

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1989

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HOUSE BILL 945
Committee Substitute Favorable 5/5/89
Committee Substitute #2 Favorable 6/5/89

Short Title: Venture Capital Tax Exemptions.

(Public)

Sponsors:

Referred to:

March 29, 1989

A BILL TO BE ENTITLED

AN ACT TO EXEMPT VENTURE CAPITAL COMPANIES FROM INTANGIBLES
TAX.

The General Assembly of North Carolina enacts:

Section 1. G.S. 105-212 reads as rewritten:

"§ 105-212. ~~Institution~~-Institutions exempted; conditional and other exemptions.

(a) None of the taxes levied in this Article or schedule shall apply to religious, educational, charitable or benevolent organizations not conducted for profit, nor to trusts established for religious, educational, charitable or benevolent purposes where none of the property or the income from the property owned by such trust may inure to the benefit of any individual or any organization conducted for profit, nor to any funds, evidences of debt, or securities held irrevocably in a charitable remainder trust meeting the requirements of section 664 of the Code or in a pooled income fund meeting the requirements of section 642(c)(5) of the Code, nor to any funds held irrevocably in trust exclusively for the maintenance and care of places of burial; nor to any funds, evidences of debt, or securities held irrevocably in pension, profit-sharing, stock bonus, or annuity trusts, or combinations thereof, established by employers for the purpose of distributing both the principal and income thereof exclusively to eligible employees, or the beneficiaries of such employees, if such trusts qualify for exemption from income tax under the provisions of G.S. 105-161(f)(1)a; nor to any funds, evidences of debt or securities held irrevocably in a pension, profit-sharing, stock bonus or annuity plan established by an employer for the benefit of his employees or for himself and his

1 employees if such plan qualifies for exemption from income tax under the provisions of
2 G.S. 105-141(b)(19); nor to any funds, evidences of debt, or securities held in an
3 individual retirement account described in section 408(a) of the Code, or an individual
4 retirement annuity described in section 408(b) of the Code, if such individual retirement
5 account or individual retirement annuity is exempt from income tax under the
6 provisions of G.S. 105-161(f)(1)c or 105-141(b)(19).

7 (b) Insurance companies reporting premiums to the Commissioner of Insurance
8 of this State and paying a tax thereon under the provisions of Article ~~8B~~-8B, Schedule I-
9 B shall not be subject to the provisions of G.S. 105-201, 105-202 and 105-203, building
10 and loan associations and savings and loan associations paying a tax under the
11 provisions of Article 8D of Chapter 105 of the General Statutes shall not be subject to
12 the provisions of G.S. 105-201, 105-202 and 105-203; State credit unions organized
13 pursuant to the provisions of Subchapter III, Chapter 54, paying the supervisory fees
14 required by law, shall not be subject to any of the taxes levied in this Article or
15 schedule; banks, banking associations and trust companies shall not be subject to the tax
16 levied in this Article or schedule on evidences of debt held by them when said
17 evidences of debt represent investment of funds on deposit with such banks, banking
18 associations and trust companies: Provided, that each such institution must, upon
19 request by the Secretary of Revenue, establish in writing its claim for exemption as
20 herein provided. The exemption in this ~~section~~-subsection shall apply only to those
21 institutions, and only to the extent, specifically mentioned, and no other.

22 (c) Any corporation or trust doing business in North Carolina which in the
23 opinion of the Secretary of Revenue of North Carolina qualifies as a 'regulated
24 investment company' under section 851 of the Code or as a 'real estate investment trust'
25 under the provisions of section 856 of the Code and which files with the North Carolina
26 Department of Revenue its election to be treated as a 'regulated investment company' or
27 'real estate investment trust,' shall not be subject to any of the taxes levied in this Article
28 or schedule.

29 (d) The taxes levied in this Article do not apply to evidences of debt or equity
30 securities held by a venture capital firm. For the purpose of this subsection, the term
31 'venture capital firm' means a corporation, partnership, limited partnership, or other
32 entity that:

- 33 (1) Does not own the securities of any business for the purpose of
34 operating the business or for any purpose other than as an investment
35 for future sale;
- 36 (2) Is not organized to invest in only one business or one group of
37 businesses that conduct the same or a similar type of business activity;
- 38 (3) Is organized for the principal purpose of investing in, and does in fact
39 have more than fifty percent (50%) of all its investments in the equity
40 securities or subordinated debt of companies that, at the time of the
41 investment:
 - 42 a. Had no more than 100 owners of their securities, excluding
43 officers, directors, partners, and employees;
 - 44 b. Were not financial institutions; and,

1 c. Did not derive their income or value primarily from real estate;
2 and

3 (4) Has the remainder of its investments in shares of stock or other
4 investments on which either no tax is imposed or is payable under this
5 Article.

6 A venture capital firm may rely on the written representations of a company as to the
7 number of owners of its securities. The definitions as found in G.S. 105-163.010 apply
8 to this subsection.

9 (e) If any intangible personal property held or controlled by a fiduciary
10 domiciled in this State is so held or controlled for the benefit of a nonresident or
11 nonresidents, or for the benefit of any organization exempt under this section for the tax
12 imposed by this Article, such intangible personal property shall be partially or wholly
13 exempt from taxation and under the provisions of this Article in the ratio which the net
14 income distributed or distributable to such nonresident, nonresidents or organization,
15 derived from such intangible personal property during the calendar year for which the
16 taxes levied by this Article are imposed, bears to the entire net income derived from
17 such intangible personal property during such calendar year. 'Net income' shall be
18 deemed to have the same meaning that it has in the income tax article. Where the
19 intangible personal property for which this exemption is claimed is held or controlled
20 with other property as a unit, allocation of appropriate deductions from gross income
21 shall be made to that part of the entire gross income which is derived from the
22 intangible personal property by direct method to the extent practicable; and otherwise
23 by such other method as the Secretary of Revenue shall find to be reasonable: Provided,
24 that each fiduciary claiming the exemption provided in this paragraph shall, upon the
25 request of the Secretary of Revenue, establish in writing its claim to such exemption.
26 No provisions of law shall be construed as exempting trust funds or trust property from
27 the taxes levied by this Article except in the specific cases covered by this ~~section.~~
28 subsection.

29 (f) As used in this section, the term 'Code' means the Internal Revenue Code as
30 enacted as of January 1, 1988, and includes any provisions enacted as of that date which
31 become effective either before or after that date."

32 Sec. 2. This act is effective for taxable years beginning on or after January 1,
33 1989.