

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

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HOUSE BILL 1576

Short Title: Merchant's Discount. (Public)

Sponsors: Representative Gibson.

Referred to: Commerce, Small Business, and Entrepreneurship, if favorable, Finance.

May 5, 2009

1 A BILL TO BE ENTITLED
2 AN ACT TO REIMBURSE RETAILERS WHO PAY A MERCHANT CREDIT CARD FEE
3 TO BANKS FOR COLLECTING SALES AND USE TAX FROM CUSTOMERS WHO
4 PAY BY CREDIT CARD.

5 The General Assembly of North Carolina enacts:

6 **SECTION 1.** G.S. 105-164.21 is reenacted and reads as written:

7 **"§ 105-164.21. Merchant's discount.**

8 (a) Amount. – Except as provided in subsections (b) and (c) of this section, a retailer
9 who pays the retail sales or use tax imposed by this Article may deduct from the tax paid an
10 amount equal to that portion of any merchant credit card fee, paid by the retailer to a bank or
11 other credit card company, that is applicable to the sales tax on the goods, products, or services
12 sold by the retailer and paid for by the purchaser with a credit card. The amount claimed shall
13 not exceed one percent (1%) of the total tax paid by the retailer.

14 (b) Restrictions. – The Secretary may deny a retailer the benefit of this section for
15 failure to pay the full tax when due as well as in cases of fraud, evasion, or failure to keep
16 accurate and clear records as required by this Article. In order to receive the discount provided
17 in this section, a retailer must deduct the discount when it remits the tax to the Department. A
18 retailer who sells electricity or telecommunications services may not deduct the discount
19 provided in this section on sales of electricity or telecommunications services.

20 (c) Exemptions. – Subsection (a) of this section does not apply to debit card sale
21 transactions or to credit card sale transactions where the credit card is issued by the retailer or
22 by an entity affiliated with the retailer."

23 **SECTION 2.** G.S. 105-474 reads as rewritten:

24 **"§ 105-474. Definitions; construction of Article; remedies and penalties. Administration
25 and construction of Article.**

26 This Article shall be administered consistently with Article 5 of this Chapter to the extent
27 practicable. The merchant's discount provided in G.S. 105-164.21 does not apply to this Article.
28 The remaining provisions of Articles 5 and 9 of this Chapter apply to this Article to the extent
29 they are consistent with this Article.

30 The definitions set forth in G.S. 105-164.3 shall apply to this Article insofar as such
31 definitions are not inconsistent with the provisions of this Article, and all other provisions of
32 Article 5 and of Article 9 of Subchapter 1, Chapter 105 of the General Statutes, as the same
33 relate to the North Carolina Sales and Use Tax Act shall be applicable to this Article unless
34 such provisions are inconsistent with the provisions of this Article. The administrative
35 interpretations made by the Secretary of Revenue with respect to the North Carolina Sales and
36 Use Tax Act, to the extent not inconsistent with the provisions of this Article, may be
37 uniformly applied in the construction and interpretation of this Article. It is the intention of this



1 ~~Article that the provisions of this Article and the provisions of the North Carolina Sales and~~
2 ~~Use Tax Act, insofar as practicable, shall be harmonized.~~

3 ~~The provisions with respect to remedies and penalties applicable to the North Carolina~~
4 ~~Sales and Use Tax Act, as contained in Article 5 and Article 9, Subchapter 1, Chapter 105 of~~
5 ~~the General Statutes, shall be applicable in like manner to the tax authorized to be levied and~~
6 ~~collected under this Article, to the extent that the same are not inconsistent with the provisions~~
7 ~~of this Article."~~

8 **SECTION 3.** The first sentence of Section 10 of Chapter 1096 of the 1967 Session
9 Laws is amended by adding after the word 'Act' the phrase ', other than G.S. 105-164.21,'.

10 **SECTION 4.** G.S. 105-187.5(d) reads as rewritten:

11 "(d) Administration. – The Division shall notify the Secretary of Revenue of a retailer
12 who makes the election under this section. A retailer who makes this election shall report and
13 remit to the Secretary the tax on the gross receipts of the lease or rental of the motor vehicle.
14 The Secretary shall administer the tax imposed by this section on gross receipts in the same
15 manner as the tax levied under G.S. 105-164.4(a)(2). The administrative provisions and powers
16 of the Secretary that apply to the tax levied under G.S. 105-164.4(a)(2) apply to the tax
17 imposed by this section. The merchant's discount provided in G.S. 105-164.21 does not apply
18 to this section.~~In addition, the~~

19 The Division may request the Secretary to audit a retailer who elects to pay tax on gross
20 receipts under this section. When the Secretary conducts an audit at the request of the Division,
21 the Division shall reimburse the Secretary for the cost of the audit, as determined by the
22 Secretary. In conducting an audit of a retailer under this section, the Secretary may audit any
23 sales of motor vehicles made by the retailer."

24 **SECTION 5.** G.S. 105-187.17 reads as rewritten:

25 **"§ 105-187.17. Administration.**

26 (a) Retail Sale or Use. – The privilege tax this Article imposes on a tire retailer who
27 sells new tires at retail is an additional State sales tax and the excise tax this Article imposes on
28 the storage, use, or consumption of a new tire in this State is an additional State use tax. Except
29 as otherwise provided in this Article, these taxes shall be collected and administered in the
30 same manner as the State sales and use taxes imposed by Article 5 of this Chapter. As under
31 Article 5 of this Chapter, the additional State sales tax paid when a new tire is sold is a credit
32 against the additional State use tax imposed on the storage, use, or consumption of the same
33 tire.

34 (b) Wholesale Sale or Use. – The privilege tax this Article imposes on a tire retailer and
35 on a tire wholesale merchant who sell new tires for placement in this State on a vehicle offered
36 for sale, lease, or rental is a tax on the wholesale sale of the tires. This tax and the excise tax
37 this Article imposes on a new tire purchased for placement in this State on a vehicle offered for
38 sale, lease, or rental shall, to the extent practical, be collected and administered as if they were
39 additional State sales and use taxes. The privilege tax paid when a new tire is sold for
40 placement on a vehicle offered for sale, lease, or rental is a credit against the use tax imposed
41 on the purchase of the same tire for placement in this State on a vehicle offered for sale, lease,
42 or rental.

43 (c) Discount. – The merchant's discount provided in G.S. 105-164.21 does not apply to
44 this Article."

45 **SECTION 6.** G.S. 105-187.22 reads as rewritten:

46 **"§ 105-187.22. Administration.**

47 The privilege tax this Article imposes on a white goods retailer is an additional State sales
48 tax and the excise tax this Article imposes on the storage, use, or consumption of a new white
49 good in this State is an additional State use tax. Except as otherwise provided in this Article,
50 these taxes shall be collected and administered in the same manner as the State sales and use
51 taxes imposed by Article 5 of this Chapter. As under Article 5 of this Chapter, the additional

1 State sales tax paid when a new white good is sold at retail is a credit against the additional
2 State use tax imposed on the storage, use, or consumption of the same white good. The
3 merchant's discount provided in G.S. 105-164.21 does not apply to this Article."

4 **SECTION 7.** G.S. 105-187.32 reads as rewritten:

5 "**§ 105-187.32. Administration.**

6 The privilege tax this Article imposes on a dry-cleaning solvent retailer is an additional
7 State sales tax, and the excise tax this Article imposes on the storage, use, or consumption of
8 dry-cleaning solvent by a dry-cleaning facility in this State is an additional State use tax.
9 Except as otherwise provided in this Article these taxes shall be collected and administered in
10 the same manner as the State sales and use taxes imposed by Article 5 of this Chapter. The
11 merchant's discount provided in G.S. 105-164.21 does not apply to this Article. As under
12 Article 5 of this Chapter, the additional State sales tax paid when dry-cleaning solvent is sold at
13 retail is a credit against the additional State use tax imposed on the storage, use, or consumption
14 of the same dry-cleaning solvent."

15 **SECTION 8.** This act becomes effective January 1, 2010, and applies to sales
16 made on or after that date.