

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2017

SESSION LAW 2017-39
HOUSE BILL 59

AN ACT TO MAKE TECHNICAL CHANGES TO THE REVENUE LAWS.

The General Assembly of North Carolina enacts:

PART I. INCOME AND FRANCHISE TAX CHANGES

SECTION 1. G.S. 105-228.90(b)(1b) reads as rewritten:

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

...

(1b) Code. – The Internal Revenue Code as enacted as of ~~January 1, 2016,~~
January 1, 2017, including any provisions enacted as of that date that
become effective either before or after that date."

SECTION 2. G.S. 105-122 reads as rewritten:

"§ 105-122. Franchise or privilege tax on domestic and foreign corporations.

(a) Tax Imposed. – An annual franchise or privilege tax is imposed on a corporation doing business in this State. ~~The tax is determined on the basis of the books and records of the corporation as of the close of its income year.~~ A corporation subject to the tax must file a return under affirmation with the Secretary at the place and in the manner prescribed by the Secretary. The return must be signed by the president, vice-president, treasurer, or chief financial officer of the corporation. The return is due on or before the fifteenth day of the fourth month following the end of the corporation's income year.

(b) Determination of Net Worth. – A corporation taxed under this section shall determine the total amount of its net ~~worth~~ worth on the basis of the books and records of the corporation as of the close of its income year. The net worth of a corporation is its total assets without regard to the deduction for accumulated depreciation, depletion, or amortization less its total liabilities, computed in accordance with generally accepted accounting principles as of the end of the corporation's taxable year. If the corporation does not maintain its books and records in accordance with generally accepted accounting principles, then its net worth is computed in accordance with the accounting method used by the entity for federal tax purposes so long as the method fairly reflects the corporation's net worth for purposes of the tax levied by this section. A corporation's net worth is subject to the following adjustments:

...."

SECTION 3.(a) G.S. 105-129.96 reads as rewritten:

"§ 105-129.96. Credit for constructing a railroad intermodal facility.

(a) Credit. – A taxpayer that constructs or leases an eligible railroad intermodal facility in this State ~~and places it in service during the taxable year~~ is allowed a tax credit equal to fifty percent (50%) of all amounts payable by the taxpayer towards the costs of construction or under the ~~lease~~ lease if the facility is placed in service in this State during the taxable year. No credit is allowed under this section to the extent the cost of the eligible railroad intermodal facility was provided by public funds.

...

(c) No Double Credit. – A taxpayer may not take the credit allowed in this section for an eligible railroad intermodal facility the taxpayer leases from another unless the taxpayer



obtains the lessor's written certification that the lessor will not claim a credit under this Chapter with respect to the facility."

SECTION 3.(b) This section is effective for taxable years beginning on or after January 1, 2017.

SECTION 4.(a) G.S. 105-130.20 reads as rewritten:

"§ 105-130.20. Federal corrections.

If a taxpayer's federal taxable income or federal tax credit that affects the amount of State tax payable is corrected or otherwise determined by the federal government, the taxpayer must, within six months after being notified of the correction or final determination by the federal government, file an income tax return with the Secretary reflecting the corrected or determined taxable income. The Secretary must propose an assessment for any additional tax due from the taxpayer as provided in Article 9 of this Chapter. The Secretary must refund any overpayment of tax as provided in Article 9 of this Chapter. A taxpayer that fails to comply with this section is subject to the penalties in G.S. 105-236 and forfeits its rights to any refund due by reason of the determination."

SECTION 4.(b) G.S. 105-159 reads as rewritten:

"§ 105-159. Federal corrections.

If a taxpayer's adjusted gross ~~income~~income, filing status, personal exemptions, standard deduction, itemized deductions, or federal tax credit that affects the amount of State tax payable is corrected or otherwise determined by the federal government, the taxpayer must, within six months after being notified of the correction or final determination by the federal government, file an income tax return with the Secretary reflecting the corrected or determined adjusted gross income or federal tax credit that affects the amount of State tax payable. The Secretary must propose an assessment for any additional tax due from the taxpayer as provided in Article 9 of this Chapter. The Secretary must refund any overpayment of tax as provided in Article 9 of this Chapter. A taxpayer who fails to comply with this section is subject to the penalties in G.S. 105-236 and forfeits the right to any refund due by reason of the determination."

PART II. SALES TAX CHANGES

SECTION 5. G.S. 105-164.3 reads as rewritten:

"§ 105-164.3. Definitions.

The following definitions apply in this Article:

...

(31) ~~Protective equipment. — Items for human wear and designed as protection of the wearer against injury or disease or as protection against damage or injury of other persons or property but not suitable for general use including breathing masks, face shields, hard hats, and tool belts.~~

...

(45a) Streamlined Agreement. – The Streamlined Sales and Use Tax Agreement as amended as of ~~September 17, 2015~~December 16, 2016.

...."

SECTION 6. G.S. 105-164.6(f) reads as rewritten:

"(f) Registration. – A person must obtain a certificate of registration in accordance with G.S. 105-164.29 under any of the following circumstances:

- (1) Before the person engages in business in this State selling or delivering tangible personal property, digital property, or a service for storage, use, or consumption in this State.
- (2) If the person is a facilitator that is liable for tax ~~pursuant to G.S. 105-164.4F~~under this Article."

SECTION 7. G.S. 105-164.14A(a) reads as rewritten:

"(a) Refund. – The following taxpayers are allowed an annual refund of sales and use taxes paid under this Article:

- ...
- (4) Motorsports team or sanctioning body. – A professional motorsports racing team, a motorsports sanctioning body, or a related member of such a team or body is allowed a refund of the sales and use tax paid by it in this State on aviation gasoline or jet fuel that is used to travel to or from a motorsports event in this State, to travel to a motorsports event in another state from a location in this State, or to travel to this State from a motorsports event in another state. For purposes of this subdivision, a "motorsports event" includes a motorsports race, a motorsports sponsor event, and motorsports testing. This subdivision is repealed for purchases made on or after January 1, 2020.

...."

SECTION 8. G.S. 105-164.29 reads as rewritten:

"§ 105-164.29. Application for certificate of registration by wholesale merchants, retailers, and facilitators.

(a) Requirement and Application. – Before a person may engage in business as a retailer or a wholesale merchant or when a facilitator is liable for tax under ~~G.S. 105-164.4F~~, this Article, the person must obtain a certificate of registration. To obtain a certificate of registration, a person must register with the Department. A person who has more than one business is required to obtain only one certificate of registration for each legal entity to cover all operations of each business throughout the State. An application for registration must be signed as follows:

...

(c) Term. – A certificate of registration is valid unless it is revoked for failure to comply with the provisions of this Article or becomes void. A certificate issued to a ~~retailer person~~ who makes taxable sales or a ~~facilitator person~~ liable for tax under ~~G.S. 105-164.4F~~ this Article becomes void if, for a period of 18 months, the ~~retailer or facilitator person~~ files no returns or files returns showing no sales. A certificate of registration issued to a seller that contracts with a certified service provider pursuant to G.S. 105-164.42I and that is a model one seller as defined in the Streamlined Agreement does not become void if the certified service provider files returns for the seller showing no sales for a period for which a certificate could become void under this subsection.

...."

PART III. EXCISE TAX CHANGES

SECTION 9. G.S. 105-41(a) reads as rewritten:

"(a) Every individual in this State who practices a profession or engages in a business and is included in the list below must obtain from the Secretary a statewide license for the privilege of practicing the profession or engaging in the business. A license required by this section is not transferable to another person. The tax for each license is fifty dollars (\$50.00).

...

- (11) A ~~mortician or embalmer~~ funeral director, an embalmer, or a funeral service licensee licensed under G.S. 90-210.25.

...."

SECTION 10. G.S. 105-113.29 reads as rewritten:

"§ 105-113.29. Unlicensed place of business.

It shall be unlawful for any person to maintain a place of business within this State required by this Article to be licensed to ~~engage~~ engage in the business of selling or offering for sale cigarettes or other tobacco products without first obtaining such licenses."

SECTION 11. G.S. 105-449.37 reads as rewritten:

"§ 105-449.37. Definitions; tax liability; application.

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

- (1) International Fuel Tax Agreement. – The Articles of Agreement adopted by the International Fuel Tax Association, Inc., as amended as of ~~July 1, 2013~~January 1, 2017.

...

(c) Application. – A motor carrier who operates a qualified motor vehicle in this State must ~~register the vehicle~~submit an application, as provided in this ~~Article~~Article, and obtain the appropriate license and decals for the vehicle. The Article applies to both an interstate motor carrier subject to the International Fuel Tax Agreement and to an intrastate motor carrier."

SECTION 12. G.S. 105-449.60 reads as rewritten:

"§ 105-449.60. Definitions.

The following definitions apply in this Article:

...

- (4) Biodiesel provider. – A person who does any of the following:
- a. Produces an average of no more than 500,000 gallons of biodiesel per month during a calendar year. A person who produces more than this amount is a refiner.
 - b. Imports biodiesel ~~outside the terminal transfer system~~ by means of a transport truck, a railroad tank car, ~~or a tank wagon~~wagon, or a marine vessel.

...

- (9a) Bulk storage. – A container or tank used to store bulk purchase of motor fuel or alternative fuel of 42 gallons or more.

...

- (14) Diversion. – The movement of motor fuel ~~from a terminal~~ to a state other than the destination state indicated on the original bill of lading.

...

- (20) Fuel alcohol provider. – A person who does any of the following:

...

- b. Imports fuel alcohol ~~outside the terminal transfer system~~ by means of a transport truck, a railroad tank car, ~~or a tank wagon~~wagon, or a marine vessel.

- (21) Gasohol. – A blended fuel composed of gasoline and fuel grade ethanol.

- (22) Gasoline. – Any of the following:

...

- b. A petroleum product component of gasoline, such as naphtha, reformat, or ~~toluene~~toluene, listed in Treasury Regulation Section 48-4081-1(c)(3) as of January 1, 2017, that can be blended for use in a motor fuel.

...

- (46) Supplier. – Any of the following:

...

- ~~d. A refiner.~~

- (47) System transfer. – ~~Either of the following:~~

- ~~a. A transfer of motor fuel within the terminal transfer system.~~

- ~~b. A transfer, by transport truck or railroad tank car, of fuel grade ethanol.~~

.... "

SECTION 13. G.S. 105-449.65(b) reads as rewritten:

"(b) Multiple Activity. – A person who is engaged in more than one activity for which a license is required must have a separate license for each activity, unless one of the following subdivisions provides otherwise.

- (1) Supplier. – A person who is licensed as a supplier is considered to have a license as a distributor. A person who is licensed as a supplier ~~and is a biodiesel provider~~ is considered to have a license as a blender.

...."

SECTION 14. G.S. 105-449.69(e) reads as rewritten:

"(e) Export Activity. – ~~An applicant for a license as an exporter must designate an agent located in North Carolina for service of process and must give the agent's name and address.~~ An applicant for a license as an exporter or as a distributor must list on the application each state to which the applicant intends to export motor fuel received in this State by means of a transfer that is outside the terminal transfer system and, if required by a state listed, must be licensed or registered for motor fuel tax purposes in that state. If a state listed requires the applicant to be licensed or registered, the applicant must give the applicant's license or registration number in that state."

SECTION 15. G.S. 105-449.81 reads as rewritten:

"§ 105-449.81. Excise tax on motor fuel.

An excise tax at the motor fuel rate is imposed on motor fuel that is:

...

- (3b) Fuel grade ethanol or biodiesel fuel if the fuel meets at least one of the following descriptions:
- Is produced in this State and is removed from the storage facility at the production location.
 - Is imported to this State ~~outside the terminal transfer system by~~ means of a transport truck, a railroad tank car, a tank wagon, or a marine vessel.
 - Repealed by Session Laws 2009-445, s. 34(a), effective January 1, 2010.

...."

SECTION 16. G.S. 105-449.115(d)(3) reads as rewritten:

"(d) Duties of Transporter. – A person to whom a shipping document was issued must do all of the following:

...

- (3) Deliver motor fuel described in the shipping document to the destination state printed on it unless the person does all of the following:
- Notifies the ~~Secretary~~ Secretary, in a manner designated by the Secretary, before transporting the motor fuel into a state other than the printed destination state that the person has received instructions since the shipping document was issued to deliver the motor fuel to a different destination state.
 - Receives from the ~~Secretary~~ Secretary, in a manner designated by the Secretary, a confirmation number authorizing the diversion.
 - Writes on the shipping document the change in destination state and the confirmation number for the diversion."

PART IV. EFFECTIVE DATE

SECTION 17. Except as otherwise provided, this act is effective when it becomes law.
In the General Assembly read three times and ratified this the 13th day of June, 2017.

s/ Philip E. Berger
President Pro Tempore of the Senate

s/ Sarah Stevens
Speaker Pro Tempore of the House of Representatives

s/ Roy Cooper
Governor

Approved 5:03 p.m. this 21st day of June, 2017