

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1995

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HOUSE BILL 1064

Short Title: Restore Tax Burden on Wealthy.

(Public)

Sponsors: Representatives Luebke; Adams, Beall, Bowen, Braswell, Earle, Easterling, Fitch, Gamble, H. Hunter, Lee, Michaux, G. Miller, Oldham, Ramsey, Sutton, Wainwright, and Womble.

Referred to: Business and Labor, if favorable, Finance.

May 15, 1995

A BILL TO BE ENTITLED

**AN ACT TO RESTORE THE TAX BURDEN ON THE WEALTHY IN ORDER TO
HELP EDUCATION AND REDUCE THE FOOD TAX.**

Whereas, the repeal of the intangibles tax by Senate Bill 8 grants a large tax reduction to wealthy individuals and large businesses who previously paid the great majority of the intangibles tax; and

Whereas, these tax reductions for the wealthy and for large businesses will be paid for by reimbursements to local governments from the State's General Fund; and

Whereas, rather than being used to give a tax break to the wealthy and to large businesses, the State's General Fund dollars could be used to restore education funding cut in the 1995 budget passed by the House of Representatives and to reduce the food tax for all citizens; and

Whereas, for these reasons, the General Assembly by this bill restores taxes on the wealthy and on large corporations that were eliminated by the intangibles tax repeal of Senate Bill 8; Now, therefore,

The General Assembly of North Carolina enacts:

Section 1. G.S. 105-151.19 is repealed.

Sec. 2. G.S. 105-130.7 reads as rewritten:

1 **"§ 105-130.7. Deductible portion of dividends.**

2 Dividends from stock issued by ~~any a~~ corporation shall be deducted to the extent herein
3 ~~provided. are deductible to the extent provided in this section.~~

4 (1) ~~As soon as may be practicable after September 30 of each year, the~~
5 ~~Secretary of Revenue shall determine from the corporate income tax~~
6 ~~return filed during the year ending September 30 by each corporation~~
7 ~~required to file a return during that period the proportion of the entire~~
8 ~~net income or loss of the corporation allocable to this State under the~~
9 ~~provisions of G.S. 105-130.4, except as provided herein. If a~~
10 ~~corporation has a net income in North Carolina and a net loss from all~~
11 ~~sources wherever located, or if a corporation has a net loss in North~~
12 ~~Carolina and a net income from all sources wherever located, the~~
13 ~~Secretary shall require the use of the allocation fraction determined~~
14 ~~under the provisions of G.S. 105-130.4. A corporation which is a~~
15 ~~stockholder in any such corporation shall be allowed to deduct the same~~
16 ~~proportion of the dividends received by it from such corporation during~~
17 ~~its income year ending on or after September 30. No deduction shall be~~
18 ~~allowed for any part of any dividend received from any corporation that~~
19 ~~was required to file an income tax return during the year ending~~
20 ~~September 30 but failed to file the return. In the case of dividends~~
21 ~~received from a corporation that was not required to file a return during~~
22 ~~the year ending September 30, the proportion of dividends deductible by~~
23 ~~the stockholder shall be determined by the Secretary from the best~~
24 ~~information available.~~

25 (2) ~~Dividends received by a corporation from stock in any insurance~~
26 ~~company of this State taxed under the provisions of G.S. 105-228.5~~
27 ~~shall be deductible by such corporation, and a proportionate part of any~~
28 ~~dividends received from stock in any foreign insurance corporation shall~~
29 ~~be deductible, such part to be determined on the basis of the ratio of~~
30 ~~premiums reported for taxation in this State to total premiums collected~~
31 ~~both in and out of this State.~~

32 (3) A corporation shall be allowed to deduct such proportionate part of
33 dividends received by it from a regulated investment company or a real
34 estate investment trust, as defined in G.S. 105-130.12, as represents and
35 corresponds to income received by such regulated investment company
36 or real estate investment trust which would not be taxed by this State if
37 received directly by the corporation.

38 (3a) Dividends received on shares of capital stock owned in a stock-owned
39 savings and loan association taxed under Article 8D of this Chapter
40 shall be deductible.

41 (4) ~~Notwithstanding the provisions of subdivisions (1) through (3a) any~~
42 ~~other provision of this section, a corporation which, at the close of its~~
43 ~~taxable year, has its commercial domicile within North Carolina shall be~~

1 ~~allowed to~~ may deduct all dividends received from corporations in
2 which it owns more than fifty percent (50%) of the outstanding voting
3 stock.

- 4 (5) Notwithstanding any other provisions of this Division, a corporation
5 ~~which that~~ is a shareholder in a holding company ~~shall be allowed as a~~
6 ~~deduction~~ may deduct an amount equal to those dividends received by it
7 from ~~such~~ the holding company, multiplied by a fraction, the numerator
8 of which ~~shall be~~ is the dividends received by ~~such~~ the holding company
9 ~~attributable to North Carolina,~~ that are deductible by it under subdivisions
10 (3) and (3a) of this section and the denominator of which shall be is the
11 gross dividends received by ~~such~~ the holding company. ~~company;~~
12 provided, however, that no deduction shall be allowed where the fraction is
13 smaller than one third (1/3). ~~For purposes of this section, 'dividends~~
14 ~~attributable to North Carolina' shall be the amount of dividend income~~
15 ~~received by the holding company on stock owned in other corporations equal~~
16 ~~to the total of the proportion of each of such corporation's dividends as shall~~
17 ~~be determined deductible by the Secretary under subdivisions (1) through (3a)~~
18 ~~of this section; provided that a~~ A holding company ~~which that~~ owns more
19 than fifty percent (50%) of the outstanding voting stock of one or more
20 holding companies as defined in this subdivision ~~shall be permitted~~ is
21 allowed a deduction for all dividends received from ~~such~~ those holding
22 companies and all other corporations in which it owns more than fifty
23 percent (50%) of the outstanding voting stock. ~~stock except that no~~
24 ~~deduction shall be allowed if less than one third (1/3) of the dividends~~
25 ~~received by the holding company are attributable to North Carolina. A~~
26 ~~shareholder of such a holding company shall determine the deductible portion~~
27 ~~of its dividends received from such holding company as hereinabove provided~~
28 ~~except that the amounts received from a subsidiary holding company as~~
29 ~~'dividends attributable to North Carolina' shall be determined as though the~~
30 ~~subsidiary corporation of the subsidiary holding company had paid the~~
31 ~~dividends directly to the parent holding company. For the purposes of this~~
32 ~~section and unless the context clearly requires a different meaning, As used~~
33 ~~in this section, the term 'holding company' shall mean any~~ means a
34 corporation subject to the tax imposed by G.S. 105-130.3 whose
35 ordinary gross income consists of fifty percent (50%) or more of
36 dividend income received from corporations in which it owns more than
37 fifty percent (50%) of the outstanding voting stock, and 'subsidiary' shall
38 mean any corporation, more than fifty percent (50%) of whose outstanding
39 voting stock is owned by another corporation. ~~For the purposes of this~~
40 ~~subsection,~~ stock. ~~As used in this subdivision, the term 'dividend'~~
41 includes, in addition to corporate dividends, distributions received from
42 a partnership by a corporation owning more than a fifty percent (50%)
43 interest in the partnership.

- 1 (6) In no case shall the total amount of dividends that are allowed as a
2 deduction to a corporation as a result of the application of subdivisions
3 ~~(1) through (3) and (3a)~~ of this section be in excess of fifteen thousand
4 dollars (\$15,000) for the taxable year."

5 Sec. 3. G.S. 105-120.2 reads as rewritten:

6 **"§ 105-120.2. Franchise or privilege tax on holding companies.**

7 (a) ~~Every corporation, domestic and foreign, incorporated or, by an act,~~
8 ~~domesticated under the laws of this State or doing business in this State which, at the~~
9 ~~close of its taxable year is a holding company as defined in subsection (c) of this section,~~
10 ~~shall, pursuant to the provisions of G.S. 105-122:~~

- 11 ~~(1) Make a report and statement, and~~
12 ~~(2) Determine the total amount of its issued and outstanding capital stock,~~
13 ~~surplus and undivided profits, and~~
14 ~~(3) Apportion such outstanding capital stock, surplus and undivided profits~~
15 ~~to this State.~~

16 Tax. – An annual privilege tax is imposed on holding companies. This tax is in lieu
17 of the tax imposed by G.S. 105-122. A holding company shall report and pay the tax at
18 the time set in G.S. 105-122 for reporting and paying the tax imposed by that section.

- 19 (b) (1) ~~Every corporation taxed under this section shall annually pay~~
20 ~~to the Secretary of Revenue, at the time the report and statement are~~
21 ~~due, a franchise or privilege tax, which is hereby levied, at the rate of~~
22 ~~one dollar and fifty cents (\$1.50) per one thousand dollars (\$1,000) of~~
23 ~~the amount determined under subsection (a) of this section, but in no~~
24 ~~case shall the tax be more than seventy five thousand dollars~~
25 ~~(\$75,000) nor less than thirty five dollars (\$35.00).~~
26 (2) ~~Notwithstanding the provisions of subdivision (1) of this subsection, if~~
27 ~~the tax produced pursuant to application of this paragraph (2) exceeds~~
28 ~~the tax produced pursuant to application of subdivision (1), then the tax~~
29 ~~shall be levied at the rate of one dollar and fifty cents (\$1.50) per one~~
30 ~~thousand dollars (\$1,000) on the greater of the amounts of~~
31 a. ~~Fifty five percent (55%) of the appraised value as determined for~~
32 ~~ad valorem taxation of all the real and tangible personal property~~
33 ~~in this State of each such corporation plus the total appraised~~
34 ~~value of intangible property returned for taxation of intangible~~
35 ~~personal property as computed under G.S. 105-122(d); or~~
36 b. ~~The total actual investment in tangible property in this State of~~
37 ~~such corporation as computed under G.S. 105-122(d).~~

38 Rate. – The tax rate is one dollar and seventy cents (\$1.70) for each one thousand
39 dollars (\$1,000) of value of the greatest of:

- 40 (1) The holding company's issued and outstanding capital stock, surplus,
41 and undivided profits determined in accordance with G.S. 105-122.
42 (2) Fifty-five percent (55%) of the appraised value as determined for ad
43 valorem tax purposes of the holding company's real and tangible

1 personal property in this State as determined annually under G.S. 105-
2 122(d).

3 (3) The holding company's investment in tangible property in this State
4 determined in accordance with G.S. 105-122(d).

5 The tax imposed under subdivision (1) of this subsection may not exceed two
6 hundred thousand dollars (\$200,000). The tax imposed by this section may not be less
7 than the minimum tax set in G.S. 105-122.

8 (c) ~~For purposes of this section, a~~ Definition. – A 'holding company' is any
9 ~~corporation which a corporation that~~ receives during its taxable year more than eighty
10 percent (80%) of its gross income from corporations in which it owns directly or
11 indirectly more than fifty percent (50%) of the outstanding voting stock.

12 (d) Repealed by Session Laws 1985, c. 656, s. 39.

13 (e) No Local Tax. – Counties, ~~eties~~ cities, and towns shall not levy a franchise tax
14 on corporations a holding company taxed under this section. The tax imposed under the
15 provisions of G.S. 105-122 shall not apply to businesses taxed under the provisions of this
16 section.

17 (f) Credit. – A credit is allowed against the tax imposed by this section for a
18 holding company's investments in certain corporations in accordance with Division V of
19 Article 4 of this Chapter. In determining the total tax payable by any holding company under
20 this section, there shall be allowed as a credit on such tax the amount of the credit authorized
21 under Division V of Article 4 of this Chapter."

22 Sec. 4. G.S. 105-122(d) reads as rewritten:

23 "(d) After determining the proportion of its total capital stock, surplus and
24 undivided profits as set out in subsection (c) of this section, which amount so determined
25 shall in no case be less than fifty-five percent (55%) of the appraised value as determined
26 for ad valorem taxation of all the real and tangible personal property in this State of each
27 such corporation ~~plus the total appraised value of intangible property returned for taxation of~~
28 ~~intangible personal property as herein specified nor less than its total actual investment in~~
29 tangible property in this State, every corporation taxed under this section shall annually
30 pay to the Secretary of Revenue, at the time the report and statement are due, a franchise
31 or privilege tax, which is hereby levied at the rate of ~~one dollar and fifty cents (\$1.50) one~~
32 dollar and seventy cents (\$1.70) per one thousand dollars (\$1,000) of the total amount of
33 capital stock, surplus and undivided profits as herein provided. The tax imposed in this
34 section shall in no case be less than thirty-five dollars (\$35.00) and shall be for the
35 privilege of carrying on, doing business, and/or the continuance of articles of
36 incorporation or domestication of each such corporation in this State. Appraised value of
37 tangible property including real estate shall be the ad valorem valuation for the calendar
38 year next preceding the due date of the franchise tax return. ~~Appraised value of intangible~~
39 ~~property shall be the total gross valuation required to be reported for intangible tax purposes on~~
40 ~~April 15 coincident with or next preceding the due date of the franchise tax return. –~~The term
41 'total actual investment in tangible property' as used in this section shall be construed to
42 mean the total original purchase price or consideration to the reporting taxpayer of its
43 tangible properties, including real estate, in this State plus additions and improvements

1 thereto less reserve for depreciation as permitted for income tax purposes, and also less
2 any indebtedness incurred and existing by virtue of the purchase of any real estate and
3 any permanent improvements made thereon. In computing 'total actual investment in
4 tangible personal property' there shall also be deducted reserves for the entire cost of any
5 air-cleaning device or sewage or waste treatment plant, including waste lagoons, and
6 pollution abatement equipment purchased or constructed and installed which reduces the
7 amount of air or water pollution resulting from the emission of air contaminants or the
8 discharge of sewage and industrial wastes or other polluting materials or substances into
9 the outdoor atmosphere or into streams, lakes, or rivers, upon condition that the
10 corporation claiming such deduction shall furnish to the Secretary a certificate from the
11 Department of Environment, Health, and Natural Resources or from a local air pollution
12 control program for air-cleaning devices located in an area where the Environmental
13 Management Commission has certified a local air pollution control program pursuant to
14 G.S. 143-215.112 certifying that said Department or local air pollution control program
15 has found as a fact that the air-cleaning device, waste treatment plant or pollution
16 abatement equipment purchased or constructed and installed as above described has
17 actually been constructed and installed and that such device, plant or equipment complies
18 with the requirements of the Environmental Management Commission or local air
19 pollution control program with respect to such devices, plants or equipment, that such
20 device, plant or equipment is being effectively operated in accordance with the terms and
21 conditions set forth in the permit, certificate of approval, or other document of approval
22 issued by the Environmental Management Commission or local air pollution control
23 program and that the primary purpose thereof is to reduce air or water pollution resulting
24 from the emission of air contaminants or the discharge of sewage and waste and not
25 merely incidental to other purposes and functions. The cost of constructing facilities of
26 any private or public utility built for the purpose of providing sewer service to residential
27 and outlying areas shall be treated as deductible for the purposes of this section; the
28 deductible liability allowed by this section shall apply only with respect to such pollution
29 abatement plants or equipment constructed or installed on or after January 1, 1955.

30 In determining the total tax payable by any corporation under this section, there shall
31 be allowed as a credit on such tax the amount of the credit authorized by Division V of
32 Article 4 of this Chapter."

33 Sec. 5. Division II of Article 4 of Chapter 105 of the General Statutes is
34 amended by adding a new section to read:

35 **"§ 105-134.2A. Supplemental income tax imposed.**

36 (a) Tax. – A tax is imposed upon certain resident individuals' net income from
37 intangibles at the rate of three percent (3%). This tax applies only to individuals whose
38 North Carolina taxable income for the taxable year exceeds one hundred thousand dollars
39 (\$100,000). This tax is in addition to the tax imposed in G.S. 105-134.2 and shall be
40 levied, collected, and paid annually in the same manner as the tax levied in G.S. 105-
41 134.2. A taxpayer whose tax liability under this section for a taxable year is fifteen
42 dollars (\$15.00) or less is not required to pay the tax for that year. An individual's net

1 income from intangibles is the lesser of the individual's North Carolina taxable income or
2 the sum of the following:

- 3 (1) The individual's net capital gains, as defined in section 1222 of the
4 Code, from intangible personal property described in G.S. 105-275(31b)
5 and (31c).
- 6 (2) The individual's gross dividend income, as determined under the Code,
7 from intangible personal property described in G.S. 105-275(31b) and
8 (31c).
- 9 (3) The individual's gross interest income, as determined under the Code,
10 from intangible personal property described in G.S. 105-275(31b) and
11 (31c).
- 12 (b) Exemptions. – The tax levied in this section does not apply to:
- 13 (1) Income from an obligation of (i) the United States or its possessions, (ii)
14 this State or a political subdivision of this State, or (iii) a nonprofit
15 educational institution organized or chartered under the laws of this
16 State.
- 17 (2) Income deductible under G.S. 105-134.6(b)(2).
- 18 (3) Income from units of ownership in an investment trust, the corpus of
19 which is composed entirely of obligations described in subdivisions (1)
20 and (2) of this subsection, at least eighty percent (80%) of the fair
21 market value of which represents obligations of this State. In order for
22 the exemption described in this subdivision to apply, the trustees of the
23 investment trust must provide the Secretary not later than December 31
24 of each year information in the form required by the Secretary sufficient
25 to establish the applicability of the exemption.
- 26 (4) In the case of a part-year resident, income earned during the period
27 individual was not a resident of this State."

28 Sec. 6. Division III of Article 4 of Chapter 105 of the General Statutes is
29 amended by adding a new section to read:

30 **"§ 105-160.2A. Supplemental tax.**

31 A tax is imposed upon certain trusts' and estates' net income from intangibles that is
32 for the benefit of a resident of this State. The tax shall be at the rate of three percent
33 (3%). This tax applies only to trusts and estates whose income taxable under G.S. 105-
34 160.2 for the taxable year exceeds one hundred thousand dollars (\$100,000). This tax is
35 in addition to the tax imposed in G.S. 105-160.2 and shall be levied, collected, and paid
36 annually in the same manner as the tax levied in G.S. 105-160.2. The tax levied in this
37 section does not apply to income exempt from the tax under G.S. 105-134.2A(b)(1)-(3).
38 A taxpayer whose tax liability under this section for a taxable year is fifteen dollars
39 (\$15.00) or less is not required to pay the tax for that year. A trust's or an estate's net
40 income from intangibles is the lesser of the trust's or estate's income taxable under G.S.
41 105-160.2 or the sum of the following:

- 1 (1) The trust's or estate's net capital gains, as defined in section 1222 of the
2 Code, from intangible personal property described in G.S. 105-275(31b)
3 and (31c).
4 (2) The trust's or estate's gross dividend income, as determined under the
5 Code, from intangible personal property described in G.S. 105-275(31b)
6 and (31c).
7 (3) The trust's or estate's gross interest income, as determined under the
8 Code, from intangible personal property described in G.S. 105-275(31b)
9 and (31c)."

10 Sec. 7. Notwithstanding the provisions of G.S. 105-163.15 and G.S. 105-
11 163.41, no addition to tax shall be made under those sections for a taxable year beginning
12 on or after January 1, 1995, and before January 1, 1996, with respect to any
13 underpayment to the extent the underpayment was created or increased by Sections 1, 2,
14 5, and 6 of this act.

15 Sec. 8. This act is effective for taxable years beginning on or after January 1,
16 1995.