

**GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2001**

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HOUSE BILL 1350

Short Title: Corporate Tax Disclosure.

(Public)

Sponsors: Representatives Wainwright and Luebke (Primary Sponsors).

Referred to: Financial Institutions.

April 12, 2001

A BILL TO BE ENTITLED

AN ACT TO MAKE PUBLIC CERTAIN CORPORATE TAX INFORMATION.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 105-256(a) reads as rewritten:

"(a) Reports. – The Secretary shall prepare and publish the following:

- (1) At least every two years, statistics concerning taxes imposed by this Chapter, including amounts collected, classifications of taxpayers, geographic distribution of taxes, and other facts considered pertinent and valuable.
- (2) At least every two years, a tax expenditure report that lists the tax expenditures made by a provision in this Chapter, other than a provision in Subchapter II, and gives an estimate of the amount by which revenue is reduced by each tax expenditure. A "tax expenditure" is an exemption, an exclusion, a deduction, an allowance, a credit, a refund, a preferential tax rate, or another device that reduces the amount of tax revenue that would otherwise be available to the State. An estimate of the amount by which revenue is reduced by a tax expenditure may be stated as ranging between two amounts if the Department does not have sufficient data to make a more specific estimate.
- (3) As often as required, a report that is not listed in this subsection but is required by another law.
- (4) As often as the Secretary determines is needed, other reports concerning taxes imposed by this Chapter.
- (5) At least once a year, a statement of the taxpayer's bill of rights, which sets forth in simple and nontechnical terms the following:
 - a. The taxpayer's right to have the taxpayer's tax information kept confidential.

- 1 b. The rights of a taxpayer and the obligations of the Department
2 during an audit.
- 3 c. The procedure for a taxpayer to appeal an adverse decision of
4 the Department at each level of determination.
- 5 d. The procedure for a taxpayer to claim a refund for an alleged
6 overpayment.
- 7 e. The procedure for a taxpayer to request information, assistance,
8 and interpretations or to make complaints.
- 9 f. Penalties and interest that may apply and the basis for
10 requesting waiver of a penalty.
- 11 g. The procedures the Department may use to enforce the
12 collection of a tax, including assessment, jeopardy assessment,
13 enforcement of liens, and garnishment and attachment.

14 (6) At least once a year, a report containing the information itemized
15 below for every taxpayer that is required to file a report under G.S.
16 105-130.16(a1) and for every taxpayer that claims one or more
17 corporate income tax credits or franchise tax credits under Article 3A,
18 3C, 3D, or 4 of this Chapter or under G.S. 105-129.16A or G.S.
19 105-129.16B. The report must contain the following information for
20 each affected taxpayer for the most recent taxable year for which
21 information is available, except that it may not contain any information
22 the disclosure of which is prohibited by section 6013 of the Code.

- 23 a. The name and address.
- 24 b. The amount of corporate income tax and the amount of
25 franchise tax payable under this Chapter by the taxpayer, less
26 the amount of any credits allowable other than payments of tax
27 by or on behalf of the taxpayer.
- 28 c. The amount of each tax credit the taxpayer claimed under
29 Article 3A, 3C, 3D, or 4 of this Chapter or under G.S.
30 105-129.16A or G.S. 105-129.16B
- 31 d. The information the taxpayer reported under G.S.
32 105-130.16(a1)."

33 **SECTION 2.** G.S. 105-259(b) is amended by adding a new subdivision to

34 read:

35 **"§ 105-259. Secrecy required of officials; penalty for violation.**

36 ...

37 (b) Disclosure Prohibited. – An officer, an employee, or an agent of the State
38 who has access to tax information in the course of service to or employment by the State
39 may not disclose the information to any other person unless the disclosure is made for
40 one of the following purposes:

41 ...

42 (26) To publish the report required by G.S. 105-256(a)(6)."

43 **SECTION 3.** G.S. 105-130.16 reads as rewritten:

44 **"§ 105-130.16. Returns.**

1 (a) Return. – Every corporation doing business in this State must file with the
2 Secretary an income tax return showing specifically the items of gross income and the
3 deductions allowed by this Part and any other facts the Secretary requires to make any
4 computation required by this Part. The return of a corporation must be signed by its
5 president, vice-president, treasurer, assistant treasurer, secretary, or assistant secretary.
6 The officer signing the return must furnish an affirmation verifying the return. The
7 affirmation must be in the form required by the Secretary.

8 (a1) Additional Schedules. – If a financial institution excludes or deducts from
9 income taxable under this Part for the taxable year more than two hundred fifty
10 thousand dollars (\$250,000) of interest expense allocable to interest income exempt
11 from taxation under this Part, the institution must file with the return a schedule
12 itemizing specific issues with their interest income exempt from taxation under this Part
13 and the amount of interest expense allocable to the income. The allocable portion of
14 interest expense is the portion for which deduction would be disallowed for federal tax
15 purposes pursuant to section 265(b) of the Code if the interest income were earned on
16 tax-exempt obligations as defined in section 265(b) of the Code. The schedule must
17 include sufficient detail to disclose the nature and extent of the items and the
18 methodology used in their calculation. The schedule must also include a calculation of
19 what the institution's tax liability under this Part would have been if not for the
20 exclusion or deduction of the expenses.

21 A corporation whose direct or indirect expenses related to dividends deducted under
22 G.S. 105-130.7(b) for the taxable year exceed two hundred fifty thousand dollars
23 (\$250,000) must file with the return a schedule itemizing the dividends deductible under
24 G.S. 105-130.7(b) for the taxable year and the direct or indirect expenses related to the
25 dividends. The amount of direct or indirect expenses related to dividends deductible
26 under G.S. 105-130.7(b) is presumed to be fifteen percent (15%) of the amount of the
27 dividends, not to exceed the taxpayer's total expenses. A taxpayer who itemizes related
28 expenses less than the presumed amount must maintain and make available for
29 inspection by the Secretary all records necessary to determine and verify the amount
30 itemized. The schedule required by this paragraph must include sufficient detail to
31 disclose the nature and extent of the items and the methodology used in their
32 calculation. The schedule must also include a calculation of what the corporation's tax
33 liability under this Part would have been if not for the deduction of the expenses.

34 (b) Correction of Distortions. – When the Secretary has reason to believe that any
35 corporation so conducts its trade or business in such manner as to either directly or
36 indirectly distort its true net income and the net income properly attributable to the
37 State, whether by the arbitrary shifting of income, through price fixing, charges for
38 service, or otherwise, whereby the net income is arbitrarily assigned to one or another
39 unit in a group of taxpayers carrying on business under a substantially common control,
40 the Secretary may require any facts the Secretary considers necessary for the proper
41 computation of the entire net income and the net income properly attributable to the
42 State, and in determining these computations, the Secretary must have regard to the fair
43 profit that would normally arise from the conduct of the trade or business.

1 (c) Other Corrections. – When any corporation liable to taxation under this Part
2 conducts its business in such a manner as to either directly or indirectly benefit the
3 members or stockholders thereof or any person interested in the business by selling its
4 products or goods or commodities in which it deals at less than the fair price which
5 might be obtained therefor, or when a corporation, a substantial portion of whose capital
6 stock is owned either directly or indirectly by another corporation, acquires and
7 disposes of the products of the corporation so owning a substantial portion of its stock
8 in such a manner as to create a loss or improper net income for either of the
9 corporations, or when a corporation, owning directly or indirectly a substantial portion
10 of the stock of another corporation, acquires and disposes of the products of the
11 corporation of which it so owns a substantial portion of the stock in such manner as to
12 create a loss or improper net income for either of the corporations, the Secretary may
13 determine the amount of taxable income of the such corporations for the calendar or
14 fiscal year, having due regard to the reasonable profits which, but for such arrangement
15 or understanding, might or could have been obtained by the corporations liable to
16 taxation under this Part from dealing in such products, goods or commodities."

17 **SECTION 4.** Section 3 of this act is effective for taxable years beginning on
18 or after January 1, 2001. Section 1 of this act becomes effective October 1, 2002. The
19 remainder of this act is effective when it becomes law.