

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1991

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SENATE BILL 1010
Finance Committee Substitute Adopted 6/25/92

Short Title: Electronic Funds Transfer.

(Public)

Sponsors:

Referred to:

May 28, 1992

1 A BILL TO BE ENTITLED
2 AN ACT TO AUTHORIZE THE DEPARTMENT OF REVENUE TO ALLOW OR
3 REQUIRE PAYMENT OF TAXES BY ELECTRONIC FUNDS TRANSFER.

4 The General Assembly of North Carolina enacts:

5 Section 1. Article 9 of Chapter 105 of the General Statutes is amended by
6 adding at the beginning a new section to read:

7 "**§ 105-228.90. Scope and definitions.**

8 (a) Scope. – This Article applies to Subchapters I, V, and VIII of this Chapter
9 and to inspection fees levied under Article 3 of Chapter 119 of the General Statutes.

10 (b) Definitions. – The following definitions apply in this Article:

11 (1) Code. – The Internal Revenue Code as enacted as of January 1, 1992,
12 including any provisions enacted as of that date which become
13 effective either before or after that date.

14 (2) Reserved.

15 (3) Electronic funds transfer. – A transfer of funds initiated by using an
16 electronic terminal, a telephone, a computer, or magnetic tape to
17 instruct or authorize a financial institution or its agent to credit or debit
18 an account.

19 (4) Reserved.

20 (5) Person. – An individual, a fiduciary, a firm, a partnership, an
21 association, a corporation, a unit of government, or another group
22 acting as a unit.

23 (6) Secretary. – The Secretary of Revenue.

1 (7) Tax. – A tax levied under Subchapter I, V, or VIII of this Chapter or
2 an inspection fee levied under Article 3 of Chapter 119 of the General
3 Statutes. Unless the context clearly requires otherwise, the terms ‘tax’
4 and ‘additional tax’ include penalties and interest as well as the
5 principal amount.

6 (8) Taxpayer. – A person subject to the tax or reporting requirements of
7 Subchapter I, V, or VIII of this Chapter or of Article 3 of Chapter 119
8 of the General Statutes."

9 Sec. 2. G.S. 105-241 reads as rewritten:

10 **"§ 105-241. Taxes payable in national currency; for what period, and when a lien;**
11 **priorities. Where and how taxes payable; tax period; liens.**

12 (a) Form of Payment. – Taxes are payable in the national currency. The
13 Secretary shall prescribe where taxes are to be paid and whether taxes must be paid in
14 cash, by check, by electronic funds transfer, or by another method.

15 (b) Electronic Funds Transfer. – The Secretary may not require a taxpayer to pay
16 a tax by electronic funds transfer unless, during the applicable period for that tax, the
17 average amount of each of the taxpayer's required payments of the tax was at least
18 twenty thousand dollars (\$20,000). The applicable period for a tax is a 12-month
19 period, designated by the Secretary, preceding the imposition of the payment
20 requirement. The requirement that a taxpayer pay a tax by electronic funds transfer
21 remains in effect for 12 months. After 12 months, the Secretary may require a taxpayer
22 to continue to pay a tax by electronic funds transfer only if the Secretary could have
23 required the taxpayer to begin making payments of the tax in accordance with this
24 subsection.

25 (c) Tax Period. – Except as otherwise provided in this Chapter, taxes are levied
26 for the fiscal year of the State in which they became due.

27 (d) Lien. – This subsection applies except when another Article of this Chapter
28 contains contrary provisions with respect to a lien for a tax levied in that Article. The
29 lien of a tax attaches to all real and personal property of a taxpayer on the date a tax
30 owed by the taxpayer becomes due. The lien continues until the tax and any interest,
31 penalty, and costs associated with the tax are paid. A tax lien is not extinguished by the
32 sale of the taxpayer's property. A tax lien, however, is not enforceable against a bona
33 fide purchaser for value or the holder of a duly recorded lien unless:

34 (1) In the case of real property, a certificate of tax liability or a judgment
35 was first docketed in the office of the clerk of superior court of the
36 county in which the real property is located.

37 (2) In the case of personal property, there has already been a levy on the
38 property under an execution or a tax warrant.

39 The priority of these claims and liens is determined by the date and time of recording,
40 docketing, levy, or bona fide purchase.

41 If a taxpayer executes an assignment for the benefit of creditors or if insolvency
42 proceedings are instituted against a taxpayer who owes a tax, the tax lien attaches to all
43 real and personal property of the taxpayer as of the date and time the taxpayer executes
44 the assignment for the benefit of creditors or the date and time the insolvency

1 ~~proceedings are instituted. In these cases, the tax lien is subject only to a prior recorded~~
2 ~~specific lien and the reasonable costs of administering the assignment or the insolvency~~
3 ~~proceedings. The taxes herein designated and levied shall be payable in the existing national~~
4 ~~currency. State, county, and municipal taxes levied for any and all purposes pursuant to this~~
5 ~~Subchapter shall be for the fiscal year of the State in which they become due, except as~~
6 ~~otherwise provided, and the lien of such taxes shall attach annually to all real estate of the~~
7 ~~taxpayer within the State on the date that such taxes are due and payable, and said lien shall~~
8 ~~continue until such taxes, with any interest, penalty, and costs which shall accrue thereon, shall~~
9 ~~have been paid; in the settlement of the estate of any decedent where, by any order of court or~~
10 ~~other proceeding, the real estate of the decedent has been sold to make assets to pay debts, such~~
11 ~~sale shall not have the effect of extinguishing the lien upon the land so sold for State taxes, nor~~
12 ~~shall the same be postponed in any manner to the payment of any other claim or debt against~~
13 ~~the estate, save funeral expenses and cost of administration.~~

14 ~~Provided, however, that the lien of State taxes shall not be enforceable as against~~
15 ~~bona fide purchasers for value, and as against duly recorded mortgages, deeds of trust~~
16 ~~and other recorded specific liens, as to real estate, except upon docketing of a certificate~~
17 ~~of tax liability or a judgment in the office of the clerk of the superior court of the county~~
18 ~~wherein the real estate is situated, and as to personalty, except upon a levy upon such~~
19 ~~property under an execution or a tax warrant, and the priority of the State's tax lien~~
20 ~~against property in the hands of bona fide purchasers for value, and as against duly~~
21 ~~recorded mortgages, deeds of trust and other recorded specific liens, shall be determined~~
22 ~~by reference to the date and time of docketing of judgment or certificate of tax liability~~
23 ~~or the levy under execution or tax warrant. Provided further, that in the event any~~
24 ~~taxpayer shall execute an assignment for the benefit of creditors, or if receivership, a~~
25 ~~creditor's bill or other insolvency proceedings are instituted against any taxpayer~~
26 ~~indebted in the State on account of any taxes levied by the State, the lien of State taxes~~
27 ~~shall attach to any and all property of such taxpayer or of such insolvent's estate as of~~
28 ~~the date and time of the execution of the assignment for the benefit of creditors or of the~~
29 ~~institution of proceedings herein mentioned and shall be subject only to prior recorded~~
30 ~~specific liens and reasonable costs of administration. Notwithstanding the provisions of~~
31 ~~this paragraph, the provisions contained in G.S. 105-164.38 shall remain in full force~~
32 ~~and effect with respect to the lien of sales taxes.~~

33 ~~The provisions of this section shall not have the effect of releasing any lien for State~~
34 ~~taxes imposed by other law, nor shall they have the effect of postponing the payment of~~
35 ~~the said State taxes or depriving the said State taxes of any priority in order of payment~~
36 ~~provided in any other statute under which payment of the said taxes may be required."~~

37 ~~Sec. 3. G.S. 105-130.19 reads as rewritten:~~

38 **"§ 105-130.19. Time and place of payment of tax.**

39 (a) ~~Except as provided in Article 4C of this Chapter, the full amount of the tax~~
40 ~~payable as shown on the face of the return shall be paid to the Secretary of Revenue at the~~
41 ~~office where the return is filed and within the time fixed by law allowed for filing the~~
42 ~~return. An extension of time granted for filing the return under G.S. 105-130.17(d) is~~
43 ~~not an extension of time for payment of the full amount of the tax payable. The tax~~
44 ~~shall be paid at the place and in the form required by the Secretary pursuant to G.S. 105-~~
45 ~~241(a).~~

1 ~~(b), (c) Repealed by Session Laws 1989, c. 37, s. 1.~~

2 ~~(d) The tax may be paid with uncertified check during such time and under such~~
3 ~~regulations as the Secretary of Revenue shall prescribe; but if a check so received is not~~
4 ~~paid by the bank on which it is drawn, the taxpayer by whom such check is tendered~~
5 ~~shall remain liable for the payment of the tax and for all legal penalties the same as if~~
6 ~~such check had not been tendered."~~

7 Sec. 4. G.S. 105-157 reads as rewritten:

8 **"§ 105-157. Time and place of payment of tax.**

9 (a) Except as otherwise provided in this section and in Article 4A of this Chapter,
10 the full amount of the tax payable as shown on ~~the face of the return~~ shall be paid to the
11 Secretary ~~at the office where the return is filed at the time fixed by law~~ within the time
12 allowed for filing the return. An extension of time granted for filing the return under
13 G.S. 105-155 is not an extension of time for payment of the full amount of the tax
14 payable. If the amount shown to be due is less than one dollar (\$1.00), no payment need
15 be made. The tax shall be paid at the place and in the form required by the Secretary
16 pursuant to G.S. 105-241(a).

17 ~~(b) The tax may be paid with uncertified check during such time and under such~~
18 ~~regulations as the Secretary may prescribe; but if a check so received is not paid by the~~
19 ~~bank on which it is drawn, the taxpayer by whom the check was tendered shall remain~~
20 ~~liable for the payment of the tax and for all legal penalties the same as if the check had~~
21 ~~not been tendered."~~

22 Sec. 5. G.S. 105-160.7 reads as rewritten:

23 **"§ 105-160.7. Time and place of payment of tax.**

24 ~~(a)~~ The full amount of the tax payable as shown on ~~the face of the return~~ shall be paid
25 to the Secretary ~~at the office where the return is filed at the time fixed by law~~ within the time
26 allowed for filing the return. However, if the amount shown to be due after all credits is
27 less than one dollar (\$1.00), no payment need be made. An extension of time granted
28 for filing the return under G.S. 105-160.6 is not an extension of time for payment of the
29 full amount of the tax payable. The tax shall be paid at the place and in the form
30 required by the Secretary pursuant to G.S. 105-241(a).

31 ~~(b) The tax may be paid with uncertified check, but if a check so received is not~~
32 ~~paid by the financial institution on which it is drawn, the fiduciary by whom the check~~
33 ~~was tendered shall remain liable for the payment of the tax and for all penalties lawfully~~
34 ~~imposed."~~

35 Sec. 6. G.S. 105-163.6(a) reads as rewritten:

36 "(a) General. – A return is due quarterly or monthly as specified in this section. A
37 return shall be filed with the Secretary on a form prepared by the Secretary, shall report
38 any payments of withheld taxes made during the period covered by the return, and shall
39 contain any other information required by the Secretary.

40 Withheld taxes are payable quarterly, monthly, or within three banking days, as
41 specified in this section. Withheld taxes shall be paid ~~to the Secretary or to a financial~~
42 ~~institution with which the Secretary has entered a contract to receive payment of withheld~~
43 ~~taxes.~~ at the place and in the form required by the Secretary pursuant to G.S. 105-241(a).

1 If the Secretary finds that collection of the amount of taxes this Article requires an
2 employer to withhold is in jeopardy, the Secretary may require the employer to file a
3 return or pay withheld taxes at a time other than that specified in this section."

4 Sec. 7. G.S. 105-164.18 is repealed.

5 Sec. 8. G.S. 105-236 is amended by adding the following new subdivisions
6 to read:

7 "(1a) Penalty for Bad Electronic Funds Transfer. – When an electronic
8 funds transfer cannot be completed due to insufficient funds or the
9 nonexistence of an account of the transferor, the Secretary shall
10 assess an additional tax, as a penalty, equal to ten percent (10%) of
11 the amount of the transfer, subject to a minimum of one dollar
12 (\$1.00) and a maximum of one thousand dollars (\$1,000). This
13 subdivision applies to all taxes levied or assessed by the State.

14 (1b) Making Payment in Wrong Form. – For making a payment of tax
15 in a form other than the form required by the Secretary pursuant to
16 G.S. 105-241(a), the Secretary shall assess an additional tax, as a
17 penalty, equal to five percent (5%) of the amount of the tax, subject
18 to a minimum of one dollar (\$1.00) and a maximum of one
19 thousand dollars (\$1,000)."

20 Sec. 9. G.S. 105-239.1(a) reads as rewritten:

21 "(a) Property transferred for an inadequate consideration to a donee, heir, legatee,
22 devisee, distributee, stockholder of a liquidated corporation, or any other person at a
23 time when the transferor is insolvent or is rendered insolvent by reason of the transfer
24 shall be subject to a lien for any taxes owing by the transferor to the State of North
25 Carolina at the time of ~~such the~~ transfer whether or not the amount of ~~such taxes shall~~
26 ~~have the taxes has~~ been ascertained or assessed at the time of ~~such the~~ transfer. ~~Such lien~~
27 ~~shall be subject to the provisions of the first proviso contained in G.S. 105-241. G.S. 105-241~~
28 applies to this tax lien. In the event the transferee ~~shall have disposed of such has~~
29 disposed of the property so that it cannot be subjected to the State's tax lien, the
30 transferee shall be personally liable for the difference between the fair market value of
31 ~~such the~~ property at the time of the transfer and the actual consideration, if any, paid to
32 the transferor by the transferee.

33 Upon a foreclosure of the State's tax lien upon property in the hands of a transferee,
34 the value of any consideration ~~which the transferee shall have established as having been~~
35 that the transfer proves has been given to the transferor shall be paid to the transferee
36 out of the proceeds of the foreclosure sale before applying ~~such the~~ proceeds toward the
37 satisfaction of the State's tax lien.

38 In order to proceed against the transferee or property in ~~his the~~ transferee's hands, the
39 Secretary shall cause to be docketed in the office of the clerk of the superior court of the
40 county wherein the transferee resides or the property is located, as the case may be, a
41 certificate of tax liability as provided in G.S. 105-242 or a lien certificate which shall set
42 forth the amount of the lien as determined by the Secretary or as finally determined
43 upon appeal and a description of the property subject to the lien. Thereafter, execution
44 may be issued against the transferee as in the case of other money judgments except that

1 no homestead or personal exemption shall be allowable or, upon a lien certificate, an
2 execution may be issued directing the sheriff to seize the property subject to the lien and
3 sell same in the same manner as property is sold under execution. Such procedure and
4 collection shall be subject to the provisions of subsection (c) of this section."

5 Sec. 10. G.S. 105-251 reads as rewritten:

6 **"§ 105-251. Information must be furnished.**

7 ~~Each company, firm, corporation, person, association, copartnership, or public utility~~
8 ~~shall furnish the Secretary of Revenue in the form of returns prescribed by him, all~~
9 ~~information required by law and all other facts and information in addition to the facts~~
10 ~~and information in this act specifically required to be given, which the Secretary of~~
11 ~~Revenue may require to enable him to carry into effect the provisions of the laws which~~
12 ~~the said Secretary is required to administer, and shall make specific answers to all~~
13 ~~questions submitted by the Secretary of Revenue. Every person shall give the Secretary~~
14 all information the Secretary requires to fulfill a duty delegated to the Secretary. The
15 information must be in the form required by the Secretary. The Secretary may require
16 the information to be furnished electronically or on paper."

17 Sec. 11. G.S. 105-252 reads as rewritten:

18 **"§ 105-252. Returns required.**

19 ~~Any company, firm, corporation, person, association, copartnership, or public utility~~
20 ~~receiving~~ A person who receives from the Secretary of Revenue any blanks, form
21 requiring information, information shall fill the form out properly and answer each
22 question fully and correctly. If unable to answer a question, the person shall explain
23 why in writing. cause them to be properly filled out so as to answer fully and correctly each
24 question therein propounded, and in case it is unable to answer any question, it shall, in writing,
25 give a good and sufficient reason for such failure. The person shall return the form

26 ~~The answers to such questions shall be verified under oath by such persons, or by~~
27 ~~the president, secretary, superintendent, general manager, principal accounting officer,~~
28 ~~partner, or agent, and returned to the Secretary of Revenue at his office within the~~
29 ~~period fixed by the Secretary of Revenue. at the time and place required by the~~
30 Secretary. The person shall also furnish an oath or affirmation verifying the return; the
31 oath or affirmation shall be in the form required by the Secretary."

32 Sec. 12. G.S. 105-259 reads as rewritten:

33 **"§ 105-259. Secrecy required of officials; penalty for violation.**

34 With respect to any one of the following persons: (i) the Secretary of Revenue
35 and all other officers or employees, and former officers and employees, of the
36 Department of Revenue; (ii) local tax officials, as defined in G.S. 105-273, and former
37 local tax officials; (iii) members and former members of the Property Tax Commission;
38 (iv) any other person authorized in this section to receive information concerning any
39 item contained in any report or return, or authorized to inspect any report or return; and
40 (v) the Commissioner of Insurance and all other officers or employees and former
41 officers and employees of the Department of Insurance with respect to State and federal
42 income tax returns filed with the Commissioner of Insurance by domestic insurance
43 companies; and except in accordance with proper judicial order or as otherwise
44 provided by law, it shall be unlawful for any of these persons to divulge or make known

1 in any manner the amount of income, income tax or other taxes of any taxpayer, or
2 information relating thereto or from which the amount of income, income tax or other
3 taxes or any part thereof might be determined, deduced or estimated, whether it is set
4 forth or disclosed in or by means of any report or return required to be filed or furnished
5 under this Subchapter, or in or by means of any audit, assessment, application,
6 correspondence, schedule or other document relating to the taxpayer, notwithstanding
7 the provisions of Chapter 132 of the General Statutes or of any other law or laws
8 relating to public records. It shall likewise be unlawful to reveal whether or not any
9 taxpayer has filed a return, and to abstract, compile or furnish to any person, firm or
10 corporation not otherwise entitled to information relating to the amount of income,
11 income tax or other taxes of a taxpayer, any list of names, addresses, social security
12 numbers or other personal information concerning the taxpayer, whether or not the list
13 discloses a taxpayer's income, income tax or other taxes, or any part thereof, except that
14 when an election is made by a husband and wife under G.S. 105-152.1 to file a joint
15 return, any information given to one spouse concerning the income or income tax of the
16 other spouse reported or reportable on the joint return shall not be a violation of the
17 provisions of this section.

18 Nothing in this section shall be construed to prohibit the publication of statistics, so
19 classified as to prevent the identification of particular reports or returns, and the items
20 thereof; the inspection of these reports or returns by the Governor, Attorney General, or
21 their duly authorized representative; or the inspection by a legal representative of the
22 State of the report or return of any taxpayer who shall bring an action to set aside or
23 review the tax based thereon, or against whom an action or proceeding has been
24 instituted to recover any tax or penalty imposed by this Subchapter; nor shall the
25 provisions of this section prohibit the Department of Revenue furnishing information to
26 other governmental agencies of persons and firms properly licensed under Schedule B,
27 G.S. 105-33 to 105-113. The Department of Revenue may exchange information with
28 the officers of organized associations of taxpayers under Schedule B, G.S. 105-33 to
29 105-113, with respect to parties liable for these taxes and as to parties who have paid
30 these license taxes.

31 When any record of the Department of Revenue has been photographed,
32 photocopied, or microphotocopied pursuant to the authority contained in G.S. 8-45.3,
33 the original of that record may thereafter be destroyed at any time upon the order of the
34 Secretary of Revenue, notwithstanding the provisions of G.S. 121-5, G.S. 132-2, or any
35 other law relating to the preservation of public records. Any record that has not been so
36 photographed, photocopied, or microphotocopied shall be preserved for three years, and
37 thereafter until the Secretary of Revenue orders it destroyed.

38 Any person, officer, agent, clerk, employee, or local tax official or any former
39 officer, employee, or local tax official who violates the provisions of this section shall
40 be guilty of a misdemeanor and fined not less than two hundred dollars (\$200.00) nor
41 more than one thousand dollars (\$1,000) and/or imprisoned, in the discretion of the
42 court; and if the person committing the violation is a public officer or employee, that
43 person shall be dismissed from such office or employment, and may not hold any public
44 office or employment in this State for a period of five years thereafter.

1 Notwithstanding the provisions of this section, the Secretary of Revenue may permit
2 the Commissioner of Internal Revenue of the United States, or the revenue officer of
3 any other state imposing any of the taxes imposed in this Subchapter, or the duly
4 authorized representative of either, to inspect the report or return of any taxpayer; or
5 may furnish that person an abstract of the report or return of any taxpayer; or supply that
6 person with information concerning any item contained in any report or return, or
7 disclosed by the report of any investigation of any report or return of any taxpayer. The
8 permission, however, may be granted or the information furnished to the officer or
9 agent only if the statutes of the United States or of the other state grant substantially
10 similar privilege to the Secretary of Revenue of this State or the Secretary's duly
11 authorized representative. Notwithstanding any other provision of law, the Secretary
12 may also furnish names, addresses, and account and identification numbers of (i)
13 taxpayers who may be entitled to property held in the Escheat Fund to the
14 Department of State Treasurer when that Department requests the information for the
15 purpose of administering Chapter 116B of the General Statutes, and (ii) taxpayers to the
16 Employment Security Commission when that Commission requests the information for
17 the purpose of administering Article 2 of Chapter 96 of the General Statutes. Neither
18 this section nor any other law prevents the exchange of information between the
19 Department of Revenue and the Department of Transportation's Division of Motor
20 Vehicles when the information is needed by either to administer the laws with which
21 they are charged. Notwithstanding any other provision of law, State officers and
22 employees who perform computerized data processing functions pursuant to G.S. 143-
23 341(9) for the Department of Revenue are authorized to receive and process for the
24 Department of Revenue information in reports and returns and are subject to the
25 criminal provisions of this section.

26 Notwithstanding the provisions of this section, the Secretary of Revenue may
27 contract with any person, firm or corporation to receive and address, sort, bag, or deliver
28 to the United States Postal Service any bulk mailing originated by the Department of
29 Revenue, and may deliver the mail to the contractor pursuant to the contract. To ensure
30 performance of the contract, the contractor shall furnish a bond in a form and amount
31 acceptable to the Secretary.

32 Notwithstanding the provisions of this section, the Secretary of Revenue may
33 contract with ~~a financial institution~~ financial institutions for the receipt of withheld
34 income tax payments under ~~G.S. 105-163.6~~ G.S. 105-163.6 and for electronic funds
35 transfers under G.S. 105-241. The Secretary may provide the financial institutions
36 information necessary to identify payments made by taxpayers."

37 Sec. 13. G.S. 105-269.3 reads as rewritten:

38 "**§ 105-269.3. Administration and enforcement of Subchapter V and fuel**
39 **inspection fee.**

40 ~~This Article applies to taxes levied under Subchapter V of this Chapter and to~~
41 ~~inspection fees levied under Chapter 119 of the General Statutes.~~ The State Highway
42 Patrol and law enforcement officers and other appropriate personnel in the Division of
43 Motor Vehicles of the Department of Transportation may assist the Department of
44 Revenue in enforcing Subchapter V of this Chapter and Article 3 of Chapter 119 of the

1 General Statutes. The State Highway Patrol and law enforcement officers of the
2 Division of Motor Vehicles have the power of peace officers in matters concerning the
3 enforcement of Subchapter V of this Chapter and Article 3 of Chapter 119 of the
4 General Statutes."

5 Sec. 14. This act becomes effective July 1, 1992. Notwithstanding the
6 provisions of G.S. 105-241(a) as amended by this act, the Secretary of Revenue may not
7 begin to require payment by electronic funds transfer of motor fuels taxes levied under
8 Subchapter V of Chapter 105 of the General Statutes or of the inspection fee levied
9 under Article 3 of Chapter 119 of the General Statutes until July 1, 1994.