

GENERAL ASSEMBLY OF NORTH CAROLINA
1989 SESSION

CHAPTER 704
HOUSE BILL 945

AN ACT TO EXEMPT VENTURE CAPITAL COMPANIES FROM INTANGIBLES
TAX.

The General Assembly of North Carolina enacts:

Section 1. G.S. 105-212 reads as rewritten:

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

(a) 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 105-141(b)(19).

(b) 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~~ subsection shall apply only to those institutions, and only to the extent, specifically mentioned, and no other.

(c) 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.

(d) The taxes levied in this Article do not apply to evidences of debt or equity securities held by a venture capital firm. For the purpose of this subsection, the term 'venture capital firm' means a person, corporation, partnership, limited partnership, or other entity that:

- (1) Does not own the securities of any business for the purpose of operating the business or for any purpose other than as an investment for future sale;
- (2) Is not organized to invest in only one business or one group of businesses that conduct the same or a similar type of business activity;
- (3) Is organized for the principal purpose of investing in, and does in fact have more than fifty percent (50%) of all its investments in the equity securities or subordinated debt of companies that, at the time of the investment:
 - a. Had no more than 100 owners of their securities, excluding officers, directors, partners, and employees;
 - b. Were not financial institutions; and,
 - c. Did not derive their income or value primarily from real estate; and
- (4) Has the remainder of its investments in shares of stock or other investments on which either no tax is imposed or is payable under this Article.

A venture capital firm may rely on the written representations of a company as to the number of owners of its securities. The definitions as found in G.S. 105-163.010 apply to this subsection.

(e) 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~~ subsection.

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

Sec. 2. This act is effective for taxable years beginning on or after January 1, 1989.

In the General Assembly read three times and ratified this the 31st day of July, 1989.