J. Corporate Members of LLCs (G.S. 105-114.1)

Effective January 1, 2002, a corporation that is a member of a limited liability company (LLC) and is entitled to receive at least seventy percent (70%) of the LLC's assets upon dissolution is required to include a percentage of the LLC's income, assets, liabilities, and equity in the corporation's franchise tax calculation. In that case, the corporation's investment in the LLC is not included in the calculation of the corporation's capital stock, surplus and undivided profits base.

Effective January 1, 2003, the LLC's income, assets, liabilities, or equity must be attributed to a corporation if the corporation and its related members together own indirectly seventy percent (70%) or more of the LLC's assets.

The income, assets, liabilities, or equity of an LLC are attributed to a corporation if the corporation and its related members together own indirectly seventy percent (70%) or more of the LLC's assets. A person owns indirectly assets of an LLC if the LLC's governing law provided that seventy percent (70%) or more of its assets, after payments to creditors, must be distributed to the person upon dissolution. The LLC's assets are attributed only to the related members that are corporations. None of the LLC's assets are attributed to the related members that are not corporations. Instead, the amount that would be attributed to that member is also attributed to the corporate members.

Example: A parent corporation, its subsidiary corporation, and an individual that is a shareholder of the parent corporation form a partnership to own an LLC. The parent and subsidiary transfer assets to the LLC. The LLC's governing law provides that upon dissolution, the assets of the LLC will be distributed as follows:

- Parent Corporation 20%
- Subsidiary Corporation 45%
- Individual 35%

Because the parent corporation and its related members own directly 100% of the LLC's assets, 100% of the LLC's income, assets, liabilities, and equity must be attributed to the related members that are corporation. The attribution percentage is as follows:

- Parent Corporation 31% (its 20% interest / 65% total interest of all corporate members)
- Subsidiary Corporation 69% (its 45% interest / 65% total interest of all corporate members).

Any taxpayer who, because of fraud with intent to evade tax, underpays the tax under this Article (G.S. 105 Article 3) is guilty of a Class H felony in accordance with G.S. 105-236(7). For additional information on the filing requirements for members of LLCs, see Item 5, Subsection M "Corporations Conditionally or Partially Exempt" in this section.