

NORTH CAROLINA GENERAL ASSEMBLY
1981 SESSION

CHAPTER 46
HOUSE BILL 45

AN ACT TO ADOPT FOR NORTH CAROLINA INCOME TAX PURPOSES THE
INSTALLMENT SALES REVISION ACT OF 1980, SO AS TO SIMPLIFY CAPITAL
GAINS TAX TREATMENT.

The General Assembly of North Carolina enacts:

Section 1. G.S. 105-142(f) is rewritten to read:

"(f) Installment Method.

- (1) General Rule. Except as otherwise provided in this subsection, income from an installment sale shall be taken into account for purposes of this division under the installment method.
- (2) Installment Sale Defined. For purposes of this subsection:
 - a. In General. The term 'installment sale' means a disposition of property where at least one payment is to be received after the close of the taxable year in which the disposition occurs.
 - b. Exceptions. The term 'installment sale' does not include:
 1. Dealer Disposition of Personal Property. A disposition of personal property on the installment plan by a person who regularly sells or otherwise disposes of personal property on the installment plan.
 2. Inventories of Personal Property. A disposition of personal property of a kind which is required to be included in the inventory of the taxpayer if on hand at the close of the taxable year.
- (3) Installment Method Defined. For purposes of this subsection, the term 'installment method' means a method under which the income recognized for any taxable year from a disposition is that proportion of the payments received in that year which the gross profit (realized or to be realized when payment is completed) bears to the total contract price.
- (4) Election Out.
 - a. In General. Subdivision (1) shall not apply to any disposition if the taxpayer elects to have subdivision (1) not apply to such disposition.
 - b. Time and Manner for Making Election. Except as otherwise provided by the Secretary of Revenue, an election under paragraph 'a' with respect to a disposition may be made only on or before the due date prescribed by law (including extension) for filing the taxpayer's return of the tax imposed by this division for the taxable year in which the disposition occurs. Such an election shall be made in the manner prescribed by the Secretary.
 - c. Election Revocable Only with Consent. An election under paragraph 'a' with respect to any disposition may be revoked only with the consent of the Secretary.
- (5) Definitions and Special Rules. For purposes of this subsection:

- a. Marketable Securities. The term 'marketable securities' means any security for which, as of the date of the disposition, there was a market on an established securities market or otherwise.
 - b. Payment. Except as provided in paragraph 'c' the term 'payment' does not include the receipt of evidences of indebtedness of the person acquiring the property (whether or not payment of such indebtedness is guaranteed by another person).
 - c. Purchaser Evidences of Indebtedness Payable on Demand or Readily Tradable. Receipt of a bond or other evidence of indebtedness which
 1. is payable on demand, or
 2. is issued by a corporation or a government or political subdivision thereof and is readily tradable, shall be treated as receipt of payment.
 - d. Readily Tradable Defined. For purposes of paragraph 'c', the term 'readily tradable' means a bond or other evidence of indebtedness which is issued
 1. with interest coupons attached or in registered form (other than one in registered form which the taxpayer establishes will not be readily tradable in an established securities market), or
 2. in any other form designed to render such bond or other evidence of indebtedness readily tradable in an established securities market.
 - e. Like-Kind Exchanges. In the case of any exchange described in G.S. 105-145(a):
 1. the total contract price shall be reduced to take into account the amount of any property permitted to be received in such exchange without recognition of gain,
 2. the gross profit from such exchange shall be reduced to take into account any amount not recognized by reason of G.S. 105-145(a), and
 3. the term 'payment' shall not include any property permitted to be received in such exchange without recognition of gain.
- (6) Use of Installment Method by Shareholders in Section 337 of the Internal Revenue Code Liquidations:
- a. Receipt of Obligations Not Treated as Receipt of Payment:
 1. In General. If, in connection with a liquidation to which Section 337 of the Internal Revenue Code applies, in a transaction to which Section 331 of the Internal Revenue Code applies the shareholder receives (in exchange for the shareholder's stock) an installment obligation acquired in respect of a sale or exchange by the corporation during the 12-month period set forth in Section 337(a) of the Internal Revenue Code, then, for purposes of this subsection, the receipt of payments under such obligation (but not the receipt of such obligation) by the shareholder shall be treated as the receipt of payment for the stock.
 2. Obligations Attributable to Sale of Inventory Must Result From Bulk Sale. Subparagraph 1. shall not apply to an installment obligation described in Section 337(b)(1)(B) of the Internal Revenue Code unless such obligation is also

- described in Section 337(b)(2)(B) of the Internal Revenue Code.
3. Sales by Liquidating Subsidiary. For purposes of subparagraph 1, in any case to which Section 337(c)(3) of the Internal Revenue Code applies, an obligation acquired in respect of a sale or exchange by the selling corporation shall be treated as so acquired by the corporation distributing the obligation to the shareholder.
- b. Distributions Received in More Than One Taxable Year of Shareholder. If:
 1. paragraph 'a' applies with respect to any installment obligation received by a shareholder from a corporation and
 2. by reason of the liquidation such shareholder receives property in more than one taxable year,then, on completion of the liquidation, basis previously allocated to property so received shall be reallocated for all such taxable years so that the shareholder's basis in the stock of the corporation is properly allocated among all property received by such shareholder in such liquidation.
- (7) Rules:
- a. In General. The Secretary shall prescribe such rules as may be necessary or appropriate to carry out the provisions of this section.
 - b. Selling Price Not Readily Ascertainable. The rules prescribed under paragraph a. shall include rules providing for ratable basis recovery in transactions where the gross profit or the total contract price (or both) cannot be readily ascertained.
- (8) Installment Method for Dealers in Personal Property.
- a. General Rule.
 1. In General. Under rules prescribed by the Secretary, a person who regularly sells or otherwise disposes of personal property on the installment plan may return as income therefrom in any taxable year that proportion of the installment payments actually received in that year which the gross profit, realized or to be realized when payment is completed, bears to the total contract price.
 2. Total Contract Price. For purposes of paragraph 1., the total contract price of all sales of personal property on the installment plan includes such sales and is added on the books of account of the seller to the established cash selling price of such property. This paragraph shall not apply with respect to sales of personal property under a revolving credit type plan.
 - b. Carrying Charges Not Included in Total Contract Price. If the carrying charges or interest with respect to sales of personal property, the income from which is returned under subdivision a.l., is not included in the total contract price, payments received with respect to such sales shall be treated as applying first against such carrying charges or interest.
- (9) Gain or Loss on Disposition of Installment Obligation.
- a. General Rule. If an installment obligation is satisfied at other than its face value or distributed, transmitted, sold, or otherwise disposed of,

gain or loss shall result to the extent of the difference between the basis of the obligation and

1. the amount realized, in the case of satisfaction at other than face value or a sale or exchange, or
 2. the fair market value of the obligation at the time of distribution, transmission, or disposition, in the case of the distribution, transmission, or disposition otherwise than by sale or exchange. Any gain or loss so resulting shall be considered as resulting from the sale or exchange of the property in respect of which the installment obligation was received.
- b. Basis of Obligation. The basis of an installment obligation shall be the excess of the face value of the obligation over an amount equal to the income which would be returnable were the obligation satisfied in full.
- c. Special Rule for Transmission at Death. Except as provided in G.S. 105-142.1 (relating to recipients of income in respect of decedents), this subsection shall not apply to the transmission of installment obligations at death.
- (10) Obligation Becomes Unenforceable. For purposes of this subsection, if any installment obligation is canceled or otherwise becomes unenforceable the obligation shall be treated as if it were disposed of in a transaction other than a sale or exchange."

Sec. 2. G.S. 105-144(b) is amended by adding the following new language at the end:

"Provided also, that if an individual receives an installment obligation in liquidation under the provisions of Section 337 of the Internal Revenue Code, the gain realized shall be reported in accordance with G.S. 105-142(f)."

Sec. 3. G.S. 105-142.1 is amended by adding a new subsection to read:

"(f) Other Rules Relating to Installment Obligations.

- (1) In General. In the case of an installment obligation reportable by the decedent on the installment method under G.S. 105-142, for purposes of subsection (b) of this section:
 - a. the second sentence of subsection (b) of this section shall be applied by inserting '(other than the obligor)' after 'or a transfer to a person',
 - b. any cancellation of such an obligation shall be treated as a transfer, and
 - c. any cancellation of such an obligation occurring at the death of the decedent shall be treated as a transfer by the estate of the decedent (or, if held by a person other than the decedent before the death of the decedent, by such person).
- (2) Cancellation Includes Becoming Unenforceable. For purposes of paragraph (1) of this subsection, an installment obligation which becomes unenforceable shall be treated as if it were cancelled."

Sec. 4. This act shall become effective for dispositions made after October 19, 1980, for taxable years ending after October 19, 1980, except:

- (1) G.S. 105-142(f)(6) shall apply in the case of distributions of installment obligations after March 31, 1980;
- (2) G.S. 105-142(f)(8) shall apply to taxable years ending after October 19, 1980;

- (3) G.S. 105-142(f)(10) shall apply to installment obligations becoming unenforceable after October 19, 1980;
- (4) Section 3 of this act shall apply in the case of decedents dying after October 19, 1980;
- (5) In the case of any disposition made on or before October 19, 1980, in any taxable year ending after that date, the provisions of G.S. 105-142(f)(2) as they existed before October 19, 1980, shall be applied with respect to such disposition without regard to the first proviso of that subdivision and without regard to any requirement that more than one payment be received.

In the General Assembly read three times and ratified, this the 25th day of February,

1981.