

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2003

S

1

SENATE BILL 97*

Short Title: Revenue Laws Technical Changes. (Public)

Sponsors: Senators Hartsell; Clodfelter, Dalton, Hoyle, and Kerr.

Referred to: Finance.

February 19, 2003

1 A BILL TO BE ENTITLED
2 AN ACT TO MAKE TECHNICAL AND CLARIFYING CHANGES TO THE
3 REVENUE LAWS AND RELATED STATUTES.

4 The General Assembly of North Carolina enacts:

5 SECTION 1. Section 10 of S.L. 2002-87 reads as rewritten:

6 "SECTION 10. Section 9 of this act is effective on and after January 1, 2002, and
7 applies to the estates of decedents dying on or after that ~~date~~date, except that if the
8 amendments made by Section 9 would create an increase in tax for a decedent dying
9 before August 22, 2002, then the tax may be calculated under the prior law. The
10 remainder of this act is effective when it becomes law. Section 2 of this act applies to
11 credits for buildings ~~that are awarded a federal credit allocation before January 1, 2003,~~
12 ~~and~~ for which a federal tax credit is first claimed for a taxable year beginning on or after
13 January 1, 2002."

14 SECTION 2. S.L. 2002-172 is reenacted.

15 SECTION 3. G.S. 105-129.40 reads as rewritten:

16 "**§ 105-129.40. (See Editor's note for repeal) Definitions applicable to Article. Scope**
17 **and definitions.**

18 (a) Scope. – G.S. 105-129.41 applies to buildings that are awarded a federal
19 credit allocation before January 1, 2003. G.S. 105-129.42 applies to buildings that are
20 awarded a federal credit allocation on or after January 1, 2003.

21 (b) Definitions. – The definitions in section 42 of the Code and the following
22 definitions apply in this Article:

23 (1) Housing Finance Agency. – The North Carolina Housing Finance
24 Agency established in G.S. 122A-4.

25 (2) ~~Pass-Through Entity.~~ Pass-through entity. – Defined in G.S.
26 ~~105-129.35, 105-228.90."~~

27 SECTION 4.(a) G.S. 105-163.010(7) reads as rewritten:

28 "(7) Pass-through entity. – Defined in G.S. 105-228.90. ~~An entity or~~
29 ~~business, including a limited partnership, a general partnership, a joint~~

1 venture, a Subchapter S Corporation, or a limited liability company, all
2 of which is treated as owned by individuals or other entities under the
3 federal tax laws, in which the owners report their share of the income,
4 losses, and credits from the entity or business on their income tax
5 returns filed with this State. For the purpose of this Part, an owner of a
6 pass-through entity is an individual or entity who is treated as an
7 owner under the federal tax laws."

8 **SECTION 4.(b)** G.S. 105-163.1(9) reads as rewritten:

9 "(9) Pass-through entity. – Defined in ~~G.S. 105-163.010~~, G.S. 105-228.90."

10 **SECTION 4.(c)** G.S. 105-129.35(c) reads as rewritten:

11 "(c) Definitions. – The following definitions apply in this section:

12 (1) Certified historic structure. – Defined in section 47 of the Code.

13 (2) Pass-through entity. – Defined in G.S. 105-228.90. An entity or
14 business, including a limited partnership, a general partnership, a joint
15 venture, a Subchapter S Corporation, or a limited liability company, all
16 of which is treated as owned by individuals or other entities under the
17 federal tax laws, in which the owners report their share of the income,
18 losses, and credits from the entity or business on their income tax
19 returns filed with this State. For the purpose of this section, an owner
20 of a pass-through entity is an individual or entity who is treated as an
21 owner under the federal tax laws.

22 (3) Qualified rehabilitation expenditures. – Defined in section 47 of the
23 Code."

24 **SECTION 4.(d)** G.S. 105-228.90(b) is amended by adding a new
25 subdivision to read:

26 "(b) Definitions. – The following definitions apply in this Article:

27 ...

28 (4d) Pass-through entity. – An entity or business, including a limited
29 partnership, a general partnership, a joint venture, a Subchapter S
30 Corporation, or a limited liability company, all of which is treated as
31 owned by individuals or other entities under the federal tax laws, in
32 which the owners report their share of the income, losses, and credits
33 from the entity or business on their income tax returns filed with this
34 State. For the purpose of this section, an owner of a pass-through
35 entity is an individual or entity who is treated as an owner under the
36 federal tax laws."

37 **SECTION 5.(a)** G.S. 105-130.4(a)(1) reads as rewritten:

38 "(1) ~~'Business—'~~'Apportionable income' means all income that is
39 apportionable under the United States Constitution."

40 **SECTION 5.(b)** G.S. 105-130.4(a)(5) reads as rewritten:

41 "(5) ~~'Nonbusiness—'~~'Nonapportionable income' means all income other than
42 business-apportionable income."

43 **SECTION 5.(c)** G.S. 105-130.4(c) reads as rewritten:

1 "(c) Rents and royalties from real or tangible personal property, gains and losses,
2 interest, dividends less the portion deductible under G.S. 105-130.7, patent and
3 copyright royalties and other kinds of income, to the extent that they constitute
4 ~~nonbusiness-nonapportionable~~ income, less related expenses shall be allocated as
5 provided in subsections (d) through (h) of this section."

6 **SECTION 5.(d)** G.S. 105-130.4(i) reads as rewritten:

7 "(i) All ~~business-apportionable~~ income of corporations other than public utilities
8 and excluded corporations shall be apportioned to this State by multiplying the income
9 by a fraction, the numerator of which is the property factor plus the payroll factor plus
10 twice the sales factor, and the denominator of which is four. Provided, that where the
11 sales factor does not exist, the denominator of the fraction shall be the number of
12 existing factors and where the sales factor exists but the payroll factor or the property
13 factor does not exist, the denominator of the fraction shall be the number of existing
14 factors plus one."

15 **SECTION 5.(e)** G.S. 105-130.4(j)(2) reads as rewritten:

16 "(2) Property owned by the corporation is valued at its original cost.
17 Property rented by the corporation is valued at eight times the net
18 annual rental rate. Net annual rental rate is the annual rental rate paid
19 by the corporation less any annual rental rate received by the
20 corporation from subrentals except that subrentals shall not be
21 deducted when they constitute ~~business-apportionable~~ income. Any
22 property under construction and any property the income from which
23 constitutes ~~nonbusiness-nonapportionable~~ income shall be excluded in
24 the computation of the property factor."

25 **SECTION 5.(f)** G.S. 105-130.4(k)(1) reads as rewritten:

26 "(k) (1) The payroll factor is a fraction, the numerator of which is the total
27 amount paid in this State during the income year by the corporation as
28 compensation, and the denominator of which is the total compensation
29 paid everywhere during the income year. All compensation paid to
30 general executive officers and all compensation paid in connection
31 with ~~nonbusiness-nonapportionable~~ income shall be excluded in
32 computing the payroll factor. General executive officers shall include
33 the chairman of the board, president, vice-presidents, secretary,
34 treasurer, comptroller, and any other officers serving in similar
35 capacities."

36 **SECTION 5.(g)** G.S. 105-130.4(l)(1) reads as rewritten:

37 "(l) (1) The sales factor is a fraction, the numerator of which is the total sales
38 of the corporation in this State during the income year, and the
39 denominator of which is the total sales of the corporation everywhere
40 during the income year. Notwithstanding any other provision under
41 this Part, the receipts from any casual sale of property shall be
42 excluded from both the numerator and the denominator of the sales
43 factor. Where a corporation is not taxable in another state on its
44 ~~business-apportionable~~ income but is taxable in another state only

1 because of ~~nonbusiness~~ nonapportionable income, all sales shall be
2 treated as having been made in this State."

3 **SECTION 5.(h)** G.S. 105-130.4(m) through (s) read as rewritten:

4 "(m) All ~~business~~ apportionable income of a railroad company shall be apportioned
5 to this State by multiplying the income by a fraction, the numerator of which is the
6 "railway operating revenue" from business done within this State and the denominator
7 of which is the "total railway operating revenue" from all business done by the company
8 as shown by its records kept in accordance with the standard classification of accounts
9 prescribed by the Interstate Commerce Commission.

10 "Railway operating revenue" from business done within this State shall mean
11 "railway operating revenue" from business wholly within this State, plus the equal
12 mileage proportion within this State of each item of "railway operating revenue"
13 received from the interstate business of the company. "Equal mileage proportion" shall
14 mean the proportion which the distance of movement of property and passengers over
15 lines in this State bears to the total distance of movement of property and passengers
16 over lines of the company receiving such revenue. "Interstate business" shall mean
17 "railway operating revenue" from the interstate transportation of persons or property
18 into, out of, or through this State. If the Secretary of Revenue ~~shall find,~~ finds, with
19 respect to any particular company, that its accounting records are not kept so as to
20 reflect with exact accuracy such division of revenue by State lines as to each transaction
21 involving interstate revenue, the Secretary of Revenue may adopt such regulations,
22 based upon averages, as will approximate with reasonable accuracy the proportion of
23 interstate revenue actually earned upon lines in this State. Provided, that where a
24 railroad is being operated by a partnership which is treated as a corporation for income
25 tax purposes and pays a net income tax to this State, or if located in another state would
26 be so treated and so pay as if located in this State, each partner's share of the net profits
27 shall be considered as dividends paid by a corporation for purposes of this Part and shall
28 be so treated for inclusion in gross income, deductibility, and separate allocation of
29 dividend income.

30 (n) All ~~business~~ apportionable income of a telephone company shall be
31 apportioned to this State by multiplying the income by a fraction, the numerator of
32 which is gross operating revenue from local service in this State plus gross operating
33 revenue from toll services performed wholly within this State plus the proportion of
34 revenue from interstate toll services attributable to this State as shown by the records of
35 the company plus the gross operating revenue in North Carolina from other service less
36 the uncollectible revenue in this State, and the denominator of which is the total gross
37 operating revenue from all business done by the company everywhere less total
38 uncollectible revenue. Provided, that where a telephone company is required to keep its
39 records in accordance with the standard classification of accounts prescribed by the
40 Federal Communications Commission the amounts in such accounts shall be used in
41 computing the apportionment fraction as provided in this subsection.

42 (o) All ~~business~~ apportionable income of a motor carrier of property shall be
43 apportioned by multiplying the income by a fraction, the numerator of which is the
44 number of vehicle miles in this State and the denominator of which is the total number

1 of vehicle miles of the company everywhere. The words "vehicle miles" shall mean
2 miles traveled by vehicles owned or operated by the company hauling property for a
3 charge or traveling on a scheduled route.

4 (p) All ~~business-apportionable~~ income of a motor carrier of passengers shall be
5 apportioned by multiplying the income by a fraction, the numerator of which is the
6 number of vehicle miles in this State and the denominator of which is the total number
7 of vehicle miles of the company everywhere. The words "vehicle miles" shall mean
8 miles traveled by vehicles owned or operated by the company carrying passengers for a
9 fare or traveling on a scheduled route.

10 (q) All ~~business-apportionable~~ income of a telegraph company shall be
11 apportioned by multiplying the income by a fraction, the numerator of which is the
12 property factor plus the payroll factor plus the sales factor and the denominator of which
13 is three.

14 The property factor shall be as defined in subsection (j) of this section, the payroll
15 factor shall be as defined in subsection (k) of this section, and the sales factor shall be as
16 defined in subsection (l) of this section.

17 (r) All ~~business-apportionable~~ income of an excluded corporation and of all other
18 public utilities shall be apportioned by multiplying the income by the sales factor as
19 determined under subsection (l) of this section.

20 (s) All ~~business-apportionable~~ income of an air or water transportation
21 corporation shall be apportioned by a fraction, the numerator of which is the
22 corporation's revenue ton miles in this State and the denominator of which is the
23 corporation's revenue ton miles everywhere. The term "revenue ton mile" means one ton
24 of passengers, freight, mail, or other cargo carried one mile. In making this
25 computation, a passenger is considered to weigh two hundred pounds."

26 **SECTION 5.(i)** G.S. 105-130.8(a)(5) reads as rewritten:

27 "(5) For purposes of this section, any income item deductible in
28 determining State net income under the provisions of G.S. 105-130.5
29 and any ~~nonbusiness-nonapportionable~~ income not allocable to this
30 State under the provisions of G.S. 105-130.4 shall be considered as
31 income not taxable under this Part. The amount of the income item
32 considered income not taxable under this Part is determined after
33 subtracting related expenses for which a deduction was allowed under
34 this Part."

35 **SECTION 5.(j)** G.S. 105-122(c)(1) reads as rewritten:

36 "(c) (1) After ascertaining and determining the amount of its capital stock,
37 surplus and undivided profits, as provided herein, every corporation
38 permitted to allocate and apportion its net income for income tax
39 purposes under the provisions of Article 4 of this Chapter shall
40 apportion ~~said-its~~ capital stock, surplus and undivided profits to this
41 State through use of the fraction computed for apportionment of its
42 ~~business-apportionable~~ income under ~~said-that~~ Article. A corporation
43 that is subject to franchise tax under this Article but is not subject to
44 income tax under Article 4 of this Chapter must apportion its capital

1 stock, surplus, and undivided profits to this State by using the
2 apportionment formula that would apply to the corporation if it were
3 subject to Article 4.

4 ~~Provided, that although~~ Notwithstanding the foregoing, if a
5 corporation is authorized by the Tax Review Board to apportion its
6 ~~business-apportionable~~ income by use of an alternative formula or
7 method, the corporation may not use ~~such this~~ alternative formula or
8 method for apportioning its capital stock, surplus and undivided profits
9 unless specifically authorized to do so by order of the Tax Review
10 Board.

11 ~~Provided, further, that a~~ A corporation ~~which that~~ is required to pay
12 an income tax to this State on its entire net income shall apportion its
13 entire capital stock, surplus and undivided profits to this State."

14 **SECTION 6.** G.S. 105-129.42(a)(3) reads as rewritten:

15 "(a) Definitions. – The following definitions apply in this section:

16 ...

17 (3) Qualified residential unit. ~~Residential Unit.~~ – A housing unit that
18 meets the requirements of section 42 of the Code."

19 **SECTION 7.** G.S. 105-129.42(g) reads as rewritten:

20 "(g) Return and Payment. – A taxpayer may claim the credit allowed by this
21 section on a return filed for the taxable year in which the taxpayer receives a carryover
22 allocation of a federal low-income housing credit. The return must state the name and
23 location of the qualified low-income housing development for which the credit is
24 claimed.

25 If a taxpayer chooses the loan method for receiving the credit allowed under this
26 section, the Secretary must transfer to the Housing Finance Agency the amount of credit
27 allowed the taxpayer. The Agency must loan the taxpayer the amount of the credit on
28 terms consistent with the Qualified Allocation Plan. The Housing Finance Agency is not
29 required to make a loan to a qualified North Carolina low-income housing development
30 until the Secretary transfers the credit amount to the Agency.

31 If the taxpayer chooses the direct tax refund method for receiving the credit allowed
32 under this section, the Secretary must transfer to the Housing Finance Agency the
33 refundable excess of the credit allowed the taxpayer. The Agency holds the refund due
34 the taxpayer in escrow, with no interest accruing to the taxpayer during the escrow
35 period. The Agency must release the refund to the taxpayer upon the occurrence of the
36 earlier of the following:

- 37 (1) The Agency determines that the taxpayer has complied with the
38 Qualified Allocation Plan and has completed at least fifty percent
39 (50%) of the activities included in the development's eligible basis.
40 (2) Within 30 days after the date the development is placed in ~~service~~
41 dateservice."

42 **SECTION 8.** G.S. 105-129.42(i) reads as rewritten:

43 "(i) Liability From Forfeiture. – A taxpayer that forfeits all or part of the credit
44 allowed under this section is liable for all past taxes avoided and any refund claimed as

1 a result of the credit plus interest at the rate established under G.S. 105-241.1(i). The
2 interest ~~rate~~ is computed from the date the Secretary transferred the credit amount to the
3 Housing Finance Agency. The past taxes, refund, and interest are due 30 days after the
4 date the credit is forfeited. A taxpayer that fails to pay the taxes, refund, and interest by
5 the due date is subject to the penalties provided in G.S. 105-236."

6 **SECTION 9.** G.S. 105-299 reads as rewritten:

7 "**§ 105-299. (Effective for taxes imposed for taxable years beginning on or after**
8 **July 1, 2003) Employment of experts.**

9 The board of county commissioners may employ appraisal firms, mapping firms or
10 other persons or firms having expertise in one or more of the duties of the assessor to
11 assist the assessor in the performance of these duties. The county may also assign to
12 county agencies, or contract with State or federal agencies, ~~for agencies for~~, any duties
13 involved with the approval or auditing of use-value accounts. The county may make
14 available to these persons any information it has that will facilitate the performance of a
15 contract entered into pursuant to this section. Persons receiving this information are
16 subject to the provisions of G.S. 105-289(e) and G.S. 105-259 regarding the use and
17 disclosure of information provided to them by the county. Any person employed by an
18 appraisal firm whose duties include the appraisal of property for the county must be
19 required to demonstrate that he or she is qualified to carry out these duties by achieving
20 a passing grade on a comprehensive examination in the appraisal of property
21 administered by the Department of Revenue. In the employment of these firms, primary
22 consideration must be given to the firms registered with the Department of Revenue
23 pursuant to G.S. 105-289(i). A copy of the specifications to be submitted to potential
24 bidders and a copy of the proposed contract may be sent by the board to the Department
25 of Revenue for review before the invitation or acceptance of any bids. Contracts for the
26 employment of these firms or persons are contracts for personal services and are not
27 subject to the provisions of Article 8, Chapter 143, of the General Statutes."

28 **SECTION 10.** G.S. 105-358(a) reads as rewritten:

29 "(a) Waiver. – A tax collector may, upon making a record of the reasons therefor,
30 reduce or waive the ~~ten percent (10%)~~ penalty imposed on giving a worthless check
31 under G.S. 105-357(b)(2)."

32 **SECTION 11.** G.S. 20-305.2(a)(7) reads as rewritten:

33 "**§ 20-305.2. Unfair methods of competition.**

34 (a) It is unlawful for any motor vehicle manufacturer, factory branch, distributor,
35 distributor branch, or subsidiary thereof, to directly or indirectly through any subsidiary
36 or affiliated entity, own any ownership interest in, operate, or control any motor vehicle
37 dealership in this State, provided that this section shall not be construed to prohibit:

38 ...

39 (7) The ownership, operation, or control of a dealership that sells
40 primarily recreational vehicles as defined in ~~{G.S.}~~ G.S. 20-4.01 by a
41 manufacturer, factory branch, distributor, or distributor branch, or
42 subsidiary thereof, if the manufacturer, factory branch, distributor, or
43 distributor branch, or subsidiary thereof, owned, operated, or
44 controlled the dealership as of October 1, 2001.

1 (b) This section does not apply to manufacturers or distributors of trailers or
2 semitrailers that are not recreational vehicles as defined in G.S. 20-4.01."

3 **SECTION 12.** Subchapter I of Chapter 105 of the General Statutes is
4 amended by adding a new section to read:

5 "**§ 105-1.1. Supremacy of State Constitution.**

6 The State's power of taxation is vested in the General Assembly. Under Article V,
7 Section 2(1), of the North Carolina Constitution, this power cannot be surrendered,
8 suspended, or contracted away. In the exercise of this power, the General Assembly
9 may amend or repeal any provision of this Subchapter in its discretion. No provision of
10 this Subchapter constitutes a contract that the provision will remain in effect in future
11 years, and any representation made to the contrary is of no effect."

12 **SECTION 13.** This act is effective when it becomes law.