

II. CORPORATE INCOME TAX

(Article 4)

A. Corporations Subject to the Tax, Tax Rate and Allocation Requirements (G.S. 105-130.3, 105-130.4, 17 NCAC 05C.0100)

1. Domestic and Foreign Corporations Required to File (17 NCAC 05C.0101)

All domestic corporations (those chartered in North Carolina) and all foreign corporations which are doing business in North Carolina are subject to income tax and are required to file annual income tax returns, except corporations specifically exempt from the tax under G.S. 105-130.11, and S corporations exempt under G.S. 105-131.

Because of a difference between the State income tax laws and the laws under the North Carolina Business Corporation Act, a foreign corporation operating in North Carolina may be liable for income tax but, at the same time, not be required to obtain a certificate of authority to do business in North Carolina. For example, a Virginia corporation engaged in the general contracting business which obtains a single job in North Carolina to be completed within six months, would not, under the Business Corporation Act, be required to obtain a certificate of authority to do business in this State but would be subject to income tax.

Note: Even for a year in which it was inactive or did not earn any net income, a corporation must file an income tax return as a matter of record.

2. “Doing Business” Defined (17 NCAC 05C.0102)

For income tax purposes, the term “doing business” means the operation of any business enterprise or activity in North Carolina for economic gain, including, but not limited to, the following:

- a. The maintenance of an office or other place of business in North Carolina.
- b. The maintenance in North Carolina of an inventory of merchandise or material for sale, distribution or manufacture, regardless of whether kept on the premises of the taxpayer or in a public or rented warehouse.
- c. The selling or distributing of merchandise to customers in North Carolina directly from a company-owned or operated vehicle when title to the merchandise is transferred from the seller or distributor to the customer at the time of the sale or distribution.
- d. The rendering of a service to clients or customers in North Carolina by agents or employees of a foreign corporation.
- e. The owning, renting, or operating of business or income producing property in North Carolina including, but not limited to, the following:
 - Realty.
 - Tangible personal property.
 - Trademarks, trade names, franchise rights, computer programs, copyrights, patented processes, licenses.

Corporations who are partners in a partnership or joint venture operating in North Carolina are considered to be “doing business.”

“Doing business” by an interstate motor carrier is defined as the performance of any of the following business activities in North Carolina:

- The maintenance of an office in the State.
- The operation of a terminal or other place of business in the State.
- Having an employee working out of the office or terminal of another company.
- Dropping off or gathering up shipments in the State.

3. Corporations Operating in Interstate Commerce (17 NCAC 05C.0103)

The fact that a foreign corporation’s activities or operations in North Carolina are a part of its overall interstate business does not exempt the corporation from income tax liability. A corporation doing business in North Carolina in any of the capacities outlined in the preceding paragraph is subject to income tax even if its only operations in this State are a part of its interstate business. A foreign corporation not domesticated in North Carolina whose only activity in this State is the solicitation of sales of tangible personal property by either resident or nonresident salesmen is not required, under the Department’s present policy, to file income tax returns. However, if such a corporation maintains an office or other place of business in North Carolina, or if it owns business property in this State, or meets the doing business definition, it is subject to the tax.

4. Tax Rate and Basis for the Tax (G.S. 105-130.3, G.S. 105-130.4)

An income tax is levied on the net taxable income of all corporations chartered in North Carolina or doing business in North Carolina, unless they are specifically exempt from tax under G.S. 105-130.11. Net taxable income shall be the same as taxable income as defined in the Internal Revenue Code in effect for the income year for which the returns are to be filed, subject to the adjustments provided in G.S. 105-130.5.

The corporate income tax rate is 6.90%

In the case of a corporation that has business operations both within and without North Carolina, its net taxable income shall be allocated and apportioned to this State in accordance with G.S. 105-130.4.

5. Corporations Required to Allocate Income (G.S. 105-130.4, 17 NCAC 05C.0600)

A corporation taxable both within and without North Carolina is required to use the allocation and apportionment provisions of G.S. 105-130.4 in reporting its net income or net loss to North Carolina. For purposes of allocation and apportionment, a corporation is taxable in another state if:

- The corporation’s business activity in that state subjects it to a net income tax or a tax measured by net income, or
- That state has jurisdiction based on the corporation’s business activity in that state to subject the corporation to a tax measured by net income regardless of whether that state exercises its jurisdiction.

“Business activity” includes any activity by a corporation that would establish a taxable nexus pursuant to 15 United States Code, Section 381 (P.L. 86-272). The filing of a unitary-combined return in another state with other related corporations does not, by itself, constitute

“business activity” for purposes of determining if a corporation subject to income tax in this state is allowed to allocate and apportion income.

6. When in Doubt as to Liability

Any foreign corporation operating in North Carolina that is not certain of its tax status should promptly apply to the Department for a determination of its status. Complete detailed information as to the corporation’s operations should be submitted. All correspondence concerning the matter should be addressed to Corporate Income and Franchise Tax Division, P.O. Box 871, N.C. Department of Revenue, Raleigh, N.C. 27602-0871.

To avoid the possibility of costly penalties and interest charges for delinquent filing of returns, corporations should ask for a determination of their tax status before commencing business in this State.

7. Tax Forms

The corporation income tax return, Form CD-405 or Form CD-401S, is available from the Department of Revenue in Raleigh or from any of the branch offices located throughout the State. The returns and other related schedules are also available from the Department’s web site at www.dornc.com.