

GENERAL ASSEMBLY OF NORTH CAROLINA
1989 SESSION

CHAPTER 945
SENATE BILL 1586

AN ACT TO ACCELERATE THE PAYMENT OF SALES TAXES AND GROSS RECEIPTS TAXES BY UTILITIES AND TO ACCELERATE THE PAYMENT OF WITHHELD INDIVIDUAL INCOME TAXES BY EMPLOYERS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 105-164.16 reads as rewritten:

"§ 105-164.16. Report and payment of taxes.

(a) Payment. – Taxes levied under this Article are due when a return is required to be filed. Every taxpayer liable for the tax imposed by this Article shall, within the specified time after the end of the appropriate reporting period, submit a return to the Secretary, on a form prescribed by the Secretary, stating the taxpayer's gross sales for the reporting period, the amount and type of sales made in the period that are exempt from tax under G.S. 105-164.13 or are elsewhere excluded from tax, the amount of tax due, and any other information required by the Secretary. Each return shall be accompanied by a payment to the Secretary for the amount of taxes shown to be due on the return and shall be signed by the taxpayer or his agent. Returns that do not contain the required information shall not be accepted. When an unacceptable return is submitted, the Secretary shall require a corrected return to be filed.

(b) General Reporting Periods. – Returns of taxpayers who are required by this subsection to report on a monthly or quarterly basis are due within 15 days after the end of each monthly or quarterly period. Returns of taxpayers who are required to report on a semimonthly basis are due within 10 days after the end of each semimonthly period.

A taxpayer who is consistently liable for less than twenty-five dollars (\$25.00) a month in State and local sales and use taxes may, with the approval of the Secretary, file a return on a quarterly basis. A taxpayer who is consistently liable for at least twenty thousand dollars (\$20,000) a month in State and local sales and use taxes shall, when directed to do so by the Secretary, file a return on a semimonthly basis. All other taxpayers shall file a return on a monthly basis. Quarterly reporting periods end on the last day of March, June, September, and December; monthly reporting periods end on the last day of the month; and semimonthly reporting periods end on the 15th of each month and the last day of each month.

The Secretary shall monitor the amount of tax remitted by a taxpayer and shall direct a taxpayer who consistently remits at least twenty thousand dollars (\$20,000) each month to file a return on a semimonthly basis. In determining the amount of tax due from a taxpayer for a reporting period the Secretary shall consider the total amount due

from all places of business owned or operated by the same person as the amount due from that person.

A taxpayer who is directed to remit sales and use taxes on a semimonthly basis but who is unable to gather the information required to submit a complete return for either the first reporting period or both the first and second semimonthly reporting periods may, upon written authorization by the Secretary, file an estimated return for that first reporting period or both periods on the basis prescribed by the Secretary. Once a taxpayer is authorized to file an estimated return for the first period or both periods, the taxpayer may continue to file an estimated return for the first or both periods until the Secretary, by written notification, revokes the taxpayer's authorization to do so. When filing a return for the second semimonthly reporting period, a taxpayer who files an estimated return for the first period but not both periods shall remit the amount of tax due for both the first and second reporting periods, less the amount he remitted with his estimated return.

A taxpayer who files an estimated return for both periods is considered to have been granted an extension for both the first and second reporting periods. Notwithstanding G.S. 105-164.19, if a taxpayer who files an estimated return for both periods files a reconciling return for those periods within ten days of the due date of the return for the second period and any underpayment of estimated taxes remitted with the reconciling return is less than ten percent (10%) of the amount of taxes due for both the first and second reporting periods, no interest shall be charged. Otherwise, a taxpayer who files an estimated return for both periods shall be charged interest at the statutory rate from the due date of the return for the first reporting period to the date the reconciling return is filed.

(c) Sales Tax on Utility Services. – Taxes—A return for taxes levied under G.S. 105-164.4(4a) and G.S. 105-164.4(4e) are 105-164.4(a)(4a) and G.S. 105-164.4(a)(4c) is due and payable quarterly on or before the 30th day following the end of the calendar quarter in which the tax accrues. quarterly or monthly as specified in this subsection. A utility that is allowed to pay tax under G.S. 105-120 on a quarterly basis shall file a quarterly return. All other utilities shall file a monthly return. A quarterly return is due by the last day of the month following the quarter covered by the return. A monthly return is due by the last day of the month following the month in which the taxes accrue, except the return for taxes that accrue in May. A return for taxes that accrue in May is due by June 25.

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

Sec. 2. G.S. 105-164.21A reads as rewritten:

"§ 105-164.21A. Deduction for municipalities that sell electric power.

A municipality that pays the retail sales tax imposed by this Article on electricity may deduct from the amount of tax payable by the municipality an amount equal to

three percent (3%) of the difference between its gross receipts from sales of electricity for the preceding ~~quarter reporting period~~ and the amount paid by the municipality for purchased power and related services during that ~~quarter reporting period~~."

Sec. 3. G.S. 105-116(b), as amended by Chapter 813 of the 1989 Session Laws, reads as rewritten:

"(b) ~~Payment. Report and Payment.~~ The tax imposed by this section is payable ~~when a report is required to be filed. A company taxed under this section shall file a report on a quarterly basis. monthly or quarterly as specified in this subsection. A report is due quarterly. An electric power company or a natural gas company shall pay tax monthly. A monthly tax payment is due by the last day of the month that follows the month in which the tax accrues, except the payment for tax that accrues in May. The payment for tax that accrues in May is due by June 25. An electric power company or a natural gas company is not subject to interest on or penalties for an underpayment of a monthly amount due if the company timely pays at least ninety-five percent (95%) of the amount due and includes the underpayment with the next report the company files. A water company or a public sewerage company shall pay tax quarterly when filing a report.~~

A quarterly report covers a calendar quarter and is due ~~within 30 days after the end of by the last day of the month that follows the quarter covered by the report.~~ A company shall submit a report on a form provided by the Secretary. The report shall include the company's gross receipts from all property it owned or operated during the reporting period in connection with its business taxed under this section and shall contain the following information:

- (1) The company's gross receipts for the reporting period from business inside and outside this State, stated separately.
- (2) The company's gross receipts from commodities or services described in subsection (a) that are sold to a vendee subject to the tax levied by this section or to a joint agency established under G.S. Chapter 159B or a municipality having an ownership share in a project established under that Chapter.
- (3) The amount of and price paid by the company for commodities or services described in subsection (a) that are purchased from others engaged in business in this State and the name of each vendor.
- (4) For an electric power company or a natural gas company, the company's gross receipts from the sale within each municipality of the commodities and services described in subsection (a).

A company shall report its gross receipts on an accrual basis."

Sec. 4. G.S. 105-120(b), as amended by Chapter 813 of the 1989 Session Laws, reads as rewritten:

"(b) ~~Payment. Report and Payment.~~ The tax imposed by this section is payable ~~when a report is required to be filed. A company taxed under this section shall file a report on a quarterly basis. monthly or quarterly as specified in this subsection. A report is due quarterly. A company that is liable for an average of less than three thousand dollars (\$3,000) a month in tax imposed by this section may, with the approval~~

of the Secretary of Revenue, pay tax quarterly when filing a report. All other companies shall pay tax monthly. A monthly tax payment is due by the last day of the month that follows the month in which the tax accrues, except the payment for tax that accrues in May. The payment for tax that accrues in May is due by June 25. A company is not subject to interest on or penalties for an underpayment of a monthly amount due if the company timely pays at least ninety-five percent (95%) of the amount due and includes the underpayment with the next report the company files.

A quarterly report covers a calendar quarter and is due ~~within 30 days after the end of~~ by the last day of the month that follows the quarter covered by the report. A company shall submit a report on a form provided by the Secretary. The report shall state the company's gross receipts for the reporting period from providing local telecommunications service and from providing local telecommunications service within each municipality served. A company shall report its gross receipts on an accrual basis."

Sec. 5. G.S. 105-163.1 reads as rewritten:

"§ 105-163.1. Definitions.

~~As used in this Article, The following definitions apply in this Article:~~

- (1) ~~"Secretary" means the Secretary of Revenue. Code. – The Internal Revenue Code as enacted as of January 1, 1990, including any provisions enacted as of that date which become effective either before or after that date.~~
- (2) ~~"Corporation" includes an association or a joint stock company.~~
- (3) ~~"Dependent" means a dependent – Dependent. – An individual with respect to whom an income tax exemption is allowed under the Code.~~
- (4) ~~The word "employee" means an Employee. – An individual, whether a resident or a nonresident in of this State, who performs or performed any service services in this State for wages or an individual domiciled in who is a resident of this State who and performs or performed any service services outside this State for wages. The word "employee," as used in this subdivision, is intended to include officers of corporations and elected public officials. The term does not include an ordained or licensed clergyman who elects to be considered self employed under G.S. 105-163.1A. term includes an ordained or licensed clergyman who elects to be considered an employee under G.S. 105-163.1A, an officer of a corporation, and an elected public official.~~
- (5) ~~The word "employer" means this State, or any political subdivision thereof, the United States, or any agency or instrumentality of any one or more of the foregoing, or a person, Employer. – A person for whom an individual performs or performed any service as an employee; except that:~~
 - a. ~~If the person, governmental unit, or agency thereof, for whom the individual performs or performed the service does not have control of the payment of the wages for such services, the term "employer" (except for the purposes of subdivision (6) of this~~

~~section) means the person having control of the payment of such wages, and~~

~~b. In the case of a person paying wages on behalf of a nonresident person not engaged in trade or business within this State or on behalf of any governmental unit or agency thereof not located within this State, the term "employer" (except for purposes of subdivision (6) of this section) means such person.~~

~~services for wages. In applying the requirements to withhold income taxes from wages and pay the withheld taxes, the term includes a person who:~~

~~a. Controls the payment of wages to an individual for services performed for another.~~

~~b. Pays wages on behalf of a person who is not engaged in trade or business in this State.~~

~~c. Pays wages on behalf of a unit of government that is not located in this State.~~

~~d. Pays wages for any other reason.~~

~~(6) The term "wages" means all remuneration (other than fees paid to a public official) for service performed by an employee for his employer, including the cash value of all remuneration paid in any medium other than cash; except that such term shall not include remuneration paid:~~

~~a. For agricultural labor where such remuneration is paid to workers employed on the farm for services rendered on the farm in the production, harvesting, and transportation of agricultural products to market for the farmer-employer; or~~

~~b. For domestic service in a private home, local college club, or local chapter of a college fraternity or sorority; or~~

~~c. For service not in the course of the employer's trade or business performed in any calendar quarter by an employee, unless the cash remuneration paid for such service is fifty dollars (\$50.00) or more and such service is performed by an individual who is regularly employed by such employer to perform such service. For purposes of this paragraph, an individual shall be deemed to be regularly employed by an employer during a calendar quarter only if:~~

~~1. On each of some 24 days during such quarter such individual performs for such employer for some portion of the day service not in the course of the employer's trade or business; or~~

~~2. Such individual was regularly employed (as determined under subparagraph 1 above) by such employer in the performance of such service during the preceding calendar quarter; or~~

- d. For services not in the course of the employer's trade or business, to the extent paid in any medium other than cash; or
- e. ~~To, or on behalf of, an employee or his beneficiary—~~
1. From or to a trust described in § 401(a) of the Code which is exempt from tax under § 501(a) of the Code at the time of such payment unless such payment is made to an employee of the trust as remuneration for services rendered as such employee and not as a beneficiary of the trust; or
 2. ~~Under or to an annuity plan which, at the time of such payment, meets the requirements of § 401(a) (3), (4), (5), and (6) of the Code.~~
- (7) The term "transient employer" means an "employer" who is not a resident of this State and who temporarily engages in any activity within the State for the production of income. Without intending to exclude others who may come within the foregoing definition, any nonresident "employer" engaging in any such activity within the State which, as of any date, cannot be reasonably expected to continue for a period of 18 consecutive months shall be deemed to be temporarily engaged in such activity.
- (8) ~~"Fiduciary" means a Fiduciary. – A guardian, a trustee, an executor, an administrator, a receiver, a conservator, or any other person acting in any a fiduciary capacity for any person, estate or trust. another.~~
- (9) ~~"Fiscal year" means an accounting period of 12 months ending on the last day of any month other than December. Fiscal year. – Defined in section 441(e) of the Code.~~
- (10) ~~"Individual" means a Individual. – A natural person.~~
- (11) ~~"Code" means the Internal Revenue Code as enacted as of January 1, 1989, and includes any provisions enacted as of that date which become effective either before or after that date. Miscellaneous payroll period. – A payroll period other than a daily, weekly, biweekly, semimonthly, monthly, quarterly, semiannual, or annual payroll period.~~
- (12) ~~"Payroll period" means a Payroll period. – A period for which a payment of wages is ordinarily made to the employee by his employer, and the term "miscellaneous payroll period" means a payroll period other than a daily, weekly, biweekly, semimonthly, monthly, quarterly, semiannual, or annual payroll period. an employer ordinarily pays wages to an employee of the employer.~~
- (13) ~~The word "person" means an Person. – An individual, a fiduciary, a partnership, or a corporation and includes an officer or employee of a corporation or a member or employee of a partnership or of an individual proprietorship who as such officer, employee, or member is under a duty to perform an act in meeting the requirements of this~~

~~Division. – a corporation, or a unit of government. The term includes an officer or employee of a corporation, a member or employee of a partnership, and an employee of an individual proprietorship who, as officer, employee, or member, is under a duty to perform an act in meeting the requirements of this Division.~~

- (14) ~~"Taxable year" means the calendar year or fiscal year ending during such calendar year, upon the basis of which net income is computed, and in the case of a return made for a fractional part of a year under the provisions of this Chapter or under regulations prescribed by the Secretary, "taxable year" means the period for which such return is made.~~ Taxable year. – Defined in section 441(b) of the Code.
- (14a) Secretary. – The Secretary of Revenue.
- (15) ~~The term "net taxable income" means that part of the income of an individual which, during the taxable year of the individual, is subject to payment of an income tax thereon under the provisions of Article 4 of this Chapter.~~ Wages. – The term has the same meaning as in section 3401 of the Code except it does not include remuneration paid by a farmer for services performed on the farmer's farm in producing or harvesting agricultural products or in transporting the agricultural products to market."

Sec. 6. G.S. 105-163.1A reads as rewritten:

"§ 105-163.1A. Ordained or licensed clergyman may elect to be considered self-employed instead of an employee.

An ordained or licensed clergyman who performs services for a church of any religious denomination may file an election with the Secretary and the church he serves to be considered ~~self-employed instead of an employee of the church.~~ church instead of self-employed. ~~Wages~~ Until a clergyman files an election, amounts paid by a church to a clergyman who elects to be considered self-employed are not subject to withholding. A church shall withhold taxes from a clergyman's wages until after the clergyman files an election with it under this section."

Sec. 7. G.S. 105-163.2(a) reads as rewritten:

"(a) ~~Every employer making payment of wages on or after January 1, 1960, shall deduct and withhold with respect to the wages of each employee for each payroll period an amount determined as follows:~~

~~An amount which, if an equal amount was collected for each similar payroll period with respect to a similar amount of wages for each payroll period during an entire calendar year, would aggregate or approximate the income tax liability of the employee under Article 4 of this Chapter after making allowance for the personal exemptions to which the employee would be entitled on the basis of his status during the payroll period and after making allowance for withholding purposes for a deduction from wages of the amount of the standard deduction allowed under the Code less the amount by which the standard deduction has been increased under section 63(c)(4) of the Code and without making allowance for any other deductions.~~ An employer shall deduct and withhold from the wages of each employee the State income taxes payable by the

employee on the wages. For each payroll period, the employer shall withhold from the employee's wages an amount that would approximate the employee's income tax liability under Article 4 of this Chapter if the employer withheld the same amount from the employee's wages for each similar payroll period in a calendar year. In calculating an employee's anticipated income tax liability, the employer shall allow for the exemptions, deductions, and credits to which the employee is entitled under Article 4 of this Chapter. The amount of State income taxes withheld by an employer is held in trust for the Secretary."

Sec. 8. G.S. 105-163.3 reads as rewritten:

"§ 105-163.3. Withholding in accordance with regulations.

The manner of withholding and the amount to be deducted and withheld under G.S. 105-163.2 shall be determined in accordance with tables, rules, and regulations ~~promulgated~~ adopted by the Secretary. The withholding exemption allowed by these tables, rules, and regulations shall, as nearly as possible, approximate the ~~exemptions~~ exemptions, deductions, and credits to which an employee would be entitled under the Code less the amount by which the exemptions would be increased under section 151(d)(3) of the Code. Article 4 of this Chapter."

Sec. 9. G.S. 105-163.4 reads as rewritten:

"§ 105-163.4. ~~Basis of determination of remuneration being wages.~~ No withholding from reimbursement for expenses.

~~If any of the remuneration paid by an employer to an employee during any payroll period or during any miscellaneous period without reference to a payroll period constitutes actual~~ The amount an employer pays an employee as reimbursement of the employee for ordinary and necessary expenses incurred by the employee on behalf of the employer and in the furtherance of the business of the employer, then such amounts as are paid to reimburse the employee for such expenses are not to be considered as wages and no amounts shall be deducted and withheld therefrom. employer is not wages and is not subject to withholding under this Article."

Sec. 10. G.S. 105-163.6 reads as rewritten:

"§ 105-163.6. ~~Payment of amounts withheld; personal liability for failure to withhold; limitation of recovery.~~ When employer must file returns and pay withheld taxes.

(a) ~~Every employer required to deduct and withhold from an employee's wages under G.S. 105-163.2 shall, for the quarterly period beginning January 1, 1960, and for each quarterly period thereafter, on or before the last day of the month following the close of each quarterly period, make return and pay over to the Secretary the amounts required to be withheld under G.S. 105-163.2. Such returns shall be in such form and contain such information as the Secretary may prescribe.~~ General. – A return is due quarterly or monthly as specified in this section. A return shall be filed with the Secretary on a form prepared by the Secretary, shall report any payments of withheld taxes made during the period covered by the return, and shall contain any other information required by the Secretary.

Withheld taxes are payable quarterly, monthly, or within three banking days, as specified in this section. Withheld taxes shall be paid to the Secretary or to a financial

institution with which the Secretary has entered a contract to receive payment of withheld taxes.

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

~~(b) Notwithstanding any of the other provisions of this section, all transient employers shall make return and pay over to the Secretary on a monthly basis the amounts required to be withheld under G.S. 105-163.2. Such returns and payments to the Secretary by transient employers shall be made on or before the fifteenth day of the month following the month for which such amounts were deducted and withheld from the wages of his employees; except that the returns and payments for the month of December shall be made on or before the 31st day of the following month. Quarterly. – An employer who withholds an average of less than five hundred dollars (\$500.00) of State income taxes from wages each month shall file a return and pay the withheld taxes on a quarterly basis. A quarterly return covers a calendar quarter and is due by the last day of the month following the end of the quarter.~~

~~(c) Notwithstanding any of the other provisions of this section, all employers engaged in any business which is seasonal shall make return and pay over to the Secretary on a monthly basis the amounts required to be withheld under G.S. 105-163.2. Such returns and payments to the Secretary by employers engaged in such seasonal business shall be made on or before the fifteenth day of the month following the month for which such amounts were deducted and withheld from the wages of his employees; except that the returns and payments for the month of December shall be made on or before the 31st day of the following month. Monthly. – An employer who withholds an average of at least five hundred dollars (\$500.00) but less than two thousand dollars (\$2,000) from wages each month shall file a return and pay the withheld taxes on a monthly basis. A return for the months of January through November is due by the 15th day of the month following the end of the month covered by the return. A return for the month of December is due the following January 31.~~

~~(c1) Notwithstanding any of the other provisions of this section, every employer required to deduct and withhold under the provisions of G.S. 105-163.2 an average of five hundred dollars (\$500.00) or more per month during the preceding calendar year (or during so much of such year as he paid wages) and every employer who begins paying wages during a calendar year and whose liability to deduct and withhold under G.S. 105-163.2 can reasonably be expected to average five hundred dollars (\$500.00) or more per month in that calendar year, shall make returns and pay over to the Secretary each month the amounts required to be withheld under G.S. 105-163.2. Returns and payments to the Secretary by such employers shall be made on or before the fifteenth day of the month following the month for which such amounts were required to be withheld from the wages of employees; except that the returns and payments for the month of December shall be made on or before the 31st day of the following month.~~

~~When an employer has become subject to the requirements of this subsection, he shall continue to make returns and payments to the Secretary on that basis. However, an employer required under the provisions of this subsection to file monthly returns~~

~~who, in a later calendar year, is required to deduct and withhold under G.S. 105-163.2 an average of less than five hundred dollars (\$500.00) per month may make application to the Secretary for authority to use the quarterly basis for filing and making payments. Such authority, when granted, shall be in writing, shall commence on a date set by the Secretary, and shall continue until the Secretary, in the exercise of his discretion, shall revoke it in writing, effective on a date set by him.~~

~~(d) If the Secretary, in any case, has reason to believe that the collection of moneys, required by this Article to be withheld by the employer, is in jeopardy, he may require the employer to make such return and pay to the Secretary such amounts required to be withheld at any time said Secretary may designate therefor subsequent to the time when such amounts should have been deducted from wages and withheld.~~
Three Banking Days. – An employer who withholds an average of at least two thousand dollars (\$2,000) of State income taxes from wages each month shall file a return by the date set under the Code for filing a return for federal income taxes withheld from the same wages and shall pay the withheld State taxes by the date set under the Code for depositing or paying federal income taxes withheld from the same wages. The date set by the Code for depositing or paying federal income taxes withheld from wages shall be determined without regard to § 6302(g) of the Code.

An extension of time granted to file a return for federal income taxes withheld from wages is an automatic extension of time for filing a return for State income taxes withheld from the same wages, and an extension of time granted to pay federal income taxes withheld from wages is an automatic extension of time for paying State income taxes withheld from the same wages. An employer who pays withheld State income taxes under this subsection is not subject to interest on or penalties for an underpayment of an amount due if the employer timely pays at least ninety-five percent (95%) of the amount due and includes the underpayment with the next return the employer files.

~~(e) Every employer who fails to withhold or pay to the Secretary any sums required by this Article to be withheld and paid shall be personally and individually liable therefor to the Secretary; and any sum or sums withheld in accordance with the provisions of G.S. 105-163.2 shall be deemed to be held in trust for the Secretary.~~
Category. – The Secretary shall monitor the amount of taxes withheld by an employer or estimate the amount of taxes to be withheld by a new employer and shall direct each employer to pay withheld taxes in accordance with the appropriate schedule. An employer shall file a return and pay withheld taxes in accordance with the Secretary's direction until notified in writing to file and pay under a different schedule.

~~(f) Any person required to collect, truthfully account for, and pay over any amounts required to be deducted and withheld under G.S. 105-163.2, who fails to collect and pay over such amount shall, in addition to other penalties provided by law, be personally liable to a penalty equal to the total amount not collected or not accounted for and paid over. No penalty shall be imposed under G.S. 105-163.17 for any offense to which this subsection is applicable."~~

Sec. 11. G.S. 105-163.7(b) reads as rewritten:

~~"(b) The written statement above referred to shall be furnished at such other times, shall contain such other information, and shall be in such form as the Secretary may by~~

~~regulations prescribe. Secretary may require an employer to include information not listed in subsection (a) on the employer's written statement to an employee and to file the statement at a time not required by subsection (a). Every employer shall file an annual report with the Secretary that contains the information given on each of the employer's written statements to an employee and other information required by the Secretary. The annual report is due on the same date the employer's federal information return of federal income taxes withheld from wages is due under the Code. returns or reports setting forth such information as the Secretary may require, and the Secretary may require the filing of such additional copies of all written statements described above as he may deem necessary. On and after January 1, 1961, the annual returns or reports required to be made to the Secretary under the provisions of this section shall be in lieu of such returns required under G.S. 105-154 as would furnish identical information. The report required by this subsection is in lieu of the report required by G.S. 105-154."~~

Sec. 12. G.S. 105-163.8 reads as rewritten:

"§ 105-163.8. Liability of employer, employer and others.

~~An employer shall be liable for the payment to the Secretary of the amounts required to be deducted and withheld under G.S. 105-163.2, and an employer who has withheld and paid such amounts to the Secretary shall not otherwise be liable to any person for the amounts of any such payments. Upon failure of an employer to pay over any amounts withheld or required to be withheld by said employer under this Article, the Secretary may make assessments, issue warrants for the collection of such amounts, issue certificates of tax liability, collect by attachment or garnishment proceedings, or bring actions for the collection of such amounts and for penalties due under the provisions of G.S. 105-241.1, G.S. 105-242 and G.S. 105-243.~~

(a) Employer. An employer who withholds the proper amount of income taxes under G.S. 105-163.2 and pays the withheld amount to the Secretary is not liable to any person for the amount paid. An employer who fails to withhold the proper amount of income taxes or pay the amount withheld to the Secretary is liable for the amount not withheld or not paid. An employer who fails to withhold the amount of income taxes required by this Article or who fails to pay withheld taxes by the due date for paying the taxes is subject to a penalty equal to twenty-five percent (25%) of the amount of taxes not withheld or not timely paid to the Secretary.

(b) Others. A person who has a duty to deduct, account for, or pay taxes required to be withheld under G.S. 105-163.2 and who fails to do so is liable for the amount not deducted, not accounted for, or not paid."

Sec. 13. G.S. 105-163.9 reads as rewritten:

"§ 105-163.9. Refund to employer; application of overpayment to employer.

~~(a) Where there has been an overpayment to the Secretary by the employer or withholding agent under the provisions of this Article, refund shall be made to the employer or withholding agent, as the case may be, only to the extent that the amount of such overpayment was not deducted and withheld by the employer or withholding agent from the employee's wages, and such refund shall be paid together with interest thereon at the rate established in G.S. 105-241.1(i) for assessments; provided, that interest on~~

~~any such refund shall be computed from a date 90 days after the date the overpayment was originally made by the employer or withholding agent. An employer who pays the Secretary more under this Article than the Article requires the employer to pay may obtain a refund of the overpayment by filing an application for a refund with the Secretary. No refund is allowed, however, if the employer withheld the amount of the overpayment from the wages of the employer's employees. An employer must file an application for a refund within the time period set in G.S. 105-266. Interest accrues on a refund as provided in G.S. 105-266.~~

~~(b) Unless written application for refund is received by the Secretary from the employer within two years from the date the overpayment was made, no refund shall be allowed."~~

Sec. 14. G.S. 105-163.17 reads as rewritten:

"§ 105-163.17. Enforcement. Administration.

~~Except as otherwise provided in this Article, all provisions of Articles 4 and The provisions of Article 9 of this Chapter relating to assessments, interest on delinquent payments, liens and collections with respect to taxes shall apply to all taxes and to the withholding of proper amounts from employees' wages for which an employer is responsible pursuant to this Article, and the procedure with respect thereto shall be the same as provided in said Articles 4 and 9 with respect to assessment and collection of taxes.~~

~~Any employer required under the provisions of this Article to deduct and withhold from wages and make returns and payment of amounts withheld to the Secretary, who fails to withhold such amounts, or to make such returns, or who fails to remit amounts collected to the Secretary, or otherwise fails to remit to the Secretary as required by this Article, shall be subject to a penalty equal to twenty five percent (25%) of the amount that should have been properly withheld and paid over to the Secretary for each such failure. Such penalty shall be assessed and collected by the Secretary in the same manner as is provided with respect to penalties on delinquent income tax payments under the provisions of Articles 4 and 9 of this Chapter.~~

~~The withholding of the proper amounts of an employee's wages pursuant to this Article and the payment of proper amounts to the Secretary as herein required, whether withheld in fact or not, shall be subject to all the provisions of Articles 4 and 9 of this Chapter relating to payment of income taxes, not inconsistent with this Article. apply to the amount of State income taxes this Article requires an employer to withhold and pay to the Secretary."~~

Sec. 15. G.S. 105-259 reads as rewritten:

"§ 105-259. Secrecy required of officials; penalty for violation.

With respect to any one of the following persons: (i) the Secretary of Revenue and all other officers or employees, and former officers and employees, of the Department of Revenue; (ii) local tax officials, as defined in G.S. 105-273, and former local tax officials; (iii) members and former members of the Property Tax Commission; (iv) any other person authorized in this section to receive information concerning any item contained in any report or return, or authorized to inspect any report or return; and (v) the Commissioner of Insurance and all other officers or employees and former officers

and employees of the Department of Insurance with respect to State and federal income tax returns filed with the Commissioner of Insurance by domestic insurance companies; and except in accordance with proper judicial order or as otherwise provided by law, it shall be unlawful for any of these persons to divulge or make known in any manner the amount of income, income tax or other taxes of any taxpayer, or information relating thereto or from which the amount of income, income tax or other taxes or any part thereof might be determined, deduced or estimated, whether it is set forth or disclosed in or by means of any report or return required to be filed or furnished under this Subchapter, or in or by means of any audit, assessment, application, correspondence, schedule or other document relating to the taxpayer, notwithstanding the provisions of Chapter 132 of the General Statutes or of any other law or laws relating to public records. It shall likewise be unlawful to reveal whether or not any taxpayer has filed a return, and to abstract, compile or furnish to any person, firm or corporation not otherwise entitled to information relating to the amount of income, income tax or other taxes of a taxpayer, any list of names, addresses, social security numbers or other personal information concerning the taxpayer, whether or not the list discloses a taxpayer's income, income tax or other taxes, or any part thereof, except that when an election is made by a husband and wife under G.S. 105-152.1 to file a joint return, any information given to one spouse concerning the income or income tax of the other spouse reported or reportable on the joint return shall not be a violation of the provisions of this section.

Nothing in this section shall be construed to prohibit the publication of statistics, so classified as to prevent the identification of particular reports or returns, and the items thereof; the inspection of these reports or returns by the Governor, Attorney General, or their duly authorized representative; or the inspection by a legal representative of the State of the report or return of any taxpayer who shall bring an action to set aside or review the tax based thereon, or against whom an action or proceeding has been instituted to recover any tax or penalty imposed by this Subchapter; nor shall the provisions of this section prohibit the Department of Revenue furnishing information to other governmental agencies of persons and firms properly licensed under Schedule B, G.S. 105-33 to 105-113. The Department of Revenue may exchange information with the officers of organized associations of taxpayers under Schedule B, G.S. 105-33 to 105-113, with respect to parties liable for these taxes and as to parties who have paid these license taxes.

When any record of the Department of Revenue has been photographed, photocopied, or microphotocopied pursuant to the authority contained in G.S. 8-45.3, the original of that record may thereafter be destroyed at any time upon the order of the Secretary of Revenue, notwithstanding the provisions of G.S. 121-5, G.S. 132-2, or any other law relating to the preservation of public records. Any record that has not been so photographed, photocopied, or microphotocopied shall be preserved for three years, and thereafter until the Secretary of Revenue orders it destroyed.

Any person, officer, agent, clerk, employee, or local tax official or any former officer, employee, or local tax official who violates the provisions of this section shall be guilty of a misdemeanor and fined not less than two hundred dollars (\$200.00) nor

more than one thousand dollars (\$1,000) and/or imprisoned, in the discretion of the court; and if the person committing the violation is a public officer or employee, that person shall be dismissed from such office or employment, and may not hold any public office or employment in this State for a period of five years thereafter.

Notwithstanding the provisions of this section, the Secretary of Revenue may permit the Commissioner of Internal Revenue of the United States, or the revenue officer of any other state imposing any of the taxes imposed in this Subchapter, or the duly authorized representative of either, to inspect the report or return of any taxpayer; or may furnish that person an abstract of the report or return of any taxpayer; or supply that person with information concerning any item contained in any report or return, or disclosed by the report of any investigation of any report or return of any taxpayer. The permission, however, may be granted or the information furnished to the officer or agent only if the statutes of the United States or of the other state grant substantially similar privilege to the Secretary of Revenue of this State or the Secretary's duly authorized representative. Notwithstanding any other provision of law, the Secretary may also furnish names, addresses, and account and identification numbers of (i) taxpayers who may be entitled to property held in the Escheat Fund to the Department of State Treasurer when that Department requests the information for the purpose of administering Chapter 116B of the General Statutes, and (ii) taxpayers to the Employment Security Commission when that Commission requests the information for the purpose of administering Article 2 of Chapter 96 of the General Statutes. Neither this section nor any other law prevents the exchange of information between the Department of Revenue and the Department of Transportation's Division of Motor Vehicles when the information is needed by either to administer the laws with which they are charged. Notwithstanding any other provision of law, State officers and employees who perform computerized data processing functions pursuant to G.S. 143-341(9) for the Department of Revenue are authorized to receive and process for the Department of Revenue information in reports and returns and are subject to the criminal provisions of this section.

Notwithstanding the provisions of this section, the Secretary of Revenue may contract with any person, firm or corporation to receive and address, sort, bag, or deliver to the United States Postal Service any bulk mailing originated by the Department of Revenue, and may deliver the mail to the contractor pursuant to the contract. To ensure performance of the contract, the contractor shall furnish a bond in a form and amount acceptable to the Secretary.

Notwithstanding the provisions of this section, the Secretary of Revenue may contract with a financial institution for the receipt of withheld income tax payments under G.S. 105-163.6."

Sec. 16. The revenue generated by Sections 1 through 15 of this act is nonrecurring revenue and shall therefore be used to fund only nonrecurring expenses.

Sec. 17. Sections 10 and 11 of Chapter 814 of the 1989 Session Laws are repealed.

Sec. 18. Sections 1 through 4 of this act shall become effective October 1, 1990, and shall apply to gross receipts earned from services and commodities provided

on or after that date and to sales of electricity, piped natural gas, or telecommunications service made on or after that date. Sections 5 through 15 of this act shall become effective January 1, 1991. The remaining sections of this act are effective upon ratification.

In the General Assembly read three times and ratified this the 17th day of July, 1990.