

**GENERAL ASSEMBLY OF NORTH CAROLINA**

**SECOND EXTRA SESSION 1996**

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**1**

HOUSE BILL 8

Short Title: 1996 Tax Reform Act.

(Public)

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Sponsors: Representatives Neely; Capps, Cansler, Daughtry, Ives, and G. Miller.

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Referred to: Rules, Calendar, and Operations of the House.

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July 8, 1996

A BILL TO BE ENTITLED

1  
2 AN ACT TO PROVIDE TAX REFORM BY REPEALING THE  
3 UNCONSTITUTIONAL CORPORATE TAX CREDIT FOR NORTH CAROLINA  
4 WINE, REPEALING THE UNCONSTITUTIONAL CORPORATE TAX  
5 DEDUCTION FOR NORTH CAROLINA DIVIDENDS, REVISING THE  
6 UNCONSTITUTIONAL INDIVIDUAL INCOME TAX CREDIT FOR NORTH  
7 CAROLINA DIVIDENDS, REPEALING THE UNCONSTITUTIONAL TAX  
8 CREDIT FOR QUALIFIED BUSINESS INVESTMENTS, CLARIFYING THE TAX  
9 TREATMENT OF REFUNDS OF UNCONSTITUTIONAL TAXES, CLARIFYING  
10 THE SALES AND USE TAX TREATMENT OF ITEMS GIVEN AWAY BY  
11 MERCHANTS, AND PROVIDING THE SECRETARY OF REVENUE  
12 AUTHORITY TO IMPROVE USE TAX COLLECTION.

13 The General Assembly of North Carolina enacts:

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20 **PART I. REFORM UNCONSTITUTIONAL TAX PROVISIONS**

1 Section 1. G.S. 105-130.38 and G.S. 105-151.15 are repealed.

2 Sec. 2. G.S. 105-151.19 reads as rewritten:

3 **"§ 105-151.19. Credit for North Carolina dividends.**

4 There is allowed as a credit against the tax imposed by this Division an amount equal  
5 to six percent (6%) of the amount of dividends received by the taxpayer directly or  
6 indirectly during the taxable year from ~~stock issued by a qualified corporation, corporate~~  
7 ~~stock, up to a maximum credit of three hundred dollars (\$300.00) twelve dollars (\$12.00)~~  
8 per taxpayer for the taxable year. ~~This credit A corporation is a qualified corporation if fifty~~  
9 ~~percent (50%) or more of the dividends from stock issued by the corporation would be~~  
10 ~~deductible by a corporate shareholder for the taxable year under the provisions of G.S. 105-~~  
11 ~~130.7(1), (2), (3), (3a), or (5) except that no credit shall be allowed for dividends deemed~~  
12 ~~distributable from earnings for a taxable period during which the corporation is an S Corporation~~  
13 ~~subject to the provisions of Division I-S of this Article.~~

14 ~~This credit applies only with respect to dividends received while the taxpayer was a~~  
15 ~~resident of this State. In the case of a married couple filing a joint return where both~~  
16 ~~spouses received dividends during the taxable year, the three hundred dollar (\$300.00)~~  
17 ~~maximum maximum credit amount applies separately to each spouse's dividends for a~~  
18 ~~potential total credit of six hundred dollars (\$600.00) twenty-four dollars (\$24.00) for the~~  
19 ~~couple. This credit may not exceed the amount of tax imposed by this Division for the~~  
20 ~~taxable year reduced by the sum of all credits allowed under this Division, except~~  
21 ~~payments of tax made by or on behalf of the taxpayer."~~

22 Sec. 3. Effective for taxable years beginning on or after January 1, 2001, G.S.  
23 105-151.19 is repealed.

24 Sec. 4. G.S. 105-130.7 reads as rewritten:

25 **"§ 105-130.7. Deductible portion of dividends.**

26 Dividends from stock issued by ~~any a~~ corporation shall be deducted to the extent herein  
27 ~~provided. are deductible to the extent provided in this section.~~

28 (1) ~~As soon as may be practicable after September 30 of each year, the~~  
29 ~~Secretary of Revenue shall determine from the corporate income tax~~  
30 ~~return filed during the year ending September 30 by each corporation~~  
31 ~~required to file a return during that period the proportion of the entire~~  
32 ~~net income or loss of the corporation allocable to this State under the~~  
33 ~~provisions of G.S. 105-130.4, except as provided herein. If a~~  
34 ~~corporation has a net income in North Carolina and a net loss from all~~  
35 ~~sources wherever located, or if a corporation has a net loss in North~~  
36 ~~Carolina and a net income from all sources wherever located, the~~  
37 ~~Secretary shall require the use of the allocation fraction determined~~  
38 ~~under the provisions of G.S. 105-130.4. A corporation which is a~~  
39 ~~stockholder in any such corporation shall be allowed to deduct the same~~  
40 ~~proportion of the dividends received by it from such corporation during~~  
41 ~~its income year ending on or after September 30. No deduction shall be~~  
42 ~~allowed for any part of any dividend received from any corporation that~~  
43 ~~was required to file an income tax return during the year ending~~

1           ~~September 30 but failed to file the return. In the case of dividends~~  
2           ~~received from a corporation that was not required to file a return during~~  
3           ~~the year ending September 30, the proportion of dividends deductible by~~  
4           ~~the stockholder shall be determined by the Secretary from the best~~  
5           ~~information available.~~

6           (2) ~~Dividends received by a corporation from stock in any insurance~~  
7           ~~company of this State taxed under the provisions of G.S. 105-228.5~~  
8           ~~shall be deductible by such corporation, and a proportionate part of any~~  
9           ~~dividends received from stock in any foreign insurance corporation shall~~  
10           ~~be deductible, such part to be determined on the basis of the ratio of~~  
11           ~~premiums reported for taxation in this State to total premiums collected~~  
12           ~~both in and out of this State.~~

13           (3) ~~A corporation shall be allowed to~~ may ~~deduct~~ such proportionate part of  
14           dividends received by it from a regulated investment company or a real  
15           estate investment trust, as defined in G.S. 105-130.12, as represents and  
16           corresponds to income received by such regulated investment company  
17           or real estate investment trust which would not be taxed by this State if  
18           received directly by the corporation.

19           (3a) ~~Dividends received on shares of capital stock owned in a stock owned~~  
20           ~~savings and loan association taxed under Article 8D of this Chapter~~  
21           ~~shall be deductible.~~

22           (4) ~~Notwithstanding the provisions of subdivisions (1) through (3a) of this~~  
23           ~~section, a corporation which, A corporation that, at the close of its taxable~~  
24           year, has its commercial domicile within North Carolina shall be  
25           allowed to deduct all dividends received from corporations in which it  
26           owns more than fifty percent (50%) of the outstanding voting stock.

27           (5) ~~Notwithstanding any other provisions of this Division, a corporation~~  
28           ~~which is a shareholder in a holding company shall be allowed as a~~  
29           ~~deduction an amount equal to those dividends received by it from such~~  
30           ~~holding company, multiplied by a fraction, the numerator of which shall~~  
31           ~~be the dividends received by such holding company attributable to~~  
32           ~~North Carolina, and the denominator of which shall be the gross~~  
33           ~~dividends received by such holding company; provided, however, that~~  
34           ~~no deduction shall be allowed where the fraction is smaller than one-~~  
35           ~~third (1/3). For purposes of this section, "dividends attributable to~~  
36           ~~North Carolina" shall be the amount of dividend income received by the~~  
37           ~~holding company on stock owned in other corporations equal to the total~~  
38           ~~of the proportion of each of such corporation's dividends as shall be~~  
39           ~~determined deductible by the Secretary under subdivisions (1) through~~  
40           ~~(3a) of this section; provided that a holding company which owns more~~  
41           ~~than fifty percent (50%) of the outstanding voting stock of one or more~~  
42           ~~holding companies as defined in this subdivision shall be permitted a~~  
43           ~~deduction for all dividends received from such holding companies and~~

1 all other corporations in which it owns more than fifty percent (50%) of  
2 the outstanding voting stock except that no deduction shall be allowed if  
3 less than one third (1/3) of the dividends received by the holding  
4 company are attributable to North Carolina. A shareholder of such a  
5 holding company shall determine the deductible portion of its dividends  
6 received from such holding company as hereinabove provided except  
7 that the amounts received from a subsidiary holding company as  
8 "dividends attributable to North Carolina" shall be determined as though  
9 the subsidiary corporation of the subsidiary holding company had paid  
10 the dividends directly to the parent holding company. For the purposes  
11 of this section and unless the context clearly requires a different  
12 meaning, "holding company" shall mean any corporation subject to the  
13 tax imposed by G.S. 105-130.3 whose ordinary gross income consists of  
14 fifty percent (50%) or more of dividend income received from  
15 corporations in which it owns more than fifty percent (50%) of the  
16 outstanding voting stock, and "subsidiary" shall mean any corporation,  
17 more than fifty percent (50%) of whose outstanding voting stock is  
18 owned by another corporation. For the purposes of this subsection, the  
19 term "dividend" includes, in addition to corporate dividends,  
20 distributions received from a partnership by a corporation owning more  
21 than a fifty percent (50%) interest in the partnership.

22 (6) In no case shall the total amount of dividends that are allowed as a  
23 deduction to a corporation as a result of the application of subdivisions (1)  
24 through (3a) under subdivision (3) of this section be in excess of exceed  
25 fifteen thousand dollars (\$15,000) for the taxable year."

26 Sec. 5. G.S. 105-130.5(b)(3) reads as rewritten:

27 "(3) The deductible portion of dividends from stock issued by any corporation  
28 as provided under G.S. 105-130.7."

29 Sec. 6. G.S. 105-130.4(f) reads as rewritten:

30 "(f) Interest and net dividends are allocable to this State if the corporation's  
31 commercial domicile is in this State ~~subject to the following limitations:~~ State. For

32 (1) ~~Net dividends received by a corporation from another corporation in~~  
33 ~~which the recipient corporation owns fifty (50%) or more per centum of~~  
34 ~~the paying corporation's voting stock, shall be allocated to this State if~~  
35 ~~the paying corporation is subject to income tax in this State. In such~~  
36 ~~case, the net amount of such dividends received by the recipient~~  
37 ~~corporation from the paying corporation is allocable to this State by use~~  
38 ~~of the same percentage figure used in determining the portion of the~~  
39 ~~paying corporation's dividends deductible under the provisions of G.S.~~  
40 ~~105-130.7.~~

41 (2)

1 For purposes of this section, the ~~net amount of dividends shall mean~~ term 'net dividends'  
2 means gross dividend income received less related expenses and less that portion of such  
3 the dividends deductible under the provisions of G.S. 105-130.7."

4 Sec. 7. Section 7 of Chapter 443 of the 1993 Session Laws reads as rewritten:

5 "Sec. 7. Division V of Article 4 of Chapter 105 of the General Statutes is repealed  
6 effective for investments made on or after January 1, ~~1999-1997.~~ Division V of Article 4  
7 of Chapter 105 of the General Statutes will remain in effect for investments made before  
8 January 1, ~~1999-1997."~~

9 Sec. 8. G.S. 53A-46 is repealed.

10 Sec. 9. G.S. 105-134.6(d) is amended by adding a new subdivision to read:

11 "(3) The taxpayer shall add to taxable income the amount of any recovery  
12 during the taxable year not included in taxable income, to the extent the  
13 taxpayer's deduction of the recovered amount in a prior taxable year  
14 reduced the taxpayer's tax imposed by this Division but, due to  
15 differences between the Code and this Division, did not reduce the  
16 amount of the taxpayer's tax imposed by the Code. The taxpayer may  
17 deduct from taxable income the amount of any recovery during the  
18 taxable year included in taxable income under section 111 of the Code,  
19 to the extent the taxpayer's deduction of the recovered amount in a prior  
20 taxable year reduced the taxpayer's tax imposed by the Code but, due to  
21 differences between the Code and this Division, did not reduce the  
22 amount of the taxpayer's tax imposed by this Division."

23 Sec. 10. G.S. 105-130.5(c) is amended by adding a new subdivision to read:

24 "(4) The taxpayer shall add to federal taxable income the amount of any  
25 recovery during the taxable year not included in federal taxable income,  
26 to the extent the taxpayer's deduction of the recovered amount in a prior  
27 taxable year reduced the taxpayer's tax imposed by this Division but,  
28 due to differences between the Code and this Division, did not reduce  
29 the amount of the taxpayer's tax imposed by the Code. The taxpayer  
30 may deduct from federal taxable income the amount of any recovery  
31 during the taxable year included in federal taxable income under section  
32 111 of the Code, to the extent the taxpayer's deduction of the recovered  
33 amount in a prior taxable year reduced the taxpayer's tax imposed by the  
34 Code but, due to differences between the Code and this Division, did  
35 not reduce the amount of the taxpayer's tax imposed by this Division."

## 36 PART II. SALES AND USE TAX COLLECTION

37  
38 Sec. 11. Article V of Chapter 105 of the General Statutes is amended by  
39 adding a new section to read:

### 40 "§ 105-164.6A. Voluntary collection of use tax by sellers.

41 (a) Voluntary Collection Agreements. – The Secretary may enter into agreements  
42 with sellers pursuant to which the seller agrees to collect and remit on behalf of its  
43 customers State and local use taxes due on items of tangible personal property the seller

1 sells. For the purpose of this section, a seller is a person who is engaged in the business  
2 of selling tangible personal property for use in this State and who does not have sufficient  
3 nexus with this State to be required to collect use tax on the sales.

4 (b) Mandatory Provisions. – The agreements must contain the following  
5 provisions:

6 (1) The customer may elect to pay the use tax directly to the Secretary in  
7 accordance with law rather than to the seller.

8 (2) A customer's payment of a use tax to the seller relieves the customer  
9 of liability for the use tax.

10 (3) The seller must remit all use taxes it collects from customers on or  
11 before the due date specified in the agreement, which may not be  
12 later than 31 days after the end of a quarter or other collection  
13 period.

14 (4) A seller who fails to remit use taxes collected on behalf of its  
15 customers by the due date specified in the agreement is subject to the  
16 interest and penalties provided in Article 9 of this Chapter with  
17 respect to the taxes to the same extent as if the seller were a retailer  
18 and were required to collect use taxes under this Article.

19 (c) Optional Provisions. – The agreements may contain the following provisions:

20 (1) The seller will collect the use tax only on items that are subject to  
21 the general rate of tax.

22 (2) The seller will collect local use taxes only to the extent they are at  
23 the same rate in every unit of local government in the State.

24 (3) The seller will remit the tax and file reports in the form prescribed  
25 by the Secretary.

26 (4) Other provisions establishing the types of transactions on which the  
27 seller will collect tax and prescribing administrative procedures and  
28 requirements."

29 Sec. 12. G.S. 105-469 reads as rewritten:

30 "**§ 105-469. Secretary to collect and administer local sales and use tax.**

31 (a) The Secretary shall collect and administer a tax levied by a county pursuant to  
32 this Article.

33 (b) The Secretary shall require retailers who collect use tax on sales to North  
34 Carolina residents to ascertain the county of residence of each buyer and provide that  
35 information to the Secretary along with any other information necessary for the Secretary  
36 to allocate the use tax proceeds to the correct taxing county."

37 Sec. 13. G.S. 105-164.3(15) reads as rewritten:

38 "(15) 'Sale' or "selling" ~~shall mean any selling. – The transfer of title or~~  
39 ~~possession, or both, exchange, barter, lease, license to use or consume, or~~  
40 ~~rental possession~~ of tangible personal property, conditional or  
41 otherwise, in any manner or by any means whatsoever, ~~however~~  
42 ~~effected and by whatever name called,~~ for a consideration paid or to be  
43 ~~paid, and paid.~~

1           The term includes the fabrication of tangible personal property for  
2 consumers by persons engaged in business who furnish either directly or  
3 indirectly the materials used in the fabrication ~~work, and work.~~ The term  
4 also includes the ~~furnishing, preparing, or serving~~ furnishing or preparing  
5 for a consideration of any tangible personal property consumed on the  
6 premises of the person ~~furnishing, preparing, or serving~~ such tangible  
7 ~~personal~~ furnishing or preparing the property or consumed at the place at  
8 which ~~such~~ the property is ~~prepared, served or sold.~~ furnished or prepared.  
9 ~~A transaction whereby~~ The term also includes a transaction in which the  
10 possession of the property is transferred but the seller retains title or  
11 security for the payment of the ~~price shall be deemed a sale.~~ consideration.

12           If a retailer engaged in the business of selling prepared food and  
13 drink for immediate or on-premises consumption also gives prepared  
14 food or drink to its patrons or employees free of charge, for the purposes  
15 of this Article the property given away is considered sold along with the  
16 property sold. If a retailer gives an item of inventory to a customer free  
17 of charge on the condition that the customer purchase similar or related  
18 property, the item given away is considered sold along with the item  
19 sold. In all other cases, property given away or used by any retailer or  
20 wholesale merchant is not considered sold, whether or not the retailer or  
21 wholesale merchant recovers its cost of the property from sales of other  
22 property."

23 Sec. 14. G.S. 105-164.3 is amended by adding a new subdivision to read:

24 "(11a) Prepared food and drink. – Meals, food, and beverages to which a  
25 retailer has added value or whose state the retailer has altered (other  
26 than solely by cooling) by preparing, combining, dividing, heating, or  
27 serving, in order to make them available for immediate human  
28 consumption."

### 30           **PART III. EFFECTIVE DATES**

31           Sec. 15. Notwithstanding G.S. 105-163.15 and G.S. 105-163.41, no addition to  
32 tax may be made under either of those statutes for a taxable year beginning on or after  
33 January 1, 1996, and before January 1, 1997, with respect to an underpayment of  
34 individual or corporation income tax to the extent the underpayment was created or  
35 increased by this act.

36           Sec. 16. This act does not affect the rights or liabilities of the State, a taxpayer,  
37 or another person arising under a statute amended or repealed by this act before its  
38 amendment or repeal; nor does it affect the right to any refund or credit of a tax that  
39 would otherwise have been available under the amended or repealed statute before its  
40 amendment or repeal.

41           Prosecutions for offenses committed before the effective date of this act are not  
42 abated or affected by this act, and the statutes that would be applicable but for this act  
43 remain applicable to those prosecutions.

- 1           Sec. 17. This act becomes effective as follows:
- 2           (1)     Unconstitutional Tax Preferences. – Sections 1, 2, 4 through 6, and 9
- 3                     and 10 of Part I of this act are effective for taxable years beginning
- 4                     on or after January 1, 1996. Section 3 of Part I of this act becomes
- 5                     effective for taxable years beginning on or after January 1, 2001.
- 6           (2)     Repeal Qualified Business Tax Credits. – Sections 7 and 8 of Part I
- 7                     of this act are effective upon ratification and apply to investments
- 8                     made on or after January 1, 1997.
- 9           (3)     Sales and Use Tax Collection. – Part II of this act becomes effective
- 10                    August 1, 1996.
- 11           (4)     Remainder. – The remainder of this act is effective upon ratification.