

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1989

H

1

HOUSE BILL 272

Short Title: Fair Share Tax Act.

(Public)

Sponsors: Representative Miller; and Wood.

Referred to: Finance.

February 20, 1989

A BILL TO BE ENTITLED

AN ACT TO CREATE A TAX AMNESTY PROGRAM AND IMPROVE STATE TAX ENFORCEMENT AND COMPLIANCE TO ASSURE FAIRNESS IN THE COLLECTION OF TAXES FROM ALL TAXPAYERS.

Whereas, over ninety-five percent (95%) of State taxes are collected under our voluntary compliance system; and

Whereas, uncollected taxes are needed to fund improvements in the quality of education demanded by citizens and the business community; and

Whereas, recent federal legislative and judicial mandates will impose a major burden on the current tax structure; and

Whereas, uncollected taxes undermine the fairness of the overall tax system; and

Whereas, the State's voluntary tax compliance system can be enhanced by a modernization package that includes a tax amnesty program, increased penalties for tax evasion, and additional enforcement and compliance resources; Now, therefore,

The General Assembly of North Carolina enacts:

PART I: AMNESTY PROGRAM

Section 1. This act shall be known as the "Fair Share Tax Act of 1989."

Sec. 2. Amnesty program established; scope. The Department of Revenue shall administer a tax amnesty program to be conducted during the period September 15, 1989, through December 17, 1989. During the tax amnesty period, the Department of Revenue may not initiate a criminal prosecution for failure to report or pay taxes within the scope of the Program and shall waive all penalties assessed for such failure when the taxes, plus any interest due, are paid in full.

1 The taxes within the scope of the tax amnesty program are:

- 2 (1) Inheritance taxes levied under Article 1 of Chapter 105 of
3 the General Statutes;
- 4 (2) License taxes levied under Articles 2, 2A, 2B, and 2C of Chapter 105
5 of the General Statutes;
- 6 (3) Franchise taxes levied under Article 3 of Chapter 105 of the General
7 Statutes;
- 8 (4) Income taxes levied under Articles 4, 4A, 4B, and 4C of Chapter 105
9 of the General Statutes;
- 10 (5) Sales and use taxes levied under Articles 5, 39, 40, 41, and 42 of
11 Chapter 105 of the General Statutes, and under Chapter 1096 of the
12 1967 Session Laws;
- 13 (6) Gift taxes levied under Article 6 of Chapter 105 of the General
14 Statutes;
- 15 (7) Intangibles taxes levied under Article 7 of Chapter 105 of the General
16 Statutes; and
- 17 (8) Motor fuels taxes levied under Articles 36, 36A, and 36B of Chapter
18 105 of the General Statutes.

19 The program shall apply to inheritance tax liabilities, license tax liabilities,
20 gift tax liabilities, withholding tax liabilities, sales and use tax liabilities, and motor
21 fuels tax liabilities for taxable periods ending on or before December 31, 1988, and to
22 income tax liabilities, franchise tax liabilities, and intangibles tax liabilities for taxable
23 periods ending on or before December 31, 1987. The program does not apply to any
24 matter that is the subject of a pending court proceeding.

25 Sec. 3. Effect of payment under program. A taxpayer who pays unreported,
26 underreported, or assessed but unpaid taxes as part of the program is not subject to
27 criminal prosecution for not reporting, underreporting, or not paying the taxes, but must
28 pay the interest due on the taxes at the rate established under G.S. 105-241.1(i).

29 Sec. 4. Requirements for participation. To be eligible to participate in the
30 program, a taxpayer shall:

- 31 (1) File an application to participate before the end of the amnesty period;
- 32 (2) File a return for all reporting periods for which the taxpayer has not
33 previously filed a return but was required to file a return;
- 34 (3) File an amended tax return for all reporting periods for which the
35 taxpayer underreported tax liability; and
- 36 (4) Pay the taxpayer's previously assessed taxes or unreported or
37 underreported taxes for all reporting periods in full plus any interest
38 due on the taxes by November 18, 1989.

39 Sec. 5. Administration. The Secretary of Revenue shall issue forms and
40 instructions to implement the amnesty program and shall publicize the tax amnesty
41 period to maximize public awareness of and participation in the program.

42 Sec. 6. Funds. To pay for the amnesty program provided in Part I of this act,
43 the Secretary of Revenue may draw up to one million one hundred thousand dollars

1 (\$1,100,000) from collections received by the Department during July 1989 under
2 Division II of Article 4 of Chapter 105 of the General Statutes.

3 **PART II: INCREASED PENALTIES**

4 Sec. 7. G.S. 105-236(7) reads as rewritten:

5 "(7) Attempt to Evade or Defeat Tax. – Any person who willfully attempts, or any
6 person who aids or abets any person to attempt in any manner to evade or defeat any tax
7 imposed by this Subchapter of the General Statutes, or the payment thereof, shall, in
8 addition to other penalties provided by law, be guilty of a ~~misdemeanor~~. Class I felony
9 punishable by imprisonment up to five years, a fine up to twenty-five thousand dollars
10 (\$25,000), or both."

11 Sec. 8. G.S. 105-236(8) reads as rewritten:

12 "(8) Willful Failure to Collect, Withhold, or Pay Over Tax. – Any person required
13 under this Subchapter to collect, withhold, account for, and pay over any tax imposed
14 by this Subchapter who willfully fails to collect or truthfully account for and pay over
15 such tax shall, in addition to other penalties provided by law, be guilty of a ~~misdemeanor~~
16 ~~and shall be punished by a fine not to exceed one thousand dollars (\$1,000), or by~~
17 ~~imprisonment not to exceed two years, or by both such fine and imprisonment. misdemeanor.~~
18 Notwithstanding any other provision of law, no prosecution for a violation brought
19 under this subdivision shall be barred before the expiration of three years after the date
20 of the violation."

21 Sec. 9. G.S. 105-236(9) reads as rewritten:

22 "(9) Willful Failure to File Return, Supply Information, or Pay Tax. – Any person
23 required under this Subchapter to pay any tax, to make a return, to keep any records, or
24 to supply any information, who willfully fails to pay such tax, make such return, keep
25 such records, or supply such information, at the time or times required by law, or
26 regulations issued pursuant thereto, shall, in addition to other penalties provided by law,
27 be guilty of a misdemeanor. Notwithstanding any other provision of law, no
28 prosecution for a violation brought under this subdivision shall be barred before the
29 expiration of three years after the date of the violation."

30 Sec. 10. G.S. 105-236(9a) reads as rewritten:

31 "(9a) Aid or Assistance. – Any person, pursuant to or in connection with the
32 revenue laws, who willfully aids, assists in, procures, counsels, or advises the
33 preparation, presentation, or filing of a return, affidavit, claim, or any other document
34 that he knows is fraudulent or false as to any material matter, whether or not the falsity
35 or fraud is with the knowledge or consent of the person authorized or required to present
36 or file the return, affidavit, claim, or other document, shall be guilty of a ~~misdemeanor~~.
37 Class J felony punishable by imprisonment up to three years, a fine up to ten thousand
38 dollars (\$10,000), or both."

39 **PART III: ENFORCEMENT/COMPLIANCE FUNDS**

40 Sec. 11. There is appropriated from the General Fund to the Department of
41 Revenue the sum of five million six hundred fifty-six thousand two hundred forty-five
42 dollars (\$5,656,245) for the 1989-90 fiscal year and the sum of four million eight
43 hundred seventeen thousand sixty-three dollars (\$4,817,063) for the 1990-91 fiscal year
44 to be allocated as follows:

- 1 (1) The sum of one million six hundred sixty-seven thousand six hundred
2 ninety-five dollars (\$1,667,695) for the 1989-90 fiscal year and the
3 sum of one million seven hundred sixty-seven thousand eight hundred
4 thirty-eight dollars (\$1,767,838) for the 1990-91 fiscal year shall be
5 used for salaries and related costs for additional field auditors and
6 other enforcement personnel in the Field Services Division.
- 7 (2) The sum of five hundred eighty-seven thousand five hundred dollars
8 (\$587,500) for the 1989-90 fiscal year shall be used for improved
9 telecommunications and computer equipment for the Field Services
10 Division.
- 11 (3) The sum of one million two hundred eighty-one thousand three
12 hundred thirty-nine dollars (\$1,281,339) for the 1989-90 fiscal year
13 and the sum of one million six hundred seventy-eight thousand three
14 hundred twenty-six dollars (\$1,678,326) for the 1990-91 fiscal year
15 shall be used for salaries and related costs for additional auditors and
16 other enforcement personnel in the Individual Income Tax Division.
- 17 (4) The sum of five hundred eight thousand six hundred fourteen dollars
18 (\$508,614) for the 1989-90 fiscal year and the sum of seventy-six
19 thousand three dollars (\$76,003) for the 1990-91 fiscal year shall be
20 used for data processing equipment and temporary personnel in the
21 Accounting Division.
- 22 (5) The sum of four hundred thirty-one thousand four hundred nineteen
23 dollars (\$431,419) for the 1989-90 fiscal year and the sum of four
24 hundred one thousand nine hundred seventy dollars (\$401,970) for the
25 1990-91 fiscal year shall be used for salaries and related costs for
26 additional auditors and support personnel for the Sales and Use Tax
27 Division.
- 28 (6) The sum of four hundred fifteen thousand sixty-nine dollars
29 (\$415,069) for the 1989-90 fiscal year and the sum of three hundred
30 ninety-nine thousand two hundred thirty-six dollars (\$399,236) for the
31 1990-91 fiscal year shall be used for salaries and related costs for
32 additional audit and clerical personnel for the Corporate Income and
33 Franchise Tax Division.
- 34 (7) The sum of one hundred fifty-four thousand two hundred fifty-seven
35 dollars (\$154,257) for the 1989-90 fiscal year and the sum of one
36 hundred forty-one thousand six hundred ninety dollars (\$141,690) for
37 the 1990-91 fiscal year shall be used for salaries and related costs for
38 additional enforcement personnel for the Motor Fuels Tax Division.
- 39 (8) The sum of six hundred ten thousand three hundred fifty-two dollars
40 (\$610,352) for the 1989-90 fiscal year and the sum of three hundred
41 fifty-two thousand dollars (\$352,000) for the 1990-91 fiscal year shall
42 be used for leased space and other miscellaneous costs for new
43 personnel in all Divisions.

PART IV: EFFECTIVE DATES

1 Sec. 12. Section 11 of this act shall become effective July 1, 1989; Sections 7
2 through 10 shall become effective November 18, 1989, and shall apply to violations
3 occurring on or after that date; the remainder of this act is effective upon ratification.