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Short Title: Corporate Opt Out Chg/Budget Rev Changes.

(Public)

Sponsors:

Referred to:

February 8, 2007

A BILL TO BE ENTITLED

AN ACT TO PROVIDE NORTH CAROLINA CORPORATIONS A LIMITED OPPORTUNITY TO OPT OUT OF THE NORTH CAROLINA SHAREHOLDER PROTECTION ACT AND THE NORTH CAROLINA CONTROL SHARE ACQUISITION ACT AND TO MAKE TECHNICAL AND CLARIFYING CHANGES TO THE REVENUE PROVISIONS IN THE CURRENT OPERATIONS AND CAPITAL IMPROVEMENTS APPROPRIATIONS ACT OF 2007.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 55-9-05 reads as rewritten:

"§ 55-9-05. Exemptions.

The provisions of G.S. 55-9-02 shall not be applicable to any corporation that shall be made the subject of a business combination by an other entity ~~if~~ if one or more of the following conditions apply: (i) the

(1) The corporation was not a public corporation (as defined in G.S. 55-1-40(18a)) at the time such other entity acquired in excess of ten percent (10%) of the voting shares; (ii) on shares.

(2) On or before September 30, 1990 (or such earlier date as may be irrevocably established by resolution of the board of directors), the board of directors of a corporation to which G.S. 55-9-02 was not applicable on July 1, 1990, (other than a corporation described in G.S. 55-9-05(iii)) adopted a bylaw stating that the provisions of this Article shall not be applicable to the ~~corporation; (iii) corporation.~~ Neither the adoption nor failure to adopt a bylaw under this subdivision shall constitute grounds for any cause of action, at law or in equity, against the corporation or any of its directors.

- 1 (3) In ~~in~~ the case of a corporation to which G.S. 55-9-02 was not
2 applicable on July 1, 1990, as the result of adoption by its board of
3 directors under G.S. 55-9-05(ii) of a bylaw providing that G.S. 55-9-02
4 not apply to such corporation, the board of directors of such
5 corporation shall not have rescinded such bylaw on or before
6 September 30, 1990 (or such earlier date as may be irrevocably
7 established by resolution of the board of ~~directors~~); ~~(iv) directors~~.
8 Neither the rescission nor failure to rescind a bylaw under this
9 subdivision shall constitute grounds for any cause of action, at law or
10 in equity, against the corporation or any of its directors.
- 11 (4) In ~~in~~ the case of a corporation (including its predecessors) which
12 becomes a public corporation for the first time after July 1, 1990, such
13 corporation adopts a bylaw within 90 days of becoming a public
14 corporation stating that the provisions of this Article shall not be
15 applicable to it; ~~(v) in it~~. Neither the adoption nor failure to adopt a
16 bylaw under this subdivision shall constitute grounds for any cause of
17 action, at law or in equity, against the corporation or any of its
18 directors.
- 19 (5) In the case of a newly formed corporation after April 23, 1987, the
20 initial articles of incorporation of the corporation shall provide that the
21 provisions of this Article shall not be ~~applicable~~; ~~(vi) such~~ applicable.
- 22 (6) The business combination was the subject of an existing agreement of
23 the corporation on April 23, 1987; ~~or (vii) on 1987~~.
- 24 (7) On or after September 1, 2000, and on or before December 31, 2000,
25 the board of directors of a corporation to which G.S. 55-9-02 was
26 applicable on September 1, 2000, adopts a bylaw stating that the
27 provisions of this Article shall not be applicable to the corporation.
28 Neither the adoption nor failure to adopt a bylaw under this
29 subdivision shall constitute grounds for any cause of action, at law or
30 in equity, against the corporation or any of its directors.
- 31 (8) On or after August 1, 2007, and on or before December 31, 2007, the
32 board of directors of a corporation to which G.S. 55-9-02 was
33 applicable on August 1, 2007, adopts a bylaw stating that the
34 provisions of this Article shall not be applicable to the corporation.
35 Neither the adoption ~~or nor~~ failure to adopt a bylaw ~~of the type set~~
36 forth in G.S. 55-9-05(ii), (iv), or (vii) of this section ~~nor the rescission~~
37 ~~or failure to rescind a bylaw of the type referred to in G.S. 55-9-05(iii)~~
38 under this subdivision shall constitute grounds for any cause of action,
39 at law or in equity, against the corporation or any of its directors."

40 **SECTION 2.** G.S. 55-9A-09 reads as rewritten:

41 "**§ 55-9A-09. Exemptions.**

42 The provisions of this Article shall not be applicable to any a corporation if, that
43 meets one or more of the conditions listed in this section:

- 1 (1) ~~on~~ On or before September 30, 1990, or such earlier date as may be
2 irrevocably established by resolution of the board of directors, or at
3 any time before the corporation becomes, or after it ceases to be, a
4 covered corporation, the board of directors adopts a bylaw stating that
5 the provisions of this Article shall not be applicable to the ~~corporation;~~
6 ~~or, in~~ corporation. Neither adoption nor failure to adopt such a bylaw
7 or provision shall constitute grounds for any cause of action against the
8 corporation or any officer or director of the corporation.
- 9 (2) In the case of a corporation formed after August 12, 1987, its initial
10 articles of incorporation provide that this Article shall not be
11 applicable to the corporation; or on or after September 1, 2000, and on
12 or before December 31, 2000, the board of directors of a corporation to
13 which the provisions of this Article were applicable on September 1,
14 2000, adopts a bylaw stating that the provisions of this Article shall
15 not be applicable to the corporation. Neither adoption nor failure to
16 adopt such a bylaw or provision shall constitute grounds for any cause
17 of action against the corporation, or any officer or director of the
18 corporation.
- 19 (3) On or after August 1, 2007, and on or before December 31, 2007, the
20 board of directors of a corporation to which the provisions of this
21 Article were applicable on August 1, 2007, adopts a bylaw stating that
22 the provision of this Article shall not be applicable to the corporation.
23 Neither the adoption nor failure to adopt a bylaw under this
24 subdivision shall constitute grounds for any cause of action against the
25 corporation or any of its officers or directors."

26 **SECTION 3.** Section 24.3(c) of S.L. 2007-323 reads as rewritten:

27 "**SECTION 24.3.(c)** This section is effective for taxable years beginning on or after
28 ~~January 1, 2007.~~ January 1, 2008."

29 **SECTION 4.(a)** G.S. 105-522(a)(2), as enacted by Section 31.16.4(c) of
30 S.L. 2007-323, reads as rewritten:

- 31 "(2) Hold harmless amount. – The sum of the ~~following:~~ following
32 distributed to a municipality for the month:
- 33 a. Fifty percent (50%) of the amount of sales and use tax revenue
34 distributed under Article 40 of this ~~Chapter to the municipality~~
35 ~~for a month, Chapter~~, other than revenue from the sale of food
36 that is subject to local tax but is exempt from State tax under
37 G.S. 105-164.13B.
- 38 b. Twenty-five percent (25%) of the amount of sales and use tax
39 revenue distributed under Article 39 of this Chapter or under
40 Chapter 1096 of the 1967 Session Laws, other than revenue
41 from the sale of food that is subject to local tax but is exempt
42 from State tax under G.S. 105-164.13B.
- 43 c. The amount determined ~~under sub-subdivision a. of this~~
44 ~~subdivision subtracted from the amount determined under~~

1 ~~sub-subdivision b. of this subdivision. by subtracting~~
2 ~~twenty-five percent (25%) of the amount of sales and use tax~~
3 ~~revenue distributed under Article 39 of this Chapter or under~~
4 ~~Chapter 1096 of the 1967 Session Laws from fifty percent~~
5 ~~(50%) of the amount distributed under Article 40 of this~~
6 ~~Chapter. This calculation determines the effect of distributing a~~
7 ~~one-quarter percent (.25%) tax on the basis of point of origin~~
8 ~~instead of on a per capita basis. If the difference is negative, the~~
9 ~~result increases the hold harmless amount."~~

10 **SECTION 4.(b)** G.S. 105-523(a)(2), as enacted by Section 31.16.4(d) of
11 S.L. 2007-323, reads as rewritten:

12 "(2) Repealed sales tax amount. – The sum of the ~~following:~~following
13 distributed to a county for the month:

- 14 a. Fifty percent (50%) of the amount of sales and use tax revenue
15 distributed ~~to a county~~ under Article 40 of this Chapter, other
16 than revenue from the sale of food that is subject to local tax but
17 is exempt from State tax under G.S. 105-164.13B.
- 18 b. Twenty-five percent (25%) of the amount of sales and use tax
19 revenue distributed under Article 39 of this Chapter or under
20 Chapter 1096 of the 1967 Session Laws, other than revenue
21 from the sale of food that is subject to local tax but is exempt
22 from State tax under G.S. 105-164.13B.
- 23 c. The amount determined ~~under sub-subdivision a. of this~~
24 ~~subdivision subtracted from the amount determined under~~
25 ~~sub-subdivision b. of this subdivision. by subtracting~~
26 ~~twenty-five percent (25%) of the amount of sales and use tax~~
27 ~~revenue distributed under Article 39 of this Chapter or under~~
28 ~~Chapter 1096 of the 1967 Session Laws from fifty percent~~
29 ~~(50%) of the amount distributed under Article 40 of this~~
30 ~~Chapter. This calculation determines the effect of distributing a~~
31 ~~one-quarter percent (.25%) tax on the basis of point of origin~~
32 ~~instead of on a per capita basis. If the difference is negative, the~~
33 ~~result increases the hold harmless amount."~~

34 **SECTION 4.(c)** This section becomes effective October 1, 2009, and applies
35 to distributions for months beginning on or after that date.

36 **SECTION 5.** G.S. 105-538, as enacted by Section 31.17(b) of S.L.
37 2007-323, reads as rewritten:

38 "**§ 105-538. Administration of taxes.**

39 Except as provided in this Article, the adoption, levy, collection, administration, and
40 repeal of these additional taxes must be in accordance with Article 39 of this Chapter.
41 G.S. 105-468.1 is an administrative provision that applies to this Article. A tax levied
42 under this Article does not apply to the sales price of food that is exempt from tax
43 pursuant to G.S. 105-164.13B. The Secretary shall not divide the amount allocated to a
44 county between the county and the municipalities within the county. Notwithstanding

1 the provisions of G.S. 105-467(c), during the 2008 calendar year a tax levied under this
2 Article may become effective on the first day of any calendar quarter so long as the
3 county gives the Secretary at least 60 days' advance notice of the new tax levy."

4 **SECTION 6.(a)** G.S. 105-164.14(n), as enacted by Section 31.20(b) of S.L.
5 2007-323, reads as rewritten:

6 "(n) Analytical Services Supplies. – A taxpayer engaged in analytical services in
7 this State is allowed a refund of ~~fifty percent (50%) of the eligible amount of sales and~~
8 ~~use tax paid by it in this State on State.~~ The amount of the refund is the greater of the
9 following:

- 10 (1) Fifty percent (50%) of the eligible amount sales and use tax paid by it
11 on tangible personal property that is consumed or transformed in
12 analytical service activities. The eligible amount of sales and use tax
13 paid by the taxpayer in this State is the amount by which sales and use
14 taxes paid by the taxpayer in this State in the fiscal year exceed the
15 amount paid by the taxpayer in this State in the 2006-2007 State fiscal
16 year.
- 17 (2) Fifty percent (50%) of the amount of sales and use tax paid by it in the
18 fiscal year on medical reagents.

19 A request for a refund must be in writing and must include any information and
20 documentation that the Secretary requires. A request for a refund is due within six
21 months after the end of the State's fiscal year. Refunds applied for after the due date are
22 barred."

23 **SECTION 6.(b)** This section becomes effective July 1, 2007, and applies to
24 purchases made on or after that date.

25 **SECTION 7.** G.S. 105-129.95, as enacted by Section 31.23(a) of S.L.
26 2007-323, reads as rewritten:

27 "§ 105-129.95. **Definitions.**

28 The following definitions apply in this Article:

- 29 (1) Costs of construction. – The costs of acquiring and improving land,
30 constructing buildings and other structures, ~~and equipping the facility.~~
31 facility, and constructing and equipping rail tracks to the railroad
32 intermodal facility that are necessary to access and support facility
33 operations. In the case of property owned or leased by the taxpayer,
34 cost is determined pursuant to regulations adopted under section 1012
35 of the Code.
- 36 (2) Eligible railroad intermodal facility. – A railroad intermodal facility
37 whose costs of construction exceed thirty million dollars
38 (\$30,000,000).
- 39 (3) Intermodal facility. – A facility where freight is transferred from one
40 mode of transportation to another.
- 41 (4) Railroad intermodal facility. – An intermodal facility whose primary
42 purpose is to transfer freight between a railroad and another mode of
43 transportation."

1 **SECTION 8.** A retailer is not liable for an over-collection or
2 under-collection of sales tax if the retailer has made a good faith effort to comply with
3 the law and collect the proper amount of tax and has, due to the change in the rate of tax
4 imposed under G.S. 105-164.4(a) by Section 31.2 of S.L. 2007-323, over-collected or
5 under-collected the amount of sales tax that is due. This subsection applies only to the
6 period beginning August 1, 2007, and ending September 1, 2007.

7 **SECTION 9.** This act is effective when it becomes law.