

**GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2001**

S

1

SENATE BILL 1440

Short Title: Temp. Revenue Increases to Protect Children. (Public)

Sponsors: Senator Kinnaird.

Referred to: Finance.

June 18, 2002

A BILL TO BE ENTITLED

1 AN ACT TO PROTECT OUR CHILDREN BY INSTITUTING TEMPORARY
2 REVENUE INCREASES BY TRANSFERRING FUNDS TO THE GENERAL
3 FUND FROM THE TOBACCO SETTLEMENT FUNDS, BY ELIMINATING
4 BILL LEE ACT CREDITS IN TIERS FOUR AND FIVE, BY REINSTATING THE
5 CORPORATE INCOME TAX TO PREVIOUS LEVELS, BY ENACTING A
6 SURTAX ON HIGHER-INCOME INDIVIDUALS, BY TRANSFERRING
7 MONEY FROM THE HIGHWAY TRUST FUND, AND BY APPLYING THE
8 SALES TAX TO CERTAIN PROFESSIONAL SERVICES.
9

10 The General Assembly of North Carolina enacts:

11
12 **PART I. TRANSFER OF TOBACCO SETTLEMENT FUNDS**

13
14 **SECTION 1.1.** Pursuant to Section 2(b) of S.L. 1999-2, all of the fifty
15 percent (50%) of the annual installment payment to the North Carolina State Specific
16 Account otherwise transferred and assigned to The Golden L.E.A.F. (Long-Term
17 Economic Advancement Foundation), Inc., during the 2002-2003 fiscal year is
18 transferred to the State Controller to be deposited in Nontax Budget Code 19978 (Intra
19 State Transfers) to support General Fund appropriations for the 2002-2003 fiscal year.
20 The Attorney General shall take all necessary actions to notify the court in the action
21 entitled State of North Carolina v. Philip Morris Incorporated, Et Al., 98 CVS 14377, in
22 the General Court of Justice, Superior Court Division, Wake County, North Carolina,
23 and the administrators of the State Specific Account established under the Master
24 Settlement Agreement of this action by the General Assembly redirecting this payment.

25 **SECTION 1.2.** This part is effective when it becomes law.

26
27 **PART II. ELIMINATE BILL LEE ACT CREDITS IN TIERS FOUR AND FIVE**

28
29 **SECTION 2.1.** G.S. 105-129.3A(c) reads as rewritten:

1 "(c) Relationship With Enterprise Tiers. – For the purpose of the wage standard
2 requirement of G.S. 105-129.4, the credit for investing in machinery and equipment
3 allowed in G.S. 105-129.9, and the credit for worker training allowed in G.S.
4 105-129.11, a development zone is considered an enterprise tier one area. For all other
5 purposes, a development zone has the lower of an enterprise tier three designation or the
6 same enterprise tier designation as the county in which it is located."

7 **SECTION 2.2.** G.S. 105-129.4 is amended by adding a new subsection to
8 read:

9 "(a3) Enterprise Tier. – Unless further restricted by another provision of this
10 Article, a taxpayer is eligible for a credit allowed under this Article only if the location
11 with respect to which the credit is claimed is in an enterprise tier one, two, or three area
12 in the year in which the business activity for which a credit is claimed occurred. If,
13 during the period the installments of a credit under this Article accrue, the enterprise tier
14 of the area changes so that the taxpayer would no longer be eligible for the credit, the
15 credit does not expire and the taxpayer may continue to take any remaining installments
16 of the credit and may continue to take the portion of an installment that accrued in a
17 previous year and was carried forward to the extent permitted under G.S. 105-129.5."

18 **SECTION 2.3.** G.S. 105-129.6(a1) reads as rewritten:

19 "(a1) Fee. – When filing a return for a taxable year in which the taxpayer engaged
20 in activity for which the taxpayer is eligible for a credit under this Article, the taxpayer
21 must pay the Department of Revenue a fee of five hundred dollars (\$500.00) for each
22 credit the taxpayer claims or intends to claim with respect to a location that is in an
23 enterprise tier ~~three, four, or five~~ three area, subject to a maximum fee of one thousand
24 five hundred dollars (\$1,500) per taxpayer per taxable year. This fee does not apply to
25 any credit the taxpayer claims or intends to claim with respect to a location that is in a
26 development zone as defined in G.S. 105-129.3A. If the taxpayer claims or intends to
27 claim a credit that relates to locations in more than one enterprise tier area, the fee is
28 based on the highest-numbered enterprise tier area.

29 The fee is due at the time the return is due for the taxable year in which the taxpayer
30 engaged in the activity for which the taxpayer is eligible for a credit. No credit is
31 allowed under this Article for a taxable year until all outstanding fees have been paid.

32 The Secretary of Revenue shall retain three-fourths of the proceeds of the fee
33 imposed in this section for the costs of administering and auditing the credits allowed in
34 this Article. The Secretary of Revenue shall credit the remaining proceeds of the fee
35 imposed in this section to the Department of Commerce for the costs of administering
36 this Article. The proceeds of the fee are receipts of the Department to which they are
37 credited."

38 **SECTION 2.4.** G.S. 105-129.8(a) reads as rewritten:

39 "(a) Credit. – A taxpayer that meets the eligibility requirements set out in G.S.
40 105-129.4, has five or more full-time employees, and hires an additional full-time
41 employee during the taxable year to fill a position located in this State is allowed a
42 credit for creating a new full-time job. The amount of the credit for each new full-time
43 job created is set out in the table below and is based on the enterprise tier of the area in

1 which the position is located. In addition, if the position is located in a development
 2 zone, the amount of the credit is increased by four thousand dollars (\$4,000) per job.

3 Area Enterprise Tier	Amount of Credit
4 Tier One	\$12,500
5 Tier Two	4,000
6 Tier Three	3,000
7 Tier Four	1,000
8 Tier Five	500

9 A position is located in an area if more than fifty percent (50%) of the employee's
 10 duties are performed in the area. The credit may not be taken in the taxable year in
 11 which the additional employee is hired. Instead, the credit must be taken in equal
 12 installments over the four years following the taxable year in which the additional
 13 employee was hired and is conditioned on the continued employment by the taxpayer of
 14 the number of full-time employees the taxpayer had upon hiring the employee that
 15 caused the taxpayer to qualify for the credit.

16 If, in one of the four years in which the installment of a credit accrues, the number of
 17 the taxpayer's full-time employees falls below the number of full-time employees the
 18 taxpayer had in the year in which the taxpayer qualified for the credit, the credit expires
 19 and the taxpayer may not take any remaining installment of the credit. The taxpayer
 20 may, however, take the portion of an installment that accrued in a previous year and was
 21 carried forward to the extent permitted under G.S. 105-129.5.

22 Jobs transferred from one area in the State to another area in the State are not
 23 considered new jobs for purposes of this section. If, in one of the four years in which the
 24 installment of a credit accrues, the position filled by the employee is moved to an area
 25 in a higher- or lower-numbered enterprise tier, or is moved from a development zone to
 26 an area that is not a development zone, the remaining installments of the credit must be
 27 calculated as if the position had been created initially in the area to which it was
 28 moved."

29 **SECTION 2.5.** G.S. 105-129.9(c) reads as rewritten:

30 "(c) Threshold. – The applicable threshold is the appropriate amount set out in the
 31 following table based on the enterprise tier where the eligible machinery and equipment
 32 are placed in service during the taxable year. If the taxpayer places eligible machinery
 33 and equipment in service at more than one establishment in an enterprise tier during the
 34 taxable year, the threshold applies separately to the eligible machinery and equipment
 35 placed in service at each establishment. If the taxpayer places eligible machinery and
 36 equipment in service at an establishment over the course of a two-year period, the
 37 applicable threshold for the second taxable year is reduced by the eligible investment
 38 amount for the previous taxable year.

39 Area Enterprise	Tier Threshold
40 Tier One	\$-0-
41 Tier Two	100,000
42 Tier Three	200,000
43 Tier Four	500,000
44 Tier Five	1,000,000"

1 **SECTION 2.6.** This part is effective for taxable years beginning on or after
2 January 1, 2003.

3
4 **PART III. INCOME TAX SURTAX ON HIGHER-INCOME INDIVIDUAL**
5 **TAXPAYERS**

6
7 **SECTION 3.1.** Part 1 of Article 4 of Chapter 105 of the General Statutes is
8 amended by adding a new section to read:

9 **"§ 105-130.3A. Surtax.**

10 In addition to the income tax imposed in G.S. 105-130.3, every taxpayer required to
11 file a return under this Part must pay an income tax surtax equal to two percent (2%) of
12 the tax payable by the taxpayer under G.S. 105-130.3 for the taxable year. This surtax is
13 due at the time prescribed for filing income tax returns under this Part."

14 **SECTION 3.2.** Part 2 of Article 4 of Chapter 105 of the General Statutes is
15 amended by adding a new section to read:

16 **"§ 105-134.2A. Surtax.**

17 In addition to the individual income tax imposed in G.S. 105-134.2, every taxpayer
18 required to file a return under this Part must pay an income tax surtax equal to two
19 percent (2%) of the tax payable by the taxpayer under G.S. 105-134.2 for the taxable
20 year. This surtax is due at the time prescribed for filing income tax returns under this
21 Part."

22 **SECTION 3.3.** This part is effective for taxable years beginning on or after
23 January 1, 2002, and expires for taxable years beginning on or after January 1, 2004.

24
25 **PART IV. TRANSFER FROM HIGHWAY TRUST FUND**

26
27 **SECTION 4.1.** There is transferred from the Highway Trust Fund to the
28 General Fund the sum of two hundred million dollars (\$200,000,000) for the 2002-2003
29 fiscal year. It is the intent of the General Assembly that funds be transferred from the
30 General Fund to the Highway Trust Fund over five years beginning with the 2005-2006
31 fiscal year in the amount of two hundred million dollars (\$200,000,000) plus interest at
32 the net rate of return generated by the State Treasurer's Short Term Investment Fund.

33 **SECTION 4.2.** This part becomes effective July 1, 2002.

34
35 **PART V. SALES TAX ON CERTAIN PROFESSIONAL SERVICES**

36
37 **SECTION 5.1.** G.S. 105-164.3(34) and (35) read as rewritten:

38 **"§ 105-164.3. Definitions.**

39 The following definitions apply in this Article:

40 ...

41 (34) Retail sale or sale at retail. – The sale, lease, or rental for any purpose
42 other than for resale, sublease, or subrent. Retail sale or sale at retail
43 does not include the furnishing of services by an employee to an
44 employer or the furnishing of services with respect to tangible personal

1 property to be sold where the cost of the services is included in the
2 sales price of the tangible personal property.

3 (35) Retailer. – Means and includes every person engaged in the business
4 of making sales of tangible personal property or services at retail,
5 either within or without this State, or peddling the same or soliciting or
6 taking orders for sales, whether for immediate or future delivery, for
7 storage, use or consumption in this State and every manufacturer,
8 producer or contractor engaged in business in this State and selling,
9 delivering, erecting, installing or applying tangible personal property
10 or services for use in this State notwithstanding that said property may
11 be permanently affixed to a building or realty or other tangible
12 personal property. "Retailer" also means a person who makes a mail
13 order sale, as defined in this section, if one of the conditions listed in
14 G.S. 105-164.8(b) is met. Provided, however, that when in the opinion
15 of the Secretary it is necessary for the efficient administration of this
16 Article to regard any salesmen, solicitors, representatives, consignees,
17 peddlers, truckers or canvassers as agents of the dealers, distributors,
18 consignors, supervisors, employers or persons under whom they
19 operate or from whom they obtain the tangible personal property or
20 services sold by them regardless of whether they are making sales on
21 their own behalf or on behalf of such dealers, distributors, consignors,
22 supervisors, employers or persons, the Secretary may so regard them
23 and may regard the dealers, distributors, consignors, supervisors,
24 employers or persons as "retailers" for the purpose of this Article.

25 **SECTION 5.2.** G.S. 105-164.4(a) is amended by adding a new subdivision

26 to read:

27 "(a) A privilege tax is imposed on a retailer at the following percentage rates of
28 the retailer's net taxable sales or gross receipts, as appropriate. The general rate of tax is
29 four and one-half percent (4 1/2%).

30 ...

31 "(8) The general rate of tax applies to the gross receipts derived from
32 selling at retail the following professional services: legal services,
33 advertising, computer services, consulting, engineering, and
34 accounting. A person who is engaged in the business of selling one of
35 these services at retail is considered a retailer under this Article."

36 **SECTION 5.3.** This part becomes effective July 1, 2002, and applies to
37 services rendered on or after that date.

38

39 PART VI. EFFECTIVE DATE AND SAVINGS CLAUSE

40

41 **SECTION 6.** Except as otherwise provided in this act, this act is effective
42 when it becomes law. Notwithstanding G.S. 105-163.15 and G.S. 105-163.41, no
43 addition to tax may be made under those statutes for a taxable year beginning on or after
44 January 1, 2002, and before January 1, 2003, with respect to an underpayment of

- 1 individual income tax to the extent the underpayment was created or increased by this
- 2 act.