

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1991

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HOUSE BILL 1325

Short Title: Unrelated Business Income Tax.

(Public)

Sponsors: Representatives Gamble, Colton, Jarrell, Justus, Kerr, Lilley, Luebke, and Tallent.

Referred to: Finance.

May 27, 1992

A BILL TO BE ENTITLED

AN ACT TO MAKE CONFORMING CHANGES TO THE CORPORATE INCOME TAX ON UNRELATED BUSINESS INCOME OF EXEMPT CORPORATIONS.

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), the following organizations and any organization that is exempt from federal income tax under the Code are exempt from the tax imposed under this Division.

(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;~~ dependents.

(2) ~~Every building~~ Building and loan associations ~~[association]~~, and savings and loan associations subject to tax under Article 8D of this Chapter; ~~and any~~ cooperative banks without capital stock organized and operated for mutual purposes and without ~~profit,~~ profit; and electric and telephone membership corporations organized under Chapter 117 of the General ~~Statutes;~~ Statutes.

- 1 (3) Cemetery corporations and corporations organized for religious,
 2 charitable, scientific, literary, or educational purposes, or for the
 3 prevention of cruelty to children or animals, no part of the net earnings
 4 of which inures to the benefit of any private stockholder or ~~individual;~~
 5 individual.
- 6 (4) Business leagues, chambers of commerce, merchants' associations, or
 7 boards of trade not organized for profit, and no part of the net earnings
 8 of which inures to the benefit of any private stockholder or ~~individual;~~
 9 individual.
- 10 (5) Civic leagues or organizations not organized for profit, but operated
 11 exclusively for the promotion of social ~~welfare;~~ welfare.
- 12 (6) Clubs organized and operated exclusively for pleasure, recreation, and
 13 other nonprofitable purposes, no part of the net earnings of which
 14 inures to the benefit of any private stockholder or ~~member;~~ member.
- 15 (7) Farmers' or other mutual hail, cyclone, or fire insurance companies,
 16 mutual ditch or irrigation companies, mutual or cooperative telephone
 17 companies, or like organizations of a purely local character the income
 18 of which consists solely of assessments, ~~dues~~ dues, and fees collected
 19 from members for the sole purpose of meeting ~~expenses;~~ expenses.
- 20 (8) Farmers', fruit growers', or like organizations organized and operated
 21 as sales agents for the purpose of marketing the products of members
 22 and turning back to them the proceeds of sales, less the necessary
 23 selling expenses, on the basis of the quantity of product furnished by
 24 ~~them;~~ them.
- 25 (9) Mutual associations formed under G.S. 54-111 through 54-128 to
 26 conduct agricultural business on the mutual plan and marketing
 27 associations organized under G.S. 54-129 through 54-158.

28 Nothing in this subdivision shall be construed to exempt any
 29 cooperative, mutual ~~association~~ association, or other organization from
 30 an income tax on net income ~~which~~ that has not been refunded to
 31 patrons on a patronage basis and distributed either in cash, stock, or
 32 certificates, or in some other manner that discloses ~~to each patron~~ the
 33 amount of ~~his patronage~~ each patron's refund. Provided, in arriving at
 34 net income for purposes of this subdivision, no deduction shall be
 35 allowed for dividends paid on capital stock. Patronage refunds made
 36 after the close of the taxable year and on or before the fifteenth day of
 37 the ninth month following the close of ~~such the~~ taxable year ~~shall be~~ are
 38 considered as to be made on the last day of ~~such the~~ taxable year to the
 39 extent the allocations are attributable to income derived before the
 40 close of ~~such the~~ year; provided, that no stabilization or marketing
 41 organization ~~which that~~ handles agricultural products for sale for
 42 producers on a pool basis ~~shall be deemed~~ is considered to have realized
 43 any net income or profit in the disposition of a pool or any part of a
 44 pool until all of the products in that pool ~~shall~~ have been sold and the

1 pool ~~shall have~~ has been closed; provided, further, that a pool ~~shall not~~
 2 ~~be deemed~~ is not considered closed until the expiration of at least 90
 3 days after the sale of the last remaining product in that pool. ~~Such~~
 4 These cooperatives and other organizations shall file an annual
 5 information return with the Secretary of Revenue on forms to be
 6 furnished by the Secretary and shall include ~~therein~~ the names and
 7 addresses of all persons, ~~patrons and/or shareholders,~~ patrons, or
 8 shareholders whose patronage refunds amount to ten dollars (\$10.00)
 9 or ~~more; and more.~~ more.

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

12 (11) Corporations or organizations, such as condominium associations,
 13 homeowner associations, or cooperative housing corporations not
 14 organized for profit, the membership of which is limited to the owners
 15 or occupants of residential units in the condominium, housing
 16 ~~development~~ development, or cooperative housing corporation, and
 17 operated exclusively for the management, operation, preservation,
 18 ~~maintenance~~ maintenance, or landscaping of the common areas and
 19 facilities owned by ~~such~~ the corporation or organization or its members
 20 situated contiguous to ~~such~~ the houses, ~~apartments~~ apartments, or other
 21 dwellings or for the management, operation, preservation, ~~maintenance~~
 22 maintenance, and repair of ~~such~~ the houses, ~~apartments~~ apartments, or
 23 other dwellings owned by the corporation or organization or its
 24 members, but only if no part of the net earnings of ~~such~~ the corporation
 25 or organization inures (other than through the performance of related
 26 services for the members of such corporation or organization) to the
 27 benefit of any member of such corporation or organization or other
 28 person.

29 (b) Unrelated Business Income. – Except as provided in this subsection, an
 30 organization described in subdivision (a)(1), ~~Organizations described in subdivision (1),~~
 31 (3), (4), (5), (6), (7), (8)–(8), or (9) of subsection (a) of this section and any organization
 32 exempt from federal income tax under the Code is subject to the tax provided in G.S.
 33 105-130.3 on its unrelated business taxable income, as defined in section 512 of the
 34 Code, adjusted as provided in G.S. 105-130.5. The tax does not apply, however, to net
 35 income derived from any of the following:

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

37 (2) Research performed for the United States or its instrumentality or for a
 38 state or its political subdivision.

39 (3) Research performed by an organization operated primarily to carry on
 40 fundamental research, the results of which are freely available to the
 41 general public.

42 ~~shall be subject to the tax provided for in G.S. 105-130.3 to the following extent:~~

43 ~~Gross income derived by any organization from any trade or business the conduct of~~
 44 ~~which is not substantially related (aside from the need of the organization for income) to~~

1 the exercise or performance of those functions constituting the basis for its exemption in
2 subsection (a) of this section, less all deductions allowed by this Division directly
3 connected with carrying on such trade or business and less one thousand dollars
4 (\$1,000); provided, this paragraph does not apply to interest, royalties, dividends or
5 rents unless this income is determined to be "unrelated business taxable income" under
6 the Code; provided further, this paragraph shall not apply to any trade or business (i) in
7 which substantially all the work in carrying on such trade or business is performed for
8 the organization without compensation; or (ii) which is the selling of merchandise,
9 substantially all of which is given to it; (iii) which is carried on by an organization
10 described in G.S. 105-130.11(a)(3) primarily for the convenience of its members,
11 students, patients or employees. Provided further, this paragraph shall not apply to net
12 income derived from research (i) performed by a college, university or hospital; or (ii)
13 performed for the United States, its instrumentalities or any state or political subdivision
14 thereof; or (iii) performed by an organization operated primarily for the purpose of
15 carrying on fundamental research, the results of which are freely available to the general
16 public.

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

28 Sec. 2. This act is effective for taxable years beginning on or after January 1,
29 1992.