

## SUBCHAPTER 5B - FRANCHISE TAX

### SECTION .0100 - GENERAL INFORMATION

<b>17 NCAC 05B .0101</b>	<b>SCOPE AND NATURE</b>
<b>17 NCAC 05B .0102</b>	<b>CORPORATION DEFINED</b>
<b>17 NCAC 05B .0103</b>	<b>PERIOD COVERED</b>

*History Note:* Authority G.S. 105-114; 105-262;  
Eff. February 1, 1976;  
Repealed Eff. October 31, 1981.

#### **17 NCAC 05B .0104 INACTIVE CORPORATIONS**

A corporation that is inactive and without assets is subject annually to a minimum franchise tax. A return is required containing a statement of the status of the corporation. Failure to file this return and pay the minimum tax will result in suspension of the articles of incorporation or certificate of authority.

*History Note:* Authority G.S. 105-114; 105-262;  
Eff. February 1, 1976;  
Amended Eff. November 1, 1991; November 1, 1987;  
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. August 19, 2017.

#### **17 NCAC 05B .0105 DISSOLUTION OR WITHDRAWAL OF CORPORATE RIGHTS**

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 incidental to winding up their affairs. Therefore, no franchise tax is required with the income return filed for the year in which the application is filed or with any subsequent income returns that may be required in connection with winding up the affairs of the corporation.

*History Note:* Authority G.S. 105-114; 105-262;  
Eff. February 1, 1976;  
Amended Eff. January 1, 1994; October 31, 1981;  
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. August 19, 2017.

#### **17 NCAC 05B .0106 PAYMENT OF FRANCHISE TAXES**

*History Note:* Authority G.S. 105-127; 105-262;  
Eff. February 1, 1976;  
Repealed Eff. October 1, 1993.

#### **17 NCAC 05B .0107 EXTENSION OF FILING DATE**

Rule 17 NCAC 5C .2004 sets out the procedure for a corporation to obtain an extension of time to file its corporate franchise and income tax return.

*History Note:* Authority G.S. 105-129; 105-262; 105-263;  
Eff. February 1, 1976;  
Amended Eff. July 1, 1999; January 1, 1994; April 1, 1991; January 1, 1978.  
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. August 19, 2017.

#### **17 NCAC 05B .0108 ELECTRONIC FILING OF GENERAL BUSINESS FRANCHISE TAX RETURNS**

*History Note:* Authority G.S. 105-262;  
Eff. March 1, 2006;  
Expired Eff. September 1, 2017 pursuant to G.S. 150B-21.3A.

### SECTION .0200 - RAILROADS

**17 NCAC 05B .0201 BASIS FOR TAXATION**  
**17 NCAC 05B .0202 DUE DATE OF THE TAX**

*History Note: Authority G.S. 105-115; 105-262;*  
*Eff. February 1, 1976;*  
*Repealed Eff. October 31, 1981.*

**17 NCAC 05B .0203 BILLED FOR THE TAX**

*History Note: Authority G.S. 105-115; 105-262;*  
*Eff. February 1, 1976;*  
*Repealed Eff. October 1, 1993.*

#### **SECTION .0300 - ELECTRIC: POWER: GAS: WATER AND SEWERAGE COMPANIES**

**17 NCAC 05B .0301 BASIS FOR TAXATION**  
**17 NCAC 05B .0302 DUE DATE OF THE REPORT AND TAX**  
**17 NCAC 05B .0303 FORM TO BE USED FOR FILING**  
**17 NCAC 05B .0304 SPECIAL EXEMPTION**  
**17 NCAC 05B .0305 DISTRIBUTION TO MUNICIPALITIES**

*History Note: Authority G.S. 105-116; 105-262;*  
*Eff. February 1, 1976;*  
*Amended Eff. October 23, 1977;*  
*Repealed Eff. October 31, 1981.*

#### **SECTION .0400 - PULLMAN: SLEEPING: CHAIR AND DINING CARS**

**17 NCAC 05B .0401 BASIS FOR TAXATION**  
**17 NCAC 05B .0402 DUE DATE OF THE REPORT AND TAX**

*History Note: Authority G.S. 105-117; 105-262;*  
*Eff. February 1, 1976;*  
*Repealed Eff. October 31, 1981.*

**17 NCAC 05B .0403 FORM TO BE USED FOR FILING**

*History Note: Authority G.S. 105-117; 105-262;*  
*Eff. February 1, 1976;*  
*Amended Eff. January 1, 1994;*  
*Repealed Eff. December 1, 1997.*

#### **SECTION .0500 - EXPRESS COMPANIES**

**17 NCAC 05B .0501 BASIS FOR TAXATION**  
**17 NCAC 05B .0502 DUE DATE OF THE REPORT AND TAX**

*History Note: Authority G.S. 105-118; 105-262;*  
*Eff. February 1, 1976;*  
*Repealed Eff. October 31, 1981.*

**17 NCAC 05B .0503 FORM TO BE USED FOR FILING**

*History Note: Authority G.S. 105-118; 105-262;*



**17 NCAC 05B .0903 CORPORATION BILLED FOR THE TAX**

*History Note:* Authority G.S. 105-121.1; 105-262;  
Eff. February 1, 1976;  
Amended Eff. January 1, 1994;  
Repealed Eff. July 1, 2000.

**SECTION .1000 - GENERAL BUSINESS CORPORATIONS**

- 17 NCAC 05B .1001 BASIS FOR THE TAX**
- 17 NCAC 05B .1002 FRANCHISE TAX BASES**
- 17 NCAC 05B .1003 CORPORATIONS REQUIRED TO FILE**
- 17 NCAC 05B .1004 FORMS TO BE USED FOR FILING**
- 17 NCAC 05B .1005 REPORT AND PAYMENT DUE**
- 17 NCAC 05B .1006 TAX RATE**

*History Note:* Authority G.S. 105-122; 105-262;  
Eff. February 1, 1976;  
Repealed Eff. October 31, 1981.

**SECTION .1100 - CAPITAL STOCK: SURPLUS AND UNDIVIDED PROFITS BASE**

- 17 NCAC 05B .1101 BASED ON THE YEAR ENDING BALANCE SHEET**
- 17 NCAC 05B .1102 SURPLUS DEFINED**
- 17 NCAC 05B .1103 ITEMS INCLUDABLE AND EXCLUDABLE**

*History Note:* Authority G.S. 105-120.2; 105-122; 105-262;  
Eff. February 1, 1976;  
Repealed Eff. October 31, 1981.

**17 NCAC 05B .1104 EXCLUSION OF RETAINED EARNINGS BY PARENT CORPORATION**

A parent corporation may exclude any retained earnings of existing subsidiary corporations which it has capitalized or otherwise recorded on its books from the calculation of the capital stock, surplus and undivided profits base under G.S. 105-122.

*History Note:* Authority G.S. 105-122; 105-262;  
Eff. February 1, 1976;  
Amended Eff. January 1, 1994;  
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. August 19, 2017.

**17 NCAC 05B .1105 INVESTMENT IN SUBSIDIARY**

For purposes of G.S. 105-122, the net worth base shall not be reduced by the amount invested in a subsidiary.

*History Note:* Authority G.S. 105-122; 105-262;  
Eff. February 1, 1976;  
Amended Eff. July 1, 1999; January 1, 1994;  
Readopted Eff. May 1, 2018.

- 17 NCAC 05B .1106 BORROWED CAPITAL TREATMENT: DEBTOR CORPORATION**
- 17 NCAC 05B .1107 BORROWED CAPITAL TREATMENT: CREDITOR CORPORATION**

*History Note:* Authority G.S. 105-122; 105-262;  
Eff. February 1, 1976;  
Repealed Eff. October 31, 1981.

**17 NCAC 05B .1108 EXCLUSION PROVISION LIMITED TO INDEBTEDNESS OWED**

The exclusion from the net worth base of indebtedness owed that is permitted the debtor corporation and the deduction permitted the creditor corporation in G.S. 105-122 are applicable only to indebtedness owed to or due from a parent, subsidiary, or affiliated corporation. These provisions do not apply where the indebtedness is only endorsed or guaranteed.

*History Note:* Authority G.S. 105-122; 105-262;  
Eff. February 1, 1976;  
Amended Eff. January 1, 1994;  
Readopted Eff. May 1, 2018.

**17 NCAC 05B .1109 EQUITY CAPITAL NOT DEDUCTIBLE**

The equity capital of a wholly owned subsidiary does not represent "indebtedness" owed to a parent corporation which the parent is entitled to deduct from its franchise tax base.

*History Note:* Authority G.S. 105-122; 105-262;  
Eff. February 1, 1976;  
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. August 19, 2017.

**17 NCAC 05B .1110 RECIPROCAL INDEBTEDNESS BETWEEN AFFILIATES**

A corporation that owes indebtedness to a parent, subsidiary, or affiliated corporation and at the same time is owed indebtedness by the same parent, subsidiary, or affiliated corporation shall net the payable and receivable for purposes of the indebtedness computation in arriving at the net worth base under G.S. 105-122. If the indebtedness is owed to one corporation and the receivable is due from another corporation, each amount shall be treated separately.

*History Note:* Authority G.S. 105-122; 105-262;  
Eff. February 1, 1976;  
Amended Eff. January 1, 1994;  
Readopted Eff. May 1, 2018.

**17 NCAC 05B .1111 INDEBTEDNESS DEFINED**

*History Note:* Authority G.S. 105-122; 105-262;  
Eff. February 1, 1976;  
Repealed Eff. October 1, 1993.

**17 NCAC 05B .1112 BORROWED CAPITAL DEFINED**

*History Note:* Authority G.S. 105-122; 105-262;  
Eff. February 1, 1976;  
Amended Eff. November 2, 1992;  
Repealed Eff. July 1, 2000.

**17 NCAC 05B .1113 DEDUCTION FOR QUALIFIED RECYCLING FACILITIES**

**17 NCAC 05B .1114 HOLDING COMPANIES**

*History Note:* Authority G.S. 105-120.2; 105-122; 105-262;  
Eff. February 1, 1976;  
Repealed Eff. October 31, 1981.

**17 NCAC 05B .1115 CASH BASIS CORPORATIONS**

*History Note:* Authority G.S. 105-122; 105-258;  
Eff. April 1, 1991;  
Expired Eff. September 1, 2017 pursuant to G.S. 150B-21.3A.

## SECTION .1200 - MULTISTATE CORPORATIONS

### **17 NCAC 05B .1201      APPORTIONMENT FORMULA** **17 NCAC 05B .1202      ALTERNATIVE APPORTIONMENT FORMULA**

*History Note:*      *Authority G.S. 105-122; 105-262;*  
                          *Eff. February 1, 1976;*  
                          *Amended Eff. October 23, 1977;*  
                          *Repealed Eff. October 31, 1981.*

## SECTION .1300 - INVESTMENT IN TANGIBLE PROPERTIES IN NORTH CAROLINA BASE

### **17 NCAC 05B .1301      BASIS FOR THE INVESTMENT BASE**

*History Note:*      *Authority G.S. 105-122; 105-262;*  
                          *Eff. February 1, 1976;*  
                          *Repealed Eff. October 31, 1981.*

### **17 NCAC 05B .1302      WHAT IS INCLUDABLE IN THE INVESTMENT BASE**

For purposes of G.S. 105-122, all tangible assets located in North Carolina shall be included in the Tangible Property Base at book value (original purchase price less reserve for depreciation permitted for income tax purposes). Typical items of tangible property would include: inventory, consigned inventories to be included by consignor, machinery and equipment, furniture and fixtures, containers, tools and supplies, land, buildings, leasehold improvements, and all other tangible assets.

*History Note:*      *Authority G.S. 105-122; 105-262;*  
                          *Eff. February 1, 1976;*  
                          *Amended Eff. January 1, 1994;*  
                          *Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. August 19, 2017.*

### **17 NCAC 05B .1303      TREATMENT OF CONSTRUCTION IN PROGRESS**

Construction in progress is excluded from the tangible properties base in G.S. 105-122 only if such property is not owned by the corporation filing the return.

*History Note:*      *Authority G.S. 105-122; 105-262;*  
                          *Eff. February 1, 1976;*  
                          *Amended Eff. January 1, 1994;*  
                          *Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. August 19, 2017.*

### **17 NCAC 05B .1304      CARRIER OPERATIONS PROPERTY EXEMPT FROM INVESTMENT BASE**

*History Note:*      *Authority G.S. 105-122; 105-262;*  
                          *Eff. February 1, 1976;*  
                          *Amended Eff. January 1, 1994;*  
                          *Repealed Eff. October 1, 1998.*

### **17 NCAC 05B .1305      INDEBTEDNESS DEDUCTION**

*History Note:*      *Authority G.S. 105-122; 105-262;*  
                          *Eff. February 1, 1976;*  
                          *Repealed Eff. October 31, 1981.*

### **17 NCAC 05B .1306      REFINANCING OF A LOAN**

*History Note:*      *Authority G.S. 105-122; 105-262;*

*Eff. February 1, 1976;*  
*Amended Eff. January 1, 1994; October 31, 1981;*  
*Expired Eff. September 1, 2017 pursuant to G.S. 150B-21.3A.*

**17 NCAC 05B .1307      POLLUTION ABATEMENT FACILITIES**  
**17 NCAC 05B .1308      DEDUCTION FOR QUALIFIED RECYCLING FACILITIES**

*History Note:      Authority G.S. 105-122; 105-262;*  
*Eff. February 1, 1976;*  
*Repealed Eff. October 31, 1981.*

**17 NCAC 05B .1309      DETERMINATION OF INCLUSION BY DEPRECIATION**

When two or more corporations are in doubt as to which should include property in the investment in tangible property base pursuant to G.S. 105-122, such property shall be included by the corporation allowed depreciation under the Internal Revenue Code.

*History Note:      Authority G.S. 105-122; 105-262;*  
*Eff. February 1, 1976;*  
*Amended Eff. January 1, 1994;*  
*Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. August 19, 2017.*

**17 NCAC 05B .1310      NO LIMITATION ON HOLDING COMPANIES**

*History Note:      Authority G.S. 105-120.2; 105-262;*  
*Eff. February 1, 1976;*  
*Repealed Eff. October 1, 1993.*

**SECTION .1400 - APPRAISED VALUATION OF TANGIBLE AND INTANGIBLE PROPERTY BASE**

**17 NCAC 05B .1401      BASIS FOR TANGIBLE PROPERTY**

*History Note:      Authority G.S. 105-122; 105-262;*  
*Eff. February 1, 1976;*  
*Repealed Eff. October 31, 1981.*

**17 NCAC 05B .1402      CARRIER OPERATIONS APPRAISED PROPERTY EXEMPT**

*History Note:      Authority G.S. 105-122; 105-262;*  
*Eff. February 1, 1976;*  
*Amended Eff. January 1, 1994;*  
*Repealed Eff. May 1, 1998.*

**17 NCAC 05B .1403      AVERAGE BANK BALANCE**

**17 NCAC 05B .1404      INTANGIBLE PROPERTY**

*History Note:      Authority G.S. 105-122; 105-262;*  
*Eff. February 1, 1976;*  
*Repealed Eff. October 31, 1981.*

**17 NCAC 05B .1405      NO LIMITATION ON HOLDING COMPANIES**

*History Note:      Authority G.S. 105-120.2; 105-262;*  
*Eff. February 1, 1976;*  
*Repealed Eff. October 1, 1993.*

**17 NCAC 05B .1406 INVESTMENT BASE PROPERTY INCLUDED**

A corporation including property in the investment in tangible property base shall also include the value of this property in the appraised valuation base, except for property acquired in the current tax year and not yet assessed for North Carolina property tax purposes.

*History Note: Authority G.S. 105-122; 105-262;  
Eff. February 1, 1976;  
Readopted Eff. May 1, 2018.*

**SECTION .1500 - CHANGE OF INCOME YEAR**

**17 NCAC 05B .1501 COMPUTATION OF TAX**

A change in income year automatically establishes a new franchise year. A combined franchise and income tax return is required for the short income period. Credit is permitted on such return against the franchise tax to the extent that the new franchise year overlaps the old year.

*History Note: Authority G.S. 105-122; 105-262;  
Eff. February 1, 1976;  
Amended Eff. October 31, 1981;  
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. August 19, 2017.*

**17 NCAC 05B .1502 COMPUTATION OF TAX WHEN MERGER IS INVOLVED**

(a) Since franchise tax is prepaid, a special computation is sometimes required to prevent a duplication of tax when two, or more, corporations with different income years merge or otherwise transfer the entire assets from one corporation to the other.  
(b) The surviving corporation shall be allowed to deduct from franchise tax computed on an annual basis the amount of franchise tax paid by the submerged corporation applicable to the period that overlaps the surviving corporation's income year.

*History Note: Authority G.S. 105-122; 105-262;  
Eff. February 1, 1976;  
Amended Eff. January 1, 1994; October 31, 1981;  
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. August 19, 2017.*

**SECTION .1600 - NEW CORPORATIONS**

**17 NCAC 05B .1601 INITIAL REQUIREMENTS**

**17 NCAC 05B .1602 FRANCHISE TAX PAYABLE IN ADVANCE**

*History Note: Authority G.S. 105-123; 105-262;  
Eff. February 1, 1976;  
Repealed Eff. October 31, 1981.*

**SECTION .1700 - CORPORATIONS CONDITIONALLY OR PARTIALLY EXEMPT**

**17 NCAC 05B .1701 NON-PROFIT ORGANIZATIONS**

**17 NCAC 05B .1702 CORPORATIONS FULLY EXEMPT**

*History Note: Authority G.S. 105-125; 105-262;  
Eff. February 1, 1976;  
Repealed Eff. October 31, 1981.*

**17 NCAC 05B .1703 FRANCHISE MOTOR CARRIERS**

*History Note: Authority G.S. 105-122; 105-262;  
Eff. February 1, 1976;*



*Amended Eff. January 1, 1994;*  
*Repealed Eff. May 1, 1998.*

**17 NCAC 05B .1704      REGULATED INVESTMENT COMPANIES**

*History Note:      Authority G.S. 105-125; 105-262;*  
*Eff. February 1, 1976;*  
*Repealed Eff. October 31, 1981.*