

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

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HOUSE BILL 455
Senate Finance Committee Substitute Adopted 7-9-10

Short Title: Sales Tax Changes/Study Competing Systems.

(Public)

Sponsors:

Referred to:

March 9, 2009

A BILL TO BE ENTITLED

1 AN ACT TO ALLOW A SALES TAX REFUND TO A JOINT GOVERNMENTAL
2 AGENCY CREATED TO OPERATE A CABLE TELEVISION SYSTEM; TO DIRECT
3 THE REVENUE LAWS STUDY COMMITTEE TO CONTINUE ITS REVIEW OF
4 LOCAL GOVERNMENT OWNED AND OPERATED COMMUNICATION SYSTEMS,
5 AND TO CLARIFY A SELLER'S OBLIGATION WITH REGARD TO THE
6 OVERCOLLECTION OF SALES AND USE TAX.
7

8 The General Assembly of North Carolina enacts:

9 **SECTION 1.** A joint agency created by an interlocal agreement pursuant to
10 G.S. 160A-462 to operate a cable system that provides video programming services is allowed
11 a refund of sales and use tax paid by it on purchases made on or after July 1, 2007, and before
12 June 30, 2010, to the same extent allowed to a city under G.S. 105-164.14(c). Notwithstanding
13 G.S. 105-164.14, the joint agency must make a request for a refund in writing before January 1,
14 2011.

15 **SECTION 2.(a)** Continue Study of Local Government Owned and Operated
16 Communication Systems – The Revenue Laws Study Committee may continue its study begun
17 in 2009 of local government owned and operated communication systems and to report its
18 findings and any recommended legislation on this subject to the 2011 General Assembly by
19 March 1, 2011. As part of its study, the Committee shall determine the following:

- 20 (1) The extent to which current law authorizes units of local government to offer
21 communication services not traditionally thought of as cable television
22 services.
23 (2) The requirements and standards that should apply to a unit of local
24 government and to a private provider when the local unit offers a
25 communication service that is offered by a private provider.
26 (3) Whether varying or different provisions are needed to accommodate
27 communication systems placed in service or financed under G.S. 160A-20
28 by cities before the effective date of this act.
29 (4) Policies and incentives that can be established to facilitate the offering and
30 expansion of communication service by both public and private service
31 providers, including public-private ventures and other opportunities.

32 **SECTION 2.(b)** In conducting the study described in subsection (a) of this section,
33 the Revenue Laws Study Committee cochairs are authorized to appoint an advisory
34 subcommittee and to ask the Local Government Commission to designate an individual to
35 participate in the subcommittee's deliberations in an ex officio, nonvoting capacity. The
36 subcommittee may consist of no more than 14 members and may include individuals who are



1 not members of the Committee or of the General Assembly, 10 of whom represent the
2 following interests:

- 3 (1) A cable service provider.
- 4 (2) A wireless telecommunications service provider.
- 5 (3) A local exchange provider that is not a wireless telecommunications service
6 provider.
- 7 (4) A local exchange provider that is a wireless telecommunications service
8 provider.
- 9 (5) A telephone membership corporation.
- 10 (6) A city that operates a cable system and an electric power system as a public
11 enterprise.
- 12 (7) A city that operates a cable system as a public enterprise and does not
13 operate an electric power system as a public enterprise.
- 14 (8) A city that is a member of a joint agency established under G.S. 160A-462
15 for the operation of a cable system as a public enterprise.
- 16 (9) The North Carolina League of Municipalities.
- 17 (10) The North Carolina Association of County Commissioners.

18 **SECTION 3.** G.S. 105-164.11(a) reads as rewritten:

19 "(a) Remittance of ~~Over Collections~~ Overcollections to Secretary. – When ~~the tax is~~
20 collected for any period is on a taxable sale in excess of the total amount that should have been
21 collected, collected or is collected on an exempt or nontaxable sale, the total amount collected
22 must be paid over remitted to the Secretary. When tax is collected for any period on exempt or
23 nontaxable sales the tax erroneously collected shall be remitted to the Secretary and no refund
24 shall be made to a taxpayer unless the purchaser has received credit for or has been refunded
25 the amount of tax erroneously charged. The seller who overcollected the tax is not allowed a
26 refund of the overcollected tax unless the seller gives the purchaser credit for or a refund of the
27 overcollected tax. If the Secretary determines that a seller who overcollected tax on a
28 transaction is liable for use tax on the transaction rather than sales tax or is liable for sales tax
29 on the transaction rather than use tax, the seller may apply the overcollected tax to the seller's
30 liability for use tax or sales tax on the transaction. This provision-subsection shall be construed
31 with other provisions of this Article and given effect so as to result in the payment to the
32 Secretary of the total amount collected as tax if it is in excess of the amount that should have
33 been collected, collected and to preclude collection of both a sales tax and a use tax on the same
34 transaction."

35 **SECTION 4.** This act is effective when it becomes law. Section 3 of this act
36 applies to liabilities that accrue on or after that date, are not collectible as of that date, or are the
37 subject of a final agency decision made on or after January 1, 2010.