

H. Apportionable and Nonapportionable Income (G.S. 105-130.4, 17 NCAC 05C.0700)

1. Division of Income – In General

When a taxpayer has income from sources within this State as well as income from sources outside this State, the division of income and the resulting determination of the portion of the taxpayer's entire net income that is attributable to this State shall be determined pursuant to the allocation and apportionment provisions set forth in G.S. 105-130.4. In such cases, the first step is to determine which portion of the taxpayer's entire net income constitutes "apportionable income" and which portion constitutes "nonapportionable income". The various items of nonapportionable income are then directly allocated to specific jurisdictions pursuant to the provisions of subsections (d) through (h) of G.S. 105-130.4. The apportionable income of the taxpayer other than public utilities and excluded corporations is divided between the jurisdictions in which the business is conducted pursuant to the property, payroll and sales apportionment factors set forth in subsections (j) through (1) of G.S. 105-130.4. The sum of (1) the items of nonapportionable income directly allocated to this State, plus (2) the amount of apportionable income attributable to this State by the apportionment formula generally constitutes the amount of the taxpayer's entire net income that is subject to tax under the income tax laws of this State.

The taxpayer shall classify income as apportionable or nonapportionable income on a consistent basis. In the event the taxpayer is not consistent in its reporting, it shall disclose in its return to this State the nature and extent of the inconsistency.

The word "apportionment" generally refers to the division of net income between jurisdictions by the use of a formula containing apportionment factors, and the word "allocation" generally refers to the assignment of net income to a particular jurisdiction.

2. Apportionable and Nonapportionable Income Defined

The Revenue Act defines "apportionable income" as all income that is apportionable under the United States Constitution. For purposes of administration of G.S. 105-130.4, the income of the taxpayer is apportionable income unless clearly classifiable as nonapportionable income under the law and these regulations. Nonapportionable income means all income other than apportionable income.

3. Apportionable and Nonapportionable Income – Application of Definitions

The classification of income by the labels customarily given them, such as interest, rents, royalties, and capital gains, is of no aid in determining whether that income is apportionable or nonapportionable income. The gain or loss recognized on the sale of property, for example, may be apportionable income or nonapportionable income depending upon the relation to the taxpayer's trade or business. In general, all income from transactions and activities that are dependent upon or contribute to the operations of a taxpayer is apportionable. Income from unrelated business activities that make up a discrete business enterprise is "nonbusiness" income.

4. Proration of Deductions Related to Apportionable and Nonapportionable Income

Any allowable deduction that is applicable both to apportionable and nonapportionable income or to more than one "trade or business" of the taxpayer shall be prorated to those classes of income or trades or businesses in determining income subject to tax. The taxpayer must be consistent in the proration of such deductions in filing returns under these regulations. (See Subject: "Attribution of Expenses to Nontaxable Income and to Nonapportionable Income and Property").