

## **E. General Business Corporations (G.S. 105-122)**

### **1. Basis For the Tax**

The basis of the tax is total or allocated capital stock, surplus and undivided profits. The basis is the same for both domestic and foreign corporations. Corporations doing business both within and without North Carolina are required to allocate a part of their capital stock, surplus and undivided profits to their business in North Carolina in accordance with a specified statutory allocation formula. Regardless of the actual amount of capital stock, surplus and undivided profits, the amount determined for purposes of this tax cannot be less than fifty-five percent (55%) of appraised ad valorem tax value of all tangible property plus value of intangible property in North Carolina nor less than the actual investment in tangible property in North Carolina.

### **2. Franchise Tax Bases**

The taxable franchise tax base is the largest of these tax bases:

- Capital stock, surplus and undivided profits
- Fifty-five percent (55%) of appraised ad valorem tax value of all tangible property in N. C.
- Actual investment in tangible property in North Carolina

### **3. Corporations Required to File**

Unless specifically exempt under G.S. 105-125, all active and inactive domestic corporations, and all foreign corporations with a Certificate of Authority to do business, or which are in fact doing business in this State, are subject to the annual franchise tax levied under G.S. 105-122.

If an LLC is treated as a C Corporation for federal tax purposes and a corporate member's only connection to North Carolina is its ownership interest in the LLC, the corporate member(s) is not required to file a North Carolina corporate income and franchise tax return. The corporate member(s) is not required to file in this circumstance because the LLC reports its North Carolina income at the entity level and the apportionment attributes of the LLC do not flow through to the corporate member(s) as is the case when the LLC is disregarded or is treated as a partnership.

If an LLC is treated as a C Corporation for federal tax purposes and a corporate member has activities in this State in addition to its ownership interest in the LLC, the corporate member(s) is required to file a corporate income and franchise tax return.

### **4. No Double Taxation (G.S. 105-114(a4))**

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. This provision preventing double taxation also applies to a corporation if a limited liability company whose assets must be included in the corporation's tax base under G.S. 105-114.1 is subject to one of the other franchise taxes.

**5. Forms to be Used for Filing**

The general business franchise tax is filed on Form CD-405 for both domestic and multistate C corporations and Form CD-401S for S corporations. These forms, along with other required corporate forms and instructions, are available from the Department of Revenue in Raleigh or from any of the branch offices located throughout the State. The forms and other related schedules are also available from the Department's web site at [www.dornc.com](http://www.dornc.com).

**6. Substitute Returns**

Any substitute form must be approved by the Department of Revenue prior to its use. The guidelines for producing substitute forms are available on the Department's website. If you use computer-generated returns, the software company is responsible for requesting and receiving an assigned barcode. The Department publishes a list of software developers who have received approval on our web site. Photocopies of the return are not acceptable. Returns that cannot be processed by our imaging and scanning equipment may be returned to the taxpayer with instructions to refile on an acceptable form.

**7. Report and Payment Due**

General business corporations must file returns annually on or before the fifteenth day of the third month following the end of the income year. Effective for taxable years beginning on or after January 1, 2008, the return will be due on the fifteenth day of the fourth month. The return is filed as a part of a combined franchise and income tax return. Payment of the entire amount of franchise tax is required by the statutory due date of the return.

**8. Tax Rate**

The franchise tax rate is one dollar and fifty cents (\$1.50) per one thousand dollars (\$1,000) and is applied to the largest of the three bases determined as set forth in the law. The minimum franchise tax is thirty-five dollars (\$35).

**9. Franchise Tax Payable in Advance (G.S. 105-114)**

Franchise tax is payable in advance for the privilege of doing business in North Carolina or for the privilege of existing as a corporation in North Carolina.

Example: A corporation incorporates, domesticates or commences business in North Carolina on October 15, 2006. The corporation has selected the calendar year as its income year end. The first tax return due on March 15, 2007 will be a short period return covering the income tax period from October 15, 2006 to December 31, 2006. Franchise tax due on this return covers the ensuing calendar year through December 31, 2007 for the privilege of doing business in North Carolina or for the privilege of existing as a corporation in North Carolina.