

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2007

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SENATE DRS85045-RBxz-3* (01/10)

Short Title: Modernize Corporate Income Tax Filing. (Public)

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

Referred to:

1 A BILL TO BE ENTITLED
2 AN ACT TO REQUIRE CORPORATIONS TO FILE A COMBINED INCOME TAX
3 REPORT.

4 The General Assembly of North Carolina enacts:

5 SECTION 1. G.S. 105-130.2(5c) reads as rewritten:

6 "§ 105-130.2. Definitions.

7 The following definitions apply in this Part:

8 ...

9 (5c) State net income. – The taxpayer's federal taxable income as
10 determined under the Code, adjusted as provided in G.S. 105-130.5
11 and, in the case of a corporation that has income from business activity
12 that is taxable both within and without this State, allocated and
13 apportioned to this State as provided in G.S. 105-130.4. A
14 corporation's net income in this State includes all of the following:

- 15 a. Its share of any income apportionable to this State of each of
16 the combined groups of which it is a member.
17 b. Its share of any income apportionable to this State of a distinct
18 business activity conducted within or without the State wholly
19 by the taxpayer.
20 c. Its income from a business conducted wholly by the taxpayer
21 entirely within this State.
22 d. Its nonapportionable income or loss allocable to this State."

23 SECTION 2. G.S. 105-130.4(a) reads as rewritten:

24 "§ 105-130.4. Allocation and apportionment of income for corporations.

25 (a) ~~As used in this section, unless the context otherwise requires:~~The following
26 definitions apply in this section, G.S. 105-130.4A, and G.S. 105-130.4B:

- 1 (1) ~~"Apportionable income" means all~~ Affiliated group. – A group of two
2 or more corporations in which more than fifty percent (50%) of the
3 voting stock of each member corporation is directly or indirectly
4 owned by a common owner or owners, either corporate or
5 noncorporate, or by one or more of the member corporations.
- 6 (1a) Apportionable income. – All income that is apportionable under the
7 United States Constitution.
- 8 (1b) Business activity. – Any activity by a corporation that would establish
9 nexus under 15 United States Code section 381.
- 10 (1c) Casual sale of property. – The sale of any property which was not
11 purchased, produced, or acquired primarily for sale in the corporation's
12 regular trade or business.
- 13 (1d) Combined group. – The collective members of an affiliated group that
14 are engaged in a unitary business.
- 15 (2) ~~"Commercial domicile" means the~~ Commercial domicile. – The
16 principal place from which the trade or business of the taxpayer is
17 directed or managed.
- 18 (3) ~~"Compensation" means wages,~~ Compensation. – Wages, salaries,
19 commissions and any other form of remuneration paid to employees
20 for personal services.
- 21 (4) ~~"Excluded corporation" means any~~ Excluded corporation. – A
22 corporation engaged in business as a building or construction
23 contractor, a securities dealer, or a loan company or a corporation that
24 receives more than fifty percent (50%) of its ordinary gross income
25 from intangible property.
- 26 (5) ~~"Nonapportionable income" means all~~ Nonapportionable income. – All
27 income other than apportionable income.
- 28 (6) ~~"Public utility" means any~~ Public utility. – A corporation that is
29 subject to control of one or more of the following entities: the North
30 Carolina Utilities Commission, the Federal Communications
31 Commission, the Interstate Commerce Commission, the Federal
32 Energy Regulatory Commission, or the Federal Aviation Agency; and
33 that owns or operates for public use any plant, equipment, property,
34 franchise, or license for the transmission of communications, the
35 transportation of goods or persons, or the production, storage,
36 transmission, sale, delivery or furnishing of electricity, water, steam,
37 oil, oil products, or gas. The term also includes a motor carrier of
38 property whose principal business activity is transporting property by
39 motor vehicle for hire over the public highways of this State.
- 40 (7) ~~"Sales" means all~~ Sales. – All gross receipts of the corporation except
41 for the following receipts:
42 a. Receipts from a casual sale of property.
43 b. Receipts allocated under subsections (c) through (h) of this
44 section.

- 1 c. Receipts exempt from taxation.
2 d. The portion of receipts realized from the sale or maturity of
3 securities or other obligations that represents a return of
4 principal.

5 (8) ~~"Casual sale of property" means the sale of any property which was~~
6 ~~not purchased, produced or acquired primarily for sale in the~~
7 ~~corporation's regular trade or business.~~

8 (9) ~~"State" means any State. – A state of the United States, the District of~~
9 ~~Columbia, the Commonwealth of Puerto Rico, any territory or~~
10 ~~possession of the United States, and any foreign country or political~~
11 ~~subdivision thereof.~~

12 (10) Unitary business. – One or more related business organizations
13 engaged in business activity both within and without the State among
14 which one or more of the following exist:

15 a. A unity of ownership, operation, or use.

16 b. An interdependence in their functions."

17 **SECTION 2.** G.S. 105-130.4(b) reads as rewritten:

18 "(b) A corporation having income from business activity which is taxable both
19 within and without this State shall allocate and apportion its net income or net loss as
20 provided in this ~~section.~~ section and G.S. 105-130.4A. For purposes of allocation and
21 apportionment, a corporation is taxable in another state if (i) the corporation's business
22 activity in that state subjects it to a net income tax or a tax measured by net income, or
23 (ii) that state has jurisdiction based on the corporation's business activity in that state to
24 subject the corporation to a tax measured by net income regardless whether that state
25 exercises its jurisdiction. ~~For purposes of this section, "business activity" includes any~~
26 ~~activity by a corporation that would establish a taxable nexus pursuant to 15 United~~
27 ~~States Code section 381."~~

28 **SECTION 3.** G.S. 105-130.4(i) reads as rewritten:

29 "(i) All apportionable income of corporations other than public utilities and
30 excluded corporations shall be apportioned to this State by multiplying the income by a
31 fraction, the numerator of which is the property factor plus the payroll factor plus twice
32 the sales factor, and the denominator of which is four. Provided, that where the sales
33 factor does not exist, the denominator of the fraction shall be the number of existing
34 factors and where the sales factor exists but the payroll factor or the property factor does
35 not exist, the denominator of the fraction shall be the number of existing factors plus
36 one. The apportionable income of a corporation that is part of a combined group
37 engaged in a unitary business shall be apportioned to this State as provided in
38 G.S. 105-130.4A."

39 **SECTION 4.** G.S. 105-130.4(1)(2) reads as rewritten:

40 "(2) Sales of tangible personal property are in this State if the property is
41 received in this State by ~~the purchaser.~~ a purchaser other than the
42 United States government. In addition, a sale of tangible personal
43 property is in this State if the property is shipped from a place in this
44 State and the purchaser is in the United States government or the

1 taxpayer is not taxable in the state of the purchaser. In the case of
2 delivery of goods by common carrier or by other means of
3 transportation, including transportation by the purchaser, the place at
4 which the goods are ultimately received after all transportation has
5 been completed shall be considered as the place at which the goods are
6 received by the purchaser. Direct delivery into this State by the
7 taxpayer to a person or firm designated by a purchaser from within or
8 without the State shall constitute delivery to the purchaser in this
9 State."

10 **SECTION 5.** Part 1 of Article 4 of Chapter 105 of the General Statutes is
11 amended by adding two new sections to read:

12 **"§ 105-130.4A. Apportionment of income of combined group.**

13 (a) Combined Group. – The apportionable income of a combined group's unitary
14 business is determined by eliminating income, deductions, and losses from all
15 transactions between the members of the combined group associated with the combined
16 group's unitary business. The apportionable income of the combined group's unitary
17 business is apportioned in accordance with G.S. 105-130.4(i) through G.S. 105-130.4(l),
18 including in the numerator the property, payroll, and sales associated with the combined
19 group's unitary business in this State of each member of the combined group that has
20 business activity in this State associated with the combined group's unitary business and
21 including in the denominator the property, payroll, and sales of all members of the
22 combined group that are associated with the combined group's unitary business.
23 Members of a combined group may elect to determine the combined group's
24 apportionable income pursuant to water's edge election under G.S. 105-130.4B.

25 (b) Member Share. – A member's share of the apportionable income of a
26 combined group's unitary business apportioned to this State of which it is a member is
27 the product of the following:

28 (1) The apportionable income of the combined group's unitary business
29 apportionable to this State.

30 (2) The ratio of the member's State apportionment factors associated with
31 the combined group's unitary business to the combined group's
32 aggregate State apportionment factors associated with the combined
33 group's unitary business.

34 **"§ 105-130.4B. Water's edge election.**

35 (a) Election. – Members of a combined group may elect to disregard the income
36 and apportionment factors of a member of the combined group that is a foreign
37 corporation that conducts eighty percent (80%) or more of its business activity outside
38 the United States and outside of a tax haven country. A water's edge election must be
39 filed in writing with the Secretary. It is effective for the taxable year in which it is filed
40 and for the following 10 taxable years. The election will be automatically extended at
41 the end of the 10-year period unless notice is given in writing to the Secretary of intent
42 not to renew. The notice of intent not to renew must be made before the end of the last
43 two years of the election period.

1 (b) Withdrawal of Election. – An election may be withdrawn only upon written
2 request to the Secretary and only with the written permission of the Secretary. If the
3 Secretary grants a withdrawal of election, the Secretary must impose reasonable
4 conditions as necessary to prevent the evasion of tax or to clearly reflect income for the
5 election period prior to or after the withdrawal. A water's edge election, once terminated
6 by either a notice of withdrawal or a failure to renew, may not be renewed for a
7 minimum of three years.

8 (c) Definition. – For purposes of this section, the term 'tax haven country' has the
9 same meaning as in G.S. 143-59.1."

10 **SECTION 6.** G.S. 105-130.14 reads as rewritten:

11 "**§ 105-130.14. Corporations filing consolidated returns for federal income tax**
12 **purposes. Combined reporting.**

13 ~~Any corporation electing or required to file a consolidated income tax return with~~
14 ~~the Internal Revenue Service shall not file a consolidated return with the Secretary of~~
15 ~~Revenue, unless specifically directed to do so in writing by the Secretary, and shall~~
16 ~~determine its State net income as if a separate return had been filed for federal purposes.~~

17 A corporation which is part of an affiliated group engaged in a unitary business must
18 file a report for the combined group containing the combined net income of the
19 combined group and any other information the Secretary may require. The use of a
20 combined report does not disregard the separate identities of the members of the
21 combined group. Each member of the combined group is responsible for tax based on
22 its taxable income or loss apportioned or allocated to this State."

23 **SECTION 7.** This act becomes effective for taxable years beginning on or
24 after January 1, 2009.