

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2003

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HOUSE DRH50285-LCx-126 (05/06)

Short Title: Subsidiary Dividend Tax Changes.

(Public)

Sponsors: Representative McComas.

Referred to:

A BILL TO BE ENTITLED

AN ACT TO MODIFY THE EXPENSE ATTRIBUTION LAW AS IT APPLIES TO
DEDUCTIBLE DIVIDENDS.

The General Assembly of North Carolina enacts:

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

"§ 105-130.6A. Adjustment for expenses related to dividends.

(a) Definitions. – ~~The provisions of G.S. 105-130.6 govern the determination of whether a corporation is a subsidiary or an affiliate of another corporation. In addition, the following definitions apply in this section:~~

(1) ~~Affiliated group. — A group that includes a corporation, all other corporations that are affiliates or subsidiaries of that corporation, and all other corporations that are affiliates or subsidiaries of another corporation in the group.~~

(2) Bank holding company. – A holding company with an affiliate that is subject to the privilege tax on banks levied in G.S. 105-102.3.

(3) Dividends. – Dividends received that are not taxed under this Part.

(4) Electric power holding company. – A holding company with an affiliate or a subsidiary that is subject to the franchise tax on electric power companies levied in G.S. 105-116.

(5) Expense adjustment. – The adjustment required by G.S. 105-130.5(c)(3) for expenses related to dividends not taxed under this Part.

(6) Holding company. – Defined in G.S. 105-120.2.

(b) ~~General Uniform Rule. – For corporations other than bank holding companies and electric power holding companies, the~~The adjustment under G.S. 105-130.5(c)(3) for expenses related to dividends not taxed under this Part ~~may not exceed an amount equal to fifteen percent (15%) of the dividends.~~must be computed pursuant to guidelines

1 adopted by the Department of Revenue. The guidelines adopted by the Department must
2 apply equally to bank holding companies, electric power holding companies, and other
3 corporations.

4 ~~(e) Bank Holding Companies. — For bank holding companies the adjustment~~
5 ~~under G.S. 105-130.5(c)(3) for expenses related to dividends not taxed under this Part~~
6 ~~may not exceed an amount equal to twenty percent (20%) of the dividends.~~

7 ~~(d) Electric Power Holding Companies. — For electric power holding companies,~~
8 ~~the adjustment under G.S. 105-130.5(c)(3) for expenses related to dividends not taxed~~
9 ~~under this Part may not exceed an amount equal to fifteen percent (15%) of its total~~
10 ~~interest expenses.~~

11 ~~(e) Cap for Bank Holding Companies. — After calculating the expense adjustment~~
12 ~~as provided in subsection (c) of this section, each bank holding company must calculate~~
13 ~~the amount of additional tax that results from the expense adjustments for the holding~~
14 ~~company and for every corporation in the holding company's affiliated group for the~~
15 ~~taxable year. If the expense adjustments result in additional tax exceeding eleven~~
16 ~~million dollars (\$11,000,000) for a taxable year for the affiliated group, the affiliated~~
17 ~~group may reduce the amount of the expense adjustment so that the resulting additional~~
18 ~~tax does not exceed this maximum. This maximum applies once to each affiliated group~~
19 ~~each taxable year, whether or not the group includes more than one bank holding~~
20 ~~company.~~

21 ~~The members of the affiliated group may allocate this reduction among themselves~~
22 ~~in their discretion. In order to take this reduction, each member of the affiliated group~~
23 ~~that is required to file a return under this Part and that has dividends for the taxable year~~
24 ~~must provide a schedule with its return that lists every member of the group that has~~
25 ~~dividends, the amount of the dividends, and whether the member is a bank holding~~
26 ~~company. In addition, the schedule must show the expense adjustments for those~~
27 ~~members whose additional tax as a result of the expense adjustment constitutes the~~
28 ~~maximum amount. In addition, each member must provide any other documentation~~
29 ~~required by the Secretary.~~

30 ~~If the expense adjustment for an affiliated group is reduced under this subsection,~~
31 ~~and the return of a member of the group is later changed in a manner that reduces below~~
32 ~~the maximum the amount of additional tax for the group resulting from the expense~~
33 ~~adjustment, the Secretary may increase the expense adjustment for any member of the~~
34 ~~group in order to increase to the maximum the amount of additional tax for the group~~
35 ~~resulting from the expense adjustment. In this situation, the amount of the increase is~~
36 ~~considered a forfeited tax benefit with respect to the affiliated group for the purposes of~~
37 ~~G.S. 105-241.1(e). The date of the forfeiture is the date of the change that triggers the~~
38 ~~Secretary's authority to increase the expense adjustment. Any member whose expense~~
39 ~~adjustment the Secretary increases is liable for interest on the amount of the increase at~~
40 ~~the rate established under G.S. 105-241.1(i), computed from the date the taxes would~~
41 ~~have been due if the expense adjustment had been calculated correctly on the original~~
42 ~~return. The amount of the increase and the interest are due 60 days after the date of the~~
43 ~~forfeiture. A taxpayer that fails to pay the amount of the increase and interest by the due~~
44 ~~date is subject to the penalties provided in G.S. 105-236.~~

1 (f) ~~Credits for Bank Holding Companies.— If the affiliated group of which a~~
2 ~~bank holding company is a member is eligible for the reduction provided in subsection~~
3 ~~(e) of this section for a taxable year, the affiliated group is also eligible for a credit equal~~
4 ~~to two million dollars (\$2,000,000). If the affiliated group of which a bank holding~~
5 ~~company is a member is not eligible for the reduction provided in subsection (e) of this~~
6 ~~section for a taxable year, the affiliated group is eligible for a credit equal to the amount~~
7 ~~of additional tax that results from its expense adjustments in excess of the amount of~~
8 ~~additional tax that would result from the expense adjustments if the expense adjustment~~
9 ~~of any bank holding company in the group were equal to fifteen percent (15%) of the~~
10 ~~holding company's dividends for that taxable year.~~

11 ~~A credit allowed by this subsection may be taken in four equal, annual installments~~
12 ~~beginning with the later of the following taxable year or the taxpayer's taxable year~~
13 ~~beginning in 2003. The members of the affiliated group may allocate a credit allowed~~
14 ~~by this subsection among themselves in their discretion.~~

15 (g) ~~Credit for Electric Power Holding Companies.— After calculating the~~
16 ~~adjustment for expenses related to dividends under G.S. 105-130.5(c)(3), each electric~~
17 ~~power holding company must calculate the amount of additional tax under this Part that~~
18 ~~results from the expense adjustment for the taxable year. The electric power holding~~
19 ~~company is allowed a credit for the following taxable year equal to one half of this~~
20 ~~amount of additional tax.~~

21 ~~As an alternative to taking this credit against its own tax liability, an electric power~~
22 ~~holding company may elect to allocate the credit among the members of its affiliated~~
23 ~~group. In this case, the credit must be taken in four equal installments beginning in the~~
24 ~~later of the following taxable year or the taxable year for which the taxpayer's final~~
25 ~~return is due in 2004.~~

26 (h) ~~Limitation on Credits.— The credits provided in this section are allowed~~
27 ~~against the tax levied in this Part and the franchise tax levied in Article 3 of this~~
28 ~~Chapter. A taxpayer may claim a credit against only one of the taxes against which it is~~
29 ~~allowed. Each taxpayer must elect the tax against which the credit will be taken when~~
30 ~~filing the return on which the first installment of the credit is claimed. This election is~~
31 ~~binding. All installments and carryforwards of the credit must be taken against the same~~
32 ~~tax.~~

33 ~~In order for a member of an affiliated group to take a credit, each member of the~~
34 ~~affiliated group that is required to file a return under this Part or under Article 3 of this~~
35 ~~Chapter must attach a schedule to its return that shows for every member of the group~~
36 ~~the amount of the credit taken by it, the tax against which it is taken, and the amount of~~
37 ~~the resulting tax. In addition, each member must provide any other documentation~~
38 ~~required by the Secretary.~~

39 ~~A credit allowed in this section may not exceed the amount of tax against which it is~~
40 ~~taken for the taxable year reduced by the sum of all credits allowable, except tax~~
41 ~~payments made by or on behalf of the taxpayer. Any unused portion of the credit may~~
42 ~~be carried forward to succeeding taxable years."~~

43 **SECTION 2.** ~~This act is effective for taxable years beginning on or after~~
44 ~~January 1, 2003. Notwithstanding G.S. 105-163.41, no addition to tax may be made~~

1 under that statute for a taxable year beginning on or after January 1, 2003, and before
2 January 1, 2004, with respect to an underpayment of corporation tax to the extent the
3 underpayment was created or increased by this act.