

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

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HOUSE BILL 1326*
Committee Substitute Favorable 7/6/98

Short Title: Update IRC Reference/Conform Gift Tax.

(Public)

Sponsors:

Referred to:

May 19, 1998

A BILL TO BE ENTITLED

1 AN ACT TO UPDATE THE REFERENCE TO THE INTERNAL REVENUE CODE
2 USED IN DEFINING AND DETERMINING CERTAIN STATE TAX
3 PROVISIONS, TO EXTEND THE CORPORATE INCOME TAX
4 CARRYFORWARD FOR NET ECONOMIC LOSSES FROM FIVE YEARS TO
5 TWENTY YEARS, AND TO CONFORM TO FEDERAL GIFT TAX TREATMENT
6 OF CONTRIBUTIONS TO QUALIFIED TUITION PROGRAMS.
7

8 The General Assembly of North Carolina enacts:

9 Section 1. G.S. 105-228.90(b)(1a) reads as rewritten:

10 "(1a) Code. – The Internal Revenue Code as enacted as of ~~January 1, 1997,~~
11 June 1, 1998, including any provisions enacted as of that date which
12 become effective either before or after that date."

13 Section 2. G.S. 105-134.6(b)(12) is repealed.

14 Section 3. G.S. 105-134.6(b)(13) reads as rewritten:

15 "(13) The amount that is distributed to a beneficiary of the Parental Savings
16 Trust Fund of the State Education Assistance Authority ~~if the earnings on~~
17 ~~the amount are excluded from income under subdivision (12) of this~~
18 ~~subsection or section 529 of the Code, unless the distribution is a refund of~~
19 earnings described in section 529 of the Code."

1 Section 4. G.S. 105-188 is amended by adding a new subsection to read:

2 "(k) Qualified Tuition Programs. – The provisions of section 529(c)(2) and (5) of
3 the Code apply to this Article. If a donor elects to take a contribution into account ratably
4 over a five-year period as provided in section 529(c)(2) of the Code, that election applies
5 for the purposes of this Article."

6 Section 5. Notwithstanding Section 1 of this act, to the extent an amendment
7 to the Internal Revenue Code enacted after January 1, 1997, would increase North
8 Carolina taxable income for a taxpayer's tax year beginning before January 1, 1998, the
9 amendment does not apply to the taxpayer for that tax year.

10 Section 6. G.S. 105-130.8 reads as rewritten:

11 **"§ 105-130.8. Net economic loss.**

12 (a) Net economic losses sustained by a corporation in any or all of the ~~five~~ 20
13 preceding income years shall be allowed as a deduction to ~~such~~ the corporation subject to
14 the following limitations:

15 (1) The purpose in allowing the deduction of a net economic loss of a prior
16 year ~~or years is that of granting to grant~~ some measure of relief to the
17 corporation ~~which that~~ has incurred economic misfortune or ~~which is~~
18 otherwise materially affected by strict adherence to the annual
19 accounting rule in the determination of net income. The deduction ~~herein~~
20 ~~specified~~ allowed in this section does not authorize the carrying forward
21 of any particular items or category of loss except to the extent that ~~such~~
22 ~~loss or losses shall result~~ the loss results in the impairment of the net
23 economic situation of the corporation so as to result in a net economic
24 loss as ~~hereinafter defined~~ defined in this section.

25 (2) The net economic loss for any year ~~shall mean~~ means the amount by
26 which allowable deductions for the year other than prior year losses
27 ~~shall exceed~~ income from all sources in the year including any income
28 not taxable under this Division.

29 (3) Any net economic loss of a ~~prior year or prior~~ years brought forward and
30 claimed as a deduction in any income year may be deducted from net
31 income of the year only to the extent that ~~such carry over~~ the loss carried
32 forward from the prior year ~~or years shall exceed~~ exceeds any income not
33 taxable under this Division received in the same year in which the
34 deduction is claimed, except that in the case of a corporation required to
35 allocate and apportion to North Carolina its net income, ~~as defined in this~~
36 ~~Division~~, only ~~such that~~ proportionate part of the net economic loss of a
37 prior year shall be deductible from total income allocable to this State as
38 would be determined by the use of the allocation and apportionment
39 provisions of G.S. 105-130.4 for the year of ~~such~~ the loss.

40 (4) A net economic loss carried forward from any year shall first be applied
41 to, or offset by, any income taxable or nontaxable of the next
42 succeeding year before any portion of ~~such~~ the loss may be carried
43 forward to a succeeding year.

1 (5) For purposes of this section, any income item deductible in determining
2 State net income under the provisions of G.S. 105-130.5 and any
3 nonbusiness income not allocable to this State under the provisions of
4 G.S. 105-130.4 shall be considered as income not taxable under this
5 Division.

6 (6) No loss shall either directly or indirectly be carried forward more than
7 ~~five~~20 years.

8 (b) A corporation claiming a deduction for a loss for the current year or carried
9 forward from a prior year shall maintain and make available for inspection by the
10 Secretary all records necessary to determine and verify the amount of the deduction. The
11 burden of proving eligibility for the deduction and the amount of the deduction shall rest
12 upon the corporation, and no deduction shall be allowed to a corporation that fails to
13 maintain adequate records or to make them available for inspection."

14 Section 7. G.S. 105-130.5(b)(4) reads as rewritten:

15 "(4) Losses in the nature of net economic losses sustained by the corporation
16 in any or all of the ~~five~~20 preceding years pursuant to the provisions of
17 G.S. 105-130.8. ~~Provided, a~~A corporation required to allocate and
18 apportion its net income under the provisions of G.S. 105-130.4 shall
19 deduct its allocable net economic loss only from total income allocable
20 to this State pursuant to the provisions of G.S. 105-130.8."

21 Section 8(a). Sections 6 and 7 of this act are effective for taxable years
22 beginning on or after July 1, 1998, and apply to losses incurred for taxable years
23 beginning on or after July 1, 1992.

24 Section 8(b). Section 4 of this act becomes effective for taxable years
25 beginning on or after January 1, 1998. The remainder of this act is effective when it
26 becomes law.