

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2005

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SENATE BILL 1283
Second Edition Engrossed 6/1/06
House Committee Substitute Favorable 6/22/06

Short Title: Franchise Tax Base Calculation.

(Public)

Sponsors:

Referred to:

May 11, 2006

A BILL TO BE ENTITLED

1 AN ACT TO CLARIFY THE TREATMENT OF DEFERRED TAX ASSETS IN THE
2 COMPUTATION OF THE FRANCHISE TAX CAPITAL BASE AND TO
3 INCREASE THE ADMINISTRATIVE EFFICIENCY OF THE UNIVERSITY OF
4 NORTH CAROLINA BY EXEMPTING IT FROM LAWS GOVERNING
5 CONSULTANT SERVICES, ALLOWING THE BOARD OF GOVERNORS TO
6 DELEGATE MORE AUTHORITY TO THE PRESIDENT OF THE UNIVERSITY
7 OF NORTH CAROLINA, AND CHANGING ITS REPORTING DATES.

8 The General Assembly of North Carolina enacts:

9 **PART I. FRANCHISE TAX BASE CALCULATION**

10 **SECTION 1.1.** G.S. 105-122(b) reads as rewritten:

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

16 (1) ~~Definite definite—~~ and accrued legal ~~liabilities, except as herein~~
17 ~~provided;~~ liabilities.

18 (2) ~~taxes—Taxes~~ accrued, dividends ~~declared—declared,~~ and reserves for
19 depreciation of tangible assets as permitted for income tax ~~purposes~~
20 ~~shall be treated as deductible liabilities. There shall also be treated as a~~
21 ~~deductible liability reserves for the entire cost purposes.~~

22 (3) When including deferred tax liabilities, a corporation may reduce the
23 amount included in its base by netting against that amount deferred tax
24 assets. The reduction may not decrease deferred tax liabilities below
25 zero (0).

26 (4) Reserves for the cost of any air-cleaning device or sewage or waste
27 treatment plant, including waste lagoons, and pollution abatement
28

1 equipment purchased or constructed and installed which reduces the
2 amount of air or water pollution resulting from the emission of air
3 contaminants or the discharge of sewage and industrial wastes or other
4 polluting materials or substances into the outdoor atmosphere or
5 streams, lakes, or rivers, upon condition that the corporation claiming
6 such deductible liability shall furnish to the Secretary a certificate from
7 the Department of Environment and Natural Resources or from a local
8 air pollution control program for air-cleaning devices located in an
9 area where the Environmental Management Commission has certified
10 a local air pollution control program pursuant to G.S. 143-215.112
11 certifying that the Environmental Management Commission or local
12 air pollution control program has found as a fact that the air-cleaning
13 device, waste treatment plant or pollution abatement equipment
14 purchased or constructed and installed as above described has actually
15 been constructed and installed and that such plant or equipment
16 complies with the requirements of the Environmental Management
17 Commission or local air pollution control program with respect to such
18 devices, plants or equipment, that such device, plant or equipment is
19 being effectively operated in accordance with the terms and conditions
20 set forth in the permit, certificate of approval, or other document of
21 approval issued by the Environmental Management Commission or
22 local air pollution control program and that the primary purpose
23 thereof is to reduce air or water pollution resulting from the emission
24 of air contaminants or the discharge of sewage and waste and not
25 merely incidental to other purposes and functions.

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

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

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

6 (8) In the case of an international banking facility, the capital base shall be
7 reduced by the excess of the amount as of the end of the taxable year
8 of all assets of an international banking facility which are employed
9 outside the United States over liabilities of the international banking
10 facility owed to foreign persons. For purposes of such reduction,
11 foreign persons shall have the same meaning as defined in
12 G.S. 105-130.5(b)(13)d.

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

35 The following definitions apply in this subsection:

36 (1) Affiliate. – The same meaning as specified in G.S. 105-130.6.

37 (2) Indebtedness. – All loans, credits, goods, supplies, or other capital of
38 whatsoever nature furnished by a parent, subsidiary, or affiliated
39 corporation, other than indebtedness endorsed, guaranteed, or
40 otherwise supported by one of these corporations.

41 (3) Parent. – The same meaning as specified in G.S. 105-130.6.

42 (4) Subsidiary. – The same meaning as specified in G.S. 105-130.6."

43 **SECTION 1.2.** This part becomes effective for taxable years beginning on
44 or after January 1, 2007.

PART II. UNIVERSITY EFFICIENCY MEASURES**SECTION 2.1.** G.S. 143-64.24 reads as rewritten:**"§ 143-64.24. Applicability of Article.**

This Article shall not apply to the following agencies:

- (1) The General Assembly, special Assembly.
- (2) Special study commissions, the commissions.
- (3) The Research Triangle Institute, or the Institute.
- (4) The Institute of Government, nor shall it apply to attorneys Government.
- (5) Attorneys employed by the North Carolina Department of Justice, or physiciansJustice.
- (6) Physicians or doctors performing contractual services for any State agency. This Article shall not apply to Independent
- (7) Independent Review Organizations selected by the Commissioner of Insurance pursuant to G.S. 58-50-85.
- (8) The University of North Carolina. The Board of Governors of the University of North Carolina must adopt policies and procedures governing contracts to obtain the services of a consultant by the constituent institutions of the University of North Carolina."

SECTION 2.2. G.S. 116-11(13) reads as rewritten:**"§ 116-11. Powers and duties generally.**

The powers and duties of the Board of Governors shall include the following:

...

- (13) The Board may delegate any part of its authority over the affairs of any institution to the board of trustees or, through the President, to the chancellor of the institution in any case where such delegation appears necessary or prudent to enable the institution to function in a proper and expeditious manner. The Board may delegate any part of its authority over the affairs of The University of North Carolina to the President in any case where such delegation appears necessary or prudent to enable The University of North Carolina to function in a proper and expeditious manner. Any delegation of authority may be rescinded by the Board at any time in whole or in part."

SECTION 2.3. G.S. 116-209.35(f) reads as rewritten:

"(f) The Board of Governors of The University of North Carolina shall report to the Joint Legislative Education Oversight Committee by ~~March 1~~ December 1 each year regarding the Fund and scholarships awarded from the Fund."

SECTION 2.4. G.S. 116-209.36(g) reads as rewritten:

"(g) The State Education Assistance Authority shall report to the Joint Legislative Education Oversight Committee by ~~March 1~~ December 1 each year regarding the Fund and scholarship loans awarded from the Fund."

SECTION 2.5. G.S. 116-209.38(f) reads as rewritten:

1 (f) The Board of Governors of The University of North Carolina shall report to
2 the Joint Legislative Education Oversight Committee by ~~March 1~~December 1 each year
3 regarding the Fund and scholarship loans awarded from the Fund."

4 **SECTION 2.6.** This part is effective when it becomes law.

5 **PART III. EFFECTIVE DATE**

6 **SECTION 3.** This act is effective when it becomes law.