

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1991

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HOUSE BILL 1202

Short Title: Unpaid Debt Taxed as Income.

(Public)

Sponsors: Representative Gamble.

Referred to: Finance.

May 9, 1991

A BILL TO BE ENTITLED

AN ACT TO PROVIDE THAT DEBTS THAT REMAIN UNPAID ONE HUNDRED
TWENTY DAYS AFTER THEY ARE DUE ARE TAXABLE AS INCOME TO
THE DEBTOR.

The General Assembly of North Carolina enacts:

Section 1. G.S. 105-130.5 reads as rewritten:

"§ 105-130.5. Adjustments to federal taxable income in determining State net income.

(a) The following additions to federal taxable income shall be made in determining State net income:

- (1) Taxes based on or measured by net income by whatever name called and excess profits taxes;
- (2) Interest paid in connection with income exempt from taxation under this Division;
- (3) The contributions deduction allowed by the Code;
- (4) Interest income earned on bonds and other obligations of other states or their political subdivisions, less allowable amortization on any bond acquired on or after January 1, 1963;
- (5) The amount by which gains have been offset by the capital loss carryover allowed under the Code. All gains recognized on the sale or other disposition of assets must be included in determining State net income or loss in the year of disposition;
- (6) The net operating loss deduction allowed by the Code; and

- 1 (7) Special deductions allowable under sections 241 to 247, inclusive, of
2 the Code.
- 3 (8) Repealed by Session Laws 1987, c. 778, s. 2.
- 4 (9) Payments to or charges by a parent, subsidiary or affiliated corporation
5 in excess of fair compensation in all intercompany transactions of any
6 kind whatsoever pursuant to the Revenue Laws of this State.
- 7 (10) The total amounts allowed under this Article during the taxable year as
8 a credit against the taxpayer's income tax. A corporation that
9 apportions part of its income to this State shall make the addition
10 required by this subdivision after it determines the amount of its
11 income that is apportioned and allocated to this State and shall not
12 apply to a credit taken under this Article the apportionment factor used
13 by it in determining the amount of its apportioned income.
- 14 (11) The amount by which the percentage depletion allowance allowed by
15 sections 613 and 613A of the Code for mines, oil and gas wells, and
16 other natural deposits exceeds the cost depletion allowance for these
17 items under the Code, except as otherwise provided herein. This
18 subdivision does not apply to depletion deductions for clay, gravel,
19 phosphate rock, lime, shells, stone, sand, feldspar, gemstones, mica,
20 talc, lithium compounds, tungsten, coal, peat, olivine, pyrophyllite, and
21 other solid minerals or rare earths extracted from the soil or waters of
22 this State. Corporations required to apportion income to North
23 Carolina shall first add to federal taxable income the amount of all
24 percentage depletion in excess of cost depletion that was subtracted
25 from the corporation's gross income in computing its federal income
26 taxes and shall then subtract from the taxable income apportioned to
27 North Carolina the amount by which the percentage depletion
28 allowance allowed by sections 613 and 613A of the Code for solid
29 minerals or rare earths extracted from the soil or waters of this State
30 exceeds the cost depletion allowance for these items.
- 31 (12) The total amount of all debts owed by the taxpayer at the end of the
32 taxable year that became 120 days overdue during the taxable year.
- 33 (b) The following deductions from federal taxable income shall be made in
34 determining State net income:
- 35 (1) Interest upon the obligations of the United States or its possessions, to
36 the extent included in federal taxable income: Provided, interest upon
37 the obligations of the United States shall not be an allowable deduction
38 unless interest upon obligations of the State of North Carolina or any
39 of its political subdivisions is exempt from income taxes imposed by
40 the United States;
- 41 (2) Payments received from a parent, subsidiary or affiliated corporation
42 in excess of fair compensation in intercompany transactions which in
43 the determination of the net income or net loss of such corporation
44 were not allowed as a deduction under the Revenue Laws of this State;

- 1 (3) The deductible portion of dividends from stock issued by any
2 corporation as provided under G.S. 105-130.7;
- 3 (4) Losses in the nature of net economic losses sustained by the
4 corporation in any or all of the five preceding years pursuant to the
5 provisions of G.S. 105-130.8. Provided, a corporation required to
6 allocate and apportion its net income under the provisions of G.S. 105-
7 130.4 shall deduct its allocable net economic loss only from total
8 income allocable to this State pursuant to the provisions of G.S. 105-
9 130.8;
- 10 (5) Contributions or gifts made by any corporation within the income year
11 to the extent provided under G.S. 105-130.9;
- 12 (6) Amortization in excess of depreciation allowed under the Code on the
13 cost of any sewage or waste treatment plant, and facilities or
14 equipment used for purposes of recycling or resource recovery of or
15 from solid waste, or for purposes of reducing the volume of hazardous
16 waste generated as provided in G.S. 105-130.10.
- 17 (7) Depreciation of emergency facilities acquired prior to January 1, 1955.
18 Any corporation shall be permitted to depreciate any emergency
19 facility, as such is defined in section 168 of the Code, over its useful
20 life, provided such facility was acquired prior to January 1, 1955, and
21 no amortization has been claimed on such facility for State income tax
22 purposes; and
- 23 (8) The amount of losses realized on the sale or other disposition of assets
24 not allowed under section 1211 (a) of the Code. All losses recognized
25 on the sale or other disposition of assets must be included in
26 determining State net income or loss in the year of disposition.
- 27 (9) With respect to a shareholder of a regulated investment company, the
28 portion of undistributed capital gains of such regulated investment
29 company included in such shareholder's federal taxable income and on
30 which the federal tax paid by the regulated investment company is
31 allowed as a credit or refund to the shareholder under section 852 of
32 the Code.
- 33 (10) Repealed by Session Laws 1987, c. 778, s. 2.
- 34 (11) The amount by which a deduction for an ordinary and necessary
35 business expense was required to be reduced under the Code for
36 federal tax purposes or the amount of such a deduction that was not
37 allowed under the Code because the corporation claimed a federal tax
38 credit against its federal income tax liability for the income year in
39 lieu of a deduction.
- 40 (12) Reasonable expenses, in excess of deductions allowed under the Code,
41 paid for reforestation and cultivation of commercially grown trees;
42 provided, that this deduction shall be allowed only to those
43 corporations in which the real owners of all the shares of such
44 corporation are natural persons actively engaged in the commercial

1 growing of trees, or the spouse, siblings, or parents of such persons.
2 Provided, further, that in no case shall a corporation be allowed a
3 deduction for the same reforestation or cultivation expenditure more
4 than once.

- 5 (13) The eligible income of an international banking facility to the extent
6 included in determining federal taxable income, determined as follows:
- 7 a. 'International banking facility' shall have the same meaning as
8 is set forth in the laws of the United States or regulations of the
9 board of governors of the federal reserve system.
 - 10 b. The eligible income of an international banking facility for the
11 taxable year shall be an amount obtained by multiplying State
12 taxable income as determined under G.S. 105-130.3
13 (determined without regard to eligible income of an
14 international banking facility and allocation and apportionment,
15 if applicable) for such year by a fraction, the denominator of
16 which shall be the gross receipts for such year derived by the
17 bank from all sources, and the numerator of which shall be the
18 adjusted gross receipts for such year derived by the
19 international banking facility from:
 - 20 1. Making, arranging for, placing or servicing loans to
21 foreign persons substantially all the proceeds of which
22 are for use outside the United States;
 - 23 2. Making or placing deposits with foreign persons which
24 are banks or foreign branches of banks (including
25 foreign subsidiaries or foreign branches of the taxpayer)
26 or with other international banking facilities; or
 - 27 3. Entering into foreign exchange trading or hedging
28 transactions related to any of the transactions described
29 in this paragraph.
 - 30 c. The adjusted gross receipts shall be determined by multiplying
31 the gross receipts of the international banking facility by a
32 fraction the numerator of which is the average amount for the
33 taxable year of all assets of the international banking facility
34 which are employed outside the United States and the
35 denominator of which is the average amount for the taxable
36 year of all assets of the international banking facility.
 - 37 d. For the purposes of this subsection the term 'foreign person'
38 means:
 - 39 1. An individual who is not a resident of the United States;
 - 40 2. A foreign corporation, a foreign partnership or a foreign
41 trust, as defined in section 7701 of the Code, other than a
42 domestic branch thereof;
 - 43 3. A foreign branch of a domestic corporation (including
44 the taxpayer);

1 Article. As used in this section, the term "foreign sales corporation" means a
2 corporation that qualifies as a foreign sales corporation under the provisions of
3 Subchapter N of Chapter 1 of the Code and has in effect for the entire taxable year a
4 valid election under the Code to be treated as a foreign sales corporation."

5 Sec. 2. G.S. 105-130.21 reads as rewritten:

6 **"§ 105-130.21. Information at the source.**

7 (a) Every corporation having a place of business or having one or more
8 employees, agents or other representatives in this State, in whatever capacity acting,
9 including lessors or mortgagors of real or personal property, or having the control,
10 receipt, custody, disposal, or payment of interest (other than interest coupons payable to
11 the bearer), rent, salaries, wages, premiums, annuities, compensations, remunerations,
12 emoluments or other fixed or determinable annual or periodical gains or profits paid or
13 payable during any year to any taxpayer, shall make complete return thereof to the
14 Secretary of Revenue under such regulations and in such form and manner and to such
15 extent as may be prescribed by him. The filing of any report in compliance with the
16 provisions of this section by a foreign corporation shall not constitute an act in evidence
17 of and shall not be deemed to be evidence that such corporation is doing business in this
18 State.

19 (b) Every corporation doing business or having a place of business in this State
20 shall file with the Secretary of Revenue, on such form and in such manner as he may
21 prescribe, the names and addresses of all taxpayers, residents of North Carolina, to
22 whom dividends have been paid and the amount of such dividends during the income
23 year.

24 (c) Every corporation doing business or having a place of business in this State
25 shall file with the Secretary of Revenue, on the form and in the manner prescribed by
26 the Secretary, (i) the name and address of every individual residing in this State and
27 every corporation doing business in this State who owes a debt to the corporation that
28 became 120 days overdue during the year and (ii) the amount of the debt."

29 Sec. 3. G.S. 105-134.6 reads as rewritten:

30 **"§ 105-134.6. Adjustments to taxable income.**

31 (a) S Corporations. – The pro rata share of each shareholder in the income
32 attributable to the State of an S Corporation shall be adjusted as provided in G.S. 105-
33 130.5. The pro rata share of each resident shareholder in the income not attributable to
34 the State of an S Corporation shall be subject to the adjustments provided in subsections
35 (b) and (c) of this section.

36 (b) Deductions. – The following deductions from taxable income shall be
37 made in calculating North Carolina taxable income, to the extent each item is included
38 in gross income:

- 39 (1) Interest upon the obligations of (i) the United States or its possessions,
40 (ii) this State or a political subdivision of this State, or (iii) a nonprofit
41 educational institution organized or chartered under the laws of this
42 State.

- 1 (2) Interest upon obligations and gain from the disposition of obligations
2 to the extent the interest or gain is exempt from tax under the laws of
3 this State.
- 4 (3) Benefits received under Title II of the Social Security Act and amounts
5 received from retirement annuities or pensions paid under the
6 provisions of the Railroad Retirement Act of 1937.
- 7 (4) Repealed by Session Laws 1989 (Reg. Sess., 1990), c. 1002, s. 2.
- 8 (5) Refunds of State, local, and foreign income taxes included in the
9 taxpayer's gross income.
- 10 (6) a. An amount, not to exceed four thousand dollars (\$4,000), equal to
11 the sum of the amount calculated in subparagraph b. plus the amount
12 calculated in subparagraph c.
- 13 b. The amount calculated in this subparagraph is the amount
14 received during the taxable year from one or more state, local,
15 or federal government retirement plans.
- 16 c. The amount calculated in this subparagraph is the amount
17 received during the taxable year from one or more retirement
18 plans other than state, local, or federal government retirement
19 plans, not to exceed a total of two thousand dollars (\$2,000) in
20 any taxable year.
- 21 d. In the case of a married couple filing a joint return where both
22 spouses received retirement benefits during the taxable year, the
23 maximum dollar amounts provided in this subdivision for
24 various types of retirement benefits apply separately to each
25 spouse's benefits.
- 26 (7) The amount of inheritance tax attributable to an item of income in
27 respect of a decedent required to be included in gross income under the
28 Code, adjusted as provided in G.S. 105-134.5, 105-134.6, and 105-
29 134.7. The amount of inheritance tax attributable to an item of income
30 in respect of a decedent is (i) the amount by which the inheritance tax
31 paid under Article 1 of this Chapter on property transferred to a
32 beneficiary by a decedent exceeds the amount of inheritance tax that
33 would have been payable by the beneficiary if the item of income in
34 respect of a decedent had not been included in the property transferred
35 to the beneficiary by the decedent, (ii) multiplied by a fraction, the
36 numerator of which is the amount required to be included in gross
37 income for the taxable year under the Code, adjusted as provided in
38 G.S. 105-134.5, 105-134.6, and 105-134.7, and the denominator of
39 which is the total amount of income in respect of a decedent
40 transferred to the beneficiary by the decedent. For an estate or trust,
41 the deduction allowed by this subdivision shall be computed by
42 excluding from the gross income of the estate or trust the portion, if
43 any, of the items of income in respect of a decedent that are properly

1 paid, credited, or to be distributed to the beneficiaries during the
2 taxable year.

3 The Secretary of Revenue may provide to a beneficiary of an item
4 of income in respect of a decedent any information contained on an
5 inheritance tax return that the beneficiary needs to compute the
6 deduction allowed by this subdivision.

7 (8) The amount by which the taxpayer's mortgage interest deduction under
8 the Code was reduced pursuant to section 163(g) of the Code.

9 (9) The total amount of all debts repaid by the taxpayer during the taxable
10 year that were included in the taxpayer's North Carolina taxable
11 income in an earlier taxable year pursuant to subdivision (c)(5) of this
12 section.

13 (c) Additions. – The following additions to taxable income shall be made in
14 calculating North Carolina taxable income, to the extent each item is not included in
15 gross income:

16 (1) Interest upon the obligations of states, other than this State, and their
17 political subdivisions.

18 (2) Any amount allowed as a deduction from gross income under the Code
19 that is taxed under the Code by a separate tax other than the tax
20 imposed in section 1 of the Code. The Secretary shall report to the
21 1991 General Assembly all provisions under the Code for taxing
22 certain amounts separately and shall recommend whether those
23 amounts should be taxed separately under this Division or should be
24 added to taxable income in calculating North Carolina taxable income.

25 (3) Any amount deducted from gross income under section 164 of the
26 Code as State, local, or foreign income tax to the extent that the
27 taxpayer's total itemized deductions deducted under the Code for the
28 taxable year exceed the standard deduction allowable to the taxpayer
29 under the Code reduced by the amount by which the taxpayer's
30 allowable standard deduction has been increased under section
31 63(c)(4) of the Code.

32 (4) The amount by which the taxpayer's standard deduction has been
33 increased under section 63(c)(4) of the Code and the amount by which
34 the taxpayer's personal exemptions have been increased under section
35 151(d)(3) of the Code.

36 (5) The total amount of all debts owed by the taxpayer at the end of the
37 taxable year that became 120 days overdue during the taxable year."

38 Sec. 4. G.S. 105-154 reads as rewritten:

39 **"§ 105-154. Information at the source.**

40 (a) Every individual, partnership, corporation, joint-stock company or
41 association, or insurance company, being a resident or having a place of business or
42 having one or more employees, agents, or other representatives in this State, in whatever
43 capacity acting, including lessors or mortgagors of real or personal property, fiduciaries,
44 employers, and all officers and employees of the State or of any political subdivision of

1 the State and all officers and employees of the United States or of any political
2 subdivision or agency thereof having the control, receipt, custody, disposal, or payment
3 of interest (other than interest coupons payable to bearer), rent, salaries, wages,
4 dividends, premiums, annuities, compensations, remunerations, emoluments, or other
5 fixed or determinable annual or periodical gains, profits, and incomes paid or payable
6 during any year to any taxpayer, shall make complete return thereof to the Secretary
7 under such regulations and in such form and manner and to such extent as may be
8 prescribed by the Secretary. The filing of any report in compliance with the provisions
9 of this section by a foreign corporation shall not constitute an act in evidence of and
10 shall not be deemed to be evidence that the corporation is doing business in this State.

11 (b) Every partnership doing business in the State required to file a return under
12 the Code shall make a return stating specifically the items of its gross income and the
13 deductions allowed under the Code and the adjustments required by this Division, and
14 shall include in the return the names and addresses of the individuals who would be
15 entitled to share in the net income if distributable, and the amount of the distributive
16 share of each individual, together with the distributive shares of corporation dividends.
17 The return shall be signed by one of the partners under affirmation in the form
18 prescribed in G.S. 105-155 of this Division, and the same penalties prescribed in G.S.
19 105-236 shall apply in the event of a willful misstatement. If a business established in
20 this State is owned by a nonresident individual or by a partnership having one or more
21 nonresident members, the manager of the business shall report the earnings of the
22 business in this State and the distributive share of the income of each nonresident owner
23 or partner, and shall pay the tax as levied on individuals under G.S. 105-134.2(a)(3) for
24 each nonresident owner or partner. The business may deduct the payment for each
25 nonresident owner or partner from the owner or partner's distributive share of the profits
26 of the business in this State.

27 (c) Every individual residing in this State shall file with the Secretary, on the
28 form and in the manner prescribed by the Secretary, (i) the name and address of every
29 individual residing in this State and every corporation doing business in this State who
30 owes a debt to the individual that became 120 days overdue during the year and (ii) the
31 amount of the debt."

32 Sec. 5. This act is effective for taxable years beginning on or after January 1,
33 1991.