GENERAL ASSEMBLY OF NORTH CAROLINA
1989 SESSION

CHAPTER 37
HOUSE BILL 5

AN ACT TO MAKE TECHNICAL CHANGES TO THE REVENUE LAWS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 105-130.19 reads as rewritten:

"**§ 105-130.19. Time and place of payment of tax.**

(a) Except as ~~otherwise~~ provided in ~~this section and in Article 4B~~ Article 4C of this Chapter, the full amount of the tax payable as shown on the face of the return shall be paid to the Secretary of Revenue at the office where the return is filed and within the time fixed by law for filing the return.

~~(b) If the amount of the tax exceeds fifty dollars ($50.00), payment may be made in two equal installments: One half on the date the return is filed, and one half on or before the fifteenth day of the sixth month following the month in which the return was originally due to be filed, with interest on the deferred payment at the rate established pursuant to G.S. 105-241.1(i). If the amount of the tax exceeds four hundred dollars ($400.00), payment may be made in four equal installments: One fourth at the time of filing the return, one fourth on or before the fifteenth day of the third month following the month in which the return was originally due to be filed, one fourth on or before the fifteenth day of the sixth month following the month in which the return was originally due to be filed, and one fourth on or before the fifteenth day of the ninth month following the month in which the return was originally due to be filed with interest on deferred payments at the rate established pursuant to G.S. 105-241.1(i).~~

~~(c) In the event any deferred payment is not made when due, then the entire balance of the tax will immediately become due and collectible, and interest upon such outstanding balance shall be added at the rate established pursuant to G.S. 105-241.1(i).~~

(d) The tax may be paid with uncertified check during such time and under such regulations as the Secretary of Revenue shall prescribe; but if a check so received is not paid by the bank on which it is drawn, the taxpayer by whom such check is tendered shall remain liable for the payment of the tax and for all legal penalties the same as if such check had not been tendered."

Sec. 2. G.S. 105-145(d1) reads as rewritten:

"(d1) A gain or loss on a transfer of property incident to divorce from an individual to (or in trust for the benefit of) a spouse or former spouse shall be recognized only to the extent recognized under the ~~Internal Revenue Code of 1954, as amended,~~ Code for federal income tax purposes; however, if there is a difference in basis of such transferred property under State law and the ~~Internal Revenue Code of 1954, as~~

~~amended,~~ Code, the basis used in determining such gain or loss recognized shall be the basis as determined under the provisions of this Division."

Sec. 3. G.S. 105-147(7) reads as rewritten:

"(7) Dividends reported in gross income under this Division from stock issued by any corporation to the extent herein provided. As soon as may be practicable after the close of each calendar year, the Secretary of Revenue shall determine from each corporate income tax return filed with him during such year, and due from the filing corporation during such year, the proportion of the entire net income or loss of the corporation allocable to this State under the provisions of G.S. 105-130.4, except as provided herein; if a corporation has a net taxable income in North Carolina and a net loss from all sources wherever located, or, if a corporation has a net loss in North Carolina and a net income from all sources wherever located, the Secretary shall require the use of the allocation fraction determined under the provisions of G.S. 105-130.4. A taxpayer who is a stockholder in any such corporation and reports the dividends in gross income shall be allowed to deduct from his gross income the same proportion of the dividends received by him from such corporation during his income year ending at or after the end of such calendar year. Provided that notwithstanding any other provision of this subdivision, a taxpayer who is a stockholder in a holding company as defined in G.S. 105-130.7(5) shall determine the deductible portion of dividend received from such holding company as provided therein. No deduction shall be allowed for any part of any dividend received by such taxpayer from any corporation which filed no income tax return with the Secretary of Revenue during such calendar year. Dividends received by a taxpayer from stock in any insurance company of this State taxed under the provisions of G.S. 105-228.5 shall be deductible from the gross income of such taxpayer, and a proportionate part of any dividends received from stock in any foreign insurance corporation shall be deductible, such part to be determined on the basis of the ratio of premiums reported for taxation in this State to total premiums collected both in and out of the State. Dividends received on shares of capital stock owned in a stock-owned savings and loan association taxed under Article 8D of this Chapter shall be deductible. A taxpayer shall be allowed to deduct such proportionate part of dividends received by him from a regulated investment company and real estate investment trust as defined in G.S. 105-130.12 as represents and corresponds to income received by such regulated investment company and real estate investment trust which would not be taxed by this State if received directly by the North Carolina resident. In no case shall the total amount of dividends that are deducted from a taxpayer's gross income as a result of the application of the provisions of this subdivision be in excess of fifteen thousand dollars ($15,000) for the taxable year, except that this limitation shall not apply to dividends received from a corporation for which a valid election to be taxed under Subchapter S of Chapter 1 of the Code is in effect."

Sec. 4. G.S. 105-159.1(b) reads as rewritten:

"(b) For each quarterly period beginning January 1, 1978, and for each quarterly period thereafter, on or before the last day of the month following the close of each quarterly period, the Secretary of Revenue shall remit all funds so designated above collected during the preceding quarter to the State Treasurer who shall thereafter deposit

them in an interest-bearing account to be known as the North Carolina ~~Election Campaign~~ Political Parties Financing Fund. Any interest earned on funds so deposited shall be credited to the political party for which said funds were designated. A report to the State Treasurer, State Board of Elections and each State party chairman shall accompany each such remittance, and shall detail the amount of funds forwarded, the cumulative total of funds forwarded to date for the year, and an estimate of the probable total amount to be collected and forwarded for that calendar year."

Sec. 5. G.S. 105-163.05 is repealed.

Sec. 6. G.S. 105-242(b) reads as rewritten:

"(b) Bank deposits, rents, salaries, wages, and all other choses in action or property incapable of manual levy or delivery, hereinafter called the intangible, belonging, owing, or to become due to any taxpayer subject to any of the provisions of this Subchapter, or which has been transferred by such taxpayer under circumstances which would permit it to be levied upon if it were tangible, shall be subject to attachment or garnishment as herein provided, and the person owing said intangible, matured or unmatured, or having same in his possession or control, hereinafter called the garnishee, shall become liable for all sums due by the taxpayer under this Subchapter to the extent of the amount of the intangible belonging, owing, or to become due to the taxpayer subject to the setoff of any matured or unmatured indebtedness of the taxpayer to the garnishee; provided, however, the garnishee shall not become liable for any sums represented by or held pursuant to any negotiable instrument issued and delivered by the garnishee to the taxpayer and negotiated by the taxpayer to a bona fide holder in due course, and whenever any sums due by the taxpayer and subject to garnishment are so held or represented, the garnishee shall hold such sums for payment to the Secretary of Revenue upon the garnishee's receipt of such negotiable instrument, unless such instrument is presented to the garnishee for payment by a bona fide holder in due course in which event such sums may be paid in accordance with such instrument to such holder in due course. To effect such attachment or garnishment the Secretary of Revenue shall serve or cause to be served upon the taxpayer and the garnishee a notice as hereinafter provided, which notice may be served by any deputy or employee of the Secretary of Revenue or by any officer having authority to serve ~~summonses. Provided, if the taxpayer no longer resides within North Carolina or cannot be located therein the notice may be served upon the taxpayer by registered or certified mail, return receipt requested, and such service shall be conclusively presumed to have been made upon the exhibition of the return receipt.~~ summonses or may be served in any manner provided in Rule 4 of the North Carolina Rules of Civil Procedure. ~~Said notice shall show:~~ The notice shall:

(1) ~~The~~ Show the name of the taxpayer, and if known his Social Security number or federal tax identification number and his address;

(2) ~~The~~ Show the nature and amount of the tax, and the interest and penalties thereon, and the year or years for which the same were levied or assessed, and

(3) ~~Shall be~~ Be accompanied by a copy of this subsection, and thereupon the procedure shall be as follows:

If the garnishee has no defense to offer or no setoff against the taxpayer, he shall within 10 days after service of said notice, answer the same by sending to the Secretary of Revenue by registered or certified mail a statement to that effect, and if the amount due or belonging to the taxpayer is then due or subject to his demand, it shall be remitted to the Secretary with said statement, but if said amount is to mature in the future, the statement shall set forth that fact and the same shall be paid to the Secretary upon maturity, and any payment by the garnishee hereunder shall be a complete extinguishment of any liability therefor on his part to the taxpayer. If the garnishee has any defense or setoff, he shall state the same in writing under oath, and, within 10 days after service of said notice, shall send two copies of said statement to the Secretary by registered or certified mail; if the Secretary admits such defense or setoff, he shall so advise the garnishee in writing within 10 days after receipt of such statement and the attachment or garnishment shall thereupon be discharged to the amount required by such defense or setoff, and any amount attached or garnished hereunder which is not affected by such defense or setoff shall be remitted to the Secretary as above provided in cases where the garnishee has no defense or setoff, and with like effect. If the Secretary shall not admit the defense or setoff, he shall set forth in writing his objections thereto and shall send a copy thereof to the garnishee within 10 days after receipt of the garnishee's statement, or within such further time as may be agreed on by the garnishee, and at the same time he shall file a copy of said notice, a copy of the garnishee's statement, and a copy of his objections thereto in the superior court of the county where the garnishee resides or does business where the issues made shall be tried as in civil actions.

If judgment is entered in favor of the Secretary of Revenue by default or after hearing, the garnishee shall become liable for the taxes, interest and penalties due by the taxpayer to the extent of the amount over and above any defense or setoff of the garnishee belonging, owing, or to become due to the taxpayer, but payments shall not be required from amounts which are to become due to the taxpayer until the maturity thereof, nor shall more than 10 percent of any taxpayer's salary or wages be required to be paid hereunder in any one month. The garnishee may satisfy said judgment upon paying said amount, and if he fails to do so, execution may issue as provided by law. From any judgment or order entered upon such hearing either the Secretary of Revenue or the garnishee may appeal as provided by law. If, before or after judgment, adequate security is filed for the payment of said taxes, interest, penalties, and costs, the attachment or garnishment may be released or execution stayed pending appeal, but the final judgment shall be paid or enforced as above provided. The taxpayer's sole remedies to question his liability for said taxes, interest, and penalties shall be those provided in this Subchapter, as now or hereafter amended or supplemented. If any third person claims any intangible attached or garnished hereunder and his lawful right thereto, or to any part thereof, is shown to the Secretary, he shall discharge the attachment or garnishment to the extent necessary to protect such right, and if such right is asserted after the filing of said copies as aforesaid, it may be established by interpleader as now or hereafter provided by law in cases of attachment and garnishment. In case such third party has no notice of proceedings hereunder, he shall

have the right to file his petition under oath with the Secretary at any time within 12 months after said intangible is paid to him and if the Secretary finds that such party is lawfully entitled thereto or to any part thereof, he shall pay the same to such party as provided for refunds by G.S. 105-267.1, and if such payment is denied, said party may appeal from the determination of the Secretary under the provisions of G.S. 105-241.4; provided, that in taking an appeal to the superior court, said party may appeal either to the Superior Court of Wake County or to the superior court of the county wherein he resides or does business. The intangibles of a taxpayer shall be paid or collected hereunder only to the extent necessary to satisfy said taxes, interest, penalties, and costs. Except as hereinafter set forth, the remedy provided in this section shall not be resorted to unless a warrant for collection or execution against the taxpayer has been returned unsatisfied: Provided, however, if the Secretary is of opinion that the only effective remedy is that herein provided, it shall not be necessary that a warrant for collection or execution shall be first returned unsatisfied, and in no case shall it be a defense to the remedy herein provided that a warrant for collection or execution has not been first returned unsatisfied.

This subsection shall be applicable with respect to the wages, salary or other compensation of officials and employees of this State and its agencies and instrumentalities, officials and employees of political subdivisions of this State and their agencies and instrumentalities, and also officials and employees of the United States and its agencies and instrumentalities insofar as the same is permitted by the Constitution and laws of the United States. In the case of State or federal employees, the notice shall be served upon such employee and upon the head or chief fiscal officer of the department, agency, instrumentality or institution by which the taxpayer is employed. In case the taxpayer is an employee of a political subdivision of the State, the notice shall be served upon such employee and upon the chief fiscal officer, or any officer or person charged with making up the payrolls, or disbursing funds, of the political subdivision by which the taxpayer is employed. Such head or chief officer or fiscal officer or other person as specified above shall thereafter, subject to the limitations herein provided, make deductions from the salary or wages due or to become due the taxpayer and remit same to the Secretary until the tax, penalty, interest and costs allowed by law are fully paid. Such deductions and remittances shall, pro tanto, constitute a satisfaction of the salary or wages due the taxpayer."

Sec. 7. G.S. 105-375(c) reads as rewritten:

"(c) Notice Listing Taxpayer and Others.

The tax collector filing the certificate provided for in subsection (b), above, shall, at least 30 days prior to docketing the judgment, send a registered or certified letter, return receipt requested, to the listing taxpayer at his last known address, and to all lienholders of record who have filed with the office of the tax collector of the taxing unit or units in which the real property subject to his lien is located a request that he be notified of the docketing of a judgment under the procedure set forth in this section, stating that the judgment will be docketed and that execution will be issued thereon in the manner provided by law. A notice stating that the judgment will be docketed and that execution will be issued thereon shall also be mailed by certified or registered mail, return receipt

requested, to the current owner of the property (if different from the listing owner) if: (i) a deed or other instrument transferring title to and containing the name of the current owner was recorded in the office of the register of deeds or filed or docketed in the office of the clerk of superior court after January 1 of the first year in which the property was listed in the name of the listing owner, and (ii) the tax collector can obtain the current owner's mailing address through the exercise of due diligence. The request from the lienholder shall be made on a form supplied by the tax collector and shall describe the real property, indicate whose name it is listed in for taxation, and state the name and mailing address of the lienholder. If within 10 days following the mailing of said letters of notice, a return receipt has not been received by the tax collector indicating receipt of the letter, then the tax collector shall have a notice published in a newspaper of general circulation in said county once a week for two consecutive weeks directed to, and naming, all unnotified lienholders and the listing taxpayer that a judgment will be docketed against the listing taxpayer. The notice shall contain the proposed date of such docketing, that execution will issue thereon as provided by law, a brief description of the real property affected, and notice that the lien may be paid off prior to judgment being entered. All costs of mailing and publication, plus a charge of fifty dollars ($50.00) to defray administrative costs, shall be ~~added to those set forth in subsection (b).~~ added to the amount of taxes that are a lien on the real property and shall be paid by the taxpayer to the taxing unit at the time the taxes are collected or the property is sold."

Sec. 8. G.S. 106-277.28(2) reads as rewritten:

"(2) Each seed dealer selling, distributing, offering, or exposing for sale in, or exporting from, this State any agricultural, vegetable, or lawn or turf seeds for seeding purposes shall register with the Commissioner and shall obtain an annual license, for each location where activities are conducted, by January 1 of each year and shall pay for such license as follows:

a. Wholesale or combined wholesale and retail seed dealer $100.00
b. Retail seed dealer with sales of ~~less~~ no more than $500.00 ..... 5.00
c. Retail seed dealer with sales of more than $500.00 but ~~less~~ no more than $1,000..... 15.00
d. Retail seed dealer with sales of more than $1,000 ..... 25.00."

Sec. 9. This act does not affect the rights or liabilities of the State, a taxpayer, or other person arising under the statute repealed by this act before its repeal; nor does it affect the right to any refund or credit of a tax that would otherwise have been available under the repealed statute before its repeal.

Sec. 10. Sections 1 and 3 of this act are effective for taxable years beginning on or after January 1, 1989. Section 5 of this act is effective for taxable years beginning on or after January 1, 1990. The remainder of this act is effective upon ratification.

In the General Assembly read three times and ratified this the 30th day of March, 1989.