

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1989

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HOUSE BILL 2072*

Short Title: Modify Taxation of N.C. Enterprise Corp.

(Public)

Sponsors: Representatives Lilley, Abernethy, Brawley, Craven, Hasty, Wiser; and Perdue.

Referred to: Finance.

May 24, 1990

A BILL TO BE ENTITLED

1 AN ACT TO REVISE THE TAXATION OF A NORTH CAROLINA ENTERPRISE
2 CORPORATION AND TO EXTEND THE TAX CREDIT FOR INVESTMENTS
3 IN AN ENTERPRISE CORPORATION.
4

5 The General Assembly of North Carolina enacts:

6 Section 1. G.S. 105-125 reads as rewritten:

7 **"§ 105-125. Corporations not mentioned.**

8 None of the taxes levied in this Article shall apply to charitable, religious, fraternal,
9 benevolent, scientific or educational corporations, not operating for a profit; nor to
10 insurance companies; nor to mutual ditch or irrigation associations, mutual or
11 cooperative telephone associations or companies, mutual canning associations,
12 cooperative breeding associations, or like organizations or associations of a purely local
13 character deriving receipts solely from assessments, dues, or fees collected from
14 members for the sole purpose of meeting expenses; nor to cooperative marketing
15 associations operating solely for the purpose of marketing the products of members or
16 other farmers, which operations may include activities which are directly related to such
17 marketing activities, and turning back to them the proceeds of sales, less the necessary
18 operating expenses of the association, including interest and dividends on capital stock
19 on the basis of the quantity of product furnished by them; nor to production credit
20 associations organized under the act of Congress known as the Farm Credit Act of 1933;
21 nor to business leagues, boards of trade, clubs organized and operated exclusively for
22 pleasure, recreation and other nonprofitable purposes, civic leagues operated
23 exclusively for the promotion of social welfare, or chambers of commerce and

1 merchants' associations not organized for profit, and no part of the net earnings of which
2 inures to the benefit of any private stockholder, individual or other corporations; nor to
3 corporations or organizations, such as condominium associations, homeowner
4 associations or cooperative housing corporations not organized for profit, the
5 membership of which is limited to the owners or occupants of residential units in the
6 condominium, housing development, or cooperative housing corporation, and operated
7 exclusively for the management, operation, preservation, maintenance or landscaping of
8 the common areas and facilities owned by such corporation or organization or its
9 members situated contiguous to such houses, apartments or other dwellings or for the
10 management, operation, preservation, maintenance and repair of such houses,
11 apartments or other dwellings owned by the corporation or organization or its members,
12 but only if no part of the net earnings of such corporation or organization inures (other
13 than through the performance of related services for the members of such corporation or
14 organization) to the benefit of any member of such corporation or organization or other
15 person. In addition, absent a specific provision to the contrary, the taxes levied in this
16 Article do not apply to any organization that is exempt from federal income tax under
17 the Code.

18 Provided, that each such corporation must, upon request by the Secretary of
19 Revenue, establish in writing its claim for exemption from said provisions. The
20 provisions of G.S. 105-122 and 105-123 shall apply to electric light, power, gas, water,
21 Pullman, sleeping and dining car, express, telegraph, telephone, motor bus, and truck
22 corporations to the extent and only to the extent that the franchise taxes levied in G.S.
23 105-122 and 105-123 exceed the franchise taxes levied in other sections of this Article
24 or schedule; except that the provisions of G.S. 105-122 and 105-123 shall not apply to
25 businesses taxed under G.S. 105-120.1. The exemptions in this section shall apply only
26 to those corporations specially mentioned, and no other.

27 ~~Provided, that any corporation doing business in North Carolina which in the~~
28 ~~opinion of the Secretary of Revenue of North Carolina, qualifies as a "regulated~~
29 ~~investment company" under section 851 of the Code or as a "real estate investment~~
30 ~~trust" under the provisions of section 856 of the Code and which files with the North~~
31 ~~Carolina Department of Revenue its election to be treated as a "regulated investment~~
32 ~~company" or as a "real estate investment trust," shall in determining its basis for~~
33 ~~franchise tax be allowed to—~~The following corporations may deduct the aggregate
34 market value of ~~its~~ their investments in the stocks, bonds, debentures, or other securities
35 or evidences of debt of other ~~corporations, partnerships, individuals, municipalities,~~
36 governmental agencies or governments. entities in determining their basis for franchise
37 tax:

38 (1) A regulated investment company under section 851 of the Code that
39 files an election with the Department to be treated as a regulated
40 investment company.

41 (2) A real estate investment trust under section 856 of the Code that files
42 an election with the Department to be treated as a real estate
43 investment trust.

1 (3) A North Carolina Enterprise Corporation established under Article 3 of
2 Chapter 53A of the General Statutes."

3 Sec. 2. G.S. 105-130.7(3) reads as rewritten:

4 "~~(3) A corporation shall be allowed to deduct such proportionate part of~~
5 ~~dividends received by it from a regulated investment company or a real~~
6 ~~estate investment trust, as defined in G.S. 105-130.12, as represents~~
7 ~~and corresponds to income received by such regulated investment~~
8 ~~company or real estate investment trust which would not be taxed by~~
9 ~~this State if received directly by the corporation.~~ may deduct dividends
10 received from a corporation listed in this subdivision to the extent the
11 dividends are attributable to income that would be exempt from tax
12 under this Division if received by the corporation claiming the
13 deduction:

14 a. A regulated investment company under section 851 of the Code
15 that files an election with the Department to be treated as a
16 regulated investment company.

17 b. A real estate investment trust under section 856 of the Code that
18 files an election with the Department to be treated as a real
19 estate investment trust.

20 c. A North Carolina Enterprise Corporation established under
21 Article 3 of Chapter 53A of the General Statutes."

22 Sec. 3. G.S. 105-130.12 reads as rewritten:

23 "**§ 105-130.12. ~~Regulated investment companies and real estate investment trusts.~~**
24 **Corporations taxed on undistributed income.**

25 ~~Any organization or trust which, in the opinion of the Secretary of Revenue of North~~
26 ~~Carolina, qualifies as either a "regulated investment company" under section 851 of the~~
27 ~~Code or as a "real estate investment trust" under section 856 of the Code and which files~~
28 ~~with the North Carolina Department of Revenue its election to be treated as a "regulated~~
29 ~~investment company," or as a "real estate investment trust"~~ The following corporations
30 shall be taxed under this Division upon only that part of ~~its~~ their net income ~~which~~ that
31 is not distributed or declared for distribution to shareholders during the income year or
32 by the time required by law for the filing of the return for the income year including the
33 period of any extension of time granted for filing ~~such the return.~~ return.

34 (1) A regulated investment company under section 851 of the Code that
35 files an election with the Department to be treated as a regulated
36 investment company.

37 (2) A real estate investment trust under section 856 of the Code that files
38 an election with the Department to be treated as a real estate
39 investment trust.

40 (3) A North Carolina Enterprise Corporation established under Article 3 of
41 Chapter 53A of the General Statutes."

42 Sec. 4. G.S. 105-212(c) reads as rewritten:

43 "~~(c) Any corporation or trust doing business in North Carolina which in the~~
44 ~~opinion of the Secretary of Revenue of North Carolina qualifies as a "regulated~~

1 investment company" under section 851 of the Code or as a "real estate investment
2 trust" under the provisions of section 856 of the Code and which files with the North
3 Carolina Department of Revenue its election to be treated as a "regulated investment
4 company" or "real estate investment trust," shall not be subject to any of the taxes levied
5 in this Article or schedule. The following entities are exempt from the taxes levied in
6 this Article:

7 (1) A regulated investment company under section 851 of the Code that
8 files an election with the Department to be treated as a regulated
9 investment company.

10 (2) A real estate investment trust under section 856 of the Code that files
11 an election with the Department to be treated as a real estate
12 investment trust.

13 (3) A North Carolina Enterprise Corporation established under Article 3 of
14 Chapter 53A of the General Statutes."

15 Sec. 5. G.S. 105-163.011(a) reads as rewritten:

16 "(a) Corporations. – Subject to the limitations contained in G.S. 105-163.012, a
17 corporation that invests in the equity securities of a North Carolina Capital Resource
18 Corporation, a North Carolina Enterprise Corporation, or a qualified investment
19 organization is allowed as a credit against the income tax imposed by Division I of this
20 ~~Article or the Article, the franchise tax~~ imposed by G.S. 105-116, 105-120.2, and ~~105-~~
21 ~~122-105-122, or the gross premiums tax~~ imposed by G.S. 105-228.5 and 105-228.8 for
22 the taxable year an amount equal to twenty-five percent (25%) of the amount invested
23 or seven hundred fifty thousand dollars (\$750,000), whichever is less. The credit may
24 not be taken for the year in which the investment is made but shall be taken for the
25 taxable year beginning during the calendar year following the calendar year in which
26 the investment was made."

27 Sec. 6. G.S. 105-163.012(a) reads as rewritten:

28 "(a) The credit allowed a taxpayer under G.S. 105-163.011 may not exceed the
29 amount of income tax imposed by Division I or II of this ~~Article or by Article, the~~
30 amount of franchise tax imposed by Article 3 of this Chapter, or the amount of gross
31 premiums tax imposed by Article 8B of this Chapter, as appropriate, for the taxable year
32 reduced by the sum of all other credits allowable except tax payments made by or on
33 behalf of the taxpayer. The amount of unused credit allowed under G.S. 105-163.011
34 may be carried forward for the next five succeeding years."

35 Sec. 7. This act is effective for taxable years beginning on or after January 1,
36 1990.