

NORTH CAROLINA GENERAL ASSEMBLY  
1961 SESSION

CHAPTER 1093  
HOUSE BILL 289

1 AN ACT TO AMEND G.S. 105-144 RELATING TO THE DETERMINATION OF GAIN OR  
2 LOSS FOR INCOME TAX PURPOSES.

3  
4 The General Assembly of North Carolina do enact:

5 **Section 1.** Subsection (a) of Section 105-144 of the General Statutes is hereby  
6 amended so that the same shall hereafter read as follows:

7 "(a) For the purpose of ascertaining the gain or loss from the sale or other disposition  
8 (other than a distribution to which Subsection (c1) of this Section applies) of property acquired  
9 after January 1, 1921, the basis shall be the cost thereof; provided, however, that in the case of  
10 property which was included in the last preceding annual inventory used in determining net  
11 income in a return under this Article, such inventory value shall be the basis in lieu of cost. In  
12 the case of property (other than property involved in a distribution to which Subsection (c1) of  
13 this Section applies) acquired before January 1, 1921, the basis for the purpose of ascertaining  
14 gain shall be the fair market value of the property at January 1, 1921, or the cost of the  
15 property, whichever is greater, and the basis for determining loss shall be the cost of the  
16 property in all cases if such cost is known or determinable. Otherwise, the basis shall be the fair  
17 market value of the property at January 1, 1921. The basis so determined shall be adjusted for  
18 capital additions or losses applicable to the property and for depreciation, amortization and  
19 depletion allowed or allowable."

20 **Sec. 2.** Section 105-144 of the General Statutes is hereby further amended by  
21 inserting in said Section, immediately following Subsection (a) of said Section, a new  
22 Subsection, designated as Subsection (a1), which shall read as follows:

23 "(a1) Property received in liquidation under Subsection (c1), if

- 24 (1) property was acquired by a shareholder in the liquidation of a corporation in  
25 cancellation or redemption of stock, and  
26 (2) with respect to such acquisition  
27 (A) gain was realized, but  
28 (B) as the result of an election made by the shareholder under Subsection  
29 (c1) of this Section, the extent to which gain was recognized was  
30 determined under Subsection (c1) of this Section,

31 then the basis shall be the same as the basis of such stock cancelled or redeemed in the  
32 liquidation, decreased in the amount of any money received by the shareholder, and increased  
33 in the amount of gain recognized to him."

34 **Sec. 3.** Subsection (b) of Section 105-144 of the General Statutes of North Carolina  
35 is hereby amended so that the same shall hereafter read as follows:

36 "(b) Except as hereinafter provided in Subsection (c) or in Subsection (c1) of this  
37 Section, the final distribution to the taxpayer of the assets of a corporation shall be treated as a  
38 sale of the stock or securities of the corporation owned by him, and the gain or loss shall be  
39 computed accordingly."

40 **Sec. 4.** Section 105-144 of the General Statutes is hereby further amended by  
41 inserting in said Section, immediately following Subsection (c) thereof, a new Subsection,  
42 designated Subsection (c1), which shall read as follows:

- 1       "(c1) (1) General Rule. In the case of property distributed in complete liquidation of a  
2 corporation, if  
3       (A) the liquidation is made in pursuance of a plan of liquidation adopted  
4 on or after the effective date of this Section; and  
5       (B) the distribution is in complete cancellation or redemption of all the  
6 stock, and the transfer of all the property under the liquidation occurs  
7 within some one calendar month,

8 then in the case of each qualified electing shareholder (as defined in Subparagraph (3) gain on  
9 the shares owned by him at the time of the adoption of the plan of liquidation shall be  
10 recognized only to the extent provided in Subparagraphs (5) and (6)."

- 11       (2) Excluded Corporation. For purposes of this Section, the term "excluded  
12 corporation" means a corporation which at any time between the effective  
13 date of this Section and the date of the adoption of the plan of liquidation,  
14 both dates inclusive, was the owner of stock possessing fifty per cent (50%)  
15 or more of the total combined voting power of all classes of stock entitled to  
16 vote on the adoption of such plan.

- 17       (3) Qualified Electing Shareholders. For purposes of this Section, the term  
18 "qualified electing shareholder" means a shareholder (other than an excluded  
19 corporation) of any class of stock (whether or not entitled to vote on the  
20 adoption of the plan of liquidation) who is a shareholder at the time of the  
21 adoption of such plan, and whose written election to have the benefits of  
22 Subparagraph (1) has been made and filed in accordance with Subparagraph  
23 (4), but

- 24       (A) in the case of a shareholder other than a corporation, only if written  
25 elections have been so filed by shareholders (other than corporations)  
26 who at the time of the adoption of the plan of liquidation are owners  
27 of stock possessing at least eighty per cent (80%) of the total  
28 combined voting power (exclusive of voting power possessed by  
29 stock owned by corporations) of all classes of stock entitled to vote  
30 on the adoption of such plan of liquidation; or

- 31       (B) in the case of a shareholder which is a corporation, only if written  
32 elections have been so filed by corporate shareholders (other than an  
33 excluded corporation) which at the time of the adoption of such plan  
34 of liquidation are owners of stock possessing at least eighty per cent  
35 (80%) of the total combined voting power (exclusive of voting power  
36 possessed by stock owned by an excluded corporation and by  
37 shareholders who are not corporations) of all classes of stock entitled  
38 to vote on the adoption of such plan of liquidation.

- 39       (4) Making and Filing of Elections. The written elections referred to in  
40 Subparagraph (3) shall be deemed to have been made and filed if, and only  
41 if, such written elections were duly made and filed for Federal income tax  
42 purposes in conformity with the provisions of Section 333 of the 1954  
43 Internal Revenue Code and the regulations thereunder.

- 44       (5) Noncorporate Shareholders. In the case of a qualified electing shareholder  
45 other than a corporation

- 46       (A) there shall be recognized, and treated as ordinary income, so much of  
47 the gain as is not in excess of his ratable share of the earnings and  
48 profits of the corporation accumulated after January 1, 1921, such  
49 earnings and profits to be determined as of the close of the month in  
50 which the transfer in liquidation occurred under Subparagraph  
51 (1)(B), but without diminution by reason of distributions made

1 during such month; but by including in the computation thereof all  
2 amounts accrued up to the date on which the transfer of all the  
3 property under the liquidation is completed; and

4 (B) there shall be recognized and treated as gain so much of the  
5 remainder of the gain as is not in excess of the amount by which the  
6 value of that portion of the assets received by him which consists of  
7 money, or of stock or securities acquired by the corporation after the  
8 effective date of this Section, exceeds his ratable share of such  
9 earnings and profits.

10 (6) Corporate Shareholders. In the case of a qualified electing shareholder which  
11 is a corporation, the gain shall be recognized only to the extent of the greater  
12 of the two following:

13 (A) the portion of the assets received by it which consists of money, or of  
14 stock or securities acquired by the liquidating corporation after the  
15 effective date of this Section; or

16 (B) its ratable share of the earnings and profits of the liquidating  
17 corporation accumulated after January 1, 1921, such earnings and  
18 profits to be determined as of the close of the month in which the  
19 transfer in liquidation occurred under Subparagraph (1)(B), but  
20 without diminution by reason of distributions made during such  
21 month; but by including in the computation thereof all amounts  
22 accrued up to the date on which the transfer of all property under the  
23 liquidation is completed."

24 **Sec. 5.** All laws and clauses of laws in conflict with this Act are hereby repealed.

25 **Sec. 6.** This Act shall be in full force and effect from and after its ratification.

26 In the General Assembly read three times and ratified, this the 21st day of June,

27 1961.