

**GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2001**

**SESSION LAW 2002-72
SENATE BILL 1160**

AN ACT TO MAKE TECHNICAL AND CLARIFYING CHANGES TO THE REVENUE LAWS AND RELATED STATUTES AND TO PROVIDE A ONE-TIME EXTENSION TO THE TIME PERIOD IN WHICH A TAXPAYER MAY SIGN A LETTER OF COMMITMENT WITH THE DEPARTMENT OF COMMERCE TO QUALIFY FOR A LOWER TIER DESIGNATION.

The General Assembly of North Carolina enacts:

PART I: SUBSTANTIVE CHANGE

SECTION 1. Notwithstanding the provisions of Article 3A of Chapter 105 of the General Statutes to the contrary, if during January or February 2002 a taxpayer signed a letter of commitment with the Department of Commerce under G.S. 105-129.8 to create new jobs at a location or a letter of commitment with the Department of Commerce under G.S. 105-129.9 to place specific machinery and equipment in service at a location, then the taxpayer may calculate the credit for which the taxpayer qualifies based on the location's enterprise tier designation and development zone designation for 2001.

PART II: TECHNICAL CHANGES

SECTION 2. Subdivision (5) in the first paragraph of Section 4 of Chapter 1096 of the 1967 Session Laws, as amended, reads as rewritten:

"(5) The sales price of food and other items that are not otherwise exempt from tax pursuant to G.S. 105-164.13 but ~~is~~ are exempt from the State sales and use tax pursuant to G.S. 105-164.13B."

SECTION 3. Section 3 of S.L. 2001-264 reads as rewritten:

"**SECTION 3.** Any provision of a local act that conflicts with G.S. 153A-154.1 or G.S. 160A-214.1 is repealed. Any local meals tax penalty in addition to or greater than the corresponding penalty provided in G.S. 153A-154.1 or G.S. 160A-214.1 is repealed."

SECTION 4. Section 49 of S.L. 2001-414 reads as rewritten:

"**SECTION 49.** Section ~~47- 48~~ of this act does not derogate any existing powers."

SECTION 5. The introductory language of Section 13(a) of S.L. 2001-427 reads as rewritten:

"**SECTION 13.(a)** G.S. ~~405-472(a)~~ 105-472 reads as rewritten:"

SECTION 6. G.S. 20-10.1 reads as rewritten:

"§ 20-10.1. Mopeds.

It shall be unlawful for any person who is under the age of 16 years to operate a moped as defined in G.S. ~~20-4.01(27)~~ 105-164.3 upon any highway or public vehicular area of this State."

SECTION 7. G.S. 20-17.4(a)(1) reads as rewritten:

"(1) A first conviction of G.S. 20-138.1, driving while impaired, that occurred while the person was driving a motor vehicle that is not a commercial motor vehicle."

SECTION 8. G.S. 20-87(6) reads as rewritten:

"(6) Private Motorcycles. – The base fee on private passenger motorcycles shall be nine dollars (\$9.00); except that when a motorcycle is equipped with an additional form of device designed to transport

persons or property, the base fee shall be sixteen dollars (\$16.00). An additional fee of three dollars (\$3.00) is imposed on each private motorcycle registered under this subdivision in addition to the base fee. The revenue from the additional fee, in addition to any other funds appropriated for this purpose, shall be deposited in used to fund the Motorcycle Safety Instruction Program created in G.S. 115D-72."

SECTION 9.(a) G.S. 58-6-25(c) reads as rewritten:

"(c) Returns; When Payable. – ~~The charge levied on each health maintenance organization is payable March 15 following the end of each calendar year.~~ The charge levied on each insurance company ~~other than a health maintenance organization~~ is payable at the time the insurance company remits its premium tax. If the insurance company is required to remit installment payments of premiums tax under G.S. 105-228.5 for a taxable year, it shall also remit installment payments of the charge levied in this section for that taxable year at the same time and on the same basis as the premium tax installment payments. Each installment payment shall be equal to at least thirty-three and one-third percent (33.3%) of the insurance company's regulatory charge liability incurred in the immediately preceding taxable year.

Every insurance company shall, on or before the date the charge levied in this section is due, file a return on a form prescribed by the Secretary of Revenue. The return shall state the company's total North Carolina premiums or presumed premiums for the taxable year and shall be accompanied by any supporting documentation that the Secretary of Revenue may by rule require."

SECTION 9.(b) This section becomes effective for taxable years beginning on or after January 1, 2003.

SECTION 10. G.S. 105-116(a) reads as rewritten:

- "(a) Tax. – An annual franchise or privilege tax is imposed on the following:
- (1) An electric power company engaged in the business of furnishing electricity, electric lights, current, or power.
 - (2), (2a) Repealed by Session Laws 1998-22, s. 2, effective July 1, 1999.
 - (3) A water company engaged in owning or operating a water system subject to regulation by the North Carolina Utilities Commission.
 - (4) A public sewerage company engaged in owning or operating a public sewerage system.

The tax on an electric power company is three and twenty-two hundredths percent (3.22%) of the company's taxable gross receipts from the business of furnishing electricity, electric lights, current, or power. The tax on a water company is four percent (4%) of the company's taxable gross receipts from owning or operating a water system subject to regulation by the North Carolina Utilities Commission. The tax on a public sewerage company is six percent (6%) of the company's taxable gross receipts from owning or operating a public sewerage company. A company's taxable gross receipts are its gross receipts from business inside the State less the amount of gross receipts from sales reported under subdivision (b)(2). A company that engages in more than one business taxed under this section shall pay tax on each business. ~~A company is allowed a credit against the tax imposed by this section for the company's investments in certain entities in accordance with Part 5 of Article 4 of this Chapter.~~"

SECTION 11. G.S. 105-127(d) and (e) are repealed.

SECTION 12. G.S. 105-129.4(b3) reads as rewritten:

"(b3) Environmental Impact. – A taxpayer is eligible for a credit allowed under this Article only if the taxpayer certifies that, at the time the taxpayer first claims the credit, the taxpayer has no pending administrative, civil, or criminal enforcement action based on alleged significant violations of any program implemented by an agency of the Department of Environment and Natural Resources, and has had no final determination of responsibility for any significant administrative, civil, or criminal violation of any program implemented by an agency of the Department of Environment and Natural Resources within the last five years. A significant violation is a violation or alleged

violation that does not satisfy any of the conditions of G.S. 143-215.6B(d). The Secretary of Environment and Natural Resources must notify the Department of Revenue annually of every person that currently has any of these pending actions and every person that has had any of these final determinations within ~~this~~ the last five years."

SECTION 13. G.S. 105-129.12A(a) reads as rewritten:

"(a) Credit. – If a taxpayer that has purchased or leased real property in an enterprise tier one or two area begins to use the property in an eligible business during the taxable year, the taxpayer is allowed a credit equal to thirty percent (30%) of the eligible investment amount if all of the eligibility requirements of G.S. 105-129.4 are met. For the purposes of this section, property is located in an enterprise tier one or two area if the area the property is located in was an enterprise tier one or two area at the time the taxpayer applied for the ~~certification~~ determination required under G.S. 105-129.4(b5). The eligible investment amount is the lesser of (i) the cost of the property and (ii) the amount by which the cost of all of the real property the taxpayer is using in this State in an eligible business on the last day of the taxable year exceeds the cost of all of the real property the taxpayer was using in this State in an eligible business on the last day of the base year. The base year is that year, of the three immediately preceding taxable years, in which the taxpayer was using the most real property in this State in an eligible business. In the case of property that is leased, the cost of the property is not determined as provided in G.S. 105-129.2 but is considered to be the taxpayer's lease payments over a seven-year period, plus any expenditures made by the taxpayer to improve the property before it is used by the taxpayer if the expenditures are not reimbursed or credited by the lessor. The entire credit may not be taken for the taxable year in which the property is first used in an eligible business but shall be taken in equal installments over the seven years following the taxable year in which the property is first used in an eligible business. When part of the property is first used in an eligible business in one year and part is first used in an eligible business in a later year, separate credits may be claimed for the amount of property first used in an eligible business in each year. The basis in any real property for which a credit is allowed under this section shall be reduced by the amount of credit allowable."

SECTION 14. G.S. 105-130.5(b)(17) reads as rewritten:

"(b) The following deductions from federal taxable income shall be made in determining State net income:

- ..
- (17) ~~The~~ To the extent included in federal taxable income, the following:
- a. The amount of 911 charges collected under G.S. 62A-5 and remitted to a local government under G.S. ~~62A-6, and the~~ 62A-6.
 - b. The amount of wireless Enhanced 911 service charges collected under G.S. 62A-23 and remitted to the Wireless Fund under G.S. 62A-24."

SECTION 15.(a) G.S. 105-130.34(a) reads as rewritten:

"(a) Any corporation that makes a qualified donation of an interest in real property located in North Carolina during the taxable year that is useful for public beach access or use, public access to public waters or trails, fish and wildlife conservation, or other similar land conservation purposes is allowed a credit against the tax imposed by this Part equal to twenty-five percent (25%) of the fair market value of the donated property interest. To be eligible for this credit, the interest in real property must be donated in perpetuity to and accepted by ~~either~~ the State, a local government, or a body that is both organized to receive and administer lands for conservation purposes and qualified to receive charitable contributions pursuant to G.S. 105-130.9. Lands required to be dedicated pursuant to local governmental regulation or ordinance and dedications made to increase building density levels permitted under a regulation or ordinance are not eligible for this credit. The credit allowed under this section may not exceed five

hundred thousand dollars (\$500,000). To support the credit allowed by this section, the taxpayer must file with its income tax return, for the taxable year in which the credit is claimed, a certification by the Department of Environment and Natural Resources that the property donated is suitable for one or more of the valid public benefits set forth in this subsection."

SECTION 15.(b) G.S. 105-151.12(a) reads as rewritten:

"(a) A person who makes a qualified donation of an interest in real property located in North Carolina during the taxable year that is useful for (i) public beach access or use, (ii) public access to public waters or trails, (iii) fish and wildlife conservation, or (iv) other similar land conservation purposes is allowed a credit against the tax imposed by this Part equal to twenty-five percent (25%) of the fair market value of the donated property interest. To be eligible for this credit, the interest in property must be donated in perpetuity to and accepted by ~~either~~ the State, a local government, or a body that is both organized to receive and administer lands for conservation purposes and qualified to receive charitable contributions under the Code. Lands required to be dedicated pursuant to local governmental regulation or ordinance and dedications made to increase building density levels permitted under a regulation or ordinance are not eligible for this credit. The credit allowed under this section may not exceed two hundred fifty thousand dollars (\$250,000). To support the credit allowed by this section, the taxpayer must file with the income tax return for the taxable year in which the credit is claimed a certification by the Department of Environment and Natural Resources that the property donated is suitable for one or more of the valid public benefits set forth in this subsection."

SECTION 16. G.S. 105-163.7(c) is repealed.

SECTION 17. G.S. 105-164.23 reads as rewritten:

"§ 105-164.23. Consumer must keep records.

Every consumer shall keep such records, receipts, invoices and other pertinent papers in such form as may be required by the Secretary and all such books, invoices and other records shall be open for examination by the ~~Secretary or any of his duly authorized agents.~~ Department of Revenue. In the event the retailer, user or consumer has imported the tangible personal property and fails to produce an invoice showing the purchase price of the tangible personal property as defined in this Article which is subject to tax or the invoices do not reflect the true or actual cost as defined ~~herein, in this Article,~~ then the Secretary shall ascertain in any manner feasible the true purchase price and assess and collect the tax with interest, plus penalties, if such have accrued, on the ~~true cost price as determined by him.~~ purchase price as determined by the Secretary."

SECTION 18. G.S. 105-164.27A(b) reads as rewritten:

"(b) Telecommunications Service. – A direct pay permit for telecommunications service authorizes its holder to purchase telecommunications service without paying tax to the seller and authorizes the seller to not collect any tax on a sale to the permit holder. A person who purchases telecommunications service under a direct pay permit must file a return and pay the tax due monthly to the Secretary. A direct pay permit issued under this subsection does not apply to any tax other than the tax on telecommunications service.

A call center that purchases interstate telecommunications service that originates outside this State and terminates in this State may apply to the Secretary for a direct pay permit for telecommunications service. A call center is a business that is primarily engaged in providing support services to customers by telephone to support products or services of the business. A business is primarily engaged in providing support services by telephone if at least sixty percent (60%) of its calls are incoming.
~~must be made on a form provided by the"~~

SECTION 19.(a) G.S. 105-187.1(4) reads as rewritten:

"(4) Recreational vehicle. – ~~A motorized or towable vehicle that combines transportation and temporary living quarters for travel, recreation, and camping. To qualify as a motorized recreational vehicle, the vehicle~~

~~must be a camping and travel vehicle built on or as an integral part of a self propelled motor vehicle chassis. If a towable vehicle is of such size or weight as to require a special highway movement permit, it is not a recreational vehicle. Towable recreational vehicles include travel trailers, fifth wheel travel trailers, folding camping trailers, and truck campers. Defined in G.S. 20-4.01."~~

SECTION 19.(b) G.S. 20-4.01(32a) reads as rewritten:

"(32a) ~~Recreation~~ Recreational Vehicle. – A vehicular type unit primarily designed as temporary living quarters for recreational, camping, or travel use that either has its own motive power or is mounted on, or towed by, another vehicle. The basic entities are camping trailer, fifth-wheel travel trailer, motor home, travel trailer, and truck camper.

- a. Motor home. – As defined in G.S. 20-4.01(27)d2.
- b. Travel trailer. – A vehicular unit mounted on wheels, designed to provide temporary living quarters for recreational, camping, or travel use, and of a size or weight that does not require a special highway movement permit when towed by a motorized vehicle.
- c. Fifth-wheel trailer. – A vehicular unit mounted on wheels designed to provide temporary living quarters for recreational, camping, or travel use, of a size and weight that does not require a special highway movement permit and designed to be towed by a motorized vehicle that contains a towing mechanism that is mounted above or forward of the tow vehicle's rear axle.
- d. Camping trailer. – A vehicular portable unit mounted on wheels and constructed with collapsible partial side walls that fold for towing by another vehicle and unfold at the campsite to provide temporary living quarters for recreational, camping, or travel use.
- e. Truck camper. – A portable unit that is constructed to provide temporary living quarters for recreational, camping, or travel use, consisting of a roof, floor, and sides and is designed to be loaded onto and unloaded from the bed of a pickup truck."

SECTION 19.(c) G.S. 20-116(d) reads as rewritten:

"(d) Maximum Length. – ~~The following maximum lengths apply to vehicles. A single vehicle having two axles shall not exceed 40 feet in length of extreme overall dimensions inclusive of front and rear bumpers. A single vehicle having three axles shall not exceed 40 feet in length overall of dimensions inclusive of front and rear bumpers. Provided, however, trucks transporting unprocessed cotton from farm to gin shall not exceed 48 feet in length overall of dimensions inclusive of front and rear bumpers. A truck-tractor and semitrailer shall be regarded as two vehicles for the purpose of determining lawful length and license taxes.~~

- (1) Except as otherwise provided in this subsection, a single vehicle having two or three axles shall not exceed 40 feet in length overall of dimensions inclusive of front and rear bumpers.
- (2) Trucks transporting unprocessed cotton from farm to gin shall not exceed 48 feet in length overall of dimensions inclusive of front and rear bumpers.
- (3) ~~Recreation~~ Recreational vehicles shall not exceed 45 feet in length overall, excluding bumpers and mirrors."

SECTION 19.(d) G.S. 20-305.2(a)(7) reads as rewritten:

"(7) The ownership, operation, or control of a dealership that sells primarily ~~recreation~~ recreational vehicles as defined in ~~G.S. 20-4.01(32a)~~ 20-4.01 by a manufacturer, factory branch, distributor, or distributor branch, or subsidiary thereof, if the manufacturer, factory

branch, distributor, or distributor branch, or subsidiary thereof, owned, operated, or controlled the dealership as of October 1, 2001."

SECTION 19.(e) G.S. 20-305.2(b) reads as rewritten:

"(b) This section ~~shall~~ does not apply to manufacturers or distributors of trailers or semitrailers that are not ~~recreation~~ recreational vehicles as defined in ~~G.S. 20-4.01(32a)~~. G.S. 20-4.01."

SECTION 20. G.S. 105-269.14(b) reads as rewritten:

"(b) Distribution. – The Secretary must distribute ~~one-third~~ a portion of the net use tax proceeds collected under this section to counties and ~~cities in proportion to their total distributions under Articles 39, 40, and 42 of this Chapter and Chapter 1096 of the 1967 Session Laws for the most recent period for which data is available.~~ cities. The portion to be distributed to all counties and cities is the total net use tax proceeds collected under this section multiplied by a fraction. The numerator of the fraction is the local use tax proceeds collected under this section. The denominator of the fraction is the total use tax proceeds collected under this section. The Secretary must distribute this portion to the counties and cities in proportion to their total distributions under Articles 39, 40, 42, 43, and 44 of this Chapter and Chapter 1096 of the 1967 Session Laws for the most recent period for which data are available. The provisions of G.S. 105-472, 105-486, and 105-501 do not apply to tax proceeds distributed under this section."

SECTION 21. G.S. 159I-1 reads as rewritten:

"§ 159I-1. **Short title.**

This Chapter may be cited as the ~~North Carolina Solid Waste Management Loan Program~~. Program and Local Government Special Obligation Bond Act."

PART III: EFFECTIVE DATE

SECTION 22. Except as otherwise provided in this act, this act is effective when it becomes law.

In the General Assembly read three times and ratified this the 1st day of August, 2002.

s/ Beverly E. Perdue
President of the Senate

s/ James B. Black
Speaker of the House of Representatives

s/ Michael F. Easley
Governor

Approved 3:44 p.m. this 12th day of August, 2002