

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2011

H

1

HOUSE BILL 909

Short Title: Combined Reporting for Corporate Income Tax. (Public)

Sponsors: Representatives Luebke, Weiss, and Harrison (Primary Sponsors).  
For a complete list of Sponsors, see Bill Information on the NCGA Web Site.

Referred to: Rules, Calendar, and Operations of the House.

May 5, 2011

1 A BILL TO BE ENTITLED  
2 AN ACT TO REQUIRE CORPORATIONS TO FILE A COMBINED INCOME TAX  
3 REPORT.

4 The General Assembly of North Carolina enacts:

5 **SECTION 1.** G.S. 105-130.2(5c) reads as rewritten:

6 "**§ 105-130.2. Definitions.**

7 The following definitions apply in this Part:

- 8 ...
- 9 (5c) State net income. – The taxpayer's federal taxable income as determined  
10 under the Code, adjusted as provided in G.S. 105-130.5 and, in the case of a  
11 corporation that has income from business activity that is taxable both within  
12 and without this State, allocated and apportioned to this State as provided in  
13 G.S. 105-130.4. A corporation's net income in this State includes all of the  
14 following:
- 15 a. Its share of any income apportionable to this State of each of the  
16 combined groups of which it is a member.
  - 17 b. Its share of any income apportionable to this State of a distinct  
18 business activity conducted within or without the State wholly by the  
19 taxpayer.
  - 20 c. Its income from a business conducted wholly by the taxpayer entirely  
21 within this State.
  - 22 d. Its nonapportionable income or loss allocable to this State."

23 **SECTION 2.** G.S. 105-130.4(a) reads as rewritten:

24 "**§ 105-130.4. Allocation and apportionment of income for corporations.**

25 (a) ~~As used in this section, unless the context otherwise requires:~~ The following  
26 definitions apply in this section, G.S. 105-130.4A, and G.S. 105-130.4B:

- 27 (1) ~~"Apportionable income" means all~~ Affiliated group. – A group of two or  
28 more corporations in which more than fifty percent (50%) of the voting  
29 stock of each member corporation is directly or indirectly owned by a  
30 common owner or owners, either corporate or noncorporate, or by one or  
31 more of the member corporations.
- 32 (1a) Apportionable income. – All income that is apportionable under the United  
33 States Constitution.
- 34 (1b) Business activity. – Any activity by a corporation that would establish nexus  
35 under 15 United States Code section 381.



- 1           (1c) Casual sale of property. – The sale of any property which was not purchased,  
2           produced, or acquired primarily for sale in the corporation's regular trade or  
3           business.
- 4           (1d) Combined group. – The collective members of an affiliated group that are  
5           engaged in a unitary business.
- 6           (2) ~~"Commercial domicile" means the Commercial domicile.~~ – The principal  
7           place from which the trade or business of the taxpayer is directed or  
8           managed.
- 9           (3) ~~"Compensation" means wages,~~ Compensation. – Wages, salaries,  
10           commissions and any other form of remuneration paid to employees for  
11           personal services.
- 12           (4) ~~"Excluded corporation" means any Excluded corporation.~~ – A corporation  
13           engaged in business as a building or construction contractor, a securities  
14           dealer, or a loan company or a corporation that receives more than fifty  
15           percent (50%) of its ordinary gross income from intangible property.
- 16           (5) ~~"Nonapportionable income" means all Nonapportionable income.~~ – All  
17           income other than apportionable income.
- 18           (6) ~~"Public utility" means any Public utility.~~ – A corporation that is subject to  
19           control of one or more of the following entities: the North Carolina Utilities  
20           Commission, the Federal Communications Commission, the Interstate  
21           Commerce Commission, the Federal Energy Regulatory Commission, or the  
22           Federal Aviation Agency; and that owns or operates for public use any plant,  
23           equipment, property, franchise, or license for the transmission of  
24           communications, the transportation of goods or persons, or the production,  
25           storage, transmission, sale, delivery or furnishing of electricity, water, steam,  
26           oil, oil products, or gas. The term also includes a motor carrier of property  
27           whose principal business activity is transporting property by motor vehicle  
28           for hire over the public highways of this State.
- 29           (7) ~~"Sales" means all Sales.~~ – All gross receipts of the corporation except for the  
30           following receipts:
- 31           a.       Receipts from a casual sale of property.
- 32           b.       Receipts allocated under subsections (c) through (h) of this section.
- 33           c.       Receipts exempt from taxation.
- 34           d.       The portion of receipts realized from the sale or maturity of securities  
35           or other obligations that represents a return of principal.
- 36           (8) ~~"Casual sale of property" means the sale of any property which was not~~  
37           ~~purchased, produced or acquired primarily for sale in the corporation's~~  
38           ~~regular trade or business.~~
- 39           (9) ~~"State" means any State.~~ – A state of the United States, the District of  
40           Columbia, the Commonwealth of Puerto Rico, any territory or possession of  
41           the United States, and any foreign country or political subdivision thereof.
- 42           (10) Unitary business. – One or more related business organizations engaged in  
43           business activity both within and without the State among which one or  
44           more of the following exist:
- 45           a.       A unity of ownership, operation, or use.
- 46           b.       An interdependence in their functions."

47           **SECTION 3.** G.S. 105-130.4(b) reads as rewritten:

48           "(b) A corporation having income from business activity which is taxable both within  
49           and without this State shall allocate and apportion its net income or net loss as provided in this  
50           ~~section.~~ section and G.S. 105-130.4A. For purposes of allocation and apportionment, a  
51           corporation is taxable in another state if (i) the corporation's business activity in that state

1 subjects it to a net income tax or a tax measured by net income, or (ii) that state has jurisdiction  
2 based on the corporation's business activity in that state to subject the corporation to a tax  
3 measured by net income regardless whether that state exercises its jurisdiction. ~~For purposes of~~  
4 ~~this section, "business activity" includes any activity by a corporation that would establish a~~  
5 ~~taxable nexus pursuant to 15 United States Code section 381."~~

6 **SECTION 4.** G.S. 105-130.4(i) reads as rewritten:

7 "(i) All apportionable income of corporations other than public utilities, excluded  
8 corporations, and qualified capital intensive corporations shall be apportioned to this State by  
9 multiplying the income by a fraction, the numerator of which is the property factor plus the  
10 payroll factor plus twice the sales factor, and the denominator of which is four. If the sales  
11 factor does not exist, the denominator of the fraction is the number of existing factors and if the  
12 sales factor exists but the payroll factor or the property factor does not exist, the denominator of  
13 the fraction is the number of existing factors plus one. The apportionable income of a  
14 corporation that is part of a combined group engaged in a unitary business shall be apportioned  
15 to this State as provided in G.S. 105-130.4A."

16 **SECTION 5.** G.S. 105-130.4(1)(2) reads as rewritten:

17 "(2) Sales of tangible personal property are in this State if the property is  
18 received in this State by ~~the purchaser.~~ a purchaser other than the United  
19 States government. In addition, a sale of tangible personal property is in this  
20 State if the property is shipped from a place in this State and the purchaser is  
21 in the United States government or the taxpayer is not taxable in the state of  
22 the purchaser. In the case of delivery of goods by common carrier or by  
23 other means of transportation, including transportation by the purchaser, the  
24 place at which the goods are ultimately received after all transportation has  
25 been completed shall be considered as the place at which the goods are  
26 received by the purchaser. Direct delivery into this State by the taxpayer to a  
27 person or firm designated by a purchaser from within or without the State  
28 shall constitute delivery to the purchaser in this State."

29 **SECTION 6.** Part 1 of Article 4 of Chapter 105 of the General Statutes is amended  
30 by adding two new sections to read:

31 **§ 105-130.4A. Apportionment of income of combined group.**

32 (a) Combined Group. – The apportionable income of a combined group's unitary  
33 business is determined by eliminating income, deductions, and losses from all transactions  
34 between the members of the combined group associated with the combined group's unitary  
35 business. The apportionable income of the combined group's unitary business is apportioned in  
36 accordance with G.S. 105-130.4(i) through G.S. 105-130.4(1), including in the numerator the  
37 property, payroll, and sales associated with the combined group's unitary business in this State  
38 of each member of the combined group that has business activity in this State associated with  
39 the combined group's unitary business, and including in the denominator the property, payroll,  
40 and sales of all members of the combined group that are associated with the combined group's  
41 unitary business. Members of a combined group may elect to determine the combined group's  
42 apportionable income pursuant to water's edge election under G.S. 105-130.4B.

43 (b) Member Share. – A member's share of the apportionable income of a combined  
44 group's unitary business apportioned to this State of which it is a member is the product of the  
45 following:

- 46 (1) The apportionable income of the combined group's unitary business  
47 apportionable to this State.  
48 (2) The ratio of the member's State apportionment factors associated with the  
49 combined group's unitary business to the combined group's aggregate State  
50 apportionment factors associated with the combined group's unitary  
51 business.

1 **"§ 105-130.4B. Water's edge election.**

2 (a) Election. – Members of a combined group may elect to disregard the income and  
3 apportionment factors of a member of the combined group that is a foreign corporation that  
4 conducts eighty percent (80%) or more of its business activity outside the United States and  
5 outside of a tax haven country. A water's edge election must be filed in writing with the  
6 Secretary. It is effective for the taxable year in which it is filed and for the following 10 taxable  
7 years. The election will be automatically extended at the end of the 10-year period unless notice  
8 is given in writing to the Secretary of intent not to renew. The notice of intent not to renew  
9 must be made before the end of the last two years of the election period.

10 (b) Withdrawal of Election. – An election may be withdrawn only upon written request  
11 to the Secretary and only with the written permission of the Secretary. If the Secretary grants a  
12 withdrawal of election, the Secretary must impose reasonable conditions as necessary to  
13 prevent the evasion of tax or to clearly reflect income for the election period prior to or after the  
14 withdrawal. A water's edge election, once terminated by either a notice of withdrawal or a  
15 failure to renew, may not be renewed for a minimum of three years.

16 (c) Definition. – For purposes of this section, the term 'tax haven country' has the same  
17 meaning as in G.S. 143-59.1."

18 **SECTION 7.** G.S. 105-130.14 reads as rewritten:

19 **"§ 105-130.14. Corporations filing consolidated returns for federal income tax purposes.**

20 (a) Elective or Secretary-Initiated Consolidated Returns. – Any corporation electing or  
21 required to file a consolidated income tax return with the Internal Revenue Service must  
22 determine its State net income as if the corporation had filed a separate federal return and shall  
23 not file a consolidated or combined return with the Secretary unless one of the following  
24 applies:

- 25 (1) The corporation is specifically directed in writing by the Secretary under  
26 G.S. 105-130.6 to file a consolidated or combined return.  
27 (2) The corporation's facts and circumstances meet the facts and circumstances  
28 described in a permanent rule adopted under G.S. 105-130.6 and the  
29 corporation files a consolidated or combined return in accordance with that  
30 rule.  
31 (3) Pursuant to a written request from the corporation, the Secretary has  
32 provided written advice to the corporation stating that the Secretary will  
33 require a consolidated or combined return under the facts and circumstances  
34 set out in the request and the corporation files a consolidated or combined  
35 return in accordance with that written advice.

36 (b) Affiliated Group Combined Reporting. – A corporation which is part of an  
37 affiliated group engaged in a unitary business must file a report for the combined group  
38 containing the combined net income of the combined group and any other information the  
39 Secretary may require. The use of a combined report does not disregard the separate identities  
40 of the members of the combined group. Each member of the combined group is responsible for  
41 tax based on its taxable income or loss apportioned or allocated to this State."

42 **SECTION 8.** This act becomes effective for taxable years beginning on or after  
43 January 1, 2012.