

GENERAL ASSEMBLY OF NORTH CAROLINA
1993 SESSION

CHAPTER 494
SENATE BILL 1018

AN ACT TO CLARIFY THAT REAL ESTATE MORTGAGE INVESTMENT CONDUITS WILL BE TREATED AS PASS-THROUGH ENTITIES FOR STATE TAX PURPOSES TO THE SAME EXTENT AS UNDER THE FEDERAL TAX LAW.

The General Assembly of North Carolina enacts:

Section 1. G.S. 105-125 reads as rewritten:

"§ 105-125. Corporations not mentioned.

None of the taxes levied in this Article shall apply to charitable, religious, fraternal, benevolent, scientific or educational corporations, not operating for a profit; nor to insurance companies; nor to mutual ditch or irrigation associations, mutual or cooperative telephone associations or companies, mutual canning associations, cooperative breeding associations, or like organizations or associations of a purely local character deriving receipts solely from assessments, dues, or fees collected from members for the sole purpose of meeting expenses; nor to cooperative marketing associations operating solely for the purpose of marketing the products of members or other farmers, which operations may include activities which are directly related to such marketing activities, and turning back to them the proceeds of sales, less the necessary operating expenses of the association, including interest and dividends on capital stock on the basis of the quantity of product furnished by them; nor to production credit associations organized under the act of Congress known as the Farm Credit Act of 1933; nor to business leagues, boards of trade, clubs organized and operated exclusively for pleasure, recreation and other nonprofitable purposes, civic leagues operated exclusively for the promotion of social welfare, or chambers of commerce and merchants' associations not organized for profit, and no part of the net earnings of which inures to the benefit of any private stockholder, individual or other corporations; nor to corporations or organizations, such as condominium associations, homeowner associations or cooperative housing corporations not organized for profit, the membership of which is limited to the owners or occupants of residential units in the condominium, housing development, or cooperative housing corporation, and operated exclusively for the management, operation, preservation, maintenance or landscaping of the common areas and facilities owned by such corporation or organization or its members situated contiguous to such houses, apartments or other dwellings or for the management, operation, preservation, maintenance and repair of such houses, apartments or other dwellings owned by the corporation or organization or its members, but only if no part of the net earnings of such corporation or organization inures (other

than through the performance of related services for the members of such corporation or organization) to the benefit of any member of such corporation or organization or other person. In addition, absent a specific provision to the contrary, the taxes levied in this Article do not apply to any organization that is exempt from federal income tax under the Code.

Provided, that each such corporation must, upon request by the Secretary of Revenue, establish in writing its claim for exemption from said provisions. The provisions of G.S. 105-122 shall apply to electric light, power, gas, water, Pullman, sleeping and dining car, express, telegraph, telephone, motor bus, and truck corporations to the extent and only to the extent that the franchise taxes levied in G.S. 105-122 exceed the franchise taxes levied in other sections of this Article or schedule; except that the provisions of G.S. 105-122 shall not apply to businesses taxed under G.S. 105-120.1. The exemptions in this section shall apply only to those corporations specially mentioned, and no other.

Provided, that any corporation 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 as a 'real estate investment trust,' shall in determining its basis for franchise tax be allowed to deduct the aggregate market value of its investments in the stocks, bonds, debentures, or other securities or evidences of debt of other corporations, partnerships, individuals, municipalities, governmental agencies or governments.

Provided, that an entity that qualifies as a real estate mortgage investment conduit, as defined in section 860D of the Code, is exempt from all of the taxes levied in this Article. Upon request by the Secretary of Revenue, a real estate mortgage investment conduit must establish in writing its qualification for this exemption."

Sec. 2. G.S. 105-130.11 is amended by adding a new subsection to read:

"(d) Real Estate Mortgage Investment Conduits. – An entity that qualifies as a real estate mortgage investment conduit, as defined in section 860D of the Code, is exempt from the tax imposed under this Division, except that any net income derived from a prohibited transaction, as defined in section 860F of the Code, is taxable to the real estate mortgage investment conduit under G.S. 105-130.3 and G.S. 105-130.3A, subject to the adjustments provided in G.S. 105-130.5. This subsection does not exempt the holders of a regular or residual interest in a real estate mortgage investment conduit as defined in section 860G of the Code from any tax on the income from that interest."

Sec. 3. G.S. 105-212(c) reads as rewritten:

~~"(c) Any corporation or trust doing business in North Carolina which in the opinion of the Secretary of Revenue of North Carolina qualifies – The taxes levied in this Article do not apply to an entity that is treated for federal tax purposes as a 'regulated investment company' under section 851 of the Code or Code, as a 'real estate investment trust' under the provisions of section 856 of the Code Code, or as a 'real estate mortgage investment conduit' under section 860D 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."~~

Sec. 4. This act is effective for taxable years beginning on or after January 1, 1993.

In the General Assembly read three times and ratified this the 23rd day of July, 1993.

Dennis A. Wicker
President of the Senate

Daniel Blue, Jr.
Speaker of the House of Representatives