

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1995

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SENATE BILL 1275*
Finance Committee Substitute Adopted 5/29/96
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Short Title: Tax Reduction Act of 1996

(Public)

Sponsors:

Referred to:

May 23, 1996

1 A BILL TO BE ENTITLED
2 AN ACT TO PROVIDE TAX RELIEF AND TO PROMOTE ECONOMIC
3 DEVELOPMENT.

4 The General Assembly of North Carolina enacts:

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15
16 Section 1. This act shall be known as Tax Reduction Act of 1996.
17

PART I. REDUCE CORPORATE INCOME TAX

Sec. 1.1. G.S. 105-130.3 reads as rewritten:

"§ 105-130.3. Corporations.

A tax is imposed on the State net income of every C Corporation doing business in this State ~~at seven and seventy-five one-hundredths percent (7.75%) of the corporation's State net income.~~ State. An S Corporation is not subject to the tax levied in this section. The tax is a percentage of the taxpayer's State net income computed as follows:

Income Years Beginning	Tax
<u>In 1997</u>	<u>7.5%</u>
<u>In 1998</u>	<u>7.25%</u>
<u>In 1999</u>	<u>7%</u>
<u>After 1999</u>	<u>6.75%".</u>

Sec. 1.2. G.S. 115C-546.1 reads as rewritten:

"§ 115C-546.1. Creation of Fund; administration.

(a) There is created the Public School Building Capital Fund. The Fund shall be used to assist county governments in meeting their public school building capital needs.

(b) Each calendar quarter, the Secretary of Revenue shall remit to the State Treasurer for credit to the Public School Building Capital Fund an amount equal to ~~two~~ thirty-firsts (2/31) the applicable proportion provided in the table below of the net collections received during the previous quarter by the Department of Revenue under G.S. 105-130.3 minus two million five hundred thousand dollars (\$2,500,000). All funds deposited in the Public School Building Capital Fund shall be invested as provided in G.S. 147-69.2 and G.S. 147-69.3.

Period Proportion	
<u>10/1/97 to 9/30/98</u>	<u>One-fifteenth (1/15)</u>
<u>10/1/98 to 9/30/99</u>	<u>Two twenty-ninths (2/29)</u>
<u>10/1/99 to 9/30/00</u>	<u>One-fourteenth (1/14)</u>
<u>After 9/30/00</u>	<u>Two twenty-sevenths (2/27)</u>

(c) The Fund shall be administered by the Office of State Budget and Management."

PART II. ALLOW INVESTMENT TAX CREDIT AND RESEARCH AND DEVELOPMENT TAX CREDIT

Sec. 2.1. Chapter 105 of the General Statutes is amended by adding a new Article to read:

"ARTICLE 3A.**"INVESTMENT AND RESEARCH AND DEVELOPMENT TAX CREDITS.****"§ 105-129.2. Definitions.**

The following definitions apply in this Article:

- (1) Business property. – Tangible personal property that is used by the taxpayer in connection with a business or for the production of income and is capitalized by the taxpayer for tax purposes under the Code.
- (2) Cost. – Defined in section 179 of the Code.

1 (3) Data processing. – Defined in the Standard Industrial Classification
2 Manual issued by the United States Bureau of the Census.

3 (4) Manufacturing and processing. – Defined in the Standard Industrial
4 Classification Manual issued by the United States Bureau of the Census.

5 (5) Purchase. – Defined in section 179 of the Code.

6 (6) Warehousing and distribution. – Defined in the Standard Industrial
7 Classification Manual issued by the United States Bureau of the Census.

8 **"§ 105-129.3. Credit for investing in business property.**

9 (a) Credit. – A taxpayer that has purchased business property and places it in
10 service in this State during the taxable year is allowed a credit equal to seven and
11 seventy-five one-hundredths percent (7.75%) of the cost of the property. The maximum
12 credit allowed a taxpayer for property placed in service during a taxable year is thirty-
13 eight thousand seven hundred fifty dollars (\$38,750). The entire credit may not be taken
14 for the taxable year in which the property is placed in service but must be taken in five
15 equal installments beginning with the taxable year in which the property is placed in
16 service.

17 (b) Expiration. – If, in one of the five years in which the installment of a credit
18 accrues, the business property with respect to which the credit was claimed is sold or
19 moved out of State, the credit expires and the taxpayer may not take any remaining
20 installment of the credit. The taxpayer may, however, take the portion of an installment
21 that accrued in a previous year and was carried forward to the extent permitted under
22 G.S. 105-129.5.

23 **"§ 105-129.4. Credit for research and development.**

24 (a) Credit. – An eligible taxpayer who claims for the taxable year a federal income
25 tax credit under section 41 of the Code for increasing research activities is allowed a
26 credit equal to five percent (5%) of the State's apportioned share of the taxpayer's
27 expenditures for increasing research activities. The State's apportioned share of a
28 taxpayer's expenditures for increasing research activities is the excess of the taxpayer's
29 qualified research expenses for the taxable year over the base amount, as determined
30 under section 41 of the Code, multiplied by a percentage equal to the ratio of the
31 taxpayer's qualified research expenses in this State for the taxable year to the taxpayer's
32 total qualified research expenses for the taxable year. As used in this section, the terms
33 'qualified research expenses' and 'base amount' have the meaning provided in section 41
34 of the Code.

35 (b) Eligibility. – A taxpayer is eligible for a credit allowed by this section only if
36 the taxpayer satisfies all of the following conditions at the time the credit is claimed:

37 (1) Type of Business. – The taxpayer engages in manufacturing or
38 processing, warehousing or distributing, or data processing, and the
39 research and development for which a credit is claimed is carried out as
40 part of that business.

41 (2) Wage Standard. – The jobs at the location with respect to which the
42 taxpayer claims the credit meet the wage standard. Jobs meet the wage
43 standard if they pay an average weekly wage that is at least ten percent

1 (10%) above the average weekly wage paid in the county in which the
2 jobs are located. In calculating the average weekly wage of jobs,
3 positions that pay a wage or salary at a rate that exceeds one hundred
4 thousand dollars (\$100,000) a year shall be excluded. For the purpose
5 of this subdivision, the average wage in a county is the average wage for
6 all insured industries in the county as computed by the Employment
7 Security Commission for the most recent period for which data are
8 available.

9 (3) Health Insurance. – The taxpayer provides health insurance for the full-
10 time positions at the location with respect to which the credit is claimed.
11 For the purpose of this subdivision, a taxpayer provides health insurance
12 if it pays at least fifty percent (50%) of the premiums for health care
13 coverage that equals or exceeds the minimum provisions of the basic
14 health care plan of coverage recommended by the Small Employer
15 Carrier Committee pursuant to G.S. 58-50-125.

16 (d) Forfeiture. – A taxpayer forfeits a credit allowed under this section if the
17 taxpayer was not eligible for the credit at the time the taxpayer claimed the credit. A
18 taxpayer who forfeits a credit under this section is liable for all past taxes avoided as a
19 result of the credit plus interest at the rate established under G.S. 105-241.1(i), computed
20 from the date the taxes would have been due if the credit had not been allowed. The past
21 taxes and interest are due 30 days after the date the credit is forfeited; a taxpayer who
22 fails to pay the past taxes and interest by the due date is subject to the penalties provided
23 in G.S. 105-236.

24 **"§ 105-129.5. Tax election; cap.**

25 (a) Tax Election. – The credits provided in this section are allowed against the
26 franchise tax levied in Article 3 of this Chapter or the income taxes levied in Article 4 of
27 this Chapter. The taxpayer must elect the tax against which the credit will be claimed
28 when filing the return on which the first installment of the credit is claimed. This
29 election is binding. Any carryforwards of the credit must be claimed against the same
30 tax.

31 (b) Cap. – The credits allowed under this Article may not exceed fifty percent
32 (50%) of the tax against which they are claimed for the taxable year, reduced by the sum
33 of all other credits allowed against that tax, except tax payments made by or on behalf of
34 the taxpayer. This limitation applies to the cumulative amount of credit, including
35 carryforwards, claimed by the taxpayer under this Article against each tax for the taxable
36 year. Any unused portion of the credit may be carried forward for the succeeding five
37 years.

38 **"§ 105-129.6. Substantiation.**

39 To claim the credit allowed by this Article, the taxpayer must provide any information
40 required by the Secretary of Revenue. Every taxpayer claiming a credit under this Article
41 must maintain and make available for inspection by the Secretary of Revenue any records
42 the Secretary considers necessary to determine and verify the amount of the credit to
43 which the taxpayer is entitled. The burden of proving eligibility for the credit and the

1 amount of the credit rests upon the taxpayer, and no credit may be allowed to a taxpayer
2 that fails to maintain adequate records or to make them available for inspection.

3 **"§ 105-129.7. Reports.**

4 The Department of Revenue shall report to the Legislative Research Commission and
5 to the Fiscal Research Division of the General Assembly by May 1 of each year the
6 following information for the 12-month period ending the preceding April 1:

7 (1) The number of taxpayers that claimed each credit allowed in this
8 Article.

9 (2) The cost of business property with respect to which credits were
10 claimed.

11 (3) The total cost to the General Fund of the credits claimed."

12 Sec. 2.2. G.S. 105-241.1(e) reads as rewritten:

13 "(e) Statute of Limitations. – The Secretary may propose an assessment of tax due
14 from a taxpayer at any time if (i) the taxpayer did not file a proper application for a
15 license or did not file a return, (ii) the taxpayer filed a false or fraudulent application or
16 return, or (iii) the taxpayer attempted in any manner to fraudulently evade or defeat the
17 tax. If a taxpayer files a return reflecting a federal determination as provided in G.S. 105-
18 29, 105-130.20, 105-159, 105-160.8, 105-163.6A, or 105-197.1, the Secretary must
19 propose an assessment of any tax due within one year after the return is filed or within
20 three years of when the original return was filed or due to be filed, whichever is later. If
21 there is a federal determination and the taxpayer does not file the required return, the
22 Secretary must propose an assessment of any tax due within three years after the date the
23 Secretary received the final report of the federal determination. If a taxpayer forfeits a tax
24 credit pursuant to G.S. ~~105-163.014~~, 105-163.014 or Article 3A of this Chapter, the
25 Secretary must assess any tax or additional tax due as a result of the forfeiture within
26 three years after the date of the forfeiture. In all other cases, the Secretary must propose
27 an assessment of any tax due from a taxpayer within three years after the date the
28 taxpayer filed an application for a license or a return or the date the application or return
29 was required by law to be filed, whichever is later. If the Secretary proposes an
30 assessment of tax within the time provided in this section, the final assessment of the tax
31 is timely.

32 A taxpayer may make a written waiver of any of the limitations of time set out in this
33 subsection, for either a definite or an indefinite time. If the Secretary accepts the
34 taxpayer's waiver, the Secretary may propose an assessment at any time within the time
35 extended by the waiver."

36 Sec. 2.3. Notwithstanding the provisions of G.S. 105-129.4, as enacted by this
37 act, if a taxpayer relocates an employee to this State during 1996, any in-house research
38 expenses the taxpayer incurs with respect to that employee during 1996, either before or
39 after the employee is relocated to this State, are considered in-house research expenses in
40 this State for the purposes of G.S. 105-129.4.

41 Sec. 2.4. Notwithstanding the definition of 'Code' in G.S. 105-228.90, if the
42 federal tax credit for increasing research activities that was formerly allowed under
43 Section 41 of the Code is reenacted, the credit for research and development allowed in

1 Article 3A of Chapter 105 of the General Statutes, as enacted by this Part, becomes
2 effective for the same taxable year for which the reenacted federal credit becomes
3 effective.

4
5 PART III. PHASE OUT SOFT DRINK TAX

6 Sec. 3.1. G.S. 105-113.45 reads as rewritten:

7 "**§ 105-113.45. 1996) Excise taxes on soft drinks and base products.**

8 (a) Bottled Soft Drinks. – An excise tax ~~of three-fourths cent (3/4¢)~~ at the applicable
9 rate provided in the following table is levied on each bottled soft drink.

<u>Date Tax Accrues</u>	<u>Rate</u>
<u>From 7/1/96 until 6/30/97</u>	<u>3/4¢</u>
<u>From 7/1/97 until 6/30/98</u>	<u>1/2¢</u>
<u>After 7/1/98</u>	<u>1/4¢</u>

14 (b) Repealed by Session Laws 1991, c. 689, s. 276.

15 (c) Liquid Base Products. – An excise tax at the ~~rate of seventy-five cents (75¢)~~
16 applicable per-gallon rate provided in the table below is levied on each individual
17 container of a liquid base product. The tax applies regardless whether the liquid base
18 product is diverted to and used for a purpose other than making a soft drink.

<u>Date Tax Accrues</u>	<u>Rate</u>
<u>From 7/1/96 until 6/30/97</u>	<u>75¢</u>
<u>From 7/1/97 until 6/30/98</u>	<u>50¢</u>
<u>After 7/1/98</u>	<u>25¢</u>

23 (d) Dry Base Products. – An excise tax is levied on each individual container of a
24 dry base product ~~at the rate of:~~ at:

25 (1) ~~Of three-fourths cent (3/4¢) an ounce.~~ The applicable per-ounce rate in the
26 table below if the dry base product is not converted into a syrup or other
27 liquid base product before it is used to make a soft drink.

<u>Date Tax Accrues</u>	<u>Rate</u>
<u>From 7/1/96 until 6/30/97</u>	<u>3/4¢</u>
<u>From 7/1/97 until 6/30/98</u>	<u>1/2¢</u>
<u>After 7/1/98</u>	<u>1/4¢</u>

32 (2) ~~That~~ The rate that would apply under subsection (c) to the resulting
33 liquid base product if the dry base product is converted into a liquid
34 base product before it is used to make a soft drink.

35 (e) Repealed by Session Laws 1991, c. 689, s. 276."

36 Sec. 3.2. Effective July 1, 1999, Article 2B of Chapter 105 of the General
37 Statutes, as amended by this act, is repealed. The Secretary shall retain from collections
38 under Article 2 of Chapter 105 of the General Statutes the cost of refunding the taxes
39 levied in Article 2B of Chapter 105 of the General Statutes.

40
41 PART IV. REDUCE SALES TAX ON FARM AND INDUSTRY FUEL

42 Sec. 4.1. G.S. 105-164.4(a) is amended by adding a new subdivision to read:

1 "(1f) The rate of two and sixty-seven one-hundredths percent (2.67%)
2 applies to the sales price of the articles listed in paragraphs a.
3 through c. of this subdivision:

4 a. Sales of electricity and piped natural gas to farmers to be used by
5 them for any farm purposes other than preparing food, heating
6 dwelling, and other household purposes. The quantity of
7 electricity or gas purchased or used at any one time shall not be a
8 determinative factor as to whether its sale or use is or is not
9 subject to the rate of tax provided in this subdivision.

10 b. Sales of electricity and piped natural gas to manufacturing
11 industries and manufacturing plants for use in connection with
12 the operation of the industries and plants other than sales of
13 electricity and gas to be used for residential heating purposes.
14 The quantity of electricity or gas purchased or used at any one
15 time shall not be a determinative factor as to whether its sale or
16 use is or is not subject to the rate of tax provided in this
17 subdivision.

18 c. Sales of electricity and piped natural gas to commercial laundries
19 or to pressing and dry-cleaning establishments for use in
20 machinery used in the direct performance of the laundering or the
21 pressing and cleaning service."

22 Sec. 4.2. G.S. 105-164.4(a)(4a) reads as rewritten:

23 "(4a) The rate of three percent (3%) applies to the gross receipts
24 derived by a utility from sales of electricity, piped natural gas, or
25 local telecommunications service as defined by G.S. ~~105-120(e).~~
26 105-120(e), other than sales of electricity or piped natural gas
27 subject to tax under another subdivision in this section. Gross
28 receipts from sales of piped natural gas shall not include natural
29 gas expansion surcharges imposed under G.S. 62-158. A person
30 who operates a utility is considered a retailer under this Article."

31
32 PART V. MODIFY BUNDLED TRANSACTION SALES TAX

33 Sec. 5.1. Article 5 of Chapter 105 of the General Statutes is amended by
34 adding a new section to read:

35 "**§ 105-164.12B. Bundled transactions.**

36 (a) Bundled Transaction Defined. – A bundled transaction is a transaction in
37 which all of the following conditions are met:

38 (1) A seller transfers an item of tangible personal property to a consumer on
39 the condition that the consumer enter into an agreement to purchase
40 services on an ongoing basis for a minimum period of at least six
41 months.

1 (2) The agreement requires the consumer to pay a cancellation fee to the
2 service provider if the consumer cancels the contract for services within
3 the minimum period.

4 (3) For the item transferred, the seller:

5 a. Does not charge the consumer; or

6 b. Charges the consumer a price that, after any discount or rebate
7 the seller gives the consumer, is below the cost price the seller
8 paid for the item.

9 (b) Bundled Transaction Is a Sale; Sales Price. – If a seller transfers an item of
10 tangible personal property as part of a bundled transaction, a sale has occurred, and the
11 sales price of the item is presumed to be the retail price at which the item would sell if no
12 agreement for services were entered into. Part of this price may be paid by the consumer
13 at the time of the transfer; the remainder of the price is considered paid as part of the
14 price to be paid for the services contracted for. Sales tax is due on any part of the price
15 paid by the consumer at the time of the transfer.

16 (c) No Additional Sales Tax if Services Taxed. – If the services for which the
17 consumer was required to contract are subject to services taxes at a combined rate equal
18 to or greater than the combined State and local general rate of sales and use tax, then no
19 additional sales tax is due on the transfer. However, if the consumer cancels the contract
20 for services before the expiration of the minimum period, sales tax applies to the
21 cancellation fee paid by the consumer.

22 (d) Additional Sales Tax if Services Not Taxed. – If the services for which the
23 consumer was required to contract are not subject to services taxes at a combined rate
24 equal to or greater than the combined State and local general rate of sales and use tax,
25 then sales tax is due at the time of the transfer on the remainder of the sales price not paid
26 at that time.

27 (e) Services Taxes Defined. – For the purpose of this section, the term 'services
28 taxes' means any combination of State franchise tax on gross receipts, State sales tax, or
29 local sales tax levied on the sale of or gross receipts from the services.

30 (f) Determination of Cost Price. – For the purpose of this section, the cost price a
31 seller paid for an item is presumed to be no greater than the price the seller paid for the
32 same model within 12 months before the bundled transaction, as shown on the seller's
33 invoices."

34 PART VI. REDUCE INHERITANCE AND GIFT TAXES

35 Sec. 6.1. Article 1 of Chapter 105 of the General Statutes is amended by
36 adding a new section to read:

37 **"§ 105-6.1. Phaseout of inheritance tax.**

38 When this Article imposes an inheritance tax on property transferred by a decedent
39 but no state death tax credit is allowed under section 2011 of the Code against federal
40 estate tax due on the transfer of the decedent's estate, the amount of inheritance tax is
41 reduced by the appropriate percentage in the phaseout table set out below. When this
42 Article imposes an inheritance tax on property transferred by a decedent and a state death
43 tax is due on the transfer, the amount of inheritance tax is reduced by the appropriate

1 tax credit is allowed under section 2011 of the Code against federal estate tax due on the
 2 transfer of the decedent's estate, the amount of inheritance tax that exceeds the maximum
 3 credit for state death taxes is reduced by the appropriate percentage in the following
 4 phaseout table:

	<u>Calendar Year of</u>	<u>Percentage Reduction</u>
	<u>Decedent's Death</u>	
7	<u>1997</u>	<u>20%</u>
8	<u>1998</u>	<u>40%</u>
9	<u>1999</u>	<u>60%</u>
10	<u>2000</u>	<u>80%</u>
11	<u>2001 and after</u>	<u>100%."</u>

12 Sec. 6.2. G.S. 105-3 is amended by adding a new subdivision to read:

13 "(11) Property transferred to a spouse when the transfer of the property is
 14 exempt from federal estate and gift taxes under section 2056(b)(7) of
 15 the Code because it is considered qualified terminable interest
 16 property."

17 Sec. 6.3. G.S. 105-188 is amended by adding a new subsection to read:

18 "(j) The tax does not apply to property transferred to a spouse when the transfer of
 19 the property is exempt from federal estate and gift taxes under section 2523(f) of the
 20 Code because it is considered qualified terminable interest property."

21 Sec. 6.4. G.S. 105-2(a) reads as rewritten:

22 "(a) A tax shall be and is hereby imposed upon the transfer of any property, real or
 23 personal, or of any interest therein or income therefrom, in trust or otherwise, to persons
 24 or corporations, in the following cases:

25 (1) When the transfer is from a person who dies seized of the
 26 property while a resident of the State and it is made:

- 27 a. By will or by intestacy;
- 28 b. Pursuant to a final judgment entered in a proceeding to caveat a
 29 will; or
- 30 c. Pursuant to a settlement agreement, to which the personal
 31 representative is a party, that, in the determination of the
 32 Secretary of Revenue in his sole discretion based on evidence
 33 presented by the personal representative, reflects the good faith,
 34 arm's-length compromise of an actual dispute between
 35 beneficiaries, heirs, or personal representatives and does not have
 36 the primary purpose of avoiding inheritance tax.

37 (2) When the transfer is by will or intestate laws of this or any other state of
 38 real property or goods, wares, and merchandise within this State, or of
 39 any property, real, personal, or mixed, tangible or intangible, over which
 40 the State of North Carolina has a taxing jurisdiction, including State and
 41 municipal bonds, and the decedent was a resident of the State at the time
 42 of death; when the transfer is of real property or tangible personal
 43 property within the State, or intangible personal property that has

1 acquired a situs in this State, and the decedent was a nonresident of the
2 State at the time of death.

3 (3) When the transfer of property made by a resident, or
4 nonresident, is of real property within this State, or of goods, wares
5 and merchandise within this State, or of any other property, real,
6 personal, or mixed, tangible or intangible, over which the State of
7 North Carolina has taxing jurisdiction, including State and municipal
8 bonds, by deed, grant, bargain, sale, or gift made in contemplation of
9 the death of the grantor, vendor, or donor, or intended to take effect in
10 possession or enjoyment at or after such death, including a transfer
11 under which the transferor has retained for his life or any period not
12 ending before his death (i) the possession or enjoyment of, or the
13 income from, the property or (ii) the right to designate the persons
14 who shall possess or enjoy the property or the income therefrom. The
15 aggregate value exceeding ten thousand dollars (\$10,000) of transfers
16 to any one donee within a tax year by deed, grant, bargain, sale, gift,
17 or combination thereof, made within three years prior to the death of
18 the grantor, vendor, or donor, without an adequate valuable
19 consideration, shall be presumed, subject to rebuttal, to have been
20 made in contemplation of death within the meaning of this section; the
21 first ten thousand dollars (\$10,000) in value shall be deemed not made
22 in contemplation of death.

23 (4) When any person or corporation comes into possession or
24 enjoyment, by a transfer from a resident, or from a nonresident
25 decedent when such nonresident decedent's property consists of real
26 property within this State or tangible personal property within the
27 State, or intangible personal property that has acquired a situs in this
28 State, of an estate in expectancy of any kind or character which is
29 contingent or defeasible, transferred by any instrument taking effect
30 after March 24, 1939.

31 (5) a. For purposes of this Article, the term 'general
32 power of appointment' means a power which is exercisable in
33 favor of the decedent, his estate, his creditors, or the creditors
34 of his estate; except that:

35 1. A power to consume, invade or appropriate
36 property for the benefit of the decedent which is limited
37 by an ascertainable standard relating to the health,
38 education, support or maintenance of the decedent shall
39 not be deemed a general power of appointment.

40 2. A power of appointment which is exercisable
41 by the decedent only in conjunction with another
42 person:

- 1 I. If the power is not exercisable by the decedent
2 except in conjunction with the creator of the power,
3 such power shall not be deemed a general power of
4 appointment.
- 5 II. If the power is not exercisable by the decedent
6 except in conjunction with a person having a
7 substantial interest in the property, subject to the
8 power, which is adverse to exercise of the power in
9 favor of the decedent, such power shall not be
10 deemed a general power of appointment. For the
11 purposes of this clause a person who, after the
12 death of the decedent, may be possessed of a power
13 of appointment (with respect to the property subject
14 to the decedent's power) which he may exercise in
15 his own favor shall be deemed as having an interest
16 in the property and such interest shall be deemed
17 adverse to such exercise of the decedent's power.
- 18 III. If (after the application of clauses I and II) the
19 power is a general power of appointment and is
20 exercisable in favor of such other person, such
21 power shall be deemed a general power of
22 appointment only in respect of a fractional part of
23 the property subject to such power, such part to be
24 determined by dividing the value of such property
25 by the number of such persons (including the
26 decedent) in favor of whom such power is
27 exercisable.
- 28 IV. For purposes of clauses II and III, a power shall be
29 deemed to be exercisable in favor of a person if it is
30 exercisable in favor of such person, his estate, his
31 creditors, or the creditors of his estate.
- 32 b. Whenever any person shall have a general power of appointment
33 with respect to any interest in property, such person shall, for the
34 purposes of this Article, be deemed the owner of such interest
35 and accordingly:
- 36 1. If in connection with any transfer of property
37 taxable under this Article the transferor shall give to any
38 person a general power of appointment with respect to
39 any interest in such property, the transferor shall be
40 deemed to have given such interest in such property to
41 such person.
- 42 2. If any person holding a general power of
43 appointment with respect to any interest in property

1 shall exercise such power in favor of any other person
2 or persons, either by will or by an appointment made in
3 contemplation of the death of such person, or by an
4 appointment intended to take effect in possession or
5 enjoyment at or after such death, he shall be deemed to
6 have made a transfer of such interest to such person or
7 persons.

8 3. If any person holding a general power of
9 appointment with respect to any interest in property
10 shall relinquish such power by any action taken in
11 contemplation of death or intended to take effect at or
12 after his death, or shall die without fully exercising such
13 power, he shall be deemed, to the extent of such
14 relinquishment or nonexercise, to have made a transfer
15 of such interest to the person or persons who shall
16 benefit thereby.

17 (6) Neither the exercise nor the relinquishment of a special power
18 of appointment (which shall mean any power other than a general
19 power) with respect to an interest in property shall be deemed to
20 constitute a transfer of such interest within the meaning of this
21 Article. If in connection with any transfer taxable under this Article
22 the transferor shall give to any person a special power of appointment
23 with respect to any interest in property, he shall be deemed, for the
24 purpose of computing the tax applicable thereto, to have given such
25 interest in equal shares to those persons, not more than two, among
26 the possible appointees and takers in default of appointment whom the
27 transferor's executor or administrator may designate as transferees in
28 the inheritance tax return, except that:

29 a. If a gift tax return is filed with respect to such transfer,
30 the persons designated therein shall also be designated in the
31 inheritance tax return, and

32 b. The tax shall be computed according to the
33 relationship of the donee of the power to the persons
34 designated if the possible appointees and takers in default of
35 appointment include any persons more closely related to the
36 donee of the power than to the donor, and if such computation
37 would produce a higher tax.

38 (7), (7a) Repealed by Session Laws, 1985, c. 656, s. 1.

39 (8) Where the proceeds of life insurance policies are payable as
40 provided in G.S. 105-13.

41 (9) Whenever any person or corporation comes into possession or
42 enjoyment of any real or personal property, including bonds of the
43 United States and bonds of a state or subdivision or agency thereof, at

1 or after the death of an individual and by reason of said individual's
2 having entered into a contract or other arrangement with the United
3 States, a state or any person or corporation to pay, transfer or deliver
4 said real or personal property, including bonds of the United States
5 and bonds of a state, to the person or corporation receiving the same,
6 whether said person or corporation is named in the contract or other
7 arrangement or not: Provided, that no tax shall be due or collected on
8 that portion of the real or personal property received under the
9 conditions outlined herein which the person or corporation receiving
10 the same purchased or otherwise acquired by funds or property of the
11 person or corporation receiving the same, or had acquired by a
12 completed inter vivos gift.

13 Nothing in subdivision (9) shall apply to the proceeds of life
14 insurance policies.

15 (10) Upon the death of a spouse who had a qualifying income interest for life
16 in qualified terminable interest property whose previous transfer was
17 exempt from inheritance or gift taxes under G.S. 105-3(11) or G.S. 105-
18 188(j), the qualified terminable interest property that was previously
19 exempt is considered to pass from the spouse to the person who is
20 entitled to the property upon the termination of the spouse's qualifying
21 income interest for life.

22 However, nothing in this Article shall be construed as imposing a tax upon any
23 transfer of intangibles not having a commercial or business situs in this State, by a
24 person, or by reason of the death of a person, who was not a resident of this State at the
25 time of his death, and, if held or transferred in trust, such intangibles shall not be deemed
26 to have a commercial or business situs in this State merely because the trustee is a
27 resident or, if a corporation, is doing business in this State, unless the same be employed
28 in or held or used in connection with some business carried on in whole or in part in this
29 State."

30 Sec. 6.5. G.S. 105-9(8) reads as rewritten:

31 "(8) Costs of ~~administration, including~~ administration not claimed as a
32 deduction on the federal income tax return filed under the Code by the
33 fiduciary for the decedent's estate. Costs of administration include
34 reasonable attorneys' fees."

35 Sec. 6.6. Article 1 of Chapter 105 of the General Statutes is amended by
36 adding a new section to read:

37 **§ 105-23.1. Making installment payments of tax due when federal estate tax is**
38 **payable in installments.**

39 A personal representative who elects under section 6166 of the Code to make
40 installment payments of federal estate tax may elect to make installment payments of the
41 tax imposed by this Article. An election under this section extends the time for payment
42 of the tax due in accordance with the extension elected under section 6166 of the Code.
43 Payments of tax are due under this section at the same time and in the same proportion to

1 the total amount of tax due as payments of federal tax under section 6166 of the Code.
2 Acceleration of payments under section 6166 of the Code accelerates the payments due
3 under this section."

4 Sec. 6.7. Effective January 1, 2001, Article 1 of Chapter 105 of the General
5 Statutes is repealed.

6 Sec. 6.8. Effective January 1, 2001, Chapter 105 of the General Statutes is
7 amended by adding a new Article to read:

8 **"ARTICLE 1A.**
9 **"ESTATE TAXES.**

10 **"§ 105-32.1. Definitions.**

11 The following definitions apply in this Article:

12 (1) Code. – Defined in G.S. 105-228.90.

13 (2) Personal representative. – The person appointed by the clerk of superior
14 court under Chapter 28A of the General Statutes to administer the estate
15 of a decedent or, if no one is appointed under that Chapter, the person
16 required to file a federal estate tax return for the estate of the decedent.

17 (3) Secretary. – Defined in G.S. 105-228.90.

18 **"§ 105-32.2. Estate tax imposed in amount equal to federal state death tax credit.**

19 (a) Tax. – An estate tax is imposed on the estate of a decedent when a federal
20 estate tax is imposed on the estate under section 2001 of the Code and any of the
21 following apply:

22 (1) The decedent was a resident of this State at death.

23 (2) The decedent was not a resident of this State at death and owned any of
24 the following:

25 a. Real property or tangible personal property that is located in this
26 State.

27 b. Intangible personal property that has a tax situs in this State.

28 (b) Amount. – The amount of the estate tax imposed by this section is the
29 maximum credit for state death taxes allowed under section 2011 of the Code. If any
30 property in the estate is located in a state other than North Carolina, the amount of tax
31 payable is the North Carolina percentage of the credit.

32 If the decedent was a resident of this State at death, the North Carolina percentage is
33 the net value of the estate that does not have a tax situs in another state, divided by the net
34 value of all property in the estate. If the decedent was not a resident of this State at death,
35 the North Carolina percentage is the net value of real property that is located in North
36 Carolina plus the net value of any personal property that has a tax situs in North Carolina,
37 divided by the net value of all property in the estate, unless the decedent's state of
38 residence uses a different formula to determine that state's percentage. In that
39 circumstance, the North Carolina percentage is the amount determined by the formula
40 used by the decedent's state of residence.

41 The net value of property that is located in or has a tax situs in this State is its gross
42 value reduced by any debt secured by that property. The net value of all the property in
43 the estate is its gross value reduced by any debts and deductions of the estate.

"§ 105-32.3. Liability for estate tax.

(a) Primary. – The tax imposed by this Article is payable from the assets of the estate. A person who receives property from an estate is liable for the amount of estate tax attributable to that property.

(b) Personal Representative. – The personal representative of an estate is liable for an estate tax that is not paid within two years after it was due. This liability is limited to the value of the assets of the estate that were under the control of the personal representative. The amount for which the personal representative is liable may be recovered from the personal representative or from the surety on any bond filed by the personal representative under Article 8 of Chapter 28A of the General Statutes.

(c) Clerk of Court. – A clerk of court who allows a personal representative to make a final settlement of an estate without presenting one of the following is liable on the clerk's bond for any estate tax due:

(1) An affirmation by the personal representative certifying that no tax is due on the estate because this Article does not require an estate tax return to be filed for that estate.

(2) A certificate issued by the Secretary stating that the tax liability of the estate has been satisfied.

"§ 105-32.4. Payment of estate tax.

(a) Due Date. – The estate tax imposed by this Article is due when an estate tax return is due. An estate tax return is due on the date a federal estate tax return is due.

(b) Filing Return. – An estate tax return must be filed under this Article if a federal estate tax return is required. The return must be filed by the personal representative of the estate on a form provided by the Secretary.

(c) Extension. – An extension of time to file a federal estate tax return is an automatic extension of the time to file an estate tax return under this Article. The Secretary may, in accordance with G.S. 105-263, extend the time for paying the estate tax imposed by this Article or for filing an estate tax return.

(d) Interest and Penalties. – The penalties in G.S. 105-236 apply to the failure to file an estate tax return or to pay an estate tax when due. Interest at the rate set in G.S. 105-241.1 accrues on estate taxes paid after the date they are due.

(e) Obtaining Amount Due. – The personal representative of an estate may sell assets in the estate to obtain money to pay the tax imposed by this Article.

"§ 105-32.5. Making installment payments of tax due when federal estate tax is payable in installments.

A personal representative who elects under section 6166 of the Code to make installment payments of federal estate tax may elect to make installment payments of the tax imposed by this Article. An election under this section extends the time for payment of the tax due in accordance with the extension elected under section 6166 of the Code. Payments of tax are due under this section at the same time and in the same proportion to the total amount of tax due as payments of federal estate tax under section 6166 of the Code. Acceleration of payments under section 6166 of the Code accelerates the payments due under this section.

1 **"§ 105-32.6. Estate tax is a lien on property in the estate.**

2 The tax imposed by this Article on an estate is a lien on the real property in the estate
3 and on the proceeds of the sale of the real property in the estate. The lien is extinguished
4 when one of the following occurs:

5 (1) The personal representative certifies to the clerk of court that no tax is
6 due on the estate because this Article does not require an estate tax
7 return to be filed for that estate.

8 (2) The Secretary issues a certificate stating that the tax liability of the
9 estate has been satisfied.

10 (3) For specific real property, when the Secretary issues a tax waiver for
11 that property.

12 (4) Ten years have elapsed since the date of the decedent's death.

13 **"§ 105-32.7. Generation-skipping transfer tax.**

14 (a) Tax. – A tax is imposed on a generation-skipping transfer that is subject to the
15 tax imposed by Chapter 13 of Subtitle B of the Code when any of the following apply:

16 (1) The original transferor is a resident of this State at the date of the
17 original transfer.

18 (2) The original transferor is not a resident of this State at the date of the
19 original transfer and the transfer includes any of the following:

20 a. Real or tangible personal property that is located in this State.

21 b. Intangible personal property that has a tax situs in this State.

22 (b) Amount. – The amount of the tax imposed by this section is the maximum
23 credit for state generation-skipping transfer taxes allowed under section 2604 of the
24 Code. If property in the transfer is located in a state other than North Carolina, the
25 amount of tax payable is the North Carolina percentage of the credit.

26 If the original transferor was a resident of this State at the date of the original transfer,
27 the North Carolina percentage is the net value of the property transferred that does not
28 have a tax situs in another state, divided by the net value of all property transferred. If
29 the original transferor was not a resident of this State at the date of the original transfer,
30 the North Carolina percentage is the net value of real property that is located in North
31 Carolina plus the net value of any personal property that has a tax situs in North Carolina,
32 divided by the net value of all property transferred, unless the original transferor's state of
33 residence uses a different formula to determine that state's percentage. In that
34 circumstance, the North Carolina percentage is the amount determined by the formula
35 used by the original transferor's state of residence.

36 The net value of property that is located in or has a tax situs in this State is its gross
37 value reduced by any debt secured by that property. The net value of all the property in a
38 transfer is its gross value reduced by any debts secured by the property.

39 (c) Payment. – The tax imposed by this section is due when a return is due. A
40 return is due the same date as the federal return for payment of the federal generation-
41 skipping transfer tax. The tax is payable by the person who is liable for the federal
42 generation-skipping transfer tax.

1 "§ 105-32.8. Federal determination that changes the amount of tax payable to the
2 State.

3 If the federal government corrects or otherwise determines the amount of the
4 maximum state death tax credit allowed an estate under section 6166 of the Code, the
5 personal representative must, within two years after being notified of the correction or
6 final determination by the federal government, file an estate tax return with the Secretary
7 reflecting the correct amount of tax payable under this Article. If the federal government
8 corrects or otherwise determines the amount of the maximum state generation-skipping
9 transfer tax credit allowed under section 2604 of the Code, the person who made the
10 transfer must, within two years after being notified of the correction or final
11 determination by the federal government, file a tax return with the Secretary reflecting
12 the correct amount of tax payable under this Article.

13 The Secretary must assess and collect any additional tax due as provided in Article 9
14 of this Chapter and must refund any overpayment of tax as provided in Article 9 of this
15 Chapter. A person who fails to report a federal correction or determination in accordance
16 with this section is subject to the penalties in G.S. 105-236 and forfeits the right to any
17 refund due by reason of the determination."

18
19 PART VII. EXCLUDE SEVERANCE PAY FROM INCOME TAX

20 Sec. 7.1. G.S. 105-134.6(b) is amended by adding a new subdivision to read:

21 "(11) The amount paid to the taxpayer as severance wages as the result of
22 the closure of a manufacturing or processing plant."

23 Sec. 7.2. G.S. 105-134.1 is amended by adding a new subdivision to read:

24 "(15a) Manufacturing and processing. – Defined in the Standard Industrial
25 Classification Manual issued by the United States Bureau of the
26 Census."

27
28 PART VIII. EFFECTIVE DATES

29 Sec. 8.1. This act does not affect the rights or liabilities of the State, a taxpayer,
30 or another person arising under a statute amended or repealed by this act before its
31 amendment or repeal; nor does it affect the right to any refund or credit of a tax that
32 would otherwise have been available under the amended or repealed statute before its
33 amendment or repeal.

34 Sec. 8.2. This act becomes effective as follows:

35 (1) Reduce corporate income tax. Section 1.1. of Part I of this act is
36 effective for taxable years beginning on or after January 1, 1997.
37 Section 1.2 of Part I of this act becomes effective October 1, 1997, and
38 applies to remittances made on or after that date.

39 (2) Allow research and development and investment tax credit. Part II of
40 this act is effective for taxable years beginning on or after January 1,
41 1996, and applies to research and development expenditures made on or
42 after July 1, 1996, and to property placed in service on or after July 1,
43 1996. Part II of this act is repealed effective for research and

- 1 development expenditures made on or after January 1, 2002, and for
2 business property placed in service on or after January 1, 2002.
- 3 (3) Phase out soft drink tax. Section 3.1 of Part III of this act becomes
4 effective July 1, 1997. Section 3.2 of Part III of this act becomes
5 effective July 1, 1999.
- 6 (4) Reduce sales tax on farm and industry fuel. Part IV of this act becomes
7 effective July 1, 1996, and applies to sales made on or after that date.
- 8 (5) Modify bundled transaction sales tax. Part V of this act becomes
9 effective on the first day of the third month following the ratification of
10 this act and applies to sales made on or after that date.
- 11 (6) Inheritance and gift tax changes. Sections 6.1 through 6.4 of Part VI of
12 this act become effective January 1, 1997, and apply to the estates of
13 decedents dying on or after that date. Sections 6.5 and 6.6 of Part VI
14 become effective July 1, 1996, and apply to the estates of decedents
15 dying on or after that date. Sections 6.7 and 6.8 of Part VI become
16 effective January 1, 2001, and apply to the estates of decedents dying on
17 or after that date.
- 18 (7) Part VII of this act is effective for taxable years beginning on or after
19 January 1, 1996.
- 20 (8) Remainder. The remainder of this act is effective upon ratification.