

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S

1

SENATE BILL 55

Short Title: Revenue Laws Technical Changes.

(Public)

Sponsors: Senators Cochrane, Dalton, Hartsell, Hoyle, Kerr, and Webster.

Referred to: Finance.

February 9, 1999

A BILL TO BE ENTITLED

AN ACT TO MAKE TECHNICAL AND CONFORMING CHANGES TO THE REVENUE LAWS AND RELATED STATUTES.

The General Assembly of North Carolina enacts:

Section 1. Section 7 of S.L. 1998-158 reads as rewritten:

"Section 7. ~~Section 5 of this act is effective for taxable years beginning on or after October 1, 1998. The remainder of this~~ This act is effective when it becomes law."

Section 2. G.S. 1C-1601(a)(9) reads as rewritten:

"(a) Exempt property. – Each individual, resident of this State, who is a debtor is entitled to retain free of the enforcement of the claims of his creditors:

...

(9) ~~Individual retirement accounts as described in Section 408(a) of the Internal Revenue Code, individual retirement annuities as described in Section 408(b) of the Internal Revenue Code, and accounts established as part of a trust described in Section 408(c) of plans as defined in the Internal Revenue Code and any plan treated in the same manner as an individual retirement plan under the Internal Revenue Code. For purposes of this subdivision, 'Internal Revenue Code' means Code as defined in G.S. 105-228.90.~~

Section 3.(a) G.S. 10A-4(b) reads as rewritten:

1 "(b) A person qualified for a notarial commission shall meet all of the following
2 requirements:

- 3 (1) Be at least 18 years of age.
4 (2) Reside or work in this State.
5 (3) Satisfactorily complete a course of study that is approved by the
6 Secretary and consists of not less than three hours nor more than six
7 hours of classroom instruction provided by community colleges
8 throughout the State, unless the person is a licensed member of the Bar
9 of this State.
10 (4) Purchase and keep as a reference a manual approved by the Secretary
11 that describes the duties, authority, and ethical responsibilities of
12 notaries public.
13 (5) Submit an application containing no significant misstatement or
14 omission of fact. The application form shall be provided by the
15 Secretary and be available at the register of deeds office in each county.
16 Every application shall bear the signature of the applicant written with
17 pen and ink, and the signature shall be acknowledged by the applicant
18 before a person authorized to administer oaths. The applicant shall also
19 obtain the recommendation of one publicly elected official in North
20 Carolina whose recommendation shall be contained on the application.
21 (6) Pay a nonrefundable fee of ~~twenty five dollars (\$25.00)~~ thirty dollars
22 (\$30.00)."

23 Section 3.(b) G.S. 10A-7(a) reads as rewritten:

24 "(a) The course of study required by G.S. 10A-4(b) shall be taught by an instructor
25 certified in accordance with rules adopted by the Secretary. An instructor must meet the
26 following requirements to be certified to teach a course of study for notaries public:

- 27 (1) Complete and pass a six-hour instructor's course taught by the Director
28 or other person approved by the Secretary.
29 (2) Have six months of active experience as a notary public.
30 (3) Maintain a current commission as a notary public.
31 (4) Purchase the current notary public guidebook.
32 (5) Pay a nonrefundable fee of fifty dollars (\$50.00).

33 ~~thirty dollars (\$30.00) thirty dollars (\$30.00)"~~

34 Section 3.(c) This section becomes effective July 1, 1999.

35 Section 4. G.S. 28A-21-2(a) reads as rewritten:

36 "(a) Unless the time for filing the final account has been extended by the clerk of
37 superior court, the personal representative or collector must file ~~his~~ the final account for
38 settlement within one year ~~of his qualification~~ after qualifying or within six months after
39 ~~his receipt of the State~~ receiving a State estate or inheritance tax release, whichever is later.
40 If no estate or inheritance tax return was required to be filed for the ~~estate under G.S. 105-~~
41 ~~23 because the estate met the requirements of subsection (b) of that section,~~ estate, the personal
42 representative or collector shall so certify in the final account filed with the clerk of
43 superior court. Such certification shall list the amount and value of all of the decedent's

1 property, and with respect to real estate, its particular location within or outside the State,
2 including any property transferred by the decedent over which ~~he~~the decedent had
3 retained any ~~interest as described in G.S. 105-2(a)(3)~~, interest, or any property transferred
4 within three years prior to the date of the decedent's death, and after being filed and
5 accepted by the clerk of the superior court shall be prima facie evidence that such
6 property is free of any State inheritance or State estate tax liability. The personal
7 representative or collector shall produce vouchers for all payments or verified proof for
8 all payments in lieu of vouchers. With the approval of the clerk of superior court, such
9 account may be filed voluntarily at any time. In all cases, the accounting shall be
10 reviewed, audited and recorded by the clerk of superior court in the manner prescribed in
11 G.S. 28A-21-1."

12 Section 5. G.S. 29-13 reads as rewritten:

13 **"§ 29-13. Descent and distribution upon intestacy.**

14 All the estate of a person dying intestate shall descend and be distributed, subject to
15 the payment of costs of administration and other lawful claims against the estate, and
16 subject to the payment by the recipient of State inheritance or estate taxes, as provided in
17 this Chapter."

18 Section 6. G.S. 29-20 reads as rewritten:

19 **"§ 29-20. Descent and distribution upon intestacy of illegitimate children.**

20 All the estate of a person dying illegitimate and intestate shall descend and be
21 distributed, subject to the payment of costs of administration and other lawful claims
22 against ~~his~~the estate, and subject to the payment by the recipient of State inheritance or
23 estate taxes, as provided in this Article."

24 Section 7. G.S. 36A-100(c) reads as rewritten:

25 "(c) A person having the right to designate the beneficiary under a life insurance
26 policy, employee benefit plan or group life insurance policy described in subsection (a) or
27 (b) of this section may designate as such beneficiary a trustee named or to be named in
28 his will whether or not the will is in existence at the time of the designation. The proceeds
29 received by the trustee shall be held and disposed of as part of the trust estate under the
30 terms of the will as they exist at the death of the testator. If no qualified trustee makes
31 claim to the proceeds within six months after the death of the decedent or if within that
32 period it is established that no trustee can qualify to receive the proceeds, payments shall
33 be made to the personal representative of the estate of the person making the designation
34 unless it is otherwise provided by an alternative designation or by the policy or plan. The
35 proceeds received by the trustee shall not be subject to claims against the estate of the
36 decedent or to estate or inheritance taxes to any greater extent than if the proceeds were
37 payable directly to the beneficiary or beneficiaries named in the trust. The proceeds may
38 be commingled with any other assets which may properly become part of such trust, but
39 the proceeds shall not become part of the decedent's estate for purposes of trust
40 administration unless the will of the decedent expressly so provides."

41 Section 8. G.S. 36A-125(a) reads as rewritten:

42 "(a) If at any time the trustee of a noncharitable irrevocable trust determines in
43 good faith that the value of the assets held in trust is ten thousand dollars (\$10,000) or

1 less, and the continuance of the trust pursuant to its terms in relation to the cost of its
2 administration would defeat or substantially impair the accomplishment of the purposes
3 of the trust, the trustee, without approval of the court, may, but is not required to,
4 terminate the trust and distribute the trust property, including principal and undistributed
5 income, to the beneficiaries in a manner which conforms as nearly as possible to the
6 intention of the settlor as determined by the trustee from the trust agreement; provided,
7 however, that the trust property, including principal and undistributed income, shall be
8 distributed to the income beneficiary of the trust if the trust otherwise qualifies for the
9 marital deduction for federal estate tax or North Carolina estate or inheritance tax
10 purposes, or is a Qualified Subchapter S Trust as defined in the Internal Revenue Code.
11 The trustee may enter into an agreement or make such other provisions that the trustee
12 deems necessary or appropriate to protect the interests of the beneficiaries and to carry
13 out the intent and purpose of the trust."

14 Section 9. G.S. 41-2.1(f) reads as rewritten:

15 "(f) This section does not repeal or modify any provisions of the law relating to
16 estate or inheritance taxes."

17 Section 10. G.S. 41-2.2(d) reads as rewritten:

18 "(d) This section does not repeal or modify any provisions of the law relating to
19 estate or inheritance taxes."

20 Section 11. G.S. 41-2.5(d) reads as rewritten:

21 ~~"(d) Nothing herein contained shall be construed to repeal or modify any of the~~
22 ~~provisions of Article 1 of Chapter 105 relating to the administration of the inheritance tax~~
23 ~~laws or any other provision of the law relating to~~ This section does not repeal or modify
24 any provisions of the law relating to estate or inheritance taxes."

25 Section 12. G.S. 105-114(b)(2) reads as rewritten:

26 "(b) Definitions. – The following definitions apply in this Article:

27 ...

28 (2) Corporation. – A domestic corporation, a foreign corporation, an
29 electric membership corporation organized under Chapter 117 of the
30 General Statutes or doing business in this State, or an association that is
31 organized for pecuniary gain, has capital stock represented by shares,
32 whether with or without par value, and has privileges not possessed by
33 individuals or partnerships. The term includes a mutual or capital stock
34 savings and loan association or building and loan association chartered
35 under the laws of any state or of the United States. The term does not
36 include a limited liability company."

37 Section 13. G.S. 105-122(a) reads as rewritten:

38 "(a) Every corporation, domestic and foreign, incorporated, or, by an act,
39 domesticated under the laws of this State or doing business in this State, except as
40 otherwise provided in this Article, shall, on or before the fifteenth day of the third month
41 following the end of its income year, annually make and deliver to the Secretary in the
42 form prescribed by the Secretary a full, accurate, and complete report and statement
43 signed by either its president, vice-president, treasurer, assistant treasurer, secretary or

1 assistant secretary, containing the facts and information required by the Secretary as
2 shown by the books and records of the corporation at the close of the income year.

3 There shall be annexed to the return required by this subsection the affirmation of the
4 officer signing the return. ~~this the preparer~~".

5 Section 14. G.S. 105-130.16 reads as rewritten:

6 "**§ 105-130.16. Returns.**

7 (a) Every corporation doing business in this State ~~shall file with the Secretary of~~
8 ~~Revenue~~ must file with the Secretary an income tax return under affirmation, showing
9 ~~therein~~ specifically the items of gross income and the deductions allowed by this Part, and
10 ~~such other facts as the Secretary may require for the purpose of making any other facts the~~
11 Secretary requires to make any computation required by this Part.

12 The return of a corporation ~~shall be signed by either~~ must be signed by its president,
13 vice-president, treasurer, assistant treasurer, ~~secretary~~ secretary, or assistant secretary.
14 ~~There shall be annexed to the return the affirmation of the officer signing the same, which shall~~
15 ~~be in the form prescribed in G.S. 105-130.17 of this Part, and the same penalties prescribed in~~
16 ~~G.S. 105-236 shall apply to any person making wilful misstatements in said returns.~~ The officer
17 signing the return must also furnish an oath or affirmation verifying the return, in the
18 form required by the Secretary.

19 (b) When the Secretary ~~of Revenue~~ has reason to believe that any corporation so
20 conducts its trade or business in such manner as to either directly or indirectly distort its
21 true net income and the net income properly attributable to the State, whether by the
22 arbitrary shifting of income, through price fixing, charges for service, or otherwise,
23 whereby the net income is arbitrarily assigned to one or another unit in a group of
24 taxpayers carrying on business under a substantially common control, ~~he may require such~~
25 ~~facts as he deems~~ the Secretary may require any facts the Secretary considers necessary for
26 the proper computation of the entire net income and the net income properly attributable
27 to the State, and in determining ~~same the Secretary of Revenue shall~~ these computations the
28 Secretary must have regard to the fair profit which would normally arise from the
29 conduct of the trade or business.

30 (c) When any corporation liable to taxation under this Part conducts its business in
31 such a manner as to either directly or indirectly benefit the members or stockholders
32 thereof or any person interested in ~~such the~~ the business by selling its products or goods or
33 commodities in which it deals at less than the fair price which might be obtained therefor,
34 or ~~where when~~ when a corporation, a substantial portion of whose capital stock is owned either
35 directly or indirectly by another corporation, acquires and disposes of the products of the
36 corporation so owning a substantial portion of its stock in such a manner as to create a
37 loss or improper net income for either of ~~said the~~ the corporations, or ~~where when~~ when
38 a corporation, owning directly or indirectly a substantial portion of the stock of another
39 corporation, acquires and disposes of the products of the corporation of which it so owns
40 a substantial portion of the stock in such manner as to create a loss or improper net
41 income for either of ~~said the~~ the corporations, the Secretary ~~of Revenue~~ may determine the
42 amount of taxable income of any such corporations for the calendar or fiscal year, having
43 due regard to the reasonable profits which, but for such arrangement or understanding,

1 might or could have been obtained by the ~~corporation or~~ corporations liable to taxation
2 under this Part from dealing in such products, goods or commodities."

3 Section 15. G.S. 105-130.33(a) reads as rewritten:

4 "(a) Any corporation that constructs or installs a hydroelectric generator with a
5 capacity of at least three kilowatts (3KW) at an existing dam or free flowing stream
6 located in this State shall be allowed a credit against the tax imposed by this Part equal to
7 ten percent (10%) of the installation and equipment costs of the hydroelectric generator
8 paid during the taxable year. The credit allowed under this section may not exceed five
9 thousand dollars (\$5,000) for any single installation. No credit is allowed, however, to
10 the extent that any of the costs of the system were provided by federal, State, or local
11 grants. To secure the credit allowed by this section, the taxpayer must own or control the
12 site at the time the hydroelectric generator is installed. The credit allowed by this section
13 may not exceed the amount of the tax imposed by this Part for the taxable year reduced
14 by the sum of all credits ~~allowable under this Part,~~ allowable, except payments of tax made
15 by or on behalf of the taxpayer."

16 Section 16. G.S. 105-131.7(d) reads as rewritten:

17 "(d) The agreements required to be filed pursuant to subsection (c) of this section
18 shall be filed at the following times:

- 19 (1) At the time the annual return is required to be filed for the first taxable
20 period for which the S Corporation becomes subject to the provisions of
21 this ~~Division;~~ Part; and
22 (2) At the time the annual return is required to be filed for any taxable
23 period in which the corporation has a nonresident shareholder on whose
24 behalf such an agreement has not been previously filed."

25 Section 17. G.S. 105-154(c) reads as rewritten:

26 "(c) Information Returns of Partnerships. – A partnership doing business in this
27 State and required to file a return under the Code shall file an information return with the
28 Secretary. A partnership that the Secretary believes to be doing business in this State and
29 to be required to file a return under the Code shall file an information return when
30 requested to do so by the Secretary. The information return shall contain all information
31 required by the Secretary. It shall state specifically the items of the partnership's gross
32 income, the deductions allowed under the Code, and the adjustments required by this
33 Part. The information return shall also include the name and address of each person who
34 would be entitled to share in the partnership's net income, if distributable, and the amount
35 each person's distributive share would be. The information return shall specify the part of
36 each person's distributive share of the net income that represents corporation dividends.
37 The information return shall be signed by one of the partners under affirmation in the
38 form ~~prescribed in G.S. 105-155,~~ required by the Secretary.

39 A partnership that files an information return under this subsection shall furnish to
40 each person who would be entitled to share in the partnership's net income, if
41 distributable, any information necessary for that person to properly file a State income tax
42 return. The information shall be in the form prescribed by the Secretary and must be
43 furnished on or before the due date of the information return."

1 Section 18. G.S. 105-163.011 reads as rewritten:

2 **"§ 105-163.011. (Repealed effective for investments made on or after January 1,**
3 **2003) Tax credits allowed.**

4 (a) No Credit for Brokered Investments. – No credit is allowed under this section
5 for a purchase of equity securities or subordinated debt if a broker's fee or commission or
6 other similar remuneration is paid or given directly or indirectly for soliciting the
7 purchase.

8 (b) Individuals. – Subject to the limitations contained in G.S. 105-163.012, an
9 individual who purchases the equity securities or subordinated debt of a qualified
10 business venture or a qualified grantee business directly from that business is allowed as
11 a credit against the tax imposed by Part 2 of this Article for the taxable year an amount
12 equal to twenty-five percent (25%) of the amount invested. The aggregate amount of
13 credit allowed an individual for one or more investments in a single taxable year under
14 this ~~Division, Part,~~ whether directly or indirectly as owner of a pass-through entity, may
15 not exceed fifty thousand dollars (\$50,000). The credit may not be taken for the year in
16 which the investment is made but shall be taken for the taxable year beginning during the
17 calendar year in which the application for the credit becomes effective as provided in
18 subsection (c) of this section.

19 (b1) Pass-Through Entities. – This subsection does not apply to a pass-through
20 entity that has committed capital under management in excess of five million dollars
21 (\$5,000,000) or to a pass-through entity that is a qualified grantee business, a qualified
22 business venture, or a North Carolina Enterprise Corporation. Subject to the limitations
23 provided in G.S. 105-163.012, a pass-through entity that purchases the equity securities
24 or subordinated debt of a qualified grantee business or a qualified business venture
25 directly from the business is eligible for a tax credit equal to twenty-five percent (25%) of
26 the amount invested. The aggregate amount of credit allowed a pass-through entity for
27 one or more investments in a single taxable year under this ~~Division, Part,~~ whether
28 directly or indirectly as owner of another pass-through entity, may not exceed seven
29 hundred fifty thousand dollars (\$750,000). The pass-through entity is not eligible for the
30 credit for the year in which the investment by the pass-through entity is made but shall be
31 eligible for the credit for the taxable year beginning during the calendar year in which the
32 application for the credit becomes effective as provided in subsection (c) of this section.

33 Each individual who is an owner of a pass-through entity is allowed as a credit against
34 the tax imposed by Part 2 of this Article for the taxable year an amount equal to the
35 owner's allocated share of the credits for which the pass-through entity is eligible under
36 this subsection. The aggregate amount of credit allowed an individual for one or more
37 investments in a single taxable year under this ~~Division, Part,~~ whether directly or
38 indirectly as owner of a pass-through entity, may not exceed fifty thousand dollars
39 (\$50,000).

40 If an owner's share of the pass-through entity's credit is limited due to the maximum
41 allowable credit under this section for a taxable year, the pass-through entity and its
42 owners may not reallocate the unused credit among the other owners.

1 (c) Application. – To be eligible for the tax credit provided in this section, the
2 taxpayer must file an application for the credit with the Secretary on or before April 15 of
3 the year following the calendar year in which the investment was made. The Secretary
4 may grant extensions of this deadline, as the Secretary finds appropriate, upon the request
5 of the taxpayer, except that the application may not be filed after September 15 of the
6 year following the calendar year in which the investment was made. An application is
7 effective for the year in which it is timely filed. The application shall be on a form
8 prescribed by the Secretary and shall include any supporting documentation that the
9 Secretary may require. If an investment for which a credit is applied for was paid for
10 other than in money, the taxpayer shall include with the application a certified appraisal
11 of the value of the property used to pay for the investment. The application for a credit
12 for an investment made by a pass-through entity must be filed by the pass-through entity.

13 (d) Penalties. – The penalties provided in G.S. 105-236 apply in this ~~Division.~~
14 Part."

15 Section 19. G.S. 105-194 reads as rewritten:

16 "**§ 105-194. Death of donor within three years; time of assessment.**

17 ~~Where~~–If a donor dies within three years after filing a return, gift taxes may be
18 assessed at any time within ~~said~~–those three years, or on or before the date of final
19 settlement of the donor's State estate or inheritance taxes, whichever is later."

20 Section 20. G.S. 105-253(a) reads as rewritten:

21 "(a) Any officer, trustee, or receiver of any corporation or limited liability company
22 required to file a report with the Secretary who has custody of funds of the corporation or
23 company and who allows the funds to be paid out or distributed to the stockholders of the
24 corporation or company without having remitted to the Secretary any State taxes that are
25 due is personally liable for the payment of the tax."

26 Section 21.(a) G.S. 105-275 is amended by adding a new subdivision to read:

27 "(41) Objects of art held by the North Carolina State Art Society,
28 Incorporated."

29 Section 21.(b) G.S. 140-15 reads as rewritten:

30 "~~§ 140 ♦ All gifts made to the North Carolina State Art Society, Incorporated, shall~~
31 ~~be exempt from State gift and inheritance taxes, and objects of art held by~~
32 ~~the Society shall be exempt from ad valorem taxes."~~

33 Section 22. This act does not affect the rights or liabilities of the State, a
34 taxpayer, or another person arising under a statute amended or repealed by this act before
35 the effective date of its amendment or repeal; nor does it affect the right to any refund or
36 credit of a tax that accrued under the amended or repealed statute before the effective
37 date of its amendment or repeal.

38 Section 23. Except as otherwise provided in this act, this act is effective when
39 it becomes law.