making technical changes as set forth in G.S. 150B-21.10.

Lines 5, 6, 25, and 28, for the term "rules" these appear to be hierarchical, but please verify.

Line 6, define or delete "properly" Is "properly" like "reasonably"? "Proper" is used to define "reasonable" in Rule .0102. Please clarify the definition if necessary

Lines 9, 25, and 28, delete "applicable" as it appears to be an unnecessary term

Lines 12, and 20, how are these determinations of "is appropriate" made? Please clarify the process and factors considered by the Secretary in the process..

Line 18, delete the term "reasonably" as the statutory phrase is "cannot be determined"

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

Abigail M. Hammond
Commission Counsel
Date submitted to agency: Friday, January 27, 2017

1 17 NCAC 05G .0503 is adopted with changes as published in 31:07 NCR 619-630 as follows:

2
3 **17 NCAC 05G .0503 SECRETARY'S AUTHORITY TO ADJUST A TAXPAYER'S RETURN**

4 The Secretary's ability to review and adjust a taxpayer's assignment of receipts on a return to assign receipts consistent
5 with the rules of this Subchapter, includes each of the following potential actions:

- 6 (1) when a taxpayer fails to properly assign receipts from a sale in accordance with the rules set forth
7 in this Subchapter, including the failure to apply a hierarchy of rules consistent with the principles
8 of Rule .0201(2) of this Subchapter, the Secretary shall adjust the assignment of the receipts in
9 accordance with the applicable rules in this Subchapter;
- 10 (2) when a taxpayer uses a method of approximation to assign its receipts and the Secretary determines
11 that the method of approximation employed by the taxpayer is not reasonable, the Secretary shall
12 either substitute a method of approximation that the Secretary determines is appropriate or exclude
13 the receipts from the taxpayer's numerator and denominator;
- 14 (3) when the Secretary determines that a taxpayer's method of approximation has not been applied in a
15 consistent manner with respect to similar transactions or year to year, the Secretary may require that
16 the taxpayer apply its method of approximation in a consistent manner;
- 17 (4) when a taxpayer excludes receipts from the denominator of its ~~receipts~~ sales factor on the basis that
18 the assignment of the receipts cannot be reasonably approximated, the Secretary may determine that
19 the exclusion of those receipts is not appropriate, and may instead substitute a method of
20 approximation that the Secretary determines is appropriate;
- 21 (5) when a taxpayer fails to retain contemporaneous records that explain the determination and
22 application of its method of assigning its receipts, including its underlying assumptions, or fails to
23 provide those records to the Secretary upon request, the Secretary shall treat the taxpayer's
24 assignment of receipts as unsubstantiated, and shall adjust the assignment of the receipts in a manner
25 consistent with the applicable rules in this Subchapter; or
- 26 (6) when the Secretary concludes that a customer's billing address was selected by the taxpayer for tax
27 avoidance purposes, the Secretary shall adjust the assignment of receipts from sales to that customer
28 in a manner consistent with the applicable rules in this Subchapter.

29
30 *History Note: Authority G.S. 105-130.4; S.L. 2016-94.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Department of Revenue

RULE CITATION: 17 NCAC 05G .0504

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In reviewing these rules, the staff determined that the following technical changes need to be made. Approval of any rule is contingent upon making technical changes as set forth in G.S. 150B-21.10.

Line 12, and 20, how are these determinations of "is appropriate" made? Please clarify the process and factors considered by the Secretary in the process.

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

Abigail M. Hammond
Commission Counsel
Date submitted to agency: Friday, January 27, 2017

1 17 NCAC 05G .0504 is adopted with changes as published in 31:07 NCR 619-630 as follows:

2

3 **17 NCAC 05G .0504 TAXPAYER AUTHORITY TO CHANGE A METHOD OF ASSIGNMENT ON A**
4 **PROSPECTIVE BASIS**

5 A taxpayer ~~may that seeks to~~ change its method of assigning its receipts ~~every year in its original return, including~~
6 ~~changing its method of approximation, from that used on previous returns. However, the taxpayer may only make~~
7 ~~this change for purposes of improving the accuracy of assigning its receipts consistent with the rules set forth in this~~
8 ~~Subchapter. This includes addressing the circumstance where there is a change in the information that is available to~~
9 ~~the taxpayer as relevant for purposes of complying with these Rules. Further, a taxpayer that changes its method of~~
10 ~~assigning its receipts shall disclose, in the original return filed for the year of the change, the fact that is the taxpayer~~
11 ~~has made the change. The taxpayer shall retain and provide to the Secretary upon request documents that explain the~~
12 ~~nature and extent of the change, and the reason for the change. If a taxpayer fails to disclose the change, or retain and~~
13 ~~provide the required records upon request, the Secretary may disregard the taxpayer's change and substitute an~~
14 assignment method that the Secretary determines is appropriate.

15

16 *History Note: Authority G.S. 105-130.4; S.L. 2016-94.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Department of Revenue

RULE CITATION: 17 NCAC 05G .0505

DEADLINE FOR RECEIPT: Friday, February 10, 2017

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In reviewing these rules, the staff determined that the following technical changes need to be made. Approval of any rule is contingent upon making technical changes as set forth in G.S. 150B-21.10.

Line 8, replace "can" with "may"

Line 8, define or delete "reasonably"

Line 12, how is the determination of "is reasonable" made? Please clarify the process and factors considered by the Secretary in the process.

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

Abigail M. Hammond
Commission Counsel
Date submitted to agency: Friday, January 27, 2017

1 17 NCAC 05G .0505 is adopted with changes as published in 31:07 NCR 619-630 as follows:

2

3 **17 NCAC 05G .0505 SECRETARY AUTHORITY TO CHANGE A METHOD OF ASSIGNMENT ON**
4 **A PROSPECTIVE BASIS**

5 The Secretary may direct a taxpayer to change its method of assigning its receipts in tax returns that have not yet been
6 filed, including changing the taxpayer's method of approximation, if upon reviewing the taxpayer's filing methodology
7 applied in a prior tax year, the Secretary determines that the change reflects a more accurate assignment of the
8 taxpayer's receipts within the meaning of this Subchapter, and determines that the change can be reasonably adopted
9 by the taxpayer. The Secretary shall provide the taxpayer with a written explanation of the reason for making the
10 change. When a taxpayer fails to comply with the Secretary's direction on future returns, the Secretary shall deem the
11 taxpayer's method of assigning its receipts on those returns to be unreasonable, and shall substitute an assignment
12 method that the Secretary determines is reasonable.

13

14 *History Note: Authority G.S. 105-130.4; S.L. 2016-94.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Department of Revenue

RULE CITATION: 17 NCAC 05G .0601

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In reviewing these rules, the staff determined that the following technical changes need to be made. Approval of any rule is contingent upon making technical changes as set forth in G.S. 150B-21.10.

Lines 6, 8, and 10, for the term "rules" these appear to be hierarchical, but please verify.

Line 7, replace "is" with "shall be"

Lines 11 thru 12, how is this determination of "be deemed appropriate" made? Please clarify the process and factors considered by the Secretary in the process.

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

Abigail M. Hammond
Commission Counsel
Date submitted to agency: Friday, January 27, 2017

1 17 NCAC 05G .0601 is adopted with changes as published in 31:07 NCR 619-630 as follows:

2

3

SECTION .0600 - FURTHER GUIDANCE

4

17 NCAC 05G .0601 EXAMPLES

6 (a) The Secretary shall publish on the Department's website examples demonstrating the application of rules set forth
7 in this Subchapter. The document is available at ~~doe.gov~~www.ncdor.gov.

8 (b) The Secretary may issue further public written statements with respect to the rules set forth in this Subchapter.
9 These statements may include guidance with respect to:

10 (1) what constitutes a reasonable method of approximation within the meaning of the rules, and

11 (2) the circumstances when a filing change for a taxpayer's method of reasonable approximation will
12 be deemed appropriate.

13

14 *History Note:* *Authority G.S. 105-130.4; S.L. 2016-94.*

15

REQUEST FOR TECHNICAL CHANGE

AGENCY: Department of Revenue

RULE CITATION: 17 NCAC 05G .0701

DEADLINE FOR RECEIPT: Friday, February 10, 2017

PLEASE NOTE: This request when viewed on computer extends several pages. Please be sure you have reached the end of the document.

The Rules Review Commission staff has completed its review of this rule prior to the Commission's next meeting. The Commission has not yet reviewed this rule and therefore there has not been a determination as to whether the rule will be approved. You may call this office to inquire concerning the staff recommendation.

In reviewing these rules, the staff determined that the following technical changes need to be made. Approval of any rule is contingent upon making technical changes as set forth in G.S. 150B-21.10.

Line 6, replace "are" with "shall be"

Line 9, for the term "rules" this appears to be hierarchical, but please verify.

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

Abigail M. Hammond
Commission Counsel
Date submitted to agency: Friday, January 27, 2017

1 17 NCAC 05G .0701 is adopted as published in 31:07 NCR 619-630 as follows:
2

3 **SECTION .0700 – SALE OF A SERVICE**
4

5 **17 NCAC 05G .0701 IN GENERAL**

6 (a) The receipts from a sale of a service are in North Carolina to the extent that the service is delivered to a location
7 in North Carolina. The term "delivered to a location" refers to the location of the taxpayer's market for the service,
8 which may not be the location of the taxpayer's employees or property.

9 (b) The rules to determine the location of the delivery of a service in the context of several specific types of service
10 transactions are set forth in Sections .0700 through .1000 of this Subchapter.

11
12 *History Note: Authority G.S. 105-130.4; S.L. 2016-94.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Department of Revenue

RULE CITATION: 17 NCAC 05G .0801

DEADLINE FOR RECEIPT: Friday, February 10, 2017

PLEASE NOTE: This request when viewed on computer extends several pages. Please be sure you have reached the end of the document.

The Rules Review Commission staff has completed its review of this rule prior to the Commission's next meeting. The Commission has not yet reviewed this rule and therefore there has not been a determination as to whether the rule will be approved. You may call this office to inquire concerning the staff recommendation.

In reviewing these rules, the staff determined that the following technical changes need to be made. Approval of any rule is contingent upon making technical changes as set forth in G.S. 150B-21.10.

Line 21, should the "and" be an "or"

Line 23, for the term "Rule" this appears to be referencing this Rule in the Administrative Code, but please verify.

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

Abigail M. Hammond
Commission Counsel
Date submitted to agency: Friday, January 27, 2017

1 17 NCAC 05G .0801 is adopted as published in 31:07 NCR 619-630 as follows:

2
3 **SECTION .0800 – SALE OF IN-PERSON SERVICES**
4

5 **17 NCAC 05G .0801 IN GENERAL**

6 (a) Except as otherwise provided in this Section, "in-person services" are services that are physically provided in
7 person by the taxpayer, where the customer or the customer's real or tangible property upon which the services are
8 performed is in the same location as the service provider at the time the services are performed. This Section includes
9 situations where the services are provided on behalf of the taxpayer by a third-party contractor.

10 (b) Examples of in-person services include:

11 (1) warranty and repair services;

12 (2) cleaning services;

13 (3) plumbing services;

14 (4) carpentry;

15 (5) construction contractor services;

16 (6) pest control;

17 (7) landscape services;

18 (8) medical and dental services, including medical testing, x-rays, and mental health care and treatment;

19 (9) child care;

20 (10) hair cutting and salon services;

21 (11) live entertainment and athletic performances; and

22 (12) in-person training or lessons.

23 (c) In-person services include services within the description of this Rule that are performed at

24 (1) a location that is owned or operated by the service provider; or

25 (2) a location of the customer, including the location of the customer's real or tangible personal property.

26 (d) Professional services as described in Section .1000 of this Subchapter shall not be treated as in-person services
27 within the meaning of this Section.

28
29 *History Note: Authority G.S. 105-130.4; S.L. 2016-94.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Department of Revenue

RULE CITATION: 17 NCAC 05G .0802

DEADLINE FOR RECEIPT: Friday, February 10, 2017

PLEASE NOTE: This request when viewed on computer extends several pages. Please be sure you have reached the end of the document.

The Rules Review Commission staff has completed its review of this rule prior to the Commission's next meeting. The Commission has not yet reviewed this rule and therefore there has not been a determination as to whether the rule will be approved. You may call this office to inquire concerning the staff recommendation.

In reviewing these rules, the staff determined that the following technical changes need to be made. Approval of any rule is contingent upon making technical changes as set forth in G.S. 150B-21.10.

Line 4, replace "receives" with "received"

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

Abigail M. Hammond
Commission Counsel
Date submitted to agency: Friday, January 27, 2017

1 17 NCAC 05G .0802 is adopted as published in 31:07 NCR 619-630 as follows:

2

3 **17 NCAC 05G .0802 ASSIGNMENT OF RECEIPTS FROM SALE OF IN-PERSON SERVICES**

4 Receipts from a sale of in-person services shall be assigned to North Carolina to the extent the customer receives the
5 service in North Carolina. The taxpayer shall determine the location where a service is received as follows:

6 (1) if the service is performed with respect to the body of an individual customer in North Carolina,
7 such as hair cutting or x-ray services, or in the physical presence of the customer in North Carolina,
8 such as live entertainment or athletic performances, the service is received in North Carolina;

9 (2) if the service is performed with respect to the customer's real estate in North Carolina or if the service
10 is performed with respect to the customer's tangible personal property at the customer's residence or
11 in the customer's possession in North Carolina, the service is received in North Carolina; or

12 (3) if the service is performed with respect to the customer's tangible personal property and the tangible
13 personal property is to be shipped or delivered to the customer, whether the service is performed
14 within or outside North Carolina, the service is received in North Carolina if the property is shipped
15 or delivered to the customer in North Carolina.

16

17 *History Note: Authority G.S. 105-130.4; S.L. 2016-94.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Department of Revenue

RULE CITATION: 17 NCAC 05G .0803

DEADLINE FOR RECEIPT: Friday, February 10, 2017

PLEASE NOTE: This request when viewed on computer extends several pages. Please be sure you have reached the end of the document.

The Rules Review Commission staff has completed its review of this rule prior to the Commission's next meeting. The Commission has not yet reviewed this rule and therefore there has not been a determination as to whether the rule will be approved. You may call this office to inquire concerning the staff recommendation.

In reviewing these rules, the staff determined that the following technical changes need to be made. Approval of any rule is contingent upon making technical changes as set forth in G.S. 150B-21.10.

Line 5, define or delete "sufficient" What is the threshold requirement to qualify? Is the term necessary to the sentence? If so, please clarify.

Line 5, replace "it" with "the taxpayer"

Line 5, replace "can" with "is able to"

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

Abigail M. Hammond
Commission Counsel
Date submitted to agency: Friday, January 27, 2017

1 17 NCAC 05G .0803 is adopted as published in 31:07 NCR 619-630 as follows:

2

3 **17 NCAC 05G .0803 REASONABLE APPROXIMATION**

4 When the taxpayer cannot determine the state or states where a service was received pursuant to Rule .0802 of this
5 Section, but the taxpayer has sufficient information regarding the location of receipt from which it can reasonably
6 approximate the state or states where the service is received, the taxpayer shall reasonably approximate such state or
7 states.

8

9 *History Note: Authority G.S. 105-130.4; S.L. 2016-94.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Department of Revenue

RULE CITATION: 17 NCAC 05G .0901

DEADLINE FOR RECEIPT: Friday, February 10, 2017

PLEASE NOTE: This request when viewed on computer extends several pages. Please be sure you have reached the end of the document.

The Rules Review Commission staff has completed its review of this rule prior to the Commission's next meeting. The Commission has not yet reviewed this rule and therefore there has not been a determination as to whether the rule will be approved. You may call this office to inquire concerning the staff recommendation.

In reviewing these rules, the staff determined that the following technical changes need to be made. Approval of any rule is contingent upon making technical changes as set forth in G.S. 150B-21.10.

Line 7, replace "within the meaning of" to "as defined in"

Line 8, replace "Section .1000" with "Rule .1001"

Lines 12 and 14, replace "in which" with "where"

Lines 13 and 16, replace the periods at the end of the clauses with semicolons, as this is a list

Line 16, add an "or" at the end of the clause to join the items in the list

*Line 18, define or delete "substantially" " Is this term defined in another statute or rule?
Please clarify*

Line 20, replace "can" with "may"

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

Abigail M. Hammond
Commission Counsel
Date submitted to agency: Friday, January 27, 2017

1 17 NCAC 05G .0901 is adopted as published in 31:07 NCR 619-630 as follows:

2
3 **SECTION .0900 - SERVICES DELIVERED TO A CUSTOMER OR ON BEHALF OF THE**
4 **CUSTOMER, OR DELIVERED ELECTRONICALLY THROUGH THE CUSTOMER**
5

6 **17 NCAC 05G .0901 IN GENERAL**

7 (a) If the service provided by the taxpayer is not an in-person service within the meaning of Rule .0801 of this
8 Subchapter or a professional service as defined in Section .1000 of this Subchapter, and the service is delivered to or
9 on behalf of the customer, or delivered electronically through the customer, the receipts from a sale are in North
10 Carolina to the extent that the service is delivered in North Carolina.

11 (b) For purposes of this Section, a service:

12 (1) "delivered to a customer" is a service in which the customer and not a third party is the recipient of
13 the service.

14 (2) "delivered on behalf of a customer" is one in which a customer contracts for a service but one or
15 more third parties, rather than the customer, is the recipient of the service. This includes fulfillment
16 services, or the direct or indirect delivery of advertising to the customer's intended audience.

17 (3) "delivered electronically through a customer" is a service that is delivered electronically to a
18 customer for purposes of resale and subsequent electronic delivery in substantially identical form to
19 an end user or other third-party recipient.

20 (c) A service can be delivered to or on behalf of a customer by physical means or through electronic transmission.

21
22 *History Note: Authority G.S. 105-130.4; S.L. 2016-94.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Department of Revenue

RULE CITATION: 17 NCAC 05G .0902

DEADLINE FOR RECEIPT: Friday, February 10, 2017

PLEASE NOTE: This request when viewed on computer extends several pages. Please be sure you have reached the end of the document.

The Rules Review Commission staff has completed its review of this rule prior to the Commission's next meeting. The Commission has not yet reviewed this rule and therefore there has not been a determination as to whether the rule will be approved. You may call this office to inquire concerning the staff recommendation.

In reviewing these rules, the staff determined that the following technical changes need to be made. Approval of any rule is contingent upon making technical changes as set forth in G.S. 150B-21.10.

Lines 8 and 11, for the term "rules" these appear to be hierarchical, but please verify

Line 11, capitalize "section"

Line 12, delete the term "reasonably" as the statutory phrase is "cannot be determined"

Line 13, add an "a" before "business"

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

Abigail M. Hammond
Commission Counsel
Date submitted to agency: Friday, January 27, 2017

1 17 NCAC 05G .0902 is adopted as published in 31:07 NCR 619-630 as follows:

2

3 **17 NCAC 05G .0902 ASSIGNMENT OF RECEIPTS FROM SALES OF SERVICES DELIVERED TO**
4 **THE CUSTOMER OR ON BEHALF OF THE CUSTOMER, OR DELIVERED**
5 **ELECTRONICALLY THROUGH THE CUSTOMER**

6 (a) The assignment of receipts to a state or states when a sale of a service is delivered to the customer or on behalf of
7 the customer, or delivered electronically through the customer, shall depend upon the method of delivery of the service
8 and the nature of the customer. Separate rules of assignment shall apply to services delivered by physical means and
9 services delivered by electronic transmission. For purposes of this Section, a service delivered by an electronic
10 transmission is not a delivery by a physical means.

11 (b) If a rule of assignment set forth in this section depends upon whether the customer is an individual or a business
12 customer, and the taxpayer acting in good faith cannot reasonably determine whether the customer is an individual or
13 business customer, the taxpayer shall treat the customer as a business customer.

14

15 *History Note: Authority G.S. 105-130.4; S.L. 2016-94.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Department of Revenue

RULE CITATION: 17 NCAC 05G .0903

DEADLINE FOR RECEIPT: Friday, February 10, 2017

PLEASE NOTE: This request when viewed on computer extends several pages. Please be sure you have reached the end of the document.

The Rules Review Commission staff has completed its review of this rule prior to the Commission's next meeting. The Commission has not yet reviewed this rule and therefore there has not been a determination as to whether the rule will be approved. You may call this office to inquire concerning the staff recommendation.

In reviewing these rules, the staff determined that the following technical changes need to be made. Approval of any rule is contingent upon making technical changes as set forth in G.S. 150B-21.10.

Lines 6 thru 11, consider beginning these clauses with lowercase letters as they are part of a list.

Line 8, add a comma after "fliers"

Line 12, define or delete "properly" Is "properly" like "reasonably"? "Proper" is used to define "reasonable" in Rule .0102. Please clarify the definition, if necessary.

Line 14, for the term "rules" this appear to be hierarchical, but please verify.

Line 20, define or delete "sufficient" What is the threshold requirement to qualify? Is the term necessary to the sentence? If so, please clarify.

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

Abigail M. Hammond
Commission Counsel
Date submitted to agency: Friday, January 27, 2017

1 17 NCAC 05G .0903 is adopted as published in 31:07 NCR 619-630 as follows:

2
3 **17 NCAC 05G .0903 DELIVERY TO OR ON BEHALF OF A CUSTOMER BY PHYSICAL MEANS,**
4 **WHETHER TO AN INDIVIDUAL OR BUSINESS CUSTOMER**

5 (a) Services delivered to a customer or on behalf of a customer through a physical means include:

6 (1) Product delivery services where property is delivered to the customer or to a third party on behalf
7 of the customer;

8 (2) The delivery of brochures, fliers or other direct mail services;

9 (3) The delivery of advertising or advertising-related services to the customer's intended audience in
10 the form of a physical medium; and

11 (4) The sale of custom software, such as where software is developed for a specific customer in a case
12 where the transaction is properly treated as a service transaction for purposes of corporate taxation
13 where the taxpayer installs the custom software at the customer's site.

14 (b) The following rules shall apply whether the taxpayer's customer is an individual customer or a business customer:

15 (1) Rule of Determination. In assigning the receipts from a sale of a service delivered to a customer or
16 on behalf of a customer through a physical means, a taxpayer shall determine the state or states
17 where the service is delivered. If the taxpayer is able to determine the state or states where the
18 service is delivered, it shall assign the receipts to that state or states.

19 (2) Rule of Reasonable Approximation. If the taxpayer is unable to determine the state or states where
20 the service is delivered, but has sufficient information regarding the place of delivery that the
21 taxpayer may reasonably approximate the state or states where the service is delivered, it shall
22 reasonably approximate the state or states.

23
24 *History Note: Authority G.S. 105-130.4; S.L. 2016-94.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Department of Revenue

RULE CITATION: 17 NCAC 05G .0904

DEADLINE FOR RECEIPT: Friday, February 10, 2017

PLEASE NOTE: This request when viewed on computer extends several pages. Please be sure you have reached the end of the document.

The Rules Review Commission staff has completed its review of this rule prior to the Commission's next meeting. The Commission has not yet reviewed this rule and therefore there has not been a determination as to whether the rule will be approved. You may call this office to inquire concerning the staff recommendation.

In reviewing these rules, the staff determined that the following technical changes need to be made. Approval of any rule is contingent upon making technical changes as set forth in G.S. 150B-21.10.

Line 7, for the term "rules" this appear to be hierarchical, but please verify

Line 17, define or delete "sufficient" What is the threshold requirement to qualify? Is the term necessary to the sentence? If so, please clarify.

Line 18, replace "that it can" with "to"

Line 18, replace "in which" with "where"

Line 24, replace "can" with "is able to"

Line 26, for the term "Rule" this appears to be referencing this Rule in the Administrative Code, but please verify.

Line 26, add a comma after "Rule"

Line 27, define or delete "directly"

Line 35, replace "in which" with "where"

Line 37, replace "can" with "may"

Page 2, lines 1, 9, 12, and 15, replace "in which" with "where"

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

Abigail M. Hammond
Commission Counsel
Date submitted to agency: Friday, January 27, 2017

1 17 NCAC 05G .0904 is adopted with changes as published in 31:07 NCR 619-630 as follows:

2
3 **17 NCAC 05G .0904 DELIVERY TO CUSTOMER BY ELECTRONIC TRANSMISSION**

4 (a) Services delivered by electronic transmission include services that are transmitted through the means of wire,
5 lines, cable, fiber optics, electronic signals, satellite transmission, audio or radio waves, or other similar means,
6 whether or not the service provider owns, leases, or otherwise controls the transmission equipment.

7 (b) When a service is delivered by electronic transmission to a customer, the following rules apply:

8 (1) Services Delivered By Electronic Transmission to an Individual Customer.

9 (A) Rule of Determination. When a service is delivered to an individual customer by electronic
10 transmission, the service is delivered in North Carolina to the extent that the taxpayer's
11 customer received the service in North Carolina. If the taxpayer is able to determine the
12 state or states where the service is received, it shall assign the receipts from that sale to that
13 state or states.

14 (B) Rules of Reasonable Approximation. If the taxpayer is unable to determine the state or
15 states where the customer received the service, but has sufficient information regarding the
16 place of receipt to reasonably approximate the state or states where the service is received,
17 it shall reasonably approximate the state or states. If a taxpayer does not have sufficient
18 information that it can determine or reasonably approximate the state or states in which the
19 service is received, it shall reasonably approximate the state or states using the customer's
20 billing address.

21 (2) Services Delivered By Electronic Transmission to a Business Customer.

22 (A) Rule of Determination. When a service is delivered to a business customer by electronic
23 transmission, the service is delivered in North Carolina to the extent that the taxpayer's
24 customer received the service in North Carolina. If the taxpayer can determine the state or
25 states where the service is received, it shall assign the receipts from that sale to the state or
26 states. For purposes of this ~~Part~~ Rule the state or states where the service is received shall
27 reflect the location where the service was directly used by the employees or designees of
28 the customer.

29 (B) Rule of Reasonable Approximation. If the taxpayer is unable to determine the state or
30 states where the customer received the service, but has sufficient information regarding the
31 place of receipt to reasonably approximate the state or states where the service is received,
32 it shall reasonably approximate the state or states.

33 (C) Secondary Rule of Reasonable Approximation. When a service is delivered to a business
34 customer by electronic transmission where a taxpayer does not have sufficient information
35 to determine or reasonably approximate the state or states in which the service is received,
36 the taxpayer shall reasonably approximate the state or states as set forth in this Rule. In
37 these cases, unless the taxpayer can apply the safe harbor set forth in Sub-Item (2)(D) of

1 this Rule, the taxpayer shall reasonably approximate the state or states in which the service
2 is received as follows: first, by assigning the receipts from the sale to the state where the
3 contract of sale is principally managed by the customer; second, if the state where the
4 customer principally manages the contract is not reasonably determinable, by assigning the
5 receipts from the sale to the customer's place of order; and third, if the customer's place of
6 order is not reasonably determinable, by assigning the receipts from the sale using the
7 customer's billing address. However, if the taxpayer derives more than five percent of its
8 receipts from sales of services from any single customer, the taxpayer shall identify the
9 state in which the contract of sale is principally managed by that customer.

10 (D) Safe Harbor. When a service is delivered to a business customer by electronic transmission,
11 a taxpayer may not be able to determine, or reasonably approximate under Sub-Item (2)(B)
12 of this Rule, the state or states in which the service is received. In these cases, the taxpayer
13 may, in lieu of the rule stated in Sub-Item (2)(C) of this Rule, apply the safe harbor stated
14 in this Sub-Item. Under this safe harbor, a taxpayer may assign its receipts from sales to a
15 particular customer based upon the customer's billing address in a taxable year in which
16 the taxpayer engages in substantially similar service transactions with more than 250
17 customers, whether business or individual, and does not derive more than five percent of
18 its receipts from sales of all services from that customer.

19 (E) Related Entity Transactions. When a service is delivered by electronic transmission to a
20 business customer that is a related entity, the taxpayer may not use the secondary rule of
21 reasonable approximation in Sub-Item (2)(C) of this Rule but may use the rule of
22 reasonable approximation in Sub-Item (2)(B) of this Rule, and the safe harbor in Sub-Item
23 (2)(D) of this Rule. The Secretary may aggregate sales to related entities in determining
24 whether the sales exceed five percent of receipts from sales of all services under that safe
25 harbor provision.

26
27 *History Note: Authority G.S. 105-130.4; S.L. 2016-94.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Department of Revenue

RULE CITATION: 17 NCAC 05G .0905

DEADLINE FOR RECEIPT: Friday, February 10, 2017

PLEASE NOTE: This request when viewed on computer extends several pages. Please be sure you have reached the end of the document.

The Rules Review Commission staff has completed its review of this rule prior to the Commission's next meeting. The Commission has not yet reviewed this rule and therefore there has not been a determination as to whether the rule will be approved. You may call this office to inquire concerning the staff recommendation.

In reviewing these rules, the staff determined that the following technical changes need to be made. Approval of any rule is contingent upon making technical changes as set forth in G.S. 150B-21.10.

Line 6, for the term "Rule" this appears to be referencing this Rule in the Administrative Code, but please verify

Line 14, define or delete "substantially" " Is this term defined in another statute or rule? Please clarify

Line 21, delete "actually" Is there an alternative way to view "delivery to the end users" that requires the term "actually"?

Line 30, for the term "rules" this appears to be hierarchical, but please verify.

Line 34, replace "in which" with "where"

Page 2, line 11, specify where "provided above" by stating the specific "Item"

Page 2, lines 13 and 14 thru 15, define or delete "substantially or materially" Are these terms defined in another statute or rule? Please clarify

Page 2, line 14, replace "will" with "shall"

Page 2, line 14, who is making the presumption referenced in this line? Please clarify.

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

Abigail M. Hammond
Commission Counsel
Date submitted to agency: Friday, January 27, 2017

1 17 NCAC 05G .0905 is adopted as published in 31:07 NCR 619-630 as follows:

2
3 **17 NCAC 05G .0905 SERVICES DELIVERED ELECTRONICALLY THROUGH OR ON BEHALF OF**
4 **AN INDIVIDUAL OR BUSINESS CUSTOMER**

5 When a service is delivered electronically "on behalf of" or "through" a customer as defined in Rule .0901 of this
6 Subchapter, the methodology provided under this Rule applies.

7 (1) Rule of Determination. In the case of the delivery of a service by electronic transmission, where
8 the service is delivered electronically to end users or other third-party recipients through or on behalf
9 of the customer, the service is delivered in North Carolina to the extent that the end users or other
10 third-party recipients are in North Carolina. For example, in the case of the direct or indirect
11 delivery of advertising on behalf of a customer to the customer's intended audience by electronic
12 means, the service is delivered in North Carolina to the extent that the audience for the advertising
13 is in North Carolina. In the case of the delivery of a service to a customer that acts as an intermediary
14 in reselling the service in substantially identical form to third-party recipients, the service is
15 delivered in North Carolina to the extent that the end users or other third-party recipients receive the
16 services in North Carolina. The provisions in this Sub-Item apply whether the taxpayer's customer
17 is an individual customer or a business customer and whether the end users or other third-party
18 recipients to which the services are delivered through or on behalf of the customer are individuals
19 or businesses.

20 (2) Rule of Reasonable Approximation. If the taxpayer cannot determine the state or states where the
21 services are actually delivered to the end users or other third-party recipients either through or on
22 behalf of the customer, but has sufficient information regarding the place of delivery that the
23 taxpayer may reasonably approximate the state or states where the services are delivered, it shall
24 reasonably do so.

25 (3) Select Secondary Rules of Reasonable Approximation.

26 (a) If a taxpayer's service is the direct or indirect electronic delivery of advertising on behalf
27 of its customer to the customer's intended audience, and if the taxpayer lacks sufficient
28 information regarding the location of the audience that the taxpayer may determine or
29 reasonably approximate that location, the taxpayer shall reasonably approximate the
30 audience in a state for the advertising using the following secondary rules of reasonable
31 approximation. If a taxpayer is delivering advertising directly or indirectly to a known list
32 of subscribers, the taxpayer shall reasonably approximate the audience for advertising in a
33 state using a percentage that reflects the ratio of the state's subscribers in the specific
34 geographic area in which the advertising is delivered relative to the total subscribers in that
35 area. For a taxpayer with less information about its audience, the taxpayer shall reasonably
36 approximate the audience in a state using the percentage that reflects the ratio of the state's

1 population in the specific geographic area where the advertising is delivered relative to the
2 total population in that area.

3 (b) If a taxpayer's service is the delivery of a service to a customer that then acts as the
4 taxpayer's intermediary in reselling that service to end users or other third party recipients,
5 and the taxpayer lacks sufficient information regarding the location of the end users or
6 other third party recipients that the taxpayer may determine or reasonably approximate that
7 location, the taxpayer shall reasonably approximate the extent to which the service is
8 received in a state by using the percentage that reflects the ratio of the state's population in
9 the specific geographic area where the taxpayer's intermediary resells the services, relative
10 to the total population in that area.

11 (c) When using the secondary reasonable approximation methods provided above, the relevant
12 specific geographic area of delivery includes only the areas where the service was
13 substantially and materially delivered or resold. Unless the taxpayer demonstrates the
14 contrary, it will be presumed that the area where the service was substantially and
15 materially delivered or resold does not include areas outside the United States.

16
17 *History Note: Authority G.S. 105-130.4; S.L. 2016-94.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Department of Revenue

RULE CITATION: 17 NCAC 05G .1001

DEADLINE FOR RECEIPT: Friday, February 10, 2017

PLEASE NOTE: This request when viewed on computer extends several pages. Please be sure you have reached the end of the document.

The Rules Review Commission staff has completed its review of this rule prior to the Commission's next meeting. The Commission has not yet reviewed this rule and therefore there has not been a determination as to whether the rule will be approved. You may call this office to inquire concerning the staff recommendation.

In reviewing these rules, the staff determined that the following technical changes need to be made. Approval of any rule is contingent upon making technical changes as set forth in G.S. 150B-21.10.

Line 24, should the "and" be an "or"

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

Abigail M. Hammond
Commission Counsel
Date submitted to agency: Friday, January 27, 2017

1 17 NCAC 05G .1001 is adopted as published in 31:07 NCR 619-630 as follows:
2

3 **SECTION .1000 - PROFESSIONAL SERVICES**
4

5 **17 NCAC 05G .1001 IN GENERAL**

6 (a) Except as otherwise provided in this Subchapter, "professional services" are services that require specialized
7 knowledge and may require a professional certification, license, or degree. These services include the performance
8 of technical services that require the application of specialized knowledge.

9 (b) Professional services include:

- 10 (1) management services;
- 11 (2) bank and financial services;
- 12 (3) financial custodial services;
- 13 (4) investment and brokerage services;
- 14 (5) fiduciary services;
- 15 (6) tax preparation;
- 16 (7) payroll and accounting services;
- 17 (8) lending services;
- 18 (9) credit card services, including credit card processing services;
- 19 (10) data processing services;
- 20 (11) legal services;
- 21 (12) consulting services;
- 22 (13) video production services;
- 23 (14) graphic and other design services;
- 24 (15) engineering services; and
- 25 (16) architectural services.

26
27 *History Note: Authority G.S. 105-130.4; S.L. 2016-94.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Department of Revenue

RULE CITATION: 17 NCAC 05G .1002

DEADLINE FOR RECEIPT: Friday, February 10, 2017

PLEASE NOTE: This request when viewed on computer extends several pages. Please be sure you have reached the end of the document.

The Rules Review Commission staff has completed its review of this rule prior to the Commission's next meeting. The Commission has not yet reviewed this rule and therefore there has not been a determination as to whether the rule will be approved. You may call this office to inquire concerning the staff recommendation.

In reviewing these rules, the staff determined that the following technical changes need to be made. Approval of any rule is contingent upon making technical changes as set forth in G.S. 150B-21.10.

Lines 5, 12, and 15, for the term "rules" these appear to be hierarchical, but please verify

Line 9, replace "are" with "shall be"

Line 14, delete "in some cases"

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

Abigail M. Hammond
Commission Counsel
Date submitted to agency: Friday, January 27, 2017

1 17 NCAC 05G .1002 is adopted as published in 31:07 NCR 619-630 as follows:

2
3 **17 NCAC 05G .1002 OVERLAP WITH OTHER CATEGORIES OF SERVICES**

4 (a) Certain services that fall within the definition of "professional services" set forth in this Section shall be treated
5 as "in-person services" within the meaning of Section .0800 of this Subchapter, and shall be assigned under the rules
6 of that Section. Specifically, professional services that are physically provided in person by the taxpayer such as
7 carpentry, certain medical and dental services, or child care services when the customer or the customer's real or
8 tangible property upon which the services are provided is in the same location as the service provider at the time the
9 services are performed are "in-person services" and are assigned as such, notwithstanding that they may also be
10 considered to be "professional services."

11 (b) Professional services where the service is of an intellectual or intangible nature, such as legal, accounting,
12 financial, and consulting services, shall be assigned as professional services under the rules of this Section,
13 notwithstanding the fact that these services may involve some amount of in-person contact.

14 (c) Professional services may in some cases include the transmission of documents or other communications by mail
15 or by electronic means. In these cases, the assignment rules that apply are those set forth in this Section, and not those
16 set forth in Section .0900 of this Subchapter, pertaining to services delivered to a customer or through or on behalf of
17 a customer.

18
19 *History Note: Authority G.S. 105-130.4; S.L. 2016-94.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Department of Revenue

RULE CITATION: 17 NCAC 05G .1003

DEADLINE FOR RECEIPT: Friday, February 10, 2017

PLEASE NOTE: This request when viewed on computer extends several pages. Please be sure you have reached the end of the document.

The Rules Review Commission staff has completed its review of this rule prior to the Commission's next meeting. The Commission has not yet reviewed this rule and therefore there has not been a determination as to whether the rule will be approved. You may call this office to inquire concerning the staff recommendation.

In reviewing these rules, the staff determined that the following technical changes need to be made. Approval of any rule is contingent upon making technical changes as set forth in G.S. 150B-21.10.

Line 4, for the term "rule" this appears to be hierarchical, but please verify

Lines 6 and 7, add an "a" before "business"

Line 6, delete the term "reasonably" as the statutory phrase is "cannot be determined"

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

Abigail M. Hammond
Commission Counsel
Date submitted to agency: Friday, January 27, 2017

1 17 NCAC 05G .1003 is adopted as published in 31:07 NCR 619-630 as follows:

2

3 **17 NCAC 05G .1003 ASSIGNMENT OF RECEIPTS**

4 The location of delivery of professional services shall not be determined by a general rule of determination, but shall
5 be reasonably approximated. The assignment of receipts from a sale of a professional service depends on whether the
6 customer is an individual or business customer. When the taxpayer, acting in good faith, cannot reasonably determine
7 whether the customer is an individual or business customer, the taxpayer shall treat the customer as a business
8 customer. For purposes of assigning the receipts from a sale of a professional service, a taxpayer's customer is the
9 person that contracts for the service, irrespective of whether another person pays for or also benefits from the taxpayer's
10 services.

11

12 *History Note: Authority G.S. 105-130.4; S.L. 2016-94.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Department of Revenue

RULE CITATION: 17 NCAC 05G .1004

DEADLINE FOR RECEIPT: Friday, February 10, 2017

PLEASE NOTE: This request when viewed on computer extends several pages. Please be sure you have reached the end of the document.

The Rules Review Commission staff has completed its review of this rule prior to the Commission's next meeting. The Commission has not yet reviewed this rule and therefore there has not been a determination as to whether the rule will be approved. You may call this office to inquire concerning the staff recommendation.

In reviewing these rules, the staff determined that the following technical changes need to be made. Approval of any rule is contingent upon making technical changes as set forth in G.S. 150B-21.10.

Lines 5 and 19, for the terms "Rules" and "Rule" these appear to be referencing this Rule in the Administrative Code, but please verify.

Lines 8, 17, and 27, replace "in which" with "where"

Line 11, delete the term "reasonably" as the statutory phrase is "cannot be determined"

Line 18, delete "In particular"

Line 18, capitalize "unless"

Line 18, replace "can" with "may"

Line 19, add a comma after "Rule"

Line 27, define or delete "principally" Is this term defined in another statute or rule? Please clarify

Line 29, for the term "rules" this appears to be hierarchical, but please verify

Line 31, define or delete "substantially" " Is this term defined in another statute or rule? Please clarify

Lines 33 thru 34, this restriction on the application of the safe harbor provision is not located in Rule .0904. In light of the language on line 14 of Rule .1006, the "safe harbor" does not appear to only apply to this Rule. Please review and clarify if necessary.

Abigail M. Hammond
Commission Counsel
Date submitted to agency: Friday, January 27, 2017

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

Abigail M. Hammond
Commission Counsel
Date submitted to agency: Friday, January 27, 2017

1 17 NCAC 05G .1004 is adopted as published in 31:07 NCR 619-630 as follows:

2
3 **17 NCAC 05G .1004 PROFESSIONAL SERVICES OTHER THAN ARCHITECTURAL OR**
4 **ENGINEERING SERVICES**

5 Receipts from sales of professional services other than those services described in Rules .1005 - .1006 of this Section,
6 shall be assigned as follows:

7 (1) Professional Services Delivered to Individual Customers. Except as otherwise provided in Section
8 .1000 of this Subchapter, in any instance in which the service provided is a professional service and
9 the taxpayer's customer is an individual customer, the state or states where the service is delivered
10 shall be reasonably approximated as set forth in this Rule. The taxpayer shall assign the receipts
11 from a sale to the customer's state of primary residence, or, if the taxpayer cannot reasonably identify
12 the customer's state of primary residence, to the state of the customer's billing address. However,
13 when the taxpayer derives more than five percent of its receipts from sales of all services from an
14 individual customer, the taxpayer shall identify the customer's state of primary residence and assign
15 the receipts from the service or services provided to that customer to that state.

16 (2) Professional Services Delivered to Business Customers. When the taxpayer provides a professional
17 service to a business customer, the state or states in which the service is delivered shall be reasonably
18 approximated as set forth in this Rule. In particular, unless the taxpayer can use the safe harbor set
19 forth in Item (3) of this Rule the taxpayer shall assign the receipts from the sale as follows:

20 (a) by assigning the receipts to the state where the contract of sale is principally managed by
21 the customer;

22 (b) if the place of customer management is not reasonably determinable, to the customer's
23 place of order; and

24 (c) if the customer place of order is not reasonably determinable, to the customer's billing
25 address.

26 When the taxpayer derives more than five percent of its receipts from sales of all services from a
27 customer, the taxpayer is required to identify the state in which the contract of sale is principally
28 managed by the customer.

29 (3) Safe Harbor; Large Volume of Transactions. Notwithstanding the rules set forth in Items (1) and (2)
30 of this Rule, a taxpayer may assign its receipts from sales to a particular customer based on the
31 customer's billing address in any taxable year when the taxpayer engages in substantially similar
32 service transactions with more than 250 customers, whether individual or business, and does not
33 derive more than five percent of its receipts from sales of all services from that customer. This safe
34 harbor applies only for purposes of this Rule.

35
36 *History Note: Authority G.S. 105-130.4; S.L. 2016-94.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Department of Revenue

RULE CITATION: 17 NCAC 05G .1005

DEADLINE FOR RECEIPT: Friday, February 10, 2017

PLEASE NOTE: This request when viewed on computer extends several pages. Please be sure you have reached the end of the document.

The Rules Review Commission staff has completed its review of this rule prior to the Commission's next meeting. The Commission has not yet reviewed this rule and therefore there has not been a determination as to whether the rule will be approved. You may call this office to inquire concerning the staff recommendation.

In reviewing these rules, the staff determined that the following technical changes need to be made. Approval of any rule is contingent upon making technical changes as set forth in G.S. 150B-21.10.

Line 11, for the term "Rule" this appears to be referencing this Rule in the Administrative Code, but please verify

Line 11, delete "regardless of"

Line 13, replace "must" with "shall"

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

Abigail M. Hammond
Commission Counsel
Date submitted to agency: Friday, January 27, 2017

1 17 NCAC 05G .1005 is adopted as published in 31:07 NCR 619-630 as follows:

2

3 **17 NCAC 05G .1005 ARCHITECTURAL OR ENGINEERING SERVICES WITH RESPECT TO**
4 **REAL OR TANGIBLE PERSONAL PROPERTY**

5 (a) Architectural and engineering services with respect to real or tangible personal property shall be professional
6 services within the meaning of this Section. The receipts from a sale of an architectural service shall be assigned to a
7 state or states to the extent that the services are with respect to real estate improvements located, or expected to be
8 located, in the state or states. The receipts from a sale of an engineering service shall be assigned to a state or states to
9 the extent that the services are with respect to tangible or real property located in the state or states, including real
10 estate improvements located in, or expected to be located in, the state or states.

11 (b) This Rule shall apply regardless of whether or not the customer is an individual or business customer. In any
12 instance in which architectural or engineering services are not described in this Rule, the receipts from a sale of these
13 services must be assigned under Rule .1004 of this Section.

14

15 *History Note: Authority G.S. 105-130.4; S.L. 2016-94.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Department of Revenue

RULE CITATION: 17 NCAC 05G .1006

DEADLINE FOR RECEIPT: Friday, February 10, 2017

PLEASE NOTE: This request when viewed on computer extends several pages. Please be sure you have reached the end of the document.

The Rules Review Commission staff has completed its review of this rule prior to the Commission's next meeting. The Commission has not yet reviewed this rule and therefore there has not been a determination as to whether the rule will be approved. You may call this office to inquire concerning the staff recommendation.

In reviewing these rules, the staff determined that the following technical changes need to be made. Approval of any rule is contingent upon making technical changes as set forth in G.S. 150B-21.10.

Line 4, for the term "rule" this appears to be hierarchical, but please verify

Line 12, define or delete "generally"

Line 14 allows the safe harbor provision in Rule .1004 to apply, but Rule .1004 restricts the provision "for purposes of this Rule." Please review and clarify if necessary.

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

Abigail M. Hammond
Commission Counsel
Date submitted to agency: Friday, January 27, 2017

1 17 NCAC 05G .1006 is adopted as published in 31:07 NCR 619-630 as follows:

2

3 **17 NCAC 05G .1006 RELATED ENTITY TRANSACTIONS**

4 When the professional service is sold to a related entity, rather than applying the rule for professional services
5 delivered to business customers in Rule .1004(2) of this Section, the state or states where the service is assigned is the
6 place of receipt by the related entity as reasonably approximated using the following hierarchy:

7 (1) if the service primarily relates to specific operations or activities of a related entity conducted in one
8 or more locations, then to the state or states where those operations or activities are conducted in
9 proportion to the related entity's payroll at the locations to which the service relates in the state or
10 states; or

11 (2) if the service does not primarily relate to specific operations or activities of a related entity conducted
12 in particular locations, but instead relates to the operations of the related entity generally, then to the
13 state or states where the related entity has employees, in proportion to the related entity's payroll in
14 those states. The taxpayer may use the safe harbor provided by Rule .1004(3) of this Section.

15

16 *History Note: Authority G.S. 105-130.4; S.L. 2016-94.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Department of Revenue

RULE CITATION: 17 NCAC 05G .1101

DEADLINE FOR RECEIPT: Friday, February 10, 2017

PLEASE NOTE: This request when viewed on computer extends several pages. Please be sure you have reached the end of the document.

The Rules Review Commission staff has completed its review of this rule prior to the Commission's next meeting. The Commission has not yet reviewed this rule and therefore there has not been a determination as to whether the rule will be approved. You may call this office to inquire concerning the staff recommendation.

In reviewing these rules, the staff determined that the following technical changes need to be made. Approval of any rule is contingent upon making technical changes as set forth in G.S. 150B-21.10.

Lines 9, 12, and 15, for the term "rules" these appear to be hierarchical, but please verify

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

Abigail M. Hammond
Commission Counsel
Date submitted to agency: Friday, January 27, 2017

1 17 NCAC 05G .1101 is adopted with changes as published in 31:07 NCR 619-630 as follows:

2
3 **SECTION .1100 – LICENSE OR LEASE OF INTANGIBLE PROPERTY**

4
5 **17 NCAC 05G .1101 IN GENERAL**

6 (a) The receipts from the license of intangible property shall be assigned to North Carolina to the extent the intangible
7 is used in North Carolina. The term "use" shall refer to the location of the taxpayer's market for the use of the intangible
8 property that is being licensed and shall not refer to the location of the property or payroll of the taxpayer. This Section
9 sets forth the rules to determine the location of the use of intangible property for several specific types of licensing
10 transactions.

11 (b) A license of intangible property that conveys all substantial rights in that property shall be treated as a sale of
12 intangible property for purposes of these rules. For purposes of Sections .1100 and .1200, a sale or exchange of
13 intangible property shall be treated as a license of that property where the receipts from the sale or exchange derive
14 from payments that are contingent on the productivity, use, or disposition of the property.

15 (c) Intangible property licensed as part of the sale or lease of tangible property shall be treated under these rules as
16 the sale or lease of tangible property.

17 (d) Nothing in this Section shall be construed to allow or require inclusion of sales in the sales factor that are not
18 included in the definition of "sales" pursuant to G.S. 105-130.4, or that are excluded from the numerator and the
19 denominator of the sales factor pursuant to ~~proposed~~ G.S. 105-130.4(1)(6). To the extent that the transfer of either a
20 security or business "goodwill" or similar intangible value, including "going concern value" or "workforce in place,"
21 is characterized as a license or lease of intangible property, receipts from such transaction shall be excluded from the
22 numerator and the denominator of the taxpayer's sales factor.

23
24 *History Note: Authority G.S. 105-130.4; S.L. 2016-94.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Department of Revenue

RULE CITATION: 17 NCAC 05G .1102

DEADLINE FOR RECEIPT: Friday, February 10, 2017

PLEASE NOTE: This request when viewed on computer extends several pages. Please be sure you have reached the end of the document.

The Rules Review Commission staff has completed its review of this rule prior to the Commission's next meeting. The Commission has not yet reviewed this rule and therefore there has not been a determination as to whether the rule will be approved. You may call this office to inquire concerning the staff recommendation.

In reviewing these rules, the staff determined that the following technical changes need to be made. Approval of any rule is contingent upon making technical changes as set forth in G.S. 150B-21.10.

Line 12, should the "and" be an "or"?

Lines 14 and 16, define or delete "actual"

Line 24, replace "in which" with "where"

Line 25, define or delete "ultimately or materially" Are these terms defined in another statute or rule? Please clarify

Lines 25 thru 27, why does this language appear to be saying the same thing as page 2, lines 13 thru 15 of Rule .0905, but it states it differently. Please use consistent terms or phrases when talking about the same topic. Consider the following re-write:

Unless the taxpayer demonstrates the contrary, it shall be presumed (clarification needed as to whom) that the area where was services was....does not include areas outside the United States.

Line 27, who is making the presumption referenced in this line? Please clarify.

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

Abigail M. Hammond
Commission Counsel
Date submitted to agency: Friday, January 27, 2017

1 17 NCAC 05G .1102 is adopted as published in 31:07 NCR 619-630 as follows:

2
3 **17 NCAC 05G .1102 LICENSE OF A MARKETING INTANGIBLE**

4 (a) If a license is granted for the right to use intangible property in connection with the sale, lease, license, or other
5 marketing of goods, services, or other items, such as a marketing intangible, to a consumer, the royalties or other
6 licensing fees paid by the licensee for that marketing intangible shall be assigned to North Carolina to the extent that
7 those fees are attributable to the sale or other provision of goods, services, or other items purchased or otherwise
8 acquired by consumers in North Carolina.

9 (b) License of a marketing intangible includes the following when it is intended to promote consumer sales:

10 (1) the license of a service mark, trademark, or trade name;

11 (2) copyrights;

12 (3) the license of a film, television or multimedia production or event for commercial distribution; and

13 (4) a franchise agreement.

14 (c) In the case of the license of a marketing intangible, where a taxpayer has actual evidence of the amount or
15 proportion of its receipts that is attributable to North Carolina, it shall assign that amount or proportion to North
16 Carolina. In the absence of actual evidence of the amount or proportion of the licensee's receipts that are derived from
17 North Carolina consumers, the portion of the licensing fee to be assigned to North Carolina shall be reasonably
18 approximated by multiplying the total fee by a percentage that reflects the ratio of the North Carolina population in
19 the specific geographic area where the licensee makes material use of the intangible property to regularly market its
20 goods, services, or other items relative to the total population in that area.

21 (d) If the license of a marketing intangible is for the right to use the intangible property in connection with sales or
22 other transfers at wholesale rather than directly to retail customers, the portion of the licensing fee to be assigned to
23 North Carolina shall be reasonably approximated by multiplying the total fee by a percentage that reflects the ratio of
24 the North Carolina population in the specific geographic area in which the licensee's goods, services, or other items
25 are ultimately and materially marketed using the intangible property relative to the total population of that area. Unless
26 the taxpayer demonstrates that the marketing intangible is materially used in the marketing of items outside the United
27 States, the fees from licensing that marketing intangible shall be presumed to be derived from within the United States.

28
29 *History Note: Authority G.S. 105-130.4; S.L. 2016-94.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Department of Revenue

RULE CITATION: 17 NCAC 05G .1103

DEADLINE FOR RECEIPT: Friday, February 10, 2017

PLEASE NOTE: This request when viewed on computer extends several pages. Please be sure you have reached the end of the document.

The Rules Review Commission staff has completed its review of this rule prior to the Commission's next meeting. The Commission has not yet reviewed this rule and therefore there has not been a determination as to whether the rule will be approved. You may call this office to inquire concerning the staff recommendation.

In reviewing these rules, the staff determined that the following technical changes need to be made. Approval of any rule is contingent upon making technical changes as set forth in G.S. 150B-21.10.

For the first sentence, break this into two sentences. Re-write one sentence to clarify that a term is being defined. Please consider the following:

A “production intangible” means a license for the right to use intangible property, other than in connection with the sale, lease, license, or other marketing of goods, services or other items, and the license will be used in a production capacity. The licensing fees paid by a licensee for the right to the production intangible shall..”

Alternatively, line 4, replace “If” with “Where”

Line 10, replace “If” with “Where”

Line 9, define or delete “predominately”

Line 11, replace “is” with “shall be”

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

Abigail M. Hammond
Commission Counsel
Date submitted to agency: Friday, January 27, 2017

1 17 NCAC 05G .1103 is adopted as published in 31:07 NCR 619-630 as follows:

2

3 **17 NCAC 05G .1103 LICENSE OF A PRODUCTION INTANGIBLE**

4 (a) If a license is granted for the right to use intangible property, other than in connection with the sale, lease, license,
5 or other marketing of goods, services, or other items, and the license will be used in a production capacity (a
6 "production intangible"), the licensing fees paid by the licensee for that right shall be assigned to North Carolina to
7 the extent that the use for which the fees are paid takes place in North Carolina.

8 (b) License of a production intangible includes the license of a patent, a copyright, or trade secrets to be used in a
9 manufacturing process, where the value of the intangible lies predominately in its use in that process.

10 (c) If the actual use of intangible property pursuant to a license of a production intangible takes place in part in North
11 Carolina, the entire use is in this State except to the extent that the taxpayer is able to demonstrate that the actual
12 location of a portion of the use takes place outside North Carolina.

13 (d) When a license of a production intangible to a related entity, the taxpayer shall assign the receipts to where the
14 intangible property is actually used. When a license of a production intangible to a party other than a related entity
15 where the location of actual use is unknown, the use of the intangible property takes place in the state of the licensee's
16 commercial domicile when a business, or the licensee's state of primary residence when an individual.

17

18 *History Note: Authority G.S. 105-130.4; S.L. 2016-94.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Department of Revenue

RULE CITATION: 17 NCAC 05G .1104

DEADLINE FOR RECEIPT: Friday, February 10, 2017

PLEASE NOTE: This request when viewed on computer extends several pages. Please be sure you have reached the end of the document.

The Rules Review Commission staff has completed its review of this rule prior to the Commission's next meeting. The Commission has not yet reviewed this rule and therefore there has not been a determination as to whether the rule will be approved. You may call this office to inquire concerning the staff recommendation.

In reviewing these rules, the staff determined that the following technical changes need to be made. Approval of any rule is contingent upon making technical changes as set forth in G.S. 150B-21.10.

For the first sentence, break this into two sentences. Re-write one sentence to clarify that a term is being defined. Please consider the following:

A "mixed intangible" means a license of a marketing intangible and a license of a production intangible. The licensing fees paid by a licensee for the right to the mixed intangible shall.."

Alternatively, line 4, replace "If" with "Where"

Lines 5, if the language remains, define or delete "separately and reasonably"

Line 6, replace "will" with "shall"

Line 6, for the term "Rules" this appears to be referencing this Rule in the Administrative Code, but please verify.

Line 9, replace "can" with "may"

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

Abigail M. Hammond
Commission Counsel
Date submitted to agency: Friday, January 27, 2017

1 17 NCAC 05G .1104 is adopted as published in 31:07 NCR 619-630 as follows:

2

3 **17 NCAC 05G .1104 LICENSE OF A MIXED INTANGIBLE**

4 If a license of intangible property includes both a license of a marketing intangible and a license of a production
5 intangible (a "mixed intangible") and the fees to be paid in each instance are separately and reasonably stated in the
6 licensing contract, the Secretary will accept that separate statement for purposes of these Rules. If a license of
7 intangible property includes both a license of a marketing intangible and a license of a production intangible and the
8 fees to be paid in each instance are not separately and reasonably stated in the contract, the licensing fees were paid
9 entirely for the license of the marketing intangible, except to the extent that the taxpayer can reasonably establish
10 otherwise.

11

12 *History Note: Authority G.S. 105-130.4; S.L. 2016-94.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Department of Revenue

RULE CITATION: 17 NCAC 05G .1105

DEADLINE FOR RECEIPT: Friday, February 10, 2017

PLEASE NOTE: This request when viewed on computer extends several pages. Please be sure you have reached the end of the document.

The Rules Review Commission staff has completed its review of this rule prior to the Commission's next meeting. The Commission has not yet reviewed this rule and therefore there has not been a determination as to whether the rule will be approved. You may call this office to inquire concerning the staff recommendation.

In reviewing these rules, the staff determined that the following technical changes need to be made. Approval of any rule is contingent upon making technical changes as set forth in G.S. 150B-21.10.

Lines 8 thru 11, consider beginning these clauses with lowercase letters as they are part of a list.

Line 10, should the "and" be an "or"?

Lines 16 and 19, define or delete "substantially" Is this term defined in another statute or rule? Please clarify

Line 19, define or delete "merely"

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

Abigail M. Hammond
Commission Counsel
Date submitted to agency: Friday, January 27, 2017

1 17 NCAC 05G .1105 is adopted as published in 31:07 NCR 619-630 as follows:

2
3 **17 NCAC 05G .1105 LICENSE OF INTANGIBLE PROPERTY WHEN SUBSTANCE OF THE**
4 **TRANSACTION RESEMBLES A SALE OF GOODS OR SERVICES**

5 (a) When the license of intangible property resembles the sale of an electronically-delivered good or service, rather
6 than the license of a marketing intangible or production intangible, the receipts shall be assigned by applying Rules
7 .0904 and .0905 of this Subchapter. Transactions to be assigned under this Rule include the license of:

8 (1) Database access;

9 (2) Access to information;

10 (3) Digital goods; and

11 (4) Certain software, where the transaction is not the license of pre-written software treated as the sale
12 of tangible personal property.

13 (b) Sublicenses. The provisions of Rule .0905 of this Subchapter shall apply where a taxpayer licenses intangible
14 property to a customer that in turn sublicenses the intangible property to end users as if the transaction were a service
15 delivered electronically through a customer to end users. Rule .0905 of this Subchapter shall apply to services
16 delivered electronically to a customer for purposes of resale and subsequent electronic delivery in substantially
17 identical form to end users or other recipients shall also apply with respect to licenses of intangible property for
18 purposes of sublicense to end users. For this purpose, the intangible property sublicensed to an end user shall not fail
19 to be substantially identical to the property that was licensed to the sublicensor merely because the sublicense transfers
20 a reduced bundle of rights with respect to that property, such as when the sublicensee's rights are limited to its own
21 use of the property and do not include the ability to grant a further sublicense, or because that property is bundled with
22 additional services or items of property.

23
24 *History Note: Authority G.S. 105-130.4; S.L. 2016-94.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Department of Revenue

RULE CITATION: 17 NCAC 05G .1201

DEADLINE FOR RECEIPT: Friday, February 10, 2017

PLEASE NOTE: This request when viewed on computer extends several pages. Please be sure you have reached the end of the document.

The Rules Review Commission staff has completed its review of this rule prior to the Commission's next meeting. The Commission has not yet reviewed this rule and therefore there has not been a determination as to whether the rule will be approved. You may call this office to inquire concerning the staff recommendation.

In reviewing these rules, the staff determined that the following technical changes need to be made. Approval of any rule is contingent upon making technical changes as set forth in G.S. 150B-21.10.

Line 13, replace "are" with "shall be"

Lines 22 and 26, for the term "rules" these appear to be hierarchical, but please verify

Line 27, replace "are not" with "shall not be"

Line 28, replace "does" with "shall"

Line 29, replace "in which" with "where"

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

Abigail M. Hammond
Commission Counsel
Date submitted to agency: Friday, January 27, 2017

1 17 NCAC 05G .1201 is adopted as published in 31:07 NCR 619-630 as follows:
2

3 **SECTION .1200 – SALE OF INTANGIBLE PROPERTY**
4

5 **17 NCAC 05G .1201 ASSIGNMENT OF RECEIPTS**

6 The assignment of receipts to a state or states in the instance of a sale or exchange of intangible property depends upon
7 the nature of the intangible property sold. For purposes of this Section, a sale or exchange of intangible property
8 includes a license of that property where the transaction is treated for tax purposes as a sale of all substantial rights in
9 the property and the receipts from the transaction are not contingent on the productivity, use, or disposition of the
10 property.

- 11 (1) In the case of a sale or exchange of intangible property where the property sold or exchanged is a
12 contract right, government license, or similar intangible property that authorizes the holder to
13 conduct a business activity in a specific geographic area, the receipts from the sale are assigned to
14 a state to the extent that the intangible property is used or is authorized to be used within the state.
15 If the intangible property is used or may be used only in this State, the taxpayer shall assign the
16 receipts from the sale to North Carolina. If the intangible property is used or is authorized to be
17 used in North Carolina and one or more other states, the taxpayer shall assign the receipts from the
18 sale to North Carolina to the extent that the intangible property is used in or authorized for use in
19 North Carolina, through the means of a reasonable approximation.
- 20 (2) In the case of a sale or exchange of intangible property where the receipts from the sale or exchange
21 are contingent on the productivity, use, or disposition of the property, the receipts from the sale shall
22 be assigned by applying the rules set forth in Section .1100 of this Subchapter.
- 23 (3) In the case of a sale or exchange of intangible property where the substance of the transaction
24 resembles a sale of goods or services and where the receipts from the sale or exchange do not derive
25 from payments contingent on the productivity, use, or disposition of the property, the receipts from
26 the sale shall be assigned by applying the rules set forth in Rule .1105 of this Subchapter.
- 27 (4) Receipts from the sale of intangible property are not included in the sales factor in any case when
28 the sale does not give rise to receipts within the meaning of Rule .0401 of this Subchapter. In
29 addition, in any case in which the sale of intangible property results in receipts within the meaning
30 of Section .0400 of this Subchapter, those receipts shall be excluded from the numerator and the
31 denominator of the taxpayer's sales factor if the receipts are not referenced in G.S. 105.130.4(1) The
32 sale of intangible property that is excluded from the numerator and denominator of the taxpayer's
33 sales factor under this provision includes the sale of business "goodwill," the sale of an agreement
34 not to compete, or similar intangible value.

35
36 *History Note: Authority G.S. 105-130.4; S.L. 2016-94.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Department of Revenue

RULE CITATION: 17 NCAC 05G .1301

DEADLINE FOR RECEIPT: Friday, February 10, 2017

PLEASE NOTE: This request when viewed on computer extends several pages. Please be sure you have reached the end of the document.

The Rules Review Commission staff has completed its review of this rule prior to the Commission's next meeting. The Commission has not yet reviewed this rule and therefore there has not been a determination as to whether the rule will be approved. You may call this office to inquire concerning the staff recommendation.

In reviewing these rules, the staff determined that the following technical changes need to be made. Approval of any rule is contingent upon making technical changes as set forth in G.S. 150B-21.10.

Lines 9 and 10, for the term "rules" these appear to be hierarchical, but please verify

Line 10, replace "applicable" with "the"

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

Abigail M. Hammond
Commission Counsel
Date submitted to agency: Friday, January 27, 2017

1 17 NCAC 05G .1301 is adopted as published in 31:07 NCR 619-630 as follows:
2

3 **SECTION .1300 – SPECIAL RULES**
4

5 **17 NCAC 05G .1301 SOFTWARE TRANSACTIONS**

6 (a) A license or sale of pre-written software for purposes other than commercial reproduction, or other exploitation
7 of the intellectual property rights, transferred on a tangible medium shall be treated as the sale of tangible personal
8 property, rather than as either the license or sale of intangible property or the performance of a service. In these cases,
9 the receipts shall be in North Carolina as determined under the rules for the sale of tangible personal property set forth
10 under G.S. 105-130.4 and applicable rules of this Subchapter.

11 (b) In all other cases, the receipts from a license or sale of software shall be assigned to North Carolina as determined
12 otherwise under this Subchapter. This determination shall be based on the facts, and:

13 (1) the development and sale of custom software as set forth in Section .0900 of this Subchapter;

14 (2) the license of a marketing intangible, as set forth in Rule .1102 of this Subchapter;

15 (3) the license of a production intangible, as set forth in Rule .1103 of this Subchapter;

16 (4) the license of intangible property where the substance of the transaction resembles a sale of goods
17 or services, as set forth in Rule .1105 of this Subchapter; or

18 (5) as a sale of intangible property, as set forth in Rule .1201 of this Subchapter.
19

20 *History Note: Authority G.S. 105-130.4; S.L. 2016-94.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Department of Revenue

RULE CITATION: 17 NCAC 05G .1302

DEADLINE FOR RECEIPT: Friday, February 10, 2017

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The Rules Review Commission staff has completed its review of this rule prior to the Commission's next meeting. The Commission has not yet reviewed this rule and therefore there has not been a determination as to whether the rule will be approved. You may call this office to inquire concerning the staff recommendation.

In reviewing these rules, the staff determined that the following technical changes need to be made. Approval of any rule is contingent upon making technical changes as set forth in G.S. 150B-21.10.

Line 5, add a comma after "transactions"

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

Abigail M. Hammond
Commission Counsel
Date submitted to agency: Friday, January 27, 2017

1 17 NCAC 05G .1302 is adopted as published in 31:07 NCR 619-630 as follows:

2

3 **17 NCAC 05G .1302 SALES OR LICENSES OF DIGITAL GOODS AND SERVICES**

4 The receipts from the sale or license of digital goods or services, including the sale of video, audio, and software
5 products or similar transactions shall be assigned by applying the same provisions set forth in Rules .0904 or .0905 of
6 this Subchapter, as if the transaction was a service delivered to an individual or business customer, or delivered through
7 or on behalf of an individual or business customer. For purposes of the analysis, the terms of the contractual
8 relationship or the characterization of the sale or the license shall not be relevant.

9

10 *History Note: Authority G.S. 105-130.4; S.L. 2016-94.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Department of Revenue

RULE CITATION: 17 NCAC 05G .1303

DEADLINE FOR RECEIPT: Friday, February 10, 2017

PLEASE NOTE: This request when viewed on computer extends several pages. Please be sure you have reached the end of the document.

The Rules Review Commission staff has completed its review of this rule prior to the Commission's next meeting. The Commission has not yet reviewed this rule and therefore there has not been a determination as to whether the rule will be approved. You may call this office to inquire concerning the staff recommendation.

In reviewing these rules, the staff determined that the following technical changes need to be made. Approval of any rule is contingent upon making technical changes as set forth in G.S. 150B-21.10.

Line 4, delete "and"

Line 4, replace "is" with "are"

Lines 8 thru 9, please incorporate the Multistate Tax Commission Reg. IV.18(i) in compliance with [G.S. 150B-21.6](#). The text is missing a clear statement that something is being incorporated and whether subsequent amendments and editions are to be incorporated. Here is an example:

Multistate Tax Commission Reg. IV.18(i) is hereby incorporated by reference, including subsequent amendments or additions, and is available free of charge at...

Line 10, for the term "rules" this appears to be hierarchical, but please verify.

Line 10, replace "receives" with "received"

Line 11, replace "it" with "the taxpayer"

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

Abigail M. Hammond
Commission Counsel
Date submitted to agency: Friday, January 27, 2017

1 17 NCAC 05G .1303 is adopted with changes as published in 31:07 NCR 619-630 as follows:

2

3 **17 NCAC 05G .1303 TELECOMMUNICATIONS COMPANIES**

4 (a) When a taxpayer ~~who~~ that provides telecommunications or ancillary services and that is subject to Multistate Tax
5 Commission Reg. IV.18(i), receipts from the sale or license of digital goods or services not otherwise assigned for
6 apportionment purposes pursuant to that Regulation shall be assigned pursuant to this Rule. The taxpayer shall apply
7 Rules .0904 or .0905 of this Subchapter as if the transaction were a service delivered to an individual or business
8 customer or delivered through or on behalf of an individual or business customer. MTC Reg. IV.18(i) is available at
9 no charge at <http://www.mtc.gov/Uniformity/Adopted-Uniformity-Recommendations>.

10 (b) In applying these rules, if the taxpayer cannot determine the state or states where a customer receives the purchased
11 product, it may reasonably approximate this location using the customer's place of "primary use" of the purchased
12 product, applying the definition of "primary use" set forth in MTC Model Regulation for Sourcing Sales of
13 Telecommunications and Ancillary Services, MTC Reg. IV.18(i).

14

15 *History Note: Authority G.S. 105-130.4; S.L. 2016-94.*