

17 NCAC 05G .0905 SERVICES DELIVERED ELECTRONICALLY THROUGH OR ON BEHALF OF AN INDIVIDUAL OR BUSINESS CUSTOMER

When a service is delivered electronically "on behalf of" or "through" a customer as defined in Rule .0901 of this Subchapter, the methodology provided under this Rule applies.

- (1) Rule of Determination. In the case of the delivery of a service by electronic transmission, where the service is delivered electronically to end users or other third-party recipients through or on behalf of the customer, the service is delivered in North Carolina to the extent that the end users or other third-party recipients are in North Carolina. For example, in the case of the direct or indirect delivery of advertising on behalf of a customer to the customer's intended audience by electronic means, the service is delivered in North Carolina to the extent that the audience for the advertising is in North Carolina. In the case of the delivery of a service to a customer that acts as an intermediary in reselling the service in substantially identical form to third-party recipients, the service is delivered in North Carolina to the extent that the end users or other third-party recipients receive the services in North Carolina. The provisions in this Sub-Item apply whether the taxpayer's customer is an individual customer or a business customer and whether the end users or other third-party recipients to which the services are delivered through or on behalf of the customer are individuals or businesses.
- (2) Rule of Reasonable Approximation. If the taxpayer cannot determine the state or states where the services are actually delivered to the end users or other third-party recipients either through or on behalf of the customer, but has sufficient information regarding the place of delivery that the taxpayer may reasonably approximate the state or states where the services are delivered, it shall reasonably do so.
- (3) Select Secondary Rules of Reasonable Approximation.
 - (a) If a taxpayer's service is the direct or indirect electronic delivery of advertising on behalf of its customer to the customer's intended audience, and if the taxpayer lacks sufficient information regarding the location of the audience that the taxpayer may determine or reasonably approximate that location, the taxpayer shall reasonably approximate the audience in a state for the advertising using the following secondary rules of reasonable approximation. If a taxpayer is delivering advertising directly or indirectly to a known list of subscribers, the taxpayer shall reasonably approximate the audience for advertising in a state using a percentage that reflects the ratio of the state's subscribers in the specific geographic area where the advertising is delivered relative to the total subscribers in that area. For a taxpayer with less information about its audience, the taxpayer shall reasonably approximate the audience in a state using the percentage that reflects the ratio of the state's population in the specific geographic area where the advertising is delivered relative to the total population in that area.
 - (b) If a taxpayer's service is the delivery of a service to a customer that then acts as the taxpayer's intermediary in reselling that service to end users or other third party recipients, and the taxpayer lacks sufficient information regarding the location of the end users or other third party recipients that the taxpayer may determine or reasonably approximate that location, the taxpayer shall reasonably approximate the extent to which the service is received in a state by using the percentage that reflects the ratio of the state's population in the specific geographic area where the taxpayer's intermediary resells the services, relative to the total population in that area.
 - (c) When using the secondary reasonable approximation methods provided in Sub-items (3)(a) or (b), the relevant specific geographic area of delivery includes only the areas where the service was substantially and materially delivered or resold. Unless the taxpayer demonstrates the contrary, it shall be presumed that the area where the service was substantially and materially delivered or resold does not include areas outside the United States.

History Note: Authority G.S. 105-130.4; S.L. 2016-94; Eff. January 1, 2020 (See S.L. 2019-246, s. 3).