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Proposed Conference Committee Substitute H189-PCCS10610-RBx-7

Short Title: Various Tax Law and Film Grant Changes (Public)

Sponsors:

Referred to:

March 4, 2013

A BILL TO BE ENTITLED

AN ACT TO ALLOW DURHAM, ORANGE, FORSYTH, GUILFORD, MECKLENBURG, AND WAKE COUNTIES TO RETAIN A LOCAL SALES AND USE TAX CAP OF TWO AND THREE-QUARTERS PERCENT IF A MAJORITY OF VOTERS IN THOSE COUNTIES APPROVE THE LEVY OF A ONE-QUARTER PERCENT TAX IN A REFERENDUM HELD BY THE END OF 2016; TO EXPAND THE MAXIMUM GRANT ALLOWED FOR A TELEVISION OR VIDEO SERIES; TO CLARIFY THAT A FARMER'S INCOME FROM FARMING OPERATIONS FOR THE PURPOSE OF THE SALES AND USE TAX EXEMPTION IS GROSS SALES AND ALL OTHER INCOME FROM FARMING OPERATIONS; AND TO MAKE OTHER TECHNICAL CHANGES TO THE REVENUE LAWS.

The General Assembly of North Carolina enacts:

SECTION 1.(a) If House Bill 1224 becomes law, then G.S. 105-506.4(b)(3), as enacted by House Bill 1224, reads as rewritten:

"(3) The county conducted one or more advisory referendums on or before December 31, ~~2014~~, 2016, in which a majority of the voters approved the levy of a local sales and use tax at the rate of one-quarter percent (1/4%) under Article 46 of this Chapter."

SECTION 1.(b) If House Bill 1224 becomes law, then G.S. 105-537(e)(2), as enacted by House Bill 1224, reads as rewritten:

"(2) The county conducted one or more advisory referendums on or before December 31, ~~2014~~, 2016, in which a majority of the voters approved the levy of a local sales and use tax at the rate of one-quarter percent (1/4%) under this Article."

SECTION 2.(a) G.S. 143B-437.02A(a)(2), as enacted by S.L. 2014-100, reads as rewritten:

§ 143B-437.02A. The Film and Entertainment Grant Fund.

(a) Creation and Purpose of Fund. - There is created in the Department of Commerce a special, nonreverting account to be known as the Film and Entertainment Grant Fund to provide funds to encourage the production of motion pictures, television shows, and

1 commercials and to develop the filmmaking industry within the State. The Department of
2 Commerce shall adopt guidelines providing for the administration of the program. Those
3 guidelines may provide for the Secretary to award the grant proceeds over a period of time, not
4 to exceed three years. Those guidelines shall include the following provisions, which shall
5 apply to each grant from the account:

- 6 ...
7 (2) The funds are not used to provide a grant in excess of any of the following:
8 a. An amount more than twenty-five percent (25%) of the qualifying
9 expenses for the production.
10 b. An amount more than five million dollars (\$5,000,000) for a
11 feature-length film, more than five million dollars (\$5,000,000) for a
12 single episode of a television or video series, or two hundred fifty
13 thousand dollars (\$250,000) for a commercial for theatrical or
14 television viewing."

15 **SECTION 2.**(b) This section becomes effective January 1, 2015.

16 **SECTION 3.** G.S. 105-164.13E, as amended by S.L. 2014-3, reads as rewritten:

17 **"§ 105-164.13E. Exemption for farmers.**

18 (a) Exemption. – A qualifying farmer is a person who has an annual ~~gross income from~~
19 farming operations for the preceding taxable year of ten thousand dollars (\$10,000) or more
20 ~~from farming operations~~ or who has an average annual ~~gross income from farming operations~~
21 for the three preceding taxable years of ten thousand dollars (\$10,000) or ~~more from farming~~
22 operations, more. For purposes of this section, the term "income from farming operations"
23 means sales plus any other amounts treated as gross income under the Code from farming
24 operations. A qualifying farmer includes a dairy operator, a poultry farmer, an egg producer, a
25 livestock farmer, a farmer of crops, and a farmer of an aquatic species, as defined in
26 G.S. 106-758. A qualifying farmer may apply to the Secretary for an exemption certificate
27 number under G.S. 105-164.28A. The exemption certificate expires when a person fails to meet
28 the income threshold for three consecutive taxable years or ceases to engage in farming
29 operations, operations, whichever comes first.

30 The following tangible personal property, digital property, and services are exempt from
31 sales and use tax if purchased by a qualifying farmer and for use by the farmer in farming
32 operations. For purposes of this section, an item is used by a farmer for farming operations if it
33 is used for the planting, cultivating, harvesting, or curing of farm crops or in the production of
34 dairy products, eggs, or animals:

35 ...
36 (b) Conditional Exemption. – A person who does not meet the definition of a qualifying
37 farmer in subsection (a) of this section may apply to the Department for a conditional
38 exemption certificate under G.S. 105-164.28A. A person with a conditional exemption
39 certificate is allowed to purchase items exempt from sales and use tax to the same extent as a
40 qualifying farmer under subsection (a) of this section. To receive a conditional exemption
41 certificate under this subsection, the person must certify that the person intends to engage in
42 farming operations, as that term is described in subsection (a) of this section, and that the
43 person will timely file State and federal income tax returns that reflect income and expenses
44 incurred from farming operations during the taxable years that the conditional exemption
45 certificate applies.

46 A conditional exemption certificate issued under this subsection is valid for the taxable year
47 in which the certificate is issued and the following two taxable years, provided the person to
48 whom the certificate is issued provides copies of applicable State and federal income tax
49 returns to the Department within 90 days following the end of each taxable year covered by the
50 conditional exemption ~~certificate, certificate~~ and provided the person is engaged in farming
51 operations. A conditional exemption certificate issued under this subsection may not be

1 extended or renewed beyond the original three-year period. The Department may not issue a
2 conditional exemption certificate to a person who has had a conditional exemption certificate
3 issued under this subsection during the prior 15 taxable years.

4 A person who purchases items with a conditional exemption certificate must maintain
5 documentation of the items purchased and copies of State and federal income tax returns that
6 reflect activities from farming operations for the period of time covered by the conditional
7 exemption certificate for three years following the expiration of the conditional exemption
8 certificate. The Secretary may require a person who has a conditional exemption certificate to
9 provide any other information requested by the Secretary to verify the person met the
10 conditions of this subsection. A person who fails to provide the information requested by the
11 Secretary in a timely manner or who fails to meet the requirements of this subsection becomes
12 liable for any taxes for which an exemption under this subsection was claimed. The taxes
13 become due and payable at the expiration of the conditional exemption certificate, and interest
14 accrues from the date of the original purchase. Additionally, where the person does not timely
15 provide the information requested by the Secretary, the misuse of exemption certificate penalty
16 in G.S. 105-236(a)(5a) applies to each seller identified by the Department from which the
17 person made a purchase."

18 **SECTION 4.(a)** G.S. 105-153.4 reads as rewritten:

19 **"§ 105-153.4. North Carolina taxable income defined.**

20 (a) Residents. – For an individual who is a resident of this State, the term "North
21 Carolina taxable income" means the taxpayer's adjusted gross income as modified in
22 G.S. 105-153.5 and ~~G.S. 105-153.6 and G.S. 105-134.6A~~ G.S. 105-153.6.

23 (b) Nonresidents. – For a nonresident individual, the term "North Carolina taxable
24 income" means the taxpayer's adjusted gross income as modified in G.S. 105-153.5 and
25 ~~G.S. 105-153.6 and G.S. 105-134.6A~~ G.S. 105-153.6, multiplied by a fraction the denominator
26 of which is the taxpayer's gross income as modified in G.S. 105-153.5 and ~~G.S. 105-153.6 and~~
27 ~~G.S. 105-134.6A~~ G.S. 105-153.6, and the numerator of which is the amount of that gross
28 income, as modified, that is derived from North Carolina sources and is attributable to the
29 ownership of any interest in real or tangible personal property in this State, is derived from a
30 business, trade, profession, or occupation carried on in this State, or is derived from gambling
31 activities in this State.

32 (c) Part-year Residents. – If an individual was a resident of this State for only part of
33 the taxable year, having moved into or removed from the State during the year, the term "North
34 Carolina taxable income" has the same meaning as in subsection (b) of this section except that
35 the numerator includes gross income, as modified under G.S. 105-153.5 and ~~G.S. 105-153.6~~
36 ~~and G.S. 105-134.6A~~ G.S. 105-153.6, derived from all sources during the period the individual
37 was a resident.

38 (d) S Corporations and Partnerships. – In order to calculate the numerator of the
39 fraction provided in subsection (b) of this section, the amount of a shareholder's pro rata share
40 of S Corporation ~~income~~ income, as modified in G.S. 105-153.5 and G.S. 105-153.6, that is
41 includable in the numerator is the shareholder's pro rata share of the S Corporation's income
42 attributable to the State, as defined in G.S. 105-131(b)(4). In order to calculate the numerator of
43 the fraction provided in subsection (b) of this section for a member of a partnership or other
44 unincorporated business that has one or more nonresident members and operates in one or more
45 other states, the amount of the member's distributive share of the total net income of the
46 ~~business~~ business, as modified in G.S. 105-153.5 and G.S. 105-153.6, that is includable in the
47 numerator is ~~determined by multiplying the total net income of the business by the ratio~~
48 ~~ascertained under the~~ in accordance with the provisions of G.S. 105-130.4. As used in this
49 subsection, total net income means the entire gross income of the business less all expenses,
50 taxes, interest, and other deductions allowable under the Code that were incurred in the
51 operation of the business.

(e) Tax Year. – A taxpayer must compute North Carolina taxable income on the basis of the taxable year used in computing the taxpayer's income tax liability under the Code."

SECTION 4.(b) G.S. 105-153.5 is amended by adding a new subsection to read:

"(c1) Other Additions. – S Corporations subject to the provisions of Part 1A of this Article, partnerships subject to the provisions of this Part, and estates and trusts subject to the provisions of Part 3 of this Article must add any amount deducted under section 164 of the Code as state, local, or foreign income tax."

SECTION 4.(c) This section is effective for taxable years beginning on or after January 1, 2014.

SECTION 5.(a) G.S. 105-164.13, as amended by Section 6.1(f) of S.L. 2014-3, reads as rewritten:

"§ 105-164.13. Retail sales and use tax.

The sale at retail and the use, storage, or consumption in this State of the following tangible personal property, digital property, and services are specifically exempted from the tax imposed by this Article:

...

(62) An item used to maintain or repair tangible personal property or a motor vehicle pursuant to a service contract taxable under this Article if the purchaser of the contract is not charged for the item. ~~This exemption does not apply to an item used to maintain or repair tangible personal property pursuant to a service contract exempt from tax under G.S. 105-164.41(b).~~ For purposes of this exemption, the term "item" does not include a tool, equipment, supply, or similar tangible personal property used to complete the maintenance or repair and that is not deemed to be a component or repair part of the tangible personal property or motor vehicle for which a service contract is sold to a purchaser."

SECTION 5.(b) G.S. 105-187.52(c) reads as rewritten:

"(c) Exemption. – State agencies are exempted from the privilege taxes imposed by this Article. The exemption in G.S. 105-164.13(62) does not apply to an item used to maintain or repair tangible personal property pursuant to a service contract exempt from tax under G.S. 105-164.41(b)(4)."

SECTION 5.(c) Notwithstanding G.S. 105-164.13(62), as amended by S.L. 2014-3 and by subsection (a) of this section, the sales and use tax exemption in G.S. 105-164.13(62) applies to an item used pursuant to a service contract that meets the definition of a "service contract" as defined in G.S. 105-164.3(38b), notwithstanding that the service contract was sold before January 1, 2014, and effective on, before, or after January 1, 2014.

SECTION 5.(d) Subsections (a) and (b) of this section become effective October 1, 2014. The remainder of this section is effective when it becomes law.

SECTION 6. Section 4.1(g) of S.L. 2014-3 reads as rewritten:

"SECTION 4.1.(g) This Part is effective when it becomes law and applies to the following:

(1) ~~gross~~ Gross receipts derived from a prepaid meal plan sold or billed on or after July 1, 2014.

(2) Gross receipts derived from a prepaid meal plan sold or billed before July 1, 2014, if the prepaid meal plan is not authorized for use or available to the person until August 1, 2014."

SECTION 7. Except as otherwise provided, this act is effective when it becomes law.