

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

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SENATE BILL 1112

Finance Committee Substitute Adopted 6/14/99

House Committee Substitute Favorable 6/29/99

Short Title: No Sales Tax Fee/Other Changes.

(Public)

Sponsors:

Referred to:

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.~~ agencies.

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

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

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

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

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

42 (c) At the time of making any such loan, the person, or officer of the firm or
43 corporation making the ~~same, loan,~~ shall give to the borrower in writing in convenient

1 form a statement showing the amount received by the borrower, the amount to be paid
2 back by the borrower, ~~and the time in which said the~~ amount is to be paid, and the rate of
3 interest and discount agreed upon.

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

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

12 Section 3. G.S. 105-159.1(d) reads as rewritten:

13 "(d) Return. – The Secretary shall amend the first page of the income tax return in
14 order that all taxpayers desiring must give an individual the opportunity to make the
15 political contributions contribution authorized in this section may do so by designating on the
16 front face of the tax return. The line of authorization for the designation shall be color contrasted
17 with the color scheme of the remainder of the income tax return section. The return or its
18 accompanying explanatory instruction shall instructions must readily indicate that any
19 designations neither increase nor decrease a contribution neither increases nor decreases an
20 individual's tax liability."

21 Section 4. G.S. 105-164.3(25) reads as rewritten:

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

- 25 a. A business entity that provides local, toll, or private
26 telecommunications service as defined by G.S. 105-120(e), or a
27 105-120(e).
28 b. A business entity or a municipality that sells electric power, other
29 than a municipality whose only wholesale supplier of electric
30 power is a federal agency and who is required by a contract with
31 that federal agency to make payments in lieu of taxes. power."

32 Section 5. G.S. 105-164.13(12) reads as rewritten:

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

- 34 a. Therapeutic, prosthetic, or artificial devices, such as pulmonary
35 respirators or medical beds, that are designed for individual
36 personal use to correct or alleviate physical illness, disease, or
37 incapacity and that are sold on the written prescription of a
38 physician, dentist, or other professional person licensed to
39 prescribe, and crutches, prescribe.
40 b. Crutches, artificial limbs, artificial eyes, hearing aids, false teeth,
41 eyeglasses ground on prescription of a physician or an
42 optometrist, and orthopedic optometrist.

1 c. Orthopedic appliances designed to be worn by the purchaser or
2 user.

3 d. Durable medical equipment and related medical supplies that are
4 covered under the Medicare or Medicaid program and are sold on
5 either a certificate of medical necessity or a written prescription
6 of a physician, dentist, or other professional person licensed to
7 prescribe. This exemption applies whether or not the item is
8 purchased by a Medicare or Medicaid beneficiary."

9 Section 6. G.S. 105-164.13(13) reads as rewritten:

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

14 a. Prescription drugs.

15 b. ~~Medicines—~~Nonprescription drugs sold on prescription of
16 physicians, dentists, or veterinarians; ~~insulin whether or not sold on~~
17 ~~prescription—~~veterinarians.

18 c. Insulin."

19 Section 7. G.S. 105-164.13(13b) is repealed.

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

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

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

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

29 Section 9. G.S. 105-164.13(35) reads as rewritten:

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

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

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

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

43 Section 10. G.S. 105-164.13(39) is repealed.

1 Section 11. G.S. 105-164.13(42) reads as rewritten:

2 "(42) Tangible personal property that is purchased by a retailer for resale
3 or is manufactured or purchased by a wholesale merchant for resale
4 and then withdrawn from inventory and donated by the retailer or
5 wholesale merchant to either a governmental entity or a nonprofit
6 organization, contributions to which are deductible as charitable
7 contributions for federal income tax purposes."

8 Section 12. G.S. 105-164.13 is amended by adding a new subdivision to read:

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

12 Section 13. G.S. 105-164.13A reads as rewritten:

13 **"§ 105-164.13A. Service charges on food, beverages, or meals.**

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

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

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

23 Section 14. G.S. 105-164.14(c)(16) reads as rewritten:

24 "(16) A local airport authority that was created pursuant to a local act of
25 the General Assembly and has at least one of the following
26 characteristics:

- 27 a. ~~It has all of the rights of a municipality.~~
28 b. ~~A local act of the General Assembly declares it to be a~~
29 ~~municipality.~~
30 c. ~~A local act of the General Assembly specifically authorizes it to~~
31 ~~receive a refund under this section.~~ Assembly."

32 Section 15. G.S. 105-236(1) reads as rewritten:

33 "(1) Penalty for Bad Checks. – When the bank upon which any
34 uncertified check tendered to the Department of Revenue in payment
35 of any obligation due to the Department returns the check because of
36 insufficient funds or the nonexistence of an account of the drawer,
37 the Secretary shall assess a penalty equal to ten percent (10%) of the
38 check, subject to a minimum of one dollar (\$1.00) and a maximum
39 of one thousand dollars (\$1,000). This penalty does not apply if the
40 Secretary finds that, when the check was presented for payment, the
41 drawer of the check had sufficient funds in an account at a financial
42 institution in this State to pay the check and, by inadvertence, the
43 drawer of the check failed to draw the check on the account that had

1 sufficient funds. ~~The penalty imposed may not be waived or diminished~~
2 ~~by the Secretary."~~

3 Section 16. G.S. 105-236(5) reads as rewritten:

4 "(5) Negligence. –

- 5 a. Finding of negligence. – For negligent failure to comply with any
6 of the provisions to which this Article applies, or rules issued
7 pursuant thereto, without intent to defraud, the Secretary shall
8 assess a penalty equal to ten percent (10%) of the deficiency due
9 to the negligence.
- 10 b. Large individual income tax deficiency. – In the case of
11 individual income tax, if a taxpayer understates taxable income,
12 by any means, by an amount equal to twenty-five percent (25%)
13 or more of gross income, the Secretary shall assess a penalty
14 equal to twenty-five percent (25%) of the deficiency. For
15 purposes of this subdivision, "gross income" means gross income
16 as defined in section 61 of the Code.
- 17 c. Other large tax deficiency. – In the case of a tax other than
18 individual income tax, if a taxpayer understates tax liability by
19 twenty-five percent (25%) or more, the Secretary shall assess a
20 penalty equal to twenty-five percent (25%) of the deficiency.
- 21 d. No double penalty. – If a penalty is assessed under subdivision
22 (6) of this section, no additional penalty for negligence shall be
23 assessed with respect to the same deficiency.
- 24 e. Inheritance and gift tax deficiencies. – This subdivision does not
25 apply to inheritance, estate, and gift tax deficiencies that are the
26 result of valuation understatements."

27 Section 17. G.S. 105-237(a) reads as rewritten:

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

31 Section 18. G.S. 105-259(b)(15) reads as rewritten:

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

36 ...

37 (15) To exchange information concerning a tax imposed by Articles 2A,
38 2B, 2C, or 2D of this Chapter with one of the following agencies
39 when the information is needed to fulfill a duty imposed on the
40 Department or the agency:

- 41 a. The North Carolina Alcoholic Beverage Control Commission.
42 b. The Division of Alcohol Law Enforcement of the Department of
43 Crime Control and Public Safety.

1 c. The Bureau of Alcohol, Tobacco, and Firearms of the United
2 States Treasury Department.

3 d. Local law enforcement agencies."

4 Section 19. G.S. 105-266(c)(1) reads as rewritten:

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

7 (1) General Rule. – No overpayment shall be refunded, whether upon
8 discovery or receipt of written demand, if the discovery is not made
9 or the demand is not received within three years after the date set by
10 the statute for the filing of the return or within six months after the
11 payment of the tax alleged to be an overpayment, whichever is later.
12 An agreement by a taxpayer to extend the time in which the
13 Department can assess the taxpayer for an underpayment
14 automatically extends the time in which the taxpayer can request a
15 refund."

16 Section 20. G.S. 105-449.65(a)(8) is repealed.

17 Section 21. G.S. 105-449.65(a)(9) is repealed.

18 Section 22. G.S. 105-449.87(a)(1) reads as rewritten:

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

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

24 Section 23. G.S. 105-449.97(b) reads as rewritten:

25 "(b) Administrative Discount. – A supplier that files a timely return and sends a
26 timely payment may deduct from the amount of tax payable with the return an
27 administrative discount of one-tenth of one percent (0.1%) of the amount of tax payable
28 to this State as the trustee, not to exceed eight thousand dollars (\$8,000) a month. The
29 discount covers expenses incurred in collecting taxes on motor fuel."

30 Section 24. G.S. 105-449.106 reads as rewritten:

31 "**§ 105-449.106. Quarterly refunds for certain local governmental entities, nonprofit**
32 **organizations, ~~and taxicabs.~~ taxicabs, and special mobile equipment.**

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

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

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

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

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

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

3 An application for a refund allowed under this ~~section~~ subsection must be made in
4 accordance with this Part and must be signed by the chief executive officer of the entity.
5 The chief executive officer of a nonprofit organization is the president of the organization
6 or another officer of the organization designated in the charter or bylaws of the
7 organization.

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

9 (1) A county or a municipal corporation.

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

12 (3) A volunteer fire department.

13 (4) A volunteer rescue squad.

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

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

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

31 Section 25. G.S. 105-449.116 is repealed.

32 Section 26. G.S. 20-50(a) reads as rewritten:

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

1 The Commissioner of Motor Vehicles or ~~his~~ the Commissioner's duly authorized
2 agent is empowered to grant a special one-way trip permit to move a vehicle without
3 license upon good cause being shown. ~~It is further provided that when~~ When the owner of a
4 vehicle leases ~~such the~~ vehicle to a carrier of passengers or property and ~~it the~~ vehicle is
5 actually used by ~~such the~~ carrier in the operation of its business, the ~~registration license~~
6 plates may be obtained by the lessee, upon written consent of the owner, after the
7 certificate of title has been obtained by the owner. ~~Provided further that when~~ When the
8 owner of a vehicle leases ~~such the~~ vehicle to a farmer and ~~it the~~ vehicle is actually used by
9 ~~such the~~ farmer in the operation of ~~his a~~ farm, the ~~registration license~~ plates may be
10 obtained by the farmer at the applicable farmer rate, upon written consent of the owner,
11 after the certificate of title has been obtained by the owner. The lessee shall make
12 application on an appropriate form furnished by the Division and file such evidence of
13 the lease as the Division may require."

14 Section 27. G.S. 20-87(10) reads as rewritten:

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

19 Section 28. G.S. 20-116(a) reads as rewritten:

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

30 Section 29. G.S. 20-140.5 reads as rewritten:

31 "**§ 20-140.5. Special mobile equipment may tow certain vehicles.**

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

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

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

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

42 Section 30. G.S. 110-129.2(g) reads as rewritten:

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

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

6 (2) The North Carolina Industrial Commission may access information
7 entered into the Directory from employer reports for the purpose of
8 administering workers' compensation programs.

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

11 Section 31. This act does not affect the rights or liabilities of the State, a
12 taxpayer, or another person arising under a statute amended or repealed by this act before
13 the effective date of its amendment or repeal; nor does it affect the right to any refund or
14 credit of a tax that accrued under the amended or repealed statute before the effective
15 date of its amendment or repeal.

16 Section 32. Sections 1 and 27 of this act become effective January 1, 2000.
17 Sections 2 and 14 of this act become effective July 1, 1999; Section 14 applies to
18 purchases made on or after that date. Sections 5 through 11, 13, 15 through 17, and 22 of
19 this act become effective October 1, 1999; Sections 15 through 17 apply to penalties
20 assessed on or after that date. The remainder of this act is effective when it becomes law;
21 Section 24 applies to taxes paid on or after January 1, 1999.