

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

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HOUSE BILL 1290  
Committee Substitute Favorable 6/24/99  
Senate Finance Committee Substitute Adopted 6/29/00

Short Title: Revenue Laws Clarifying Changes.

(Public)

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Sponsors:

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Referred to:

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April 19, 1999

1 A BILL TO BE ENTITLED  
2 AN ACT TO IMPROVE THE ADMINISTRATION OF THE TAX LAWS BY  
3 MAKING CLARIFYING AND CONFORMING CHANGES TO THE REVENUE  
4 AND RELATED LAWS.

5 The General Assembly of North Carolina enacts:

6 Section 1.(a) Section 10.2(3) of Chapter 13 of the Session Laws of the 1996  
7 Second Extra Session, as amended by Section 1 of S.L. 1999-360, reads as rewritten:

8 "(3) Quality jobs and business expansion tax credits. – Sections 3.5, 3.6, and  
9 3.8 through 3.10 of Part III of this act become effective August 1, 1996.  
10 G.S. 105-129.11, as enacted by Part III of this act, becomes effective for  
11 taxable years beginning on or after January 1, 1997, and applies to  
12 training expenditures made on or after July 1, 1997. The remainder of  
13 Part III of this act is effective for taxable years beginning on or after  
14 January 1, 1996, and applies to jobs created on or after August 1, 1996,  
15 and property placed in service on or after August 1, 1996. Article 3A of  
16 Chapter 105 of the General Statutes is repealed effective for applications  
17 for credits filed under G.S. 105-129.6 on or after January 1, 2006. G.S. 105-  
18 129.16 is repealed effective for business property placed in service on or after

1           ~~January 1, 2002. The remainder of as provided in that Article. Article 3B~~  
2           ~~of Chapter 105 of the General Statutes is repealed effective for buildings~~  
3           ~~to which federal credits are allocated on or after January 1, 2006. as provided~~  
4           ~~in that Article. "~~

5           Section 1.(b) Section 4 of S.L. 1997-277, as amended by Section 18.1 of S.L.  
6 1999-360, is recodified as G.S. 105-129.2A(b), (c), and (d).

7           Section 1.(c) G.S. 105-129.2A, as enacted by this act, reads as rewritten:

8 **"§ 105-129.2A. Sunset; studies.**

9           (a) Sunset. – This Article is repealed effective for applications for credits filed  
10 under G.S. 105-129.6 on or after January 1, 2006.

11           (b) Equity Study. – The Department of Commerce shall study the effect of the tax  
12 incentives provided in the William S. Lee Quality Jobs and Business Expansion Act, codified  
13 as Article 3A of Chapter 105 of the General Statutes, this Article on tax equity. This study  
14 shall include the following:

15               (1) Reexamining the formula in G.S. 105-129.3(b) used to define enterprise  
16 tiers, to include consideration of alternative measures for more equitable  
17 treatment of counties in similar economic circumstances.

18               (2) Considering whether the assignment of tiers and the applicable  
19 thresholds are equitable for smaller counties, for example those under  
20 50,000 in population.

21               (3) Compiling any available data on whether expanding North Carolina  
22 businesses receive fewer benefits than out-of-State businesses that  
23 locate to North Carolina.

24           (c) Impact Study. – The Department of Commerce shall study the effectiveness of  
25 the tax incentives provided in the William S. Lee Quality Jobs and Business Expansion Act,  
26 codified as Article 3A of Chapter 105 of the General Statutes. this Article. This study shall  
27 include:

28               (1) Study of the distribution of tax incentives across new and expanding  
29 industries.

30               (2) Examination of data on economic recruitment for the period 1994  
31 through 2000 by county, by industry type, by size of investment, and by  
32 number of jobs, and other relevant information to determine the pattern  
33 of business locations and expansions before and after the enactment of  
34 the William S. Lee Act incentives.

35               (3) Measuring the direct costs and benefits of the tax incentives.

36               (4) Compiling available information on the current use of incentives by  
37 other states and whether that use is increasing or declining.

38           (d) Report. – The Department of Commerce shall report the results of these  
39 studies and its recommendations to the 2001 General Assembly by April 1, 2001."

40           Section 1.(d) Article 3B of Chapter 105 of the General Statutes is amended by  
41 adding a new section to read:

42 **"§ 105-129.15A. Sunset.**

1 G.S. 105-129.16 is repealed effective for business property placed in service on or  
2 after January 1, 2002. The remainder of this Article is repealed effective January 1, 2006.  
3 The repeal of G.S. 105-129.16A applies to renewable energy property placed in service  
4 on or after January 1, 2006. The repeal of G.S. 105-129.16B applies to buildings to  
5 which federal credits are allocated on or after January 1, 2006."

6 Section 2. Effective July 1, 2000, G.S. 105-88(e) reads as rewritten:

7 "(e) Counties, cities, and towns may levy a license tax on the business taxed under  
8 ~~this section not in excess of section.~~ Except as provided in G.S. 160A-211 and G.S. 153A-  
9 152, the tax may not exceed one hundred dollars (\$100.00)."

10 Section 3. G.S. 105-113.82 reads as rewritten:

11 "**§ 105-113.82. Distribution of part of beer and wine taxes.**

12 (a) Amount, Method. – The Secretary shall distribute annually the following  
13 percentages of the net amount of excise taxes collected on the sale of malt beverages and  
14 wine during the preceding 12-month period ending March 31, less the amount of the net  
15 proceeds credited to the Department of Agriculture and Consumer Services under G.S.  
16 105-113.81A, to the counties and cities in which the retail sale of these beverages is  
17 ~~authorized:~~ authorized in the entire county or city:

- 18 (1) Of the tax on malt beverages levied under G.S. 105-113.80(a), twenty-  
19 three and three-fourths percent (23 3/4%);  
20 (2) Of the tax on unfortified wine levied under G.S. 105-113.80(b), sixty-  
21 two percent (62%); and  
22 (3) Of the tax on fortified wine levied under G.S. 105-113.80(b), twenty-  
23 two percent (22%).

24 If malt beverages, unfortified wine, or fortified wine may be licensed to be sold at  
25 retail in both a county and a city located in the county, both the county and city shall  
26 receive a portion of the amount distributed, that portion to be determined on the basis of  
27 population. If one of these beverages may be licensed to be sold at retail in a city located  
28 in a county in which the sale of the beverage is otherwise prohibited, only the city shall  
29 receive a portion of the amount distributed, that portion to be determined on the basis of  
30 population. The amounts distributed under subdivisions (1), (2), and (3) shall be  
31 computed separately.

32 ~~(b) Reduction in Amount Distributed. — Where the sale of malt beverages,~~  
33 ~~unfortified wine, or fortified wine is prohibited in a defined area of a city or county in~~  
34 ~~which the sale of the beverage is authorized, the amount that would otherwise be~~  
35 ~~distributed to the city or county on the basis of population under subsection (a) shall be~~  
36 ~~reduced in the same ratio that the area of the defined area bears to the total area of the~~  
37 ~~city or county, unless the defined area is a city. If the defined area in a county is a city,~~  
38 ~~the reduction in the amount that would otherwise be distributed to the county under~~  
39 ~~subsection (a) shall be based on population instead of area.~~

40 (c) Exception. – Notwithstanding subsection (a), in a county in which ABC stores  
41 have been established by petition, the revenue shall be distributed as though the entire  
42 county had approved the retail sale of a beverage whose retail sale is authorized in part of  
43 the county.

1 (d) Time. – The revenue shall be distributed to cities and counties within 60 days  
2 after March 31 of each year.

3 (e) Population Estimates. – To determine the population of a city or county for  
4 purposes of the distribution required by this section, the Secretary shall use the most  
5 recent annual estimate of population certified by the State Planning Officer.

6 (f) City Defined. – As used in this section, the term "city" means a city as defined  
7 in G.S. 153A-1(1) or an urban service district defined by the governing body of a  
8 consolidated city-county.

9 (g) Use of Funds. – Funds distributed to a county or city under this section may be  
10 used for any public purpose.

11 (h) Disqualification. – No municipality may receive any funds under this section if  
12 it was incorporated with an effective date of on or after January 1, 2000, and is  
13 disqualified from receiving funds under G.S. 136-41.2. No municipality may receive any  
14 funds under this section, incorporated with an effective date on or after January 1, 2000,  
15 unless a majority of the mileage of its streets are open to the public. The previous  
16 sentence becomes effective with respect to distribution of funds on or after July 1, 1999."

17 Section 4. G.S. 105-119 and G.S. 105-120.1 are repealed.

18 Section 5. G.S. 105-114 reads as rewritten:

19 "**§ 105-114. Nature of taxes; definitions.**

20 (a) Nature of Taxes. – The taxes levied in this Article upon persons and  
21 partnerships are for the privilege of engaging in business or doing the act named.

22 (a1) Scope. – The taxes levied in this Article upon corporations are privilege or  
23 excise taxes levied upon:

24 (1) Corporations organized under the laws of this State for the existence of  
25 the corporate rights and privileges granted by their charters, and the  
26 enjoyment, under the protection of the laws of this State, of the powers,  
27 rights, privileges and immunities derived from the State by the form of  
28 such existence; and

29 (2) Corporations not organized under the laws of this State for doing  
30 business in this State and for the benefit and protection which these  
31 corporations receive from the government and laws of this State in  
32 doing business in this State.

33 If

34 (a2) Condition for Doing Business. – If the corporation is organized under the laws  
35 of this State, the payment of the taxes levied by this Article ~~shall be~~ is a condition  
36 precedent to the right to continue in the corporate form of ~~organization; and if~~  
37 organization. If the corporation is not organized under the laws of this State, payment of  
38 these taxes ~~shall be~~ is a condition precedent to the right to continue to engage in doing  
39 business in this State.

40 (a3) Tax Year. – The taxes levied in this Article are for the fiscal year of the State  
41 in which the taxes become ~~due; due,~~ except that the taxes levied in G.S. 105-122 are for  
42 the income year of the corporation in which the taxes become due.

43 G.S. 105-122

1 (a4) No Double Taxation. – G.S. 105-122 does not apply to ~~street transportation~~  
2 ~~systems taxed under G.S. 105-120.1 or~~ holding companies taxed under G.S. 105-120.2. G.S.  
3 105-122 applies to a corporation taxed under another section of this Article only to the  
4 extent the taxes levied on the corporation in G.S. 105-122 exceed the taxes levied on the  
5 corporation in other sections of this Article.

6 (b) Definitions. – The following definitions apply in this Article:

7 (1) City. – Defined in G.S. 105-228.90.

8 (1a) Code. – Defined in G.S. 105-228.90.

9 (2) Corporation. – A domestic corporation, a foreign corporation, an  
10 electric membership corporation organized under Chapter 117 of the  
11 General Statutes or doing business in this State, or an association that is  
12 organized for pecuniary gain, has capital stock represented by shares,  
13 whether with or without par value, and has privileges not possessed by  
14 individuals or partnerships. The term includes a mutual or capital stock  
15 savings and loan association or building and loan association chartered  
16 under the laws of any state or of the United States. The term does not  
17 include a limited liability company.

18 (3) Doing business. – Each and every act, power, or privilege exercised or  
19 enjoyed in this State, as an incident to, or by virtue of the powers and  
20 privileges granted by the laws of this State.

21 (4) Income year. – Defined in G.S. 105-130.2(5)."

22 Section 6. G.S. 105-164.3(8a) reads as rewritten:

23 "(8a) 'Manufactured home' means a structure that is designed to be used as a  
24 dwelling and is manufactured in accordance with the specifications for  
25 manufactured homes issued by the United States Department of  
26 Housing and Urban Development. ~~and:~~

27 a. ~~Is built on a permanent chassis;~~

28 b. ~~Is transportable in one or more sections;~~

29 c. ~~When transported, is at least eight feet wide or forty feet long;~~  
30 ~~and~~

31 d. ~~When erected on a site, has at least 320 square feet."~~

32 Section 7.(a) G.S. 105-187.1 is amended by adding a new subdivision to read:

33 "(3a) Retailer. – A retailer as defined in G.S. 105-164.3 who is engaged in the  
34 business of selling, leasing, or renting motor vehicles."

35 Section 7.(b) G.S. 105-187.5(a) reads as rewritten:

36 "(a) Election. – A retailer ~~who is engaged in the business of leasing or renting motor~~  
37 ~~vehicles~~ may elect not to pay the tax imposed by this Article at the rate set in G.S. 105-  
38 187.3 when applying for a certificate of title for a motor vehicle purchased by the retailer  
39 for lease or rental. A retailer who makes this election shall pay a tax on the gross receipts  
40 of the lease or rental of the vehicle. Like the tax imposed by G.S. 105-187.3, this  
41 alternate tax is a tax on the privilege of using the highways of this State. The tax is  
42 imposed on a retailer, but is to be added to the lease or rental price of a motor vehicle and  
43 thereby be paid by the person who leases or rents the vehicle."

1 Section 7.(c) G.S. 20-4.01(5) reads as rewritten:

2 "(5) Dealer. – Every person engaged in the business of buying, selling,  
3 distributing, or exchanging motor vehicles, ~~trailers—trailers,~~ or  
4 semitrailers in this State, and having an established place of business in  
5 this ~~State and being subject to the tax levied by G.S. 105-89.~~ State.

6 The terms 'motor vehicle dealer,' 'new motor vehicle dealer,' and  
7 'used motor vehicle dealer' ~~shall~~ as used in Article 12 of this Chapter  
8 have the meaning set forth in G.S. 20-286."

9 Section 8. G.S. 105-259(b)(15) reads as rewritten:

10 "(b) Disclosure Prohibited. – An officer, an employee, or an agent of the State who  
11 has access to tax information in the course of service to or employment by the State may  
12 not disclose the information to any other person unless the disclosure is made for one of  
13 the following purposes:

14 ...  
15 (15) To exchange information concerning a tax imposed by Articles 2A, 2C,  
16 or 2D of this Chapter with one of the following agencies when the  
17 information is needed to fulfill a duty imposed on the Department or the  
18 agency:

- 19 a. The North Carolina Alcoholic Beverage Control Commission.  
20 b. The Division of Alcohol Law Enforcement of the Department of  
21 Crime Control and Public Safety.  
22 c. The Bureau of Alcohol, Tobacco, and Firearms of the United  
23 States Treasury Department.  
24 d. Law enforcement agencies.  
25 e. The Division of Adult Probation and Parole of the Department of  
26 Correction."

27 Section 9. G.S. 105-449.44 reads as rewritten:

28 "**§ 105-449.44. How to determine the amount of fuel used in the State; presumption**  
29 **of amount used.**

30 (a) Calculation. – The amount of motor fuel or alternative fuel a motor carrier  
31 ~~carries~~ uses in its operations in this State for a reporting period is the ratio of the number  
32 of miles the motor carrier travels in this State during that period to the total number of  
33 miles the motor carrier travels inside and outside this State during that period, multiplied  
34 by the total amount of fuel the motor carrier uses in its operations inside and outside the  
35 State during that period.

36 (b) Presumption. – The Secretary ~~shall~~ must check reports filed under this Article  
37 against the weigh station records and other records of the Division of Motor Vehicles of  
38 the Department of Transportation concerning motor carriers to determine if motor  
39 carriers that are operating in this State are filing the reports required by this Article. The  
40 Department may assess a motor carrier for the amount payable based on the presumed  
41 mileage. A motor carrier that does either of the following for a quarter is presumed to  
42 have traveled in this State during that quarter the number of miles equal to 10 trips of 450  
43 miles each for each of the motor carrier's vehicles:

1 (1) Fails to file a report for the quarter and the records of the Division  
2 indicate the carrier operated in this State during the quarter.

3 (2) Files a report for the quarter that, based on the records of the Division,  
4 understates by at least twenty-five percent (25%) the carrier's mileage in  
5 this State for the quarter.

6 (c) Vehicles. – The number of vehicles of a motor carrier that is registered under  
7 this Article is the number of identification markers issued to the carrier. The number of  
8 vehicles of a carrier that is not registered under this Article is the number of vehicles  
9 registered by the motor carrier in the carrier's base state under the International  
10 Registration Plan. ~~The Department shall assess a motor carrier for the amount payable based on~~  
11 ~~the presumed mileage."~~

12 Section 10.(a) Effective July 1, 2000, G.S. 105-449.60(31) and (40) read as  
13 rewritten:

14 "**§ 105-449.60. Definitions.**

15 The following definitions apply in this Article:

16 ...

17 (31) Supplier. – Any of the following:

- 18 a. A position holder or a person who receives motor fuel pursuant  
19 to a two-party ~~transaction.~~ exchange.  
20 b. A fuel alcohol provider.

21 ...

22 (40) ~~Two-party transaction.~~ exchange. – A transaction in which motor fuel is  
23 transferred ~~between two licensed suppliers as the motor fuel crosses the~~  
24 ~~terminal rack as the result of an exchange agreement or a sale between~~  
25 ~~the suppliers that requires the supplier that is the position holder from~~  
26 one licensed supplier to another licensed supplier pursuant to an  
27 exchange agreement under which the supplier that is the position holder  
28 agrees to deliver motor fuel to the other supplier or the other supplier's  
29 customer at the rack of the terminal at which the delivering supplier is  
30 the position holder."

31 Section 10.(b) Effective July 1, 2000, G.S. 105-449.88 is amended by adding a new  
32 subdivision to read:

33 "**§ 105-449.88. Exemptions from the excise tax.**

34 The excise tax on motor fuel does not apply to the following:

35 ...

36 (1a) Motor fuel removed by transport truck from a terminal for export if the  
37 motor fuel is removed by a licensed distributor or licensed exporter, the  
38 supplier that is the position holder for the motor fuel sells the motor fuel  
39 to another supplier as the motor fuel crosses the terminal rack, the  
40 purchasing supplier or its customer receives the motor fuel at the  
41 terminal rack for export, and the supplier that is the position holder  
42 collects tax on the motor fuel at the rate of the motor fuel's destination  
43 state."

1 Section 11.(a) G.S. 105-449.60(41) reads as rewritten:

2 **"§ 105-449.60. Definitions.**

3 The following definitions apply in this Article:

4 ...  
5 (41) User. – A person who owns or operates a licensed highway vehicle that  
6 has a registered gross vehicle weight of at last 10,001 pounds and who  
7 and does not maintain storage facilities for motor fuel."

8 Section 11.(b) G.S. 105-449.68 reads as rewritten:

9 **"§ 105-449.68. Restrictions on who can get a license as a distributor.**

10 A bulk-end user of motor fuel may not be licensed as a distributor unless the bulk-end  
11 user also acquires motor fuel from a supplier or from another distributor for subsequent  
12 sale. This restriction does not apply to a bulk-end user that was licensed as a distributor  
13 on January 1, 1996. If a distributor license held by a bulk-end user on January 1, 1996, is  
14 subsequently cancelled, the bulk-end user is subject to the restriction set in this section."

15 Section 11.(c) G.S. 105-449.97(c) reads as rewritten:

16 "(c) Percentage Discount. – A supplier that sells motor fuel directly to an  
17 unlicensed distributor or to the bulk-end user, the retailer, or the user of the fuel may take  
18 the same percentage discount on the fuel that a licensed distributor may take under G.S.  
19 105-449.93(b) when making deferred payments of tax to the supplier."

20 Section 12. G.S. 105-449.88(1) reads as rewritten:

21 **"§ 105-449.88. Exemptions from the excise tax.**

22 The excise tax on motor fuel does not apply to the following:

23 (1) Motor fuel removed, by transport truck or another means of transfer  
24 outside the terminal transfer system, from a terminal for export, if the  
25 motor fuel is removed by a licensed distributor or a licensed exporter  
26 and the supplier of the motor fuel collects tax on it at the rate of the  
27 motor fuel's destination state."

28 Section 13. The catch line of G.S. 105-449.105 reads as rewritten:

29 **"§ 105-449.105. Refunds upon application for tax paid on exempt fuel, lost fuel, and**  
30 **fuel unsalable for highway use, and undyed diesel fuel used in boats. use."**

31 Section 14. G.S. 105-449.121(b)(2) reads as rewritten:

32 "(b) Inspection. – The Secretary or a person designated by the Secretary may do  
33 any of the following to determine tax liability under this Article:

34 ...  
35 (2) Audit a ~~distributor~~ distributor, a retailer, a bulk-end user, or a motor fuel  
36 user that is not licensed under this Article."

37 Section 15.(a) G.S. 62A-5(d) reads as rewritten:

38 "(d) Any taxes due on 911 service provided by the service supplier will be billed to  
39 the local government subscribing to that service. ~~State and local taxes do not apply to 911~~  
40 ~~charges billed to subscribers under this Article."~~

41 Section 15.(b) G.S. 105-120(c1) reads as rewritten:

42 "(c1) ~~Enhanced 911—Service Charge.Charges.~~ – Gross receipts of an entity that  
43 provides local telecommunications service do not include 911 charges imposed under

1 G.S. 62A-5 and remitted to a local government under G.S. 62A-6, or wireless Enhanced  
2 911 service charges imposed under G.S. 62A-23 and remitted to the Wireless Fund under  
3 G.S. 62A-24."

4 Section 15.(c) G.S. 105-130.5(b)(17) reads as rewritten:

5 "(17) The amount of 911 charges collected under G.S. 62A-5 and remitted to  
6 a local government under G.S. 62A-6, and the amount of wireless  
7 Enhanced 911 service charges collected under G.S. 62A-23 and remitted  
8 to the Wireless Fund under G.S. 62A-24."

9 Section 16. Except as otherwise provided in this act, this act is effective when  
10 it becomes law.