

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 1999

SENATE BILL 1112
RATIFIED BILL

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 1.1. G.S. 105-164.6(f) reads as rewritten:

"(f) Before a person may engage in business in this State selling or delivering tangible personal property for storage, use, or consumption in this State, 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.

(a) Every person, firm, or corporation engaged in any of the following businesses must pay for the privilege of engaging in that business an annual tax of two hundred fifty dollars (\$250.00) for each location at which the business is conducted:

- (1) The ~~the regular~~ business of making loans or lending money, accepting liens on, or contracts of assignments of, salaries or wages, or any part thereof, or other security or evidence of debt for repayment of such loans in installment payment or otherwise, and maintaining in connection with same any office or other located or established place for the conduct, negotiation, or transaction of such business and/or advertising or soliciting such business in any manner whatsoever, shall be deemed a loan agency, and shall apply for and procure from the Secretary of Revenue a State license for the privilege of transacting or negotiating such business at each office or place so maintained, and shall pay for such license a tax of seven hundred fifty dollars (\$750.00). otherwise.
- (2) The business of check cashing regulated under Article 22 of Chapter 53 of the General Statutes.
- (3) The business of pawnbroker regulated under Chapter 91A of the General Statutes.

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

(c) At the time of making any such loan, the person, or officer of the firm or corporation making the ~~same, loan,~~ shall give to the borrower in writing in convenient form a statement showing the amount received by the borrower, the amount to be paid back by the borrower, ~~and the time in which said the amount is to be paid,~~ and the rate of interest and discount agreed upon.

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

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

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

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

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

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

- a. A business entity that provides local, toll, or private telecommunications service as defined by G.S. 105-120(e), or a 105-120(e).
- b. A business entity or a municipality that sells electric power, other than a municipality whose only wholesale supplier of

~~electric power is a federal agency and who is required by a contract with that federal agency to make payments in lieu of taxes-power."~~

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

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

- a. Therapeutic, prosthetic, or artificial devices, such as pulmonary respirators or medical beds, that are designed for individual personal use to correct or alleviate physical illness, disease, or incapacity and that are sold on the written prescription of a physician, dentist, or other professional person licensed to prescribe, and crutches, prescribe.
- b. Crutches, artificial limbs, artificial eyes, hearing aids, false teeth, eyeglasses ground on prescription of a physician or an optometrist, and orthopedic optometrist.
- c. Orthopedic appliances designed to be worn by the purchaser or user.
- d. Durable medical equipment and related medical supplies that are covered under the Medicare or Medicaid program and are sold on either a certificate of medical necessity or a written prescription of a physician, dentist, or other professional person licensed to prescribe. This exemption applies whether or not the item is purchased by a Medicare or Medicaid beneficiary."

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

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

- a. Prescription drugs.
- b. Medicines—Nonprescription drugs sold on prescription of physicians, dentists, or veterinarians; insulin whether or not sold on prescription—veterinarians.
- c. Insulin."

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

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

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

- a. A used article taken in trade, or a series of trades, as a credit or part payment on the sale of a new article if tax is paid on the sales price of the new article. "New article" means the original stock in trade of the merchant and is not limited to a newly manufactured article.
- b. An an article repossessed by the vendor if tax was paid on the sales price of the article."

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

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

- a. The sales are conducted only upon an annual basis for the purpose of raising funds for its activities, and when—the organization's activities.
- b. the—The proceeds thereof of the sale are actually used for such purposes; provided, however, that no such sale shall be exempt if not actually consummated—the organization's activities.

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

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

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

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

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

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

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

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

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

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

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

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

- "(16) A local airport authority that was created pursuant to a local act of the General Assembly and ~~has at least one of the following characteristics:~~
- a. ~~It has all of the rights of a municipality.~~
 - b. ~~A local act of the General Assembly declares it to be a municipality.~~
 - e. ~~A local act of the General Assembly specifically authorizes it to receive a refund under this section. Assembly."~~

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

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

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

- "(5) Negligence. –
- a. Finding of negligence. – For negligent failure to comply with any of the provisions to which this Article applies, or rules

issued pursuant thereto, without intent to defraud, the Secretary shall assess a penalty equal to ten percent (10%) of the deficiency due to the negligence.

- b. Large individual income tax deficiency. – In the case of individual income tax, if a taxpayer understates taxable income, by any means, by an amount equal to twenty-five percent (25%) or more of gross income, the Secretary shall assess a penalty equal to twenty-five percent (25%) of the deficiency. For purposes of this subdivision, "gross income" means gross income as defined in section 61 of the Code.
- c. Other large tax deficiency. – In the case of a tax other than individual income tax, if a taxpayer understates tax liability by twenty-five percent (25%) or more, the Secretary shall assess a penalty equal to twenty-five percent (25%) of the deficiency.
- d. No double penalty. – If a penalty is assessed under subdivision (6) of this section, no additional penalty for negligence shall be assessed with respect to the same deficiency.
- e. Inheritance and gift tax deficiencies. – This subdivision does not apply to inheritance, estate, and gift tax deficiencies that are the result of valuation understatements."

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

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

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

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

- ... (15) To exchange information concerning a tax imposed by Articles 2A, 2B, 2C, or 2D of this Chapter with one of the following agencies when the information is needed to fulfill a duty imposed on the Department or the agency:
 - a. The North Carolina Alcoholic Beverage Control Commission.
 - b. The Division of Alcohol Law Enforcement of the Department of Crime Control and Public Safety.
 - c. The Bureau of Alcohol, Tobacco, and Firearms of the United States Treasury Department.
 - d. Law enforcement agencies."

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(c) Special Mobile Equipment. – A person who purchases and uses motor fuel to operate special mobile equipment off-highway may receive a quarterly refund, for the excise tax paid during the preceding quarter, at a rate equal to the flat cents-per-gallon rate plus the variable cents-per-gallon rate in effect during the quarter for which the

refund is claimed, less the amount of sales and use tax due on the fuel under this Chapter, as determined in accordance with G.S. 105-449.107(c). An application for a refund must be made in accordance with this Part."

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

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

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

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

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

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

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

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

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

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

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

- (1) A single passenger vehicle that can carry no more than nine passengers and is not loaded, in whole or in part, with passengers or property. passengers and is carrying no passengers.
- (2) A single property-hauling vehicle that has a registered weight of 5,000 pounds or less and is not loaded, in whole or in part, with passengers

~~or property less, is carrying no passengers, and does not exceed its registered weight.~~

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

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

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

- (1) The Employment Security Commission for the purpose of administering employment security programs.
- (2) The North Carolina Industrial Commission may access information entered into the Directory from employer reports for the purpose of administering workers' compensation programs.
- (3) The Department of Revenue for the purpose of administering the taxes it has a duty to collect under Chapter 105 of the General Statutes."

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

Section 32. Sections 1, 1.1, and 27 of this act become effective January 1, 2000. Sections 2 and 14 of this act become effective July 1, 1999; Section 14 applies to purchases made on or after that date. Sections 5 through 11, 13, 15 through 17, and 22 of this act become effective October 1, 1999; Sections 15 through 17 apply to penalties assessed on or after that date. The remainder of this act is effective when it becomes law; Section 24 applies to taxes paid on or after January 1, 1999.

In the General Assembly read three times and ratified this the 20th day of July, 1999.

Dennis A. Wicker
President of the Senate

James B. Black
Speaker of the House of Representatives

James B. Hunt, Jr.
Governor

Approved _____ .m. this _____ day of _____ , 19