

GENERAL ASSEMBLY OF NORTH CAROLINA
1995 SESSION

CHAPTER 747
HOUSE BILL 1096

AN ACT TO TRANSFER RESPONSIBILITY FOR COLLECTING THE
REMAINDER OF THE GROSS PREMIUMS TAX FROM THE DEPARTMENT
OF INSURANCE TO THE DEPARTMENT OF REVENUE AND TO CLARIFY
RELATED STATUTES.

The General Assembly of North Carolina enacts:

Section 1. G.S. 105-228.9 reads as rewritten:

**"§ 105-228.9. ~~Commissioner of Insurance to administer portions of Article. Cross-~~
reference to other taxes relating to insurance.**

~~Notwithstanding any other provision of this Article, the taxes levied in this Article on self-insurers and the additional tax levied in this Article at the rate of one and thirty-three hundredths percent (1.33%) on contracts of insurance applicable to fire and lightning coverage shall be administered solely by the Commissioner of Insurance, who~~
The following taxes relating to insurance are collected by the Commissioner of Insurance:

- (1) Surplus lines tax, G.S. 58-21-85.
- (2) Tax on risk retention groups not chartered in this State, G.S. 58-22-20(3).
- (3) Tax on person procuring insurance directly with an unlicensed insurer, G.S. 58-28-5(b).

The Commissioner of Insurance has the same authority and responsibility in administering those portions of this Article taxes as the Secretary of Revenue has in administering the other portions of this Article."

Sec. 2. G.S. 105-228.5 reads as rewritten:

"§ 105-228.5. Taxes measured by gross premiums.

(a) Tax Levied. – A tax is levied in this section on insurers, Article 65 corporations, and self-insurers. An insurer or Article 65 corporation that is subject to the tax levied by this section is not subject to franchise or income taxes imposed by Articles 3 and 4, respectively, of this Chapter.

(b) Tax Base. –

- (1) Insurers. – The tax imposed by this section on an insurer shall be measured by gross premiums from business done in this State during the preceding calendar year.
- (2) Additional Local Fire and Lightning Rate. – The additional tax imposed by subdivision (d)(4) of this section shall be measured by gross premiums from business done in fire districts in this State during

the preceding calendar year. For the purpose of this section, the term 'fire district' has the meaning provided in G.S. 58-84-5.

- (3) Article 65 Corporations. – The tax imposed by this section on an Article 65 corporation shall be measured by gross collections from membership dues, exclusive of receipts from cost plus plans, received by the corporation during the preceding calendar year.
- (4) Self-insurers. – The tax imposed by this section on a self-insurer shall be measured by the gross premiums that would be charged against the same or most similar industry or business, taken from the manual insurance rate then in force in this State, applied to the self-insurer's payroll for the previous calendar year as determined under Article 2 of Chapter 97 of the General Statutes modified by the self-insurer's approved experience modifier.

(b1) Calculation of Tax Base. – In determining the amount of gross premiums from business in this State, all gross premiums received in this State, credited to policies written or procured in this State, or derived from business written in this State shall be deemed to be for contracts covering persons, property, or risks resident or located in this State unless one of the following applies:

- (1) The premiums are properly reported and properly allocated as being received from business done in some other nation, territory, state, or states.
- (2) The premiums are from policies written in federal areas for persons in military service who pay premiums by assignment of service pay.

Gross premiums from business done in this State in the case of life insurance contracts, including supplemental contracts providing for disability benefits, accidental death benefits, or other special benefits that are not annuities, means all premiums collected in the calendar year, other than for contracts of reinsurance, for policies the premiums on which are paid by or credited to persons, firms, or corporations resident in this State, or in the case of group policies, for contracts of insurance covering persons resident within this State. The only deductions allowed shall be for premiums refunded on policies rescinded for fraud or other breach of contract and premiums that were paid in advance on life insurance contracts and subsequently refunded to the insured, premium payer, beneficiary or estate. Gross premiums shall be deemed to have been collected for the amounts as provided in the policy contracts for the time in force during the year, whether satisfied by cash payment, notes, loans, automatic premium loans, applied dividend, or by any other means except waiver of premiums by companies under a contract for waiver of premium in case of disability.

Gross premiums from business done in this State for all other contracts of insurance, including contracts of insurance required to be carried by the Workers' Compensation Act, means all premiums written during the calendar year, or the equivalent thereof in the case of self-insurers under the Workers' Compensation Act, for contracts covering property or risks in this State, other than for contracts of reinsurance, whether the premiums are designated as premiums, deposits, premium deposits, policy fees, membership fees, or assessments. Gross premiums shall be deemed to have been written

for the amounts as provided in the policy contracts, new and renewal, becoming effective during the year irrespective of the time or method of making payment or settlement for the premiums, and with no deduction for dividends whether returned in cash or allowed in payment or reduction of premiums or for additional insurance, and without any other deduction except for return of premiums, deposits, fees, or assessments for adjustment of policy rates or for cancellation or surrender of policies.

(c) Exclusions. – Every insurer, in computing the premium tax, shall exclude all of the following from the gross amount of premiums:

- (1) All premiums received on or after July 1, 1973, from policies or contracts issued in connection with the funding of a pension, annuity, or profit-sharing plan qualified or exempt under section 401, 403, 404, 408, 457 or 501 of the Code as defined in G.S. 105-228.90.
- (2) Premiums or considerations received from annuities, as defined in G.S. 58-7-15.
- (3) Funds or considerations received in connection with funding agreements, as defined in G.S. 58-7-16.

The gross amount of the excluded premiums, funds, and considerations shall be exempt from the tax imposed by this section.

(d) ~~Tax Rates-Rates; Disposition.~~ –

- (1) Workers Compensation. – The tax rate to be applied to gross premiums, or the equivalent thereof in the case of self-insurers, collected on contracts applicable to liabilities under the Workers' Compensation Act shall be two and five-tenths percent (2.5%). The net proceeds shall be credited to the General Fund.
- (2) Other Insurance Contracts. – The tax rate to be applied to gross premiums collected on all other insurance contracts issued by insurers shall be one and nine-tenths percent (1.9%). The net proceeds shall be credited to the General Fund.
- (3) Additional Statewide Fire and Lightning Rate. – An additional tax shall be applied to amounts collected on contracts of insurance applicable to fire and lightning coverage, except in the case of marine and automobile policies, at the rate of one and thirty-three hundredths percent (~~1.33%~~); ~~twenty-five (1.33%)~~. Twenty-five percent (25%) of the net proceeds of this additional tax shall be deposited in the Rural Volunteer Fire Department Fund established in ~~Articles 84 through 88~~ Article 87 of Chapter 58 of the General Statutes. The remaining net proceeds shall be credited to the General Fund.
- (4) Additional Local Fire and Lightning Rate. – An additional tax shall be applied to amounts collected on contracts of insurance applicable to fire and lightning coverage within fire districts at the rate of one-half of one percent (1/2 of 1%). The net proceeds shall be credited to the Department of Insurance for disbursement pursuant to G.S. 58-84-25.
- (5) Article 65 Corporations. – The tax rate to be applied to gross premiums and/or gross collections from membership dues, exclusive

of receipts from cost plus plans, received by Article 65 corporations shall be one-half of one percent (1/2 of 1%). The net proceeds shall be credited to the General Fund.

(e) Report and Payment. – Each insurer, Article 65 corporation, and self-insurer doing business in this State shall, within the first 15 days of March, file with the Secretary of Revenue a full and accurate report of the total gross premiums as defined in this section, the payroll and other information required by the Secretary in the case of a self-insurer, or the total gross collections from membership dues exclusive of receipts from cost plus plans collected in this State during the preceding calendar year. The report shall be verified by the oath of the official or other representative responsible for transmitting it; the taxes imposed by this section shall be remitted to the Secretary with the report.

In the case of an insurer liable for the additional local fire and lightning tax, the report shall include the information required under G.S. 58-84-1.

(f) Installment Payments Required. – Insurers, Article 65 corporations, and self-insurers that are subject to the tax imposed by this section and have a premium tax ~~liability~~ liability, not including the additional local fire and lightning tax, of ten thousand dollars (\$10,000) or more for business done in North Carolina during the immediately preceding year shall remit three equal quarterly installments with each installment equal to at least thirty-three and one-third percent (33 1/3%) of the premium tax liability incurred in the immediately preceding taxable year. The quarterly installment payments shall be made on or before April 15, June 15, and October 15 of each taxable year. The company shall remit the balance by the following March 15 in the same manner provided in this section for annual returns.

The Secretary of Revenue may permit an insurance company to pay less than the required estimated payment when the insurer reasonably believes that the total estimated payments made for the current year will exceed the total anticipated tax liability for the year.

An underpayment of an installment payment required by this subsection shall bear ~~interest, as a penalty, interest~~ interest at the rate established under G.S. 105-241.1(i). Any overpayment shall bear interest as provided in G.S. 105-266(b) and, together with the interest, shall be credited to the company and applied against the taxes imposed upon the company under this Article.

(g) Exemptions. – This section does not apply to farmers' mutual assessment fire insurance companies or to fraternal orders or societies that do not operate for a profit and do not issue policies on any person except members."

Sec. 3. G.S. 58-6-25(a) reads as rewritten:

"(a) Charge Levied. – There is levied on each insurance company an annual charge for the purposes stated in subsection (d) of this section. As used in this section, the term "insurance company" means a company that pays the gross premiums tax levied in G.S. 105-228.5 and G.S. 105-228.8, except that the term does not include a hospital, medical, or dental service corporation regulated under Articles 65 and 66 of this Chapter. The term "insurance company" does not include a company regulated under Article 67 of this Chapter. The charge levied in this section is in addition to all

other fees and taxes. The charge shall be at a percentage rate of the company's premium tax liability for the taxable year. In determining an insurance company's premium tax liability for a taxable year, additional taxes imposed by G.S. 105-228.8 and the additional local fire and lightning tax imposed by G.S. 105-228.5(d)(4) shall be disregarded."

Sec. 4. G.S. 58-84-1 reads as rewritten:

"§ 58-84-1. Insurance companies to report premiums collected. Fire and lightning insurance report.

~~Every insurance company, corporation, or association doing business in any town or city in North Carolina that has, or may hereafter have, a regularly organized fire department under the control of the mayor and city council or other governing body of said town or city, and which has in serviceable condition for fire duty apparatus and equipment amounting in value to one thousand dollars (\$1,000) or more, and which enforces the fire laws to the satisfaction of the Insurance Commissioner, shall return to the Insurance Commissioner of the State of North Carolina~~ Every insurance company doing business in a fire district in this State shall report to the Secretary of Revenue by March 15 of each year a just and true account of all premiums collected and received from all fire and lightning insurance business done within the limits of such towns and cities during the year ending December 31, or such portion thereof as it may have transacted such business in such towns and cities. Such companies, corporations, or associations shall make said returns within 60 days from and after the thirty first day of December of each year. each fire district during the preceding calendar year and shall pay the tax levied in G.S. 105-228.5(d)(4). The Secretary of Revenue shall provide the Commissioner the reports filed pursuant to this section and shall credit the net proceeds of the tax to the Department of Insurance for disbursement pursuant to G.S. 58-84-25."

Sec. 5. G.S. 58-84-5 reads as rewritten:

"§ 58-84-5. Definitions.

~~As used in Articles 84 through 88 of this Chapter, the words "city," "cities," "town" or "towns" shall also include and mean sanitary districts, school districts, rural fire districts and any other political subdivisions of the State having an organized fire department.~~

~~Whenever the clerk of any city or town is required to perform any act pursuant to Articles 84 through 88 of this Chapter, clerk shall mean the person so designated by the governing body or committee where there is no clerk.~~

The following definitions apply in Articles 84 through 88 of this Chapter:

- (1) City. – A fire district.
- (2) Clerk. – The clerk of a fire district or, if there is no clerk, the person so designated by the governing body of the fire district.
- (3) Fire district. – Any political subdivision of the State that meets all of the following conditions:
 - a. It has an organized fire department under the control of its governing body.
 - b. Its fire department has apparatus and equipment that is in serviceable condition for fire duty and is valued at one thousand dollars (\$1,000) or more.

c. It enforces the fire laws to the satisfaction of the Commissioner.

(4) Town. – A fire district."

Sec. 6. G.S. 58-84-10, 58-84-15, and 58-84-20 are repealed.

Sec. 7. G.S. 58-84-25 reads as rewritten:

"§ 58-84-25. Disbursement of funds by Insurance Commissioner.

The Insurance Commissioner shall deduct the sum of three percent (3%) from the ~~money so collected from the insurance companies, corporations, or association, as aforesaid, tax proceeds~~ credited to the Department pursuant to G.S. 105-228.5(d)(4) and pay the same over to the treasurer of the State Firemen's Association for general purposes. The Insurance Commissioner shall deduct the sum of two percent (2%) from the ~~money so collected from the insurance companies, corporations, or associations, as aforesaid, tax proceeds~~ and retain the same in the budget of the Department of Insurance for the purpose of administering the disbursement of funds by the board of trustees in accordance with the provisions of G.S. 58-84-35. The Insurance Commissioner shall, pursuant to G.S. 58-84-50, credit the amount forfeited by nonmember fire districts to the North Carolina State Firemen's Association. ~~The remainder of the money so collected from the insurance companies, corporations, or associations, as aforesaid, doing business in the towns and cities in the State having or that may hereafter have organized fire departments as provided in this Article, said Insurance Commissioner shall pay the remaining tax proceeds to the treasurer of each town or city to be held by him fire district in proportion to the amount of business done in the fire district. These funds shall be held by the treasurer as a separate and distinct fund, and he fund. The fire district shall immediately pay the same funds to the treasurer of the local board of trustees upon his the treasurer's election and qualification, for the use of the board of trustees of the firemen's local relief fund in each town or city, fire district, which board shall be composed of five members, residents of said city or town the fire district as hereinafter provided for, to be used by it for the purposes as named provided in G.S. 58-84-35."~~

Sec. 8. G.S. 58-22-15(a) reads as rewritten:

"(a) A risk retention group seeking to be chartered in this State must be chartered and licensed as a liability insurance company under Article 7 of this Chapter and, except as provided elsewhere in this Article, must comply with all of the laws and rules applicable to such insurers chartered and licensed in this State and with G.S. 58-22-20 to the extent such requirements are not a limitation on laws, administrative rules, or requirements of this State. As a chartered and licensed liability insurance company, the group is subject to the taxes imposed in Article 8B of Chapter 105 of the General Statutes."

Sec. 9. G.S. 58-22-20(3) reads as rewritten:

"(3) Taxation.

a. All premiums paid for coverages within this State to risk retention groups shall be subject to taxation at the same rate and subject to the same payment procedures and to the same interest, fines, and penalties for nonpayment as those applicable to surplus lines insurance under Article 21 of this Chapter.

Premiums paid by purchasing groups are, however, taxed as provided in G.S. 58-22-35(b).

- b. To the extent licensed agents or brokers are utilized pursuant to G.S. 58-22-60, they shall report and pay the taxes for the premiums for risks that they have placed with or on behalf of a risk retention group not chartered in this State. Such agent or broker shall keep a complete and separate record of all policies procured from each such risk retention group, which record shall be open to examination by the Commissioner, as provided in G.S. 58-2-185. These records shall, for each policy and each kind of insurance provided thereunder, include the following:
 - 1. The limit of liability;
 - 2. The time period covered;
 - 3. The effective date;
 - 4. The name of the risk retention group that issued the policy;
 - 5. The gross premium charged; and
 - 6. The amount of return premiums, if any.
- c. To the extent that insurance agents or brokers are not utilized or fail to pay the tax, each risk retention group shall pay the tax for risks insured within the State. Each risk retention group shall report to the Commissioner all premiums paid to it for risks insured within the State. "

Sec. 10. G.S. 58-22-35(b) reads as rewritten:

"(b) Taxes on premiums paid for coverage of risks resident or located in this State by a purchasing group or any members of the purchasing group shall be:

- (1) Imposed at the same rate and subject to the same interest, fines, and penalties as those applicable to premium taxes on similar coverage from a similar insurance source by other ~~insureds; and insureds.~~ For example, coverage provided by a surplus lines licensee is taxed under Article 21 of this Chapter, coverage provided by an insurance company is taxed under Article 8B of Chapter 105 of the General Statutes, and coverage provided by an unlicensed insurer is taxed under G.S. 58-28-5(b).
- (2) Paid first by such insurance source, and if not by such source then by the agent or broker for the purchasing group, and if not by such agent or broker then by the purchasing group, and if not by such group then by each of its members."

Sec. 11. G.S. 58-6-20 reads as rewritten:

"§ 58-6-20. Policyholders to furnish information.

~~To enable the Commissioner the better to enforce the payment of the taxes imposed by Articles 1 through 64 of this Chapter and by G.S. 105-228.5 every~~ Every corporation, firm, or individual doing business in the State shall, upon ~~demand request~~ of the Commissioner, furnish to him, ~~upon blanks to be provided by him, a statement of~~

~~the amount of all insurance held by them, giving the name of the company, number, and amount of policies and the premiums paid on each, and such other information as the Commissioner calls for, or shall file an affidavit with the Commissioner that all their insurance is placed in companies licensed to do business in this State. the Commissioner any information the Commissioner considers necessary to enable the Commissioner to enforce the payment of a tax levied in this Chapter."~~

Sec. 12. G.S. 58-45-80 reads as rewritten:

"§ 58-45-80. Premium taxes to be paid through ~~Association to Commissioner.~~ Association.

All premium taxes due on insurance written under this Article shall be remitted by each insurer to the Association; and the Association, as collecting agent for its member companies, shall forward all such taxes to the ~~Commissioner~~ Secretary of Revenue as provided in Article 8B of Chapter 105 of the General Statutes."

Sec. 13. G.S. 58-46-45 reads as rewritten:

"§ 58-46-45. Premium taxes to be paid through ~~Association to Commissioner.~~ Association.

All premium taxes due on insurance written under this Article shall be remitted by each insurer to the Association; and the Association, as collecting agent for its member companies, shall forward all such taxes to the ~~Commissioner~~ Secretary of Revenue as provided in Article 8B of Chapter 105 of the General Statutes."

Sec. 14. G.S. 58-47-30(d) reads as rewritten:

"(d) ~~The fund shall be subject to the premium tax law as stated in North Carolina G.S. 105-228.5. is an insurer for the purposes of Article 8B of Chapter 105 of the General Statutes and assessments paid to the fund are subject to the tax levied in that Article.~~"

Sec. 15. Position Number 3927-0000-0007-023, which is an Office Assistant III, Grade 57, is transferred from the Department of Insurance to the Department of Revenue to implement this act. After the transfer, the position shall continue to be funded from the Insurance Regulatory Fund established in G.S. 58-6-25.

Sec. 16. This act becomes effective January 1, 1997. This act does not obligate the General Assembly to appropriate funds.

In the General Assembly read three times and ratified this the 21st day of June, 1996.

Dennis A. Wicker
President of the Senate

Harold J. Brubaker
Speaker of the House of Representatives