

**GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2001**

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SENATE BILL 268

Short Title: Simplify Taxes on Telecommunications.

(Public)

Sponsors: Senators Hoyle, Dalton, and Kerr.

Referred to: Finance.

March 1, 2001

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:

...

(8b) Mobile telecommunications service. – A radio communication service carried on between mobile stations or receivers and land stations and by mobile stations communicating among themselves and include all of the following:

- a. Both one-way and two-way radio communication services.
- b. A mobile service which provides a regularly interacting group of base, mobile, portable, and associated control and relay stations for private one-way or two-way land mobile radio communications by eligible users over designated areas of operation.
- c. Any service for which a federal license is required in a personal communications service.

...

(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

1 electronically dialed; and is sold in units or dollars whose number or
2 dollar value declines with use and is known on a continuous basis.

3 . . .

4 (16b) Service address. – The location of the telecommunications equipment
5 from which a customer originates or receives telecommunications
6 service. In the case of mobile telecommunications service, maritime
7 systems, third-number calls, calling card calls, and other similar
8 services for which the location of the equipment cannot be determined
9 as part of the billing process, the telecommunications service provider
10 may determine the location of the equipment based upon the
11 customer's telephone number, the mailing address to which the bills
12 are sent, or a street address provided by the customer if the street
13 address is within the licensed service area of the service provider. In
14 the case of telecommunications service paid through a payment
15 mechanism that does not relate to the location of the equipment, such
16 as a bank, travel, debit, or credit card, the service address is the address
17 of the central office as determined by the area code and the first three
18 digits of the seven digit originating telephone number.

19 . . .

20 (21a) Telecommunications service. – The transmission, conveyance, or
21 routing of voice, data, audio, video, or any other information or signals
22 to a point, or between or among points, by or through any electronic,
23 radio, satellite, optical, microwave, or other medium, regardless of the
24 protocol used for the transmission, conveyance, or routing. The term
25 includes mobile telecommunications service and vertical services.
26 Vertical services are switch-based services offered in connection with
27 a telecommunications service, such as call forwarding services, caller
28 ID services, and three-way calling services."

29 **SECTION 2.** G.S. 105-164.3(8c) is recodified as G.S. 105-164.3(8d), and
30 G.S. 105-164.3(8b) is recodified as G.S. 105-164.3(8c).

31 **SECTION 3.** G.S. 105-164.3(25) is repealed.

32 **SECTION 4.** G.S. 105-164.4(a)(4a) reads as rewritten:

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

42 **SECTION 5.** G.S. 105-164.4(a)(4c) reads as rewritten:

43 "(4c) The rate of ~~six and one-half percent (6 1/2%)~~ four and one-half percent
44 (4.5%) applies to the gross receipts derived from providing toll

1 ~~telecommunications services or private telecommunications services as~~
2 ~~defined by G.S. 105-120(e) that both originate from and terminate in~~
3 ~~the State and are not subject to the privilege tax under G.S. 105-~~
4 ~~120:service. A person who provides telecommunications service is~~
5 ~~considered a retailer under this Article. Telecommunications service is~~
6 ~~taxed in accordance with G.S. 105-164.4B. Any business entity that~~
7 ~~provides these services is considered a retailer under this Article. This~~
8 ~~subdivision does not apply to telephone membership corporations as~~
9 ~~described in Chapter 117 of the General Statutes."~~

10 **SECTION 6.** G.S. 105-164.4(a) is amended by adding a new subdivision to

11 read:

12 "(4d) The sale or recharge of prepaid telephone calling arrangements is
13 taxable at the rate set in subdivision (a)(1) of this section for sales of
14 tangible personal property. The tax applies regardless of whether
15 tangible personal property, such as a card or a telephone, is transferred.
16 Prepaid telephone calling arrangements taxed under this subdivision
17 are not subject to tax as a telecommunications service.

18 Prepaid telephone calling arrangements are taxable at the point of
19 sale instead of at the point of use. If the sale or recharge of a prepaid
20 telephone calling arrangement does not take place at a retailer's place
21 of business, the sale or recharge is considered to have taken place at
22 one of the following:

- 23 a. The customer's shipping address, if an item of tangible personal
24 property is shipped to the customer as part of the transaction.
25 b. The customer's billing address or, for mobile
26 telecommunications service, the customer's service address, if
27 no tangible personal property is shipped to the customer as part
28 of the transaction."

29 **SECTION 7.** Part 2 of Article 5 of Chapter 105 of the General Statutes is
30 amended by adding a new section to read:

31 **§ 105-164.4B. Tax on telecommunications.**

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

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

- 38 (1) Receipts from local, intrastate, interstate, toll, private, and mobile
39 telecommunications service.
40 (2) Charges for directory assistance, directory listing that is not yellow-
41 page classified listing, call forwarding, call waiting, three-way calling,
42 caller ID, and other similar services.
43 (3) Customer access line charges billed to subscribers for access to the
44 intrastate or interstate interexchange network.

- 1 (4) Charges billed to a pay telephone provider who uses the
2 telecommunications service to provide pay telephone service.
- 3 (c) Excluded From Gross Receipts. – Gross receipts derived from
4 telecommunications service do not include any of the following:
- 5 (1) Charges for telecommunications services that are a component part of
6 or are integrated into a telecommunications service that is resold.
7 Examples of services that are resold include carrier charges for access
8 to an intrastate or interstate interexchange network, interconnection
9 charges paid by a provider of mobile telecommunications service, and
10 charges for the sale of unbundled network elements. An unbundled
11 network element is a network element, as defined in 47 U.S.C. §
12 153(29), to which access is provided on an unbundled basis pursuant
13 to 47 U.S.C. § 251(c)(3).
- 14 (2) Telecommunications services that are resold as part of a prepaid
15 telephone calling arrangement.
- 16 (3) 911 charges imposed under G.S. 62A-4 or G.S. 62A-23 and remitted to
17 the Emergency Telephone System Fund under G.S. 62A-7 or the
18 Wireless Fund under G.S. 62A-24.
- 19 (4) Allowable surcharges imposed to recoup assessments for the Universal
20 Service Fund.
- 21 (5) Receipts of a pay telephone provider from the sale of pay telephone
22 service.
- 23 (6) Charges for commercial, cable, mobile, broadcast, or satellite video or
24 audio service unless the service provides two-way communication,
25 other than the customer's interactive communication in connection
26 with the customer's selection or use of the video or audio service.
- 27 (7) Paging service, unless the service provides two-way communication.
- 28 (8) Charges for telephone service made by a hotel, motel, or another entity
29 whose gross receipts are taxable under G.S. 105-164.4(a)(3) when the
30 charges are incidental to the occupancy of the entity's
31 accommodations.
- 32 (9) Receipts from the sale, installation, maintenance, or repair of tangible
33 personal property.
- 34 (10) Directory advertising and yellow-page classified listings.
- 35 (11) Voicemail services.
- 36 (12) Information services. An information service is a service that can
37 generate, acquire, store, transform, process, retrieve, use, or make
38 available information through a communications service. Examples of
39 an information service include an electronic publishing service and a
40 web hosting service.
- 41 (13) Internet access service, electronic mail service, electronic bulletin
42 board service, or similar on-line services.
- 43 (14) Billing and collection services.
- 44 (15) Charges for bad checks or late payments.

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

4 (1) If the service provider offers all the services in the bundle on an
5 unbundled basis, tax is due on the unbundled price of the taxable
6 service, less the discount resulting from the bundling. The discount for
7 a service as the result of bundling is the proportionate price decrease of
8 the service, determined on the basis of the total unbundled price of all
9 the services in the bundle compared to the bundled price of the
10 services.

11 (2) If the service provider does not offer one or more of the services in the
12 bundle on an unbundled basis, tax is due on the taxable service based
13 on a reasonable allocation of revenue to that service. If the service
14 provider maintains an account for revenue from a taxable service, the
15 service provider's allocation of revenue to that service for the purpose
16 of determining the tax due on the service must reflect its accounting
17 allocation of revenue to that service.

18 (e) Interstate Private Line. – The gross receipts derived from interstate private
19 telecommunications service are taxable as follows:

20 (1) One hundred percent (100%) of the charge imposed at each channel
21 termination point in this State.

22 (2) One hundred percent (100%) of the charge imposed for the total
23 channel mileage between each channel termination point in this State.

24 (3) Fifty percent (50%) of the charge imposed for the total channel
25 mileage between the first channel termination point in this State and
26 the nearest channel termination point outside this State.

27 (f) Call Center Cap. – The gross receipts tax on interstate telecommunications
28 service that originates outside this State, terminates in this State, and is provided to a
29 call center that has a direct pay certificate issued by the Department under G.S. 105-
30 164.27 may not exceed fifty thousand dollars (\$50,000) a calendar year. This cap
31 applies separately to each legal entity.

32 (g) Credit. – A taxpayer who pays a tax legally imposed by another state on a
33 telecommunications service taxable under this section is allowed a credit against the tax
34 imposed in this section.

35 (h) Definitions. – The following definitions apply in this section:

36 (1) Call center. – Defined in G.S. 105-164.27.

37 (2) Interstate telecommunications service. – Telecommunications service
38 that originates or terminates in this State, but does not both originate
39 and terminate in this State, and is charged to a service address in this
40 State.

41 (3) Intrastate telecommunications service. – Telecommunications service
42 that both originates and terminates in this State.

43 (4) Local telecommunications service. – Telecommunications service that
44 provides access to a local telephone network and enables a user to

1 communicate with substantially everyone who has a telephone or
2 radiotelephone station that is part of the local telephone network.

3 (5) Mobile telecommunications service. – Defined in G.S. 105-164.3.

4 (6) Private telecommunications service. – Telecommunications service
5 that entitles a subscriber of the service to exclusive or priority use of a
6 communications channel or group of channels.

7 (7) Service address. – Defined in G.S. 105-164.3.

8 (8) Telecommunications service. – Defined in G.S. 105-164.3.

9 (9) Toll telecommunications service. – Any of the following:

10 a. A service for which there is a toll charge that varies in amount
11 with the distance or elapsed transmission time of each
12 individual communication.

13 b. A service that entitles the subscriber, upon payment of a
14 periodic charge, determined as a flat amount or on the basis of
15 total elapsed transmission time, to an unlimited number of
16 communications to or from all or a substantial portion of those
17 who have a telephone or radiotelephone station in an area
18 outside the local telephone network."

19 **SECTION 8.** G.S. 105-164.16(c) reads as rewritten:

20 "(c) Sales Tax on Utility Services. Electricity and Telecommunications. – A return
21 for taxes levied under G.S. 105-164.4(a)(4a) and G.S. 105-164.4(a)(4c) is due quarterly
22 or monthly as specified in this subsection. A utility that is allowed to pay tax under G.S.
23 105-120 on a quarterly basis shall file a quarterly return. All other utilities shall file a
24 monthly return. A quarterly return is due by the last day of the month following the
25 quarter covered by the return. A monthly. The monthly return is due by the last day of
26 the month following the month in which the taxes accrue, except the return for taxes
27 that accrue in May. A return for taxes that accrue in May is due by June 25.

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

34 **SECTION 9.** G.S. 105-164.20 reads as rewritten:

35 "**§ 105-164.20. Cash or accrual basis of reporting.**

36 Any retailer, except a utility-retailer who sells electricity or telecommunications
37 service, may report sales on either the cash or accrual basis of accounting upon making
38 application to the Secretary for permission to use the basis selected. Permission granted
39 by the Secretary to report on a selected basis continues in effect until revoked by the
40 Secretary or the taxpayer receives permission from the Secretary to change the basis
41 selected. A utility-retailer who sells electricity or telecommunications service must
42 report its sales on an accrual basis. A sale by a utility of electricity or intrastate
43 telephone telecommunications service is considered to accrue when the utility bills its
44 customer for the sale."

1 SECTION 10. G.S. 105-164.27A reads as rewritten:

2 **"§ 105-164.27A. Direct pay ~~certificate~~. permit.**

3 (a) ~~Requirements.~~ Direct Pay Permit for Tangible Personal Property. – A direct
4 pay permit for tangible personal property authorizes its holder to purchase any tangible
5 personal property without paying tax to the seller and authorizes the seller to not collect
6 any tax on a sale to the permit holder. A person who purchases tangible personal
7 property under a direct pay permit issued under this subsection is liable for use tax due
8 on the purchase. The tax is payable when the property is placed in use. A direct pay
9 permit issued under this subsection does not apply to taxes imposed under G.S. 105-
10 164.4(a)(1f) or G.S. 105-164.4(a)(4a).

11 A person who purchases tangible personal property whose tax status cannot be
12 determined at the time of the purchase because of one of the reasons listed below may
13 apply to the Secretary for a direct pay ~~certificate~~; permit for tangible personal property:

- 14 (1) The place of business where the property will be used is not known at
15 the time of the purchase and a different tax consequence applies
16 depending on where the property is used.
- 17 (2) The manner in which the property will be used is not known at the
18 time of the purchase and one or more of the potential uses is taxable
19 but others are not taxable.

20 (b) ~~Procedure.~~ An application for a direct pay certificate ~~Secretary and contain~~
21 ~~the information required by the Secretary. The Secretary may grant the application if the~~
22 ~~Secretary finds that the applicant complies with the sales and use tax laws and that the~~
23 ~~applicant's compliance burden will be greatly reduced by use of the certificate.~~

24 (c) ~~Effect.~~ A direct pay certificate authorizes its holder to purchase any tangible
25 personal property without paying tax to the seller and authorizes the seller to not collect
26 any tax on a sale to the certificate holder. A person who purchases tangible personal
27 property under a direct pay certificate is liable for use tax due on the purchase. The tax
28 is payable when the property is placed in use. A direct pay certificate does not apply to
29 taxes imposed under G.S. 105-164.4(a)(1f) or G.S. 105-164.4(a)(4a).

30 (b) Direct Pay Permit for Telecommunications Service. – A direct pay permit for
31 telecommunications service authorizes its holder to purchase telecommunications
32 service without paying tax to the seller and authorizes the seller to not collect any tax on
33 a sale to the permit holder. A person who purchases telecommunications service under a
34 direct pay permit must file a return and pay the tax due monthly to the Secretary. A
35 direct pay permit issued under this subsection does not apply to any tax other than the
36 tax on telecommunications service.

37 A call center that purchases interstate telecommunications service that originates
38 outside this State and terminates in this State may apply to the Secretary for a direct pay
39 permit for telecommunications service. A call center is a business that is primarily
40 engaged in providing support services to customers by telephone to support products or
41 services of the business. A business is primarily engaged in providing support services
42 by telephone if at least sixty percent (60%) of its calls are incoming.

43 (c) Application. – An application for a direct pay permit must be made on a form
44 provided by the Secretary and contain the information required by the Secretary. The

1 Secretary may grant the application if the Secretary finds that the applicant complies
2 with the sales and use tax laws and that the applicant's compliance burden will be
3 greatly reduced by use of the ~~certificate-permit~~.

4 (d) Revocation. – A direct pay ~~certificate-permit~~ is valid until the holder returns it
5 to the Secretary or ~~it is revoked by the Secretary~~ the Secretary revokes it. The Secretary
6 may revoke a direct pay ~~certificate-permit~~ if the holder of the ~~certificate-permit~~ does not
7 file a sales and use tax return on time, does not pay sales and use on time, or otherwise
8 fails to comply with the sales and use tax laws."

9 **SECTION 11.** Part 8 of Article 5 of Chapter 105 of the General Statutes is
10 amended by adding a new section to read:

11 "**§ 105-164.44F. Distribution of part of telecommunications taxes to cities.**

12 Within 75 days after the end of each calendar quarter, the Secretary must distribute
13 to the cities twelve percent (12%) of the net proceeds of the taxes imposed by G.S. 105-
14 164.4(a)(4c) on telecommunications service. The Secretary must distribute this amount
15 among the cities on a per capita basis according to the most recent annual population
16 estimates certified to the Secretary by the State Planning Officer. A city incorporated on
17 or after January 1, 2000, may not receive a distribution under this section unless it meets
18 both of the following requirements:

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

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

21 **SECTION 12.** G.S. 105-116(d) reads as rewritten:

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

29 **SECTION 13.** G.S. 105-116.1 is repealed.

30 **SECTION 14.** G.S. 105-120 is repealed.

31 **SECTION 15.** G.S. 105-467 is amended by adding a new subdivision to
32 read:

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

35 **SECTION 16.** The first paragraph of Section 4 of Chapter 1096 of the 1967
36 Session Laws, as amended, is amended as follows:

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

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

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

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

43 **SECTION 17.(a)** Hold Harmless. – For distributions made in calendar
44 quarters beginning on or after April 1, 2002, the combined amount distributed to a city

1 under G.S. 105-116, 105-164.44F, and 105-187.44 is subject to the following
2 conditions:

- 3 (1) The amount distributed to a city may not exceed the city's overall
4 benchmark amount until each city receives an amount equal to its
5 overall benchmark amount.
- 6 (2) The amount distributed to a city may not be less than the city's overall
7 benchmark amount.

8 **SECTION 17.(b)** Calculation. – Each quarter, the Secretary of Revenue
9 must determine a city's overall benchmark amount and the amount it would receive
10 under G.S. 105-116, 105-164.44F, and 105-187.44, as modified by S.L. 1998-22,
11 Section 14 and S.L. 2000-140, Section 85, if not for the redistribution required by this
12 section. The Secretary must identify those cities whose distribution amounts under
13 these three statutes are less than their overall benchmark amounts and must determine
14 the total dollar amount of the shortfall. The Secretary must reduce the amount to be
15 distributed to those cities whose distribution amount under those statutes exceeds their
16 overall benchmark amount by the total dollar amount of the shortfall determined for that
17 quarter in proportion to each city's excess. However, in no event may a city's
18 distribution amount be reduced below its overall benchmark amount. The Secretary
19 must redistribute these monies to the cities whose distribution amounts under the three
20 statutes are less than their overall benchmark amounts in proportion to each city's
21 shortfall. In any quarter that a city does not have a prior year's distribution for the
22 corresponding quarter in the preceding fiscal year, that city is excluded from the
23 redistribution required under this section for that quarter. In that case, the city will
24 receive the amount it is entitled to receive under G.S. 105-116, 105-164.44F, and
25 105-187.44.

26 **SECTION 17.(c)** Definition. – As used in this section, the term "overall
27 benchmark amount" means the sum of the following two amounts:

- 28 (1) The amount distributed to the city under repealed G.S. 105-116.1 in
29 the same calendar quarter of the last year in which the city received the
30 distribution under that statute.
- 31 (2) The city's piped natural gas benchmark amount for that same quarter,
32 as determined under S.L. 1998-22, Section 14, as amended by S.L.
33 2000-140, Section 18.

34 **SECTION 17.(d)** Report. – The Department of Revenue must report to the
35 Revenue Laws Study Committee by October 1, 2003, on the effect of the changes made
36 by this act on the amounts distributed to cities. The Department must include in its
37 report any adjustments to city distributions recommended by the Department. The
38 Department must consult with the North Carolina League of Municipalities in
39 developing its recommendations.

40 **SECTION 18.** G.S. 153A-152 reads as rewritten:

41 "**§ 153A-152. Privilege license taxes.**

42 (a) Authority. – A county may levy privilege license taxes on trades,
43 occupations, professions, businesses, and franchises to the extent authorized by Article
44 2 of Chapter 105 of the General Statutes and any other acts of the General Assembly. A

1 county may levy privilege license taxes to the extent formerly authorized by the
2 following sections of Article 2 of Chapter 105 of the General Statutes before they were
3 repealed:

| | | |
|----|----------------|--|
| 4 | G.S. 105-50 | Pawnbrokers. |
| 5 | G.S. 105-53 | Peddlers, itinerant merchants, and specialty market operators. |
| 6 | G.S. 105-55 | Installing elevators and automatic sprinkler systems. |
| 7 | G.S. 105-58 | Fortune tellers, palmists, etc. |
| 8 | G.S. 105-65 | Music machines. |
| 9 | G.S. 105-66.1 | Electronic video games. |
| 10 | G.S. 105-80 | Firearms dealers and dealers in other weapons. |
| 11 | G.S. 105-89 | Automobiles, wholesale supply dealers and service stations. |
| 12 | G.S. 105-89.1 | Motorcycle dealers. |
| 13 | G.S. 105-90 | Emigrant and employment agents. |
| 14 | G.S. 105-102.5 | General business license. |

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

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

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

21 **SECTION 20.** Pursuant to G.S. 62-31 and G.S. 62-32, the Utilities
22 Commission must lower the rate set for local telecommunications service to reflect the
23 repeal of G.S. 105-120 and the resulting liability of local telecommunications
24 companies for the tax imposed under G.S. 105-122.

25 **SECTION 21.** The Revenue Laws Study Committee shall recommend any
26 changes necessary to this act to conform with the federal Mobile Telecommunications
27 Sourcing Act to the 2002 Session of the 2001 General Assembly.

28 **SECTION 22.** This act becomes effective January 1, 2002, and applies to
29 taxable services reflected on bills dated on or after January 1, 2002. Section 17 expires
30 on July 1, 2004.