§ 105-122. (Effective for taxable years beginning before January 1, 2017) Franchise or privilege tax on domestic and foreign corporations.

(a) An annual franchise or privilege tax is imposed on a corporation doing business in this State. The tax is determined on the basis of the books and records of the corporation as of the close of its income year. 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 Capital Base. – A corporation taxed under this section shall determine the total amount of its issued and outstanding capital stock, surplus, and undivided profits. No reservation or allocation from surplus or undivided profits is allowed except as provided below:

1. Definite and accrued legal liabilities.
2. Billings in excess of costs that are considered a deferred liability under the percentage of completion method of revenue recognition.
3. Taxes accrued, dividends declared, and reserves for depreciation of tangible assets and for amortization of intangible assets as permitted for income tax purposes.
4. When including deferred tax liabilities, a corporation may reduce the amount included in its base by netting against that amount deferred tax assets. The reduction may not decrease deferred tax liabilities below zero (0).
5. Reserves for the cost of any air-cleaning device or sewage or waste treatment plant, including waste lagoons, and pollution abatement equipment purchased or constructed and installed which reduces the amount of air or water pollution resulting from the emission of air contaminants or the discharge of sewage and industrial wastes or other polluting materials or substances into the outdoor atmosphere or streams, lakes, or rivers, upon condition that the corporation claiming such deductible liability shall furnish to the Secretary a certificate from the Department of Environmental Quality or from a local air pollution control program for air-cleaning devices located in an area where the Environmental Management Commission has certified a local air pollution control program pursuant to G.S. 143-215.112 certifying that the Environmental Management Commission or local air pollution control program has found as a fact that the air-cleaning device, waste treatment plant or pollution abatement equipment purchased or constructed and installed as above described has actually been constructed and installed and that such plant or equipment complies with the requirements of the Environmental Management Commission or local air pollution control program with respect to such devices, plants or equipment, that such device, plant or equipment is being effectively operated in accordance with the terms and conditions set forth in the permit, certificate of approval, or other document of approval issued by the Environmental Management Commission or local air pollution control program and that the primary purpose thereof is to reduce air or water pollution resulting from the emission of air contaminants or the discharge of sewage and waste and not merely incidental to other purposes and functions.
6. Reserves for the cost of purchasing and installing equipment or constructing facilities for the purpose of recycling or resource recovering of or from solid waste or for the purpose of reducing the volume of hazardous waste generated shall be treated as deductible for the purposes of this section upon condition
that the corporation claiming such deductible liability shall furnish to the
Secretary a certificate from the Department of Environmental Quality
certifying that the Department of Environmental Quality has found as a fact
that the equipment or facility has actually been purchased, installed or
constructed, that it is in conformance with all rules and regulations of the
Department of Environmental Quality, and the recycling or resource
recovering is the primary purpose of the facility or equipment.

(6) Reserves for the cost of constructing facilities of any private or public utility
built for the purpose of providing sewer service to residential and outlying
areas shall be treated as deductible for the purposes of this section; the
deductible liability allowed by this section shall apply only with respect to
such pollution abatement plants or equipment constructed or installed on or
after January 1, 1955.

(7) The cost of treasury stock.

(8) In the case of an international banking facility, the capital base shall be
reduced by the excess of the amount as of the end of the taxable year of all
assets of an international banking facility which are employed outside the
United States over liabilities of the international banking facility owed to
foreign persons. For purposes of such reduction, foreign persons shall have
the same meaning as defined in G.S. 105-130.5(b)(13)d.

Every corporation doing business in this State which is a parent, subsidiary,
or affiliate of another corporation shall add to its capital stock, surplus, and undivided profits all indebtedness
owed to a parent, subsidiary, or affiliated corporation as a part of its capital used in its business
and as a part of the base for franchise tax under this section. If any part of the capital of the
creditor corporation is capital borrowed from a source other than a parent, subsidiary, or affiliate,
the debtor corporation, which is required under this subsection to include in its tax base the
amount of debt by reason of being a parent, subsidiary, or affiliate of the creditor corporation,
may deduct from the debt included a proportionate part determined on the basis of the ratio of
the borrowed capital of the creditor corporation to the total assets of the creditor corporation. If
the creditor corporation is also taxable under the provisions of this section, the creditor
corporation is allowed to deduct from the total of its capital, surplus, and undivided profits the
amount of any debt owed to it by a parent, subsidiary or affiliated corporation to the extent that
the debt has been included in the tax base of the parent, subsidiary, or affiliated debtor corporation
reporting for taxation under the provisions of this section.

(b1) Definitions. – The following definitions apply in subsection (b) of this section:

(1) Affiliate. – The same meaning as specified in G.S. 105-130.2.

(2) Indebtedness. – All loans, credits, goods, supplies, or other capital of
whatsoever nature furnished by a parent, subsidiary, or affiliated corporation,
other than indebtedness endorsed, guaranteed, or otherwise supported by one
of these corporations.

(3) Parent. – The same meaning as specified in G.S. 105-130.2.

(4) Subsidiary. – The same meaning as specified in G.S. 105-130.2.

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

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

(d) After determining the proportion of its total capital stock, surplus and undivided profits as set out in subsection (c1) of this section, which amount shall not be less than fifty-five percent (55%) of the appraised value as determined for ad valorem taxation of all the real and tangible personal property in this State of each corporation nor less than its total actual investment in tangible property in this State, every corporation taxed under this section shall annually pay to the Secretary of Revenue, at the time the return is due, a franchise or privilege tax at the rate of one dollar and fifty cents ($1.50) per one thousand dollars ($1,000) of the total amount of capital stock, surplus and undivided profits as provided in this section. The tax imposed in this section shall not be less than thirty-five dollars ($35.00) and is for the privilege of carrying on, doing business, and/or the continuance of articles of incorporation or domestication of each corporation in this State. 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. The term "total actual investment in tangible property" as used in this section means 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, and also less any indebtedness incurred and existing by virtue of the purchase of any real estate and any permanent improvements made thereon. In computing "total actual investment in tangible personal property" a corporation may deduct reserves for the entire cost of any air-cleaning device or sewage or waste treatment plant, including waste lagoons, and pollution abatement equipment purchased or constructed and installed which reduces the amount of air or water pollution resulting from the emission of air contaminants or the discharge of sewage and industrial wastes or other polluting materials or substances into the outdoor atmosphere or into streams, lakes, or rivers, upon condition that the corporation claiming this deduction shall furnish to the Secretary a certificate from the Department of Environmental Quality or from a local air pollution control program for air-cleaning devices located in an area where the Environmental Management Commission has certified a local air pollution control program pursuant to G.S. 143-215.112 certifying that said Department or local air pollution control program has found as a fact that the air-cleaning device, waste treatment plant or pollution abatement equipment purchased or constructed and installed as above described has actually been constructed and installed and that the device, plant or equipment complies with the requirements of the Environmental Management Commission or local air pollution control program with respect to the devices, plants or equipment, that the device, plant or equipment is being effectively operated in accordance with the terms and conditions set forth in the permit, certificate of approval, or other document of approval issued by the Environmental Management Commission or local air pollution control program and that the primary purpose is to reduce air or water pollution resulting from the emission of air contaminants or the discharge of sewage and waste and not merely incidental to other purposes and functions. The cost of constructing facilities of any private or public utility built for the purpose of providing sewer service to residential and outlying areas is treated as deductible for the purposes of this section; the deductible liability allowed by this section applies only with respect to pollution abatement plants or equipment constructed or installed on or after January 1, 1955.

(d1) Credits. – A corporation is allowed a credit against the tax imposed by this section for a taxable year equal to one-half of the amount of tax payable during the taxable year under Article 5E of this Chapter. The credit allowed by this subsection may not exceed the amount of tax imposed by this section for the taxable year, reduced by the sum of all other credits allowed against that tax, except tax payments made by or on behalf of the taxpayer.

(e) 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) 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) 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.

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§ 105-122.  (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) 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.

2. 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.

3. 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.

4. 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.
(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.

(c1) 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.
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.

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

(d) 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.
(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) **(Effective for taxable years beginning before January 1, 2019)** Tax Rate. – 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. The tax imposed in this section shall not be less than two hundred dollars ($200.00).

(d2) **(Effective for taxable years beginning on or after January 1, 2019, and applicable to the calculation of franchise tax reported on the 2018 and later corporate income tax returns)** 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, ss. 1.7(a), (b); 2017-39, s. 2; 2017-57, s. 38.6(a); 2017-204, ss. 1.3(a)-(c); 2018-5, s. 38.2(b).)