

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1991

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HOUSE BILL 401

Short Title: Venture Capital Tax Withholding.

(Public)

Sponsors: Representatives Abernethy; and Smith.

Referred to: Finance.

March 28, 1991

A BILL TO BE ENTITLED

1 AN ACT TO PROVIDE THAT VENTURE CAPITAL PARTNERSHIPS ARE NOT
2 REQUIRED TO WITHHOLD TAXES ON DISTRIBUTIONS TO
3 NONRESIDENT PARTNERS.
4

5 The General Assembly of North Carolina enacts:

6 Whereas, venture capital is vital to small and expanding North Carolina
7 companies; and

8 Whereas, venture capital funds tend to invest in the states in which they are
9 located; and

10 Whereas, the present North Carolina tax withholding requirements cause
11 North Carolina venture capital partnerships to be at a disadvantage as compared to
12 venture capital partnerships in other states; and

13 Whereas, present withholding regulations require that North Carolina venture
14 capital partnerships withhold income taxes from the disbursements to non-State
15 residents but not disbursements to partners who live in North Carolina; and

16 Whereas, because there are only a few venture capital partnerships in North
17 Carolina, there will be only a small reduction in revenue if this requirement is repealed;
18 Now, therefore,

19 The General Assembly of North Carolina enacts:

20 Section 1. G.S. 105-154 reads as rewritten:

21 "§ 105-154. **Information at the source.**

1 (a) Every individual, partnership, corporation, joint-stock company or
2 association, or insurance company, being a resident or having a place of business or
3 having one or more employees, agents, or other representatives in this State, in whatever
4 capacity acting, including lessors or mortgagors of real or personal property, fiduciaries,
5 employers, and all officers and employees of the State or of any political subdivision of
6 the State and all officers and employees of the United States or of any political
7 subdivision or agency thereof having the control, receipt, custody, disposal, or payment
8 of interest (other than interest coupons payable to bearer), rent, salaries, wages,
9 dividends, premiums, annuities, compensations, remunerations, emoluments, or other
10 fixed or determinable annual or periodical gains, profits, and incomes paid or payable
11 during any year to any taxpayer, shall make complete return thereof to the Secretary
12 under such regulations and in such form and manner and to such extent as may be
13 prescribed by the Secretary. The filing of any report in compliance with the provisions
14 of this section by a foreign corporation shall not constitute an act in evidence of and
15 shall not be deemed to be evidence that the corporation is doing business in this State.

16 (b) Every partnership doing business in the State required to file a return under
17 the Code shall make a return stating specifically the items of its gross income and the
18 deductions allowed under the Code and the adjustments required by this Division, and
19 shall include in the return the names and addresses of the individuals who would be
20 entitled to share in the net income if distributable, and the amount of the distributive
21 share of each individual, together with the distributive shares of corporation dividends.
22 The return shall be signed by one of the partners under affirmation in the form
23 prescribed in G.S. 105-155 of this Division, and the same penalties prescribed in G.S.
24 105-236 shall apply in the event of a willful misstatement.

25 (c) If a business established in this State is owned by a nonresident individual or
26 by a partnership having one or more nonresident members, the manager of the business
27 shall report the earnings of the business in this State and the distributive share of the
28 income of each nonresident owner or partner, ~~and~~ and, unless the business is owned by a
29 partnership that is a venture capital firm as defined in G.S. 105-212(d), shall pay the tax
30 as levied on individuals under G.S. 105-134.2(a)(3) for each nonresident owner or
31 partner. The business may deduct the payment for each nonresident owner or partner
32 from the owner or partner's distributive share of the profits of the business in this State."

33 Sec. 2. This act is effective for taxable years beginning on or after January 1,
34 1992.