

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1995

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HOUSE BILL 1064
Committee Substitute Favorable 6/18/96

Short Title: Study Restore Tax Burden on Wealthy.

(Public)

Sponsors:

Referred to:

May 15, 1995

A BILL TO BE ENTITLED

1 AN ACT TO REQUIRE THE STUDY OF RESTORING THE TAX BURDEN ON THE
2 WEALTHY IN ORDER TO HELP EDUCATION AND REDUCE THE FOOD
3 TAX.
4

5 The General Assembly of North Carolina enacts:

6 Section 1. The Legislative Research Commission Study Committee on
7 Revenue Laws shall study the merits of the following legislation contained in Section 2
8 of this act which would restore the tax burden on the wealthy in order to help education
9 and reduce the food tax.

10 Sec. 2. The following legislation was contained in Proposed Committee
11 Substitute for House Bill 1064 (H1064-CSLC-6/13). It is set forth in this act for
12 illustrative purposes only.

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

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

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

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

7 (b) G.S. 105-120.2 reads as rewritten:

8 **"§ 105-120.2. Franchise or privilege tax on holding companies.**

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

13 ~~(1) Make a report and statement, and~~

14 ~~(2) Determine the total amount of its issued and outstanding capital stock,~~
15 ~~surplus and undivided profits, and~~

16 ~~(3) Apportion such outstanding capital stock, surplus and undivided profits~~
17 ~~to this State.~~

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

21 (b) ~~(1) Every corporation taxed under this section shall annually pay~~
22 ~~to the Secretary of Revenue, at the time the report and statement are~~
23 ~~due, a franchise or privilege tax, which is hereby levied, at the rate of~~
24 ~~one dollar and fifty cents (\$1.50) per one thousand dollars (\$1,000) of~~
25 ~~the amount determined under subsection (a) of this section, but in no~~
26 ~~case shall the tax be more than seventy five thousand dollars~~
27 ~~(\$75,000) nor less than thirty five dollars (\$35.00).~~

28 ~~(2) Notwithstanding the provisions of subdivision (1) of this subsection, if~~
29 ~~the tax produced pursuant to application of this paragraph (2) exceeds~~
30 ~~the tax produced pursuant to application of subdivision (1), then the tax~~
31 ~~shall be levied at the rate of one dollar and fifty cents (\$1.50) per one~~
32 ~~thousand dollars (\$1,000) on the greater of the amounts of~~

33 ~~a. Fifty five percent (55%) of the appraised value as determined for~~
34 ~~ad valorem taxation of all the real and tangible personal property~~
35 ~~in this State of each such corporation plus the total appraised~~
36 ~~value of intangible property returned for taxation of intangible~~
37 ~~personal property as computed under G.S. 105-122(d); or~~

38 ~~b. The total actual investment in tangible property in this State of~~
39 ~~such corporation as computed under G.S. 105-122(d).~~

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

42 ~~(1) The holding company's issued and outstanding capital stock, surplus,~~
43 ~~and undivided profits determined in accordance with G.S. 105-122.~~

1 (2) Fifty-five percent (55%) of the appraised value as determined for ad
2 valorem tax purposes of the holding company's real and tangible
3 personal property in this State as determined annually under G.S. 105-
4 122(d).

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

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

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

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

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

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

24 (c) G.S. 105-122(d) reads as rewritten:

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

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

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

35 (d) Division II of Article 4 of Chapter 105 of the General Statutes is amended by
36 adding a new section to read:

37 **"§ 105-134.2A. Supplemental income tax imposed.**

38 (a) Tax. – A tax is imposed upon certain resident individuals' net income from
39 intangibles at the rate of three percent (3%). This tax applies only to individuals whose
40 North Carolina taxable income for the taxable year exceeds one hundred thousand dollars
41 (\$100,000). This tax is in addition to the tax imposed in G.S. 105-134.2 and shall be
42 levied, collected, and paid annually in the same manner as the tax levied in G.S. 105-
43 134.2. A taxpayer whose tax liability under this section for a taxable year is fifteen

1 dollars (\$15.00) or less is not required to pay the tax for that year. An individual's net
2 income from intangibles is the lesser of the individual's North Carolina taxable income or
3 the sum of the following:

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

29 (e) Division III of Article 4 of Chapter 105 of the General Statutes is amended
30 by adding a new section to read:

31 **"§ 105-160.2A. Supplemental tax.**

32 A tax is imposed upon certain trusts' and estates' net income from intangibles that is
33 for the benefit of a resident of this State. The tax shall be at the rate of three percent
34 (3%). This tax applies only to trusts and estates whose income taxable under G.S. 105-
35 160.2 for the taxable year exceeds one hundred thousand dollars (\$100,000). This tax is
36 in addition to the tax imposed in G.S. 105-160.2 and shall be levied, collected, and paid
37 annually in the same manner as the tax levied in G.S. 105-160.2. The tax levied in this
38 section does not apply to income exempt from the tax under G.S. 105-134.2A(b)(1)-(3).
39 A taxpayer whose tax liability under this section for a taxable year is fifteen dollars
40 (\$15.00) or less is not required to pay the tax for that year. A trust's or an estate's net
41 income from intangibles is the lesser of the trust's or estate's income taxable under G.S.
42 105-160.2 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 (f) Notwithstanding the provisions of G.S. 105-163.15 and G.S. 105-163.41,
11 no addition to tax shall be made under those sections for a taxable year beginning on or
12 after January 1, 1996, and before January 1, 1997, with respect to any underpayment to
13 the extent the underpayment was created or increased by this act.
- 14 (g) This act is effective for taxable years beginning on or after January 1,
15 1996.
- 16 Sec. 3. Section 2 of this act is set forth for illustrative purposes only and will
17 not become effective. The remainder of this act is effective upon ratification.