GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1993

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HOUSE BILL 1903

Short Title: Repeal Intangibles Tax. (Public)

Sponsors: Representatives Bowman; Robinson, Holmes, Decker, and Justus.

Referred to: Finance.

May 31, 1994

A BILL TO BE ENTITLED

AN ACT TO REPEAL THE INTANGIBLES TAX, TO REPEAL EXISTING INCOME TAX PREFERENCES FOR NORTH CAROLINA DIVIDENDS, AND TO AUTHORIZE COUNTIES TO ENACT A LOCAL OPTION INCOME TAX ON INCOME FROM INTANGIBLES.

The General Assembly of North Carolina enacts:

Section 1. G.S. 105-213.1 is recodified as G.S. 105-275.2. The remainder of Article 7 of Chapter 105 of the General Statutes is repealed. Any taxes collected pursuant to Article 7 of Chapter 105 of the General Statutes on or after the date the Article is repealed shall remain in the General Fund and any refunds made on or after the date the Article is repealed of taxes collected pursuant to that Article shall be charged to the General Fund. The Secretary of Revenue shall retain from collections under Division II of Article 4 of Chapter 105 of the General Statutes the cost for the 1994-95 fiscal year of collecting and administering the taxes levied in Article 7 of Chapter 105 of the General Statutes.

Sec. 2. G.S. 105-275 is amended by adding the following new subdivisions:

"<u>(31a)</u> <u>Accounts receivable.</u>

<u>(31b)</u> <u>Bonds, notes, and other evidences of debt.</u>

<u>(31c)</u> <u>Shares of stock, including shares and units of ownership of mutual funds, investment trusts, and investment funds.</u>

<u>(31d)</u> <u>The beneficial or equitable interest in a trust, trust fund, or trust account, including custodial accounts, held by a foreign fiduciary.</u>"

Sec. 3. G.S. 105-213.1, as recodified as G.S. 105-275.2 by Section 1 of this act, reads as rewritten:

"§ 105-275.2. Reimbursement to counties and municipalities for partial repeal of tax on intangible personal property.

(a) Reimbursement for Repeal of Tax on Money on Deposit, Money on Hand, and Funds on Deposit with Insurance Companies. – On or before August 30 of each year, the Secretary of Revenue shall allocate for distribution to each county and the municipalities in the county the amount allocated to the county under this subsection in 1990.

~~Amounts allocated to a county under this subsection shall in turn be divided and distributed between the county and the municipalities located in the county in accordance with the method of allocating intangible tax revenue between a county and the municipalities located in the county provided in G.S. 105-213.~~

(a1) Reimbursement for Partial Repeal of Tax on Accounts Receivable. – On or before August 30 of each year, the Secretary of Revenue shall distribute to counties and municipalities an amount equal to forty percent (40%) of the tax collected on accounts receivable <u>under former Article 7 of this Chapter (repealed)</u> during the 1989-90 fiscal year. ~~The Secretary of Revenue shall first allocate the amount to be distributed in this subsection to the counties in the same manner as the amount allocated in G.S. 105-213. The amount allocated to each county shall in turn be divided and distributed between the county and the municipalities located in the county in accordance with the method of allocating intangible tax revenue between a county and the municipalities located in the county provided in G.S. 105-213.~~ <u>The Secretary shall allocate this amount among the counties in proportion to the amount allocated to each county under former G.S. 105-213 (repealed) in August 1994.</u>

<u>(a2) Distribution Between County and Its Municipalities. – The amounts allocated to each county under this section shall be allocated between the county and the municipalities in the county in proportion to the total amount of ad valorem taxes levied by each during the fiscal year preceding the distribution. In dividing these amounts between each county and its municipalities, the Secretary of Revenue shall treat taxes levied by a merged school administrative unit described in G.S. 115C-513 in a part of the unit located in a county as taxes levied by the county in which that part is located.</u>

<u>After making these allocations, the Secretary shall certify to the State Controller and to the State Treasurer the amount to be distributed to each county and municipality in the State. The State Controller shall then issue a warrant on the State Treasurer to each county and municipality in the amount certified.</u>

<u>For the purpose of computing the distribution to any county and the municipalities located in the county for any year with respect to which the property valuation of a public service company is the subject of an appeal and the Department of Revenue is restrained by law from certifying the valuation to the county and the municipalities in the county, the Department shall use the last property valuation of the public service company that has been certified.</u>

<u>The chair of each board of county commissioners and the mayor of each municipality shall report to the Secretary of Revenue information requested by the Secretary to enable the Secretary to allocate the amount distributed by this section. If a county or municipality fails to make a requested report within the time allowed, the</u>

Secretary may disregard the county or municipality in allocating the amount distributed by this section.

(b) Restrictions on Use. ~~– Amounts distributed to a county or a municipality under this section are subject to the same restrictions as amounts distributed under G.S. 105-213.~~ The amount distributed to each county and municipality shall be used by the county or municipality in proportion to property tax levies made by it for the various funds and activities of the county or municipality, unless the county or municipality has pledged the amount to be distributed to it under this section in payment of a loan agreement with the North Carolina Solid Waste Management Capital Projects Financing Agency. A county or municipality that has pledged amounts distributed under this section in payment of a loan agreement with the Agency may apply the amount the loan agreement requires.

~~(c) Municipality Defined. – As used in this section, the term 'municipality' has the same meaning as in G.S. 105-213.~~

(d) Source. – Funds distributed under this section shall be drawn from collections received under Division II of Article 4 of this Chapter."

Sec. 4. G.S. 105-247 reads as rewritten:

"§ 105-247. ~~Municipalities not to levy~~ Local government income and inheritance ~~tax.~~ taxes.

No ~~city, town, township, or county~~ local government shall levy any tax on ~~income or~~ inheritance. A county may levy an income tax on income from intangibles as provided in Article 4D of this Chapter. No local government shall levy any other tax on income."

Sec. 5. Chapter 105 of the General Statutes is amended by adding a new Article to read:

"ARTICLE 4D.

"LOCAL GOVERNMENT TAX ON INCOME FROM INTANGIBLES.

"§ 105-163.50. Definitions.

The following definitions apply in this Article:

(1) Income from intangibles. – A taxpayer's net capital gains and dividend income, as determined under the Code, from intangible personal property described in G.S. 105-275(31b) and (31c) and net interest income, as determined under the Code, from intangible personal property.

(2) Individual net income from intangibles. – The lesser of an individual's income from intangibles or the individual's North Carolina net income taxable under G.S. 105-134.2.

(3) Resident of a county. – An individual is a resident of a county if the individual is a resident of this State for the purposes of Division II of Article 4 of this Chapter, the individual resided in the county for a period of time during the taxable year, and the individual did not reside in another county of this State for a longer period of time during the taxable year.

(4) Taxpayer. – An individual, a trust, or an estate subject to a tax levied under this Article.

(5) Trust and estate net income from intangibles. – The lesser of a trust's or estate's income from intangibles or the trust's or estate's income taxable under G.S. 105-160.2.

"**§ 105-163.51. Intangibles income tax authorized.**

The board of commissioners of a county may by resolution, after not less than 10 days' public notice and a public hearing pursuant to the notice, levy a tax of one and seventy-five one-hundredths percent (1.75%) on the individual net income from intangibles of every resident of the county and the trust and estate net income from intangibles that is for the benefit of a resident of the county. This tax is in addition to the taxes imposed in Article 4 of this Chapter.

If the resolution levying the tax is adopted on or before December 15, the tax shall become effective for taxable years beginning on or after the following January 1. If the resolution levying the tax is adopted after December 15, the tax shall become effective for taxable years beginning on or after January 1 of the second calendar year following adoption of the resolution. Upon adoption of a resolution levying a tax under this Article, the board of commissioners shall deliver a certified copy of the resolution immediately to the Secretary.

"**§ 105-163.52. Exemptions.**

A tax levied under this Article does not apply to income:

(1) From an obligation of (i) the United States or its possessions, (ii) this State or a political subdivision of this State, or (iii) a nonprofit educational institution organized or chartered under the laws of this State.

(2) Deductible under G.S. 105-134.6(b)(2).

(3) From units of ownership in an investment trust, the corpus of which is composed entirely of obligations described in subdivisions (1) and (2) of this subsection, at least eighty percent (80%) of the fair market value of which represents obligations of this State. In order for the exemption described in this subdivision to apply, the trustees of the investment trust must provide the Secretary not later than December 31 of each year information in the form required by the Secretary sufficient to establish the applicability of the exemption.

"**§ 105-163.53. Administration.**

The Secretary shall collect and administer a tax levied in this section. A tax levied under this Article shall be collected and paid annually and is due at the same time the taxpayer's tax under Article 4 of this Chapter is due. A taxpayer shall compute the tax levied under this Article on the basis of the taxable year used in computing the taxpayer's income tax liability under Article 4 of this Chapter. Article 4A of this Chapter does not apply to a tax levied under this Article. The credits allowed against the taxes levied in Article 4 of this Chapter do not apply to a tax levied under this Article. A taxpayer is not required to pay a tax levied under this Article for the taxable year if, pursuant to G.S. 105-157 or G.S. 105-160.7, the taxpayer is not required to pay the tax levied in Article 4 of this Chapter for the taxable year.

"**§ 105-163.54. Distribution and use of tax.**

The Secretary shall, on or before June 25 of each year, allocate to each taxing county the net proceeds of the tax levied by that county under this Article. The net proceeds of the tax are the gross proceeds minus taxes refunded, the cost to the State of collecting and administering the tax, and other deductions that may be charged to the taxing county. The amounts allocated to each taxing county shall be allocated between the county and the municipalities in the county in proportion to the total amount of ad valorem taxes levied by each during the fiscal year preceding the distribution in the same manner as provided in G.S. 105-275.2. A county or a municipality may use the proceeds distributed to it under this section for any lawful purpose.

"**§ 105-163.55. Repeal of levy.**

A tax levied under this Article may be repealed by a resolution adopted by the board of county commissioners. Repeal of a tax levied under this Article shall become effective on January 1 immediately preceding adoption of the repeal resolution unless the resolution specifies that the repeal shall become effective January 1 following adoption of the repeal resolution. Repeal of a tax levied under this Article does not affect a liability for a tax that was attached before the effective date of the repeal, nor does it affect a right to a refund of a tax that accrued before the effective date of the repeal."

Sec. 6. G.S. 105-151.19 is repealed.

Sec. 7. G.S. 105-130.7 reads as rewritten:

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

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

~~(1)~~ ~~As soon as may be practicable after September 30 of each year, the Secretary of Revenue shall determine from the corporate income tax return filed during the year ending September 30 by each corporation required to file a return during that period the proportion of the entire net income or loss of the corporation allocable to this State under the provisions of G.S. 105-130.4, except as provided herein. If a corporation has a net income in North Carolina and a net loss from all sources wherever located, or if a corporation has a net loss in North Carolina and a net income from all sources wherever located, the Secretary shall require the use of the allocation fraction determined under the provisions of G.S. 105-130.4. A corporation which is a stockholder in any such corporation shall be allowed to deduct the same proportion of the dividends received by it from such corporation during its income year ending on or after September 30. No deduction shall be allowed for any part of any dividend received from any corporation that was required to file an income tax return during the year ending September 30 but failed to file the return. In the case of dividends received from a corporation that was not required to file a return during the year ending September 30, the proportion of dividends deductible by the stockholder shall be determined by the Secretary from the best information available.~~

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

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

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

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

(5) Notwithstanding any other provisions of this Division, a corporation ~~which~~ that is a shareholder in a holding company ~~shall be allowed as a deduction~~ may deduct an amount equal to those dividends received by it from ~~such~~ the holding company, multiplied by a fraction, the numerator of which ~~shall be~~ is the dividends received by ~~such~~ the holding company ~~attributable to North Carolina,~~ that are deductible by it under subdivisions (2) through (3a) of this section and the denominator of which ~~shall be~~ is the gross dividends received by ~~such~~ the holding company. ~~company; provided, however, that no deduction shall be allowed where the fraction is smaller than one-third (1/3). For purposes of this section, 'dividends attributable to North Carolina' shall be the amount of dividend income received by the holding company on stock owned in other corporations equal to the total of the proportion of each of such corporation's dividends as shall be determined deductible by the Secretary under subdivisions (1) through (3a) of this section; provided that a~~ A holding company ~~which~~ that owns more than fifty percent (50%) of the outstanding voting stock of one or more holding companies as defined in this subdivision ~~shall be permitted~~ is allowed a deduction for all dividends received from ~~such~~ those holding companies and all other corporations in which it owns more than fifty percent (50%) of the outstanding voting stock. ~~stock except that no deduction shall be allowed if less than one-third (1/3) of the dividends received by the holding company are attributable to North Carolina. A shareholder of such a holding company~~

~~shall determine the deductible portion of its dividends received from such holding company as hereinabove provided except that the amounts received from a subsidiary holding company as 'dividends attributable to North Carolina' shall be determined as though the subsidiary corporation of the subsidiary holding company had paid the dividends directly to the parent holding company. For the purposes of this section and unless the context clearly requires a different meaning,~~ As used in this section, the term 'holding company' ~~shall mean any~~ means a corporation subject to the tax imposed by G.S. 105-130.3 whose ordinary gross income consists of fifty percent (50%) or more of dividend income received from corporations in which it owns more than fifty percent (50%) of the outstanding voting ~~stock, and 'subsidiary' shall mean any corporation, more than fifty percent (50%) of whose outstanding voting stock is owned by another corporation. For the purposes of this subsection,~~ stock. As used in this subdivision, the term 'dividend' includes, in addition to corporate dividends, distributions received from a partnership by a corporation owning more than a fifty percent (50%) interest in the partnership.

(6) In no case shall the total amount of dividends that are allowed as a deduction to a corporation as a result of the application of subdivisions ~~(1)~~ (2) through (3a) of this section be in excess of fifteen thousand dollars ($15,000) for the taxable year."

Sec. 8. G.S. 105-501 reads as rewritten:

"**§ 105-501. Distribution of additional taxes.**

The Secretary shall, on a quarterly basis, allocate the net proceeds of the additional one-half percent (1/2%) sales and use taxes levied under this Article to the taxing counties on a per capita basis according to the most recent annual population estimates certified to the Secretary by the State Budget Officer. The Secretary shall then adjust the amount allocated to each county as provided in G.S. 105-486(b). The amount allocated to each taxing county shall then be divided among the county and the municipalities located in the county in accordance with the method by which the one percent (1%) sales and use taxes levied in that county pursuant to Article 39 of this Chapter or Chapter 1096 of the 1967 Session Laws are distributed.

If any taxes levied under this Article by a county have not been collected in that county for a full quarter because of the levy or repeal of the taxes, the Secretary shall distribute a pro rata share to that county for that quarter based on the number of months the taxes were collected in that county during the quarter.

In determining the net proceeds of the tax to be distributed, the Secretary shall deduct from the collections to be allocated an amount equal to one-fourth of the costs during the preceding fiscal year of:

(1) The Department of Revenue in performing the duties imposed by Article 15 of this Chapter.

(2) The Property Tax Commission.

(3) The Institute of Government in operating a training program in property tax appraisal and assessment.

(4) The personnel and operations provided by the Department of State Treasurer for the Local Government Commission."

Sec. 9. G.S. 105-288(d) reads as rewritten:

"(d) Expenses. – The members of the Property Tax Commission shall receive travel and subsistence expenses in accordance with G.S. 138-5 and a salary of two hundred dollars ($200.00) a day when hearing cases. The Secretary of Revenue shall supply all the clerical and other services required by the Commission. All expenses of the Commission and the Department of Revenue in performing the duties enumerated in this Article shall be paid ~~from funds appropriated out of revenue derived from the tax on intangible personal property as provided by G.S. 105-213.~~ as provided in G.S. 105-501."

Sec. 10. G.S. 105-276 reads as rewritten:

"§ 105-276. Taxation of intangible personal property.

Intangible personal property that is not excluded from taxation under G.S. ~~105-275(31) or classified under Schedule H, G.S. 105-198 through G.S. 105-217,~~ 105-275 is subject to this Subchapter. ~~The classification of such property for taxation under Schedule H shall not exclude the property from the system property valuation of public service companies under Article 23 provided proper adjustments are made to prevent duplicate taxation~~."

Sec. 11. G.S. 105-305 reads as rewritten:

"§ 105-305. Place for listing intangible personal property.

(a) Listing Instructions. – This section ~~shall apply~~ applies to all taxable intangible personal property that has a tax situs in this ~~State, that~~ State and is not required by this Subchapter to be appraised originally by the Department of ~~Revenue, and that is not subject to taxation under the provisions of Schedule H, G.S. 105-198 through 105- 217.~~ Revenue. The place in this State at which ~~such~~ this property is taxable shall be determined ~~according to the rules prescribed in subsections (b) through (e), below.~~ as provided in this section. The person whose duty it is to list property shall list it in the county in which the place of taxation is located, indicating on the abstract the information required by G.S. 105-309(d). If the place of taxation lies within a city or town that requires separate listing under G.S. 105-326(a), the person whose duty it is to list shall also list the property for taxation in the city or town.

(b) General Rule. – Except as otherwise provided in subsections (c) through ~~(e), below,~~ (e) of this section, intangible personal property shall be taxable at the residence of the owner. For the purposes of this section:

(1) The residence of a person who has two or more places in this State at which ~~he~~ the person occasionally dwells shall be the place ~~at which he~~ the person dwelt for the longest period of time during the calendar year immediately preceding the date as of which property is to be listed for taxation.

(2) The residence of a domestic or foreign taxpayer other than an individual person shall be the place at which its principal North Carolina office is located.

(c) Intangible personal property representing an interest or interests in real property that is situated in this State shall be taxable in the place in which the represented real property is located.

(d) The intangible personal property of a decedent whose estate is in the process of administration or has not been distributed shall be taxable in the place at which it would be taxable if the decedent were still alive and still residing in the place at which ~~he~~ the decedent resided at the time of ~~his~~ death.

(e) Intangible personal property within the jurisdiction of the State held by a resident or nonresident trustee, guardian, or other fiduciary having legal title to the property shall be taxable in accordance with the following rules:

(1) If ~~any~~ a beneficiary is a resident of the State, an amount representing ~~his~~ the beneficiary's portion of the property shall be taxable in the place at which it would be taxable if ~~he~~ the beneficiary were the owner of ~~his~~ that portion.

(2) If ~~any~~ a beneficiary is a nonresident of the State, an amount representing ~~his~~ the beneficiary's portion of the property shall be taxable in the place at which it would be taxable if the fiduciary were the beneficial owner of the property."

Sec. 12. G.S. 108A-93 reads as rewritten:

"§ 108A-93. Withholding of State moneys from counties failing to pay public assistance costs.

The Director of the Budget ~~is authorized to~~ may withhold from any county that does not pay its full share of public assistance costs to the State and has not ~~arranged for payment pursuant to G.S. 108- 54.1 or~~ obtained a loan for repayment under G.S. 108A-89, any State moneys appropriated from the General Fund for public assistance and related administrative costs, or ~~to~~ may direct the Secretary of Revenue and State ~~Treasurer~~ Controller to withhold any tax owed to a county under ~~Article 7 of Chapter 105 of the General Statutes,~~ G.S. 105-113.82, ~~Article 39 of Chapter 105 of the General Statutes~~ Subchapter VIII of Chapter 105 of the General Statutes, or Chapter 1096 of the Session Laws of 1967. The Director of the Budget shall notify the ~~chairman~~ chair of the board of county commissioners of the proposed action prior to the withholding of funds."

Sec. 13. G.S. 105-282.1(a)(2) reads as rewritten:

"(2) Owners of the special classes of property excluded from taxation under G.S. 105-275(5), (15), (16), (26), (31), (31a), (31b), (31c), (31(d), (32a), (33), (34), or (40), or exempted under G.S. 105-278.2 are not required to file applications for the exclusion or exemption of that property."

Sec. 14. Notwithstanding the provisions of G.S. 105-163.15 and G.S. 105-163.41, no addition to tax shall be made under those sections for a taxable year beginning on or after January 1, 1994, and before January 1, 1995, with respect to any underpayment to the extent the underpayment was created or increased by Section 6 or 7 of this act.

Sec. 15. The repeal of G.S. 105-213 by Section 1 of this act becomes effective January 1, 1995. Section 3 of this act becomes effective January 1, 1995.

Sections 4 and 5 of this act are effective upon ratification. Sections 6 and 7 of this act are effective for taxable years beginning on or after January 1, 1994. Section 8 of this act becomes effective July 1, 1995, and applies to distributions made on or after that date. The remainder of this act is effective for taxable years beginning on or after January 1, 1995. This act does not affect the rights or liabilities of the State, a taxpayer, or another person arising under a statute amended or repealed by this act before its amendment or repeal; nor does it affect the right to any refund or credit of a tax that would otherwise have been available under the amended or repealed statute before its amendment or repeal.