

GENERAL ASSEMBLY OF NORTH CAROLINA
1993 SESSION

CHAPTER 450
HOUSE BILL 174

AN ACT TO AUTHORIZE THE DEPARTMENT OF REVENUE TO ALLOW OR
REQUIRE PAYMENT OF TAXES BY ELECTRONIC FUNDS TRANSFER.

The General Assembly of North Carolina enacts:

Section 1. G.S. 105-228.90(b) is amended by adding a new subdivision to read:

"(3) Electronic Funds Transfer. – A transfer of funds initiated by using an electronic terminal, a telephone, a computer, or magnetic tape to instruct or authorize a financial institution or its agent to credit or debit an account."

Sec. 2. G.S. 105-241 reads as rewritten:

"§ 105-241. ~~Taxes payable in national currency; for what period, and when a lien; priorities. Where and how taxes payable; tax period; liens.~~

(a) Form of Payment. – Taxes are payable in the national currency. The Secretary shall prescribe where taxes are to be paid and whether taxes must be paid in cash, by check, by electronic funds transfer, or by another method.

(b) Electronic Funds Transfer. – The Secretary shall not require a taxpayer to pay a tax by electronic funds transfer unless, during the applicable period for that tax, the average amount of the taxpayer's required payments of the tax was at least twenty thousand dollars (\$20,000) a month. The twenty thousand dollar (\$20,000) threshold applies separately to each tax. The applicable period for a tax is a 12-month period, designated by the Secretary, preceding the imposition or review of the payment requirement. The requirement that a taxpayer pay a tax by electronic funds transfer remains in effect until suspended by the Secretary. Every 12 months after requiring a taxpayer to pay a tax by electronic funds transfer, the Secretary shall determine whether, during the applicable period for that tax, the average amount of the taxpayer's required payments of the tax was at least twenty thousand dollars (\$20,000) a month. If it was not, the Secretary shall suspend the requirement that the taxpayer pay the tax by electronic funds transfer and shall notify the taxpayer in writing that the requirement has been suspended.

(c) Tax Period. – Except as otherwise provided in this Chapter, taxes are levied for the fiscal year of the state in which they became due.

(d) Lien. – This subsection applies except when another Article of this Chapter contains contrary provisions with respect to a lien for a tax levied in that Article. The lien of a tax attaches to all real and personal property of a taxpayer on the date a tax owed by the taxpayer becomes due. The lien continues until the tax and any interest,

penalty, and costs associated with the tax are paid. A tax lien is not extinguished by the sale of the taxpayer's property. A tax lien, however, is not enforceable against a bona fide purchaser for value or the holder of a duly recorded lien unless:

- (1) In the case of real property, a certificate of tax liability or a judgment was first docketed in the office of the clerk of superior court of the county in which the real property is located.
- (2) In the case of personal property, there has already been a levy on the property under an execution or a tax warrant.

The priority of these claims and liens is determined by the date and time of recording, docketing, levy, or bona fide purchase.

If a taxpayer executes an assignment for the benefit of creditors or if insolvency proceedings are instituted against a taxpayer who owes a tax, the tax lien attaches to all real and personal property of the taxpayer as of the date and time the taxpayer executes the assignment for the benefit of creditors or the date and time the insolvency proceedings are instituted. In these cases, the tax lien is subject only to a prior recorded specific lien and the reasonable costs of administering the assignment or the insolvency proceedings. The taxes herein designated and levied shall be payable in the existing national currency. State, county, and municipal taxes levied for any and all purposes pursuant to this Subchapter shall be for the fiscal year of the State in which they become due, except as otherwise provided, and the lien of such taxes shall attach annually to all real estate of the taxpayer within the State on the date that such taxes are due and payable, and said lien shall continue until such taxes, with any interest, penalty, and costs which shall accrue thereon, shall have been paid; in the settlement of the estate of any decedent where, by any order of court or other proceeding, the real estate of the decedent has been sold to make assets to pay debts, such sale shall not have the effect of extinguishing the lien upon the land so sold for State taxes, nor shall the same be postponed in any manner to the payment of any other claim or debt against the estate, save funeral expenses and cost of administration.

Provided, however, that the lien of State taxes shall not be enforceable as against bona fide purchasers for value, and as against duly recorded mortgages, deeds of trust and other recorded specific liens, as to real estate, except upon docketing of a certificate of tax liability or a judgment in the office of the clerk of the superior court of the county wherein the real estate is situated, and as to personalty, except upon a levy upon such property under an execution or a tax warrant, and the priority of the State's tax lien against property in the hands of bona fide purchasers for value, and as against duly recorded mortgages, deeds of trust and other recorded specific liens, shall be determined by reference to the date and time of docketing of judgment or certificate of tax liability or the levy under execution or tax warrant. Provided further, that in the event any taxpayer shall execute an assignment for the benefit of creditors, or if receivership, a creditor's bill or other insolvency proceedings are instituted against any taxpayer indebted in the State on account of any taxes levied by the State, the lien of State taxes shall attach to any and all property of such taxpayer or of such insolvent's estate as of the date and time of the execution of the assignment for the benefit of creditors or of the institution of proceedings herein mentioned and shall be subject only to prior recorded

~~specific liens and reasonable costs of administration. Notwithstanding the provisions of this paragraph, the provisions contained in G.S. 105-164.38 shall remain in full force and effect with respect to the lien of sales taxes.~~

~~The provisions of this section shall not have the effect of releasing any lien for State taxes imposed by other law, nor shall they have the effect of postponing the payment of the said State taxes or depriving the said State taxes of any priority in order of payment provided in any other statute under which payment of the said taxes may be required."~~

Sec. 3. G.S. 105-130.19 reads as rewritten:

"§ 105-130.19. Time and place of payment of tax. When tax must be paid.

(a) ~~Except as provided in Article 4C of this Chapter, the full amount of the tax payable as shown on the face of the return shall must be paid to the Secretary of Revenue at the office where the return is filed and within the time fixed by law allowed for filing the return.~~

~~(b), (c) Repealed by Session Laws 1989, c. 37, s. 1.~~

~~(d) The tax may be paid with uncertified check during such time and under such regulations as the Secretary of Revenue shall prescribe; but if a check so received is not paid by the bank on which it is drawn, the taxpayer by whom such check is tendered shall remain liable for the payment of the tax and for all legal penalties the same as if such check had not been tendered."~~

Sec. 4. G.S. 105-157 reads as rewritten:

"§ 105-157. Time and place of payment of tax. When tax must be paid.

(a) ~~Except as otherwise provided in this section and in Article 4A of this Chapter, the full amount of the tax payable as shown on the face of the return shall must be paid to the Secretary at the office where the return is filed at the time fixed by law within the time allowed for filing the return. If the amount shown to be due is less than one dollar (\$1.00), no payment need be made.~~

~~(b) The tax may be paid with uncertified check during such time and under such regulations as the Secretary may prescribe; but if a check so received is not paid by the bank on which it is drawn, the taxpayer by whom the check was tendered shall remain liable for the payment of the tax and for all legal penalties the same as if the check had not been tendered."~~

Sec. 5. G.S. 105-160.7 reads as rewritten:

"§ 105-160.7. Time and place of payment of tax. When tax must be paid.

(a) ~~The full amount of the tax payable as shown on the face of the return shall must be paid to the Secretary at the office where the return is filed at the time fixed by law within the time allowed for filing the return. However, if the amount shown to be due after all credits is less than one dollar (\$1.00), no payment need be made.~~

~~(b) The tax may be paid with uncertified check, but if a check so received is not paid by the financial institution on which it is drawn, the fiduciary by whom the check was tendered shall remain liable for the payment of the tax and for all penalties lawfully imposed."~~

Sec. 6. G.S. 105-163.6(a) reads as rewritten:

"(a) General. – A return is due quarterly or monthly as specified in this section. A return shall be filed with the Secretary on a form prepared by the Secretary, shall report

any payments of withheld taxes made during the period covered by the return, and shall contain any other information required by the Secretary.

Withheld taxes are payable quarterly, monthly, or within three banking days, as specified in this section. ~~Withheld taxes shall be paid to the Secretary or to a financial institution with which the Secretary has entered a contract to receive payment of withheld taxes.~~ If If the Secretary finds that collection of the amount of taxes this Article requires an employer to withhold is in jeopardy, the Secretary may require the employer to file a return or pay withheld taxes at a time other than that specified in this section."

Sec. 7. G.S. 105-164.16(a) reads as rewritten:

"(a) Payment. – Taxes levied under this Article are due when a return is required to be filed. Every taxpayer liable for the tax imposed by this Article shall, within the specified time after the end of the appropriate reporting period, submit a return to the ~~Secretary, Secretary~~ on a form prescribed by the ~~Secretary, stating Secretary.~~ A return must be signed by the taxpayer or the taxpayer's agent.

A sales tax return must state the taxpayer's gross sales for the reporting period, the amount and type of sales made in the period that are exempt from tax under G.S. 105-164.13 or are elsewhere excluded from tax, the amount of tax due, and any other information required by the Secretary. A use tax return must state the cost price of tangible personal property that was purchased or received during the reporting period and is subject to tax under G.S. 105-164.6, the amount of tax due, and any other information required by the Secretary. Each return shall be accompanied by a payment to the Secretary for the amount of taxes shown to be due on the return and shall be signed by the taxpayer or his agent. Returns that do not contain the required information shall not be accepted. When an unacceptable return is submitted, the Secretary shall require a corrected return to be filed."

Sec. 8. G.S. 105-164.17 is repealed.

Sec. 9. G.S. 105-164.18 is repealed.

Sec. 10. G.S. 105-236 is amended by adding the following new subdivisions to read:

"(1a) Penalty for Bad Electronic Funds Transfer. – When an electronic funds transfer cannot be completed due to insufficient funds or the nonexistence of an account of the transferor, the Secretary shall assess a penalty equal to ten percent (10%) of the amount of the transfer, subject to a minimum of one dollar (\$1.00) and a maximum of one thousand dollars (\$1,000). This subdivision applies to all taxes levied or assessed by the State. This penalty may be waived by the Secretary in accordance with G.S. 105-237.

(1b) Making Payment in Wrong Form. – For making a payment of tax in a form other than the form required by the Secretary pursuant to G.S. 105-241(a), the Secretary shall assess a penalty equal to five percent (5%) of the amount of the tax, subject to a minimum of one dollar (\$1.00) and a maximum of one thousand dollars (\$1,000). This penalty may be waived by the Secretary in accordance with G.S. 105-237."

Sec. 11. G.S. 105-239.1(a) reads as rewritten:

"(a) Property transferred for an inadequate consideration to a donee, heir, legatee, devisee, distributee, stockholder of a liquidated corporation, or any other person at a time when the transferor is insolvent or is rendered insolvent by reason of the transfer shall be subject to a lien for any taxes owing by the transferor to the State of North Carolina at the time of ~~such the~~ transfer whether or not the amount of ~~such taxes shall have the taxes has~~ been ascertained or assessed at the time of ~~such the~~ transfer. ~~Such lien shall be subject to the provisions of the first proviso contained in G.S. 105-241. G.S. 105-241 applies to this tax lien.~~ In the event the transferee ~~shall have disposed of such~~ has disposed of the property so that it cannot be subjected to the State's tax lien, the transferee shall be personally liable for the difference between the fair market value of ~~such the~~ property at the time of the transfer and the actual consideration, if any, paid to the transferor by the transferee.

Upon a foreclosure of the State's tax lien upon property in the hands of a transferee, the value of any consideration ~~which the transferee shall have established as having been that the transferee proves has been~~ given to the transferor shall be paid to the transferee out of the proceeds of the foreclosure sale before applying ~~such the~~ proceeds toward the satisfaction of the State's tax lien.

In order to proceed against the transferee or property in ~~his the transferee's~~ hands, the Secretary shall cause to be docketed in the office of the clerk of the superior court of the county wherein the transferee resides or the property is located, as the case may be, a certificate of tax liability as provided in G.S. 105-242 or a lien certificate which shall set forth the amount of the lien as determined by the Secretary or as finally determined upon appeal and a description of the property subject to the lien. Thereafter, execution may be issued against the transferee as in the case of other money judgments except that no homestead or personal exemption shall be allowable or, upon a lien certificate, an execution may be issued directing the sheriff to seize the property subject to the lien and sell same in the same manner as property is sold under execution. Such procedure and collection shall be subject to the provisions of subsection (c) of this section."

Sec. 12. G.S. 105-434(b) reads as rewritten:

"(b) Payment. – The tax levied under this Article is due when a return is required to be filed. Each distributor shall, within 20 days after the end of each month, submit a return to the ~~Secretary of Revenue, Secretary,~~ Secretary, on a form prescribed by the Secretary, stating the quantity of motor fuel sold, distributed, or used by ~~him the distributor~~ within the State during the preceding calendar month. Each return ~~shall be accompanied by a payment to the Secretary for the amount of tax shown to be due on the return and shall~~ must show the amount of tax due for the month covered by the return and must be signed by the distributor or ~~his the distributor's~~ agent.

In reporting the amount of tax due, a distributor may elect to calculate the tax on adjusted monthly receipts less a tare of two percent (2%) on the first 150,000 gallons, one and one-half percent (1 1/2%) on the next 100,000 gallons, and one percent (1%) on the excess over 250,000 gallons. 'Adjusted monthly receipts' means the quantity of motor fuel purchased, produced, refined, or compounded during the month plus the quantity of untaxed motor fuel on hand at the beginning of the month and less the quantity of motor fuel transported out-of-state during the month or lost during the

month due to damage to a conveyance transporting the motor fuel, fire, a natural disaster, an act of war, or an accident. ~~The Secretary of Revenue may, in accordance with rules adopted by him, refund to a~~

A nonlicensed distributor may obtain a refund for the amount of the tax on motor fuel that is purchased by and delivered to him the distributor taxpaid and that is lost due to fire, a natural disaster, an act of war, or an accident after it is delivered to him and before it is sold. To obtain a refund, the nonlicensed distributor must file an application with the Secretary."

Sec. 13. G.S. 105-449.19(a) reads as rewritten:

"(a) Return. – A supplier of fuel who acquires, sells, delivers, or uses part or all of the fuel to propel a motor vehicle must file a monthly return. A supplier of fuel who sells, delivers, or uses fuel only for a purpose other than to propel a motor vehicle must file a quarterly return. A return must be filed with the Secretary on a form provided by the Secretary. A monthly return covers a calendar month and is due within 25 days after the end of each month. A quarterly return covers a calendar quarter and is due within 30 days after the end of each quarter. ~~A supplier must pay any tax due~~ Tax owed by a supplier on fuel acquired, sold, delivered, or used by the supplier during a reporting period when filing a return is due when the return for that period is due."

Sec. 14. G.S. 105-449.21 reads as rewritten:

"§ 105-449.21. Report of purchases and payment of tax by user-seller.

On or before the last day of the month immediately following the end of the quarter, each user-seller not otherwise licensed as a supplier shall render to the Secretary a statement on forms furnished by the Secretary which shall be signed by the user-seller. The statement shall show the quantity of fuel on hand at the beginning of the quarter, the quantity on hand at the end of the quarter, the quantity sold or used ~~used~~, and each and every purchase made by the user-seller during the preceding calendar quarter. Each purchase shall be specifically noted on the statement and the statement shall show the name and address of the supplier and the quantity and date of each purchase. ~~Each user-seller at the time of rendering such statement shall pay to the Secretary the tax or taxes for the preceding calendar quarter which may be due~~ Tax owed by a user-seller because of fuel imported or acquired tax-free in any manner whatsoever during a reporting period is due when the statement for that period is due."

Sec. 15. This act becomes effective August 1, 1993. Notwithstanding the provisions of G.S. 105-241(a) as amended by this act, the Secretary of Revenue may not begin to require payment by electronic funds transfer of motor fuels taxes levied under Subchapter V of Chapter 105 of the General Statutes or of the inspection fee levied under Article 3 of Chapter 119 of the General Statutes until July 1, 1995.

In the General Assembly read three times and ratified this the 23rd day of July, 1993.

Dennis A. Wicker
President of the Senate

Daniel Blue, Jr.
Speaker of the House of Representatives