

## **CHAPTER 81-03-09.2**

### **SALES FACTOR WEIGHTING ELECTION**

#### **Section**

81-03-09.2-01	Definitions
81-03-09.2-02	Sales Factor Weighting Election
81-03-09.2-03	Sales Factor Weighting Election Applicability
81-03-09.2-04	Rescission of Sales Factor Weighting Election
81-03-09.2-05	Provisions of Income Tax Laws Applicable
81-03-09.2-06	Taxable Years

#### **81-03-09.2-01. Definitions.**

1. "Affiliated corporation" means a corporation whose voting stock is over fifty percent owned, directly or indirectly, by another corporation.
2. "Apportionment factor" means the resulting computation of the percentage of a taxpayer's business income that is assignable to this state.
3. "Consolidated return" means a single corporation income tax return that reports the tax liability of more than one corporation engaged in business in or having sources of income from North Dakota.
4. "Passthrough entity" has the same meaning as in North Dakota Century Code section 57-38-01.
5. "Sales factor" has the same meaning as in North Dakota Century Code section 57-38.1-15.
6. "Sales factor weighting election" means the election provided in North Dakota Century Code section 57-38.1-09 allowing a taxpayer to weight its sales factor fifty percent for tax years 2016 and 2017, seventy-five percent for tax year 2018, and one hundred percent for tax years 2019 and thereafter.
7. "Taxpayer" means a person other than a passthrough entity that is required to file a North Dakota income tax return.
8. "Unitary business" means a group of corporations engaged in a unitary business described in chapter 81-03-05.3.

**History:** Effective July 1, 2016.

**General Authority:** NDCC 57-38-56

**Law Implemented:** NDCC 57-38.1-09

#### **81-03-09.2-02. Sales factor weighting election.**

1. A taxpayer that is a corporation makes a sales factor weighting election by checking the sales factor weighting election box on its original North Dakota income tax return for the first year to which the election applies.
2. A taxpayer that is a sole proprietor apportioning income under subsection 5 of North Dakota Century Code section 57-38-04 makes a sales factor weighting election by attaching a statement to the taxpayer's individual income tax return for the first year to which the election applies.
3. A taxpayer's return making a sales factor weighting election for the first year is considered timely if filed by the prescribed due date, including extensions.

4. A sales factor weighting election is binding for five consecutive tax years. An election made on a tax return for a sixth consecutive year constitutes a new five-year election.
5. For any tax year that is not included under a sales factor weighting five-year election period, income is apportioned using equal weighting of the three factors under subsection 1 of North Dakota Century Code section 57-38.1-09.

**History:** Effective July 1, 2016.

**General Authority:** NDCC 57-38-56

**Law Implemented:** NDCC 57-38.1-09

**81-03-09.2-03. Sales factor weighting election applicability.**

1. If a taxpayer is a member of a unitary business, the sales factor weighting election applies to each taxpayer in the unitary business.
2. If a taxpayer files a consolidated return, the election made on that return applies to all corporations included in that return.
3. An affiliated corporation is considered to have consented to the sales factor weighting election if the corporation becomes a member of the unitary group after the group elects to use the sales factor weighting election.
4. If a taxpayer's apportionment factor includes its share of a passthrough entity's apportionment factors, the taxpayer's sales factor weighting election includes its share of factors from a passthrough entity.

**History:** Effective July 1, 2016.

**General Authority:** NDCC 57-38-56

**Law Implemented:** NDCC 57-38.1-09

**81-03-09.2-04. Rescission of a sales factor weighting election.**

1. A sales factor weighting election of a taxpayer that has had more than fifty percent of its voting stock acquired by a nonaffiliated entity is rescinded.
2. A sales factor weighting election of a taxpayer formed due to reorganization or spinoff from an existing taxpayer is rescinded if, after the reorganization or spinoff, it is no longer an affiliated member of the unitary group.
3. The sales factor weighting election of a taxpayer that is completely liquidated is rescinded. The election does not carry over to the entity receiving the liquidated assets. This provision does not affect the sales factor weighting election made by any taxpayer that receives liquidated assets.
4. If a taxpayer's sales factor weighting election is rescinded under this section, it is not precluded from making a new sales factor weighting election in the first tax year following the rescission.

**History:** Effective July 1, 2016.

**General Authority:** NDCC 57-38-56

**Law Implemented:** NDCC 57-38.1-09

**81-03-09.2-05. Provisions of income tax laws applicable.**

Administration of the sales factor weighting election is governed by the provisions in North Dakota Century Code chapters 57-38 and 57-38.1, not in conflict with this chapter.

**History:** Effective July 1, 2016.

**General Authority:** NDCC 57-38-56

**Law Implemented:** NDCC 57-38.1-09

**81-03-09.2-06. Taxable years.**

This chapter applies to tax years beginning after December 31, 2015.

**History:** Effective July 1, 2016.

**General Authority:** NDCC 57-38-56

**Law Implemented:** NDCC 57-38.1-09