

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2009

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HOUSE BILL 1636

Short Title: Charitable Exemption Standard.

(Public)

Sponsors: Representative Blust.

Referred to: Judiciary I, if favorable, Finance.

May 7, 2009

A BILL TO BE ENTITLED

AN ACT TO PROVIDE THAT TAX-EXEMPT STATUS FOR CHARITABLE AND  
SIMILAR ORGANIZATIONS IS CONDITIONED ON THE ORGANIZATION'S USING  
A MINIMUM AMOUNT OF ITS GROSS INCOME FOR ITS CHARITABLE OR  
SIMILAR PURPOSE.

The General Assembly of North Carolina enacts:

**SECTION 1.** G.S. 105-130.11 reads as rewritten:

**"§ 105-130.11. Conditional and other exemptions.**

(a) Exempt Organizations. – Except as provided in subsections ~~(b) and (c)~~, (b), (b1), and (c) of this section, the following organizations and any organization that is exempt from federal income tax under the Code are exempt from the tax imposed under this Part.

- (1) Fraternal beneficiary societies, orders or associations
  - a. Operating under the lodge system or for the exclusive benefit of the members of a fraternity itself operating under the lodge system, and
  - b. Providing for the payment of life, sick, accident, or other benefits to the members of such society, order or association, or their dependents.
- (2) Cooperative banks without capital stock organized and operated for mutual purposes and without profit; and electric and telephone membership corporations organized under Chapter 117 of the General Statutes.
- (3) Cemetery corporations and corporations organized for religious, charitable, scientific, literary, or educational purposes, or for the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private stockholder or individual.
- (4) Business leagues, chambers of commerce, merchants' associations, or boards of trade not organized for profit, and no part of the net earnings of which inures to the benefit of any private stockholder or individual.
- (5) Civic leagues or organizations not organized for profit, but operated exclusively for the promotion of social welfare.
- (6) Clubs organized and operated exclusively for pleasure, recreation, and other nonprofitable purposes, no part of the net earnings of which inures to the benefit of any private stockholder or member.
- (7) Farmers' or other mutual hail, cyclone, or fire insurance companies, mutual ditch or irrigation companies, mutual or cooperative telephone companies, or like organizations of a purely local character the income of which consists solely of assessments, dues, and fees collected from members for the sole purpose of meeting expenses.



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1 (8) Farmers', fruit growers', or like organizations organized and operated as  
2 sales agents for the purpose of marketing the products of members and  
3 turning back to them the proceeds of sales, less the necessary selling  
4 expenses, on the basis of the quantity of product furnished by them.

5 (9) Mutual associations formed under G.S. 54-111 through 54-128 to conduct  
6 agricultural business on the mutual plan and marketing associations  
7 organized under G.S. 54-129 through 54-158.

8 Nothing in this subdivision shall be construed to exempt any  
9 cooperative, mutual association, or other organization from an income tax on  
10 net income that has not been refunded to patrons on a patronage basis and  
11 distributed either in cash, stock, or certificates, or in some other manner that  
12 discloses the amount of each patron's refund. Provided, in arriving at net  
13 income for purposes of this subdivision, no deduction shall be allowed for  
14 dividends paid on capital stock. Patronage refunds made after the close of  
15 the taxable year and on or before the fifteenth day of the ninth month  
16 following the close of the taxable year are considered as to be made on the  
17 last day of the taxable year to the extent the allocations are attributable to  
18 income derived before the close of the year; provided, that no stabilization or  
19 marketing organization that handles agricultural products for sale for  
20 producers on a pool basis is considered to have realized any net income or  
21 profit in the disposition of a pool or any part of a pool until all of the  
22 products in that pool have been sold and the pool has been closed; provided,  
23 further, that a pool is not considered closed until the expiration of at least 90  
24 days after the sale of the last remaining product in that pool. These  
25 cooperatives and other organizations shall file an annual information return  
26 with the Secretary on forms to be furnished by the Secretary and shall  
27 include the names and addresses of all persons, patrons, or shareholders  
28 whose patronage refunds amount to ten dollars (\$10.00) or more.

29 (10) Insurance companies paying the tax on gross premiums as specified in  
30 G.S. 105-228.5.

31 (11) Corporations or organizations, such as condominium associations,  
32 homeowner associations, or cooperative housing corporations not organized  
33 for profit, the membership of which is limited to the owners or occupants of  
34 residential units in the condominium, housing development, or cooperative  
35 housing corporation, and operated exclusively for the management,  
36 operation, preservation, maintenance, or landscaping of the common areas  
37 and facilities owned by the corporation or organization or its members  
38 situated contiguous to the houses, apartments, or other dwellings or for the  
39 management, operation, preservation, maintenance, and repair of the houses,  
40 apartments, or other dwellings owned by the corporation or organization or  
41 its members, but only if no part of the net earnings of the corporation or  
42 organization inures (other than through the performance of related services  
43 for the members of such corporation or organization) to the benefit of any  
44 member of such corporation or organization or other person.

45 (b) Unrelated Business Income. – Except as provided in this subsection, an organization  
46 described in subdivision (a)(1), (3), (4), (5), (6), (7), (8), or (9) of this section and any  
47 organization exempt from federal income tax under the Code is subject to the tax provided in  
48 G.S. 105-130.3 on its unrelated business taxable income, as defined in section 512 of the Code,  
49 adjusted as provided in G.S. 105-130.5. The tax does not apply, however, to net income derived  
50 from any of the following:

51 (1) Research performed by a college, university, or hospital.

- 1           (2)     Research performed for the United States or its instrumentality or for a state  
2                 or its political subdivision.
- 3           (3)     Research performed by an organization operated primarily to carry on  
4                 fundamental research, the results of which are freely available to the general  
5                 public.

6       **(b1) Charitable and Similar Organizations.** – This subsection does not apply to  
7 organizations organized primarily for religious purposes. An organization that is exempt  
8 pursuant to subdivision (a)(3) of this section or pursuant to section 501(c)(3) of the Code  
9 because of its charitable or other purpose must meet the following standard in order to qualify  
10 for exemption under subsection (a) of this section. Of the organization's gross receipts for the  
11 income year, at least sixty-five percent (65%) of the amount that was spent for any purpose  
12 must have been spent for the charitable or other purpose that is the basis for the organization's  
13 exemption. For the purpose of this subsection, an organization's gross receipts include the gross  
14 amount solicited on its behalf by a paid solicitor. For the purpose of this subsection, funds spent  
15 for any purpose include the amount retained by a paid solicitor for solicitation on behalf of the  
16 organization and any other part of gross receipts not held by the organization as of the end of  
17 the income year.

18       (c)     Homeowner Association Income. – An organization described in subdivision (a)(11)  
19 of this section is subject to the tax provided in G.S. 105-130.3 on its gross income other than  
20 membership income less the deductions allowed by this Article that are directly connected with  
21 the production of the gross income other than membership income. The term "membership  
22 income" means the gross income from assessments, fees, charges, or similar amounts received  
23 from members of the organization for expenditure in the preservation, maintenance, and  
24 management of the common areas and facilities of or the residential units in the condominium  
25 or housing development.

26       (d)     Real Estate Mortgage Investment Conduits. – An entity that qualifies as a real estate  
27 mortgage investment conduit, as defined in section 860D of the Code, is exempt from the tax  
28 imposed under this Part, except that any net income derived from a prohibited transaction, as  
29 defined in section 860F of the Code, is taxable to the real estate mortgage investment conduit  
30 under G.S. 105-130.3 and G.S. 105-130.3A, subject to the adjustments provided in  
31 G.S. 105-130.5. This subsection does not exempt the holders of a regular or residual interest in  
32 a real estate mortgage investment conduit as defined in section 860G of the Code from any tax  
33 on the income from that interest."

34       **SECTION 2.** This act is effective for taxable years beginning on or after January 1,  
35 2009.