

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2013

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HOUSE BILL 189
Committee Substitute Favorable 3/18/13
Senate Judiciary II Committee Substitute Adopted 6/19/14
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Proposed Conference Committee Substitute H189-PCCS30817-RBx-4

Short Title: Various Tax Law Changes

(Public)

Sponsors:

Referred to:

March 4, 2013

A BILL TO BE ENTITLED

1 AN ACT TO ALLOW DURHAM, ORANGE, FORSYTH, GUILFORD, MECKLENBURG,
2 AND WAKE COUNTIES TO RETAIN A LOCAL SALES AND USE TAX CAP OF
3 TWO AND THREE-QUARTERS PERCENT IF A MAJORITY OF VOTERS IN THOSE
4 COUNTIES APPROVE THE LEVY OF A ONE-QUARTER PERCENT TAX IN A
5 SPECIAL ELECTION HELD BY THE END OF 2016; TO CLARIFY THAT A
6 FARMER'S INCOME FROM FARMING OPERATIONS FOR THE PURPOSE OF THE
7 SALES AND USE TAX EXEMPTION IS GROSS SALES AND ALL OTHER INCOME
8 FROM FARMING OPERATIONS; AND TO MAKE OTHER TECHNICAL CHANGES
9 TO THE REVENUE LAWS.
10

11 The General Assembly of North Carolina enacts:

12 **SECTION 1.(a)** If House Bill 1224 becomes law, then G.S. 105-506.4(b)(3), as
13 enacted by House Bill 1224, reads as rewritten:

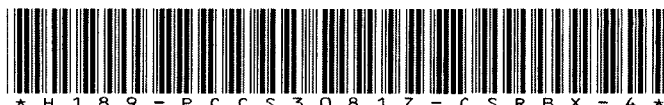
14 "(3) The county conducted one or more advisory referendums on or before
15 December 31, ~~2014~~, 2016, in which a majority of the voters approved the
16 levy of a local sales and use tax at the rate of one-quarter percent (1/4%)
17 under Article 46 of this Chapter."

18 **SECTION 1.(b)** If House Bill 1224 becomes law, then G.S. 105-537(e)(2), as
19 enacted by House Bill 1224, reads as rewritten:

20 "(2) The county conducted one or more advisory referendums on or before
21 December 31, ~~2014~~, 2016, in which a majority of the voters approved the
22 levy of a local sales and use tax at the rate of one-quarter percent (1/4%)
23 under this Article."

24 **SECTION 2.** G.S. 105-164.13E, as amended by S.L. 2014-3, reads as rewritten:
25 "**§ 105-164.13E. Exemption for farmers.**

26 (a) Exemption. – A qualifying farmer is a person who has an annual ~~gross income from~~
27 farming operations for the preceding taxable year of ten thousand dollars (\$10,000) or more
28 ~~from farming operations~~ or who has an average annual ~~gross income from farming operations~~
29 for the three preceding taxable years of ten thousand dollars (\$10,000) or more from farming
30 operations. For purposes of this section, the term "income from farming operations"



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1 means sales plus any other amounts treated as gross income under the Code pursuant to
2 Schedule F of Form 1040. A qualifying farmer includes a dairy operator, a poultry farmer, an
3 egg producer, a livestock farmer, a farmer of crops, and a farmer of an aquatic species, as
4 defined in G.S. 106-758. A qualifying farmer may apply to the Secretary for an exemption
5 certificate number under G.S. 105-164.28A. The exemption certificate expires when a person
6 fails to meet the income threshold for three consecutive taxable years or ceases to engage in
7 farming operations-operations, whichever comes first.

8 The following tangible personal property, digital property, and services are exempt from
9 sales and use tax if purchased by a qualifying farmer and for use by the farmer in farming
10 operations. For purposes of this section, an item is used by a farmer for farming operations if it
11 is used for the planting, cultivating, harvesting, or curing of farm crops or in the production of
12 dairy products, eggs, or animals:

13 ...

14 (b) Conditional Exemption. – A person who does not meet the definition of a qualifying
15 farmer in subsection (a) of this section may apply to the Department for a conditional
16 exemption certificate under G.S. 105-164.28A. A person with a conditional exemption
17 certificate is allowed to purchase items exempt from sales and use tax to the same extent as a
18 qualifying farmer under subsection (a) of this section. To receive a conditional exemption
19 certificate under this subsection, the person must certify that the person intends to engage in
20 farming operations, as that term is described in subsection (a) of this section, and that the
21 person will timely file State and federal income tax returns that reflect income and expenses
22 incurred from farming operations during the taxable years that the conditional exemption
23 certificate applies.

24 A conditional exemption certificate issued under this subsection is valid for the taxable year
25 in which the certificate is issued and the following two taxable years, provided the person to
26 whom the certificate is issued provides copies of applicable State and federal income tax
27 returns to the Department within 90 days following the end of each taxable year covered by the
28 conditional exemption ~~certificate~~-certificate and provided the person is engaged in farming
29 operations. A conditional exemption certificate issued under this subsection may not be
30 extended or renewed beyond the original three-year period. The Department may not issue a
31 conditional exemption certificate to a person who has had a conditional exemption certificate
32 issued under this subsection during the prior 15 taxable years.

33 A person who purchases items with a conditional exemption certificate must maintain
34 documentation of the items purchased and copies of State and federal income tax returns that
35 reflect activities from farming operations for the period of time covered by the conditional
36 exemption certificate for three years following the expiration of the conditional exemption
37 certificate. The Secretary may require a person who has a conditional exemption certificate to
38 provide any other information requested by the Secretary to verify the person met the
39 conditions of this subsection. A person who fails to provide the information requested by the
40 Secretary in a timely manner or who fails to meet the requirements of this subsection becomes
41 liable for any taxes for which an exemption under this subsection was claimed. The taxes
42 become due and payable at the expiration of the conditional exemption certificate, and interest
43 accrues from the date of the original purchase. Additionally, where the person does not timely
44 provide the information requested by the Secretary, the misuse of exemption certificate penalty
45 in G.S. 105-236(a)(5a) applies to each seller identified by the Department from which the
46 person made a purchase."

47 **SECTION 3.(a)** G.S. 105-153.4 reads as rewritten:

48 "**§ 105-153.4. North Carolina taxable income defined.**

49 (a) Residents. – For an individual who is a resident of this State, the term "North
50 Carolina taxable income" means the taxpayer's adjusted gross income as modified in
51 G.S. 105-153.5 and ~~G.S. 105-153.6 and G.S. 105-134.6A.~~G.S. 105-153.6.

1 (b) Nonresidents. – For a nonresident individual, the term "North Carolina taxable
 2 income" means the taxpayer's adjusted gross income as modified in G.S. 105-153.5 and
 3 ~~G.S. 105-153.6 and G.S. 105-134.6A~~, G.S. 105-153.6, multiplied by a fraction the denominator
 4 of which is the taxpayer's gross income as modified in G.S. 105-153.5 and ~~G.S. 105-153.6 and~~
 5 ~~G.S. 105-134.6A~~, G.S. 105-153.6, and the numerator of which is the amount of that gross
 6 income, as modified, that is derived from North Carolina sources and is attributable to the
 7 ownership of any interest in real or tangible personal property in this State, is derived from a
 8 business, trade, profession, or occupation carried on in this State, or is derived from gambling
 9 activities in this State.

10 (c) Part-year Residents. – If an individual was a resident of this State for only part of
 11 the taxable year, having moved into or removed from the State during the year, the term "North
 12 Carolina taxable income" has the same meaning as in subsection (b) of this section except that
 13 the numerator includes gross income, as modified under G.S. 105-153.5 and ~~G.S. 105-153.6~~
 14 ~~and G.S. 105-134.6A~~, G.S. 105-153.6, derived from all sources during the period the individual
 15 was a resident.

16 (d) S Corporations and Partnerships. – In order to calculate the numerator of the
 17 fraction provided in subsection (b) of this section, the amount of a shareholder's pro rata share
 18 of S Corporation ~~income~~ ~~income~~, as modified in G.S. 105-153.5 and G.S. 105-153.6, that is
 19 includable in the numerator is the shareholder's pro rata share of the S Corporation's income
 20 attributable to the State, as defined in G.S. 105-131(b)(4). In order to calculate the numerator of
 21 the fraction provided in subsection (b) of this section for a member of a partnership or other
 22 unincorporated business that has one or more nonresident members and operates in one or more
 23 other states, the amount of the member's distributive share of the total net income of the
 24 ~~business~~ ~~business~~, as modified in G.S. 105-153.5 and G.S. 105-153.6, that is includable in the
 25 numerator is determined by ~~multiplying the total net income of the business by the ratio~~
 26 ~~ascertained under the~~ ~~in~~ accordance with the provisions of G.S. 105-130.4. As used in this
 27 subsection, total net income means the entire gross income of the business less all expenses,
 28 taxes, interest, and other deductions allowable under the Code that were incurred in the
 29 operation of the business.

30 (e) Tax Year. – A taxpayer must compute North Carolina taxable income on the basis
 31 of the taxable year used in computing the taxpayer's income tax liability under the Code."

32 **SECTION 3.(b)** G.S. 105-153.5 is amended by adding a new subsection to read:

33 "(c1) Other Additions. – S Corporations subject to the provisions of Part 1A of this
 34 Article, partnerships subject to the provisions of this Part, and estates and trusts subject to the
 35 provisions of Part 3 of this Article must add any amount deducted under section 164 of the
 36 Code as state, local, or foreign income tax."

37 **SECTION 3.(c)** This section is effective for taxable years beginning on or after
 38 January 1, 2014.

39 4.(c) **SECTION 4.** G.S. 105-164.13, as amended by Section 6.1(f) of S.L. 2014-3, reads
 40 as rewritten:

41 "**§ 105-164.13. Retail sales and use tax.**

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

- 45 ...
- 46 (62) An item used to maintain or repair tangible personal property or a motor
 47 vehicle pursuant to a service contract taxable under this Article if the
 48 purchaser of the contract is not charged for the item. ~~This exemption does~~
 49 ~~not apply to an item used to maintain or repair tangible personal property~~
 50 ~~pursuant to a service contract exempt from tax under G.S. 105-164.41(b).~~ For
 51 purposes of this exemption, the term "item" does not include a tool,

1 equipment, supply, or similar tangible personal property used to complete
2 the maintenance or repair and that is not deemed to be a component or repair
3 part of the tangible personal property or motor vehicle for which a service
4 contract is sold to a purchaser."

5 **4.(b) SECTION 5.(a)** G.S. 105-187.52(c) reads as rewritten:

6 "(c) Exemption. – State agencies are exempted from the privilege taxes imposed by this
7 Article. The exemption in G.S. 105-164.13(62) does not apply to an item used to maintain or
8 repair tangible personal property pursuant to a service contract exempt from tax under
9 G.S. 105-164.41(b)(4)."

10 **4.(c) SECTION 5.(b)** Notwithstanding G.S. 105-164.13(62), as amended by S.L. 2014-3
11 and by subsection (a) of this section, the sales and use tax exemption in G.S. 105-164.13(62)
12 applies to an item used pursuant to a service contract that meets the definition of a "service
13 contract" as defined in G.S. 105-164.3(38b), notwithstanding that the service contract was sold
14 before January 1, 2014, and effective on, before, or after January 1, 2014.

15 **4.(d) SECTION 5.(e)** Subsection (a) of this section becomes effective October 1, 2014.
16 The remainder of this section is effective when it becomes law.

17 **SECTION 6.** Section 4.1(g) of S.L. 2014-3 reads as rewritten:

18 "**SECTION 4.1.(g)** This Part is effective when it becomes law and applies to the
19 following:

- 20 (1) ~~gross~~ Gross receipts derived from a prepaid meal plan sold or billed on or
21 after July 1, 2014.
- 22 (2) Gross receipts derived from a prepaid meal plan sold or billed before July 1,
23 2014, if the prepaid meal plan is not authorized for use or available to the
24 person until August 1, 2014."

25 **SECTION 7.** Except as otherwise provided, this act is effective when it becomes
26 law.