



SENATE BILL 99: Appropriations Act of 2018, Sec. 38.2: Business Tax Changes

2017-2018 General Assembly

Committee:	Date: July 10, 2018
Introduced by:	Prepared by: Cindy Avrette
Analysis of: Sec. 38.2 of S.L. 2018-5	Staff Attorney

OVERVIEW: *Sec. 38.2 of S.L. 2018-5, as amended by Sec. 11.2(a) of S.L. 2018-97, makes various changes to the business tax statutes to make the laws more equitable, intelligible, easier to administer, and concise by eliminating unnecessary provisions.*

This section has various effective dates. Please see the full summary for more detail.

CURRENT LAW, BILL ANALYSIS, AND EFFECTIVE DATE:

Except as otherwise provided, this section became effective when it became law on June 12, 2018.

Subsection	Explanation	Effective Date
(a)	Amends the definition of a "corporation" for purposes of the application of the franchise tax to include partnerships that elect to be taxed as a corporation for income tax purposes. Under current law, the definition includes limited liability companies that elect to be taxed as corporations, but it does not include partnerships. This change equalizes the treatment among all business entities that either are corporations or choose to be taxed as one. Moreover, the change makes franchise tax treatment consistent with the income tax treatment.	1/1/19, and applies to calculation of franchise tax reported on the 2018 and later returns.
(b)	Does two things as it relates to the determination of net worth for franchise tax purposes: <ul style="list-style-type: none"> • Eliminates vague language to make clear that if a corporation does not maintain its books in accordance with generally accepted accounting principles (GAAP), then its net worth is computed in accordance with the method it uses for federal tax purposes. If a corporation uses a method for federal tax purposes other than GAAP, then the new subdivision (1a) requires that asset valuation, depreciation, depletion, and amortization be calculated for franchise tax purposes using same method used for federal income tax purposes. • Prevents a double deduction of treasury stock that is already captured in the current franchise tax calculation. 	1/1/19, and applies to calculation of franchise tax reported on the 2018 and later returns.
(c)	Provides guidance to the Department with respect to the term "income-producing activity" for apportionment purposes. The	

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	modernization of the language comports with current practice and policy. Section 11.2 of S.L. 2018-97 amended this subsection to remove the clarifying language as it applies to the sourcing of intangibles for corporate income and franchise tax apportionment. ¹	
(d)	Repeals references in the corporate addback statute to credits or deductions that have expired. G.S. 105-130.47 is the film credit that expired January 1, 2015. G.S. 105-129.16H is the credit for donating funds to a nonprofit or unit of State or local government to enable the acquisition of renewable energy property, which expired January 1, 2017.	
(e), (f), and (g)	Clarifies that non-North Carolina captive insurance companies, which are those licensed and taxed in another state, are not subject to the tax on captive insurance companies, the corporate income tax, the franchise tax, or the gross premiums tax. No state taxes a foreign captive insurance company despite the fact that the insured risk may be located in the state.	
(h)	Re-enacts a provision that was inadvertently not roll-called during the 2017 Session. Section 4 of S.L. 2017-151 added massage and bodywork therapists to the list of professionals that are required to pay the annual \$50 State privilege license tax. However, the bill was not roll-called at the time of enactment as required by the NC Constitution.	Applies to taxable years beginning on and after July 1, 2018.
(i)	Provides that the income tax applicable to unrelated business income of a nonprofit organization does not include amounts paid or incurred by a 501(c)(3) organization for transportation and parking benefits it provides to its employees. Under the TCJA ² , a nonprofit organization that provides these benefits must pay tax on these expenses. This section ensures that NC's income tax treatment of these expenses will remain the same.	Applies to taxable years beginning or and after January 1, 2018

¹ The original change included in this act sought to clarify that if an intangible is used in NC to generate income, such as a patent or trademark, then that income is sourced to NC. This sourcing principle is consistent with current policy as reflected in DOR bulletins. DOR suggested the clarifying language because some taxpayers have argued that if the royalty payment comes from an office located outside NC, then the income is not subject to tax in NC in spite of the fact that the patent or trademark is used in NC to generate income. However, some taxpayers feared that the change may impact the apportionment of other intangible income, such as dividends. To alleviate this concern, the Budget Technical Corrections act (Senate Bill 335, enacted as S.L. 2018-97) removed the clarifying language, thus retaining the current language.

² The federal Tax Cut and Jobs Act. For more information, see the explanation for Section 38.1 of this act.