

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

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SENATE DRS95050-MEX-45 (03/01)

Short Title: Consolidated Corporate Tax Returns.

(Public)

Sponsors: Senator Goolsby.

Referred to:

A BILL TO BE ENTITLED

AN ACT TO PROVIDE MORE GUIDANCE ON CONSOLIDATED CORPORATE
INCOME TAX RETURNS AND TO ALLOW CORPORATIONS TO CHOOSE TO FILE
CONSOLIDATED RETURNS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 105-130.6 reads as rewritten:

"§ 105-130.6. Subsidiary and affiliated corporations.

The net income of a corporation doing business in this State that is a parent, subsidiary, or affiliate of another corporation shall be determined by eliminating all payments to or charges by the parent, subsidiary, or affiliated corporation in excess of fair compensation in all intercompany transactions of any kind whatsoever. If the Secretary finds as a fact that a report by a corporation does not disclose the true earnings of the corporation on its business carried on in this ~~State~~, State due to payments to or charges by the parent, subsidiary, or affiliated corporation in excess of fair market value in intercompany transactions, then the Secretary may require the corporation to file a consolidated return of the entire operations of the parent corporation and of its subsidiaries and affiliates, including its own operations and ~~income~~income, and the consolidated return shall eliminate payments to or charges by the parent, subsidiary, or affiliated corporation in excess of fair market value in intercompany transactions. The Secretary shall determine the true amount of net income earned by such corporation in this State. The combined net income of the corporation and of its parent, subsidiaries, and affiliates shall be apportioned to this State by use of the applicable apportionment formula required to be used by the corporation under G.S. 105-130.4. The return shall include in the apportionment formula the property, payrolls, and sales of all corporations for which the return is made. For the purposes of this section, a corporation is considered a subsidiary of another corporation when, directly or indirectly, it is subject to control by the other corporation by stock ownership, interlocking directors, or by any other means whatsoever exercised by the same or associated financial interests, whether the control is direct or through one or more subsidiary, affiliated, or controlled corporations. A corporation is considered an affiliate of another corporation when both are directly or indirectly controlled by the same parent corporation or by the same or associated financial interests by stock ownership, interlocking directors, or by any other means whatsoever, whether the control is direct or through one or more subsidiary, affiliated, or controlled corporations. The secretary may require a consolidated return under this section regardless of whether the parent or controlling corporation or interests or its subsidiaries or affiliates, other than the taxpayer, are or are not doing business in this State.

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1 If the Secretary finds that the determination of the income of a parent, subsidiary, or
2 affiliated corporation under a consolidated return will produce a greater or lesser figure than the
3 amount of income earned in this State, the Secretary may readjust the determination by
4 reasonable methods of computation to make it conform to the amount of income earned in this
5 State. If the corporation contends the figure produced is greater than the earnings in this State,
6 it must file with the Secretary within 30 days after notice of the determination a statement of its
7 objections and of an alternative method of determination. The Secretary must consider the
8 statement in determining the income earned in this State. The findings and conclusions of the
9 Secretary shall be presumed to be ~~correct and shall not be set aside unless shown to be plainly~~
10 ~~wrong.~~ correct.

11 In order to provide clarity for taxpayers, the Secretary ~~may~~ shall adopt rules in accordance
12 with G.S. 105-262 that describe facts and circumstances under which the Secretary will require
13 a corporation to file a consolidated or combined return. The adoption of these rules does not
14 limit the Secretary's authority to require a consolidated or combined return under sets of facts
15 and circumstances not described in the rules when the Secretary finds as a fact that a report by a
16 corporation does not disclose the true earnings of the corporation on its business carried on in
17 this State."

18 **SECTION 2.** G.S. 105-130.6, as amended by Section 1 of this act, reads as
19 rewritten:

20 "**§ 105-130.6. Subsidiary and affiliated corporations.**

21 The net income of a corporation doing business in this State that is a parent, subsidiary, or
22 affiliate of another corporation shall be determined by eliminating all payments to or charges
23 by the parent, subsidiary, or affiliated corporation in excess of fair compensation in all
24 intercompany transactions of any kind whatsoever. If the Secretary finds as a fact that a report
25 by a corporation does not disclose the true earnings of the corporation on its business carried on
26 in this State due to payments to or charges by the parent, subsidiary, or affiliated corporation in
27 excess of fair market value in intercompany transactions, then the Secretary may require the
28 corporation to file a consolidated return of the entire operations of the parent corporation and of
29 its subsidiaries and affiliates, including its own operations and income, and the consolidated
30 return shall eliminate payments to or charges by the parent, subsidiary, or affiliated corporation
31 in excess of fair market value in intercompany transactions. The Secretary shall determine the
32 true amount of net income earned by such corporation in this State. The combined net income
33 of the corporation and of its parent, subsidiaries, and affiliates shall be apportioned to this State
34 by use of the applicable apportionment formula required to be used by the corporation under
35 G.S. 105-130.4. The return shall include in the apportionment formula the property, payrolls,
36 and sales of all corporations for which the return is made. For the purposes of this section, a
37 corporation is considered a subsidiary of another corporation when, directly or indirectly, it is
38 subject to control by the other corporation by stock ownership, interlocking directors, or by any
39 other means whatsoever exercised by the same or associated financial interests, whether the
40 control is direct or through one or more subsidiary, affiliated, or controlled corporations. A
41 corporation is considered an affiliate of another corporation when both are directly or indirectly
42 controlled by the same parent corporation or by the same or associated financial interests by
43 stock ownership, interlocking directors, or by any other means whatsoever, whether the control
44 is direct or through one or more subsidiary, affiliated, or controlled corporations. The secretary
45 may require a consolidated return under this section regardless of whether the parent or
46 controlling corporation or interests or its subsidiaries or affiliates, other than the taxpayer, are
47 or are not doing business in this State.

48 If a consolidated return required by this section is not filed within 60 days after it is
49 demanded, then the corporation is subject to the penalties provided in G.S. 105-230 and
50 G.S. 105-236.

1 The parent, subsidiary, or affiliated corporation must incorporate in its return required
2 under this section information needed to determine the net income taxable under this Part, and
3 must furnish any additional information the Secretary requires. If the return does not contain
4 the information required or the additional information requested is not furnished within 30 days
5 after it is demanded, the corporation is subject to the penalties provided in G.S. 105-230 and
6 G.S. 105-236.

7 Although not required by the Secretary, any parent, subsidiary, or affiliated corporation
8 may file a consolidated return of the entire operations of the parent corporation and of its
9 subsidiaries and affiliates, including its own operations and income, which consolidated return
10 shall eliminate payments to or charges by the parent, subsidiary, or affiliated corporation in
11 excess of fair market value in intercompany transactions. Such a consolidated return shall be
12 adjusted only if the Secretary determines that the consolidated return does not disclose the true
13 earnings of the corporation on its business carried on in this State due to payments to or charges
14 by the parent, subsidiary, or affiliated corporation in excess of fair market value in
15 intercompany transactions. A corporation may elect to file a consolidated return or not for a
16 taxable year regardless of an election made in a prior taxable year.

17 If the Secretary finds that the determination of the income of a parent, subsidiary, or
18 affiliated corporation under a consolidated return will produce a greater or lesser figure than the
19 amount of income earned in this State, the Secretary may readjust the determination by
20 reasonable methods of computation to make it conform to the amount of income earned in this
21 State. If the corporation contends the figure produced is greater than the earnings in this State,
22 it must file with the Secretary within 30 days after notice of the determination a statement of its
23 objections and of an alternative method of determination. The Secretary must consider the
24 statement in determining the income earned in this State. The findings and conclusions of the
25 Secretary shall be presumed to be correct.

26 In order to provide clarity for taxpayers, the Secretary shall adopt rules in accordance with
27 G.S. 105-262 that describe facts and circumstances under which the Secretary will require a
28 corporation to file a consolidated or combined return. The adoption of these rules does not limit
29 the Secretary's authority to require a consolidated or combined return under sets of facts and
30 circumstances not described in the rules when the Secretary finds as a fact that a report by a
31 corporation does not disclose the true earnings of the corporation on its business carried on in
32 this State."

33 **SECTION 3.** The Secretary of the Department of Revenue shall propose rules that
34 describe facts and circumstances under which the Secretary will require a corporation to file a
35 consolidated or combined return, as required by G.S. 105-130.6, as amended by Section 1 of
36 this act, no later than September 1, 2011. Section 2 of this act becomes effective for taxable
37 years beginning on or after January 1, 2012. The remainder of this act is effective when it
38 becomes law and shall apply to current contested administrative law cases in which an
39 administrative law judge has not rendered a final decision.