

**GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2007**

H

3

**HOUSE BILL 109
Committee Substitute Favorable 7/27/07
Senate Finance Committee Substitute Adopted 7/31/07**

Short Title: Corporate Opt Out Chg/Budget Rev Changes.

(Public)

Sponsors:

Referred to:

February 8, 2007

A BILL TO BE ENTITLED

AN ACT TO PROVIDE NORTH CAROLINA CORPORATIONS A LIMITED OPPORTUNITY TO OPT OUT OF THE NORTH CAROLINA SHAREHOLDER PROTECTION ACT AND THE NORTH CAROLINA CONTROL SHARE ACQUISITION ACT AND TO MAKE TECHNICAL AND CLARIFYING CHANGES TO THE REVENUE PROVISIONS IN THE CURRENT OPERATIONS AND CAPITAL IMPROVEMENTS APPROPRIATIONS ACT OF 2007.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 55-9-05 reads as rewritten:

"§ 55-9-05. Exemptions.

The provisions of G.S. 55-9-02 shall not be applicable to any corporation that shall be made the subject of a business combination by an other entity ~~if~~ if one or more of the following conditions apply: (i) the

(1) The corporation was not a public corporation (as defined in G.S. 55-1-40(18a)) at the time such other entity acquired in excess of ten percent (10%) of the voting shares; (ii) on shares.

(2) On or before September 30, 1990 (or such earlier date as may be irrevocably established by resolution of the board of directors), the board of directors of a corporation to which G.S. 55-9-02 was not applicable on July 1, 1990, (other than a corporation described in G.S. 55-9-05(iii)) adopted a bylaw stating that the provisions of this Article shall not be applicable to the ~~corporation; (iii) corporation.~~ Neither the adoption nor failure to adopt a bylaw under this subdivision shall constitute grounds for any cause of action, at law or in equity, against the corporation or any of its directors.

(3) In ~~in~~ the case of a corporation to which G.S. 55-9-02 was not applicable on July 1, 1990, as the result of adoption by its board of

1 directors under G.S. 55-9-05(ii) of a bylaw providing that G.S. 55-9-02
 2 not apply to such corporation, the board of directors of such
 3 corporation shall not have rescinded such bylaw on or before
 4 September 30, 1990 (or such earlier date as may be irrevocably
 5 established by resolution of the board of ~~directors~~; ~~(iv)~~ directors).
 6 Neither the rescission nor failure to rescind a bylaw under this
 7 subdivision shall constitute grounds for any cause of action, at law or
 8 in equity, against the corporation or any of its directors.

9 (4) In ~~in~~ the case of a corporation (including its predecessors) which
 10 becomes a public corporation for the first time after July 1, 1990, such
 11 corporation adopts a bylaw within 90 days of becoming a public
 12 corporation stating that the provisions of this Article shall not be
 13 applicable to it; ~~(v)~~ ~~in~~ it. Neither the adoption nor failure to adopt a
 14 bylaw under this subdivision shall constitute grounds for any cause of
 15 action, at law or in equity, against the corporation or any of its
 16 directors.

17 (5) In the case of a newly formed corporation after April 23, 1987, the
 18 initial articles of incorporation of the corporation shall provide that the
 19 provisions of this Article shall not be ~~applicable~~; ~~(vi)~~ ~~such~~ applicable.

20 (6) The business combination was the subject of an existing agreement of
 21 the corporation on April 23, 1987; ~~or (vii)~~ ~~on~~ 1987.

22 (7) On or after September 1, 2000, and on or before December 31, 2000,
 23 the board of directors of a corporation to which G.S. 55-9-02 was
 24 applicable on September 1, 2000, adopts a bylaw stating that the
 25 provisions of this Article shall not be applicable to the corporation.
 26 Neither the adoption nor failure to adopt a bylaw under this
 27 subdivision shall constitute grounds for any cause of action, at law or
 28 in equity, against the corporation or any of its directors.

29 (8) On or after August 1, 2007, and on or before December 31, 2007, the
 30 board of directors of a corporation to which G.S. 55-9-02 was
 31 applicable on August 1, 2007, adopts a bylaw stating that the
 32 provisions of this Article shall not be applicable to the corporation.
 33 Neither the adoption ~~or~~ ~~nor~~ failure to adopt a bylaw of the type set
 34 forth in G.S. 55-9-05(ii), (iv), or (vii) of this section nor the rescission
 35 or failure to rescind a bylaw of the type referred to in G.S. 55-9-05(iii)
 36 under this subdivision shall constitute grounds for any cause of action,
 37 at law or in equity, against the corporation or any of its directors."

38 **SECTION 2.** G.S. 55-9A-09 reads as rewritten:

39 **"§ 55-9A-09. Exemptions.**

40 The provisions of this Article shall not be applicable to ~~any~~ a corporation ~~if, that~~
 41 meets one or more of the conditions listed in this section:

42 (1) ~~on~~ On or before September 30, 1990, or such earlier date as may be
 43 irrevocably established by resolution of the board of directors, or at
 44 any time before the corporation becomes, or after it ceases to be, a

1 covered corporation, the board of directors adopts a bylaw stating that
2 the provisions of this Article shall not be applicable to the ~~corporation;~~
3 ~~or, in~~ corporation. Neither adoption nor failure to adopt such a bylaw
4 or provision shall constitute grounds for any cause of action against the
5 corporation or any officer or director of the corporation.

6 (2) In the case of a corporation formed after August 12, 1987, its initial
7 articles of incorporation provide that this Article shall not be
8 applicable to the corporation; or on or after September 1, 2000, and on
9 or before December 31, 2000, the board of directors of a corporation to
10 which the provisions of this Article were applicable on September 1,
11 2000, adopts a bylaw stating that the provisions of this Article shall
12 not be applicable to the corporation. Neither adoption nor failure to
13 adopt such a bylaw or provision shall constitute grounds for any cause
14 of action against the corporation, or any officer or director of the
15 corporation.

16 (3) On or after August 1, 2007, and on or before December 31, 2007, the
17 board of directors of a corporation to which the provisions of this
18 Article were applicable on August 1, 2007, adopts a bylaw stating that
19 the provision of this Article shall not be applicable to the corporation.
20 Neither the adoption nor failure to adopt a bylaw under this
21 subdivision shall constitute grounds for any cause of action against the
22 corporation or any of its officers or directors."

23 **SECTION 3.** Section 24.3(c) of S.L. 2007-323 reads as rewritten:

24 "SECTION 24.3.(c) This section is effective for taxable years beginning on or after
25 ~~January 1, 2007.~~ January 1, 2008."

26 **SECTION 4.(a)** G.S. 105-522(a)(2), as enacted by Section 31.16.4(c) of
27 S.L. 2007-323, reads as rewritten:

28 "(2) Hold harmless amount. – The sum of the ~~following:~~ following
29 distributed to a municipality for the month:

30 a. Fifty percent (50%) of the amount of sales and use tax revenue
31 distributed under Article 40 of this ~~Chapter to the municipality~~
32 ~~for a month,~~ Chapter, other than revenue from the sale of food
33 that is subject to local tax but is exempt from State tax under
34 G.S. 105-164.13B.

35 b. Twenty-five percent (25%) of the amount of sales and use tax
36 revenue distributed under Article 39 of this Chapter or under
37 Chapter 1096 of the 1967 Session Laws, other than revenue
38 from the sale of food that is subject to local tax but is exempt
39 from State tax under G.S. 105-164.13B.

40 c. ~~The amount determined under sub-subdivision a. of this~~
41 ~~subdivision subtracted from the amount determined under~~
42 ~~sub-subdivision b. of this subdivision.~~ by subtracting
43 twenty-five percent (25%) of the amount of sales and use tax
44 revenue distributed under Article 39 of this Chapter or under

1 Chapter 1096 of the 1967 Session Laws from fifty percent
2 (50%) of the amount distributed under Article 40 of this
3 Chapter. This calculation determines the effect of distributing a
4 one-quarter percent (.25%) tax on the basis of point of origin
5 instead of on a per capita basis. ~~If the difference is negative, the~~
6 ~~result increases the hold harmless amount."~~

7 **SECTION 4.(b)** G.S. 105-523(a)(2), as enacted by Section 31.16.4(d) of
8 S.L. 2007-323, reads as rewritten:

9 "(2) Repealed sales tax amount. – The sum of the ~~following:~~following
10 distributed to a county for the month:

- 11 a. Fifty percent (50%) of the amount of sales and use tax revenue
12 distributed ~~to a county~~ under Article 40 of this Chapter, other
13 than revenue from the sale of food that is subject to local tax but
14 is exempt from State tax under G.S. 105-164.13B.
- 15 b. Twenty-five percent (25%) of the amount of sales and use tax
16 revenue distributed under Article 39 of this Chapter or under
17 Chapter 1096 of the 1967 Session Laws, other than revenue
18 from the sale of food that is subject to local tax but is exempt
19 from State tax under G.S. 105-164.13B.
- 20 c. The amount determined ~~under sub-subdivision a. of this~~
21 ~~subdivision~~ ~~subtracted from the amount determined under~~
22 ~~sub-subdivision b. of this subdivision.~~ by subtracting
23 twenty-five percent (25%) of the amount of sales and use tax
24 revenue distributed under Article 39 of this Chapter or under
25 Chapter 1096 of the 1967 Session Laws from fifty percent
26 (50%) of the amount distributed under Article 40 of this
27 Chapter. This calculation determines the effect of distributing a
28 one-quarter percent (.25%) tax on the basis of point of origin
29 instead of on a per capita basis. ~~If the difference is negative, the~~
30 ~~result increases the hold harmless amount."~~

31 **SECTION 4.(c)** This section becomes effective October 1, 2009, and applies
32 to distributions for months beginning on or after that date.

33 **SECTION 5.** G.S. 105-538, as enacted by Section 31.17(b) of S.L.
34 2007-323, reads as rewritten:

35 "**§ 105-538. Administration of taxes.**

36 Except as provided in this Article, the adoption, levy, collection, administration, and
37 repeal of these additional taxes must be in accordance with Article 39 of this Chapter.
38 G.S. 105-468.1 is an administrative provision that applies to this Article. A tax levied
39 under this Article does not apply to the sales price of food that is exempt from tax
40 pursuant to G.S. 105-164.13B. The Secretary shall not divide the amount allocated to a
41 county between the county and the municipalities within the county. Notwithstanding
42 the provisions of G.S. 105-467(c), during the 2008 calendar year a tax levied under this
43 Article may become effective on the first day of any calendar quarter so long as the
44 county gives the Secretary at least 60 days' advance notice of the new tax levy."

1 **SECTION 6.(a)** G.S. 105-164.14(n), as enacted by Section 31.20(b) of S.L.
2 2007-323, reads as rewritten:

3 "(n) Analytical Services Supplies. – A taxpayer engaged in analytical services in
4 this State is allowed a refund of ~~fifty percent (50%) of the eligible amount of sales and~~
5 use tax paid by it in this ~~State on~~ State. The amount of the refund is the greater of the
6 following:

7 (1) Fifty percent (50%) of the eligible amount sales and use tax paid by it
8 on tangible personal property that is consumed or transformed in
9 analytical service activities. The eligible amount of sales and use tax
10 paid by the taxpayer in this State is the amount by which sales and use
11 taxes paid by the taxpayer in this State in the fiscal year exceed the
12 amount paid by the taxpayer in this State in the 2006-2007 State fiscal
13 year.

14 (2) Fifty percent (50%) of the amount of sales and use tax paid by it in the
15 fiscal year on medical reagents and medical supplies.

16 A request for a refund must be in writing and must include any information and
17 documentation that the Secretary requires. A request for a refund is due within six
18 months after the end of the State's fiscal year. Refunds applied for after the due date are
19 barred."

20 **SECTION 6.(b)** This section becomes effective July 1, 2007, and applies to
21 purchases made on or after that date.

22 **SECTION 7.** G.S. 105-129.95, as enacted by Section 31.23(a) of S.L.
23 2007-323, reads as rewritten:

24 **"§ 105-129.95. Definitions.**

25 The following definitions apply in this Article:

26 (1) Costs of construction. – The costs of acquiring and improving land,
27 constructing buildings and other structures, ~~and equipping the facility.~~
28 facility, and constructing and equipping rail tracks to the railroad
29 intermodal facility that are necessary to access and support facility
30 operations. In the case of property owned or leased by the taxpayer,
31 cost is determined pursuant to regulations adopted under section 1012
32 of the Code.

33 (2) Eligible railroad intermodal facility. – A railroad intermodal facility
34 whose costs of construction exceed thirty million dollars
35 (\$30,000,000).

36 (3) Intermodal facility. – A facility where freight is transferred from one
37 mode of transportation to another.

38 (4) Railroad intermodal facility. – An intermodal facility whose primary
39 purpose is to transfer freight between a railroad and another mode of
40 transportation."

41 **SECTION 8.** This act is effective when it becomes law.