

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

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SENATE BILL 1112
Finance Committee Substitute Adopted 6/14/99

Short Title: No Sales Tax Fee/Other Changes.

(Public)

Sponsors:

Referred to:

April 15, 1999

1 A BILL TO BE ENTITLED
2 AN ACT TO PROMOTE ELECTRONIC COMMERCE BY REPEALING THE SALES
3 TAX REGISTRATION FEE AND TO MAKE OTHER CHANGES TO THE TAX
4 LAWS AND RELATED STATUTES.

5 The General Assembly of North Carolina enacts:

6 Section 1. G.S. 105-164.4(c) reads as rewritten:

7 "(c) Certificate of Registration. – Before a person may engage in business as a
8 retailer or a wholesale merchant, the person must obtain a certificate of registration from
9 the Department. To obtain a certificate of registration, a person must register with the
10 Department and pay fifteen dollars (\$15.00).-Department.

11 A certificate of registration is valid unless it is revoked for failure to comply with the
12 provisions of this Article or becomes void. A certificate issued to a retailer becomes void
13 if, for a period of 18 months, the retailer files no returns or files returns showing no
14 sales."

15 Section 2. G.S. 105-88 reads as rewritten:

16 **"§ 105-88. Loan agencies or brokers. agencies.**

17 (a) Every person, firm, or corporation engaged in any of the following businesses
18 must pay for the privilege of engaging in that business an annual tax of seven hundred
19 fifty dollars (\$750.00) for each location at which the business is conducted:

1 (1) ~~The the regular~~ business of making loans or lending money, accepting
2 liens on, or contracts of assignments of, salaries or wages, or any part
3 thereof, or other security or evidence of debt for repayment of such
4 loans in installment payment or otherwise, and maintaining in connection
5 with same any office or other located or established place for the conduct,
6 negotiation, or transaction of such business and/or advertising or soliciting
7 such business in any manner whatsoever, shall be deemed a loan agency, and
8 shall apply for and procure from the Secretary of Revenue a State license for
9 the privilege of transacting or negotiating such business at each office or place
10 so maintained, and shall pay for such license a tax of seven hundred fifty
11 dollars (\$750.00) otherwise.

12 (2) The business of check cashing regulated under Article 22 of Chapter 53
13 of the General Statutes.

14 (3) The business of pawnbroker regulated under Chapter 91A of the
15 General Statutes.

16 (b) This section does not apply to banks, industrial banks, trust companies,
17 savings and loan associations, cooperative credit unions, the business of negotiating loans
18 on real estate as described in G.S. 105-41, ~~pawnbrokers lending or advancing money on~~
19 ~~specific articles of personal property,~~ or insurance premium finance companies licensed
20 under Article 35 of Chapter 58 of the General Statutes. This section applies to those
21 persons or concerns operating what are commonly known as loan companies or finance
22 companies and whose business is as hereinbefore described, and those persons, firms, or
23 corporations pursuing the business of lending money and taking as security for the
24 payment of the loan and interest an assignment of wages or an assignment of wages with
25 power of attorney to collect the amount due, or other order or chattel mortgage or bill of
26 sale upon household or kitchen furniture. No real estate mortgage broker is required to
27 obtain a privilege license under this section merely because the broker advances the
28 broker's own funds and takes a security interest in real estate to secure the advances and
29 when, at the time of the advance, the broker has already made arrangements with others
30 for the sale or discount of the obligation at a later date and does so sell or discount the
31 obligation within the period specified in the arrangement or extensions thereof; or when,
32 at the time of the advance the broker intends to sell the obligation to others at a later date
33 and does, within 12 months from date of initial advance, make arrangements with others
34 for the sale of the obligation and does sell the obligation within the period specified in the
35 arrangement or extensions thereof; or because the broker advances the broker's own funds
36 in temporary financing directly involved in the production of permanent-type loans for
37 sale to others; and no real estate mortgage broker whose mortgage lending operations are
38 essentially as described above is required to obtain a privilege license under this section.

39 (c) At the time of making any such loan, the person, or officer of the firm or
40 corporation making the ~~same,~~ loan, shall give to the borrower in writing in convenient
41 form a statement showing the amount received by the borrower, the amount to be paid
42 back by the borrower, ~~and the time in which said~~ the amount is to be paid, and the rate of
43 interest and discount agreed upon.

1 (d) ~~Any such person, firm, or corporation failing, refusing, or neglecting to pay the~~
2 ~~tax herein levied shall be guilty of a Class 1 misdemeanor in addition to double the tax~~
3 ~~due. No such loan shall be~~ A loan is not collectible at law in the courts of this State in
4 any case where the person making such the loan has failed to pay the tax levied herein,
5 and/or otherwise complied in this section or otherwise failed to comply with the
6 provisions of this section.

7 (e) Counties, cities, and towns may levy a license tax on the business taxed under
8 this section not in excess of one hundred dollars (\$100.00)."

9 Section 3. G.S. 105-164.3(25) reads as rewritten:

10 "(25) 'Utility' means ~~an electric power company or a telephone company that~~
11 ~~is subject to a privilege tax based on gross receipts under G.S. 105-116~~
12 ~~or 105-120, a~~ any of the following:

13 a. A business entity that provides local, toll, or private
14 telecommunications service as defined by G.S. 105-120(e), or a
15 105-120(e).

16 b. A business entity or a municipality that sells electric power, other
17 than a municipality whose only wholesale supplier of electric
18 power is a federal agency and who is required by a contract with
19 that federal agency to make payments in lieu of taxes. power."

20 Section 4. G.S. 105-164.13(12) reads as rewritten:

21 "(12) Sales of any of the following items:

22 a. Therapeutic, prosthetic, or artificial devices, such as pulmonary
23 respirators or medical beds, that are designed for individual
24 personal use to correct or alleviate physical illness, disease, or
25 incapacity and that are sold on the written prescription of a
26 physician, dentist, or other professional person licensed to
27 prescribe, and crutches, prescribe.

28 b. Crutches, artificial limbs, artificial eyes, hearing aids, false teeth,
29 eyeglasses ground on prescription of a physician or an
30 optometrist, and orthopedic optometrist.

31 c. Orthopedic appliances designed to be worn by the purchaser or
32 user.

33 d. Durable medical equipment and related medical supplies that are
34 covered under the Medicare or Medicaid program and are sold on
35 either a certificate of medical necessity or a written prescription
36 of a physician, dentist, or other professional person licensed to
37 prescribe. This exemption applies whether or not the item is
38 purchased by a Medicare or Medicaid beneficiary."

39 Section 5. G.S. 105-164.13(13) reads as rewritten:

40 "(13) All of the following drugs, including the constituent elements and
41 ingredients used to produce the drugs, the packaging materials, and
42 any instructions or information about the product included in the
43 package with the drugs:

1 a. Prescription drugs.

2 b. ~~Medicines—Nonprescription drugs sold on prescription of~~
3 physicians, dentists, or veterinarians; ~~insulin whether or not sold on~~
4 ~~prescription—veterinarians.~~

5 c. Insulin."

6 Section 6. G.S. 105-164.13(13b) is repealed.

7 Section 7. G.S. 105-164.13(16) reads as rewritten:

8 "(16) ~~Sales of any of the following articles:~~

9 a. ~~A used article taken in trade, or a series of trades, as a credit or~~
10 ~~part payment on the sale of a new article if tax is paid on the~~
11 ~~sales price of the new article. "New article" means the original~~
12 ~~stock in trade of the merchant and is not limited to a newly~~
13 ~~manufactured article.~~

14 b. ~~An~~an article repossessed by the vendor if tax was paid on the
15 sales price of the article."

16 Section 8. G.S. 105-164.13(35) reads as rewritten:

17 "(35) Sales by a nonprofit civic, charitable, educational, scientific, ~~literary~~
18 literary, or fraternal organization ~~continuously chartered or incorporated~~
19 ~~within North Carolina for at least two years when such all of the~~
20 ~~following conditions are met:~~

21 a. The sales are conducted only upon an annual basis for the
22 purpose of raising funds for its activities, and when—the
23 organization's activities.

24 b. ~~the~~The proceeds thereof of the sale are actually used for such
25 ~~purposes; provided, however, that no such sale shall be exempt if~~
26 ~~not actually consummated~~the organization's activities.

27 c. The products sold are delivered to the purchaser within 60 days
28 after the first solicitation of any sale made during said—the
29 organization's annual sales period."

30 Section 9. G.S. 105-164.13(39) is repealed.

31 Section 10. G.S. 105-164.13(42) reads as rewritten:

32 "(42) Tangible personal property that is purchased by a retailer for resale
33 or is manufactured or purchased by a wholesale merchant for resale
34 and then withdrawn from inventory and donated by the retailer or
35 wholesale merchant to either a governmental entity or a nonprofit
36 organization, contributions to which are deductible as charitable
37 contributions for federal income tax purposes."

38 Section 11. G.S. 105-164.13 is amended by adding a new subdivision to read:

39 "(46) Sales of electricity by a municipality whose only wholesale supplier
40 of electric power is a federal agency and who is required by a
41 contract with that federal agency to make payments in lieu of taxes."

42 Section 12. G.S. 105-164.13A reads as rewritten:

43 **"§ 105-164.13A. Service charges on food, beverages, or meals.**

1 When a service charge is imposed on food, beverages, or meals, so much of ~~said~~ the
2 service charge as ~~that~~ does not exceed ~~fifteen percent (15%)~~ twenty percent (20%) of the
3 sales price is considered a tip and is specifically exempted from the tax imposed by this
4 Article when the service charge if it meets both of the following conditions:

- 5 (1) Is separately stated in the price list, menu, or written proposal and
6 also in the invoice or ~~bill; and bill.~~
7 (2) Is turned over to the personnel directly involved in the service of the
8 food, beverages, or meals, in accordance with G.S. 95-25.6.

9 ~~Such service charge shall be considered to be a tip."~~

10 Section 13. G.S. 105-236(1) reads as rewritten:

- 11 "(1) Penalty for Bad Checks. – When the bank upon which any
12 uncertified check tendered to the Department of Revenue in payment
13 of any obligation due to the Department returns the check because of
14 insufficient funds or the nonexistence of an account of the drawer,
15 the Secretary shall assess a penalty equal to ten percent (10%) of the
16 check, subject to a minimum of one dollar (\$1.00) and a maximum
17 of one thousand dollars (\$1,000). This penalty does not apply if the
18 Secretary finds that, when the check was presented for payment, the
19 drawer of the check had sufficient funds in an account at a financial
20 institution in this State to pay the check and, by inadvertence, the
21 drawer of the check failed to draw the check on the account that had
22 sufficient funds. ~~The penalty imposed may not be waived or diminished~~
23 ~~by the Secretary."~~

24 Section 14. G.S. 105-236(5) reads as rewritten:

- 25 "(5) Negligence. –
26 a. Finding of negligence. – For negligent failure to comply with any
27 of the provisions to which this Article applies, or rules issued
28 pursuant thereto, without intent to defraud, the Secretary shall
29 assess a penalty equal to ten percent (10%) of the deficiency due
30 to the negligence.
31 b. Large individual income tax deficiency. – In the case of
32 individual income tax, if a taxpayer understates taxable income,
33 by any means, by an amount equal to twenty-five percent (25%)
34 or more of gross income, the Secretary shall assess a penalty
35 equal to twenty-five percent (25%) of the deficiency. For
36 purposes of this subdivision, "gross income" means gross income
37 as defined in section 61 of the Code.
38 c. Other large tax deficiency. – In the case of a tax other than
39 individual income tax, if a taxpayer understates tax liability by
40 twenty-five percent (25%) or more, the Secretary shall assess a
41 penalty equal to twenty-five percent (25%) of the deficiency.

1 d. No double penalty. – If a penalty is assessed under subdivision
2 (6) of this section, no additional penalty for negligence shall be
3 assessed with respect to the same deficiency.

4 e. Inheritance and gift tax deficiencies. – This subdivision does not
5 apply to inheritance, estate, and gift tax deficiencies that are the
6 result of valuation understatements."

7 Section 15. G.S. 105-237(a) reads as rewritten:

8 "(a) Waiver. – The Secretary may, upon making a record of the reasons
9 therefor, reduce or waive any penalties provided for in this Subchapter, ~~except the penalty~~
10 ~~provided in G.S. 105-236 relating to unpaid checks.~~ Subchapter."

11 Section 16. G.S. 105-259(b)(15) reads as rewritten:

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

16 ...

17 (15) To exchange information concerning a tax imposed by Articles 2A,
18 2B, 2C, or 2D of this Chapter with one of the following agencies
19 when the information is needed to fulfill a duty imposed on the
20 Department or the agency:

- 21 a. The North Carolina Alcoholic Beverage Control Commission.
22 b. The Division of Alcohol Law Enforcement of the Department of
23 Crime Control and Public Safety.
24 c. The Bureau of Alcohol, Tobacco, and Firearms of the United
25 States Treasury Department.
26 d. Local law enforcement agencies."

27 Section 17. G.S. 105-266(c)(1) reads as rewritten:

28 "(c) Statute of Limitations. – The period in which a refund must be demanded or
29 discovered under this section is determined as follows:

30 (1) General Rule. – No overpayment shall be refunded, whether upon
31 discovery or receipt of written demand, if the discovery is not made
32 or the demand is not received within three years after the date set by
33 the statute for the filing of the return or within six months after the
34 payment of the tax alleged to be an overpayment, whichever is later.
35 An agreement by a taxpayer to extend the time in which the
36 Department can assess the taxpayer for an underpayment
37 automatically extends the time in which the taxpayer can request a
38 refund."

39 Section 18. G.S. 105-449.87(a)(1) reads as rewritten:

40 "(a) Tax. – An excise tax at the motor fuel rate is imposed on the following:

41 (1) Dyed diesel fuel that is used to operate a highway vehicle for a use
42 that is not a nontaxable use under § 4082(b) of the Code. The tax

1 does not apply, however, to dyed diesel fuel that is used to operate
2 special mobile equipment."

3 Section 19. G.S. 105-449.106 reads as rewritten:

4 **"§ 105-449.106. Quarterly refunds for certain local governmental entities, nonprofit**
5 **organizations, ~~and taxicabs.~~ taxicabs, and special mobile equipment.**

6 (a) Government and Nonprofits. – A local governmental entity or a nonprofit
7 organization listed below that purchases and uses motor fuel may receive a quarterly
8 refund, for the excise tax paid during the preceding quarter, at a rate equal to the amount
9 of the flat cents-per-gallon rate plus the variable cents-per-gallon rate in effect during the
10 quarter for which the refund is claimed, less one cent (1¢) per gallon. ~~Any of the following~~
11 ~~entities may receive a refund under this section:~~

12 (1) ~~A county or a municipal corporation.~~

13 (2) ~~A private, nonprofit organization that transports passengers under~~
14 ~~contract with or at the express designation of a unit of local government.~~

15 (3) ~~A volunteer fire department.~~

16 (4) ~~A volunteer rescue squad.~~

17 (5) ~~A sheltered workshop recognized by the Department of Health and~~
18 ~~Human Services.~~

19 An application for a refund allowed under this ~~section~~ subsection must be made in
20 accordance with this Part and must be signed by the chief executive officer of the entity.
21 The chief executive officer of a nonprofit organization is the president of the organization
22 or another officer of the organization designated in the charter or bylaws of the
23 organization.

24 Any of the following entities may receive a refund under this subsection:

25 (1) A county or a municipal corporation.

26 (2) A private, nonprofit organization that transports passengers under
27 contract with or at the express designation of a unit of local government.

28 (3) A volunteer fire department.

29 (4) A volunteer rescue squad.

30 (5) A sheltered workshop recognized by the Department of Health and
31 Human Services.

32 (b) Taxi. – A person who purchases and uses motor fuel in a taxicab, as defined in
33 G.S. 20-87(1), while the taxicab is engaged in transporting passengers for hire, or in a bus
34 operated as part of a city transit system that is exempt from regulation by the North
35 Carolina Utilities Commission under G.S. 62-260(a)(8), may receive a quarterly refund,
36 for the excise tax paid during the preceding quarter, at a rate equal to the flat cents-per-
37 gallon rate plus the variable cents-per-gallon rate in effect during the quarter for which
38 the refund is claimed, less one cent (1¢) per gallon. An application for a refund must be
39 made in accordance with this Part.

40 (c) Special Mobile Equipment. – A person who purchases and uses motor fuel to
41 operate special mobile equipment off-highway may receive a quarterly refund, for the
42 excise tax paid during the preceding quarter, at a rate equal to the flat cents-per-gallon
43 rate plus the variable cents-per-gallon rate in effect during the quarter for which the

1 refund is claimed, less the amount of sales and use tax due on the fuel under this Chapter,
2 as determined in accordance with G.S. 105-449.107(c). An application for a refund must
3 be made in accordance with this Part."

4 Section 20. G.S. 105-449.116 is repealed.

5 Section 21. G.S. 20-50(a) reads as rewritten:

6 "(a) ~~Except as otherwise provided in this Article, every owner of a~~ A vehicle intended to
7 be operated upon any highway of this State must be registered with the Division in
8 accordance with G.S. 20-52, and the owner of the vehicle must comply with G.S. 20-52
9 before operating the vehicle. A vehicle that is leased to an individual who is a resident of
10 this State is a vehicle intended to be operated upon a highway of this State, and required
11 by this Article to be registered shall, before the same is so operated, apply to the Division for and
12 obtain the registration thereof, the registration plates therefor and a certificate of title therefor,
13 and attach the registration plates to the vehicle, except when an owner is permitted to operate a
14 vehicle under the registration provisions relating to manufacturers, dealers and nonresidents
15 contained in G.S. 20-79, or under temporary registration plates as provided in this Article:
16 Provided that the

17 The Commissioner of Motor Vehicles or his ~~the Commissioner's~~ duly authorized
18 agent is empowered to grant a special one-way trip permit to move a vehicle without
19 license upon good cause being shown. It is further provided that when When the owner of a
20 vehicle leases ~~such the~~ the vehicle to a carrier of passengers or property and ~~it the~~ the vehicle is
21 actually used by ~~such the~~ the carrier in the operation of its business, the ~~registration license~~
22 plates may be obtained by the lessee, upon written consent of the owner, after the
23 certificate of title has been obtained by the owner. ~~Provided further that when~~ When the
24 owner of a vehicle leases ~~such the~~ the vehicle to a farmer and ~~it the~~ the vehicle is actually used by
25 ~~such the~~ the farmer in the operation of ~~his a~~ a farm, the ~~registration license~~
26 plates may be obtained by the farmer at the applicable farmer rate, upon written consent of the owner,
27 after the certificate of title has been obtained by the owner. The lessee shall make
28 application on an appropriate form furnished by the Division and file such evidence of
29 the lease as the Division may require."

30 Section 22. G.S. 20-87(10) reads as rewritten:

31 "(10) Special Mobile Equipment. – The fee for special mobile equipment for
32 the license year or any part of the license year is ~~the same as two times~~
33 the fee in subdivision (5) for a private passenger motor vehicle of not
34 more than 15 passengers."

35 Section 23. G.S. 20-116(a) reads as rewritten:

36 "(a) The total outside width of any vehicle or the load thereon shall not exceed 96
37 inches, except as otherwise provided in this ~~section. Provided that when~~ section. When
38 hogsheads of tobacco are being transported, a tolerance of six inches shall be allowed and
39 that when is allowed. When sheet or bale tobacco is being transported the load does must
40 not exceed a width of 114 inches at the top of the load and the bottom of the load at the
41 truck bed does must not exceed the width of 102 inches inclusive of allowance for load
42 shifting or settling. Provided, further, that vehicles Vehicles (other than passenger buses)
43 which that do not exceed the overall width of 102 inches and otherwise provided in this

1 section may be operated in accordance with G.S. 20-115.1(c), (f), and (g). Special
2 mobile equipment is allowed a total outside width of 102 inches."

3 Section 24. G.S. 20-140.5 reads as rewritten:

4 **"§ 20-140.5. Special mobile equipment may tow certain vehicles.**

5 Special mobile equipment may ~~tow any of the following vehicles:~~ not tow any vehicle
6 other than the following:

7 (1) A single passenger vehicle that can carry no more than nine ~~passengers~~
8 ~~and is not loaded, in whole or in part, with passengers or property.~~ passengers
9 and is carrying no passengers.

10 (2) A single property-hauling vehicle that has a registered weight of 5,000
11 pounds or ~~less and is not loaded, in whole or in part, with passengers or~~
12 ~~property.~~ less, is carrying no passengers, and does not exceed its
13 registered weight.

14 ~~Special mobile equipment may not tow a vehicle that is not listed in this section."~~

15 Section 25. G.S. 110-129.2(g) reads as rewritten:

16 "(g) Other Uses of Directory Information. – ~~The Employment Security Commission~~
17 following agencies may access information entered into the Directory from employer
18 reports for the ~~purpose~~ purposes stated:

19 (1) The Employment Security Commission for the purpose of administering
20 employment security programs.

21 (2) The North Carolina Industrial Commission ~~may access information~~
22 ~~entered into the Directory from employer reports~~ for the purpose of
23 administering workers' compensation programs.

24 (3) The Department of Revenue for the purpose of administering the taxes it
25 has a duty to collect under Chapter 105 of the General Statutes."

26 Section 26. This act does not affect the rights or liabilities of the State, a
27 taxpayer, or another person arising under a statute amended or repealed by this act before
28 the effective date of its amendment or repeal; nor does it affect the right to any refund or
29 credit of a tax that accrued under the amended or repealed statute before the effective
30 date of its amendment or repeal.

31 Section 27. Sections 1 and 22 of this act become effective January 1, 2000.
32 Section 2 of this act becomes effective July 1, 1999. Sections 4 through 10, 12 through
33 15, and 18 of this act become effective October 1, 1999; Sections 13 through 15 apply to
34 penalties assessed on or after that date. The remainder of this act is effective when it
35 becomes law; Section 19 applies to taxes paid on or after January 1, 1999.