

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1993

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SENATE BILL 160

Short Title: Nonresident Joint Returns.

(Public)

Sponsors: Senators Kerr, Plexico, Seymour, and Winner of Buncombe.

Referred to: Finance.

February 15, 1993

A BILL TO BE ENTITLED

AN ACT TO ALLOW A NONRESIDENT COUPLE TO FILE A JOINT INCOME TAX RETURN IF ONLY ONE SPOUSE HAS INCOME FROM NORTH CAROLINA SOURCES.

The General Assembly of North Carolina enacts:

Section 1. G.S. 105-152 reads as rewritten:

"§ 105-152. **Income tax returns.**

(a) Who Must File. – The following individuals shall file with the Secretary an income tax return under affirmation:

(1) Every resident required to file an income tax return for the taxable year under the ~~Code and every Code~~.

(1a) Every nonresident required to file an income tax return for the taxable year under the Code who (i)-derived gross income from North Carolina sources during the taxable year attributable to the ownership of any interest in real or tangible personal property in this State or derived from a business, trade, profession, or occupation carried on in this State and (ii) is required to file an income tax return for the taxable year under the Code-State.

(1b) Every nonresident whose spouse is required to file a return under subdivision (1a) and whose federal taxable income is determined on a joint federal return.

(2) Repealed by Session Laws 1991 (Reg. Sess. 1992), c. 930, s. 1.

1 (3) Any individual whom the Secretary believes to be liable for a tax
2 under this Division, when so notified by the Secretary and requested to
3 file a return.

4 (b) Taxpayer Deceased or Unable to Make Return. – If the taxpayer is unable to
5 file the income tax return, the return shall be filed by a duly authorized agent or by a
6 guardian or other person charged with the care of the person or property of the taxpayer.
7 If an individual who was required to file an income tax return for the taxable year while
8 living has died before making the return, the administrator or executor of the estate shall
9 file the return in the decedent's name and behalf, and the tax shall be levied upon and
10 collected from the estate.

11 (c) Information Required With Return. – The income tax return shall show the
12 taxable income and adjustments required by this Division and any other information the
13 Secretary requires. The Secretary may require some or all individuals required to file an
14 income tax return to attach to the return a copy of their federal income tax return for the
15 taxable year. The Secretary may require a taxpayer to provide the Department with
16 copies of any other return the taxpayer has filed with the Internal Revenue Service and
17 to verify any information in the return.

18 (d) Secretary May Require Additional Information. – When the Secretary has
19 reason to believe that any taxpayer conducts a trade or business in a way that directly or
20 indirectly distorts the taxpayer's taxable income or North Carolina taxable income, the
21 Secretary may require any additional information for the proper computation of the
22 taxpayer's taxable income and North Carolina taxable income. In computing the
23 taxpayer's taxable income and North Carolina taxable income, the Secretary shall
24 consider the fair profit that would normally arise from the conduct of the trade or
25 business.

26 (e) Joint Returns. – A husband and wife shall file a single income tax return jointly if
27 ~~(i) their federal taxable income is determined on a joint federal return, ~~return~~ and (ii) both~~
28 ~~spouses are residents of this State or both spouses have North Carolina taxable income.~~
29 Except as otherwise provided in this Division, a wife and husband filing jointly are
30 treated as one taxpayer for the purpose of determining the tax imposed by this Division.
31 A husband and wife filing jointly are jointly and severally liable for the tax imposed by
32 this Division reduced by the sum of all credits allowable under this Division including
33 tax payments made by or on behalf of the husband and wife. However, if a spouse has
34 been relieved of liability for federal tax attributable to a substantial understatement by
35 the other spouse pursuant to section 6013 of the Code, that spouse is not liable for the
36 corresponding tax imposed by this Division attributable to the same substantial
37 understatement by the other spouse. A wife and husband filing jointly have expressly
38 agreed that if the amount of the payments made by them with respect to the taxes for
39 which they are liable, including withheld and estimated taxes, exceeds the total of the
40 taxes due, refund of the excess may be made payable to both spouses jointly or, if either
41 is deceased, to the survivor alone.

42 (f) Repealed by Session Laws 1991, (Reg. Sess. 1992), c. 930, s. 1."
43 Sec. 2. This act is effective for taxable years beginning on or after January 1,
44 1993.