

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 1997

SESSION LAW 1998-171
HOUSE BILL 1326

AN ACT TO UPDATE THE REFERENCE TO THE INTERNAL REVENUE CODE USED IN DEFINING AND DETERMINING CERTAIN STATE TAX PROVISIONS, TO EXTEND THE CORPORATE INCOME TAX CARRYFORWARD FOR NET ECONOMIC LOSSES, TO CONFORM TO FEDERAL GIFT TAX TREATMENT OF CONTRIBUTIONS TO QUALIFIED TUITION PROGRAMS, AND TO CORRECT TWO REDLINING ERRORS IN 1998 TAX LEGISLATION.

The General Assembly of North Carolina enacts:

Section 1. G.S. 105-228.90(b)(1a) reads as rewritten:

"(1a) Code. – The Internal Revenue Code as enacted as of ~~January 1, 1997~~, September 1, 1998, including any provisions enacted as of that date which become effective either before or after that date."

Section 2. G.S. 105-134.6(b)(12) is repealed.

Section 3. G.S. 105-134.6(b)(13) reads as rewritten:

"(13) The amount that is distributed to a beneficiary of the Parental Savings Trust Fund of the State Education Assistance Authority ~~if the earnings on the amount are excluded from income under subdivision (12) of this subsection or section 529 of the Code.~~ unless the distribution is a refund of earnings described in section 529 of the Code."

Section 4. G.S. 105-188 is amended by adding a new subsection to read:

"(k) Qualified Tuition Programs. – The provisions of section 529(c)(2) and (5) of the Code apply to this Article. If a donor elects to take a contribution into account ratably over a five-year period as provided in section 529(c)(2) of the Code, that election applies for the purposes of this Article."

Section 5. Notwithstanding Section 1 of this act, to the extent an amendment to the Internal Revenue Code enacted after January 1, 1997, would increase North Carolina taxable income for a taxpayer's tax year beginning before January 1, 1998, the amendment does not apply to the taxpayer for that tax year.

Section 6. G.S. 105-130.8, as amended by S.L. 1998-98, reads as rewritten:

"§ 105-130.8. Net economic loss.

(a) Net economic losses sustained by a corporation in any or all of the ~~five~~ 15 preceding income years shall be allowed as a deduction to ~~such~~ the corporation subject to the following limitations:

- (1) The purpose in allowing the deduction of a net economic loss of a prior year ~~or years is that of granting to grant~~ some measure of relief to the corporation ~~which that~~ has incurred economic misfortune or ~~which is~~ otherwise materially affected by strict adherence to the annual accounting rule in the determination of net income. The deduction ~~herein specified~~ allowed in this section does not authorize the carrying forward of any particular items or category of loss except to the extent that ~~such loss or losses shall result~~ the loss results in the impairment of the net economic situation of the corporation so as to result in a net economic loss as ~~hereinafter defined~~ defined in this section.
- (2) The net economic loss for any year ~~shall mean~~ means the amount by which allowable deductions for the year other than prior year losses ~~shall exceed~~ income from all sources in the year including any income not taxable under this Part.
- (3) Any net economic loss of a ~~prior year or prior~~ years brought forward and claimed as a deduction in any income year may be deducted from net income of the year only to the extent that ~~such carry over the loss carried forward~~ from the prior year ~~or years shall exceed~~ exceeds any income not taxable under this Part received in the same year in which the deduction is claimed, except that in the case of a corporation required to allocate and apportion to North Carolina its net income, ~~as defined in this Part~~, only ~~such that~~ proportionate part of the net economic loss of a prior year shall be deductible from total income allocable to this State as would be determined by the use of the allocation and apportionment provisions of G.S. 105-130.4 for the year of ~~such the loss~~.
- (4) A net economic loss carried forward from any year shall first be applied to, or offset by, any income taxable or nontaxable of the next succeeding year before any portion of ~~such the loss~~ may be carried forward to a succeeding ~~year year~~, except that a loss that is more than five years old may offset no more than fifteen percent (15%) of any taxable income for a taxable year before the remaining portion may be carried forward to a succeeding year.
- (5) For purposes of this section, any income item deductible in determining State net income under the provisions of G.S. 105-130.5 and any nonbusiness income not allocable to this State under the provisions of G.S. 105-130.4 shall be considered as income not taxable under this Part.
- (6) No loss shall either directly or indirectly be carried forward more than ~~five~~ 15 years.

(b) A corporation claiming a deduction for a loss for the current year or carried forward from a prior year must maintain and make available for inspection by the Secretary all records necessary to determine and verify the amount of the deduction.

The Secretary or the taxpayer may redetermine an item originating in a taxable year that is closed under the statute of limitations for the purpose of determining the amount of net economic loss that can be carried forward to a taxable year that remains open under the statute of limitations."

Section 7. G.S. 105-130.5(b)(4) reads as rewritten:

"(4) Losses in the nature of net economic losses sustained by the corporation in any or all of the ~~five~~ 15 preceding years pursuant to the provisions of G.S. 105-130.8. ~~Provided, a~~ A corporation required to allocate and apportion its net income under the provisions of G.S. 105-130.4 shall deduct its allocable net economic loss only from total income allocable to this State pursuant to the provisions of G.S. 105-130.8."

Section 8. Effective for taxable years beginning on or after January 1, 2002, G.S. 105-130.8(a)(4), as amended by this act, reads as rewritten:

"(4) A net economic loss carried forward from any year shall first be applied to, or offset by, any income taxable or nontaxable of the next succeeding year before any portion of the loss may be carried forward to a succeeding year, ~~except that a loss that is more than five years old may offset no more than fifteen percent (15%) of any taxable income for a taxable years before the remaining portion may be carried forward to a succeeding year.~~"

Section 9. G.S. 105-467(5), as amended by S.L. 1998-98, reads as rewritten:

"(5) The sales price of food that is not otherwise exempt from tax pursuant to G.S. 105-164.13 but would be exempt from the State sales and use tax pursuant to G.S. 105-164.13 if it were ~~issued~~ purchased under the Food Stamp Program, 7 U.S.C. § 51."

Section 10(a). Section 9 of Senate Bill 1230, 1997 General Assembly, is repealed.

Section 10(b). G.S. 105-164.13(11)a., as amended by Section 14 of S.L. 1998-98, reads as rewritten:

"a. Motor fuel, as defined in G.S. 105-449.60, except motor fuel for which a refund of the per gallon excise tax is allowed under G.S. 105-449.105A or G.S. 105-449.107."

Section 11(a). Sections 6 and 7 of this act are effective for taxable years beginning on or after January 1, 1999, and apply to losses incurred for taxable years beginning on or after January 1, 1993. Section 8 of this act becomes effective for taxable years beginning on or after January 1, 2002.

Section 11(b). Section 4 of this act becomes effective for taxable years beginning on or after January 1, 1998. The remainder of this act is effective when it becomes law.

In the General Assembly read three times and ratified this the 24th day of September, 1998.

s/ Marc Basnight
President Pro Tempore of the Senate

s/ Harold J. Brubaker
Speaker of the House of Representatives

s/ James B. Hunt, Jr.
Governor

Approved 10:10 a.m. this 2nd day of October, 1998