

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2011

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SENATE BILL 739

Short Title: Consolidated Corporate Tax Returns. (Public)

Sponsors: Senators Goolsby; Blake, Daniel, Davis, Forrester, Hise, Rabon, and Tucker.

Referred to: Finance.

April 20, 2011

1 A BILL TO BE ENTITLED  
2 AN ACT TO PROVIDE MORE GUIDANCE ON CONSOLIDATED CORPORATE  
3 INCOME TAX RETURNS AND TO ALLOW CORPORATIONS TO CHOOSE TO FILE  
4 CONSOLIDATED RETURNS.

5 The General Assembly of North Carolina enacts:

6 SECTION 1. G.S. 105-130.6 reads as rewritten:

7 "§ 105-130.6. **Subsidiary and affiliated corporations.**

8 The net income of a corporation doing business in this State that is a parent, subsidiary, or  
9 affiliate of another corporation shall be determined by eliminating all payments to or charges  
10 by the parent, subsidiary, or affiliated corporation in excess of fair compensation in all  
11 intercompany transactions of any kind whatsoever. If the Secretary finds as a fact that a report  
12 by a corporation does not disclose the true earnings of the corporation on its business carried on  
13 in this ~~State~~, State due to payments to or charges by the parent, subsidiary, or affiliated  
14 corporation in excess of fair market value in intercompany transactions, then the Secretary may  
15 require the corporation to file a consolidated return of the entire operations of the parent  
16 corporation and of its subsidiaries and affiliates, including its own operations and ~~income~~.  
17 income, and the consolidated return shall eliminate payments to or charges by the parent,  
18 subsidiary, or affiliated corporation in excess of fair market value in intercompany transactions.  
19 The Secretary shall determine the true amount of net income earned by such corporation in this  
20 State. The combined net income of the corporation and of its parent, subsidiaries, and affiliates  
21 shall be apportioned to this State by use of the applicable apportionment formula required to be  
22 used by the corporation under G.S. 105-130.4. The return shall include in the apportionment  
23 formula the property, payrolls, and sales of all corporations for which the return is made. For  
24 the purposes of this section, a corporation is considered a subsidiary of another corporation  
25 when, directly or indirectly, it is subject to control by the other corporation by stock ownership,  
26 interlocking directors, or by any other means whatsoever exercised by the same or associated  
27 financial interests, whether the control is direct or through one or more subsidiary, affiliated, or  
28 controlled corporations. A corporation is considered an affiliate of another corporation when  
29 both are directly or indirectly controlled by the same parent corporation or by the same or  
30 associated financial interests by stock ownership, interlocking directors, or by any other means  
31 whatsoever, whether the control is direct or through one or more subsidiary, affiliated, or  
32 controlled corporations. The secretary may require a consolidated return under this section  
33 regardless of whether the parent or controlling corporation or interests or its subsidiaries or  
34 affiliates, other than the taxpayer, are or are not doing business in this State.

35 ...

36 If the Secretary finds that the determination of the income of a parent, subsidiary, or  
37 affiliated corporation under a consolidated return will produce a greater or lesser figure than the



1 amount of income earned in this State, the Secretary may readjust the determination by  
2 reasonable methods of computation to make it conform to the amount of income earned in this  
3 State. If the corporation contends the figure produced is greater than the earnings in this State,  
4 it must file with the Secretary within 30 days after notice of the determination a statement of its  
5 objections and of an alternative method of determination. The Secretary must consider the  
6 statement in determining the income earned in this State. The findings and conclusions of the  
7 Secretary shall be presumed to be ~~correct and shall not be set aside unless shown to be plainly~~  
8 ~~wrong.~~ correct.

9 In order to provide clarity for taxpayers, the Secretary ~~may~~ shall adopt rules in accordance  
10 with G.S. 105-262 that describe facts and circumstances under which the Secretary will require  
11 a corporation to file a consolidated or combined return. The adoption of these rules does not  
12 limit the Secretary's authority to require a consolidated or combined return under sets of facts  
13 and circumstances not described in the rules when the Secretary finds as a fact that a report by a  
14 corporation does not disclose the true earnings of the corporation on its business carried on in  
15 this State."

16 **SECTION 2.** G.S. 105-130.6, as amended by Section 1 of this act, reads as  
17 rewritten:

18 "**§ 105-130.6. Subsidiary and affiliated corporations.**

19 The net income of a corporation doing business in this State that is a parent, subsidiary, or  
20 affiliate of another corporation shall be determined by eliminating all payments to or charges  
21 by the parent, subsidiary, or affiliated corporation in excess of fair compensation in all  
22 intercompany transactions of any kind whatsoever. If the Secretary finds as a fact that a report  
23 by a corporation does not disclose the true earnings of the corporation on its business carried on  
24 in this State due to payments to or charges by the parent, subsidiary, or affiliated corporation in  
25 excess of fair market value in intercompany transactions, then the Secretary may require the  
26 corporation to file a consolidated return of the entire operations of the parent corporation and of  
27 its subsidiaries and affiliates, including its own operations and income, and the consolidated  
28 return shall eliminate payments to or charges by the parent, subsidiary, or affiliated corporation  
29 in excess of fair market value in intercompany transactions. The Secretary shall determine the  
30 true amount of net income earned by such corporation in this State. The combined net income  
31 of the corporation and of its parent, subsidiaries, and affiliates shall be apportioned to this State  
32 by use of the applicable apportionment formula required to be used by the corporation under  
33 G.S. 105-130.4. The return shall include in the apportionment formula the property, payrolls,  
34 and sales of all corporations for which the return is made. For the purposes of this section, a  
35 corporation is considered a subsidiary of another corporation when, directly or indirectly, it is  
36 subject to control by the other corporation by stock ownership, interlocking directors, or by any  
37 other means whatsoever exercised by the same or associated financial interests, whether the  
38 control is direct or through one or more subsidiary, affiliated, or controlled corporations. A  
39 corporation is considered an affiliate of another corporation when both are directly or indirectly  
40 controlled by the same parent corporation or by the same or associated financial interests by  
41 stock ownership, interlocking directors, or by any other means whatsoever, whether the control  
42 is direct or through one or more subsidiary, affiliated, or controlled corporations. The secretary  
43 may require a consolidated return under this section regardless of whether the parent or  
44 controlling corporation or interests or its subsidiaries or affiliates, other than the taxpayer, are  
45 or are not doing business in this State.

46 If a consolidated return required by this section is not filed within 60 days after it is  
47 demanded, then the corporation is subject to the penalties provided in G.S. 105-230 and  
48 G.S. 105-236.

49 The parent, subsidiary, or affiliated corporation must incorporate in its return required  
50 under this section information needed to determine the net income taxable under this Part, and  
51 must furnish any additional information the Secretary requires. If the return does not contain

1 the information required or the additional information requested is not furnished within 30 days  
2 after it is demanded, the corporation is subject to the penalties provided in G.S. 105-230 and  
3 G.S. 105-236.

4 Although not required by the Secretary, any parent, subsidiary, or affiliated corporation  
5 may file a consolidated return of the entire operations of the parent corporation and of its  
6 subsidiaries and affiliates, including its own operations and income, which consolidated return  
7 shall eliminate payments to or charges by the parent, subsidiary, or affiliated corporation in  
8 excess of fair market value in intercompany transactions. Such a consolidated return shall be  
9 adjusted only if the Secretary determines that the consolidated return does not disclose the true  
10 earnings of the corporation on its business carried on in this State due to payments to or charges  
11 by the parent, subsidiary, or affiliated corporation in excess of fair market value in  
12 intercompany transactions. A corporation may elect to file a consolidated return or not for a  
13 taxable year regardless of an election made in a prior taxable year.

14 If the Secretary finds that the determination of the income of a parent, subsidiary, or  
15 affiliated corporation under a consolidated return will produce a greater or lesser figure than the  
16 amount of income earned in this State, the Secretary may readjust the determination by  
17 reasonable methods of computation to make it conform to the amount of income earned in this  
18 State. If the corporation contends the figure produced is greater than the earnings in this State,  
19 it must file with the Secretary within 30 days after notice of the determination a statement of its  
20 objections and of an alternative method of determination. The Secretary must consider the  
21 statement in determining the income earned in this State. The findings and conclusions of the  
22 Secretary shall be presumed to be correct.

23 In order to provide clarity for taxpayers, the Secretary shall adopt rules in accordance with  
24 G.S. 105-262 that describe facts and circumstances under which the Secretary will require a  
25 corporation to file a consolidated or combined return. The adoption of these rules does not limit  
26 the Secretary's authority to require a consolidated or combined return under sets of facts and  
27 circumstances not described in the rules when the Secretary finds as a fact that a report by a  
28 corporation does not disclose the true earnings of the corporation on its business carried on in  
29 this State."

30 **SECTION 3.** The Secretary of the Department of Revenue shall propose rules that  
31 describe facts and circumstances under which the Secretary will require a corporation to file a  
32 consolidated or combined return, as required by G.S. 105-130.6, as amended by Section 1 of  
33 this act, no later than September 1, 2011. Section 2 of this act becomes effective for taxable  
34 years beginning on or after January 1, 2012. The remainder of this act is effective when it  
35 becomes law and shall apply to current contested administrative law cases in which an  
36 administrative law judge has not rendered a final decision.