

REQUEST FOR TECHNICAL CHANGE

AGENCY: Department of Revenue

RULE CITATION: All forms

DEADLINE FOR RECEIPT: Friday, March 9, 2018

PLEASE NOTE: This request may extend to 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 our office to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following technical changes be made:

Please complete Box 6 to indicate the "Adoption by agency on:" date

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: Thursday, February 22, 2018

REQUEST FOR TECHNICAL CHANGE

AGENCY: Department of Revenue

RULE CITATION: 17 NCAC 05B .1105

DEADLINE FOR RECEIPT: Friday, March 9, 2018

PLEASE NOTE: *This request may extend to 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 our office to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following technical changes be made:

Line 6, how is the phrase "amount invested" not a "loan" within "indebtedness" of G.S. 105-122(b1)(5)? If the phrase "amount invested" is the same as "indebtedness" is this not addressed in G.S. 105-122(b)(2)? Is the content of this Rule 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: Thursday, February 22, 2018

1 17 NCAC 05B .1105 is readopted with changes pursuant to G.S. 150B-21.3A(c)(2)g without notice pursuant to G.S. 150B-
2 1(d)(4) as follows:

3
4 **17 NCAC 05B .1105 INVESTMENT IN SUBSIDIARY**

5 For purposes of G.S. 105-122, the ~~capital stock, surplus, and undivided profits~~ net worth base ~~may~~ shall not be reduced
6 by the amount invested in a subsidiary.

7
8 *History Note: Authority G.S. 105-122; 105-262;*

9 *Eff. February 1, 1976;*

10 *Amended Eff. July 1, 1999; January 1, ~~1994~~, 1994;*

11 *Readopted Eff. March 1, 2018.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Department of Revenue

RULE CITATION: 17 NCAC 05B .1108

DEADLINE FOR RECEIPT: Friday, March 9, 2018

PLEASE NOTE: This request may extend to 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 our office to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following technical changes be made:

Line 5, replace "which" with "that"

Line 7, add a comma after "subsidiary"

Line 8, define or delete "merely"

Lines 7 thru 8, is this sentence necessary in light of G.S. 105-122(b1)(5)? 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: Thursday, February 22, 2018

1 17 NCAC 05B .1108 is readopted with changes pursuant to G.S. 150B-21.3A(c)(2)g without notice pursuant to G.S. 150B-
2 1(d)(4) as follows:

3
4 **17 NCAC 05B .1108 EXCLUSION PROVISION LIMITED TO INDEBTEDNESS OWED**

5 The exclusion from the ~~Capital Stock Base~~ net worth base of indebtedness owed which is permitted the debtor
6 corporation and the deduction permitted the creditor corporation in G.S. 105-122 are applicable only to indebtedness
7 owed to or due from a parent, subsidiary or affiliated corporation. These provisions do not apply where the indebtedness
8 is merely endorsed or guaranteed.

9
10 *History Note: Authority G.S. 105-122; 105-262;*
11 *Eff. February 1, 1976;*
12 *Amended Eff. July 1, 1999; January 1, ~~1994~~. 1994;*
13 *Readopted Eff. March 1, 2018.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Department of Revenue

RULE CITATION: 17 NCAC 05B .1110

DEADLINE FOR RECEIPT: Friday, March 9, 2018

PLEASE NOTE: This request may extend to 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 our office to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following technical changes be made:

Line 5, replace "which" with "that"

Lines 5 and 6, add a comma after "subsidiary"

Line 9, 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: Thursday, February 22, 2018

1 17 NCAC 05B .1110 is readopted with changes pursuant to G.S. 150B-21.3A(c)(2)g without notice pursuant to G.S. 150B-
2 1(d)(4) as follows:

3
4 **17 NCAC 05B .1110 RECIPROCAL INDEBTEDNESS BETWEEN AFFILIATES**

5 A corporation which owes indebtedness to a parent, subsidiary or affiliated corporation and at the same time is owed
6 indebtedness by the same parent, subsidiary or affiliated corporation shall ~~may~~ net the payable and receivable for
7 purposes of the indebtedness computation in arriving at the ~~capital stock, surplus and undivided profits~~ net worth base
8 under G.S. 105-122. If the indebtedness is owed to one corporation and the receivable is due from another corporation,
9 each amount must be treated separately.

10
11 *History Note: Authority G.S. 105-122; 105-262;*
12 *Eff. February 1, 1976;*
13 *Amended Eff. July 1, 1999; January 1, ~~1994~~. 1994;*
14 *Readopted Eff. March 1, 2018.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Department of Revenue

RULE CITATION: 17 NCAC 05B .1406

DEADLINE FOR RECEIPT: Friday, March 9, 2018

PLEASE NOTE: This request may extend to 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 our office to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following technical changes be made:

Lines 5 thru 7, is this sentence necessary in light of G.S. 105-122(d)? 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: Thursday, February 22, 2018

1 17 NCAC 05B .1406 is readopted with changes pursuant to G.S. 150B-21.3A(c)(2)g without notice pursuant to G.S. 150B-
2 1(d)(4) as follows:

3
4 **17 NCAC 05B .1406 INVESTMENT BASE PROPERTY INCLUDED**

5 A corporation including property in the investment in tangible property base shall also include the value of this property
6 in the appraised valuation ~~base~~, base, except for property acquired in the current tax year and not yet assessed for North
7 Carolina property tax purposes.

8
9 *History Note: Authority G.S. 105-122; 105-262;*
10 *Eff. February 1, ~~1976~~-1976;*
11 *Readopted Eff. March, 1, 2018.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Department of Revenue

RULE CITATION: 17 NCAC 05C .0101

DEADLINE FOR RECEIPT: Friday, March 9, 2018

PLEASE NOTE: *This request may extend to 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 our office to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following technical changes be made:

Lines 6 thru 9, the example in the Rule is more appropriate for a policy guidance document. Is the sentence necessary in light of G.S. 105-130.4(b)? Please consider deleting.

Lines 10 thru 12, is this sentence a restatement of G.S. 105-130.16? Is it necessary? Please review and clarify if necessary

Line 12, what is meant by "Entities treated as corporations" if not "domestic" or "foreign" corporations that are addressed in early parts of this Rule? Is this sentence necessary? 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: Thursday, February 22, 2018

1 17 NCAC 05C .0101 is readopted with changes pursuant to G.S. 150B-21.3A(c)(2)g without notice pursuant to G.S. 150B-
2 1(d)(4) as follows:

3
4 **17 NCAC 05C .0101 DOMESTIC AND FOREIGN CORPORATIONS REQUIRED TO FILE**

5 (a) A foreign corporation operating in North Carolina may be liable for income tax even if it is not required to obtain a
6 certificate of authority to do business in North Carolina. For example, a Virginia corporation engaged in the general
7 contracting business which obtains a single job in North Carolina to be completed within six months, would not, under
8 the Business Corporation Act, be required to obtain a certificate of authority to do business in this state but would be
9 subject to income tax.

10 (b) Even for a year in which a domestic corporation or a foreign corporation with a certificate of authority to do business
11 in North Carolina conducted no business activity or did not earn any net ~~income~~, income in the State, it must file an
12 income tax return. Entities treated as corporations for federal income tax purposes are also subject to this requirement.

13
14 *History Note: Authority G.S. 105-130.3; 105-130.4; 105-130.16; 105-262;*
15 *Eff. February 1, 1976;*
16 *Amended Eff. January 1, ~~1994~~, 1994;*
17 *Readopted Eff. March 1, 2018.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Department of Revenue

RULE CITATION: 17 NCAC 05C .0403

DEADLINE FOR RECEIPT: Friday, March 9, 2018

PLEASE NOTE: *This request may extend to 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 our office to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following technical changes be made:

Line 5, add a comma after "notes"

*Lines 5 thru 7, is this sentence a restatement of G.S. 105-130.5(b)(1)? Is it necessary?
Please review and clarify if necessary*

Line 9, define or delete "specifically"

Line 20, correct the struck through date from "1997" to "1977"

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: Thursday, February 22, 2018

1 17 NCAC 05C .0403 is readopted with changes pursuant to G.S. 150B-21.3A(c)(2)g without notice pursuant to G.S. 150B-
2 1(d)(4) as follows:

3
4 **17 NCAC 05C .0403 U.S. OBLIGATIONS**

5 (a) Net interest income earned on bonds, notes or other obligations of the United States or its possessions is exempt from
6 income taxation in this ~~state~~ State so long as interest on obligations of the State of North Carolina and its political
7 subdivisions is exempt from income taxes imposed by the United States. For the interest income to be deductible, the
8 obligation shall be in writing, bear interest, be a binding promise by the United States to pay specific amounts at specific
9 dates, and be specifically authorized by Congress.

10 (b) Net interest from obligations ~~issued under the borrowing power of a federal land bank, a federal home loan bank, a~~
11 ~~federal intermediate credit bank, Farm Home Administration, Export Import Bank of the United States, Tennessee Valley~~
12 ~~Authority, banks for cooperatives, Student Loan Marketing Association, Federal Farm Credit Bank, Federal Financing~~
13 ~~Bank, Federal Savings and Loan Insurance Corporation, Commodity Credit Corporation, Resolution Funding~~
14 ~~Corporation, Production Credit Association and United States Postal Service is considered to be interest from obligations~~
15 ~~of the United States that are backed, insured, or guaranteed by the United States, but are not direct obligations of the~~
16 United States Government, shall not be deductible.

17
18 *History Note: Authority G.S. 105-130.5; 105-262;*

19 *Eff. February 1, 1976;*

20 *Amended Eff. January 1, 1995; April 1, 1991; October 23, 1977; 1997;*

21 *Readopted Eff. March 1, 2018.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Department of Revenue

RULE CITATION: 17 NCAC 05C .0801

DEADLINE FOR RECEIPT: Friday, March 9, 2018

PLEASE NOTE: This request may extend to 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 our office to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following technical changes be made:

Line 7, add a comma after "equipment"

Line 10, replace "which" with "that"

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: Thursday, February 22, 2018

1 17 NCAC 05C .0801 is readopted with changes pursuant to G.S. 150B-21.3A(c)(2)g without notice pursuant to G.S. 150B-
2 1(d)(4) as follows:

3
4 **17 NCAC 05C .0801 IN GENERAL**

5 (a) The property factor as provided in G.S. 105-130.4 shall include all real and tangible personal property owned or
6 rented and used during the income year to produce apportionable income. The term "real and tangible personal property"
7 includes land, buildings, machinery, stocks of goods, equipment and other real and tangible personal property used in
8 connection with the production of apportionable income but does not include coin or currency. ~~(see definition of~~
9 ~~"business income")~~

10 (b) Property used in connection with the production of nonapportionable income which is allocated in accordance with
11 Subsection (c) to (h) of G.S. 105-130.4 shall be excluded from the factor.

12 (c) Property used in connection with the production of both apportionable and nonapportionable income shall be included
13 in the factor only to the extent the property was used in connection with the production of apportionable income.
14

15 *History Note: Authority G.S. 105-130.4; 105-262;*

16 *Eff. February 1, 1976;*

17 *Amended Eff. January 1, 2005; January 1, ~~1994~~. 1994;*

18 *Readopted Eff. March 1, 2018.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Department of Revenue

RULE CITATION: 17 NCAC 05C .0907

DEADLINE FOR RECEIPT: Friday, March 9, 2018

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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 our office to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following technical changes be made:

Lines 5 thru 7, is this sentence necessary in light of G.S. 105-130.4(k)? Please review and clarify if necessary

Lines 6, 14, 15, and 17, if "state" means "North Carolina," then please capitalize

Line 8, replace "such" with "the"

Line 8, replace "can" with "may"

Line 16, define or delete "properly"

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: Thursday, February 22, 2018

1 17 NCAC 05C .0907 is readopted with changes pursuant to G.S. 150B-21.3A(c)(2)g without notice pursuant to G.S. 150B-
2 1(d)(4) as follows:

3
4 **17 NCAC 05C .0907 NUMERATOR OF PAYROLL FACTOR**

5 Except for compensation paid to general executive officers and compensation paid in connection with nonapportionable
6 income, for purposes of G.S. 105-130.4, the numerator of the payroll factor is the total amount paid in this state during
7 the tax period by the taxpayer for compensation. In determining the payroll factor, information used to file federal forms
8 941 and the North Carolina Tax and Wage Reports may be used if such amounts can be reconciled to the amounts used
9 for the payroll factor. ~~The tests to be applied in determining whether compensation is paid in this state are stated in the~~
10 ~~Model Unemployment Compensation Act which is hereby incorporated by reference. This does not include any~~
11 ~~subsequent amendments or editions. A copy of this act can be obtained at no charge by contacting the Department of~~
12 ~~Revenue. Accordingly, if~~ If compensation paid to employees is included in the payroll factor by use of the cash method
13 of accounting or if the taxpayer is required to report such compensation under such method for unemployment
14 compensation purposes, it shall be presumed that the total wages reported by the taxpayer to this state for unemployment
15 compensation purposes constitutes compensation paid in this state except for compensation excluded under G.S. 105-
16 130.4(k). The presumption may be overcome by satisfactory evidence that an employee's compensation is not properly
17 reportable to this state for unemployment compensation purposes.

18
19 *History Note: Authority G.S. 105-130.4; 105-262;*
20 *Eff. February 1, 1976;*
21 *Amended Eff. January 1, 2005; January 1, 1994; October 31, 1981; 1981;*
22 *Readopted Eff. March 1, 2018.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Department of Revenue

RULE CITATION: 17 NCAC 05C .1506

DEADLINE FOR RECEIPT: Friday, March 9, 2018

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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 our office to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following technical changes be made:

Line 5, delete the "(a)" as Paragraph (b) is being deleted in this Rule

Lines 5 thru 10, are these sentences necessary in light of G.S. 105-130.8A? Please review and clarify if necessary

Line 15, is the statutory authority for this Rule correct? G.S. 105-130.8 was repealed effective for taxable years beginning on or after January 1, 2015. Please review and correct the statutory authority

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: Thursday, February 22, 2018

1 17 NCAC 05C .1506 is readopted with changes pursuant to G.S. 150B-21.3A(c)(2)g without notice pursuant to G.S. 150B-
2 1(d)(4) as follows:

3
4 **17 NCAC 05C .1506 CORPORATIONS ~~ALLOCATING~~ APPORTIONING THEIR NET INCOME**

5 (a) A corporation required to ~~allocate and~~ apportion its net income or net loss under G.S. 105-130.4 may carry forward
6 only a portion of its State net ~~economic~~ loss. ~~After the required adjustments for income not taxable in the next succeeding~~
7 ~~year have been made, the allocable portion of such determined net economic loss deduction is deducted from the total~~
8 ~~amount of income allocated to this state.~~ For example, a corporation ~~allocating~~ apportioning 50 percent of its net income
9 or loss to North Carolina in a particular year in which it sustains a total State net ~~economic~~ loss of one thousand dollars
10 (\$1,000.00) may carry forward only five hundred dollars (\$500.00) to a subsequent year.

11 ~~(b) Where the allocating corporation earns nonapportionable income subject to direct allocation outside North Carolina in~~
12 ~~a year succeeding the loss year, the portion of the directly allocated income used to offset the loss brought forward is~~
13 ~~determined by applying to such income the allocation percentage applicable to the succeeding year.~~

14
15 *History Note: Authority G.S. 105-130.8; 105-262;*
16 *Eff. February 1, 1976;*
17 *Amended Eff. January 1, 2005. 2005;*
18 *Readopted Eff. March 1, 2018.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Department of Revenue

RULE CITATION: 17 NCAC 05C .1702

DEADLINE FOR RECEIPT: Friday, March 9, 2018

PLEASE NOTE: This request may extend to 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 our office to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following technical changes be made:

Line 5 thru 6 is not rule language, as it merely a statement of what the remainder of this Rule requires. Please delete

Line 6, delete "Such"

Line 6, capitalize "income"

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

Line 7, define or delete "mere"

Line 8, is "regularly or materially" a phrase known by the regulated public? If not, please define or delete

Line 9, is "directly or integrally" a phrase known by the regulated public? If not, please define or delete

Line 11, add a comma after "payrolls"

Line 12, replace "such" 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: Thursday, February 22, 2018

1 17 NCAC 05C .1702 is readopted with changes pursuant to G.S. 150B-21.3A(c)(2)g without notice pursuant to G.S. 150B-
2 1(d)(4) as follows:

3
4 **17 NCAC 05C .1702 APPORTIONABLE INCOME OR NONAPPORTIONABLE INCOME**

5 For income tax purposes, whether a corporate partner's share of the partnership's net income is classified as apportionable
6 income or nonapportionable income depends upon the facts in each case. Such income is classified as nonapportionable
7 income where the corporate partner limits its connection to the partnership to the mere investment of funds or property
8 and does not regularly or materially participate in the day-to-day operation of the partnership. Where the business of the
9 partnership is directly or integrally related to the business of the corporate partner, the corporate partner's share of the
10 partnership net income is classified as apportionable income. When classified as apportionable income, the corporate
11 partner's apportionment factors shall include its proportionate share of the partnership's property, payrolls and sales. If
12 such income is classified as nonapportionable income, it shall be included in the corporate partner's net taxable income
13 and allocated in accordance with the allocation provisions of G.S. 105-130.4.

14
15 *History Note:* Authority G.S. 105-130.4; 105-262;
16 Eff. February 1, 1976;
17 Amended Eff. January 1, 2005; January 1, 1994; October 31, ~~1981~~ 1981;
18 Readopted Eff. March 1, 2018.

REQUEST FOR TECHNICAL CHANGE

AGENCY: Department of Revenue

RULE CITATION: 17 NCAC 05D .0109

DEADLINE FOR RECEIPT: Friday, March 9, 2018

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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 our office to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following technical changes be made:

Line 5, consider replacing "its" with "the corporation's"

Line 6, add "as set forth in G.S. 105-130.4(t1)" after "formula"

Line 7, please clarify what is meant by "generally used in legal presentations."

Lines 7 thru 36, consider replacing each period at the end of the clause with a semicolon, as these items appear to be part of a list

Lines 9 thru page 2, line 1, consider replacing "must" with "shall"

Line 9, should "without" be "outside"? Please review and clarify if necessary

Lines 16 and 34, replace "which" with "that"

Line 22, add a comma after "payroll"

Line 28, replace "and/or" with "or"

Line 31, define or delete "clearly"

Line 35, replace "are" with "shall be"

Line 36, if the periods have been replaced with semicolons, please add an "and" at the end of the clause

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: Thursday, February 22, 2018

1 17 NCAC 05D .0109 is readopted with changes pursuant to G.S. 150B-21.3A(c)(2)g without notice pursuant to G.S. 150B-
2 1(d)(4) as follows:

3
4 **17 NCAC 05D .0109 REQUEST FOR ALTERNATIVE APPORTIONMENT FORMULA**

5 The corporation shall file a request with the Secretary setting forth the facts upon which its belief is based and its
6 argument with respect to the application of the allocation formula. The request:

7 (1) shall be in a form generally used in legal presentations.

8 (2) shall be subscribed to by an officer of the corporation having knowledge of the facts.

9 (3) must summarize the business operation of the corporation both within and without North Carolina.

10 (4) must state whether the request is for income tax purposes, for franchise tax purposes, or for both.

11 (5) must include the corporation's argument and contentions respecting the application of the formula prescribed by
12 statute and the method of allocation requested referring to any legal references and other grounds upon which the
13 corporation is basing its position(s).

14 (6) must disclose the alternative apportionment method of allocation and apportionment being requested and indicate the
15 effect of its application on the corporation's tax liability together with any supporting and supplementing information
16 which will enable the Secretary to fully understand and consider the method of allocation and apportionment requested.

17 (7) must state the taxable periods to be reviewed.

18 (8) must, for income tax purposes, include statements of income and expenses, showing the net income of the corporation
19 subject to apportionment for each taxable period to be reviewed.

20 (9) must, for franchise tax purposes, include statements showing the total ~~capital stock, surplus and undivided profits~~ net
21 worth subject to apportionment for each taxable period to be reviewed.

22 (10) must include schedules for each taxable period showing the computation of the property, payroll and sales factors as
23 prescribed by statute in the determination of the apportionment factor as required by G.S. 105-130.4 and rules published
24 by the Department of Revenue.

25 (11) must, for a separate accounting method of reporting the corporation's business operations in this State, submit as
26 support operating statements showing the results of the corporation's operations within North Carolina computed on the
27 separate accounting basis together with similar statements showing the results of the corporation's operations outside
28 North Carolina for each taxable period to be reviewed. A full explanation and/or description of the separate accounting
29 method employed in the computation must accompany the statements. If there are items of expense or income that are
30 indirectly attributed to the separated operations, the basis for apportioning such items must be disclosed. General
31 overhead expenses must be clearly documented and explained when any portion of this expense is allocated to the
32 separate net income attributed to this State under the requested method.

33 (12) must, for a separate accounting method, submit as support schedules reflecting the apportionment factors applicable
34 to the operations which are conducted in whole or part in this State and the apportionment factor applicable to the
35 business conducted outside of this State. The computations are made without regard to nexus requirements that would be
36 considered if the operations were legal separate entities.

1 (13) must contain any other information relevant to the apportionment formula or the requested method of allocation that
2 the corporation deems appropriate under the circumstances.

3
4 *History Note: Authority G.S. 105-122(c1)(2); 105-130.4(t1); 105-262;*

5 *Eff. February 1, 2008;*

6 ~~*Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. August 19, 2017.*~~

7 *Readopted Eff. March 1, 2018.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Department of Revenue

RULE CITATION: 17 NCAC 05D .0112

DEADLINE FOR RECEIPT: Friday, March 9, 2018

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In reviewing this Rule, the staff recommends the following technical changes be made:

Lines 5 and 6, replace "his/her" with "their"

Line 6, please clarify what is meant by the clause "with any other Department personnel the Secretary or Director shall deem appropriate"

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: Thursday, February 22, 2018

1 17 NCAC 05D .0112 is readopted with changes pursuant to G.S. 150B-21.3A(c)(2)g without notice pursuant to G.S. 150B-
2 1(d)(4) as follows:

3
4 **17 NCAC 05D .0112 WHO SHALL ATTEND THE CONFERENCE**

5 The Secretary or his/her designee and the Director of the ~~Corporate, Excise and Insurance~~ Corporate Tax Division or
6 his/her designee, along with any other Department personnel the Secretary or Director shall deem appropriate, shall
7 attend any conference pursuant to a request for an alternative apportionment formula. The taxpayer is not required to
8 personally appear or be represented at the conference. Legal counsel or other tax practitioner may appear with or without
9 the taxpayer on the taxpayer's behalf.

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11 *History Note: Authority G.S. 105-122(c1)(2); 105-130.4(t1); 105-262;*
12 *Eff. February 1, ~~2008~~ 2008;*
13 *Readopted Eff. March 1, 2018.*