

**GENERAL ASSEMBLY OF NORTH CAROLINA**  
**SESSION 2007**

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**HOUSE BILL 2508**  
**Committee Substitute Favorable 5/29/08**

Short Title: Corporate Tax Law Changes.

(Public)

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Sponsors:

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Referred to:

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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."

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

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

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

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

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

17       **"§ 105-154. Information at the source returns.**

18       (a) Repealed by Session Laws 1993, c. 354, s. 14.

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

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

39       A partnership that files an information return under this subsection shall furnish to  
40 each person who would be entitled to share in the partnership's net income, if  
41 distributable, any information necessary for that person to properly file a State income  
42 tax return. The information shall be in the form prescribed by the Secretary and must be  
43 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 publicly traded partnership  
17 that is described in 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.