

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

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HOUSE BILL 1326\*  
Committee Substitute Favorable 7/6/98  
Committee Substitute #2 Favorable 8/5/98

Short Title: Update IRC Reference/Conform Gift Tax.

(Public)

Sponsors:

Referred to:

May 19, 1998

A BILL TO BE ENTITLED  
AN ACT TO UPDATE THE REFERENCE TO THE INTERNAL REVENUE CODE  
USED IN DEFINING AND DETERMINING CERTAIN STATE TAX  
PROVISIONS, TO EXTEND THE CORPORATE INCOME TAX  
CARRYFORWARD FOR NET ECONOMIC LOSSES FROM FIVE YEARS TO  
TWENTY YEARS, TO ALLOW AN INCOME TAX DEDUCTION FOR  
EMPLOYEES' PAYMENTS TO THEIR EMPLOYERS FOR PARKING, AND TO  
CONFORM TO FEDERAL GIFT TAX TREATMENT OF CONTRIBUTIONS TO  
QUALIFIED TUITION PROGRAMS.

The General Assembly of North Carolina enacts:

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

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

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 G.S. 105-134.6(b)(12) is repealed.

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

"(13) The amount that is distributed to a beneficiary of the Parental Savings  
Trust Fund of the State Education Assistance Authority ~~if the earnings on~~

1           ~~the amount are excluded from income under subdivision (12) of this~~  
2           ~~subsection or section 529 of the Code, unless the distribution is a refund of~~  
3           ~~earnings described in section 529 of the Code."~~

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

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

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

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

14          "**§ 105-130.8. Net economic loss.**

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

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

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

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

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

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

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

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

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

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

25 Section 8. G.S. 105-134.6(b) is amended by adding a new subdivision to read:

26 "(15) The amount the taxpayer paid during the taxable year to the taxpayer's  
27 employer for parking provided by the employer."

28 Section 9(a). Sections 6 and 7 of this act are effective for taxable years  
29 beginning on or after July 1, 1998, and apply to losses incurred for taxable years  
30 beginning on or after July 1, 1992.

31 Section 9(b). Section 4 of this act becomes effective for taxable years  
32 beginning on or after January 1, 1998. Section 8 of this act is effective for taxable years  
33 beginning on or after January 1, 1999. The remainder of this act is effective when it  
34 becomes law.