



ADOPTED

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 826*

AMENDMENT NO. 1
(to be filled in by
Principal Clerk)

S826-ASVx-58 [v.6]
Comm. Sub. [YES]
Amends Title [NO]
Second Edition

HELD TO BE MATERIAL
CONSTITUTES 1ST RDG

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Date June 4, 2012

Senator Hartsell

1 moves to amend the bill on page 8, line 20, by deleting the period and substituting a colon;
2
3 and on page 8, line 30-31, by inserting between the lines the following new section to read:

4 "SECTION 1.14.(a). G.S. 105-122(b1) reads as rewritten:

5 (b1) Definitions. – The following definitions apply in subsection (b) of this section:

- 6 (1) Affiliate. – The same meaning as specified in G.S. ~~105-130.6~~105-130.2.
- 7 (2) Indebtedness. – All loans, credits, goods, supplies, or other capital of
- 8 whatsoever nature furnished by a parent, subsidiary, or affiliated
- 9 corporation, other than indebtedness endorsed, guaranteed, or otherwise
- 10 supported by one of these corporations.
- 11 (3) Parent. – The same meaning as specified in G.S. ~~105-130.6~~105-130.2.
- 12 (4) Subsidiary. – The same meaning as specified in G.S. ~~105-130.6~~105-130.2.

13 SECTION 1.14.(b). G.S. 105-130.2 reads as rewritten:

14 § 105-130.2. Definitions.

15 The following definitions apply in this Part:

- 16 (1) Affiliate. – A corporation is an affiliate of another corporation when both are
- 17 directly or indirectly controlled by the same parent corporation or by the
- 18 same or associated financial interests by stock ownership, interlocking
- 19 directors, or by any other means whatsoever, whether the control is direct or
- 20 through one or more subsidiary, affiliated, or controlled corporations.
- 21 (2) Code. – Defined in G.S. 105-228.90.
- 22 (1a)(3) Corporation. – A joint-stock company or association, an insurance company,
- 23 a domestic corporation, a foreign corporation, or a limited liability company.
- 24 (1b)(4) C Corporation. – A corporation that is not an S Corporation.
- 25 (1e)(5) Department. – The Department of Revenue.
- 26 (2)(6) Domestic corporation. – A corporation organized under the laws of this
- 27 State.
- 28 (3)(7) Fiscal year. – An income year, ending on the last day of any month other
- 29 than December. A corporation that pursuant to the provisions of the Code
- 30 has elected to compute its federal income tax liability on the basis of an
- 31 annual period varying from 52 to 53 weeks shall compute its taxable income



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1 under this Part on the basis of the same period used by the corporation in
2 computing its federal income tax liability for the income year.

3 ~~(4)~~(8) Foreign corporation. – Any corporation other than a domestic corporation.

4 ~~(4a)~~(9) Gross income. – Defined in section 61 of the Code.

5 ~~(4b)~~(10) Income year. – The calendar year or the fiscal year upon the basis of
6 which the net income is computed under this Part. If no fiscal year has been
7 established, the income year is the calendar year. In the case of a return
8 made for a fractional part of a year under the provisions of this Part or under
9 rules adopted by the Secretary, the income year is the period for which the
10 return is made.

11 ~~(5)~~(11) Limited liability company. – Either a domestic limited liability company
12 organized under Chapter 57C of the General Statutes or a foreign limited
13 liability company authorized by that Chapter to transact business in this
14 State that is classified for federal income tax purposes as a corporation. As
15 applied to a limited liability company that is a corporation under this Part,
16 the term "shareholder" means a member of the limited liability company and
17 the term "corporate officer" means a member or manager of the limited
18 liability company.

19 ~~(12)~~ Parent. – A corporation is a parent of another corporation when, directly or
20 indirectly, it controls the other corporation by stock ownership, interlocking
21 directors, or by any other means whatsoever exercised by the same or
22 associated financial interests, whether the control is direct or through one or
23 more subsidiary, affiliated, or controlled corporations.

24 ~~(5a)~~(13) S Corporation. – Defined in G.S. 105-131(b).

25 ~~(5b)~~(14) Secretary. – The Secretary of Revenue.

26 ~~(5e)~~(15) State net income. – The taxpayer's federal taxable income as determined
27 under the Code, adjusted as provided in G.S. 105-130.5 and, in the case of a
28 corporation that has income from business activity that is taxable both within
29 and without this State, allocated and apportioned to this State as provided in
30 G.S. 105-130.4.

31 ~~(16)~~ Subsidiary. – A corporation is a subsidiary of another corporation when,
32 directly or indirectly, it is subject to control by the other corporation by stock
33 ownership, interlocking directors, or by any other means whatsoever
34 exercised by the same or associated financial interest, whether the control is
35 direct or through one or more subsidiary, affiliated, or controlled
36 corporations.

37 ~~(5d)~~(17) Taxable year. – Income year.

38 ~~(6)~~(18) Taxpayer. – A corporation subject to the tax imposed by this Part.'

39 SECTION 1.14.(c). G.S. 105-130.14 reads as rewritten:

40 '§ 105-130.14. Corporations filing consolidated returns for federal income tax purposes.

41 Any corporation electing or required to file a consolidated income tax return with the
42 Internal Revenue Service must determine its State net income as if the corporation had filed a

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1 separate federal return and shall not file a consolidated or combined return with the Secretary
2 unless one of the following applies:

- 3 (1) The corporation is specifically directed in writing by the Secretary under
4 G.S. ~~105-130.6~~ 105-130.5A to file a consolidated or combined return.
- 5 (2) ~~The corporation's facts and circumstances meet the facts and circumstances~~
6 ~~described in a permanent rule adopted under G.S. 105-130.6 and the~~
7 ~~corporation files a consolidated or combined return in accordance with that~~
8 ~~rule.~~
- 9 (3) Pursuant to a written request from the ~~corporation,~~ corporation under
10 G.S. 105-130.5A, the Secretary has provided written advice to the
11 corporation stating that the Secretary will ~~require~~ allow a consolidated or
12 combined return under the facts and circumstances set out in the request and
13 the corporation files a consolidated or combined return in accordance with
14 that written advice.'

15 **SECTION 1.14.(d)** G.S. 105-262(b) is repealed.

16 **SECTION 1.14.(e)** G.S. 153A-279(a)(1) reads as rewritten:

- 17 (1) "Claim" means a claim, action, suit, or request for damages, whether
18 compensatory, punitive, or otherwise, made by any person or entity against:
19 a. The County, a railroad, or an operating rights railroad; or
20 b. An officer, director, trustee, employee, parent, subsidiary, or
21 affiliated corporation as defined in G.S. ~~105-130.6,~~ 105-130.2, or
22 agent of: the County, a railroad, or an operating rights railroad.'

23 **SECTION 1.14.(f)** G.S. 160A-326(a)(1) reads as rewritten:

- 24 (1) "Claim" means a claim, action, suit, or request for damages, whether
25 compensatory, punitive, or otherwise, made by any person or entity against:
26 a. The City, a railroad, or an operating rights railroad; or
27 b. An officer, director, trustee, employee, parent, subsidiary, or
28 affiliated corporation as defined in G.S. ~~105-130.6,~~ 105-130.2, or
29 agent of: the City, a railroad, or an operating rights railroad.'

30 **SECTION 1.14.(g)** G.S. 160A-626(a)(1) reads as rewritten:

- 31 (1) "Claim" means a claim, action, suit, or request for damages, whether
32 compensatory, punitive, or otherwise, made by any person or entity against:
33 a. The Authority, a railroad, or an operating rights railroad; or
34 b. An officer, director, trustee, employee, parent, subsidiary, or
35 affiliated corporation as defined in G.S. ~~105-130.6,~~ 105-130.2, or
36 agent of: the Authority, a railroad, or an operating rights railroad.'";
37

38 and on page 10, lines 7-8, by inserting the following between the lines:

- 39 "(26b) Prepaid calling service. – A right that meets all of the following
40 requirements:
41 a. Authorizes the exclusive purchase of telecommunications service.
42 b. Must be paid for in advance.

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- 1 c. Enables the origination of calls by means of an access number,
2 authorization code, or another similar means, regardless of whether
3 the access number or authorization code is manually or electronically
4 dialed.
5 d. Is sold in predetermined units or dollars whose number or dollar
6 value declines with use and is known on a continuous basis.
7
8 ...
9 (27a) Prepaid wireless calling service. – A right that meets all of the following
10 requirements:
11 a. Authorizes the purchase of mobile telecommunications service,
12 either exclusively or in conjunction with other services.
13 b. Must be paid for in advance.
14 c. Is sold in predetermined units or dollars whose number or dollar
15 value declines with use and is known on a continuous basis.

16 ...";

17 and on page 10, line 32, by rewriting the line to read:

18 "(1) ~~Over the counter.~~—When a purchaser receives a product at a business";

20 and on page 10, line 34, by rewriting the line to read:

21 "(2) ~~Delivery to specified address.~~—When a purchaser or purchaser's donee";

23 and on page 16, lines 28-29, by inserting the following new sections between the lines:

24 "**SECTION 2.18.(a)** G.S. 105-236 reads as rewritten:

25 '**§ 105-236. Penalties; situs of violations; penalty disposition.**

26 (a) Penalties. – The following civil penalties and criminal offenses apply:

27 ...
28 (3) Failure to File Return. – In case of failure to file any return on the date it is
29 due, determined with regard to any extension of time for filing, the Secretary
30 shall assess a penalty equal to five percent (5%) of the amount of the tax if
31 the failure is for not more than one month, with an additional five percent
32 (5%) for each additional month, or fraction thereof, during which the failure
33 continues, not exceeding twenty-five percent (25%) in the aggregate, or five
34 dollars (\$5.00), whichever is the greater aggregate.

35 (4) Failure to Pay Tax When Due. – In the case of failure to pay any tax when
36 due, without intent to evade the tax, the Secretary shall assess a penalty
37 equal to ten percent (10%) of the tax, ~~subject to a minimum of five dollars~~
38 ~~(\$5.00).~~ tax. This penalty does not apply in any of the following
39 circumstances:

40 a. When the amount of tax shown as due on an amended return is paid
41 when the return is filed.

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- b. When the Secretary proposes an assessment for tax due but not shown on a return and the tax due is paid within 45 days after the later of the following:
1. The date of the notice of proposed assessment of the tax, if the taxpayer does not file a timely request for a Departmental review of the proposed assessment.
 2. The date the proposed assessment becomes collectible under one of the circumstances listed in G.S. 105-241.22(3) through (6), if the taxpayer files a timely request for a Departmental review of the proposed assessment.
- c. When a taxpayer timely files a consolidated or combined return at the request of the Secretary under Part 1 of Article 4 of this Chapter and the tax due is paid within 45 days after the latest of the following:
1. The date the return is filed.
 2. The date of a notice of proposed assessment based on the return, if the taxpayer does not file a timely request for a Departmental review of the proposed assessment.
 3. The date the Departmental review of the proposed assessment ends as a result of the occurrence of one of the actions listed in G.S. 105-241.22(3) through (6), if the taxpayer files a timely request for a Departmental review.

...'

SECTION 2.18.(b) This section becomes effective January 1, 2014.

SECTION 2.19.(a) G.S. 121-5(e) reads as rewritten:

'(e) ~~Program Funding. Archives and Records Management Fund. – The Archives and~~ Records Management Fund is established as a special revenue fund. The Fund consists of the fees Fees credited to the Department it under G.S. 161-11.6 shall Chapter 161 of the General Statutes. Revenue in the Fund may be used only to offset the Department's costs in providing essential records management and archival services for public records pursuant to Chapter 121 and Chapter 132 of the General Statutes.

SECTION 2.19.(b) This section becomes effective July 1, 2012.";

and on page 17, lines 48-49, by inserting the following new sub-subdivision between the lines:

"e. Interest accrues on unpaid taxes for these unregistered classified motor vehicles at the rate of five percent (5%) for the remainder of the month following the month the taxes are due. Interest accrues at the rate of three-fourths percent (3/4%) for each following month until the taxes are paid, unless the notice is prepared after the date the taxes are due. In that circumstance, the interest accrues beginning the second month following the date of the notice until the taxes are paid.";

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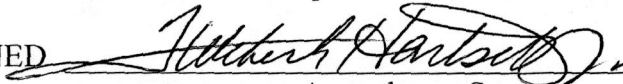
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2 and on page 18, lines 16-17, by inserting the following between the lines:
3 "(b) Subject to the provisions of G.S. 105-395.1, interest on unpaid taxes and registration
4 fees on classified motor vehicles listed pursuant to G.S. 105-330.3(a)(1) accrues at the rate of
5 five percent (5%) for the remainder of the month following the date month in which the
6 registration renewal sticker expired pursuant to G.S. 20-66(g). Interest accrues at the rate of
7 three-fourths percent (3/4%) beginning the second month following the due date and for each
8 month thereafter until the taxes and fees are paid, unless the notice required by G.S. 105-330.5
9 is prepared after the date the taxes and fees are due. In that circumstance, the interest accrues
10 beginning the second month following the date of the notice until the taxes and fees are paid.
11 Subject to the provisions of G.S. 105-395.1, interest on delinquent taxes on classified motor
12 vehicles listed pursuant to G.S. 105-330.3(a)(2) accrues as provided in G.S. 105-360(a) and
13 discounts shall be allowed as provided in G.S. 105-360(c)."

SIGNED



Amendment Sponsor

SIGNED

Committee Chair if Senate Committee Amendment

ADOPTED

49-0

FAILED

TABLED

Sarah Clapp
June 4, 2012

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CONSTITUTES 1ST RDG**