

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 1999

HOUSE BILL 1624
RATIFIED BILL

AN ACT TO IMPLEMENT THE RECOMMENDATION OF THE NATIONAL GOVERNORS' ASSOCIATION FOR A STREAMLINED SALES TAX COLLECTION SYSTEM AND TO OTHERWISE IMPROVE COLLECTION.

The General Assembly of North Carolina enacts:

Section 1. Article 5 of Chapter 105 of the General Statutes is amended by adding a new section to read:

"§ 105-164.27. Direct pay certificate.

(a) Requirements. – A person who purchases tangible personal property whose tax status cannot be determined at the time of the purchase because of one of the reasons listed below may apply to the Secretary for a direct pay certificate:

(1) The place of business where the property will be used is not known at the time of the purchase and a different tax consequence applies depending on where the property is used.

(2) The manner in which the property will be used is not known at the time of the purchase and one or more of the potential uses is taxable but others are not taxable.

(b) Procedure. – An application for a direct pay certificate must be made on a form provided by the Secretary and contain the information required by the Secretary. The Secretary may grant the application if the Secretary finds that the applicant complies with the sales and use tax laws and that the applicant's compliance burden will be greatly reduced by use of the certificate.

(c) Effect. – A direct pay certificate authorizes its holder to purchase any tangible personal property without paying tax to the seller and authorizes the seller to not collect any tax on a sale to the certificate holder. A person who purchases tangible personal property under a direct pay certificate is liable for use tax due on the purchase. The tax is payable when the property is placed in use. A direct pay certificate does not apply to taxes imposed under G.S. 105-164.4(a)(1f) or G.S. 105-164.4(a)(4a).

(d) Revocation. – A direct pay certificate is valid until the holder returns it to the Secretary or it is revoked by the Secretary. The Secretary may revoke a direct pay certificate if the holder of the certificate does not file a sales and use tax return on time, does not pay sales and use on time, or otherwise fails to comply with the sales and use tax laws."

Section 2. Article 5 of Chapter 105 of the General Statutes is amended by adding the following new sections to read:

"§ 105-164.43A. Certification of tax collector software and tax collector.

(a) Software. – The Secretary may certify a software program as a certified sales tax collection program if the Secretary determines that the program correctly determines all of the following and that the software can generate reports and returns required by the Secretary:

(1) The applicable combined State and local sales and use tax rate for a sale, based on a ship-to address.

(2) Whether or not an item is exempt from tax, based on a uniform product code or another method.

- (3) Whether or not an exemption certificate offered by a purchaser is a valid certificate, based on the Department's registry of holders of exemption certificates.
- (4) The amount of tax to be remitted for each taxpayer for a reporting period.
- (5) Any other issue necessary for the application or calculation of sales and use tax due.

(b) Tax Collector. – The Secretary may certify an entity as a Certified Sales Tax Collector if the entity meets all of the following requirements:

- (1) The entity uses a certified sales tax collection program.
- (2) The entity has agreed to update its program upon notification by the Secretary.
- (3) The entity integrates its certified sales tax collection program with the system of a retailer for whom the entity collects tax so that the tax due on a sale is determined at the time of the sale.
- (4) The entity remits the taxes it collects at the time and in the manner specified by the Secretary.
- (5) The entity agrees to file sales and use tax returns on behalf of the retailers for whom it collects tax.
- (6) The entity enters into a contract with the Secretary and agrees to comply with all the conditions of the contract.

"§ 105-164.43B. Contract with Certified Sales Tax Collector.

The Secretary may contract with a Certified Sales Tax Collector for the collection and remittance of sales and use taxes. A Certified Sales Tax Collector must file with the Secretary a bond or an irrevocable letter of credit in the amount set by the Secretary. A bond must be conditioned upon compliance with the contract, be payable to the State, and be in the form required by the Secretary. The amount a Certified Sales Tax Collector charges under the contract is a cost of collecting the tax and is payable from the amount collected.

"§ 105-164.43C. Effect of contract.

(a) Retailer. – A retailer may contract with a Certified Sales Tax Collector to collect and remit sales and use taxes payable to the State on sales made by the retailer. In the absence of fraud, a retailer who contracts with a Certified Sales Tax Collector is not subject to audit by the State on the transactions it processes using the Collector's certified sales tax collection program. A retailer is subject to audit for transactions not processed by the Certified Sales Tax Collector.

The Department may review a retailer's procedures to determine if the certified sales tax collection program is functioning properly. A retailer who contracts with a Certified Sales Tax Collector is not liable for taxes due on sales processed using the program unless the retailer misrepresented the product it sells. A contract with a Certified Sales Tax Collector is not a factor in determining whether a person has nexus with this State for payment of any tax.

(b) Collector. – A Certified Sales Tax Collector is the agent of a seller who contracts with the Certified Sales Tax Collector for collection and remittance of sales and use taxes payable to this State. As the seller's agent, the Certified Sales Tax Collector is liable for sales tax due on all sales transactions processed by the Certified Sales Tax Collector unless the seller misrepresented the type of property sold."

Section 3. G.S. 105-88(d) reads as rewritten:

"(d) A loan made by a person who does not comply with this section is not collectible at law in the courts of this State in any case where the person making the loan has failed to pay the tax levied in this section or otherwise failed to comply with the provisions of this section, under G.S. 105-269.13."

Section 4. G.S. 105-164.6A(b)(1) reads as rewritten:

"(b) Mandatory Provisions. – The agreements must contain the following provisions:

- (1) ~~The customer may elect to pay the use tax directly to the Secretary in accordance with law rather than to the seller. The seller is not liable for use tax not paid to it by a customer.~~"

Section 5. G.S. 105-164.13(14a) is recodified as G.S. 105-164.13(33a) and reads as rewritten:

"(33a) ~~Printed material which is sold by a printer~~ Tangible personal property sold by a retailer to a purchaser within or without this State, when such ~~printed material~~ the property is delivered in this State to a common carrier or to the United States Postal Service for delivery to the purchaser or the purchaser's designees outside this State, ~~if State and the purchaser does not thereafter subsequently use the printed material property in this State.~~"

Section 6. G.S. 105-164.28 reads as rewritten:

"§ 105-164.28. Certificate of resale.

(a) Seller's Responsibility. – A seller who accepts a certificate of resale from a purchaser of tangible personal property has the burden of proving that the sale was not a retail sale unless all of the following conditions are met:

- (1) ~~The seller acted in good faith in accepting the certificate of resale. For a sale made in person, the certificate is signed by the purchaser, states the purchaser's name, address, and registration number, and describes the type of tangible personal property generally sold by the purchaser in the regular course of business.~~
- (2) ~~The certificate is in the form required by the Secretary. For a sale made in person, the purchaser is engaged in the business of selling tangible personal property of the type sold.~~
- (3) ~~The certificate is signed by the purchaser, states the purchaser's name, address, and registration number, and describes the type of tangible personal property generally sold by the purchaser in the regular course of business. For a sale made over the Internet or by other remote means, the sales tax registration number given by the purchaser matches the number on the Department's registry.~~
- (4) ~~The purchaser is licensed under this Article or under the law of another taxing jurisdiction.~~
- (5) ~~The purchaser is engaged in the business of selling tangible personal property of the type sold.~~

(b) Liabilities. – A purchaser who does not resell property purchased under a certificate of resale is liable for any tax subsequently determined to be due on the sale. A seller of property sold under a certificate of resale is jointly liable with the purchaser of the property for any tax subsequently determined to be due on the sale only if the Secretary proves that the sale was a retail sale."

Section 7. G.S. 105-236(5a) reads as rewritten:

"(5a) ~~Misuse of Exemption Certificate of Resale Certificate.~~ – For misuse of ~~a certificate of resale~~ an exemption certificate by a purchaser, the Secretary shall assess a penalty equal to two hundred fifty dollars (\$250.00). An exemption certificate is a certificate issued by the Secretary that authorizes a retailer to sell tangible personal property to the holder of the certificate and either collect tax at a preferential rate or not collect tax on the sale. Examples of an exemption certificate include a certificate of resale, a direct pay certificate, and a farmer's certificate."

Section 8. G.S. 105-259(b) is amended by adding a new subdivision to read:

"(b) Disclosure Prohibited. – An officer, an employee, or an agent of the State who has access to tax information in the course of service to or employment by the State may not disclose the information to any other person unless the disclosure is made for one of the following purposes:

(25) To provide public access to a database containing the names of retailers who are registered to collect sales and use taxes under Article 5 of this Chapter."

Section 9. Article 9 of Chapter 105 of the General Statutes is amended by adding a new section to read:

"§ 105-269.13. Debts not collectible under North Carolina law.

(a) Debts Not Collectible. – The following debts are not collectible and are not subject to execution under Article 28 of Chapter 1 of the General Statutes or any other provision of law:

(1) A loan made by a person who does not comply with G.S. 105-88.

(2) A debt owed to a retailer described in subsection (b) of this section as the result of the purchase of tangible personal property.

(b) Retailer. – A debt owed to a retailer is subject to this section if all of the following applies to the retailer:

(1) The retailer meets one or more of the conditions in G.S. 105-164.8(b).

(2) The retailer is not registered to collect the use tax due under Article 5 of this Chapter on its sales delivered to an address in North Carolina.

(3) The retailer reported gross sales of at least five million dollars (\$5,000,000) on its most recent federal income tax return.

(c) Assignment. – An assignment to a person of a debt listed in subsection (a) of this section is subject to the collection restrictions imposed by this section."

Section 10. G.S. 105-269.14 is repealed.

Section 11. G.S. 105-164.16(d) reads as rewritten:

"(d) Use Tax on Out-of-State Purchases. – Use tax payable by Notwithstanding subsection (b), an individual who purchases tangible personal property outside the State for a nonbusiness purpose is due shall file a use tax return on an annual basis. For an individual who is not required to file an individual income tax return under Part 2 of Article 4 of this Chapter, the annual reporting period ends on the last day of the calendar year and a use tax return is due by the following April 15. For an individual who is required to file an individual income tax return, the annual reporting period ends on the last day of the individual's income tax year, and the use tax must be paid on the income tax return as provided in G.S. 105-269.14. year. The return is due by the due date, including any approved extensions, for filing the individual's income tax return."

Section 12. G.S. 105-466(c) reads as rewritten:

"(c) Collection of the tax, and liability therefor, shall begin and continue only on and after the first day of a calendar month the month of either January or July, as set by the board of county commissioners in the resolution levying the tax, which shall in no case be tax. In no event may the tax be imposed, or the tax rate changed, earlier than the first day of the second succeeding calendar month after the date of the adoption of the resolution. The county must give the Secretary at least 90 days advance notice of a new tax levy or tax rate change."

Section 13. Chapter 1096 of the 1967 Session Laws is amended by adding a new section to read:

"Section 10.3. Mecklenburg County must give the Secretary of Revenue at least 90 days advance notice of any tax rate change under this act. Any tax rate change under this act must become effective on the first day of the month of either January or July, as set by the board of county commissioners in the resolution levying the tax."

Section 14. G.S. 20-7(b1) reads as rewritten:

"(b1) Application. – To obtain a drivers license from the Division, a person must complete an application form provided by the Division, present at least two forms of identification approved by the Commissioner, be a resident of this State, and demonstrate his or her physical and mental ability to drive safely a motor vehicle included in the class of license for which the person has applied. The Division may copy the identification presented or hold it for a brief period of time to verify its authenticity.

To obtain an endorsement, a person must demonstrate his or her physical and mental ability to drive safely the type of motor vehicle for which the endorsement is required.

The application form must request all of the following ~~information; information, and~~ it must contain the disclosures concerning the request for an applicant's social security number required by section 7 of the federal Privacy Act of 1974, Pub. L. No. 93-579:

- (1) The applicant's full name.
- (2) The applicant's mailing address and residence address.
- (3) A physical description of the applicant, including the applicant's sex, height, eye color, and hair color.
- (4) The applicant's date of birth.
- (5) The applicant's social security number. The Division shall not issue a license to an applicant who fails to provide the applicant's social security number. ~~The applicant's social security number shall not be printed on the license and may be released only to the Department of Health and Human Services, Child Support Enforcement Program, upon its request and for the purpose of establishing paternity or child support, or enforcing a child support order.~~
- (6) The applicant's signature.

~~The application form must also contain the disclosures concerning the request for an applicant's social security number required by section 7 of the federal Privacy Act of 1974, Pub. L. No. 93-579.~~

(b2) Disclosure of Social Security Number. – The social security number of an applicant is not a public record. The Division may not disclose an applicant's social security number except as allowed under federal law. A violation of the disclosure restrictions is punishable as provided in 42 U.S.C. § 408, and amendments to that law.

In accordance with 42 U.S.C. 405 and 42 U.S.C. 666, and amendments thereto, the Division may disclose a social security number obtained under ~~this subsection~~ subsection (b1) of this section only as follows:

- (1) ~~for~~ For the purpose of administering the drivers license laws or to laws.
- (2) To the Department of Health and Human Services, Child Support Enforcement Program for the purpose of assist the State Child Support Enforcement Program in establishing paternity or establishing child support or enforcing a child support order. and may not disclose the social security number for any other purpose. The social security number of an applicant for a license or of a licensed driver is therefore not a public record. A violation of the disclosure restrictions is punishable as provided in 42 U.S.C. 408, and amendments thereto.
- (3) To the Department of Revenue for the purpose of verifying taxpayer identity."

Section 15. G.S. 20-7(n)(7) reads as rewritten:

"(n) Format. – A drivers license issued by the Division must be tamperproof and must contain all of the following information:

- (7) ~~The license holder's social security number or another~~ An identifying number for the license holder assigned by the Division. The identifying number may not be the license holder's social security number.

Section 16. Section 5.(a) of Chapter 341 of the 1999 Session Laws reads as rewritten:

"Section 5.(a) The Secretary of Revenue shall contract during the 1999-2001 fiscal biennium for the collection of delinquent tax debts owed by nonresidents and foreign entities. To implement this section, the Secretary may draw funds for the 1999-2000 fiscal year from net collections that would otherwise be credited to the General

Fund under G.S. 105-269.14, enacted by Section 2 of this act. For the 2000-2001 fiscal year, the Secretary may retain the costs of implementing this section from the amounts collected pursuant to the contracts authorized by this section. The Secretary of Revenue shall report annually to the Revenue Laws Study Committee on its collections pursuant to this contract during the biennium."

Section 17. Section 6 of Chapter 341 of the 1999 Session Laws reads as rewritten:

"Section 6. The Department of Revenue shall conduct a study to identify and evaluate proposals for more efficient collection of taxes, including using electronic commerce and other technology to increase efficiency. The study shall include an analysis of the most efficient tax collection methods used in other states. The State Controller shall cooperate with the Department of Revenue in this study. The Department shall report the results of its study, including findings, recommendations, and estimated revenue gains of each recommendation, to the Revenue Laws Study Committee by May 1, 2000. To implement this section, the Secretary of Revenue may draw up to fifty thousand dollars (\$50,000) for the 1999-2000 fiscal year from net collections that would otherwise be credited to the General Fund under G.S. 105-269.14, enacted by Section 2 of this act. To implement the recommendations of this study, the Secretary may enter into a performance-based contract and may withhold from the revenue collected pursuant to Section 5 of this act the amount needed to obtain assistance in developing a request for proposal for the performance-based contract."

Section 18. Section 7 of this act becomes effective January 1, 2001. Sections 10 and 11 of this act become effective for taxable years beginning on or after January 1, 2003. The remainder of this act is effective when it becomes law.

In the General Assembly read three times and ratified this the 6th day of July, 2000.

Marc Basnight
President Pro Tempore of the Senate

James B. Black
Speaker of the House of Representatives

James B. Hunt, Jr.
Governor

Approved _____ .m. this _____ day of _____ , 2000