

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

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SENATE BILL 1035  
Finance Committee Substitute Adopted 5/22/97

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

(Public)

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Sponsors:

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Referred to: Appropriations.

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April 21, 1997

1 A BILL TO BE ENTITLED  
2 AN ACT TO REVISE THE DEFINITION OF FOOD FOR SALES TAX PURPOSES  
3 AND ALLOW A PERCENTAGE DISCOUNT TO MERCHANTS FOR  
4 COLLECTING STATE SALES AND USE TAXES.

5 The General Assembly of North Carolina enacts:

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

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

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

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

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

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

19 (1) Raw meat.

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

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

15        Section 3. G.S. 105-164.21 is reenacted and rewritten to read:

16        "**§ 105-164.21. Merchant's discount.**

17        (a)   Amount. – Except as provided in subsection (c) of this section, a retailer who  
 18 pays the retail sales or use tax imposed by this Article may deduct from the amount of the  
 19 tax paid the applicable percentage discount provided in the table below, up to the  
 20 following maximum discounts:

- 21           (1)   The applicable per-location cap per month for each place of business at  
 22               a separate location.
- 23           (2)   For taxpayers who are not required to report on a semimonthly basis, the  
 24               applicable retailer group cap per month for each retailer group.
- 25           (3)   For taxpayers who are required to report on a semimonthly basis, one-  
 26               half of the applicable retailer group cap per semimonthly period for each  
 27               retailer group.

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

33        The discount for each location may be deducted only from the tax paid with regard to  
 34 that location.

35        (b)   Retailer Group. – For the purposes of this section, a retailer group includes all  
 36 retail establishments that have one of the following relationships with one another:

- 37           (1)   One corporation owns, directly or indirectly, at least eighty percent  
 38               (80%) of the voting stock of the others.
- 39           (2)   At least eighty percent (80%) of the voting stock of the corporation is  
 40               owned, directly or indirectly, by the same interests.
- 41           (3)   In the case of establishments that are not incorporated, the  
 42               establishments are under the same general management, supervision, or  
 43               ownership.

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

7 Section 4. G.S. 105-474 reads as rewritten:

8 "**§ 105-474. Definitions; construction of Article; remedies and penalties.**  
9 **Administration and construction of Article.**

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

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

24 ~~The provisions with respect to remedies and penalties applicable to the North Carolina~~  
25 ~~Sales and Use Tax Act, as contained in Article 5 and Article 9, Subchapter 1, Chapter~~  
26 ~~105 of the General Statutes, shall be applicable in like manner to the tax authorized to be~~  
27 ~~levied and collected under this Article, to the extent that the same are not inconsistent~~  
28 ~~with the provisions of this Article."~~

29 Section 5. The first sentence of Section 10 of Chapter 1096 of the 1967  
30 Session Laws is amended by adding after the word "Act" the phrase ", other than G.S.  
31 105-164.21,".

32 Section 6. G.S. 105-187.5(d) reads as rewritten:

33 "(d) Administration. – The Division shall notify the Secretary of Revenue of a  
34 retailer who makes the election under this section. A retailer who makes this election  
35 shall report and remit to the Secretary the tax on the gross receipts of the lease or rental of  
36 the motor vehicle. The Secretary shall administer the tax imposed by this section on gross  
37 receipts in the same manner as the tax levied under G.S. 105-164.4(a)(2). The  
38 administrative provisions and powers of the Secretary that apply to the tax levied under  
39 G.S. 105-164.4(a)(2) apply to the tax imposed by this section. ~~In addition, the~~ The  
40 merchant's discount provided in G.S. 105-164.21 does not apply to this section.

41 The Division may request the Secretary to audit a retailer who elects to pay tax on  
42 gross receipts under this section. When the Secretary conducts an audit at the request of  
43 the Division, the Division shall reimburse the Secretary for the cost of the audit, as

1 determined by the Secretary. In conducting an audit of a retailer under this section, the  
2 Secretary may audit any sales of motor vehicles made by the retailer."

3 Section 7. G.S. 105-187.17 reads as rewritten:

4 **"§ 105-187.17. Administration.**

5 (a) Retail Sale or Use. – The privilege tax this Article imposes on a tire retailer  
6 who sells new tires at retail is an additional State sales tax and the excise tax this Article  
7 imposes on the storage, use, or consumption of a new tire in this State is an additional  
8 State use tax. Except as otherwise provided in this Article, these taxes shall be collected  
9 and administered in the same manner as the State sales and use taxes imposed by Article  
10 5 of this Chapter. As under Article 5 of this Chapter, the additional State sales tax paid  
11 when a new tire is sold is a credit against the additional State use tax imposed on the  
12 storage, use, or consumption of the same tire.

13 (b) Wholesale Sale or Use. – The privilege tax this Article imposes on a tire  
14 retailer and on a tire wholesale merchant who sell new tires for placement in this State on  
15 a vehicle offered for sale, lease, or rental is a tax on the wholesale sale of the tires. This  
16 tax and the excise tax this Article imposes on a new tire purchased for placement in this  
17 State on a vehicle offered for sale, lease, or rental shall, to the extent practical, be  
18 collected and administered as if they were additional State sales and use taxes. The  
19 privilege tax paid when a new tire is sold for placement on a vehicle offered for sale,  
20 lease, or rental is a credit against the use tax imposed on the purchase of the same tire for  
21 placement in this State on a vehicle offered for sale, lease, or rental.

22 (c) Discount. – The merchant's discount provided in G.S. 105-164.21 does not  
23 apply to this Article."

24 Section 8. G.S. 105-187.22 reads as rewritten:

25 **"§ 105-187.22. Administration.**

26 The privilege tax this Article imposes on a white goods retailer is an additional State  
27 sales tax and the excise tax this Article imposes on the storage, use, or consumption of a  
28 new white good in this State is an additional State use tax. Except as otherwise provided  
29 in this Article, these taxes shall be collected and administered in the same manner as the  
30 State sales and use taxes imposed by Article 5 of this Chapter. As under Article 5 of this  
31 Chapter, the additional State sales tax paid when a new white good is sold at retail is a  
32 credit against the additional State use tax imposed on the storage, use, or consumption of  
33 the same white good. The merchant's discount provided in G.S. 105-164.21 does not  
34 apply to this Article."

35 Section 9. G.S. 105-164.21(a), as amended by Section 3 of this act, reads as  
36 rewritten:

37 "(a) Amount. – Except as provided in subsection (c) of this section, a retailer who  
38 pays the retail sales or use tax imposed by this Article may deduct from the amount of the  
39 tax paid ~~the applicable percentage discount provided in the table below,~~ a discount of two  
40 percent (2%), up to the following maximum discounts:

- 41 (1) ~~The applicable per-location cap~~ Forty dollars (\$40.00) per month for each  
42 place of business at a separate location.

- 1           (2) For taxpayers who are not required to report on a semimonthly basis, ~~the~~  
 2           ~~applicable retailer group cap~~ seven hundred fifty dollars (\$750.00) per  
 3           month for each retailer group.  
 4           (3) For taxpayers who are required to report on a semimonthly basis, ~~one-~~  
 5           ~~half of the applicable retailer group cap~~ three hundred seventy-five dollars  
 6           (\$375.00) per semimonthly period for each retailer group.

<b>Returns Filed</b>	<b>Percentage</b>		<b>Per-Location</b>		<b>Retailer Group</b>	
	<b>Discount</b>				<b>Cap</b>	<b>Cap</b>
9	In 1998	1%	\$30	\$500		
10	Thereafter	2%	\$40	\$750		

11           The discount for each location may be deducted only from the tax paid with regard to  
 12           that location."

13           Section 10. Sections 1 and 2 of this act become effective July 1, 1997, and  
 14           apply to sales made on or after that date. Sections 3 through 8 of this act become  
 15           effective January 1, 1998, and apply to returns filed on or after that date. Section 9 of  
 16           this act becomes effective January 1, 1999, and applies to returns filed on or after that  
 17           date. The remainder of this act is effective when it becomes law.