

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

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HOUSE BILL 324

Short Title: Corporate Income Tax Reports.

(Public)

Sponsors: Representatives Gamble; and Luebke.

Referred to: Finance.

February 26, 1997

A BILL TO BE ENTITLED

AN ACT TO REQUIRE CORPORATIONS TO REPORT INFORMATION RELATING
TO CERTAIN INCOME TAX DEDUCTIONS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 105-130.16 reads as rewritten:

"§ 105-130.16. Returns.

(a) Return Required. – Every corporation doing business in this State shall file with the Secretary of Revenue an income tax return under affirmation, showing ~~therein~~ specifically the items of gross ~~income and the deductions allowed~~ income, deductions, adjustments, and other calculations allowed or required by this Division, and ~~such other facts as the Secretary may require~~ any other information the Secretary requires for the purpose of making any computation required by this Division.

(b) Additional Schedules. – If a financial institution excludes or deducts from income taxable under this Division for the taxable year more than two hundred fifty thousand dollars (\$250,000) of interest expense allocable to interest income exempt from taxation under this Division, the institution shall file with the return a schedule itemizing specific issues with their interest income exempt from taxation under this Division and the amount of interest expense allocable to the income. The allocable portion of interest expense is the portion for which deduction would be disallowed for federal tax purposes pursuant to section 265(b) of the Code if the interest income were earned on tax-exempt

1 obligations as defined in section 265(b) of the Code. The schedule shall include
2 sufficient detail to disclose the nature and extent of the items and the methodology used
3 in their calculation. The schedule shall also include a calculation of what the institution's
4 tax liability under this Division would have been if not for the exclusion or deduction of
5 the expenses.

6 A corporation whose direct or indirect expenses related to dividends deducted under
7 G.S. 105-130.7(4) for the taxable year exceed two hundred fifty thousand dollars
8 (\$250,000) shall file with the return a schedule itemizing the dividends deductible under
9 G.S. 105-130.7(4) for the taxable year and the direct or indirect expenses related to the
10 dividends. The amount of direct or indirect expenses related to dividends deductible
11 under G.S. 105-130.7(4) is presumed to be fifteen percent (15%) of the amount of the
12 dividends, not to exceed the taxpayer's total expenses. A taxpayer who itemizes related
13 expenses less than the presumed amount must maintain and make available for inspection
14 by the Secretary all records necessary to determine and verify the amount itemized. The
15 schedule required by this paragraph shall include sufficient detail to disclose the nature
16 and extent of the items and the methodology used in their calculation. The schedule shall
17 also include a calculation of what the corporation's tax liability under this Division would
18 have been if not for the deduction of the expenses.

19 (c) Signing Officer – The return of a corporation shall be signed by either its
20 president, vice-president, treasurer, assistant treasurer, ~~secretary~~ secretary, or assistant
21 secretary. There shall be annexed to the return the affirmation of the officer signing the
22 same ~~return~~, which shall be in the form prescribed in G.S. 105-130.17 of this Division, and
23 the same penalties prescribed in G.S. 105-236 shall apply to any person making wilful
24 misstatements in said returns. ~~105-130.17.~~

25 (d) Determinations. – When the Secretary of Revenue has reason to believe that any
26 corporation so conducts its trade or business in such manner as to either directly or
27 indirectly distort its true net income and the net income properly attributable to the State,
28 whether by the arbitrary shifting of income, through price fixing, charges for service, or
29 otherwise, whereby the net income is arbitrarily assigned to one or another unit in a group
30 of taxpayers carrying on business under a substantially common control, ~~he may require~~
31 such facts as he deems the Secretary may require any information the Secretary considers
32 necessary for the proper computation of the entire net income and the net income
33 properly attributable to the State, and in determining ~~same the Secretary of Revenue~~ this net
34 income, the Secretary shall have regard to the fair profit which would normally arise
35 from the conduct of the trade or business.

36 When any corporation liable to taxation under this Division conducts its business in
37 such a manner as to either directly or indirectly benefit the members or stockholders
38 thereof or any person interested in ~~such the~~ business by selling its products or goods or
39 commodities in which it deals at less than the fair price which might be obtained therefor,
40 or ~~where~~ when a corporation, a substantial portion of whose capital stock is owned either
41 directly or indirectly by another corporation, acquires and disposes of the products of the
42 corporation so owning a substantial portion of its stock in such a manner as to create a
43 loss or improper net income for either of ~~said the~~ corporations, or ~~where~~ when a

1 corporation, owning directly or indirectly a substantial portion of the stock of another
2 corporation, acquires and disposes of the products of the corporation of which it so owns
3 a substantial portion of the stock in such manner as to create a loss or improper net
4 income for either of ~~said~~ the corporations, the Secretary of ~~Revenue~~ may determine the
5 amount of taxable income of any ~~such~~ of the corporations for the calendar or fiscal year,
6 having due regard to the reasonable profits which, but for such arrangement or
7 understanding, might or could have been obtained by the corporation or corporations
8 liable to taxation under this Division from dealing in such products, ~~goods~~ goods, or
9 commodities."

10 Section 2. G.S. 105-256(a) is amended by adding a new subdivision to read:

11 "(6) At least once a year, a compilation and summary of the information
12 filed pursuant to G.S. 105-130.16(b). The report shall show cumulative
13 statistics as well as breakdowns by size of taxpayer and other factors in
14 order to fully clarify the size and nature of each tax provision to which
15 the report relates."

16 Section 3. G.S. 105-236(10) reads as rewritten:

17 "(10) Failure to File Informational Returns. –

- 18 a. For failure to file a partnership or a fiduciary informational return
19 when the return is due to be filed, there shall be assessed as a tax
20 against the delinquent five dollars (\$5.00) per month or fraction
21 thereof of the delinquency, this penalty, however, in the
22 aggregate not to exceed twenty-five dollars (\$25.00). When
23 assessed against a fiduciary, the penalty shall be paid by the
24 fiduciary and shall not be passed on to the trust or estate. No tax
25 may be assessed against the delinquent when it is a partnership as
26 defined under Section 6231(a)(1)(B) of the Code and no penalty
27 could be assessed as provided by Rev. Proc. 84-35, except that
28 for the purpose of Section 3.01 of that procedure 'the Department
29 of Revenue' is substituted for 'the Internal Revenue Service'.
- 30 b. For failure to file timely statements of payments to another
31 person with respect to wages, dividends, rents, or interest paid to
32 that person, there shall be assessed as a tax a penalty of one
33 dollar (\$1.00) for each statement not filed on time, the aggregate
34 of the penalties for each tax year not to exceed one hundred
35 dollars (\$100.00), and in addition thereto, if the Secretary
36 requests the payer to file the statements and sets a date by which
37 the statements must be filed, and the payer fails to file the
38 statements within this time, the amounts claimed on payer's
39 income tax return as deductions for salaries and wages, or rents
40 or interest shall be disallowed to the extent that the payer failed
41 to comply with the Secretary's request with respect to the
42 statements.

1 c. For failure to file an informational return required by Article 36C
2 or 36D of this Chapter by the date the return is due, there shall be
3 assessed as a tax a penalty of fifty dollars (\$50.00).

4 d. For failure to file the informational schedule required by G.S.
5 105-130.16(b), there shall be assessed as a tax a penalty of five
6 dollars (\$5.00) per day of the delinquency."

7 Section 4. This act is effective for taxable years beginning on or after January
8 1, 1997.