

**GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2017**

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SENATE BILL 353

Short Title: Audience Factor for Apportionment. (Public)

Sponsors: Senators Tillman, Brock, Tucker (Primary Sponsors); Hise and Rabin.

Referred to: Rules and Operations of the Senate

March 23, 2017

1 A BILL TO BE ENTITLED
2 AN ACT TO USE THE AUDIENCE FACTOR TO SOURCE RECEIPTS OF
3 BROADCASTERS FOR MULTISTATE INCOME AND FRANCHISE TAX
4 APPORTIONMENT.

5 The General Assembly of North Carolina enacts:

6 **SECTION 1.** G.S. 105-130.4 reads as rewritten:

7 **"§ 105-130.4. Allocation and apportionment of income for corporations.**

8 (a) As used in this section, unless the context otherwise requires:

9 ...

10 (1a) Audience factor. – The factor determined by the ratio provided in this
11 subdivision. The ratio is as follows:

12 a. Television station. – The ratio that the viewing audience located in
13 this State for a television station bears to the total viewing audience
14 for a television station.

15 b. Radio station. – The ratio that the listening audience in this State for
16 a radio station bears to the total listening audience for a radio station.

17 c. Cable or satellite program and channel broadcasts. – The ratio that
18 the subscribers located in this State to a cable or satellite system bear
19 to the total subscribers to a cable or satellite system. If the number of
20 subscribers cannot be accurately determined from the books and
21 records maintained by the taxpayer, the ratio shall be determined on
22 the basis of the applicable year's subscription statistics located in
23 published surveys, provided the source selected is consistently used
24 from year to year for this purpose.

25 (1b) Broadcast. – The transmission of audio or video programming, directly or
26 indirectly, to viewers and listeners by any method of communication or
27 combination of methods.

28 (1c) Broadcaster. – A person that provides audio or video programming to
29 customers in this State by digital or analog means in exchange for one or
30 more of the following: advertising receipts, subscriber fees, license, rent, or
31 similar fees. The term includes a television or radio station licensed by the
32 Federal Communications Commission, including network-owned or
33 network-affiliated stations, a television or radio broadcast network, a cable
34 program network, a distributor of audio or video programming, a cable
35 system operator, and satellite system operator.

36 ...



1 (4a) Gross receipts. – The same meaning as the term "sales" in G.S. 105-130.4.

2 ...

3 (8a) Release or in release. – The placing of film or radio programming into
4 service. A film or radio program is placed into service when it is first
5 broadcast to the primary audience for entertainment, educational,
6 commercial, artistic, or other purposes. Each episode of a television or radio
7 series is placed in service when it is first broadcast. A program is not placed
8 in service merely because it is completed and therefore in a condition or
9 state of readiness and availability for broadcast or merely because it is
10 previewed to prospective sponsors or purchasers.

11 (8b) Rent. – License fees or other payments or consideration provided in
12 exchange for the broadcast or other use of television or radio programming.

13 ...

14 (10) Subscriber. – The individual residence or other outlet that is the ultimate
15 recipient of the transmission of the audio or video programming.

16 ...

17 (u) Broadcasters. – The sales factor for a broadcaster shall be determined as provided in
18 this subsection. The sales factor of a broadcaster is a fraction, the numerator of which is the
19 sum of the broadcaster's gross receipts from sources within the State, and the denominator of
20 which is the sum of the broadcaster's gross receipts from transactions and activity in the regular
21 course of its trade or business everywhere. Advertising gross receipts and license fees for audio
22 or video programming in release are attributable to this State in accordance with the audience
23 factor in this State. Gross receipts from subscriber fees, rents, sales, or similar charges from
24 audio or video programming in release are attributable to this State based on the amount of
25 subscriber or other fees paid by customers in this State. A sale of audio or video programming
26 on tangible media is sourced to this State as a sale of tangible personal property.

27 If the audience factor for a receipt cannot be determined, the state or states of assignment
28 shall be reasonably approximated. If a taxpayer is delivering advertising or licensed content
29 directly or indirectly to a known list of subscribers, the taxpayer shall reasonably approximate
30 the receipts attributable to this State's market using a percentage that reflects the ratio of North
31 Carolina subscribers to the total number of subscribers. If the taxpayer is delivering advertising
32 or licensed content through an intermediary and does not have access to the list of subscribers,
33 the taxpayer shall reasonably approximate the receipts attributable to this State's market using a
34 percentage that reflects the ratio of the North Carolina population to the total population in the
35 specific geographic area where the advertisement or licensed content is materially used. Unless
36 the taxpayer provides substantial evidence to the contrary, the area where the advertisement or
37 licensed content is materially used does not include areas outside the United States. If the
38 taxpayer is able to show with substantial evidence that the advertisement or licensed content is
39 materially used in a city within a foreign country, then the population of that city may be
40 included in the population ratio calculation. If the taxpayer is able to show with substantial
41 evidence that the advertisement or license content is materially used throughout a foreign
42 county, then the population of that foreign country may be included in the population ratio
43 calculation. In a case where the specified rules of reasonable approximation fail to reasonably
44 approximate the percentage of receipts attributable to this State's market, the Department may
45 authorize an alternate approach that reflects an attempt to obtain the most accurate assignment
46 of receipts."

47 **SECTION 2.** This act is effective for taxable years beginning on or after January 1,
48 2018.