

**Important Notice: Franchise Tax Law Change**  
**Regarding “Billings in Excess of Costs”**  
**Liability Authorizes Refunds**

Over the past several years the Department has issued numerous franchise tax assessments against taxpayers who did not add the “billings in excess of costs” liability account in arriving at the capital stock, surplus and undivided profits base. “Billings in excess of costs” is an accounting term under the “Percentage of Completion Method” of accounting for construction contracts. The “billings in excess of costs” liability account was required to be added back because it was not a definite and accrued legal liability.

The law was amended during the 2009 legislative session to specifically exempt the “billings in excess of costs” liability account from the capital stock, surplus and undivided profits base effective for taxable years beginning on or after January 1, 2010. Because the general business franchise tax is levied for the income year of the corporation in which it becomes due, the change affected tax returns due to be filed on or after January 1, 2010, such as the 2009 income and franchise tax return filed for a calendar year taxpayer since it was due to be filed on April 15, 2010. (Session Law 2009-422, s. 1)

New Law Change

During the 2010 legislative session the law was amended again to make the changes enacted during the 2009 legislative session effective retroactively to taxable years beginning on or after January 1, 2007. The legislation also authorizes a taxpayer who paid franchise tax on the “billings in excess of costs” liability account in taxable years 2007, 2008, and 2009 to apply for a refund of the franchise tax paid attributable to that account (for example, a calendar year 2006 income and franchise tax return). (Session Law 2010-31, s. 31.9)

Applying for a Refund

A taxpayer who paid franchise tax on its “billings in excess of costs” liability account for tax years in which the taxes were due in 2007, 2008 or 2009 may request a refund by filing either (1) an amended income and franchise tax return (CD-405 or CD-401S) or (2) Form NC-19, Claim for Refund of Taxes, available at <http://www.dor.state.nc.us/downloads/nc19.pdf>. Enter “Franchise Tax Paid on Billings in Excess of Costs” in the explanation section of the request for refund. Mail the form to:

North Carolina Department of Revenue  
Attention: Lynnette Cope, Central Examination  
P. O. Box 871  
Raleigh, NC 27602-0871

To be considered timely, a request for refund must be received by the Department no later than January 1, 2011. Any requests for refund received after January 1, 2011 are barred.