

GENERAL ASSEMBLY OF NORTH CAROLINA
1991 SESSION

CHAPTER 690
SENATE BILL 108

AN ACT TO IMPROVE ADMINISTRATION OF THE SALES AND USE TAX BY INCREASING THE LICENSE TAXES, ALLOWING MORE SMALL RETAILERS TO FILE QUARTERLY SALES TAX RETURNS, AND EXTENDING THE LIMITATIONS PERIOD FOR ENFORCING LIABILITY AGAINST CERTAIN TRANSFEREES AND CORPORATE OFFICERS, AND TO MAKE TECHNICAL CORRECTIONS TO THE REVENUE LAWS.

The General Assembly of North Carolina enacts:

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

"(c) Any person who engages ~~or continues~~ in any business for which a privilege tax is imposed by this Article shall ~~immediately after July 1, 1979,~~ apply for and obtain from the Secretary upon payment of ~~the sum of five dollars (\$5.00)~~ fifteen dollars (\$15.00) a license to engage in and conduct ~~such the~~ business upon the condition that the person shall pay the tax accruing to the State under this Article; the person shall thereby be duly licensed and registered to engage in ~~and conduct such the~~ business. Except as hereinafter provided, a license issued under this subsection shall be a continuing license until revoked for failure to comply with the provisions of this Article. ~~However, any person who has heretofore applied for and obtained the license, if the license was in force and effect as of July 1, 1979, shall not be required to apply for and obtain a new license.~~

A license issued under this section becomes void if the license holder ~~Any person who ceases to be engaged in any a business for which a privilege tax is imposed by this Article, and who Article and remains continuously out of business for a period of five years. The burden of proving that a license is still valid is on the license holder. years shall apply for and obtain a new license from the Secretary upon the payment of a tax of five dollars (\$5.00), and any license previously issued under this section shall be void. The burden of proof after such period shall be upon the taxpayer to show that he did engage in such business within the period, and that no new license is required.~~

A retailer who sells tangible personal property at a flea market shall conspicuously display his sales tax license when making sales at the flea market."

Sec. 2. G.S. 105-164.5 reads as rewritten:

"§ 105-164.5. Imposition of tax; wholesale merchant.

There is ~~hereby~~ levied and imposed, in addition to all other taxes of every kind now imposed by law, a privilege or license tax upon every person who engages in the business of selling tangible personal property at wholesale in this ~~State as defined~~

herein, the same to be collected and the amount to be determined in the following manner, to wit: State as follows:

- (1) Every wholesale merchant as defined in this Article shall apply for and obtain an annual license and ~~pay tax therefor of ten dollars (\$10.00).~~ pay for the license a tax of twenty-five dollars (\$25.00). ~~Such annual~~ This license tax shall be paid for in advance within the first 15 days of July in each year or, in the case of a new business, within 15 days after business is commenced. Manufacturers making wholesale sales, as defined in this Article, of their own manufactured products, directly and exclusively from the place where such articles of tangible personal property the products are manufactured are not are manufactured, shall not be required to obtain an annual wholesale license.
- (2) The sale of any tangible personal property by any wholesale merchant to anyone other than to a registered retailer, wholesale ~~merchant~~ merchant, or nonresident retail or wholesale merchant as defined for resale shall be taxable at the rate of ~~tax~~ provided in this Article upon the retail sale of tangible personal property.
- (3) The sale of any tangible personal property by any wholesale merchant to a nonresident retail or wholesale merchant must be in strict compliance with ~~such regulations as may be promulgated rules adopted by the Secretary. Secretary and which are applicable to such sales. Any sale which~~ A sale that does not conform to such the regulations shall be rules is taxable at the rate of tax provided in this Article upon the retail sale of tangible personal property.
- (4) Every wholesale merchant who sells tangible personal property to retailers or nonresident retail or wholesale merchants for resale shall deliver to ~~such the~~ the customer a bill of sale for each ~~sale of such tangible personal property sale,~~ whether sold for cash or on credit, credit and shall ~~make and~~ retain a duplicate or carbon copy of each ~~such bill of sale bill of sale,~~ and shall keep ~~on file all such duplicate bills each bill of sale on file~~ for at least three years from the date of sale. Failure to comply with ~~the provisions of~~ this subsection shall subject the wholesale merchant to liability for tax upon ~~such the~~ sales at the rate of ~~tax~~ levied in this Article upon retail sales.
- (5) The tax levied is ~~and shall be~~ in addition to all other ~~taxes whether levied in the form of excise, license or privilege or other taxes."~~

Sec. 3. G.S. 105-164.6(f) reads as rewritten:

"(f) Every retailer engaged in business in this State selling or delivering tangible personal property for storage, ~~use use,~~ or consumption in this State shall ~~immediately after July 1, 1979,~~ apply for and obtain from the Secretary upon the payment of ~~the sum of five dollars (\$5.00) fifteen~~ dollars (\$15.00) a license to engage in and conduct ~~such the~~ the business upon the condition that ~~such the~~ person shall pay the tax accruing to the State of North Carolina under the provisions of this Article, and ~~he~~ under this Article; the person shall thereby be duly licensed and registered to engage in ~~and conduct such~~

the business. Except as hereinafter provided, a license issued under this subsection shall be a continuing license until revoked for failure to comply with the provisions of this Article. ~~However, any person who has heretofore applied for and obtained such license, and such license was in force and effect as of July 1, 1979, shall not be required to apply for and obtain a new license.~~

A license issued under this section becomes void if the license holder ~~Any person who ceases to be engaged in any a business for which a tax is imposed by this Article, and who Article and remains continuously out of business for a period of five years. The burden of proving that a license is still valid is on the license holder. years shall apply for and obtain a new license from the Secretary upon the payment of a tax of five dollars (\$5.00), and any license previously issued under this section shall be void. The burden of proof after such period shall be upon the taxpayer to show that he did engage in such activity within the period, and that no new license is required."~~

Sec. 4. G.S. 105-164.16(b) reads as rewritten:

"(b) General Reporting Periods. – Returns of taxpayers who are required by this subsection to report on a monthly or quarterly basis are due within 15 days after the end of each monthly or quarterly period. Returns of taxpayers who are required to report on a semimonthly basis are due within 10 days after the end of each semimonthly period.

A taxpayer who is consistently liable for less than ~~twenty-five dollars (\$25.00)~~ fifty dollars (\$50.00) a month in State and local sales and use taxes may, with the approval of the Secretary, file a return on a quarterly basis. A taxpayer who is consistently liable for at least twenty thousand dollars (\$20,000) a month in State and local sales and use taxes shall, when directed to do so by the Secretary, file a return on a semimonthly basis. All other taxpayers shall file a return on a monthly basis. Quarterly reporting periods end on the last day of March, June, September, and December; monthly reporting periods end on the last day of the month; and semimonthly reporting periods end on the 15th of each month and the last day of each month.

The Secretary shall monitor the amount of tax remitted by a taxpayer and shall direct a taxpayer who consistently remits at least twenty thousand dollars (\$20,000) each month to file a return on a semimonthly basis. In determining the amount of tax due from a taxpayer for a reporting period the Secretary shall consider the total amount due from all places of business owned or operated by the same person as the amount due from that person.

A taxpayer who is directed to remit sales and use taxes on a semimonthly basis but who is unable to gather the information required to submit a complete return for either the first reporting period or both the first and second semimonthly reporting periods may, upon written authorization by the Secretary, file an estimated return for that first reporting period or both periods on the basis prescribed by the Secretary. Once a taxpayer is authorized to file an estimated return for the first period or both periods, the taxpayer may continue to file an estimated return for the first or both periods until the Secretary, by written notification, revokes the taxpayer's authorization to do so. When filing a return for the second semimonthly reporting period, a taxpayer who files an estimated return for the first period but not both periods shall remit the amount of tax

due for both the first and second reporting periods, less the amount he remitted with his estimated return.

A taxpayer who files an estimated return for both periods is considered to have been granted an extension for both the first and second reporting periods. Notwithstanding G.S. 105-164.19, if a taxpayer who files an estimated return for both periods files a reconciling return for those periods within ten days of the due date of the return for the second period and any underpayment of estimated taxes remitted with the reconciling return is less than ten percent (10%) of the amount of taxes due for both the first and second reporting periods, no interest shall be charged. Otherwise, a taxpayer who files an estimated return for both periods shall be charged interest at the statutory rate from the due date of the return for the first reporting period to the date the reconciling return is filed."

Sec. 5. G.S. 105-164.29 reads as rewritten:

"§ 105-164.29. Application for licenses by wholesale merchants and retailers.

Every application for a license by a wholesale merchant or retailer shall be made upon a form prescribed by the Secretary and shall set forth ~~the name under which the applicant transacts or intends to transact business, the location of his place or places of business, and such other~~ all information as the Secretary may require. The application shall be signed by the owner if a natural person; in the case of an association or partnership, by a member or partner; in the case of a corporation, by an executive officer or some other person specifically authorized by the corporation to sign the application, to which shall be attached the written evidence of ~~his~~ the person's authority. ~~Provided, however, that persons, firms, or corporations, A wholesale merchant or retailer whose business extends into more than one county shall be~~ is required to secure only one license ~~under the provisions of this Article which license shall to~~ cover all operations of ~~such company~~ the business throughout the ~~State of North Carolina~~ State.

When the required application has been made the Secretary shall issue a license to the applicant. ~~grant and issue to each applicant such license.~~ A license is not assignable and is valid only for the person in whose name it is issued and for the transaction of business at the place designated ~~therein~~ in the license. The license holder shall display the license conspicuously at all times at the place for which it was issued. ~~It shall be at all times conspicuously displayed at the place of which issued.~~

A ~~retailer person~~ whose license has been previously suspended or revoked shall pay the Secretary ~~the sum of five dollars (\$5.00)~~ fifteen dollars (\$15.00) for the reissuance ~~or renewal of such~~ of the license. A wholesale merchant whose annual license has been previously suspended or revoked shall pay the Secretary ~~the sum of ten dollars (\$10.00)~~ twenty-five dollars (\$25.00) for the reissuance ~~or renewal of such~~ of the license for the ~~year or fraction thereof for which said license is reissued or renewed.~~ remainder of the license year.

Whenever ~~any wholesale merchant or retailer~~ a license holder fails to comply with ~~any provision of this Article or any rule or regulation of the Secretary relating thereto, this Article,~~ the Secretary, upon hearing, after giving the ~~wholesale merchant or retailer~~ license holder 10 days' notice in writing, specifying the time and place of hearing and requiring ~~him~~ the license holder to show cause why ~~his~~ the license should not be

revoked, may revoke or suspend the ~~license.~~ ~~license held by such wholesale merchant or retailer.~~ The notice may be served personally or by registered mail directed to the last known address of the ~~person.~~ license holder. All provisions with respect to review and appeals of the Secretary's decisions as provided by G.S. 105-241.2, 105-241.3, and 105-241.4 ~~of the General Statutes shall be applicable~~ apply to this section.

Any wholesale merchant or retailer who engages in business as a seller in this State without a license or after ~~his~~ the license has been suspended or revoked, and each officer of any corporation ~~which~~ that so engages in business shall be guilty of a misdemeanor and subject to a fine of ~~not exceeding up to~~ five hundred dollars (\$500.00) for each ~~such~~ offense."

Sec. 6. G.S. 105-164.38 reads as rewritten:

"§ 105-164.38. Tax shall be a lien.

The tax imposed by this Article shall be a lien upon ~~the stock of goods and/or any other all personal~~ property of any person subject to the provisions of this Article who shall sell out or in any manner transfer his business or stock of goods or shall quit business, and such person shall be required to make out who is required by this Article to obtain a license to engage in business and who stops engaging in the business by transferring the business, transferring the stock of goods of the business, or going out of business. A person who stops engaging in business shall file the return provided for under Division IV of required by this Article within 30 days after the date he sold out his business or stock of goods or quit transferring the business, transferring the stock of goods of the business, or going out of business. ~~business and his successor in~~ Any person to whom the business or the purchaser of the entire stock of goods was transferred shall be required to withhold sufficient of the purchase money or money's worth in the event there is an exchange of properties to cover the amount of said from the consideration paid for the business or stock of goods an amount sufficient to cover the taxes due and unpaid until such time as the former owner shall produce person selling the business or stock of goods produces a receipt statement from the Secretary showing that the taxes have been paid or a certificate that no taxes are due. If the ~~purchaser of~~ person who buys a business or stock of goods shall fail fails to withhold purchase money as above provided, and the taxes ~~shall be due and an amount sufficient to cover the taxes and the taxes remain~~ unpaid after the 30-day period allowed, ~~he shall be the buyer is~~ personally liable for the payment of the taxes accrued and unpaid on account of the operation of the business by the former owner. The transferee shall be liable for payment of any sales and/or use taxes due by the transferor the unpaid taxes, to the extent of the purchase price consideration paid by the transferee or fair market value of the property transferred whichever is greater. by the buyer for the business or the stock of goods. The period of limitations for assessing liability against the buyer of a business or the stock of goods of a business and for enforcing the lien against the property shall expire one year after the end of the period of limitations for assessment against the person who sold the business or the stock of goods. Except as otherwise provided in this section, a ~~The transferee or successor in business and the liability of the transferee of successor in business shall be person who buys a business or the stock of goods of a business and that person's liability for unpaid taxes are subject to the~~

provisions of G.S. 105-241.1, 105-241.2, 105-241.3, and 105-241.4 and to other remedies for the collection of taxes to the same extent as if the ~~transferee or successor in business person~~ had incurred the original tax liability."

Sec. 7. G.S. 105-253 reads as rewritten:

"§ 105-253. Personal liability of officers, trustees, or receivers.

(a) Any officer, trustee, or receiver of any corporation required to file a report with the Secretary of Revenue, ~~having in his Revenue who has custody of funds of the corporation, corporation and~~ who allows ~~said the~~ funds to be paid out or distributed to the stockholders of ~~said the~~ corporation without having ~~satisfied remitted to the~~ Secretary of Revenue for any State taxes ~~which that~~ are due and have accrued, shall be personally ~~responsible liable~~ for the payment of ~~said the~~ tax, and ~~in addition thereto~~ shall be subject to ~~a an~~ additional penalty of ~~not more than equal to~~ the amount of tax, ~~nor less than twenty five percent (25%) of such tax found to be due or accrued. tax due.~~

(b) Each responsible corporate officer is ~~made~~ personally and individually ~~liable:~~ liable for all of the following:

- (1) ~~For all All~~ sales and use taxes collected by a corporation upon taxable transactions of the ~~corporation, which liability shall be satisfied upon~~ timely remittance of such taxes to the Secretary by the ~~corporation;~~ corporation.
- (2) ~~For all All~~ sales and use taxes due upon taxable transactions of the corporation but upon which the corporation failed to collect the tax, but only if the responsible officer knew, or in the exercise of reasonable care should have known, that the tax was not being ~~collected; and collected.~~
- (3) ~~For all All~~ taxes due from the corporation pursuant to the provisions of Article 36 and Article 36A of Subchapter V of this Chapter.

~~His The~~ liability of the responsible corporate officer is ~~shall be~~ satisfied upon timely remittance of ~~such the~~ tax to the Secretary by the corporation. If ~~said tax shall remain~~ the tax remains unpaid by the ~~corporation, after the same corporation~~ after it is due and payable, the Secretary of Revenue may assess the tax against, and collect the tax from, any responsible corporate officer in accordance with ~~the provisions of G.S. 105-241.1,~~ which officer shall be the 'taxpayer' in such case, as referred to in G.S. 105-241.1 et seq. ~~the procedures in this Article for assessing and collecting tax from a taxpayer.~~ As used in this section, the ~~words term~~ 'responsible corporate officers' ~~mean the president and the treasurer of a corporation and may include such officer' includes~~ the president and the treasurer of the corporation and any other officers as ~~have been~~ assigned the duty of filing tax returns and remitting ~~the taxes to the Secretary of Revenue~~ on behalf of the corporation. Any penalties ~~which that~~ may be imposed pursuant to the provisions of ~~under~~ G.S. 105-236 and ~~which are applicable that apply~~ to a deficiency shall apply to any assessment ~~provided for herein. made under this section.~~ ~~All other The~~ provisions of ~~this Article 9, Schedule J of the Revenue Laws shall apply to such apply to an~~ assessment ~~made under this section~~ to the extent ~~that they are not inconsistent with the~~ provisions of this section.

The period of limitations for assessing a responsible corporate officer for unpaid taxes under this section shall expire one year after the expiration of the period of limitations for assessment against the corporation.

(c) ~~The Secretary of State shall withhold the issuance of any certificate not file articles of dissolution to, or withdrawal of, any corporation, domestic or foreign, of a domestic corporation or issue a certificate of withdrawal of a foreign corporation until the receipt by him of a notice from notified by the Secretary of Revenue to the effect that any such the corporation has met the requirements with respect to reports and taxes required imposed by this Subchapter. Subchapter or Subchapter V of this Chapter."~~

Sec. 8. Section 3 of Chapter 347 of the 1991 Session Laws is repealed.

Sec. 9. G.S. 105-159.1, as amended by Section 13 of Chapter 45 of the 1991 Session Laws, reads as rewritten:

"§ 105-159.1. Designation of tax by individual to political party.

(a) Every individual whose income tax liability for the taxable year is one dollar (\$1.00) or more may designate on his or her income tax return that one dollar (\$1.00) of the tax shall be paid to the State Treasurer for the use of all political parties. credited to the North Carolina Political Parties Financing Fund. In the case of a married couple filing a joint return whose income tax liability for the taxable year is two dollars (\$2.00) or more, each spouse may designate on the income tax return that one dollar (\$1.00) of the tax shall be paid to the State Treasurer for the use of all political parties. credited to the North Carolina Political Parties Financing Fund. ~~The Secretary shall credit all amounts so designated to the State Board of Elections for deposit with the State Treasurer for the use of all political parties upon~~ Amounts credited to the Fund shall be allocated among the political parties on a pro rata basis according to their respective party voter registrations according to as determined by the most recent certification of the State Board of Elections. As used in this section, the term 'political party' means one of the following that has at least one percent (1%) of the total number of registered voters in the State:

- (1) A political party that at the last preceding general State election received at least ten percent (10%) of the entire vote cast in the State for Governor or for presidential electors. ~~or~~
- (2) A group of voters who by July 1 of the preceding calendar year, by virtue of a petition as a new political party, had duly qualified as a new political party within the meaning of Chapter 163 of the General Statutes.

(b) ~~For each quarterly period beginning on or after January 1, 1978, on or before the last day of the month following the close of the quarterly period, the Secretary shall remit all funds designated pursuant to this section collected during the preceding quarter to the State Treasurer who shall deposit them in an interest bearing account to be known as the North Carolina Political Parties Financing Fund. Any interest earned on funds so deposited shall be credited to the political party to which the funds were allocated.~~ Amounts designated under subsection (a) shall be credited to the North Carolina Political Parties Financing Fund on a quarterly basis. Interest earned by the Fund shall be credited to the Fund and shall be allocated among the political parties on the same

basis as the principal of the Fund. ~~A report to the State Treasurer, The State Board of Elections, and Elections, which administers the Fund, shall make a quarterly report to each State party chairman shall accompany each remittance, and shall detail stating the amount of funds forwarded, allocated to each party for that quarter, the cumulative total of funds forwarded allocated to each party to date for the year, and an estimate of the probable total amount to be collected and forwarded allocated to each party for that calendar year.~~

(c) Repealed by Session Laws 1983, c. 481.

(d) The Secretary shall amend the income tax return in order that all taxpayers desiring to make the political contributions 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. The return or its accompanying explanatory instruction shall readily indicate that any designations neither increase nor decrease an individual's tax liability.

(e) A paid preparer of tax returns may not designate on a return that the taxpayer does or does not desire to make the political contribution authorized in this section unless the taxpayer or the taxpayer's spouse has consented to the designation."

Sec. 10. G.S. 130A-309.12(b)(3) reads as rewritten:

"(3) Ten percent (10%) of the proceeds of the scrap tire disposal ~~fee tax~~ imposed pursuant to ~~G.S. 130A-309.55 and G.S. 130A-309.56.~~ under Article 5B of Chapter 105 of the General Statutes."

Sec. 11. Sections 2 and 4 of this act become effective July 1, 1992. Sections 8 through 11 of this act are effective upon ratification. The remaining sections of this act become effective August 1, 1991. Sections 1, 3, and 5 of this act apply to licenses issued or renewed on or after August 1, 1991. This act does not extend a period of limitations that expired before the act is ratified.

In the General Assembly read three times and ratified this the 16th day of July, 1991.

James C. Gardner
President of the Senate

Daniel Blue, Jr.
Speaker of the House of Representatives