

**GENERAL ASSEMBLY OF NORTH CAROLINA**  
**SESSION 2007**

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**SENATE BILL 1952**  
**Finance Committee Substitute Adopted 6/12/08**

Short Title: Small Business Tax Protection Act.

(Public)

Sponsors:

Referred to:

May 27, 2008

1 A BILL TO BE ENTITLED  
2 AN ACT TO PROTECT SMALL BUSINESSES FROM CERTAIN SALES AND USE  
3 TAX ASSESSMENTS, TO REQUIRE THE DEPARTMENT OF REVENUE TO  
4 DOCUMENT CERTAIN VERBAL ADVICE GIVEN TO TAXPAYERS, TO  
5 ALLOW TAXPAYERS TO RELY ON DOCUMENTED VERBAL ADVICE  
6 FROM THE DEPARTMENT OF REVENUE, AND TO GIVE THE SECRETARY  
7 OF REVENUE MORE DISCRETION IN RESOLVING SALES AND USE TAX  
8 DISPUTES CONCERNING SMALL BUSINESSES.

9 The General Assembly of North Carolina enacts:

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

12 **"§ 105-244.2. Reduction of sales tax assessments against small businesses that**  
13 **attempt to comply with the law.**

14 (a) Findings. – The General Assembly finds that many aspects of the sales and  
15 use tax laws are complex, that the application of the tax in these complex areas turns on  
16 slight differences in facts, and that taxpayers who make a good faith effort to comply  
17 with these laws may nevertheless fail to apply the law correctly. The General Assembly  
18 further finds that these complex areas of the sales and use tax laws are particularly  
19 challenging for small businesses to apply correctly, that assessments against these  
20 businesses for this inadvertent noncompliance often threaten their viability, and that the  
21 State's tax laws are not intended to place the viability of small businesses in jeopardy.

22 (b) Reduction. – The Secretary must reduce an assessment against a small  
23 business for State and local sales and use taxes and waive any penalties imposed as part  
24 of the assessment when the assessment is made as the result of an audit of the small  
25 business by the Department and all of the following apply:

26 (1) The gross receipts of the business for the calendar year preceding the  
27 year in which the audit period begins, combined with the 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).

(2) The business remitted to the Department all the sales and use taxes it collected during the audit period.

(3) Either of the following applies:

a. The business attempted to comply with the sales and use tax laws by obtaining and following advice from the Department before the business received notice of the audit from the Department.

b. The business made a good faith effort to comply with the sales and use tax laws and the assessment is based on the incorrect application of one of the following complex areas of these laws:

1. The rate of tax that applies to food.

2. The distinction between a retailer and a performance contractor.

3. The distinction between a service that is exempt from tax and a service that is provided in conjunction with the delivery of tangible personal property and is part of the sales price of the tangible personal property.

4. The determination of whether a person is a manufacturer.

(4) The business had not been told by the Department in a prior audit to collect sales and use taxes in the circumstance that is the basis of the assessment, as reflected in the written audit comments of the prior audit.

(c) Amount. – The amount by which a sales and use tax assessment against a small business must 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 calendar year for which annual gross receipts are determined under subdivision (b)(1) of this section. A reduction of an assessment under this section and the waiver of penalties imposed as part of the assessment apply only to the amount of an assessment attributable to reliance on advice from the Department or the incorrect application of one of the complex areas of the law listed in subdivision (b)(3) of this section.

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

**"§ 105-258.2. Taxpayer conversations.**

(a) Taxpayers. – The Secretary must document advice given to a taxpayer in a conversation with that taxpayer when the taxpayer gives the Secretary the taxpayer's identifying information and asks the Secretary about the application of tax to the

1 taxpayer in specific circumstances. The Secretary must make an entry in the account  
2 record of the taxpayer setting out the date of the conversation, the question asked, and  
3 the advice given. This requirement applies regardless of whether the conversation is  
4 conducted by phone or in person.

5 (b) Sales Tax Inquiries. – The Secretary must document advice given in a  
6 conversation with a person who is not registered as a retailer or a wholesale merchant  
7 under Article 5 of this Chapter when the person gives the Secretary the person's name  
8 and address, describes a business in which the person is engaged, and asks if the person  
9 is required to be registered under Article 5. The Secretary must keep a record of the  
10 person's inquiry that sets out the date of the conversation, the person making the  
11 inquiry, the business described in the conversation, and the advice given. This  
12 requirement applies regardless of whether the conversation is conducted by phone or in  
13 person."

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

15 "**§ 105-264. Effect of Secretary's interpretation of revenue laws.** laws; written and  
16 verbal advice.

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

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

28 (b) Written Advice. – If a taxpayer requests in writing specific advice from the  
29 Department and receives in response erroneous written advice, the taxpayer is not liable  
30 for any penalty or additional assessment attributable to the erroneous advice furnished  
31 by the Department to the extent the advice was reasonably relied upon by the taxpayer  
32 and the penalty or additional assessment did not result from the taxpayer's failure to  
33 provide adequate or accurate information.

34 (c) Documented Verbal Advice. – If a taxpayer verbally requests specific advice  
35 from the Department and receives in response erroneous verbal advice, the taxpayer is  
36 not liable for any penalty or additional assessment attributable to the erroneous advice  
37 furnished by the Department to the extent the advice was reasonably relied upon by the  
38 taxpayer and the penalty or additional assessment did not result from the taxpayer's  
39 failure to provide adequate or accurate information. In order to receive the protection  
40 afforded by this subsection, the advice on which the taxpayer relied must be  
41 documented in the records of the Department, as required by G.S. 105-258.2.

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

1           **SECTION 4.** G.S. 105-237.1 reads as rewritten:

2   **"§ 105-237.1. Compromise of liability.**

3       (a) Authority. – ~~The Secretary of Revenue, with the approval of the Attorney~~  
4 ~~General, is authorized to compromise the amount of liability of any taxpayer for taxes~~  
5 ~~due under Subchapter I, V, or VIII of this Chapter or under Article 3 of Chapter 119 of~~  
6 ~~the General Statutes and to accept in full settlement of the liability a lesser amount than~~  
7 ~~that asserted to be due when in the opinion of the Secretary and the Attorney General~~  
8 ~~the compromise settlement is in the best interest of the State. When made other than in~~  
9 ~~the course of litigation in the courts of the State on an appeal from an administrative~~  
10 ~~determination or in a civil action brought to recover from the Secretary, the basis for the~~  
11 ~~compromise must also conform to the conditions set out in this section. The~~  
12 ~~compromise settlement may be made only after a final administrative or judicial~~  
13 ~~determination of the liability of the taxpayer.~~

14       ~~A compromise settlement may be made only if one or more of the following findings~~  
15 ~~is made:~~a taxpayer's liability for a tax that is collectible under G.S. 105-241.22 when the  
16 Secretary makes one or more of the following findings:

- 17       (1) There is a reasonable doubt as to the amount of the liability of the  
18 taxpayer under the law and the facts.
- 19       (2) The taxpayer is insolvent and the Secretary probably could not  
20 otherwise collect an amount equal to or in excess of the amount  
21 offered in compromise. A taxpayer is considered insolvent only in one  
22 of the following circumstances:
- 23           a. It is plain and indisputable that the taxpayer is clearly insolvent  
24 and will remain so in the reasonable future.
- 25           b. The taxpayer has been determined to be insolvent in a judicial  
26 proceeding.
- 27       (3) Collection of a greater amount than that offered in compromise is  
28 improbable, and the funds or a substantial portion of the funds offered  
29 in the settlement come from sources from which the Secretary could  
30 not otherwise collect.
- 31       (4) A federal tax assessment arising out of the same facts has been  
32 compromised with the federal government on the same or a similar  
33 basis as that proposed to the State and the Secretary could probably not  
34 collect an amount equal to or in excess of that offered in compromise.
- 35       (5) Collection of a greater amount than that offered in compromise would  
36 produce an unjust result under the circumstances.
- 37       (6) If the liability is under judicial review after a final administrative  
38 decision, acceptance of the offer is in the best interest of the State.

39       ~~For the purposes of this section a taxpayer may be considered insolvent only if (i)~~  
40 ~~there is an established status of insolvency by either a judicial declaration of a status~~  
41 ~~necessarily or ordinarily involving insolvency or by a legal proceeding in which the~~  
42 ~~insolvency of the taxpayer would ordinarily be determined or made evident or (ii) it is~~  
43 ~~plain and indisputable that the taxpayer is clearly insolvent and will remain so in the~~  
44 ~~reasonable future. Whenever a compromise is made by the Secretary pursuant to this~~

1 ~~section and the unpaid amount of the tax assessed is one hundred dollars (\$100.00) or~~  
2 ~~more, the Secretary shall place on file in the office of the Secretary a written opinion,~~  
3 ~~signed by the Secretary and the Attorney General, setting forth the amount of tax or~~  
4 ~~additional tax assessed, the amount actually paid in accordance with the terms of the~~  
5 ~~compromise, and a summary of the facts and reasons upon which acceptance of the~~  
6 ~~compromise is based.~~

7 (b) Written Statement. ~~Whenever an assessment of taxes or additional taxes is~~  
8 ~~based upon an action of the federal government in making an assessment of taxes and~~  
9 ~~the federal assessment is subsequently settled, compromised or adjusted, the Secretary~~  
10 ~~may, in his discretion, settle, compromise or adjust the State's tax assessment upon the~~  
11 ~~same basis as the federal settlement, compromise or adjustment. When the Secretary~~  
12 ~~compromises a tax liability under this section and the amount of the liability is at least~~  
13 ~~one thousand dollars (\$1,000), the Secretary must make a written statement that sets out~~  
14 ~~the amount of the liability, the amount accepted under the compromise, a summary of~~  
15 ~~the facts concerning the liability, and the findings on which the compromise is based.~~  
16 ~~The Secretary must sign the statement and keep a record of the statement. If the~~  
17 ~~compromise settles a dispute that is in litigation, the Secretary must obtain the approval~~  
18 ~~of the Attorney General before accepting the compromise and the Attorney General~~  
19 ~~must sign the statement describing the compromise."~~

20 **SECTION 5.** Section 1 of this act is effective when it becomes law and  
21 applies retroactively to sales and use tax assessments made on or after May 1, 2005. An  
22 eligible business that paid an assessment made on or after May 1, 2005, in an amount  
23 greater than the amount required under G.S. 105-244.2, as enacted by this act, may  
24 obtain a refund of the difference between the amount paid and the amount required  
25 under this act by filing a claim for refund with the Secretary of Revenue in accordance  
26 with G.S. 105-241.7. The claim for refund for an assessment paid before the effective  
27 date of this act must be filed within one year after the effective date of the act. Sections  
28 2 and 3 of this act become effective January 1, 2009. The remainder of this act is  
29 effective when it becomes law.