FILED SENATE
Mar 21, 2017
S.B. 325
PRINCIPAL CLERK

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2017

S D

SENATE BILL DRS45219-RBx-6 (03/09)

Short Title:	Billion Dollar Middle Class Tax Cut.	(Public)
Sponsors:	Senators Tillman, Brock, and Tucker (Primary Sponsors).	
Referred to:		

A BILL TO BE ENTITLED

AN ACT TO REDUCE THE PERSONAL INCOME TAX RATE AND INCREASE THE STANDARD DEDUCTION; TO ELIMINATE THE TAX PENALTY IN THE MORTGAGE INTEREST TAX DEDUCTION; TO EXPAND AND INCREASE THE CHILD TAX DEDUCTION; TO REDUCE THE CORPORATE INCOME TAX RATE; AND TO ADOPT MARKET-BASED SOURCING FOR BUSINESS TAX APPORTIONMENT.

The General Assembly of North Carolina enacts:

PART I. PERSONAL INCOME TAX CHANGES

SECTION 1.1. G.S. 105-153.7(a) reads as rewritten:

"(a) Tax. – A tax is imposed for each taxable year on the North Carolina taxable income of every individual. The tax shall be levied, collected, and paid annually. The tax is ~~five and four hundred ninety-nine thousandths percent (5.499%)~~ five and thirty-five hundredths percent (5.35%) of the taxpayer's North Carolina taxable income."

SECTION 1.2. G.S. 105-153.5 reads as rewritten:

"**§ 105-153.5. Modifications to adjusted gross income.**

(a) Deduction Amount. – In calculating North Carolina taxable income, a taxpayer may deduct from adjusted gross income either the standard deduction amount provided in subdivision (1) of this subsection or the itemized deduction amount provided in subdivision (2) of this subsection that the taxpayer claimed under the Code. The deduction amounts are as follows:

(1) Standard deduction amount. – The standard deduction amount is zero for a person who is not eligible for a standard deduction under section 63 of the Code. For all other taxpayers, the standard deduction amount is equal to the amount listed in the table below based on the taxpayer's filing status:

Filing Status	**Standard Deduction**
Married, filing jointly/surviving spouse	~~$17,500~~$20,000
Head of Household	~~14,000~~15,000
Single	~~8,750~~10,000
Married, filing separately	~~8,750.~~10,000.

(2) Itemized deduction amount. – An amount equal to the sum of the items listed in this subdivision. The amounts allowed under this subdivision are not subject to the overall limitation on itemized deductions under section 68 of the Code:

…

DRS45219-RBX-6

b. Mortgage Expense and Property Tax. – The amount allowed as a deduction for interest paid or accrued during the taxable year under section 163(h) of the Code with respect to any qualified residence plus the amount allowed as a deduction for property taxes paid or accrued on real estate under section 164 of the Code for that taxable year. ~~For taxable years 2014, 2015, and 2016, the amount allowed as a deduction for interest paid or accrued during the taxable year under section 163(h) of the Code with respect to any qualified residence shall not include the amount for mortgage insurance premiums treated as qualified residence interest.~~ The amount allowed under this sub-subdivision may not exceed ~~twenty thousand dollars ($20,000). For spouses filing as married filing separately or married filing jointly, the total mortgage interest and real estate taxes claimed by both spouses combined may not exceed twenty thousand dollars ($20,000). For spouses filing as married filing separately with a joint obligation for mortgage interest and real estate taxes, the deduction for these items is allowable to the spouse who actually paid them. If the amount of the mortgage interest and real estate taxes paid by both spouses exceeds twenty thousand dollars ($20,000), these deductions must be prorated based on the percentage paid by each spouse. For joint obligations paid from joint accounts, the proration is based on the income reported by each spouse for that taxable year.~~ the amount listed in the table below based on the taxpayer's filing status:

Filing Status	**Cap Amount**
Married, filing jointly/surviving spouse	$22,000
Head of Household	16,500
Single	11,000
Married, filing separately	11,000.

…

(a1) Child Deduction Amount. – A taxpayer who is allowed a federal child tax credit under section 24 of the Code for the taxable year is allowed a deduction under this subsection for each dependent child for whom the taxpayer is allowed the federal tax credit. The amount of the deduction is equal to the amount listed in the table below based on the taxpayer's adjusted gross income, as calculated under the Code:

Filing Status	**AGI**	**Deduction Amount**
Married, filing jointly	Up to $40,000	$2,500.00
	Over $40,000	
	Up to $60,000	2,000.00
	Over $60,000	
	Up to $80,000	1,500.00
	Over $80,000	
	Up to $100,000	1,000.00
	Over $100,000	
	Up to $120,000	500.00
	Over $120,000	0
Head of Household	Up to $30,000	$2,500.00
	Over $30,000	
	Up to $45,000	2,000.00
	Over $45,000	
	Up to $60,000	1,500.00

	Over $60,000	
	Up to $75,000	1,000.00
	Over $75,000	
	Up to $90,000	500.00
	Over $90,000	0
Single	Up to $20,000	$2,500.00
	Over $20,000	
	Up to $30,000	2,000.00
	Over $30,000	
	Up to $40,000	1,500.00
	Over $40,000	
	Up to $50,000	1,000.00
	Over $50,000	
	Up to $60,000	500.00
	Over $60,000	0
Married, filing separately	Up to $20,000	$2,500.00
	Over $20,000	
	Up to $30,000	2,000.00
	Over $30,000	
	Up to $40,000	1,500.00
	Over $40,000	
	Up to $50,000	1,000.00
	Over $50,000	
	Up to $60,000	500.00
	Over $60,000	0.

…."

SECTION 1.3. G.S. 105-153.10 is repealed.

SECTION 1.4. This part becomes effective for taxable years beginning on or after January 1, 2018.

PART II. BUSINESS TAX CHANGES

SECTION 2.1. G.S. 105-130.3 reads as rewritten:

"**§ 105-130.3. Corporations.**

A tax is imposed on the State net income of every C Corporation doing business in this State at the rate of ~~three percent (3%).~~ two and three-quarters percent (2.75%). An S Corporation is not subject to the tax levied in this section."

SECTION 2.2. G.S. 105-130.3, as amended by Section 2.1 of this act, reads as rewritten:

"**§ 105-130.3. Corporations.**

A tax is imposed on the State net income of every C Corporation doing business in this State at the rate of ~~two and three-quarters percent (2.75%).~~ two and one-half percent (2.5%). An S Corporation is not subject to the tax levied in this section."

SECTION 2.3. G.S. 105-122 reads as rewritten:

"**§ 105-122. Franchise or privilege tax on domestic and foreign corporations.**

(a) Tax Imposed. – An annual franchise or privilege tax is imposed on a corporation doing business in this ~~State.~~ State for the privilege of doing business in this State and for the continuance of articles of incorporation or domestication of each corporation in this State. The tax is determined on the basis of the books and records of the corporation as of the close of its income year. A corporation subject to the tax must file a return under affirmation with the

Secretary at the place and in the manner prescribed by the Secretary. The return must be signed by the president, vice-president, treasurer, or chief financial officer of the corporation. The return is due on or before the fifteenth day of the fourth month following the end of the corporation's income year.

…

(d) Tax ~~Base and Tax Rate. – After determining the~~ Base. – A corporation's tax base is the greater of the following:

(1) The proportion of its net worth as set out in subsection (c1) of this ~~section, which amount shall not be less than fifty-five percent (55%)~~ section.

(2) Fifty-five percent (55%) of the corporation's appraised value as determined for ad valorem taxation of all the real and tangible personal property in this ~~State of each corporation nor less than its~~ State. For purposes of this subdivision, the appraised value of tangible property including real estate is the ad valorem valuation for the calendar year next preceding the due date of the franchise tax return.

(3) The corporation's total actual investment in tangible property in this ~~State, every corporation taxed under this section shall annually pay to the Secretary of Revenue, at the time the return is due, a franchise or privilege tax at the rate of one dollar and fifty cents ($1.50) per one thousand dollars ($1,000) of the total amount of net worth as provided in this section. The tax imposed in this section shall not be less than two hundred dollars ($200.00) and is for the privilege of carrying on, doing business, and/or the continuance of articles of incorporation or domestication of each corporation in this State. Appraised value of tangible property including real estate is the ad valorem valuation for the calendar year next preceding the due date of the franchise tax return. The term "total~~ State. For purposes of this subdivision, the total actual investment in tangible ~~property" as used in this section means~~ property in this State is the total original purchase price or consideration to the reporting taxpayer of its tangible properties, including real estate, in this State plus additions and improvements thereto less reserve for depreciation as permitted for income tax purposes.

…

(d2) Tax Rate. – For a C Corporation, as defined in G.S. 105-130.2, the tax rate is one dollar and fifty cents ($1.50) per one thousand dollars ($1,000) of the corporation's tax base as determined under subsection (d) of this section. For an S Corporation, as defined in G.S. 105-130.2, the tax rate is two hundred dollars ($200.00) for the first one million dollars ($1,000,000) of the corporation's tax base as determined under subsection (d) of this section, and one dollar and fifty cents ($1.50) per one thousand dollars ($1,000) of its tax base that exceeds one million dollars ($1,000,000). In no event may the tax imposed by this section be less than two hundred dollars ($200.00).

…."

SECTION 2.4. Section 2.1 of this act becomes effective for taxable years beginning on or after January 1, 2018. Section 2.2 of this act becomes effective for taxable years beginning on or after January 1, 2019. Section 2.3 of this act becomes effective for taxable years beginning on or after January 1, 2019, and is applicable to the calculation of franchise tax reported on the 2018 and later corporate income tax returns.

PART III. MARKET-BASED SOURCING

SECTION 3.1. G.S. 105-130.4 reads as rewritten:

"**§ 105-130.4. Allocation and apportionment of income for corporations.**

…

(*l*) ~~(1) The~~ Sales Factor. – The sales factor is a fraction, the numerator of which is the total sales of the corporation in this State during the income year, and the denominator of which is the total sales of the corporation everywhere during the income year. Notwithstanding any other provision under this Part, the receipts from any casual sale of property shall be excluded from both the numerator and the denominator of the sales factor. Where a corporation is not taxable in another state on its apportionable income but is taxable in another state only because of nonapportionable income, all sales shall be treated as having been made in this State.

Receipts are in this State if the taxpayer's market for the receipts is in this State. If the market for a receipt cannot be determined, the state or states of assignment shall be reasonably approximated. In a case in which a taxpayer cannot ascertain the state or states to which receipts of a sale are to be assigned through the use of a method of reasonable approximation, the receipts must be excluded from the denominator of a taxpayer's sales factor. Except as otherwise provided by this section, a taxpayer's market for receipts is in this State as provided below:

(1) In the case of sale, rental, lease, or license of real property, if and to the extent the property is located in this State.

(2) ~~Sales of tangible personal property are in this State if the property is received in this State by the purchaser. In the case of delivery of goods by common carrier or by other means of transportation, including transportation by the purchaser, the place at which the goods are ultimately received after all transportation has been completed shall be considered as the place at which the goods are received by the purchaser. Direct delivery into this State by the taxpayer to a person or firm designated by a purchaser from within or without the State shall constitute delivery to the purchaser in this State.~~In the case of rental, lease, or license of tangible personal property, if and to the extent the property is located in this State.

(3) ~~Other sales are in this State if:~~In the case of sale of tangible personal property, if and to the extent the property is received in this State by the purchaser. In the case of delivery of goods by common carrier or by other means of transportation, including transportation by the purchaser, the place at which the goods are ultimately received after all transportation has been completed is considered the place at which the goods are received by the purchaser. Direct delivery into this State by the taxpayer to a person or firm designated by a purchaser from within or without the State constitutes delivery to the purchaser in this State.

~~a. The receipts are from real or tangible personal property located in this State; or~~

~~b. The receipts are from intangible property and are received from sources within this State; or~~

~~c. The receipts are from services and the income-producing activities are in this State.~~

(4) In the case of sale of a service, if and to the extent the service is delivered to a location in this State.

(5) In the case of intangible property that is rented, leased, or licensed, if and to the extent the property is used in this State. Intangible property utilized in marketing a good or service to a consumer is "used in this State" if that good or service is purchased by a consumer who is in this State.

(6) In the case of intangible property that is sold, if and to the extent the property is used in this State. A contract right, government license, or similar intangible property that authorized the holder to conduct a business activity in a specific geographic area is "used in this State" if the geographic area

includes all or part of this State. Receipts from a sale of intangible property that is contingent on the productivity, use, or disposition of the intangible property shall be treated as receipts from the rental, lease, or licensing of the intangible property as provided under subdivision (5) of this subsection. All other receipts from a sale of intangible property shall be excluded from the numerator and denominator of the sales factor.

(*l*1) Banks. – A bank's market for receipts is in this State as provided in G.S. 105-130.4A. For purposes of this section, the term "bank" has the same meaning as defined in G.S. 105-130.4A.

…."

SECTION 3.2. Part 1 of Article 4 of Chapter 105 of the General Statutes is amended by adding a new section to read:

"**§ 105-130.4A. Market-based sourcing for banks.**

(a) Definitions. – The definitions in G.S. 105-130.4 apply to this section, and the following definitions apply to this section:

(1) Bank. – Defined in G.S. 105-130.7B.

(2) Billing address. – The location indicated in the books and records of the taxpayer on the first day of the taxable year, or on the date in the taxable year when the customer relationship began, as the address where any notice, statement, or billing relating to the customer's account is mailed.

(3) Borrower, card holder, or payor is located in this State. – A borrower, credit card holder, or payor whose billing address is in this State.

(4) Card issuer's reimbursement fee. – The fee a taxpayer receives from a merchant's bank because one of the persons to whom the taxpayer has issued a credit, debit, or similar type of card has charged merchandise or services to the card.

(5) Credit card. – A card, or other means of providing information, that entitles the holder to charge the cost of purchases, or a cash advance, against a line of credit.

(6) Debit card. – A card, or other means of providing information, that enables the holder to charge the cost of purchases, or a cash withdrawal, against the holder's bank account or a remaining balance on the card.

(7) Loan. – Any extension of credit resulting from direct negotiations between the taxpayer and its customer, and/or the purchase, in whole or in part, of such an extension of credit from another. The term includes participations, syndications, and leases treated as loans for federal income tax purposes.

(8) Loan secured by real property. – A loan or other obligation of which fifty percent (50%) or more of the aggregate value of the collateral used to secure the loan or other obligation, when valued at fair market value as of the time the original loan or obligation was incurred, was real property.

(9) Merchant discount. – The fee, or negotiated discount, charged to a merchant by the taxpayer for the privilege of participating in a program whereby a credit, debit, or similar type of card is accepted in payment for merchandise or services sold to the card holder, net of any cardholder chargeback and unreduced by any interchange transaction or issuer reimbursement fee paid to another for charges or purchases made by its cardholder.

(10) Participation. – An extension of credit in which an undivided ownership interest is held on a prorated basis in a single loan or pool of loans and related collateral. In a loan participation, the credit originator initially makes the loan and then subsequently resells all or a portion of it to other lenders. The participation may or may not be known to the borrower.

(11) Payor. – The person who is legally responsible for making payment to the taxpayer.

(12) Real property owned. – Real property (i) on which the taxpayer may claim depreciation for federal income tax purposes or (ii) to which the taxpayer holds legal title and on which no other person may claim depreciation for federal income tax purposes or could claim depreciation if subject to federal income tax. Real property does not include coin, currency, or property acquired in lieu of or pursuant to a foreclosure.

(13) Syndication. – An extension of credit in which two or more persons fund, and each person is at risk only up to a specified percentage of the total extension of credit or up to a specified dollar amount.

(14) Tangible personal property owned. – Tangible personal property (i) on which the taxpayer may claim depreciation for federal income tax purposes or (ii) to which the taxpayer holds legal title and on which no other person may claim depreciation for federal income tax purposes could claim depreciation if subject to federal income tax. Tangible personal property does not include coin, currency, or property acquired in lieu of or pursuant to a foreclosure.

(15) Transportation property. – Vehicles and vessels capable of moving under their own power as well as any equipment or containers attached to such property. Examples of transportation property include aircraft, trains, water vessels, motor vehicles, rolling stock, barges, and trailers.

(b) General Rule. – The receipts factor of a bank is a fraction, the numerator of which is the total receipts of the taxpayer in this State during the income year, and the denominator of which is the total receipts of the taxpayer everywhere during the income year. The method of calculating receipts for purposes of the denominator is the same as the method used in determining receipts for purposes of the numerator. The receipts factor includes only those receipts described herein that are apportionable income for the taxable year. Notwithstanding any other provision under this Part, the receipts from the following are excluded from both the numerator and the denominator of the receipts factor:

(1) Receipts from a casual sale of property.

(2) Receipts exempt from taxation.

(3) The portion of receipts realized from the sale or maturity of securities or other obligations that represents a return of principal.

(4) Receipts in the nature of dividends subtracted under G.S. 105-130.5(b)(3a) and (3b) and dividends excluded for federal tax purposes.

(5) The portion of receipts from financial swaps and other similar financial derivatives that represent the notional principal amount that generates the cash flow traded in the swap agreement.

(c) Receipts From the Sale, Lease, or Rental of Real Property. – The numerator of the receipts factor includes receipts from the sale, lease, or rental of real property owned by the taxpayer if the property is located within this State or receipts from the sublease of real property if the property is located within this State.

(d) Receipts From the Sale, Lease, or Rental of Tangible Personal Property. – The method for calculating receipts from the sale, lease, or rental of tangible personal property is as follows:

(1) Tangible personal property. – Except as provided in subdivision (2) of this subsection, the numerator of the receipts factor includes receipts from the sale, lease, or rental of tangible personal property owned by the taxpayer if the property is located within this State when it is first placed in service by the lessee.

(2) Transportation property. – Receipts from the lease or rental of transportation property owned by the taxpayer are included in the numerator of the receipts factor to the extent that the property is used in this State. The extent an aircraft will be deemed to be used in this State and the amount of receipts that is to be included in the numerator of this State's receipts factor is determined by multiplying all the receipts from the lease or rental of the aircraft by a fraction, the numerator of which is the number of landings of the aircraft in this State and the denominator of which is the total number of landings of the aircraft. If the extent of the use of any transportation property within this State cannot be determined, then the property will be deemed to be used wholly in the state in which the property has its principal base of operations. A motor vehicle will be deemed to be used wholly in the state in which it is registered.

(e) Interest, Fees, and Penalties From Loans Secured by Real Property. – The numerator of the receipts factor includes interest, fees, and penalties from loans secured by real property if the property is located within this State. If the property is located both within this State and one or more other states, the receipts described in this subsection are included in the numerator of the receipts factor if more than fifty percent (50%) of the fair market value of the real property is located within this State. If more than fifty percent (50%) of the fair market value of the real property is not located within any one state, then the receipts described in this subsection are included in the numerator of the receipts factor if the borrower is located in this State. The determination of whether the real property securing a loan is located within this State is made as of the time the original agreement was made, and any and all subsequent substitutions of collateral are disregarded.

(f) Interest, Fees, and Penalties From Loans Not Secured by Real Property. – The numerator of the receipts factor includes interest, fees, and penalties from loans not secured by real property if the borrower is located in this State.

(g) Net Gains From the Sale of Loans. – The numerator of the receipts factor includes net gains from the sale of loans. Net gains from the sale of loans include income recorded under the coupon stripping rules of section 1286 of the Code. The amount of net gains from the sale of loans that is included in the numerator is determined as follows:

(1) Secured by real property. – The amount of net gains, but not less than zero, from the sale of loans secured by real property is determined by multiplying the net gains by a fraction, the numerator of which is the amount included in the numerator of the receipts factor pursuant to subsection (e) of this section, and the denominator of which is the total amount of interest, fees, and penalties from loans secured by real property.

(2) Not secured by real property. – The amount of net gains, but not less than zero, from the sale of loans not secured by real property is determined by multiplying the net gains by a fraction, the numerator of which is the amount included in the numerator of the receipts factor pursuant to subsection (f) of this section, and the denominator of which is the total amount of interest, fees, and penalties from loans not secured by real property.

(h) Receipts From Interest, Fees, and Penalties From Card Holders. – The numerator of the receipts factor includes interest, fees, and penalties charged to credit, debit, or similar card holders, including annual fees and overdraft fees, if the card holder is located in this State.

(i) Receipts From ATM Fees. – The numerator of the receipts factor includes receipts from fees from the use of an ATM owned or rented by the taxpayer, if the ATM is located in this State. The receipts factor includes all ATM fees that are not forwarded directly to another bank. Receipts from ATM fees that are not sourced under this subsection are sourced pursuant to subsection (*l*) of this section.

(j) Net Gains From the Sale of Credit Card Receivables. – The numerator of the receipts factor includes net gains, but not less than zero, from the sale of credit card receivables multiplied by a fraction, the numerator of which is the amount included in the numerator of the receipts factor pursuant to subsection (h) of this section, and the denominator of which is the taxpayer's total amount of interest, fees, and penalties charged to card holders.

(k) Miscellaneous Receipts. – The numerator of the receipts factor includes all of the following:

(1) Card issuer's reimbursement fees. – Receipts from card issuer's reimbursement fees if the payor is located in this State.

(2) Receipts from merchant's discount. – Receipts from a merchant discount if the payor is located in this State.

(3) Loan servicing fees. – Receipts from loan servicing fees if the payor is located in this State.

(4) Receipts from services. – Receipts from services not otherwise apportioned under this section if the payor is located in this State.

(5) Receipts from investment assets and activities and trading assets and activities. – Receipts from one or more of the following:

a. Interest and dividends from investment assets and activities and trading assets and activities if the payor is located in this State.

b. Net gains and other income, but not less than zero, from investment assets and activities and trading assets and activities multiplied by a fraction, the numerator of which is the amount included in the numerator of the receipts factor pursuant to sub-subdivision a. of this subdivision, and the denominator of which is the taxpayer's total amount of interest and dividends from investment assets and activities and trading assets and activities.

(*l*) All Other Receipts. – All other receipts not specifically enumerated in this section are included in the numerator of the receipts factor if the payor is located in this State."

SECTION 3.3. As directed by Section 38.4(a) of S.L. 2016-94, the Department of Revenue adopted rules regarding the implementation and administration of market-based sourcing principles as if the statutory changes in Part I of this act were law. The Department adopted rules and submitted the rules to the Rules Review Commission. The Rules Review Commission approved the rules on February 16, 2017. As directed by Section 38.4(b) of S.L. 2016-94, the Codifier of Rules will not enter the rules into the Administrative Code until directed to do so by the General Assembly. The Codifier of Rules is directed to enter the rules approved by the Rules Review Commission at its meeting on February 16, 2017, into the Administrative Code.

SECTION 3.4. As directed by Section 38.4(d) of S.L. 2016-94, the Utilities Commission shall adjust the rates for public utilities, excluding water public utilities with less than two hundred thousand dollars ($200,000) in annual operating revenues, for the tax changes in Part I of this act. Each utility shall calculate the cumulative net effect of the tax changes and file the calculations with proposed rate changes to reflect the net prospective tax changes in utility customer rates within 60 days of the enactment of this act. Any adjustments required to existing tax assets or liabilities reflected in the utility's books and records required by the tax changes shall be deferred and reflected in customer rates either in the utility's next rate case or earlier if deemed appropriate by the Commission.

SECTION 3.5. Sections 3.1 and 3.2 of this act are effective for taxable years beginning on or after January 1, 2018.

PART IV. EFFECTIVE DATE

SECTION 4. Except as otherwise provided, this act is effective when it becomes law.