



SENATE BILL 790: Cape Hatteras EMC Tax Status

2013-2014 General Assembly

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| Committee: | House Finance | Date: | June 18, 2014 |
| Introduced by: | Sen. Cook | Prepared by: | Heather Fennell |
| Analysis of: | PCS to Second Edition S790-CSTD-46 | | Committee Counsel |

SUMMARY: *The PCS to S790 would phase in the sales tax on sales of electricity by the Cape Hatteras Electric membership Corporation over two years.*

The PCS make two technical changes at the request of the Department of Revenue.

CURRENT LAW: Electric membership corporations (EMCs) are not-for-profit entities that provide electric service in rural areas. North Carolina enacted legislation to allow EMCs in 1935 to promote electric service in the State. EMCs are not regulated by the Utilities Commission, but are governed by the board of directors that are elected by the customers of the EMC.

Prior to 1965, each EMC was designated as a "public agency." As public agencies, the EMCs did not pay taxes on the sales of electricity by the EMCs. In 1965, the General Assembly enacted legislation clarifying the service area territories of EMCs and investor-owned public utilities. As part of the negotiation over the service areas, the legislation repealed the "public agency" designation for most of the EMCs. However, Cape Hatteras EMC retained its status as a "public agency" under the law.

In 2000, the Department of Revenue informed Cape Hatteras EMC it would be required to remit sales tax on its sales of electricity.¹ Cape Hatteras paid the tax, but also filed suit for the return of taxes and clarification of its liability for the tax. In 2011, the North Carolina Court of Appeals held that Cape Hatteras EMC was not liable for the franchise or the sales tax on its sales of electricity.²

S.L. 2013-316 (*Tax Simplification and Reduction Act*) provided for the uniform taxation of all utilities. The Act repealed the franchise tax on electricity and increased the sales tax on electricity to the combined general rate. The Act specifically repealed the prior legislation that designated Cape Hatteras EMC as a "public agency" and stated "Cape Hatteras Electric Membership Corporation is subject to any other taxes to the same extent as other electric membership corporations established under Chapter 117 of the General Statutes."

BILL ANALYSIS: The PCS to S790 would phase in the sales tax on sales of electricity by the Cape Hatteras Electric membership Corporation over two years. For the year starting July 1, 2014, and ending June 30, 2015, Cape Hatteras would collect a sales tax of 3.5% on its sales of electricity. For years starting on or after July 1, 2015, Cape Hatteras would collect a sales tax at the combined general rate on its sales of electricity. Currently, the combined general rate is 7%.

EFFECTIVE DATE: This act is effective July 1, 2014, and expires July 1, 2015, and applies to gross receipts billed between those dates.

¹ In 1965, only the franchise tax was imposed on the sale of electricity. In 1984, the General Assembly lowered the franchise tax on electricity and imposed a sales tax on sales of electricity.

² *Cape Hatteras Electric Membership Corporation v. Lay*, 210 N.C. App. 92 (2011).

