

February 20, 2007

S 244. MODERNIZE CORPORATE INCOME TAX FILING. Filed 2/20/07. *TO REQUIRE CORPORATIONS TO FILE A COMBINED INCOME TAX REPORT.* Under federal law, an affiliated group of corporations may choose to file a consolidated income tax return. For North Carolina income tax purposes, GS 105-130.14 requires these corporations to file separate tax returns unless specifically directed to do otherwise by the Secretary of Revenue. This act amends GS 105-130.14 to require that a combined report be filed by a corporation that is part of an affiliated group engaged in a unitary business. In order to implement this mandatory combined reporting requirement, the act makes changes to GS 105-130.2 (definitions) and GS 105-130.4 (allocation and apportionment of corporate income) and enacts new GS 105-130.4A (apportionment of income of combined group) and GS 105-130.4B (water's edge election).

As revised, GS 105-130.4 defines an *affiliated group* of corporations as a group in which more than 50% of the voting stock of each member is owned by common owners or by other members of the group. A group of corporations is engaged in a *unitary business* if the group has (1) unity of ownership, operation, or use, (2) an interdependence in their functions, or (3) both. A group that is required to file a combined report may make a *water's edge election* under GS 105-130.4B: the group may choose to exclude from the report a member that conducts 80% or more of its business activity outside the United States and outside of a tax haven country.

The act expands GS 105-130.4(l)(2) to provide that for purposes of apportioning income of multistate corporations to North Carolina, a taxpayer's sale is considered to be in the state if it is shipped from within the state and either (1) the purchaser is the federal government or (2) the taxpayer is not taxable in the state of the purchaser. With the exception of sales to the federal government, all sales to purchasers in this state will continue to be considered sales in this state.

The act amends GS 105-130.2 to provide that a corporation's income taxable to North Carolina includes (1) its share of apportioned North Carolina income of any combined groups of which it is a member as well as (2) its apportioned income from activities that are distinct from the group, (3) its income from a business conducted entirely within NC, and (4) its nonapportionable income allocable to NC. New GS 105-130.4A provides the method of determining a combined group's apportionable income, apportioning the income, and determining each member's share of the apportionable income. Effective beginning with the 2009 tax year.

Intro. by Hoyle.

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