

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2005

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SENATE BILL 1283

Short Title: Franchise Tax Base Calculation.

(Public)

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

Referred to: Finance.

May 11, 2006

A BILL TO BE ENTITLED
AN ACT TO CLARIFY THE TREATMENT OF DEFERRED TAX ASSETS IN THE
COMPUTATION OF THE FRANCHISE TAX CAPITAL BASE.

The General Assembly of North Carolina enacts:

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

"(b) Determination of Capital Base. – ~~Every such~~ A corporation taxed under this section shall determine the total amount of its issued and outstanding capital stock, ~~surplus—surplus,~~ and undivided ~~profits; no reservation or allocation—profits.~~ No reservation or allocation from surplus or undivided profits shall be is allowed other than for—except as provided below:

- (1) Definite ~~definite~~ and accrued legal ~~liabilities, except as herein provided; liabilities.~~
- (2) ~~taxes—Taxes~~ accrued, dividends ~~declared—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 purposes.~~
- (3) When including deferred tax liabilities, a corporation may reduce the amount included in its base by netting against that amount deferred tax assets. The reduction may not decrease deferred tax liabilities below zero (0).
- (4) Reserves for the 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, lakes, or rivers, upon condition that the corporation claiming such deductible liability shall furnish to the Secretary a certificate from the Department of Environment and Natural Resources or from a local

1 air pollution control program for air-cleaning devices located in an
2 area where the Environmental Management Commission has certified
3 a local air pollution control program pursuant to G.S. 143-215.112
4 certifying that the Environmental Management Commission or local
5 air pollution control program has found as a fact that the air-cleaning
6 device, waste treatment plant or pollution abatement equipment
7 purchased or constructed and installed as above described has actually
8 been constructed and installed and that such plant or equipment
9 complies with the requirements of the Environmental Management
10 Commission or local air pollution control program with respect to such
11 devices, plants or equipment, that such device, plant or equipment is
12 being effectively operated in accordance with the terms and conditions
13 set forth in the permit, certificate of approval, or other document of
14 approval issued by the Environmental Management Commission or
15 local air pollution control program and that the primary purpose
16 thereof is to reduce air or water pollution resulting from the emission
17 of air contaminants or the discharge of sewage and waste and not
18 merely incidental to other purposes and functions.

19 (5) ~~The Reserves for the~~ cost of purchasing and installing equipment or
20 constructing facilities for the purpose of recycling or resource
21 recovering of or from solid waste or for the purpose of reducing the
22 volume of hazardous waste generated shall be treated as deductible for
23 the purposes of this section upon condition that the corporation
24 claiming such deductible liability shall furnish to the Secretary a
25 certificate from the Department of Environment and Natural Resources
26 certifying that the Department of Environment and Natural Resources
27 has found as a fact that the equipment or facility has actually been
28 purchased, installed or constructed, that it is in conformance with all
29 rules and regulations of the Department of Environment and Natural
30 Resources, and the recycling or resource recovering is the primary
31 purpose of the facility or equipment.

32 (6) ~~The Reserves for the~~ cost of constructing facilities of any private or
33 public utility built for the purpose of providing sewer service to
34 residential and outlying areas shall be treated as deductible for the
35 purposes of this section; the deductible liability allowed by this section
36 shall apply only with respect to such pollution abatement plants or
37 equipment constructed or installed on or after January 1, 1955.

38 (7) ~~Treasury stock shall not be considered in computing the capital stock,~~
39 ~~surplus and undivided profits as the basis for franchise tax, but shall be~~
40 ~~excluded proportionately from said capital stock, surplus and~~
41 ~~undivided profits as the case may be upon the basis and to the extent of~~
42 ~~the cost thereof.~~ The cost of treasury stock.

43 (8) In the case of an international banking facility, the capital base shall be
44 reduced by the excess of the amount as of the end of the taxable year

1 of all assets of an international banking facility which are employed
2 outside the United States over liabilities of the international banking
3 facility owed to foreign persons. For purposes of such reduction,
4 foreign persons shall have the same meaning as defined in
5 G.S. 105-130.5(b)(13)d.

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

28 The following definitions apply in this subsection:

- 29 (1) Affiliate. – The same meaning as specified in G.S. 105-130.6.
30 (2) Indebtedness. – All loans, credits, goods, supplies, or other capital of
31 whatsoever nature furnished by a parent, subsidiary, or affiliated
32 corporation, other than indebtedness endorsed, guaranteed, or
33 otherwise supported by one of these corporations.
34 (3) Parent. – The same meaning as specified in G.S. 105-130.6.
35 (4) Subsidiary. – The same meaning as specified in G.S. 105-130.6."

36 **SECTION 2.** This act is effective when it becomes law.