

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S

1

SENATE BILL 1112

Short Title: No Sales Tax Fee/Other Changes.

(Public)

---

Sponsors: Senator Kerr.

---

Referred to: Finance.

---

April 15, 1999

A BILL TO BE ENTITLED

AN ACT TO PROMOTE ELECTRONIC COMMERCE BY REPEALING THE SALES  
TAX REGISTRATION FEE AND TO MAKE OTHER CHANGES TO THE TAX  
LAWS AND RELATED STATUTES.

The General Assembly of North Carolina enacts:

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

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

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

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

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

(a) Every person, firm, or corporation engaged in or soliciting any of the following businesses, and maintaining a place of business for conducting the business, must pay for the privilege of engaging in that business an annual tax of seven hundred 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 is amended by adding a new subdivision to read:

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

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

25 "(13b) ~~Prescription drugs distributed free of charge by the manufacturer,~~  
26 drugs, including the constituent elements and ingredients used to  
27 produce the drugs, the packaging materials, and any instructions or  
28 information about the product included in the package with the  
29 drugs."

30 Section 6. G.S. 20-50(a) reads as rewritten:

31 "(a) ~~Except as otherwise provided in this Article, every owner of a~~ A vehicle intended to  
32 be operated upon any highway of this State must be registered with the Division in  
33 accordance with G.S. 20-52 and the owner of the vehicle must comply with G.S. 20-52  
34 before operating the vehicle. A vehicle that is leased to an individual who is a resident of  
35 this State is a vehicle intended to be operated upon a highway of this State. and required  
36 by this Article to be registered shall, before the same is so operated, apply to the Division for and  
37 obtain the registration thereof, the registration plates therefor and a certificate of title therefor,  
38 and attach the registration plates to the vehicle, except when an owner is permitted to operate a  
39 vehicle under the registration provisions relating to manufacturers, dealers and nonresidents  
40 contained in G.S. 20-79, or under temporary registration plates as provided in this Article:  
41 Provided that the

42 The Commissioner of Motor Vehicles or his the Commissioner's duly authorized  
43 agent is empowered to grant a special one-way trip permit to move a vehicle without

1 license upon good cause being shown. ~~It is further provided that when~~ When the owner of a  
2 vehicle leases ~~such the~~ vehicle to a carrier of passengers or property and ~~it the~~ vehicle is  
3 actually used by ~~such the~~ carrier in the operation of its business, the ~~registration license~~  
4 plates may be obtained by the lessee, upon written consent of the owner, after the  
5 certificate of title has been obtained by the owner. ~~Provided further that when~~ When the  
6 owner of a vehicle leases ~~such the~~ vehicle to a farmer and ~~it the~~ vehicle is actually used by  
7 ~~such the~~ farmer in the operation of ~~his a~~ farm, the ~~registration license~~ plates may be  
8 obtained by the farmer at the applicable farmer rate, upon written consent of the owner,  
9 after the certificate of title has been obtained by the owner. The lessee shall make  
10 application on an appropriate form furnished by the Division and file such evidence of  
11 the lease as the Division may require."

12 Section 7. G.S. 105-449.87(a)(1) reads as rewritten:

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

- 14 (1) Dyed diesel fuel that is used to operate a highway vehicle for a use  
15 that is not a nontaxable use under § 4082(b) of the Code. The tax  
16 does not apply, however, to dyed diesel fuel that is used to operate  
17 special mobile equipment."

18 Section 8. G.S. 105-449.106 reads as rewritten:

19 "**§ 105-449.106. Quarterly refunds for certain local governmental entities, nonprofit**  
20 **organizations, ~~and taxicabs.~~ taxicabs, and special mobile equipment.**

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

- 27 (1) ~~A county or a municipal corporation.~~  
28 (2) ~~A private, nonprofit organization that transports passengers under~~  
29 ~~contract with or at the express designation of a unit of local government.~~  
30 (3) ~~A volunteer fire department.~~  
31 (4) ~~A volunteer rescue squad.~~  
32 (5) ~~A sheltered workshop recognized by the Department of Health and~~  
33 ~~Human Services.~~

34 An application for a refund allowed under this ~~section~~ subsection must be made in  
35 accordance with this Part and must be signed by the chief executive officer of the entity.  
36 The chief executive officer of a nonprofit organization is the president of the organization  
37 or another officer of the organization designated in the charter or bylaws of the  
38 organization.

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

- 40 (1) A county or a municipal corporation.  
41 (2) A private, nonprofit organization that transports passengers under  
42 contract with or at the express designation of a unit of local government.  
43 (3) A volunteer fire department.

1           (4) A volunteer rescue squad.

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

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

12           (c) Special Mobile Equipment. – A person who purchases and uses motor fuel to  
13 operate special mobile equipment off-highway may receive a quarterly refund, for the  
14 excise tax paid during the preceding quarter, at a rate equal to the flat cents-per-gallon  
15 rate plus the variable cents-per-gallon rate in effect during the quarter for which the  
16 refund is claimed, less the amount of sales and use tax due on the fuel under this chapter  
17 as determined in accordance with G.S. 105-449.107(c). An application for a refund must  
18 be made in accordance with this Part."

19           Section 9. G.S. 20-140.5 reads as rewritten:

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

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

23           (1) A single passenger vehicle that can carry no more than nine passengers  
24 and is not loaded, in whole or in part, with passengers or property.  
25 passengers, is carrying no passengers, and is carrying no more than its  
26 registered weight in property.

27           (2) A single property-hauling vehicle that has a registered weight of 5,000  
28 pounds or less and is not loaded, in whole or in part, with passengers or  
29 property. less, is carrying no passengers, and is carrying no more than its  
30 registered weight in property.

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

32           Section 10. G.S. 20-116(a) reads as rewritten:

33           "(a) The total outside width of any vehicle or the load thereon shall not exceed 96  
34 inches, except as otherwise provided in this section: ~~Provided that when~~ section. When  
35 hogsheads of tobacco are being transported, a tolerance of six inches shall be allowed and  
36 that when is allowed. When sheet or bale tobacco is being transported the load does must  
37 not exceed a width of 114 inches at the top of the load and the bottom of the load at the  
38 truck bed does must not exceed the width of 102 inches inclusive of allowance for load  
39 shifting or settling. Provided, further, that vehicles Vehicles (other than passenger buses)  
40 which that do not exceed the overall width of 102 inches and otherwise provided in this  
41 section may be operated in accordance with G.S. 20-115.1(c), (f), and (g). Special  
42 mobile equipment is allowed a total outside width of 102 inches."

43           Section 11. G.S. 105-449.116 reads as rewritten:

1 ~~"§ 105-449.116. Import confirmation number required for some imported motor~~  
2 ~~fuel.~~

3 (a) Requirement.— A bonded importer or an occasional importer that acquires  
4 motor fuel for import by transport truck from a supplier that is not an elective supplier or  
5 a permissive supplier, and therefore will not be acting as trustee for the remittance of tax  
6 to the State on behalf of the importer, must obtain an import confirmation number from  
7 the Secretary before importing the motor fuel. The importer must write the import  
8 confirmation number on the shipping document issued for the fuel. The importer must  
9 obtain a separate import confirmation number for each transport truck delivery of motor  
10 fuel into this State.

11 (b) Penalty.— An importer that does not obtain an import confirmation number  
12 when required by this section is liable for a civil penalty. The civil penalty is payable to  
13 the Department of Transportation, Division of Motor Vehicles, or the Department of  
14 Revenue and is payable by the person in whose name the transport truck is registered.  
15 The amount of the penalty depends on whether the person against whom the penalty is  
16 assessed has previously been assessed a penalty under this subsection. For a first  
17 assessment under this subsection, the penalty is the same as the amount for a first  
18 assessment under G.S. 105-449.115(f). For a second or subsequent assessment under this  
19 subsection, the penalty is the same as the amount for a second or subsequent assessment  
20 under G.S. 105-449.115(f). A penalty imposed under this subsection is in addition to any  
21 motor fuel tax assessed."

22 Section 12. G.S. 105-122(d) reads as rewritten:

23 "(d) After determining the proportion of its total capital stock, surplus and  
24 undivided profits as set out in subsection (c) of this section, which amount so determined  
25 shall in no case be less than fifty-five percent (55%) of the appraised value as determined for  
26 ad valorem taxation of all the real and tangible personal property in this State of each such  
27 corporation plus the total appraised value of intangible property returned for taxation of  
28 intangible personal property as herein specified nor less than its total actual investment in  
29 tangible property in this State, every corporation taxed under this section shall annually  
30 pay to the Secretary of Revenue, at the time the report and statement are due, a franchise  
31 or privilege tax, which is hereby levied at the rate of one dollar and fifty cents (\$1.50) per  
32 one thousand dollars (\$1,000) of the total amount of capital stock, surplus and undivided  
33 profits as herein provided. The tax imposed in this section shall in no case be less than  
34 thirty-five dollars (\$35.00) and shall be for the privilege of carrying on, doing business,  
35 and/or the continuance of articles of incorporation or domestication of each such  
36 corporation in this State. Appraised value of tangible property including real estate shall be the  
37 ad valorem valuation for the calendar year next preceding the due date of the franchise tax  
38 return. Appraised value of intangible property shall be the total gross valuation required to be  
39 reported for intangible tax purposes on April 15 coincident with or next preceding the due date of  
40 the franchise tax return. The term 'total actual investment in tangible property' as used in  
41 this section shall be construed to mean the total original purchase price or consideration  
42 to the reporting taxpayer of its tangible properties, including real estate, in this State plus  
43 additions and improvements thereto less reserve for depreciation as permitted for income

1 tax purposes, and also less any indebtedness incurred and existing by virtue of the purchase of  
2 any real estate and any permanent improvements made thereon. purposes. In computing 'total  
3 actual investment in tangible personal property' there shall also be deducted reserves for  
4 the entire cost of any air-cleaning device or sewage or waste treatment plant, including  
5 waste lagoons, and pollution abatement equipment purchased or constructed and installed  
6 which reduces the amount of air or water pollution resulting from the emission of air  
7 contaminants or the discharge of sewage and industrial wastes or other polluting  
8 materials or substances into the outdoor atmosphere or into streams, lakes, or rivers, upon  
9 condition that the corporation claiming such deduction shall furnish to the Secretary a  
10 certificate from the Department of Environment and Natural Resources or from a local air  
11 pollution control program for air-cleaning devices located in an area where the  
12 Environmental Management Commission has certified a local air pollution control  
13 program pursuant to G.S. 143-215.112 certifying that said Department or local air  
14 pollution control program has found as a fact that the air-cleaning device, waste treatment  
15 plant or pollution abatement equipment purchased or constructed and installed as above  
16 described has actually been constructed and installed and that such device, plant or  
17 equipment complies with the requirements of the Environmental Management  
18 Commission or local air pollution control program with respect to such devices, plants or  
19 equipment, that such device, plant or equipment is being effectively operated in  
20 accordance with the terms and conditions set forth in the permit, certificate of approval,  
21 or other document of approval issued by the Environmental Management Commission or  
22 local air pollution control program and that the primary purpose thereof is to reduce air or  
23 water pollution resulting from the emission of air contaminants or the discharge of  
24 sewage and waste and not merely incidental to other purposes and functions. The cost of  
25 constructing facilities of any private or public utility built for the purpose of providing  
26 sewer service to residential and outlying areas shall be treated as deductible for the  
27 purposes of this section; the deductible liability allowed by this section shall apply only  
28 with respect to such pollution abatement plants or equipment constructed or installed on  
29 or after January 1, 1955."

30 Section 13. Section 1 of this act becomes effective January 1, 2000. Sections  
31 2 through 4, 7, and 9 through 11 of this act become effective July 1, 1999. Section 5 of  
32 this act becomes effective October 1, 1999. Section 8 of this act is effective when it  
33 becomes law and applies to taxes paid on or after January 1, 1999. Section 12 of this act  
34 becomes effective for taxable years beginning on or after January 1, 2000. The  
35 remainder of this act is effective when it becomes law.