

GENERAL ASSEMBLY OF NORTH CAROLINA
1989 SESSION

CHAPTER 36
HOUSE BILL 4

AN ACT TO UPDATE THE REFERENCE TO THE INTERNAL REVENUE CODE
USED TO DETERMINE CERTAIN TAXABLE INCOME AND TAX
EXEMPTIONS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 105-2.1 reads as rewritten:

"§ 105-2.1. Internal Revenue Code definition.

As used in this Article, the term 'Code' means the Internal Revenue Code as enacted as of ~~January 1, 1988,~~ January 1, 1989, and includes any provisions enacted as of that date which become effective either before or after that date."

Sec. 2. G.S. 105-114 reads as rewritten:

"§ 105-114. Nature of taxes; definitions.

The taxes levied in this Article upon persons and partnerships are for the privilege of engaging in business or doing the act named. The taxes levied in this Article upon corporations are privilege or excise taxes levied upon:

- (1) Corporations organized under the laws of this State for the existence of the corporate rights and privileges granted by their charters, and the enjoyment, under the protection of the laws of this State, of the powers, rights, privileges and immunities derived from the State by the form of such existence; and
- (2) Corporations not organized under the laws of this State for doing business in this State and for the benefit and protection which such corporations receive from the government and laws of this State in doing business in this State.

As used in this Article, the term 'Code' means the Internal Revenue Code as enacted as of ~~January 1, 1988,~~ January 1, 1989, and includes any provisions enacted as of that date which become effective either before or after that date.

The term 'corporation' as used in this Article shall, unless the context clearly requires another interpretation, mean and include not only corporations but also associations or joint-stock companies and every other form of organization for pecuniary gain, having capital stock represented by shares, whether with or without par value, and having privileges not possessed by individuals or partnerships; and whether organized under, or without, statutory authority. The term 'corporation' as used in this Article shall also mean and include any electric membership corporation organized under Chapter 117, and any electric membership corporation, whether or not organized under the laws of this State, doing business within the State.

When the term 'doing business' is used in this Article, it shall mean and include each and every act, power or privilege exercised or enjoyed in this State, as an incident to, or by virtue of the powers and privileges acquired by the nature of such organizations whether the form of existence be corporate, associate, joint-stock company or common-law trust.

If the corporation is organized under the laws of this State, the payment of the taxes levied by this Article shall be a condition precedent to the right to continue in such form of organization; and if the corporation is not organized under the laws of this State, payment of said taxes shall be a condition precedent to the right to continue to engage in doing business in this State. The taxes levied in this Article or schedule shall be for the fiscal year of the State in which said taxes become due; except, that the taxes levied in G.S. 105-122 and G.S. 105-123 shall be for the income year of the corporation in which such taxes become due. For purposes of this Article, the words 'income year' shall mean an income year as defined in G.S. 105-130.2(5)."

Sec. 3. G.S. 105-130.2(1) reads as rewritten:

"(1) 'Code' means the Internal Revenue Code as enacted as of ~~January 1, 1988,~~ January 1, 1989, and includes any provisions enacted as of that date which become effective either before or after that date."

Sec. 4. G.S. 105-135(15) reads as rewritten:

"(15) The word 'Code' means the Internal Revenue Code as enacted as of ~~January 1, 1988,~~ January 1, 1989, and includes any provisions enacted as of that date which become effective either before or after that date."

Sec. 5. G.S. 105-163.1(11) reads as rewritten:

"(11) 'Code' means the Internal Revenue Code as enacted as of ~~January 1, 1988,~~ January 1, 1989, and includes any provisions enacted as of that date which become effective either before or after that date."

Sec. 6. G.S. 105-212 reads as rewritten:

"§ 105-212. Institution exempted; conditional and other exemptions.

None of the taxes levied in this Article or schedule shall apply to religious, educational, charitable or benevolent organizations not conducted for profit, nor to trusts established for religious, educational, charitable or benevolent purposes where none of the property or the income from the property owned by such trust may inure to the benefit of any individual or any organization conducted for profit, nor to any funds, evidences of debt, or securities held irrevocably in a charitable remainder trust meeting the requirements of section 664 of the Code or in a pooled income fund meeting the requirements of section 642(c)(5) of the Code, nor to any funds held irrevocably in trust exclusively for the maintenance and care of places of burial; nor to any funds, evidences of debt, or securities held irrevocably in pension, profit-sharing, stock bonus, or annuity trusts, or combinations thereof, established by employers for the purpose of distributing both the principal and income thereof exclusively to eligible employees, or the beneficiaries of such employees, if such trusts qualify for exemption from income tax under the provisions of G.S. 105-161(f)(1)a; nor to any funds, evidences of debt or securities held irrevocably in a pension, profit-sharing, stock bonus or annuity plan established by an employer for the benefit of his employees or for himself and his

employees if such plan qualifies for exemption from income tax under the provisions of G.S. 105-141(b)(19); nor to any funds, evidences of debt, or securities held in an individual retirement account described in section 408(a) of the Code, or an individual retirement annuity described in section 408(b) of the Code, if such individual retirement account or individual retirement annuity is exempt from income tax under the provisions of G.S. 105-161(f)(1)c or G.S. 105-141(b)(19). Insurance companies reporting premiums to the Commissioner of Insurance of this State and paying a tax thereon under the provisions of Article ~~8B-8B~~, Schedule I-B shall not be subject to the provisions of G.S. 105-201, 105-202 and 105-203, building and loan associations and savings and loan associations paying a tax under the provisions of Article 8D of Chapter 105 of the General Statutes shall not be subject to the provisions of G.S. 105-201, 105-202 and 105-203; State credit unions organized pursuant to the provisions of Subchapter III, Chapter 54, paying the supervisory fees required by law, shall not be subject to any of the taxes levied in this Article or schedule; banks, banking associations and trust companies shall not be subject to the tax levied in this Article or schedule on evidences of debt held by them when said evidences of debt represent investment of funds on deposit with such banks, banking associations and trust companies: Provided, that each such institution must, upon request by the Secretary of Revenue, establish in writing its claim for exemption as herein provided. The exemption in this section shall apply only to those institutions, and only to the extent, specifically mentioned, and no other.

Any corporation or trust doing business in North Carolina which in the opinion of the Secretary of Revenue of North Carolina qualifies as a 'regulated investment company' under section 851 of the Code or as a 'real estate investment trust' under the provisions of section 856 of the Code and which files with the North Carolina Department of Revenue its election to be treated as a 'regulated investment company' or 'real estate investment trust,' shall not be subject to any of the taxes levied in this Article or schedule.

If any intangible personal property held or controlled by a fiduciary domiciled in this State is so held or controlled for the benefit of a nonresident or nonresidents, or for the benefit of any organization exempt under this section for the tax imposed by this Article, such intangible personal property shall be partially or wholly exempt from taxation and under the provisions of this Article in the ratio which the net income distributed or distributable to such nonresident, nonresidents or organization, derived from such intangible personal property during the calendar year for which the taxes levied by this Article are imposed, bears to the entire net income derived from such intangible personal property during such calendar year. 'Net income' shall be deemed to have the same meaning that it has in the income tax article. Where the intangible personal property for which this exemption is claimed is held or controlled with other property as a unit, allocation of appropriate deductions from gross income shall be made to that part of the entire gross income which is derived from the intangible personal property by direct method to the extent practicable; and otherwise by such other method as the Secretary of Revenue shall find to be reasonable: Provided, that each fiduciary claiming the exemption provided in this paragraph shall, upon the request of the Secretary of Revenue, establish in writing its claim to such exemption. No provisions

of law shall be construed as exempting trust funds or trust property from the taxes levied by this Article except in the specific cases covered by this section.

As used in this section, the term 'Code' means the Internal Revenue Code as enacted as of ~~January 1, 1988~~, January 1, 1989, and includes any provisions enacted as of that date which become effective either before or after that date."

Sec. 7. This act is effective upon ratification.

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