

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2015

U

D

BILL DRAFT 2015-RBxz-36A [v.3] (01/25)

(THIS IS A DRAFT AND IS NOT READY FOR INTRODUCTION)

Short Title: Market-Based Sourcing.

(Public)

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.(a)** G.S. 105-130.4(l) reads as rewritten:

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

7 ...

8 (l) Sales Factor. – ~~The~~ ~~(l)~~ The sales factor is a fraction, the numerator of which is the
9 total sales of the corporation in this State during the income year, and the denominator of which is
10 the 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. Except as otherwise provided by this section, a taxpayer's market for receipts is in
18 this State as provided below:

- 19 (1) In the case of sale, rental, lease, or license of real property, if and to the extent
20 the property is in this State.
21 (2) In the case of rental, lease, or license of tangible personal property, if and to the
22 extent the property is located in this State.
23 (3) In the case of sale of tangible personal property, if and to the extent the property
24 is received in this State by the purchaser. In the case of delivery of goods by
25 common carrier or by other means of transportation, including transportation by
26 the purchaser, the place at which the goods are ultimately received after all
27 transportation has been completed is considered the place at which the goods
28 are received by the purchaser. Direct delivery into this State by the taxpayer to
29 a person or firm designated by a purchaser from within or without the State
30 constitutes delivery to the purchaser in this State.
31 (4) In the case of sale of a service, if and to the extent the service is delivered to a
32 location in this State.
33 (5) In the case of intangible property that is rented, leased, or licensed, if and to the
34 extent the property is used in this State. Intangible property utilized in



* 2 0 1 5 - R B X Z - 3 6 A - V - 3 *

marketing a good or service to a consumer is "used in this State" if that good or service is purchased by a consumer who is in this State.

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

~~(2) Sales of tangible personal property are in this State if the property is received in this State by the purchaser. In the case of delivery of goods by common carrier or by other means of transportation, including transportation by the purchaser, the place at which the goods are ultimately received after all transportation has been completed shall be considered as the place at which the goods are received by the purchaser. Direct delivery into this State by the taxpayer to a person or firm designated by a purchaser from within or without the State shall constitute delivery to the purchaser in this State.~~

~~(3) Other sales are in this State if:~~

- ~~a. The receipts are from real or tangible personal property located in this State; or~~
- ~~b. The receipts are from intangible property and are received from sources within this State; or~~
- ~~c. The receipts are from services and the income-producing activities are in this State.~~

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

..."

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

"§ 105-130.4A. Market based sourcing for banks.

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

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

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

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

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

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

- 1 (6) Debit card. – A card, or other means of providing information, that enables the
2 holder to charge the cost of purchases, or a cash withdrawal, against the holder's
3 bank account or a remaining balance on the card.
- 4 (7) Loan. – Any extension of credit resulting from direct negotiations between the
5 taxpayer and its customer, and/or the purchase, in whole or in part, of such an
6 extension of credit from another. The term includes participations, syndications,
7 and leases treated as loans for federal income tax purposes.
- 8 (8) Loan secured by real property. – A loan or other obligation of which fifty
9 percent (50%) or more of the aggregate value of the collateral used to secure the
10 loan or other obligation, when valued at fair market value as of the time the
11 original loan or obligation was incurred, was real property.
- 12 (9) Merchant discount. – The fee, or negotiated discount, charged to a merchant by
13 the taxpayer for the privilege of participating in a program whereby a credit,
14 debit, or similar type of card is accepted in payment for merchandise or services
15 sold the card holder, net of any cardholder charge-back and unreduced by any
16 interchange transaction or issuer reimbursement fee paid to another for charges
17 or purchased made by its cardholder.
- 18 (10) Participation. – An extension of credit in which an undivided ownership interest
19 is held on a pro rate basis in a single loan or pool of loans and related collateral.
20 In a loan participation, the credit originator initially makes the loan and then
21 subsequently resells all or a portion of it to other lenders. The participation may
22 or may not be known to the borrower.
- 23 (11) Payor. – The person who is legally responsible for making payment to the
24 taxpayer.
- 25 (12) Real property owned. – Real property (i) on which the taxpayer may claim
26 depreciation for federal income tax purposes, or (ii) to which the taxpayer holds
27 legal title and on which no other person may claim depreciation for federal
28 income tax purposes or could claim depreciation if subject to federal income
29 tax. Real property does not include coin, currency, or property acquired in lieu
30 of or pursuant to a foreclosure.
- 31 (13) Syndication. – An extension of credit in which two or more persons fund and
32 each person is at risk only up to a specified percentage of the total extension of
33 credit or up to a specified dollar amount.
- 34 (14) Tangible personal property owned. – Tangible personal property (i) on which
35 the taxpayer may claim depreciation for federal income tax purposes, or (ii) to
36 which the taxpayer holds legal title and on which no other person may claim
37 depreciation for federal income tax purposes could claim depreciation if subject
38 to federal income tax. Tangible personal property does not include coin,
39 currency, or property acquired in lieu of or pursuant to a foreclosure.
- 40 (15) Transportation property. – Vehicles and vessels capable of moving under their
41 own power as well as any equipment or containers attached to such property.
42 Examples of transportation property include aircraft, trains, water vessels,
43 motor vehicles, rolling stock, barges, and trailers.

44 (b) General Rule. – The receipts factor of a bank is a fraction, the numerator of which is
45 the total receipts of the taxpayer in this State during the income year and the denominator of which
46 is the total receipts of the taxpayer everywhere during the income year. The method of calculating
47 receipts for purposes of the denominator is the same as the method used in determining receipts
48 for purposes of the numerator. The receipts factor includes only those receipts described herein
49 that are apportionable income for the taxable year. Notwithstanding any other provision under this
50 Part, the receipts from the following are excluded from both the numerator and the denominator of
51 the receipts factor:

- 1 (1) Receipts from casual sale of property.
2 (2) Receipts exempt from taxation.
3 (3) The portion of receipts realized from the sale or maturity of securities or other
4 obligations that represents a return of principal.
5 (4) Receipts in the nature of dividends subtracted under G.S. 105-130.5(b)(3a) and
6 (3b) and dividends excluded for federal tax purposes.
7 (c) Receipts from the Sale, Lease, or Rental of Real Property. – The numerator of the
8 receipts factor includes receipts from the sale, lease, or rental of real property owned by the
9 taxpayer if the property is located within this State or receipts from the sublease of real property if
10 the property is located within this State.
11 (d) Receipts from the Sale, Lease, or Rental of Tangible Personal Property. – The method
12 for calculating receipts from the sale, lease, or rental of tangible personal property is as follows:
13 (1) Tangible personal property. – Except as provided in subdivision (2) of this
14 subsection, the numerator of the receipts factor includes receipts from the sale,
15 lease, or rental of tangible personal property owned by the taxpayer if the
16 property is located within this State when it is first placed in service by the
17 lessee.
18 (2) Transportation property. – Receipts from the lease or rental of transportation
19 property owned by the taxpayer are included in the numerator of the receipts
20 factor to the extent that the property is used in this State. The extent an aircraft
21 will be deemed to be used in this State and the amount of receipts that is to be
22 included in the numerator of this State's receipts factor is determined by
23 multiplying all the receipts from the lease or rental of the aircraft by a fraction,
24 the numerator of which is the number of landings of the aircraft in this State
25 and the denominator of which is the total number of landings of the aircraft. If
26 the extent of the use of any transportation property within this State cannot be
27 determined, then the property will be deemed to be used wholly in the state in
28 which the property has its principal base of operations. A motor vehicle will be
29 deemed to be used wholly in the state in which it is registered.
30 (e) Interest, Fees, and Penalties from Loans Secured by Real Property. – The numerator of
31 the receipts factor includes interest, fees, and penalties from loans secured by real property if the
32 property is located within this State. If the property is located both within this State and one or
33 more other states, the receipts described in this subsection are included in the numerator of the
34 receipts factor if more than fifty percent (50%) of the fair market value of the real property is
35 located within this State. If more than fifty percent (50%) of the fair market value of the real
36 property is not located within any one state, then the receipts described in this subsection are
37 included in the numerator of the receipts factor if the borrower is located in this State. The
38 determination of whether the real property securing a loan is located within this State is made as of
39 the time the original agreement was made and any and all subsequent substitutions of collateral are
40 disregarded.
41 (f) Interest, Fees, and Penalties from Loans Not Secured by Real Property. – The
42 numerator of the receipts factor includes interest, fees, and penalties from loans not secured by
43 real property if the borrower is located in this State.
44 (g) Net Gains from the Sale of Loans. – The numerator of the receipts factor includes net
45 gains from the sale of loans. Net gains from the sale of loans include income recorded under the
46 coupon stripping rules of Section 1286 of the Code. The amount of net gains from the sale of loans
47 that is included in the numerator is determined as follows:
48 (1) Secured by real property. – The amount of net gains, but not less than zero,
49 from the sale of loans secured by real property is determined by multiplying the
50 net gains by a fraction, the numerator of which is the amount included in the
51 numerator of the receipts factor pursuant to subsection (e) of this section and

- 1 the denominator of which is the total amount of interest, fees, and penalties
2 from loans secured by real property.
- 3 (2) Not secured by real property. – The amount of net gains, but not less than zero,
4 from the sale of loans not secured by real property is determined by multiplying
5 the net gains by a fraction, the numerator of which is the amount included in the
6 numerator of the receipts factor pursuant to subsection (f) of this section and the
7 denominator of which is the total amount of interest, fees, and penalties from
8 loans not secured by real property.
- 9 (h) Receipts from Interest, Fees, and Penalties from Card Holders. – The numerator of the
10 receipts factor includes interest, fees, and penalties charged to credit, debit, or similar card holders,
11 including annual fees and overdraft fees, if the card holder is located in this State.
- 12 (i) Net Gains from the Sale of Credit Card Receivables. – The numerator of the receipts
13 factor includes net gains, but not less than zero, from the sale of credit card receivables multiplied
14 by a fraction, the numerator of which is the amount included in the numerator of the receipts factor
15 pursuant to subsection (h) of this section and the denominator of which is the taxpayer's total
16 amount of interest, fees, and penalties charged to card holders.
- 17 (j) Miscellaneous Receipts. – The numerator of the receipts factor includes all of the
18 following:
- 19 (1) Card issuer's reimbursement fees. – Receipts from card issuer's reimbursement
20 fees if the payor is located in this State.
- 21 (2) Receipts from merchant's discount. – Receipts from a merchant discount if the
22 payor is located in this State.
- 23 (3) Receipts from ATM fees. – Receipts from one or more of the following:
- 24 a. ATM fees that are not forwarded directly to another bank.
- 25 b. Fees for the use of an ATM owned or rented by the taxpayer, if the
26 ATM is located in this State.
- 27 (4) Loan servicing fees. – Receipts from loan servicing fees if the payor is located
28 in this State.
- 29 (5) Receipts from services. – Receipts from services not otherwise apportioned
30 under this section if the payor is located in this State.
- 31 (6) Receipts from investment assets and activity and trading assets and activity. –
32 Receipts from one or more of the following:
- 33 a. Interest and dividends from investment assets and activities and trading
34 assets and activities if the payor is located in this State.
- 35 b. Net gains and other income, but not less than zero, from investment
36 assets and activities and trading assets and activities multiplied by a
37 fraction, the numerator of which is the amount included in the
38 numerator of the receipts factor pursuant to sub-subdivision a. of this
39 subdivision and the denominator of which is the taxpayer's total amount
40 of interest and dividends from investment assets and activities and
41 trading assets and activities.
- 42 (k) All Other Receipts. – All other receipts not specifically enumerated in this section are
43 included in the numerator of the receipts factor if the payor is located in this State."

44 **SECTION 3.** Article 9 of Chapter 105 of the General Statutes is amended by adding a
45 new section to read:

46 **"§ 105-262.2. Rules to implement market based sourcing.**

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

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

4 **SECTION 4.** Sections 1 and 2 of this act are effective for taxable years beginning on
5 or after January 1, 2018. The remainder of this act is effective when it becomes law.