GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

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SENATE BILL 1092
House Committee Substitute Favorable 5/27/98

Short Title: Reduce North Carolina Taxes. (Public)

Sponsors:

Referred to:

May 12, 1998

A BILL TO BE ENTITLED

AN ACT TO ELIMINATE THE STATE SALES TAX ON FOOD, TO ELIMINATE THE STATE'S INHERITANCE TAX AND RETAIN A STATE ESTATE TAX EQUAL TO THE FEDERAL STATE DEATH TAX CREDIT, TO INCREASE AND INDEX THE INDIVIDUAL INCOME TAX PERSONAL EXEMPTION AMOUNT, TO INCREASE THE PROPERTY TAX HOMESTEAD EXEMPTION AMOUNT AND INCOME ELIGIBILITY AMOUNT AND REIMBURSE LOCAL GOVERNMENTS FOR THE RESULTING REVENUE LOSS, TO EXPAND THE STATE CORPORATE INCOME TAX DEDUCTION FOR CHARITABLE CONTRIBUTIONS, TO INCREASE THE INCOME TAX CREDIT FOR CHARITABLE CONTRIBUTIONS BY NONITEMIZERS, AND TO REPEAL THE GIFT TAX.

The General Assembly of North Carolina enacts:

REPEAL STATE SALES TAX ON FOOD.

Section 1. G.S. 105-164.4(a)(5) is repealed.

Section 2. Article 5 of Chapter 105 of the General Statutes is amended by adding a new section to read:

"**<u>§ 105-164.13B. Food exempt from tax.</u>**

The taxes imposed by this Article do not apply to food that is not otherwise exempt pursuant to G.S. 105-164.13 but would be exempt pursuant to G.S. 105-164.13 if it were purchased under the Food Stamp Program, 7 U.S.C. § 51."

ELIMINATE NORTH CAROLINA INHERITANCE TAX.

Section 3. Article 1 of Chapter 105 of the General Statutes is repealed.

Section 4. Chapter 105 of the General Statutes is amended by adding a new Article to read:

"**ARTICLE 1A.**

"**ESTATE TAXES.**

"**§ 105-32.1. Definitions.**

The following definitions apply in this Article:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(1) The personal representative certifies to the clerk of court 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) The Secretary issues a certificate stating that the tax liability of the estate has been satisfied.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

PROPERTY TAX HOMESTEAD EXEMPTION.

Section 5. G.S. 105-277.1(a) reads as rewritten:

"(a) Exclusion. – The following class of property is designated a special class of property under Article V, Sec. 2(2) of the North Carolina Constitution and shall be assessed for taxation in accordance with this section. The first ~~twenty thousand dollars ($20,000)~~ twenty-five thousand dollars ($25,000) in appraised value of a permanent residence owned and occupied by a qualifying owner is excluded from taxation. A qualifying owner is an owner who meets all of the following requirements as of January 1 preceding the taxable year for which the benefit is claimed:

(1) Is at least 65 years of age or totally and permanently disabled.

(2) Has an income for the preceding calendar year of not more than ~~fifteen thousand dollars ($15,000).~~ twenty-five thousand dollars ($25,000).

(3) Is a North Carolina resident.

An otherwise qualifying owner does not lose the benefit of this exclusion because of a temporary absence from his or her permanent residence for reasons of health, or because of an extended absence while confined to a rest home or nursing home, so long as the residence is unoccupied or occupied by the owner's spouse or other dependent."

Section 6. G.S. 105-309(f) reads as rewritten:

"(f) The following information shall appear on each abstract or on an information sheet distributed with the abstract. The abstract or sheet must include the address and telephone number of the assessor below the notice required by this subsection. The notice shall read as follows:

'PROPERTY TAX RELIEF FOR ELDERLY AND PERMANENTLY DISABLED PERSONS.

North Carolina excludes from property taxes the first ~~twenty thousand dollars ($20,000)~~ twenty-five thousand dollars ($25,000) in appraised value of a permanent residence owned and occupied by North Carolina residents aged 65 or older or totally and permanently disabled whose income does not exceed ~~fifteen thousand dollars ($15,000).~~ twenty-five thousand dollars ($25,000). Income means the owner's adjusted gross income as determined for federal income tax purposes, plus all moneys received other than gifts or inheritances received from a spouse, lineal ancestor or lineal descendant.

If you received this exclusion in (assessor insert previous year), you do not need to apply again unless you have changed your permanent residence. If you received the exclusion in (assessor insert previous year) and your income in (assessor insert previous year) was above ~~fifteen thousand dollars ($15,000),~~ twenty-five thousand dollars ($25,000), you must notify the assessor. If you received the exclusion in (assessor insert previous year) because you were totally and permanently disabled and you are no longer totally and permanently disabled, you must notify the assessor. If the person receiving the exclusion in (assessor insert previous year) has died, the person required by law to list the property must notify the assessor. Failure to make any of the notices required by this paragraph before April 15 will result in penalties and interest.

If you did not receive the exclusion in (assessor insert previous year) but are now eligible, you may obtain a copy of an application from the assessor. It must be filed by April 15.'"

Section 7. G.S. 105-277.1A reads as rewritten:

"§ 105-277.1A. Property classified for taxation at reduced valuation; duties of tax collectors; reimbursement of localities for portion of tax lost.

(a) On September 1, 1990, the tax collector of each county and the tax collector of each city shall furnish to the Secretary of Revenue a list containing the name and address of each person who has qualified in that year for the exemption provided in G.S. 105-277.1. The list shall also contain for each name the total amount of property exempted, the tax rate the property is subject to, and the product obtained by multiplying those two numbers by each other. The lists shall be accompanied by an affidavit attesting to the accuracy of the list and shall all be on a form prescribed by the Secretary of Revenue.

(a1) On December 1, 1997, the tax collector of each county and the tax collector of each city shall furnish to the Secretary of Revenue two lists containing the name and address of each taxpayer who has qualified in that year for the exemption provided in G.S. 105-277.1. The first list shall include those taxpayers whose income was above eleven thousand dollars ($11,000) and the second list shall include those taxpayers whose income was eleven thousand dollars ($11,000) or less. On the first list, the tax collector shall provide for each name the total amount of property exempted and on the second list, the tax collector shall provide for each name the amount of property above fifteen thousand dollars ($15,000) exempted. On both lists, the tax collector shall provide the tax rate the property is subject to and the product obtained by multiplying the tax rate by the amount of property. The lists shall be accompanied by an affidavit attesting to the accuracy of the list and shall be on a form prescribed by the Secretary of Revenue.

(a2) On December 1, 1999, the tax collector of each county and the tax collector of each city shall furnish to the Secretary of Revenue two lists containing the name and address of each taxpayer who has qualified in that year for the exemption provided in G.S. 105-277.1. The first list shall include those taxpayers whose income was above fifteen thousand dollars ($15,000), and the second list shall include those taxpayers whose income was fifteen thousand dollars ($15,000) or less. On the first list, the tax collector shall provide for each name the total amount of property exempted and on the second list, the tax collector shall provide for each name the amount of property above twenty thousand dollars ($20,000) exempted. On both lists, the tax collector shall provide the tax rate the property is subject to and the product obtained by multiplying the tax rate by the amount of property. The lists shall be accompanied by an affidavit attesting to the accuracy of the list and shall be on a form prescribed by the Secretary of Revenue.

(b) Repealed by Session Laws 1996, Second Extra Session, c. 18, s. 15.1(c).

(c) The Secretary of Revenue may, for cause, grant an extension for the submission of a list required by this section.

(d) Before May 31, 1991, the Secretary of Revenue shall distribute to the county or city fifty percent (50%) of the total for the entire list provided pursuant to subsection (a) of this section of the product obtained by multiplying the tax exemption for each taxpayer times the applicable tax rate. Each year thereafter, on or before May 31, the Secretary of Revenue shall pay to each county and city that was entitled to receive a distribution under this subsection in 1991 the amount it was entitled to receive in 1991.

(d1) Before May 31, 1998, the Secretary of Revenue shall distribute to the county or city fifty percent (50%) of the total for both lists provided the preceding December 1 pursuant to subsection (a1) of this section of the product obtained by multiplying the applicable tax rate times the amount listed for each taxpayer. Before May 31, 1999, the Secretary of Revenue shall pay to each county and city the amount it received under this subsection in 1998.

(d2) Before May 31, 2000, the Secretary of Revenue shall distribute to the county or city the total for both lists provided the preceding December 1 pursuant to subsection (a2) of this section of the product obtained by multiplying the applicable tax rate times the amount listed for each taxpayer. Each year thereafter, on or before May 31, the Secretary of Revenue shall pay to each county and city the amount it received under this subsection in 2000.

(e) Any funds received by any county or city pursuant to this section because the county or city was collecting taxes for another unit of government or special district shall be credited to the funds of that other unit or district in accordance with regulations issued by the Local Government Commission.

(f) In order to pay for the reimbursement under this section and the cost to the Department of Revenue of administering the reimbursement, the Secretary of Revenue shall draw from collections received under Division I of Article 4 of this Chapter an amount equal to the reimbursement and the cost of administration."

INCREASE AND INDEX PERSONAL EXEMPTIONS.

Section 8. G.S. 105-134.6(c)(4a) is repealed.

INCREASE CHARITABLE GIVING.

Section 9. G. S. 105-130.9 reads as rewritten:

"**§ 105-130.9. Contributions.**

~~Contributions shall be allowed as a deduction to the extent and in the manner provided as follows:~~ (a) North Carolina Corporations. – Corporations that do not allocate a part of their total net income outside this State may deduct the following contributions to the extent allowed in this section:

(1) Most Charitable Contributions. – Charitable contributions as defined in section 170(c) of the Code, ~~exclusive of~~ other than contributions allowed in subdivision (2) of this section, ~~shall be allowed as a deduction to the extent provided herein. The amount allowed as a deduction hereunder shall be limited to an amount not in excess of five percent (5%)~~ up to a maximum deduction of ten percent (10%) of the corporation's net income as computed without the benefit of this subdivision or subdivision (2) of this section. ~~Provided, that a carryover of contributions shall not be allowed and that contributions made to North Carolina donees by corporations allocating a part of their total net income outside this State shall not be allowed under this subdivision, but shall be allowed under subdivision (3) of this section.~~

(2) Contributions to North Carolina Governments and Educational Institutions. – Contributions ~~by any corporation~~ to the following entities: the State of North Carolina, any of its institutions, instrumentalities, or agencies, any county of this State, its institutions, instrumentalities, or agencies, any municipality of this State, its institutions, instrumentalities, or agencies, and ~~contributions or gifts by any corporation to~~ any educational institutions located within North Carolina, no part of the net earnings of which inures to the benefit of any private stockholders or dividend. For the purpose of this subdivision, the ~~words~~ term 'educational institution' ~~shall mean~~ includes only an educational institution ~~which~~ that normally maintains a regular faculty and curriculum and normally has a regularly organized body of students in attendance at the place where the educational activities are carried on. The ~~words 'educational institution' shall be deemed to include all of such~~ term includes all of the institution's departments, ~~schools~~ schools, and colleges, a group of ~~'educational institutions'~~ educational institutions, and an organization ~~(corporation, trust, foundation, association or other entity)~~ organized and operated exclusively to receive, hold, ~~invest~~ invest, and administer property and to make expenditures to or for the sole benefit of an ~~'educational institution' or group of 'educational institutions.'~~ educational institution.

~~(3)~~

(b) Interstate Corporations. – Corporations allocating a part of their total net income outside North Carolina under ~~the provisions of~~ G.S. 105-130.4 ~~shall~~ may deduct from total income allocable to North Carolina contributions made to North Carolina donees qualified under ~~subdivisions (1) and (2) of this section~~ subdivision (1) or (2) of subsection (a) of this section or made through North Carolina offices or branches of other donees qualified under ~~the above-mentioned~~ those ~~subdivisions of this section; provided, such~~ subdivisions. The deduction for contributions made to North Carolina donees qualified under subdivision (1) of this section ~~shall be limited in amount to five percent (5%)~~ may not exceed ten percent (10%) of the total income allocated to North Carolina as computed without the benefit of this ~~deduction for contributions.~~ subsection.

Corporations allocating a part of their total net income outside North Carolina may deduct from net income before allocation under G.S. 105-130.4 contributions made to other donees qualified under subdivision (1) of subsection (a) of this section. This deduction may not exceed ten percent (10%) of the corporation's net income before allocation under G.S. 105-130.4, as computed without the benefit of this subsection.

(c) Carryforward. – If a corporation's deductions allowed under subdivision (a)(1) or subsection (b) of this section exceed the applicable percentage limitation, the corporation may carry the excess forward for the succeeding five years to the extent the amounts carried forward under this subsection plus the amounts deductible under subdivision (a)(1) or subsection (b) of this section for each taxable year do not exceed the percentage limitation for that taxable year. Amounts deductible under subdivision (a)(1) or subsection (b) of this section for the current taxable year shall be taken into account before amounts carried forward under this subsection.

~~(4)~~ ~~The~~

(d) Double Benefit Disallowed. – The amount of a contribution for which the taxpayer claimed a tax credit pursuant to G.S. 105-130.34 shall not be eligible for a deduction under this section. The amount of the credit claimed with respect to the contribution is not, however, required to be added to income under G.S. 105-130.5(a)(10)."

Section 10. G.S. 105-130.5(b)(5) reads as rewritten:

"(5) Contributions or gifts made by any corporation ~~within the income year~~ to the extent provided under G.S. 105-130.9."

Section 11. G.S. 105-151.26 reads as rewritten:

"§ 105-151.26. Credit for charitable contributions by nonitemizers.

A taxpayer who elects the standard deduction under section 63 of the Code for federal tax purposes is allowed as a credit against the tax imposed by this Division an amount equal to ~~two and three-fourths percent (2.75%)~~ seven percent (7%) of the taxpayer's excess charitable contributions. The taxpayer's excess charitable contributions are the amount by which the taxpayer's charitable contributions for the taxable year that would have been deductible under section 170 of the Code if the taxpayer had not elected the standard deduction exceed two percent (2%) of the taxpayer's adjusted gross income as calculated under the Code.

No credit shall be allowed under this section for amounts deducted from gross income in calculating taxable income under the Code or for contributions for which a credit was claimed under G.S. 105-151.12 or G.S. 105-151.14. A nonresident or part-year resident who claims the credit allowed by this section shall reduce the amount of the credit by multiplying it by the fraction calculated under G.S. 105-134.5(b) or (c), as appropriate. The credit allowed under this section may not exceed the amount of tax imposed by this Division for the taxable year reduced by the sum of all credits allowed, except payments of tax made by or on behalf of the taxpayer."

REPEAL STATE GIFT TAX.

Section 11.1. Article 6 of Chapter 105 of the General Statutes is repealed.

EFFECTIVE DATES.

Section 12. 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 the effective date of its amendment or repeal; nor does it affect the right to any refund or credit of a tax that was available under the amended or repealed statute before the effective date of its amendment or repeal.

Section 13. Sections 1 and 2 of this act become effective October 1, 1998, and apply to sales made on or after that date. Sections 3 and 4 of this act become effective January 1, 1999, and apply to the estates of decedents dying on or after that date. Sections 5 through 7 of this act are effective for taxes imposed for taxable years beginning on or after July 1, 1999. Sections 8 through 11 of this act are effective for taxable years beginning on or after January 1, 1999. Section 11.1 of this act becomes effective January 1, 1999, and applies to gifts made on or after that date. The remainder of this act is effective when it becomes law.