

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 1991

CHAPTER 949
SENATE BILL 1012

AN ACT TO REINSTATE TWO SALES TAX PROVISIONS THAT WERE INADVERTENTLY DELETED IN PRIOR LEGISLATION AND TO PROVIDE THAT COMPUTER ACCESS CHARGES ARE NOT TANGIBLE PERSONAL PROPERTY.

The General Assembly of North Carolina enacts:

Section 1. G.S. 105-164.13(16) reads as rewritten:

"(16) Sales of any of the following used articles-articles:

- a. A used article taken in trade, or a series of trades, as a credit or part payment on the sale of a new article- article if tax is paid on the sales price of the new article. 'New article' means the original stock in trade of the merchant, -merchant and is not limited to a newly manufactured articles- article.
- b. An The resale of articles- article repossessed by the vendor shall likewise be exempt from gross sales taxable under this Article- vendor if tax was paid on the sales price of the article."

Sec. 2. G.S. 105-164.38 reads as rewritten:

"§ 105-164.38. Tax shall be a lien.

The tax imposed by this Article shall be a lien upon all personal property of any person who is required by this Article to obtain a license to engage in business and who stops engaging in the business by transferring the business, transferring the stock of goods of the business, or going out of business. A person who stops engaging in business shall file the return required by this Article within 30 days after transferring the business, transferring the stock of goods of the business, or going out of business. ~~Any~~

Any person to whom the business or the stock of goods was transferred shall withhold from the consideration paid for the business or stock of goods an amount sufficient to cover the taxes due until the person selling the business or stock of goods produces a statement from the Secretary showing that the taxes have been paid or that no taxes are due. If the person who buys a business or stock of goods fails to withhold an amount sufficient to cover the taxes and the taxes remain unpaid after the 30-day period allowed, the buyer is personally liable for the unpaid ~~taxes, taxes~~ to the extent of the greater of the following:

- (1) The consideration paid by the buyer for the business or the stock of goods.
- (2) The fair market value of the business or the stock of goods.

The period of limitations for assessing liability against the buyer of a business or the stock of goods of a business and for enforcing the lien against the property shall expire one year after the end of the period of limitations for assessment against the person who sold the business or the stock of goods. Except as otherwise provided in this section, a person who buys a business or the stock of goods of a business and that person's liability for unpaid taxes are subject to the provisions of G.S. 105-241.1, 105-241.2, 105-241.3, and 105-241.4 and to other remedies for the collection of taxes to the same extent as if the person had incurred the original tax liability."

Sec. 3. G.S. 105-164.3(20) reads as rewritten:

"(20) 'Tangible personal property' means and includes personal property which may be seen, weighed, measured, felt or touched or is in any other manner perceptible to the senses. The term 'tangible personal property' shall not include stocks, bonds, notes, insurance or other obligations or securities, nor shall it include water delivered by or through main lines or pipes either for commercial or domestic use or consumption. The term includes all 'canned' or prewritten computer programs, either in the form of written procedures or in the form of storage media on which or in which the program is recorded, held, or existing for general or repeated sale, lease, or license to use or consume. The term does not include the design, development, writing, translation, fabrication, lease, license to use or consume, or transfer for a consideration of title or possession of a custom computer program, other than a basic operational program, either in the form of written procedures or in the form of storage media on which or in which the program is recorded, or any required documentation or manuals designed to facilitate the use of the custom computer program. The term also does not include access to a computer program or a database when the user of the computer program or database receives a separately stated fee or other charge for the access.

As used in this subdivision:

- a. 'Basic operational program' or 'control program' means a computer program that is fundamental and necessary to the functioning of a computer. A basic operational program is that part of an operating system, including supervisors, monitors, executives, and control or master programs, which consists of the control program elements of that system. A control or master program, as opposed to a processing program, controls the operation of a computer by managing the allocation of all system resources, including the central processing unit, main storage, input/output devices, and processing programs. A processing program is used to develop and implement the specific applications the computer is to perform.
- b. 'Computer program' means the complete plan for the solution of a problem, such as the complete sequence of automatic data-

processing equipment instructions necessary to solve a problem, and includes both systems and application programs and subdivisions, such as assemblers, compilers, routines, generators, and utility programs.

- c. 'Custom computer program' means a computer program prepared to the special order of the customer. Custom computer programs include one of the following elements:
 - 1. Preparation or selection of the programs for the customer's use requires an analysis of the customer's requirements by the vendor; or
 - 2. The program requires adaptation by the vendor to be used in a particular make and model of computer utilizing a specified output device.
- d. 'Storage media' means punched cards, tapes, disks, diskettes, or drums."

Sec. 4. Section 1 of this act becomes effective August 1, 1992. The remaining sections of this act are effective upon ratification.

In the General Assembly read three times and ratified this the 14th day of July, 1992.

James C. Gardner
President of the Senate

Daniel Blue, Jr.
Speaker of the House of Representatives