

GENERAL ASSEMBLY OF NORTH CAROLINA
1987 SESSION

CHAPTER 557
HOUSE BILL 605

AN ACT TO REFORM THE FRANCHISE TAX APPLICABLE TO
TELECOMMUNICATIONS COMPANIES.

The General Assembly of North Carolina enacts:

Section 1. G.S. 105-120(a) reads as rewritten:

"(a) Every person, firm, or corporation, domestic or foreign, owning and/or operating a ~~telephone business~~ business entity for the ~~transmission of messages and/or conversations to, from, through, in or across this state,~~ provision of local telecommunications service, shall within 30 days after the first day of January, April, July and October of each year, make and deliver to the Secretary of Revenue a quarterly return, verified by the affirmation of the officer or authorized agent making such return, showing the total amount of gross receipts of such ~~telephone company~~ business entity for the three months ending the last day of the month immediately preceding such return, and pay, at the time of making such return, the franchise, license or privilege tax herein imposed. Gross receipts shall be reported on an accrual basis.

For purposes of this section:

- (1) 'Local telecommunications service' means telecommunications service provided wholly within a LATA entitling the user to access to a local telephone exchange for the privilege of telephonic quality communication with substantially all persons in the local telephone exchange. Provided, however, local telecommunications service does not include intraLATA or interLATA toll telecommunications services, or private telecommunications services;
- (2) 'LATA' is a Local Access and Transport Area representing a geographical area comprising one or more telephone exchange areas;
- (3) 'InterLATA telecommunications' is telecommunications service provided between two or more LATAs;
- (4) 'Toll telecommunications service' means:
 - a. a telephonic quality communication for which:
 1. there is a toll charge which varies in amount with the distance and elapsed transmission time of each individual communication; and
 2. the charge is paid within the United States; and
 - b. a service which entitles the subscriber, upon payment of a periodic charge (determined as flat amount or upon the basis of total elapsed transmission time), to the privilege

of an unlimited number of telephonic communications to or from all or a substantial portion of the persons having telephone or radiotelephone stations in a specified area which is outside the local telephone exchange;

- (5) 'Private telecommunications service' means a service furnished to a subscriber that entitles the subscriber to exclusive or priority use of a communications channel or group of channels between exchanges.'"

Sec. 2. G.S. 105-120(b) reads as rewritten:

"(b) An annual franchise or privilege tax of three and twenty-two hundredths percent (3.22%), payable quarterly, on the gross receipts of such ~~telephone company business entity~~, is herein imposed for the privilege of engaging in such business within this State. Provided, however, gross receipts from local telephone service shall not include telecommunications access charges. Such gross receipts shall include all rentals, rentals and other similar charges, charges; and all tolls received from business which both originates and terminates in the State of North Carolina, whether such business in the course of transmission goes outside of this State or not. Provided, where any city or town in the State has heretofore sold at public auction to the highest bidder the right, license and/or privilege of engaging in such business in such city or town, based upon a percentage of gross revenue of such ~~telephone company, business entity~~, and is now collecting and receiving therefor a revenue tax not exceeding one percent of such revenues, the amount so paid by such ~~operating company, business entity~~, upon being certified by the treasurer of such municipality to the Secretary of Revenue, shall be from time to time credited by the Secretary of Revenue to such ~~telephone company business entity~~ upon the tax imposed by the State under this section of this Chapter. Telecommunications access charges are those charges paid to a provider of local telephone service for access to an interconnection with the local telephone exchange."

Sec. 3. G.S. 105-120(f) reads as rewritten:

"(f) Counties, cities and towns shall not levy any franchise, license, or privilege tax on the business taxed under this section or under G.S. 105-164.4(4c)."

Sec. 3.1 G.S. 105-164.3(25) is amended to add the following phrase after "105-120,": "a business entity that provides local, toll or private telecommunications service as defined by G.S. 105-120(a)".

Sec. 4. G.S. 105-164.4(4a) reads as rewritten:

"(4a) At the rate of three percent (3%) of the gross receipts derived by a utility from sales of electricity, piped natural gas, or ~~intrastate telephone service. local telecommunications service as defined by G.S. 105-120(a).~~ A person who operates a utility is considered a retailer under this Article."

Sec. 5. G.S. 105-164.4 is amended by adding a new subdivision to read:

"(4c) At the rate of six and one-half percent (6 1/2%) of the gross receipts derived from providing toll telecommunications services or private telecommunications services as defined by G.S. 105-120(a) that both originate from and terminate in the State which are not subject to the privilege tax under G.S. 105-120. Any business entity that provides the service outlined above is considered a retailer under this Article. This

subdivision shall not apply to telephone membership corporations as described in Chapter 117 of the General Statutes.

Sec. 6. G.S. 105-164.16(c) is amended by adding the phrase "and G.S. 105-164.4(4c)" after the phrase "G.S. 105-164.4(4a)".

Sec. 7. G.S. 105-467 reads as rewritten:

"§ 105-467. Sales tax imposed; limited to items on which the State now imposes a three percent sales tax.—The sales tax which may be imposed under this Article is limited to a tax at the rate of one percent (1%) of:

(1) The sales price of those articles of tangible personal property now subject to the three percent (3%) sales tax imposed by the State under G.S. 105-164.4(1);

(2) The gross receipts derived from the lease or rental of tangible personal property where the lease or rental of such property is an established business now subject to the three percent (3%) sales tax imposed by the State under G.S. 105-164.4(2);

(3) The gross receipts derived from the rental of any room or lodging furnished by any hotel, motel, inn, tourist camp or other similar accommodations now subject to the three percent (3%) sales tax imposed by the State under G.S. 105-164.4(3); and

(4) The gross receipts derived from services rendered by laundries, dry cleaners, cleaning plants and similar type businesses now subject to the three percent (3%) sales tax imposed by the State under G.S. 105-164.4(4).

The sales tax authorized by this Article does not apply to sales by a utility of electricity, piped natural gas, ~~or intrastate telephone service~~ local, toll, or private telecommunications services as defined by G.S. 105-120(a).

The exemptions and exclusions contained in G.S. 105-164.13 and the refund provisions contained in G.S. 105-164.14 shall apply with equal force and in like manner to the local sales and use tax authorized to be levied and imposed under this Article. A taxing county shall have no authority, with respect to the local sales and use tax imposed under this Article to change, alter, add to or delete any refund provisions contained in G.S. 105-164.14, or any exemptions or exclusions contained in G.S. 105-164.13 or which are elsewhere provided for.

The local sales tax authorized to be imposed and levied under the provisions of this Article shall be applicable to such retail sales, leases, rentals, rendering of services, furnishing of rooms, lodgings or accommodations and other taxable transactions which are made, furnished or rendered by retailers whose place of business is located within the taxing county. The tax imposed shall apply to the furnishing of rooms, lodging or other accommodations within the county which are rented to transients. However no tax shall be imposed where the tangible personal property sold is delivered to the purchaser at a point outside the taxing county by the retailer or his agent, or by a common carrier."

Sec. 8. G.S. 105-164.14(b) reads as rewritten:

"(b) The Secretary of Revenue shall make refunds semiannually to hospitals not operated for profit (including hospitals and medical accommodations operated by an authority created under the Hospital Authorities Law, Article 12 of Chapter 131), educational institutions not operated for profit, churches, orphanages and other charitable or religious institutions and organizations not operated for profit of sales and

use taxes paid under this Article, except under G.S. 105-164.4(4a) and G.S. 105-164.4(4c), by such institutions and organizations on direct purchases of tangible personal property for use in carrying on the work of such institutions or organizations. Sales and use tax liability indirectly incurred by such institutions and organizations on building materials, supplies, fixtures and equipment which shall become a part of or annexed to any building or structure being erected, altered or repaired for such institutions and organizations for carrying on their nonprofit activities shall be construed as sales or use tax liability incurred on direct purchases by such institutions and organizations, and such institutions and organizations may obtain refunds of such taxes indirectly paid. The Secretary of Revenue shall also make refunds semiannually to all other hospitals (not specifically excluded herein) of sales and use tax paid by them on medicines and drugs purchased for use in carrying out the work of such hospitals. This subsection does not apply to organizations, corporations, and institutions that are owned and controlled by the United States, the State, or a unit of local government, except hospital facilities created under Article 12 of Chapter 131 of the General Statutes and nonprofit hospitals owned and controlled by a unit of local government that elect to receive semiannual refunds under this subsection instead of annual refunds under subsection (c). In order to receive the refunds herein provided for, such institutions and organizations shall file a written request for refund covering the first six months of the calendar year on or before the fifteenth day of October next following the close of said period, and shall file a written request for refund covering the second six months of the calendar year on or before the fifteenth day of April next following the close of that period. Such requests for refund shall be substantiated by such proof as the Secretary of Revenue may require, and no refund shall be made on applications not filed within the time allowed by this section and in such manner as the Secretary may require."

Sec. 9. G.S. 105-164.14(c) reads as rewritten:

"(c) Upon receipt of timely applications for refund, the Secretary of Revenue shall make refunds annually to all governmental entities, as hereinafter defined, of sales and use tax paid under this Article, except under G.S. 105-164.4(4a) and G.S. 105-164.4(4c), by said governmental entities on direct purchases of tangible personal property. Sales and use tax liability indirectly incurred by such governmental entities on building materials, supplies, fixtures and equipment which shall become a part of or annexed to any building or structure being erected, altered or repaired which is owned or leased by such governmental entities shall be construed as sales or use tax liability incurred on direct purchases by such governmental entities, and such entities may obtain refunds of such taxes indirectly paid. The refund provisions contained in this subsection shall not apply to any governmental entities not specifically named herein. In order to receive the refund herein provided for, governmental entities shall file a written request for said refund within six months of the close of the fiscal year of the governmental entities seeking said refund, and such request for refund shall be substantiated by such records, receipts and information as the Secretary may require. No refunds shall be made on applications not filed within the time allowed by this section and in such manner as the Secretary may otherwise require. The term 'governmental entities,' for the purposes of this subsection, shall mean all counties, incorporated cities and towns, water

and sewer authorities created and existing under the provisions of Chapter 162A of the General Statutes, lake authorities created by a board of county commissioners pursuant to an act of the General Assembly, sanitary districts, regional councils of governments created pursuant to G.S. 160A-470, area mental health, mental retardation, and substance abuse authorities (other than single-county area authorities) established pursuant to Article 4 of Chapter 122C of the General Statutes, district health departments, regional planning and economic development commissions created pursuant to G.S. 158-14, regional economic development commissions created pursuant to G.S. 158-8, regional planning commissions created pursuant to G.S. 153A-391, metropolitan sewerage districts and metropolitan water districts in this State."

Sec. 10. Prior to the effective date of the tax imposed by Sec. 105-164.4(4c), customers shall be notified by the service providers concerning the change in the law, services subject to this tax and the rate of tax by bill inserts, public notices and other means necessary to adequately apprise the public.

Sec. 11. This act shall become effective January 1, 1989.

In the General Assembly read three times and ratified this the 6th day of July, 1987.