

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

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SENATE BILL 1320

Short Title: Simplify Taxes on Telecommunications.

(Public)

Sponsors: Senators Hoyle and Kerr.

Referred to: Finance.

May 18, 2000

A BILL TO BE ENTITLED

AN ACT TO SIMPLIFY THE COLLECTION OF TELECOMMUNICATIONS TAXES. The General Assembly of North Carolina enacts:

Section 1. G.S. 105-164.3 is amended by adding the following new subdivisions in the correct alphabetical order to read:

"§ 105-164.3. Definitions.

The following definitions apply in this Article, except when the context clearly indicates a different meaning:

...

(11a) Prepaid telephone calling arrangement. – A right that authorizes the exclusive purchase of telecommunications service; must be paid for in advance; enables the origination of calls by means of an access number, authorization code, or another similar means, regardless of whether the access number or authorization code is manually or electronically dialed; and is sold in units or dollars whose number or dollar value declines with use and is known on a continuous basis.

...

(16b) Service address. – The location of the telecommunications equipment from which a customer originates or receives telecommunications service. In the case of wireless telecommunications service, maritime

1 systems, third-number calls, calling card calls, and other similar services
2 for which the location of the equipment cannot be determined as part of
3 the billing process, the telecommunications service provider may
4 determine the location of the equipment based upon the customer's
5 telephone number, the mailing address to which the bills are sent, or a
6 street address provided by the customer if the street address is within the
7 licensed service area of the service provider. In the case of
8 telecommunications service paid through a payment mechanism that
9 does not relate to the location of the equipment, such as a bank, travel,
10 debit, or credit card, the service address is the address of the central
11 office as determined by the area code and the first three digits of the
12 seven digit originating telephone number.

13 ...

14 (21a) Telecommunications service. – A two-way electronic or
15 electromagnetic transmission that consists of sound, signals, or other
16 intelligence converted to sound or signals and is made by means of wire,
17 cable, radio wave, microwave, light wave, satellite, fiber optics, or
18 another transmission media.

19 ...

20 (26) Wireless telecommunications service. – A two-way radio
21 communications service, including cellular telecommunications service,
22 two-way paging service, and any other form of mobile two-way
23 communications service."

24 Section 2. G.S. 105-164.3(25) is repealed.

25 Section 3. G.S. 105-164.4(a)(4a) reads as rewritten:

26 "(4a) ~~The rate of three percent (3%) applies to the gross receipts derived by a~~
27 ~~utility from sales of electricity or local telecommunications service as~~
28 ~~defined by G.S. 105-120(e), electricity, other than sales of electricity~~
29 ~~subject to tax under another subdivision in this section. Gross receipts~~
30 ~~from sales of local telecommunications service do not include receipts~~
31 ~~from service provided by means of public coin-operated pay telephone~~
32 ~~instruments and paid for by coin. A person who operates a utility sells~~
33 ~~electricity is considered a retailer under this Article."~~

34 Section 4. G.S. 105-164.4(a)(4c) reads as rewritten:

35 "(4c) ~~The rate of six and one-half percent (6 1/2%)~~ four and one-half percent
36 (4.5%) ~~applies to the gross receipts derived from providing toll~~
37 ~~telecommunications services or private telecommunications services as~~
38 ~~defined by G.S. 105-120(e) that both originate from and terminate in the~~
39 ~~State and are not subject to the privilege tax under G.S. 105-120.~~
40 service. A person who provides telecommunications service is
41 considered a retailer under this Article. Telecommunications service is
42 taxed in accordance with G.S. 105-164.4B. Any business entity that
43 provides these services is considered a retailer under this Article. This

1 subdivision does not apply to telephone membership corporations as
2 described in Chapter 117 of the General Statutes."

3 Section 5. G.S. 105-164.4(a) is amended by adding a new subdivision to read:

4 "(4d) The sale or recharge of prepaid telephone calling arrangements is
5 taxable at the rate set in subdivision (a)(1) of this section for sales of
6 tangible personal property. The tax applies regardless of whether
7 tangible personal property, such as a card or a telephone, is transferred.
8 Prepaid telephone calling arrangements taxed under this subsection are
9 not subject to tax as a telecommunications service.

10 Prepaid telephone calling arrangements are taxable at the point of
11 sale instead of at the point of use. If the sale or recharge of a prepaid
12 telephone calling arrangement does not take place at a retailer's place of
13 business, the sale or recharge is considered to have taken place at one of
14 the following:

- 15 a. The customer's shipping address, if an item of tangible personal
16 property is shipped to the customer as part of the transaction.
17 b. The customer's billing address or, for wireless
18 telecommunications service, the customer's service address, if no
19 tangible personal property is shipped to the customer as part of
20 the transaction."

21 Section 6. Part 2 of Article 5 of Chapter 105 of the General Statutes is
22 amended by adding a new section to read:

23 "**§ 105-164.4B. Tax on telecommunications.**

24 (a) General. – The gross receipts derived from providing telecommunications
25 service in this State are taxed at the rate set in G.S. 105-164.4(a)(4c). Wireless
26 telecommunications service is provided in this State if the customer's service address is in
27 this State and the call originates or terminates in this State.

28 (b) Included in Gross Receipts. – Gross receipts derived from telecommunications
29 service include the following:

- 30 (1) Receipts from local, intrastate, interstate, toll, private, and wireless
31 telecommunications service.
32 (2) Charges for directory assistance, directory listing that is not yellow-page
33 classified listing, call forwarding, call waiting, three-way calling, caller
34 ID, and other similar services.
35 (3) Customer access line charges billed to subscribers for access to the
36 intrastate or interstate interexchange network.
37 (4) Charges billed to a pay telephone provider who uses the
38 telecommunications service to provide pay telephone service.

39 (c) Excluded From Gross Receipts. – Gross receipts derived from
40 telecommunications service do not include any of the following:

- 41 (1) Charges for telecommunications services that are a component part of or
42 are integrated into a telecommunications service that is resold.
43 Examples of services that are resold include carrier charges for access to

1 an intrastate or interstate interexchange network, interconnection
2 charges paid by a provider of wireless telecommunications service, and
3 charges for the sale of unbundled network elements. An unbundled
4 network element is a network element, as defined in 47 U.S.C. §
5 153(29), to which access is provided on an unbundled basis pursuant to
6 47 U.S.C. § 251(c)(3).

7 (2) 911 charges imposed under G.S. 62A-4 or G.S. 62A-23 and remitted to
8 the Emergency Telephone System Fund under G.S. 62A-7 or the
9 Wireless Fund under G.S. 62A-24.

10 (3) Allowable surcharges imposed to recoup assessments for the Universal
11 Service Fund.

12 (4) Receipts of a pay telephone provider from the sale of pay telephone
13 service.

14 (5) Charges for commercial, cable, wireless, broadcast, or satellite video or
15 audio service unless the service provides two-way communication, other
16 than the customer's interactive communication in connection with the
17 customer's selection or use of the video or audio service.

18 (6) Paging service, unless the service provides two-way communication.

19 (7) Charges for telephone service made by a hotel, motel, or another entity
20 whose gross receipts are taxable under G.S. 105-164.4(a)(3) when the
21 charges are incidental to the occupancy of the entity's accommodations.

22 (8) Receipts from the sale, installation, maintenance, or repair of tangible
23 personal property.

24 (9) Directory advertising and yellow-page classified listings.

25 (10) Voicemail services.

26 (11) Information services. An information service is a service that can
27 generate, acquire, store, transform, process, retrieve, use, or make
28 available information through a communications service. Examples of
29 an information service include an electronic publishing service and a
30 Web hosting service.

31 (12) Internet access.

32 (13) Billing and collection services.

33 (14) Charges for bad checks or late payments.

34 (d) Bundled Services. – When a taxable telecommunications service is bundled
35 with a service that is not taxable, the tax applies to the gross receipts from the taxable
36 service in the bundle as follows:

37 (1) If the service provider offers all the services in the bundle on an
38 unbundled basis, tax is due on the unbundled price of the taxable
39 service, less the discount resulting from the bundling. The discount for
40 a service as the result of bundling is the proportionate price decrease of
41 the service, determined on the basis of the total unbundled price of all
42 the services in the bundle compared to the bundled price of the services.

- 1 (2) If the service provider does not offer one or more of the services in the
2 bundle on an unbundled basis, tax is due on the taxable service based on
3 a reasonable allocation of revenue to that service. If the service
4 provider maintains an account for revenue from a taxable service, the
5 service provider's allocation of revenue to that service for the purpose of
6 determining the tax due on the service must reflect its accounting
7 allocation of revenue to that service.
- 8 (e) Interstate Private Line. – The gross receipts derived from interstate private
9 telecommunications service are taxable as follows:
- 10 (1) One hundred percent (100%) of the charge imposed at each channel
11 termination point in this State.
- 12 (2) One hundred percent (100%) of the charge imposed for the total channel
13 mileage between each channel termination point in this State.
- 14 (3) Fifty percent (50%) of the charge imposed for the total channel mileage
15 between the first channel termination point in this State and the nearest
16 channel termination point outside this State.
- 17 (f) Call Center Cap. – The gross receipts tax on interstate telecommunications
18 service that originates outside this State, terminates in this State, and is provided to a call
19 center that has a direct pay certificate issued by the Department under G.S. 105-164.27
20 may not exceed fifty thousand dollars (\$50,000) a calendar year. This cap applies
21 separately to each legal entity.
- 22 (g) Credit. – A taxpayer who pays a tax legally imposed by another state on a
23 telecommunications service taxable under this section is allowed a credit against the tax
24 imposed in this section.
- 25 (h) Definitions. – The following definitions apply in this section:
- 26 (1) Call center. – Defined in G.S. 105-164.27.
- 27 (2) Interstate telecommunications service. – Telecommunications service
28 that originates or terminates in this State, but does not both originate
29 and terminate in this State, and is charged to a service address in this
30 State.
- 31 (3) Intrastate telecommunications service. – Telecommunications service
32 that both originates and terminates in this State.
- 33 (4) Local telecommunications service. – Telecommunications service that
34 provides access to a local telephone network and enables a user to
35 communicate with substantially everyone who has a telephone or
36 radiotelephone station that is part of the local telephone network.
- 37 (5) Private telecommunications service. – Telecommunications service that
38 entitles a subscriber of the service to exclusive or priority use of a
39 communications channel or group of channels.
- 40 (6) Service address. – Defined in G.S. 105-164.3.
- 41 (7) Telecommunications service. – Defined in G.S. 105-164.3.
- 42 (8) Toll telecommunications service. – Any of the following:

- 1 a. A service for which there is a toll charge that varies in amount
2 with the distance or elapsed transmission time of each individual
3 communication.
- 4 b. A service that entitles the subscriber, upon payment of a periodic
5 charge, determined as a flat amount or on the basis of total
6 elapsed transmission time, to an unlimited number of
7 communications to or from all or a substantial portion of those
8 who have a telephone or radiotelephone station in an area outside
9 the local telephone network.

10 (9) Wireless telecommunications service. – Defined in G.S. 105-164.3."

11 Section 7. G.S. 105-164.16(c) reads as rewritten:

12 "(c) Sales Tax on Utility Services. Electricity and Telecommunications. – A return
13 for taxes levied under G.S. 105-164.4(a)(4a) and G.S. 105-164.4(a)(4c) is due quarterly
14 or monthly as specified in this subsection. A utility that is allowed to pay tax under G.S.
15 105-120 on a quarterly basis shall file a quarterly return. All other utilities shall file a
16 monthly return. A quarterly return is due by the last day of the month following the
17 quarter covered by the return. A monthly. The monthly return is due by the last day of
18 the month following the month in which the taxes accrue, except the return for taxes that
19 accrue in May. A return for taxes that accrue in May is due by June 25.

20 A utility-retailer that is required to file a monthly return may file an estimated return
21 for the first month, the second month, or both the first and second months in a quarter. A
22 utility-retailer is not subject to interest on or penalties for an underpayment submitted
23 with an estimated monthly return if the utility-retailer timely pays at least ninety-five
24 percent (95%) of the amount due with a monthly return and includes the underpayment
25 with the company's-retailer's return for the third month in the same quarter."

26 Section 8. G.S. 105-164.20 reads as rewritten:

27 "**§ 105-164.20. Cash or accrual basis of reporting.**

28 Any retailer, except a utility-retailer who sells electricity or telecommunications
29 service, may report sales on either the cash or accrual basis of accounting upon making
30 application to the Secretary for permission to use the basis selected. Permission granted
31 by the Secretary to report on a selected basis continues in effect until revoked by the
32 Secretary or the taxpayer receives permission from the Secretary to change the basis
33 selected. A utility-retailer who sells electricity or telecommunications service must report
34 its sales on an accrual basis. A sale by a utility of electricity or intrastate telephone
35 telecommunications service is considered to accrue when the utility bills its customer for
36 the sale."

37 Section 9. Part 4 of Article 5 of Chapter 105 of the General Statutes is
38 amended by adding a new section to read:

39 "**§ 105-164.27. Direct pay certificate for call center.**

40 (a) Requirements. – A call center that purchases interstate telecommunications
41 service that originates outside this State and terminates in this State may apply to the
42 Secretary for a direct pay certificate. An application for a direct pay certificate must be

1 made on a form provided by the Secretary and contain the information required by the
2 Secretary.

3 (b) Effect. – A direct pay certificate authorizes its holder to purchase
4 telecommunications service without paying tax to the seller and authorizes the seller to
5 not collect any tax on a sale to the certificate holder. A person who purchases
6 telecommunications service under a direct pay certificate must file a return and pay the
7 tax due monthly to the Secretary. A direct pay certificate issued under this section does
8 not apply to any tax other than the tax on telecommunications service.

9 (c) Call Center Defined. – A call center is a business that is primarily engaged in
10 providing support services to customers by telephone to support products or services of
11 the business. A business is primarily engaged in providing support services by telephone
12 if at least sixty percent (60%) of its calls are incoming."

13 Section 10. Part 8 of Article 5 of Chapter 105 of the General Statutes is
14 amended by adding a new section to read:

15 "**§ 105-164.44F. Distribution of part of telecommunications taxes to cities.**

16 Within 75 days after the end of each calendar quarter, the Secretary must distribute to
17 the cities twelve percent (12%) of the net proceeds of the taxes imposed by G.S. 105-
18 164.4(a)(4c) on telecommunications service. The Secretary must distribute this amount
19 among the cities on a per capita basis according to the most recent annual population
20 estimates certified to the Secretary by the State Planning Officer. A city incorporated on
21 or after January 1, 2000, may not receive a distribution under this section unless it meets
22 both of the following requirements:

23 (1) It must be eligible to receive funds under G.S. 136-41.2.

24 (2) A majority of the mileage of its streets must be open to the public."

25 Section 11. G.S. 105-116(d) reads as rewritten:

26 "(d) ~~Distribution. — Part of the taxes imposed by this section on electric~~
27 ~~power companies, natural gas companies, and regional natural gas districts is distributed~~
28 ~~to cities under G.S. 105-116.1. Within 75 days after the end of each calendar quarter, the~~
29 ~~Secretary must distribute to the cities part of the tax proceeds from the gross receipts of~~
30 ~~an electric power company derived within the city. The amount to be distributed to a city~~
31 ~~is three and nine hundredths percent (3.09%) of the gross receipts derived within the~~
32 ~~city."~~

33 Section 12. G.S. 105-116.1 is repealed.

34 Section 13. G.S. 105-120 is repealed.

35 Section 14. G.S. 105-467 is amended by adding a new subdivision to read:

36 "(6) The sales price of prepaid telephone calling arrangements taxed as
37 tangible personal property under G.S. 105-164.4(a)(4d)."

38 Section 15. The first paragraph of Section 4 of Chapter 1096 of the 1967
39 Session Laws, as amended, is amended as follows:

40 (1) By deleting the word "and" before subdivision (5).

41 (2) By changing the period at the end of subdivision (5) to a semicolon and
42 adding the word "and".

43 (3) By adding a new subdivision to read:

1 "(6) The sales price of prepaid telephone calling arrangements taxed as
2 tangible personal property under G.S. 105-164.4(a)(4d)."

3 Section 16.(a) Hold-Harmless. – For distributions made in calendar quarters
4 beginning on or after April 1, 2001, the combined amount distributed to a city under G.S.
5 105-116, 105-164.44F, and 105-187.44 is subject to the following conditions:

6 (1) The amount distributed to a city may not exceed the city's overall
7 benchmark amount until each city receives an amount equal to its
8 overall benchmark amount.

9 (2) The amount distributed to a city may not be less than the city's overall
10 benchmark amount.

11 Section 16.(b) Calculation. – Each quarter, the Secretary of Revenue must
12 determine a city's overall benchmark amount and the amount it would receive under G.S.
13 105-116, 105-164.44F, and 105-187.44, as modified by S.L. 1998-22, Section 14, if not
14 for the redistribution required by this section. The Secretary must identify those cities
15 whose distribution amounts under these three statutes are less than their overall
16 benchmark amounts and must determine the total dollar amount of the shortfall. The
17 Secretary must reduce the amount to be distributed to those cities whose distribution
18 amount under those statutes exceeds their overall benchmark amount by the total dollar
19 amount of the shortfall determined for that quarter in proportion to each city's excess.
20 However, in no event may a city's distribution amount be reduced below its overall
21 benchmark amount. The Secretary must redistribute these monies to the cities whose
22 distribution amounts under the three statutes are less than their overall benchmark
23 amounts in proportion to each city's shortfall. In any quarter that a city does not have a
24 prior year's distribution for the corresponding quarter in the preceding fiscal year, that
25 city is excluded from the redistribution required under this section for that quarter. In
26 that case, the city will receive the amount it is entitled to receive under G.S. 105-116,
27 105-164.44F, and 105-187.44.

28 Section 16.(c) Definition. – As used in this section, the term "overall benchmark
29 amount" means the sum of the following two amounts:

30 (1) The amount distributed to the city under repealed G.S. 105-116.1 in the
31 same calendar quarter of the last year in which the city received the
32 distribution under that statute.

33 (2) The city's piped natural gas benchmark amount for that same quarter, as
34 determined under S.L. 1998-22, Section 14.

35 Section 16.(d) Report. – The Department of Revenue must report to the
36 Revenue Laws Study Committee by October 1, 2002, on the effect of the changes made
37 by this act on the amounts distributed to cities. The Department must include in its
38 report any adjustments to city distributions recommended by the Department. The
39 Department must consult with the North Carolina League of Municipalities in developing
40 its recommendations.

41 Section 17. G.S. 153A-152 reads as rewritten:

42 "**§ 153A-152. Privilege license taxes.**

1 (a) Authority. – A county may levy privilege license taxes on trades, occupations,
2 professions, businesses, and franchises to the extent authorized by Article 2 of Chapter
3 105 of the General Statutes and any other acts of the General Assembly. A county may
4 levy privilege license taxes to the extent formerly authorized by the following sections of
5 Article 2 of Chapter 105 of the General Statutes before they were repealed:

6	G.S. 105-50	Pawnbrokers.
7	G.S. 105-53	Peddlers, itinerant merchants, and specialty market operators.
8	G.S. 105-55	Installing elevators and automatic sprinkler systems.
9	G.S. 105-58	Fortune tellers, palmists, etc.
10	G.S. 105-65	Music machines.
11	G.S. 105-66.1	Electronic video games.
12	G.S. 105-80	Firearms dealers and dealers in other weapons.
13	G.S. 105-89	Automobiles, wholesale supply dealers and service stations.
14	G.S. 105-89.1	Motorcycle dealers.
15	G.S. 105-90	Emigrant and employment agents.
16	G.S. 105-102.5	General business license.

17 (b) Telecommunications Restriction. – A county may not impose a license,
18 franchise, or privilege tax on a company taxed under G.S. 105-164.4(a)(4c)."

19 Section 18. G.S. 160A-211 is amended by adding a new subsection to read:

20 "(d) Telecommunications Restriction. – A city may not impose a license, franchise,
21 or privilege tax on a company taxed under G.S. 105-164.4(a)(4c)."

22 Section 19. Pursuant to G.S. 62-31 and G.S. 62-32, the Utilities Commission
23 must lower the rate set for local telecommunications service to reflect the repeal of G.S.
24 105-120.

25 Section 20. This act becomes effective January 1, 2001, and applies to taxable
26 services reflected on bills dated on or after January 1, 2001. Section 16 expires on July 1,
27 2003.