

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2003

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HOUSE BILL 1291

Short Title: Subsidiary Dividend Tax Changes.

(Public)

Sponsors: Representative McComas.

Referred to: Finance.

May 15, 2003

1 A BILL TO BE ENTITLED  
2 AN ACT TO MODIFY THE EXPENSE ATTRIBUTION LAW AS IT APPLIES TO  
3 DEDUCTIBLE DIVIDENDS.

4 The General Assembly of North Carolina enacts:

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

6 "§ 105-130.6A. Adjustment for expenses related to dividends.

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

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

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

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

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

20 (5) Expense adjustment. – The adjustment required by G.S.  
21 105-130.5(c)(3) for expenses related to dividends not taxed under this  
22 Part.

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

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

1 apply equally to bank holding companies, electric power holding companies, and other  
2 corporations.

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

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

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

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

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