

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

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HOUSE BILL 455
PROPOSED SENATE COMMITTEE SUBSTITUTE H455-PCS70586-SV-89

Short Title: Sales Tax Changes/Study Competing Systems.

(Public)

Sponsors:

Referred to:

March 9, 2009

A BILL TO BE ENTITLED

AN ACT TO ALLOW A SALES TAX REFUND TO A JOINT GOVERNMENTAL AGENCY CREATED TO OPERATE A CABLE TELEVISION SYSTEM; TO DIRECT THE REVENUE LAWS STUDY COMMITTEE TO CONTINUE ITS REVIEW OF LOCAL GOVERNMENT OWNED AND OPERATED COMMUNICATION SYSTEMS, AND TO CLARIFY A SELLER'S OBLIGATION WITH REGARD TO THE OVERCOLLECTION OF SALES AND USE TAX.

The General Assembly of North Carolina enacts:

SECTION 1. A joint agency created by an interlocal agreement pursuant to G.S. 160A-462 to operate a cable system that provides video programming services is allowed a refund of sales and use tax paid by it on purchases made on or after July 1, 2007, and before June 30, 2010, to the same extent allowed to a city under G.S. 105-164.14(c). Notwithstanding G.S. 105-164.14, the joint agency must make a request for a refund in writing before January 1, 2011.

SECTION 2.(a) Continue Study of Local Government Owned and Operated Communication Systems – The Revenue Laws Study Committee may continue its study begun in 2009 of local government owned and operated communication systems and to report its findings and any recommended legislation on this subject to the 2011 General Assembly by March 1, 2011. As part of its study, the Committee shall determine the following:

- (1) The extent to which current law authorizes units of local government to offer communication services not traditionally thought of as cable television services.
- (2) The requirements and standards that should apply to a unit of local government and to a private provider when the local unit offers a communication service that is offered by a private provider.
- (3) Whether varying or different provisions are needed to accommodate communication systems placed in service or financed under G.S. 160A-20 by cities before the effective date of this act.
- (4) Policies and incentives that can be established to facilitate the offering and expansion of communication service by both public and private service providers, including public-private ventures and other opportunities.

SECTION 2.(b) In conducting the study described in subsection (a) of this section, the Revenue Laws Study Committee cochairs are authorized to appoint an advisory subcommittee and to ask the Local Government Commission to designate an individual to



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1 participate in the subcommittee's deliberations in an ex officio, nonvoting capacity. The
2 subcommittee may consist of no more than 14 members and may include individuals who are
3 not members of the Committee or of the General Assembly, 10 of whom represent the
4 following interests:

- 5 (1) A cable service provider.
- 6 (2) A wireless telecommunications service provider.
- 7 (3) A local exchange provider that is not a wireless telecommunications service
8 provider.
- 9 (4) A local exchange provider that is a wireless telecommunications service
10 provider.
- 11 (5) A telephone membership corporation.
- 12 (6) A city that operates a cable system and an electric power system as a public
13 enterprise.
- 14 (7) A city that operates a cable system as a public enterprise and does not
15 operate an electric power system as a public enterprise.
- 16 (8) A city that is a member of a joint agency established under G.S. 160A-462
17 for the operation of a cable system as a public enterprise.
- 18 (9) The North Carolina League of Municipalities.
- 19 (10) The North Carolina Association of County Commissioners.

20 **SECTION 3.** G.S. 105-164.11(a) reads as rewritten:

21 "(a) ~~Remittance of Over-Collections-Overcollections~~ to Secretary. – When the tax is
22 collected for any period ~~is on a taxable sale~~ in excess of the total amount that should have been
23 ~~collected, collected or is collected on an exempt or nontaxable sale~~, the total amount collected
24 must be ~~paid over~~ remitted to the Secretary. ~~When tax is collected for any period on exempt or~~
25 ~~nontaxable sales the tax erroneously collected shall be remitted to the Secretary and no refund~~
26 ~~shall be made to a taxpayer unless the purchaser has received credit for or has been refunded~~
27 ~~the amount of tax erroneously charged. The seller who overcollected the tax is not allowed a~~
28 ~~refund of the overcollected tax unless the seller gives the purchaser credit for or a refund of the~~
29 ~~overcollected tax. If the Secretary determines that a seller who overcollected tax on a~~
30 ~~transaction is liable for use tax on the transaction rather than sales tax or is liable for sales tax~~
31 ~~on the transaction rather than use tax, the seller may apply the overcollected tax to the seller's~~
32 ~~liability for use tax or sales tax on the transaction. This provision-subsection shall be construed~~
33 with other provisions of this Article and given effect so as to result in the payment to the
34 Secretary of the total amount collected as tax if it is in excess of the amount that should have
35 been ~~collected, collected and to preclude collection of both a sales tax and a use tax on the same~~
36 ~~transaction.~~"

37 **SECTION 4.** This act is effective when it becomes law. Section 3 of this act
38 applies to liabilities that accrue on or after that date, are not collectible as of that date, or are the
39 subject of a final agency decision made on or after January 1, 2010.