

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

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HOUSE BILL 1013

Short Title: Modify Food Tax/Merchant's Discount.

(Public)

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Sponsors: Representatives Cansler; Baddour, Buchanan, Davis, Hall, Hill, Morris, Nichols, Rayfield, Sexton, Sherrill, Shubert, and Starnes.

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Referred to: Finance.

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April 21, 1997

A BILL TO BE ENTITLED

1  
2 AN ACT TO REDUCE THE SALES TAX ON FOOD, REVISE THE DEFINITION OF  
3 FOOD FOR SALES TAX PURPOSES, AND ALLOW A PERCENTAGE  
4 DISCOUNT TO MERCHANTS FOR COLLECTING STATE SALES AND USE  
5 TAXES.

6 The General Assembly of North Carolina enacts:

7 Section 1. G.S. 105-164.4(5) reads as rewritten:

8 "(5) The rate of three percent (3%) applies to the sales price of food that  
9 meets the following conditions:

10 a. It is sold at a retail food business qualified under subsection (d)  
11 of this section.

12 b. It is not otherwise exempt pursuant to G.S. 105-164.13 but would  
13 be exempt pursuant to G.S. 105-164.13 if it were purchased with  
14 coupons issued under the Food Stamp Program, 7 U.S.C. § 51."

15 Section 2. G.S. 105-164.4 is amended by adding a new subsection to read:

16 "(d) For the purpose of this Article, a retailer is a qualified retail food business if  
17 either (i) it sells all of the staple food items listed in this subsection or (ii) more than  
18 eighty percent (80%) of its gross sales are sales of one or more staple food items listed in  
19 this subsection. The following are staple food items for the purpose of this subsection:

- 1           (1)   Raw meat.
- 2           (2)   Raw poultry.
- 3           (3)   Raw fish.
- 4           (4)   Bread.
- 5           (5)   Breadstuffs.
- 6           (6)   Cereal.
- 7           (7)   Vegetables.
- 8           (8)   Fruit.
- 9           (9)   Fruit or vegetable juices.
- 10          (10) Dairy products.

11           A retailer's sales for the most recent 12-month period shall be considered in  
 12 determining whether the retailer is a qualified retail food business. If the retailer has been  
 13 in business less than 12 months, the period the retailer has been in business shall be  
 14 considered. If the retailer has been in business for less than one reporting period, the  
 15 determination shall be based on the retailer's expected sales for the first reporting period."

16           Section 3. G.S. 105-164.4(5), as amended by Section 1 of this act, reads as  
 17 rewritten:

- 18           "(5)   The rate of ~~three percent (3%)~~ two and one-half percent (2.5%) applies to
- 19           the sales price of food that meets the following conditions:
- 20           a.       It is sold at a retail food business qualified under subsection (d)
- 21           of this section.
- 22           b.       It is not otherwise exempt pursuant to G.S. 105-164.13 but would
- 23           be exempt pursuant to G.S. 105-164.13 if it were purchased with
- 24           coupons issued under the Food Stamp Program, 7 U.S.C. § 51."

25           Section 4. G.S. 105-164.21 is reenacted and rewritten to read:

26           "**§ 105-164.21. Merchant's discount.**

27           (a)   Amount. – Except as provided in subsection (b), a retailer who pays the retail  
 28 sales or use tax imposed by this Article may deduct from the amount of the tax paid the  
 29 applicable percentage discount provided in the table below, up to the following maximum  
 30 discounts:

- 31           (1)   The applicable per-location cap per month for each place of business at  
 32           a separate location.
- 33           (2)   For taxpayers who are not required to report on a semimonthly basis, the  
 34           applicable retailer group cap per month for each retailer group.
- 35           (3)   For taxpayers who are required to report on a semimonthly basis, one-  
 36           half of the applicable retailer group cap per semimonthly period for each  
 37           retailer group.

38 <u>Returns Filed</u>	39 <u>Percentage</u> <u>Discount</u>	40 <u>Per-Location</u> <u>Cap</u>	41 <u>Retailer Group</u> <u>Cap</u>
40 <u>In 1998</u>	40 <u>1%</u>	40 <u>\$30</u>	40 <u>\$ 500</u>
41 <u>In 1999</u>	41 <u>2%</u>	41 <u>\$40</u>	41 <u>\$ 750</u>
42 <u>Thereafter</u>	42 <u>3%</u>	42 <u>\$50</u>	42 <u>\$1,000</u>

1       The discount for each location may be deducted only from the tax paid with regard to  
2 that location. For the purposes of this section, a retailer group includes all retail  
3 establishments that have one of the following relationships with one another: (i) one  
4 corporation owns, directly or indirectly, at least eighty percent (80%) of the voting stock  
5 of the others; (ii) at least eighty percent (80%) of the voting stock of the corporation is  
6 owned, directly or indirectly, by the same interests; or (iii) in the case of establishments  
7 that are not incorporated, the establishments are under the same general management,  
8 supervision, or ownership.

9       (b) Restrictions. – The Secretary may deny a retailer the benefit of this section for  
10 failure to pay the full tax when due as well as in cases of fraud, evasion, or failure to keep  
11 accurate and clear records as required by this Article. In order to receive the discount  
12 provided in this section, a retailer must deduct the discount when it remits the tax to the  
13 Department of Revenue. A utility may not deduct the discount provided in this section  
14 on sales of electricity, piped natural gas, or telecommunications services."

15       Section 5. G.S. 105-474 reads as rewritten:

16 ~~"§ 105-474. **Definitions; construction of Article; remedies and penalties.**~~  
17 ~~**Administration and construction of Article.**~~

18       This Article shall be harmonized with the North Carolina Sales and Use Tax Act to  
19 the extent practical. The merchant's discount provided in G.S. 105-164.21 does not apply  
20 to this Article. The remaining provisions of Articles 5 and 9 of this Chapter apply to this  
21 Article to the extent they are consistent with this Article.

22 ~~The definitions set forth in G.S. 105-164.3 shall apply to this Article insofar as such~~  
23 ~~definitions are not inconsistent with the provisions of this Article, and all other provisions~~  
24 ~~of Article 5 and of Article 9 of Subchapter 1, Chapter 105 of the General Statutes, as the~~  
25 ~~same relate to the North Carolina Sales and Use Tax Act shall be applicable to this~~  
26 ~~Article unless such provisions are inconsistent with the provisions of this Article. The~~  
27 ~~administrative interpretations made by the Secretary of Revenue with respect to the North~~  
28 ~~Carolina Sales and Use Tax Act, to the extent not inconsistent with the provisions of this~~  
29 ~~Article, may be uniformly applied in the construction and interpretation of this Article. It~~  
30 ~~is the intention of this Article that the provisions of this Article and the provisions of the~~  
31 ~~North Carolina Sales and Use Tax Act, insofar as practicable, shall be harmonized.~~

32       ~~The provisions with respect to remedies and penalties applicable to the North Carolina~~  
33 ~~Sales and Use Tax Act, as contained in Article 5 and Article 9, Subchapter 1, Chapter~~  
34 ~~105 of the General Statutes, shall be applicable in like manner to the tax authorized to be~~  
35 ~~levied and collected under this Article, to the extent that the same are not inconsistent~~  
36 ~~with the provisions of this Article."~~

37       Section 6. The first sentence of Section 10 of Chapter 1096 of the 1967  
38 Session Laws is amended by adding after the word "Act" the phrase ", other than G.S.  
39 105-164.21,".

40       Section 7. G.S. 105-164.21(a), as amended by Section 4 of this act, reads as  
41 rewritten:

42       "(a) Amount. – Except as provided in subsection (b), a retailer who pays the retail  
43 sales or use tax imposed by this Article may deduct from the amount of the tax paid ~~the~~

1 ~~applicable percentage discount provided in the table below, a discount of three percent~~  
 2 ~~(3%), up to the following maximum discounts:~~

- 3       (1) ~~The applicable per location cap Fifty dollars (\$50.00) per month for~~  
 4       each place of business at a separate location.  
 5       (2) For taxpayers who are not required to report on a semimonthly basis, ~~the~~  
 6       ~~applicable retailer group cap one thousand dollars (\$1,000) per month~~  
 7       for each retailer group.  
 8       (3) For taxpayers who are required to report on a semimonthly basis, ~~one-~~  
 9       ~~half of the applicable retailer group cap five hundred dollars (\$500.00)~~  
 10       per semimonthly period for each retailer group.

11 <b>Returns Filed</b>	12 <b>Percentage</b>	13 <b>Per-Location</b>	14 <b>Retailer Group</b>
	<b>Discount</b>	<b>Cap</b>	<b>Cap</b>
15 In 1998	1%	\$30	\$ 500
16 In 1999	2%	\$40	\$ 750
17 Thereafter	3%	\$50	\$1,000

18 The discount for each location may be deducted only from the tax paid with regard to  
 19 that location. For the purposes of this section, a retailer group includes all retail  
 20 establishments that have one of the following relationships with one another: (i) one  
 21 corporation owns, directly or indirectly, at least eighty percent (80%) of the voting stock  
 22 of the others; (ii) at least eighty percent (80%) of the voting stock of the corporations is  
 23 owned, directly or indirectly, by the same interests; or (iii) in the case of establishments  
 24 that are not incorporated, the establishments are under the same general management,  
 25 supervision, or ownership."

26 Section 8. Sections 1 and 2 of this act become effective July 1, 1997, and  
 27 apply to sales made on or after that date. Section 3 of this act becomes effective January  
 28 1, 1998, and applies to sales made on or after that date. Sections 4 through 6 of this act  
 29 become effective January 1, 1998, and apply to returns filed on or after that date. Section  
 7 of this act becomes effective January 1, 2000, and applies to returns filed on or after  
 that date. The remainder of this act is effective when it becomes law.