

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1989

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HOUSE BILL 272
Committee Substitute Favorable 5/4/89

Short Title: Fair Share Tax Act.

(Public)

Sponsors:

Referred to:

February 20, 1989

1 A BILL TO BE ENTITLED
2 AN ACT TO CREATE A TAX AMNESTY PROGRAM AND IMPROVE STATE
3 TAX ENFORCEMENT AND COMPLIANCE TO ASSURE FAIRNESS IN THE
4 COLLECTION OF TAXES FROM ALL TAXPAYERS.

5 Whereas, over ninety-five percent (95%) of State taxes are collected under
6 our voluntary compliance system; and

7 Whereas, uncollected taxes are needed to fund improvements in the quality of
8 education demanded by citizens and the business community; and

9 Whereas, recent federal legislative and judicial mandates will impose a major
10 burden on the current tax structure; and

11 Whereas, uncollected taxes undermine the fairness of the overall tax system;
12 and

13 Whereas, the State's voluntary tax compliance system can be enhanced by a
14 modernization package that includes a tax amnesty program, increased penalties for tax
15 evasion, and additional enforcement and compliance resources; Now, therefore,
16 The General Assembly of North Carolina enacts:

17 **PART I: AMNESTY PROGRAM**

18 Section 1. This act shall be known as the "Fair Share Tax Act of 1989."

19 Sec. 2. Amnesty program established; scope. The Department of Revenue
20 shall administer a tax amnesty program to be conducted during the period September 1,
21 1989, through December 1, 1989. During the tax amnesty period, the Department of
22 Revenue may not initiate a criminal prosecution for failure to report or pay taxes within

1 the scope of the Program and shall waive all penalties assessed for such failure when the
2 taxes, plus any interest due, are paid in full.

3 The taxes within the scope of the tax amnesty program are:

- 4 (1) Inheritance taxes levied under Article 1 of Chapter 105 of
5 the General Statutes;
- 6 (2) License taxes levied under Articles 2, 2A, 2B, and 2C of Chapter 105
7 of the General Statutes;
- 8 (3) Franchise taxes levied under Article 3 of Chapter 105 of the General
9 Statutes;
- 10 (4) Income taxes levied under Articles 4, 4A, 4B, and 4C of Chapter 105
11 of the General Statutes;
- 12 (5) Sales and use taxes levied under Articles 5, 39, 40, 41, and 42 of
13 Chapter 105 of the General Statutes, and under Chapter 1096 of the
14 1967 Session Laws;
- 15 (6) Gift taxes levied under Article 6 of Chapter 105 of the General
16 Statutes;
- 17 (7) Intangibles taxes levied under Article 7 of Chapter 105 of the General
18 Statutes;
- 19 (8) Motor fuels taxes levied under Articles 36, 36A, and 36B of Chapter
20 105 of the General Statutes; and
- 21 (9) Inspection taxes levied under Article 3 of Chapter 119 of the General
22 Statutes.

23 The program applies to inheritance tax liabilities due for the estates of
24 decedents dying prior to December 1, 1988; license tax liabilities for taxable periods
25 ending on or before June 30, 1988; gift tax liabilities due and remaining unpaid after
26 December 31, 1987; individual income withholding tax liabilities, sales and use tax
27 liabilities, motor fuels tax liabilities, and inspection tax liabilities for taxable periods
28 ending on or before December 31, 1988; income tax liabilities and intangibles tax
29 liabilities for taxable periods ending on or before December 31, 1987; and franchise tax
30 liabilities for taxable periods beginning on or before January 1, 1988. The program
31 does not apply to any matter that is the subject of a pending court proceeding.

32 Sec. 3. Effect of payment under program. A taxpayer who pays unreported,
33 underreported, or assessed but unpaid taxes as part of the program is not subject to
34 criminal prosecution for not reporting, underreporting, or not paying the taxes, but must
35 pay the interest due on the taxes at the rate established under G.S. 105-241.1(i). An
36 attorney, accountant, paid preparer of a tax return, or other person who would otherwise
37 be subject to criminal prosecution under G.S. 105-236(9a) for his actions concerning
38 returns prepared for unreported or underreported taxes paid pursuant to the amnesty
39 program is not subject to criminal prosecution under that subdivision on the basis of
40 those actions.

41 Sec. 4. Requirements for participation. To be eligible to participate in the
42 program, a taxpayer shall:

- 43 (1) File an application to participate before the end of the amnesty period;

- 1 (2) File a return for all reporting periods for which the taxpayer has not
2 previously filed a return but was required to file a return;
3 (3) File an amended tax return for all reporting periods for which the
4 taxpayer underreported tax liability; and
5 (4) Pay the taxpayer's previously assessed taxes or unreported or
6 underreported taxes for all reporting periods in full plus any interest
7 due on the taxes by December 1, 1989.

8 Sec. 5. Administration. The Secretary of Revenue shall issue forms and
9 instructions to implement the amnesty program and shall publicize the tax amnesty
10 period to maximize public awareness of and participation in the program.

11 Sec. 6. Funds. To pay for the amnesty program provided in Part I of this act,
12 the Secretary of Revenue may draw up to one million one hundred thousand dollars
13 (\$1,100,000) from collections received by the Department during July 1989 under
14 Division II of Article 4 of Chapter 105 of the General Statutes.

15 PART II: INCREASED PENALTIES

16 Sec. 7. G.S. 105-236(7) reads as rewritten:

17 "(7) Attempt to Evade or Defeat Tax. – Any person who willfully attempts, or any
18 person who aids or abets any person to attempt in any manner to evade or defeat any tax
19 imposed by this Subchapter of the General Statutes, or the payment thereof, shall, in
20 addition to other penalties provided by law, be guilty of a ~~misdemeanor~~. Class I felony
21 punishable by imprisonment up to five years, a fine up to twenty-five thousand dollars
22 (\$25,000), or both."

23 Sec. 8. G.S. 105-236(8) reads as rewritten:

24 "(8) Willful Failure to Collect, Withhold, or Pay Over Tax. – Any person required
25 under this Subchapter to collect, withhold, account for, and pay over any tax imposed
26 by this Subchapter who willfully fails to collect or truthfully account for and pay over
27 such tax shall, in addition to other penalties provided by law, be guilty of a ~~misdemeanor~~
28 ~~and shall be punished by a fine not to exceed one thousand dollars (\$1,000), or by~~
29 ~~imprisonment not to exceed two years, or by both such fine and imprisonment.~~ ~~misdemeanor.~~
30 Notwithstanding any other provision of law, no prosecution for a violation brought
31 under this subdivision shall be barred before the expiration of three years after the date
32 of the violation."

33 Sec. 9. G.S. 105-236(9) reads as rewritten:

34 "(9) Willful Failure to File Return, Supply Information, or Pay Tax. – Any person
35 required under this Subchapter to pay any tax, to make a return, to keep any records, or
36 to supply any information, who willfully fails to pay such tax, make such return, keep
37 such records, or supply such information, at the time or times required by law, or
38 regulations issued pursuant thereto, shall, in addition to other penalties provided by law,
39 be guilty of a misdemeanor. Notwithstanding any other provision of law, no
40 prosecution for a violation brought under this subdivision shall be barred before the
41 expiration of three years after the date of the violation."

42 Sec. 10. G.S. 105-236(9a) reads as rewritten:

43 "(9a) Aid or Assistance. – Any person, pursuant to or in connection with the
44 revenue laws, who willfully aids, assists in, procures, counsels, or advises the

1 preparation, presentation, or filing of a return, affidavit, claim, or any other document
2 that he knows is fraudulent or false as to any material matter, whether or not the falsity
3 or fraud is with the knowledge or consent of the person authorized or required to present
4 or file the return, affidavit, claim, or other document, shall be guilty of a ~~misdemeanor~~.
5 Class J felony punishable by imprisonment up to three years, a fine up to ten thousand
6 dollars (\$10,000), or both."

7 PART III: ENFORCEMENT/COMPLIANCE FUNDS

8 Sec. 11. There is appropriated from the General Fund to the Department of
9 Revenue the sum of five million six hundred fifty-six thousand two hundred forty-five
10 dollars (\$5,656,245) for the 1989-90 fiscal year and the sum of four million nine
11 hundred twenty-two thousand one hundred fifty dollars (\$4,922,150) for the 1990-91
12 fiscal year to be allocated as follows:

- 13 (1) The sum of one million six hundred sixty-seven thousand six hundred
14 ninety-five dollars (\$1,667,695) for the 1989-90 fiscal year and the
15 sum of one million seven hundred sixty-seven thousand eight hundred
16 thirty-eight dollars (\$1,767,838) for the 1990-91 fiscal year shall be
17 used for salaries and related costs for additional field auditors and
18 other enforcement personnel in the Field Services Division.
- 19 (2) The sum of five hundred eighty-seven thousand five hundred dollars
20 (\$587,500) for the 1989-90 fiscal year shall be used for improved
21 telecommunications and computer equipment for the Field Services
22 Division.
- 23 (3) The sum of one million two hundred eighty-one thousand three
24 hundred thirty-nine dollars (\$1,281,339) for the 1989-90 fiscal year
25 and the sum of one million six hundred seventy-eight thousand three
26 hundred twenty-six dollars (\$1,678,326) for the 1990-91 fiscal year
27 shall be used for salaries and related costs for additional auditors and
28 other enforcement personnel in the Individual Income Tax Division.
- 29 (4) The sum of five hundred eight thousand six hundred fourteen dollars
30 (\$508,614) for the 1989-90 fiscal year and the sum of seventy-six
31 thousand three dollars (\$76,003) for the 1990-91 fiscal year shall be
32 used for data processing equipment and temporary personnel in the
33 Accounting Division.
- 34 (5) The sum of four hundred thirty-one thousand four hundred nineteen
35 dollars (\$431,419) for the 1989-90 fiscal year and the sum of four
36 hundred one thousand nine hundred seventy dollars (\$401,970) for the
37 1990-91 fiscal year shall be used for salaries and related costs for
38 additional auditors and support personnel for the Sales and Use Tax
39 Division.
- 40 (6) The sum of four hundred fifteen thousand sixty-nine dollars
41 (\$415,069) for the 1989-90 fiscal year and the sum of three hundred
42 ninety-nine thousand two hundred thirty-six dollars (\$399,236) for the
43 1990-91 fiscal year shall be used for salaries and related costs for

1 additional audit and clerical personnel for the Corporate Income and
2 Franchise Tax Division.

3 (7) The sum of one hundred fifty-four thousand two hundred fifty-seven
4 dollars (\$154,257) for the 1989-90 fiscal year and the sum of one
5 hundred forty-one thousand six hundred ninety dollars (\$141,690) for
6 the 1990-91 fiscal year shall be used for salaries and related costs for
7 additional enforcement personnel for the Motor Fuels Tax Division.

8 (8) The sum of six hundred ten thousand three hundred fifty-two dollars
9 (\$610,352) for the 1989-90 fiscal year and the sum of four hundred
10 fifty-seven thousand and eighty-seven dollars (\$457,087) for the 1990-
11 91 fiscal year shall be used for leased space and other miscellaneous
12 costs for new personnel in all Divisions.

13 **PART IV: EFFECTIVE DATES**

14 Sec. 12. Section 11 of this act shall become effective July 1, 1989; Sections 7
15 through 10 shall become effective December 2, 1989, and shall apply to violations
16 occurring on or after that date; the remainder of this act is effective upon ratification.