

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1989

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SENATE BILL 1362*

Short Title: Modify Taxation of N.C. Enterprise Corp.

(Public)

Sponsors: Senators Winner, Guy, Kincaid, Rauch, Staton; and Simpson.

Referred to: Finance.

May 23, 1990

A BILL TO BE ENTITLED

AN ACT TO REVISE THE TAXATION OF A NORTH CAROLINA ENTERPRISE CORPORATION AND TO EXTEND THE TAX CREDIT FOR INVESTMENTS IN AN ENTERPRISE CORPORATION.

The General Assembly of North Carolina enacts:

Section 1. G.S. 105-125 reads as rewritten:

"§ 105-125. Corporations not mentioned.

None of the taxes levied in this Article shall apply to charitable, religious, fraternal, benevolent, scientific or educational corporations, not operating for a profit; nor to insurance companies; nor to mutual ditch or irrigation associations, mutual or cooperative telephone associations or companies, mutual canning associations, cooperative breeding associations, or like organizations or associations of a purely local character deriving receipts solely from assessments, dues, or fees collected from members for the sole purpose of meeting expenses; nor to cooperative marketing associations operating solely for the purpose of marketing the products of members or other farmers, which operations may include activities which are directly related to such marketing activities, and turning back to them the proceeds of sales, less the necessary operating expenses of the association, including interest and dividends on capital stock on the basis of the quantity of product furnished by them; nor to production credit associations organized under the act of Congress known as the Farm Credit Act of 1933; nor to business leagues, boards of trade, clubs organized and operated exclusively for pleasure, recreation and other nonprofitable purposes, civic leagues operated exclusively for the promotion of social welfare, or chambers of commerce and merchants' associations not organized for profit, and no part of the net earnings of which

1 inures to the benefit of any private stockholder, individual or other corporations; nor to
2 corporations or organizations, such as condominium associations, homeowner
3 associations or cooperative housing corporations not organized for profit, the
4 membership of which is limited to the owners or occupants of residential units in the
5 condominium, housing development, or cooperative housing corporation, and operated
6 exclusively for the management, operation, preservation, maintenance or landscaping of
7 the common areas and facilities owned by such corporation or organization or its
8 members situated contiguous to such houses, apartments or other dwellings or for the
9 management, operation, preservation, maintenance and repair of such houses,
10 apartments or other dwellings owned by the corporation or organization or its members,
11 but only if no part of the net earnings of such corporation or organization inures (other
12 than through the performance of related services for the members of such corporation or
13 organization) to the benefit of any member of such corporation or organization or other
14 person. In addition, absent a specific provision to the contrary, the taxes levied in this
15 Article do not apply to any organization that is exempt from federal income tax under
16 the Code.

17 Provided, that each such corporation must, upon request by the Secretary of
18 Revenue, establish in writing its claim for exemption from said provisions. The
19 provisions of G.S. 105-122 and 105-123 shall apply to electric light, power, gas, water,
20 Pullman, sleeping and dining car, express, telegraph, telephone, motor bus, and truck
21 corporations to the extent and only to the extent that the franchise taxes levied in G.S.
22 105-122 and 105-123 exceed the franchise taxes levied in other sections of this Article
23 or schedule; except that the provisions of G.S. 105-122 and 105-123 shall not apply to
24 businesses taxed under G.S. 105-120.1. The exemptions in this section shall apply only
25 to those corporations specially mentioned, and no other.

26 ~~Provided, that any corporation doing business in North Carolina which in the~~
27 ~~opinion of the Secretary of Revenue of North Carolina, qualifies as a "regulated~~
28 ~~investment company" under section 851 of the Code or as a "real estate investment~~
29 ~~trust" under the provisions of section 856 of the Code and which files with the North~~
30 ~~Carolina Department of Revenue its election to be treated as a "regulated investment~~
31 ~~company" or as a "real estate investment trust," shall in determining its basis for~~
32 ~~franchise tax be allowed to—~~The following corporations may deduct the aggregate
33 market value of ~~its~~ their investments in the stocks, bonds, debentures, or other securities
34 or evidences of debt of other corporations, partnerships, individuals, municipalities,
35 governmental agencies or governments. entities in determining their basis for franchise
36 tax:

- 37 (1) A regulated investment company under section 851 of the Code that
38 files an election with the Department to be treated as a regulated
39 investment company.
40 (2) A real estate investment trust under section 856 of the Code that files
41 an election with the Department to be treated as a real estate
42 investment trust.
43 (3) A North Carolina Enterprise Corporation established under Article 3 of
44 Chapter 53A of the General Statutes."

1 Sec. 2. G.S. 105-130.7(3) reads as rewritten:

2 "~~(3) A corporation shall be allowed to deduct such proportionate part of~~
3 ~~dividends received by it from a regulated investment company or a real~~
4 ~~estate investment trust, as defined in G.S. 105-130.12, as represents~~
5 ~~and corresponds to income received by such regulated investment~~
6 ~~company or real estate investment trust which would not be taxed by~~
7 ~~this State if received directly by the corporation. may deduct dividends~~
8 ~~received from a corporation listed in this subdivision to the extent the~~
9 ~~dividends are attributable to income that would be exempt from tax~~
10 ~~under this Division if received by the corporation claiming the~~
11 ~~deduction:~~

12 a. A regulated investment company under section 851 of the Code
13 that files an election with the Department to be treated as a
14 regulated investment company.

15 b. A real estate investment trust under section 856 of the Code that
16 files an election with the Department to be treated as a real
17 estate investment trust.

18 c. A North Carolina Enterprise Corporation established under
19 Article 3 of Chapter 53A of the General Statutes."

20 Sec. 3. G.S. 105-130.12 reads as rewritten:

21 "~~§ 105-130.12. Regulated investment companies and real estate investment trusts.~~
22 ~~Corporations taxed on undistributed income.~~

23 ~~Any organization or trust which, in the opinion of the Secretary of Revenue of North~~
24 ~~Carolina, qualifies as either a "regulated investment company" under section 851 of the~~
25 ~~Code or as a "real estate investment trust" under section 856 of the Code and which files~~
26 ~~with the North Carolina Department of Revenue its election to be treated as a "regulated~~
27 ~~investment company," or as a "real estate investment trust" The following corporations~~
28 ~~shall be taxed under this Division upon only that part of ~~its~~ their net income ~~which~~ that~~
29 ~~is not distributed or declared for distribution to shareholders during the income year or~~
30 ~~by the time required by law for the filing of the return for the income year including the~~
31 ~~period of any extension of time granted for filing ~~such the~~ return.~~

32 (1) A regulated investment company under section 851 of the Code that
33 files an election with the Department to be treated as a regulated
34 investment company.

35 (2) A real estate investment trust under section 856 of the Code that files
36 an election with the Department to be treated as a real estate
37 investment trust.

38 (3) A North Carolina Enterprise Corporation established under Article 3 of
39 Chapter 53A of the General Statutes."

40 Sec. 4. G.S. 105-212(c) reads as rewritten:

41 "~~(c) Any corporation or trust doing business in North Carolina which in the~~
42 ~~opinion of the Secretary of Revenue of North Carolina qualifies as a "regulated~~
43 ~~investment company" under section 851 of the Code or as a "real estate investment~~
44 ~~trust" under the provisions of section 856 of the Code and which files with the North~~

1 ~~Carolina Department of Revenue its election to be treated as a "regulated investment~~
2 ~~company" or "real estate investment trust," shall not be subject to any of the taxes levied~~
3 ~~in this Article or schedule. The following entities are exempt from the taxes levied in~~
4 ~~this Article:~~

5 (1) A regulated investment company under section 851 of the Code that
6 files an election with the Department to be treated as a regulated
7 investment company.

8 (2) A real estate investment trust under section 856 of the Code that files
9 an election with the Department to be treated as a real estate
10 investment trust.

11 (3) A North Carolina Enterprise Corporation established under Article 3 of
12 Chapter 53A of the General Statutes."

13 Sec. 5. G.S. 105-163.011(a) reads as rewritten:

14 "(a) Corporations. – Subject to the limitations contained in G.S. 105-163.012, a
15 corporation that invests in the equity securities of a North Carolina Capital Resource
16 Corporation, a North Carolina Enterprise Corporation, or a qualified investment
17 organization is allowed as a credit against the income tax imposed by Division I of this
18 ~~Article or the Article, the franchise tax~~ imposed by G.S. 105-116, 105-120.2, and ~~105-~~
19 ~~122-105-122, or the gross premiums tax~~ imposed by G.S. 105-228.5 and 105-228.8 for
20 the taxable year an amount equal to twenty-five percent (25%) of the amount invested
21 or seven hundred fifty thousand dollars (\$750,000), whichever is less. The credit may
22 not be taken for the year in which the investment is made but shall be taken for the
23 taxable year beginning during the calendar year following the calendar year in which
24 the investment was made."

25 Sec. 6. G.S. 105-163.012(a) reads as rewritten:

26 "(a) The credit allowed a taxpayer under G.S. 105-163.011 may not exceed the
27 amount of income tax imposed by Division I or II of this ~~Article or by Article, the~~
28 amount of franchise tax imposed by Article 3 of this Chapter, or the amount of gross
29 premiums tax imposed by Article 8B of this Chapter, as appropriate, for the taxable year
30 reduced by the sum of all other credits allowable except tax payments made by or on
31 behalf of the taxpayer. The amount of unused credit allowed under G.S. 105-163.011
32 may be carried forward for the next five succeeding years."

33 Sec. 7. This act is effective for taxable years beginning on or after January 1,
34 1990.