

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

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HOUSE BILL 93
Committee Substitute Favorable 6/9/11

Short Title: Sales & Use Tax Overcollection.

(Public)

Sponsors:

Referred to:

February 16, 2011

1 A BILL TO BE ENTITLED
2 AN ACT TO ALLOW A SELLER TO APPLY OVERCOLLECTED SALES TAX TO
3 OFFSET A USE TAX LIABILITY ON A RELATED TRANSACTION.

4 The General Assembly of North Carolina enacts:

5 **SECTION 1.** G.S. 105-164.11(a) reads as rewritten:

6 "(a) Remittance of ~~Over Collections~~ Overcollections to Secretary. – When ~~the tax is~~ tax is
7 collected for any period ~~is on a taxable sale~~ is on a taxable sale in excess of the total amount that should have been
8 ~~collected, collected or is collected on an exempt or nontaxable sale,~~ collected or is collected on an exempt or nontaxable sale, the total amount collected
9 must be ~~paid over~~ remitted to the Secretary. ~~When tax is collected for any period on exempt or~~
10 ~~nontaxable sales the tax erroneously collected shall be remitted to the Secretary and no refund~~
11 ~~shall be made to a taxpayer unless the purchaser has received credit for or has been refunded~~
12 ~~the amount of tax erroneously charged. If the Secretary determines that the seller overcollected~~
13 ~~the sales tax on a transaction, the Secretary shall take only one of the actions listed in this~~
14 ~~subsection. This provision~~ subsection shall be construed with other provisions of this Article
15 and given effect so as to result in the payment to the Secretary of the total amount collected as
16 tax if it is in excess of the amount that should have been collected.

17 (1) If the Secretary determines that the seller overcollected tax on a transaction,
18 the Secretary may allow a refund of the tax. The Secretary may allow the
19 refund only if the seller gives the purchaser credit for or a refund of the
20 overcollected tax. The Secretary shall not refund the overcollected tax to the
21 seller if the seller has elected to offset a use tax liability on a related
22 transaction with the overcollected sales tax under subdivision (2) of this
23 subsection.

24 (2) If the Secretary determines that a seller who overcollected sales tax on a
25 transaction is instead liable for a use tax on a related transaction, the
26 Secretary may allow the seller to offset the use tax liability with the
27 overcollected sales tax. The Secretary shall not allow an offset if the seller
28 has elected to receive a refund of the overcollected tax under subdivision (1)
29 of this subsection. The decision by a seller to receive an offset of tax liability
30 rather than a refund of the overcollected tax does not affect the liability of
31 the seller to the purchaser for the overcollected tax.

32 (3) If neither subdivision (1) nor (2) of this subsection applies, the Secretary
33 shall retain the total amount collected on the transaction."

34 **SECTION 2.** This act becomes effective July 1, 2011, and applies to tax liabilities
35 that accrue on or after that date.

