

**GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2001**

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SENATE BILL 242

Short Title: Make Franchise Tax More Equitable.

(Public)

Sponsors: Senators Dalton, Hartsell, Hoyle, and Kerr.

Referred to: Finance.

February 26, 2001

A BILL TO BE ENTITLED

1 AN ACT TO EQUALIZE THE FRANCHISE TAX TREATMENT OF ENTITIES
2 ORGANIZED AS CORPORATIONS AND ENTITIES TAXED AS
3 CORPORATIONS UNDER FEDERAL LAW AND TO CLARIFY THE
4 FRANCHISE TAX LIABILITY OF CORPORATIONS THAT OWN ENTITIES
5 THAT ARE DISREGARDED FOR TAX PURPOSES.
6

7 The General Assembly of North Carolina enacts:

8 **SECTION 1.** G.S. 105-114(b)(2) reads as rewritten:

9 "(b) Definitions. -- The following definitions apply in this Article:

10 (2) Corporation. -- A domestic corporation, a foreign corporation, an
11 electric membership corporation organized under Chapter 117 of the
12 General Statutes or doing business in this State, ~~or an association that~~
13 ~~is organized for pecuniary gain, has capital stock represented by~~
14 ~~shares, whether with or without par value, and has privileges not~~
15 ~~possessed by individuals or partnerships. The term includes an entity~~
16 that is treated as a corporation for federal income tax purposes, or a
17 mutual or capital stock savings and loan association or building and
18 loan association chartered under the laws of any state or of the United
19 States. The term does not include a limited liability company-
20 company that is treated as a partnership for income tax purposes."

21 **SECTION 2.** G.S. 105-122(b) reads as rewritten:

22 "(b) Every such corporation taxed under this section shall determine the total
23 amount of its issued and outstanding capital stock, surplus and undivided profits; no
24 reservation or allocation from surplus or undivided profits shall be allowed other than
25 for definite and accrued legal liabilities, except as herein provided; taxes accrued,
26 dividends declared and reserves for depreciation of tangible assets as permitted for
27 income tax purposes shall be treated as deductible liabilities. There shall also be treated
28 as a deductible liability reserves for the entire cost of any air-cleaning device or sewage

1 or waste treatment plant, including waste lagoons, and pollution abatement equipment
2 purchased or constructed and installed which reduces the amount of air or water
3 pollution resulting from the emission of air contaminants or the discharge of sewage and
4 industrial wastes or other polluting materials or substances into the outdoor atmosphere
5 or streams, lakes, or rivers, upon condition that the corporation claiming such deductible
6 liability shall furnish to the Secretary a certificate from the Department of Environment
7 and Natural Resources or from a local air pollution control program for air-cleaning
8 devices located in an area where the Environmental Management Commission has
9 certified a local air pollution control program pursuant to G.S. 143-215.112 certifying
10 that the Environmental Management Commission or local air pollution control program
11 has found as a fact that the air-cleaning device, waste treatment plant or pollution
12 abatement equipment purchased or constructed and installed as above described has
13 actually been constructed and installed and that such plant or equipment complies with
14 the requirements of the Environmental Management Commission or local air pollution
15 control program with respect to such devices, plants or equipment, that such device,
16 plant or equipment is being effectively operated in accordance with the terms and
17 conditions set forth in the permit, certificate of approval, or other document of approval
18 issued by the Environmental Management Commission or local air pollution control
19 program and that the primary purpose thereof is to reduce air or water pollution
20 resulting from the emission of air contaminants or the discharge of sewage and waste
21 and not merely incidental to other purposes and functions. The cost of purchasing and
22 installing equipment or constructing facilities for the purpose of recycling or resource
23 recovering of or from solid waste or for the purpose of reducing the volume of
24 hazardous waste generated shall be treated as deductible for the purposes of this section
25 upon condition that the corporation claiming such deductible liability shall furnish to the
26 Secretary a certificate from the Department of Environment and Natural Resources
27 certifying that the Department of Environment and Natural Resources has found as a
28 fact that the equipment or facility has actually been purchased, installed or constructed,
29 that it is in conformance with all rules and regulations of the Department of
30 Environment and Natural Resources, and the recycling or resource recovering is the
31 primary purpose of the facility or equipment. The cost of constructing facilities of any
32 private or public utility built for the purpose of providing sewer service to residential
33 and outlying areas shall be treated as deductible for the purposes of this section; the
34 deductible liability allowed by this section shall apply only with respect to such
35 pollution abatement plants or equipment constructed or installed on or after January 1,
36 1955. Treasury stock shall not be considered in computing the capital stock, surplus and
37 undivided profits as the basis for franchise tax, but shall be excluded proportionately
38 from said capital stock, surplus and undivided profits as the case may be upon the basis
39 and to the extent of the cost thereof. In the case of an international banking facility, the
40 capital base shall be reduced by the excess of the amount as of the end of the taxable
41 year of all assets of an international banking facility which are employed outside the
42 United States over liabilities of the international banking facility owed to foreign
43 persons. For purposes of such reduction, foreign persons shall have the same meaning
44 as defined in G.S. 105-130.5(b)(13)d.

1 Every corporation doing business in this State which is a parent, subsidiary, or
2 affiliate of another corporation shall add to its capital stock, surplus and undivided
3 profits all indebtedness owed to a parent, subsidiary or affiliated corporation as a part of
4 its capital used in its business and as a part of the base for franchise tax under this
5 section. The term "indebtedness" as used in this paragraph includes all loans, credits,
6 goods, supplies, or other capital of whatsoever nature furnished by a parent, subsidiary,
7 or affiliated corporation, other than indebtedness endorsed, guaranteed, or otherwise
8 supported by one of these corporations. The terms "parent," "subsidiary," and "affiliate"
9 as used in this paragraph shall have the meaning specified in G.S. 105-130.6. If any part
10 of the capital of the creditor corporation is capital borrowed from a source other than a
11 parent, subsidiary or affiliate, the debtor corporation, which is required under this
12 paragraph to include in its tax base the amount of debt by reason of being a parent,
13 subsidiary, or affiliate of the said creditor corporation, may deduct from the debt thus
14 included a proportionate part determined on the basis of the ratio of such borrowed
15 capital as above specified of the creditor corporation to the total assets of the said
16 creditor corporation. Further, in case the creditor corporation as above specified is also
17 taxable under the provisions of this section, such creditor corporation shall be allowed
18 to deduct from the total of its capital, surplus and undivided profits the amount of any
19 debt owed to it by a parent, subsidiary or affiliated corporation to the extent that such
20 debt has been included in the tax base of said parent, subsidiary or affiliated debtor
21 corporation reporting for taxation under the provisions of this section.

22 If a corporation is the sole shareholder or sole member of an entity that is
23 disregarded for federal income tax purposes, the corporation and the disregarded entity
24 are considered the same corporation under this Article. In this circumstance, any
25 income, assets, liabilities, and equity of the disregarded entity are attributed to that
26 corporation and must be included in the corporation's computation of tax under this
27 Article."

28 **SECTION 3.** Section 1 of this act is effective for taxable years beginning on
29 or after January 1, 2002. The remainder of this act is effective when it becomes law.