

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1993

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HOUSE BILL 74

Short Title: Modify Tax Secrecy Provision.

(Public)

Sponsors: Representatives Gamble, Jarrell, Justus, Luebke, and Tallent.

Referred to: Finance.

February 9, 1993

A BILL TO BE ENTITLED

AN ACT TO CLARIFY THE PROHIBITION AGAINST DISCLOSING TAX INFORMATION, TO MODIFY THE PROHIBITION TO PERMIT THE EXCHANGE OF CERTAIN INFORMATION BETWEEN DESIGNATED AGENCIES, AND TO EXCLUDE INFORMATION SUBMITTED ON A MASTER TAX APPLICATION FROM THE PROHIBITION.

The General Assembly of North Carolina enacts:

Section 1. G.S. 105-259 reads as rewritten:

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

~~With respect to any one of the following persons: (i) the Secretary of Revenue and all other officers or employees, and former officers and employees, of the Department of Revenue; (ii) local tax officials, as defined in G.S. 105-273, and former local tax officials; (iii) members and former members of the Property Tax Commission; (iv) any other person authorized in this section to receive information concerning any item contained in any report or return, or authorized to inspect any report or return; and (v) the Commissioner of Insurance and all other officers or employees and former officers and employees of the Department of Insurance with respect to State and federal income tax returns filed with the Commissioner of Insurance by domestic insurance companies; and except in accordance with proper judicial order or as otherwise provided by law, it shall be unlawful for any of these persons to divulge or make known in any manner the amount of income, income tax or other taxes of any taxpayer, or information relating thereto or from which the amount of income, income tax or other taxes or any part thereof might be determined, deduced or estimated, whether it is set forth or disclosed in or by means of any report or return required to be filed or furnished~~

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

~~14 Nothing in this section shall be construed to prohibit the publication of statistics, so
15 classified as to prevent the identification of particular reports or returns, and the items
16 thereof; the inspection of these reports or returns by the Governor, Attorney General, or
17 their duly authorized representative; or the inspection by a legal representative of the
18 State of the report or return of any taxpayer who shall bring an action to set aside or
19 review the tax based thereon, or against whom an action or proceeding has been
20 instituted to recover any tax or penalty imposed by this Subchapter; nor shall the
21 provisions of this section prohibit the Department of Revenue furnishing information to
22 other governmental agencies of persons and firms properly licensed under Schedule B,
23 G.S. 105-33 to 105-113. The Department of Revenue may exchange information with
24 the officers of organized associations of taxpayers under Schedule B, G.S. 105-33 to
25 105-113, with respect to parties liable for these taxes and as to parties who have paid
26 these license taxes.~~

~~27 When any record of the Department of Revenue has been photographed,
28 photocopied, or microphotocopied pursuant to the authority contained in G.S. 8-45.3,
29 the original of that record may thereafter be destroyed at any time upon the order of the
30 Secretary of Revenue, notwithstanding the provisions of G.S. 121-5, G.S. 132-2, or any
31 other law relating to the preservation of public records. Any record that has not been so
32 photographed, photocopied, or microphotocopied shall be preserved for three years, and
33 thereafter until the Secretary of Revenue orders it destroyed.~~

~~34 Any person, officer, agent, clerk, employee, or local tax official or any former
35 officer, employee, or local tax official who violates the provisions of this section shall
36 be guilty of a misdemeanor and fined not less than two hundred dollars (\$200.00) nor
37 more than one thousand dollars (\$1,000) and/or imprisoned, in the discretion of the
38 court; and if the person committing the violation is a public officer or employee, that
39 person shall be dismissed from such office or employment, and may not hold any public
40 office or employment in this State for a period of five years thereafter.~~

~~41 Notwithstanding the provisions of this section, the Secretary of Revenue may permit
42 the Commissioner of Internal Revenue of the United States, or the revenue officer of
43 any other state imposing any of the taxes imposed in this Subchapter, or the duly
44 authorized representative of either, to inspect the report or return of any taxpayer; or~~

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

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

28 Notwithstanding the provisions of this section, the Secretary of Revenue may
29 contract with a financial institution for the receipt of withheld income tax payments
30 under G.S. 105-163.6.

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

32 (1) Employee or Officer. – The term includes a former employee, a former
33 officer, and a current or former member of a State board or
34 commission.

35 (2) Tax Information. – Any information from any source concerning the
36 liability of a taxpayer for a tax, as defined in G.S. 105-228.90. The
37 term includes the following:

38 a. Information contained on a tax return, a tax report, or an
39 application for a license for which a tax is imposed.

40 b. Information obtained through an audit of a taxpayer or by
41 correspondence with a taxpayer.

42 c. Information on whether a taxpayer has filed a tax return or a tax
43 report.

1 d. A list or other compilation of the names, addresses, social
2 security numbers, or similar information concerning taxpayers.
3 The term does not include (i) statistics classified so that information
4 about specific taxpayers cannot be identified or (ii) information
5 submitted to the Business License Information Office of the
6 Department of Secretary of State on a master application form for
7 various business licenses.

8 (b) Disclosure Prohibited. – An officer, an employee, or an agent of the State
9 who has access to tax information in the course of service to or employment by the State
10 may not disclose the information to any other person unless the disclosure is made for
11 one of the following purposes:

- 12 (1) To comply with a court order or a law.
13 (2) To give a spouse who elects to file a joint tax return tax information
14 concerning the other spouse, to the extent the information relates to the
15 joint return.
16 (3) Review by the Attorney General or a representative of the Attorney
17 General.
18 (4) To provide a governmental agency or an officer of an organized
19 association of taxpayers with a list of taxpayers who are liable for or
20 have paid a privilege license tax under Article 2 of this Chapter.
21 (5) Review by a tax official of another state or the United States to aid the
22 state or the United States in collecting a tax imposed by this State, the
23 other state, or the United States if the laws of the other state or the
24 United States allow the state or the United States to provide similar tax
25 information to a representative of this State.
26 (6) To receive, process, or deliver tax information on behalf of the
27 Department of Revenue.
28 (7) To furnish to the chair of a board of county commissioners information
29 on the county sales and use tax.
30 (8) To exchange information with the Division of Motor Vehicles of the
31 Department of Transportation when the information is needed to fulfill
32 a duty imposed on the Department of Revenue or the Division of
33 Motor Vehicles.
34 (9) To furnish to the Department of State Treasurer, upon request, the
35 name, address, and account and identification numbers of a taxpayer
36 who may be entitled to property held in the Escheat Fund.
37 (10) To furnish to the Employment Security Commission the name,
38 address, and account and identification numbers of a taxpayer when
39 the information is requested by the Commission in order to fulfill a
40 duty imposed under Article 2 of Chapter 96 of the General Statutes.
41 (11) To contract with a financial institution for the receipt of withheld
42 income tax payments under G.S. 105-163.6 or for the transmittal of
43 payments by electronic funds transfer.
44 (12) Review by the State Auditor to the extent authorized in G.S. 147-64.7.

- 1 (13) To furnish the Fiscal Research Division of the General Assembly upon
2 request a sample of tax returns or other tax information from which
3 taxpayers' names and identification numbers have been removed.
- 4 (14) To exchange information concerning a tax imposed by Subchapter V
5 of this Chapter with the Standards Division of the Department of
6 Agriculture when the information is needed to administer the Gasoline
7 and Oil Inspection Act, Article 3 of Chapter 119 of the General
8 Statutes.
- 9 (15) To exchange information concerning a tax imposed by Article 2A, 2B,
10 2C, or 2D of this Chapter with one of the following agencies when the
11 information is needed to fulfill a duty imposed on the agency:
- 12 a. The North Carolina Alcoholic Beverage Control Commission.
13 b. The Division of Alcohol Law Enforcement of the Department
14 of Crime Control and Public Safety.
- 15 c. The Bureau of Alcohol, Tobacco, and Firearms of the United
16 States Treasury Department.
- 17 (16) To furnish to the Department of Secretary of State the name, address,
18 and account and identification numbers of a corporation liable for
19 corporate income or franchise taxes to enable the Secretary of State to
20 notify the corporation of the annual report filing requirement or that its
21 articles of incorporation or its certificate of authority has been
22 suspended.
- 23 (17) To inform the Business License Information Office of the Department
24 of Secretary of State of the status of an application for a license for
25 which a tax is imposed and of any information needed to process the
26 application.
- 27 (18) To furnish to the Office of the State Controller the name, address, and
28 account and identification numbers of a taxpayer upon request to
29 enable the State Controller to verify statewide vendor files or track
30 debtors of the State.

31 (c) Punishment. – A person who violates this section is guilty of a misdemeanor
32 and may be fined not less than two hundred dollars (\$200.00) nor more than one
33 thousand dollars (\$1,000), imprisoned for up to two years, or both. If the person
34 committing the violation is an officer or employee, that person shall be dismissed from
35 office or employment, and may not hold any public office or employment in this State
36 for a period of five years thereafter."

37 Sec. 2. G.S. 75-28 reads as rewritten:

38 **"§ 75-28. Unauthorized disclosure of tax information; violation a misdemeanor.**

39 Except in accordance with proper judicial order, or as otherwise provided by law, it
40 shall be unlawful for any person, firm or corporation employed or engaged to prepare,
41 or who or which prepares or undertakes to prepare, for any other person or taxpayer any
42 tax form, report or return, to disclose, divulge or make known in any manner or use for
43 any purpose or in any manner other than in the preparation of such form, report or
44 return, without the express consent of the taxpayer or person for whom the form or

1 return is prepared, the name or address of the taxpayer or such other person, the amount
2 of income, income tax or other taxes, or any other information shown on or included in
3 such form, report or return, or any information which may be or may have been
4 furnished by the taxpayer or such other person to the preparer of such form, report or
5 return or to the person, firm or corporation so employed or engaged.

6 ~~Nothing in this section shall be construed to amend or modify the authority specified~~
7 ~~in G.S. 105-276(6) or any statute enacted in substitution therefor.~~

8 ~~Nothing in this section shall be construed to prohibit the inspection of such forms,~~
9 ~~reports or returns required under Subchapter I of Chapter 105 of the General Statutes in~~
10 ~~accordance with the authority provided in G.S. 105-259, or the examination of any~~
11 ~~person, books, papers, records or other data in accordance with the authority provided~~
12 ~~in G.S. 105-258.~~

13 Any person, firm or corporation, or any officer, agent, clerk, employee, or former
14 officer or employee, of any firm or corporation engaged or formerly engaged in the
15 preparation of tax forms, reports or returns for others, whether acting for himself or as
16 agent for such corporation, who or which shall violate the provisions of this section
17 shall be guilty of a misdemeanor and shall be fined or imprisoned in the discretion of
18 the court."

19 Sec. 3. Article 7 of Chapter 153A of the General Statutes is amended by
20 adding a new section to read:

21 "**§ 153A-148.1. Disclosure of certain information prohibited.**

22 (a) Disclosure Prohibited. – Notwithstanding Chapter 132 of the General
23 Statutes or any other law regarding access to public records, local tax records that
24 contain information about a taxpayer's income or receipts are not public records. A
25 current or former officer, employee, or agent of a county who in the course of service to
26 or employment by the county has access to information about the amount of a taxpayer's
27 income or receipts may not disclose the information to any other person unless the
28 disclosure is made for one of the following purposes:

29 (1) To comply with a court order or a law.

30 (2) Review by the Attorney General or a representative of the Attorney
31 General.

32 (3) To receive, process, or deliver tax information on behalf of the county,
33 as necessary to administer a tax.

34 (b) Penalty. – Violation of this section is a misdemeanor punishable by a fine not
35 to exceed one thousand dollars (\$1,000), imprisonment for up to two years, or both."

36 Sec. 4. Article 9 of Chapter 160A of the General Statutes is amended by
37 adding a new section to read:

38 "**§ 160A-208.1. Disclosure of certain information prohibited.**

39 (a) Disclosure Prohibited. – Notwithstanding Chapter 132 of the General Statutes
40 or any other law regarding access to public records, local tax records that contain
41 information about a taxpayer's income or receipts are not public records. A current or
42 former officer, employee, or agent of a city who in the course of service to or
43 employment by the city has access to information about the amount of a taxpayer's

1 income or receipts may not disclose the information to any other person unless the
2 disclosure is made for one of the following purposes:

3 (1) To comply with a court order or a law.

4 (2) Review by the Attorney General or a representative of the Attorney
5 General.

6 (3) To receive, process, or deliver tax information on behalf of the city, as
7 necessary to administer a tax.

8 (b) Penalty. – Violation of this section is a misdemeanor punishable by a fine not
9 to exceed one thousand dollars (\$1,000), imprisonment for up to two years, or both."

10 Sec. 5. G.S. 105-289(e) reads as rewritten:

11 "(e) The Department of Revenue may furnish the following information to a local
12 tax official:

13 (1) Information contained in a report to it or to any other State department;
14 and

15 (2) Information the Department has in its possession that may assist a
16 local tax official in securing complete tax listings, appraising or
17 assessing taxable property, collecting taxes, or presenting information
18 in administrative or judicial proceedings involving the listing,
19 appraisal, or assessment of property.

20 A local tax official may use information obtained from the Department under this
21 subsection only for the purposes stated in subdivision (2). A local tax official may not
22 divulge or make public this information except as required in administrative or judicial
23 proceedings under this Subchapter. A local tax official who makes improper use of or
24 discloses information obtained from the Department under this subsection is ~~punishable~~
25 ~~as provided in G.S. 105-259~~ guilty of a misdemeanor and is punishable by a fine not to
26 exceed one thousand dollars (\$1,000), imprisonment for up to two years, or both.

27 The Department may not furnish information to a local tax official pursuant to this
28 subsection unless it has obtained a written certification from the official stating that ~~he~~
29 the official is familiar with the provisions of ~~both this subsection and G.S. 105-259~~ and
30 that information obtained from the Department under this subsection will be used only
31 for the purposes stated in subdivision (2)."

32 Sec. 6. G.S. 105-449.57 reads as rewritten:

33 **"§ 105-449.57. Cooperative agreements between states.**

34 The Secretary may enter into cooperative agreements with other states for exchange
35 of information in administering the tax imposed by this Article. No agreement,
36 arrangement, declaration, or amendment to an agreement is effective until stated in
37 writing and approved by the Secretary.

38 An agreement may provide for determining the base state for motor carriers, records
39 requirements, audit procedures, exchange of information, persons eligible for tax
40 licensing, defining qualified motor vehicles, determining if bonding is required,
41 specifying reporting requirements and periods, including defining uniform penalty and
42 interest rates for late reporting, determining methods for collecting and forwarding of
43 gasoline or other motor fuel taxes and penalties to another jurisdiction, and such other
44 provisions as will facilitate the administration of the agreement.

1 ~~Notwithstanding the provisions of G.S. 105-259 to the contrary,~~ In accordance with G.S.
2 105-259, the Secretary may, as required by the terms of an agreement, forward to
3 officials of another state any information in the Department's possession relative to the
4 use of gasoline or other motor fuels by any motor carrier. The Secretary may disclose
5 to officials of another state the location of offices, motor vehicles, and other real and
6 personal property of motor carriers.

7 An agreement may provide for each state to audit the records of motor carriers based
8 in the state to determine if the gasoline or other motor fuel taxes due each state are
9 properly reported and paid. Each state shall forward the findings of the audits
10 performed on motor carriers based in the state to each state in which the carrier has
11 taxable use of gasoline or other motor fuels. For motor carriers not based in this State
12 who have taxable use of gasoline or other motor fuels in this State, the Secretary may
13 utilize the audit findings received from another state as the basis upon which to propose
14 assessments of gasoline or other motor fuel taxes against the carrier as though the audit
15 had been conducted by the Secretary. Penalties and interest shall be assessed at the
16 rates provided in the agreement.

17 No agreement entered into pursuant to this section may preclude the Department
18 from auditing the records of any motor carrier covered by this Chapter.

19 The provisions of Article 9 of this Chapter apply to any assessment or order made
20 under this section.

21 The Secretary may not enter into any agreement that would increase or decrease
22 taxes and fees imposed under Subchapter V of Chapter 105 of the General Statutes, and
23 any provision to the contrary is void."

24 Sec. 7. G.S. 120-19 reads as rewritten:

25 **"§ 120-19. State officers, etc., upon request, to furnish data and information to**
26 **legislative committees.**

27 ~~All—~~Except as provided in G.S. 105-259, all officers, agents, agencies and
28 departments of the State are required to give to any committee of the General Assembly,
29 upon request, all information and all data within their possession, or ascertainable from
30 their records. This requirement is mandatory and shall include requests made by any
31 individual member of the General Assembly or ~~any one~~ of its committees or ~~chairmen~~
32 ~~thereof.~~ or the chair of a committee. "

33 Sec. 8. G.S. 132-1.1 reads as rewritten:

34 **"§ 132-1.1. Confidential communications by legal counsel to public board or**
35 **agency; ~~not public records.~~ State tax information.**

36 (a) Confidential Communications. – Public records, as defined in G.S. 132-1,
37 shall not include written communications (and copies thereof) to any public board,
38 council, commission or other governmental body of the State or of any county,
39 municipality or other political subdivision or unit of government, made within the scope
40 of the attorney-client relationship by any attorney-at-law serving any such governmental
41 body, concerning any claim against or on behalf of the governmental body or the
42 governmental entity for which such body acts, or concerning the prosecution, defense,
43 settlement or litigation of any judicial action, or any administrative or other type of
44 proceeding to which the governmental body is a party or by which it is or may be

1 directly affected. Such written communication and copies thereof shall not be open to
2 public inspection, examination or copying unless specifically made public by the
3 governmental body receiving such written communications; provided, however, that
4 such written communications and copies thereof shall become public records as defined
5 in G.S. 132-1 three years from the date such communication was received by such
6 public board, council, commission or other governmental body.

7 (b) State Tax Information. – Tax information may not be disclosed except as
8 provided in G.S. 105-259, 153A-148.1, and 160A-208.1. As used in this subsection,
9 'tax information' has the same meaning as in G.S. 105-259."

10 Sec. 9. G.S. 132-3 reads as rewritten:

11 **"§ 132-3. Destruction of records regulated.**

12 (a) Prohibition. – No public official may destroy, sell, loan, or otherwise dispose
13 of any public record, except in accordance with G.S. 121-5, without the consent of the
14 Department of Cultural Resources. Whoever unlawfully removes a public record from
15 the office where it is usually kept, or alters, defaces, mutilates or destroys it shall be
16 guilty of a misdemeanor and upon conviction fined not less than ten dollars (\$10.00) nor
17 more than five hundred dollars (\$500.00).

18 (b) Revenue Records. – Notwithstanding subsection (a) and G.S. 121-5, when a
19 record of the Department of Revenue has been photographed, photocopied, or
20 microphotocopied, the original record may be destroyed upon the order of the Secretary
21 of Revenue. If a record of the Department of Revenue has not been photographed,
22 photocopied, or microphotocopied, the original record shall be preserved for at least
23 three years. After three years the original record may be destroyed upon the order of the
24 Secretary of Revenue."

25 Sec. 10. This act is effective upon ratification.