

**GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009**

**SESSION LAW 2010-89
HOUSE BILL 713**

AN ACT TO PROVIDE THAT THE ADDITION TO FEDERAL TAXABLE INCOME OF AMOUNTS ALLOWED AS A CREDIT AGAINST NORTH CAROLINA INCOME DOES NOT APPLY TO THE FILM CREDIT AND TO INCREASE THE PERIOD OF TIME FOR WHICH THE SECRETARY OF REVENUE MAY ALLOW A CORPORATION TO USE AN ALTERNATIVE APPORTIONMENT FORMULA.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 105-130.5(a)(10) reads as rewritten:

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

...
(10) The total amounts allowed under this Chapter during the taxable year as a credit against the taxpayer's income tax. This subdivision does not apply to a credit allowed under G.S. 105-130.47. A corporation that apportions part of its income to this State shall make the addition required by this subdivision after it determines the amount of its income that is apportioned and allocated to this State and shall not apply to a credit taken under this Chapter the apportionment factor used by it in determining the amount of its apportioned income.

...."

SECTION 2.(a) G.S. 105-130.4(t1) reads as rewritten:

"(t1) Alternative Apportionment Method. – A corporation that believes the statutory apportionment method that otherwise applies to it under this section subjects a greater portion of its income to tax 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 statutory apportionment method that otherwise applies to a corporation under this section is presumed to be the best method of determining the portion of the corporation's income that is attributable to its business in this State. A corporation has the burden of establishing by clear, cogent, and convincing proof that the proposed alternative method is a better method of determining the amount of the corporation's income 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.~~years, unless the provisions of subsection (t2) of this section apply. A corporation may renew a request to use an alternative apportionment method by following the procedure in this subsection. 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 income in accordance with the alternative method or the statutory method. A



corporation may not use an alternative apportionment method except upon written order of the Secretary, and any return in which any alternative apportionment method, other than the method prescribed by statute, is used without permission of the Secretary is not a lawful return."

SECTION 2.(b) G.S. 105-130.4 is amended by adding a new subsection to read:

"(t2) 15-Year Alternative. – A corporation that, by September 15, 2010, signs a letter of commitment with the Secretary of Commerce certifying that the corporation will invest at least five hundred million dollars (\$500,000,000) in private funds to construct a facility in a development tier one area within five years after the time construction begins may make a written request to the Secretary for permission to use an alternative method of apportionment if it believes the statutory apportionment method that otherwise applies to it under this section subjects a greater portion of its income to tax than is attributable to its business in this State. The corporation must include the letter of commitment with its request to the Secretary. All of the provisions of subsection (t1) of this section apply to a request for an alternative apportionment method under this subsection except that a decision may apply to no more than 15 tax years."

SECTION 2.(c) G.S. 105-122(c1) reads as rewritten:

"(c1) Apportionment. – A corporation that is doing business in this State and in one or more other states must apportion its capital stock, surplus, and undivided profits 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 capital stock, surplus, and undivided profits determined by applying the appropriate apportionment method is considered the amount of capital stock, surplus, and undivided profits 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 capital stock, surplus, and undivided profits 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 capital stock, surplus, and undivided profits 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 capital stock, surplus, and undivided profits 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 capital stock, surplus, and undivided profits 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 capital stock, surplus, and undivided profits 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 capital stock, surplus, and undivided profits 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—years~~, unless the provisions of subdivision (3) of this subsection applies. 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 capital stock, surplus, and undivided profits in accordance with the alternative method or the statutory method.

- (3) 15-Year Alternative. – A corporation that, by September 15, 2010, signs a letter of commitment with the Secretary of Commerce certifying that the corporation will invest at least five hundred million dollars (\$500,000,000) in private funds to construct a facility in a development tier one area within five years after the time construction begins may make a written request to the Secretary for permission to use an alternative method of apportionment if it believes the statutory apportionment method that otherwise applies to it under this subsection subjects a greater portion of its capital stock, surplus, and undivided profits to tax than is attributable to its business in this State. The corporation must include the letter of commitment with its request to the Secretary. All of the provisions of subdivision (2) of this subsection apply to a request for an alternative apportionment method under this subdivision except that a decision may apply to no more than 15 tax years."

SECTION 3. Section 1 of this act becomes effective for taxable years beginning on or after January 1, 2011. The remainder of this act is effective when it becomes law. Section 2 of this act applies to requests for alternative apportionment formulas filed on or after that date.

In the General Assembly read three times and ratified this the 10th day of July, 2010.

s/ Walter H. Dalton
President of the Senate

s/ Joe Hackney
Speaker of the House of Representatives

s/ Beverly E. Perdue
Governor

Approved 7:07 a.m. this 11th day of July, 2010