

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1991

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HOUSE BILL 1242

Short Title: Corporate Tax Fairness.

(Public)

Sponsors: Representatives Stamey; and Easterling.

Referred to: Finance.

May 10, 1991

A BILL TO BE ENTITLED

AN ACT TO PROVIDE TAX FAIRNESS AND TAX RESTRUCTURING FOR CORPORATIONS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 105-130.2 reads as rewritten:

"§ 105-130.2. Definitions.

~~For the purpose of this Division, and unless otherwise required by the context: The following definitions apply in this Division:~~

(1) ~~'Code' means the Code.~~ – The Internal Revenue Code as enacted as of January 1, 1990, and includes 1991, including any provisions enacted as of that date which become effective either before or after that date.

(1a) ~~The word 'corporation'~~–Corporation. – This term includes joint-stock companies or associations and insurance companies.

(1b) C Corporation. – A corporation that is not an S Corporation.

(1c) Department. – The Department of Revenue.

(2) ~~The words 'domestic corporation' mean any~~–Domestic corporation. – A corporation organized under the laws of this State.

(3) ~~The words 'fiscal year' mean an~~–Fiscal year. – An income year, ending on the last day of any month other than December. A corporation which pursuant to the provisions of the Code has elected to compute its income tax liability to the United States on the basis of an annual period varying from 52 to 53 weeks shall compute its taxable income for the purposes of this division on the basis of the same period used

1 by ~~such~~ the corporation in accordance with the Code in computing its
2 tax liability to the United States for such income year.

3 (4) ~~The words 'foreign corporation' mean any Foreign corporation. – Any~~
4 corporation other than a domestic corporation.

5 (5) ~~The words 'income year' or 'taxable year' mean the Income year. – The~~
6 calendar year or the fiscal year upon the basis of which the net income
7 is computed under this ~~division; provided, that if~~ Division. If no fiscal
8 year has been established, ~~they mean the income year is the calendar~~
9 year. year, except that in ~~In~~ the case of a return made for a fractional
10 part of a year under the provisions of this Division or under rules or
11 regulations prescribed by the ~~Secretary of Revenue, the words 'income~~
12 year' or 'taxable year' mean ~~Secretary, the income year is the period for~~
13 which ~~such~~ the return is made.

14 (5a) S Corporation. – Defined in G.S. 105-131(b).

15 (5b) Secretary. – The Secretary of Revenue.

16 (5c) State net income. – Federal taxable income adjusted as provided in
17 G.S. 105-130.5 and, in the case of a corporation that has income from
18 business activity that is taxable both within and without this State,
19 allocated and apportioned to this State as provided in G.S. 105-130.4.

20 (5d) Taxable year. – Income year.

21 (6) ~~The word 'taxpayer' includes any Taxpayer. – A corporation subject to~~
22 the tax imposed by this Division."

23 Sec. 2. G.S. 105-130.3 reads as rewritten:

24 "**§ 105-130.3. Corporations.**

25 (a) C Corporations. A tax is imposed on the State net income of every C
26 Corporation doing business in this State at the following percentages of the C
27 Corporation's State net income:

28 On the State net income up to fifty thousand dollars (\$50,000), five
29 percent (5%).

30 On the amount over fifty thousand dollars (\$50,000) and up to
31 seventy-five thousand dollars (\$75,000), six percent (6%).

32 On the amount over seventy-five thousand dollars (\$75,000) and up
33 to one hundred thousand dollars (\$100,000), seven percent (7%).

34 On the amount over one hundred thousand dollars (\$100,000),
35 eight percent (8%).

36 (b) S Corporations. A tax is imposed on the State net income of every S
37 Corporation doing business in this State at three percent (3%) of the S Corporation's
38 State net income. In addition, a shareholder's pro rata share of an S Corporation's
39 income is taxable as provided in Division I-S of this Article.

40 ~~Every corporation doing business in this State shall pay annually an income tax~~
41 ~~equivalent to seven percent (7%) of its net income or the portion thereof allocated and~~
42 ~~apportioned to this State, except that an S Corporation subject to the provisions of~~
43 ~~Division I-S of this Article shall not be subject to the tax levied by this section.~~

1 ~~The net income or net loss of such corporation shall be the same as 'taxable income'~~
2 ~~as defined in the Code subject to the adjustments provided in G.S. 105-130.5.~~

3 ~~If the entire business of the corporation is done within this State or if the corporation~~
4 ~~is not taxable in another state within the meaning of subsection (b) of G.S. 105-130.4,~~
5 ~~the tax shall be measured by the entire net income of the corporation for the income~~
6 ~~year.~~

7 ~~If the business of the corporation is taxable both within and without this State, its~~
8 ~~entire net income or net loss shall be allocated and apportioned in accordance with the~~
9 ~~provisions of G.S. 105-130.4."~~

10 Sec. 3. G.S. 105-131.1 reads as rewritten:

11 **"§ 105-131.1. Taxation of an S Corporation and its shareholders.**

12 (a) ~~An S Corporation shall not be subject to the tax levied under G.S. 105-130.3. is~~
13 ~~subject to the tax levied in G.S. 105-130.3(b).~~

14 (b) Each shareholder's pro rata share of an S Corporation's income attributable to
15 the State and each resident shareholder's pro rata share of income not attributable to the
16 State, shall be taken into account by the shareholder in the manner and subject to the
17 adjustments provided in Division II of this Article and section 1366 of the Code and
18 shall be subject to the tax levied under Division II of this Article."

19 Sec. 4. Notwithstanding G.S. 105-163.41, no addition to tax may be made
20 under that statute for a taxable year beginning on or after January 1, 1991, and before
21 January 1, 1992, with respect to an underpayment of corporation income tax to the
22 extent the underpayment was created or increased by this act.

23 Sec. 5. This act does not affect the rights or liabilities of the State, a taxpayer,
24 or another person arising under a statute amended by this act before its amendment; nor
25 does it affect the right to any refund or credit of a tax that would otherwise have been
26 available under the amended statute before its amendment.

27 Sec. 6. This act is effective for taxable years beginning on or after January 1,
28 1991.