

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1989

S

1

SENATE BILL 210

Short Title: Tax Amnesty/Penalties/Enforcement.

(Public)

Sponsors: Senators Rauch, Plyler, Winner; Smith, Hardin, Carpenter, and Ezzell.

Referred to: Judiciary II.

February 20, 1989

A BILL TO BE ENTITLED

AN ACT TO CREATE A TAX AMNESTY PROGRAM, MODIFY PENALTIES FOR WILLFUL VIOLATION OF THE REVENUE LAWS, AND APPROPRIATE FUNDS TO THE DEPARTMENT OF REVENUE FOR ENHANCED ENFORCEMENT CAPABILITIES AND GREATER TAXPAYER COMPLIANCE.

The General Assembly of North Carolina enacts:

PART I: AMNESTY PROGRAM

Section 1. Amnesty program established; scope. The Department of Revenue shall administer a tax amnesty program to be conducted during the period September 15, 1989, through December 17, 1989. During the tax amnesty period, the Department of Revenue may not initiate a criminal prosecution for failure to report or pay taxes within the scope of the program and shall waive all penalties assessed for such failure when the taxes, plus any interest due, are paid in full.

The taxes within the scope of the tax amnesty program are:

- (1) Inheritance taxes levied under Article 1 of Chapter 105 of the General Statutes;
- (2) License taxes levied under Articles 2, 2A, 2B, and 2C of Chapter 105 of the General Statutes;
- (3) Franchise taxes levied under Article 3 of Chapter 105 of the General Statutes;
- (4) Income taxes levied under Articles 4, 4A, 4B, and 4C of Chapter 105 of the General Statutes;

- 1 (5) Sales and use taxes levied under Articles 5, 39, 40, 41, and 42 of
2 Chapter 105 of the General Statutes, and under Chapter 1096 of the
3 1967 Session Laws;
- 4 (6) Gift taxes levied under Article 6 of Chapter 105 of the General
5 Statutes;
- 6 (7) Intangibles taxes levied under Article 7 of Chapter 105 of the General
7 Statutes; and
- 8 (8) Motor fuels taxes levied under Articles 36, 36A, and 36B of Chapter
9 105 of the General Statutes.

10 The program shall apply to inheritance tax liabilities, license tax liabilities,
11 gift tax liabilities, withholding tax liabilities, sales and use tax liabilities, and motor
12 fuels tax liabilities for taxable periods ending on or before December 31, 1988, and to
13 income tax liabilities, franchise tax liabilities, and intangibles tax liabilities for taxable
14 periods ending on or before December 31, 1987. The program does not apply to any
15 matter that is the subject of a pending court proceeding.

16 Sec. 2. Effect of payment under program. A taxpayer who pays unreported,
17 underreported, or assessed but unpaid taxes as part of the program is not subject to
18 criminal prosecution for not reporting, underreporting, or not paying the taxes, but must
19 pay the interest due on the taxes at the rate established under G.S. 105-241.1(i).

20 Sec. 3. Requirements for participation. To be eligible to participate in the
21 program, a taxpayer shall:

- 22 (1) File an application to participate before the end of the amnesty period;
- 23 (2) File a return for all reporting periods for which the taxpayer has not
24 previously filed a return but was required to file a return;
- 25 (3) File an amended tax return for all reporting periods for which the
26 taxpayer underreported tax liability; and
- 27 (4) Pay the taxpayer's previously assessed taxes or unreported or
28 underreported taxes for all reporting periods in full plus any interest
29 due on the taxes by November 18, 1989.

30 Sec. 4. Administration. The Secretary of Revenue shall issue forms and
31 instructions to implement the amnesty program and shall publicize the tax amnesty
32 period to maximize public awareness of and participation in the program.

33 Sec. 5. Funds. To pay for the amnesty program provided in Part I of this act,
34 the Secretary of Revenue may draw up to one million one hundred thousand dollars
35 (\$1,100,000) from collections received by the Department during July 1989 under
36 Division II of Article 4 of Chapter 105 of the General Statutes.

37 **PART II: INCREASED PENALTIES**

38 Sec. 6. G.S. 105-236(7) reads as rewritten:

39 "(7) Attempt to Evade or Defeat Tax. – Any person who willfully attempts, or any
40 person who aids or abets any person to attempt in any manner to evade or defeat any tax
41 imposed by this Subchapter of the General Statutes, or the payment thereof, shall, in
42 addition to other penalties provided by law, be guilty of a ~~misdemeanor~~. Class I felony
43 punishable by imprisonment up to five years, a fine up to twenty-five thousand dollars
44 (\$25,000), or both."

1 Sec. 7. G.S. 105-236(8) reads as rewritten:

2 "(8) Willful Failure to Collect, Withhold, or Pay Over Tax. – Any person required
3 under this Subchapter to collect, withhold, account for, and pay over any tax imposed
4 by this Subchapter who willfully fails to collect or truthfully account for and pay over
5 such tax shall, in addition to other penalties provided by law, be guilty of a ~~misdemeanor~~
6 ~~and shall be punished by a fine not to exceed one thousand dollars (\$1,000), or by~~
7 ~~imprisonment not to exceed two years, or by both such fine and imprisonment.~~ misdemeanor.
8 Notwithstanding any other provision of law, no prosecution for a violation brought
9 under this subdivision shall be barred before the expiration of three years after the date
10 of the violation."

11 Sec. 8. G.S. 105-236(9) reads as rewritten:

12 "(9) Willful Failure to File Return, Supply Information, or Pay Tax. – Any person
13 required under this Subchapter to pay any tax, to make a return, to keep any records, or
14 to supply any information, who willfully fails to pay such tax, make such return, keep
15 such records, or supply such information, at the time or times required by law, or
16 regulations issued pursuant thereto, shall, in addition to other penalties provided by law,
17 be guilty of a misdemeanor. Notwithstanding any other provision of law, no
18 prosecution for a violation brought under this subdivision shall be barred before the
19 expiration of three years after the date of the violation."

20 Sec. 9. G.S. 105-236(9a) reads as rewritten:

21 "(9a) Aid or Assistance. – Any person, pursuant to or in connection with the
22 revenue laws, who willfully aids, assists in, procures, counsels, or advises the
23 preparation, presentation, or filing of a return, affidavit, claim, or any other document
24 that he knows is fraudulent or false as to any material matter, whether or not the falsity
25 or fraud is with the knowledge or consent of the person authorized or required to present
26 or file the return, affidavit, claim, or other document, shall be guilty of a ~~misdemeanor.~~
27 Class J felony punishable by imprisonment up to three years, a fine up to ten thousand
28 dollars (\$10,000), or both."

29 **PART III: ENFORCEMENT/COMPLIANCE FUNDS**

30 Sec. 10. There is appropriated from the General Fund to the Department of
31 Revenue the sum of five million six hundred fifty-six thousand two hundred forty-five
32 dollars (\$5,656,245) for the 1989-90 fiscal year and the sum of four million eight
33 hundred seventeen thousand sixty-three dollars (\$4,817,063) for the 1990-91 fiscal year
34 to be allocated as follows:

- 35 (1) The sum of one million six hundred sixty-seven thousand six hundred
36 ninety-five dollars (\$1,667,695) for the 1989-90 fiscal year and the
37 sum of one million seven hundred sixty-seven thousand eight hundred
38 thirty-eight dollars (\$1,767,838) for the 1990-91 fiscal year shall be
39 used for salaries and related costs for additional field auditors and
40 other enforcement personnel in the Field Services Division.
- 41 (2) The sum of five hundred eighty-seven thousand five hundred dollars
42 (\$587,500) for the 1989-90 fiscal year shall be used for improved
43 telecommunications and computer equipment for the Field Services
44 Division.

- 1 (3) The sum of one million two hundred eighty-one thousand three
2 hundred thirty-nine dollars (\$1,281,339) for the 1989-90 fiscal year
3 and the sum of one million six hundred seventy-eight thousand three
4 hundred twenty-six dollars (\$1,678,326) for the 1990-91 fiscal year
5 shall be used for salaries and related costs for additional auditors and
6 other enforcement personnel in the Individual Income Tax Division.
- 7 (4) The sum of five hundred eight thousand six hundred fourteen dollars
8 (\$508,614) for the 1989-90 fiscal year and the sum of seventy-six
9 thousand three dollars (\$76,003) for the 1990-91 fiscal year shall be
10 used for data processing equipment and temporary personnel in the
11 Accounting Division.
- 12 (5) The sum of four hundred thirty-one thousand four hundred nineteen
13 dollars (\$431,419) for the 1989-90 fiscal year and the sum of four
14 hundred one thousand nine hundred seventy dollars (\$401,970) for the
15 1990-91 fiscal year shall be used for salaries and related costs for
16 additional auditors and support personnel for the Sales and Use Tax
17 Division.
- 18 (6) The sum of four hundred fifteen thousand sixty-nine dollars
19 (\$415,069) for the 1989-90 fiscal year and the sum of three hundred
20 ninety-nine thousand two hundred thirty-six dollars (\$399,236) for the
21 1990-91 fiscal year shall be used for salaries and related costs for
22 additional audit and clerical personnel for the Corporate Income and
23 Franchise Tax Division.
- 24 (7) The sum of one hundred fifty-four thousand two hundred fifty-seven
25 dollars (\$154,257) for the 1989-90 fiscal year and the sum of one
26 hundred forty-one thousand six hundred ninety dollars (\$141,690) for
27 the 1990-91 fiscal year shall be used for salaries and related costs for
28 additional enforcement personnel for the Motor Fuels Tax Division.
- 29 (8) The sum of six hundred ten thousand three hundred fifty-two dollars
30 (\$610,352) for the 1989-90 fiscal year and the sum of three hundred
31 fifty-two thousand dollars (\$352,000) for the 1990-91 fiscal year shall
32 be used for leased space and other miscellaneous costs for new
33 personnel in all Divisions.

34 PART IV: EFFECTIVE DATES

35 Sec. 11. Section 10 of this act shall become effective July 1, 1989; Sections 6
36 through 9 of this act shall become effective November 18, 1989, and shall apply to
37 violations occurring on or after that date; the remainder of this act is effective upon
38 ratification.