

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2005

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SENATE DRS15296-RBz-31 (02/24)

Short Title: Franchise Tax Base Calculation.

(Public)

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

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Referred to:

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A BILL TO BE ENTITLED

AN ACT TO CLARIFY THE TREATMENT OF DEFERRED TAX ASSETS IN THE  
COMPUTATION OF THE FRANCHISE TAX CAPITAL BASE.

The General Assembly of North Carolina enacts:

**SECTION 1.** G.S. 105-122(b) reads as rewritten:

"(b) Determination of Capital Base. – ~~Every such~~ A corporation taxed under this section shall determine the total amount of its issued and outstanding capital stock, ~~surplus—surplus,~~ and undivided ~~profits; no reservation or allocation—profits.~~ No reservation or allocation from surplus or undivided profits ~~shall be is~~ is allowed ~~other than~~ for ~~except~~ as provided below:

(1) ~~Definite~~ definite and accrued legal liabilities, ~~except as herein provided;~~ liabilities.

(2) ~~taxes—Taxes~~ accrued, dividends ~~declared—declared,~~ and reserves for depreciation of tangible assets as permitted for income tax ~~purposes shall be treated as deductible liabilities.~~ There shall also be treated as a deductible liability reserves for the entire cost—purposes.

(3) When including deferred tax liabilities, a corporation may reduce the amount included in its base by netting against that amount deferred tax assets. The reduction may not decrease deferred tax liabilities below zero (0).

(4) Reserves for the cost of any air-cleaning device or sewage or waste treatment plant, including waste lagoons, and pollution abatement equipment purchased or constructed and installed which reduces the amount of air or water pollution resulting from the emission of air contaminants or the discharge of sewage and industrial wastes or other polluting materials or substances into the outdoor atmosphere or streams, lakes, or rivers, upon condition that the corporation claiming

1 such deductible liability shall furnish to the Secretary a certificate from  
2 the Department of Environment and Natural Resources or from a local  
3 air pollution control program for air-cleaning devices located in an  
4 area where the Environmental Management Commission has certified  
5 a local air pollution control program pursuant to G.S. 143-215.112  
6 certifying that the Environmental Management Commission or local  
7 air pollution control program has found as a fact that the air-cleaning  
8 device, waste treatment plant or pollution abatement equipment  
9 purchased or constructed and installed as above described has actually  
10 been constructed and installed and that such plant or equipment  
11 complies with the requirements of the Environmental Management  
12 Commission or local air pollution control program with respect to such  
13 devices, plants or equipment, that such device, plant or equipment is  
14 being effectively operated in accordance with the terms and conditions  
15 set forth in the permit, certificate of approval, or other document of  
16 approval issued by the Environmental Management Commission or  
17 local air pollution control program and that the primary purpose  
18 thereof is to reduce air or water pollution resulting from the emission  
19 of air contaminants or the discharge of sewage and waste and not  
20 merely incidental to other purposes and functions.

21 (5) ~~The Reserves for the~~ cost of purchasing and installing equipment or  
22 constructing facilities for the purpose of recycling or resource  
23 recovering of or from solid waste or for the purpose of reducing the  
24 volume of hazardous waste generated shall be treated as deductible for  
25 the purposes of this section upon condition that the corporation  
26 claiming such deductible liability shall furnish to the Secretary a  
27 certificate from the Department of Environment and Natural Resources  
28 certifying that the Department of Environment and Natural Resources  
29 has found as a fact that the equipment or facility has actually been  
30 purchased, installed or constructed, that it is in conformance with all  
31 rules and regulations of the Department of Environment and Natural  
32 Resources, and the recycling or resource recovering is the primary  
33 purpose of the facility or equipment.

34 (6) ~~The Reserves for the~~ cost of constructing facilities of any private or  
35 public utility built for the purpose of providing sewer service to  
36 residential and outlying areas shall be treated as deductible for the  
37 purposes of this section; the deductible liability allowed by this section  
38 shall apply only with respect to such pollution abatement plants or  
39 equipment constructed or installed on or after January 1, 1955.

40 (7) ~~Treasury stock shall not be considered in computing the capital stock,~~  
41 ~~surplus and undivided profits as the basis for franchise tax, but shall be~~  
42 ~~excluded proportionately from said capital stock, surplus and~~  
43 ~~undivided profits as the case may be upon the basis and to the extent of~~  
44 ~~the cost thereof.~~ The cost of treasury stock.

1           (8)    In the case of an international banking facility, the capital base shall be  
2                reduced by the excess of the amount as of the end of the taxable year  
3                of all assets of an international banking facility which are employed  
4                outside the United States over liabilities of the international banking  
5                facility owed to foreign persons. For purposes of such reduction,  
6                foreign persons shall have the same meaning as defined in  
7                G.S. 105-130.5(b)(13)d.

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

30          The following definitions apply in this subsection:

- 31           (1)    Affiliate. – The same meaning as specified in G.S. 105-130.6.  
32           (2)    Indebtedness. – All loans, credits, goods, supplies, or other capital of  
33                whatsoever nature furnished by a parent, subsidiary, or affiliated  
34                corporation, other than indebtedness endorsed, guaranteed, or  
35                otherwise supported by one of these corporations.  
36           (3)    Parent. – The same meaning as specified in G.S. 105-130.6.  
37           (4)    Subsidiary. – The same meaning as specified in G.S. 105-130.6."

38          **SECTION 2.** This act is effective when it becomes law.