

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2005

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SENATE BILL 1458*

Short Title: Expansion of Royalty Reporting Option. (Public)

Sponsors: Senators Hoyle, Clodfelter, Dalton, Hartsell, Kerr, and Webster.

Referred to: Finance.

May 17, 2006

A BILL TO BE ENTITLED
AN ACT TO EXPAND THE ROYALTY INCOME REPORTING OPTION TO
INCLUDE ADDITIONAL TYPES OF INTANGIBLE PROPERTY.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 105-130.7A reads as rewritten:

"§ 105-130.7A. Royalty income reporting option.

(a) Purpose. – Royalty payments received for the use of ~~trademarks~~ intangible property in this State are income derived from doing business in this State. This section provides taxpayers with an option concerning the method by which these royalties can be reported for taxation when the recipient and the payer are related members. As provided in this section, these royalty payments can be either (i) deducted by the payer and included in the income of the recipient, or (ii) added back to the income of the payer and excluded from the income of the recipient.

(b) Definitions. – The following definitions apply in this section:

(1) Component member. – Defined in section 1563(b) of the Code.

(1a) Intangible property. – Copyrights, patents, and trademarks.

(2) North Carolina royalty. – An amount charged that is for, related to, or in connection with the use in this State of a ~~trademark~~ intangible property. The term includes royalty and technical fees, licensing fees, and other similar charges.

(3) Own. – To own directly, indirectly, beneficially, or constructively. The attribution rules of section 318 of the Code apply in determining ownership under this section.

(4) Related entity. – Any of the following:

a. A stockholder who is an individual, or a member of the stockholder's family enumerated in section 318 of the Code, if the stockholder and the members of the stockholder's family own in the aggregate at least eighty percent (80%) of the value of the taxpayer's outstanding stock.

- 1 b. A stockholder, or a stockholder's partnership, limited liability
2 company, estate, trust, or corporation, if the stockholder and the
3 stockholder's partnerships, limited liability companies, estates,
4 trusts, and corporations own in the aggregate at least fifty
5 percent (50%) of the value of the taxpayer's outstanding stock.
- 6 c. A corporation, or a party related to the corporation in a manner
7 that would require an attribution of stock from the corporation
8 to the party or from the party to the corporation under the
9 attribution rules of section 318 of the Code, if the taxpayer
10 owns at least eighty percent (80%) of the value of the
11 corporation's outstanding stock.
- 12 (5) Related member. – A person that, with respect to the taxpayer during
13 any part of the taxable year, is one or more of the following:
- 14 a. A related entity.
- 15 b. A component member.
- 16 c. A person to or from whom there would be attribution of stock
17 ownership in accordance with section 1563(e) of the Code if the
18 phrase "5 percent or more" were replaced by "twenty percent
19 (20%) or more" each place it appears in that section.
- 20 (6) Royalty payment. – Either of the following:
- 21 a. Expenses, losses, and costs paid, accrued, or incurred for North
22 Carolina royalties, to the extent the amounts are allowed as
23 deductions or costs in determining taxable income before
24 operating loss deduction and special deductions for the taxable
25 year under the Code.
- 26 b. Amounts directly or indirectly allowed as deductions under
27 section 163 of the Code, to the extent the amounts are paid,
28 accrued, or incurred for a time price differential charged for the
29 late payment of any expenses, losses, or costs described in this
30 subdivision.
- 31 (7) Trademark. – A trademark, trade name, service mark, or other similar
32 type of intangible asset.
- 33 (8) Use. – Use of ~~a trademark~~ intangible property includes direct or
34 indirect maintenance, management, ownership, sale, exchange, or
35 disposition of the ~~trademark~~ intangible property.
- 36 (c) Election. – For the purpose of computing its State net income, a taxpayer
37 must add royalty payments made to, or in connection with transactions with, a related
38 member during the taxable year. This addition is not required for an amount of royalty
39 payments that meets either of the following conditions:
- 40 (1) The related member includes the amount as income on a return filed
41 under this Part for the same taxable year that the amount is deducted
42 by the taxpayer, and the related member does not elect to deduct the
43 amount pursuant to G.S. 105-130.5(b)(20).

1 (2) The taxpayer can establish that the related member during the same
2 taxable year directly or indirectly paid, accrued, or incurred the
3 amount to a person who is not a related member.

4 (d) Indirect Transactions. – For the purpose of this section, an indirect transaction
5 or relationship has the same effect as if it were direct."

6 **SECTION 2.** This act is effective for taxable years beginning on or after
7 January 1, 2006.