

17 NCAC 05G .1102 LICENSE OF A MARKETING INTANGIBLE

(a) If a license is granted for the right to use intangible property in connection with the sale, lease, license, or other marketing of goods, services, or other items, such as a marketing intangible, to a consumer, the royalties or other licensing fees paid by the licensee for that marketing intangible shall be assigned to North Carolina to the extent that those fees are attributable to the sale or other provision of goods, services, or other items purchased or otherwise acquired by consumers in North Carolina.

(b) License of a marketing intangible includes the following when it is intended to promote consumer sales:

- (1) the license of a service mark, trademark, or trade name;
- (2) copyrights;
- (3) the license of a film, television or multimedia production or event for commercial distribution; and
- (4) a franchise agreement.

(c) In the case of the license of a marketing intangible, where a taxpayer has actual evidence of the amount or proportion of its receipts that is attributable to North Carolina, it shall assign that amount or proportion to North Carolina. In the absence of actual evidence of the amount or proportion of the licensee's receipts that are derived from North Carolina consumers, the portion of the licensing fee to be assigned to North Carolina shall be reasonably approximated by multiplying the total fee by a percentage that reflects the ratio of the North Carolina population in the specific geographic area where the licensee makes material use of the intangible property to regularly market its goods, services, or other items relative to the total population in that area.

(d) If the license of a marketing intangible is for the right to use the intangible property in connection with sales or other transfers at wholesale rather than directly to retail customers, the portion of the licensing fee to be assigned to North Carolina shall be reasonably approximated by multiplying the total fee by a percentage that reflects the ratio of the North Carolina population in the specific geographic area where the licensee's goods, services, or other items are ultimately and materially marketed using the intangible property relative to the total population of that area. Unless the taxpayer demonstrates that the marketing intangible is materially used in the marketing of items outside the United States, the fees from licensing that marketing intangible shall be presumed to be derived from within 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).*