

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1991

H

2

HOUSE BILL 13
Committee Substitute Favorable 3/7/91

Short Title: Repeal Franchise Tax Initial Return.

(Public)

Sponsors:

Referred to:

February 4, 1991

A BILL TO BE ENTITLED

AN ACT TO ELIMINATE THE FRANCHISE TAX INITIAL RETURN AND TO
INCREASE THE MINIMUM FRANCHISE TAX.

The General Assembly of North Carolina enacts:

Section 1. G.S. 105-123 is repealed.

Sec. 2. G.S. 105-114(a) reads as rewritten:

"(a) Nature of Taxes. The taxes levied in this Article upon persons and partnerships are for the privilege of engaging in business or doing the act named. The taxes levied in this Article upon corporations are privilege or excise taxes levied upon:

(1) Corporations organized under the laws of this State for the existence of the corporate rights and privileges granted by their charters, and the enjoyment, under the protection of the laws of this State, of the powers, rights, privileges and immunities derived from the State by the form of such existence; and

(2) Corporations not organized under the laws of this State for doing business in this State and for the benefit and protection which such corporations receive from the government and laws of this State in doing business in this State.

If the corporation is organized under the laws of this State, the payment of the taxes levied by this Article shall be a condition precedent to the right to continue in such form of organization; and if the corporation is not organized under the laws of this State, payment of these taxes shall be a condition precedent to the right to continue to engage in doing business in this State. The taxes levied in this Article or schedule shall be for

1 the fiscal year of the State in which the taxes become due; except that the taxes levied in
2 G.S. 105-122 and ~~G.S. 105-123~~ shall be for the income year of the corporation in which
3 the taxes become due."

4 Sec. 3. G.S. 105-120.1 reads as rewritten:

5 "**§ 105-120.1. Franchise or privilege tax on street bus or similar street**
6 **transportation system for the transportation of passengers for hire.**

7 (a) Every person, firm or corporation, domestic or foreign, other than municipal
8 corporations, owning and/or operating a street railway, street bus or similar street
9 transportation system for the transportation of passengers for hire shall on or before the
10 first day of June of each year pay to the Secretary of Revenue an annual franchise or
11 privilege tax in the amount of ~~twenty-five dollars (\$25.00)~~ thirty-five dollars (\$35.00).

12 (b) Businesses taxed under this section shall not be required to pay the franchise
13 tax imposed by G.S. 105-122 or ~~105-123~~ and no county, city or town shall impose a
14 franchise, license or privilege tax upon the business taxed under this section."

15 Sec. 4. G.S. 105-120.2(b)(1) reads as rewritten:

16 "(b)(1) Every corporation taxed under this section shall annually pay to the
17 Secretary of Revenue, at the time the report and statement are due, a
18 franchise or privilege tax, which is hereby levied, at the rate of one
19 dollar and fifty cents (\$1.50) per one thousand dollars (\$1,000) of the
20 amount determined under subsection (a) of this section, but in no case
21 shall the tax be more than seventy-five thousand dollars (\$75,000) nor
22 less than ~~twenty-five dollars (\$25.00)~~ thirty-five dollars (\$35.00)."

23 Sec. 5. 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
30 total actual investment in tangible property in this State, every corporation taxed under
31 this 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)~~ thirty-five dollars
36 (\$35.00) and shall be for the privilege of carrying on, doing business, and/or the
37 continuance of articles of incorporation or domestication of each such corporation in
38 this State. Appraised value of tangible property including real estate shall be the ad
39 valorem valuation for the calendar year next preceding the due date of the franchise tax
40 return. Appraised value of intangible property shall be the total gross valuation required
41 to be reported for intangible tax purposes on April 15 coincident with or next preceding
42 the due date of the franchise tax return. The term 'total actual investment in tangible
43 property' as used in this section shall be construed to mean the total original purchase
44 price or consideration to the reporting taxpayer of its tangible properties, including real

1 estate, in this State plus additions and improvements thereto less reserve for
2 depreciation as permitted for income tax purposes, and also less any indebtedness
3 incurred and existing by virtue of the purchase of any real estate and any permanent
4 improvements made thereon. In computing 'total actual investment in tangible personal
5 property' there shall also be deducted reserves for the entire cost of any air-cleaning
6 device or sewage or waste treatment plant, including waste lagoons, and pollution
7 abatement equipment purchased or constructed and installed which reduces the amount
8 of air or water pollution resulting from the emission of air contaminants or the discharge
9 of sewage and industrial wastes or other polluting materials or substances into the
10 outdoor atmosphere or into streams, lakes, or rivers, upon condition that the corporation
11 claiming such deduction shall furnish to the Secretary a certificate from the Department
12 of Environment, Health, and Natural Resources or from a local air pollution control
13 program for air-cleaning devices located in an area where the Environmental
14 Management Commission has certified a local air pollution control program pursuant to
15 G.S. 143-215.112 certifying that said Department or local air pollution control program
16 has found as a fact that the air-cleaning device, waste treatment plant or pollution
17 abatement equipment purchased or constructed and installed as above described has
18 actually been constructed and installed and that such device, plant or equipment
19 complies with the requirements of the Environmental Management Commission or local
20 air pollution control program with respect to such devices, plants or equipment, that
21 such device, plant or equipment is being effectively operated in accordance with the
22 terms and conditions set forth in the permit, certificate of approval, or other document
23 of approval issued by the Environmental Management Commission or local air
24 pollution control program and that the primary purpose thereof is to reduce air or water
25 pollution resulting from the emission of air contaminants or the discharge of sewage and
26 waste and not merely incidental to other purposes and functions. The cost of
27 constructing facilities of any private or public utility built for the purpose of providing
28 sewer service to residential and outlying areas shall be treated as deductible for the
29 purposes of this section; the deductible liability allowed by this section shall apply only
30 with respect to such pollution abatement plants or equipment constructed or installed on
31 or after January 1, 1955.

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

35 Sec. 6. G.S. 105-125 reads as rewritten:

36 **"§ 105-125. Corporations not mentioned.**

37 None of the taxes levied in this Article shall apply to charitable, religious, fraternal,
38 benevolent, scientific or educational corporations, not operating for a profit; nor to
39 insurance companies; nor to mutual ditch or irrigation associations, mutual or
40 cooperative telephone associations or companies, mutual canning associations,
41 cooperative breeding associations, or like organizations or associations of a purely local
42 character deriving receipts solely from assessments, dues, or fees collected from
43 members for the sole purpose of meeting expenses; nor to cooperative marketing
44 associations operating solely for the purpose of marketing the products of members or

1 other farmers, which operations may include activities which are directly related to such
2 marketing activities, and turning back to them the proceeds of sales, less the necessary
3 operating expenses of the association, including interest and dividends on capital stock
4 on the basis of the quantity of product furnished by them; nor to production credit
5 associations organized under the act of Congress known as the Farm Credit Act of 1933;
6 nor to business leagues, boards of trade, clubs organized and operated exclusively for
7 pleasure, recreation and other nonprofitable purposes, civic leagues operated
8 exclusively for the promotion of social welfare, or chambers of commerce and
9 merchants' associations not organized for profit, and no part of the net earnings of which
10 inures to the benefit of any private stockholder, individual or other corporations; nor to
11 corporations or organizations, such as condominium associations, homeowner
12 associations or cooperative housing corporations not organized for profit, the
13 membership of which is limited to the owners or occupants of residential units in the
14 condominium, housing development, or cooperative housing corporation, and operated
15 exclusively for the management, operation, preservation, maintenance or landscaping of
16 the common areas and facilities owned by such corporation or organization or its
17 members situated contiguous to such houses, apartments or other dwellings or for the
18 management, operation, preservation, maintenance and repair of such houses,
19 apartments or other dwellings owned by the corporation or organization or its members,
20 but only if no part of the net earnings of such corporation or organization inures (other
21 than through the performance of related services for the members of such corporation or
22 organization) to the benefit of any member of such corporation or organization or other
23 person. In addition, absent a specific provision to the contrary, the taxes levied in this
24 Article do not apply to any organization that is exempt from federal income tax under
25 the Code.

26 Provided, that each such corporation must, upon request by the Secretary of
27 Revenue, establish in writing its claim for exemption from said provisions. The
28 provisions of G.S. 105-122 ~~and 105-123~~ shall apply to electric light, power, gas, water,
29 Pullman, sleeping and dining car, express, telegraph, telephone, motor bus, and truck
30 corporations to the extent and only to the extent that the franchise taxes levied in G.S.
31 105-122 ~~and 105-123~~ exceed the franchise taxes levied in other sections of this Article or
32 schedule; except that the provisions of G.S. 105-122 ~~and 105-123~~ shall not apply to
33 businesses taxed under G.S. 105-120.1. The exemptions in this section shall apply only
34 to those corporations specially mentioned, and no other.

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

44 Sec. 7. G.S. 105-127(a) reads as rewritten:

1 "(a) Every corporation, domestic or foreign, from which a report is required by
2 law to be made to the Secretary of Revenue, shall, unless otherwise provided, pay to
3 said Secretary annually the franchise tax as required by ~~G.S. 105-122 and 105-123.~~ G.S.
4 105-122."

5 Sec. 8. This act is effective for taxable years beginning on or after September
6 1, 1991.