

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1995

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HOUSE BILL 1119

Short Title: Limit Franchise Add-Back For Debt.

(Public)

Sponsors: Representatives Shaw, Blue, Cansler, Capps, Church, Neely, G. Robinson, and Shubert.

Referred to: Finance.

May 14, 1996

A BILL TO BE ENTITLED

AN ACT TO DELETE THE REQUIREMENT THAT A COMPANY ADD BACK TO ITS NET WORTH FRANCHISE TAX BASE THE AMOUNT OF ITS LOANS THAT ARE PAYABLE TO AN UNRELATED COMPANY BUT ARE ENDORSED OR GUARANTEED BY A RELATED COMPANY, AS RECOMMENDED BY THE DEPARTMENT OF REVENUE.

The General Assembly of North Carolina enacts:

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

"(b) Every such corporation taxed under this section shall determine the total amount of its issued and outstanding capital stock, surplus and undivided profits; no reservation or allocation from surplus or undivided profits shall be allowed other than for definite and accrued legal liabilities, except as herein provided; taxes accrued, dividends 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 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,

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

41 Every corporation doing business in this State which is a parent, subsidiary, or
42 affiliate of another corporation shall add to its capital stock, surplus and undivided profits
43 all indebtedness owed to ~~or endorsed or guaranteed by~~ a parent, subsidiary or affiliated

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

20 Sec. 2. This act is effective for taxable years beginning on or after October 1,
21 1996.