

**GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2001**

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**SENATE BILL 1292  
Finance Committee Substitute Adopted 6/11/02  
Third Edition Engrossed 6/13/02  
House Committee Substitute Favorable 7/17/02**

Short Title: Budget Revenue Act of 2002.

(Public)

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Sponsors:

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Referred to:

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June 10, 2002

A BILL TO BE ENTITLED

1  
2 AN ACT TO DELAY THE INCREASE IN THE CHILD TAX CREDIT BY ONE  
3 YEAR; TO DELAY THE INCREASE IN THE STANDARD DEDUCTION FOR  
4 MARRIED PERSONS BY ONE YEAR; TO UPDATE THE REFERENCE DATE  
5 TO THE INTERNAL REVENUE CODE USED TO DEFINE AND DETERMINE  
6 CERTAIN STATE TAX PROVISIONS; TO CONFORM TO THE FEDERAL  
7 ANNUAL EXCLUSION AMOUNT FOR GIFT TAXES; TO DELAY THE  
8 EFFECT OF ACCELERATED DEPRECIATION UNDER SECTION 168 OF THE  
9 CODE AND SECTION 1400L OF THE CODE; TO DISREGARD THE  
10 PHASE-OUT OF THE STATE DEATH TAX CREDIT UNDER THE CODE; TO  
11 ALLOW THE SECRETARY OF REVENUE TO RECOUP A PORTION OF THE  
12 COSTS OF ADMINISTERING THE UNAUTHORIZED SUBSTANCES TAX  
13 FROM LOCAL SALES AND USE TAX DISTRIBUTIONS; TO SET THE  
14 INSURANCE REGULATORY FEE AND THE PUBLIC UTILITY  
15 REGULATORY FEES; TO PROVIDE THAT LOCAL REVENUES MAY NOT  
16 BE WITHHELD OR IMPOUNDED BY THE GOVERNOR; TO CONFORM THE  
17 DEFINITION OF BUSINESS INCOME TO FEDERAL STANDARDS; TO  
18 PROVIDE THAT IN APPORTIONING CORPORATE INCOME TO THIS STATE  
19 FOR INCOME TAX PURPOSES, SALES IN ANOTHER STATE OR COUNTRY  
20 WHERE THEY ARE NOT TAXABLE ARE NOT CONSIDERED; TO CLOSE A  
21 LOOPHOLE IN THE 2001 LEGISLATION INTENDED TO CLOSE A  
22 LOOPHOLE THAT ALLOWS CORPORATIONS TO AVOID FRANCHISE TAX  
23 LIABILITY BY TRANSFERRING ASSETS TO A LIMITED LIABILITY  
24 COMPANY; AND TO ENLARGE THE CLASS OF TAXPAYERS ELIGIBLE  
25 FOR AN ENHANCED CREDIT FOR INVESTING IN LOW-INCOME HOUSING  
26 IN A COUNTY THAT SUSTAINED SEVERE OR MODERATE DAMAGE  
27 FROM A HURRICANE IN 1999.

1 The General Assembly of North Carolina enacts:

2  
3 **PART I. RESERVED**

4  
5 **PART II. DELAY 2001 TAX BREAKS**

6  
7 **SECTION 2.1.(a)** The lead-in language of Section 34.19(a) of S.L.  
8 2001-424 reads as rewritten:

9 "**SECTION 34.19.(a)** Effective for taxable years beginning on or after January 1,  
10 ~~2002,2003~~, G.S. 105-134.6(c)(3) and (4) reads as rewritten:".

11 **SECTION 2.1.(b)** The lead-in language of Section 34.19(b) of S.L.  
12 2001-424 reads as rewritten:

13 "**SECTION 34.19.(b)** Effective for taxable years beginning on or after January 1,  
14 ~~2003,2004~~, G.S. 105-134.6(c)(4), as amended by this section, reads as rewritten:".

15 **SECTION 2.2.(a)** The lead-in language of Section 34.20(a) of S.L.  
16 2001-424 reads as rewritten:

17 "**SECTION 34.20.(a)** Effective for taxable years beginning on or after January 1,  
18 ~~2002,2003~~, G.S. 105-151.24 reads as rewritten:".

19 **SECTION 2.2.(b)** The lead-in language of Section 34.20(b) of S.L.  
20 2001-424 reads as rewritten:

21 "**SECTION 34.20.(b)** Effective for taxable years beginning on or after January 1,  
22 ~~2003,2004~~, G.S. 105-151.24, as amended by this section, reads as rewritten:".

23  
24 **PART III. UPDATE IRC REFERENCE**

25  
26 **SECTION 3.1.** G.S. 105-228.90(b)(1b) reads as rewritten:

27 "(1b) Code. – The Internal Revenue Code as enacted as of ~~January 1,~~  
28 ~~2001,May 1, 2002~~, including any provisions enacted as of that date  
29 which become effective either before or after that date."

30 **SECTION 3.2.(a)** G.S. 105-130.5(a) is amended by adding a new  
31 subdivision to read:

32 "(a) The following additions to federal taxable income shall be made in  
33 determining State net income:

34 ...

35 (15) A percentage of the amount allowed as a thirty percent (30%)  
36 accelerated depreciation deduction under section 168(k) or section  
37 1400L of the Code. For amounts allowed for taxable years beginning  
38 before January 1, 2004, the percentage is one hundred percent (100%).  
39 For amounts allowed for taxable years beginning on or after January 1,  
40 2004, the percentage is eighty percent (80%).

41 In addition, a taxpayer who was allowed a thirty percent (30%)  
42 accelerated depreciation deduction under section 168(k) or section  
43 1400L of the Code in a taxable year beginning before January 1, 2002,  
44 and whose North Carolina taxable income in that earlier year reflected

1           that accelerated depreciation deduction must add to federal taxable  
2           income in the taxpayer's first taxable year beginning on or after  
3           January 1, 2002, an amount equal to the amount of the deduction  
4           allowed in the earlier taxable year.

5           These adjustments do not result in a difference in basis of the  
6           affected assets for State and federal income tax purposes."

7           **SECTION 3.2.(b)** G.S. 105-134.6(c) is amended by adding a new  
8 subdivision to read:

9           "(c) Additions. – The following additions to taxable income shall be made in  
10 calculating North Carolina taxable income, to the extent each item is not included in  
11 taxable income:

12           ...

13           (8) A percentage of the amount allowed as a thirty percent (30%)  
14           accelerated depreciation deduction under section 168(k) or section  
15           1400L of the Code. For amounts allowed for taxable years beginning  
16           before January 1, 2004, the percentage is one hundred percent (100%).  
17           For amounts allowed for taxable years beginning on or after January 1,  
18           2004, the percentage is eighty percent (80%).

19           In addition, a taxpayer who was allowed a thirty percent (30%)  
20           accelerated depreciation deduction under section 168(k) or section  
21           1400L of the Code in a taxable year beginning before January 1, 2002,  
22           and whose North Carolina taxable income in that earlier year reflected  
23           that accelerated depreciation deduction must add to federal taxable  
24           income in the taxpayer's first taxable year beginning on or after  
25           January 1, 2002, an amount equal to the amount of the deduction  
26           allowed in the earlier taxable year.

27           These adjustments do not result in a difference in basis of the  
28           affected assets for State and federal income tax purposes."

29           **SECTION 3.2.(c)** This section is effective for taxable years beginning on or  
30 after January 1, 2002.

31           **SECTION 3.3.(a)** G.S. 105-130.5(b) is amended by adding a new  
32 subdivision to read:

33           "(b) The following deductions from federal taxable income shall be made in  
34 determining State net income:

35           ...

36           (21) In each of the taxpayer's first five taxable years beginning on or after  
37           January 1, 2005, an amount equal to twenty percent (20%) of the  
38           amount added to taxable income in a previous year as accelerated  
39           depreciation under subdivision (a)(15) of this section."

40           **SECTION 3.3.(b)** G.S. 105-134.6(b) is amended by adding a new  
41 subdivision to read:

42           "(b) Deductions. – The following deductions from taxable income shall be made  
43 in calculating North Carolina taxable income, to the extent each item is included in  
44 taxable income:

1 ...

2 (17) In each of the taxpayer's first five taxable years beginning on or after  
3 January 1, 2005, an amount equal to twenty percent (20%) of the  
4 amount added to taxable income in a previous year as accelerated  
5 depreciation under subdivision (c)(8) of this section."

6 **SECTION 3.3.(c)** This section is effective for taxable years beginning on or  
7 after January 1, 2002.

8 **SECTION 3.4.(a)** G.S. 105-32.2(b) reads as rewritten:

9 "(b) Amount. – The amount of the estate tax imposed by this section is the  
10 maximum credit for state death taxes allowed under section 2011 of the ~~Code~~. Code  
11 without regard to the phase-out of that credit under subdivision (b)(2) of that section. If  
12 any property in the estate is located in a state other than North Carolina, the amount of  
13 tax payable is the North Carolina percentage of the credit.

14 If the decedent was a resident of this State at death, the North Carolina percentage is  
15 the net value of the estate that does not have a tax situs in another state, divided by the  
16 net value of all property in the estate. If the decedent was not a resident of this State at  
17 death, the North Carolina percentage is the net value of real property that is located in  
18 North Carolina plus the net value of any personal property that has a tax situs in North  
19 Carolina, divided by the net value of all property in the estate, unless the decedent's  
20 state of residence uses a different formula to determine that state's percentage. In that  
21 circumstance, the North Carolina percentage is the amount determined by the formula  
22 used by the decedent's state of residence.

23 The net value of property that is located in or has a tax situs in this State is its gross  
24 value reduced by any debt secured by that property. The net value of all the property in  
25 the estate is its gross value reduced by any debts and deductions of the estate."

26 **SECTION 3.4.(b)** This section is effective on and after January 1, 2002, and  
27 applies to the estates of decedents dying on or after that date. This section is repealed  
28 effective for the estates of decedents dying on or after January 1, 2004.

29 **SECTION 3.5.** Effective for taxable years beginning on or after January 1,  
30 2002, G.S. 105-134.6(b)(13) is repealed.

31 **SECTION 3.6.** Notwithstanding Section 3.1 of this act, any amendments to  
32 the Internal Revenue Code enacted in 2001 that increase North Carolina taxable income  
33 for the 2001 taxable year become effective for taxable years beginning on or after  
34 January 1, 2002.

35 **SECTION 3.7.(a)** G.S. 105-188(d) reads as rewritten:

36 "(d) Annual Exclusion. – The annual exclusion amount is equal to the federal  
37 inflation-adjusted exclusion amount provided in section 2503(b) of the Code. Gifts not  
38 exceeding a total value of ten thousand dollars (\$10,000) equal to the annual exclusion  
39 amount made to any one donee in a calendar year are not taxable under this Article.  
40 When gifts exceeding a total value of ten thousand dollars (\$10,000) equal to the annual  
41 exclusion amount are made to any one donee in a calendar year, only the portion of the  
42 gifts exceeding ten thousand dollars (\$10,000) the annual exclusion amount in value is  
43 taxable under this Article. This exclusion does not apply to gifts of future interests in  
44 property. For the purposes of determining the ~~exclusion herein provided,~~ annual

1 exclusion, no part of a gift to an individual, or in trust for an individual, who has not  
2 attained the age of 21 years on the date of ~~such~~the transfer ~~shall be~~is considered a gift  
3 of a future interest in property if the property and the income therefrom meet all of the  
4 following conditions: (i) they may be expended by, or for the benefit of, the donee  
5 before ~~his attaining~~the donee reaches the age of 21 ~~years, and~~years; (ii) they will to the  
6 extent not so expended pass to the donee ~~on his attaining~~when the donee reaches the age  
7 of 21 ~~years, and~~years; and (iii) they will, in the event the donee dies before ~~attaining the~~  
8 ~~age of 21 years, reaching that age~~, be payable to the estate of the donee or as ~~he~~the  
9 donee may appoint under a general power of appointment.

10 When a gift is made by one spouse to a person other than the donor's spouse, the  
11 donor may claim both the donor's annual exclusion and the spouse's annual exclusion  
12 ~~provided that if~~ both spouses consent and both spouses are residents of this State when  
13 the gift is made. Consent to share annual gift tax exclusions ~~shall~~must be made in  
14 writing on a timely filed gift tax return. Once given, consent to share annual exclusions  
15 is irrevocable."

16 **SECTION 3.7.(b)** This section is effective January 1, 2002, and applies to  
17 gifts made on or after that date."  
18

#### 19 **PART IV. UNAUTHORIZED SUBSTANCE TAX EXPENSES**

20  
21 **SECTION 4.1.** G.S. 105-501 is amended by adding a new subdivision to  
22 read:

23 "...

24 In determining the net proceeds of the tax to be distributed, the Secretary shall  
25 deduct from the collections to be allocated an amount equal to one-fourth of the costs  
26 during the preceding fiscal year of:

27 ...

28 (1a) Seventy percent (70%) of the expenses of the Department of Revenue  
29 in performing the duties imposed by Article 2D of this Chapter.

30 ...."

31 **SECTION 4.2.** This Part becomes effective June 30, 2002.  
32

#### 33 **PART V. INSURANCE REGULATORY CHARGE**

34  
35 **SECTION 5.(a)** The percentage rate to be used in calculating the insurance  
36 regulatory charge under G.S. 58-6-25 is six and one-half percent (6.5%) for the 2002  
37 calendar year.

38 **SECTION 5.(b)** This section is effective when it becomes law.  
39

#### 40 **PART VI. REGULATORY FEE FOR UTILITIES COMMISSION**

41  
42 **SECTION 6.(a)** The percentage rate to be used in calculating the public  
43 utility regulatory fee under G.S. 62-302(b)(2) is one-tenth percent (0.1%) for each

1 public utility's North Carolina jurisdictional revenues earned during each quarter that  
2 begins on or after July 1, 2002.

3 **SECTION 6.(b)** The electric membership corporation regulatory fee  
4 imposed under G.S. 62-302(b1) for the 2002-2003 fiscal year is two hundred thousand  
5 dollars (\$200,000).

6 **SECTION 6.(c)** This section becomes effective July 1, 2002.

7  
8 **PART VII. RESERVED**

9  
10 **PART VIII. SECURE LOCAL REVENUES**

11  
12 **SECTION 8.1.** G.S. 105-113.82(d) reads as rewritten:

13 "(d) Time. – The revenue shall be distributed to cities and counties within 60 days  
14 after March 31 of each year. The General Assembly finds that the revenue distributed  
15 under this section is local revenue, not a State expenditure, for the purpose of Section  
16 5(3) of Article III of the North Carolina Constitution. Therefore, the Governor may not  
17 reduce or withhold the distribution."

18 **SECTION 8.2.** G.S. 105-116.1(b) reads as rewritten:

19 "(b) Distribution. – The Secretary must distribute to the cities part of the taxes  
20 collected under this Article on electric power companies. Each city's share for a  
21 calendar quarter is the percentage distribution amount for that city for that quarter minus  
22 one-fourth of the city's hold-back amount and one-fourth of the city's proportionate  
23 share of the annual cost to the Department of administering the distribution. The  
24 Secretary must make the distribution within 75 days after the end of each calendar  
25 quarter. The General Assembly finds that the revenue distributed under this section is  
26 local revenue, not a State expenditure, for the purpose of Section 5(3) of Article III of  
27 the North Carolina Constitution. Therefore, the Governor may not reduce or withhold  
28 the distribution."

29 **SECTION 8.3.** G.S. 105-187.44(b) reads as rewritten:

30 "(b) Distribution. – Within 75 days after the end of each calendar quarter, the  
31 Secretary must distribute to the cities part of the tax proceeds collected under this  
32 Article during that quarter. The amount to be distributed to a city is one-half of the  
33 amount of tax attributable to that city for that quarter under subsection (a) of this  
34 section. The General Assembly finds that the revenue distributed under this section is  
35 local revenue, not a State expenditure, for the purpose of Section 5(3) of Article III of  
36 the North Carolina Constitution. Therefore, the Governor may not reduce or withhold  
37 the distribution."

38 **SECTION 8.4.** G.S. 105-164.44F is amended by adding a new subsection to  
39 read:

40 "(f) Nature. – The General Assembly finds that the revenue distributed under this  
41 section is local revenue, not a State expenditure, for the purpose of Section 5(3) of  
42 Article III of the North Carolina Constitution. Therefore, the Governor may not reduce  
43 or withhold the distribution."

1           **SECTION 8.5.** G.S. 136-41.1 is amended by adding a new subsection to  
2 read:

3           "(d) Nature. – The General Assembly finds that the revenue distributed under this  
4 section is local revenue, not a State expenditure, for the purpose of Section 5(3) of  
5 Article III of the North Carolina Constitution. Therefore, the Governor may not reduce  
6 or withhold the distribution."

7           **SECTION 8.6.** G.S. 159B-27(d) reads as rewritten:

8           "(d) The State shall distribute to cities and towns which receive electric power and  
9 energy from their ownership share of a project or to which electric power and energy is  
10 sold by a joint agency an amount equal to a tax of three and nine hundredths percent  
11 (3.09%) of all moneys expended by a municipality on account of its ownership share of  
12 a project, including payment of principal and interest on bonds issued to finance such  
13 ownership share, or an amount equal to a tax of three and nine hundredths percent  
14 (3.09%) of the gross receipts from all sales of electric power and energy to such city or  
15 town by a joint agency, as the case may be. The General Assembly finds that the  
16 revenue distributed under this section is local revenue, not a State expenditure, for the  
17 purpose of Section 5(3) of Article III of the North Carolina Constitution. Therefore, the  
18 Governor may not reduce or withhold the distribution."

19           **SECTION 8.7.** G.S. 143-25 reads as rewritten:

20           "**§ 143-25. Maintenance appropriations dependent upon adequacy of revenues to**  
21 **support them.**

22           (a) All maintenance appropriations now or hereafter made are hereby declared to  
23 be maximum, conditional and proportionate appropriations, the purpose being to make  
24 the appropriations payable in full in the amounts named herein if necessary and then  
25 only in the event the aggregate revenues collected and available during each fiscal year  
26 of the biennium for which such appropriations are made, are sufficient to pay all of the  
27 appropriations in full; otherwise, the said appropriations shall be deemed to be payable  
28 in such proportion as the total sum of all appropriations bears to the total amount of  
29 revenue available in each of said fiscal years. ~~The Except as provided in subsection (b)~~  
30 of this section, the Director of the Budget is hereby given full power and authority to  
31 examine and survey the progress of the collection of the revenue out of which such  
32 appropriations are to be made, and to declare and determine the amounts that can be,  
33 during each quarter of each of the fiscal years of the biennium properly allocated to  
34 each respective appropriation. In making such examination and survey, ~~he~~ the Director  
35 of the Budget shall receive estimates of the prospective collection of revenues from the  
36 Secretary of Revenue and every other revenue collecting agency of the State. The  
37 Director of the Budget may reduce all of said appropriations pro rata when necessary to  
38 prevent an overdraft or deficit to the fiscal period for which such appropriations are  
39 made. The Governor may also reduce all of said appropriations pursuant to Article III,  
40 Section 5(3) of the Constitution in accordance with subsection (b) of this section, after  
41 consulting with the Joint Legislative Commission on Governmental Operations under  
42 G.S. 120-76(8) if prior consultation is required by that section. The purpose and policy  
43 of this Article are to provide and insure that there shall be no overdraft or deficit in the  
44 general fund of the State at the end of the fiscal period, growing out of appropriations

1 for maintenance and the Director of the Budget is directed and required to so administer  
2 this Article as to prevent any such overdraft or deficit. Prior to taking any action under  
3 this section to reduce appropriations pro rata, the Governor may consult with the  
4 Advisory Budget Commission.

5 (b) The General Assembly recognizes that it has required units of local  
6 government to adopt and maintain annual balanced budgets and take other steps to  
7 assure financially sound operations under the Local Government Budget and Fiscal  
8 Control Act and other provisions of Chapter 159 of the General Statutes. Accordingly,  
9 the General Assembly finds that in order to satisfy those statutory requirements and  
10 provide adequate services to their citizens, units of local government must be able to  
11 rely on the funds and local revenue sources the General Assembly has provided.

12 It is the intent of the General Assembly that funds that have been collected by the  
13 State on behalf of local governments and funds that the General Assembly has  
14 appropriated or otherwise committed to local governments shall not be reduced except  
15 as provided in this section. In exercising the powers contained in Section 5(3) of Article  
16 III of the Constitution, the Governor shall not withhold from distribution funds that have  
17 been collected by the State on behalf of local governments or funds that the General  
18 Assembly has appropriated or otherwise committed to local governments unless, after  
19 making adequate provision for the prompt payment of principal of and interest on bonds  
20 and notes of the State according to their terms, the Governor has exhausted all other  
21 sources of revenue of the State including surplus remaining in the treasury at the  
22 beginning of the fiscal period and has been authorized to withhold the funds by an act of  
23 the General Assembly.

24 This subsection does not authorize the Governor to withhold revenues from taxes  
25 levied by units of local governments and collected by the State. The General Assembly  
26 recognizes that under Section 19 of Article I of the North Carolina Constitution and  
27 under the Due Process Clause of the United States Constitution, the State is prohibited  
28 from taking local tax revenue."

## 29 30 PART IX. CLOSE CORPORATE TAX LOOPHOLES

31  
32 **SECTION 9.1.(a)** G.S. 105-130.4(a)(1) reads as rewritten:

33 "(1) "Business income" means ~~income arising from transactions and~~  
34 ~~activity in the regular course of the corporation's trade or business and~~  
35 ~~includes income from tangible and intangible property if the~~  
36 ~~acquisition, management, and/or disposition of the property constitute~~  
37 ~~integral parts of the corporation's regular trade or business operations.~~  
38 all income that is apportionable under the United States Constitution."

39 **SECTION 9.1.(b)** This section is effective for taxable years beginning on or  
40 after January 1, 2002.

41 **SECTION 9.2.(a)** G.S. 105-130.4(l) reads as rewritten:

42 "(1) (1) The sales factor is a ~~fraction, the~~fraction. The numerator of which the  
43 fraction is the total sales of the corporation in this State during the  
44 income year, and the year other than sales to the United States

1            ~~government. The denominator of which is the total sales of the~~  
2            ~~corporation everywhere during the income year. the fraction is the total~~  
3            ~~sales of the corporation everywhere during the income year except for~~  
4            ~~(i) sales to the United States government, (ii) sales that are in a state in~~  
5            ~~which the taxpayer is not taxable, and (iii) sales that are in a foreign~~  
6            ~~country when that country does not subject the taxpayer to a tax on or~~  
7            ~~measured by profits or income. Notwithstanding any other provision~~  
8            under this Part, the receipts from any casual sale of property shall be  
9            excluded from both the numerator and the denominator of the sales  
10           factor. Where a corporation is not taxable in another state on its  
11           business income but is taxable in another state only because of  
12           nonbusiness income, all sales shall be treated as having been made in  
13           this State.

14           (2) Sales of tangible personal property are in this State if the property is  
15           received in this State by the purchaser. In the case of delivery of goods  
16           by common carrier or by other means of transportation, including  
17           transportation by the purchaser, the place at which the goods are  
18           ultimately received after all transportation has been completed shall be  
19           considered as the place at which the goods are received by the  
20           purchaser. Direct delivery into this State by the taxpayer to a person or  
21           firm designated by a purchaser from within or without the State shall  
22           constitute delivery to the purchaser in this State.

23           (3) Other sales are in this State if:  
24           a.        The receipts are from real or tangible personal property located  
25           in this State; or  
26           b.        The receipts are from intangible property and are received from  
27           sources within this State; or  
28           c.        The receipts are from services and the income-producing  
29           activities are in this State."

30           **SECTION 9.2.(b)** This section is effective for taxable years beginning on or  
31           after January 1, 2002.

32           **SECTION 9.3.(a)** Section 2(a) of S.L. 2001-327 reads as rewritten:  
33           **"EQUALIZE FRANCHISE TAX ON CORPORATE-AFFILIATED LLCs**

34           **SECTION 2.(a)** The General Assembly finds that most corporations engaged in  
35           business in this State comply with the State franchise tax on corporate assets. Some  
36           taxpayers, however, take advantage of an unintended loophole in the law and avoid  
37           franchise tax by transferring their assets to a controlled limited liability company. This  
38           tax avoidance creates an unfair burden on corporate citizens that pay the franchise tax  
39           on their assets. It is the intent of this section to apply the franchise tax equally to assets  
40           held by corporations and assets held by corporate-affiliated limited liability companies.  
41           It is also the intent of this section to provide that a criminal penalty applies to taxpayers  
42           who fraudulently evade the tax.

43           The General Assembly further finds that, after this loophole was closed in 2001,  
44           some taxpayers continue to avoid franchise tax by manipulating ownership of assets.

1 One method is to interpose a controlled partnership between the corporation and the  
2 controlled limited liability company. This tax avoidance creates an unfair burden on  
3 corporate citizens that pay the franchise tax on their assets. It is the intent of the General  
4 Assembly to apply the franchise tax equally to assets held by corporations and assets  
5 held by corporate-controlled entities."

6 **SECTION 9.3.(b)** G.S. 105-114(c) is recodified as G.S. 105-114.1 and reads  
7 as rewritten:

8 **"§ 105-114.1. Limited liability companies.**

9 (a) Definitions. – The definitions in G.S. 105-130.7A apply in this section. In  
10 addition, the following definitions apply in this section:

11 (1) Governing law. – A limited liability company's governing law is  
12 determined under G.S. 57C-6-05 or G.S. 57C-7-01, as applicable.

13 (2) Owned indirectly. – A person owns indirectly assets of a limited  
14 liability company if the limited liability company's governing law  
15 provides that seventy percent (70%) or more of its assets, after  
16 payments to creditors, must be distributed upon dissolution to the  
17 person as of the last day of the principal corporation's taxable year.

18 (3) Principal corporation. – A corporation that is a member of a limited  
19 liability company or has a related member that is a member of a  
20 limited liability company.

21 (b) Controlled Companies. – If a corporation or a related member of the  
22 corporation is a member of a limited liability company and the principal corporation and  
23 any related members of the principal corporation together own indirectly the limited  
24 liability company's governing law provides that seventy percent (70%) or more of its the  
25 limited liability company's assets, after payments to creditors, must be distributed upon  
26 dissolution to the member corporation or to includible corporations of an affiliated  
27 group in which the member corporation is includible, then the following provisions  
28 apply:

29 (1) ~~(i) a~~ percentage of the limited liability company's income, assets,  
30 liabilities, and equity is attributed to that ~~member-principal~~ corporation  
31 and must be included in the ~~member-principal~~ corporation's  
32 computation of tax under this Article, and ~~(ii) the~~ Article.

33 (2) The principal ~~member~~ corporation's investment in the limited liability  
34 company is not included in the ~~member-principal~~ corporation's  
35 computation of tax under this Article.

36 (3) The attributable percentage is equal to the percentage of the limited  
37 liability company's assets, after payments to creditors, that would be  
38 distributable to the member corporation assets owned indirectly by the  
39 principal corporation divided by the percentage of the limited liability  
40 company's assets owned indirectly by related members of the principal  
41 corporation that are corporations, under the limited liability company's  
42 governing law if the limited liability company dissolved as of the last  
43 day of the member corporation's taxable year.

1 (c) Other Companies. – In all other cases, none of the limited liability company's  
2 income, assets, liabilities, or equity is attributed to a ~~member~~ principal corporation  
3 under this Article. ~~A limited liability company's governing law is determined under G.S.~~  
4 ~~57C-6-05 or G.S. 57C-7-01, as applicable. The definitions in section 1504 of the Code~~  
5 ~~apply in this subsection.~~

6 (d) Penalty. – A taxpayer who, because of fraud with intent to evade tax,  
7 underpays the tax under this Article on assets attributable to it under this ~~subsection~~  
8 section is guilty of a Class H felony in accordance with G.S. 105-236(7)."

9 **SECTION 9.3.(c)** This section becomes effective January 1, 2003, and  
10 applies to taxes due on or after that date.

## 11 12 **PART X. HOUSING TAX CREDIT EFFECTIVE DATE CHANGE**

13  
14 **SECTION 10.** Section 10.(f) of S.L. 2000-56 reads as rewritten:

15 "**SECTION 10.(f)** Low-Income Housing Credit Changes. – G.S. 105-129.16B(d),  
16 as amended by Section 7 of this act, is effective for taxable years beginning on or after  
17 January 1, 2000. The remainder of Section 7 is effective for taxable years beginning on  
18 or after January 1, 2001, applies to buildings to which federal credits are allocated on or  
19 after January 1, ~~2001~~, 2000, and expires January 1, 2005."

## 20 21 **PART XI. SEVERABILITY CLAUSE AND EFFECTIVE DATE**

22  
23 **SECTION 11.1.** The provisions of this act are severable. If any provision of  
24 this act is held invalid by a court of competent jurisdiction, the invalidity does not affect  
25 other provisions of the act that can be given effect without the invalid provision.

26 **SECTION 11.2.** Except as otherwise provided, this act is effective when it  
27 becomes law. Notwithstanding G.S. 105-163.15 and G.S. 105-163.41, no addition to  
28 tax may be made under those statutes for a taxable year beginning on or after January 1,  
29 2002, and before January 1, 2003, with respect to an underpayment of corporate or  
30 individual income tax to the extent the underpayment was created or increased by this  
31 act.