

# **I. FRANCHISE TAX**

## **(Article 3)**

### **A. General Information (G.S. 105-114)**

#### **1. Scope and Nature**

North Carolina levies a series of franchise taxes upon corporations, both domestic and foreign, and upon certain persons, LLCs, and partnerships. The taxes levied in this subchapter are for the privilege of engaging in business or doing the act named. Specific sections of the law under which the various corporations and businesses are taxed are as follows:

G.S. 105-114.1	Limited liability companies
G.S. 105-116	Electric power, water, and sewerage companies
G.S. 105-120.2	Holding companies
G.S. 105-121.1	Mutual burial associations
G.S. 105-122	General business corporations
G.S. 105-125	Exempt corporations

The taxes levied upon corporations organized under the laws of North Carolina (domestic corporations) are for the corporate rights and privileges granted by their charters, and the enjoyment of corporate powers, rights, privileges and immunities under the laws of North Carolina.

The taxes levied upon corporations not organized under the laws of North Carolina (foreign corporations) are for the privilege of doing business in this State and for the benefit and protection they receive from the government and laws of this State.

A corporation, other than a holding company taxed under G.S. 105-120.2, that is subject to one of the franchise taxes other than the general business franchise tax is subject to the general business franchise tax to the extent it exceeds the other franchise tax.

#### **2. Corporation Defined**

For franchise tax purposes, the term “corporation” includes not only corporations in the usual meaning of the term, but also associations, joint stock companies, trusts and other organizations formed or operating for pecuniary gain which have capital stock represented by shares and privileges not possessed by individuals or partnerships. The term includes limited liability companies that elect to be taxed as C Corporations for federal income tax purposes.

#### **3. S Corporations**

S corporations are liable for franchise tax levied under Article 3 of the Revenue Laws.

#### **4. Period Covered**

Taxes levied under this Subchapter are for the fiscal year of the State in which they become due, except for the general business franchise tax that is for the income year of the corporation in which such taxes become due.

#### **5. Inactive Corporations (17 NCAC 05B.0104)**

A corporation that is inactive and without assets is subject annually to a minimum franchise tax of thirty-five dollars (\$35). Failure to file this return and pay the minimum tax will result in suspension of the Articles of Incorporation or Certificate of Authority. Any corporation that intends to dissolve or withdraw through suspension for nonpayment of franchise tax should indicate its intention in writing to the Department.

#### **6. Dissolution or Withdrawal of Corporate Rights (17 NCAC 05B.0105)**

Corporations are not subject to franchise tax after the end of the income year in which articles of dissolution or withdrawal are filed with the Secretary of State unless they engage in business activities not reasonably incidental to winding up their affairs. Therefore, no franchise tax is required with the income tax return filed for the year in which the application is filed or with any subsequent income tax returns that may be required in connection with winding up the affairs of the corporation.

Example 1: A calendar year corporation files articles of dissolution or withdrawal during the calendar year 2007. Although its final income tax return will be filed on a combined franchise and income tax form, the franchise tax portion of the return need not be completed since the franchise tax applicable to calendar year 2007 was due on March 15, 2007 with the combined 2006 return.

Example 2: A corporation using an income year ending April 30 files articles of dissolution or withdrawal on May 19, 2007. Although its final income tax return will be filed on a combined franchise and income tax form, the franchise tax portion of the final return need not be completed since the franchise tax applicable to the income year beginning May 1, 2007 was due on July 15, 2007 with the combined tax return for the income year ended April 30, 2007. A corporation is not entitled to a partial refund of its franchise tax paid if it files articles of dissolution or withdrawal during the year.

#### **7. Payment of Franchise Taxes**

General business corporation franchise and income taxes are due on the statutory filing date of the return, without regard to any extensions.

The utility franchise tax, dependent on various law requirements, may be due monthly or quarterly as stated under the paragraph of "Due Date of the Return and Tax" of each utility tax type. All utility companies, except electric power companies, with an average franchise utility tax of twenty thousand dollars (\$20,000) or more per month are required to remit the utility tax by Electronic Funds Transfer. An electric power company is required to pay franchise utility tax by EFT if the company is required to prepay its tax.

For additional information on EFT, refer to the subject: “Payments of Taxes by Electronic Funds Transfer (EFT)”, in the General Administration section.

**8. Extension of Filing Date (17 NCAC 05B.0107)**

Prior to the regular due date, a corporation may apply for an extension of time for filing its return.

For additional detailed information concerning the requirements for obtaining an extension of time for filing a corporate franchise and income tax return, see the subject, “Extension of Time for Filing Return”, in the Corporate Income Tax section.

**9. Tax Credit for Limited Liability Companies Subject to Franchise Tax**

LLCs that elect to be taxed as C Corporations for federal income tax purposes are allowed a tax credit against franchise tax equal to the difference between the annual report fee on corporations for filing paper annual reports under G.S. 55-1-22(a)(23) and the annual report fee for limited liability companies under G.S. 57C-1-22(a). The credit allowed may not exceed the franchise tax liability for the year reduced by the sum of all credits allowed, except payments of tax made by or on behalf of the taxpayer.