

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1993

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SENATE BILL 1018

Short Title: Real Estate Mortgage Investment Conduit.

(Public)

Sponsors: Senators Ward; and Kaplan.

Referred to: Finance.

May 3, 1993

A BILL TO BE ENTITLED

1 AN ACT TO CLARIFY THAT REAL ESTATE MORTGAGE INVESTMENT
2 CONDUITS WILL BE TREATED AS PASS-THROUGH ENTITIES FOR STATE
3 TAX PURPOSES TO THE SAME EXTENT AS UNDER THE FEDERAL TAX
4 LAW.
5

6 The General Assembly of North Carolina enacts:

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

8 "**§ 105-125. Corporations not mentioned.**

9 None of the taxes levied in this Article shall apply to charitable, religious, fraternal,
10 benevolent, scientific or educational corporations, not operating for a profit; nor to
11 insurance companies; nor to mutual ditch or irrigation associations, mutual or
12 cooperative telephone associations or companies, mutual canning associations,
13 cooperative breeding associations, or like organizations or associations of a purely local
14 character deriving receipts solely from assessments, dues, or fees collected from
15 members for the sole purpose of meeting expenses; nor to cooperative marketing
16 associations operating solely for the purpose of marketing the products of members or
17 other farmers, which operations may include activities which are directly related to such
18 marketing activities, and turning back to them the proceeds of sales, less the necessary
19 operating expenses of the association, including interest and dividends on capital stock
20 on the basis of the quantity of product furnished by them; nor to production credit
21 associations organized under the act of Congress known as the Farm Credit Act of 1933;
22 nor to business leagues, boards of trade, clubs organized and operated exclusively for
23 pleasure, recreation and other nonprofitable purposes, civic leagues operated
24 exclusively for the promotion of social welfare, or chambers of commerce and

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

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

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

36 Provided, that an entity that qualifies as a real estate mortgage investment conduit,
37 as defined in section 860D of the Code, is exempt from all of the taxes levied in this
38 Article. Upon request by the Secretary of Revenue, a real estate mortgage investment
39 conduit must establish in writing its qualification for this exemption."

40 Sec. 2. G.S. 105-130.11 is amended by adding a new subsection to read:

41 "(d) Real Estate Mortgage Investment Conduits. – An entity that qualifies as a real
42 estate mortgage investment conduit, as defined in section 860D of the Code, is exempt
43 from the tax imposed under this Division, except that any net income derived from a
44 prohibited transaction, as defined in section 860F of the Code, is taxable to the real

1 estate mortgage investment conduit under G.S. 105-130.3 and G.S. 105-130.3A, subject
2 to the adjustments provided in G.S. 105-130.5. This subsection does not exempt the
3 holders of a regular or residual interest in a real estate mortgage investment conduit as
4 defined in section 860G of the Code from any tax on the income from that interest."

5 Sec. 3. G.S. 105-212(a) read as rewritten:

6 "(a) None of the taxes levied in this Article or schedule shall apply to religious,
7 educational, charitable or benevolent organizations not conducted for profit, nor to
8 trusts established for religious, educational, charitable or benevolent purposes where
9 none of the property or the income from the property owned by such trust may inure to
10 the benefit of any individual or any organization conducted for profit, nor to any funds,
11 evidences of debt, or securities held irrevocably in a charitable remainder trust meeting
12 the requirements of section 664 of the Code or in a pooled income fund meeting the
13 requirements of section 642(c)(5) of the Code, nor to any funds held irrevocably in trust
14 exclusively for the maintenance and care of places of burial; nor to any funds, evidences
15 of debt, or securities held irrevocably in pension, profit-sharing, stock bonus, or annuity
16 trusts, or combinations thereof, established by employers for the purpose of distributing
17 both the principal and income thereof exclusively to eligible employees, or the
18 beneficiaries of such employees, if such trusts qualify for exemption from income tax
19 under the Code; nor to any funds, evidences of debt or securities held irrevocably in a
20 pension, profit-sharing, stock bonus or annuity plan established by an employer for the
21 benefit of his employees or for himself and his employees if such plan qualifies for
22 exemption from income tax under section 401 of the Code; nor to any funds, evidences
23 of debt, or securities held in an individual retirement account described in section 408(a)
24 of the Code, or an individual retirement annuity described in section 408(b) of the Code,
25 if such individual retirement account or individual retirement annuity is exempt from
26 income tax under section 408(e) of the Code. The taxes levied in this Article do not
27 apply to an entity that qualifies as a real estate mortgage investment conduit, as defined
28 in section 860D of the Code."

29 Sec. 4. This act is effective for taxable years beginning on or after January 1,
30 1993.