

**NORTH CAROLINA GENERAL ASSEMBLY  
LEGISLATIVE FISCAL NOTE**

**BILL NUMBER:** HB 1326 (Proposed Senate Committee Substitute)

**SHORT TITLE:** Update IRC Reference/Conform Gift Tax

**SPONSOR(S):**

<b>FISCAL IMPACT</b>					
	Yes (X)	No ( )	No Estimate Available ( )		
	(\$ Millions)				
	<u>FY 1998-99</u>	<u>FY 1999-00</u>	<u>FY 2000-01</u>	<u>FY 2001-02</u>	<u>FY 2002-03</u>
<b>REVENUES</b>					
<b>GENERAL FUND</b>					
IRC Update	(\$6.97)	(\$4.01)	(\$10.70)	(\$18.53)	(\$33.64)
Net Economic Loss					
Carryforward	_____	(3.70)	(3.70)	(3.70)	(16.00)
Total	(\$6.97)	(\$7.71)	(\$14.40)	(\$22.23)	(\$49.64)
 <b>PRINCIPAL DEPARTMENT(S) &amp; PROGRAM(S) AFFECTED:</b> Department of Revenue					
 <b>EFFECTIVE DATE:</b> Section 4 (Qualified Tuition Programs) becomes effective for taxable years beginning on or after January 1, 1998. Sections 6 and 7 (net loss carryforward) are effective for taxable years beginning on or after July 1, 1999, and apply to losses incurred for taxable years beginning on or after July 1, 1993. Section 8 becomes effective for taxable years beginning on or after January 1, 2002. The remainder of the act is effective when it becomes law.					

**BILL SUMMARY:** The act (1) updates the reference to the Internal Revenue Code used in defining and determining certain state tax provisions (from January 1, 1997 to September 1, 1998), (2) conforms to federal gift tax treatment of contributions to qualified tuition programs, (3) extends the corporate income tax carryforward for net economic losses from five years to fifteen years, but no more than 15% of taxable income can be offset in tax years 1999 through 2001, and (4) makes two technical changes in the revenue laws.

**BACKGROUND:** Each year the General Assembly changes the reference date in the definition of the Internal Revenue Code used in the state individual and corporate income tax statutes. Congress made hundreds of changes in the Code with the passage of the Taxpayer Relief Act of 1997. These changes were reviewed by the Revenue Laws Study Committee and were recommended to the 1998 General Assembly with a few exceptions. Those tax law changes that affect the 1997 tax year cannot be adopted by North Carolina until 1998, because the state constitution prohibits enacting a retroactive tax increase.

Congress recently approved and the president signed the Internal Revenue Service Restructuring and Reform Act of 1998. This act made additional changes in both individual and corporate income tax laws that have a positive impact on the state General Fund.

## **ASSUMPTIONS AND METHODOLOGY:**

### **IRC Update**

North Carolina estimates on updating the Internal Revenue Code reference are based on a percentage of the federal estimate calculated by the Congressional Joint Committee on Taxation. The percentage used is North Carolina's actual tax collections divided by national tax collections. (individual = .723% and corporate = .542%.) The charts on the following pages show the fiscal impact of the major federal tax changes on the state's General Fund.

### **Qualified Tuition Program**

As for the gift tax change on qualified tuition programs, there should be little or no revenue loss to the state. The newly created College Vision Fund, administered by the State Education Assistance Authority, is designed for middle income taxpayers who save an average of \$125 a month for their children's college education. While gifts exceeding \$10,000 may be accepted by the fund, such contributions are not the norm. Those with the means to give more than \$10,000 per year will probably invest in college trust funds bearing interest greater than the interest paid by the State Treasurer on the investments in the College Vision Fund.

### **Net Economic Loss Carryforwards**

The Tax Research Division of the Department of Revenue estimates that extending the corporate income tax carryforward for net economic losses from 5 years to 15 years will cause a **revenue loss in the General Fund from \$8 million to \$16 million per year**. This estimate was based on corporate income tax returns from 1994 when 36,780 nontaxable corporations had \$10.1 billion in unexpended net economic loss carryforwards. The Department could not be more precise due to the volatility of corporate taxable income and the lack of information concerning "expired" losses. The Department confirmed this estimate by reviewing a small sample of 1996 returns.

Section 6 of the bill requires that losses that are more than five years old may offset only 15% of any taxable income in tax years 1999, 2000, and 2001. In 2002, 100% of losses may once again be used. Since this section is effective for taxable years on or after January 1, 1999, it is assumed that the majority of corporations will file their annual returns three months and 15 days after the close of their fiscal year on January 1, 2000. This would put the first year revenue loss in FY 1999-00. There will be some short period returns filed due to mergers and other reasons, but there is no data to determine how many might occur in the spring of 1999 or FY 1998-99. Using the returns mentioned above, the Department of Revenue estimated that a 15% cap on the use of carryforward losses would produce a General Fund revenue loss of \$3.7 million. For 2002 and beyond, this fiscal note uses the high end of the range (\$16 million) to be conservative in estimating budget availability in future fiscal years.

## INTERNAL REVENUE CODE UPDATE - STATE IMPACT

	Effective Date	(\$Millions)				
		98-99	99-00	00-01	01-02	02-03
<b>IRS Restructuring and Reform Act of 1998</b>						
<b>Individual &amp; Corporate</b>						
Clarify provisions relating to examination and collection activities; Offers-in- compromise	Generally 7/23/98	--	0.07	0.03	0.03	0.03
Authorize the Federal government to offset a Federal Income Tax refund to satisfy a past-due, legally owing state income tax debt	1/1/00		Gain, but no estimate available			
Clarifies the exclusion of meals provided for the convenience of employees on employer's premises	upon enactment	-0.11	-0.18	-0.18	-0.19	-0.20
Overrule <u>Schmidt Baking</u> with respect to vacation pay and severance and other types of compensation, with three year spread	1/1/98	4.55	5.40	2.47	1.67	0.85
Freeze grandfathered status of Stapled or Paired-Share REITS	1/1/98	0.01	0.02	0.03	0.05	0.08
Make certain trade receivables ineligible for Mark-to-Market Treatment	1/1/98	1.72	2.71	1.80	0.63	0.38
<b>Taxpayer Relief Act of 1997</b>						
<b>Affects Individual Income Tax Only</b>						
Exclude capital gain from sale of residence	5-6-97	-3.62	-3.62	-3.62	-4.34	-4.34
Expand deduction for self-employed individuals' health insurance	2000	--	-0.28	-0.87	-1.62	-4.37
Establish Roth IRAs/Expand existing IRAs	1-1-98	-2.49	0.62	-2.50	-6.22	-13.23

Taxpayer Relief Act of 1997 (Continued)	Effective Date	(\$Millions)				
		98-99	99-00	00-01	01-02	02-03
<b>Affects Individual Income Tax Only</b>						
Establish education IRAs	1-1-98	-4.66	-6.59	-7.66	-8.14	-10.47
Add room and board as qualifying expenses for Prepaid Tuition Programs	8-21-96	No impact - NC already exempts these expenses				
Reenact employer-provided educational assistance	1-1-97	-2.67	-1.81	--	--	--
Allow deduction of interest paid on qualified higher education loans	1-1-98	-0.50	-0.88	-1.47	-2.00	-2.23
Restrict penalty for underpayment of estimated income tax	12-31-97	-0.12	-0.13	-0.14	-0.14	-0.15
Increase standard deduction for individuals claimed as dependent by another	1-1-98	-0.27	-0.25	-0.25	-0.25	-0.25
Change net operating loss carryback and forward periods	1/1/98	0.22	0.26	0.19	0.13	0.10
Increase charitable mileage rate from 12 cents to 14 cents	1/1/98	-0.40	-0.42	-0.44	-0.46	-0.49
Extend deduction for FMV of stock contributed to private foundation	6/1/97	-0.07	-0.03	-	-	-
Expand rules on home office as principal place of business	1/1/99	-0.86	-1.76	-1.83	-1.90	-1.98
Exclude capital gain from sale of qualified small business stock	8/1/97	-0.36	-0.36	-0.36	-0.36	-0.36
Increase maximum amount of self-employed 401(k) contributions	1/1/98	No estimate available				
Modify tax treatment of Employee Stock Ownership Plans (ESOP) in S corporations	12/31/97	-0.17	-0.25	-0.30	-0.32	-0.33
Change tax treatment of rural mail carriers' reimbursed mileage	1/1/98	-0.01	-0.01	-0.01	-0.01	-0.01
Defer gain from sale of livestock due to drought, flood or other weather related event	1/1/97	-0.01	-0.01	-0.01	-0.01	-0.01
Expand business meals/entertainment deduction for air transportation employees, truck drivers, railroad employees, and merchant marines	1/1/98	-0.12	-0.20	-0.27	-0.35	-0.45
Clarify exclusion of the value of employer-provided parking	1/1/98	0.06	0.08	0.09	0.09	0.09
Increase exclusion of income earned by US citizens residing in foreign countries		-0.22	-0.36	-0.48	-0.59	-0.70
Exclude from income the disability payments to former police officers and fire fighters retroactive to 1989, 1990, and 1991		-	-	-	-	-
Exclude from income government survivor annuities to slain public safety officers	1/1/97	-0.01	-0.01	-0.01	-0.01	-0.01
Deny nonrecognition of gain of involuntarily converted property	6/8/97	0.03	0.04	0.06	0.08	0.09
Provide an above the line deduction for state and local officials' expenses	1/1/87	-0.03	-0.03	-0.03	-0.04	-0.04
Change basis recovery method for pension plan payments modified	12/31/97	0.02	0.04	0.07	0.08	0.11
Simplify treatment of personal transactions in foreign currency	12/31/97	-0.01	-0.01	-0.01	-0.01	-0.01
Increase full funding limit with 20 year amortization for pensions	12/31/98	-0.03	-0.09	-0.10	-0.13	-0.14

Taxpayer Relief Act of 1997 (Continued)	Effective Date	(\$Millions)				
		98-99	99-00	00-01	01-02	02-03
<b>Affects Partnerships (Individual Income Tax)</b>						
Classify sale or exchange of inventory in partnership as ordinary income	8/5/97	No impact - NC already taxes as ordinary income				
Change formula for allocation of basis among distributed assets of partnership	8/5/97	0.38	0.40	0.41	0.43	0.44
Extend period from 5 to 7 years for recognition of precontribution gains	6/8/97	-	-	-	0.01	0.07
<b>Affects both Individual and Corporate Income Tax</b>						
Extend R&D tax credit retroactive to 6/1/97	6/1/97	Costs included in the Bill Lee act				
Restrict income forecast method of depreciation	8/6/97	0.30	0.45	0.56	0.27	0.20
Eliminate short against the box transaction for stock	6/8/97	0.87	0.49	0.53	0.57	0.61
Require immediate accrual of interest on pool of debt instruments	8/5/97	1.99	2.59	2.31	2.05	0.72
Allow expensing of certain environmental remediation costs for brownfields	8/5/97	-0.95	-1.19	-0.46	0.00	0.01
Allow inventory adjustment for estimated shrinkage	8/5/97	-0.15	-0.17	-0.18	-0.20	-0.21
Change gain recognition rules under sections 1233 and 1234A of the Internal Revenue Code	8/5/97	0.20	0.18	0.18	0.18	0.18
Include income from notional principal contracts and stock lending transactions in gross income of U.S. shareholders	8/5/97	0.14	0.15	0.15	0.15	0.15
Restrict like-kind exchanges involving foreign personal property	6/8/97	0.06	0.08	0.09	0.11	0.12
Limit treaty benefits for payments to hybrid entities	8/5/97	0.01	0.01	0.01	0.01	0.01
Exempt certain securities positions from U.S. property definition under subpart F	12/31/97	-0.01	-0.01	-0.01	-0.01	-0.01
Exempt active financing income from subpart F	1998	-0.49	-0.02	0.00	0.00	0.00
Modify look-back method for long term contracts	8/5/97	-0.01	-0.02	-0.03	-0.03	-0.03
<b>Affects Corporate Income Tax Only</b>						
Recognize gain from exchange of property for preferred stock treated as boot	6/8/97	0.20	0.21	0.22	0.23	0.05
Expand charitable deduction for corporate contributions of computer software and equipment	1/1/98	-0.26	-0.42	-0.27	-0.03	-0.01
Repeal income deferral when farms change from cash method to accrual method	7/1/96	0.18	0.19	0.20	0.20	0.21
Allow Subchapter S subsidiaries to be treated as separate corporations	1/1/97	No estimate available				

<b>Taxpayer Relief Act of 1997 (Continued)</b>	<b>Effective Date</b>	<b>(\$Millions)</b>				
		<b>98-99</b>	<b>99-00</b>	<b>00-01</b>	<b>01-02</b>	<b>02-03</b>
<b>Affects Corporate Income Tax Only</b>						
Clarify that software qualifies as export property	1/1/98	-0.23	-0.79	-0.94	-0.98	-1.04
Restrict corporate deductions relating to life insurance	8/6/98	0.29	0.50	0.76	1.05	1.34
Require recognition of gain from extraordinary dividend and other changes	9/13/95	-0.50	-0.29	-0.05	0.24	0.42
Repeal law allowing manufacturers to use installment method to report sales to their dealers	8/6/98	0.24	0.53	0.57	0.57	0.35
Require gain recognition on certain distributions of controlled corporation stock and change tax treatment of redemptions involving related corporations	6/8/97	1.37	1.20	1.04	0.88	0.73
Deny interest deduction on convertible debt	6/8/97	0.09	0.16	0.23	0.30	0.34
Defer gain allowed on sales of stock of certain corporations engaged in refining or processing agricultural products to farmer cooperatives engaged in marketing agricultural products	12/31/97	-0.37	-0.03	-0.03	-0.02	-0.02
Modify control test and include attribution rules to determine unrelated business income						
tax consequences of certain payments from subsidiaries of tax-exempt organizations	12/31/98	0.00	0.00	0.02	0.03	0.03
Repeal 30% gross income limitation for regulated investment companies	8/5/97	-0.12	-0.15	-0.18	-0.21	-0.24
<b>Affect Other NC Taxes</b>						
Extend generation-skipping transfer tax exemption to grandnieces and grand nephews	1/1/98	-0.03	-0.03	-0.03	-0.03	-0.03
<b>TOTAL - IRC UPDATE</b>		<b>-6.97</b>	<b>-4.01</b>	<b>-10.7</b>	<b>-18.53</b>	<b>-33.64</b>

<b>Taxpayer Relief Act of 1997 - Other Provisions</b>	<b>Effective Date</b>	<b>98-99</b>	<b>(\$Millions)</b>			
			<b>99-00</b>	<b>00-01</b>	<b>01-02</b>	<b>02-03</b>
<b>Gift Tax</b>						
Treat contributions in excess of \$10,000 to state pre-paid tuition plans as being made ratably over a five year period	1/1/98		Negligible revenue effect			
<b>Technical/Minor Impact</b>						
Clarify that self-employed individual is eligible to deduct long term care insurance even if employer provides health insurance			No estimate available			
Recapture all depreciation on section 1250 property			No estimate available			
Clarify that medical savings account withdrawals are for individual who was eligible in the month the expenses were incurred			No estimate available			
Treat estate and its beneficiaries as related parties for purpose of disallowing loss deduction for sales of assets	8/5/97		Negligible revenue effect			
Relax luxury auto depreciation limits for clean burning fuel vehicles and electric vehicles	8/5/97	-0.01	0.00	0.00	0.00	0.00
Allow employer deduction for contributions to SIMPLE 401(k) with no 15% cap	1/1/97		No estimate available			
Allow securities traders and commodity traders and dealers to elect mark to market accounting rules	8/5/97		No estimate available			
Exclude from unrelated business tax income certain corporate sponsorship payments	12/31/97		Negligible revenue effect			
Change treatment of travel expenses of certain federal employees engaged in criminal investigations	8/6/97		No revenue impact			
Close partnership taxable year with respect to deceased partner	12/31/97		No revenue impact			
Deduct contributions made by ministers to retirement plans	12/31/97		Negligible revenue effect			
Clarify tax-free employer-provided employee meals	1/1/97		No revenue impact			
Authorize MedicarePlus Choice Medical Savings Accounts pilot program	1/1/99		No estimate available			

**Taxpayer Relief Act of 1997 (Continued)**

	Effective Date	(\$Millions)				
		98-99	99-00	00-01	01-02	02-03
Reduce carryback period for general business credits, but increase carry forward	1/1/98		Negligible revenue effect			
Repeal 30% gross income requirement for real estate investment trusts	8/5/97		Negligible revenue effect			

**NOTES:**

- 1) North Carolina estimates are based on a percentage of the federal estimate calculated by the Congressional Joint Committee on Taxation. The percentage used is N.C. actual tax collections divided by national tax collections. (Individual = .723% Corporate = .542%)
- 2) The North Carolina constitution prohibits enacting a retroactive tax increase, so this bill cannot adopt federal revenue increasing items for the 1997 tax year. This chart assumes that half of the revenue gained from tax increases in 1997 will be received by the Department in Tax Year 1998.



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