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SENATE BILL DRS35362-RBx-44B (03/31)

Short Title: Market-Based Sourcing.

(Public)

Sponsors: Senators Rucho and Rabon (Primary Sponsors).

Referred to:

1 A BILL TO BE ENTITLED
2 AN ACT TO USE MARKET-BASED SOURCING FOR MULTISTATE INCOME TAX
3 APPORTIONMENT.

4 The General Assembly of North Carolina enacts:

5 SECTION 1. G.S. 105-130.4(l) reads as rewritten:

6 "§ 105-130.4. Allocation and apportionment of income for corporations.

7 ...

8 (l) ~~(1) The Sales Factor.~~ – The sales factor is a fraction, the numerator of which is the total
9 sales of the corporation in this State during the income year, and the denominator of which is the
10 total sales of the corporation everywhere during the income year. Notwithstanding any other
11 provision under this Part, the receipts from any casual sale of property shall be excluded from both
12 the numerator and the denominator of the sales factor. Where a corporation is not taxable in
13 another state on its apportionable income but is taxable in another state only because of
14 nonapportionable income, all sales shall be treated as having been made in this State.

15 Receipts are in this State if the taxpayer's market for the receipts is in this State. If the market
16 for a receipt cannot be determined, the state or states of assignment shall be reasonably
17 approximated. In a case in which a taxpayer cannot ascertain the state or states to which receipts of
18 a sale are to be assigned through the use of a method of reasonable approximation, the receipts
19 must be excluded from the denominator of a taxpayer's sales factor. Except as otherwise provided
20 by this section, a taxpayer's market for receipts is in this State as provided below:

21 (1) In the case of sale, rental, lease, or license of real property, if and to the extent
22 the property is located in this State.

23 (2) Sales of tangible personal property are in this State if the property is received in
24 this State by the purchaser. In the case of delivery of goods by common carrier
25 or by other means of transportation, including transportation by the purchaser,
26 the place at which the goods are ultimately received after all transportation has
27 been completed shall be considered as the place at which the goods are received
28 by the purchaser. Direct delivery into this State by the taxpayer to a person or
29 firm designated by a purchaser from within or without the State shall constitute
30 delivery to the purchaser in this State. In the case of rental, lease, or license of
31 tangible personal property, if and to the extent the property is located in this
32 State.

33 (3) Other sales are in this State if: In the case of sale of tangible personal property,
34 if and to the extent the property is received in this State by the purchaser. In the
35 case of delivery of goods by common carrier or by other means of
36 transportation, including transportation by the purchaser, the place at which the



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1 goods are ultimately received after all transportation has been completed is
2 considered the place at which the goods are received by the purchaser. Direct
3 delivery into this State by the taxpayer to a person or firm designated by a
4 purchaser from within or without the State constitutes delivery to the purchaser
5 in this State.

6 a. ~~The receipts are from real or tangible personal property located in this~~
7 ~~State; or~~

8 b. ~~The receipts are from intangible property and are received from sources~~
9 ~~within this State; or~~

10 e. ~~The receipts are from services and the income producing activities are~~
11 ~~in this State.~~

12 (4) In the case of sale of a service, if and to the extent the service is delivered to a
13 location in this State.

14 (5) In the case of intangible property that is rented, leased, or licensed, if and to the
15 extent the property is used in this State. Intangible property utilized in
16 marketing a good or service to a consumer is "used in this State" if that good or
17 service is purchased by a consumer who is in this State.

18 (6) In the case of intangible property that is sold, if and to the extent the property is
19 used in this State. A contract right, government license, or similar intangible
20 property that authorized the holder to conduct a business activity in a specific
21 geographic area is "used in this State" if the geographic area includes all or part
22 of this State. Receipts from a sale of intangible property that is contingent on
23 the productivity, use, or disposition of the intangible property shall be treated as
24 receipts from the rental, lease, or licensing of the intangible property as
25 provided under subdivision (4) of this subsection. All other receipts from a sale
26 of intangible property shall be excluded from the numerator and denominator of
27 the sales factor.

28 (11) Broadcasters. – A broadcaster's market for receipts is in this State as provided in
29 G.S. 105-130.4A. For purposes of this section, the term "broadcaster" has the same meaning as
30 defined in G.S. 105-130.4A.

31 (12) Banks. – A bank's market for receipts is in this State as provided in G.S. 105-130.4A.
32 For purposes of this section, the term "bank" has the same meaning as defined in
33 G.S. 105-130.4B."

34 **SECTION 2.** Part 1 of Article 4 of Chapter 105 of the General Statutes is amended by
35 adding a new section to read:

36 **"§ 105-130.4A. Market-based sourcing for broadcasters.**

37 (a) Definitions. – The definitions in G.S. 105-130.4 and the following definitions apply to
38 this section:

39 (1) Audience factor. – The factor determined by the ratio provided in this
40 subdivision. The ratio is as follows:

41 a. Television station. – The ratio that the viewing audience located in this
42 State for a television station bears to the total viewing audience for a
43 television station.

44 b. Radio station. – The ratio that the listening audience in this State for a
45 radio station bears to the total listening audience for a radio station.

46 c. Cable or satellite program and channel broadcasts. – The ratio that the
47 subscribers for a cable or satellite system located in this State bears to
48 the total subscribers of a cable or satellite system. If the number of
49 subscribers cannot be accurately determined from the books and records
50 maintained by the taxpayer, the ratio shall be determined on the basis of
51 the applicable year's subscription statistics located in published surveys,

- 1 provided the source selected is consistently used from year to year for
2 this purpose.
- 3 (2) Broadcast. – The transmission of audio or video programming, directly or
4 indirectly, to viewers and listeners by any other method of communication or
5 combination of methods.
- 6 (3) Broadcaster. – A person that provides audio or video programming to
7 customers in this State by digital or analog means in exchange for one or more
8 of the following: advertising receipts, subscriber fees, license, rent, or similar
9 fees. The term includes a television or radio station licensed by the Federal
10 Communications Commission, including network-owned or affiliated stations,
11 a television or radio broadcast network, a cable program network, a distributor
12 of audio or video programming, a cable system operator, and satellite system
13 operator.
- 14 (4) Gross receipts. – The same meaning as the term "sales" in G.S. 105-130.4.
- 15 (5) Release or in release. – The placing of film or radio programming into service.
16 A film or radio program is placed into service when it is first broadcast to the
17 primary audience for entertainment, educational, commercial, artistic, or other
18 purpose. Each episode of a television or radio series is placed in service when it
19 is first broadcast. A program is not placed in service merely because it is
20 completed and therefore in a condition or state of readiness and availability for
21 broadcast or merely because it is previewed to prospective sponsors or
22 purchasers.
- 23 (6) Rent. – License fees or other payments or consideration provided in exchange
24 for the broadcast or other use of television or radio programming.
- 25 (7) Subscriber. – The individual residence or other outlet that is the ultimate
26 recipient of the transmission of the audio or video programming.
- 27 (b) Reasonable Approximation. – If the audience factor for a receipt cannot be determined,
28 the state or states of assignment shall be reasonably approximated. If a taxpayer is delivering
29 advertising or licensed content directly or indirectly to a known list of subscribers, the taxpayer
30 shall reasonably approximate the receipts attributable to this State's market using a percentage that
31 reflects the ratio of North Carolina subscribers to the total number of subscribers. If the taxpayer is
32 delivering advertising or licensed content through an intermediary and does not have access to the
33 list of subscribers, the taxpayer shall reasonably approximate the receipts attributable to this
34 State's market using a percentage that reflects the ratio of the North Carolina population to the
35 total population in the specific geographic area where the advertisement or licensed content is
36 materially used. Unless the taxpayer provides substantial evidence to the contrary, the area where
37 the advertisement or licensed content is materially used does not include areas outside the United
38 States. If the taxpayer is able to show with substantial evidence that the advertisement or licensed
39 content is materially used in a city within a foreign country, then the population of that city may
40 be included in the population ratio calculation. If the taxpayer is able to show with substantial
41 evidence that the advertisement or license content is materially used throughout a foreign county,
42 then the population of that foreign country may be included in the population ratio calculation. In
43 a case where the specified rules of reasonable approximation fail to reasonably approximate the
44 percentage of receipts attributable to this State's market, the Department may authorize an
45 alternate approach that reflects an attempt to obtain the most accurate assignment of receipts.
- 46 (c) Market for Receipts. – The receipts factor of a broadcaster is a fraction, the numerator
47 of which is the sum of the broadcaster's gross receipts from sources within the State and the
48 denominator of which is the sum of the broadcaster's gross receipts from transactions and activity
49 in the regular course of its trade or business everywhere. Advertising gross receipts and license
50 fees for audio or video programming in release are attributable to this State in accordance with the
51 audience factor in this State. Gross receipts from subscriber fees, rents, sales, or similar charges

1 from audio or video programming in release are attributable to this State based on the amount of
2 subscriber or other fees paid by customers in this State. A sale of audio or video programming on
3 tangible media is sourced to this State as sales of tangible personal property."

4 **SECTION 3.** Part 1 of Article 4 of Chapter 105 of the General Statutes is amended by
5 adding a new section to read:

6 **"§ 105-130.4B. Market based sourcing for banks.**

7 (a) Definitions. – The definitions in G.S. 105-130.4 apply to this section and the following
8 definitions apply to this section:

9 (1) Bank. – Defined in G.S. 105-130.7B.

10 (2) Billing address. – The location indicated in the books and records of the
11 taxpayer on the first day of the taxable year, or on the date in the taxable year
12 when the customer relationship began, as the address where any notice,
13 statement, or billing relating to the a customer's account is mailed.

14 (3) Borrower, card holder, or payor located in this State. – A borrower, credit card
15 holder, or payor whose billing address is in this State.

16 (4) Card issuer's reimbursement fee. – The fee a taxpayer receives from a
17 merchant's bank because one of the persons to whom the taxpayer has issued a
18 credit, debit, or similar type of card has charged merchandise or services to the
19 card.

20 (5) Credit card. – A card, or other means of providing information, that entitles the
21 holder to charge the cost of purchases, or a cash advance, against a line of
22 credit.

23 (6) Debit card. – A card, or other means of providing information, that enables the
24 holder to charge the cost of purchases, or a cash withdrawal, against the holder's
25 bank account or a remaining balance on the card.

26 (7) Loan. – Any extension of credit resulting from direct negotiations between the
27 taxpayer and its customer, and/or the purchase, in whole or in part, of such an
28 extension of credit from another. The term includes participations, syndications,
29 and leases treated as loans for federal income tax purposes.

30 (8) Loan secured by real property. – A loan or other obligation of which fifty
31 percent (50%) or more of the aggregate value of the collateral used to secure the
32 loan or other obligation, when valued at fair market value as of the time the
33 original loan or obligation was incurred, was real property.

34 (9) Merchant discount. – The fee, or negotiated discount, charged to a merchant by
35 the taxpayer for the privilege of participating in a program whereby a credit,
36 debit, or similar type of card is accepted in payment for merchandise or services
37 sold to the card holder, net of any cardholder charge-back and unreduced by
38 any interchange transaction or issuer reimbursement fee paid to another for
39 charges or purchased made by its cardholder.

40 (10) Participation. – An extension of credit in which an undivided ownership interest
41 is held on a prorate basis in a single loan or pool of loans and related collateral.
42 In a loan participation, the credit originator initially makes the loan and then
43 subsequently resells all or a portion of it to other lenders. The participation may
44 or may not be known to the borrower.

45 (11) Payor. – The person who is legally responsible for making payment to the
46 taxpayer.

47 (12) Real property owned. – Real property (i) on which the taxpayer may claim
48 depreciation for federal income tax purposes, or (ii) to which the taxpayer holds
49 legal title and on which no other person may claim depreciation for federal
50 income tax purposes or could claim depreciation if subject to federal income

1 tax. Real property does not include coin, currency, or property acquired in lieu
2 of or pursuant to a foreclosure.

3 (13) Syndication. – An extension of credit in which two or more persons fund and
4 each person is at risk only up to a specified percentage of the total extension of
5 credit or up to a specified dollar amount.

6 (14) Tangible personal property owned. – Tangible personal property (i) on which
7 the taxpayer may claim depreciation for federal income tax purposes or (ii) on
8 which the taxpayer holds legal title and on which no other person may claim
9 depreciation for federal income tax purposes could claim depreciation if subject
10 to federal income tax. Tangible personal property does not include coin,
11 currency, or property acquired in lieu of or pursuant to a foreclosure.

12 (15) Transportation property. – Vehicles and vessels capable of moving under their
13 own power as well as any equipment or containers attached to such property.
14 Examples of transportation property include aircraft, trains, water vessels,
15 motor vehicles, rolling stock, barges, and trailers.

16 (b) General Rule. – The receipts factor of a bank is a fraction, the numerator of which is
17 the total receipts of the taxpayer in this State during the income year, and the denominator of
18 which is the total receipts of the taxpayer everywhere during the income year. The method of
19 calculating receipts for purposes of the denominator is the same as the method used in determining
20 receipts for purposes of the numerator. The receipts factor includes only those receipts described
21 herein that are apportionable income for the taxable year. Notwithstanding any other provision
22 under this Part, the receipts from the following are excluded from both the numerator and the
23 denominator of the receipts factor:

24 (1) Receipts from a casual sale of property.

25 (2) Receipts exempt from taxation.

26 (3) The portion of receipts realized from the sale or maturity of securities or other
27 obligations that represents a return of principal.

28 (4) Receipts in the nature of dividends subtracted under G.S. 105-130.5(b)(3a) and
29 (3b) and dividends excluded for federal tax purposes.

30 (5) The portion of receipts from financial swaps and other similar financial
31 derivatives that represent the notional principal amount that generates the cash
32 flow traded in the swap agreement.

33 (c) Receipts from the Sale, Lease, or Rental of Real Property. – The numerator of the
34 receipts factor includes receipts from the sale, lease, or rental of real property owned by the
35 taxpayer if the property is located within this State or receipts from the sublease of real property if
36 the property is located within this State.

37 (d) Receipts from the Sale, Lease, or Rental of Tangible Personal Property. – The method
38 for calculating receipts from the sale, lease, or rental of tangible personal property is as follows:

39 (1) Tangible personal property. – Except as provided in subdivision (2) of this
40 subsection, the numerator of the receipts factor includes receipts from the sale,
41 lease, or rental of tangible personal property owned by the taxpayer if the
42 property is located within this State when it is first placed in service by the
43 lessee.

44 (2) Transportation property. – Receipts from the lease or rental of transportation
45 property owned by the taxpayer are included in the numerator of the receipts
46 factor to the extent that the property is used in this State. The extent an aircraft
47 will be deemed to be used in this State and the amount of receipts that is to be
48 included in the numerator of this State's receipts factor is determined by
49 multiplying all the receipts from the lease or rental of the aircraft by a fraction,
50 the numerator of which is the number of landings of the aircraft in this State
51 and the denominator of which is the total number of landings of the aircraft. If

1 the extent of the use of any transportation property within this State cannot be
2 determined, then the property will be deemed to be used wholly in the state in
3 which the property has its principal base of operations. A motor vehicle will be
4 deemed to be used wholly in the state in which it is registered.

5 (e) Interest, Fees, and Penalties from Loans Secured by Real Property. – The numerator of
6 the receipts factor includes interest, fees, and penalties from loans secured by real property if the
7 property is located within this State. If the property is located both within this State and one or
8 more other states, the receipts described in this subsection are included in the numerator of the
9 receipts factor if more than fifty percent (50%) of the fair market value of the real property is
10 located within this State. If more than fifty percent (50%) of the fair market value of the real
11 property is not located within any one state, then the receipts described in this subsection are
12 included in the numerator of the receipts factor if the borrower is located in this State. The
13 determination of whether the real property securing a loan is located within this State is made as of
14 the time the original agreement was made and any and all subsequent substitutions of collateral are
15 disregarded.

16 (f) Interest, Fees, and Penalties from Loans Not Secured by Real Property. – The
17 numerator of the receipts factor includes interest, fees, and penalties from loans not secured by
18 real property if the borrower is located in this State.

19 (g) Net Gains from the Sale of Loans. – The numerator of the receipts factor includes net
20 gains from the sale of loans. Net gains from the sale of loans include income recorded under the
21 coupon stripping rules of section 1286 of the Code. The amount of net gains from the sale of loans
22 that is included in the numerator is determined as follows:

23 (1) Secured by real property. – The amount of net gains, but not less than zero,
24 from the sale of loans secured by real property is determined by multiplying the
25 net gains by a fraction, the numerator of which is the amount included in the
26 numerator of the receipts factor pursuant to subsection (e) of this section, and
27 the denominator of which is the total amount of interest, fees, and penalties
28 from loans secured by real property.

29 (2) Not secured by real property. – The amount of net gains, but not less than zero,
30 from the sale of loans not secured by real property is determined by multiplying
31 the net gains by a fraction, the numerator of which is the amount included in the
32 numerator of the receipts factor pursuant to subsection (f) of this section, and
33 the denominator of which is the total amount of interest, fees, and penalties
34 from loans not secured by real property.

35 (h) Receipts from Interest, Fees, and Penalties from Card Holders. – The numerator of the
36 receipts factor includes interest, fees, and penalties charged to credit, debit, or similar card holders,
37 including annual fees and overdraft fees, if the card holder is located in this State.

38 (i) Net Gains from the Sale of Credit Card Receivables. – The numerator of the receipts
39 factor includes net gains, but not less than zero, from the sale of credit card receivables multiplied
40 by a fraction, the numerator of which is the amount included in the numerator of the receipts factor
41 pursuant to subsection (h) of this section, and the denominator of which is the taxpayer's total
42 amount of interest, fees, and penalties charged to card holders.

43 (j) Miscellaneous Receipts. – The numerator of the receipts factor includes all of the
44 following:

45 (1) Card issuer's reimbursement fees. – Receipts from card issuer's reimbursement
46 fees if the payor is located in this State.

47 (2) Receipts from merchant's discount. – Receipts from a merchant discount if the
48 payor is located in this State.

49 (3) Receipts from ATM fees. – Receipts from one or more of the following:

50 a. ATM fees that are not forwarded directly to another bank.

1 b. Fees for the use of an ATM owned or rented by the taxpayer, if the
2 ATM is located in this State.

3 (4) Loan servicing fees. – Receipts from loan servicing fees if the payor is located
4 in this State.

5 (5) Receipts from services. – Receipts from services not otherwise apportioned
6 under this section if the payor is located in this State.

7 (6) Receipts from investment assets and activity and trading assets and activity. –
8 Receipts from one or more of the following:

9 a. Interest and dividends from investment assets and activities and trading
10 assets and activities if the payor is located in this State.

11 b. Net gains and other income, but not less than zero, from investment
12 assets and activities and trading assets and activities multiplied by a
13 fraction, the numerator of which is the amount included in the
14 numerator of the receipts factor pursuant to sub-subdivision a. of this
15 subdivision, and the denominator of which is the taxpayer's total amount
16 of interest and dividends from investment assets and activities and
17 trading assets and activities.

18 (k) All Other Receipts. – All other receipts not specifically enumerated in this section are
19 included in the numerator of the receipts factor if the payor is located in this State."

20 **SECTION 4.** Article 9 of Chapter 105 of the General Statutes is amended by adding a
21 new section to read:

22 **"§ 105-262.2. Rules to implement market-based sourcing.**

23 (a) Purpose and Scope. – It is the policy of the State to provide necessary guidance on a
24 timely basis to corporate taxpayers subject to allocation and apportionment of income under
25 G.S. 105-130.4. Except as otherwise provided in this section, the expedited procedure for the
26 adoption of rules under G.S. 105-262.1 applies to the adoption of rules needed to administer
27 market-based sourcing of receipts.

28 (b) Fiscal Note. – The Office of State Budget and Management is not required to prepare a
29 fiscal note for a proposed rule under this section. The Secretary is not subject to the fiscal note
30 requirement under G.S. 105-262(c) or under G.S. 105-262.1(c)."

31 **SECTION 5.** The Utilities Commission shall adjust the rates for public utilities,
32 excluding water public utilities with less than two hundred thousand dollars (\$200,000) in annual
33 operating revenues, for the tax changes in Section 1 of this act. Each utility shall calculate the
34 cumulative net effect of the tax changes and file the calculations with proposed rate changes to
35 reflect the net prospective tax changes in utility customer rates within 60 days of the enactment of
36 this act. Any adjustments required to existing tax assets or liabilities reflected in the utility's books
37 and records required by the tax changes shall be deferred and reflected in customer rates in either
38 the utility's next rate case or earlier if deemed appropriate by the Commission.

39 **SECTION 6.** Sections 1 through 3 of this act are effective for taxable years beginning
40 on or after the later of (i) the taxable year that the corporate income tax rate is three percent (3%),
41 as provided in G.S. 105-130.3C, or (ii) January 1, 2018. The remainder of this act is effective
42 when it becomes law.