

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1995

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SENATE BILL 123

Short Title: Repeal Intangibles Tax/Mandates.

(Public)

Sponsors: Senators Kincaid, Cochrane, McDaniel, Webster; Forrester, Carrington, Ballantine, Foxx, East, Davis, Horton, Smith, Little, Simpson, Ledbetter, Clark, McKoy, Blackmon, Hartsell, and Carpenter.

Referred to: Finance.

February 2, 1995

A BILL TO BE ENTITLED

1 AN ACT TO REPEAL THE INTANGIBLES TAX, TO REIMBURSE LOCAL
2 GOVERNMENTS FOR THEIR RESULTING REVENUE LOSS, AND TO PHASE
3 IN STATE FUNDING OF MANDATED LOCAL PROGRAMS AS
4 REIMBURSEMENT IN FUTURE YEARS.

5 The General Assembly of North Carolina enacts:

6 Section 1. (a) Effective July 1, 1995, G.S. 105-213.1 is recodified as G.S. 105-
7 275.2, and G.S. 105-213 is repealed.

8 (b) Effective January 1, 1995, the remainder of Article 7 of Chapter 105 of the
9 General Statutes is repealed. The Secretary of Revenue shall retain from collections
10 under Division II of Article 4 of Chapter 105 of the General Statutes the cost for the
11 1995-96 fiscal year of collecting, administering, and refunding the taxes levied in Article
12 7 of Chapter 105 of the General Statutes.

13 Sec. 2. G.S. 105-275 is amended by adding the following new subdivisions:

14 "(31a) Accounts receivable.

15 (31b) Bonds, notes, and other evidences of debt.

16 (31c) Shares of stock, including shares and units of ownership of mutual
17 funds, investment trusts, and investment funds.
18

(31d) The beneficial or equitable interest in a trust, trust fund, or trust account, including custodial accounts, held by a foreign fiduciary."

Sec. 3. G.S. 105-213.1, as recodified as G.S. 105-275.2 by Section 1 of this act, reads as rewritten:

"§ 105-275.2. Reimbursement to counties and municipalities for partial repeal of tax on intangible personal property.

(a) Reimbursement for Repeal of Tax on Money on Deposit, Money on Hand, and Funds on Deposit with Insurance Companies. – On or before August 30 of each year, the Secretary of Revenue shall allocate for distribution to each county and the municipalities in the county the amount allocated to the county under this subsection in 1990.

~~Amounts allocated to a county under this subsection shall in turn be divided and distributed between the county and the municipalities located in the county in accordance with the method of allocating intangible tax revenue between a county and the municipalities located in the county provided in G.S. 105-213.~~

(a1) Reimbursement for Partial Repeal of Tax on Accounts Receivable. – On or before August 30 of each year, the Secretary of Revenue shall distribute to counties and municipalities an amount equal to forty percent (40%) of the tax collected on accounts receivable under former Article 7 of this Chapter (repealed) during the 1989-90 fiscal year. ~~The Secretary of Revenue shall first allocate the amount to be distributed in this subsection to the counties in the same manner as the amount allocated in G.S. 105-213. The amount allocated to each county shall in turn be divided and distributed between the county and the municipalities located in the county in accordance with the method of allocating intangible tax revenue between a county and the municipalities located in the county provided in G.S. 105-213.~~ The Secretary shall allocate this amount among the counties in proportion to the amount allocated to each county under former G.S. 105-213 (repealed) in August 1994.

(a2) Distribution Between County and Its Municipalities. – The amounts allocated to each county under this section shall be allocated between the county and the municipalities in the county in proportion to the total amount of ad valorem taxes levied by each during the fiscal year preceding the distribution. In dividing these amounts between each county and its municipalities, the Secretary of Revenue shall treat taxes levied by a merged school administrative unit described in G.S. 115C-513 in a part of the unit located in a county as taxes levied by the county in which that part is located.

After making these allocations, the Secretary shall certify to the State Controller and to the State Treasurer the amount to be distributed to each county and municipality in the State. The State Controller shall then issue a warrant on the State Treasurer to each county and municipality in the amount certified.

For the purpose of computing the distribution to any county and the municipalities located in the county for any year with respect to which the property valuation of a public service company is the subject of an appeal and the Department of Revenue is restrained by law from certifying the valuation to the county and the municipalities in the county, the Department shall use the last property valuation of the public service company that has been certified.

1 The chair of each board of county commissioners and the mayor of each municipality
2 shall report to the Secretary of Revenue information requested by the Secretary to enable
3 the Secretary to allocate the amount distributed by this section. If a county or
4 municipality fails to make a requested report within the time allowed, the Secretary may
5 disregard the county or municipality in allocating the amount distributed by this section.

6 (b) Restrictions on Use. —~~Amounts distributed to a county or a municipality~~
7 ~~under this section are subject to the same restrictions as amounts distributed under G.S.~~
8 ~~105-213.~~ The amount distributed to each county and municipality shall be used by the
9 county or municipality in proportion to property tax levies made by it for the various
10 funds and activities of the county or municipality, unless the county or municipality has
11 pledged the amount to be distributed to it under this section in payment of a loan
12 agreement with the North Carolina Solid Waste Management Capital Projects Financing
13 Agency. A county or municipality that has pledged amounts distributed under this
14 section in payment of a loan agreement with the Agency may apply the amount the loan
15 agreement requires.

16 (e) Municipality Defined. —As used in this section, the term 'municipality' has the
17 same meaning as in G.S. 105-213.

18 (d) Source. – Funds distributed under this section shall be drawn from collections
19 received under Division II of Article 4 of this Chapter."

20 Sec. 4. Article 12 of Chapter 105 of the General Statutes is amended by
21 adding a new section to read:

22 **"§ 105-275.3. Reimbursement to counties and municipalities for repeal of tax on**
23 **accounts receivable, bonds, stocks, and foreign trust interests.**

24 On or before August 30, 1995, the Secretary shall distribute the sum of ninety-eight
25 million one hundred ninety-two thousand dollars (\$98,192,000) to local governments for
26 the 1995-96 fiscal year to reimburse them for their revenue losses due to the repeal of the
27 remainder of the intangibles tax. Each year thereafter, on or before August 30, the
28 Secretary shall distribute to local governments one hundred three percent (103%) of the
29 amount distributed under this section the previous year. The Secretary shall allocate
30 these funds among the counties in proportion to the amount allocated to each county
31 under former G.S. 105-213 (repealed) in August 1994. The amount allocated to each
32 county shall be allocated and distributed between the county and the municipalities in the
33 county in accordance with G.S. 105-275.2(a3). Funds distributed under this section shall
34 be drawn from collections received under Division II of Article 4 of this Chapter. It is
35 the intent of the General Assembly that this reimbursement shall be phased out over four
36 years as State funding of selected mandated local programs is phased in to replace the
37 reimbursement."

38 Sec. 5. (a) The Legislative Research Commission is authorized to study
39 existing State mandates to local governments that have required local government
40 funding to implement and for which the State can assume financial responsibility,
41 including, but not limited to:

42 (1) Due process mandates that require notice of proposed local government
43 actions directed by the State;

- 1 (2) Entitlement mandates that provide that certain classes of citizens are
2 entitled to receive a specific benefit;
- 3 (3) Personnel mandates that relate to fringe benefits, retirement benefits,
4 and other terms or conditions of local government employment;
- 5 (4) Record-keeping mandates that relate to accounting standards, financial
6 statements, or other local governmental operations;
- 7 (5) Regulatory mandates that require that local governments comply with
8 State environmental, health, and other governmental regulations;
- 9 (6) Service level mandates that require that local services meet certain
10 minimum standards; and
- 11 (7) Tax base mandates that grant exemptions from the local tax base.

12 (b) The Commission shall review existing State mandates to local governments,
13 identify those that have required local government funding to implement, and determine
14 what local revenue sources and what amounts have been used to fund these mandates.
15 The Commission shall then determine which mandates should be financed by the State
16 and which mandates may properly be funded by the local governments. In reviewing
17 State mandates to local government, the Commission's inquiry shall relate to the
18 following:

- 19 (1) Whether the mandate prescribes an activity that the local government
20 ought to be doing whether mandated to do so or not;
- 21 (2) If the activity is a reasonable one for local government, whether the
22 prescribed level of the activity is excessive and whether differing
23 economies of scale affect the reasonableness of the activity;
- 24 (3) Whether the State should pay for some or all of the cost of the activity;
- 25 (4) Whether the benefits of a State mandate accrue only to local citizens or
26 to residents of a broader area; and
- 27 (5) Whether the benefits of a State mandate exceed the costs of complying
28 with it or impose an unreasonable burden on some local governments.

29 (c) The Commission shall recommend transition schedules and implementing
30 legislation for shifting the costs of State mandates, as appropriate, from the local
31 governments to the State. The Commission shall establish a plan for phasing in State
32 financial responsibility for mandates with a corresponding phaseout of the State's
33 distributions to local governments to reimburse them for the repeal of the intangibles tax,
34 so that State funding of these mandates will substitute for the State distribution by the
35 beginning of the 1999-2000 fiscal year. When the recommendations of the Commission,
36 if enacted, would result in an increase or decrease in State revenues or expenditures, the
37 report of the Commission shall include an estimate of the increase or decrease.

38 (d) The Commission may call upon the Governor, the Council of State, the North
39 Carolina Association of County Commissioners, and the North Carolina League of
40 Municipalities to cooperate with it in the study of State mandates.

41 (e) The Commission shall make an interim report of its recommendations to
42 the 1996 Regular Session of the 1995 General Assembly and a final report of its
43 recommendations to the 1997 General Assembly.

1 Sec. 6. G.S. 105-501 reads as rewritten:

2 **"§ 105-501. Distribution of additional taxes.**

3 The Secretary shall, on a quarterly basis, allocate the net proceeds of the additional
4 one-half percent (1/2%) sales and use taxes levied under this Article to the taxing
5 counties on a per capita basis according to the most recent annual population estimates
6 certified to the Secretary by the State Budget Officer. The Secretary shall then adjust the
7 amount allocated to each county as provided in G.S. 105-486(b). The amount allocated
8 to each taxing county shall then be divided among the county and the municipalities
9 located in the county in accordance with the method by which the one percent (1%) sales
10 and use taxes levied in that county pursuant to Article 39 of this Chapter or Chapter 1096
11 of the 1967 Session Laws are distributed.

12 If any taxes levied under this Article by a county have not been collected in that
13 county for a full quarter because of the levy or repeal of the taxes, the Secretary shall
14 distribute a pro rata share to that county for that quarter based on the number of months
15 the taxes were collected in that county during the quarter.

16 In determining the net proceeds of the tax to be distributed, the Secretary shall deduct
17 from the collections to be allocated an amount equal to one-fourth of the costs during the
18 preceding fiscal year of:

19 (1) The Department of Revenue in performing the duties imposed by
20 Article 15 of this Chapter.

21 (2) The Property Tax Commission.

22 (3) The Institute of Government in operating a training program in property
23 tax appraisal and assessment.

24 (4) The personnel and operations provided by the Department of State
25 Treasurer for the Local Government Commission."

26 Sec. 7. G.S. 105-288(d) reads as rewritten:

27 "(d) Expenses. – The members of the Property Tax Commission shall receive travel
28 and subsistence expenses in accordance with G.S. 138-5 and a salary of two hundred
29 dollars (\$200.00) a day when hearing cases. The Secretary of Revenue shall supply all
30 the clerical and other services required by the Commission. All expenses of the
31 Commission and the Department of Revenue in performing the duties enumerated in this
32 Article shall be paid ~~from funds appropriated out of revenue derived from the tax on intangible~~
33 ~~personal property as provided by G.S. 105-213.~~ as provided in G.S. 105-501."

34 Sec. 8. G.S. 105-276 reads as rewritten:

35 **"§ 105-276. Taxation of intangible personal property.**

36 Intangible personal property that is not excluded from taxation under G.S. 405-
37 ~~275(31) or classified under Schedule H, G.S. 105-198 through G.S. 105-217, 105-275~~
38 is subject to this Subchapter. ~~The classification of such property for taxation under~~
39 ~~Schedule H shall not exclude the property from the system property valuation of public~~
40 ~~service companies under Article 23 provided proper adjustments are made to prevent~~
41 ~~duplicate taxation."~~

42 Sec. 9. G.S. 105-282.1(a)(2) reads as rewritten:

1 "(2) Owners of the special classes of property excluded from taxation under
2 G.S. 105-275(5), (15), (16), (26), (31), ~~(31a), (31b), (31c), (31d),~~ (32a),
3 (33), (34), or (40), or exempted under G.S. 105-278.2 are not required to
4 file applications for the exclusion or exemption of that property."

5 Sec. 10. G.S. 105-305 reads as rewritten:

6 "**§ 105-305. Place for listing intangible personal property.**

7 (a) Listing Instructions. – This section ~~shall apply~~ applies to all taxable intangible
8 personal property that has a tax situs in this State, ~~that State and~~ is not required by this
9 Subchapter to be appraised originally by the Department of Revenue, ~~and that is not subject~~
10 ~~to taxation under the provisions of Schedule H, G.S. 105-198 through 105-217. Revenue.~~ The
11 place in this State at which ~~such~~ this property is taxable shall be determined ~~according to~~
12 ~~the rules prescribed in subsections (b) through (e), below.~~ as provided in this section. The
13 person whose duty it is to list property shall list it in the county in which the place of
14 taxation is located, indicating on the abstract the information required by G.S. 105-
15 309(d). If the place of taxation lies within a city or town that requires separate listing
16 under G.S. 105-326(a), the person whose duty it is to list shall also list the property for
17 taxation in the city or town.

18 (b) General Rule. – Except as otherwise provided in subsections (c) through ~~(e),~~
19 ~~below,~~ (e) of this section, intangible personal property shall be taxable at the residence of
20 the owner. For the purposes of this section:

21 (1) The residence of a person who has two or more places in this State at
22 which ~~he~~ the person occasionally dwells shall be the place ~~at which he~~
23 the person dwelt for the longest period of time during the calendar year
24 immediately preceding the date as of which property is to be listed for
25 taxation.

26 (2) The residence of a domestic or foreign taxpayer other than an individual
27 person shall be the place at which its principal North Carolina office is
28 located.

29 (c) Intangible personal property representing an interest or interests in real
30 property that is situated in this State shall be taxable in the place in which the represented
31 real property is located.

32 (d) The intangible personal property of a decedent whose estate is in the process of
33 administration or has not been distributed shall be taxable in the place at which it would
34 be taxable if the decedent were still alive and still residing in the place at which ~~he~~ the
35 decedent resided at the time of ~~his~~ death.

36 (e) Intangible personal property within the jurisdiction of the State held by a
37 resident or nonresident trustee, guardian, or other fiduciary having legal title to the
38 property shall be taxable in accordance with the following rules:

39 (1) If ~~any~~ a beneficiary is a resident of the State, an amount representing ~~his~~
40 the beneficiary's portion of the property shall be taxable in the place at
41 which it would be taxable if ~~he~~ the beneficiary were the owner of ~~his~~
42 that portion.

1 (2) If ~~any~~a beneficiary is a nonresident of the State, an amount representing
2 ~~his~~the beneficiary's portion of the property shall be taxable in the place
3 at which it would be taxable if the fiduciary were the beneficial owner
4 of the property."

5 Sec. 11. G.S. 108A-93 reads as rewritten:

6 "**§ 108A-93. Withholding of State moneys from counties failing to pay public**
7 **assistance costs.**

8 The Director of the Budget ~~is authorized to~~may withhold from any county that does
9 not pay its full share of public assistance costs to the State and has not ~~arranged for~~
10 ~~payment pursuant to G.S. 108-54.1 or~~obtained a loan for repayment under G.S. 108A-89,
11 any State moneys appropriated from the General Fund for public assistance and related
12 administrative costs, or ~~to~~may direct the Secretary of Revenue and State ~~Treasurer~~
13 Controller to withhold any tax owed to a county under ~~Article 7 of Chapter 105 of the~~
14 ~~General Statutes,~~ G.S. 105-113.82, ~~Article 39 of Chapter 105 of the General Statutes~~
15 Subchapter VIII of Chapter 105 of the General Statutes, or Chapter 1096 of the Session
16 Laws of 1967. The Director of the Budget shall notify the ~~chairman~~chair of the board of
17 county commissioners of the proposed action prior to the withholding of funds."

18 Sec. 12. G.S. 142-12.1(c) reads as rewritten:

19 "(c) The interest on any ~~such~~of these bonds or obligations shall maintain its
20 existing exemption from State income taxation, or other taxation, if any, ~~including, but not~~
21 ~~limited to, the tax on intangible personal property now imposed by the State,~~ notwithstanding
22 that ~~such~~the interest may be or become subject to federal income taxation as a result of
23 legislative action by the federal government."

24 Sec. 13. Section 1(a) of this act becomes effective July 1, 1995. Section 1(b)
25 of this act is effective for taxable years beginning on or after January 1, 1995. Section 4
26 of this act becomes effective July 1, 1995. Sections 3, 5, 6, 7, and 11 of this act become
27 effective July 1, 1995, and apply to distributions made on or after that date. The
28 remainder of this act is effective for taxable years beginning on or after January 1, 1995.

29 This act does not affect the rights or liabilities of the State, a taxpayer, or
30 another person arising under a statute amended or repealed by this act before its
31 amendment or repeal; nor does it affect the right to any refund or credit of a tax that
32 would otherwise have been available under the amended or repealed statute before its
33 amendment or repeal.