

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1993

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HOUSE BILL 174

Short Title: Electronic Funds Transfer.

(Public)

Sponsors: Representatives Luebke, Gamble, Jarrell, Justus, and Tallent.

Referred to: Finance.

February 17, 1993

A BILL TO BE ENTITLED

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 may 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

1 taxpayer to pay a tax by electronic funds transfer, the Secretary shall determine whether,  
2 during the applicable period for that tax, the average amount of the taxpayer's required  
3 payments of the tax was at least twenty thousand dollars (\$20,000) a month. If it was  
4 not, the Secretary shall suspend the requirement that the taxpayer pay the tax by  
5 electronic funds transfer and shall notify the taxpayer in writing that the requirement has  
6 been suspended.

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

9 (d) Lien. – This subsection applies except when another Article of this Chapter  
10 contains contrary provisions with respect to a lien for a tax levied in that Article. The  
11 lien of a tax attaches to all real and personal property of a taxpayer on the date a tax  
12 owed by the taxpayer becomes due. The lien continues until the tax and any interest,  
13 penalty, and costs associated with the tax are paid. A tax lien is not extinguished by the  
14 sale of the taxpayer's property. A tax lien, however, is not enforceable against a bona  
15 fide purchaser for value or the holder of a duly recorded lien unless:

16 (1) In the case of real property, a certificate of tax liability or a judgment  
17 was first docketed in the office of the clerk of superior court of the  
18 county in which the real property is located.

19 (2) In the case of personal property, there has already been a levy on the  
20 property under an execution or a tax warrant.

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

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

40 Provided, however, that the lien of State taxes shall not be enforceable as against  
41 bona fide purchasers for value, and as against duly recorded mortgages, deeds of trust  
42 and other recorded specific liens, as to real estate, except upon docketing of a certificate  
43 of tax liability or a judgment in the office of the clerk of the superior court of the county  
44 wherein the real estate is situated, and as to personalty, except upon a levy upon such  
45 property under an execution or a tax warrant, and the priority of the State's tax lien

1 against property in the hands of bona fide purchasers for value, and as against duly  
2 recorded mortgages, deeds of trust and other recorded specific liens, shall be determined  
3 by reference to the date and time of docketing of judgment or certificate of tax liability  
4 or the levy under execution or tax warrant. Provided further, that in the event any  
5 taxpayer shall execute an assignment for the benefit of creditors, or if receivership, a  
6 creditor's bill or other insolvency proceedings are instituted against any taxpayer  
7 indebted in the State on account of any taxes levied by the State, the lien of State taxes  
8 shall attach to any and all property of such taxpayer or of such insolvent's estate as of  
9 the date and time of the execution of the assignment for the benefit of creditors or of the  
10 institution of proceedings herein mentioned and shall be subject only to prior recorded  
11 specific liens and reasonable costs of administration. Notwithstanding the provisions of  
12 this paragraph, the provisions contained in G.S. 105-164.38 shall remain in full force  
13 and effect with respect to the lien of sales taxes.

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

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

19 **"§ 105-130.19. Time and place of payment of tax.**

20 (a) Except as provided in Article 4C of this Chapter, the full amount of the tax  
21 payable as shown on the face of the return shall be paid to the Secretary of Revenue at the  
22 office where the return is filed and within the time fixed by law allowed for filing the  
23 return. The tax shall be paid at the place and in the form required by the Secretary  
24 pursuant to G.S. 105-241(a).

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

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

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

32 **"§ 105-157. Time and place of payment of tax.**

33 (a) Except as otherwise provided in this section and in Article 4A of this Chapter,  
34 the full amount of the tax payable as shown on the face of the return shall be paid to the  
35 Secretary at the office where the return is filed at the time fixed by law within the time  
36 allowed for filing the return. If the amount shown to be due is less than one dollar  
37 (\$1.00), no payment need be made. The tax shall be paid at the place and in the form  
38 required by the Secretary pursuant to G.S. 105-241(a).

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

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

1 **"§ 105-160.7. Time and place of payment of tax.**

2 (a) The full amount of the tax payable as shown on ~~the face of the return~~ shall be  
3 paid to the Secretary ~~at the office where the return is filed at the time fixed by law~~ within the  
4 time allowed for filing the return. However, if the amount shown to be due after all  
5 credits is less than one dollar (\$1.00), no payment need be made. The tax shall be paid  
6 at the place and in the form required by the Secretary pursuant to G.S. 105-241(a).

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

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

12 "(a) General. – A return is due quarterly or monthly as specified in this section. A  
13 return shall be filed with the Secretary on a form prepared by the Secretary, shall report  
14 any payments of withheld taxes made during the period covered by the return, and shall  
15 contain any other information required by the Secretary.

16 Withheld taxes are payable quarterly, monthly, or within three banking days, as  
17 specified in this section. Withheld taxes shall be paid ~~to the Secretary or to a financial~~  
18 ~~institution with which the Secretary has entered a contract to receive payment of withheld~~  
19 ~~taxes.~~ at the place and in the form required by the Secretary pursuant to G.S. 105-241(a).

20 If the Secretary finds that collection of the amount of taxes this Article requires an  
21 employer to withhold is in jeopardy, the Secretary may require the employer to file a  
22 return or pay withheld taxes at a time other than that specified in this section."

23 Sec. 7. G.S. 105-164.18 is repealed.

24 Sec. 8. G.S. 105-236 is amended by adding the following new subdivisions  
25 to read:

26 "(1a) Penalty for Bad Electronic Funds Transfer. – When an electronic funds  
27 transfer cannot be completed due to insufficient funds or the  
28 nonexistence of an account of the transferor, the Secretary shall assess  
29 an additional tax, as a penalty, equal to ten percent (10%) of the  
30 amount of the transfer, subject to a minimum of one dollar (\$1.00) and  
31 a maximum of one thousand dollars (\$1,000). This subdivision applies  
32 to all taxes levied or assessed by the State.

33 (1b) Making Payment in Wrong Form. – For making a payment of tax in a  
34 form other than the form required by the Secretary pursuant to G.S.  
35 105-241(a), the Secretary shall assess an additional tax, as a penalty,  
36 equal to five percent (5%) of the amount of the tax, subject to a  
37 minimum of one dollar (\$1.00) and a maximum of one thousand  
38 dollars (\$1,000)."

39 Sec. 9. G.S. 105-239.1(a) reads as rewritten:

40 "(a) Property transferred for an inadequate consideration to a donee, heir, legatee,  
41 devisee, distributee, stockholder of a liquidated corporation, or any other person at a  
42 time when the transferor is insolvent or is rendered insolvent by reason of the transfer  
43 shall be subject to a lien for any taxes owing by the transferor to the State of North  
44 Carolina at the time of ~~such~~ the transfer whether or not the amount of ~~such~~ taxes shall

1 ~~have the taxes~~ has been ascertained or assessed at the time of ~~such the~~ transfer. ~~Such lien~~  
2 ~~shall be subject to the provisions of the first proviso contained in G.S. 105-241. G.S. 105-241~~  
3 ~~applies to this tax lien.~~ In the event the transferee ~~shall have disposed of such~~ has  
4 disposed of the property so that it cannot be subjected to the State's tax lien, the  
5 transferee shall be personally liable for the difference between the fair market value of  
6 ~~such the~~ property at the time of the transfer and the actual consideration, if any, paid to  
7 the transferor by the transferee.

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

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

24 Sec. 10. G.S. 105-251 reads as rewritten:

25 **"§ 105-251. Information must be furnished.**

26 ~~Each company, firm, corporation, person, association, copartnership, or public utility~~  
27 ~~shall furnish the Secretary of Revenue in the form of returns prescribed by him, all~~  
28 ~~information required by law and all other facts and information in addition to the facts~~  
29 ~~and information in this act specifically required to be given, which the Secretary of~~  
30 ~~Revenue may require to enable him to carry into effect the provisions of the laws which~~  
31 ~~the said Secretary is required to administer, and shall make specific answers to all~~  
32 ~~questions submitted by the Secretary of Revenue. Every person shall give the Secretary~~  
33 all information the Secretary requires to fulfill a duty delegated to the Secretary. The  
34 information must be in the form required by the Secretary. The Secretary may require  
35 the information to be furnished electronically or on paper."

36 Sec. 11. This act becomes effective July 1, 1993. Notwithstanding the  
37 provisions of G.S. 105-241(a) as amended by this act, the Secretary of Revenue may not  
38 begin to require payment by electronic funds transfer of motor fuels taxes levied under  
39 Subchapter V of Chapter 105 of the General Statutes or of the inspection fee levied  
40 under Article 3 of Chapter 119 of the General Statutes until July 1, 1995.