

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2003

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SENATE DRS15037-LCx-19A (1/30)

Short Title: Close Franchise Tax Loophole.

(Public)

Sponsors: Senator Clodfelter.

Referred to:

A BILL TO BE ENTITLED

AN ACT TO CLOSE A LOOPHOLE THAT ALLOWS CORPORATIONS TO
CONTINUE AVOIDING FRANCHISE TAXES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 105-114.1 reads as rewritten:

"§ 105-114.1. Limited liability companies.

(a) Definitions. – The definitions in G.S. 105-130.7A apply in this section. In addition, the following definitions apply in this section:

(1) Governing law. – A limited liability company's governing law is determined under G.S. 57C-6-05 or G.S. 57C-7-01, as applicable.

(2) Owned indirectly. – A person owns indirectly assets of a limited liability company if the limited liability company's governing law provides that seventy percent (70%) or more of its assets, after payments to creditors, must be distributed upon dissolution to the person as of the last day of the principal corporation's taxable year.

(3) Principal corporation. – A corporation that is a member of a limited liability company or has a related member that is a member of a limited liability company.

(b) Controlled Companies. – If a corporation or a related member of the corporation is a member of a limited liability company and the principal corporation and any related members of the principal corporation together own indirectly seventy percent (70%) or more of the limited liability company's assets, then the following provisions apply:

(1) A percentage of the limited liability company's income, assets, liabilities, and equity is attributed to that principal corporation and must be included in the principal corporation's computation of tax under this Article.

1 (2) The principal corporation's investment in the limited liability company
2 is not included in the principal corporation's computation of tax under
3 this Article.

4 (3) The attributable percentage is equal to the percentage of the limited
5 liability company's assets owned indirectly by the principal
6 corporation divided by the percentage of the limited liability
7 company's assets owned indirectly by related members of the principal
8 corporation that are corporations.

9 **(b1) Attribution.** – For the purpose of applying this section, any membership
10 interest a business trust holds in a limited liability company is attributed to the owners
11 of the beneficial interests in the business trust, according to their interests in the trust,
12 and the trust itself is disregarded as a separate entity.

13 **(c) Other Companies.** – In all other cases, none of the limited liability company's
14 income, assets, liabilities, or equity is attributed to a principal corporation under this
15 Article.

16 **(d) Penalty.** – A taxpayer who, because of fraud with intent to evade tax,
17 underpays the tax under this Article on assets attributable to it under this section is
18 guilty of a Class H felony in accordance with G.S. 105-236(7)."

19 **SECTION 2.** This act becomes effective January 1, 2004, and applies to
20 taxes due on or after that date.