

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

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SENATE BILL 388

Short Title: No Back Intangibles Tax Assessment.

(Public)

Sponsors: Senators Hoyle, Kerr; and Foxx.

Referred to: Finance.

March 13, 1997

A BILL TO BE ENTITLED

1
2 AN ACT TO PROHIBIT THE ASSESSMENT OF INTANGIBLES TAX FROM
3 TAXPAYERS WHO BENEFITED FROM THE TAXABLE PERCENTAGE
4 DEDUCTION IN THE FORMER INTANGIBLES TAX STATUTE.

Whereas, former G.S. 105-203 (repealed) imposed an intangibles tax on shares of stock and provided a taxable percentage deduction reducing a taxpayer's liability for this tax in proportion to the issuing company's income taxed in North Carolina; and

Whereas, the United States Supreme Court in "Fulton Corporation v. Faulkner" held the taxable percentage deduction to discriminate against interstate commerce in violation of the United States Constitution and remanded the case to the Supreme Court of North Carolina to address the remedy appropriate to redress the constitutional violation; and

Whereas, the Supreme Court of North Carolina in "Fulton Corporation v. Faulkner" (on remand) held that the taxable percentage deduction was severable from former G.S. 105-203, thereby exposing all taxpayers to liability for taxation under G.S. 105-203, including those who were not required to pay the tax on shares of stock, in whole or in part, by virtue of the taxable percentage deduction; and

Whereas, the Secretary of Revenue has been advised by the Attorney General that the Supreme Court of North Carolina's decision requires assessment and collection of intangibles tax from taxpayers who received the benefit of the taxable percentage deductions in former G.S. 105-203, unless the General Assembly directs otherwise; and

Whereas, the Supreme Court of North Carolina provided in "Fulton Corporation v. Faulkner" (on remand) that "[w]hether to enforce the tax as to all shareholders is within the province of the General Assembly"; Now, therefore,

1 The General Assembly of North Carolina enacts:

2 Section 1. The Secretary of Revenue shall take no action to assess or collect
3 intangibles tax from any taxpayer for liability arising solely from the taxpayer's use of the
4 taxable percentage deductions in former G.S. 105-203 (repealed) for one or more of the
5 tax years from 1990 through 1994.

6 Section 2. This act is effective when it becomes law.