

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 1999

SESSION LAW 2000-173
HOUSE BILL 1290

AN ACT TO IMPROVE THE ADMINISTRATION OF THE TAX LAWS BY
MAKING CLARIFYING AND CONFORMING CHANGES TO THE REVENUE
AND RELATED LAWS.

The General Assembly of North Carolina enacts:

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

"(3) Quality jobs and business expansion tax credits. – Sections 3.5, 3.6, and 3.8 through 3.10 of Part III of this act become effective August 1, 1996. G.S. 105-129.11, as enacted by Part III of this act, becomes effective for taxable years beginning on or after January 1, 1997, and applies to training expenditures made on or after July 1, 1997. The remainder of Part III of this act is effective for taxable years beginning on or after January 1, 1996, and applies to jobs created on or after August 1, 1996, and property placed in service on or after August 1, 1996. Article 3A of Chapter 105 of the General Statutes is repealed effective for applications for credits filed under G.S. 105-129.6 on or after January 1, 2006. G.S. 105-129.16 is repealed effective for business property placed in service on or after January 1, 2002. The remainder of as provided in that Article. Article 3B of Chapter 105 of the General Statutes is repealed effective for buildings to which federal credits are allocated on or after January 1, 2006. as provided in that Article."

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

Section 1.(c) G.S. 105-129.2A, as codified by this act, reads as rewritten:
"§ 105-129.2A. Sunset; studies.

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 – This Article is repealed effective for applications for credits filed under G.S. 105-129.6 on or after January 1, 2006.

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

(1) Reexamining the formula in G.S. 105-129.3(b) used to define enterprise tiers, to include consideration of alternative measures for

more equitable treatment of counties in similar economic circumstances.

- (2) Considering whether the assignment of tiers and the applicable thresholds are equitable for smaller counties, for example those under 50,000 in population.
- (3) Compiling any available data on whether expanding North Carolina businesses receive fewer benefits than out-of-State businesses that locate to North Carolina.

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

- (1) Study of the distribution of tax incentives across new and expanding industries.
- (2) Examination of data on economic recruitment for the period 1994 through 2000 by county, by industry type, by size of investment, and by number of jobs, and other relevant information to determine the pattern of business locations and expansions before and after the enactment of the William S. Lee Act incentives.
- (3) Measuring the direct costs and benefits of the tax incentives.
- (4) Compiling available information on the current use of incentives by other states and whether that use is increasing or declining.

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

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

"§ 105-129.15A. Sunset.

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

Section 2. Effective July 1, 2001, G.S. 105-88(e) reads as rewritten:

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

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

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

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

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

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

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

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

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

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

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

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

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

Section 4. G.S. 105-113.84 reads as rewritten:

"§ 105-113.84. ~~Invoices; report~~ Report of resident brewery, resident winery, or nonresident vendor.

~~(a) Invoice. — A resident brewery, resident winery, or nonresident vendor that sells or delivers wine or malt beverages to a North Carolina wholesaler or importer shall give that wholesaler or importer two copies of the sales invoice and shall also file one copy with the Secretary. The invoice shall state all of the following:~~

- ~~(1) The name and address of the permit holder making the sale or delivery.~~
- ~~(2) The name, address, and permit number of the wholesaler or importer receiving the beverages.~~
- ~~(3) The kind of beverage sold or delivered, including the number of cases.~~
- ~~(4) The exact quantities of beverages sold or delivered, specified by size and type of containers.~~
- ~~(5) The total gallons of malt beverages, the total liters of unfortified wine, and the total liters of fortified wine.~~

~~(b) Monthly Report. — Each resident brewery, resident winery, or nonresident vendor that sells or delivers wine or malt beverages in North Carolina shall prepare and file with the Secretary a monthly report, on a form provided by the Secretary, stating the exact quantities of those beverages sold to North Carolina wholesalers or importers during the previous month. The report shall be filed on or before the 15th day of the month following the month in which the beverages are sold or delivered.~~

A resident brewery, resident winery, and nonresident vendor must file a monthly report with the Secretary. The report must list the amount of beverages delivered to North Carolina wholesalers and importers during the month. The report is due by the 15th day of the month following the month covered by the report. The report must be filed on a form approved by the Secretary and must contain the information required by the Secretary."

Section 5. G.S. 105-113.85 reads as rewritten:

"§ 105-113.85. Discount.

Each wholesaler or importer who remits the excise taxes on malt beverages or wine may deduct from the amount payable by him a discount of four percent (4%). This discount covers losses due to spoilage and breakage, expenses incurred in preparing the records and reports required by this Article, and the expense of furnishing a bond. ~~No discount is allowed on taxpaid beverages given as free goods for advertising."~~

Section 6. G.S. 105-113.88 reads as rewritten:

"§ 105-113.88. ~~Record keeping~~ Record-keeping requirements.

~~(a) Requirement. — Every person licensed under this Article shall maintain complete and accurate records of all purchases and sales of alcoholic beverages taxable under this Article. These records shall be kept separate from all other records the person keeps. Each person shall also maintain copies of all reports filed with the Secretary and invoices, sales tickets, and other data that substantiate those reports.~~

~~(b) Length of Time Records Shall Be Kept. — Every person licensed under this Article shall keep the records, reports, and other information required by this section for three years.~~

A person who is required to file a report or return under this Article must keep a record of all documents used to determine information the person provides in a report or return. The records must be kept for three years from the due date of the report or return to which the records apply."

Section 7. G.S. 105-119 and G.S. 105-120.1 are repealed.

Section 8. G.S. 105-114 reads as rewritten:

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

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

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

- (1) Corporations organized under the laws of this State for the existence of the corporate rights and privileges granted by their charters, and the enjoyment, under the protection of the laws of this State, of the powers, rights, privileges and immunities derived from the State by the form of such existence; and
- (2) Corporations not organized under the laws of this State for doing business in this State and for the benefit and protection which these corporations receive from the government and laws of this State in doing business in this State.

¶

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

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

~~G.S. 105-122~~

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

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

- (1) City. – Defined in G.S. 105-228.90.
- (1a) Code. – Defined in G.S. 105-228.90.
- (2) Corporation. – A domestic corporation, a foreign corporation, an electric membership corporation organized under Chapter 117 of the General Statutes or doing business in this State, or an association that is organized for pecuniary gain, has capital stock represented by shares, whether with or without par value, and has privileges not

possessed by individuals or partnerships. The term includes a mutual or capital stock savings and loan association or building and loan association chartered under the laws of any state or of the United States. The term does not include a limited liability company.

- (3) Doing business. – Each and every act, power, or privilege exercised or enjoyed in this State, as an incident to, or by virtue of the powers and privileges granted by the laws of this State.
- (4) Income year. – Defined in G.S. 105-130.2(5)."

Section 9. G.S. 105-164.3(8a) reads as rewritten:

"(8a) 'Manufactured home' means a structure that is designed to be used as a dwelling ~~and~~ and that meets one of the following conditions:

- a. ~~Is built on a permanent chassis;~~ Is manufactured in accordance with the specifications for manufactured homes issued by the United States Department of Housing and Urban Development.
- b. ~~Is transportable in one or more sections;~~ Is manufactured in accordance with the specifications for modular homes under the North Carolina State Residential Building Code, is built on a permanent chassis, and is transportable in one or more sections.
- c. ~~When transported, is at least eight feet wide or forty feet long; and~~
- d. ~~When erected on a site, has at least 320 square feet."~~

Section 10.(a) G.S. 105-187.1 is amended by adding a new subdivision to read:

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

Section 10.(b) G.S. 105-187.5(a) reads as rewritten:

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

Section 10.(c) G.S. 20-4.01(5) reads as rewritten:

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

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

Section 11. G.S. 105-259(b)(15) reads as rewritten:

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

...

- (15) To exchange information concerning a tax imposed by Articles 2A, 2C, or 2D of this Chapter with one of the following agencies when the information is needed to fulfill a duty imposed on the Department or the agency:
 - a. The North Carolina Alcoholic Beverage Control Commission.
 - b. The Division of Alcohol Law Enforcement of the Department of Crime Control and Public Safety.
 - c. The Bureau of Alcohol, Tobacco, and Firearms of the United States Treasury Department.
 - d. Law enforcement agencies.
 - e. The Division of Adult Probation and Parole of the Department of Correction."

Section 12. G.S. 105-449.44 reads as rewritten:

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

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

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

- (1) Fails to file a report for the quarter and the records of the Division indicate the carrier operated in this State during the quarter.
- (2) Files a report for the quarter that, based on the records of the Division, understates by at least twenty-five percent (25%) the carrier's mileage in this State for the quarter.

(c) Vehicles. – The number of vehicles of a motor carrier that is registered under this Article is the number of identification markers issued to the carrier. The number of vehicles of a carrier that is not registered under this Article is the number of vehicles registered by the motor carrier in the carrier's base state under the International

Registration Plan. ~~The Department shall assess a motor carrier for the amount payable based on the presumed mileage.~~"

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

"§ 105-449.60. Definitions.

The following definitions apply in this Article:

...

(31) Supplier. – Any of the following:

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

...

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

Section 13.(b) Effective July 1, 2000, G.S. 105-449.88 is amended by adding a new subdivision to read:

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

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

...

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

Section 14.(a) G.S. 105-449.60(41) reads as rewritten:

"§ 105-449.60. Definitions.

The following definitions apply in this Article:

...

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

Section 14.(b) G.S. 105-449.68 reads as rewritten:

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

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

Section 14.(c) G.S. 105-449.97(c) reads as rewritten:

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

Section 15. G.S. 105-449.88(1) reads as rewritten:

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

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

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

Section 16. The catch line of G.S. 105-449.105 reads as rewritten:

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

Section 17. G.S. 105-449.105A reads as rewritten:

"§ 105-449.105A. Monthly refunds for kerosene.

(a) Refund. – A distributor who sells kerosene to any of the following may obtain a refund for the excise tax the distributor paid on the kerosene, less the amount of any discount allowed on the kerosene under G.S. 105-449.93:

- (1) The end user of the kerosene, if the distributor dispenses the kerosene into a storage facility of the end user that contains fuel used only for heating.
- (2) A retailer of kerosene, if the distributor dispenses the kerosene into a storage facility that is marked ~~for nonhighway use in accordance with the requirements in G.S. 105-449.123(a)(1) through (a)(3) and with the phrase "Undyed, Untaxed Kerosene, Nontaxable Use Only" and either has a dispensing device that is not suitable for use in fueling a highway vehicle.~~ vehicle or is kept locked by the retailer and must be unlocked by the retailer for each sale of kerosene.

(b) Liability. – If the Secretary determines that the Department overpaid a distributor by refunding more tax to the distributor than is due under this section, the distributor is liable for the amount of the overpayment. This liability applies regardless of whether the actions of a retailer of kerosene contributed to the overpayment."

Section 18. G.S. 105-449.121(b)(2) reads as rewritten:

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

...

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

Section 19.(a) G.S. 62A-5(d) reads as rewritten:

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

Section 19.(b) G.S. 105-120(c1) reads as rewritten:

"(c1) ~~Enhanced 911 Service Charge.~~ Charges. – Gross receipts of an entity that provides local telecommunications service do not include 911 charges imposed under G.S. 62A-5 and remitted to a local government under G.S. 62A-6, or wireless Enhanced 911 service charges imposed under G.S. 62A-23 and remitted to the Wireless Fund under G.S. 62A-24."

Section 19.(c) G.S. 105-130.5(b)(17) reads as rewritten:

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

Section 20. Except as otherwise provided in this act, this act is effective when it becomes law.

In the General Assembly read three times and ratified this the 11th day of July, 2000.

s/ Marc Basnight
President Pro Tempore of the Senate

s/ James B. Black
Speaker of the House of Representatives

s/ James B. Hunt, Jr.
Governor

Approved 10:06 a.m. this 2nd day of August, 2000