

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1989

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SENATE BILL 1251

Short Title: Air Pollution Tax.

(Public)

Sponsors: Senators Barker; Tally, Richardson, Shaw, and Sands.

Referred to: Finance.

May 10, 1989

A BILL TO BE ENTITLED

AN ACT TO LEVY AN AIR POLLUTION TAX ON THE EMISSION OF AIR
CONTAMINANTS KNOWN TO CAUSE AIR POLLUTION.

The General Assembly of North Carolina enacts:

Section 1. Article 21B of Chapter 143 of the General Statutes is amended by adding a new section to read:

"§ 143-215.115. Air pollution tax.

(a) Definitions. In addition to the definitions in G.S. 143-212 and G.S. 143-213 applicable to air pollution, the following definitions apply in this section:

(1) Permit. An air quality permit issued pursuant to G.S. 143-215.108. The term 'permit' includes a new permit, a modified permit, and a renewed permit.

(2) Person. A person, as defined in G.S. 143-212, other than a State, federal, or local government agency.

(3) Taxable emissions. The amount of air contaminants known to cause air pollution that may be emitted under the permit. If the permit does not specify an emission rate, then the taxable emissions are the actual emissions that would occur if the air contamination source were to operate constantly under maximum conditions allowed by the permit.

(b) Tax Levied. Every person required to obtain a permit under G.S. 143-215.108(a) shall pay an excise tax, in addition to all other fees and taxes imposed by law, on the taxable emissions under the permit of air contaminants known to cause air pollution. The tax shall be at the following rates per pound of taxable emissions:

- 1 (1) Category One. Emissions of total suspended particulate (TSP) and
2 carbon monoxide (CO) – one cent (1¢) per pound.
- 3 (2) Category Two. Emissions of volatile organic compounds (VOC),
4 sulfur dioxide (SO₂), nitrogen oxides (NOX), and total reduced sulfur
5 (TRS) – two cents (2¢) per pound.
- 6 (3) Category Three. Emissions of noncarcinogenic toxic compounds and
7 lead – three cents (3¢) per pound.
- 8 (4) Category Four. Emissions of carcinogenic toxic compounds – four
9 cents (4¢) per pound.

10 If an air contamination source has taxable emissions of an air contaminant that falls
11 into more than one category, then the higher tax rate shall apply to that contaminant.

12 (c) Administration. When the Commission issues a permit, it shall calculate the
13 amount of the tax that will accrue under the permit on taxable emissions for each
14 calendar quarter or part of a calendar quarter that the permit will be in effect. The
15 Department of Natural Resources and Community Development shall design, print, and
16 furnish to each permit holder forms for filing returns and instructions to ensure the full
17 collection of the tax.

18 (d) When Tax Due and Payable. The tax levied by this section is due and
19 payable by the permit holder to the Department of Revenue in quarterly installments on
20 or before the last day of the calendar quarter in which the tax accrues. Every person
21 liable for the tax shall, on or before the last day of each calendar quarter, prepare and
22 render a return on the form furnished by the Department of Natural Resources and
23 Community Development.

24 (e) Enforcement. The Department of Revenue shall collect and enforce the tax
25 levied by this section. All of the administrative provisions, penalties, and remedies of
26 Article 9 of Chapter 105 shall apply to the tax levied by this section to the extent they
27 are not inconsistent with this section. The Department of Natural Resources and
28 Community Development shall provide the Secretary of Revenue such information
29 regarding permit holders, amounts and types of taxable emissions, the tax applicable to
30 each permit, and such other matters as the Secretary of Revenue may request.

31 (f) Additional Penalty. In addition to the penalties and remedies provided in
32 Article 9 of Chapter 105, there shall be an additional penalty for the following
33 violations: (i) failure to obtain a permit required by G.S. 143-215.108(a) and (ii)
34 emission of an air contaminant known to cause air pollution in excess of the amount of
35 taxable emissions allowed under the permit. The additional penalty is one hundred
36 percent (100%) of the excess of the tax that would have been due during the period of
37 the violation if the taxpayer had obtained the required permit for the amount and type of
38 the actual emission over the tax that was paid for that period by the taxpayer. The
39 Department of Natural Resources and Community Development shall, within 10 days
40 after it determines that a violation subject to the additional penalty has occurred, notify
41 the Department of Revenue of the taxpayer who committed the violation, the amount of
42 tax due for the period of the violation, and the amount of the additional penalty for the
43 violation.

1 (g) Actual Emissions; Refund. If a permit holder can demonstrate to the
2 satisfaction of the Commission that its actual emissions for a calendar quarter were less
3 than the amount of its taxable emissions for that quarter, the permit holder may receive
4 a refund equal to the excess of the tax paid for the calendar quarter over the tax that
5 would have been due if the permit holder's taxable emissions had been equal to its
6 actual emissions. In order to receive a refund, the permit holder shall apply to the
7 Commission within 60 days after the end of the calendar quarter for which the refund is
8 sought. If the Commission determines that a permit holder is entitled to a refund under
9 this subsection, it shall notify the Secretary of Revenue of the amount of the refund due
10 and the Secretary shall make the refund. A permit holder may receive a refund for no
11 more than two quarters in each calendar year.

12 (h) Rules. The Department of Revenue may adopt appropriate rules to
13 implement the provisions of this section."

14 Sec. 2. The Environmental Management Commission shall, before July 1,
15 1990, furnish to every person who holds an air permit issued pursuant to G.S. 143-
16 215.108 forms for filing returns and instructions as provided in G.S. 143-215.115(c)
17 enacted by Section 1 of this act.

18 Sec. 3. G.S. 143-215.108 is amended by adding a new subsection to read:

19 "(c) A person who holds a permit issued under subsection (a) may apply to
20 modify the permit so that the taxable emissions, as defined in G.S. 143-215.115,
21 allowed under the permit are not unreasonably in excess of the actual emissions
22 expected to occur from the source. The Commission shall act on each application under
23 this subsection as quickly as possible. The provisions of subsection (b) regarding
24 permit applications shall apply to applications for permit modifications under this
25 subsection."

26 Sec. 4. Section 1 of this act shall become effective July 1, 1990, and applies
27 to taxable emissions allowed on or after that date. The remainder of this act is effective
28 upon ratification.