

North Carolina tax legislation enacted

Overview

On November 8, 2019, Governor Roy Cooper signed Senate Bill 557 (S.B. 557),¹ into law. S.B. 557 contains significant modifications to North Carolina law, which are effective for tax years beginning on or after January 1, 2020, unless specified otherwise, including the following:

- Expands the definition of holding company for franchise tax purposes
- Market based sourcing and a sales factor “throw out” rule
- Requires marketplace facilitators to collect and remit sale and use tax

This tax alert provides a summary of certain law changes in S.B. 557. These provisions have various effective dates, as specified. The alert does not provide a comprehensive summary of all law changes contained in S.B. 557.

Expansion of holding company definition

The bill expanded the definition of holding companies. More specifically, S.B. 557 expands the definition of “holding company” to include a company that owns patents, copyrights, trademarks, secret processes, and similar intangible assets that represent more than 80% of its total assets, or receives royalties and license fees that represent 80% of its gross income, and it is owned, directly or indirectly, 100% by a corporation that meets all of the following conditions:

- Is engaged in manufacturing, as defined by NAICS
- Generates revenues in excess of \$5 billion from goods that it manufactures
- Includes in its net worth, kept in accordance with generally accepted accounting principles, an investment that is based on the net worth of its subsidiary that owns the patents, copyrights, trademarks, secret processes, and similar intangible assets.² As stated in the bill, the provision is “effective for taxable years beginning on or after January 1, 2020 and applicable to the calculation of franchise tax reported on the 2019 and later corporate income tax returns.”³
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Market based sourcing

Effective for taxable years beginning on or after January 1, 2020,⁵ S.B. 557 generally provides that receipts are sourced to North Carolina if the taxpayer’s market for the sale is in North Carolina.⁶ As stated in the bill, “if the market for a receipt cannot be determined, the state or states of assignment shall be reasonably approximated.⁷ In a case in which a taxpayer cannot ascertain the state or states to which receipts of a sale are to be assigned through reasonable approximation, the receipts must be excluded from the denominator of a taxpayer’s sales factor.”⁸

S.B. 557 defines market for sales in North Carolina as follows:

- Receipts involving the sale, rental, lease, or license of real property, if and to the extent the property is located in North Carolina
- Receipts involving the rental, lease, or license of tangible personal property, if and to the extent the property is located in North Carolina

¹ Session Law 2019-246 (S.B. 557). A copy of the law is accessible [here](#).

² S.B. 557, Sec. 2.(a), amending N.C. G.S. 105-120.2(c)(3).

³ S.B. 557, Sec. 2.(b).

⁴ S.B. 557, Sec. 2.(b).

⁵ S.B. 557, Sec. 3.(g).

⁶ S.B. 557, Sec. 3.(a), amending N.C. G.S. 105-130.4(l).

⁷ *Id.*

⁸ *Id.*

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- Receipts involving the sale of tangible personal property, if and to the extent the property is received in North Carolina by the purchaser. Delivery of goods by common carrier or by other means of transportation, including transportation by the purchaser, the place at which the goods are ultimately received after all transportation has been completed is considered the place at which the goods are received by the purchaser. Direct delivery into North Carolina by the taxpayer to a person or firm designated by a purchaser from within or without North Carolina constitutes delivery to the purchaser in North Carolina.
- Receipts from services, if and to the extent the service is delivered to a location in North Carolina
- Receipts from intangible property that is rented, leased, or licensed, if and to the extent the property is used in North Carolina. Intangible property utilized in marketing a good or service to a consumer is “used in this state” if that good or service is purchased by a consumer who is in North Carolina.
- Receipts from intangible property that is sold, if and to the extent the property is used in North Carolina.⁹

S.B. 557 provides specific rules relating to wholesale content distributors and banks.¹⁰ The bill provides specific definitions for these entities to determine if the market for receipts is in the State, thus required to be sourced to North Carolina.¹¹

Marketplace facilitators

Effective February 1, 2020 and applying to sales occurring on or after that date,¹² S.B. 557 enacts rules to require marketplace facilitators to collect and remit sales and use tax on marketplace facilitated sales.¹³ The bill also defines marketplace, marketplace facilitated sale, marketplace facilitator, and marketplace seller.¹⁴ The rules apply to marketplace facilitators that make sales, including all marketplace facilitated sales for all marketplace sellers, sourced to North Carolina for the previous or current calendar year that meet either of the following: Gross sales in excess of \$100,000, or 200 or more separate transactions.¹⁵

A marketplace facilitator that meets the threshold is considered the retailer of each marketplace facilitated sale it makes and is liable for collecting and remitting the sales and use tax on all such sales.¹⁶ A marketplace facilitator is required to collect and remit sales tax regardless of whether a marketplace seller for whom it makes a marketplace facilitated sale meets any of the following conditions: has a physical presence in North Carolina, is required to be registered to collect and remit sales and use tax in North Carolina, would have been required to collect and remit sales and use tax in North Carolina had the sale not been made through a marketplace, or would not have been required to collect and remit sales and use tax in North Carolina had the sale not been made through a marketplace.¹⁷

S.B. 557 mandates that marketplace facilitators must provide, or make available, the gross sales and number of separate transactions to each marketplace seller no later than 10 days after the end of each calendar month for marketplace facilitated sales made on behalf of the marketplace seller, which are sourced to North Carolina.¹⁸

Additional changes

In addition to the changes summarized above, S.B. 557 amends other state sales and use tax provisions, as well as certain excise tax and corporate income tax provisions. S.B. 557 also provides individual income tax law changes with various effective dates.

Considerations

Corporate taxpayers should review the impacts of the new law on any state tax obligations in North Carolina, particularly with regard to the changes to the apportionment factor provisions and the computation of net worth. Taxpayers are advised to consult with their North Carolina tax advisors for further assistance.

⁹ S.B. 557, Sec. 3.(a), adding N.C. G.S. 105-130.4(l)(1)-(l)(6).

¹⁰ S.B. 557, Sec. 3.(a), adding N.C. G.S. 105-130.4(l1) and (l2).

¹¹ *Id.*

¹² S.B. 557, Sec. 4.(q).

¹³ S.B. 557, Sec. 4.(c), adding N.C. G.S. 105-164.4J.

¹⁴ S.B. 557, Sec. 4.(a), adding N.C. G.S. 105-164.3(20a)-(20d).

¹⁵ S.B. 557, Sec. 4.(c), adding N.C. G.S. 105-164.4J(a).

¹⁶ S.B. 557, Sec. 4.(c), adding N.C. G. S. 105-164.4J(b)

¹⁷ *Id.*

¹⁸ S.B. 557, Sec. 4.(c), adding N.C. G.S. 105-164.4J(c).

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