

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2003

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SENATE BILL 51

Short Title: Close Franchise Tax Loophole.

(Public)

Sponsors: Senator Clodfelter.

Referred to: Finance.

February 17, 2003

1 A BILL TO BE ENTITLED  
2 AN ACT TO CLOSE A LOOPHOLE THAT ALLOWS CORPORATIONS TO  
3 CONTINUE AVOIDING FRANCHISE TAXES.

4 The General Assembly of North Carolina enacts:

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

6 "**§ 105-114.1. Limited liability companies.**

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

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

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

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

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

24 (1) A percentage of the limited liability company's income, assets,  
25 liabilities, and equity is attributed to that principal corporation and  
26 must be included in the principal corporation's computation of tax  
27 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.