

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2005

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HOUSE BILL 1891
Committee Substitute Favorable 7/10/06
Senate Finance Committee Substitute Adopted 7/13/06

Short Title: Simplify Fire Tax Rate/Other Tax Changes.

(Public)

Sponsors:

Referred to:

May 11, 2006

1 A BILL TO BE ENTITLED
2 AN ACT TO CLARIFY AND SIMPLIFY THE APPLICATION OF THE
3 ADDITIONAL GROSS PREMIUMS TAXES ON FIRE AND LIGHTNING
4 COVERAGE AND TO MAKE TECHNICAL AND CLARIFYING TAX LAW
5 CHANGES.

6 The General Assembly of North Carolina enacts:

7 **SECTION 1.** G.S. 105-228.5(d)(3) reads as rewritten:

8 "(d) Tax Rates; Disposition. –

9 ...

10 (3) Additional Statewide Fire and Lightning Rate. – An additional tax
11 shall be applied to gross premiums on contracts of insurance
12 applicable to fire and lightning coverage, except in the case of marine
13 and automobile policies, at the rate of one and thirty-three hundredths
14 percent (1.33%). (1.33%) applies to gross premiums on insurance
15 contracts applicable to fire and lightning coverage, except marine and
16 automobile contracts. The tax is a percentage of the gross premiums
17 from the contracts, determined in accordance with the table in this
18 subdivision. Twenty-five percent (25%) of the net proceeds of this
19 additional tax shall be deposited in the Volunteer Fire Department
20 Fund established in Article 87 of Chapter 58 of the General Statutes.
21 The remaining net proceeds shall be credited to the General Fund.

22 **Type of Insurance Contract**

Taxable Percentage

23 Fire Loss

100%

24 Commercial Multiple Peril

25 Nonliability portion

100%

26 Liability portion

0%

27 Homeowners

50%

28 Farm Owners

30%."

1 **SECTION 2.** G.S. 105-228.5(b)(2) and G.S. 105-228.5(d)(4) are repealed.

2 **SECTION 3.** G.S. 105-228.5(d)(3), as amended by Section 1 of this act,
 3 reads as rewritten:

4 "(d) Tax Rates; Disposition. –

5 ...
 6 (3) ~~Additional Statewide Fire and Lightning Rate. Rate on Property~~
 7 ~~Coverage Contracts. – An additional tax at the rate of one and~~
 8 ~~thirty three hundredths percent (1.33%) eighty-five hundredths percent~~
 9 ~~(.85%) applies to gross premiums on insurance contracts applicable to~~
 10 ~~fire and lightning coverage, except marine and automobile~~
 11 ~~contracts for property coverage. The tax is imposed on ten percent~~
 12 ~~(10%) a percentage of the gross premiums from the insurance~~
 13 ~~contracts for automobile physical damage coverage contracts,~~
 14 ~~determined in accordance with the table in this subdivision. and on one~~
 15 ~~hundred percent (100%) of the gross premiums from all other contracts~~
 16 ~~for property coverage. Twenty five percent (25%) (20%) of the net~~
 17 ~~proceeds of this additional tax shall be deposited in must be credited to~~
 18 ~~the Volunteer Fire Department Fund established in Article 87 of~~
 19 ~~Chapter 58 of the General Statutes. Twenty-five percent (25%) of the~~
 20 ~~net proceeds must be credited to the Department of Insurance for~~
 21 ~~disbursement pursuant to G.S. 58-84-25. The remaining net proceeds~~
 22 ~~shall must be credited to the General Fund.~~

Type of Insurance Contract	Taxable Percentage
Fire Loss	100%
Commercial Multiple Peril	
Nonliability portion	100%
Liability portion	—0%
Homeowners	50%
Farm Owners	30%.

30 The following definitions apply in this subdivision:

- 31 a. Automobile physical damage. – The following lines of business
 32 identified by the NAIC: private passenger automobile physical
 33 damage and commercial automobile physical damage.
- 34 b. Property coverage. – The following lines of business identified
 35 by the NAIC: fire, farm owners multiple peril, homeowners
 36 multiple peril, nonliability portion of commercial multiple peril,
 37 ocean marine, inland marine, earthquake, private passenger
 38 automobile physical damage, commercial automobile physical
 39 damage, aircraft, and boiler and machinery.
- 40 c. NAIC. – National Association of Insurance Commissioners."

41 **SECTION 4.** G.S. 105-228.5(e) reads as rewritten:

42 "(e) Report and Payment. – Each taxpayer doing business in this State shall,
 43 within the first 15 days of March, file with the Secretary of Revenue a full and accurate
 44 report of the total gross premiums as defined in this section, the payroll and other

1 information required by the Secretary in the case of a self-insurer, or the total gross
2 collections from membership dues exclusive of receipts from cost plus plans collected
3 in this State during the preceding calendar year. The taxes imposed by this section shall
4 be remitted to the Secretary with the report.

5 ~~In the case of an insurer liable for the additional local fire and lightning tax, the~~
6 ~~report shall include the information required under G.S. 58-84-1."~~

7 **SECTION 5.** G.S. 105-228.5(f) reads as rewritten:

8 "(f) Installment Payments Required. – Taxpayers that are subject to the tax
9 imposed by this section and have a premium tax ~~liability, not including the additional~~
10 ~~local fire and lightning tax, liability~~ of ten thousand dollars (\$10,000) or more for
11 business done in North Carolina during the immediately preceding year shall remit three
12 equal quarterly installments with each installment equal to at least thirty-three and
13 one-third percent (33 1/3%) of the premium tax liability incurred in the immediately
14 preceding taxable year. The quarterly installment payments shall be made on or before
15 April 15, June 15, and October 15 of each taxable year. The company shall remit the
16 balance by the following March 15 in the same manner provided in this section for
17 annual returns.

18 The Secretary of Revenue may permit an insurance company to pay less than the
19 required estimated payment when the insurer reasonably believes that the total
20 estimated payments made for the current year will exceed the total anticipated tax
21 liability for the year.

22 An underpayment of an installment payment required by this subsection shall bear
23 interest at the rate established under G.S. 105-241.1(i). Any overpayment shall bear
24 interest as provided in G.S. 105-266(b) and, together with the interest, shall be credited
25 to the company and applied against the taxes imposed upon the company under this
26 Article."

27 **SECTION 6.** G.S. 58-84-1 is repealed.

28 **SECTION 7.** G.S. 58-84-25 reads as rewritten:

29 **"§ 58-84-25. Disbursement of funds by Insurance Commissioner.**

30 The Insurance Commissioner shall deduct the sum of three percent (3%) from the
31 tax proceeds credited to the Department pursuant to
32 ~~G.S. 105-228.5(d)(4)~~G.S. 105-228.5(d)(3) and pay the same over to the treasurer of the
33 State Firemen's Association for general purposes. The Insurance Commissioner shall
34 deduct the sum of two percent (2%) from the tax proceeds and retain the same in the
35 budget of the Department of Insurance for the purpose of administering the
36 disbursement of funds by the board of trustees in accordance with the provisions of
37 G.S. 58-84-35. The Insurance Commissioner shall, pursuant to G.S. 58-84-50, credit the
38 amount forfeited by nonmember fire districts to the North Carolina State Firemen's
39 Association. The Insurance Commissioner shall pay the remaining tax proceeds to the
40 treasurer of each fire district ~~in proportion to the amount of business done in the fire~~
41 ~~district.~~ on a per capita basis, using the most recent annual population estimates certified
42 by the State Budget Officer. These funds shall be held by the treasurer as a separate and
43 distinct fund. The fire district shall immediately pay the funds to the treasurer of the
44 local board of trustees upon the treasurer's election and qualification, for the use of the

1 board of trustees of the firemen's local relief fund in each fire district, which board shall
2 be composed of five members, residents of the fire district as hereinafter provided for,
3 to be used by it for the purposes provided in G.S. 58-84-35."

4 **SECTION 8.** G.S. 58-87-1 reads as rewritten:

5 "**§ 58-87-1. Volunteer Fire Department Fund.**

6 (a) Fund. – ~~There is created the~~ The Volunteer Fire Department Fund is created
7 as an interest-bearing, nonreverting fund in the Department to provide matching grants
8 to volunteer fire departments to purchase equipment and make capital improvements.
9 The Commissioner shall administer the ~~Fund shall be distributed under the direction of~~
10 ~~the Commissioner of Insurance.~~ Fund. Up to two percent (2%) of the Fund may be used
11 for additional staff and resources to administer the Fund in each fiscal year.

12 (a1) Grant Program. – ~~Beginning January 1, 1988, an~~ An eligible fire department
13 may apply to the Commissioner ~~of Insurance~~ for a grant under this section. In awarding
14 grants under this section, the Commissioner must, to the extent possible, select
15 applicants from all parts of the State based upon need. ~~Beginning May 1, 1988, and on~~
16 ~~each May 15, thereafter, the~~ The Commissioner must award the grants on May 15 of
17 each year shall make grants to eligible fire departments subject to the following
18 limitations:

- 19 (1) The size of a grant may not exceed twenty thousand dollars (\$20,000);
- 20 (2) The applicant shall match the grant on a dollar-for-dollar basis;
- 21 (3) The grant may be used only for equipment purchases, payment of
22 highway use taxes on those purchases, or capital expenditures
23 necessary to provide fire protection services; and
- 24 (4) An applicant may receive no more than one grant per fiscal year.

25 ~~In awarding grants under this section, the Commissioner shall to the extent possible~~
26 ~~select applicants from all parts of the State based upon need. Up to two percent (2%) of~~
27 ~~the Fund may be used for additional staff and resources to administer the Fund in each~~
28 ~~fiscal year.~~

29 ~~No fire department may be declared ineligible for a grant under this section solely~~
30 ~~because it is classified as a municipal fire department.~~

31 (b) Eligible Fire Department. – A fire department is eligible for a grant under this
32 section if it meets all of the ~~following conditions:~~ conditions of this subsection. No fire
33 department may be declared ineligible for a grant solely because it is classified as a
34 municipal fire department.

- 35 (1) It serves a response area of 6,000 or less in population. In making the
36 population determination, the Department must use the most recent
37 annual population estimates certified by the State Budget Officer.
- 38 (2) It consists entirely of volunteer members, with the exception that the
39 unit may have paid members to fill the equivalent of three full-time
40 paid positions.
- 41 (3) It has been certified by the Department of Insurance.

42 ~~In making the population determination under subdivision (1) of this subsection, the~~
43 ~~Department shall use the most recent annual population estimates certified by the State~~
44 ~~Budget Officer.~~

1 (c) Report. – The Commissioner of Insurance ~~shall~~ must submit a written report
2 to the General Assembly within 60 days after the grants have been made. This report
3 ~~shall~~ must contain the amount of the grant and the name of the recipient."

4 **SECTION 9.** G.S. 105-120.2(c) reads as rewritten:

5 "(c) For purposes of this section, a "holding company" is ~~any~~ a corporation
6 ~~which~~ that receives during its taxable year more than eighty percent (80%) of its gross
7 income from corporations in which it owns directly or indirectly more than fifty percent
8 (50%) of the outstanding voting ~~stock~~ stock or voting capital interests."

9 **SECTION 10.** G.S. 105-130.7A(c) reads as rewritten:

10 "(c) Election. – For the purpose of computing its State net income, a taxpayer
11 must add royalty payments made to, or in connection with transactions with, a related
12 member during the taxable year. This addition is not required for an amount of royalty
13 payments that meets ~~either~~ any of the following conditions:

14 (1) The related member includes the amount as income on a return filed
15 under this Part for the same taxable year that the amount is deducted
16 by the taxpayer, and the related member does not elect to deduct the
17 amount pursuant to G.S. 105-130.5(b)(20).

18 (2) The taxpayer can establish that the related member during the same
19 taxable year directly or indirectly paid, accrued, or incurred the
20 amount to a person who is not a related member.

21 (3) The taxpayer can establish that the related member to whom the
22 amount was paid is organized under the laws of a country other than
23 the United States, the country has a comprehensive income tax treaty
24 with the United States, and the country imposes a tax on the royalty
25 income of the related member at a rate that equals or exceeds the rate
26 set in G.S. 105-130.3."

27 **SECTION 11.** G.S. 105-259(b)(5d) reads as rewritten:

28 "(5d) To provide the following information to a county or city on an annual
29 basis, when the county or city needs the information for the
30 administration of its local ~~tax on~~ prepared food and
31 ~~beverages~~ beverages tax or room occupancy tax:

32 a. The name, address, and identification number of retailers who
33 collect the sales and use taxes imposed under Article 5 of this
34 Chapter and may be engaged in ~~the a~~ a business of ~~selling~~ subject
35 to a local prepared food and ~~beverages~~ beverages tax or room
36 occupancy tax.

37 b. The name, address, and identification number of a retailer
38 audited by the Department of Revenue regarding the sales and
39 use taxes imposed under Article 5 of this Chapter, when the
40 Department determines that the audit results may be of interest
41 to the county or city in the administration of its local ~~tax on~~
42 prepared food and ~~beverages~~ beverages tax or room occupancy
43 tax."

44 **SECTION 12.** Section 24.9(b) of S.L. 2006-66 reads as rewritten:

1 "**SECTION 24.9.(b)** This section becomes effective ~~January~~ July 1, 2007."

2 **SECTION 13.** The Revenue Laws Study Committee shall study the
3 following issues:

- 4 (1) The simplification of the additional tax imposed on insurance contracts
5 on property coverage, as enacted in Section 3 of this act, and the
6 distribution of the revenue generated by the tax. The study of this issue
7 may include a recommendation on the percentage of revenue to be
8 distributed to the firemen's local relief funds and the formula for
9 making this distribution. The study may also consider the increasing
10 difference between the amount of revenue available in the Volunteer
11 Fire Department Fund for matching grants to purchase equipment and
12 make capital improvements and the amount of grant requests received.
- 13 (2) The authority of the Secretary of Revenue to require taxpayers to file
14 consolidated returns. The study of this issue may include consideration
15 of whether the State should require some corporations or all
16 corporations to file a consolidated return.
- 17 (3) The feasibility of replacing the State's current corporate income and
18 franchise tax laws with a commercial activity tax based upon business
19 gross receipts.
- 20 (4) The administrative process for the review of disputed tax matters.

21 **SECTION 14.** Sections 1 and 10 of this act are effective for taxable years
22 beginning on or after January 1, 2006. Sections 2, 3, 4, and 5 of this act are effective for
23 taxable years beginning on or after January 1, 2008. Sections 6, 7, and 8 of this act
24 become effective January 1, 2008, and apply to proceeds credited to the Department of
25 Insurance on or after that date. Section 9 of this act is effective for taxable years
26 beginning on or after January 1, 2007. The remainder of this act is effective when it
27 becomes law.