

§ 105-130.7A. Royalty income reporting option.

(a) Purpose. – Royalty payments received for the use of intangible property in this State are income derived from doing business in this State. This section provides taxpayers with an option concerning the method by which these royalties can be reported for taxation when the recipient and the payer are related members. As provided in this section, these royalty payments can be either (i) deducted by the payer and included in the income of the recipient, or (ii) added back to the income of the payer and excluded from the income of the recipient. Exercising the royalty reporting income option provided in this section does not prevent a taxpayer from having taxable nexus in this State as otherwise provided in this Article and does not permit the recipient of the income to exclude royalty payments from its calculation of sales as defined in G.S. 105-130.4.

(b) Definitions. – The following definitions apply in this section:

- (1) Component member. – Defined in section 1563(b) of the Code.
- (1a) Intangible property. – Copyrights, patents, and trademarks.
- (2) North Carolina royalty. – An amount charged that is for, related to, or in connection with the use in this State of intangible property. The term includes royalty and technical fees, licensing fees, and other similar charges.
- (3) Own. – To own directly, indirectly, beneficially, or constructively. The attribution rules of section 318 of the Code apply in determining ownership under this section.
- (4) Related entity. – Any of the following:
 - a. A stockholder who is an individual, or a member of the stockholder's family enumerated in section 318 of the Code, if the stockholder and the members of the stockholder's family own in the aggregate at least eighty percent (80%) of the value of the taxpayer's outstanding stock.
 - b. A stockholder, or a stockholder's partnership, limited liability company, estate, trust, or corporation, if the stockholder and the stockholder's partnerships, limited liability companies, estates, trusts, and corporations own in the aggregate at least fifty percent (50%) of the value of the taxpayer's outstanding stock.
 - c. A corporation, or a party related to the corporation in a manner that would require an attribution of stock from the corporation to the party or from the party to the corporation under the attribution rules of section 318 of the Code, if the taxpayer owns at least eighty percent (80%) of the value of the corporation's outstanding stock.
- (5) Related member. – A person that, with respect to the taxpayer during any part of the taxable year, is one or more of the following:
 - a. A related entity.
 - b. A component member.
 - c. A person to or from whom there would be attribution of stock ownership in accordance with section 1563(e) of the Code if the phrase "5 percent or more" were replaced by "twenty percent (20%) or more" each place it appears in that section.
- (6) Royalty payment. – Either of the following:
 - a. Expenses, losses, and costs paid, accrued, or incurred for North Carolina royalties, to the extent the amounts are allowed as deductions or costs in determining taxable income before operating loss deduction and special deductions for the taxable year under the Code.

- b. Amounts directly or indirectly allowed as deductions under section 163 of the Code, to the extent the amounts are paid, accrued, or incurred for a time price differential charged for the late payment of any expenses, losses, or costs described in this subdivision.
- (7) Trademark. – A trademark, trade name, service mark, or other similar type of intangible asset.
- (8) Use. – Use of intangible property includes direct or indirect maintenance, management, ownership, sale, exchange, or disposition of the intangible property.
- (c) Election. – For the purpose of computing its State net income, a taxpayer must add royalty payments made to, or in connection with transactions with, a related member during the taxable year. This addition is not required for an amount of royalty payments that meets any of the following conditions:
 - (1) The related member includes the amount as income on a return filed under this Part for the same taxable year that the amount is deducted by the taxpayer, and the related member does not elect to deduct the amount pursuant to G.S. 105-130.5(b)(20).
 - (2) The taxpayer can establish that the related member during the same taxable year directly or indirectly paid, accrued, or incurred the amount to a person who is not a related member.
 - (3) The taxpayer can establish that the related member to whom the amount was paid is organized under the laws of a country other than the United States, the country has a comprehensive income tax treaty with the United States, and the country imposes a tax on the royalty income of the related member at a rate that equals or exceeds the rate set in G.S. 105-130.3.
- (d) Indirect Transactions. – For the purpose of this section, an indirect transaction or relationship has the same effect as if it were direct. (2001-327, s. 1(b); 2003-416, s. 15; 2006-66, s. 24A.3(a); 2006-196, s. 10; 2016-5, s. 1.5.)