

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1991

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SENATE BILL 109

Short Title: Modify Tax Secrecy Provision.

(Public)

Sponsors: Senators Winner, Kincaid, and Staton.

Referred to: Judiciary II.

February 20, 1991

A BILL TO BE ENTITLED

AN ACT TO CLARIFY THE PROHIBITION AGAINST DISCLOSING TAX INFORMATION, TO MODIFY THE PROHIBITION TO PERMIT THE EXCHANGE OF CERTAIN INFORMATION BETWEEN DESIGNATED AGENCIES, AND TO EXCLUDE INFORMATION SUBMITTED ON A MASTER TAX APPLICATION FORM FROM THE PROHIBITION.

The General Assembly of North Carolina enacts:

Section 1. G.S. 105-259 reads as rewritten:

**"§ 105-259. Secrecy required of officials; penalty for violation.**

~~With respect to any one of the following persons: (i) the Secretary of Revenue and all other officers or employees, and former officers and employees, of the Department of Revenue; (ii) local tax officials, as defined in G.S. 105-273, and former local tax officials; (iii) members and former members of the Property Tax Commission; (iv) any other person authorized in this section to receive information concerning any item contained in any report or return, or authorized to inspect any report or return; and (v) the Commissioner of Insurance and all other officers or employees and former officers and employees of the Department of Insurance with respect to State and federal income tax returns filed with the Commissioner of Insurance by domestic insurance companies; and except in accordance with proper judicial order or as otherwise provided by law, it shall be unlawful for any of these persons to divulge or make known in any manner the amount of income, income tax or other taxes of any taxpayer, or information relating thereto or from which the amount of income, income tax or other taxes or any part thereof might be determined, deduced or estimated, whether it is set forth or disclosed in or by means of any report or return required to be filed or furnished~~

1 under this Subchapter, or in or by means of any audit, assessment, application,  
2 correspondence, schedule or other document relating to the taxpayer, notwithstanding  
3 the provisions of Chapter 132 of the General Statutes or of any other law or laws  
4 relating to public records. It shall likewise be unlawful to reveal whether or not any  
5 taxpayer has filed a return, and to abstract, compile or furnish to any person, firm or  
6 corporation not otherwise entitled to information relating to the amount of income,  
7 income tax or other taxes of a taxpayer, any list of names, addresses, social security  
8 numbers or other personal information concerning the taxpayer, whether or not the list  
9 discloses a taxpayer's income, income tax or other taxes, or any part thereof, except that  
10 when an election is made by a husband and wife under G.S. 105-152.1 to file a joint  
11 return, any information given to one spouse concerning the income or income tax of the  
12 other spouse reported or reportable on the joint return shall not be a violation of the  
13 provisions of this section.

14 Nothing in this section shall be construed to prohibit the publication of statistics, so  
15 classified as to prevent the identification of particular reports or returns, and the items  
16 thereof; the inspection of these reports or returns by the Governor, Attorney General, or  
17 their duly authorized representative; or the inspection by a legal representative of the  
18 State of the report or return of any taxpayer who shall bring an action to set aside or  
19 review the tax based thereon, or against whom an action or proceeding has been  
20 instituted to recover any tax or penalty imposed by this Subchapter; nor shall the  
21 provisions of this section prohibit the Department of Revenue furnishing information to  
22 other governmental agencies of persons and firms properly licensed under Schedule B,  
23 G.S. 105-33 to 105-113. The Department of Revenue may exchange information with  
24 the officers of organized associations of taxpayers under Schedule B, G.S. 105-33 to  
25 105-113, with respect to parties liable for these taxes and as to parties who have paid  
26 these license taxes.

27 When any record of the Department of Revenue has been photographed,  
28 photocopied, or microphotocopied pursuant to the authority contained in G.S. 8-45.3,  
29 the original of that record may thereafter be destroyed at any time upon the order of the  
30 Secretary of Revenue, notwithstanding the provisions of G.S. 121-5, G.S. 132-2, or any  
31 other law relating to the preservation of public records. Any record that has not been so  
32 photographed, photocopied, or microphotocopied shall be preserved for three years, and  
33 thereafter until the Secretary of Revenue orders it destroyed.

34 (a) Disclosure Prohibited. – An officer, an employee, or an agent of the State or  
35 of a unit of local government who has access to tax information in the course of service  
36 to or employment by the State or unit of local government may not disclose the  
37 information to another unless the disclosure is made for one of the following purposes:

- 38 (1) To comply with a court order or a law.
- 39 (2) To give a husband or wife who elects to file a joint individual income  
40 tax return information concerning the income tax liability of the other  
41 spouse.
- 42 (3) Review by the Governor or a representative of the Governor.

- 1           (4) Review by the Attorney General or other legal representative of the  
2 State to determine the accuracy or sufficiency of the information or to  
3 prepare for a legal action concerning the information.
- 4           (5) To provide an officer of an organized association of taxpayers with a  
5 list of taxpayers who are liable for or have paid a privilege license tax  
6 under Article 2 of this Chapter.
- 7           (6) Review by a representative of another state or the United States to aid  
8 the state or the United States in collecting a tax imposed by this State,  
9 the other state, or the United States if the laws of the other state or the  
10 United States allow the state or the United States to provide similar tax  
11 information to a representative of this State.
- 12           (7) To receive, process, or deliver tax information on behalf of the  
13 Department of Revenue.
- 14           (8) To exchange information with the Division of Motor Vehicles of the  
15 Department of Transportation when the information is needed to fulfill  
16 a duty imposed on the Department of Revenue or the Division of  
17 Motor Vehicles.
- 18           (9) To exchange information concerning a tax imposed by Articles 2, 2A,  
19 2B, 2C, or 2D of this Chapter with one of the following agencies when  
20 the information is needed to fulfill a duty imposed on the agency:  
21           a. The North Carolina Alcoholic Beverage Control Commission.  
22           b. The Division of Alcohol Law Enforcement of the Department  
23 of Crime Control and Public Safety.  
24           c. The Bureau of Alcohol, Tobacco, and Firearms of the United  
25 States Treasury Department.
- 26           (10) To furnish to the Department of State Treasurer the name, address, and  
27 account and identification numbers of a taxpayer who may be entitled  
28 to property held in the Escheat Fund.
- 29           (11) To furnish to the Employment Security Commission the name,  
30 address, and account and identification numbers of a taxpayer when  
31 the information is needed to enable the Commission to fulfill a duty  
32 imposed under Article 2 of Chapter 96 of the General Statutes.
- 33           (12) To furnish to the Department of Secretary of State the name and  
34 address of a corporation liable for corporate income and franchise  
35 taxes to enable the Secretary of State to notify the corporation of the  
36 requirement to file an annual report with the Secretary of State.
- 37           (13) To inform the Business License Information Office of the Department  
38 of Secretary of State of the status of an application for a license for  
39 which a tax is imposed and of any information needed to process the  
40 application.
- 41           (b) Punishment. ~~Any person, officer, agent, clerk, employee, or local tax official~~  
42 ~~or any former officer, employee, or local tax official~~ A person who violates the  
43 ~~provisions of this section shall be~~ is guilty of a misdemeanor and may be fined not less  
44 than two hundred dollars (\$200.00) nor more than one thousand dollars (\$1,000) ~~and/or~~

1 ~~imprisoned, in the discretion of the court; and if (\$1,000), imprisoned for up to two~~  
2 ~~years, or both. If the person committing the violation is a public an officer or employee,~~  
3 ~~that person shall be dismissed from such office or employment, and may not hold any~~  
4 ~~public office or employment in this State for a period of five years thereafter.~~

5 ~~Notwithstanding the provisions of this section, the Secretary of Revenue may permit~~  
6 ~~the Commissioner of Internal Revenue of the United States, or the revenue officer of~~  
7 ~~any other state imposing any of the taxes imposed in this Subchapter, or the duly~~  
8 ~~authorized representative of either, to inspect the report or return of any taxpayer; or~~  
9 ~~may furnish that person an abstract of the report or return of any taxpayer; or supply that~~  
10 ~~person with information concerning any item contained in any report or return, or~~  
11 ~~diselosed by the report of any investigation of any report or return of any taxpayer. The~~  
12 ~~permission, however, may be granted or the information furnished to the officer or~~  
13 ~~agent only if the statutes of the United States or of the other state grant substantially~~  
14 ~~similar privilege to the Secretary of Revenue of this State or the Secretary's duly~~  
15 ~~authorized representative. Notwithstanding any other provision of law, the Secretary~~  
16 ~~may also furnish names, addresses, and account and identification numbers of (i)~~  
17 ~~taxpayers who may be entitled to property held in the Escheat Fund to the~~  
18 ~~Department of State Treasurer when that Department requests the information for the~~  
19 ~~purpose of administering Chapter 116B of the General Statutes, and (ii) taxpayers to the~~  
20 ~~Employment Security Commission when that Commission requests the information for~~  
21 ~~the purpose of administering Article 2 of Chapter 96 of the General Statutes. Neither~~  
22 ~~this section nor any other law prevents the exchange of information between the~~  
23 ~~Department of Revenue and the Department of Transportation's Division of Motor~~  
24 ~~Vehicles when the information is needed by either to administer the laws with which~~  
25 ~~they are charged. Notwithstanding any other provision of law, State officers and~~  
26 ~~employees who perform computerized data processing functions pursuant to G.S. 143-~~  
27 ~~341(9) for the Department of Revenue are authorized to receive and process for the~~  
28 ~~Department of Revenue information in reports and returns and are subject to the~~  
29 ~~eriminal provisions of this section.~~

30 ~~Notwithstanding the provisions of this section, the Secretary of Revenue may~~  
31 ~~contract with any person, firm or corporation to receive and address, sort, bag, or deliver~~  
32 ~~to the United States Postal Service any bulk mailing originated by the Department of~~  
33 ~~Revenue, and may deliver the mail to the contractor pursuant to the contract. To ensure~~  
34 ~~performance of the contract, the contractor shall furnish a bond in a form and amount~~  
35 ~~acceptable to the Secretary.~~

36 (c) Definitions. – The following definitions apply in this section:

37 (1) Employee or officer. The term includes a former employee, a former  
38 officer, and a current or former member of a State or local board or  
39 commission created to advise the State or a unit of local government or  
40 to fulfill a duty delegated by the State or the unit of local government.

41 (2) Tax information. Any information from any source concerning the  
42 liability of a taxpayer for a tax imposed by the State or a unit of local  
43 government. The term includes the following:

- 1           a.     Information contained on a tax return, a tax report, or an  
 2           application for a license for which a tax is imposed.  
 3           b.     Information obtained through an audit of a taxpayer or by  
 4           correspondence with a taxpayer.  
 5           c.     Information on whether a taxpayer has filed a tax return or a tax  
 6           report.  
 7           d.     A list or other compilation of the names, addresses, social  
 8           security numbers, or similar information concerning taxpayers.  
 9           The term does not include information submitted to the Business  
 10          License Information Office of the Department of Secretary of State on  
 11          a master application form for various business licenses."

12           Sec. 2. G.S. 75-28 reads as rewritten:

13   **"§ 75-28. Unauthorized disclosure of tax information; violation a misdemeanor.**

14       Except in accordance with proper judicial order, or as otherwise provided by law, it  
 15 shall be unlawful for any person, firm or corporation employed or engaged to prepare,  
 16 or who or which prepares or undertakes to prepare, for any other person or taxpayer any  
 17 tax form, report or return, to disclose, divulge or make known in any manner or use for  
 18 any purpose or in any manner other than in the preparation of such form, report or  
 19 return, without the express consent of the taxpayer or person for whom the form or  
 20 return is prepared, the name or address of the taxpayer or such other person, the amount  
 21 of income, income tax or other taxes, or any other information shown on or included in  
 22 such form, report or return, or any information which may be or may have been  
 23 furnished by the taxpayer or such other person to the preparer of such form, report or  
 24 return or to the person, firm or corporation so employed or engaged.

25       ~~Nothing in this section shall be construed to amend or modify the authority specified~~  
 26 ~~in G.S. 105-276(6) or any statute enacted in substitution therefor.~~

27       ~~Nothing in this section shall be construed to prohibit the inspection of such forms,~~  
 28 ~~reports or returns required under Subchapter I of Chapter 105 of the General Statutes in~~  
 29 ~~accordance with the authority provided in G.S. 105-259, or the examination of any~~  
 30 ~~person, books, papers, records or other data in accordance with the authority provided~~  
 31 ~~in G.S. 105-258.~~

32       Any person, firm or corporation, or any officer, agent, clerk, employee, or former  
 33 officer or employee, of any firm or corporation engaged or formerly engaged in the  
 34 preparation of tax forms, reports or returns for others, whether acting for himself or as  
 35 agent for such corporation, who or which shall violate the provisions of this section  
 36 shall be guilty of a misdemeanor and shall be fined or imprisoned in the discretion of  
 37 the court.

38           Sec. 3. G.S. 105-251.1(e) reads as rewritten:

39       "(e)   The North Carolina State Bureau of Investigation ~~shall, through designation by~~  
 40 ~~the Attorney General pursuant to G.S. 105-259, have access to and shall be authorized to~~ may  
 41 inspect and copy any reports filed with the Department pursuant to this section."

42           Sec. 4. G.S. 105-449.57 reads as rewritten:

43   **"§ 105-449.57. Cooperative agreements between states.**

1 The Secretary may enter into cooperative agreements with other states for exchange  
2 of information in administering the tax imposed by this Article. No agreement,  
3 arrangement, declaration, or amendment to an agreement is effective until stated in  
4 writing and approved by the Secretary.

5 An agreement may provide for determining the base state for motor carriers, records  
6 requirements, audit procedures, exchange of information, persons eligible for tax  
7 licensing, defining qualified motor vehicles, determining if bonding is required,  
8 specifying reporting requirements and periods, including defining uniform penalty and  
9 interest rates for late reporting, determining methods for collecting and forwarding of  
10 gasoline or other motor fuel taxes and penalties to another jurisdiction, and such other  
11 provisions as will facilitate the administration of the agreement.

12 ~~Notwithstanding the provisions of G.S. 105-259 to the contrary,~~ In accordance with G.S.  
13 105-259, the Secretary may, as required by the terms of an agreement, forward to  
14 officials of another state any information in the Department's possession relative to the  
15 use of gasoline or other motor fuels by any motor carrier. The Secretary may disclose  
16 to officials of another state the location of offices, motor vehicles, and other real and  
17 personal property of motor carriers.

18 An agreement may provide for each state to audit the records of motor carriers based  
19 in the state to determine if the gasoline or other motor fuel taxes due each state are  
20 properly reported and paid. Each state shall forward the findings of the audits  
21 performed on motor carriers based in the state to each state in which the carrier has  
22 taxable use of gasoline or other motor fuels. For motor carriers not based in this State  
23 who have taxable use of gasoline or other motor fuels in this State, the Secretary may  
24 utilize the audit findings received from another state as the basis upon which to propose  
25 assessments of gasoline or other motor fuel taxes against the carrier as though the audit  
26 had been conducted by the Secretary. Penalties and interest shall be assessed at the  
27 rates provided in the agreement.

28 No agreement entered into pursuant to this section may preclude the Department  
29 from auditing the records of any motor carrier covered by this Chapter.

30 The provisions of Article 9 of this Chapter apply to any assessment or order made  
31 under this section.

32 The Secretary may not enter into any agreement that would increase or decrease  
33 taxes and fees imposed under Subchapter V of Chapter 105 of the General Statutes, and  
34 any provision to the contrary is void."

35 Sec. 5. G.S. 132-1.1 reads as rewritten:

36 "**§ 132-1.1. Confidential communications by legal counsel to public board or**  
37 **agency; ~~not public records.~~ tax information.**

38 (a) Confidential Communications. – Public records, as defined in G.S. 132-1,  
39 shall not include written communications (and copies thereof) to any public board,  
40 council, commission or other governmental body of the State or of any county,  
41 municipality or other political subdivision or unit of government, made within the scope  
42 of the attorney-client relationship by any attorney-at-law serving any such governmental  
43 body, concerning any claim against or on behalf of the governmental body or the  
44 governmental entity for which such body acts, or concerning the prosecution, defense,

1 settlement or litigation of any judicial action, or any administrative or other type of  
2 proceeding to which the governmental body is a party or by which it is or may be  
3 directly affected. Such written communication and copies thereof shall not be open to  
4 public inspection, examination or copying unless specifically made public by the  
5 governmental body receiving such written communications; provided, however, that  
6 such written communications and copies thereof shall become public records as defined  
7 in G.S. 132-1 three years from the date such communication was received by such  
8 public board, council, commission or other governmental body.

9 (b) Tax Information. – Tax information is a public record but may not be  
10 disclosed except as provided in G.S. 105-259. As used in this subsection, 'tax  
11 information' has the same meaning as in G.S. 105-259."

12 Sec. 6. G.S. 132-3 reads as rewritten:

13 **"§ 132-3. Destruction of records regulated.**

14 (a) Prohibition. – No public official may destroy, sell, loan, or otherwise dispose  
15 of any public record, except in accordance with G.S. 121-5, without the consent of the  
16 Department of Cultural Resources. Whoever unlawfully removes a public record from  
17 the office where it is usually kept, or alters, defaces, mutilates or destroys it shall be  
18 guilty of a misdemeanor and upon conviction fined not less than ten dollars (\$10.00) nor  
19 more than five hundred dollars (\$500.00).

20 (b) Revenue Records. – Notwithstanding subsection (a) and G.S. 121-5, when a  
21 record of the Department of Revenue has been photographed, photocopied, or  
22 microphotocopied, the original record may be destroyed upon the order of the Secretary  
23 of Revenue. If a record of the Department of Revenue has not been photographed,  
24 photocopied, or microphotocopied, the original record shall be preserved for at least  
25 three years. After three years the original record may be destroyed upon the order of the  
26 Secretary of Revenue."

27 Sec. 7. This act is effective upon ratification.