

GENERAL ASSEMBLY OF NORTH CAROLINA
1997 SESSION

S.L. 1997-118
SENATE BILL 34

AN ACT TO ADJUST THE SHARE THE CITIES RECEIVE FROM THE STATE GROSS RECEIPTS TAX TO MAKE THE DISTRIBUTION MORE EQUITABLE AND TO ALLOW THE DEPARTMENT OF REVENUE TO GIVE CITY FINANCE OFFICIALS INFORMATION NEEDED TO VERIFY THE ACCURACY OF A CITY'S DISTRIBUTION.

The General Assembly of North Carolina enacts:

Section 1. Article 3 of Chapter 105 of the General Statutes is amended by adding a new section to read:

"§ 105-116.1. Distribution of gross receipts taxes to cities.

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

- (1) Freeze deduction. – The amount by which the percentage distribution amount of a city was required to be reduced in fiscal year 1995-96 in determining the amount to distribute to the city.
- (2) Percentage distribution amount. – Three and nine-hundredths percent (3.09%) of the gross receipts derived by an electric power company, a natural gas company, and a telephone company from sales within a city that are taxable under G.S. 105-116 or G.S. 105-120.

(b) Distribution. – The Secretary must distribute to the cities part of the taxes collected under this Article on electric power companies, natural gas companies, and telephone companies. Each city's share for a calendar quarter is the percentage distribution amount for that city for that quarter minus one-fourth of the city's hold-back amount. The Secretary must make the distribution within 75 days after the end of each calendar quarter.

(c) Limited Hold-Harmless Adjustment. – The hold-back amount for a city that, in the 1995-96 fiscal year, received from gross receipts taxes less than ninety-five percent (95%) of the amount it received in the 1990-91 fiscal year is the amount determined by the following calculation:

- (1) Adjust the city's 1995-96 distribution by adding the city's freeze deduction to the amount distributed to the city for that year.
- (2) Compare the adjusted 1995-96 amount with the city's 1990-91 distribution.
- (3) If the adjusted 1995-96 amount is less than or equal to the city's 1990-91 distribution, the hold-back amount for the city is zero.

- (4) If the adjusted 1995-96 amount is more than the city's 1990-91 distribution, the hold-back amount for the city is the city's freeze deduction minus the difference between the city's adjusted 1995-96 amount and the city's 1990-91 distribution.

(d) Allocation of Hold-Harmless Adjustment. – The hold-back amount for a city that, in the 1995-96 fiscal year, received from gross receipts taxes at least ninety-five percent (95%) of the amount it received in the 1990-91 fiscal year is the amount determined by the following calculation:

- (1) Determine the amount by which the freeze deduction is reduced for all cities whose hold-back amount is determined under subsection (c) of this section. This amount is the total hold-harmless adjustment.
- (2) Determine the amount of gross receipts taxes that would be distributed for the quarter to cities whose hold-back amount is determined under this subsection if these cities received their percentage distribution amount minus one-fourth of their freeze deduction.
- (3) For each city included in the calculation in subdivision (2) of this subsection, determine that city's percentage share of the amount determined under that subdivision.
- (4) Add to the city's freeze deduction an amount equal to the city's percentage share under subdivision (3) of this subsection multiplied by the total hold-harmless adjustment."

Section 2. G.S. 105-116 reads as rewritten:

"§ 105-116. Franchise or privilege tax on electric power, natural gas, water, and sewerage companies.

(a) Tax. – An annual franchise or privilege tax is imposed on a person, firm, or corporation, other than a municipal corporation, that is:

- (1) An electric power company engaged in the business of furnishing electricity, electric lights, current, or power.
- (2) A natural gas company engaged in the business of furnishing piped natural gas.
- (3) A water company engaged in owning or operating a water system subject to regulation by the North Carolina Utilities Commission.
- (4) A public sewerage company engaged in owning or operating a public sewerage system.

The tax on an electric power company is three and twenty-two hundredths percent (3.22%) of the company's taxable gross receipts from the business of furnishing electricity, electric lights, current, or power. The tax on a natural gas company is three and twenty-two hundredths percent (3.22%) of the company's taxable gross receipts from the business of furnishing piped natural gas. The tax on a water company is four percent (4%) of the company's taxable gross receipts from owning or operating a water system subject to regulation by the North Carolina Utilities Commission. The tax on a public sewerage company is six percent (6%) of the company's taxable gross receipts from owning or operating a public sewerage company. A company's taxable gross receipts are its gross receipts from business inside the State less the amount of gross

receipts from sales reported under subdivision (b)(2). A company that engages in more than one business taxed under this section shall pay tax on each business. A company is allowed a credit against the tax imposed by this section for the company's investments in certain entities in accordance with Division V of Article 4 of this Chapter.

(b) Report and Payment. – The tax imposed by this section is payable 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 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~~city 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~~city of the commodities and services described in subsection (a).

A company shall report its gross receipts on an accrual basis. If a company's report does not state the company's taxable gross receipts derived within a city, the Secretary must determine a practical method of allocating part of the company's taxable gross receipts to the city.

(c) Gas Special Charges. – Gross receipts of a natural gas company do not include the following:

- (1) Special charges collected within this State by the company pursuant to drilling and exploration surcharges approved by the North Carolina Utilities Commission, if the surcharges are segregated from the other receipts of the company and are devoted to drilling, exploration, and other means to acquire additional supplies of natural gas for the account of natural gas customers in North Carolina and the beneficial

interest in the surcharge collections is preserved for the natural gas customers paying the surcharges under rules established by the Commission.

(2) Natural gas expansion surcharges imposed under G.S. 62-158.

(d) Distribution. – ~~For the purpose of this subsection, the term "distribution amount" means three and nine hundredths percent (3.09%) of the taxable gross receipts derived during a period by an electric power company and a natural gas company from sales within a municipality of the commodities and services described in subsection (a) of this section. The Secretary shall distribute to each municipality the distribution amount for that municipality for the preceding calendar quarter less an amount equal to one-fourth of the excess of the distribution amount for that municipality for the period April 1, 1994, to March 31, 1995, over the distribution amount for that municipality for the period April 1, 1990, to March 31, 1991, as certified by the Secretary. The Secretary shall distribute the revenue within 75 days after the end of each quarter. If a company's report does not state the company's taxable gross receipts derived within a municipality, the Secretary shall determine a practical method of allocating part of the company's taxable gross receipts to the municipality.~~

~~As used in this subsection, the term "municipality" includes an urban service district defined by the governing board of a consolidated city-county. The amount due an urban service district shall be distributed to the governing board of the consolidated city-county. Part of the taxes imposed by this section on electric power companies and natural gas companies is distributed to cities under G.S. 105-116.1.~~

(e) Local Tax. – So long as there is a distribution to ~~municipalities of the amount herein provided~~ cities from the tax imposed by this section, no ~~municipality-city~~ shall impose or collect any greater franchise, privilege or license taxes, in the aggregate, on the businesses taxed under this section, than was imposed and collected on or before January 1, 1947. If any municipality shall have collected any privilege, license or franchise tax between January 1, 1947, and April 1, 1949, in excess of the tax collected by it prior to January 1, 1947, then upon distribution of the taxes imposed by this section to municipalities, the amount distributable to any municipality shall be credited with such excess payment."

Section 3. G.S. 105-120 reads as rewritten:

"§ 105-120. Franchise or privilege tax on telephone companies.

(a) Tax. – An annual franchise or privilege tax is imposed on a person, firm, or ~~corporation, corporation~~ that owns or operates a business entity for the provision of local telecommunications service. The tax is three and twenty-two hundredths percent (3.22%) of the company's taxable gross receipts. A company's taxable gross receipts are its receipts from providing local telecommunications service, including receipts from rentals and other similar charges, less its receipts from telecommunications access charges. A company is allowed a credit against the tax imposed by this section for the company's investments in certain entities in accordance with Division V of Article 4 of this Chapter.

(b) Report and Payment. – The tax imposed by this section is payable 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 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~~ city served. If a company's report does not state the company's taxable gross receipts derived within a city, the Secretary must determine a practical method of allocating part of the company's taxable gross receipts to the city. A company shall report its gross receipts on an accrual basis.

(c) Distribution. – ~~For the purpose of this subsection, the term "distribution amount" means three and nine hundredths percent (3.09%) of the taxable gross receipts derived during a period from local telecommunications service provided within a municipality. The Secretary shall distribute to each municipality the distribution amount for that municipality for the preceding calendar quarter less an amount equal to one fourth of the excess of the distribution amount for that municipality for the period April 1, 1994, to March 31, 1995, over the distribution amount for that municipality for the period April 1, 1990, to March 31, 1991, as certified by the Secretary. The Secretary shall distribute the revenue within 75 days after the end of each quarter. If a company's report does not state the company's taxable gross receipts derived within a municipality, the Secretary shall determine a practical method of allocating part of the company's taxable gross receipts to the municipality.~~

~~As used in this subsection, the term "municipality" includes an urban service district defined by the governing board of a consolidated city-county. The amount due an urban service district shall be distributed to the governing board of the consolidated city-county. Part of the tax imposed by this section is distributed to cities under G.S. 105-116.1.~~

(d) No Local Tax. – Counties and cities may not impose a license, franchise, or privilege tax on a company taxed under this section or under G.S. 105-164.4(a)(4c).

(e) Definitions. – 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 service, or private telecommunications service.

- (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 that varies in amount with the distance and elapsed transmission time of each individual communication; and
 - 2. The charge is paid within the United States.
 - b. A service that entitles the subscriber, upon payment of a periodic charge (determined as a 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 that 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.
- (6) 'Telecommunications access charges' means charges paid to a provider of local telecommunications service for access to an interconnection with the local telephone exchange."

Section 4. G.S. 105-114(b) is amended by adding a new subdivision in the appropriate alphabetical order to read:

"(01) City. – Defined in G.S. 105-228.90."

Section 5. If a city's hold-back amount calculated under G.S. 105-116.1(c), as enacted by this act, is less than the amount deducted from the city's 1995-96 franchise tax distribution, the Secretary must distribute two times the amount of the difference to the city by July 15, 1997. This distribution is made to adjust retroactively the city's 1995-96 and 1996-97 franchise tax distributions. The amount needed to make the distribution required by this section shall be drawn from the amount of gross receipts taxes distributed to the cities that do not receive a distribution under this section in proportion to the amount received.

Section 6. G.S. 105-259(b) is amended by inserting a new subdivision to read:

"(5b) To furnish to the finance officials of a city a list of the utility taxable gross receipts that were derived from sales within the city and used to determine the city's distribution under G.S. 105-116.1 or former distribution under G.S. 105-116 and G.S. 105-120."

Section 7. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 20th day of May, 1997.

s/ Dennis A. Wicker
President of the Senate

s/ Harold J. Brubaker
Speaker of the House of Representatives

s/ James B. Hunt, Jr.
Governor

Approved 4:35 p.m. this 29th day of May, 1997