

**GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2005**

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SENATE BILL 541

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

Sponsors: Senator Clodfelter.

Referred to: Finance.

March 15, 2005

1 A BILL TO BE ENTITLED
2 AN ACT TO ADJUST THE APPORTIONMENT FORMULA SALES FACTOR FOR
3 BROADCASTERS AND PUBLISHERS AND TO UPDATE THE
4 APPORTIONMENT FORMULA PROPERTY FACTOR FOR ALL
5 CORPORATIONS BY EXCLUDING OUTER-JURISDICTIONAL PROPERTY
6 FROM THAT FACTOR.

7 The General Assembly of North Carolina enacts:

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

9 **"§ 105-130.4. Allocation and apportionment of income for corporations.**

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

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

13 (1b) 'Broadcasting' means transmitting programming by radio or television
14 any of the following:

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

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

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

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

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

27 (4c) 'General formula' means a fraction, the numerator of which is the
28 property factor plus the payroll factor plus twice the sales factor, and
29 the denominator of which is four. If the sales factor does not exist, the

1 denominator of the fraction is the number of existing factors. If the
2 sales factor exists but the payroll factor or the property factor does not
3 exist, the denominator of the fraction is the number of existing factors
4 plus one.

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

7 (5b) 'Outer-jurisdictional property' means tangible personal property that is
8 not physically located in any state. The term includes orbiting satellites
9 and undersea transmission cables.

10 (5d) 'Programming' means any performance, event, or production, including
11 news, sporting events, plays, stories, and other literary, commercial,
12 educational, or artistic works. Each episode of a series is considered
13 separately.

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

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

29 a. Receipts from a casual sale of property.

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

32 c. Receipts exempt from taxation.

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

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

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

42 ...

43 (i) ~~All apportionable income of corporations other than public utilities and~~
44 ~~excluded corporations shall be apportioned to this State by multiplying the income by a~~

1 ~~fraction, the numerator of which is the property factor plus the payroll factor plus twice~~
2 ~~the sales factor, and the denominator of which is four. Provided, that where the sales~~
3 ~~factor does not exist, the denominator of the fraction shall be the number of existing~~
4 ~~factors and where the sales factor exists but the payroll factor or the property factor does~~
5 ~~not exist, the denominator of the fraction shall be the number of existing factors plus~~
6 ~~one corporation, other than those corporations that are required to apportion income~~
7 ~~under one of the special formulas provided in subsections (m) through (s2) of this~~
8 ~~section, is apportioned to this State by multiplying the income by the general factor.~~

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

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

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

38 ...

39 (s1) All apportionable income of a corporation engaged in the business of
40 broadcasting is apportioned by multiplying the income by the general formula, after
41 modifying the numerator of the sales factor in accordance with this section. The
42 numerator includes all receipts from broadcasting programming multiplied by an
43 audience factor. For radio broadcasts and for television broadcasts by a television
44 station, the audience factor is the ratio of the corporation's North Carolina listening or

1 viewing audience to the corporation's total listening or viewing audience. For television
2 broadcasts by a cable television system, the audience factor is the ratio of the cable
3 television system's subscribers located in this State to all the cable television system's
4 subscribers. A corporation may use published rating or subscription statistics, as
5 appropriate, to determine its audience factor.

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

21"

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