

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2007

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HOUSE BILL 2508

Short Title: Corporate Tax Law Changes. (Public)

Sponsors: Representatives Gibson, Luebke, Wainwright, Weiss (Primary Sponsors);
Brubaker, Hill, McComas, McGee, and Tarleton.

Referred to: Finance.

May 26, 2008

A BILL TO BE ENTITLED

1 AN ACT TO CLOSE FRANCHISE TAX LOOPHOLES BY REQUIRING A
2 LIMITED LIABILITY COMPANY THAT ELECTS TO BE TREATED AS A
3 CORPORATION AND A CAPTIVE REIT TO PAY FRANCHISE TAX AND TO
4 REQUIRE PUBLICLY TRADED PARTNERSHIPS TO GIVE THE
5 DEPARTMENT OF REVENUE A LIST OF THE PARTNERS WHO RECEIVED
6 MORE THAN FIVE HUNDRED DOLLARS OF INCOME FROM THE
7 PARTNERSHIP.
8

9 The General Assembly of North Carolina enacts:

10 **SECTION 1.** G.S. 105-114(b) reads as rewritten:

11 "(b) Definitions. – The following definitions apply in this Article:

12 ...

13 (2) Corporation. – A domestic corporation, a foreign corporation, an
14 electric membership corporation organized under Chapter 117 of the
15 General Statutes or doing business in this State, or an association that
16 is organized for pecuniary gain, has capital stock represented by
17 shares, whether with or without par value, and has privileges not
18 possessed by individuals or partnerships. The term includes a mutual
19 or capital stock savings and loan association or building and loan
20 association chartered under the laws of any state or of the United
21 States. The term includes a limited liability company that elects to be
22 taxed as a ~~C Corporation~~ corporation under the Code, but does not
23 otherwise include a limited liability company.

24"

25 **SECTION 2.** G.S. 105-114.1(a)(5) reads as rewritten:

26 "(5) Noncorporate limited liability company. – A limited liability company
27 that does not elect to be taxed as a ~~C Corporation~~ corporation under the
28 Code."

1 **SECTION 3.** G.S. 105-125(b) reads as rewritten:

2 "(b) Certain Investment Companies. —~~A corporation doing business in North~~
3 ~~Carolina that qualifies as a "regulated investment company" under section 851 of the~~
4 ~~Code or as a "real estate investment trust" under section 856 of the Code and elects for~~
5 ~~federal income tax purposes to be treated as a "regulated investment company" or as a~~
6 ~~"real estate investment trust,"~~ A corporation doing business in North Carolina that meets
7 one or more of the following conditions may, in determining its basis for franchise tax,
8 deduct the aggregate market value of its investments in the stocks, bonds, debentures, or
9 other securities or evidences of debt of other corporations, partnerships, individuals,
10 municipalities, governmental agencies, or ~~governments.~~governments:

11 (1) A regulated investment company. — A regulated investment company
12 is an entity that qualifies as a regulated investment company under
13 section 851 of the Code.

14 (2) A REIT, unless the REIT is a captive REIT. — The terms 'REIT' and
15 'captive REIT' have the same meanings as defined in
16 G.S. 105-130.12."

17 **SECTION 4.** G.S. 105-154 reads as rewritten:

18 **"§ 105-154. Information at the source returns.**

19 (a) Repealed by Session Laws 1993, c. 354, s. 14.

20 (b) Information Returns of Payers. — A person who is a resident of this State, has
21 a place of business in this State, or has an employee, an agent, or another representative
22 in any capacity in this State shall file an information return as required by the Secretary
23 if the person directly or indirectly pays or controls the payment of any income to any
24 taxpayer. The return shall contain all information required by the Secretary. The filing
25 of any return in compliance with this section by a foreign corporation is not evidence
26 that the corporation is doing business in this State.

27 (c) Information Returns of Partnerships. — A partnership doing business in this
28 State and required to file a return under the Code shall file an information return with
29 the Secretary. A partnership that the Secretary believes to be doing business in this State
30 and to be required to file a return under the Code shall file an information return when
31 requested to do so by the Secretary. The information return shall contain all information
32 required by the Secretary. It shall state specifically the items of the partnership's gross
33 income, the deductions allowed under the Code, and the adjustments required by this
34 Part. The information return shall also include the name and address of each person who
35 would be entitled to share in the partnership's net income, if distributable, and the
36 amount each person's distributive share would be. The information return shall specify
37 the part of each person's distributive share of the net income that represents corporation
38 dividends. The information return shall be signed by one of the partners under
39 affirmation in the form required by the Secretary.

40 A partnership that files an information return under this subsection shall furnish to
41 each person who would be entitled to share in the partnership's net income, if
42 distributable, any information necessary for that person to properly file a State income
43 tax return. The information shall be in the form prescribed by the Secretary and must be
44 furnished on or before the due date of the information return.

1 (d) Payment of Tax on Behalf of Nonresident Owner or Partner. – If a business
2 conducted in this State is owned by a nonresident individual or by a partnership having
3 one or more nonresident members, the manager of the business shall report the earnings
4 of the business in this State, the distributive share of the income of each nonresident
5 owner or partner, and any other information required by the Secretary. The manager of
6 the business shall pay with the return the tax on each nonresident owner or partner's
7 share of the income computed at the rate levied on individuals under
8 G.S. 105-134.2(a)(3). The business may deduct the payment for each nonresident owner
9 or partner from the owner or partner's distributive share of the profits of the business in
10 this State. If the nonresident partner is not an individual and the partner has executed an
11 affirmation that the partner will pay the tax with its corporate, partnership, trust, or
12 estate income tax return, the manager of the business is not required to pay the tax on
13 the partner's share. In this case, the manager shall include a copy of the affirmation with
14 the report required by this subsection.

15 (e) Publicly Traded Partnership. – The information return and payment
16 requirements under this section are modified as follows for a partnership that qualifies
17 as a publicly traded partnership under section 7704(c) of the Code:

18 (1) The information return required under subsection (c) of this section is
19 limited to partners whose distributive share of the partnership's net
20 income during the tax year was more than five hundred dollars
21 (\$500.00).

22 (2) The payment requirements under subsection (d) of this section do not
23 apply."

24 **SECTION 5.** Sections 1 through 3 of this act are effective for taxable years
25 beginning on or after January 1, 2009. Section 4 of this act is effective for taxable years
26 beginning on or after January 1, 2008. The remainder of this act is effective when it
27 becomes law.