

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 1991

CHAPTER 921
HOUSE BILL 1325

AN ACT TO MAKE CONFORMING CHANGES TO THE CORPORATE INCOME
TAX ON UNRELATED BUSINESS INCOME OF EXEMPT CORPORATIONS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 105-130.11 reads as rewritten:

"§ 105-130.11. Conditional and other exemptions.

(a) Exempt Organizations. — Except as provided in subsections (b) and (c), the following organizations and any organization that is exempt from federal income tax under the Code are exempt from the tax imposed under this Division.

- (1) Fraternal beneficiary societies, orders or associations
 - a. Operating under the lodge system or for the exclusive benefit of the members of a fraternity itself operating under the lodge system, and
 - b. Providing for the payment of life, sick, accident, or other benefits to the members of such society, order or association, or their dependents; dependents.
- (2) Every building Building and loan associations [association], and savings and loan associations subject to tax under Article 8D of this Chapter; and any cooperative banks without capital stock organized and operated for mutual purposes and without profit, profit; and electric and telephone membership corporations organized under Chapter 117 of the General Statutes; Statutes.
- (3) Cemetery corporations and corporations organized for religious, charitable, scientific, literary, or educational purposes, or for the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private stockholder or individual; individual.
- (4) Business leagues, chambers of commerce, merchants' associations, or boards of trade not organized for profit, and no part of the net earnings of which inures to the benefit of any private stockholder or individual; individual.
- (5) Civic leagues or organizations not organized for profit, but operated exclusively for the promotion of social welfare; welfare.
- (6) Clubs organized and operated exclusively for pleasure, recreation, and other nonprofitable purposes, no part of the net earnings of which inures to the benefit of any private stockholder or member; member.

- (7) Farmers' or other mutual hail, cyclone, or fire insurance companies, mutual ditch or irrigation companies, mutual or cooperative telephone companies, or like organizations of a purely local character the income of which consists solely of assessments, ~~dues~~dues, and fees collected from members for the sole purpose of meeting ~~expenses~~expenses.
- (8) Farmers', fruit growers', or like organizations organized and operated as sales agents for the purpose of marketing the products of members and turning back to them the proceeds of sales, less the necessary selling expenses, on the basis of the quantity of product furnished by ~~them~~them.
- (9) Mutual associations formed under G.S. 54-111 through 54-128 to conduct agricultural business on the mutual plan and marketing associations organized under G.S. 54-129 through 54-158.

Nothing in this subdivision shall be construed to exempt any cooperative, mutual ~~association~~association, or other organization from an income tax on net income ~~which~~that has not been refunded to patrons on a patronage basis and distributed either in cash, stock, or certificates, or in some other manner that discloses ~~to each patron~~ the amount of ~~his~~patronage ~~each~~ patron's refund. Provided, in arriving at net income for purposes of this subdivision, no deduction shall be allowed for dividends paid on capital stock. Patronage refunds made after the close of the taxable year and on or before the fifteenth day of the ninth month following the close of ~~such~~the taxable year ~~shall be~~ are considered as to be made on the last day of ~~such~~the taxable year to the extent the allocations are attributable to income derived before the close of ~~such~~the year; provided, that no stabilization or marketing organization ~~which~~that handles agricultural products for sale for producers on a pool basis ~~shall be deemed~~ is considered to have realized any net income or profit in the disposition of a pool or any part of a pool until all of the products in that pool ~~shall have~~ been sold and the pool ~~shall have~~has been closed; provided, further, that a pool ~~shall not be deemed~~ is not considered closed until the expiration of at least 90 days after the sale of the last remaining product in that pool. ~~Such~~These cooperatives and other organizations shall file an annual information return with the Secretary of Revenue on forms to be furnished by the Secretary and shall include ~~therein~~ the names and addresses of all persons, ~~patrons and/or shareholders~~, patrons, or shareholders whose patronage refunds amount to ten dollars (\$10.00) or more; and more.

- (10) Insurance companies paying the tax on gross premiums as specified in G.S. 105-228.5.
- (11) Corporations or organizations, such as condominium associations, homeowner associations, or cooperative housing corporations not organized for profit, the membership of which is limited to the owners

or occupants of residential units in the condominium, housing development development, or cooperative housing corporation, and operated exclusively for the management, operation, preservation, maintenance maintenance, or landscaping of the common areas and facilities owned by such the corporation or organization or its members situated contiguous to such the houses, apartments apartments, or other dwellings or for the management, operation, preservation, maintenance maintenance, and repair of such the houses, apartments apartments, or other dwellings owned by the corporation or organization or its members, but only if no part of the net earnings of such the corporation or organization inures (other than through the performance of related services for the members of such corporation or organization) to the benefit of any member of such corporation or organization or other person.

(b) Unrelated Business Income. – Except as provided in this subsection, an organization described in subdivision (a)(1), Organizations described in subdivision (1), (3), (4), (5), (6), (7), (8)-(8), or (9) of subsection (a) of this section and any organization exempt from federal income tax under the Code is subject to the tax provided in G.S. 105-130.3 on its unrelated business taxable income, as defined in section 512 of the Code, adjusted as provided in G.S. 105-130.5. The tax does not apply, however, to net income derived from any of the following:

- (1) Research performed by a college, university, or hospital.
- (2) Research performed for the United States or its instrumentality or for a state or its political subdivision.
- (3) Research performed by an organization operated primarily to carry on fundamental research, the results of which are freely available to the general public.

shall be subject to the tax provided for in G.S. 105-130.3 to the following extent:

Gross income derived by any organization from any trade or business the conduct of which is not substantially related (aside from the need of the organization for income) to the exercise or performance of those functions constituting the basis for its exemption in subsection (a) of this section, less all deductions allowed by this Division directly connected with carrying on such trade or business and less one thousand dollars (\$1,000); provided, this paragraph does not apply to interest, royalties, dividends or rents unless this income is determined to be "unrelated business taxable income" under the Code; provided further, this paragraph shall not apply to any trade or business (i) in which substantially all the work in carrying on such trade or business is performed for the organization without compensation; or (ii) which is the selling of merchandise, substantially all of which is given to it; (iii) which is carried on by an organization described in G.S. 105-130.11(a)(3) primarily for the convenience of its members, students, patients or employees. Provided further, this paragraph shall not apply to net income derived from research (i) performed by a college, university or hospital; or (ii) performed for the United States, its instrumentalities or any state or political subdivision thereof; or (iii) performed by an organization operated primarily for the purpose of

~~carrying on fundamental research, the results of which are freely available to the general public.~~

(c) Homeowner Association Income. – An organization ~~described~~ in subdivision (11) of subsection (a)(a)(11) of this section shall be ~~is~~ subject to the tax provided for in G.S. 105-130.3 on its ~~unrelated business income~~. For purposes of this subsection the term "unrelated business income" means gross income (excluding any membership income) ~~gross income other than membership income~~ less the deductions allowed by this Article ~~which that~~ are directly connected with the production of ~~such unrelated business income~~ ~~the gross income other than membership income~~. The term 'membership income' means the gross income from assessments, fees, charges, or similar amounts received from members of the organization for expenditure in the preservation, maintenance, and management of the common areas and facilities of or the residential units in the condominium or housing development."

Sec. 2. This act is effective for taxable years beginning on or after January 1, 1992.

In the General Assembly read three times and ratified this the 10th day of July, 1992.

James C. Gardner
President of the Senate

Daniel Blue, Jr.
Speaker of the House of Representatives