

GENERAL ASSEMBLY OF NORTH CAROLINA



Session 2007

Legislative Fiscal Note

BILL NUMBER: House Bill 2508 (First Edition)

SHORT TITLE: Corporate Tax Law Changes.

SPONSOR(S): Representatives Luebke, Wainwright, Gibson, and Weiss

FISCAL IMPACT

Yes (X) No () No Estimate Available ()

FY 2008-09 FY 2009-10 FY 2010-11 FY 2011-12 FY 2012-13

REVENUES:

****See Assumptions and Methodology****

EXPENDITURES

POSITIONS (cumulative):

**PRINCIPAL DEPARTMENT(S) &
PROGRAM(S) AFFECTED:**

EFFECTIVE DATE: Sections 1-3, January 1, 2009; Section 4, January 1, 2008

- **BILL SUMMARY:** This makes changes to the franchise tax laws to conform with changes the General Assembly made in 2006 and 2007 to the corporate income tax laws. The Department of Revenue recommended these changes to the Revenue Laws Study Committee. Effective beginning with the 2009 tax year, this bill makes the following changes to franchise taxes:
 - Amends GS 105-114(b) by modifying the definition of corporation to include a limited liability company (LLC) that elects to be treated as a corporation (was, C corporation) for tax purposes, and making that LLC subject to the franchise tax.
 - Makes a conforming change to GS 105-114.1(a)(5). Amends GS 105-125(b) by excluding captive REITs, which are real estate investment trusts owned or controlled by a single entity, from applying deductions allowed for regulated investment companies and non-captive REITs in determining franchise tax valuation.

The bill also makes changes to income tax laws that would require publicly traded partnerships (PTPs) that qualify as a PTP under section 7704(c) of the Internal Revenue Code to file an informational return with the Secretary of Revenue that lists the partners who received more than \$500 of income from the partnership during the taxable year.

Effective beginning with the 2008 tax year, the bill enacts new GS 105-154(e) to provide that:

- The information requirements for partnerships do not apply to a partner in a publicly traded partnership if the partner's distributive share for the year was no more than \$500, and
- The requirement to pay on behalf of nonresident partners does not apply to publicly traded partnerships

ASSUMPTIONS AND METHODOLOGY: Sections 1 and 2 – These sections close a potential loophole that could impact franchise tax collections. This could occur if an existing corporation (C or S) reorganized itself as a limited liability company and then elected S corporation status for federal tax purposes. This will impact any entities that have been able to take advantage of the loophole and avoid franchise tax liability. It is not possible, however, to calculate the number of companies that have reorganized themselves as a limited liability company to take advantage of this loophole or any companies that were avoided the tax regardless of the intent to avoid franchise tax liability. It is estimated that the impact of this bill is to increase franchise tax collections, however the amount is not anticipated to be significant.

Section 3 - The purpose of this section is to close a loophole that allows corporations to create captive REITs and shift assets to the REIT that then become exempt from franchise tax. A similar loophole was closed for income tax purposes last year and the Department did not think any significant changes to collections would result. Again, this may affect some taxpayers but the amount is not expected to be significant.

Section 4- According to the Department of Revenue this section of the bill will not have a fiscal impact. It may effect who has a tax liability, but not the overall amount of tax liability generated by the PTP.

SOURCES OF DATA: Department of Revenue

TECHNICAL CONSIDERATIONS: None

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DATE: May 27, 2008



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