

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2005

H

1

HOUSE BILL 1456

Short Title: Charitable Entity Exemption Standard.

(Public)

Sponsors: Representatives Blust; Holloway and Rhodes.

Referred to: Finance.

April 21, 2005

A BILL TO BE ENTITLED

1 AN ACT TO PROVIDE THAT TAX-EXEMPT STATUS FOR CHARITABLE AND
2 SIMILAR ORGANIZATIONS IS CONDITIONED ON THE ORGANIZATION'S
3 USING A MINIMUM AMOUNT OF ITS GROSS INCOME FOR ITS
4 CHARITABLE OR SIMILAR PURPOSE.
5

6 The General Assembly of North Carolina enacts:

7 **SECTION 1.** G.S. 105-130.11 reads as rewritten:

8 "**§ 105-130.11. Conditional and other exemptions.**

9 (a) Exempt Organizations. – Except as provided in subsections ~~(b) and (c)~~,
10 ~~(b1), and (c) of this section~~, the following organizations and any organization that is
11 exempt from federal income tax under the Code are exempt from the tax imposed under
12 this Part.

13 (1) Fraternal beneficiary societies, orders or associations

14 a. Operating under the lodge system or for the exclusive benefit of
15 the members of a fraternity itself operating under the lodge
16 system, and

17 b. Providing for the payment of life, sick, accident, or other
18 benefits to the members of such society, order or association, or
19 their dependents.

20 (2) Cooperative banks without capital stock organized and operated for
21 mutual purposes and without profit; and electric and telephone
22 membership corporations organized under Chapter 117 of the General
23 Statutes.

24 (3) Cemetery corporations and corporations organized for religious,
25 charitable, scientific, literary, or educational purposes, or for the
26 prevention of cruelty to children or animals, no part of the net earnings
27 of which inures to the benefit of any private stockholder or individual.

- 1 (4) Business leagues, chambers of commerce, merchants' associations, or
2 boards of trade not organized for profit, and no part of the net earnings
3 of which inures to the benefit of any private stockholder or individual.
- 4 (5) Civic leagues or organizations not organized for profit, but operated
5 exclusively for the promotion of social welfare.
- 6 (6) Clubs organized and operated exclusively for pleasure, recreation, and
7 other nonprofitable purposes, no part of the net earnings of which
8 inures to the benefit of any private stockholder or member.
- 9 (7) Farmers' or other mutual hail, cyclone, or fire insurance companies,
10 mutual ditch or irrigation companies, mutual or cooperative telephone
11 companies, or like organizations of a purely local character the income
12 of which consists solely of assessments, dues, and fees collected from
13 members for the sole purpose of meeting expenses.
- 14 (8) Farmers', fruit growers', or like organizations organized and operated
15 as sales agents for the purpose of marketing the products of members
16 and turning back to them the proceeds of sales, less the necessary
17 selling expenses, on the basis of the quantity of product furnished by
18 them.
- 19 (9) Mutual associations formed under G.S. 54-111 through 54-128 to
20 conduct agricultural business on the mutual plan and marketing
21 associations organized under G.S. 54-129 through 54-158.

22 Nothing in this subdivision shall be construed to exempt any
23 cooperative, mutual association, or other organization from an income
24 tax on net income that has not been refunded to patrons on a patronage
25 basis and distributed either in cash, stock, or certificates, or in some
26 other manner that discloses the amount of each patron's refund.
27 Provided, in arriving at net income for purposes of this subdivision, no
28 deduction shall be allowed for dividends paid on capital stock.
29 Patronage refunds made after the close of the taxable year and on or
30 before the fifteenth day of the ninth month following the close of the
31 taxable year are considered as to be made on the last day of the taxable
32 year to the extent the allocations are attributable to income derived
33 before the close of the year; provided, that no stabilization or
34 marketing organization that handles agricultural products for sale for
35 producers on a pool basis is considered to have realized any net
36 income or profit in the disposition of a pool or any part of a pool until
37 all of the products in that pool have been sold and the pool has been
38 closed; provided, further, that a pool is not considered closed until the
39 expiration of at least 90 days after the sale of the last remaining
40 product in that pool. These cooperatives and other organizations shall
41 file an annual information return with the Secretary on forms to be
42 furnished by the Secretary and shall include the names and addresses
43 of all persons, patrons, or shareholders whose patronage refunds
44 amount to ten dollars (\$10.00) or more.

1 (10) Insurance companies paying the tax on gross premiums as specified in
2 G.S. 105-228.5.

3 (11) Corporations or organizations, such as condominium associations,
4 homeowner associations, or cooperative housing corporations not
5 organized for profit, the membership of which is limited to the owners
6 or occupants of residential units in the condominium, housing
7 development, or cooperative housing corporation, and operated
8 exclusively for the management, operation, preservation, maintenance,
9 or landscaping of the common areas and facilities owned by the
10 corporation or organization or its members situated contiguous to the
11 houses, apartments, or other dwellings or for the management,
12 operation, preservation, maintenance, and repair of the houses,
13 apartments, or other dwellings owned by the corporation or
14 organization or its members, but only if no part of the net earnings of
15 the corporation or organization inures (other than through the
16 performance of related services for the members of such corporation or
17 organization) to the benefit of any member of such corporation or
18 organization or other person.

19 (b) Unrelated Business Income. – Except as provided in this subsection, an
20 organization described in subdivision (a)(1), (3), (4), (5), (6), (7), (8), or (9) of this
21 section and any organization exempt from federal income tax under the Code is subject
22 to the tax provided in G.S. 105-130.3 on its unrelated business taxable income, as
23 defined in section 512 of the Code, adjusted as provided in G.S. 105-130.5. The tax
24 does not apply, however, to net income derived from any of the following:

25 (1) Research performed by a college, university, or hospital.

26 (2) Research performed for the United States or its instrumentality or for a
27 state or its political subdivision.

28 (3) Research performed by an organization operated primarily to carry on
29 fundamental research, the results of which are freely available to the
30 general public.

31 (b1) Charitable and Similar Organizations. – This subsection does not apply to
32 organizations organized primarily for religious purposes. An organization that is exempt
33 pursuant to subdivision (a)(3) of this section or pursuant to section 501(c)(3) of the
34 Code because of its charitable or other purpose must meet the following standard in
35 order to qualify for exemption under subsection (a) of this section. Of the organization's
36 gross receipts for the income year, at least sixty-five percent (65%) of the amount that
37 was spent for any purpose must have been spent for the charitable or other purpose that
38 is the basis for the organization's exemption. For the purpose of this subsection, an
39 organization's gross receipts include the gross amount solicited on its behalf by a paid
40 solicitor. For the purpose of this subsection, funds spent for any purpose include the
41 amount retained by a paid solicitor for solicitation on behalf of the organization and any
42 other part of gross receipts not held by the organization as of the end of the income year.

43 (c) Homeowner Association Income. – An organization described in subdivision
44 (a)(11) of this section is subject to the tax provided in G.S. 105-130.3 on its gross

1 income other than membership income less the deductions allowed by this Article that
2 are directly connected with the production of the gross income other than membership
3 income. The term "membership income" means the gross income from assessments,
4 fees, charges, or similar amounts received from members of the organization for
5 expenditure in the preservation, maintenance, and management of the common areas
6 and facilities of or the residential units in the condominium or housing development.

7 (d) Real Estate Mortgage Investment Conduits. – An entity that qualifies as a real
8 estate mortgage investment conduit, as defined in section 860D of the Code, is exempt
9 from the tax imposed under this Part, except that any net income derived from a
10 prohibited transaction, as defined in section 860F of the Code, is taxable to the real
11 estate mortgage investment conduit under G.S. 105-130.3 and G.S. 105-130.3A, subject
12 to the adjustments provided in G.S. 105-130.5. This subsection does not exempt the
13 holders of a regular or residual interest in a real estate mortgage investment conduit as
14 defined in section 860G of the Code from any tax on the income from that interest."

15 **SECTION 2.** This act becomes effective for taxable years beginning on or
16 after January 1, 2006.