

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1989

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SENATE BILL 205\*

Short Title: Repeal Intangibles Tax.

(Public)

Sponsors: Senators Rauch, Plyler, Winner; Smith, Carpenter, and Hardin.

Referred to: Finance.

February 20, 1989

A BILL TO BE ENTITLED

AN ACT TO REPEAL THE TAX ON INTANGIBLE PERSONAL PROPERTY, TO REIMBURSE COUNTIES AND CITIES FOR THE RESULTING REVENUE LOSS, AND TO INCREASE INCOME TAXES TO PAY FOR THE REIMBURSEMENT.

The General Assembly of North Carolina enacts:

Section 1. Effective January 1, 1990, G.S. 105-213.1 is transferred to Article 12 of Chapter 105 of the General Statutes and is redesignated as G.S. 105-275.1.

Sec. 2. Effective January 1, 1990, G.S. 105-275.1, as designated by this act, reads as rewritten:

**"§ 105-275.1. ~~Additional distribution to counties and municipalities. Reimbursement for exclusion of intangible personal property.~~**

(a) Distribution. As soon as practicable after July 1 of 1986, the Secretary of Revenue shall allocate for distribution to each county and the municipalities located in the county the amount allocated to that county from taxes levied under G.S. 105-199, 105-200, and 105-205 for the last taxable year in which these taxes were levied, plus or minus a sum that equals the product of this amount and the percentage by which State disposable personal income has increased or decreased during the most recent 12-month period for which State personal income data has been compiled by the Bureau of Economic Analysis of the United States Department of Commerce.

Thereafter, as soon as practicable after July 1 of each year, the Secretary shall allocate to each county the amount of funds allocated to the county under this subsection the preceding year, plus or minus a sum that equals the product of this amount and the percentage by which State disposable personal income has increased or

1 decreased during the most recent 12-month period for which State personal income data  
2 has been compiled by the Bureau of Economic Analysis of the United States  
3 Department of Commerce.

4 Amounts allocated to a county under this section shall in turn be divided and  
5 distributed between the county and the municipalities located in the county ~~in accordance~~  
6 ~~with the method of allocating intangible tax revenue between a county and the municipalities~~  
7 ~~located in the county provided in G.S. 105-213.~~ in proportion to the total amount of ad  
8 valorem taxes levied by each during the fiscal year preceding the distribution. For the  
9 purpose of computing the distribution to any county and the municipalities located in  
10 the county for any year with respect to which the property valuation of a public service  
11 company is the subject of an appeal and the Department of Revenue is restrained by law  
12 from certifying the valuation to the appropriate counties and municipalities, the  
13 Department shall use the last property valuation of that public service company that has  
14 been certified.

15 The governing body of each county and municipality shall report to the Secretary of  
16 Revenue such information as he may request for his guidance in making the distribution  
17 under this subsection. If a county or municipality fails to make a requested report  
18 within the time prescribed, the Secretary may disregard that county or municipality in  
19 making the distribution.

20 (a1) Supplemental Distribution. As soon as practicable after July 1 of 1991, the  
21 Secretary of Revenue shall allocate for distribution to each county the amount allocated  
22 to that county from taxes levied under G.S. 105-201, 105-202, 105-203, and 105-204,  
23 for the last taxable year in which these taxes were levied, including the amount by  
24 which the allocation was increased under G.S. 105-213, plus or minus an amount that  
25 equals the product of this amount and the percentage by which State personal income  
26 has increased or decreased during the most recent 12-month period for which State  
27 personal income data has been compiled by the Bureau of Economic Analysis of the  
28 United States Department of Commerce.

29 Thereafter, as soon as practicable after July 1 of each year, the Secretary shall allocate  
30 to each county the amount of funds allocated to the county under this subsection the  
31 preceding year, plus or minus a sum that equals the product of this amount and the  
32 percentage by which State personal income has increased or decreased during the most  
33 recent 12-month period for which State personal income data has been compiled by the  
34 Bureau of Economic Analysis of the United States Department of Commerce.

35 Amounts allocated to a county under this subsection shall in turn be divided and  
36 distributed between the county and the municipalities located in the county in  
37 accordance with the method by which funds are distributed under subsection (a) of this  
38 section.

39 (b) Restrictions on Use. Amounts distributed to a county or a municipality under  
40 this section are subject to the same restrictions as amounts distributed under G.S. 105-213.  
41 shall be used by the county or municipality in proportion to other property tax levies  
42 made by it for various funds and activities.

43 (c) Municipality Defined.—As used in this section, the term "municipality" has  
44 the same meaning as in G.S. 105-213.

1 (d) Source. Amounts distributed under this section shall be charged to individual  
2 income tax collections."

3 Sec. 3. Article 7 of Chapter 105 of the General Statutes, as amended by this  
4 act, and G.S. 105-276 are repealed. Any taxes collected pursuant to Article 7 of  
5 Chapter 105 of the General Statutes on or after July 1, 1990, shall remain in the General  
6 Fund and any refunds made on or after July 1, 1990, of taxes collected pursuant to  
7 Article 7 of Chapter 105 of the General Statutes shall be charged to the General Fund.

8 Sec. 4. G.S. 105-275 is amended by adding a new subdivision to read:

9 "(38) Accounts receivable, evidences of debt, stocks, bonds, and beneficial interests  
10 in trusts held by foreign fiduciaries."

11 Sec. 5. G.S. 105-285(b) reads as rewritten:

12 "(b) Personal Property; General Rule. – Except as provided in subsection (c) below,  
13 the value, ownership, and place of taxation of tangible personal property ~~personal~~  
14 ~~property, both tangible and intangible,~~ shall be determined annually as of January 1."

15 Sec. 6. G.S. 105-288 reads as rewritten:

16 "**§ 105-288. Functions of Department and Property Tax Commission; oath;**  
17 **expenses.**

18 (a) Duties of the Department of Revenue:

19 (1) The Department shall exercise general and specific supervision over  
20 the valuation and taxation of property by counties and municipalities  
21 throughout the State.

22 (2) The Department is responsible for appraising the property of public  
23 service companies as defined in G.S. 105-333.

24 (b) Duties of the Property Tax Commission:

25 (1) The Commission is constituted as the State board of equalization and  
26 review for the valuation and taxation of property in the State.

27 (2) The Commission shall hear appeals from the appraisal and assessment  
28 of the property of public service companies as defined in G.S. 105-  
29 333.

30 (c) Each member of the Commission, the Secretary of Revenue, and the  
31 employees of the Department assigned duties and responsibilities enumerated in this  
32 Chapter shall take and subscribe the oath set up below and file it with the Secretary of  
33 State:

34 I, ....., do solemnly swear, or affirm, that I will support and maintain the  
35 Constitution and laws of the United States, and the Constitution and laws of North  
36 Carolina not inconsistent therewith, and that I will faithfully discharge the duties of my  
37 office and that I will not allow my actions in such office to be influenced by personal or  
38 political friendships or obligations, so help me, God.

39 .....

40 Signature

41 (d) All expenses of the Commission, and the Department of Revenue in  
42 performing the duties enumerated in this Article shall be paid from funds appropriated  
43 out of revenue derived from the local sales and use taxes levied pursuant to Article 42 of  
44 this Chapter. ~~tax on intangible personal property as provided by G.S. 105-213."~~

1           Sec. 7. G.S. 105-501 reads as rewritten:

2   **"§ 105-501. Distribution of additional taxes.**

3           The Secretary shall, on a quarterly basis, allocate the net proceeds of the additional  
4 one-half percent (1/2%) sales and use taxes levied under this Article to the taxing  
5 counties on a per capita basis according to the most recent annual population estimates  
6 certified to the Secretary by the State Budget Officer. The Secretary shall then adjust  
7 the amount allocated to each county as provided in G.S. 105-486(b). The amount  
8 allocated to each taxing county shall then be divided among the county and the  
9 municipalities located in the county in accordance with the method by which the one  
10 percent (1%) sales and use taxes levied in that county pursuant to Article 39 of this  
11 Chapter or Chapter 1096 of the 1967 Session Laws are distributed.

12           If any taxes levied under this Article by a county have not been collected in that  
13 county for a full quarter because of the levy or repeal of the taxes, the Secretary shall  
14 distribute a pro rata share to that county for that quarter based on the number of months  
15 the taxes were collected in that county during the quarter.

16           In determining the amount to be distributed, the Secretary shall deduct from the net  
17 proceeds collected under this Article the cost to the State for the preceding quarter to:

- 18           (1) Perform the duties imposed upon the Department of Revenue by  
19 Article 15 of this Chapter;  
20           (2) Operate the Property Tax Commission; and  
21           (3) Operate a training program in property tax appraisal and assessment  
22 administration by the Institute of Government."

23           Sec. 8. G.S. 105-333(3) reads as rewritten:

24           "(3) 'Distributable system property' means all real property and tangible ~~and~~  
25 ~~intangible~~—personal property owned or used by a railroad company other than  
26 nondistributable system property."

27           Sec. 9. G.S. 105-333(17) reads as rewritten:

28           "(17) 'System property' means the real property and tangible ~~and intangible~~—personal  
29 property used by a public service company in its public service activities. It also means  
30 public service company property under construction on the day as of which property is  
31 assessed which when completed will be used by the owner in its public service  
32 activities."

33           Sec. 10. G.S. 105-305(a) reads as rewritten:

34           "(a) Listing Instructions. This section ~~shall apply~~—applies to all taxable intangible  
35 personal property that has a tax situs in this ~~State, State and~~ State and that is not required by this  
36 ~~Subchapter~~—to be appraised originally by the Department of Revenue. ~~Revenue, and that is~~  
37 ~~not subject to taxation under the provisions of Schedule H, G.S. 105-198 through 105-217.~~  
38 The place in this State at which such property is taxable shall be determined according  
39 to the rules prescribed in subsections (b) through (e), below. The person whose duty it  
40 is to list property shall list it in the county in which the place of taxation is located,  
41 indicating on the abstract the information required by G.S. 105-309(d). If the place of  
42 taxation lies within a city or town that requires separate listing under G.S. 105-326(a),  
43 the person whose duty it is to list shall also list the property for taxation in the city or  
44 town."

1           Sec. 11. G.S. 105-115(2) reads as rewritten:

2           "(2) The value upon which the tax herein levied shall be assessed by the Secretary  
3 of Revenue and the measure of the extent to which every such railroad company is  
4 carrying on intrastate commerce within the State of North Carolina shall be fifty-five  
5 percent (55%) of the appraised value of the total ~~property, tangible and intangible,~~ tangible  
6 property in this State, for each such railroad company, as determined for ad valorem  
7 taxation during the calendar year in which such report is due."

8           Sec. 12. Effective for taxable years beginning on or after January 1, 1991,  
9 G.S. 105-120.2(b)(2) reads as rewritten:

10          "(2) Notwithstanding the provisions of subdivision (1) of this subsection, if the tax  
11 produced pursuant to application of this paragraph (2) exceeds the tax produced  
12 pursuant to application of subdivision (1), then the tax shall be levied at the rate of one  
13 dollar and fifty cents (\$1.50) per one thousand dollars (\$1,000) on the greater of the  
14 amounts of

- 15           a. Fifty-five percent (55%) of the appraised value as determined for ad  
16 valorem taxation of all the real and tangible personal property in this  
17 State of each such corporation; or ~~corporation plus the total appraised~~  
18 ~~value of intangible property returned for taxation of intangible personal~~  
19 ~~property as computed under G.S. 105-122(d); or~~  
20           b. The total actual investment in tangible property in this State of such  
21 corporation as computed under G.S. 105-122(d)."

22          Sec. 13. Effective for taxable years beginning on or after January 1, 1991,  
23 G.S. 105-122(d) reads as rewritten:

24          "(d) After determining the proportion of its total capital stock, surplus and  
25 undivided profits as set out in subsection (c) of this section, which amount so  
26 determined shall in no case be less than fifty-five percent (55%) of the appraised value  
27 as determined for ad valorem taxation of all the real and tangible personal property in  
28 this State of each such corporation ~~plus the total appraised value of intangible property~~  
29 ~~returned for taxation of intangible personal property as herein specified~~ nor less than its total  
30 actual investment in tangible property in this State, every corporation taxed under this  
31 section shall annually pay to the Secretary of Revenue, at the time the report and  
32 statement are due, a franchise or privilege tax, which is hereby levied at the rate of one  
33 dollar and fifty cents (\$1.50) per one thousand dollars (\$1,000) of the total amount of  
34 capital stock, surplus and undivided profits as herein provided. The tax imposed in this  
35 section shall in no case be less than twenty-five dollars (\$25.00) and shall be for the  
36 privilege of carrying on, doing business, and/or the continuance of articles of  
37 incorporation or domestication of each such corporation in this State. Appraised value  
38 of tangible property including real estate shall be the ad valorem valuation for the  
39 calendar year next preceding the due date of the franchise tax return. ~~Appraised value of~~  
40 ~~intangible property shall be the total gross valuation required to be reported for intangible tax~~  
41 ~~purposes on April 15 coincident with or next preceding the due date of the franchise tax return.~~  
42 The term 'total actual investment in tangible property' as used in this section shall be  
43 construed to mean the total original purchase price or consideration to the reporting  
44 taxpayer of its tangible properties, including real estate, in this State plus additions and

1 improvements thereto less reserve for depreciation as permitted for income tax  
2 purposes, and also less any indebtedness incurred and existing by virtue of the purchase  
3 of any real estate and any permanent improvements made thereon. In computing 'total  
4 actual investment in tangible personal property' there shall also be deducted reserves for  
5 the entire cost of any air-cleaning device or sewage or waste treatment plant, including  
6 waste lagoons, and pollution abatement equipment purchased or constructed and  
7 installed which reduces the amount of air or water pollution resulting from the emission  
8 of air contaminants or the discharge of sewage and industrial wastes or other polluting  
9 materials or substances into the outdoor atmosphere or into streams, lakes, or rivers,  
10 upon condition that the corporation claiming such deduction shall furnish to the  
11 Secretary a certificate from the Department of Natural Resources and Community  
12 Development certifying that said Department has found as a fact that the air-cleaning  
13 device, waste treatment plant or pollution abatement equipment purchased or  
14 constructed and installed as above described has actually been constructed and installed  
15 and that such device, plant or equipment complies with the requirements of said  
16 Environmental Management Commission with respect to such devices, plants or  
17 equipment, that such device, plant or equipment is being effectively operated in  
18 accordance with the terms and conditions set forth in the permit, certificate of approval,  
19 or other document of approval issued by the Environmental Management Commission  
20 and that the primary purpose thereof is to reduce air or water pollution resulting from  
21 the emission of air contaminants or the discharge of sewage and waste and not merely  
22 incidental to other purposes and functions. The cost of constructing facilities of any  
23 private or public utility built for the purpose of providing sewer service to residential  
24 and outlying areas shall be treated as deductible for the purposes of this section; the  
25 deductible liability allowed by this section shall apply only with respect to such  
26 pollution abatement plants or equipment constructed or installed on or after January 1,  
27 1955.

28 In determining the total tax payable by any corporation under this section, there shall  
29 be allowed as a credit on such tax the amount of the credit authorized by Division V of  
30 Article 4 of this Chapter."

31 Sec. 14. Effective July 1, 1991, G.S. 108A-93 reads as rewritten:

32 "**§ 108A-93. Withholding of State moneys from counties failing to pay public**  
33 **assistance costs.**

34 The Director of the Budget is authorized to withhold from any county that does not  
35 pay its full share of public assistance costs to the State and has not arranged for payment  
36 pursuant to G.S. 108-54.1 or G.S. 108A-89, any State moneys appropriated from the  
37 General Fund for public assistance and related administrative costs, or to direct the  
38 Secretary of Revenue and State Treasurer to withhold any funds to be distributed to a  
39 county under G.S. 105-275.1 or any tax owed to a county under ~~Article 7 of Chapter 105~~  
40 ~~of the General Statutes, G.S. 105-113.82, Article 39 of Chapter 105 of the General~~  
41 Statutes or Chapter 1096 of the Session Laws of 1967. The Director of the Budget shall  
42 notify the chairman of the board of county commissioners of the proposed action prior  
43 to the withholding of funds."

1           Sec. 15. Division I of Article 4 of Chapter 105 is amended by adding after  
2 G.S. 105-130.3 a new section to read:

3 **"§ 105-130.3A. Income tax surtax.**

4           In addition to the income tax imposed by G.S. 105-130.3, each corporation required  
5 to file a return under this Division shall pay an income tax surtax equal to three and one-  
6 half percent (3.5%) of the amount of income tax payable by the corporation to the State  
7 for the taxable year. This tax is due on or before the fifteenth day of the third month  
8 following the close of the corporation's taxable year."

9           Sec. 16. G.S. 105-136 reads as rewritten:

10 **"§ 105-136. Individuals.**

11           A tax is hereby imposed upon every resident of this State which shall be levied,  
12 collected, and paid annually, with respect to the net income of the taxpayer as herein  
13 defined, and upon the net income derived from North Carolina sources of every  
14 nonresident individual which is attributable to the ownership of any interest in real or  
15 tangible personal property in this State or which is from a business, trade, profession, or  
16 occupation carried on in this State, computed at the following rates, after deducting the  
17 exemptions provided in this Division.

18           On the excess over the amount legally exempted, up to two thousand dollars  
19 (\$2,000), three percent (3%).

20           On the excess above two thousand dollars (\$2,000), and up to four thousand dollars  
21 (\$4,000), four percent (4%).

22           On the excess above four thousand dollars (\$4,000), and up to six thousand dollars  
23 (\$6,000), five percent (5%).

24           On the excess over six thousand dollars (\$6,000), and up to ten thousand dollars  
25 (\$10,000), six percent (6%).

26           On the excess over ten thousand dollars (\$10,000), and up to thirty thousand dollars  
27 (\$30,000), seven percent (7%).

28           On the excess over thirty thousand dollars (\$30,000), and up to sixty thousand  
29 dollars (\$60,000), seven and one-half percent (7.5%).

30           On the excess over sixty thousand dollars (\$60,000), eight percent (8%)."

31           Sec. 17. This act does not affect the rights or liabilities of the State, a  
32 taxpayer, or other person arising under a statute amended or repealed by this act before  
33 its amendment or repeal; nor does it affect the right to any refund or credit of a tax that  
34 would otherwise have been available under the amended or repealed statute before its  
35 amendment or repeal.

36           Sec. 18. Sections 1 and 2 of this act shall become effective January 1, 1990.  
37 Section 7 of this act shall become effective January 1, 1990, and applies to sales and use  
38 taxes collected on sales made on or after that date. Sections 12 and 13 of this act are  
39 effective for taxable years beginning on or after January 1, 1991. Section 14 of this act  
40 shall become effective July 1, 1991. The remainder of this act is effective for taxable  
41 years beginning on or after January 1, 1990.