

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1993

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SENATE BILL 832

Short Title: DOR Administrative Hearings.

(Public)

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Sponsors: Senator Winner of Buncombe.

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Referred to: Finance.

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April 13, 1993

A BILL TO BE ENTITLED

1 AN ACT TO PROVIDE A TIMETABLE WITHIN WHICH THE DEPARTMENT OF  
2 REVENUE MUST HOLD ADMINISTRATIVE HEARINGS AND RENDER  
3 DECISIONS.  
4

5 The General Assembly of North Carolina enacts:

6 Section 1. G.S. 105-241.1(c) reads as rewritten:

7 "(c) A taxpayer who objects to a proposed assessment of tax is entitled to a  
8 hearing before the Secretary as provided in this subsection. To obtain a hearing, the  
9 taxpayer must file a written request either for a hearing or for a written statement of the  
10 information and evidence upon which the proposed assessment is based. If the notice of  
11 a proposed assessment was mailed, the taxpayer's request must be filed within 30 days  
12 after the date the notice was postmarked; if the notice of a proposed assessment was  
13 delivered in person, the taxpayer's request must be filed within 30 days after the date the  
14 notice was delivered.

15 Within 45 days after a taxpayer files a timely request for a written statement of the  
16 information and evidence upon which the proposed assessment is based, the Secretary  
17 shall provide such a written statement to the taxpayer. A taxpayer who requests a  
18 written statement in accordance with this subsection must, to obtain a hearing, file a  
19 written request for a hearing within 30 days after receiving the written statement.

20 Within 60 days after a timely request for a hearing has been filed and at least 10  
21 days before the date set for the hearing, the Secretary shall notify the taxpayer in writing  
22 of the time and place at which the hearing will be conducted. The date set for the  
23 hearing shall be within 90 days after the timely request for a hearing was filed. The date

1 set for the hearing may be postponed once, at the request of the taxpayer or the  
2 Secretary, for a period of up to 90 days.

3 The taxpayer may present any objections to the proposed assessment at the hearing.  
4 The rules of evidence do not apply to a hearing conducted under this subsection.

5 Within 90 days after conducting a hearing under this subsection, the Secretary shall  
6 make a decision on the proposed assessment, notify the taxpayer of the decision, and  
7 assess the taxpayer for the amount of tax determined to be due. Upon assessment, the  
8 tax shall become immediately due and collectible.

9 ~~Any taxpayer who objects to a proposed assessment of tax or additional tax shall be~~  
10 ~~entitled to a hearing before the Secretary of Revenue provided application therefor is~~  
11 ~~made in writing within 30 days after the mailing or delivery of the notice required by~~  
12 ~~subsection (a). If application for a hearing is made in due time, the Secretary of~~  
13 ~~Revenue shall set a time and place for the hearing and after considering the taxpayer's~~  
14 ~~objections shall give written notice of his decision to the taxpayer. The amount of tax or~~  
15 ~~additional tax due from the taxpayer as finally determined by the Secretary shall~~  
16 ~~thereupon be assessed and upon assessment shall become immediately due and~~  
17 ~~collectible.~~

18 ~~Provided, the taxpayer may request the Secretary at any time within 30 days of~~  
19 ~~notice of such proposed assessment for a written statement, or transcript, of the~~  
20 ~~information and the evidence upon which the proposed assessment is based, and the~~  
21 ~~Secretary of Revenue shall furnish such statement, or transcript, to the taxpayer.~~  
22 ~~Provided, further, after request by the taxpayer for such written statement, or transcript,~~  
23 ~~the taxpayer shall have 30 days after the receipt of the same from the Secretary of~~  
24 ~~Revenue to apply in writing for such hearing, explaining in detail his objections to such~~  
25 ~~proposed assessment. If no request for such hearing is so made, such proposed~~  
26 ~~assessment shall be final and conclusive."~~

27 Sec. 2. G.S. 105-241.2 reads as rewritten:

28 **"§ 105-241.2. Administrative review.**

29 (a) Petition for Administrative Review. – Without having to pay the tax or  
30 additional tax assessed by the Secretary under this Chapter, any taxpayer may ~~secure~~  
31 obtain from the Tax Review Board an administrative review with respect to ~~his~~ the  
32 taxpayer's liability for the tax or additional tax assessed by the Secretary. Such a review  
33 may be obtained only if the taxpayer has obtained a hearing before the Secretary and the  
34 Secretary has rendered a final decision with respect to the taxpayer's liability. If a  
35 taxpayer has made a timely written demand for refund of an alleged overpayment and  
36 the Secretary has issued a decision denying part or all of the claimed refund, the  
37 taxpayer may obtain from the Tax Review Board an administrative review of the  
38 Secretary's decision. To obtain ~~such~~ administrative review the taxpayer shall:

39 (1) ~~File~~ Within 30 days after the Secretary's final decision is issued, file  
40 with the Tax Review Board, with a copy to the Secretary, notice of  
41 intent to file a petition for review, such notice to be filed within 30 days  
42 after notice of the Secretary's final decision is issued; review, and

43 (2) ~~File~~ Within 60 days after the Secretary's final decision is  
44 issued, file with the Tax Review Board, with a copy to the Secretary,

1 a petition requesting administrative review and stating in concise  
2 terms the grounds upon which review is sought, such petition to be  
3 filed within 60 days after the expiration of the period provided in  
4 subdivision (1) for filing of notice of intent to petition for review. sought.

5 (b) Secretary to Provide Records. – Upon receipt by the Secretary of the  
6 taxpayer's petition, the Secretary shall transmit to the Tax Review Board all of the  
7 records, data, evidence and other materials ~~which he has in the Secretary's possession~~  
8 pertaining to the matters which the Tax Review Board is being requested by the  
9 taxpayer to review. ~~He~~ The Secretary shall also transmit to the Board a copy of ~~his~~ the  
10 decision respecting such matters.

11 (b1) Hearing. – Within 60 days after a timely petition for administrative review  
12 has been filed and at least 10 days before the date set for the hearing, the Tax Review  
13 Board shall notify the taxpayer and the Secretary in writing of the time and place at  
14 which the hearing will be conducted. The hearing shall be held in Raleigh and the date  
15 set for the hearing shall be within 90 days after the timely petition for administrative  
16 review was filed. The date set for the hearing may be postponed once, at the request of  
17 the taxpayer or the Secretary, for a period of up to 90 days. The Tax Review Board shall  
18 fix a time for reviewing the Secretary's decision and shall hear the same in the City of Raleigh.  
19 ~~The Board shall give notice of the time and place of such hearing to the petitioner and to the~~  
20 ~~Secretary at least 10 days prior thereto.~~ Officers and employees of the Revenue  
21 Department, when so requested by the Board, shall attend hearings on such reviews and  
22 shall furnish the Board with all information they have respecting the asserted liability.  
23 The Tax Review Board may establish ~~by regulation~~ the procedure to be followed in  
24 hearings before it and ~~is authorized to~~ may establish ~~by regulations~~ a schedule of costs of  
25 the proceedings. At least two members of the Board shall sit at the hearing and all  
26 members shall consider and decide the matters on review.

27 (b2) Decision of Tax Review Board. ~~The~~ Within 90 days after conducting a  
28 hearing under this section, the Board shall confirm, modify, reverse, reduce, or increase  
29 the assessment or decision of the Secretary, and it shall furnish a written copy of its order  
30 to the Secretary and shall ~~Secretary, and~~ serve a written copy of its order upon the  
31 taxpayer by personal service or by registered mail (return receipt requested). In the event  
32 if the decision of the Tax Review Board should ~~does~~ not result in a reduction of the tax  
33 liability asserted by the Secretary to be due, or if the Tax Review Board should ~~dismiss~~  
34 ~~the petition under the provisions of~~ dismisses the petition under subsection (c) of this  
35 section, the costs of the proceeding shall be added to and shall become a part of the tax  
36 liability to be collected by the Secretary. ~~In the event~~ If the decision of the Tax Review  
37 Board should result in a reduction of the tax liability asserted by the Secretary to be ~~due,~~  
38 due or in a refund to the taxpayer, no costs shall be taxed against the taxpayer. Any  
39 overpayment of tax determined by the decision of the Tax Review Board, together with  
40 interest thereon at the rate and for the period provided under G.S. 105-266, shall be  
41 refunded by the State.

42 (c) F frivolous Petitions. – Upon receipt of a petition requesting administrative  
43 review as provided in the preceding subsection, the Tax Review Board shall examine  
44 the petition and the records and other data transmitted by the Secretary pertaining to the

1 matter for which review is sought, and if it should appear from such records and data  
2 that the petition is frivolous or filed for purpose of delay, the Tax Review Board shall  
3 dismiss the petition for review and, in addition, is authorized, in its discretion, to impose  
4 a penalty not to exceed one hundred dollars (\$100.00), which penalty shall be in  
5 addition to the tax, penalties, interests, and costs, and shall be collected in the same  
6 manner as the principal tax liability.

7 ~~(d) Any taxpayer may also apply to the Tax Review Board under the provisions~~  
8 ~~of this section for administrative review of the decision of the Secretary of Revenue~~  
9 ~~with respect to an alleged overpayment of tax imposed by this Chapter provided such~~  
10 ~~taxpayer has filed a demand in writing for refund of such overpayment within the time~~  
11 ~~allowed by law for the filing of such demand and the Secretary has issued a decision~~  
12 ~~denying the claimed refund. To obtain such review the taxpayer shall file notice of~~  
13 ~~intent to petition for review with the Tax Review Board, with copy to the Secretary,~~  
14 ~~within 30 days after issuance of the Secretary's decision. The taxpayer shall also perfect~~  
15 ~~the application for review by filing with the Tax Review Board, with a copy to the~~  
16 ~~Secretary, a petition requesting administrative review and stating in concise terms the~~  
17 ~~grounds upon which review is sought. Such petition shall be filed within 60 days after~~  
18 ~~expiration of the period provided for filing notice of intent to petition for review. The~~  
19 ~~Tax Review Board shall consider and dispose of the petition for review in the manner~~  
20 ~~provided in subsection (b) for the consideration and disposition of petitions for review~~  
21 ~~of any tax or additional tax assessed by the Secretary. No costs shall, however, be taxed~~  
22 ~~against the taxpayer if the decision of the Tax Review Board results in a refund to the~~  
23 ~~taxpayer. Any overpayment of tax determined by the decision of the Tax Review Board,~~  
24 ~~together with interest thereon at the rate and for the period provided under G.S. 105-~~  
25 ~~266, shall be refunded by the State.~~

26 ~~(e) Jeopardy Assessments. – At any time the Secretary of Revenue shall have~~  
27 ~~authority, if in his may, if in the Secretary's opinion, such action is necessary for the~~  
28 ~~protection of the interest of the State, to proceed at once to levy the assessment for the~~  
29 ~~amount of the tax against the property of the taxpayer seeking the administrative review.~~  
30 ~~In levying said the assessment the Secretary shall make a certificate setting forth~~  
31 ~~verifying the essential parts relating to the tax, including the amount thereof asserted to~~  
32 ~~be due, the date when same is asserted to have become due and payable, the person,~~  
33 ~~firm, or corporation chargeable therewith, and the nature of the tax. Under his hand and~~  
34 ~~seal the The Secretary shall transmit said this certificate to the clerk of the superior court~~  
35 ~~of any county in which the taxpayer resides or has property; whereupon, it shall be the~~  
36 ~~duty of the clerk of the superior court of the county to docket the said certificate and to~~  
37 ~~index the same it on the cross index of judgments. When so docketed and indexed, said~~  
38 ~~the certificate of tax liability shall constitute a lien upon the property of the taxpayer to~~  
39 ~~the same extent as that provided for by G.S. 105-241. No execution shall issue on said~~  
40 ~~the certificate before final determination of the administrative review by the Tax~~  
41 ~~Review Board; provided, however, if the Secretary determines that the collection of the~~  
42 ~~tax would be jeopardized by delay, he the Secretary may cause execution to be issued,~~  
43 ~~as provided in this Chapter, immediately against the personal property of the taxpayer~~  
44 ~~unless the taxpayer files with the Secretary a bond in the amount of the asserted liability~~

1 for tax, penalty and interest. If upon ~~such~~ final administrative determination the tax  
2 asserted or any part thereof is sustained, execution may issue on ~~said~~ the certificate at  
3 the request of the Secretary of Revenue, and the sheriff shall proceed to advertise and  
4 sell the property of the taxpayer.

5 (f) ~~Taxpayers seeking administrative review of liability decisions of the~~  
6 ~~Commissioner of Insurance under Article 8B of this Subchapter shall follow the~~  
7 ~~procedure prescribed in subsection (a) of this section for taxpayers seeking~~  
8 ~~administrative review of decisions of the Secretary of Revenue. In such cases all~~  
9 ~~provisions of this section referring to the Secretary of Revenue shall be considered as~~  
10 ~~applying to the Commissioner of Insurance."~~

11 Sec. 3. G.S. 105-266.1(a) reads as rewritten:

12 "(a) If a taxpayer claims that a tax or an additional tax paid by the taxpayer was  
13 excessive or incorrect, the Any taxpayer may apply to the Secretary of Revenue for  
14 refund of the tax or additional tax paid by him at any time within three years after the  
15 date set by the statute for the filing of the return or application for a license or within six  
16 months from after the date of payment of such the tax or additional tax, whichever is  
17 later.

18 The Secretary shall grant a hearing on each timely request for a refund. Within 60  
19 days after a timely request for a refund has been filed and at least 10 days before the  
20 date set for the hearing, the Secretary shall notify the taxpayer in writing of the time and  
21 place at which the hearing will be conducted. The date set for the hearing shall be  
22 within 90 days after the timely request for a hearing was filed. The date set for the  
23 hearing may be postponed once, at the request of the taxpayer or the Secretary, for a  
24 period of up to 90 days.

25 Within 90 days after conducting a hearing under this subsection, the Secretary shall  
26 make a decision on the requested refund, notify the taxpayer of the decision, and adjust  
27 the computation of the tax in accordance with the decision. The Secretary shall ~~The~~  
28 ~~Secretary shall grant a hearing thereon, and if upon such hearing he shall determine that the tax~~  
29 ~~is excessive or incorrect, he shall resettle the same according to the law and the facts, and~~  
30 ~~adjust the computation of tax accordingly. The Secretary shall notify the taxpayer of his~~  
31 ~~determination, and shall refund to the taxpayer the amount, if any, paid amount of any tax~~  
32 the Secretary finds was paid incorrectly or paid in excess of the tax found by him to be  
33 due: due, except that there shall be no refund to the taxpayer of any sum set off under  
34 the provisions of Chapter 105A, the Set-off Debt Collection Act."

35 Sec. 4. G.S. 105-122(c)(2) reads as rewritten:

36 "(2) If any corporation believes that the method of allocation or  
37 apportionment hereinbefore described as administered by the Secretary  
38 of Revenue has operated or will so operate as to subject it to taxation on  
39 a greater portion of its capital stock, surplus and undivided profits than  
40 is reasonably attributable to business within the State, it ~~shall be entitled~~  
41 ~~to~~ may file with the Tax Review Board a petition setting forth the facts  
42 upon which its belief is based and its argument with respect to the  
43 application of the allocation formula. This petition shall be filed in  
44 such form and within such time as the Tax Review Board may

1 prescribe. The Board shall grant a hearing ~~thereon~~ on the petition. The  
2 time limitations set in G.S. 105-241.2 for the date of the hearing,  
3 notification to the taxpayer, and a decision following the hearing apply  
4 to a hearing held pursuant to this subdivision.

5 At least three members of the Tax Review Board shall attend any  
6 hearing pursuant to such petition. In such cases the Tax Review  
7 Board's membership shall be augmented by the addition of the  
8 ~~Secretary of Revenue, Secretary,~~ Secretary, who shall sit as a member of ~~said the~~  
9 Board with full power to participate in its deliberations and decisions  
10 with respect to petitions filed under the provisions of this section. An  
11 informal record containing in substance the evidence, contentions and  
12 arguments presented at the hearing shall be made. All members of the  
13 augmented Tax Review Board shall consider such evidence,  
14 contentions and arguments, and the decision thereon shall be made by  
15 a majority vote of the augmented Board. If the Board ~~shall find~~ finds  
16 that the application of the allocation formula subjects the corporation  
17 to taxation on a greater portion of its capital stock, surplus and  
18 undivided profits than is reasonably attributable to its business within  
19 this State:

- 20 a. If the corporation ~~shall employ~~ employs in its books of account a  
21 detailed allocation of receipts and expenditures which reflects  
22 more clearly than the applicable allocation formula or  
23 alternative formulas prescribed by this section the portion of the  
24 capital stock, surplus and undivided profits attributable to the  
25 business within this State, application for permission to base the  
26 return upon the taxpayer's books of account shall be considered  
27 by the Tax Review Board. The Board ~~shall be authorized to~~ may  
28 permit such separate accounting method in lieu of applying the  
29 applicable allocation formula if the Board ~~deems such method~~  
30 ~~proper as best reflecting~~ finds that method best reflects  
31 the portion of the capital stock, surplus and undivided profits  
32 attributable to this State.
- 33 b. If the corporation ~~shall show~~ shows that any other method of  
34 allocation than the applicable allocation formula or alternative  
35 formulas prescribed by this section reflects more clearly the  
36 portion of the capital stock, surplus and undivided profits  
37 attributable to the business within this State, application for  
38 permission to base the return upon such other method shall be  
39 considered by the Tax Review Board. The application shall be  
40 accompanied by a statement setting forth in detail, with full  
41 explanations, the method the taxpayer believes will more nearly  
42 reflect the portion of its capital stock, surplus and undivided  
43 profits attributable to the business within this State. If the Board  
44 ~~shall conclude~~ concludes that the allocation formula and the

1 alternative formulas prescribed by this section allocate to this  
2 State a greater portion of the capital stock, surplus and  
3 undivided profits of the corporation than is reasonably  
4 attributable to business within this State, it shall determine the  
5 allocable portion by such other method as it ~~shall find~~ finds best  
6 calculated to assign to this State for taxation the portion  
7 reasonably attributable to its business within this State.

8 There shall be a presumption that the appropriate allocation  
9 formula reasonably attributes to this State the portion of the  
10 corporation's capital stock, surplus and undivided profits reasonably  
11 attributable to its business in this State and the burden shall rest upon  
12 the corporation to show the contrary. The relief herein authorized shall  
13 be granted by the Board only in cases of clear, cogent and convincing  
14 proof that the petitioning taxpayer is entitled thereto. No corporation  
15 shall use any alternative formula or method other than the applicable  
16 allocation formula provided by statute in making a franchise tax report  
17 or return to this State except upon order in writing of the Board and  
18 any return in which any alternative formula or other method other than  
19 the applicable allocation formula prescribed by statute is used without  
20 the permission of the Board, shall not be a lawful return.

21 When the Board determines, pursuant to the provisions of this  
22 Article, that an alternative formula or other method more accurately  
23 reflects the portion of the capital stock, surplus and undivided profits  
24 allocable to North Carolina and renders its decision with regard  
25 thereto, the corporation shall allocate its capital stock, surplus and  
26 undivided profits for future years in accordance with such  
27 determination and decision of the Board so long as the conditions  
28 constituting the basis upon which the decision was made remain  
29 unchanged or until such time as the business method of operation of  
30 the corporation changes. Provided, however, that the Secretary of  
31 ~~Revenue may, in his discretion, may,~~ Revenue may, in his discretion, may, with respect to any subsequent  
32 year, require the corporation to furnish information relating to its  
33 property, operations and activities.

34 A corporation which proposes to do business in this State may file  
35 a petition with the Board setting forth the facts upon which it contends  
36 that the applicable allocation formula will allocate a greater portion of  
37 the corporation's capital stock, surplus and undivided profits to North  
38 Carolina than will be reasonably attributable to its proposed business  
39 within the State. Upon a proper showing in accordance with the  
40 procedure described above for determination by the Board, the Board  
41 may authorize such corporation to allocate its capital stock, surplus  
42 and undivided profits to North Carolina on the basis prescribed by the  
43 Board under the provisions of this section for such future years as the  
44 conditions constituting the basis upon which the Board's decision is

1 made remain unchanged and the business operations of the corporation  
2 continue to conform to the statement of proposed methods of business  
3 operations presented by the corporation to the Board.

4 When the Secretary ~~of Revenue~~ asserts liability under the formula  
5 adjustment decision of the Tax Review Board, an aggrieved taxpayer  
6 may pay the tax under protest and bring a civil action for recovery  
7 under the provisions of G.S. 105-241.4."

8 Sec. 5. G.S. 105-130.4(t) reads as rewritten:

9 "(t) (1) If any corporation believes that the method of allocation or  
10 apportionment as administered by the Secretary ~~of Revenue~~ has  
11 operated or will so operate as to subject it to taxation on a greater  
12 portion of its income than is reasonably attributable to business or  
13 earnings within the State, it ~~shall be entitled to~~ may file with the Tax  
14 Review Board a petition setting forth the facts upon which its belief  
15 is based and its argument with respect to the application of the  
16 allocation formula. This petition shall be filed in such form and  
17 within such time as the Tax Review Board may prescribe. The Board  
18 shall grant a hearing ~~thereon~~ on the petition. The time limitations set  
19 in G.S. 105-241.2 for the date of the hearing, notification to the  
20 taxpayer, and a decision following the hearing apply to a hearing  
21 held pursuant to this subsection. At least three members of the Tax  
22 Review Board shall attend any hearing pursuant to such petition. In  
23 such cases, the Tax Review Board's membership shall be augmented  
24 by the addition of the ~~Secretary of Revenue~~ Secretary, who shall sit as  
25 a member of ~~said~~ the Board with full power to participate in its  
26 deliberations and decisions with respect to petitions filed under the  
27 provisions of this ~~section~~ subsection. An informal record containing  
28 in substance the evidence, contentions and arguments presented at  
29 the hearing shall be made. All members of the augmented Tax  
30 Review Board shall consider such evidence, contentions and  
31 arguments and the decisions thereon shall be made by a majority  
32 vote of the augmented Board.

33 (2) If the corporation ~~shall employ~~ employs in its books of account a  
34 detailed allocation of receipts and expenditures which reflects more  
35 clearly than the applicable allocation formula prescribed by this  
36 section the income attributable to the business within this State,  
37 application for permission to base the return upon the taxpayer's books  
38 of account shall be considered by the Tax Review Board. The Board  
39 ~~shall be authorized to~~ may permit such separate accounting method in  
40 lieu of applying the applicable allocation formula if the Board ~~deems~~  
41 ~~such method proper as best reflecting~~ finds that method best reflects the  
42 income and earnings attributable to this State.

43 (3) If the corporation ~~shall show~~ shows that any other method of allocation  
44 than the applicable allocation formula prescribed by this section



1 reflects more clearly the income attributable to the business within this  
2 State, application for permission to base the return upon such other  
3 method shall be considered by the Tax Review Board. The application  
4 shall be accompanied by a statement setting forth in detail, with full  
5 explanations, the method the corporation believes will more nearly  
6 reflect its income from business within this State. If the Board ~~shall~~  
7 ~~conclude~~ concludes that the allocation formula prescribed by this  
8 section allocates to this State a greater portion of the net income of the  
9 corporation than is reasonably attributable to business or earnings  
10 within this State, it shall determine the allocable net income by such  
11 other method as it ~~shall find~~ finds best calculated to assign to this State  
12 for taxation the portion of the corporation's net income reasonably  
13 attributable to its business or earnings within this State.

- 14 (4) There shall be a presumption that the appropriate allocation formula  
15 reasonably attributes to this State the portion of the corporation's  
16 income earned in this State, and the burden shall rest upon the  
17 corporation to show the contrary. The relief herein authorized shall be  
18 granted by the Board only in cases of clear, cogent and convincing  
19 proof that the petitioning corporation is entitled thereto. No  
20 corporation shall use any alternative formula or method other than the  
21 applicable allocation formula provided by statute in making a report or  
22 return of its income to this State except upon order in writing of the  
23 Board, and any return in which any alternative formula or other  
24 method, other than the applicable allocation formula prescribed by  
25 statute, is used without permission of the Board shall not be a lawful  
26 return.

27 When the Board determines, pursuant to the provisions of this  
28 subsection, that an alternative formula or other method more  
29 accurately reflects the income allocable to North Carolina and renders  
30 its decision with regard thereto, the corporation shall allocate its net  
31 income for future years in accordance with such determination and  
32 decision of the Board so long as the conditions constituting the basis  
33 upon which the decision was made remain unchanged or until such  
34 time as the business method of operation of the corporation changes.  
35 Provided, however, that the Secretary of Revenue ~~may, in his discretion,~~  
36 may, with respect to any subsequent year, require the corporation to  
37 furnish information relating to its property, operations, and activities.

- 38 (5) A corporation which proposes to do business in this State may file a  
39 petition with the Board setting forth the facts upon which it contends  
40 that the applicable allocation formula will allocate a greater portion of  
41 the corporation's future income to North Carolina than will be  
42 reasonably attributable to its proposed business or contemplated  
43 earnings within the State. Upon a proper showing in accordance with  
44 the procedure described above for determinations by the Board, the

1 Board may authorize such corporation to allocate income from its  
2 future business to North Carolina on the basis prescribed by the Board  
3 under the provisions of this section for such future years if the  
4 conditions constituting the basis upon which the Board's decision is  
5 made remain unchanged and the business operations of the corporation  
6 continue to conform to the statement of proposed methods of business  
7 operation presented by the corporation to the Board.

8 (6) When the Secretary of ~~Revenue~~ asserts liability under the formula  
9 adjustment decision of the Tax Review Board, an aggrieved  
10 corporation may pay the tax and bring a civil action for recovery under  
11 the provisions of Article 9."

12 Sec. 6. This act becomes effective July 1, 1993, and applies to requests for a  
13 hearing and petitions for administrative review filed on or after that date.