

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1991

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HOUSE BILL 1284

Short Title: End Special Interest Tax Breaks.

(Public)

Sponsors: Representative Luebke.

Referred to: Finance.

May 10, 1991

A BILL TO BE ENTITLED

AN ACT TO ELIMINATE SPECIAL INTEREST CORPORATE TAX BREAKS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 105-130.7, 105-130.10A, 105-130.38, and 105-130.39 are repealed.

Sec. 2. G.S. 105-130.4(i) reads as rewritten:

"(i) All business income of corporations other than public utilities and excluded corporations shall be apportioned to this State by multiplying the income by a fraction, the numerator of which is the property factor plus the payroll factor plus ~~twice~~ the sales factor, and the denominator of which is three. ~~four. Provided, that where the sales factor does not exist, the denominator of the fraction shall be the number of existing factors and where the sales factor exists but the payroll factor or the property factor does not exist, the denominator of the fraction shall be the number of existing factors plus one. If one or more of these factors does not exist, the denominator of the fraction shall be the number of existing factors.~~"

Sec. 3. 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;

- 1 (3) The contributions deduction allowed by the Code;
- 2 (4) Interest income earned on bonds and other obligations of other states
- 3 or their political subdivisions, less allowable amortization on any bond
- 4 acquired on or after January 1, 1963;
- 5 (5) The amount by which gains have been offset by the capital loss
- 6 carryover allowed under the Code. All gains recognized on the sale or
- 7 other disposition of assets must be included in determining State net
- 8 income or loss in the year of disposition;
- 9 (6) The net operating loss deduction allowed by the Code; and
- 10 (7) Special deductions allowable under sections 241 to 247, inclusive, of
- 11 the Code.
- 12 (8) Repealed by Session Laws 1987, c. 778, s. 2.
- 13 (9) Payments to or charges by a parent, subsidiary or affiliated corporation
- 14 in excess of fair compensation in all intercompany transactions of any
- 15 kind whatsoever pursuant to the Revenue Laws of this State.
- 16 (10) The total amounts allowed under this Article during the taxable year as
- 17 a credit against the taxpayer's income tax. A corporation that
- 18 apportions part of its income to this State shall make the addition
- 19 required by this subdivision after it determines the amount of its
- 20 income that is apportioned and allocated to this State and shall not
- 21 apply to a credit taken under this Article the apportionment factor used
- 22 by it in determining the amount of its apportioned income.
- 23 (11) The amount by which the percentage depletion allowance allowed by
- 24 sections 613 and 613A of the Code for mines, oil and gas wells, and
- 25 other natural deposits exceeds the cost depletion allowance for these
- 26 items under the Code, except as otherwise provided herein. This
- 27 subdivision does not apply to depletion deductions for clay, gravel,
- 28 phosphate rock, lime, shells, stone, sand, feldspar, gemstones, mica,
- 29 talc, lithium compounds, tungsten, coal, peat, olivine, pyrophyllite, and
- 30 other solid minerals or rare earths extracted from the soil or waters of
- 31 this State. Corporations required to apportion income to North
- 32 Carolina shall first add to federal taxable income the amount of all
- 33 percentage depletion in excess of cost depletion that was subtracted
- 34 from the corporation's gross income in computing its federal income
- 35 taxes and shall then subtract from the taxable income apportioned to
- 36 North Carolina the amount by which the percentage depletion
- 37 allowance allowed by sections 613 and 613A of the Code for solid
- 38 minerals or rare earths extracted from the soil or waters of this State
- 39 exceeds the cost depletion allowance for these items.
- 40 (b) The following deductions from federal taxable income shall be made in
- 41 determining State net income:
- 42 (1) Interest upon the obligations of the United States or its possessions, to
- 43 the extent included in federal taxable income: Provided, interest upon
- 44 the obligations of the United States shall not be an allowable deduction

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

- 1 credit against its federal income tax liability for the income year in lieu
2 of a deduction.
- 3 ~~(12) Reasonable expenses, in excess of deductions allowed under the Code,
4 paid for reforestation and cultivation of commercially grown trees;
5 provided, that this deduction shall be allowed only to those
6 corporations in which the real owners of all the shares of such
7 corporation are natural persons actively engaged in the commercial
8 growing of trees, or the spouse, siblings, or parents of such persons.
9 Provided, further, that in no case shall a corporation be allowed a
10 deduction for the same reforestation or cultivation expenditure more
11 than once.~~
- 12 ~~(13) The eligible income of an international banking facility to the extent
13 included in determining federal taxable income, determined as follows:~~
- 14 ~~a. "International banking facility" shall have the same meaning as
15 is set forth in the laws of the United States or regulations of the
16 board of governors of the federal reserve system.~~
- 17 ~~b. The eligible income of an international banking facility for the
18 taxable year shall be an amount obtained by multiplying State
19 taxable income as determined under G.S. 105-130.3
20 (determined without regard to eligible income of an
21 international banking facility and allocation and apportionment,
22 if applicable) for such year by a fraction, the denominator of
23 which shall be the gross receipts for such year derived by the
24 bank from all sources, and the numerator of which shall be the
25 adjusted gross receipts for such year derived by the
26 international banking facility from:~~
- 27 ~~1. Making, arranging for, placing or servicing loans to
28 foreign persons substantially all the proceeds of which
29 are for use outside the United States;~~
- 30 ~~2. Making or placing deposits with foreign persons which
31 are banks or foreign branches of banks (including
32 foreign subsidiaries or foreign branches of the taxpayer)
33 or with other international banking facilities; or~~
- 34 ~~3. Entering into foreign exchange trading or hedging
35 transactions related to any of the transactions described
36 in this paragraph.~~
- 37 ~~e. The adjusted gross receipts shall be determined by multiplying
38 the gross receipts of the international banking facility by a
39 fraction the numerator of which is the average amount for the
40 taxable year of all assets of the international banking facility
41 which are employed outside the United States and the
42 denominator of which is the average amount for the taxable
43 year of all assets of the international banking facility.~~

d. ~~For the purposes of this subsection the term "foreign person" means:~~

- ~~1. An individual who is not a resident of the United States;~~
- ~~2. A foreign corporation, a foreign partnership or a foreign trust, as defined in section 7701 of the Code, other than a domestic branch thereof;~~
- ~~3. A foreign branch of a domestic corporation (including the taxpayer);~~
- ~~4. A foreign government or an international organization or an agency of either, or~~
- ~~5. An international banking facility.~~

~~For purposes of this paragraph, the terms "foreign" and "domestic" shall have the same meaning as set forth in section 7701 of the Code.~~

(14) The amount by which the basis of a depreciable asset is required to be reduced under the Code for federal tax purposes because of a tax credit allowed against the corporation's federal income tax liability. This deduction may be claimed only in the year in which the Code requires that the asset's basis be reduced. In computing gain or loss on the asset's disposition, this deduction shall be considered as depreciation.

(15) The amount paid during the income year, pursuant to 7 U.S.C. § 1445-2, as marketing assessments on tobacco grown by the corporation in North Carolina.

(c) The following other adjustments to federal taxable income shall be made in determining State net income:

(1) In determining State net income, no deduction shall be allowed for annual amortization of bond premiums applicable to any bond acquired prior to January 1, 1963. The amount of premium paid on any such bond shall be deductible only in the year of sale or other disposition.

(2) Federal taxable income must be increased or decreased to account for any difference in the amount of depreciation, amortization, or gains or losses applicable to property which has been depreciated or amortized by use of a different basis or rate for State income tax purposes than used for federal income tax purposes prior to the effective date of this division.

(3) No deduction is allowed for any direct or indirect expenses related to income not taxed under this Division; provided, no adjustment shall be made under this subsection for adjustments addressed in G.S. 105-130.5(a) and (b).

(d) Repealed by Session Laws 1987, c. 778, s. 3.

(e) Notwithstanding any other provision of this section, any recapture of depreciation required under the Code must be included in a corporation's State net income to the extent required for federal income tax purposes.

1 (f) ~~The exempt foreign trade income, as defined in Section 923 of the Code, of a~~
2 ~~foreign sales corporation shall not be included in the net income of the foreign sales~~
3 ~~corporation under this Division. Any expenses and commissions paid by a shareholder~~
4 ~~to a foreign sales corporation that are deductible under the Code shall be deductible~~
5 ~~from the shareholder's income under this Article. As used in this section, the term~~
6 ~~"foreign sales corporation" means a corporation that qualifies as a foreign sales~~
7 ~~corporation under the provisions of Subchapter N of Chapter 1 of the Code and has in~~
8 ~~effect for the entire taxable year a valid election under the Code to be treated as a~~
9 ~~foreign sales corporation."~~

10 Sec. 4. The title of Division V of Article 4 of Chapter 105 of the General
11 Statutes reads as rewritten:

12 **"DIVISION V. ~~INCOME-TAX CREDITS FOR QUALIFIED BUSINESS~~**
13 **~~INVESTMENTS. INVESTMENTS MADE BEFORE DECEMBER 31, 1991."~~**

14 Sec. 5. G.S. 105-163.011 reads as rewritten:

15 **"§ 105-163.011. Tax credits allowed.**

16 (a) Corporations. – Subject to the limitations contained in G.S. 105-163.012, a
17 corporation that invests before December 31, 1991, in the equity securities of a North
18 Carolina Capital Resource Corporation, a North Carolina Enterprise Corporation, or a
19 qualified investment organization is allowed as a credit against the income tax imposed
20 by Division I of this Article, the franchise tax imposed by G.S. 105-116, 105-120.2, and
21 105-122, or the gross premiums tax imposed by G.S. 105-228.5 and G.S. 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. No tax credit is allowed for investments made on or after
27 December 31, 1991.

28 (b) Individuals. – Subject to the limitations contained in G.S. 105-163.012, an
29 individual who invests before December 31, 1991, in the equity securities or
30 subordinated debt of (i) a North Carolina Capital Resource Corporation, (ii) a qualified
31 investment organization, (iii) a qualified business venture, (iv) a qualified grantee
32 business, or (v) a North Carolina Enterprise Corporation is allowed as a credit against
33 the tax imposed by Division II of this Article for the taxable year an amount equal to
34 twenty-five percent (25%) of the amount invested or one hundred thousand dollars
35 (\$100,000), whichever is less. The credit may not be taken for the year in which the
36 investment is made but shall be taken for the taxable year beginning during the calendar
37 year following the calendar year in which the investment was made. No tax credit is
38 allowed for investments made on or after December 31, 1991.

39 (c) Application. – To be eligible for the tax credit provided in this section, the
40 taxpayer must file an application for the credit with the Secretary of Revenue on or
41 before April 15 of the year following the calendar year in which the investment was
42 made. The application shall be on a form prescribed by the Secretary and shall include
43 any supporting documentation that the Secretary may require. The last date on which
44 applications may be filed is April 15, 1992.

1 (d) Penalties. – The penalties provided in G.S. 105-236 apply in this Division."
2 Sec. 6. The title of Chapter 53A of the General Statutes reads as rewritten:

3 "CHAPTER 53A.
4 BUSINESS DEVELOPMENT CORPORATIONS AND NORTH CAROLINA
5 CAPITAL
6 RESOURCE-ENTERPRISE CORPORATIONS."

7 Sec. 7. G.S. 53A-46 reads as rewritten:

8 "§ 53A-46. Tax credit.

9 A person or corporation that invests before December 31, 1991, in the equity
10 securities of a North Carolina Enterprise Corporation may be entitled to a tax credit as
11 provided in G.S. 105-163.010 through G.S. 105-163.014."

12 Sec. 8. Effective for taxable years beginning on or after January 1, 1993,
13 G.S. 53A-46, 105-163.011, and 105-163.012 are repealed. Repeal of these statutes does
14 not affect a taxpayer's right to any carryover credit for which the taxpayer may be
15 eligible under G.S. 105-163.012 for a taxable year beginning on or after January 1,
16 1993.

17 Sec. 9. Effective for taxable years beginning on or after January 1, 1998, the
18 remainder of Division V of Article 4 of Chapter 105 of the General Statutes is repealed.

19 Sec. 10. Notwithstanding G.S. 105-163.41, no addition to tax may be made
20 under that statute for a taxable year beginning on or after January 1, 1991, and before
21 January 1, 1992, with respect to an underpayment of corporation income tax to the
22 extent the underpayment was created or increased by this act.

23 Sec. 11. This act does not affect the rights or liabilities of the State, a
24 taxpayer, or another person arising under a statute amended or repealed by this act
25 before its amendment or repeal; nor does it affect the right to any refund or credit of a
26 tax that would otherwise have been available under the amended or repealed statute
27 before its amendment or repeal. Repeal of a tax credit by this act does not affect a
28 taxpayer's right to a credit or a carryover credit that attached before the effective date of
29 the repeal.

30 Sec. 12. Sections 1, 2, and 3 of this act are effective for taxable years
31 beginning on or after January 1, 1991. Section 8 of this act is effective for taxable years
32 beginning on or after January 1, 1993. Section 9 of this act is effective for taxable years
33 beginning on or after January 1, 1998. The remainder of this act is effective upon
34 ratification.