

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2015

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SENATE DRS25167-MC~~x~~49 (02/09)

Short Title: Trust Taxable Income Clarification. (Public)

Sponsors: Senator Hartsell (Primary Sponsor).

Referred to:

1 A BILL TO BE ENTITLED  
2 AN ACT TO CLARIFY ALLOCATION OF TRUST INCOME.

3 The General Assembly of North Carolina enacts:

4 **SECTION 1.** G.S. 105-160.2 reads as rewritten:

5 "**§ 105-160.2. Imposition of tax.**

6 (a) The tax imposed by this Part applies to the taxable income of estates and trusts as  
7 determined under the provisions of the Code except as otherwise provided in this Part. The  
8 taxable income of an estate or trust is the same as taxable income for such an estate or trust  
9 under the provisions of the Code, adjusted as provided in G.S. 105-153.5 and G.S. 105-153.6,  
10 except that the adjustments provided in G.S. 105-153.5 and G.S. 105-153.6 are apportioned  
11 between the estate or trust and the beneficiaries based on the distributions made during the  
12 taxable year.

13 (b) The tax is computed on the amount of the taxable income of ~~the an~~ estate or trust  
14 ~~that is for the benefit of a resident of this State, or for the benefit of a~~ as follows:

15 (1) On a nonresident estate or nonresident trust, but only to the extent that the  
16 income (i) is derived from North Carolina sources and is attributable to the  
17 ownership of any interest in real or tangible personal property in this State or  
18 (ii) is derived from a business, trade, profession, or occupation carried on in  
19 this State;

20 (2) On a resident estate;

21 (3) On a resident trust that is for the benefit of a resident current beneficiary;  
22 and

23 (4) On a resident trust for the benefit of a nonresident current beneficiary, but  
24 only to the extent that the income (i) is derived from North Carolina sources  
25 and is attributable to the ownership of any interest in real or tangible  
26 personal property in this State or (ii) is derived from a business, trade,  
27 profession, or occupation carried on in this State.

28 For purposes of ~~the preceding sentence,~~ this subsection, taxable income and gross income is  
29 computed subject to the adjustments provided in G.S. 105-153.5 and G.S. 105-153.6.

30 (c) The tax on the amount computed above is at the rates levied in G.S. 105-153.7. The  
31 fiduciary responsible for administering the estate or trust shall pay the tax computed under the  
32 provisions of this Part.

33 (d) The taxable income of resident estates and resident trusts described in subsection (b)  
34 of this section shall be apportioned between resident and nonresident current beneficiaries on a  
35 rational basis. The Secretary may use a rebuttable presumption that the taxable income of a  
36 resident estate or resident trusts shall be equally apportioned among all current beneficiaries;



1 however, the fiduciary may rebut the presumption by attaching to its tax return a rational basis  
2 for an alternative apportionment based upon governing law, the terms of the governing  
3 instruments, the history of distributions to current beneficiaries of the resident estate or resident  
4 trust, the age and the means of current beneficiaries of the resident estate or resident trust, and  
5 other relevant facts and circumstances.

6 (e) The following definitions apply in this section:

7 (1) Current beneficiary. – A living beneficiary to whom, on the date the  
8 beneficiary's qualification is determined, is a distribute or permissible  
9 distribute of income or principal of the estate or trust.

10 (2) Nonresident estate. – An estate other than a resident estate.

11 (3) Nonresident trust. – A trust other than a resident trust.

12 (4) Resident estate. – The estate of a decedent who died a resident of North  
13 Carolina.

14 (5) Resident trust. – A trust which has its principal place of administration in  
15 North Carolina, as defined in G.S. 36-1-103(13a)."

16 **SECTION 2.** This act is effective for taxable years beginning on or after January 1,

17 2015.