

**GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2001**

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**SENATE BILL 1058**

Short Title: Corporate Affiliate Transactions.

(Public)

Sponsors: Senator Kerr.

Referred to: Finance.

April 5, 2001

1 A BILL TO BE ENTITLED  
2 AN ACT TO PROVIDE CORPORATE INCOME TAX ADJUSTMENTS FOR  
3 CERTAIN TRANSACTIONS PERTAINING TO RELATED MEMBERS.

4 The General Assembly of North Carolina enacts:

5 **SECTION 1.** G.S. 105-228.90(b) is amended by adding a new subdivision to  
6 read:

7 "**§ 105-228.90. Scope and definitions.**

8 ...

9 (b) Definitions. – The following definitions apply in this Article:

10 ...

11 (5a) Related person. – A person described in one of the relationships set  
12 forth in section 267(b) or 707(b) of the Code.

13 ...."

14 **SECTION 2.** Part 1 of Article 4 of Chapter 105 of the General Statutes is  
15 amended by adding a new section to read:

16 "**§ 105-130.7A. Adjustments pertaining to related members.**

17 (a) Definitions. – The following definitions apply in this section:

18 (1) Intangible expenses and costs. – Expenses, losses, and costs for,  
19 related to, or in connection directly or indirectly with the direct or  
20 indirect use of intangible personal property to the extent the amounts  
21 are allowed as deductions or costs in determining taxable income  
22 before operating loss deduction and special deductions for the taxable  
23 year under the Code. For the purpose of this section, use of intangible  
24 personal property includes maintenance, management, ownership, sale,  
25 exchange, and disposition of intangible personal property. The term  
26 'intangible expenses and costs' includes the following:

27 a. Losses related to or incurred in connection directly or indirectly  
28 with factoring transactions.

- 1           **b.**     Losses related to or incurred in connection directly or indirectly  
2                     with discounting transactions.
- 3           **c.**     Royalty, patent, technical, and copyright fees.
- 4           **d.**     Licensing fees.
- 5           **e.**     Other expenses and costs similar to those listed in this  
6                     subdivision.
- 7           **(2)**    Interest expenses and costs. – Any interest expenses and costs  
8                     including amounts directly or indirectly allowed as deductions under  
9                     section 163 of the Code.
- 10          **(3)**    Related member. – A person that, with respect to the taxpayer during  
11                    any part of the taxable year, is one or more of the following:
- 12                  **a.**     A related person.
- 13                  **b.**     A component member as defined in section 1563(b) of the  
14                     Code.
- 15                  **c.**     A person to or from whom there would be attribution of stock  
16                     ownership in accordance with section 1563(e) of the Code if the  
17                     phrase '5 percent or more' were replaced by 'twenty percent  
18                     (20%) or more' each place it appears in that section.
- 19          **(b)**    Addition of Certain Expenses and Costs. – For the purpose of computing its  
20                    State net income, the taxpayer must add interest expenses and costs and intangible  
21                    expenses and costs directly or indirectly paid, accrued, or incurred to, or in connection  
22                    directly or indirectly with one or more direct or indirect transactions with, one or more  
23                    of the following related members:
- 24                  **(1)**    A related member whose activities, in any one state, are primarily  
25                     limited to the maintenance and management of intangible investments  
26                     or of the intangible investments of corporations, business trusts, or  
27                     other entities registered as investment companies under the Investment  
28                     Company Act of 1940, 15 U.S.C. §§ 80a-1 et seq., as amended, and  
29                     the collection and distribution of the income from these investments or  
30                     from tangible property physically located outside that state. As used in  
31                     this subdivision, 'intangible investments' includes investments in  
32                     stocks, bonds, notes, and other debt obligations, including debt  
33                     obligations of related members, interests in partnerships, patents,  
34                     patent applications, trademarks, trade names, and similar types of  
35                     intangible assets.
- 36                  **(2)**    A related member that is a personal holding company as defined in  
37                     section 542 of the Code without regard to the stock ownership  
38                     requirements of section 542(a)(2) of the Code.
- 39                  **(3)**    A related member that is not a corporation and is directly, indirectly,  
40                     constructively, or beneficially owned in whole or in part by a personal  
41                     holding company as defined in section 542 of the Code without regard  
42                     to the stock ownership requirements of section 542(a)(2) of the Code.
- 43                  **(4)**    A related member that is a foreign personal holding company as  
44                     defined in section 552 of the Code.

- 1           (5) A related member that is not a corporation and is directly, indirectly,  
2           constructively, or beneficially owned in whole or in part by a foreign  
3           personal holding company as defined in section 552 of the Code.
- 4       (c) Exceptions. –
- 5           (1) An adjustment required by subsection (b) of this section is not required  
6           if either of the following applies:
- 7           a.     The taxpayer establishes by clear and convincing evidence that  
8           the adjustment is unreasonable.
- 9           b.     The taxpayer and the Secretary agree in writing to the  
10           application or use of alternative adjustments and computations  
11           to more properly reflect State net income. This subdivision does  
12           not limit or negate the Secretary's authority to enter into  
13           agreements and compromises otherwise allowed by law.
- 14           (2) The adjustments required by subsection (b) of this section do not apply  
15           to any portion of interest expenses and costs or intangible expenses  
16           and costs that the taxpayer can establish by the preponderance of the  
17           evidence meets both of the following conditions:
- 18           a.     The related member during the same taxable year directly or  
19           indirectly paid, accrued, or incurred that portion to a person  
20           who is not a related member.
- 21           b.     The transaction giving rise to the interest expenses and costs or  
22           the intangible expenses and costs between the taxpayer and the  
23           related member did not have as a principal purpose the  
24           avoidance of any portion of the tax due under this Chapter.
- 25       (d) Additional Penalty. – Except as otherwise provided in subsection (e) of this  
26       section, if, on the day that is one year after the day the taxpayer files its report, the  
27       taxpayer has not made the adjustment required by this section or has not fully paid the  
28       tax and interest, if any, imposed by this Chapter and attributable to the adjustment, the  
29       taxpayer is subject to a penalty equal to twice the interest charged under G.S.  
30       105-241.1(i) for the delinquent payment of the tax and interest. For the purpose of  
31       computing this penalty, the penalty is part of the tax due on the dates prescribed by this  
32       Chapter without regard to the one-year period. The penalty imposed by this subsection  
33       is in addition to all other penalties and interest imposed by this Chapter. The Secretary  
34       may waive any portion of this additional penalty only if the taxpayer establishes beyond  
35       a reasonable doubt that both the failure to fully comply with this section and the failure  
36       to fully pay the tax and interest within one year after the date the taxpayer files its report  
37       were not in any part attributable to the avoidance of any portion of the tax imposed by  
38       this Part.
- 39       (e) Exception to Additional Penalty. – The penalty imposed by subsection (d) of  
40       this section does not apply if the tax differential is less than fifty thousand dollars  
41       (\$50,000) and is also less than ten percent (10%) of the tax imposed by this Article on  
42       the taxpayer for the taxable year. For the purpose of this subsection, the term 'tax  
43       differential' means the difference between the tax imposed by this Article that is  
44       attributable to the adjustment required by this section and the portion of the tax that is so

1 attributable that was paid by the date the additional penalty accrued under subsection (d)  
2 of this section. This subsection does not waive, abate, or modify any other penalties or  
3 interest imposed by this Chapter.

4 (f) No Double Tax. – This section does not require a taxpayer to add to its net  
5 income more than once any amount of interest expenses and costs or intangible  
6 expenses and costs that is subject to this section."

7 **SECTION 3.** This act becomes effective for taxable years beginning on or  
8 after January 1, 2002.