

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1989

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SENATE BILL 210
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Short Title: Tax Amnesty/Penalties/Enforcement.

(Public)

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

Referred to: Judiciary II.

February 20, 1989

- 1 A BILL TO BE ENTITLED
2 AN ACT TO CREATE A TAX AMNESTY PROGRAM, MODIFY PENALTIES FOR
3 WILLFUL VIOLATION OF THE REVENUE LAWS, AND APPROPRIATE
4 FUNDS TO THE DEPARTMENT OF REVENUE FOR ENHANCED
5 ENFORCEMENT CAPABILITIES AND GREATER TAXPAYER
6 COMPLIANCE.
7 The General Assembly of North Carolina enacts:
8 **PART I: AMNESTY PROGRAM**
9 Section 1. Amnesty program established; scope. The Department of
10 Revenue shall administer a tax amnesty program to be conducted during the period
11 September 1, 1989, through December 1, 1989. During the tax amnesty period, the
12 Department of Revenue may not initiate a criminal prosecution for failure to report or
13 pay taxes within the scope of the program and shall waive all penalties assessed for such
14 failure when the taxes, plus any interest due, are paid in full.
15 The taxes within the scope of the tax amnesty program are:
16 (1) Inheritance taxes levied under Article 1 of Chapter 105 of
17 the General Statutes;
18 (2) License taxes levied under Articles 2, 2A, 2B, and 2C of Chapter 105
19 of the General Statutes;
20 (3) Franchise taxes levied under Article 3 of Chapter 105 of the General
21 Statutes;
22 (4) Income taxes levied under Articles 4, 4A, 4B, and 4C of Chapter 105
23 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;
- 8 (8) Motor fuels taxes levied under Articles 36, 36A, and 36B of Chapter
9 105 of the General Statutes; and
- 10 (9) Inspection taxes levied under Article 3 of Chapter 119 of the General
11 Statutes.

12 The program applies to inheritance tax liabilities due for the estates of
13 decedents dying prior to December 1, 1988; license tax liabilities for taxable periods
14 ending on or before June 30, 1988; gift tax liabilities due and remaining unpaid after
15 December 31, 1987; individual income withholding tax liabilities, sales and use tax
16 liabilities, motor fuels tax liabilities, and inspection tax liabilities for taxable periods
17 ending on or before December 31, 1988; income tax liabilities and intangibles tax
18 liabilities for taxable periods ending on or before December 31, 1987; and franchise tax
19 liabilities for taxable periods beginning on or before January 1, 1988. The program
20 does not apply to any matter that is the subject of a pending court proceeding.

21 Sec. 2. Effect of payment under program. A taxpayer who pays unreported,
22 underreported, or assessed but unpaid taxes as part of the program is not subject to
23 criminal prosecution for not reporting, underreporting, or not paying the taxes, but must
24 pay the interest due on the taxes at the rate established under G.S. 105-241.1(i). An
25 attorney, accountant, paid preparer of a tax return, or other person who would otherwise
26 be subject to criminal prosecution under G.S. 105-236(9a) for his actions concerning
27 returns prepared for unreported or underreported taxes paid pursuant to the amnesty
28 program is not subject to criminal prosecution under that subdivision on the basis of
29 those actions.

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

- 32 (1) File an application to participate before the end of the amnesty period;
- 33 (2) File a return for all reporting periods for which the taxpayer has not
34 previously filed a return but was required to file a return;
- 35 (3) File an amended tax return for all reporting periods for which the
36 taxpayer underreported tax liability; and
- 37 (4) Pay the taxpayer's previously assessed taxes or unreported or
38 underreported taxes for all reporting periods in full plus any interest
39 due on the taxes by December 1, 1989.

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

43 Sec. 5. Funds. To pay for the amnesty program provided in Part I of this act,
44 the Secretary of Revenue may draw up to one million one hundred thousand dollars

1 (\$1,100,000) from collections received by the Department during July 1989 under
2 Division II of Article 4 of Chapter 105 of the General Statutes.

3 **PART II: INCREASED PENALTIES**

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

5 "(7) Attempt to Evade or Defeat Tax. – Any person who willfully attempts, or any
6 person who aids or abets any person to attempt in any manner to evade or defeat any tax
7 imposed by this Subchapter of the General Statutes, or the payment thereof, shall, in
8 addition to other penalties provided by law, be guilty of a ~~misdemeanor~~. Class I felony
9 punishable by imprisonment up to five years, a fine up to twenty-five thousand dollars
10 (\$25,000), or both."

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

12 "(8) Willful Failure to Collect, Withhold, or Pay Over Tax. – Any person required
13 under this Subchapter to collect, withhold, account for, and pay over any tax imposed
14 by this Subchapter who willfully fails to collect or truthfully account for and pay over
15 such tax shall, in addition to other penalties provided by law, be guilty of a
16 ~~misdemeanor and shall be punished by a fine not to exceed one thousand dollars~~
17 ~~(\$1,000), or by imprisonment not to exceed two years, or by both such fine and~~
18 ~~imprisonment~~. misdemeanor. Notwithstanding any other provision of law, no
19 prosecution for a violation brought under this subdivision shall be barred before the
20 expiration of three years after the date of the violation."

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

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

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

31 "(9a) Aid or Assistance. – Any person, pursuant to or in connection with the
32 revenue laws, who willfully aids, assists in, procures, counsels, or advises the
33 preparation, presentation, or filing of a return, affidavit, claim, or any other document
34 that he knows is fraudulent or false as to any material matter, whether or not the falsity
35 or fraud is with the knowledge or consent of the person authorized or required to present
36 or file the return, affidavit, claim, or other document, shall be guilty of a ~~misdemeanor~~.
37 Class J felony punishable by imprisonment up to three years, a fine up to ten thousand
38 dollars (\$10,000), or both."

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

40 Sec. 10. (a) There is appropriated from the Highway Fund to the Department
41 of Revenue the sum of \$117,950 for the 1989-90 fiscal year and the sum of \$149,690
42 for the 1990-91 fiscal year for salaries and related costs of additional enforcement
43 personnel in the Motor Fuels Tax Division of the Department of Revenue.

1 (b) There is appropriated from the General Fund to the Department of Revenue
2 the sum of \$4,981,443 for the 1989-90 fiscal year and the sum of \$4,589,645 for the
3 1990-91 fiscal year. Of these funds, the sum of \$611,116 for the 1989-90 fiscal year
4 and the sum of \$457,087 for the 1990-91 fiscal year shall be used for administrative
5 costs in implementing this act; the remainder shall be allocated to the following
6 divisions of the Department of Revenue for salaries and related costs of additional
7 enforcement personnel as follows: **1989-90** **1990-91**

8 **Division Fiscal Year Fiscal Year**

9 Field Services Division	\$1,802,372	\$1,505,285
10 Individual Income Tax Division	1,472,401	1,750,111
11 Accounting Division	485,827	75,956
12 Sales and Use Tax Division	310,829	401,970
13 Corporate Income & Franchise Tax Division	298,898	399,236

14 Sec. 11. Section 10 of this act shall become effective July 1, 1989; Sections 6
15 through 9 of this act shall become effective December 2, 1989, and shall apply to
16 violations occurring on or after that date; the remainder of this act is effective upon
17 ratification.