

§ 105-122. Franchise or privilege tax on domestic and foreign corporations.

(a) Tax Imposed. – An annual franchise or privilege tax is imposed on a corporation doing business in this State for the privilege of doing business in this State and for the continuance of articles of incorporation or domestication of each corporation in this State. A corporation subject to the tax must file a return under affirmation with the Secretary at the place and in the manner prescribed by the Secretary. The return must be signed by the president, vice-president, treasurer, or chief financial officer of the corporation. The return is due on or before the fifteenth day of the fourth month following the end of the corporation's income year.

(b) Determination of Net Worth. – A corporation taxed under this section shall determine the total amount of its net worth on the basis of the books and records of the corporation as of the close of its income year. The net worth of a corporation is its total assets without regard to the deduction for accumulated depreciation, depletion, or amortization less its total liabilities, computed in accordance with generally accepted accounting principles as of the end of the corporation's taxable year. If the corporation does not maintain its books and records in accordance with generally accepted accounting principles, then its net worth is computed in accordance with the accounting method used by the entity for federal tax purposes. A corporation's net worth is subject to the following adjustments:

- (1) A deduction for accumulated depreciation, depletion, and amortization as determined in accordance with the method used for federal tax purposes.
- (1a) Repealed by Session Laws 2015-241, s. 32.15(d), effective for taxable years beginning on or after January 1, 2017, and applicable to the calculation of franchise tax reported on the 2016 and later corporate income tax return.
- (1b) Assets for which a deduction is allowed under subdivision (1) of this subsection are valued in accordance with the method used in computing depreciation, depletion, and amortization for federal income tax purposes.
- (2) **(Effective for taxable years beginning before January 1, 2021)** An addition for indebtedness the corporation owes to a parent, a subsidiary, an affiliate, or a noncorporate entity in which the corporation or an affiliated group of corporations owns directly or indirectly more than fifty percent (50%) of the capital interests of the noncorporate entity. The amount added back to the corporation's net worth may be further adjusted if part of the capital of the creditor is capital borrowed from a source other than a parent, a subsidiary, or an affiliate. The debtor corporation may deduct a proportionate part of the indebtedness based on the ratio of the borrowed capital of the creditor to the total assets of the creditor. For purposes of this subdivision, borrowed capital does not include indebtedness incurred by a bank arising out of the receipt of a deposit and evidenced by a certificate of deposit, a passbook, a cashier's check, a certified check, or other similar document.
- (2) **(Effective for taxable years beginning on or after January 1, 2021)** An addition for the amount of indebtedness the corporation owes to a parent, a subsidiary, an affiliate, or a noncorporate entity in which the corporation or group of corporations owns directly or indirectly more than fifty percent (50%) of the capital interest of the noncorporate entity, unless the indebtedness creates qualified interest expense, as defined in G.S. 105-130.7B(b)(4)a. through G.S. 105-130.7B(b)(4)d.
- (2a) If the creditor corporation is taxable under this Article, the creditor corporation may deduct the amount of indebtedness owed to it by a parent, subsidiary, or affiliated corporation to the extent that such indebtedness has been added by the debtor corporation.

- (2b) **(Effective for taxable years beginning on or after January 1, 2023 – see note)** The net worth of a foreign entity filing a federal income tax return is based on the value of assets deemed to be in the United States.
- (3) Repealed by Session Laws 2018-5, s. 38.2(b), effective beginning on or after January 1, 2019, and applicable to the calculation of franchise tax reported on the 2018 and later corporate income tax return.
- (4) through (8) Repealed by Session Laws 2015-241, s. 32.15(c), effective for taxable years beginning on or after January 1, 2017, and applicable to the calculation of franchise tax reported on the 2016 and later corporate income tax return.
- (b1) Definitions. – The following definitions apply in subsection (b) of this section:
 - (1) Affiliate. – A corporation is 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.
 - (2) Affiliated group. – The same meaning as defined in G.S. 105-114.1.
 - (3) Capital interest. – The right under an entity's governing law to receive a percentage of the entity's assets upon dissolution after payments to creditors.
 - (4) Governing law. – The law under which the noncorporate entity is organized.
 - (5) Indebtedness. – All loans, credits, goods, supplies, or other capital of whatsoever nature furnished by a parent, a subsidiary, an affiliate, or a noncorporate entity in which the corporation or an affiliated group of corporations owns directly or indirectly more than fifty percent (50%) of the capital interests of the noncorporate entity, other than indebtedness endorsed, guaranteed, or otherwise supported by one of these corporations.
 - (6) Noncorporate entity. – A person that is neither a human being nor a corporation.
 - (7) Parent. – A corporation is a parent of another corporation when, directly or indirectly, it controls 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.
 - (8) Subsidiary. – A corporation is 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 interest, whether the control is direct or through one or more subsidiary, affiliated, or controlled corporations.

(c) Repealed by Session Laws 2007-491, s. 2, effective January 1, 2008.

(c1) **(Effective for taxable years beginning before January 1, 2020)** Apportionment. – A corporation that is doing business in this State and in one or more other states must apportion its net worth to this State. A corporation must use the apportionment method set out in subdivision (1) of this subsection unless the Department has authorized it to use a different method under subdivision (2) of this subsection. The portion of a corporation's net worth determined by applying the appropriate apportionment method is considered the amount of net worth the corporation uses in its business in this State:

- (1) Statutory. – A corporation that is subject to income tax under Article 4 of this Chapter must apportion its net worth by using the fraction it applies in apportioning its income under that Article. A corporation that is not subject to income tax under Article 4 of this Chapter must apportion its net worth by

using the fraction it would be required to apply in apportioning its income if it were subject to that Article. The apportionment method set out in this subdivision is considered the statutory method of apportionment and is presumed to be the best method of determining the amount of a corporation's net worth attributable to the corporation's business in this State.

- (2) **Alternative.** – A corporation that believes the statutory apportionment method set out in subdivision (1) of this subsection subjects a greater portion of its net worth to tax under this section than is attributable to its business in this State may make a written request to the Secretary for permission to use an alternative method. The request must set out the reasons for the corporation's belief and propose an alternative method. The corporation has the burden of establishing by clear, cogent, and convincing proof that the statutory apportionment method subjects a greater portion of the corporation's net worth to tax under this section than is attributable to its business in this State and that the proposed alternative method is a better method of determining the amount of the corporation's net worth attributable to the corporation's business in this State.

The Secretary must issue a written decision on a corporation's request for an alternative apportionment method. If the decision grants the request, it must describe the alternative method the corporation is authorized to use and state the tax years to which the alternative method applies. A decision may apply to no more than three tax years. A corporation may renew a request to use an alternative apportionment method by following the procedure in this subdivision. A decision of the Secretary on a request for an alternative apportionment method is final and is not subject to administrative or judicial review. A corporation authorized to use an alternative method may apportion its net worth in accordance with the alternative method or the statutory method.

- (3) Repealed by Session Laws 2011-330, s. 5, effective June 27, 2011.

(c1) **(Effective for taxable years beginning on or after January 1, 2020)**
Apportionment. – A corporation that is doing business in this State and in one or more other states must apportion its net worth to this State. A corporation must use the apportionment method set out in subdivision (1) of this subsection unless the Department has authorized it to use a different method under subdivision (2) of this subsection. A taxpayer that has made an election under G.S. 105-130.4(t3) must use the apportionment method set out in subdivision (1) of this subsection as if the election had not been made, unless the Department has authorized a different method under subdivision (2) of this subsection. The portion of a corporation's net worth determined by applying the appropriate apportionment method is considered the amount of net worth the corporation uses in its business in this State:

- (1) **Statutory.** – A corporation that is subject to income tax under Article 4 of this Chapter must apportion its net worth by using the fraction it applies in apportioning its income under that Article. A corporation that is not subject to income tax under Article 4 of this Chapter must apportion its net worth by using the fraction it would be required to apply in apportioning its income if it were subject to that Article. The apportionment method set out in this subdivision is considered the statutory method of apportionment and is presumed to be the best method of determining the amount of a corporation's net worth attributable to the corporation's business in this State.
- (2) **Alternative.** – A corporation that believes the statutory apportionment method set out in subdivision (1) of this subsection subjects a greater portion of its net

worth to tax under this section than is attributable to its business in this State may make a written request to the Secretary for permission to use an alternative method. The request must set out the reasons for the corporation's belief and propose an alternative method. The corporation has the burden of establishing by clear, cogent, and convincing proof that the statutory apportionment method subjects a greater portion of the corporation's net worth to tax under this section than is attributable to its business in this State and that the proposed alternative method is a better method of determining the amount of the corporation's net worth attributable to the corporation's business in this State.

The Secretary must issue a written decision on a corporation's request for an alternative apportionment method. If the decision grants the request, it must describe the alternative method the corporation is authorized to use and state the tax years to which the alternative method applies. A decision may apply to no more than three tax years. A corporation may renew a request to use an alternative apportionment method by following the procedure in this subdivision. A decision of the Secretary on a request for an alternative apportionment method is final and is not subject to administrative or judicial review. A corporation authorized to use an alternative method may apportion its net worth in accordance with the alternative method or the statutory method.

(3) Repealed by Session Laws 2011-330, s. 5, effective June 27, 2011.

(d) **(Effective for taxable years beginning before January 1, 2023)** Tax Base. – A corporation's tax base is the greatest of the following:

(1) The proportion of its net worth as set out in subsection (c1) of this section.
(2) Fifty-five percent (55%) of the corporation's appraised value as determined for ad valorem taxation of all the real and tangible personal property in this State. For purposes of this subdivision, the appraised value of tangible property, including real estate, is the ad valorem valuation for the calendar year next preceding the due date of the franchise tax return.

(3) **(Effective for taxable years beginning before January 1, 2020)** The corporation's total actual investment in tangible property in this State. For purposes of this subdivision, the total actual investment in tangible property in this State is the total original purchase price or consideration to the reporting taxpayer of its tangible properties, including real estate, in this State plus additions and improvements thereto less reserve for depreciation as permitted for income tax purposes.

(3) **(Effective for taxable years beginning on or after January 1, 2020, and applicable to the calculation of franchise tax reported on the 2019 and later corporate income tax returns)** The corporation's total actual investment in tangible property in this State. For purposes of this subdivision, the total actual investment in tangible property in this State is the total original purchase price or consideration to the reporting taxpayer of its tangible properties, including real estate, in this State plus additions and improvements thereto less (i) reserve for depreciation as permitted for income tax purposes and (ii) any indebtedness specifically incurred and existing solely for and as the result of the purchase of any real estate and any permanent improvements made on the real estate.

(d) **(Effective for taxable years beginning on or after January 1, 2023)** Tax Base. – A corporation's tax base is the proportion of its net worth as set out in subsection (c1) of this section.

(d1) Repealed by Session Laws 2015-241, s. 32.15(c), effective for taxable years beginning on or after January 1, 2017, and applicable to the calculation of franchise tax reported on the 2016 and later corporate income tax return.

(d2) Tax Rate. – For a C Corporation, as defined in G.S. 105-130.2, [the] tax rate is one dollar and fifty cents (\$1.50) per one thousand dollars (\$1,000) of the corporation's tax base as determined under subsection (d) of this section. For an S Corporation, as defined in G.S. 105-130.2, the tax rate is two hundred dollars (\$200.00) for the first one million dollars (\$1,000,000) of the corporation's tax base as determined under subsection (d) of this section and one dollar and fifty cents (\$1.50) per one thousand dollars (\$1,000) of its tax base that exceeds one million dollars (\$1,000,000). In no event may the tax imposed by this section be less than two hundred dollars (\$200.00).

(e) Short Period. – Any corporation which changes its income year, and files a "short period" income tax return pursuant to G.S. 105-130.15 shall file a franchise tax return in accordance with the provisions of this section in the manner and as of the date specified in subsection (a) of this section. Such corporation shall be entitled to deduct from the total franchise tax computed (on an annual basis) on such return the amount of franchise tax previously paid which is applicable to the period subsequent to the beginning of the new income year.

(f) Return and Tax. – The return and tax required by this section are in addition to all other reports required or taxes levied and assessed in this State.

(g) Local Prohibition. – Counties, cities and towns shall not levy a franchise tax on corporations taxed under this section.

(h) Repealed by Session Laws 1981 (Regular Session, 1982), c. 1211, s. 5. (1939, c. 158, s. 210; 1941, c. 50, s. 4; 1943, c. 400, s. 3; 1945, c. 708, s. 3; 1947, c. 501, s. 3; 1951, c. 643, s. 3; 1953, c. 1302, s. 3; 1955, c. 1100, s. 2½; c. 1350, s. 17; 1957, c. 1340, s. 3; 1959, c. 1259, s. 3; 1963, c. 1169, s. 1; 1967, c. 286; c. 892, ss. 10, 11; c. 1110, s. 2; 1973, c. 476, s. 193; c. 695, s. 17; c. 1262, s. 23; c. 1287, s. 3; 1975, c. 764, s. 2; 1977, c. 771, s. 4; 1981, c. 704, s. 18; c. 855, s. 3; 1981 (Reg. Sess., 1982), c. 1211, s. 5; 1985, c. 656, s. 40; 1985 (Reg. Sess., 1986), c. 826, s. 6; c. 854, s. 1; 1987 (Reg. Sess., 1988), c. 882, s. 4.3; 1989, c. 148, s. 1; c. 727, ss. 218(39), 219(27); 1991, c. 30, s. 5; 1993, c. 532, s. 11; 1995 (Reg. Sess., 1996), c. 560, s. 1; 1997-443, s. 11A.119(a); 1998-22, ss. 8, 9; 1998-98, ss. 72, 77; 1998-217, s. 43; 1999-337, s. 21; 2001-427, s. 12(a); 2003-416, s. 5(j); 2006-95, s. 1.1; 2006-162, s. 2; 2007-491, ss. 2, 10, 11; 2008-134, ss. 3(a), (b); 2009-422, s. 1; 2009-445, s. 2; 2010-31, s. 31.9(a); 2010-89, s. 2(c); 2011-145, s. 31A.2(a); 2011-330, s. 5; 2012-79, s. 1.14(a); 2013-414, ss. 1(c), 2(a); 2015-241, ss. 14.30(c), (u), 32.15(c), (d); 2015-268, s. 10.1(a); 2016-5, s. 1.7(a), (b); 2017-39, s. 2; 2017-57, s. 38.6(a); 2017-204, s. 1.3(a)-(c); 2018-5, s. 38.2(b); 2019-246, s. 3(d); 2020-58, ss. 5.1(a), 5.2(b); 2022-13, ss. 1.1(a), 1.2; 2021-180, s. 42.3(a); 2023-12, s. 1.2.)