

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

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HOUSE BILL 122*

Short Title: Rev Laws Tech, Clarify., & Admin. Chngs. (Public)

Sponsors: Representatives Howard, Luebke, and Gibson (Primary Sponsors).
For a complete list of Sponsors, see Bill Information on the NCGA Web Site.

Referred to: Finance.

February 17, 2011

1 A BILL TO BE ENTITLED
2 AN ACT TO MAKE TECHNICAL, CLARIFYING, AND ADMINISTRATIVE CHANGES
3 TO THE REVENUE LAWS AND RELATED STATUTES.

4 The General Assembly of North Carolina enacts:

5 **SECTION 1.** G.S. 105-120.2(f) is repealed.

6 **SECTION 2.** G.S. 105-129.50 is amended by adding a new subdivision to read:

7 "**§ 105-129.50. Definitions.**

8 The definitions in section 41 of the Code apply in this Article. In addition, the following
9 definitions apply in this Article:

10 (1) Development tier one area. – Defined in G.S. 143B-437.08.

11"

12 **SECTION 3.** G.S. 105-130.4(t2) is repealed.

13 **SECTION 4.** G.S. 105-164.4C(h)(5) reads as rewritten:

14 "(h) Definitions. – The following definitions apply in this section:

15 ...

16 (5) Postpaid calling service. – A telecommunications service that is charged on a
17 call-by-call basis and is obtained by making payment at the time of the call
18 either through the use of a credit or payment mechanism, such as a bank
19 card, travel card, credit card, or debit card, or by charging the call to a
20 telephone number that is not associated with the origination or termination
21 of the telecommunications service. A postpaid calling service includes a
22 service that meets all the requirements of a prepaid ~~wireline~~-telephone
23 calling service, except the exclusive use requirement.

24"

25 **SECTION 5.** G.S. 105-164.13(12) and (26a) reads as rewritten:

26 "**§ 105-164.13. Retail sales and use tax.**

27 The sale at retail and the use, storage, or consumption in this State of the following tangible
28 personal property, digital property, and services are specifically exempted from the tax imposed
29 by this Article:

30 ...

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

- 32 a. Prosthetic ~~devices~~-devices for human use.
33 b. Mobility enhancing equipment sold on a prescription.
34 c. Durable medical equipment sold on prescription.
35 d. Durable medical supplies sold on prescription.



1 ...

2 (26a) Food sold not for profit by a public school cafeteria to a child care center
3 that participates in the Child and Adult Care Food Program of the
4 Department of ~~Public Instruction~~ Health and Human Services."

5 **SECTION 6.** G.S. 105-164.13D(a) reads as rewritten:

6 "(a) The taxes imposed by this Article do not apply to the Energy Star qualified products
7 listed in this section if sold between 12:01 A.M. on the first Friday of November and 11:59
8 P.M. the following Sunday. The qualified products are:

- 9 (1) Clothes washers.
10 (2) Freezers and refrigerators.
11 (3) Central air conditioners and room air conditioners.
12 (4) Air-source heat ~~pumps and geothermal heat pumps.~~
13 (5) Ceiling fans.
14 (6) Dehumidifiers.
15 (7) Programmable thermostats."

16 **SECTION 7.** G.S. 105-164.14A(a)(1) and (4) read as rewritten:

17 **"§ 105-164.14A. Economic incentive refunds.**

18 (a) Refund. – The following taxpayers are allowed an annual refund of sales and use
19 taxes paid under this Article:

- 20 (1) Passenger air carrier. – An interstate passenger air carrier is allowed a refund
21 of the sales and use tax paid by it on fuel in excess of two million five
22 hundred thousand dollars (\$2,500,000). The amount of sales and use tax paid
23 does not include a refund allowed to the interstate passenger air carrier under
24 G.S. 105-164.14(a). This subdivision is repealed for purchases made on or
25 after ~~January 1, 2011~~ January 1, 2013.

26 ...

- 27 (4) Motorsports team or sanctioning body. – A professional motorsports racing
28 team or a motorsports sanctioning body is allowed a refund of the sales and
29 use tax paid by it in this State on aviation fuel that is used to travel to or
30 from a motorsports event in this State, to travel to a motorsports event in
31 another state from a location in this State, or to travel to this State from a
32 motorsports event in another state. For purposes of this subdivision, a
33 "motorsports event" includes a motorsports race, a motorsports sponsor
34 event, and motorsports testing. This subdivision is repealed for purchases
35 made on or after ~~January 1, 2011~~ January 1, 2013.

36"

37 **SECTION 8.(a)** G.S. 105-164.14B(a) reads as rewritten:

38 "(a) Definitions. – The following definitions apply in this section:

39 ...

- 40 (12) Owner. – The term includes a lessee under a lease-purchase contract.
41 (13) Paper-from-pulp manufacturing. – An industry primarily engaged in
42 manufacturing or converting paper, other than newsprint or uncoated
43 groundwood paper, from pulp or pulp products, or in converting purchased
44 sanitary paper stock or wadding into sanitary paper products.

45 ...

- 46 (21) Reserved.
47 (22) Turbine manufacturing. – An industry primarily engaged in manufacturing
48 turbines or complete turbine generator set units, such as steam, hydraulic,
49 gas, and wind. The term does not include the manufacturing of aircraft
50 turbines."

51 **SECTION 8.(b)** G.S. 105-164.14B(b)(1) reads as rewritten:

- "(1) Business requirement. – The facility is primarily engaged in one or more of the following:
- a. Air courier services.
 - b. Aircraft manufacturing.
 - c. Bioprocessing.
 - d. Financial services, securities operations, and related systems development.
 - e. Motor vehicle manufacturing.
 - f. Paper-from-pulp manufacturing.
 - g. Pharmaceutical and medicine manufacturing and distribution of pharmaceuticals and medicines.
 - ~~g-h.~~ h. Semiconductor manufacturing.
 - ~~h-i.~~ i. Solar electricity generating materials manufacturing.
 - j. Turbine manufacturing."

SECTION 9. G.S. 105-187.51C(c) reads as rewritten:

"(c) Forfeiture. – If the required level of investment to qualify as an eligible datacenter is not timely made, then the rate provided under this section is forfeited. If the required level of investment is timely made but any eligible machinery and equipment is not located and used at an eligible datacenter, then the rate provided for that machinery and equipment under this section is forfeited. A taxpayer that forfeits a rate under this section is liable for all past sales and use taxes avoided as a result of the forfeiture, computed ~~at the combined general rate~~ from the date the taxes would otherwise have been due, plus interest at the rate established under G.S. 105-241.21. If the forfeiture is triggered due to the lack of a timely investment required by this section, then interest is computed from the date the sales or use tax would otherwise have been due. For all other forfeitures, interest is computed ~~at the combined general rate~~ from the time as of which the machinery or equipment was put to a disqualifying use. A credit is allowed against the sales or use tax owed as a result of the forfeiture provisions of this subsection for privilege taxes paid pursuant to this section. For purposes of applying this credit, the fact that payment of the privilege tax occurred in a period outside the statute of limitations provided under G.S. 105-241.6 is not considered. The credit reduces the amount forfeited, and interest applies only to the reduced amount. The past taxes and interest are due 30 days after the date of forfeiture. A taxpayer that fails to pay the past taxes and interest by the due date is subject to the provisions of G.S. 105-236."

SECTION 10.(a) G.S. 105-228.37 reads as rewritten:

"§ 105-228.37. Refund of overpayment of tax.

(a) Refund Request. – A taxpayer who pays more tax than is due under this Article may request a refund of the overpayment by filing a written request for a refund with the board of county commissioners of the county where the tax was paid. The request must be filed within six months after the date the tax was paid and must explain why the taxpayer believes a refund is due.

(b) Hearing by County. – A board of county commissioners must conduct a hearing on a request for ~~refund in accordance with the procedures that apply to a hearing held by a board of equalization and review on an appeal concerning the listing or appraisal of property. If~~ refund. Within 60 days after a timely request for a refund has been filed and at least 10 days before the date set for the hearing, the board must notify the taxpayer in writing of the time and place at which the hearing will be conducted. The date set for the hearing must be within 90 days after the timely request for a hearing was filed or at a later date mutually agreed upon by the taxpayer and the board. The board must make a decision on the requested refund within 90 days after conducting a hearing under this subsection. ~~the board decides that a refund is due, it must refund the county's portion of the overpayment, together with any applicable interest, to~~

1 the taxpayer. If the board finds that no refund is due, the written decision of the board must
2 inform the taxpayer that the taxpayer may appeal the decision to the Property Tax Commission.

3 ~~(c) Review by Commission. Process if Refund Granted. – If the board of~~
4 ~~commissioners decides that a refund is due, it must refund the overpayment, together with any~~
5 ~~applicable interest, to the taxpayer and inform the Department of the refund. The Department~~
6 ~~may assess the taxpayer for the amount of the refund in accordance with G.S. 105-241.9 if the~~
7 ~~Department disagrees with the board's decision. The procedure in G.S. 105-290 for the appeal~~
8 ~~to the Property Tax Commission of a decision of a board of equalization and review concerning~~
9 ~~the listing or appraisal of property applies to the appeal of a denial by a board of county~~
10 ~~commissioners of a request for a refund of tax paid under this Article. If the Commission~~
11 ~~determines that a refund is due, the board of county commissioners must refund the county's~~
12 ~~portion of the overpayment, together with any applicable interest, to the taxpayer. A decision of~~
13 ~~the Commission is binding on the Secretary and on a board of county commissioners.~~

14 ~~(d) Judicial Review. Process if Refund Denied. – A decision of the Property Tax~~
15 ~~Commission is subject to judicial review in accordance with G.S. 7A-29. If the board of~~
16 ~~commissioners finds that no refund is due, the written decision of the board must inform the~~
17 ~~taxpayer that the taxpayer may request a departmental review of the denial of the refund in~~
18 ~~accordance with the procedures set out in G.S. 105-241.11.~~

19 (e) Recording Correct Deed. – Before a tax is refunded, the taxpayer must record a new
20 instrument reflecting the correct amount of tax due. If no tax is due because an instrument was
21 recorded in the wrong county, then the taxpayer must record a document stating that no tax was
22 owed because the instrument being corrected was recorded in the wrong county. The taxpayer
23 must include in the document the names of the grantors and grantees and the deed book and
24 page number of the instrument being corrected.

25 When a taxpayer records a corrected instrument, the taxpayer must inform the register of
26 deeds that the instrument being recorded is a correcting instrument. The taxpayer must give the
27 register of deeds a copy of the decision granting the refund that shows the correct amount of tax
28 due. The correcting instrument must include the deed book and page number of the instrument
29 being corrected. The register of deeds must notify the county finance officer and the Secretary
30 when the correcting instrument has been recorded.

31 (f) Interest. – An overpayment of tax bears interest at the rate established in
32 G.S. 105-241.21 from the date that interest begins to accrue. Interest begins to accrue on an
33 overpayment 30 days after the request for a refund is filed by the taxpayer with the board of
34 county commissioners."

35 **SECTION 10.(b)** G.S. 105-228.30(b) reads as rewritten:

36 "(b) The register of deeds of each county must remit the proceeds of the tax levied by
37 this section to the county finance officer. The finance officer of each county must credit
38 one-half of the proceeds to the county's general fund and remit the remaining one-half of the
39 proceeds, less taxes refunded and the county's allowance for administrative expenses, to the
40 Department of Revenue on a monthly basis. A county may retain two percent (2%) of the
41 amount of tax proceeds allocated for remittance to the Department of Revenue as compensation
42 for the county's cost in collecting and remitting the State's share of the tax. Of the funds
43 remitted to it pursuant to this section, the Department of Revenue must credit seventy-five
44 percent (75%) to the Parks and Recreation Trust Fund established under G.S. 113-44.15 and
45 twenty-five percent (25%) to the Natural Heritage Trust Fund established under G.S. 113-77.7."

46 **SECTION 11.(a)** G.S. 105-228.90(b) is amended by adding a new subdivision to
47 read:

48 "(b) Definitions. – The following definitions apply in this Article:

49 ...

1 (4b) NAICS. – The North American Industry Classification System adopted by
2 the United States Office of Management and Budget as of December 31,
3 2007.

4 "

5 **SECTION 11.(b)** G.S. 105-129.81(13) and (18) read as rewritten:

6 **"§ 105-129.81. Definitions.**

7 The following definitions apply in this Article:

8 ...

9 (13) ~~Information technology and services. – An industry in one of the~~
10 ~~following:~~following, as defined by NAICS:

11 a. ~~Internet service providers, Web search portals, and data processing~~
12 ~~subsector 518 as defined by NAICS.~~Data processing industry group
13 518.

14 b. ~~Software publishers industry group 5112 as defined by NAICS.~~5112.

15 c. ~~Computer systems design and related services industry group 5415 as~~
16 ~~defined by NAICS.~~5415.

17 d. An Internet activity included in industry group 519130.

18 ...

19 (18) ~~NAICS. – The North American Industry Classification System adopted by~~
20 ~~the United States Office of Management and Budget as of December 31,~~
21 ~~2002.~~Defined in G.S. 105-228.90.

22 "

23 **SECTION 11.(c)** G.S. 105-164.3(23a) reads as rewritten:

24 "~~(23a) NAICS. – The North American Industry Classification System adopted by~~
25 ~~the United States Office of Management and Budget as of December 31,~~
26 ~~2007.~~Defined in G.S. 105-228.90."

27 **SECTION 12.** G.S. 105-236(a)(2) reads as rewritten:

28 "(a) Penalties. – The following civil penalties and criminal offenses apply:

29 ...

30 (2) ~~Failure to Obtain a License. – For failure to obtain a license before engaging~~
31 ~~in a business, trade or profession for which a license is required, the~~
32 ~~Secretary shall assess a penalty equal to five percent (5%) of the amount~~
33 ~~prescribed for the license per month or fraction thereof until paid, not to~~
34 ~~exceed twenty-five percent (25%) of the amount so prescribed, but in any~~
35 ~~event shall not be less than five dollars (\$5.00). In cases in which the~~
36 ~~taxpayer – taxpayer, after written notification by the Department, fails to~~
37 ~~obtain a license as required under G.S. 105-449.65 or G.S. 105-449.131, the~~
38 ~~Secretary may assess a penalty of one thousand dollars (\$1,000).~~

39 "

40 **SECTION 13.(a)** G.S. 105-256(a)(9) reads as rewritten:

41 "(a) Publications. – The Secretary shall prepare and publish the following:

42 ...

43 (9) ~~A final decision of the Secretary in a contested tax case. The Secretary must~~
44 ~~redact identifying taxpayer information from a final decision prior to~~
45 ~~publication."~~

46 **SECTION 13.(b)** G.S. 105-259(b)(27) reads as rewritten:

47 "(b) Disclosure Prohibited. – An officer, an employee, or an agent of the State who has
48 access to tax information in the course of service to or employment by the State may not
49 disclose the information to any other person except as provided in this subsection. Standards
50 used or to be used for the selection of returns for examination and data used or to be used for

1 determining the standards may not be disclosed for any purpose. All other tax information may
2 be disclosed only if the disclosure is made for one of the following purposes:

3 ...

4 (27) To provide a ~~report~~ publication required under this Chapter."

5 **SECTION 13.(c)** G.S. 150B-21.17(a)(5) is repealed.

6 **SECTION 14.** G.S. 105-467(a) reads as rewritten:

7 "(a) Sales Tax. – The sales tax that may be imposed under this Article is limited to a tax
8 at the rate of one percent (1%) of the ~~transactions listed in this subsection. The sales tax~~
9 ~~authorized by this Article does not apply to sales that are taxable by the State under~~
10 ~~G.S. 105-164.4 but are not specifically included in this subsection following:~~

11 (1) A retailer's net taxable sales and gross receipts that are ~~The sales price of~~
12 ~~tangible personal property~~ subject to the general rate of sales tax imposed by
13 the State under ~~G.S. 105-164.4(a)(1) and (a)(4b).~~ G.S. 105-164.4.

14 (2) ~~The gross receipts derived from the lease or rental of tangible personal~~
15 ~~property when the lease or rental of the property is subject to the general rate~~
16 ~~of sales tax imposed by the State under G.S. 105-164.4(a)(2).~~

17 (3) ~~The gross receipts derived from the rental of any room or other~~
18 ~~accommodations subject to the general rate of sales tax imposed by the State~~
19 ~~under G.S. 105-164.4(a)(3).~~

20 (4) ~~The gross receipts derived from services rendered by laundries, dry cleaners,~~
21 ~~and other businesses subject to the general rate of sales tax imposed by the~~
22 ~~State under G.S. 105-164.4(a)(4).~~

23 (5) The sales price of food that is not otherwise exempt from tax pursuant to
24 G.S. 105-164.13 but is exempt from the State sales and use tax pursuant to
25 G.S. 105-164.13B.

26 (5a) The sales price of a bundled transaction that includes food subject to tax
27 under subdivision (5) of this subsection, if the price of the food exceeds ten
28 percent (10%) of the price of the bundle. A retailer must determine the price
29 of food in a bundled transaction in accordance with G.S. 105-164.4D.

30 (5b) The sales price of bread, rolls, and buns that are sold at a bakery thrift store
31 and are exempt from State tax under G.S. 105-164.13(27a).

32 (6) ~~The sales price of prepaid telephone calling service taxed as tangible~~
33 ~~personal property under G.S. 105-164.4(a)(4d).~~

34 (7) ~~The gross receipts derived from providing satellite digital audio radio service~~
35 ~~subject to the general rate of tax under G.S. 105-164.4(a)(6a)."~~

36 **SECTION 15.** Section 24.18(g) of S.L. 2006-66 reads as rewritten:

37 "**SECTION 24.18.(g)** This section is effective for taxable years beginning on or after
38 January 1, 2006, and expires for taxable years beginning on or after ~~January 1, 2011.~~ January 1,
39 2013."

40 **SECTION 16.** Section 31.7(e) of S.L. 2010-31 reads as rewritten:

41 "**SECTION 31.7.(e)** G.S. 105-37.1(a)(1), as amended by subsection (a) of this section,
42 becomes effective ~~August 1, 2010.~~ February 1, 2009, and applies to charges for admission
43 received before that date or on or after that date. G.S. 105-37.1(a)(2), as amended by subsection
44 (a) of this section, becomes effective January 1, 2011, and applies to admission tickets sold on
45 or after that date. The remainder of this section is effective when it becomes law."

46 **SECTION 17.** Section 8 of S.L. 2006-209 reads as rewritten:

47 "**SECTION 8.** As applied to G.S. 20-79.4, the authority in G.S. 164-10 for the Division of
48 Legislative Drafting and Codification to reletter or renumber section subdivisions includes the
49 authority to renumber all the subdivisions in G.S. 20-79.4(b) in sequential and alphabetical
50 order and to eliminate mixed number-letter subdivision designations. ~~This section expires July~~
51 ~~1, 2011.~~"

1 **SECTION 18.** A facilitator is not liable for an overcollection or undercollection of
2 sales tax or local occupancy tax if the facilitator has made a good faith effort to comply with
3 the law and collect the proper amount of tax as the result of the change under Section 31.6 of
4 S.L. 2010-31 regarding a facilitator's collection and remittance obligations imposed under
5 G.S. 105-164.4(a)(3), G.S. 153A-155(c), and G.S. 160A-215(c). This applies only to the
6 period beginning January 1, 2011, and ending April 1, 2011.

7 **SECTION 19.** G.S. 105-164.16(d) reads as rewritten:

8 "(d) Use Tax on Out-of-State Purchases. – Use tax payable by an individual who
9 purchases ~~the items listed in this subsection~~~~tangible personal property other than a boat or an~~
10 ~~aircraft, digital property, or a service~~ outside the State for a nonbusiness purpose is due on an
11 annual basis. For an individual who is not required to file an individual income tax return under
12 Part 2 of Article 4 of this Chapter, the annual reporting period ends on the last day of the
13 calendar year and a use tax return is due by the following April 15. For an individual who is
14 required to file an individual income tax return, the annual reporting period ends on the last day
15 of the individual's income tax year, and the use tax must be paid on the income tax return as
16 provided in G.S. 105-269.14. The items are:

17 (1) Tangible personal property other than a boat or an aircraft.

18 (2) Digital property.

19 (3) A service."

20 **SECTION 20.** G.S. 105-133(14) reads as rewritten:

21 "**§ 105-333. Definitions.**

22 The following definitions apply in this Article unless the context requires a different
23 meaning:

24 ...

25 (14) Public service company. – A railroad company, a pipeline company, a gas
26 company, an electric power company, an electric membership corporation, a
27 telephone company, a telegraph company, a bus line company, an airline
28 company, or a motor freight carrier company. The term also includes any
29 company performing a public service that is regulated by the United States
30 Department of Energy, the United States Department of Transportation, the
31 Federal Communications Commission, the Federal Aviation Agency, or the
32 North Carolina Utilities Commission, except that the term does not include a
33 water company, mobile telecommunications service as defined in
34 G.S. 105-164.3, a cable television company, or a radio or television
35 broadcasting company."

36 **SECTION 21.** G.S. 105-241.9(b) reads as rewritten:

37 "(b) Time Limit. – The Secretary must propose an assessment within the statute of
38 limitations for proposed assessments unless the taxpayer waives the limitations period ~~in~~
39 ~~writing~~ before it expires by agreeing in writing to extend the period. A taxpayer may waive the
40 limitations period for either a definite or an indefinite time. If the taxpayer waives the
41 limitations period, the Secretary may propose an assessment at any time within the time
42 extended by the waiver."

43 **SECTION 22.** This act is effective when it becomes law.