GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

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SENATE DRS85119-LYx-158 (3/9)

Short Title: Update Corporate Tax Apportionment Formula. (Public)

Sponsors: Senator Clodfelter.

Referred to:

A BILL TO BE ENTITLED

AN ACT TO ADJUST THE APPORTIONMENT FORMULA SALES FACTOR FOR BROADCASTERS AND PUBLISHERS AND TO UPDATE THE APPORTIONMENT FORMULA PROPERTY FACTOR FOR ALL CORPORATIONS BY EXCLUDING OUTER-JURISDICTIONAL PROPERTY FROM THAT FACTOR.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 105-130.4 reads as rewritten:

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

(a) As used in this section, unless the context otherwise requires:

(1) 'Apportionable income' means all income that is apportionable under the United States Constitution.

(1b) 'Broadcasting' means transmitting programming by radio or television any of the following:

a. Recipients within the viewing or listening area of the television or radio station that transmits the programming.

b. Recipients who directly access the programming by a cable television or satellite system.

(2) 'Commercial domicile' means the principal place from which the trade or business of the taxpayer is directed or managed.

(3) 'Compensation' means wages, salaries, commissions and any other form of remuneration paid to employees for personal services.

(4) 'Excluded corporation' means any corporation engaged in business as a building or construction contractor, a securities dealer, or a loan company or a corporation that receives more than fifty percent (50%) of its ordinary gross income from intangible property.

(4c) 'General formula' means a fraction, the numerator of which is the property factor plus the payroll factor plus twice the sales factor, and the denominator of which is four. If the sales factor does not exist, the denominator of the fraction is the number of existing factors. If the sales factor exists but the payroll factor or the property factor does not exist, the denominator of the fraction is the number of existing factors plus one.

(5) 'Nonapportionable income' means all income other than apportionable income.

(5b) 'Outer-jurisdictional property' means tangible personal property that is not physically located in any state. The term includes orbiting satellites and undersea transmission cables.

(5d) 'Programming' means any performance, event, or production, including news, sporting events, plays, stories, and other literary, commercial, educational, or artistic works. Each episode of a series is considered separately.

(6) 'Public utility' means any corporation that is subject to control of one of more of the following entities: the North Carolina Utilities Commission, the Federal Communications Commission, the Interstate Commerce Commission, the Federal Energy Regulatory Commission, or the Federal Aviation Agency; and that owns or operates for public use any plant, equipment, property, franchise, or license for the transmission of communications, the transportation of goods or persons, or the production, storage, transmission, sale, delivery or furnishing of electricity, water, steam, oil, oil products, or gas. The term also includes a motor carrier of property whose principal business activity is transporting property by motor vehicle for hire over the public highways of this State. The term does not include a corporation engaged in the business of broadcasting.

(7) 'Sales' means all gross receipts of the corporation except for the following receipts:

a. Receipts from a casual sale of property.

b. Receipts allocated under subsections (c) through (h) of this section.

c. Receipts exempt from taxation.

d. The portion of receipts realized from the sale or maturity of securities or other obligations that represents a return of principal.

(8) 'Casual sale of property' means the sale of any property which was not purchased, produced or acquired primarily for sale in the corporation's regular trade or business.

(9) 'State' means any state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, any territory or possession of the United States, and any foreign country or political subdivision thereof.

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(i) All apportionable income of ~~corporations other than public utilities and excluded corporations shall be apportioned to this State by multiplying the income by a fraction, the numerator of which is the property factor plus the payroll factor plus twice the sales factor, and the denominator of which is four. Provided, that where the sales factor does not exist, the denominator of the fraction shall be the number of existing factors and where the sales factor exists but the payroll factor or the property factor does not exist, the denominator of the fraction shall be the number of existing factors plus one.~~corporations, other than those corporations that are required to apportion income under one of the special formulas provided in subsections (m) through (s2) of this section, is apportioned to this State by multiplying the income by the general factor.

(j) (1) The property factor is a fraction, the numerator of which is the average value of the corporation's real and tangible personal property owned or rented and used in this State during the income year and the denominator of which is the average value of all the corporation's real and tangible personal property owned or rented and used during the income year. Neither the numerator nor the denominator includes outer-jurisdictional property.

(2) Property owned by the corporation is valued at its original cost. Property rented by the corporation is valued at eight times the net annual rental rate. Net annual rental rate is the annual rental rate paid by the corporation less any annual rental rate received by the corporation from subrentals except that subrentals shall not be deducted when they constitute apportionable income. Any property under construction and any property the income from which constitutes nonapportionable income shall be excluded in the computation of the property factor.

(3) The average value of property shall be determined by averaging the values at the beginning and end of the income year, but in all cases the Secretary of Revenue may require the averaging of monthly or other periodic values during the income year if reasonably required to reflect properly the average value of the corporation's property. A corporation that ceases its operations in this State before the end of its income year because of its intention to dissolve or to relinquish its certificate of authority, or because of a merger, conversion, or consolidation, or for any other reason whatsoever shall use the real estate and tangible personal property values as of the first day of the income year and the last day of its operations in this State in determining the average value of property, but the Secretary may require averaging of monthly or other periodic values during the income year if reasonably required to reflect properly the average value of the corporation's property.

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(s1) All apportionable income of a corporation engaged in the business of broadcasting is apportioned by multiplying the income by the general formula, after modifying the numerator of the sales factor in accordance with this section. The numerator includes all receipts from broadcasting programming multiplied by an audience factor. For radio broadcasts and for television broadcasts by a television station, the audience factor is the ratio of the corporation's North Carolina listening or viewing audience to the corporation's total listening or viewing audience. For television broadcasts by a cable television system, the audience factor is the ratio of the cable television system's subscribers located in this State to all the cable television system's subscribers. A corporation may use published rating or subscription statistics, as appropriate, to determine its audience factor.

(s2) All apportionable income of a corporation engaged in the business of publishing, selling, licensing, or distributing newspapers, magazines, trade journals, books, or other publications is apportioned by multiplying the income by the general formula, after modifying the numerator of the sales factor in accordance with this section. The numerator includes all the corporation's receipts from advertising and from the sale, rental, or other use of its customer lists multiplied by a circulation factor. The circulation factor is the ratio of the corporation's North Carolina purchasers and subscribers of a publication to the corporation's total purchasers and subscribers of the publication. A purchaser or subscriber of a publication is the final recipient of the publication. A separate circulation factor applies to each publication. If advertising in a publication is included only in copies of the publication distributed to a limited geographic area, the circulation factor is determined on the basis of the circulation within the limited geographic area. A corporation may use rating statistics published by the Audit Bureau of Circulations or other comparable statistics to determine the circulation factor for a publication.

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SECTION 2. This act is effective for taxable years beginning on or after January 1, 2005.