

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

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HOUSE BILL 1157

Short Title: Various State Tax Law Changes.

(Public)

Sponsors: Representatives Morris; Cansler and Nichols.

Referred to: Finance.

April 24, 1997

A BILL TO BE ENTITLED

1 AN ACT TO EXTEND THE STATUTES OF LIMITATIONS FOR TAX REFUNDS,
2 TO CLARIFY THE CORPORATE INCOME TAX ON CERTAIN TAX-EXEMPT
3 OBLIGATIONS, AND TO DELETE THE CAP ON CORPORATE INCOME TAX
4 DEDUCTIONS OF DIVIDENDS RECEIVED FROM REGULATED
5 INVESTMENT COMPANIES.
6

7 The General Assembly of North Carolina enacts:

8 Section 1. G.S. 105-267 reads as rewritten:

9 "**§ 105-267. Taxes to be paid; suits for recovery of taxes.**

10 No court of this State shall entertain a suit of any kind brought for the purpose of
11 preventing the collection of any tax ~~imposed in this Subchapter. to which this Article~~
12 applies. Whenever a person has a valid defense to the enforcement of the collection of a
13 tax, the person shall pay the tax to the proper officer, and that payment shall be without
14 prejudice to any defense of rights the person may have regarding the tax. At any time
15 within the applicable protest period, the taxpayer may demand a refund of the tax paid in
16 writing from the Secretary and if the tax is not refunded within 90 days thereafter, may
17 sue the Secretary in the courts of the State for the amount demanded. The protest period
18 for a tax levied in Article 2A, 2B, 2C, or 2D of this Chapter is 30 days after payment. The
19 protest period for all other taxes is ~~one year after payment.~~ the period set by the statute of
20 limitations in G.S. 105-266(c).

1 The suit may be brought in the Superior Court of Wake County, or in the Superior
2 Court of the county in which the taxpayer resides at any time within three years after the
3 expiration of the 90-day period allowed for making the refund. If upon the trial it is
4 determined that all or part of the tax was levied or assessed for an illegal or unauthorized
5 purpose, or was for any reason invalid or excessive, judgment shall be rendered therefor,
6 with interest, and the judgment shall be collected as in other cases. The amount of taxes
7 for which judgment is rendered in such an action shall be refunded by the State. G.S.
8 105-241.2 provides an alternate procedure for a taxpayer to contest a tax and is not in
9 conflict with or superseded by this section.”

10 Section 2. G.S. 105-266(c) reads as rewritten:

11 "(c) Statute of Limitations. – The period in which a refund must be demanded or
12 discovered under this section is determined as follows:

13 (1) General Rule. – No overpayment shall be refunded, whether upon
14 discovery or receipt of written demand, if the discovery is not made or
15 the demand is not received within three years after the date set by the
16 statute for the filing of the return or within ~~six months~~ two years after the
17 payment of the tax alleged to be an overpayment, whichever is later.

18 (2) Worthless Debts or Securities. – Section 6511(d)(1) of the Code applies
19 to an overpayment of the tax levied in Division II or III of Article 4 of
20 this Chapter to the extent the overpayment is attributable to either of the
21 following:

22 a. The deductibility by the taxpayer under section 166 of the Code
23 of a debt that becomes worthless, or under section 165(g) of the
24 Code of a loss from a security that becomes worthless.

25 b. The effect of the deductibility of a debt or loss described in
26 subpart a. of this subdivision on the application of a carryover to
27 the taxpayer.

28 (3) Capital Loss and Net Operating Loss Carrybacks. – Section 6511(d)(2)
29 of the Code applies to an overpayment of the tax levied in Division II or
30 III of Article 4 of this Chapter to the extent the overpayment is
31 attributable to a capital loss carryback under section 1212(c) of the Code
32 or to a net operating loss carryback under section 172 of the Code.

33 (4) Federal Determination. – When a taxpayer files with the Secretary a
34 return that reflects a federal determination and the return is filed within
35 the required time, the period in which a refund must be demanded or
36 discovered is one year after the return reflecting the federal
37 determination is filed or three years after the original return was filed or
38 due to be filed, whichever is later."

39 Section 3. G.S. 105-130.5(b) is amended by adding a new subdivision to read:

40 "(1a) Interest upon the obligations of any of the following, net of related
41 expenses, to the extent included in federal taxable income:

- 1 a. This State, a political subdivision of this State, or a commission,
2 an authority, or another agency of this State or of a political
3 subdivision of this State.
4 b. A nonprofit educational institution organized or chartered under
5 the laws of this State."

6 Section 4. G.S. 105-130.7 reads as rewritten:

7 "**§ 105-130.7. Deductible portion of dividends.**

8 (a) Regulated Investment Companies. – A corporation may deduct the
9 proportionate part of dividends received by it from a regulated investment company or a
10 real estate investment trust, as defined in G.S. 105-130.12, as represents and corresponds
11 to income received by the regulated investment company or real estate investment trust
12 that would not be taxed by this State if received directly by the corporation.

13 (b) Subsidiary Dividends. – A corporation that, at the close of its taxable year, has
14 its commercial domicile within North Carolina may deduct all dividends received from
15 corporations in which it owns more than fifty percent (50%) of the outstanding voting
16 stock.

17 ~~Dividends from stock issued by a corporation are deductible to the extent provided in~~
18 ~~this section.~~

19 ~~(1), (2). Repealed by Session Laws 1996, Second Extra Session, c. 14, s. 3.~~

20 ~~(3) A corporation may deduct such proportionate part of dividends received~~
21 ~~by it from a regulated investment company or a real estate investment~~
22 ~~trust, as defined in G.S. 105-130.12, as represents and corresponds to~~
23 ~~income received by such regulated investment company or real estate~~
24 ~~investment trust which would not be taxed by this State if received~~
25 ~~directly by the corporation.~~

26 ~~(3a) Repealed by Session Laws 1996, Second Extra Session, c. 14, s. 3.~~

27 ~~(4) A corporation that, at the close of its taxable year, has its commercial~~
28 ~~domicile within North Carolina shall be allowed to deduct all dividends~~
29 ~~received from corporations in which it owns more than fifty percent~~
30 ~~(50%) of the outstanding voting stock.~~

31 ~~(5) Repealed by Session Laws 1996, Second Extra Session, c. 14, s. 3.~~

32 ~~(6) In no case shall the total amount of dividends that are allowed as a~~
33 ~~deduction to a corporation under subdivision (3) of this section exceed~~
34 ~~fifteen thousand dollars (\$15,000) for the taxable year."~~

35 Section 5. Sections 1 and 2 of this act become effective November 1, 1997,
36 and apply to taxes paid on or after that date. The remainder of this act is effective for
37 taxable years beginning on or after January 1, 1997.