

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2007

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SENATE DRS35566-ME-19 (5/12)

Short Title: Business Tax Protection Act.

(Public)

Sponsors: Senator Hoyle.

Referred to:

A BILL TO BE ENTITLED

AN ACT TO PROTECT SMALL BUSINESSES FROM CERTAIN SALES AND USE TAX ASSESSMENTS, TO HELP SMALL BUSINESSES UNDERSTAND THE COMPLEXITIES OF THE SALES AND USE TAX LAWS BY REQUIRING CONSULTATION FROM THE DEPARTMENT OF REVENUE, AND TO ALLOW ALL TAXPAYERS TO RELY ON VERBAL ADVICE FROM THE DEPARTMENT OF REVENUE.

The General Assembly of North Carolina enacts:

SECTION 1. Article 9 of Chapter 105 of the General Statutes is amended by adding a new section to read:

"§ 105-244.2. Reduction of sales tax assessments against small businesses that attempt to comply with the law.

(a) Reduction. – The Secretary shall waive penalties otherwise due under G.S. 105-236 and shall reduce an assessment against a business for State and local sales and use taxes when the business meets all of the following requirements:

- (1) The business remitted to the Secretary all the sales and use taxes it collected during the relevant period.
- (2) The business had not been instructed in a prior audit to collect sales and use taxes in the circumstance that is the basis of the assessment.
- (3) The business attempted to comply with the sales and use tax law before receiving the assessment by seeking and following advice from an attorney, an accountant, or the Department on its sales and use tax obligations.
- (4) The annual gross receipts of the business, combined with the annual gross receipts of all related persons, as defined in G.S. 105-163.010, do not exceed one million eight hundred thousand dollars (\$1,800,000).

(b) Amount. – The amount by which a sales and use tax assessment against a small business shall be reduced under this section is a percentage of the assessment. The percentage is determined by the average monthly gross receipts of the business for the period of the audit that led to the assessment. The following table sets out the applicable percentage reductions of an assessment.

<u>Average Monthly Gross- Receipts of Business Over</u>	<u>Average Monthly Gross Receipts Up To</u>	<u>Percentage Reduction</u>
<u>-0-</u>	<u>\$50,000</u>	<u>98%</u>
<u>\$50,000</u>	<u>\$100,000</u>	<u>95%</u>
<u>\$100,000</u>	<u>\$150,000</u>	<u>90% "</u>

SECTION 2. Part 6 of Article 5 of Chapter 105 of the General Statutes is amended by adding a new section to read:

"§ 105-164.32A. Consultation with new small retailer to promote correct application of law.

The Secretary shall send a letter to each retailer that is a quarterly or monthly filer under G.S. 105-164.16 within 12 months after a certificate of registration for the retailer issues. In the letter, the Secretary shall offer the retailer an opportunity to meet with an employee of the Department to review the retailer's obligations for collecting sales and use taxes in the context of the retailer's specific business. The letter shall provide a phone number the retailer may call to arrange the meeting. At the option of the retailer, the meeting may be conducted by telephone.

If, upon meeting with a retailer, the Department finds that the retailer is incorrectly applying the sales and use tax law and is not remitting tax as required, the Department shall give the retailer a written explanation of the law. A retailer shall not be liable for the amount that was not remitted if (i) the retailer amends their sales and use tax collection to comply with the law after receiving a written explanation and (ii) G.S. 105-244.2 would require a reduction in the amount assessed."

SECTION 3. G.S. 105-264 reads as rewritten:

"§ 105-264. Effect of Secretary's interpretation of revenue laws. laws; written and verbal advice.

(a) Interpretation. – It is the duty of the Secretary to interpret all laws administered by the Secretary. The Secretary's interpretation of these laws shall be consistent with the applicable ~~rules.~~

~~An~~ rules. An interpretation by the Secretary is prima facie correct. When the Secretary interprets a law by adopting a rule or publishing a bulletin or directive on the law, the interpretation is a protection to the officers and taxpayers affected by the interpretation, and taxpayers are entitled to rely upon the interpretation. If the Secretary changes an interpretation, a taxpayer who relied on it before it was changed is not liable for any penalty or additional assessment on any tax that accrued before the interpretation was changed and was not paid by reason of reliance upon the interpretation.

(b) Written Advice. – If a taxpayer requests in writing specific advice from the Department and receives in response erroneous written advice, the taxpayer is not liable for any penalty or additional assessment attributable to the erroneous advice furnished

1 by the Department to the extent the advice was reasonably relied upon by the taxpayer
2 and the penalty or additional assessment did not result from the taxpayer's failure to
3 provide adequate or accurate information.

4 (c) Verbal Advice. – If a taxpayer verbally requests specific advice from the
5 Department and receives in response erroneous verbal advice, the taxpayer is not liable
6 for any penalty or additional assessment attributable to the erroneous advice furnished
7 by the Department to the extent the advice was reasonably relied upon by the taxpayer
8 and the penalty or additional assessment did not result from the taxpayer's failure to
9 provide adequate or accurate information. In order to receive the protection afforded by
10 this subsection, a taxpayer must sign an affidavit stating, with as much specificity as
11 practicable, the advice requested by the taxpayer and the related fact pattern, the content
12 of advice received by the taxpayer, the date the advice was received, and the identity of
13 the person furnishing the advice.

14 (d) Revised Interpretations. – This section does not prevent the Secretary from
15 changing an interpretation and it does not prevent a change in an interpretation from
16 applying on and after the effective date of the change."

17 **SECTION 4.** Section 1 of this act is effective when it becomes law and
18 applies retroactively to sales and use tax assessments made on or after July 1, 2005. An
19 eligible business that paid an assessment made on or after July 1, 2005, in an amount
20 greater than the amount required under G.S. 105-244.2, as enacted by this act, may
21 obtain a refund of the difference between the amount paid and the amount required
22 under this act by filing a claim for refund with the Secretary of Revenue in accordance
23 with G.S. 105-241.7. The claim for refund for an assessment paid before the effective
24 date of this act must be filed within one year after the effective date of the act. Section 2
25 of this act becomes effective October 1, 2008, and applies to retailers that are issued a
26 certificate of registration under G.S. 105-164.29 on or after that date. Section 3 of this
27 act becomes effective July 1, 2005, and applies to assessments issued on or after that
28 date. The remainder of this act is effective when it becomes law.