

17 NCAC 05F .0205 ECONOMIC SUBSTANCE FACTORS

Determining whether or not a transaction has economic substance is a fact-intensive inquiry that is dependent upon the facts and circumstances of each transaction made by a taxpayer. The Secretary shall consider or analyze all the facts and circumstances including the following:

- (1) The reasons for the transaction;
- (2) Whether the transaction was a reasonable means to accomplish the asserted purposes;
- (3) Expectations of benefits obtained from the transactions;
- (4) The effects the transaction had on the taxpayer's profits;
- (5) The existence of a reasonable or realistic potential for profit from making the transaction;
- (6) The objective economic impact of the transaction other than State income tax savings;
- (7) The transaction's effect on the taxpayer's State income tax liability;
- (8) The transaction's effect on the taxpayer's tax liability in other states;
- (9) The transaction's effect on the taxpayer's federal tax liability;
- (10) Whether the method of determining the amount of payment is an industry practice;
- (11) The change in the business operations of the parties, if any, after the transaction;
- (12) Whether assets were transferred between or among related parties;
- (13) Whether the business operations related to specific assets changed after any transfer of those assets;
- (14) Whether the entity transferring assets retained control over the assets;
- (15) The tax consequences of the transfer of assets;
- (16) The party or parties who created or developed the ideas which led to the transaction;
- (17) The party or parties who presented the ideas concerning the transaction to the taxpayer;
- (18) Whether the contemporaneous documentation explaining the transaction to the taxpayer discussed profit potential in addition to tax benefits;
- (19) The party or parties that drafted the agreements relating to the transaction;
- (20) The party or parties that negotiated the agreements relating to the transaction;
- (21) The party or parties that dictated the terms of the agreements relating to the transaction;
- (22) Cost-benefit analyses or other studies conducted related to the transaction;
- (23) Non-tax benefits obtained by the taxpayer as a result of the transaction; and
- (24) Whether the intercompany transaction resulted in a circular cash flow.

*History Note: Authority G.S. 105-130.5A; 105-262.1;
Eff. January 31, 2013;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. August 19, 2017.*