

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2015

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SENATE BILL 803
Finance Committee Substitute Adopted 6/21/16
House Committee Substitute Favorable 6/28/16
PROPOSED HOUSE COMMITTEE SUBSTITUTE S803-PCS45551-TMx-65

Short Title: Rev Laws Technical, Clarifying, & Admin. Chg.

(Public)

Sponsors:

Referred to:

May 4, 2016

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

4 The General Assembly of North Carolina enacts:

5
6 **PART I. INCOME TAX CHANGES**

7 **SECTION 1.1.** G.S. 105-130.4(a)(6) reads as rewritten:

8 "**§ 105-130.4. Allocation and apportionment of income for corporations.**

9 (a) As used in this section, unless the context otherwise requires:

10 ...

11 (6) "Public utility" means any corporation that is subject to control of one or more
12 of the following entities: the North Carolina Utilities Commission, the Federal
13 Communications Commission, ~~the Interstate Commerce Commission,~~ the
14 Federal Energy Regulatory Commission, or the Federal Aviation Agency; and
15 that owns or operates for public use any plant, equipment, property, franchise,
16 or license for the transmission of communications, the transportation of goods
17 or persons, or the production, storage, transmission, sale, delivery or furnishing
18 of electricity, water, steam, oil, oil products, or gas. The term also includes a
19 motor carrier of property whose principal business activity is transporting
20 property by motor vehicle for hire over the public highways of this State."

21 **SECTION 1.2.** G.S. 105-153.5(c2), as amended by S.L. 2016-6, reads as rewritten:

22 "(c2) Decoupling Adjustments. – In calculating North Carolina taxable income, a taxpayer
23 must add to the taxpayer's adjusted gross income any of the following items that are not included
24 in the taxpayer's adjusted gross income:

25 (1) For taxable years 2014, 2015, and 2016, the amount excluded from the
26 taxpayer's gross income for the discharge of qualified principal residence
27 indebtedness under section 108 of the Code. The purpose of this subdivision is
28 to decouple from the income exclusion available under federal tax law. If the
29 taxpayer is insolvent, as defined in section 108(d)(3) of the Code, then the
30 addition required under this subdivision is limited to the amount of discharge of
31 qualified principal residence indebtedness excluded from adjusted gross income
32 under section 108(a)(1)(E) of the Code that exceeds the amount of discharge of
33 indebtedness that would have been excluded under section 108(a)(1)(B) of the
34 Code.



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3 **PART II. SALES TAX CHANGES**

4 **SECTION 2.1.(a)** G.S. 105-164.13(11b), as amended by Section 3.23(a) of S.L.
5 2016-5, reads as rewritten:

6 "(11b) Sales of aviation gasoline and jet fuel to an interstate air business for use in a
7 commercial aircraft. For purposes of this subdivision, the term "commercial
8 aircraft" has the same meaning as defined in subdivision (45a) of this
9 subsection. This exemption also applies to aviation gasoline and jet fuel
10 purchased for use in a commercial aircraft in interstate or foreign commerce by
11 a person whose primary business is scheduled passenger air transportation. This
12 subdivision expires January 1, 2020."

13 **SECTION 2.1.(b)** This section becomes effective January 1, 2016.

14 **SECTION 2.2.** G.S. 105-164.3(33c), as amended by Section 5.5(a) of S.L. 2016-5,
15 reads as rewritten:

16 "(33c) Qualifying datacenter. – A datacenter that satisfies each of the following
17 conditions:

18 ...

19 c. The datacenter certifies that it provides health insurance for all of its
20 full-time employees. The datacenter provides health insurance if it pays
21 at least fifty percent (50%) of the premiums for health care coverage
22 that equals or exceeds the minimum provisions of the basic health care
23 plan of coverage ~~recommend~~recommended by the Small Employer
24 Carrier Committee pursuant to G.S. 58-50-125."

25 **SECTION 2.3.** G.S. 105-164.4 reads as rewritten:

26 **"§ 105-164.4. Tax imposed on ~~retailers~~retailers and certain facilitators.**

27 ...

28 (b) The tax levied in this section shall be collected from the retailer and paid by him at the
29 time and in the manner as hereinafter provided. A person engaging in business as a retailer shall
30 pay the tax required on the net taxable sales of the business at the rates specified when proper
31 books are kept showing separately the gross proceeds of taxable and nontaxable sales of items
32 subject to tax under subsection (a) of this section in a form that may be accurately and
33 conveniently checked by the Secretary or the Secretary's duly authorized agent. If the records are
34 not kept separately, the tax shall be paid on the gross sales of the business and the exemptions and
35 exclusions provided by this Article are not allowed. The tax levied in this section is in addition to
36 all other taxes whether levied in the form of excise, license, privilege, or other taxes. The
37 requirements of this subsection apply to facilitators liable for tax under this Article.

38 (c) Certificate of Registration. – Before a person may engage in business as a retailer or a
39 wholesale merchant in this State, the person must obtain a certificate of registration from the
40 Department in accordance with G.S. 105-164.29. A facilitator that is liable for tax under ~~G.S.~~
41 ~~105-164.4~~this Article must obtain a certificate of registration from the Department in accordance
42 with G.S. 105-164.29."

43 **SECTION 2.4.** G.S. 105-164.7 reads as rewritten:

44 **"§ 105-164.7. Retailer or facilitator to collect sales tax from purchaser as trustee for State.**

45 The sales tax imposed by this Article is intended to be passed on to the purchaser of a taxable
46 item and borne by the purchaser instead of by the retailer. A retailer must collect the tax due on an
47 item when the item is sold at retail. The requirements of this section apply to facilitators liable for
48 tax under this Article. The tax is a debt from the purchaser to the retailer until paid and is
49 recoverable at law by the retailer in the same manner as other debts. A retailer is considered to act
50 as a trustee on behalf of the State when it collects tax from the purchaser of a taxable item. The tax

1 must be stated and charged separately on the invoices or other documents of the retailer given to
2 the purchaser at the time of the sale except for either of the following:

- 3 (1) Vending machine sales.
- 4 (2) Where a retailer displays a statement indicating the sales price includes the tax."

5 **SECTION 2.5.** G.S. 105-164.13(63) reads as rewritten:

6 "**§ 105-164.13. Retail sales and use tax.**

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

10 Agricultural Group.

11 ...

12 (63) Food and prepared food to be provided to a person entitled to the food and
13 prepared food under a prepaid meal plan subject to tax under
14 G.S. 105-164.4(a)(12). This exemption applies to packaging items including
15 wrapping paper, labels, plastic bags, cartons, packages and containers, paper
16 cups, napkins and drinking straws, and like articles that meet all of the
17 following requirements:

- 18 a. Used for packaging, shipment, or delivery of the food and prepared
19 food.
- 20 b. Constitute a part of the sale of the food and prepared food.
- 21 c. Delivered with the food and prepared food."

22 **SECTION 2.6.** G.S. 105-164.15A(b) reads as rewritten:

23 "(b) Combined Rate Items. – The effective date of a rate change for an item that is taxable
24 under this Article at the combined general rate is ~~the effective date of any of the~~
25 ~~following:~~ administered as follows:

26 (1) ~~The~~ For a taxable item that is not billed on a monthly or other periodic basis, a
27 tax change applies to amounts received for items provided on or after the
28 effective date of a change in the State general rate of tax set in G.S. 105-164.4.

29 (1a) For a taxable item that is provided and billed on a monthly or other periodic
30 basis:

- 31 a. A tax increase applies to the first billing period that is at least 30 days
32 after enactment and that starts on or after the effective date.
- 33 b. A tax rate decrease applies to bills rendered on or after the effective
34 date.

35 (2) For an increase in the authorization for local sales and use taxes, the date on
36 which local sales and use taxes authorized by Subchapter VIII of this Chapter
37 for every county become effective in the first county or group of counties to
38 levy the authorized taxes.

39 (3) For a repeal in the authorization for local sales and use taxes, the effective date
40 of the repeal."

41 **SECTION 2.7.** G.S. 105-187.5(b) reads as rewritten:

42 "**§ 105-187.5. Alternate tax for those who rent or lease motor vehicles.**

43 ...

44 (b) Rate. – The tax rate on the gross receipts from the short-term lease or rental of a motor
45 vehicle is eight percent (8%) and the tax rate on the gross receipts from the long-term lease or
46 rental of a motor vehicle is three percent (3%). Gross receipts does not include the amount of any
47 allowance given for a motor vehicle taken in trade as a partial payment on the lease or rental price.
48 The maximum tax in ~~G.S. 105-187.3(a)~~ G.S. 105-187.3(a1) on certain motor vehicles applies to a
49 continuous lease or rental of such a motor vehicle to the same person."

50
51 **PART III. LOCAL GOVERNMENT TAX CHANGES**

1 **SECTION 3.1.(a)** G.S. 153A-148.1(a) reads as rewritten:

2 "**§ 153A-148.1. Disclosure of certain information prohibited.**

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

9 ...
10 (7) To disclose to the authorized finance officer of any municipality located within
11 the county tax information in the possession of the county, as necessary to
12 administer a tax."

13 **SECTION 3.1.(b)** G.S. 160A-208.1(a) reads as rewritten:

14 "**§ 160A-208.1. Disclosure of certain information prohibited.**

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

21 ...
22 (5) To disclose to the authorized finance officer of the county in which the
23 municipality is located tax information in the possession of the municipality, as
24 necessary to administer a tax."

25 **PART IV. MSA CHANGES**

26 **SECTION 4.(a)** G.S. 66-294(b) reads as rewritten:

27 "**§ 66-294. Duties of manufacturers.**

28 ...
29 (b) Nonparticipating Manufacturers. – A nonparticipating manufacturer must:

30 ...
31 (7) Notwithstanding any other provision of law, if a newly qualified
32 nonparticipating manufacturer is to be listed in the North Carolina Tobacco
33 Directory (the Directory), or if the Attorney General reasonably determines that
34 any nonparticipating manufacturer who has filed a certification pursuant to
35 G.S. 66-291, et seq., poses an elevated risk for noncompliance with this Article,
36 neither such nonparticipating manufacturer nor any of its brand families shall
37 be included in the Directory unless and until such nonparticipating
38 manufacturer, or its United States importer that undertakes joint and several
39 liability for the manufacturer's performance in accordance with G.S. 66-291, et
40 seq., has posted a bond in accordance with this section.

41 The bond shall be posted by a corporate surety located within the United
42 States in a form and manner acceptable to the Attorney General, or a cash
43 equivalent posted by the nonparticipating manufacturer, in an amount equal to
44 the greater of fifty thousand dollars (\$50,000) or the greatest amount of escrow
45 the manufacturer in either its current or predecessor form was required to
46 deposit as a result of its highest calendar year's sales in North Carolina for any
47 of the preceding three calendar years or greatest quarterly escrow deposit for
48 any of the preceding 12 calendar quarters, depending on the manufacturer's
49 required escrow deposit frequency. The bond or its cash equivalent shall be
50 posted at least 10 days in advance of each calendar year or quarter depending
51

1 on the manufacturer's required escrow deposit frequency. The bond shall be
 2 written in favor of North Carolina and such bond or cash equivalent shall be
 3 conditioned on the performance by the nonparticipating manufacturer or its
 4 United States importer that undertakes joint and several liability for the
 5 manufacturer's performance, in accordance with G.S. 66-294.2, of all of its
 6 duties and obligations under this Article during the year in which the
 7 certification is filed and the next succeeding calendar year. The bond may be
 8 drawn upon by the Attorney General to cover unsatisfied escrow obligations,
 9 penalties, and any other liability under the tobacco laws of the State.

10 Some factors, though not exclusive, which the Attorney General may
 11 consider in determining whether any nonparticipating manufacturer or importer
 12 poses an elevated risk of noncompliance are (i) the nonparticipating
 13 manufacturer or any affiliate thereof or importer has illegally failed to satisfy an
 14 escrow obligation with respect to any state in the past; (ii) any state has
 15 removed the nonparticipating manufacturer or its brand families or an affiliate
 16 or any of the affiliate's brand families from the state's tobacco directory for
 17 noncompliance with the state's laws; (iii) any state has pending litigation
 18 against, or an unsatisfied judgment against the nonparticipating manufacturer or
 19 any affiliate thereof or importer for escrow or penalties related to
 20 noncompliance with state escrow laws; (iv) the nonparticipating manufacturer
 21 sells its cigarettes or tobacco products directly to consumers via remote or other
 22 non-face-to-face means; (v) a state or federal court has determined that the
 23 nonparticipating manufacturer or importer has violated any tobacco tax or
 24 tobacco control law or engaged in unfair business practice or unfair
 25 competition; or (vi) the nonparticipating manufacturer or importer fails to
 26 submit or complete any required forms, documents, certifications, or notices, in
 27 a timely manner or, to the satisfaction of the Attorney General."

28 **SECTION 4.(b)** This section becomes effective October 1, 2016.

29
 30 **PART V. UI TAX CHANGES**

31 **SECTION 5.(a)** G.S. 96-9.2(c) reads as rewritten:

32 **"§ 96-9.2. Required contributions to the Unemployment Insurance Fund.**

33 ...

34 (c) Contribution Rate for Experience-Rated Employer. – The contribution rate for an
 35 experience-rated employer who does not qualify as a beginning employer under subsection (b) of
 36 this section is determined in accordance with the table set out below and then rounded to the
 37 nearest one-hundredth percent (0.01%), subject to the minimum and maximum contribution rates.
 38 The minimum contribution rate is six-hundredths of one percent (0.06%). The maximum
 39 contribution rate is five and seventy-six hundredths percent (5.76%). "Total insured wages" are the
 40 total wages reported by all insured employers for the 12-month period ending on June 30
 41 preceding the computation date. The calculations in the table set out below are applied as of
 42 September 1 following the computation date. An employer's experience rating is computed as a
 43 reserve ratio in accordance with G.S. 96-9.4. An employer's reserve ratio percentage (ERRP) is the
 44 employer's reserve ratio multiplied by sixty-eight hundredths. A positive ERRP produces a lower
 45 contribution rate, and a negative ERRP produces a higher contribution rate.

46 **UI Trust Fund Balance**

47 as Percentage of Total	Contribution Rate
48 Insured Wages	
49 Less than or equal to 1%	2.9% minus ERRP
50 Greater than 1% but less	
51 than or equal to 1.25%	2.4% minus ERRP

1 Greater than 1.25% 1.9% minus ERRP"
2 **SECTION 5.(b)** This section is effective when it becomes law and applies to
3 contributions payable for calendar quarters beginning on or after January 1, 2017.
4

5 **PART VI. EFFECTIVE DATE**

6 **SECTION 6.** Except as otherwise provided, this act is effective when it becomes law.