

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1993

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HOUSE BILL 74  
Committee Substitute Favorable 7/7/93

Short Title: Modify Tax Secrecy Provision.

(Public)

Sponsors:

Referred to:

February 9, 1993

A BILL TO BE ENTITLED

AN ACT TO CLARIFY THE PROHIBITION AGAINST DISCLOSING TAX INFORMATION, TO DELETE THE AUTHORITY OF THE GOVERNOR TO OBTAIN CONFIDENTIAL TAX INFORMATION, TO ADD SEVERAL NARROW EXCEPTIONS TO THE PROHIBITION TO ENABLE STATE AGENCIES TO PERFORM THE DUTIES ASSIGNED THEM BY LAW, AND TO EXCLUDE INFORMATION SUBMITTED ON A MASTER TAX APPLICATION FROM THE PROHIBITION.

The General Assembly of North Carolina enacts:

Section 1. G.S. 105-259 reads as rewritten:

**"§ 105-259. Secrecy required of officials; penalty for violation.**

~~With respect to any one of the following persons: (i) the Secretary of Revenue and all other officers or employees, and former officers and employees, of the Department of Revenue; (ii) local tax officials, as defined in G.S. 105-273, and former local tax officials; (iii) members and former members of the Property Tax Commission; (iv) any other person authorized in this section to receive information concerning any item contained in any report or return, or authorized to inspect any report or return; and (v) the Commissioner of Insurance and all other officers or employees and former officers and employees of the Department of Insurance with respect to State and federal income tax returns filed with the Commissioner of Insurance by domestic insurance companies; and except in accordance with proper judicial order or as otherwise provided by law, it shall be unlawful for any of these persons to divulge or make known in any manner the amount of income, income tax or other taxes of any taxpayer, or~~

~~1 information relating thereto or from which the amount of income, income tax or other  
2 taxes or any part thereof might be determined, deduced or estimated, whether it is set  
3 forth or disclosed in or by means of any report or return required to be filed or furnished  
4 under this Subchapter, or in or by means of any audit, assessment, application,  
5 correspondence, schedule or other document relating to the taxpayer, notwithstanding  
6 the provisions of Chapter 132 of the General Statutes or of any other law or laws  
7 relating to public records. It shall likewise be unlawful to reveal whether or not any  
8 taxpayer has filed a return, and to abstract, compile or furnish to any person, firm or  
9 corporation not otherwise entitled to information relating to the amount of income,  
10 income tax or other taxes of a taxpayer, any list of names, addresses, social security  
11 numbers or other personal information concerning the taxpayer, whether or not the list  
12 discloses a taxpayer's income, income tax or other taxes, or any part thereof, except that  
13 when an election is made by a husband and wife under G.S. 105-152.1 to file a joint  
14 return, any information given to one spouse concerning the income or income tax of the  
15 other spouse reported or reportable on the joint return shall not be a violation of the  
16 provisions of this section.~~

~~17 Nothing in this section shall be construed to prohibit the publication of statistics, so  
18 classified as to prevent the identification of particular reports or returns, and the items  
19 thereof; the inspection of these reports or returns by the Governor, Attorney General, or  
20 their duly authorized representative; or the inspection by a legal representative of the  
21 State of the report or return of any taxpayer who shall bring an action to set aside or  
22 review the tax based thereon, or against whom an action or proceeding has been  
23 instituted to recover any tax or penalty imposed by this Subchapter; nor shall the  
24 provisions of this section prohibit the Department of Revenue furnishing information to  
25 other governmental agencies of persons and firms properly licensed under Schedule B,  
26 G.S. 105-33 to 105-113. The Department of Revenue may exchange information with  
27 the officers of organized associations of taxpayers under Schedule B, G.S. 105-33 to  
28 105-113, with respect to parties liable for these taxes and as to parties who have paid  
29 these license taxes.~~

~~30 When any record of the Department of Revenue has been photographed,  
31 photocopied, or microphotocopied pursuant to the authority contained in G.S. 8-45.3,  
32 the original of that record may thereafter be destroyed at any time upon the order of the  
33 Secretary of Revenue, notwithstanding the provisions of G.S. 121-5, G.S. 132-2, or any  
34 other law relating to the preservation of public records. Any record that has not been so  
35 photographed, photocopied, or microphotocopied shall be preserved for three years, and  
36 thereafter until the Secretary of Revenue orders it destroyed.~~

~~37 Any person, officer, agent, clerk, employee, or local tax official or any former  
38 officer, employee, or local tax official who violates the provisions of this section shall  
39 be guilty of a misdemeanor and fined not less than two hundred dollars (\$200.00) nor  
40 more than one thousand dollars (\$1,000) and/or imprisoned, in the discretion of the  
41 court; and if the person committing the violation is a public officer or employee, that  
42 person shall be dismissed from such office or employment, and may not hold any public  
43 office or employment in this State for a period of five years thereafter.~~

~~1 Notwithstanding the provisions of this section, the Secretary of Revenue may permit  
2 the Commissioner of Internal Revenue of the United States, or the revenue officer of  
3 any other state imposing any of the taxes imposed in this Subchapter, or the duly  
4 authorized representative of either, to inspect the report or return of any taxpayer; or  
5 may furnish that person an abstract of the report or return of any taxpayer; or supply that  
6 person with information concerning any item contained in any report or return, or  
7 disclosed by the report of any investigation of any report or return of any taxpayer. The  
8 permission, however, may be granted or the information furnished to the officer or  
9 agent only if the statutes of the United States or of the other state grant substantially  
10 similar privilege to the Secretary of Revenue of this State or the Secretary's duly  
11 authorized representative. Notwithstanding any other provision of law, the Secretary  
12 may also furnish names, addresses, and account and identification numbers of (i)  
13 taxpayers who may be entitled to property held in the Escheat Fund to the  
14 Department of State Treasurer when that Department requests the information for the  
15 purpose of administering Chapter 116B of the General Statutes, and (ii) taxpayers to the  
16 Employment Security Commission when that Commission requests the information for  
17 the purpose of administering Article 2 of Chapter 96 of the General Statutes. Neither  
18 this section nor any other law prevents the exchange of information between the  
19 Department of Revenue and the Department of Transportation's Division of Motor  
20 Vehicles when the information is needed by either to administer the laws with which  
21 they are charged. Notwithstanding any other provision of law, State officers and  
22 employees who perform computerized data processing functions pursuant to G.S. 143-  
23 341(9) for the Department of Revenue are authorized to receive and process for the  
24 Department of Revenue information in reports and returns and are subject to the  
25 criminal provisions of this section.~~

~~26 Notwithstanding the provisions of this section, the Secretary of Revenue may  
27 contract with any person, firm or corporation to receive and address, sort, bag, or deliver  
28 to the United States Postal Service any bulk mailing originated by the Department of  
29 Revenue, and may deliver the mail to the contractor pursuant to the contract. To ensure  
30 performance of the contract, the contractor shall furnish a bond in a form and amount  
31 acceptable to the Secretary.~~

~~32 Notwithstanding the provisions of this section, the Secretary of Revenue may  
33 contract with a financial institution for the receipt of withheld income tax payments  
34 under G.S. 105-163.6.~~

~~35 (a) Definitions. – The following definitions apply in this section:~~

~~36 (1) Employee or officer. – The term includes a former employee, a former  
37 officer, and a current or former member of a State board or  
38 commission.~~

~~39 (2) Tax information. – Any information from any source concerning the  
40 liability of a taxpayer for a tax, as defined in G.S. 105-228.90. The  
41 term includes the following:~~

~~42 a. Information contained on a tax return, a tax report, or an  
43 application for a license for which a tax is imposed.~~

- 1           b. Information obtained through an audit of a taxpayer or by  
2           correspondence with a taxpayer.  
3           c. Information on whether a taxpayer has filed a tax return or a tax  
4           report.  
5           d. A list or other compilation of the names, addresses, social  
6           security numbers, or similar information concerning taxpayers.

7           The term does not include (i) statistics classified so that information  
8           about specific taxpayers cannot be identified or (ii) information  
9           submitted to the Business License Information Office of the  
10           Department of Secretary of State on a master application form for  
11           various business licenses.

12       (b) Disclosure Prohibited. – An officer, an employee, or an agent of the State  
13       who has access to tax information in the course of service to or employment by the State  
14       may not disclose the information to any other person unless the disclosure is made for  
15       one of the following purposes:

- 16           (1) To comply with a court order or a law.  
17           (2) Review by the Attorney General or a representative of the Attorney  
18           General.  
19           (3) Review by a tax official of another state or the Internal Revenue  
20           Commissioner of the United States to aid the state or the  
21           Commissioner in collecting a tax imposed by this State, the other state,  
22           or the United States if the laws of the other state or the United States  
23           allow the state or the United States to provide similar tax information  
24           to a representative of this State.  
25           (4) To provide a governmental agency or an officer of an organized  
26           association of taxpayers with a list of taxpayers who have paid a  
27           privilege license tax under Article 2 of this Chapter.  
28           (5) To furnish to the chair of a board of county commissioners information  
29           on the county sales and use tax.  
30           (6) To sort, process, or deliver tax information on behalf of the  
31           Department of Revenue.  
32           (7) To exchange information with the Division of Motor Vehicles of the  
33           Department of Transportation when the information is needed to fulfill  
34           a duty imposed on the Department of Revenue or the Division of  
35           Motor Vehicles.  
36           (8) To furnish to the Department of State Treasurer, upon request, the  
37           name, address, and account and identification numbers of a taxpayer  
38           who may be entitled to property held in the Escheat Fund.  
39           (9) To furnish to the Employment Security Commission the name,  
40           address, and account and identification numbers of a taxpayer when  
41           the information is requested by the Commission in order to fulfill a  
42           duty imposed under Article 2 of Chapter 96 of the General Statutes.  
43           (10) Review by the State Auditor to the extent authorized in G.S. 147-64.7.

- 1           (11) To give a spouse who elects to file a joint tax return a copy of the  
2           return or information contained on the return.
- 3           (12) To contract with a financial institution for the receipt of withheld  
4           income tax payments under G.S. 105-163.6 or for the transmittal of  
5           payments by electronic funds transfer.
- 6           (13) To furnish the Fiscal Research Division of the General Assembly upon  
7           request a sample, suitable in character, composition, and size for  
8           statistical analyses, of tax returns or other tax information from which  
9           taxpayers' names and identification numbers have been removed.
- 10          (14) To exchange information concerning a tax imposed by Subchapter V  
11          of this Chapter with the Standards Division of the Department of  
12          Agriculture when the information is needed to administer the Gasoline  
13          and Oil Inspection Act, Article 3 of Chapter 119 of the General  
14          Statutes.
- 15          (15) To exchange information concerning a tax imposed by Articles 2A,  
16          2B, 2C, or 2D of this Chapter with one of the following agencies when  
17          the information is needed to fulfill a duty imposed on the agency:
- 18           a. The North Carolina Alcoholic Beverage Control Commission.  
19           b. The Division of Alcohol Law Enforcement of the Department  
20           of Crime Control and Public Safety.  
21           c. The Bureau of Alcohol, Tobacco, and Firearms of the United  
22           States Treasury Department.
- 23          (16) To furnish to the Department of Secretary of State the name, address,  
24          and account and identification numbers of a corporation liable for  
25          corporate income or franchise taxes to enable the Secretary of State to  
26          notify the corporation of the annual report filing requirement or that its  
27          articles of incorporation or its certificate of authority has been  
28          suspended.
- 29          (17) To inform the Business License Information Office of the Department  
30          of Secretary of State of the status of an application for a license for  
31          which a tax is imposed and of any information needed to process the  
32          application.
- 33          (18) To furnish to the Office of the State Controller the name, address, and  
34          account and identification numbers of a taxpayer upon request to  
35          enable the State Controller to verify statewide vendor files or track  
36          debtors of the State.
- 37          (c) Punishment. – A person who violates this section is guilty of a misdemeanor  
38          and may be fined not less than two hundred dollars (\$200.00) nor more than one  
39          thousand dollars (\$1,000), imprisoned for up to two years, or both. If the person  
40          committing the violation is an officer or employee, that person shall be dismissed from  
41          public office or public employment and may not hold any public office or public  
42          employment in this State for five years after the violation."

43           Sec. 2. G.S. 75-28 reads as rewritten:

44   "**§ 75-28. Unauthorized disclosure of tax information; violation a misdemeanor.**"

1 Except in accordance with proper judicial order, or as otherwise provided by law, it  
2 shall be unlawful for any person, firm or corporation employed or engaged to prepare,  
3 or who or which prepares or undertakes to prepare, for any other person or taxpayer any  
4 tax form, report or return, to disclose, divulge or make known in any manner or use for  
5 any purpose or in any manner other than in the preparation of such form, report or  
6 return, without the express consent of the taxpayer or person for whom the form or  
7 return is prepared, the name or address of the taxpayer or such other person, the amount  
8 of income, income tax or other taxes, or any other information shown on or included in  
9 such form, report or return, or any information which may be or may have been  
10 furnished by the taxpayer or such other person to the preparer of such form, report or  
11 return or to the person, firm or corporation so employed or engaged.

12 ~~Nothing in this section shall be construed to amend or modify the authority specified~~  
13 ~~in G.S. 105-276(6) or any statute enacted in substitution therefor.~~

14 ~~Nothing in this section shall be construed to prohibit the inspection of such forms,~~  
15 ~~reports or returns required under Subchapter I of Chapter 105 of the General Statutes in~~  
16 ~~accordance with the authority provided in G.S. 105-259, or the examination of any~~  
17 ~~person, books, papers, records or other data in accordance with the authority provided~~  
18 ~~in G.S. 105-258.~~

19 Any person, firm or corporation, or any officer, agent, clerk, employee, or former  
20 officer or employee, of any firm or corporation engaged or formerly engaged in the  
21 preparation of tax forms, reports or returns for others, whether acting for himself or as  
22 agent for such corporation, who or which shall violate the provisions of this section  
23 shall be guilty of a misdemeanor and shall be fined or imprisoned in the discretion of  
24 the court."

25 Sec. 3. Article 7 of Chapter 153A of the General Statutes is amended by  
26 adding a new section to read:

27 "**§ 153A-148.1. Disclosure of certain information prohibited.**

28 (a) Disclosure Prohibited. – Notwithstanding Chapter 132 of the General  
29 Statutes or any other law regarding access to public records, local tax records that  
30 contain information about a taxpayer's income or receipts are not public records. A  
31 current or former officer, employee, or agent of a county who in the course of service to  
32 or employment by the county has access to information about the amount of a taxpayer's  
33 income or receipts may not disclose the information to any other person unless the  
34 disclosure is made for one of the following purposes:

35 (1) To comply with a court order or a law.

36 (2) Review by the Attorney General or a representative of the Attorney  
37 General.

38 (3) To sort, process, or deliver tax information on behalf of the county, as  
39 necessary to administer a tax.

40 (b) Punishment. – A person who violates this section is guilty of a misdemeanor  
41 and may be fined not less than two hundred dollars (\$200.00) nor more than one  
42 thousand dollars (\$1,000), imprisoned for up to two years, or both. If the person  
43 committing the violation is an officer or employee, that person shall be dismissed from

1 public office or public employment and may not hold any public office or public  
2 employment in this State for five years after the violation."

3 Sec. 4. Article 9 of Chapter 160A of the General Statutes is amended by  
4 adding a new section to read:

5 **"§ 160A-208.1. Disclosure of certain information prohibited.**

6 (a) Disclosure Prohibited. – Notwithstanding Chapter 132 of the General Statutes  
7 or any other law regarding access to public records, local tax records that contain  
8 information about a taxpayer's income or receipts are not public records. A current or  
9 former officer, employee, or agent of a city who in the course of service to or  
10 employment by the city has access to information about the amount of a taxpayer's  
11 income or receipts may not disclose the information to any other person unless the  
12 disclosure is made for one of the following purposes:

13 (1) To comply with a court order or a law.

14 (2) Review by the Attorney General or a representative of the Attorney  
15 General.

16 (3) To sort, process, or deliver tax information on behalf of the city, as  
17 necessary to administer a tax.

18 (b) Punishment. – A person who violates this section is guilty of a misdemeanor  
19 and may be fined not less than two hundred dollars (\$200.00) nor more than one  
20 thousand dollars (\$1,000), imprisoned for up to two years, or both. If the person  
21 committing the violation is an officer or employee, that person shall be dismissed from  
22 public office or public employment and may not hold any public office or public  
23 employment in this State for five years after the violation."

24 Sec. 5. G.S. 105-289(e) reads as rewritten:

25 "(e) The Department of Revenue may furnish the following information to a local  
26 tax official:

27 (1) Information contained in a report to it or to any other State department;  
28 and

29 (2) Information the Department has in its possession that may assist a  
30 local tax official in securing complete tax listings, appraising or  
31 assessing taxable property, collecting taxes, or presenting information  
32 in administrative or judicial proceedings involving the listing,  
33 appraisal, or assessment of property.

34 A local tax official may use information obtained from the Department under this  
35 subsection only for the purposes stated in subdivision (2). A local tax official may not  
36 divulge or make public this information except as required in administrative or judicial  
37 proceedings under this Subchapter. A local tax official who makes improper use of or  
38 discloses information obtained from the Department under this subsection is punishable  
39 as provided in G.S. ~~105-259~~-153A-148.1 or 160A-208.1, as appropriate.

40 The Department may not furnish information to a local tax official pursuant to this  
41 subsection unless it has obtained a written certification from the official stating that ~~he~~  
42 the official is familiar with the provisions of ~~both~~ this subsection and G.S. ~~105-259~~  
43 153A-148.1 or 160A-208.1, as appropriate, and that information obtained from the

1 Department under this subsection will be used only for the purposes stated in  
2 subdivision (2)."

3 Sec. 6. G.S. 105-449.57 reads as rewritten:

4 **"§ 105-449.57. Cooperative agreements between states.**

5 The Secretary may enter into cooperative agreements with other states for exchange  
6 of information in administering the tax imposed by this Article. No agreement,  
7 arrangement, declaration, or amendment to an agreement is effective until stated in  
8 writing and approved by the Secretary.

9 An agreement may provide for determining the base state for motor carriers, records  
10 requirements, audit procedures, exchange of information, persons eligible for tax  
11 licensing, defining qualified motor vehicles, determining if bonding is required,  
12 specifying reporting requirements and periods, including defining uniform penalty and  
13 interest rates for late reporting, determining methods for collecting and forwarding of  
14 gasoline or other motor fuel taxes and penalties to another jurisdiction, and such other  
15 provisions as will facilitate the administration of the agreement.

16 ~~Notwithstanding the provisions of G.S. 105-259 to the contrary,~~ In accordance with G.S.  
17 105-259, the Secretary may, as required by the terms of an agreement, forward to  
18 officials of another state any information in the Department's possession relative to the  
19 use of gasoline or other motor fuels by any motor carrier. The Secretary may disclose  
20 to officials of another state the location of offices, motor vehicles, and other real and  
21 personal property of motor carriers.

22 An agreement may provide for each state to audit the records of motor carriers based  
23 in the state to determine if the gasoline or other motor fuel taxes due each state are  
24 properly reported and paid. Each state shall forward the findings of the audits  
25 performed on motor carriers based in the state to each state in which the carrier has  
26 taxable use of gasoline or other motor fuels. For motor carriers not based in this State  
27 who have taxable use of gasoline or other motor fuels in this State, the Secretary may  
28 utilize the audit findings received from another state as the basis upon which to propose  
29 assessments of gasoline or other motor fuel taxes against the carrier as though the audit  
30 had been conducted by the Secretary. Penalties and interest shall be assessed at the  
31 rates provided in the agreement.

32 No agreement entered into pursuant to this section may preclude the Department  
33 from auditing the records of any motor carrier covered by this Chapter.

34 The provisions of Article 9 of this Chapter apply to any assessment or order made  
35 under this section.

36 The Secretary may not enter into any agreement that would increase or decrease  
37 taxes and fees imposed under Subchapter V of Chapter 105 of the General Statutes, and  
38 any provision to the contrary is void."

39 Sec. 7. G.S. 120-19 reads as rewritten:

40 **"§ 120-19. State officers, etc., upon request, to furnish data and information to**  
41 **legislative committees.**

42 ~~All~~ Except as provided in G.S. 105-259, all officers, agents, agencies and  
43 departments of the State are required to give to any committee of the General Assembly,  
44 upon request, all information and all data within their possession, or ascertainable from



1 their records. This requirement is mandatory and shall include requests made by any  
2 individual member of the General Assembly or ~~any one~~ of its committees or ~~chairmen~~  
3 ~~thereof.~~ the chair of a committee. "

4 Sec. 8. G.S. 132-1.1 reads as rewritten:

5 "**§ 132-1.1. Confidential communications by legal counsel to public board or**  
6 **agency; ~~not public records.~~ State tax information.**

7 (a) Confidential Communications. – Public records, as defined in G.S. 132-1,  
8 shall not include written communications (and copies thereof) to any public board,  
9 council, commission or other governmental body of the State or of any county,  
10 municipality or other political subdivision or unit of government, made within the scope  
11 of the attorney-client relationship by any attorney-at-law serving any such governmental  
12 body, concerning any claim against or on behalf of the governmental body or the  
13 governmental entity for which such body acts, or concerning the prosecution, defense,  
14 settlement or litigation of any judicial action, or any administrative or other type of  
15 proceeding to which the governmental body is a party or by which it is or may be  
16 directly affected. Such written communication and copies thereof shall not be open to  
17 public inspection, examination or copying unless specifically made public by the  
18 governmental body receiving such written communications; provided, however, that  
19 such written communications and copies thereof shall become public records as defined  
20 in G.S. 132-1 three years from the date such communication was received by such  
21 public board, council, commission or other governmental body.

22 (b) State Tax Information. – Tax information may not be disclosed except as  
23 provided in G.S. 105-259, 153A-148.1, and 160A-208.1. As used in this subsection,  
24 'tax information' has the same meaning as in G.S. 105-259."

25 Sec. 9. G.S. 132-3 reads as rewritten:

26 "**§ 132-3. Destruction of records regulated.**

27 (a) Prohibition. – No public official may destroy, sell, loan, or otherwise dispose  
28 of any public record, except in accordance with G.S. 121-5, without the consent of the  
29 Department of Cultural Resources. Whoever unlawfully removes a public record from  
30 the office where it is usually kept, or alters, defaces, mutilates or destroys it shall be  
31 guilty of a misdemeanor and upon conviction fined not less than ten dollars (\$10.00) nor  
32 more than five hundred dollars (\$500.00).

33 (b) Revenue Records. – Notwithstanding subsection (a) of this section and G.S.  
34 121-5, when a record of the Department of Revenue has been copied in any manner, the  
35 original record may be destroyed upon the order of the Secretary of Revenue. If a  
36 record of the Department of Revenue has not been copied, the original record shall be  
37 preserved for at least three years. After three years the original record may be destroyed  
38 upon the order of the Secretary of Revenue."

39 Sec. 10. This act is effective upon ratification.