

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1991

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SENATE BILL 113

Short Title: Nonresident Joint Returns.

(Public)

Sponsors: Senators Winner, Kincaid, and Staton.

Referred to: Finance.

February 20, 1991

A BILL TO BE ENTITLED

AN ACT TO ALLOW A NONRESIDENT COUPLE TO FILE A JOINT INCOME
TAX RETURN IF ONLY ONE SPOUSE HAS INCOME FROM NORTH
CAROLINA SOURCES.

The General Assembly of North Carolina enacts:

Section 1. G.S. 105-152 reads as rewritten:

"§ 105-152. Returns.

(a) The following persons shall file with the Secretary an income tax return under affirmation, showing specifically the taxable income and the adjustments required by this Division, and such other facts as the Secretary may require for the purpose of making any computation required by this Division:

(1) Every resident required to file an income tax return for the taxable year under the Code and every nonresident who (i) derived gross income from North Carolina sources during the taxable year attributable to the ownership of any interest in real or tangible personal property in this State or derived from a business, trade, profession, or occupation carried on in this State and (ii) is required to file an income tax return for the taxable year under the Code.

(1a) Every nonresident whose spouse is required to file a return under subdivision (1) and whose federal taxable income is determined on a joint federal return.

(2) Every partnership doing business in this State as provided in G.S. 105-154.

1 (3) Any person whom the Secretary believes to be liable for a tax under
2 this Division, when so notified by the Secretary and requested to file a
3 return.

4 (b) If the taxpayer is unable to make his own return, the return shall be made by a
5 duly authorized agent or by a guardian or other person charged with the care of the
6 person or property of the taxpayer.

7 (c) The return of an individual who was required to file a return for the taxable
8 year while living and who has died before making the return, shall be made in his name
9 and behalf by the administrator or executor of the estate, and the tax shall be levied
10 upon and collected from the estate.

11 (d) When the Secretary has reason to believe that any taxpayer so conducts a
12 trade or business as either directly or indirectly to distort the taxpayer's taxable income
13 or North Carolina taxable income whether by the arbitrary shifting of income, through
14 price fixing, charges for service, or otherwise, whereby the net income is arbitrarily
15 assigned to one or another unit in a group of taxpayers carrying on business under a
16 substantially common control, the Secretary may require such facts as he deems
17 necessary for the proper computation of the taxable income and the North Carolina
18 taxable income, and in determining the same the Secretary shall have regard to the fair
19 profit that would normally arise from the conduct of the trade or business.

20 (e) ~~A joint return may be filed by a husband and wife as provided in G.S. 105-152.1. A~~
21 husband and wife shall make a single return jointly if their federal taxable income is
22 determined on a joint federal return. Except as otherwise provided in this Division, a
23 wife and husband filing jointly are treated as one taxpayer for the purpose of
24 determining the tax imposed by this Division. A husband and wife filing jointly are
25 jointly and severally liable for the tax imposed by this Division reduced by the sum of
26 all credits allowable under this Division including tax payments made by or on behalf of
27 the husband and wife. However, if a spouse has been relieved of liability for federal tax
28 attributable to a substantial understatement by the other spouse pursuant to section 6013
29 of the Code, that spouse is not liable for the corresponding tax imposed by this Division
30 attributable to the same substantial understatement by the other spouse. A wife and
31 husband filing jointly shall be deemed to have expressly agreed that if the amount of the
32 payments made by them with respect to the taxes for which they are liable, including
33 withheld and estimated taxes, exceeds the total of the taxes due, refund of the excess
34 may be made payable to both spouses jointly or, if either is deceased, to the survivor
35 alone.

36 (f) The Secretary may require some or all persons required to file a return under
37 this section to attach to the return a copy of their federal income tax return for the
38 taxable year. The Secretary may require a taxpayer to provide the Department with
39 copies of any other return the taxpayer has filed with the Internal Revenue Service and
40 to verify any information in the return."

41 Sec. 2. G.S. 105-152.1 is repealed.

42 Sec. 3. G.S. 105-134.2(a) reads as rewritten:

1 "(a) A tax is imposed upon the North Carolina taxable income of every individual.
2 The tax shall be levied, collected, and paid annually and shall be computed at the
3 following percentages of the taxpayer's North Carolina taxable income.

4 (1) For married individuals who file a joint return under ~~G.S. 105-152.1~~
5 G.S. 105-152 and for surviving spouses, as defined in section 2(a) of
6 the Code:

7 On the North Carolina taxable income up to twenty-one
8 thousand two hundred fifty dollars (\$21,250), six percent (6%);
9 and

10 On the excess over twenty-one thousand two hundred fifty
11 dollars (\$21,250), seven percent (7%).

12 (2) For heads of households, as defined in section 2(b) of the Code:

13 On the North Carolina taxable income up to seventeen thousand
14 dollars (\$17,000), six percent (6%); and

15 On the excess over seventeen thousand dollars (\$17,000), seven
16 percent (7%).

17 (3) For unmarried individuals other than surviving spouses and heads of
18 households:

19 On the North Carolina taxable income up to twelve thousand
20 seven hundred fifty dollars (\$12,750), six percent (6%); and

21 On the excess over twelve thousand seven hundred fifty dollars
22 (\$12,750), seven percent (7%).

23 (4) For married individuals who do not file a joint return under ~~G.S. 105-~~
24 ~~152.1~~ G.S. 105-152:

25 On the North Carolina taxable income up to ten thousand six
26 hundred twenty-five dollars (\$10,625), six percent (6%); and

27 On the excess over ten thousand six hundred twenty-five dollars
28 (\$10,625), seven percent (7%)."

29 Sec. 4. G.S. 105-151.2(b) reads as rewritten:

30 "(b) In the case of property owned by the entirety, ~~where-if~~ both spouses are required
31 to file North Carolina income tax returns, the credit allowed by this section may be
32 claimed only if the spouses file a joint ~~return under G.S. 105-152.1.~~ return. ~~Where-If~~ only
33 one spouse is required to file a North Carolina income tax return, that spouse may claim
34 the credit allowed by this ~~section.~~ section on a separate return."

35 Sec. 5. G.S. 105-151.7(b) reads as rewritten:

36 "(b) In the case of property owned by the entirety, ~~where-if~~ both spouses are
37 required to file North Carolina income tax returns, the credit allowed by this section
38 may be claimed only if the spouses file a joint ~~return under G.S. 105-152.1.~~ return. ~~Where~~
39 If only one spouse is required to file a North Carolina income tax return, that spouse
40 may claim the credit allowed by this ~~section.~~ section on a separate return."

41 Sec. 6. G.S. 105-151.8(b) reads as rewritten:

42 "(b) In the case of property owned by the entirety, ~~where-if~~ both spouses are required
43 to file North Carolina income tax returns, the credit allowed by this section may be
44 claimed only if the spouses file a joint ~~return under G.S. 105-152.1.~~ return. ~~Where-If~~ only

1 one spouse is required to file a North Carolina income tax return, that spouse may claim
2 the credit allowed by this ~~section~~ section on a separate return."

3 Sec. 7. G.S. 105-151.9(b) reads as rewritten:

4 "(b) In the case of property owned by the entirety, ~~where-if~~ both spouses are required
5 to file North Carolina income tax returns, the credit allowed by this section may be
6 claimed only if the spouses file a joint ~~return under G.S. 105-152.1~~ return. ~~Where-If~~ only
7 one spouse is required to file a North Carolina income tax return, that spouse may claim
8 the credit allowed by this ~~section~~ section on a separate return."

9 Sec. 8. G.S. 105-151.10(b) reads as rewritten:

10 "(b) In the case of property owned by the entirety, ~~where-if~~ both spouses are
11 required to file North Carolina income tax returns, the credit allowed by this section
12 may be claimed only if the spouses file a joint ~~return under G.S. 105-152.1~~ return. ~~Where~~
13 If only one spouse is required to file a North Carolina income tax return, that spouse
14 may claim the credit allowed by this ~~section~~ section on a separate return."

15 Sec. 9. G.S. 105-151.12(d) reads as rewritten:

16 "(d) In the case of property owned by the entirety, ~~where-if~~ both spouses are
17 required to file North Carolina income tax returns, the credit allowed by this section
18 may be claimed only if the spouses file a joint ~~return under G.S. 105-152.1~~ return. ~~Where~~
19 If only one spouse is required to file a North Carolina income tax return, that spouse
20 may claim the credit allowed by this ~~section~~ section on a separate return."

21 Sec. 10. G.S. 105-151.13(c) reads as rewritten:

22 "(c) In the case of conservation tillage equipment owned jointly by a husband and
23 wife, ~~where-if~~ both spouses are required to file North Carolina income tax returns, the
24 credit allowed by this section may be claimed only if the spouses file a joint ~~return under~~
25 ~~G.S. 105-152.1~~ return. ~~Where-If~~ only one spouse is required to file a North Carolina
26 income tax return, that spouse may claim the credit allowed by this ~~section~~ section on a
27 separate return."

28 Sec. 11. G.S. 105-163.16(d) reads as rewritten:

29 "(d) When a husband and wife have ~~elected under G.S. 105-152.1 to file~~
30 filed a joint return and a refund for overpayment of tax is made payable to both spouses
31 as provided in that subsection, the provisions of this section shall apply to the refund."

32 Sec. 12. G.S. 105-259 reads as rewritten:

33 **"§ 105-259. Secrecy required of officials; penalty for violation.**

34 With respect to any one of the following persons: (i) the Secretary of Revenue
35 and all other officers or employees, and former officers and employees, of the
36 Department of Revenue; (ii) local tax officials, as defined in G.S. 105-273, and former
37 local tax officials; (iii) members and former members of the Property Tax Commission;
38 (iv) any other person authorized in this section to receive information concerning any
39 item contained in any report or return, or authorized to inspect any report or return; and
40 (v) the Commissioner of Insurance and all other officers or employees and former
41 officers and employees of the Department of Insurance with respect to State and federal
42 income tax returns filed with the Commissioner of Insurance by domestic insurance
43 companies; and except in accordance with proper judicial order or as otherwise
44 provided by law, it shall be unlawful for any of these persons to divulge or make known

1 in any manner the amount of income, income tax or other taxes of any taxpayer, or
2 information relating thereto or from which the amount of income, income tax or other
3 taxes or any part thereof might be determined, deduced or estimated, whether it is set
4 forth or disclosed in or by means of any report or return required to be filed or furnished
5 under this Subchapter, or in or by means of any audit, assessment, application,
6 correspondence, schedule or other document relating to the taxpayer, notwithstanding
7 the provisions of Chapter 132 of the General Statutes or of any other law or laws
8 relating to public records. It shall likewise be unlawful to reveal whether or not any
9 taxpayer has filed a return, and to abstract, compile or furnish to any person, firm or
10 corporation not otherwise entitled to information relating to the amount of income,
11 income tax or other taxes of a taxpayer, any list of names, addresses, social security
12 numbers or other personal information concerning the taxpayer, whether or not the list
13 discloses a taxpayer's income, income tax or other taxes, or any part thereof, except that
14 ~~when an election is made by a husband and wife under G.S. 105-152.1 to file a joint return, if a~~
15 husband and wife file a joint return, any information given to one spouse concerning the
16 income or income tax of the other spouse reported or reportable on the joint return shall
17 not be a violation of the provisions of this section.

18 Nothing in this section shall be construed to prohibit the publication of statistics, so
19 classified as to prevent the identification of particular reports or returns, and the items
20 thereof; the inspection of these reports or returns by the Governor, Attorney General, or
21 their duly authorized representative; or the inspection by a legal representative of the
22 State of the report or return of any taxpayer who shall bring an action to set aside or
23 review the tax based thereon, or against whom an action or proceeding has been
24 instituted to recover any tax or penalty imposed by this Subchapter; nor shall the
25 provisions of this section prohibit the Department of Revenue furnishing information to
26 other governmental agencies of persons and firms properly licensed under Schedule B,
27 G.S. 105-33 to 105-113. The Department of Revenue may exchange information with
28 the officers of organized associations of taxpayers under Schedule B, G.S. 105-33 to
29 105-113, with respect to parties liable for these taxes and as to parties who have paid
30 these license taxes.

31 When any record of the Department of Revenue has been photographed,
32 photocopied, or microphotocopied pursuant to the authority contained in G.S. 8-45.3,
33 the original of that record may thereafter be destroyed at any time upon the order of the
34 Secretary of Revenue, notwithstanding the provisions of G.S. 121-5, G.S. 132-2, or any
35 other law relating to the preservation of public records. Any record that has not been so
36 photographed, photocopied, or microphotocopied shall be preserved for three years, and
37 thereafter until the Secretary of Revenue orders it destroyed.

38 Any person, officer, agent, clerk, employee, or local tax official or any former
39 officer, employee, or local tax official who violates the provisions of this section shall
40 be guilty of a misdemeanor and fined not less than two hundred dollars (\$200.00) nor
41 more than one thousand dollars (\$1,000) and/or imprisoned, in the discretion of the
42 court; and if the person committing the violation is a public officer or employee, that
43 person shall be dismissed from such office or employment, and may not hold any public
44 office or employment in this State for a period of five years thereafter.

1 Notwithstanding the provisions of this section, the Secretary of Revenue may permit
2 the Commissioner of Internal Revenue of the United States, or the revenue officer of
3 any other state imposing any of the taxes imposed in this Subchapter, or the duly
4 authorized representative of either, to inspect the report or return of any taxpayer; or
5 may furnish that person an abstract of the report or return of any taxpayer; or supply that
6 person with information concerning any item contained in any report or return, or
7 disclosed by the report of any investigation of any report or return of any taxpayer. The
8 permission, however, may be granted or the information furnished to the officer or
9 agent only if the statutes of the United States or of the other state grant substantially
10 similar privilege to the Secretary of Revenue of this State or the Secretary's duly
11 authorized representative. Notwithstanding any other provision of law, the Secretary
12 may also furnish names, addresses, and account and identification numbers of (i)
13 taxpayers who may be entitled to property held in the Escheat Fund to the
14 Department of State Treasurer when that Department requests the information for the
15 purpose of administering Chapter 116B of the General Statutes, and (ii) taxpayers to the
16 Employment Security Commission when that Commission requests the information for
17 the purpose of administering Article 2 of Chapter 96 of the General Statutes. Neither
18 this section nor any other law prevents the exchange of information between the
19 Department of Revenue and the Department of Transportation's Division of Motor
20 Vehicles when the information is needed by either to administer the laws with which
21 they are charged. Notwithstanding any other provision of law, State officers and
22 employees who perform computerized data processing functions pursuant to G.S. 143-
23 341(9) for the Department of Revenue are authorized to receive and process for the
24 Department of Revenue information in reports and returns and are subject to the
25 criminal provisions of this section.

26 Notwithstanding the provisions of this section, the Secretary of Revenue may
27 contract with any person, firm or corporation to receive and address, sort, bag, or deliver
28 to the United States Postal Service any bulk mailing originated by the Department of
29 Revenue, and may deliver the mail to the contractor pursuant to the contract. To ensure
30 performance of the contract, the contractor shall furnish a bond in a form and amount
31 acceptable to the Secretary.

32 Notwithstanding the provisions of this section, the Secretary of Revenue may
33 contract with a financial institution for the receipt of withheld income tax payments
34 under G.S. 105-163.6."

35 Sec. 13. G.S. 105-266 reads as rewritten:

36 **"§ 105-266. Overpayment of taxes to be refunded with interest.**

37 If the Secretary of Revenue discovers from the examination of any return, or
38 otherwise, that any taxpayer has overpaid the correct amount of tax (including penalties,
39 interest and costs if any), that overpayment if the amount of three dollars (\$3.00) or
40 more, shall be refunded to the taxpayer within 60 days after it is ascertained together
41 with interest at the rate established in G.S. 105-241.1(i) for assessments; provided, that
42 interest on the refund shall be computed from a date 90 days after the date the tax was
43 originally paid by the taxpayer; except that there shall be no refund to the taxpayer of
44 any sum set off under the provisions of Chapter 105A, the Set-off Debt Collection Act.

1 If the overpayment is less than three dollars (\$3.00) the overpayment shall be refunded
2 only upon receipt by the Secretary of Revenue of a written demand for the refund from
3 the taxpayer. Provided, however, that no overpayment shall be refunded irrespective of
4 whether upon discovery or receipt of written demand if the discovery is not made or the
5 demand is not received within three years from the date set by the statute for the filing
6 of the return or within six months of the payment of the tax alleged to be an
7 overpayment, whichever date is the later. The provisions of this paragraph shall not
8 apply to interest required under G.S. 105-267. When a husband and wife have ~~elected~~
9 ~~under G.S. 105-152.1 to file~~ filed a joint return under G.S. 105-152 and a refund for
10 overpayment of tax is made payable to both spouses as provided in that subsection, the
11 provisions of this section shall apply to the refund."
12 Sec. 14. This act is effective for taxable years beginning on or after January
13 1, 1991.