

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

2
3 **SECTION .0100 – GENERAL RULES**
4

5 **17 NCAC 05G .0101 SCOPE**

6 The ~~rules~~ Rules in this Subchapter ~~do~~ shall not apply to receipts from the sale of tangible personal property. Other
7 receipts are in North Carolina when the taxpayer's market for the sales is in North Carolina. The ~~rules~~ Rules of this
8 Subchapter establish 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;
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
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.
16

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

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

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

4 In addition to the definitions in G.S. 105-130.4, As 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~~; 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;

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

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

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

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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 of 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~~. request, as provided in Article 9 of G.S.
16 105.
- 17 (2) This Subchapter provides assignment rules that apply sequentially in a hierarchy. For each sale to
18 which a hierarchical rule applies, a taxpayer shall make a reasonable effort to apply the primary rule
19 applicable to the sale before seeking to apply the next rule in the hierarchy and shall continue to do
20 so with each succeeding rule in the hierarchy.
- 21 (3) A taxpayer's method of assigning its receipts shall reflect an attempt to obtain the most accurate
22 assignment of receipts consistent with the ~~standards~~ rules set forth in this Subchapter, rather than an
23 attempt to lower the taxpayer's tax liability.
24

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

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

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3 **SECTION .0300 – RULES OF REASONABLE APPROXIMATION**
4

5 **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~~ rules in this
9 Subchapter ~~permits~~ permit a taxpayer to reasonably approximate the state or states of assignment, ~~using a method that~~
10 ~~reflects an effort to approximate the obtain a results that would be obtained under the applicable rules or standards set~~
11 ~~forth in this Subchapter~~ result similar to those made using a specific rule of approximation.

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

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

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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 .0502 is adopted with changes as published in 31:07 NCR 619-630 as follows:

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

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

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

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

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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~~ appropriate,
13 as provided in Article 9 of G.S. 105, or exclude the receipts from the taxpayer's numerator and
14 denominator;
- 15 (3) when the Secretary determines that a taxpayer's method of approximation has not been applied in a
16 consistent manner with respect to similar transactions or year to year, the Secretary may require that
17 the taxpayer apply its method of approximation in a consistent manner;
- 18 (4) when a taxpayer excludes receipts from the denominator of its ~~receipts sales~~ factor on the basis that
19 the assignment of the receipts cannot be reasonably approximated, the Secretary may determine that
20 the exclusion of those receipts is not appropriate, and may instead substitute a method of
21 approximation that the Secretary determines is ~~appropriate~~ appropriate, as provided in Article 9 of
22 G.S. 105;
- 23 (5) when a taxpayer fails to retain contemporaneous records that explain the determination and
24 application of its method of assigning its receipts, including its underlying assumptions, or fails to
25 provide those records to the Secretary upon request, the Secretary shall treat the taxpayer's
26 assignment of receipts as unsubstantiated, and shall adjust the assignment of the receipts in a manner
27 consistent with the applicable rules in this Subchapter; or
- 28 (6) when the Secretary concludes that a customer's billing address was selected by the taxpayer for tax
29 avoidance purposes, the Secretary shall adjust the assignment of receipts from sales to that customer
30 in a manner consistent with the applicable rules in this Subchapter.

31
32 *History Note:* Authority G.S. 105-130.4; S.L. 2016-94.
33

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

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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. appropriate, as provided in Article 9 of G.S. 105,~~

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

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

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3 **SECTION .0600 - FURTHER GUIDANCE**
4

5 **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~~ shall be available at ~~doe.nc.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

1 17 NCAC 05G .0701 is adopted with changes 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~~ shall be in North Carolina to the extent that the service is delivered to a
7 location in North Carolina. The term "delivered to a location" refers to the location of the taxpayer's market for the
8 service, 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.*

1 17 NCAC 05G .0802 is adopted with changes 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~~
5 received the service in North Carolina. The taxpayer shall determine the location where a service is received as
6 follows:

- 7 (1) if the service is performed with respect to the body of an individual customer in North Carolina,
8 such as hair cutting or x-ray services, or in the physical presence of the customer in North Carolina,
9 such as live entertainment or athletic performances, the service is received in North Carolina;
10 (2) if the service is performed with respect to the customer's real estate in North Carolina or if the service
11 is performed with respect to the customer's tangible personal property at the customer's residence or
12 in the customer's possession in North Carolina, the service is received in North Carolina; or
13 (3) if the service is performed with respect to the customer's tangible personal property and the tangible
14 personal property is to be shipped or delivered to the customer, whether the service is performed
15 within or outside North Carolina, the service is received in North Carolina if the property is shipped
16 or delivered to the customer in North Carolina.

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

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

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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~~ the taxpayer can
6 reasonably approximate the state or states where the service is received, the taxpayer shall reasonably approximate
7 such state or states.

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

1 17 NCAC 05G .0901 is adopted with changes 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~~ as defined in Rule .0801
8 of this Subchapter or a professional service as defined in ~~Section .1000~~ Rule .1001 of this Subchapter, and the service
9 is delivered to or on behalf of the customer, or delivered electronically through the customer, the receipts from a sale
10 are in North 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~~ where the customer and not a third party is the
13 recipient of the ~~service~~ service;

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

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

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

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

1 17 NCAC 05G .0902 is adopted with changes 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~~ Section depends upon whether the customer is an individual or a
12 business customer, and the taxpayer acting in good faith cannot reasonably determine whether the customer is an
13 individual or a 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.*

1 17 NCAC 05G .0903 is adopted with changes 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~~ product delivery services where property is delivered to the customer or to a third party on
7 behalf of the customer;
- 8 (2) ~~The delivery~~ of brochures, ~~fliers~~ 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.*

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~~ to determine or reasonably approximate the state or states ~~in which~~
19 where the service is received, it shall reasonably approximate the state or states using the
20 customer's 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~~ where the service is
36 received, the taxpayer shall reasonably approximate the state or states as set forth in this
37 Rule. In these cases, unless the taxpayer ~~can apply~~ uses the safe harbor set forth in Sub-

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

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

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

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

1 17 NCAC 05G .0905 is adopted with changes 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~~ where the advertising is delivered relative to the total subscribers
35 in that area. For a taxpayer with less information about its audience, the taxpayer shall
36 reasonably approximate the audience in a state using the percentage that reflects the ratio

1 of the state's population in the specific geographic area where the advertising is delivered
2 relative to the 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~~ in Subitems
12 (3)(a) or (b), the relevant specific geographic area of delivery includes only the areas where
13 the service was substantially and materially delivered or resold. Unless the taxpayer
14 demonstrates the contrary, it ~~will~~ shall be presumed that the area where the service was
15 substantially and materially delivered or resold does not include areas outside the United
16 States.

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

1 17 NCAC 05G .1002 is adopted with changes 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~~ shall be assigned as such, notwithstanding that they may also
10 be 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.*

1 17 NCAC 05G .1003 is adopted with changes 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 a business customer. When the taxpayer, acting in good faith, cannot reasonably
7 determine whether the customer is an individual or a business customer, the taxpayer shall treat the customer as a
8 business customer. For purposes of assigning the receipts from a sale of a professional service, a taxpayer's customer
9 is the person that contracts for the service, irrespective of whether another person pays for or also benefits from the
10 taxpayer's services.

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

1 17 NCAC 05G .1004 is adopted with changes 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~~ where the service provided is a professional
9 service and the taxpayer's customer is an individual customer, the state or states where the service
10 is delivered shall be reasonably approximated as set forth in this Rule. The taxpayer shall assign
11 the receipts from a sale to the customer's state of primary residence, or, if the taxpayer cannot
12 reasonably identify the customer's state of primary residence, to the state of the customer's billing
13 address. However, when the taxpayer derives more than five percent of its receipts from sales of all
14 services from an individual customer, the taxpayer shall identify the customer's state of primary
15 residence and assign 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~~ where the service is delivered shall be
18 reasonably approximated as set forth in this Rule. ~~In particular, unless~~ Unless the taxpayer ~~can use~~
19 uses the safe harbor set forth in Item (3) of this ~~Rule~~ Rule, the taxpayer shall assign the receipts
20 from the sale as follows:
- 21 (a) by assigning the receipts to the state where the contract of sale is principally managed by
22 the customer;
- 23 (b) if the place of customer management is not reasonably determinable, to the customer's
24 place of order; and
- 25 (c) if the customer place of order is not reasonably determinable, to the customer's billing
26 address.

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

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

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

1 17 NCAC 05G .1005 is adopted with changes 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~~ shall be assigned under Rule .1004 of this Section.

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

1 17 NCAC 05G .1102 is adopted with changes 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~~ where the licensee's goods, services, or other
25 items are ultimately and materially marketed using the intangible property relative to the total population of that area.
26 Unless the taxpayer demonstrates that the marketing intangible is materially used in the marketing of items outside
27 the United States, the fees from licensing that marketing intangible shall be presumed to be derived from within the
28 United States.

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

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

2
3 **17 NCAC 05G .1103 LICENSE OF A PRODUCTION INTANGIBLE**

4 (a) ~~If~~ Where a license is granted for the right to use intangible property, other than in connection with the sale, lease,
5 license, 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~~ Where the actual use of intangible property pursuant to a license of a production intangible takes place in part
11 in North Carolina, the entire use ~~is~~ shall be in this State except to the extent that the taxpayer is able to demonstrate
12 that the actual 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.*

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

2
3 **17 NCAC 05G .1104 LICENSE OF A MIXED INTANGIBLE**

4 ~~If~~ Where 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~~ shall 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.*

1 17 NCAC 05G .1105 is adopted with changes 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~~ database access;

9 (2) ~~Access~~ access to information;

10 (3) ~~Digital~~ digital goods; and

11 (4) ~~Certain~~ certain software, where the transaction is not the license of pre-written software treated as
12 the sale 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~~ where the sublicense
20 transfers a reduced bundle of rights with respect to that property, such as when the sublicensee's rights are limited to
21 its own use of the property and do not include the ability to grant a further sublicense, or because that property is
22 bundled with additional services or items of property.

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

1 17 NCAC 05G .1201 is adopted with changes 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~~ shall be
14 assigned to a state to the extent that the intangible property is used or is authorized to be used within
15 the state. If the intangible property is used or may be used only in this State, the taxpayer shall
16 assign the receipts from the sale to North Carolina. If the intangible property is used or is authorized
17 to be used in North Carolina and one or more other states, the taxpayer shall assign the receipts from
18 the sale to North Carolina to the extent that the intangible property is used in or authorized for use
19 in 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~~ shall not be included in the sales factor in any case
28 when 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~~ where the sale of intangible property results in receipts within the
30 meaning of Section .0400 of this Subchapter, those receipts shall be excluded from the numerator
31 and the denominator of the taxpayer's sales factor if the receipts are not referenced in G.S.
32 105.130.4(1) The sale of intangible property that is excluded from the numerator and denominator
33 of the taxpayer's sales factor under this provision includes the sale of business "goodwill," the sale
34 of an agreement not to compete, or similar intangible value.

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

1 17 NCAC 05G .1301 is adopted with changes 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~~ the 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.*

1 17 NCAC 05G .1302 is adopted with changes 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~~ transactions, shall be assigned by applying the same provisions set forth in Rules
6 .0904 or .0905 of this Subchapter, as if the transaction was a service delivered to an individual or business customer,
7 or delivered through or on behalf of an individual or business customer. For purposes of the analysis, the terms of the
8 contractual 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.*

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~~ is ~~are~~ subject to Multistate
5 Tax Commission Reg. IV.18(i), receipts from the sale or license of digital goods or services not otherwise assigned
6 for apportionment purposes pursuant to that Regulation shall be assigned pursuant to this Rule. The taxpayer shall
7 apply 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)~~ Multistate Tax
9 Commission Reg. IV.18(i) is hereby incorporated by reference, including subsequent amendments or additions, and
10 is available at no free of charge at <http://www.mtc.gov/Uniformity/Adopted-Uniformity-Recommendations>.

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

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