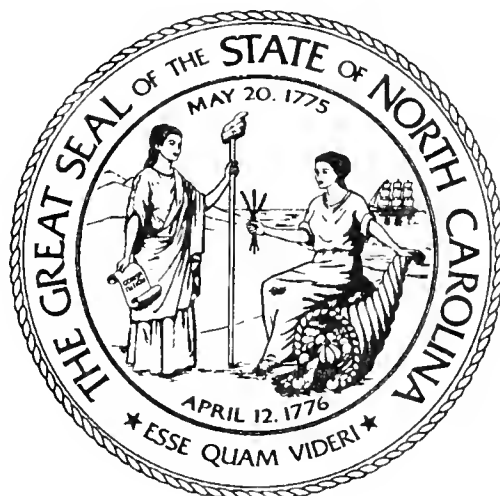


**LEGISLATIVE
RESEARCH COMMISSION**

**REVENUE LAWS AND CORPORATE
INCOME TAXATION**



**REPORT TO THE
1989 GENERAL ASSEMBLY
OF NORTH CAROLINA
1989 SESSION**

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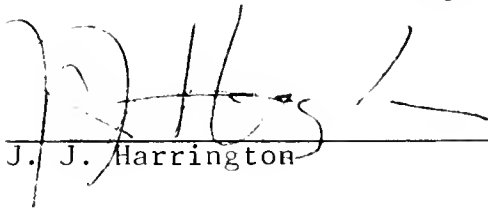


December 9, 1988

TO THE MEMBERS OF THE 1989 GENERAL ASSEMBLY:

The Legislative Research Commission submits to you for your consideration its final report on the revenue laws of this State. This report was prepared by the Legislative Research Commission's Revenue Laws and Corporate Income Taxation Study Committee pursuant to Chapter 873 of the 1987 Session Laws.

Respectfully submitted,



J. J. Harrington



Liston B. Ramsey

Cochairmen
Legislative Research Commission

1987-1988

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PREFACE

The Legislative Research Commission, established by Article 6B of Chapter 120 of the General Statutes, is a general purpose study group. The Commission is co-chaired by the Speaker of the House of Representatives and the President Pro Tempore of the Senate and has five additional members appointed from each house of the General Assembly. Among the Commission's duties is that of making or causing to be made, upon the direction of the General Assembly, "such studies of and investigations into governmental agencies and institutions and matters of public policy as will aid the General Assembly in performing its duties in the most efficient and effective manner" (G.S. 120-30.17(1)).

At the direction of the 1987 General Assembly, the Legislative Research Commission has undertaken studies of numerous subjects. These studies were grouped into broad categories and each member of the Commission was given responsibility for one category of study. The Co-chairs of the Legislative Research Commission, under the authority of G.S. 120-30.10(b) and (c), appointed committees consisting of members of the General Assembly and the public to conduct the studies. Co-chairs, one from each house of the General Assembly, were designated for each committee.

The study of the revenue laws and corporate income taxation was authorized by Sections 2.1(1) and 2.1(11) of Chapter 873 of the 1987 Session Laws. That act states that the Commission may consider House Joint Resolution 13 and House Bill 999 in determining the nature, scope and aspects of the study. House Joint Resolution 13, introduced by Representative Daniel T. Lilley in the 1987 Session, gives the Legislative Research Commission's study of the revenue laws a very broad scope, stating that the "Commission may review the State's revenue laws to determine which laws need clarification, technical amendment, repeal, or other change to make the laws concise,

intelligible, easy to administer, and equitable." In addition, the committee substitute for House Bill 999 adopted in the 1987 Session provides that the Commission may "study whether to permit corporate taxpayers to file consolidated income tax returns and whether to provide for special tax treatment of Subchapter S Corporations." The relevant portions of Chapter 873, House Joint Resolution 13, and House Bill 999 are included in Appendix A. The Legislative Research Commission grouped this study in its Revenue, State Publications, and Unruly Students area under the direction of Representative Josephus Mavretic. The Committee was chaired by Senator A.D. Guy and Representative Daniel T. Lilley. The full membership of the Committee and the staff assigned to the Committee are listed in Appendix B of this report. A committee notebook containing the committee minutes and all information presented to the Committee is filed in the Legislative Library.

In addition, by letter dated April 15, 1988, the Co-chairs of the Legislative Research Commission asked the Committee to study the impact on local sales and use tax revenue and the administrative cost savings to the State of consolidating the local sales and use taxes with the State sales and use tax, as provided in Section 12 of Chapter 832 of the 1987 Session Laws. A copy of Chapter 832 of the 1987 Session Laws is included in Appendix A of this report.

COMMITTEE PROCEEDINGS

The Legislative Research Commission's Revenue Laws and Corporate Income Taxation Study Committee met nine times: six meetings were held before the 1988 Legislative Session and three meetings were held after that session. The Committee devoted its time to considering numerous small changes in the revenue laws and studying in depth several larger, more complex issues.

Before the 1988 Session, the Committee spent several meetings studying proposals for modifying the formulas for reimbursing local governments for their revenue losses due to the repeal of the property tax on inventory by the School Facilities Finance Act of 1987. As a result of its deliberations, the Committee recommended a bill to amend the law to provide for a more equitable and more complete reimbursement. This bill was enacted in modified form by the 1988 General Assembly as Chapter 1041 of the 1987 Session Laws. A copy of the legislation and an explanation are contained in Appendix D of this report.

Other major topics studied by the Committee both before and after the 1988 Session included (i) whether to allow corporations to file consolidated income tax returns; (ii) whether to repeal the interstate motor carrier registration fee under G.S. 105-449.47; (iii) whether to consolidate the State and local sales taxes; (iv) whether to provide a uniform system of tax exemptions for individuals with certain physical or medical conditions; (v) whether to recognize Subchapter S Corporations for income tax purposes; (vi)

whether to revise the Individual Income Tax Act to conform to the Internal Revenue Code by structuring the tax as a percentage of federal taxable income; and (vii) whether to provide for a merchant's discount for collecting sales and use taxes. The Committee considered information and advice on these topics from legislative staff, the Department of Revenue, the Attorney General's Office, the Governor's Office, representatives of local governments, representatives of private business and professional organizations, and individual taxpayers.

The Committee decided to make no recommendation on the first four of these issues, consolidated corporate returns, the motor carrier registration fee, State and local sales tax merger, and tax exemptions for medical conditions. The Committee also recommended no legislation regarding tax treatment of Subchapter S Corporations; however, such legislation was enacted by the 1988 General Assembly to become effective for taxable years beginning on or after July 1, 1990. The Committee has recommended legislation to restructure the Individual Income Tax Act to calculate the tax as a percentage of federal taxable income. This proposal, which includes adoption of the federal rules for tax treatment of Subchapter S Corporations, is contained in Legislative Proposal 4 of this report. The Committee has also recommended legislation to allow retailers who collect the State sales and use tax to retain a percentage discount as compensation for collecting the tax. This proposal is contained in Legislative Proposal 3 of this report.

As in the past, the Committee proved to be an excellent forum for taxpayers and tax administrators to propose changes in the revenue laws. Numerous taxpayers either appeared before the Committee or wrote to the Committee and suggested changes in the revenue laws. One major topic raised

by taxpayers concerned the privilege license tax on flea market vendors and operators. The Committee developed compromise legislation to address the various concerns of local governments, retail merchants, the Department of Revenue, consumer trade show operators, and flea market vendors and operators regarding this tax. The proposed legislation is contained in Legislative Proposal I of this report.

Other topics brought to the attention of the Committee by concerned taxpayers included:

1. Whether to extend the income tax exemption for double leg amputees to include amputations below the knee;
2. Whether to exempt insulin from sales tax;
3. Whether to provide uniform sales tax treatment for advertising;
4. Whether to allow a use tax credit for sales tax paid to another state on construction equipment;
5. Whether to authorize political campaigns to make certain charitable expenditures;
6. Whether to provide tax relief for purchasers of diesel fuel for non-highway uses; and
7. Whether to levy a privilege license tax on painting contractors.

The Committee made recommendations on the first five of these issues. Issues one and two, adopted by the Committee before the 1988 Session, were enacted in 1988 as Chapters 936 and 937 of the 1987 Session Laws. Copies of the legislation and explanations are contained in Appendix D of this report. Issues

three through five are contained in Legislative Proposals 2, 5, and 9 of this report.

The Department of Revenue also made numerous proposals to the Committee to improve the administration of the revenue laws and to make the laws easier for taxpayers to understand. The proposals adopted by the Committee before the 1988 Session were enacted in 1988 as Chapters 1001, 1015, and 1044 of the 1987 Session Laws. Copies of the legislation and explanations are included in Appendix D of this report. The recommendations of the Department of Revenue adopted after the 1988 Session are contained in Legislative Proposals 6 through 8 of this report.

Appendix C lists the speakers at the Committee meetings and the subjects of their presentations. The list does not include personnel in the Department of Revenue, who explained the Department's proposals and frequently answered questions raised by committee members on various subjects. The Committee expresses its appreciation for the assistance of Ms. Helen Powers, Secretary of Revenue, Mr. Myron Banks, Deputy Secretary of Revenue, and the staff of the Department of Revenue.

COMMITTEE RECOMMENDATIONS AND LEGISLATIVE PROPOSALS

The Committee recommends the following legislation to the 1989 General Assembly. The Committee's legislative proposals consist of nine bills and one resolution. The proposals cover a broad range of topics, including an extensive restructuring of the Individual Income Tax Act, repeal of the privilege license tax on flea market vendors, allowance of a merchant's discount for collecting sales and use taxes, a modification in the method of imposing sales tax on items produced by advertising agencies, and numerous technical and clarifying amendments to the revenue laws. Each proposed bill is followed by an explanation of the proposal and a fiscal note indicating the anticipated revenue gain or loss resulting from the proposal. The proposed resolution is followed by an explanation.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1989

H/S

D

PROPOSAL 1 (RL-51)
(THIS IS A DRAFT AND NOT READY FOR INTRODUCTION)

Short Title: Flea Market License Changes. (Public)

Sponsors: .

Referred to:

1 A BILL TO BE ENTITLED
2 AN ACT TO REPEAL THE PRIVILEGE LICENSE TAX FOR FLEA MARKET
3 VENDORS, TO INCREASE THE TAX FOR FLEA MARKET OPERATORS, TO
4 EXEMPT GOVERNMENTAL ENTITIES FROM THE TAX, TO REDEFINE FLEA
5 MARKETS AS "SPECIALTY MARKETS", AND TO INCREASE THE PENALTY FOR
6 CERTAIN VIOLATIONS.

7 The General Assembly of North Carolina enacts:

8 Section 1. G.S. 105-53 reads as rewritten:

9 "§ 105-53. Peddlers, itinerant merchants, ~~flea market vendors~~
10 ~~and flea market~~ and specialty market operators.--(a) Peddler. --

11 Every person engaged in business or employed as a peddler shall
12 obtain a license from the Secretary of Revenue for the privilege
13 of peddling goods and shall pay a tax for the license in the
14 amount specified in this section. A 'peddler' is a person who
15 travels from place to place with an inventory of goods, who sells
16 the goods at retail or offers the goods for sale at retail, and
17 who delivers the identical goods he carries with him. A peddler
18 of only farm products shall pay a tax of twenty-five dollars
19 (\$25.00) regardless of the number of counties in which he peddles

1 goods. A peddler who travels from place to place on foot,
2 selling goods other than or in addition to farm products, shall
3 pay a tax of ten dollars (\$10.00) for each county in which he
4 peddles goods. A peddler who travels from place to place by
5 vehicle, selling goods other than or in addition to farm
6 products, shall pay a tax of twenty-five dollars (\$25.00) for
7 each county in which he peddles goods.

8 (b) Itinerant Merchant. -- Every person engaged in business as
9 an itinerant merchant shall obtain a license from the Secretary
10 of Revenue for the privilege of engaging in business and shall
11 pay a tax for the license of one hundred dollars (\$100.00) for
12 each county in which he is engaged in business. An 'itinerant
13 merchant' is a merchant, other than a merchant with an
14 established retail store in the county, who transports an
15 inventory of goods to a building, vacant lot, or other location
16 in a county and who, at that location, displays the goods for
17 sale and sells the goods at retail or offers the goods for sale
18 at retail. An itinerant merchant's license is not required to
19 engage in the business of a flea specialty market vendor at a
20 location licensed as a flea specialty market under subsection (c)
21 of this section, section or at a specialty market that is exempt
22 from the license requirement under subsection (c) because the
23 specialty market operator is the State or a unit of local
24 government. A merchant who sells goods, other than farm
25 products, in a county for less than six consecutive months is
26 considered an itinerant merchant unless he stopped selling goods
27 in that county because of his death or disablement, the
28 insolvency of his business, or the destruction of his inventory
29 by fire or other catastrophe.

30 (c) Flea Specialty Market Operator. -- Every ~~person~~ person,
31 other than the State or a unit of local government, engaged in
32 business as a flea specialty market operator shall obtain a
33 license from the Secretary of Revenue for the privilege of
34 engaging in business and shall pay a tax for the license of ~~one~~
35 ~~hundred dollars (\$100.00)~~ two hundred dollars (\$200.00) for each

1 county in which he is engaged in business. A 'flea 'specialty
2 market operator' is a ~~person~~ person, other than the State or a
3 unit of local government, who rents space, at a location other
4 than a permanent retail store, to others for the purpose of
5 selling goods at retail or offering goods for sale at retail.

6 (d) ~~Flea Specialty Market Vendor. -- Every~~ The requirements
7 and penalties set out in subsections (i) through (m) of this
8 section apply to every person engaged in business as a flea
9 specialty market vendor vendor who is liable for retail sales tax
10 under Article 5 of this Chapter. shall obtain a license from the
11 Secretary of Revenue for the privilege of engaging in such
12 business and shall pay an annual tax of twenty-five dollars
13 (\$25.00) for a statewide license. A 'flea market A 'specialty
14 market vendor' is a merchant, other than a merchant with an
15 established retail store in the county, who transports an
16 inventory of goods to a flea specialty market licensed under
17 subsection (c) of this section and who, at that location,
18 displays the goods for sale and sells the goods at retail or
19 offers the goods for sale at retail. A 'flea 'specialty market'
20 is a location, other than a permanent retail store, where space
21 is rented to others for the purpose of selling goods at retail or
22 offering goods for sale at retail.

23 (e) Exemptions. -- This section does not apply to the
24 following:

25 (1) A ~~peddler, itinerant merchant, or flea market~~
26 ~~vendor:~~ peddler or itinerant merchant:

- 27 a. Who sells farm or nursery products produced by
28 him;
- 29 b. Who sells crafts or goods made by him or his
30 own household personal property;
- 31 c. Who is a nonprofit charitable, educational,
32 religious, scientific, or civic organization;
- 33 d. Who sells printed material, wood for fuel,
34 ice, seafood, meat, poultry, livestock, eggs,
35 dairy products, bread, cakes, or pies; or

- 1 e. Who is an authorized automobile dealer
2 licensed pursuant to Chapter 20 of the General
3 Statutes.
- 4 (2) A peddler who maintains a fixed permanent location
5 from which he makes at least ninety percent (90%)
6 of his sales, but who sells some goods in the
7 county of his fixed location by peddling.
- 8 (3) An itinerant merchant:
- 9 a. Who locates at a farmer's market;
- 10 b. Who is part of the State Fair or an
11 agriculture fair which is licensed by the
12 Commissioner of Agriculture pursuant to G.S.
13 106-520.3; or
- 14 c. Who sells goods at an auction conducted by an
15 auctioneer licensed pursuant to Chapter 85B of
16 the General Statutes.
- 17 (4) A peddler who complies with the requirements of
18 G.S. 25A-38 through G.S. 25A-42, or who complies
19 with the requirements of G.S. 14-401.13.
- 20 (f) Person Defined. -- As used in this section, 'person' has
21 the same meaning as in G.S. 105-164.3(11).
- 22 (g) County Exemption. -- The board of county commissioners of
23 any county in this State, upon proper application, may exempt
24 from the annual license tax levied upon ~~peddlers, itinerant~~
25 ~~merchants and flea market vendors~~ peddlers and itinerant
26 merchants in this section disabled veterans of World War I, World
27 War II, Korean Conflict, and Vietnam Era, who have been bona fide
28 residents of this State for 12 or more months continuously, and
29 widows with dependent children; and when so exempted, the board
30 of county commissioners shall furnish such person or persons with
31 a certificate of exemption, and such certificate shall entitle
32 the holder thereof to sell within the limits of the county
33 without payment of any license tax to the State.
- 34 ~~(h) Information to Department of Revenue. -- When a peddler,~~
35 ~~itinerant merchant, flea market vendor or flea market operator~~

~~1 applies to the Department of Revenue for a license, he shall
2 provide the name and permanent address of the peddler, itinerant
3 merchant, flea market vendor or flea market operator. In
4 providing this information, if the peddler, itinerant merchant,
5 flea market vendor or flea market operator is not a corporation,
6 he must provide a copy of a valid driver's license, a special
7 identification card issued under G.S. 20-37.7, military
8 identification or a passport bearing a physical description of
9 the person named reasonably describing the peddler, itinerant
10 merchant, flea market vendor or flea market operator. If the
11 peddler, itinerant merchant, flea market vendor or flea market
12 operator is incorporated, he shall give the name and the
13 registered agent of the corporation and the address of the
14 registered office of the corporation, as filed with the North
15 Carolina Secretary of State.~~

16 (i) Display and Possession of Licenses. Licenses and
17 Identification. -- An itinerant merchant or flea market vendor
18 shall keep both the license required by this section and the
19 retail sales tax license conspicuously and prominently displayed,
20 so as to be visible for inspection by patrons of the itinerant
21 merchant or flea market vendor, at the places or locations at
22 which the goods are to be sold or offered for sale. A peddler
23 shall have the license required by this section and the retail
24 sales tax license with him at all times he offers goods for sale
25 and must produce them upon the request of any person. A
26 specialty market vendor shall keep the retail sales tax license
27 conspicuously and prominently displayed, so as to be visible for
28 inspection by patrons of the specialty market vendor at the
29 places or locations at which the goods are to be sold or offered
30 for sale. A flea specialty market operator shall have the
31 license required by this section available for inspection during
32 all times that the flea specialty market is open and must produce
33 it upon the request of any person.

34 Upon the request of any person, a peddler, itinerant merchant,
35 specialty market operator, or specialty market vendor shall

1 provide its name and permanent address. If the peddler,
2 itinerant merchant, specialty market operator, or specialty
3 market vendor is not a corporation, he shall, upon the request of
4 any person, provide a valid driver's license, a special
5 identification card issued under G.S. 20-37.7, military
6 identification, or a passport bearing a physical description of
7 the person named reasonably describing the peddler, itinerant
8 merchant, specialty market operator, or specialty market vendor.
9 If the peddler, itinerant merchant, specialty market operator, or
10 specialty market vendor is a corporation, it shall, upon the
11 request of any person, give the name and registered agent of the
12 corporation and the address of the registered office of the
13 corporation, as filed with the North Carolina Secretary of State.

14 (j) Permission of Property Owner. -- An itinerant merchant or
15 a peddler who travels from place to place by vehicle, in addition
16 to other requirements of this section, shall obtain a written
17 statement signed by the owner or lessee of any property upon
18 which the itinerant merchant or peddler offers goods for sale
19 giving the owner's or lessee's permission to offer goods for sale
20 upon the property of the owner or lessee. Such statement shall
21 clearly state the name of the owner or lessee, the location of
22 the premises for which the permission is granted, and the dates
23 during which the permission is valid. Further, such statement
24 shall be conspicuously and prominently displayed, so as to be
25 visible for inspection by patrons of the itinerant merchant or
26 peddler, at the places or locations at which the goods are to be
27 sold or offered for sale.

28 (k) Flea- Specialty Market Registration List. -- A flea
29 specialty market operator shall maintain a daily registration
30 list of all flea specialty market vendors selling or offering
31 goods for sale at the flea specialty market. This registration
32 list shall clearly and legibly show the flea each specialty
33 market vendor's name, permanent address and the flea market
34 vendor's statewide flea market vendor's address, and retail sales
35 and use tax registration number. license number. If the flea

~~1 market vendor is exempt from licensing under subsections (e) or~~
~~2 (g), the list shall show the reason for exemption and be signed~~
~~3 by the flea market vendor and the flea market operator. At the~~
~~4 time of registration, the flea~~ The specialty market operator
5 ~~must~~ shall require the flea each specialty market vendor to
6 exhibit a valid flea market vendor's license or county exemption
7 certificate and retail sales tax license for visual inspection by
8 the flea market operator. specialty market operator at the time
9 of registration, and shall require each specialty market vendor
10 to keep the retail sales tax license conspicuously and
11 prominently displayed, so as to be visible for inspection by
12 patrons of the specialty market vendor at the places or locations
13 at which the goods are offered for sale. Each daily registration
14 list maintained pursuant to this subsection shall be retained by
15 the flea specialty market operator for no less than two years and
16 shall at any time be made available upon request to any law
17 enforcement officer.

18 (1) Penalty. -- It shall be a misdemeanor, punishable by
19 imprisonment of up to 30 days, a fine of up to two hundred
20 dollars (\$200.00), or both, for a person to:

- 21 (1) Fail to obtain a license as required by this
22 section;
- 23 (2) Knowingly give false information in the application
24 process for a license or when registering pursuant
25 to subsection (k);
- 26 (3) If the person is an itinerant ~~merchant or flea~~
27 ~~market vendor,~~ merchant, fail to display the
28 license as required by subsection (i) or if the
29 person is a peddler or flea specialty market
30 operator, fail to produce the license as required
31 by subsection (i) or if the person is required to
32 do so, fail to comply with subsection (j).
33 Whenever satisfactory evidence shall be presented
34 in any court of the fact that a license was
35 required by this section and such license was not

1 displayed or produced as required by subsection
2 (i), or that permission was required by subsection
3 (j) of this section and was not displayed, the
4 peddler, itinerant merchant, ~~flea market vendor~~ or
5 ~~flea~~ specialty market operator shall be found not
6 guilty of that violation provided he produces in
7 court a valid license or valid permission which had
8 been issued prior to the time he was charged with
9 such violation; or

10 (4) Fail to provide name, address, or identification
11 upon request as required by subsection (i) or
12 provide false information in response to such a
13 request.

14 ~~(4) If the person is a flea market operator, fail to~~
15 ~~comply with subsection (k) or knowingly allow a~~
16 ~~flea market vendor to falsely register as exempt~~
17 ~~under subsection (k).~~

18 (m) Additional Penalties. It shall be a misdemeanor,
19 punishable by imprisonment of up to 30 days, a fine of up to one
20 thousand dollars (\$1,000), or both, for a specialty market
21 operator to fail to comply with subsection (k) or for a specialty
22 market vendor to fail to display the retail sales tax license as
23 required by subsection (i). For the purposes of this section,
24 the requirement that a retail sales tax license be displayed is
25 satisfied if the vendor displays either (i) a copy of the license
26 or (ii) evidence that the license has been applied for and the
27 applicable license fee has been paid within 30 days before the
28 date the license was required to be displayed. Whenever
29 satisfactory evidence shall be presented in any court of the fact
30 that display of a retail sales tax license was required by this
31 section and such license was not displayed, the specialty market
32 operator or vendor shall not be found guilty of that violation
33 provided he produces in court a valid license which had been
34 issued prior to the time he was charged with the violation.

1 ~~(m)~~ (n) Local License. -- Counties and cities may levy a
2 license tax on a business taxed under this section in an amount
3 that does not exceed the State tax. Further, this section does
4 not affect the authority of a county or city to impose additional
5 requirements on peddlers, itinerant merchants, ~~flea market~~
6 ~~vendors or flea~~ specialty market vendors, or specialty market
7 operators by an ordinance adopted under G.S. 153A-125 or G.S.
8 160A-178."

9 Sec. 2. This act does not affect the rights or
10 liabilities of the State, a taxpayer, or other person arising
11 under a statute amended or repealed by this act before its
12 amendment or repeal; nor does it affect the right to any refund
13 or credit of a tax that would otherwise have been available under
14 the amended or repealed statute before its amendment or repeal.

15 Sec. 3. This act shall become effective July 1, 1989.

Explanation of Proposal 1

G.S. 105-53 imposes a privilege license tax on peddlers, itinerant merchants, flea market operators, and flea market vendors. Before July 1, 1988, this section taxed flea market operators but not the flea market vendors to whom the operators rented space. Legislation enacted in 1987 to become effective July 1, 1988, levied a twenty-five-dollar license tax on flea market vendors and required license applicants to provide positive identification before receiving the license. The new law also required peddlers, itinerant merchants, and flea market operators and vendors to display their licenses and required flea market operators to maintain a list of all the flea market vendors selling at the flea market. Finally, the new law provided that violation of the license tax and other requirements is a misdemeanor punishable by up to 30 days' imprisonment, up to two hundred dollars' fine, or both.

The intent of the new law was to deter the sale of stolen goods at flea markets and provide consumers the means to trace a vendor who may have sold shoddy merchandise. During 1988, a number of problems with the new law were brought to the attention of the Revenue Laws and Corporate Income Taxation Study Committee.

Representatives of the License and Excise Tax Division of the Department of Revenue noted that the identification requirements forced the Department to process the license applications manually. This problem, along with the volume of new vendor licenses, drained the resources of the Division, leading to backlogs in processing privilege licenses of all sorts. In addition, the Division staff has been unable to notify all vendors newly subject to tax, leading to uneven enforcement and bad publicity when vendors were surprised by the tax. Local government officials were troubled by the

new law as well. One of the technical definitions contained in the statute subjected municipalities to the flea market operators' tax in violation of the general rule that local governments are not subject to State taxes.

By far the most numerous complaints concerning the license tax came from taxpayers. Operators of consumer trade shows, such as furniture shows, antique shows, and coin dealer shows, objected to the imposition of the tax on their vendors. They found the label "flea market" offensive when applied to their shows and pointed out that a consumer trade show vendor was not the type of vendor that would sell stolen goods or refuse to make a refund to a dissatisfied customer. The trade show operators also pointed out that because neighboring states do not impose a tax on vendors, operators and vendors were moving their shows out of North Carolina to avoid the tax. Flea market operators and vendors also complained about the new tax, stating that it imposed an unreasonably heavy burden on vendors, many of whom are elderly or handicapped and have little or no other income. They also noted several instances in which the tax was enforced against flea markets but not against trade shows and festivals that are also liable for the tax. Finally, all the parties subject to the tax complained of the difficulty of providing a copy of a positive identification before being able to obtain the license.

The Study Committee developed legislation to address all of these concerns and to maintain a mechanism for protecting consumers and deterring sale of stolen goods at flea markets. Legislative Proposal 1 repeals the license tax on flea market vendors and raises the tax on flea market operators from one hundred dollars to two hundred dollars. In addition, the bill substitutes the term "specialty market" for "flea market" in the statute because consumer trades shows as well as flea markets are covered by the law. The bill repeals the requirement that licensees submit a copy of a positive identification before receiving a license; this change will eliminate the need for the

Department to process applications by hand. The bill addresses the concerns of local governments by exempting units of government from the tax. Finally, the bill will enhance efforts to regulate licensees and make them accountable by (i) requiring flea market vendors and operators and other licensees to display their retail sales tax license and, upon the request of any person, show positive identification; (ii) requiring flea market operators to keep a list with the name, address, and sales tax number of every vendor at the market; (iii) requiring flea market operators to refuse to allow vendors to sell if they do not have a retail sales tax license; and (iv) imposing an increased penalty of up to \$1,000 for a flea market operator or vendor who fails to comply with these requirements.

The bill is to become effective July 1, 1989.

Proposal 1

Fiscal Report
Fiscal Research Division
November 8, 1988

Explanation of Proposal:

G.S. 105-53 authorizes an annual privilege license tax imposed on flea market vendors of \$25.00. As a requirement of the license application, vendors must provide positive identification. Violation of the tax or other requirements is punishable by up to 30 days imprisonment or up to \$200.00 penalty, or both. These provisions were enacted by the 1987 General Assembly and became effective July 1, 1988.

The proposal repeals the tax on flea market vendors and raises the tax on flea market operators from \$100.00 to \$200.00. Other major provisions of Proposal 1 include:

1. The term "specialty market" is substituted for "flea market" in G.S. 105-53
2. The requirement of proof of identification is repealed
3. Local governments are exempt from the tax
4. The penalty for certain violations is increased to \$1,000

Effective Date

July 1, 1989.

Fiscal Impact

There are 280 flea market operators who currently hold privilege tax licenses, generating \$28,000 annually for the General Fund. Doubling this tax would increase revenues for Fiscal Year 1989-90 by an additional \$28,000.

The repeal of the privilege license tax on flea market vendors will generate an annual revenue loss of \$132,000. The Department of Revenue has estimated that current statutory provisions which tax and regulate flea market vendors generate additional manpower demands of approximately \$35,000 in the central office in Raleigh and approximately \$60,000 among field offices. It is their opinion that, when the additional budgetary requirements of enforcing the flea market vendor tax are taken into consideration, Proposal 1 generates an insignificant revenue loss for the General Fund.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1989

S/H

D

PROPOSAL 2 (RL-41)
(THIS IS A DRAFT AND NOT READY FOR INTRODUCTION)

Short Title: Advertising Services/Sales Tax.

(Public)

Sponsors:

Referred to:

1 A BILL TO BE ENTITLED

2 AN ACT TO MAKE ADVERTISING AGENCIES LIABLE FOR SALES TAX ON ALL
3 ITEMS PURCHASED BY THEM AND TO EXCLUDE ITEMS PRODUCED BY
4 ADVERTISING AGENCIES FROM SALES TAX, THEREBY ENSURING THAT
5 ADVERTISING SERVICES ARE NOT SUBJECT TO SALES TAX.

6 The General Assembly of North Carolina enacts:

7 Section 1. G.S. 105-164.3(3) reads as rewritten:

8 "(3) 'Consumer' shall mean and include every person
9 storing, using or otherwise consuming in this State tangible
10 personal property purchased or received from a retailer either
11 within or without this State. An advertising agency is
12 considered the consumer of all tangible personal property it
13 purchases."

14 Sec. 2. G.S. 105-164.13 is amended by adding a new
15 subdivision to read:

16 "(41) Sales of tangible personal property by an advertising
17 agency to a client in connection with advertising services
18 provided to the client by the agency. This subdivision does not

1 exempt tangible personal property used or consumed by an
2 advertising agency from the taxes imposed by this Article."

3 Sec. 3. This act shall become effective July 1, 1989,
4 and applies to sales made on or after that date.

Explanation of Proposal 2

This bill changes the way items of tangible personal property produced by an advertising agency, in the course of rendering advertising services to a client, are taxed under the sales tax law. The bill requires an advertising agency to pay sales tax on all items of property purchased by it, even if these items are to be used in producing a product for a client, and exempts items delivered by the advertising agency to its clients from sales tax. By making sales of tangible personal property to an advertising agency retail sales and excluding sales by an advertising agency to a client from sales tax, the bill ensures that charges by advertising agencies to clients are not subject to sales tax and that sales tax is paid on the equipment, materials, supplies, and similar items that are used by an advertising agency in designing a product for a client.

Under current law, the way sales tax is applied to items of tangible personal property produced by an advertising agency for a client depends on what is done with each item. Charges by advertising agencies to clients for placing advertising in newspapers or magazines or on radio or television are exempt from sales and use taxes and the advertising agencies are liable for payment of sales and use tax on purchases of tangible personal property used in placing such advertising for clients. Purchases of services by the agency are not taxable. If an advertising agency prepares or acquires taxable tangible personal property which is delivered to a client for the client to use in placing advertising in newspapers or magazines or on radio or television, the advertising agency must collect and remit tax on the sales price of the property, including all charges for services that go into the design, production, and delivery of the property. Frequently, it is difficult to determine what portion of professional

services provided by the agency to the client are attributable to the production of the tangible personal property because the property is only a small part of the total charge when hundreds of hours of market research, consultation, and design have been devoted to a promotional campaign. Likewise, because some items produced by an advertising agency are taxable and some are not, it is difficult for an advertising agency to know at the time it purchases supplies whether or not these supplies later will be used in a taxable transaction and are, thus, exempt from sales tax at the time of the agency's purchase.

This bill resolves the confusion that currently surrounds the application of sales tax to items produced by advertising agencies. The committee recognizes that although an advertising agency's work may result in the transfer of a tangible item to a client, such as a brochure or other printed material, the great majority of the client's bill may be for market research, advertising strategies, and creative services, and that transfer of a tangible item may be incidental to providing the services. In this respect, the committee finds that advertising agencies are more like lawyers and other professionals, whose primary function is providing services, than they are like merchants selling goods off the shelf and should be treated as such under the sales tax law.

The bill is to become effective July 1, 1989, and will apply to sales made on or after that date.

Explanation of Proposal:

Under current law and the regulations of the Department of Revenue, if an advertising agency delivers the final product to a client, the agency is liable for collecting a sales tax. The reason is that in such a transaction it is construed that the sale of tangible personal property has taken place. The tax liability occurs regardless of the fact that most of the market value of the final product is a reflection of the services that have gone into creating the product and that services are not generally taxable. In such transactions, purchases by the agency of materials and supplies that become a part of the final product are exempt from sales and use tax.

If the agency places the ad with the media on behalf of the client, it is construed that the agency has provided a service and the transfer of any property is part of the service delivery. In such a transaction, no sales tax applies to the gross receipts of the agency but the agency is required to pay a sales or use tax on its purchases of materials and supplies that become part of the final product.

The proposal would exempt the gross receipts of advertising agencies from the sales tax but require that the agencies pay a sales or use tax on items they purchase.

Effective Date:

Sales occurring on or after July 1, 1989.

Fiscal Effect:

Based on an update of earlier estimates of the Department of Revenue, the reduction in state General Fund tax revenues would be \$1.7 million for 1989-90 (11 collection months) and \$2.0 million for 1990-91. The impact on local government revenues would be \$1.1 million for 1989-90 and \$1.3 million for 1990-91.

The earlier estimate of the Department of Revenue was based on a review of sales and use tax returns.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1989

H/S

D

PROPOSAL 3 (RL-50)

Short Title: Merchants' Sales Tax Discount.

(Public)

Sponsors:

Referred to:

1 A BILL TO BE ENTITLED

2 AN ACT TO ALLOW A PERCENTAGE DISCOUNT TO MERCHANTS FOR COLLECTING
3 STATE SALES AND USE TAXES.

4 The General Assembly of North Carolina enacts:

5 Section 1. Article 5 of Chapter 105 of the General
6 Statutes is amended by adding after G.S. 105-164.20 a new section
7 to read:

8 "§ 105-164.21. Discount for collecting and paying taxes when
9 due.--(a) Amount of Discount. Except as provided in subsection
10 (b), a retailer who pays the retail sales or use tax imposed by
11 this Article may deduct from the amount of the tax for which it
12 is liable and which it actually pays a discount of three percent
13 (3%) of the first one thousand dollars (\$1,000) of tax paid per
14 month and one percent (1%) of the remaining tax paid per month,
15 up to a maximum discount of one hundred dollars (\$100.00) per
16 month for each place of business at a separate location, and up
17 to a maximum discount of twenty-five thousand dollars (\$25,000)
18 for each State fiscal year for each retailer group. The one
19 hundred-dollar (\$100.00) per month maximum discount for each
20 location may be deducted only from the tax paid with regard to

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

10 (b) Restrictions. The Secretary may deny a taxpayer the
11 benefits of this section for failure to pay the full tax when due
12 as well as in cases of fraud, evasion, or failure to keep
13 accurate and clear records as required by this Article. In order
14 to receive the discount provided in this section, the taxpayer
15 must deduct the discount at the time of making its remittance of
16 tax to the Department of Revenue. A utility may not deduct the
17 discount provided in subsection (a) on sales of electricity,
18 piped natural gas, or intrastate telephone service."

19 Sec. 2. G.S. 105-474 reads as rewritten:

20 "§ 105-474. Definitions; construction of Article; remedies and
21 penalties.--The definitions set forth in G.S. 105-164.3 shall
22 apply to this Article insofar as such definitions are not
23 inconsistent with the provisions of this Article, and all other
24 provisions of Article 5 and of Article 9 of Subchapter 1, Chapter
25 105 of the General Statutes, as the same relate to the North
26 Carolina Sales and Use Tax Act shall be applicable to this
27 Article unless such provisions are inconsistent with the
28 provisions of this Article. Provided, however, the discount
29 provided in G.S. 105-164.21 shall not apply to this Article. The
30 administrative interpretations made by the Secretary of Revenue
31 with respect to the North Carolina Sales and Use Tax Act, to the
32 extent not inconsistent with the provisions of this Article, may
33 be uniformly applied in the construction and interpretation of
34 this Article. It is the intention of this Article that the
35 provisions of this Article and the provisions of the North

1 Carolina Sales and Use Tax Act, insofar as practicable, shall be
2 harmonized.

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

10 Sec. 3. Section 10 of Chapter 1096 of the 1967 Session
11 Laws is amended by adding after the first sentence a new sentence
12 to read: "Provided, however, the discount provided in G.S.
13 105-164.21 shall not apply to this division."

14 Sec. 4. This act shall become effective October 1,
15 1989, and applies to remittances of sales and use taxes on sales
16 made on or after that date.

Explanation of Proposal 3

Until 1987, North Carolina allowed a retailer who collected sales and use taxes to retain a discount of three percent of the State and local taxes collected and remitted to the State. This allowance, known as the merchant's discount, was repealed by the School Facilities Finance Act of 1987 as part of a tax package that repealed the property tax on inventories and raised the corporate income tax from six percent to seven percent. During the spring of 1988, the Committee heard from numerous groups requesting reinstatement of the discount. The Committee took no action on the issue before the 1988 Legislative Session; nonetheless, during that session Senate Bill 1594 was introduced to allow merchants a discount of three percent of the State (but not local) sales taxes collected, up to a maximum discount of two hundred dollars per month. The bill, which would have cost the State nearly thirty million dollars per year, passed the Senate but stalled in the House of Representatives.

After the 1988 Session, the Committee heard again from business organizations on this issue. Among the groups represented were retail merchants, independent businesses, automobile dealers, farm and power equipment dealers, convenience stores, petroleum marketers, restaurants, tire dealers, automotive wholesalers, and lumber and building material dealers. These groups pointed out that, unlike withholding payroll dollars, when a retailer collects and remits sales tax, it is handling the public's money as a service to the State. This service enables the State to bring in about one-fourth of its total tax revenues more quickly than any of its other major revenue sources. According to the groups who spoke to the Committee, some sort of discount is needed to help offset the significant costs to retailers of collecting and remitting the tax.

The Committee compared the treatment of sales tax discounts in the other forty-nine states and reviewed the cost of various discount rates and caps. The Committee concluded that a new discount would be desirable if it could be structured in such a way that the allowance to large merchants would be limited. An additional advantage of such a limitation is that it would be more reasonable in light of the State's budget needs. Finally, the Committee felt that the pressing needs of local government units in the State dictated that the local tax base not be eroded. After reviewing a number of options for allowing a discount against the State tax, the Committee agreed on Legislative Proposal 3. This proposal allows a discount against State sales and use tax collections of three percent of the first \$1,000 of tax collected per month and one percent of the remaining tax collected each month, with a cap of one hundred dollars per location each month and a cap of \$25,000 per retailer group per year. For the purpose of calculating the annual cap, a retailer group includes (i) all corporate affiliates, parents, and subsidiaries that have 80% or more common stock ownership and/or (ii) all non-corporate businesses that are under the same general management, supervision, or ownership. The discount will not apply to local sales and use taxes.

The bill is to become effective October 1, 1989.

Explanation of Proposal:

Would allow merchants remitting the state sales tax to retain 3% of the first \$1,000 of tax collected and 1% of the remainder, provided that the merchant remitted the full tax on a timely basis. The amount retained would be limited to \$100 per month per business location and \$25,000 per year for each retail group.

The maximum monthly discount for a business location may only be deducted from the taxes remitted at a specific location. For purposes of the annual discount limit, the proposal contains technical language defining the term "retail group".

Effective Date:

Sales occurring on or after October 1, 1989.

Fiscal Effect:

- (1) Would reduce state General Fund tax revenue by \$12.2 million for 1989-90 (partial year) and \$18.3 million for 1990-91.
- (2) The \$100 per month limit is equivalent to monthly taxable sales volume of \$266,667 and monthly state sales tax liability of \$8,000.
- (3) The \$25,000 annual discount limit for a retail group is equivalent to a limitation of slightly more than 20 locations at the \$100 per month maximum per location.
- (4) A recent tabulation of monthly sales and use tax returns by the Department of Revenue indicates that of the total active accounts remitting on a monthly or semimonthly basis, approximately 98% would have monthly sales volume below the level at which the discount would equal \$100.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1989

H/S

D

PROPOSAL 4 (RL-49)
(THIS IS A DRAFT AND NOT READY FOR INTRODUCTION)
18-NOV-88

Short Title: Income Tax Based on Federal Law. (Public)

Sponsors: .

Referred to:

1 A BILL TO BE ENTITLED
2 AN ACT TO STRUCTURE INDIVIDUAL INCOME TAX AS A PERCENTAGE OF
3 FEDERAL TAXABLE INCOME.

4 The General Assembly of North Carolina enacts:

5 Section 1. G.S. 105-133 reads as rewritten:

6 "§ 105-133. Short title.--This Division of the income tax
7 Article shall be known ~~and may be cited~~ as the Individual Income
8 Tax Act."

9 Sec. 2. G.S. 105-134 reads as rewritten:

10 "§ 105-134. Purpose.--The general purpose of this Division is
11 to impose a tax for the use of the State government upon the net
12 income ~~in excess of the exemptions herein allowed~~ collectible
13 annually:

14 (1) Of every resident of this State.

15 (2) Of every nonresident individual deriving income
16 from North Carolina sources attributable to the
17 ownership of any interest in real or tangible
18 personal property in this State or deriving income

1 from a business, trade, profession, or occupation
2 carried on in this State."

3 Sec. 3. G.S. 105-135 through G.S. 105-149 are repealed.

4 Sec. 4. Division II of Article 4 of Chapter 105 of the
5 General Statutes is amended by adding after G.S. 105-134 the
6 following new sections to read:

7 "§ 105-134.1 Definitions.--The following definitions apply in
8 this Division.

9 (1) Code. The Internal Revenue Code as enacted as of
10 January 1, 1989, including any provisions enacted
11 as of that date which become effective either
12 before or after that date, but not including
13 Sections 63(c)(4), 151(d)(1)(c), and 151(d)(3).

14 (2) Department. The Department of Revenue.

15 (3) Fiscal year. Defined in Section 441(e) of the
16 Code.

17 (4) Gross income. Defined in Section 61 of the Code.

18 (5) Head of household. Defined in Section 2(b) of the
19 Code.

20 (6) Individual. A natural person.

21 (7) Married individual. An individual who is married
22 and is considered married as provided in Section
23 7703 of the Code.

24 (8) Nonresident individual. An individual who is not a
25 resident of this State.

26 (9) North Carolina net income. Defined in G.S.
27 105-134.5.

28 (10) Resident. An individual who is domiciled in this
29 State at any time during the taxable year or who
30 resides in this State during the taxable year for
31 other than a temporary or transitory purpose. In
32 the absence of convincing proof to the contrary, an
33 individual who is present within the State for more
34 than six months during the taxable year is presumed
35 to be a resident, but the absence of an individual

1 from the State for more than six months raises no
2 presumption that the individual is not a resident.
3 A resident who removes from the State during a
4 taxable year is considered a resident until he has
5 both established a definite domicile elsewhere and
6 abandoned any domicile in this State. The fact of
7 marriage does not raise any presumption as to
8 domicile or residence.

9 (11) Secretary. The Secretary of Revenue.

10 (12) Surviving spouse. Defined in Section 2(a) of the
11 Code.

12 (13) Taxable income. Defined in Section 63 of the Code.

13 (14) Taxable year. Defined in Section 441(b) of the
14 Code.

15 (15) Taxpayer. An individual subject to the tax imposed
16 by this Division.

17 "§ 105-134.2. Individual income tax imposed.--A tax is imposed
18 upon the North Carolina net income of every individual. The tax
19 shall be levied, collected, and paid annually and shall be
20 computed at the rate of six and six-tenths percent (6.6%) of the
21 taxpayer's North Carolina net income.

22 "§ 105-134.3. Year of assessment.--The tax imposed by this
23 Division shall be assessed, collected, and paid in the year
24 following the year for which the assessment is made, except as
25 provided to the contrary in Article 4A of this Chapter.

26 "§ 105-134.4. Taxable year.--A taxpayer shall compute his
27 North Carolina net income on the basis of the taxable year used
28 in computing his income tax liability under the Code.

29 "§ 105-134.5 North Carolina net income defined.--(a)
30 Residents. For residents of this State, the term 'North Carolina
31 net income' means taxable income as calculated under the Code,
32 adjusted as provided in G.S. 105-134.6 and G.S. 105-134.7.

33 (b) Nonresidents. For nonresident individuals, the term
34 'North Carolina net income' means taxable income as calculated
35 under the Code, adjusted as provided in G.S. 105-134.6 and G.S.

1 105-134.7, multiplied by a fraction the denominator of which is
2 the taxpayer's gross income as calculated under the Code,
3 adjusted as provided in G.S. 105-134.6 and G.S. 105-134.7, and
4 the numerator of which is the amount of that gross income, as
5 adjusted, that is derived from North Carolina sources and is
6 attributable to the ownership of any interest in real or tangible
7 personal property in this State or is derived from a business,
8 trade, profession, or occupation carried on in this State.

9 (c) Part-year residents. If an individual was a resident of
10 this State for only part of the taxable year, having moved into
11 or removed from the State during the year, the term 'North
12 Carolina net income' has the same meaning as in subsection (b)
13 except that the numerator shall include gross income, adjusted as
14 provided in G.S. 105-134.6 and G.S. 105-134.7, derived from all
15 sources during the period the individual was a resident.

16 "§ 105-134.6. Adjustments to taxable income.--(a) Deductions.
17 The following deductions from taxable income shall be made in
18 calculating North Carolina net income:

- 19 (1) Interest upon the obligations of the United States
20 or its possessions.
- 21 (2) Amounts received from retirement annuities or
22 pensions paid under the provisions of the Railroad
23 Retirement Act of 1937.
- 24 (3) Retirement, pension, and deferred compensation
25 benefits that are not subject to State taxation
26 under the following provisions: G.S. 118-49,
27 120-4.29, 127A-40(e), 128-31, 135-9, 135-95,
28 143-166.30, and 147-9.4.
- 29 (4) Any amount not to exceed four thousand dollars
30 (\$4,000) received by the taxpayer during the
31 taxable year under a federal employee retirement
32 program to which the taxpayer made contributions
33 during his working years.
- 34 (5) Any amount not to exceed four thousand dollars
35 (\$4,000) received by the taxpayer during the

1 taxable year as retired or retainer pay as a result
2 of service in any of the armed forces of the United
3 States.

4 (6) Any amount not to exceed one thousand five hundred
5 dollars (\$1,500) received by the taxpayer during
6 the taxable year as compensation for the
7 performance of duties as a member of the North
8 Carolina organized militia, the national guard as
9 defined in G.S. 127A-3.

10 (7) Retirement and pension benefits received from
11 another state by a former teacher or state employee
12 of the other state if the other state levies no
13 income tax on individuals or exempts or excludes
14 for income tax purposes retirement and pension
15 benefits received by retired members of the North
16 Carolina Retirement System for Teachers and State
17 Employees.

18 (b) Additions. The following additions to taxable income
19 shall be made in calculating North Carolina net income:

20 (1) Interest upon the obligations of States, other than
21 this State, and their political subdivisions.

22 (2) Any amount allowed as a deduction from gross income
23 under the Code that is taxed under the Code by a
24 separate tax other than the tax imposed in Section
25 1 of the Code. The Secretary shall report to the
26 1991 General Assembly all provisions under the Code
27 for taxing certain amounts separately and shall
28 recommend whether such amounts should be taxed
29 separately under this Division or should be added
30 to taxable income in calculating North Carolina net
31 income.

32 "§ 105-134.7. Transitional adjustments.--(a) The following
33 adjustments to taxable income shall be made in calculating North
34 Carolina net income:

1 (1) Amounts that were added to the basis of property
2 under federal tax law but not under State tax law
3 before January 1, 1990, shall be added to taxable
4 income in the year the taxpayer's taxable income
5 includes a gain or loss from the sale or other
6 disposition of the property.

7 (2) Amounts that were added to the basis of property
8 under State tax law but not under federal tax law
9 before January 1, 1990, shall be deducted from
10 taxable income in the year the taxpayer's taxable
11 income includes a gain or loss from the sale or
12 other disposition of the property.

13 (3) Amounts that were recognized as income under
14 federal law but not under State law due to a
15 taxpayer's use of the installment method set out in
16 G.S. 105-142(f) prior to January 1, 1990, shall be
17 added to taxable income in the taxpayer's first
18 taxable year beginning on or after January 1, 1990.

19 (b) The Secretary may by rule require other adjustments to be
20 made to taxable income as necessary to assure that the transition
21 to the tax changes effective January 1, 1990, will not result in
22 double taxation of income, exemption of otherwise taxable income
23 from taxation under this Division, or double allowance of
24 deductions.

25 "§ 105-134.8. Effective dates of amendments.--Except as
26 otherwise provided in this Chapter, the amendments to this
27 Article made by Section 4 of Chapter 1340 of the 1957 Session
28 Laws are effective for taxable years beginning on or after
29 January 1, 1957.

30 "§ 105-134.9. Inventory.--Whenever, in the opinion of the
31 Secretary, it is necessary in order clearly to determine the
32 income of any taxpayer, inventories shall be taken by the
33 taxpayer as prescribed by the Secretary, conforming as nearly as
34 possible to the best accounting practice in the trade or business
35 and most clearly reflecting the income."

1 Sec. 5. G.S. 105-151 reads as rewritten:

2 "**§ 105-151.** Tax credits for income taxes paid to other states
3 **by individuals.**--(a) ~~Individuals who are residents~~ An individual
4 who is a resident of this State ~~shall be allowed~~ is allowed a
5 credit against the taxes imposed by this ~~division~~ Division for
6 income taxes imposed by and paid to another state or country on
7 income taxed under this ~~division,~~ Division, subject to the
8 following conditions:

9 (1) The credit shall be allowed only for taxes paid to
10 ~~such other~~ another state or country on income
11 derived from sources within ~~such~~ the state or
12 country ~~which~~ that is taxed under ~~the~~ its laws
13 ~~thereof~~ irrespective of the residence or domicile
14 of the recipient; provided, that whenever a
15 taxpayer who is deemed to be a resident of this
16 State under the provisions of this ~~division~~
17 Division ~~and who~~ is deemed also to be a resident of
18 another state or country under the laws of ~~such~~
19 ~~other~~ that state or ~~country~~ country, the Secretary
20 ~~of Revenue~~ may, in his discretion, allow a credit
21 against the taxes imposed by this ~~division~~ Division
22 for ~~such~~ taxes imposed by and paid to ~~such~~ the
23 other state or country on income taxed under this
24 ~~division,~~ Division.

25 (2) The fraction of the gross ~~income for North Carolina~~
26 ~~income tax purposes~~ which income, as calculated
27 under the Code and adjusted as provided in G.S.
28 105-134.6 and G.S. 105-134.7, that is subject to
29 income tax in another state or country shall be
30 ~~ascertained~~ ascertained, and the North Carolina net
31 income tax before credit under this section shall
32 be multiplied by ~~such~~ that fraction. The credit
33 allowed shall be either the product thus calculated
34 or the income tax actually paid the other state or
35 ~~country~~ country, whichever is smaller.

1 (3) Receipts showing the payment of income taxes to
2 another state or country and a true copy of a
3 return or returns upon the basis of which the taxes
4 are assessed ~~must~~ shall be filed with the Secretary
5 of ~~Revenue~~ at, or prior to, the time credit is
6 claimed. If credit is claimed on account of a
7 deficiency assessment, a true copy of the notice
8 assessing or proposing to assess the deficiency, as
9 well as a receipt showing the payment of the
10 deficiency, shall be filed.

11 (b) If any taxes paid to another state or country for which a
12 taxpayer has been allowed a credit under this section are at any
13 time credited or refunded to the taxpayer, a tax equal to that
14 portion of the credit allowed for such taxes so credited or
15 refunded shall be due and payable from the taxpayer within 30
16 days ~~from~~ after the date of ~~the~~ receipt of the refund or notice
17 of the credit. If the amount of tax is not paid within 30 days
18 ~~of~~ after receipt or ~~notice~~ notice, the taxpayer shall be subject
19 to the penalties and interest on delinquent payments provided ~~for~~
20 in Subchapter I of this Chapter."

21 Sec. 6. G.S. 105-151.1 reads as rewritten:

22 "**§ 105-151.1. Tax credit for construction of dwelling units**
23 **for handicapped persons.**--There shall be allowed to resident
24 owners of multifamily rental units located in North Carolina as a
25 credit against the tax imposed by this Division, an amount equal
26 to five hundred fifty dollars (\$550.00) for each dwelling unit
27 constructed by such resident owner which conforms to the
28 recommendations of section (11x) of the North Carolina Building
29 Code for the taxable year within which the construction of such
30 dwelling units is completed; provided, that credit will be
31 allowed under this section only for the number of such dwelling
32 units completed during the taxable year which were required to be
33 built in compliance with section (11x) of the North Carolina
34 Building Code; provided further, that if the credit allowed by
35 this section exceeds the tax imposed by this Division reduced by

1 all other credits allowed by the provisions of this Division,
2 ~~such the~~ excess shall be allowed as a credit against the tax
3 imposed by this Division for the next succeeding year; and
4 provided further, that in order to secure the credit allowed by
5 this section the taxpayer shall file with his income tax return
6 for the taxable year with respect to which such credit is to be
7 claimed, a copy of the occupancy permit on the face of which
8 there shall be recorded by the building inspector the number of
9 units completed during the taxable year which conform to section
10 (11x) of the North Carolina Building Code. When he has recorded
11 the number of such units on the face of the occupancy permit, the
12 building inspector shall promptly ~~make and~~ forward a copy of the
13 permit to the Special Office for the Handicapped, Department of
14 Insurance."

15 Sec. 7. G.S. 105-151.2 through G.S. 105-151.10 are
16 repealed.

17 Sec. 8. G.S. 105-151.11 reads as rewritten:

18 "§ 105-151.11. Credit against personal income tax for child
19 care and certain employment-related expenses.--(a) ~~Any person who~~
20 ~~maintains a household which includes as a member one or more~~
21 ~~qualifying individuals shall be allowed as a credit against the~~
22 ~~tax imposed by this Division an amount equal to seven percent~~
23 ~~(7%) of the employment-related expenses as defined in subdivision~~
24 ~~(b)(2) herein.~~

25 ~~(b) For the purposes of this section:~~

26 ~~(1) The term "qualifying individual" means:~~

27 ~~a. A dependent of the taxpayer who is under the~~
28 ~~age of 15 and with respect to whom the~~
29 ~~taxpayer is entitled to a deduction under G.S.~~
30 ~~105-149(a)(5);~~

31 ~~b. A dependent of the taxpayer who is physically~~
32 ~~or mentally incapable of caring for himself;~~
33 ~~or~~

1 ~~c. The spouse of the taxpayer, if the spouse is~~
2 ~~physically or mentally incapable of caring for~~
3 ~~himself or herself.~~

4 ~~(2) The term "employment-related expenses" means~~
5 ~~amounts paid for expenses for household service and~~
6 ~~for the care of a qualifying individual, but only~~
7 ~~if such expenses are incurred to enable the~~
8 ~~taxpayer to be gainfully employed. The term~~
9 ~~includes expenses incurred for services outside the~~
10 ~~taxpayer's household if the expenses incurred are~~
11 ~~for the care of a qualifying individual described~~
12 ~~in (b)(1)a. or a qualifying individual described in~~
13 ~~(b)(1)b. or c. who regularly spends at least eight~~
14 ~~hours each day in the taxpayer's household.~~

15 ~~(3) a. For the purposes of this section, an~~
16 ~~individual shall be treated as maintaining a~~
17 ~~household for any period only if over half of~~
18 ~~the cost of maintaining the household during~~
19 ~~such period is furnished by such individual.~~

20 ~~b. In the case of a married person living with~~
21 ~~his or her spouse and such spouse is~~
22 ~~maintaining the household, the credit provided~~
23 ~~for herein shall be allowed with respect to~~
24 ~~employment-related expenses in connection with~~
25 ~~any qualifying individuals, except as limited~~
26 ~~herein, of the spouse not maintaining the~~
27 ~~household.~~

28 ~~(4) If a child (as defined in G.S. 105-149(a)(5)) who~~
29 ~~is under the age of 15 or who is physically or~~
30 ~~mentally incapable of caring for himself receives~~
31 ~~over half of his support during the calendar year~~
32 ~~from his parents who are divorced or separated with~~
33 ~~the intent to remain separate and apart, and such~~
34 ~~child is in the custody of one or both of his~~
35 ~~parents for more than one half of the calendar~~

~~1 year, in the case of any taxable year beginning in
2 such calendar year such child shall be treated as
3 being a qualifying individual described in
4 subparagraph a or b of subdivision (b)(1), as the
5 case may be, with respect to that parent who has
6 custody for a longer period during such calendar
7 year than the other parent, and shall not be
8 treated as being a qualifying individual with
9 respect to such other parent.~~

~~10 (b1) The amount of employment-related expenses for which a
11 credit may be claimed may not exceed two thousand four hundred
12 dollars (\$2,400) if the taxpayer's household includes one
13 qualifying individual, and may not exceed four thousand eight
14 hundred dollars (\$4,800) if the taxpayer's household includes
15 more than one qualifying individual.~~

~~16 (c) (1) If the taxpayer is married and living with his
17 spouse for any period during the taxable year,
18 there shall be taken into account
19 employment-related expenses incurred during any
20 month of such period only if:~~

- ~~21 a. Both spouses are gainfully employed on a
22 substantially full-time basis, or one spouse
23 is gainfully employed on a substantially
24 full-time basis and the other spouse is a
25 full-time student, which shall mean an
26 individual who during each of five calendar
27 months during the taxable year is a full-time
28 student at an educational institution, or
29 b. The spouse is a qualifying individual
30 described in subdivision (b)(1)c.~~

~~31 (2) No credit shall be allowed under this section with
32 respect to any amount paid by the taxpayer to an
33 individual with respect to whom a deduction is
34 allowable under G.S. 105-149(a)(5) to the taxpayer
35 or his spouse, or who is a child of the taxpayer~~

~~1 (within the meaning of G.S. 105-149(a)(5)) who has
2 not attained the age of 19 at the close of the
3 taxable year.~~

~~4 (3) In the case of employment-related expenses incurred
5 during any taxable year solely with respect to a
6 qualifying individual (other than an individual who
7 is also described in subdivision (b)(1)a), the
8 amount of such expenses which may be taken into
9 account for purposes of this section shall be
10 reduced:~~

~~11 a. If such individual is described in subdivision
12 (b)(1)b, by the amount by which the sum of:~~

~~13 1. Such individual's adjusted gross income for
14 such taxable year, and~~

~~15 2. The disability payments received by such
16 individual during such year, exceed one
17 thousand dollars (\$1,000), or~~

~~18 b. In the case of a qualifying individual
19 described in subdivision (b)(1)c, by the
20 amount of disability payments received by such
21 individual during the taxable year.~~

~~22 For purposes of this paragraph, the term "disability payment"
23 means a payment (other than a gift) which is made on account of
24 the physical or mental condition of an individual and which is
25 not included in gross income.~~

~~26 (d) If a husband and wife are living together at the end of the
27 taxable year, no credit under this section shall be allowed
28 unless they file a combined return for the year.~~

~~29 (a) A person who is allowed a credit against federal income tax
30 for a percentage of employment-related expenses under Section 21
31 of the Code shall be allowed as a credit against the tax imposed
32 by this Division an amount equal to seven percent (7%) of the
33 employment-related expenses as defined in Section 21(b)(2) of the
34 Code.~~

1 (b) The amount of employment-related expenses for which a
2 credit may be claimed may not exceed two thousand four hundred
3 dollars (\$2,400) if the taxpayer's household includes one
4 qualifying individual, as defined in Section 21(b)(1) of the
5 Code, and may not exceed four thousand eight hundred dollars
6 (\$4,800) if the taxpayer's household includes more than one
7 qualifying individual.

8 ~~(c)~~ (c) No credit shall be allowed under this section unless
9 the taxpayer completes and attaches to his return the necessary
10 form or forms as may be required by the Secretary. ~~Secretary of~~
11 ~~Revenue, nor shall any deduction be allowed under G.S.~~
12 ~~105-147(11) for amounts claimed under this subdivision. No~~
13 credit shall be allowed under this section for amounts deducted
14 from gross income in calculating taxable income under the Code.

15 ~~(d)~~ (d) The credit allowed by this section shall not exceed
16 the amount of tax imposed by this Division for the taxable year
17 reduced by the sum of all credits allowable under this Division,
18 except for payments of tax made by or on behalf of the taxpayer.

19 ~~(e)~~ (e) No credit shall be allowed under this section with
20 respect to employment-related expenses paid by a nonresident of
21 this State."

22 Sec. 9. G.S. 105-151.12 reads as rewritten:

23 "**§ 105-151.12.** Credit for certain real property
24 **donations.**--(a) Any A person that who makes a qualified donation
25 of interests in real property located in North Carolina during
26 the taxable year that is useful for (i) public beach access or
27 use, (ii) public access to public waters or trails, (iii) fish
28 and wildlife conservation, or (iv) other similar land
29 conservation purposes, shall be allowed as a credit against the
30 taxes imposed by this Division an amount equal to twenty-five
31 percent (25%) of the fair market value of the donated property
32 interest. To be eligible for this credit, the interest in
33 property must be donated to and accepted by either the State,
34 local ~~government~~ government, or a body that is both organized to
35 receive and administer lands for conservation purposes and is

1 qualified to receive charitable contributions pursuant to G.S.
2 ~~105-147(15) or (16);~~ under the Code; provided, however, that
3 lands required to be dedicated pursuant to local governmental
4 regulation or ordinance and dedications made to increase building
5 density levels permitted under such regulations or ordinances
6 ~~shall~~ are not ~~be~~ eligible for this credit. The credit allowed
7 under this section may not exceed five thousand dollars (\$5,000).
8 To support the credit allowed by this section, the taxpayer shall
9 file with the income tax return for the taxable year in which the
10 credit is ~~claimed,~~ claimed a certification by the Department of
11 Natural Resources and Community Development that the property
12 donated is suitable for one or more of the valid public benefits
13 set forth by this subsection.

14 (b) The credit allowed by this section may not exceed the
15 amount of tax imposed by this Division for the taxable year
16 reduced by the sum of all credits allowed under this Division,
17 except payments of tax made by or on behalf of the taxpayer.—

18 ~~(c)~~ Any unused portion of this credit may be carried forward
19 for the next succeeding five years.

20 ~~(d) The fair market value, or any portion thereof, of a~~
21 ~~qualifying donation that is not eligible for a credit pursuant to~~
22 ~~this section may be considered as a charitable contribution~~
23 ~~pursuant to G.S. 105-147(15) or (16). That portion of the~~
24 ~~donation allowed as a credit pursuant to this section shall not~~
25 ~~be eligible as a charitable contribution.~~

26 (c) No credit shall be allowed under this section for amounts
27 deducted from gross income in calculating taxable income under
28 the Code.

29 ~~(e) (d)~~ In the case of property owned by the entirety, where
30 both spouses are required to file North Carolina income tax
31 returns, ~~each spouse may claim one half of the credit allowed by~~
32 ~~this section or one spouse may claim the entire credit allowed by~~
33 ~~this section by agreement with the other spouse, provided both~~
34 ~~spouses were living together at the end of the taxable year and~~
35 ~~file their separate returns for the taxable year on the combined~~

1 ~~form~~ the credit allowed by this section may be claimed only if
2 the spouses file a joint return under G.S. 105-152.1. Where only
3 one spouse is required to file a North Carolina income tax
4 return, ~~such~~ that spouse may claim the credit allowed by this
5 section.

6 ~~(f)~~ (e) In the case of marshland for which a claim has been
7 filed pursuant to G.S. 113-205, the offer of donation must be
8 made before December 31, 1990, to qualify for the credit allowed
9 by this section."

10 Sec. 10. G.S. 105-151.13 reads as rewritten:

11 "**§ 105-151.13. Credit for conservation tillage equipment.--**(a)
12 ~~Any~~ A person who purchases conservation tillage equipment for use
13 in a farming business, including tree farming, shall be allowed
14 as a credit against the tax imposed by this Division an amount
15 equal to twenty-five percent (25%) of the cost of the equipment.
16 This credit may not exceed two thousand five hundred dollars
17 (\$2,500) for any ~~income~~ taxable year. The credit may ~~only~~
18 claimed only by the first purchaser of the equipment and may not
19 be claimed by a person who purchases the equipment for resale or
20 for use outside this State. This credit may not exceed the
21 amount of tax imposed by this Division for the taxable year
22 reduced by the sum of all credits allowable under this Division,
23 except tax payments made by or on behalf of the taxpayer. If the
24 credit allowed by this section exceeds the tax imposed under this
25 Division, the excess may be carried forward and applied to the
26 tax imposed under this Division for the next succeeding five
27 years. The basis in any equipment for which a credit is allowed
28 under this section shall be reduced by the amount of the credit
29 allowable.

30 (b) As used in this section, 'conservation tillage equipment'
31 means:

32 (1) A planter such as a planter commonly known as a
33 'no-till' planter designed to minimize disturbance
34 of the soil in planting crops or trees, including

1 equipment that may be attached to equipment already
2 owned by the taxpayer; ~~or, or~~ or

3 (2) Equipment designed to minimize disturbance of the
4 soil in reforestation site preparation, including
5 equipment that may be attached to equipment already
6 owned by the taxpayer; provided, however, this
7 shall include only those items of equipment
8 generally known as a 'KG-Blade', a 'drum-chopper',
9 or a 'V-Blade'.

10 (c) In the case of conservation tillage equipment owned
11 jointly by a husband and wife, where both spouses are required to
12 file North Carolina income tax returns, ~~each spouse may claim~~
13 ~~one-half of the credit allowed by this section or one spouse may~~
14 ~~claim the entire credit allowed by this section by agreement with~~
15 ~~the other spouse, provided both spouses were living together at~~
16 ~~the end of the taxable year and file their separate returns for~~
17 ~~the taxable year on the combined form.~~ the credit allowed by
18 this section may be claimed only if the spouses file a joint
19 return under G.S. 105-152.1. Where only one spouse is required
20 to file a North Carolina income tax return, that spouse may claim
21 the credit allowed by this section."

22 Sec. 11. G.S. 105-151.14 reads as rewritten:

23 "§ 105-151.14. Credit for gleaned crop.--(a) Any A person who
24 grows a crop and permits the gleaning of the crop shall be
25 allowed as a credit against the tax imposed by this Division an
26 amount equal to ten percent (10%) of the market price of the
27 quantity of the gleaned crop. This credit may not exceed the
28 amount of tax imposed by this Division for the taxable year
29 reduced by the sum of all credits allowable under this Division,
30 except tax payments made by or on behalf of the taxpayer. No
31 deduction is allowed under G.S. 105-147(15) or (16) for the items
32 for which a credit is claimed under this section. No credit is
33 allowed under this section for amounts that were deducted from
34 gross income in calculating taxable income under the Code. Any

1 unused portion of the credit may be carried forward for the next
2 succeeding five years.

3 (b) The following definitions apply to this section:

4 (1) 'Gleaning' means the harvesting of a crop that has
5 been donated by the grower to a nonprofit
6 organization which will distribute the crop to
7 individuals or other nonprofit organizations it
8 considers appropriate recipients of the ~~food;~~ food.

9 (2) 'Market price' means the season average price of
10 the crop as determined by the North Carolina Crop
11 and Livestock Reporting Service in the Department
12 of Agriculture, or the average price of the crop in
13 the nearest local market for the month in which the
14 crop is gleaned if the Crop and Livestock Reporting
15 Service does not determine the season average price
16 for that ~~crop;~~ and crop.

17 (3) 'Nonprofit organization' means an organization ~~for~~
18 to which charitable contributions are deductible
19 under ~~G.S. 105-130.9 or G.S. 105-147(15) or (16).~~
20 the Code."

21 Sec. 12. G.S. 105-151.15 reads as rewritten:

22 "§ 105-151.15. Credit for distributing North Carolina
23 wine.--(a) Credit. A person who is required by Article 2C of
24 this Chapter to pay the excise tax levied on unfortified or
25 fortified wine is allowed as a credit against the tax imposed by
26 this Division an amount equal to the product of twenty cents
27 (20¢) and the number of liters of qualifying native wine on which
28 the person paid excise tax during the taxable year. To obtain
29 this credit a person who is a wine wholesaler or an importer ~~must~~
30 shall attach the following to the tax return on which the credit
31 is claimed:

32 (1) A copy of the sales invoice between the
33 manufacturer of the wine for which the credit is
34 claimed and the grower from whom the fruits or

1 berries of which the wine is composed was
2 purchased;

3 (2) A statement signed by the manufacturer of the wine
4 certifying that the wine for which the credit is
5 claimed is qualifying native wine and giving the
6 names of any other wine wholesalers or importers in
7 North Carolina who received part of the same
8 qualifying native wine.

9 If the person claiming the credit is an unfortified winery or a
10 fortified winery, the person must attach to his return a signed
11 statement certifying that the wine for which the credit is
12 claimed is qualifying native wine. This credit may not exceed
13 the amount of tax imposed by this Division for the taxable year
14 reduced by the sum of all credits allowable under this Division,
15 except tax payments made by or on behalf of the taxpayer.

16 (b) Definitions. The following definitions apply in this
17 section:

18 (1) Native Wine. Unfortified or fortified wine at
19 least sixty percent (60%) of which is composed of
20 fruits or berries grown in North Carolina.

21 (2) Qualifying Native Wine. Native wine that is part
22 of the first 950 liters of wine produced by a
23 manufacturer from a ton of fruits or berries grown
24 in North Carolina.

25 Sec. 13. G.S. 105-151.16 is repealed.

26 Sec. 14. G.S. 105-151.17 reads as rewritten:

27 "§ 105-151.17. Credit for creating jobs in severely distressed
28 county.--(a) Credit. -- A person who (i) for at least 40 weeks
29 during the year has at least nine employees, (ii) whose business
30 is located, for part or all of his taxable year, in a severely
31 distressed county, and (iii) who is eligible as provided in
32 subsection (b) may qualify for a credit against the tax imposed
33 by this Division by creating new full-time jobs with the business
34 in the severely distressed county during that year. A person who
35 hires an additional full-time employee during that year to fill a

1 position located in a severely distressed county is allowed a
2 credit of two thousand eight hundred dollars (\$2,800) for the
3 additional employee. A position is located in a county if (i) at
4 least fifty percent (50%) of the employee's duties are performed
5 in the county, or (ii) the employee is a resident of the county.
6 The credit may not be taken in the ~~income~~ taxable year in which
7 the additional employee is hired. Instead, the credit shall be
8 taken in equal installments over the four years following the
9 ~~income~~ taxable year in which the additional employee was hired
10 and shall be conditioned on the continued employment by the
11 taxpayer of the number of full-time employees the taxpayer had
12 upon hiring the employee that caused the taxpayer to qualify for
13 the credit. If, in one of the four years in which the
14 installment of a credit accrues, the number of the taxpayer's
15 full-time employees falls below the number of full-time employees
16 the taxpayer had in the year in which the taxpayer qualified for
17 the credit or the position filled by the employee is moved to
18 another county, the credit expires and the taxpayer may not take
19 any remaining installment of the credit. The taxpayer may,
20 however, take the portion of an installment that accrued in a
21 previous year and was carried forward to the extent permitted
22 under subsection (e) of this section.

23 The North Carolina Employment Security Commission shall
24 determine the number of new full-time jobs eligible for the
25 credit allowed by this section by comparing the average number of
26 full-time employees reported by the taxpayer on the quarterly
27 wage reports submitted to the Commission during the year with the
28 number reported the previous year, and shall provide that
29 information to the Secretary of Revenue annually for each
30 employer eligible under subsection (b) of this section.

31 For the purposes of this section, a full-time job is a position
32 that requires at least 1,600 hours of work per year and is
33 intended to be held by one employee during the entire year. A
34 full-time employee is an employee who holds a full-time job.

1 (b) Eligibility. -- A taxpayer is eligible for the credit
2 allowed by this subsection only if he owns a business that
3 engages in manufacturing, agribusiness, processing, warehousing,
4 wholesaling, retailing, research and development, or a service-
5 related industry, as determined by the Employment Security
6 Commission.

7 (c) County Designation. -- A severely distressed county is a
8 county designated as such by the Secretary of the Department of
9 Commerce. Each year, on or before December 31, the Secretary of
10 the Department of Commerce shall designate which counties are
11 considered severely distressed, and shall provide that
12 information to the Secretary of Revenue. A county is considered
13 severely distressed if its distress factor is one of the twenty
14 highest in the State and it has an unemployment rate of seven
15 percent (7%) or more. The Secretary of Commerce shall assign to
16 each county in the State a distress factor which is the sum of
17 (1) the county's rank in a ranking of counties by rate of
18 unemployment from lowest to highest and (2) the county's rank in
19 a ranking of counties by per capita income from highest to
20 lowest. In measuring rates of unemployment and per capita
21 income, the Secretary of Commerce shall use data from the North
22 Carolina Employment Security Commission and the United States
23 Department of Commerce for the most recent thirty-six month
24 period for which data is available. A designation as a severely
25 distressed county is effective only for the calendar year
26 following the designation.

27 (d) Planned Expansion. -- A person who, during the year in
28 which a county is designated as a severely distressed county,
29 signs a letter of commitment with the Department of Commerce to
30 create at least twenty new full-time jobs in that distressed
31 county within two years ~~of~~ after the date the letter is signed
32 qualifies for the credit allowed by this section even though the
33 employees are not hired that year. The credit shall be available
34 in the ~~income~~ taxable year after at least twenty employees have
35 been hired if such hirings are within the two-year commitment

1 period. The conditions outlined in subsection (a) apply to a
2 credit taken under this subsection, except that if the county is
3 no longer designated a severely distressed county after the year
4 the letter of commitment was signed, the credit is still
5 available. If the taxpayer does not hire the employees within
6 the two-year period, he does not qualify for the credit.
7 However, if the taxpayer qualifies for a credit under subsection
8 (a) in the year any new employees are hired, he may take the
9 credit under that subsection.

10 (e) Limitations. -- The sale, merger, acquisition, or
11 bankruptcy of a business, or any other transaction by which an
12 existing business reformulates itself as another business, does
13 not create new eligibility in a succeeding business with respect
14 to jobs for which the predecessor was not eligible under this
15 section. A taxpayer may, however, take any installment of or
16 carried-over portion of a credit that his predecessor could have
17 taken if he had taxable income. Jobs transferred from one county
18 in the State to another county in the State shall not be
19 considered new jobs for purposes of this section. A credit taken
20 under this section may not exceed fifty percent (50%) of the tax
21 imposed by this Division for the taxable year, reduced by the sum
22 of all other credits allowed under this Division, except tax
23 payments made by or on behalf of the taxpayer. Any unused
24 portion of the credit may be carried forward for the next
25 succeeding five years."

26 Sec. 15. G.S. 105-152 reads as rewritten:

27 "§ 105-152. Returns.--(a) The following persons shall file
28 with the Secretary of ~~Revenue~~ an income tax return under
29 affirmation, showing therein specifically the ~~items of gross~~
30 taxable income and the deductions allowed adjustments required by
31 this Division, and such other facts as the Secretary may require
32 for the purpose of making any computation required by this
33 Division:

34 (1) Every resident or nonresident who has a ~~gross~~ North
35 Carolina net income during the ~~income~~ taxable year

1 ~~which is in excess of the personal exemption to~~
2 ~~which he or she is entitled under the provisions of~~
3 ~~G.S. 105-149(a), without the inclusion of the~~
4 ~~exemptions for dependents provided under~~
5 ~~subdivision (5), any part of which is subject to~~
6 ~~taxation in this State. in excess of one dollar~~
7 ~~(\$1.00).~~

8 ~~(2) Every resident or nonresident required under the~~
9 ~~provisions of G.S. 105-149(b) to prorate his~~
10 ~~exemption and who has a gross income during the~~
11 ~~income year from sources both within and without~~
12 ~~this State in excess of the prorated exemption, any~~
13 ~~part of which is subject to taxation in this State.~~

14 ~~(3)~~ (2) Every partnership doing business in this State as
15 provided in G.S. 105-154.

16 ~~(4)~~ (3) Any person whom the Secretary believes to be liable
17 for a tax under this Division, when so notified by
18 the Secretary of Revenue and requested to file a
19 return.

20 (b) If the taxpayer is unable to make his own return, the
21 return shall be made by a duly authorized agent or by a guardian
22 or other person charged with the care of the person or property
23 of ~~such~~ the taxpayer.

24 (c) The return of an ~~individual,~~ individual who, while living,
25 ~~receiving~~ received North Carolina net income in excess of the
26 ~~exemption~~ one dollar (\$1.00) during the ~~income~~ taxable year, and
27 who has died before making the return, shall be made in his name
28 and behalf by the ~~administrator,~~ administrator or executor of the
29 estate, and the tax shall be levied upon and collected from his
30 the estate.

31 (d) When the Secretary of Revenue has reason to believe that
32 any taxpayer so conducts ~~the~~ a trade or business as either
33 directly or indirectly to distort his ~~true net taxable~~ net taxable income and
34 ~~the net income properly attributable to the State, or his North~~
35 Carolina net income whether by the arbitrary shifting of income,

1 through price fixing, charges for service, or otherwise, whereby
2 the net income is arbitrarily assigned to one or another unit in
3 a group of taxpayers carrying on business under a substantially
4 common control, he may require such facts as he deems necessary
5 for the proper computation of the ~~entire net taxable~~ income and
6 the ~~North Carolina net income properly attributable to the State,~~
7 income, and in determining the same the Secretary of Revenue
8 shall have regard to the fair profit ~~which that~~ would normally
9 arise from the conduct of the trade or business.

10 (e) ~~A joint return may not be filed by a husband and wife,~~
11 ~~however, a husband and wife may, at their election, file their~~
12 ~~separate income tax returns on a single form, and a husband and~~
13 ~~wife so filing shall be deemed to have expressly agreed that:~~

14 (1) ~~If the sum of the payments by either spouse,~~
15 ~~including withheld and estimated taxes, exceeds the~~
16 ~~amount of the tax for which such spouse is~~
17 ~~separately liable, the excess may be applied by the~~
18 ~~Department of Revenue to the credit of the other~~
19 ~~spouse if the sum of the payments by such other~~
20 ~~spouse, including withholding and estimated taxes,~~
21 ~~is less than the amount of the tax for which such~~
22 ~~other spouse is separately liable.~~

23 (2) ~~If the sum of the payments made by both spouses~~
24 ~~with respect to the taxes for which they are~~
25 ~~separately liable, including withheld and estimated~~
26 ~~taxes, exceeds the total of the taxes due, refund~~
27 ~~of the excess may be made payable to both spouses~~
28 ~~or if either is deceased, to the survivor.~~

29 A joint return may be filed by a husband and wife as provided in
30 G.S. 105-152.1. A husband and wife filing jointly are jointly
31 and severally liable for the tax imposed by this Division reduced
32 by the sum of all credits allowable under this Division including
33 tax payments made by or on behalf of the husband and wife. A
34 husband and wife filing jointly shall be deemed to have expressly
35 agreed that if the amount of the payments made by them with

1 respect to the taxes for which they are liable, including
2 withheld and estimated taxes, exceeds the total of the taxes due,
3 refund of the excess may be made payable to both spouses or, if
4 either is deceased, to the survivor.

5 (f) Each person required to file a return under this section
6 shall attach to his return a copy of his federal income tax
7 return for the taxable year. The Secretary may require a
8 taxpayer to provide the Department with copies of any return the
9 taxpayer has filed with the Internal Revenue Service and to
10 verify any information in the return."

11 Sec. 16. Division II of Article 4 of Chapter 105 of the
12 General Statutes is amended by adding after G.S. 105-152 a new
13 section to read:

14 "§ 105-152.1. Joint returns.--A husband and wife shall make a
15 single return jointly if:

16 (1) Their federal taxable income is determined on a
17 joint federal return; and

18 (2) Both spouses are residents of this State or both
19 spouses have North Carolina net income."

20 Sec. 17. G.S. 105-154 reads as rewritten:

21 "§ 105-154. Information at the source.--(a) Every individual,
22 partnership, corporation, joint-stock company or association, or
23 insurance company, being a resident or having a place of business
24 or having one or more employees, agents, or other representatives
25 in this State, in whatever capacity acting, including lessors or
26 mortgagors of real or personal property, fiduciaries, employers,
27 and all officers and employees of the State or of any political
28 subdivision of the State and all officers and employees of the
29 United States of ~~America~~ or of any political subdivision or
30 agency thereof having the control, receipt, custody, disposal, or
31 payment of interest (other than interest coupons payable to
32 bearer), rent, salaries, wages, dividends, premiums, annuities,
33 compensations, remunerations, ~~emoluments~~ emoluments, or other
34 fixed or determinable annual or periodical gains, profits, and
35 incomes paid or payable during any year to any taxpayer, shall

1 make complete return thereof to the Secretary of ~~Revenue~~ under
2 such regulations and in such form and manner and to such extent
3 as may be prescribed by him. The filing of any report in
4 compliance with the provisions of this section by a foreign
5 corporation shall not constitute an act in evidence of and shall
6 not be deemed to be evidence that such corporation is doing
7 business in this State.

8 (b) Every partnership doing business in the State shall make a
9 ~~return,~~ return stating specifically the ~~items of its gross~~
10 taxable income and the deductions allowed adjustments required by
11 this Division, and shall include in the return the names and
12 addresses of the individuals who would be entitled to share in
13 the net income if distributable, and the amount of the
14 distributive share of each individual, together with the
15 distributive shares of corporation dividends. The return shall
16 be signed by one of the partners under affirmation in the form
17 prescribed in G.S. 105-155 of this Division, and the same
18 penalties prescribed in G.S. 105-236 shall apply in the event of
19 a willful misstatement."

20 Sec. 18. G.S. 105-155 reads as rewritten:

21 "§ 105-155. Time and place of filing returns.--Returns shall
22 be in such forms as the Secretary of ~~Revenue~~ may from time to
23 time prescribe, and shall be filed with the Secretary at his main
24 office, or at any branch office which he may establish. The
25 return of every ~~person~~ taxpayer reporting on a calendar year
26 basis shall be filed on or before the fifteenth day of April in
27 each year, and the return of every ~~person~~ taxpayer reporting on a
28 ~~fiscal~~ different taxable year basis shall be filed on or before
29 the fifteenth day of the fourth month following the close of the
30 ~~fiscal~~ taxable year. In case of sickness, absence, or other
31 disability or whenever in his judgment good cause exists, the
32 Secretary may allow further time for filing returns.

33 There shall be annexed to the return the affirmation of the
34 taxpayer making the return in the following form: 'Under
35 penalties prescribed by law, I hereby affirm that to the best of

1 my knowledge and belief this return, including any accompanying
2 schedules and statements, is true and complete. (If prepared by
3 a person other than the taxpayer, his affirmation is based on all
4 information of which he has any knowledge.)' The Secretary shall
5 ~~cause to be prepared~~ prepare blank forms for the ~~said~~ returns,
6 ~~and shall cause them to be distributed~~ distribute them throughout
7 the State, and ~~to be furnished~~ furnish them upon application; but
8 failure to receive or secure the form shall not relieve any
9 taxpayer from the obligation of ~~making any filing a~~ a return
10 ~~herein required.~~ required by this Division."

11 Sec. 19. G.S. 105-156 reads as rewritten:

12 "**§ 105-156. Failure to file returns; supplementary returns.--**
13 If the Secretary of ~~Revenue~~ shall be of the opinion that any
14 taxpayer has failed to file a return or to include in a return
15 filed, either intentionally or through error, items of taxable
16 income, he may require from ~~such~~ the taxpayer a return or
17 supplementary return, under oath, in such form as he shall
18 prescribe, of all the items of income which the taxpayer received
19 during the year for which the return is made, whether or not
20 taxable under the provisions of this Division. If from a
21 supplementary return or otherwise the Secretary finds that any
22 items of ~~income,~~ income taxable under this ~~Division,~~ Division
23 have been omitted from the original return, or that any items
24 returned as taxable ~~that~~ are not taxable, or that any item as of
25 taxable income is overstated, he may require the items so omitted
26 to be disclosed to him under oath of the taxpayer, and to be
27 added to or deducted from the original return. ~~Such~~ The
28 supplementary return and the correction of the original return
29 shall not relieve the taxpayer from any of the penalties to which
30 he may be liable under G.S. 105-236. The Secretary may proceed
31 under the provisions of G.S. ~~105-241.1,~~ 105-241.1 whether or not
32 he requires a return or a supplementary return under this
33 section."

34 Sec. 20. G.S. 105-156.1 is repealed.

35 Sec. 21. G.S. 105-157 reads as rewritten:

1 "§ 105-157. Time and place of payment of tax.--(a) Except as
2 otherwise provided in this section and in Article 4A of this
3 Chapter, the full amount of the tax payable as shown on the face
4 of the return shall be paid to the Secretary of Revenue at the
5 office where the return is filed at the time fixed by law for
6 filing the return. ~~return; provided, that when a husband and wife~~
7 ~~have elected under G.S. 105-152(e) to file their separate income~~
8 ~~tax returns on a single form and the amount for which one spouse~~
9 ~~is separately liable has been reduced by credit for overpayment~~
10 ~~of tax by the other spouse as provided in that subsection, only~~
11 ~~the amount in excess of such credit shall be payable; provided,~~
12 ~~that if~~ If the amount shown to be due ~~after all credits~~ is less
13 than one dollar (\$1.00), no payment need be made.

14 (b) The tax may be paid with uncertified check during such
15 time and under such regulations as the Secretary of Revenue shall
16 may prescribe; but if a check so received is not paid by the bank
17 on which it is drawn, the taxpayer by whom ~~such~~ the check is was
18 tendered shall remain liable for the payment of the tax and for
19 all legal penalties the same as if ~~such~~ the check had not been
20 tendered."

21 Sec. 22. G.S. 105-158 reads as rewritten:

22 "§ 105-158. Abatement of income taxes of certain members of
23 the armed forces upon death.--In the case of any individual

24 (1) Who dies

- 25 a. On or after January 1, ~~1964;~~ 1964,
26 b. While in active service as a member of the
27 armed forces of the United States, and
28 c. While serving in a combat zone; ~~zone~~—(as
29 determined under G.S. 105-141(b)(12); or

30 (2) Who dies

- 31 a. On or after January 1, ~~1964;~~ 1964, and
32 b. As a result of wounds, ~~disease~~ disease, or
33 injury incurred while in active service as a
34 member of the armed forces of the United

1 States, and while serving in a combat zone on
2 or after January 1, 1964,
3 No individual income tax imposed by ~~the State of North Carolina~~
4 this Division shall apply with respect to the taxable year in
5 which falls the date of his death, or with respect to any prior
6 taxable year ending on or after the first day he so served in a
7 combat zone; and any tax under this Division and under the
8 corresponding provisions of prior revenue laws for taxable years
9 preceding those above specified which is unpaid at the date of
10 his death (including interest, additions to the tax, and
11 additional amounts) shall not be assessed and if assessed the
12 assessment shall be abated, and if collected shall be credited or
13 refunded as an overpayment. As used in this section, the term
14 'combat zone' means an area which the President of the United
15 States by executive order designates as an area in which the
16 Armed Forces of the United States are or have been engaged in
17 combat."

18 Sec. 23. G.S. 105-159 reads as rewritten:

19 "§ 105-159. Corrections and changes.--If the amount of the ~~net~~
20 taxable income for any year of any taxpayer under this Division,
21 as reported or as reportable to the United States Treasury
22 Department, is changed, corrected, or otherwise determined by the
23 Commissioner of Internal Revenue or other officer of the United
24 States of competent authority, ~~such the~~ taxpayer, within two
25 years after receipt of the internal revenue agent's report or
26 supplemental report reflecting the corrected or determined ~~net~~
27 taxable income shall make return under oath or affirmation to the
28 Secretary of ~~Revenue~~ of ~~such the~~ corrected, ~~changed~~ changed, or
29 determined ~~net taxable~~ income. In making ~~any an~~ assessment or
30 refund under this section, the Secretary shall consider all ~~facts~~
31 ~~or~~ evidence brought to his attention, whether or not ~~the same~~
32 ~~were it was~~ considered ~~or taken into account~~ in the federal
33 assessment or correction. If the taxpayer fails to notify the
34 Secretary of ~~Revenue~~ of assessment of additional tax by the
35 Commissioner of Internal Revenue, the statute of limitations

1 shall not apply. The Secretary of ~~Revenue~~ shall thereupon
2 proceed to ~~determine~~, determine from such evidence as he may have
3 been brought to his attention or ~~shall otherwise acquire~~, the
4 correct North Carolina net income of ~~such the~~ taxpayer for the
5 ~~fiscal or calendar~~ taxable year, and if there ~~shall be~~ is any
6 additional tax due from such taxpayer ~~the same~~ it shall be
7 assessed and collected; and if there ~~shall have~~ has been an
8 overpayment of the tax the ~~said~~ Secretary shall, within 30 days
9 after the final determination of the North Carolina net income of
10 ~~such the~~ taxpayer, refund the amount of ~~such the~~ excess:
11 Provided, that any taxpayer who fails to comply with this section
12 ~~as to making report of such change as made by the federal~~
13 ~~government~~ within the time specified shall be subject to all
14 penalties as provided in G.S. 105-236, in case of additional tax
15 due, and shall forfeit his rights to any refund due by reason of
16 such change.

17 When the taxpayer makes the return reflecting the corrected ~~net~~
18 taxable income as required by this section, the Secretary of
19 ~~Revenue~~ shall make assessments or refunds based thereon within
20 three years ~~from~~ after the date the return required by this
21 section is filed and not thereafter. When the taxpayer does not
22 make the return reflecting the corrected ~~net~~ taxable income as
23 required by this section but the Department of ~~Revenue~~ receives
24 from the United States government or one of its agents a report
25 reflecting ~~such~~ corrected ~~net~~ taxable income, the Secretary of
26 ~~Revenue~~ shall make assessments for taxes due based on ~~such the~~
27 corrected ~~net~~ taxable income within five years ~~from~~ after the
28 date the report from the United States government or its agent is
29 actually received and not thereafter.

30 Nothing in this section shall be construed as preventing the
31 Secretary of ~~Revenue~~ from making an assessment immediately
32 following the receipt from any source of information concerning
33 the correction, change in, or determination of ~~net~~ taxable income
34 of a taxpayer by the United States government. The assessment of

1 tax or additional tax under this section shall not be subject to
2 any statute of limitations except as provided in this section."

3 Sec. 24. G.S. 105-159.1 reads as rewritten:

4 "§ 105-159.1. Designation of tax by individual to political
5 party.--(a) Every individual whose income tax liability for the
6 taxable year is one dollar (\$1.00) or more may designate on his
7 or her income tax return that one dollar (\$1.00) of the amount of
8 tax paid by him or her to the Department of ~~Revenue~~ shall
9 ~~thereafter~~ be paid by the Secretary of ~~Revenue~~, ~~in the manner~~
10 ~~hereinafter described~~, to the State Treasurer for the use of all
11 political parties ~~as defined herein~~ upon a pro rata basis
12 according to their respective party voter registrations according
13 to the most recent certification of the State Board of Elections;
14 Provided, however, that no political party with less than one
15 percent (1%) of the total number of registered voters in the
16 State shall receive any ~~such~~ of these funds, and the registration
17 of such ~~parties~~ a party shall not be included in calculating the
18 pro rata distribution. ~~For purposes of~~ As used in this section,
19 ~~political party~~ the term 'political party' shall mean means a
20 political party which at the last preceding general State
21 election received at least ten percent (10%) of the entire vote
22 cast in the State for ~~Governor~~, Governor or for presidential
23 electors, or a group of voters who by July 1 of the preceding
24 calendar year, by virtue of a petition as a new political party,
25 had duly qualified as a new political party within the meaning of
26 Chapter 163 of the General ~~Statutes of North Carolina~~. Statutes.

27 (b) For each quarterly period beginning on or after January 1,
28 1978, ~~and for each quarterly period thereafter~~, on or before the
29 last day of the month following the close of ~~each~~ the quarterly
30 period, the Secretary of ~~Revenue~~ shall remit all funds ~~so~~
31 designated ~~above~~ pursuant to this section collected during the
32 preceding quarter to the State Treasurer who shall ~~thereafter~~
33 deposit them in an interest-bearing account to be known as the
34 North Carolina ~~Election Campaign~~ Political Parties Financing
35 Fund. Any interest earned on funds so deposited shall be

1 credited to the political party ~~for~~ to which ~~said~~ the funds were
2 ~~designated.~~ allocated. A report to the State Treasurer, State
3 Board of ~~Elections~~ Elections, and each State party chairman shall
4 accompany each ~~such~~ remittance, and shall detail the amount of
5 funds forwarded, the cumulative total of funds forwarded to date
6 for the year, and an estimate of the probable total amount to be
7 collected and forwarded for that calendar year.

8 (d) The Secretary ~~of Revenue~~ shall amend the income tax return
9 in order that all taxpayers desiring to make the political
10 contributions authorized ~~herein shall~~ in this section may do so
11 by designating ~~same~~ on the front face of the tax return. The
12 line of authorization for ~~such~~ the designation shall be color
13 contrasted with the color scheme of the remainder of the income
14 tax return. ~~Such return,~~ The return or its accompanying
15 explanatory ~~instruction,~~ instruction shall readily indicate that
16 any ~~such~~ designations neither increase nor decrease an
17 individual's tax liability."

18 Sec. 25. Section 6 of Chapter 1089 of the 1987 Session
19 Laws reads as rewritten:

20 "Sec. 6. This act is effective for taxable years beginning on
21 or after ~~July~~ January 1, 1990.

22 Sec. 26. G.S. 53A-15(i) reads as rewritten:

23 "(i) The securities, evidences of indebtedness and shares of
24 the capital stock issued by the corporation established under the
25 provisions of this Article, ~~their transfer, and income therefrom,~~
26 and deposits of financial institutions invested therein, shall at
27 all times be free from taxation within the State. Gain from the
28 transfer of, and income from, such securities, evidences of
29 indebtedness, and shares of stock, shall be taxable under Article
30 4 of Chapter 105 of the General Statutes to the same extent as it
31 is taxable under the Internal Revenue Code."

32 Sec. 27. G.S. 115E-21 reads as rewritten:

33 "**§ 115E-21. Tax exemption.**--The exercise of the powers granted
34 by this Chapter will be in all respects for the benefit of the
35 people of the State and will promote their health and welfare,

1 and no tax or assessment shall be levied upon any project
2 undertaken by the agency prior to the retirement or provision for
3 the retirement of all bonds or notes issued and obligations
4 incurred by the agency in connection with such project.

5 Any bonds or notes issued by the agency under the provisions of
6 this Chapter, ~~their transfer and the income therefrom (including~~
7 ~~any profit made on the sale thereof)~~ Chapter shall at all times
8 be free from taxation by the State or any local unit or political
9 subdivision or other instrumentality of the State, excepting
10 inheritance or gift taxes. Gain from the transfer of, and income
11 from, such bonds and notes shall be taxable under Article 4 of
12 Chapter 105 of the General Statutes to the same extent as it is
13 taxable under the Internal Revenue Code."

14 Sec. 28. G.S. 116-183 reads as rewritten:

15 "§ 116-183. Acceptance of grants; exemption from taxation.--The
16 Board is hereby authorized, subject to the approval of the
17 Director of the Budget, to accept grants of money or materials or
18 property of any kind for any project from a federal agency,
19 private agency, corporation or individual, upon such terms and
20 conditions as such federal agency, private agency, corporation or
21 individual may impose. The bonds issued under the provisions of
22 this Article ~~and the income therefrom~~ shall at all times be free
23 from taxation within the State. Gain from the transfer of, and
24 income from, such bonds shall be taxable under Article 4 of
25 Chapter 105 of the General Statutes to the same extent as it is
26 taxable under the Internal Revenue Code."

27 Sec. 29. G.S. 116-196 reads as rewritten:

28 "§ 116-196. Exemption from taxation; bonds eligible for
29 investment or deposit.--Any bonds issued under this Article,
30 including any of such bonds constituting a part of the surplus of
31 any bank, trust company or other corporation, ~~and the transfer of~~
32 ~~and the income from any such bonds (including any profit made on~~
33 ~~the sale thereof and all principal, interest and redemption~~
34 ~~premiums, if any)~~ corporation shall at all times be exempt from
35 all taxes or assessment, direct or indirect, general or special,

1 whether imposed for the purpose of general revenue or otherwise,
2 which are levied or assessed by the State or by any county,
3 political subdivision, agency or other instrumentality of the
4 State. Gain from the transfer of, and income from, such bonds
5 shall be taxable under Article 4 of Chapter 105 of the General
6 Statutes to the same extent as it is taxable under the Internal
7 Revenue Code. Bonds issued by the Board under the provisions of
8 this Article are hereby made securities in which all public
9 officers and public bodies of the State and its political
10 subdivisions, all insurance companies, trust companies, banking
11 associations, investment companies, executors, administrators,
12 trustees and other fiduciaries may properly and legally invest
13 funds, including capital in their control or belonging to them.
14 Such bonds are hereby made securities which may properly and
15 legally be deposited with and received by any State or municipal
16 officer or any agency or political subdivision of the State for
17 any purpose for which the deposit of bonds or obligations of the
18 State is now or may hereafter be authorized by law."

19 Sec. 30. G.S. 122A-19 reads as rewritten:

20 "§ 122A-19. Tax exemption.--The exercise of the powers granted
21 by this Chapter will be in all respects for the benefit of the
22 people of the State, for their well-being and prosperity and for
23 the improvement of their social and economic conditions, and the
24 Agency shall not be required to pay any tax or assessment on any
25 property owned by the Agency under the provisions of this Chapter
26 or upon the income therefrom.

27 Any obligations issued by the Agency under the provisions of
28 this Chapter, ~~their transfer and the income therefrom (including~~
29 ~~any profit made on the sale thereof),~~ Chapter shall at all times
30 be free from taxation by the State or any local unit or political
31 subdivision or other instrumentality of the State, excepting
32 inheritance or gift taxes. Gain from the transfer of, and income
33 from, such obligations shall be taxable under Article 4 of
34 Chapter 105 of the General Statutes to the same extent as it is
35 taxable under the Internal Revenue Code."

1 Sec. 31. G.S. 122D-14 reads as rewritten:

2 "**§ 122D-14. Exemption from taxes.**--The exercise of the powers
3 granted by this Chapter will be in all respects for the benefit
4 of the people of the State, for their well-being and prosperity
5 and for the improvement of their social and economic conditions,
6 and the Authority shall not be required to pay any tax or
7 assessment on any property owned by the Authority under the
8 provisions of this Chapter or upon the income therefrom.

9 Any obligations issued by the Authority under the provisions of
10 this Chapter, ~~their transfer and the income therefrom (including~~
11 ~~any profit made on the sale thereof)~~, Chapter shall at all times
12 be free from taxation by the State or any local unit or political
13 subdivision or other instrumentality of the State, excepting
14 inheritance or gift taxes. Gain from the transfer of, and income
15 from, such obligations shall be taxable under Article 4 of
16 Chapter 105 of the General Statutes to the same extent as it is
17 taxable under the Internal Revenue Code."

18 Sec. 32. G.S. 131A-21 reads as rewritten:

19 "**§ 131A-21. Tax exemption.**--The exercise of the powers granted
20 by this Chapter will be in all respects for the benefit of the
21 people of the State and will promote their health and welfare,
22 and no tax or assessment shall be levied upon any health care
23 facilities undertaken by the Commission prior to the retirement
24 or provision for the retirement of all bonds or notes issued and
25 obligations incurred by the Commission in connection with such
26 health care facilities.

27 Any bonds or notes issued by the Commission under the
28 provisions of this Chapter, ~~their transfer and the income~~
29 ~~therefrom (including any profit made on the sale thereof)~~ Chapter
30 shall at all times be free from taxation by the State or any
31 local unit or political subdivision or other instrumentality of
32 the State, excepting inheritance or gift taxes. Gain from the
33 transfer of, and income from, such bonds and notes shall be
34 taxable under Article 4 of Chapter 105 of the General Statutes to

1 the same extent as it is taxable under the Internal Revenue
2 Code."

3 Sec. 33. G.S. 131E-28(c) reads as rewritten:

4 "(c) Bonds, notes, debentures, or other evidences of
5 indebtedness of a hospital authority issued under the Local
6 Government Revenue Bond Act, Chapter 159 of the General Statutes,
7 Article 5, or issued pursuant to the bond and revenue
8 anticipation provisions of Chapter 159 of the General Statutes,
9 Article 9, or issued pursuant to G.S. 131E-26(b) or contracted
10 pursuant to G.S. 131E-32 ~~and the transfer of and income from such~~
11 ~~instruments, including profits on sales,~~ shall at all times be
12 free from taxation by the State or any of its subdivisions,
13 except for inheritance or gift taxes. Gain from the transfer of,
14 and income from, such bonds, notes, debentures, or other
15 evidences of indebtedness shall be taxable under Article 4 of
16 Chapter 105 of the General Statutes to the same extent as it is
17 taxable under the Internal Revenue Code."

18 Sec. 34. G.S. 143B-456(g) reads as rewritten:

19 "(g) Any obligations issued by the Authority under the
20 provisions of this ~~Part, their transfer and the income therefrom~~
21 ~~(including any profit made on the sale thereof),~~ Part shall at
22 all times be free from taxation by the State or any local unit or
23 political subdivision or other instrumentality of the State,
24 excepting inheritance or gift taxes. Gain from the transfer of,
25 and income from, such obligations shall be taxable under Article
26 4 of Chapter 105 of the General Statutes to the same extent as it
27 is taxable under the Internal Revenue Code."

28 Sec. 35. G.S. 157-26 reads as rewritten:

29 "§ 157-26. Tax exemptions.--The authority shall be exempt from
30 the payment of any taxes or fees to the State or any subdivision
31 thereof, or to any officer or employee of the State or any
32 subdivision thereof. The property of an authority used for
33 public purposes shall be exempt from all local and municipal
34 taxes and for the purposes of such tax exemption, it is hereby
35 declared as a matter of legislative determination that an

1 authority is and shall be deemed to be a municipal corporation.
2 Bonds, notes, debentures and other evidences of indebtedness of
3 an authority (including any corporate agent thereof authorized by
4 this Article to exercise the powers of the authority) heretofore
5 or hereafter issued are declared to be issued for a public
6 purpose and to be public instrumentalities ~~and, together with the~~
7 ~~interest thereon,~~ and shall be exempt from taxes. Gain from the
8 transfer of, and income from, such bonds, notes, debentures, and
9 other evidences of indebtedness, and shares of stock, shall be
10 taxable under Article 4 of Chapter 105 of the General Statutes to
11 the same extent as it is taxable under the Internal Revenue
12 Code."

13 Sec. 36. G.S. 159B-26 reads as rewritten:

14 "§ 159B-26. Tax exemption.--Bonds, their transfer and the
15 income therefrom (including any profit made on the sale thereof),
16 Bonds shall at all times be free from taxation by the State or
17 any political subdivision or any agency of either thereof,
18 excepting inheritance or gift taxes. Gain from the transfer of,
19 and income from, such bonds shall be taxable under Article 4 of
20 Chapter 105 of the General Statutes to the same extent as it is
21 taxable under the Internal Revenue Code."

22 Sec. 37. G.S. 159C-14 reads as rewritten:

23 "§ 159C-14. Tax exemption.--The authority shall not be required
24 to pay any taxes on any project or on any other property owned by
25 the authority under the provisions of this Chapter or upon the
26 income therefrom.

27 The interest on bonds issued by the authority shall be exempt
28 from ~~all~~ income taxes within the State to the same extent as it
29 is exempt from income taxes under the Internal Revenue Code.

30 All projects and all transactions therefor shall be subject to
31 taxation to the extent such projects and transactions would be
32 subject to taxation if no public body were involved therewith."

33 Sec. 38. G.S. 105-160 reads as rewritten:

34 "§ 105-160. Short title.--This Division shall be known ~~and may~~
35 ~~be cited~~ as the Income Tax Act for Estates and Trusts."

1 Sec. 39. G.S. 105-161, 105-162, and 105-163 are
2 repealed.

3 Sec. 40. Division III of Article 4 of Chapter 105 of
4 the General Statutes is amended by adding after G.S. 105-160 a
5 new section to read:

6 "§ 105-160.1. Estates and trusts.--(a) Imposition of the Tax.
7 The tax imposed by this Division shall apply to the taxable
8 income of estates and trusts as determined under the provisions
9 of the Code except as otherwise provided in this Division.

10 (b) Computation and Payment. The taxable income of an estate
11 or trust shall be the same as taxable income for such an estate
12 or trust under the provisions of the Code, adjusted as provided
13 in G.S. 105-134.6 and G.S. 105-134.7. The tax shall be computed
14 at the rate of six and six-tenths percent (6.6%) of an amount
15 equal to the taxable income multiplied by a fraction, the
16 numerator of which is the estate or trust's gross income from
17 North Carolina sources, plus the gross income from sources
18 outside of the State and from intangible sources which is for the
19 benefit of a resident of this State, and the denominator of which
20 is the estate or trust's gross income as calculated under the
21 Code. For purposes of the preceding sentence, the words 'taxable
22 income' and 'gross income' shall be computed subject to the
23 adjustments provided in G.S. 105-134.6 and G.S. 105-134.7. The
24 tax computed under the provisions of this Division shall be paid
25 by the fiduciary responsible for administering the estate or
26 trust.

27 (c) Definitions. For the purpose of this Division, the words
28 and phrases defined in Division II of this Article shall have the
29 same meanings prescribed to them in that Division, except in
30 those instances where the context clearly indicates a different
31 meaning.

32 (d) Tax Credits for Income Taxes Paid to Other States.

33 (1) If a fiduciary is required to pay income tax to
34 this State for an estate or a trust for which he
35 acts, he shall be allowed a credit against the

1 taxes imposed by this section for income taxes
2 imposed by and paid to another state or country on
3 income derived from sources within that other state
4 or country in accordance with the formula contained
5 in subdivision (2) of this subsection and the
6 requirements of subdivision (3) of this subsection.

7 (2) The fraction of the gross income for North Carolina
8 income tax purposes which is derived from sources
9 within and subject to income tax in another state
10 or country shall be ascertained and the North
11 Carolina net income tax before credit under this
12 subsection shall be multiplied by that fraction.
13 The credit allowed shall be either the product thus
14 calculated or the income tax actually paid the
15 other state or country, whichever is smaller.

16 (3) Receipts showing the payment of income taxes to
17 another state or country and a true copy of a
18 return or returns upon the basis of which the taxes
19 are assessed shall be filed with the Secretary of
20 Revenue at or prior to the time credit is claimed.
21 If credit is claimed on account of a deficiency
22 assessment, a true copy of the notice assessing or
23 proposing to assess the deficiency, as well as a
24 receipt showing the payment of the deficiency,
25 shall be filed.

26 (4) If any taxes paid to another state or country for
27 which a fiduciary has been allowed a credit under
28 this section are at any time credited or refunded
29 to the fiduciary, a tax equal to that portion of
30 the credit allowed for the taxes so credited or
31 refunded shall be due and payable from the
32 fiduciary within 30 days after the date of the
33 receipt of the refund or the notice of the credit.
34 If the amount of tax due is not paid within 30 days
35 after receipt or notice, the fiduciary shall be

1 subject to the penalties and interest on delinquent
2 payments provided in G.S. 105-236 and G.S.
3 105-241.1.

4 (5) A resident beneficiary of an estate or trust who is
5 taxed under the provisions of Division II of this
6 Article on income from an estate or trust
7 determined to be includable in his gross income
8 shall be allowed a credit against the tax imposed
9 for income taxes paid by the fiduciary to another
10 state or country on the income in accordance with
11 the formula contained in subsection (d)(2) of this
12 section and the requirements of subsection (d)(3)
13 of this section; provided, that if any taxes paid
14 to another state or country for which a beneficiary
15 has been allowed credit under this section are at
16 any time credited or refunded to the beneficiary, a
17 tax equal to that portion of the credit allowed for
18 the taxes so credited or refunded shall be due and
19 payable from the beneficiary within 30 days after
20 the date of receipt of the refund or notice of the
21 credit. If the amount of tax due is not paid
22 within 30 days after receipt or notice, the
23 beneficiary shall be subject to the penalties and
24 interest on delinquent payments provided in G.S.
25 105-236 and G.S. 105-241.1.

26 (e) Returns. The fiduciary of an estate or trust shall file
27 an income tax return for the following trusts or estates under
28 affirmation, showing therein specifically the taxable income and
29 the adjustments required by this Division, and such other facts
30 as the Secretary may require for the purpose of making any
31 computation required by this Division:

32 (1) Every estate or trust which has taxable income
33 under this Division during the taxable year in
34 excess of one dollar (\$1.00).

1 (2) Every estate or trust which the Secretary believes
2 to be liable for a tax under this Division, when so
3 notified by the Secretary of Revenue and requested
4 to file a return.

5 (f) Time and Place of Filing Returns. Returns required under
6 the provisions of subsection (e) of this section shall be in such
7 form as the Secretary of Revenue may prescribe, and shall be
8 filed with the Secretary at his main office, or at any branch
9 office which he may establish. The return of every fiduciary
10 reporting on a calendar-year basis shall be filed on or before
11 the fifteenth day of April in each year, and the return of every
12 fiduciary reporting on a fiscal year basis shall be filed on or
13 before the fifteenth day of the fourth month following the close
14 of the fiscal year. In the case of sickness, absence, or other
15 disability or whenever in his judgment good cause exists, the
16 Secretary may allow further time for filing these returns.

17 (g) Time and Place of Payment of Tax.

18 (1) The full amount of the tax payable as shown on the
19 face of the return shall be paid to the Secretary
20 of Revenue at the office where the return is filed
21 at the time fixed by law for filing the return;
22 provided, that if the amount shown to be due after
23 all credits is less than one dollar (\$1.00), no
24 payment need be made.

25 (2) The tax may be paid with uncertified check, but if
26 a check so received is not paid by the bank on
27 which it is drawn, the fiduciary by whom the check
28 is tendered shall remain liable for the payment of
29 the tax and for all penalties lawfully imposed.

30 (h) Corrections and Changes. For purposes of this section,
31 the provisions of G.S. 105-159 requiring an individual to report
32 changes, corrections, or the determination of net income by the
33 Internal Revenue Service shall apply also to fiduciaries required
34 to file returns for estates and trusts."

35 Sec. 41. G.S. 105-163.02(11) reads as rewritten:

1 "(11) 'Taxable year' shall have the meaning ascribed to such
2 term in G.S. ~~105-135(9)~~ 105-134.1(14) and G.S. 105-130.2(5), as
3 appropriate. In addition, 'taxable year' shall be that taxable
4 year for which a manufacturer files an income tax return upon
5 which the tax credit provided for under this Division is
6 claimed."

7 Sec. 42. G.S. 105-163.1(3) reads as rewritten:

8 "(3) 'Dependent' means a dependent with respect to whom an
9 income tax exemption is allowed under the ~~provisions of G.S. 105-~~
10 ~~149(a)(5)~~ the Code."

11 Sec. 43. G.S. 105-163.2(a) and (b) read as rewritten:

12 "(a) Every employer making payment of wages on or after January
13 1, 1960, shall deduct and withhold with respect to the wages of
14 each employee for each payroll period an amount determined as
15 follows:

16 Such amount which, if an equal amount was collected for each
17 similar payroll period with respect to a similar amount of wages
18 for each payroll period during an entire calendar year, would
19 aggregate or approximate the income tax liability of such
20 employee under Article 4 of this Chapter after making allowance
21 for the personal exemptions to which such employee would be
22 entitled on the basis of his status during such payroll period
23 and after making allowance for withholding purposes for a
24 deduction from wages of the amount of the standard deduction
25 allowed under ~~G.S. 105-147(22)~~ the Code and without making
26 allowance for any other deductions.

27 (b) The Secretary of Revenue shall cause to be prepared and
28 shall promulgate tables for computing amounts to be withheld with
29 respect to different rates of wages for different payroll periods
30 applicable to the various combinations of exemptions to which an
31 employee may be entitled and taking into account the ~~limited ten~~
32 ~~percent (10%)~~ standard deduction above referred to. Such tables
33 may provide for the same amount to be withheld within reasonable
34 salary brackets or ranges so designed as to result in the
35 withholding during a year of approximately the amount of an

1 employee's indicated income tax liability with respect to said
2 year. The withholding of wages pursuant to and in accordance
3 with such tables shall be deemed as a matter of law to constitute
4 compliance with the provisions of subsection (a) of this section,
5 notwithstanding any other provisions of this Article."

6 Sec. 44. G.S. 105-163.3 reads as rewritten:

7 "**§ 105-163.3. Withholding in accordance with regulations.**--The
8 manner of withholding and the amount to be deducted and withheld
9 under G.S. 105-163.2 shall be determined in accordance with
10 tables, rules and regulations promulgated by the Secretary. The
11 withholding exemption allowed by such tables, rules and
12 regulations shall, as nearly as possible, approximate the
13 exemptions to which an employee would be entitled under ~~G.S.~~
14 ~~105-149~~ the Code."

15 Sec. 45. G.S. 105-163.5(b) reads as rewritten:

16 "(b) Every employee shall, on or before January 1, 1960, or at
17 the time of commencing employment, whichever is later, furnish
18 his employer with a signed withholding exemption certificate
19 informing the employer of the exemptions which the employee
20 claims, which in no event shall exceed the amount of exemptions
21 to which the employee is entitled under ~~G.S. 105-149;~~ the Code;
22 but, in the event that the employee fails to file the exemption
23 certificate required herein, the employer, in computing amounts
24 to be withheld from said employee's wages, shall allow the
25 employee the exemption accorded a single person with no
26 dependents."

27 Sec. 46. G.S. 105-163.16(d) and (e) read as rewritten:

28 "(d) When a husband and wife have elected under ~~G.S. 105-152(e)~~
29 G.S. 105-152.1 to file ~~their separate income tax returns on a~~
30 ~~single form~~ a joint return and a refund for overpayment of tax is
31 made payable to both spouses as provided in that subsection, the
32 provisions of this section shall apply to such refund.

33 (e) Any taxpayer who shall be entitled to a refund of taxes
34 withheld or estimated taxes paid as provided by this section may
35 elect to contribute all or any part of such refund to the

1 Wildlife Fund for the support of wildlife management and
2 protection programs primarily for nongame wildlife species and
3 wildlife species which are or may hereafter be designated as
4 endangered or threatened. The Secretary shall provide
5 appropriate language and space on the individual income tax form
6 in which to make ~~such this~~ election ~~and shall note the same in~~
7 ~~his instructions as a contribution qualifying as a deduction~~
8 ~~under G.S. 105-147(16)~~. Any such election shall become
9 irrevocable upon filing the taxpayer's income tax return for the
10 taxable year. All of such contributions shall be transmitted to
11 the State Treasurer for credit to the Wildlife Fund which shall
12 be made available to the Wildlife Resources Commission for the
13 support of management and protection programs primarily for
14 nongame wildlife and endangered and threatened species and to
15 match federal funds which may become available for such
16 purposes."

17 Sec. 47. G.S. 105-203 reads as rewritten:

18 "§ 105-203. Shares of stock.--All shares of stock (including
19 shares and units of ownership of mutual funds, investment trusts
20 trusts, and investment funds) owned by residents of this State or
21 having a business, ~~commercial~~ commercial, or taxable situs in
22 this State on December 31 of each year, with the exception herein
23 provided, shall be subject to an annual tax, which is hereby
24 levied, of twenty-five cents (25¢) on every one hundred dollars
25 (\$100.00) of the total fair market value of such stock on
26 December 31 of each year less such proportion of such value as is
27 ~~equal to the proportion of the dividends upon such stock~~
28 ~~deductible by such taxpayer in computing his income tax liability~~
29 ~~under the provisions of G.S. 105-130.7 and 105-147(7) without~~
30 ~~regard to the fifteen-thousand-dollar (\$15,000) limitation under~~
31 ~~subdivision (7) of G.S. 105-147 and 105-130.7. to:~~

32 (1) In the case of a taxpayer that is a corporation, the
33 proportion of the dividends upon such stock deductible by such
34 taxpayer in computing its income tax liability under G.S.

1 105-130.7 without regard to the fifteen-thousand-dollar (\$15,000)
2 limitation under G.S. 105-130.7; and
3 (2) In the case of a taxpayer that is not a corporation,
4 the proportion of the dividends upon such stock that would be
5 deductible by such taxpayer, if the taxpayer were a corporation,
6 in computing its income tax liability under the provisions of
7 G.S. 105-130.7(1),(2),(3), and (3a), with out regard to the
8 fifteen-thousand-dollar (\$15,000) limitation under G.S.
9 105-130.7.

10 The tax herein levied shall not apply to shares of stock in
11 building and loan associations or savings and loan associations
12 which pay a tax as levied under Article 8D of Chapter 105 of the
13 General Statutes, nor to shares of stock owned by any corporation
14 which has its commercial domicile in North Carolina, where such
15 corporation owns more than fifty percent (50%) of the outstanding
16 voting stock.

17 The tax herein levied shall not apply to units of ownership in
18 an investment trust, the corpus of which is composed (i) entirely
19 of obligations of this State or (ii) entirely of obligations of
20 the United States and of this State, at least eighty percent
21 (80%) of the fair market value of which represents obligations of
22 this State. For the purpose of this paragraph, "State" includes
23 the State of North Carolina, political subdivisions of this
24 State, and agencies of such governmental units; "United States"
25 includes the United States and its possessions, and the District
26 of Columbia; "obligations" includes bonds, notes and other
27 evidences of debt. In order for the exemption provided for in
28 this paragraph to apply, it shall be the duty of the trustees of
29 an investment trust to provide to the Secretary of Revenue, in
30 form satisfactory to him and not later than December 31 of the
31 year with respect to which the exemption applies, information
32 sufficient to establish the applicability of this exemption.

33 Indebtedness incurred directly for the purchase of shares of
34 stock may be deducted from the total value of such shares;
35 provided, the specific shares of stock so purchased are pledged

1 as collateral to secure said indebtedness; provided further, that
2 only so much of said indebtedness may be deducted as is in the
3 same proportion as the taxable value of said shares of stock is
4 to the total value of said shares of stock."

5 Sec. 48. G.S. 105-259 reads as rewritten:

6 "§ 105-259. Secrecy required of officials; penalty for
7 violation.--With respect to any one of the following persons: (i)
8 the Secretary of Revenue and all other officers or employees, and
9 former officers and employees, of the Department of Revenue; (ii)
10 local tax officials, as defined in G.S. 105-273, and former local
11 tax officials; (iii) members and former members of the Property
12 Tax Commission; (iv) any other person authorized in this section
13 to receive information concerning any item contained in any
14 report or return, or authorized to inspect any report or return;
15 and (v) the Commissioner of Insurance and all other officers or
16 employees and former officers and employees of the Department of
17 Insurance with respect to State and federal income tax returns
18 filed with the Commissioner of Insurance by domestic insurance
19 companies; and except in accordance with proper judicial order or
20 as otherwise provided by law, it shall be unlawful for any of
21 said persons to divulge or make known in any manner the amount of
22 income, income tax or other taxes of any taxpayer, or information
23 relating thereto or from which the amount of income, income tax
24 or other taxes or any part thereof might be determined, deduced
25 or estimated, whether the same be set forth or disclosed in or by
26 means of any report or return required to be filed or furnished
27 under this Subchapter, or in or by means of any audit,
28 assessment, application, correspondence, schedule or other
29 document relating to such taxpayer, notwithstanding the
30 provisions of Chapter 132 of the General Statutes or of any other
31 law or laws relating to public records. It shall likewise be
32 unlawful to reveal whether or not any taxpayer has filed a
33 return, and to abstract, compile or furnish to any person, firm
34 or corporation not otherwise entitled to information relating to
35 the amount of income, income tax or other taxes of a taxpayer,

1 any list of names, addresses, social security numbers or other
2 personal information concerning such taxpayer, whether or not
3 such list discloses a taxpayer's income, income tax or other
4 taxes, or any part thereof, except that when an election is made
5 by a husband and wife ~~under G.S. 105-152(e) to file their~~
6 ~~separate returns on a single form, or in order to determine an~~
7 ~~exemption allowable under G.S. 105-149(a)(2) under G.S. 105-152.1~~
8 to file a joint return, any information given to one spouse
9 concerning the income or income tax of the other spouse reported
10 or reportable on such single return or on separate returns shall
11 not be a violation of the provisions of this section.

12 Nothing in this section shall be construed to prohibit the
13 publication of statistics, so classified as to prevent the
14 identification of particular reports or returns, and the items
15 thereof; the inspection of such reports or returns by the
16 Governor, Attorney General, or their duly authorized
17 representative; or the inspection by a legal representative of
18 the State of the report or return of any taxpayer who shall bring
19 an action to set aside or review the tax based thereon, or
20 against whom an action or proceeding has been instituted to
21 recover any tax or penalty imposed by this Subchapter; nor shall
22 the provisions of this section prohibit the Department of Revenue
23 furnishing information to other governmental agencies of persons
24 and firms properly licensed under Schedule B, G.S. 105-33 to
25 105-113. The Department of Revenue may exchange information
26 with the officers of organized associations of taxpayers under
27 Schedule B, G.S. 105-33 to 105-113, with respect to parties
28 liable for such taxes and as to parties who have paid such
29 license taxes.

30 When any record of the Department of Revenue shall have been
31 photographed, photocopied or microphotocopied pursuant to the
32 authority contained in G.S. 8-45.3, the original of said record
33 may thereafter be destroyed at any time upon the order of the
34 Secretary of Revenue, notwithstanding the provisions of G.S.
35 121-5, G.S. 132-3 or any other law or laws relating to the

1 preservation of public records. Any record which shall not have
2 been so photographed, photocopied or microphotocopied shall be
3 preserved for three years, and thereafter until the Secretary of
4 Revenue shall order the same to be destroyed.

5 Any person, officer, agent, clerk, employee, local tax official
6 or former officer, employee or local tax official violating the
7 provisions of this section shall be guilty of a misdemeanor and
8 fined not less than two hundred dollars (\$200.00) nor more than
9 one thousand dollars (\$1,000) and/or imprisoned, in the
10 discretion of the court; and if such offending person be a public
11 officer or employee, he shall be dismissed from such office or
12 employment, and shall not hold any public office or employment in
13 this State for a period of five years thereafter.

14 Notwithstanding the provisions of this section, the Secretary
15 of Revenue may permit the Commissioner of Internal Revenue of the
16 United States, or the revenue officer of any other state imposing
17 any of the taxes imposed in this Subchapter, or the duly
18 authorized representative of either, to inspect the report or
19 return of any taxpayer; or may furnish such officer or his
20 authorized agent an abstract of the report or return of any
21 taxpayer; or supply such officer with information concerning any
22 item contained in any report or return, or disclosed by the
23 report of any investigation of such report or return of any
24 taxpayer. Such permission, however, shall be granted or such
25 information furnished to such officer, or his duly authorized
26 representatives, only if the statutes of the United States or of
27 such other state grants substantially similar privilege to the
28 Secretary of Revenue of this State or his duly authorized
29 representative. Notwithstanding contrary provisions of this
30 section, the Secretary may also furnish to the Employment
31 Security Commission account and identification numbers, and names
32 and addresses, of taxpayers when said Commission requires such
33 information for the purpose of administering Chapter 96 of the
34 General Statutes. Neither this section nor any other law
35 prevents the exchange of information between the Department of

1 Revenue and the Department of Transportation's Division of Motor
2 Vehicles when the information is needed by either to administer
3 the laws with which they are charged. Notwithstanding any other
4 provision of law, State officers and employees who perform
5 computerized data processing functions pursuant to G.S.
6 143-341(9) for the Department of Revenue are authorized to
7 receive and process for the Department of Revenue information in
8 reports and returns and are subject to the criminal provisions of
9 this section.

10 Notwithstanding the provisions of this section, the Secretary
11 of Revenue may contract with any person, firm or corporation to
12 receive and address, sort, bag, or deliver to the United States
13 Postal Service any bulk mailing originated by the Department of
14 Revenue, and may deliver the mail to the contractor pursuant to
15 the contract. To ensure performance of the contract, the
16 contractor shall furnish a bond in a form and amount acceptable
17 to the Secretary."

18 Sec. 49. G.S. 105-266 reads as rewritten:

19 "§ 105-266. **Overpayment of taxes to be refunded with**
20 **interest.**--If the Secretary of Revenue discovers from the
21 examination of any return, or otherwise, that any taxpayer has
22 overpaid the correct amount of tax (including penalties, interest
23 and costs if any), such overpayment if the amount of three
24 dollars (\$3.00) or more, shall be refunded to the taxpayer within
25 60 days after it is ascertained together with interest thereon at
26 the rate established in G.S. 105-241.1(i) for assessments;
27 provided, that interest on any such refund shall be computed from
28 a date 90 days after the date the tax was originally paid by the
29 taxpayer; except that there shall be no refund to the taxpayer of
30 any sum set off under the provisions of Chapter 105A, the Set-off
31 Debt Collection Act. If said overpayment is less than three
32 dollars (\$3.00) said overpayment shall be refunded as aforesaid
33 but only upon receipt by the Secretary of Revenue of a written
34 demand for such refund from the taxpayer. Provided, however,
35 that no overpayment shall be refunded irrespective of whether

1 upon discovery or receipt of written demand if such discovery is
2 not made or such demand is not received within three years from
3 the date set by the statute for the filing of the return or
4 within six months of the payment of the tax alleged to be an
5 overpayment, whichever date is the later. The provisions of this
6 paragraph shall not apply to interest required under G.S.
7 105-267. When a husband and wife have elected ~~under G.S.~~
8 ~~105-152(e) to file their separate income tax returns on a single~~
9 ~~form~~ under G.S. 105-152.1 to file a joint return and a refund for
10 overpayment of tax is made payable to both spouses as provided in
11 that subsection, the provisions of this section shall apply to
12 such refund."

13 Sec. 50. This act does not affect the rights or
14 liabilities of the State, a taxpayer, or other person arising
15 under a statute amended or repealed by this act before its
16 amendment or repeal; nor does it affect the right to any refund
17 or credit of a tax that would otherwise have been available under
18 the amended or repealed statute before its amendment or repeal.

19 Sec. 51. This act is effective for taxable years
20 beginning on or after January 1, 1990.

Explanation of Proposal 4

I. Summary

At several of its meetings, the Revenue Laws Study Committee discussed a proposal to restructure the Individual Income Tax Act to conform more closely to the federal Internal Revenue Code. Under current law, the State statutes set out their own rules for defining gross income, excluding certain types of income from taxation, determining the amount of gain or loss from transactions, calculating deductions and personal exemptions, and allowing tax credits. While many of these rules duplicate the federal rules, there are numerous technical differences. As a result, taxpayers must make two separate calculations of taxable income in order to pay tax each year. This is time-consuming and difficult for taxpayers and, for those who employ a tax practitioner, expensive as well.

The proposal recommended by the Revenue Laws Study Commission would simplify the process of paying taxes by using the federal rules for calculating net taxable income. Increased conformity to the Internal Revenue Code would also enhance compliance. Adoption of the federal standard deduction and personal exemptions would provide tax relief to low-income taxpayers.

Legislative Proposal 4 is entitled AN ACT TO STRUCTURE INDIVIDUAL INCOME TAX AS A PERCENTAGE OF FEDERAL TAXABLE INCOME. The substantive portion of the bill, pages 34-70, revises the Individual Income Tax Act to tax at the rate of six and six-tenths percent (6.6%) each taxpayers's net income, which is calculated as the individual's federal taxable income attributable to North Carolina.

minus amounts that are exempt from State income tax, and plus amounts that are taxed by the State but not by the federal government. The bill also authorizes married couples to file joint returns, accelerates the effective date of the law providing for special treatment for Subchapter S Corporations, deletes current deductions and exemptions that will be replaced with federal deductions and exemptions, eliminates some tax credits allowed under current law, and provides that certain bonds will be taxed by the State to the same extent as by the federal government.

The remainder of the bill (pages 70-82) makes changes to conform other parts of the law to the substantive changes made by the bill, provides a savings clause, and makes the bill effective for taxable years beginning on or after January 1, 1990.

II. Section by Section Analysis

Sections 1 and 2 of the bill make minor changes regarding the title and purpose of the Individual Income Tax Act, Division II of Article 4 of Chapter 105 of the General Statutes. Section 3 repeals 23 statutes from current law that relate to definitions, tax rates, year of assessment, calculation of gross income and net income, deductions, and exemptions.

Section 4 adds nine new statutes to replace those deleted by Section 3. New § 105-134.1, Definitions, modifies or deletes existing definitions and adds new definitions as necessary for the new law. The Internal Revenue Code referenced is as enacted as of January 1, 1989, but does not include provisions to increase automatically exemptions and standard deductions. Definitions from the Code are adopted by cross-reference.

New § 105-134.2 imposes the individual income tax as a percentage of each individual's North Carolina Net Income, which is federal taxable income adjusted as

provided below. As in the federal law, there are separate brackets for married individuals filing joint returns and surviving spouses, heads of households, single individuals, and married individuals filing separate returns.

New § 105-134.3, providing that the tax is paid in the year following the taxable year, is the same as current G.S. 105-137, repealed by Section 3 above. New § 105-134.4 requires taxpayers to use the same taxable year for State tax purposes as for federal tax purposes.

New § 105-134.5 defines North Carolina Net Income as federal taxable income adjusted as provided in new §§ 105-134.6 and 105-134.7, below. For nonresidents and part-year residents the amount is further adjusted to exclude income that is not attributable to North Carolina sources.

New § 105-134.6 provides for adjustments to federal taxable income in calculating North Carolina Net Income. In subsection (a), amounts are deducted if they are to be exempt from State income tax: interest on U.S. obligations; retirement benefits under the Railroad Retirement Act; retirement benefits, currently exempt from State income tax, for firefighters, legislators, members of the national guard, public officials, teachers, state employees, and law-enforcement officers; up to \$4,000 in retirement pay for civil service and military retirees, and up to \$1,500 in compensation received by members of the national guard. In subsection (b), amounts are added if they are exempt from federal income tax but not State income tax: interest on obligations of other states and income taxed under federal law separately from taxable income.

New § 105-134.7 provides for adjustments to federal taxable income necessary to effect the transition from current law to the new State tax law proposed by the bill. These adjustments relate to calculating the basis of property when it is transferred and recognizing gain that was previously unrecognized. The section also authorizes the

Secretary of Revenue to require other adjustments as necessary to avoid double taxation or unintended exemptions due to the transition from old to new law.

New §§ 105-134.8 and 105-134.9 are essentially the same as current G.S. 105-156.1 and 105-146. These statutes provide for the effective dates of some earlier changes and authorize the Secretary of Revenue to take inventories, respectively.

Sections 5, 6, 8-12, and 14 (pages 49-64) carry forward the following tax credits with conforming changes:

- § 105-151 Tax credits for income taxes paid to other states by individuals.
- § 105-151.1 Tax credit for construction of dwelling units for handicapped persons.
- § 105-151.11 Credit against personal income tax for child care and certain employment-related expenses. (Changed to track the federal credit).
- § 105-151.12 Credit for certain real property donations.
- § 105-151.13 Credit for conservation tillage equipment.
- § 105-151.14 Credit for gleaned crop.
- § 105-151.15 Credit for distributing North Carolina wine.
- § 105-151.17 Credit for creating jobs in severely distressed counties.

Sections 7 and 13 of the bill repeal the following individual income tax credits:

- G.S. 105-151.2. Credit against personal income tax for solar hot water, heating and cooling.
- G.S. 105-151.4. Credit against personal income tax for construction of cogenerating power plants.
- G.S. 105-151.5. Credit against personal income tax for conversion of industrial boiler to wood fuel.
- G.S. 105-151.6. Credit against personal income tax for construction of a fuel ethanol distillery.
- G.S. 105-151.6A. Credit against personal income tax for construction of a peat facility.
- G.S. 105-151.7. Credit against personal income tax for installation of a hydroelectric generator.
- G.S. 105-151.8. Credit against personal income tax for installation of solar equipment for the production of industrial or process heat.
- G.S. 105-151.9. Credit against personal income tax for installation of a wind energy device.
- G.S. 105-151.10. Credit against personal income tax for construction of a methane gas facility.
- G.S. 105-151.16. General credit for individuals with low or moderate incomes.

Section 15 amends G.S. 105-152 to make conforming changes, authorize joint returns, and require taxpayers to attach a copy of their federal return to their State

return. Section 16 adds a new § 105-152.1 to provide that a wife and husband may file a joint return under certain circumstances. Sections 17-19 and 21-24 make conforming changes to the following individual income tax statutes:

- G.S. 105-154. Information at the source.
- G.S. 105-155. Time and place of filing returns.
- G.S. 105-156. Failure to file returns; supplementary returns.
- G.S. 105-157. Time and place of payment of tax.
- G.S. 105-158. Abatement of income taxes of certain members of the armed forces upon death.
- G.S. 105-159. Corrections and changes.
- G.S. 105-159.1. Designation of tax by individual to political party.

Section 20 repeals G.S. 105-156.1, which was recodified as § 105-134.8, above. Sections 25 and 26 of the bill amend Chapter 1089 of the 1987 Session Laws to make conforming changes and to change that law's effective date of July 1, 1990, to January 1, 1990. Chapter 1089 provides that State taxation of Subchapter S Corporations and their shareholders shall be done in the same way as under the Code.

Sections 27-37 of the bill provide that income from and gain from the transfer of certain bonds shall be taxed to the same extent as under federal law.

Sections 38-40 of the bill rewrite the Income Tax Act for Estates and Trusts to conform it to the rewrite of the Individual Income Tax Act. Sections 41-49 make changes to cross-references in Chapter 105 because the provisions referenced were rewritten by the bill.

Section 50 of the bill, the savings clause, provides that the changes made by the bill do not affect any rights or liabilities that arose under the law before the changes went into effect. Section 51 of the bill provides that the bill is effective for taxable years beginning on or after January 1, 1990.

Explanation of Proposal:

Under the current personal income tax structure in North Carolina the state tax does not use any federal definition of income as a starting point for the calculation of state tax liability. The state tax is based on specific statutory language regarding the sources of income subject to taxation; the amount of personal, dependency, and "additional" exemptions; the amount of the optional standard deduction; and the progressive rate schedule applicable to net taxable income. Married couples are not allowed to file a joint return but can file their individual calculations on a single form ("combined return"). Subchapter S tax treatment will not be allowed until mid-1990. There are a handful of statutory tie-ins to the Internal Revenue Code. The primary conformity areas include Individual Retirement Accounts and other retirement vehicles.

The proposal would use federal net taxable income as a starting point with a handful of "add and deduct" items. The effect would be to use the federal definition of items subject to taxation and the federal rules on itemized deductions. The amount of the personal exemptions and optional standard deduction would be tied to the 1988 federal amount (not indexed). A married couple would be authorized to file a joint return. The Subchapter S option would be allowed sooner. A tax rate of 6.6% would be applied to net taxable income.

Effective Date:
1990 tax year.

Fiscal Effect:

Based on the best available information provided by the Department of Revenue, the application of a 6.6% rate to the new definition of state net taxable income will generate approximately the same amount of General Fund tax revenue as the current law.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1989

S/H

D

PROPOSAL 5 (RL-36)
(THIS IS A DRAFT AND NOT READY FOR INTRODUCTION)

Short Title: Use Tax Credit/Equipment.

(Public)

Sponsors: .

Referred to:

1 A BILL TO BE ENTITLED
2 AN ACT TO ALLOW A USE TAX CREDIT FOR SALES TAX PAID TO ANOTHER
3 STATE ON CONSTRUCTION EQUIPMENT BROUGHT INTO NORTH CAROLINA.
4 The General Assembly of North Carolina enacts:
5 Section 1. G.S. 105-164.6(8) reads as rewritten:
6 "(8) Notwithstanding any other provisions of this Article, a
7 use tax, at the applicable use tax rate, as hereinbefore
8 provided, is hereby levied upon the storage or use in this State
9 of any motor vehicles, machines, machinery, tools or other
10 equipment brought, imported or caused to be brought into this
11 State for use in constructing, building or repairing any
12 building, highway, street, sidewalk, bridge, culvert, sewer or
13 water system, drainage or dredging system, railway system,
14 reservoir or dam, hydraulic or power plant, transmission line,
15 tower, dock, wharf, excavation, grading or other improvement or
16 structure, or any part thereof. The owner or, if the property is
17 leased the lessee of any such motor vehicle, machine, machinery,
18 tools or other equipment shall be liable for the tax provided for
19 in this paragraph, to be computed as set out below. The useful

1 life of such motor vehicles, machines, tools or other equipment
2 shall be determined by the Secretary in accordance with the
3 experience and practices of the building and construction trades.
4 Said use tax shall be computed on the basis of such proportion of
5 the original purchase price of such property as the duration of
6 time of use in this State bears to the total useful life thereof.
7 Such tax shall become due immediately upon such property being
8 brought into this State, and in the absence of satisfactory
9 evidence as to the period of use intended in this State, it shall
10 be presumed that such property will remain in this State for the
11 remainder of its useful life. All provisions of this Article not
12 directly in conflict with the provisions of this paragraph shall
13 be applicable with respect to the matters herein set forth. The
14 provisions of this paragraph shall not be applicable with respect
15 to sales of such property within this State or to the use,
16 storage or consumption of such property when purchased for use in
17 this State, and in such cases the full sales or use tax shall be
18 paid as in all other cases, irrespective of the period of
19 intended use in this State.

20 Where a state retail sales and use tax is due and has been paid
21 with respect to such property in another state by the purchaser
22 of the property, there shall be allowed as a credit against the
23 tax imposed by this subdivision an amount equal to such
24 proportion of the state sales or use tax paid to the other state
25 as the duration of time of use in this State bears to the total
26 useful life of the property. Where a local retail sales and use
27 tax is due and has been paid with respect to such property in
28 another state by the purchaser of the property, there shall be
29 allowed as a credit against the local use tax imposed in this
30 State concurrently with the tax imposed by this subdivision an
31 amount equal to such proportion of the local sales or use tax
32 paid to the other state as the duration of time of use in this
33 State bears to the total useful life of the property. Provided,
34 however, that no credit shall be allowed if the state to which
35 the sales or use tax was paid does not allow a similar tax credit

1 or exemption with respect to such property brought into that
2 state from this State."

3 Sec. 2. This act shall become effective July 1, 1989,
4 and applies to equipment brought into this State on or after that
5 date.

Explanation of Proposal 5

In 1957, the General Assembly enacted G.S. 105-164.6(8), which levies a use tax on motor vehicles, machinery, tools, and other equipment brought into North Carolina for use in construction. The tax is computed using the sales price of the equipment reduced in proportion to the percentage of the equipment's useful life that will be spent in North Carolina. No credit is allowed for sales taxes paid to another state on the equipment. In the absence of a credit, North Carolina's use tax operates as a protectionist measure, giving construction firms that use North Carolina equipment an advantage over those that bring equipment in from other states.

North Carolina's surrounding states have similar use taxes, but those states allow a credit for sales taxes paid to another state if that state would have allowed a credit in the same situation. Because North Carolina does not allow a credit, other states allow no credit when North Carolina equipment is taken into another state. Representatives of North Carolina construction contractors told the Committee that the construction business is becoming more mobile, seeking to expand into out-of-State markets. In this context, North Carolina's use tax imposes a burden on the industry.

In a recent case, the United States Supreme Court struck down an Ohio tax law that allowed a tax credit only for products produced in state. New Energy Co. of Indiana v. Limbach, 108 S. Ct. 1803 (1988). The court held that the tax, which had the effect of taxing a product made by out-of-state manufacturers at a rate higher than the same product made by in-state manufacturers, violated the Commerce Clause's prohibition against "economic protectionism--that is, regulatory measures designed to

benefit in-state economic interests by burdening out-of-state competitors." 108 S. Ct. at 1807.

G.S. 105-164.6(8) violates this principle of the United States Constitution because it is designed to benefit North Carolina concerns by burdening those who seek to bring construction equipment into North Carolina from other states. For this reason, the Committee recommends Legislative Proposal 5, which amends the statute to allow a credit for sales taxes paid in another state, if that state allows a similar credit for sales taxes paid in North Carolina. The bill is to become effective July 1, 1989, and will apply to construction equipment brought into North Carolina on or after that date.

Explanation of Proposal:

Under the state use tax law a contractor bringing construction equipment into North Carolina from another state for use in North Carolina is liable for the use tax on such items. In cases in which the contractor takes delivery of the equipment in another state but then brings the items to North Carolina for initial use, a use tax credit is allowed for any sales tax paid to the state where the property is originally received. The credit does not apply in cases where the state to which the equipment is first delivered does not grant a similar use tax credit (for items delivered to a North Carolina contractor for initial use in the other state).

The proposal would allow a use tax credit for the sales tax paid another state in transactions where the equipment is delivered to a location in another state for initial use in the other state but is subsequently brought into North Carolina for use on a project.

Effective Date:

Transactions occurring on or after July 1, 1989.

Fiscal Effect:

The enactment of the proposal would lead to an insignificant reduction in General Fund tax revenue as much of the equipment used on North Carolina projects by out-of-state contractors is leased from construction equipment rental firms located near the job site.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1987

S/H

D

PROPOSAL 6 (RL-30)
(THIS IS A DRAFT AND NOT READY FOR INTRODUCTION)
18-NOV-88

Short Title: Update IRC reference.

(Public)

Sponsors: .

Referred to:

1 A BILL TO BE ENTITLED
2 AN ACT TO UPDATE THE REFERENCE TO THE INTERNAL REVENUE CODE USED
3 TO DETERMINE CERTAIN TAXABLE INCOME AND TAX EXEMPTIONS.
4 The General Assembly of North Carolina enacts:
5 Section 1. G.S. 105-2.1 reads as rewritten:
6 "**§ 105-2.1. Internal Revenue Code definition.**--As used in this
7 Article, the term 'Code' means the Internal Revenue Code as
8 enacted as of January 1, 1988, January 1, 1989, and includes any
9 provisions enacted as of that date which become effective either
10 before or after that date."
11 Sec. 2. G.S. 105-114 reads as rewritten:
12 "**§ 105-114. Nature of taxes; definitions.**--The taxes levied in
13 this Article upon persons and partnerships are for the privilege
14 of engaging in business or doing the act named. The taxes levied
15 in this Article upon corporations are privilege or excise taxes
16 levied upon:
17 (1) Corporations organized under the laws of this State
18 for the existence of the corporate rights and

1 privileges granted by their charters, and the
2 enjoyment, under the protection of the laws of this
3 State, of the powers, rights, privileges and
4 immunities derived from the State by the form of
5 such existence; and

6 (2) Corporations not organized under the laws of this
7 State for doing business in this State and for the
8 benefit and protection which such corporations
9 receive from the government and laws of this State
10 in doing business in this State.

11 As used in this Article, the term 'Code' means the Internal
12 Revenue Code as enacted as of ~~January 1, 1988~~, January 1, 1989,
13 and includes any provisions enacted as of that date which become
14 effective either before or after that date.

15 The term 'corporation' as used in this Article shall, unless
16 the context clearly requires another interpretation, mean and
17 include not only corporations but also associations or
18 joint-stock companies and every other form of organization for
19 pecuniary gain, having capital stock represented by shares,
20 whether with or without par value, and having privileges not
21 possessed by individuals or partnerships; and whether organized
22 under, or without, statutory authority. The term 'corporation'
23 as used in this Article shall also mean and include any electric
24 membership corporation organized under Chapter 117, and any
25 electric membership corporation, whether or not organized under
26 the laws of this State, doing business within the State.

27 When the term 'doing business' is used in this Article, it
28 shall mean and include each and every act, power or privilege
29 exercised or enjoyed in this State, as an incident to, or by
30 virtue of the powers and privileges acquired by the nature of
31 such organizations whether the form of existence be corporate,
32 associate, joint-stock company or common-law trust.

33 If the corporation is organized under the laws of this State,
34 the payment of the taxes levied by this Article shall be a
35 condition precedent to the right to continue in such form of

1 organization; and if the corporation is not organized under the
2 laws of this State, payment of said taxes shall be a condition
3 precedent to the right to continue to engage in doing business in
4 this State. The taxes levied in this Article or schedule shall
5 be for the fiscal year of the State in which said taxes become
6 due; except, that the taxes levied in G.S. 105-122 and 105-123
7 shall be for the income year of the corporation in which such
8 taxes become due. For purposes of this Article, the words
9 'income year' shall mean an income year as defined in G.S.
10 105-130.2(5)."

11 Sec. 3. G.S. 105-130.2(1) reads as rewritten:

12 "(1) 'Code' means the Internal Revenue Code as enacted as of
13 ~~January 1, 1988,~~ January 1, 1989, and includes any provisions
14 enacted as of that date which become effective either before or
15 after that date."

16 Sec. 4. G.S. 105-135(15) reads as rewritten:

17 "(15) The word 'Code' means the Internal Revenue Code as
18 enacted as of ~~January 1, 1988,~~ January 1, 1989, and includes any
19 provisions enacted as of that date which become effective either
20 before or after that date."

21 Sec. 5. G.S. 105-163.1(11) reads as rewritten:

22 "(11) 'Code' means the Internal Revenue Code as enacted as of
23 ~~January 1, 1988,~~ January 1, 1989, and includes any provisions
24 enacted as of that date which become effective either before or
25 after that date."

26 Sec. 6. G.S. 105-212 reads as rewritten:

27 "**§ 105-212. Institution exempted; conditional and other**
28 **exemptions.**--None of the taxes levied in this Article or schedule
29 shall apply to religious, educational, charitable or benevolent
30 organizations not conducted for profit, nor to trusts established
31 for religious, educational, charitable or benevolent purposes
32 where none of the property or the income from the property owned
33 by such trust may inure to the benefit of any individual or any
34 organization conducted for profit, nor to any funds, evidences of
35 debt, or securities held irrevocably in a charitable remainder

1 trust meeting the requirements of section 664 of the Code or in a
2 pooled income fund meeting the requirements of section 642(c)(5)
3 of the Code, nor to any funds held irrevocably in trust
4 exclusively for the maintenance and care of places of burial; nor
5 to any funds, evidences of debt, or securities held irrevocably
6 in pension, profit-sharing, stock bonus, or annuity trusts, or
7 combinations thereof, established by employers for the purpose of
8 distributing both the principal and income thereof exclusively to
9 eligible employees, or the beneficiaries of such employees, if
10 such trusts qualify for exemption from income tax under the
11 provisions of G.S. 105-161(f)(1)a; nor to any funds, evidences of
12 debt or securities held irrevocably in a pension, profit-sharing,
13 stock bonus or annuity plan established by an employer for the
14 benefit of his employees or for himself and his employees if such
15 plan qualifies for exemption from income tax under the provisions
16 of G.S. 105-141(b)(19); nor to any funds, evidences of debt, or
17 securities held in an individual retirement account described in
18 section 408(a) of the Code, or an individual retirement annuity
19 described in section 408(b) of the Code, if such individual
20 retirement account or individual retirement annuity is exempt
21 from income tax under the provisions of G.S. 105-161(f)(1)c or
22 105-141(b)(19). Insurance companies reporting premiums to the
23 Commissioner of Insurance of this State and paying a tax thereon
24 under the provisions of Article 8B. Schedule I-B shall not be
25 subject to the provisions of G.S. 105-201, 105-202 and 105-203,
26 building and loan associations and savings and loan associations
27 paying a tax under the provisions of Article 8D of Chapter 105 of
28 the General Statutes shall not be subject to the provisions of
29 G.S. 105-201, 105-202 and 105-203; State credit unions organized
30 pursuant to the provisions of Subchapter III, Chapter 54, paying
31 the supervisory fees required by law, shall not be subject to any
32 of the taxes levied in this Article or schedule; banks, banking
33 associations and trust companies shall not be subject to the tax
34 levied in this Article or schedule on evidences of debt held by
35 them when said evidences of debt represent investment of funds on

1 deposit with such banks, banking associations and trust
2 companies: Provided, that each such institution must, upon
3 request by the Secretary of Revenue, establish in writing its
4 claim for exemption as herein provided. The exemption in this
5 section shall apply only to those institutions, and only to the
6 extent, specifically mentioned, and no other.

7 Any corporation or trust doing business in North Carolina which
8 in the opinion of the Secretary of Revenue of North Carolina
9 qualifies as a 'regulated investment company' under section 851
10 of the Code or as a 'real estate investment trust' under the
11 provisions of section 856 of the Code and which files with the
12 North Carolina Department of Revenue its election to be treated
13 as a 'regulated investment company' or 'real estate investment
14 trust,' shall not be subject to any of the taxes levied in this
15 Article or schedule.

16 If any intangible personal property held or controlled by a
17 fiduciary domiciled in this State is so held or controlled for
18 the benefit of a nonresident or nonresidents, or for the benefit
19 of any organization exempt under this section for the tax imposed
20 by this Article, such intangible personal property shall be
21 partially or wholly exempt from taxation and under the provisions
22 of this Article in the ratio which the net income distributed or
23 distributable to such nonresident, nonresidents or organization,
24 derived from such intangible personal property during the
25 calendar year for which the taxes levied by this Article are
26 imposed, bears to the entire net income derived from such
27 intangible personal property during such calendar year. 'Net
28 income' shall be deemed to have the same meaning that it has in
29 the income tax article. Where the intangible personal property
30 for which this exemption is claimed is held or controlled with
31 other property as a unit, allocation of appropriate deductions
32 from gross income shall be made to that part of the entire gross
33 income which is derived from the intangible personal property by
34 direct method to the extent practicable; and otherwise by such
35 other method as the Secretary of Revenue shall find to be

1 reasonable: Provided, that each fiduciary claiming the exemption
2 provided in this paragraph shall, upon the request of the
3 Secretary of Revenue, establish in writing its claim to such
4 exemption. No provisions of law shall be construed as exempting
5 trust funds or trust property from the taxes levied by this
6 Article except in the specific cases covered by this section.

7 As used in this section, the term 'Code' means the Internal
8 Revenue Code as enacted as of ~~January 1, 1988~~, January 1, 1989,
9 and includes any provisions enacted as of that date which become
10 effective either before or after that date."

11 Sec. 7. This act is effective upon ratification.

Explanation of Proposal 6

Legislative Proposal 6 rewrites the definition of the Internal Revenue Code used in State tax statutes to change the reference date from January 1, 1988, to January 1, 1989. The bill is to become effective upon ratification. Updating the reference makes recent amendments to the Internal Revenue Code applicable to the State to the extent State tax law previously tracked federal law. This update has the greatest effect on State corporate income taxes because these taxes are a percentage of federal taxable income and are therefore closely tied to federal law. Individual income taxes are not tied to federal law in the same way, but many individual income tax deductions are based on federal tax deductions.

Since the State corporate income tax was changed to a percentage of federal taxable income in 1967, the reference date to the Internal Revenue Code has been updated periodically. In discussing bills to update the Code reference, the question frequently arises as to why the statutes refer to the Code as it existed on a particular date instead of referring to the Code and any future amendments to it, thereby eliminating the necessity of bills like this. The answer to the question lies in both a policy decision and a potential legal restraint.

First, the policy reason for specifying a particular date is that, in light of the many changes made in federal tax law recently and the likelihood of continued changes, the State may not want to adopt automatically federal changes, particularly when these changes result in large revenue losses. By pinning references to the Code to a certain date, the State ensures that it can examine any federal changes before making the changes effective for the State.

Secondly, and more importantly, however, the North Carolina Constitution imposes an obstacle to a statute that automatically adopts any changes in federal tax law. Article V, § 2(1) of the Constitution provides in pertinent part that the "power of taxation... shall never be surrendered, suspended, or contracted away." Relying on this provision, the North Carolina court decisions on delegation of legislative power to administrative agencies, and an analysis of the few federal cases on this issue, the Attorney General's Office concluded in a memorandum issued in 1977 to the Director of the Tax Research Division of the Department of Revenue that a "statute which adopts by reference future amendments to the Internal Revenue Code would... be invalidated as an unconstitutional delegation of legislative power."

Proposal 6

Fiscal Report
Fiscal Research Division
November 7, 1988

Explanation of Proposal:

The state personal income tax tracks selectively certain federal provisions dealing with the definition of income and itemized deductions. Our corporate income tax closely tracks the federal system. The tie-in for both taxes takes place on a retrospective basis through annual legislation that updates the reference to the Internal Revenue Code. The current reference is to the Code as of January 1, 1988.

The proposal updates the reference to the Code as of January 1, 1989.

Effective Date:

Upon ratification.

Fiscal Effect:

Our conformity to the 1988 federal changes under the Technical and Miscellaneous Revenue Act of 1988 will not have a significant impact of state General Fund tax revenue.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1987

S/H

D

PROPOSAL 7 (RL-35)
(THIS IS A DRAFT AND NOT READY FOR INTRODUCTION)
18-NOV-88

Short Title: Revenue Laws Technical Changes.

(Public)

Sponsors: .

Referred to:

1 A BILL TO BE ENTITLED

2 AN ACT TO MAKE TECHNICAL CHANGES TO THE REVENUE LAWS.

3 The General Assembly of North Carolina enacts:

4 Section 1. G.S. 105-130.19 reads as rewritten:

5 "§ 105-130.19. Time and place of payment of tax.--(a) Except
6 as ~~otherwise~~ provided in ~~this section and in Article 4B~~ Article
7 4C of this Chapter, the full amount of the tax payable as shown
8 on the face of the return shall be paid to the Secretary of
9 Revenue at the office where the return is filed and within the
10 time fixed by law for filing the return.

11 ~~(b) If the amount of the tax exceeds fifty dollars (\$50.00),~~
12 ~~payment may be made in two equal installments: One half on the~~
13 ~~date the return is filed, and one half on or before the fifteenth~~
14 ~~day of the sixth month following the month in which the return~~
15 ~~was originally due to be filed, with interest on the deferred~~
16 ~~payment at the rate established pursuant to G.S. 105-241.1(i).~~
17 ~~If the amount of the tax exceeds four hundred dollars (\$400.00),~~
18 ~~payment may be made in four equal installments: One fourth at the~~

~~1 time of filing the return, one fourth on or before the fifteenth
2 day of the third month following the month in which the return
3 was originally due to be filed, one fourth on or before the
4 fifteenth day of the sixth month following the month in which the
5 return was originally due to be filed, and one fourth on or
6 before the fifteenth day of the ninth month following the month
7 in which the return was originally due to be filed with interest
8 on deferred payments at the rate established pursuant to G.S.
9 105-241.1(i).~~

~~10 (c) In the event any deferred payment is not made when due,
11 then the entire balance of the tax will immediately become due
12 and collectible, and interest upon such outstanding balance shall
13 be added at the rate established pursuant to G.S. 105-241.1(i).~~

14 (d) The tax may be paid with uncertified check during such time
15 and under such regulations as the Secretary of Revenue shall
16 prescribe; but if a check so received is not paid by the bank on
17 which it is drawn, the taxpayer by whom such check is tendered
18 shall remain liable for the payment of the tax and for all legal
19 penalties the same as if such check had not been tendered."

20 Sec. 2. G.S. 105-145(d1) reads as rewritten:

21 "(d1) A gain or loss on a transfer of property incident to
22 divorce from an individual to (or in trust for the benefit of) a
23 spouse or former spouse shall be recognized only to the extent
24 recognized under the ~~Internal Revenue Code of 1954, as amended,~~
25 Code for federal income tax purposes; however, if there is a
26 difference in basis of such transferred property under State law
27 and the ~~Internal Revenue Code of 1954, as amended,~~ Code, the
28 basis used in determining such gain or loss recognized shall be
29 the basis as determined under the provisions of this Division."

30 Sec. 3. G.S. 105-147(7) reads as rewritten:

31 "(7) Dividends reported in gross income under this Division
32 from stock issued by any corporation to the extent herein
33 provided. As soon as may be practicable after the close of each
34 calendar year, the Secretary of Revenue shall determine from each
35 corporate income tax return filed with him during such year, and

1 due from the filing corporation during such year, the proportion
2 of the entire net income or loss of the corporation allocable to
3 this State under the provisions of G.S. 105-130.4, except as
4 provided herein; if a corporation has a net taxable income in
5 North Carolina and a net loss from all sources wherever located,
6 or, if a corporation has a net loss in North Carolina and a net
7 income from all sources wherever located, the Secretary shall
8 require the use of the allocation fraction determined under the
9 provisions of G.S. 105-130.4. A taxpayer who is a stockholder in
10 any such corporation and reports the dividends in gross income
11 shall be allowed to deduct from his gross income the same
12 proportion of the dividends received by him from such corporation
13 during his income year ending at or after the end of such
14 calendar year. Provided that notwithstanding any other provision
15 of this subdivision, a taxpayer who is a stockholder in a holding
16 company as defined in G.S. 105-130.7(5) shall determine the
17 deductible portion of dividend received from such holding company
18 as provided therein. No deduction shall be allowed for any part
19 of any dividend received by such taxpayer from any corporation
20 which filed no income tax return with the Secretary of Revenue
21 during such calendar year. Dividends received by a taxpayer from
22 stock in any insurance company of this State taxed under the
23 provisions of G.S. 105-228.5 shall be deductible from the gross
24 income of such taxpayer, and a proportionate part of any
25 dividends received from stock in any foreign insurance
26 corporation shall be deductible, such part to be determined on
27 the basis of the ratio of premiums reported for taxation in this
28 State to total premiums collected both in and out of the State.
29 Dividends received on shares of capital stock owned in a
30 stock-owned savings and loan association taxed under Article 8D
31 of this Chapter shall be deductible. A taxpayer shall be allowed
32 to deduct such proportionate part of dividends received by him
33 from a regulated investment company and real estate investment
34 trust as defined in G.S. 105-130.12 as represents and corresponds
35 to income received by such regulated investment company and real

1 estate investment trust which would not be taxed by this State if
2 received directly by the North Carolina resident. In no case
3 shall the total amount of dividends that are deducted from a
4 taxpayer's gross income as a result of the application of the
5 provisions of this subdivision be in excess of fifteen thousand
6 dollars (\$15,000) for the taxable year, except that this
7 limitation shall not apply to dividends received from a
8 corporation for which a valid election to be taxed under
9 Subchapter S of Chapter 1 of the Code is in effect."

10 Sec. 4. G.S. 105-159.1(b) reads as rewritten:

11 "(b) For each quarterly period beginning January 1, 1978, and
12 for each quarterly period thereafter, on or before the last day
13 of the month following the close of each quarterly period, the
14 Secretary of Revenue shall remit all funds so designated above
15 collected during the preceding quarter to the State Treasurer who
16 shall thereafter deposit them in an interest-bearing account to
17 be known as the North Carolina ~~Election Campaign~~ Political
18 Parties Financing Fund. Any interest earned on funds so
19 deposited shall be credited to the political party for which said
20 funds were designated. A report to the State Treasurer, State
21 Board of Elections and each State party chairman shall accompany
22 each such remittance, and shall detail the amount of funds
23 forwarded, the cumulative total of funds forwarded to date for
24 the year, and an estimate of the probable total amount to be
25 collected and forwarded for that calendar year."

26 Sec. 5. G.S. 105-163.05 is repealed.

27 Sec. 6. G.S. 105-242(b) reads as rewritten:

28 "(b) Bank deposits, rents, salaries, wages, and all other
29 choses in action or property incapable of manual levy or
30 delivery, hereinafter called the intangible, belonging, owing, or
31 to become due to any taxpayer subject to any of the provisions of
32 this Subchapter, or which has been transferred by such taxpayer
33 under circumstances which would permit it to be levied upon if it
34 were tangible, shall be subject to attachment or garnishment as
35 herein provided, and the person owing said intangible, matured or

1 unmatured, or having same in his possession or control,
2 hereinafter called the garnishee, shall become liable for all
3 sums due by the taxpayer under this Subchapter to the extent of
4 the amount of the intangible belonging, owing, or to become due
5 to the taxpayer subject to the setoff of any matured or unmatured
6 indebtedness of the taxpayer to the garnishee; provided, however,
7 the garnishee shall not become liable for any sums represented by
8 or held pursuant to any negotiable instrument issued and
9 delivered by the garnishee to the taxpayer and negotiated by the
10 taxpayer to a bona fide holder in due course, and whenever any
11 sums due by the taxpayer and subject to garnishment are so held
12 or represented, the garnishee shall hold such sums for payment to
13 the Secretary of Revenue upon the garnishee's receipt of such
14 negotiable instrument, unless such instrument is presented to the
15 garnishee for payment by a bona fide holder in due course in
16 which event such sums may be paid in accordance with such
17 instrument to such holder in due course. To effect such
18 attachment or garnishment the Secretary of Revenue shall serve or
19 cause to be served upon the taxpayer and the garnishee a notice
20 as hereinafter provided, which notice may be served by any deputy
21 or employee of the Secretary of Revenue or by any officer having
22 authority to serve ~~summonses. Provided, if the taxpayer no longer~~
23 ~~resides within North Carolina or cannot be located therein the~~
24 ~~notice may be served upon the taxpayer by registered or certified~~
25 ~~mail, return receipt requested, and such service shall be~~
26 ~~conclusively presumed to have been made upon the exhibition of~~
27 ~~the return receipt.~~ summonses or may be served in any manner
28 provided in Rule 4 of the North Carolina Rules of Civil
29 Procedure. Said notice shall show: The notice shall:

30 (1) The Show the name of the taxpayer, and if known his Social
31 Security number or federal tax identification number and his
32 address;

33 (2) The Show the nature and amount of the tax, and the interest
34 and penalties thereon, and the year or years for which the same
35 were levied or assessed, and

1 (3) ~~Shall be~~ Be accompanied by a copy of this subsection, and
2 thereupon the procedure shall be as follows:

3 If the garnishee has no defense to offer or no setoff against
4 the taxpayer, he shall within 10 days after service of said
5 notice, answer the same by sending to the Secretary of Revenue by
6 registered or certified mail a statement to that effect, and if
7 the amount due or belonging to the taxpayer is then due or
8 subject to his demand, it shall be remitted to the Secretary with
9 said statement, but if said amount is to mature in the future,
10 the statement shall set forth that fact and the same shall be
11 paid to the Secretary upon maturity, and any payment by the
12 garnishee hereunder shall be a complete extinguishment of any
13 liability therefor on his part to the taxpayer. If the garnishee
14 has any defense or setoff, he shall state the same in writing
15 under oath, and, within 10 days after service of said notice,
16 shall send two copies of said statement to the Secretary by
17 registered or certified mail; if the Secretary admits such
18 defense or setoff, he shall so advise the garnishee in writing
19 within 10 days after receipt of such statement and the attachment
20 or garnishment shall thereupon be discharged to the amount
21 required by such defense or setoff, and any amount attached or
22 garnished hereunder which is not affected by such defense or
23 setoff shall be remitted to the Secretary as above provided in
24 cases where the garnishee has no defense or setoff, and with like
25 effect. If the Secretary shall not admit the defense or setoff,
26 he shall set forth in writing his objections thereto and shall
27 send a copy thereof to the garnishee within 10 days after receipt
28 of the garnishee's statement, or within such further time as may
29 be agreed on by the garnishee, and at the same time he shall file
30 a copy of said notice, a copy of the garnishee's statement, and a
31 copy of his objections thereto in the superior court of the
32 county where the garnishee resides or does business where the
33 issues made shall be tried as in civil actions.

34 If judgment is entered in favor of the Secretary of Revenue by
35 default or after hearing, the garnishee shall become liable for

1 the taxes, interest and penalties due by the taxpayer to the
2 extent of the amount over and above any defense or setoff of the
3 garnishee belonging, owing, or to become due to the taxpayer, but
4 payments shall not be required from amounts which are to become
5 due to the taxpayer until the maturity thereof, nor shall more
6 than 10 percent of any taxpayer's salary or wages be required to
7 be paid hereunder in any one month. The garnishee may satisfy
8 said judgment upon paying said amount, and if he fails to do so,
9 execution may issue as provided by law. From any judgment or
10 order entered upon such hearing either the Secretary of Revenue
11 or the garnishee may appeal as provided by law. If, before or
12 after judgment, adequate security is filed for the payment of
13 said taxes, interest, penalties, and costs, the attachment or
14 garnishment may be released or execution stayed pending appeal,
15 but the final judgment shall be paid or enforced as above
16 provided. The taxpayer's sole remedies to question his liability
17 for said taxes, interest, and penalties shall be those provided
18 in this Subchapter, as now or hereafter amended or supplemented.
19 If any third person claims any intangible attached or garnished
20 hereunder and his lawful right thereto, or to any part thereof,
21 is shown to the Secretary, he shall discharge the attachment or
22 garnishment to the extent necessary to protect such right, and if
23 such right is asserted after the filing of said copies as
24 aforesaid, it may be established by interpleader as now or
25 hereafter provided by law in cases of attachment and garnishment.
26 In case such third party has no notice of proceedings hereunder,
27 he shall have the right to file his petition under oath with the
28 Secretary at any time within 12 months after said intangible is
29 paid to him and if the Secretary finds that such party is
30 lawfully entitled thereto or to any part thereof, he shall pay
31 the same to such party as provided for refunds by G.S. 105-267.1,
32 and if such payment is denied, said party may appeal from the
33 determination of the Secretary under the provisions of G.S.
34 105-241.4; provided, that in taking an appeal to the superior
35 court, said party may appeal either to the Superior Court of Wake

1 County or to the superior court of the county wherein he resides
2 or does business. The intangibles of a taxpayer shall be paid or
3 collected hereunder only to the extent necessary to satisfy said
4 taxes, interest, penalties, and costs. Except as hereinafter set
5 forth, the remedy provided in this section shall not be resorted
6 to unless a warrant for collection or execution against the
7 taxpayer has been returned unsatisfied: Provided, however, if the
8 Secretary is of opinion that the only effective remedy is that
9 herein provided, it shall not be necessary that a warrant for
10 collection or execution shall be first returned unsatisfied, and
11 in no case shall it be a defense to the remedy herein provided
12 that a warrant for collection or execution has not been first
13 returned unsatisfied.

14 This subsection shall be applicable with respect to the wages,
15 salary or other compensation of officials and employees of this
16 State and its agencies and instrumentalities, officials and
17 employees of political subdivisions of this State and their
18 agencies and instrumentalities, and also officials and employees
19 of the United States and its agencies and instrumentalities
20 insofar as the same is permitted by the Constitution and laws of
21 the United States. In the case of State or federal employees,
22 the notice shall be served upon such employee and upon the head
23 or chief fiscal officer of the department, agency,
24 instrumentality or institution by which the taxpayer is employed.
25 In case the taxpayer is an employee of a political subdivision of
26 the State, the notice shall be served upon such employee and upon
27 the chief fiscal officer, or any officer or person charged with
28 making up the payrolls, or disbursing funds, of the political
29 subdivision by which the taxpayer is employed. Such head or
30 chief officer or fiscal officer or other person as specified
31 above shall thereafter, subject to the limitations herein
32 provided, make deductions from the salary or wages due or to
33 become due the taxpayer and remit same to the Secretary until the
34 tax, penalty, interest and costs allowed by law are fully paid.

1 Such deductions and remittances shall, pro tanto, constitute a
2 satisfaction of the salary or wages due the taxpayer."

3 Sec. 7. G.S. 105-375(c) reads as rewritten:

4 "(c) Notice Listing Taxpayer and Others. -- The tax collector
5 filing the certificate provided for in subsection (b), above,
6 shall, at least 30 days prior to docketing the judgment, send a
7 registered or certified letter, return receipt requested, to the
8 listing taxpayer at his last known address, and to all
9 lienholders of record who have filed with the office of the tax
10 collector of the taxing unit or units in which the real property
11 subject to his lien is located a request that he be notified of
12 the docketing of a judgment under the procedure set forth in this
13 section, stating that the judgment will be docketed and that
14 execution will be issued thereon in the manner provided by law.
15 A notice stating that the judgment will be docketed and that
16 execution will be issued thereon shall also be mailed by
17 certified or registered mail, return receipt requested, to the
18 current owner of the property (if different from the listing
19 owner) if: (i) a deed or other instrument transferring title to
20 and containing the name of the current owner was recorded in the
21 office of the register of deeds or filed or docketed in the
22 office of the clerk of superior court after January 1 of the
23 first year in which the property was listed in the name of the
24 listing owner, and (ii) the tax collector can obtain the current
25 owner's mailing address through the exercise of due diligence.
26 The request from the lienholder shall be made on a form supplied
27 by the tax collector and shall describe the real property,
28 indicate whose name it is listed in for taxation, and state the
29 name and mailing address of the lienholder. If within 10 days
30 following the mailing of said letters of notice, a return receipt
31 has not been received by the tax collector indicating receipt of
32 the letter, then the tax collector shall have a notice published
33 in a newspaper of general circulation in said county once a week
34 for two consecutive weeks directed to, and naming, all unnotified
35 lienholders and the listing taxpayer that a judgment will be

1 docketed against the listing taxpayer. The notice shall contain
 2 the proposed date of such docketing, that execution will issue
 3 thereon as provided by law, a brief description of the real
 4 property affected, and notice that the lien may be paid off prior
 5 to judgment being entered. All costs of mailing and publication,
 6 plus a charge of fifty dollars (\$50.00) to defray administrative
 7 costs, shall be ~~added to those set forth in subsection (b).~~ added
 8 to the amount of taxes that are a lien on the real property and
 9 shall be paid by the taxpayer to the taxing unit at the time the
 10 taxes are collected or the property is sold."

11 Sec. 8. G.S. 106-277.28(2) reads as rewritten:

12 "(2) Each seed dealer selling, distributing, offering, or
 13 exposing for sale in, or exporting from, this State any
 14 agricultural, vegetable, or lawn or turf seeds for seeding
 15 purposes shall register with the Commissioner and shall obtain an
 16 annual license, for each location where activities are conducted,
 17 by January 1 of each year and shall pay for such license as
 18 follows:

- 19 a. Wholesale or combined wholesale and retail
 20 seed dealer\$100.00
- 21 b. Retail seed dealer with sales of less no more than
 22 \$500.005.00
- 23 c. Retail seed dealer with sales of more than
 24 \$500.00 but less no more than \$1,000.....15.00
- 25 d. Retail seed dealer with sales of more than
 26 \$1,00025.00."

27 Sec. 9. This act does not affect the rights or
 28 liabilities of the State, a taxpayer, or other person arising
 29 under the statute repealed by this act before its repeal; nor
 30 does it affect the right to any refund or credit of a tax that
 31 would otherwise have been available under the repealed statute
 32 before its repeal.

33 Sec. 10. Sections 1 and 3 of this act are effective for
 34 taxable years beginning on or after January 1, 1989. Section 5
 35 of this act is effective for taxable years beginning on or after

1 January 1, 1990. The remainder of this act is effective upon
2 ratification.

Explanation of Proposal 7

Legislative Proposal 7 makes numerous technical and conforming changes to the revenue laws. Most of the changes were suggested by the Department of Revenue.

Section 1 of the bill amends G.S. 105-130.19 to eliminate an installment payment option allowing corporations to pay income tax within an additional period of nine months after the due date of the income tax return. Effective for taxable years beginning on or after January 1, 1989, this amendment will bring the statute in harmony with another provision of the law, G.S. 105-163.38, which requires that ninety percent (90%) of the income tax be prepaid before the due date of the return. Because few corporations elect to use the installment method under G.S. 105-130.19, its elimination will not have a significant impact on taxpayers and will be more cost efficient for the Department of Revenue.

Section 2 of the bill deletes two obsolete references to the Internal Revenue Code of 1954 and replaces them with references to "the Code", elsewhere defined as the Internal Revenue Code of 1986. (See Proposal 6, supra).

Section 3 of the bill amends G.S. 105-147(18) to eliminate a loophole. Currently, the statute allows a nonresident individual to take an income tax deduction for a prorated portion of deductible dividends even if the dividends are not taxable to North Carolina. The bill amends the statute to provide that, effective for taxable years beginning on or after January 1, 1989, the deduction is not available with respect to dividends that are not taxable to North Carolina.

Section 4 of the bill amends G.S. 105-159.1(b) to delete a reference to the Election Campaign Fund and substitute the "Political Parties Financing Fund" in order to conform the statute to a change in the name of the Fund made in 1988.

Section 5 of the bill repeals G.S. 105-163.05 effective for taxable years beginning on or after January 1, 1990. This statute, which allows an income tax credit for property taxes paid on poultry and livestock, will become obsolete because the General Assembly has exempted poultry and livestock from property taxes.

Section 6 of the bill amends G.S. 105-242(b) to provide that the procedure used for serving garnishments will be the same for both local and State taxes. Currently, for property taxes, notice of garnishment may be served "in any manner provided by Rule 4 of the North Carolina Rules of Civil Procedure." (G.S. 105-368). For State taxes, personal service is required, which may cause embarrassment for the taxpayer if service is made at his or her workplace. Section 6 will change the law for State taxes to allow service as provided in Rule 4.

Section 7 of the bill clarifies an ambiguous provision in the Machinery Act. Currently G.S. 105-375(c) provides in certain foreclosure procedures for the assessment of administrative costs against the taxpayer but does not specify whether these costs are to be paid to the clerk of court or to the taxing unit. Section 7 amends the statute to clarify that the costs go to the taxing unit.

Section 8 of the bill amends G.S. 106-277.28 to eliminate a loophole placed in the statute when it was amended in 1988. The statute sets out a license tax for seed dealers with sales of less than \$500.00 and for seed dealers with sales of more than \$500.00, but none for seed dealers with sales of exactly \$500.00. Section 8 corrects that problem.

Section 9 of the bill provides a savings clause, preserving any rights and liabilities arising under an amended or repealed statute before its amendment or repeal. Section

10 of the bill sets out the effective dates of the various sections; except where otherwise provided, the bill is effective upon ratification.

Proposal 7

Fiscal Report
Fiscal Research Division
November 16, 1988

Explanation of Proposal

Proposal 7 makes several technical and conforming changes to the revenue laws. A detailed explanation has been provided by the Department of Revenue.

Effective Date

Upon ratification

Fiscal Impact

All of the changes recommended are technical in nature. There will be no significant impact on General Fund revenues.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1987

S/H

D

PROPOSAL 8 (RL-34)
(THIS IS A DRAFT AND NOT READY FOR INTRODUCTION)
18-NOV-88

Short Title: Uniform Fuel Use Tax Form.

(Public)

Sponsors: .

Referred to:

1 A BILL TO BE ENTITLED
2 AN ACT TO MAKE CONFORMING CHANGES TO THE MOTOR CARRIER FUEL USE
3 TAX SO THAT A UNIFORM TAX REPORTING FORM MAY BE ADOPTED.
4 The General Assembly of North Carolina enacts:
5 Section 1. G.S. 105-449.37 reads as rewritten:
6 "**§ 105-449.37. Definitions; tax liability.**--(a) As used in
7 this Article unless the context clearly requires otherwise:
8 (1) 'Motor carrier' means every person, firm, or
9 corporation who operates or causes to be operated
10 on any highway in this State a ~~passenger motor~~
11 vehicle used, designed, or maintained for
12 transportation of persons or property and (i)
13 having two axles and a gross vehicle weight or
14 registered gross vehicle weight exceeding 26,000
15 pounds, (ii) having three or more axles regardless
16 of weight, or (iii) used in combination when the
17 weight of the combination exceeds 26,000 pounds
18 gross vehicle weight. with seating capacity for

1 ~~more than 20 passengers, a road tractor, a tractor~~
2 ~~truck, or a truck with more than two axles.~~ The
3 term does not include the United States, the State
4 or its political subdivisions, operators of special
5 mobile equipment as defined in G.S. 20-4.01(44), or
6 nonprofit religious, educational, ~~charitable~~
7 charitable, or benevolent organizations;

8 (1a) 'Motor vehicle' means motor vehicle as defined in
9 G.S. 20-4.01(23) except that the term does not
10 include recreational vehicles;

11 (2) 'Operations' means operations of all vehicles
12 described in subdivision (1), whether loaded or
13 empty and whether or not operated for compensation;
14 and

15 (3) 'Secretary' means the Secretary of Revenue.

16 (b) A motor carrier who operates on one or more days of a
17 quarter is liable for the tax imposed by this Article for that
18 quarter and is entitled to the credits allowed for that quarter."

19 Sec. 2. G.S. 105-449.39 reads as rewritten:

20 "§ 105-449.39. Credit for payment of motor fuel tax.--Every
21 motor carrier subject to the tax levied by this Article is
22 entitled to a credit for tax paid on fuel purchased in the State.
23 The credit shall be allowed at a rate equal to fourteen cents
24 (14¢) per gallon plus the wholesale cents-per-gallon rate of tax
25 in effect during the quarter for which the credit is claimed.
26 Evidence of the payment of such tax in such form as may be
27 required by, or is satisfactory to, the Secretary shall be
28 furnished by each such carrier claiming the credit herein
29 allowed. When the amount of the credit herein provided to which
30 any motor carrier is entitled for any quarter exceeds the amount
31 of the tax for which such carrier is liable for the same quarter,
32 such excess may under regulations of the Secretary be allowed as
33 a credit on the tax for which such carrier would be otherwise
34 liable for another quarter or quarters; or upon application
35 ~~within 180 days from the end of any quarter,~~ duly verified and

1 ~~presented,~~ presented in accordance with regulations promulgated
2 by the Secretary and supported by such evidence as may be
3 satisfactory to the Secretary, such excess may be refunded to
4 said motor carrier.

5 Unless the Secretary of Revenue exercises his discretion as
6 hereinafter provided, or as provided in G.S. 105-449.40, he shall
7 allow such refund only after an audit of the applicant's records.
8 However, he may, in his sole discretion, make refunds without
9 prior audit or without having been furnished a bond pursuant to
10 G.S. 105-449.40 if the motor carrier has complied with the
11 provisions of this Subchapter and rules and regulations
12 promulgated thereunder for a period of one full prior
13 registration year."

14 Sec. 3. This act does not affect the rights or
15 liabilities of the State, a taxpayer, or other person arising
16 under a statute amended or repealed by this act before its
17 amendment or repeal; nor does it affect the right to any refund
18 or credit of a tax that would otherwise have been available under
19 the amended or repealed statute before its amendment or repeal.

20 Sec. 4. This act shall become effective January 1,
21 1990.

Explanation of Proposal 8

Legislative Proposal 8, recommended by the Department of Revenue, amends the motor carrier fuel use tax in order to enable North Carolina to adopt a uniform tax reporting form. In Section 19 of the federal Motor Carrier Act of 1980, Congress directed the United States Secretary of Transportation and the Interstate Commerce Commission to study differing state regulations and requirements imposed on interstate motor carriers. As a result, the National Governors' Association formed a working group on state truck issues. The working group developed a consensus agenda and recommended, among other things, that the states adopt a uniform fuel use tax reporting form. The National Conference of State Legislatures has endorsed this recommendation as well.

Before North Carolina can adopt a uniform reporting form, it must make minor changes in the scope of the fuel use tax and in the deadline for applying for refunds. Proposal 8 would replace the current definition of motor carrier in G.S. 105-449.37, one who operates "a passenger vehicle with seating capacity for more than 20 passengers, a road tractor, a tractor truck, or a truck with more than two axles", with a new definition, one who operates "a motor vehicle used, designed, or maintained for transportation of persons or property and (i) having two axles and a gross vehicle weight or registered gross vehicle weight exceeding 26,000 pounds, (ii) having three or more axles regardless of weight, or (iii) used in combination when the weight of the combination exceeds 26,000 pounds gross vehicle weight." If Proposal 8 is enacted, the Department of Revenue will be able to eliminate paperwork and simplify the refund process by altering the tax reporting form to provide space on the face of the form for the taxpayer to request a refund.

Explanation of Proposal

The proposal would amend G.S.105-449.37(a), the definition of a motor carrier. This would enable North Carolina to adopt a uniform fuel tax reporting form for highway use tax reporting as a member of a base state compact. Both the National Conference of State Legislatures and the National Governors Association have endorsed this concept which will increase the efficiency of road tax collections and decrease the reporting burden on motor carriers.

The other change the proposal would address is the deletion of the requirement for filing an application for a refund for excess highway fuel use collections within 180 days from the end of the quarter. The Department of Revenue, Motor Fuels Tax Division, intends to alter the current tax reporting form to provide space on the face of the form for such a request.

Effective Date

Upon ratification

Fiscal Impact

None

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1987

S/H

D

PROPOSAL 9 (RL-32)
(THIS IS A DRAFT AND NOT READY FOR INTRODUCTION)
18-NOV-88

Short Title: Political Campaign Expenditures. (Public)

Sponsors: .

Referred to:

1 A BILL TO BE ENTITLED

2 AN ACT TO AUTHORIZE POLITICAL COMMITTEES TO MAKE CERTAIN
3 CONTRIBUTIONS.

4 The General Assembly of North Carolina enacts:

5 Section 1. G.S. 163-278.6(9) reads as rewritten:

6 "(9) The terms 'expend' or 'expenditure' mean any purchase,
7 advance, conveyance, deposit, distribution, transfer of funds,
8 loan, payment, gift, pledge or subscription of money or anything
9 of value whatsoever, from any person or individual, whether or
10 not made in an election year, and any contract, agreement,
11 promise or other obligation, whether or not legally enforceable,
12 to make an expenditure, in support of or in opposition to any
13 candidate, political committee, referendum committee, or
14 political party.

15 The terms also include (i) any contribution to a political
16 organization exempt from tax under section 527 of the Internal
17 Revenue Code of 1986, (ii) any contribution to an organization
18 described in section 509(a)(1) or (2) that is exempt from tax

1 under section 501 of the Internal Revenue Code of 1986, and (iii)
2 any deposit in the general fund of the United States Treasury or
3 the general fund of a state or local government."

4 Sec. 2. This act is effective upon ratification.

Explanation of Proposal 9

G.S. 163-278.6(9) defines the types of expenditures that State political candidates and political committees can make. Unlike the federal Internal Revenue Code, which allows political campaigns to make charitable contributions and to deduct such contributions, this statute does not allow charitable contributions. Occasionally circumstances may arise in which a political committee wishes to make a charitable contribution. For example, in the spring of 1988, Julian Pierce was running in the Democratic primary for superior court judge. Shortly before the primary, Pierce was murdered. Pierce's campaign committee wished to donate the funds it had raised to a charitable cause but was prevented from doing so by G.S. 163-278.6(9). Chapter 1044 of the 1987 Session Laws was enacted in 1988 to provide for the Julian Pierce campaign committee, but a general amendment to the statute is necessary to provide for similar cases in the future. Accordingly, Legislative Proposal 9 amends G.S. 163-278.6(9) to authorize political candidates and committees to make charitable contributions to the same extent as authorized under the Internal Revenue Code. The bill will become effective upon ratification.

Proposal 9

Fiscal Report
Fiscal Research Division
November 8, 1988

Explanation of Proposal

G.S. 163-278.6(9) is amended to authorize political candidates and committees to make charitable contributions to same extent as authorized under the Internal Revenue Code.

Effective Date

Upon ratification

Fiscal Impact

None

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1989

H/S

D

PROPOSAL 10 (RL-52)
(THIS IS A DRAFT AND NOT READY FOR INTRODUCTION)

Sponsors: .

Referred to:

1 A JOINT RESOLUTION AUTHORIZING THE LEGISLATIVE RESEARCH
2 COMMISSION TO CONTINUE TO STUDY THE REVENUE LAWS OF NORTH
3 CAROLINA.

4 Whereas, the Legislative Research Commission has been
5 authorized by the 1977, 1979, 1981, 1983, 1985, and 1987 General
6 Assemblies to conduct a study of the revenue laws of North
7 Carolina; and

8 Whereas, since 1977 the committee appointed by the
9 Legislative Research Commission to study the revenue laws has
10 recommended many changes in the revenue laws in the committee's
11 attempt to improve these laws; and

12 Whereas, the Revenue Laws Study Committee has proved to
13 be an excellent forum for both taxpayers and tax administrators
14 to present their complaints with existing law and make
15 suggestions to improve the law;

16 Now, therefore, be it resolved by the House of Representatives,
17 the Senate concurring:

18 Section 1. The Legislative Research Commission is
19 authorized to study the revenue laws of North Carolina and the
20 administration of these laws. The Commission may review the

1 State's revenue laws to determine which laws need clarification,
2 technical amendment, repeal, or other change to make the laws
3 concise, intelligible, easy to administer, and equitable. When
4 the recommendations of the Commission, if enacted, would result
5 in an increase or decrease in State tax revenues, the report of
6 the Commission shall include an estimate of the amount of the
7 increase or decrease.

8 Sec. 2. The Commission may call upon the Department of
9 Revenue to cooperate with it in its study of the revenue laws.
10 The Secretary of Revenue shall ensure that the Department's staff
11 cooperates fully with the Commission.

12 Sec. 3. Commission shall make a final report of its
13 recommendations for improvement of the revenue laws to the 1991
14 General Assembly.

15 Sec. 4. This resolution is effective upon ratification.

Explanation of Proposal 10

This joint resolution simply authorizes the Legislative Research Commission to continue to study the revenue laws of this State. The resolution gives the study of the revenue laws a broad scope and permits the Commission to make a final report to the 1991 General Assembly on the results of its study of the revenue laws.

APPENDIX A

GENERAL ASSEMBLY OF NORTH CAROLINA
1987 SESSION
RATIFIED BILL

CHAPTER 873
HOUSE BILL 1

AN ACT TO AUTHORIZE STUDIES BY THE LEGISLATIVE RESEARCH COMMISSION, TO CREATE AND CONTINUE VARIOUS COMMITTEES AND COMMISSIONS, TO MAKE APPROPRIATIONS THEREFOR, AND TO AMEND STATUTORY LAW.

The General Assembly of North Carolina enacts:

PART I. TITLE

Section 1. This act shall be known as "The Study Commissions and Committees Act of 1987."

...

PART II.-----LEGISLATIVE RESEARCH COMMISSION

Sec. 2.1. The Legislative Research Commission may study the topics listed below. Listed with each topic is the 1987 bill or resolution that originally proposed the issue or study and the name of the sponsor. The Commission may consider the original bill or resolution in determining the nature, scope and aspects of the study. The topics are:

- (1) Continuation of the Study of Revenue Laws (H.J.R. 13-Lilley),
- (2) Acquired Immune Deficiency Syndrome--AIDS (H.J.R. 72 Jones),
- (3) Applied Design School Feasibility (H.J.R. 118-Easterling),
- (4) Continuation of the Study on the Problems of the Aging (H.J.R. 156-Edwards; S.R.J. 54-Hunt,W.),
- (5) Continuation of Study of State Personnel System (H.J.R. 247-Stamey; S.J.R. 178-Hunt, W.),
- (6) Farmland Preservation Techniques and Policy (H.J.R. 355-Beall),
- (7) Day Care (H.J.R. 595-Colton; S.J.R. 360-Tally),
- (8) State Schools for Hearing- and Sight-Impaired Children (H.J.R. 811-Jerals),
- (9) Modern Family (H.J.R. 964-Perdue),
- (10) Types of High School Diplomas (H.J.R. 981-Chalk),
- (11) Corporate Income Taxation (H.B. 999-Mothershead),
- (12) Tourism's Growth and Effect (H.J.R. 1010-Perdue; S.B. 1328-Barker).

- (13) Economic Development and Recruiting (H.B. 1097-Hightower).
- (14) Control of Development around Small Public Water Supply Reservoirs (H.J.R. 1103-Hackney).
- (15) Public School Teacher Career Development Pilot Program (H.B. 1183-McLaughlin).
- (16) Unruly Students (H.B. 1221-Brawley).
- (17) State Permitting of Septic Tank Systems (H.J.R. 1238-Redwine).
- (18) Continuation of Study of Coastal Water Quality (H.B. 1252-Stamey).
- (19) Historic Preservation (H.J.R. 1257-Colton; S.J.R. 874-Walker).
- (20) Military Justice Code for National Guard (H.B. 1265-Alexander).
- (21) Need for a State Department of Housing (H.J.R. 1303-Fitch).
- (22) Money Market Funds Treatment under the Intangibles Tax (H.B. 1344-Lineberry).
- (23) Campaign and Election Procedures (H.B. 1533-Crawford,N.).
- (24) State Buildings' Maintenance (H.B. 1606-Crawford,N.; S.B. 1012-Goldston).
- (25) Pest Control (H.B. 1752-Holt).
- (26) Attorney General's Staff (H.J.R. 1818-Anderson; S.J.R. 1157-Marvin).
- (27) State Government Leasing of Office Space (H.J.R. 1819-Anderson; S.J.R. 1085-Marvin).
- (28) Animal Welfare Act (H.B. 1850-Stamey).
- (29) Housing Discrimination (H.B. 1965-Barnes).
- (30) Sports Laws (H.B. 2093-Miller).
- (31) Outdoor Drama Funding (H.B. 2107-Holt).
- (32) Disadvantaged Business Contracts Financed by State Funds (H.B. 2130-Hardaway).
- (33) State Contracts with Small Businesses (H.B. 2131-Hardaway).
- (34) Continuation of Interest Rate Regulation Study (S.B. 203-Johnson, J.).
- (35) Wellness Program for State Employees (S.J.R. 357-Sherron).
- (36) Low-level Radioactive Waste Management (S.B. 359-Tally).
- (37) Solid Waste Management (S.J.R. 362-Speed).
- (38) Safe Roads Act Study (S.B. 509-Harris).
- (39) Inactive Hazardous Sites Protection (S.B. 517-Smith).
- (40) Interbasin Water Transfer (S.J.R. 855-Hardison).
- (41) Care Provided by Rest Homes, Intermediate Care Facilities, and Skilled Nursing Homes (S.J.R. 856-Harris).
- (42) Ombudsman Study (S.B. 857-Harris).
- (43) Tax Collector Sell Auto Tags Study (S.B. 877-Swain).
- (44) Emergency Care Volunteers Network (S.J.R. 880-Sherron).
- (45) DHR Liability Insurance (S.B. 1009-Ward).
- (46) State Publications' Need, Function, Effectiveness and Distribution (S.B. 1119-Martin,R.).
- (47) Viability of Inland Waters and Severance Tax on Phosphate Rock Mining (S.B. 1167-Thomas).
- (47A) Hunter's Safety/Wildlife Study.

- (47B) The Acquisition of Abandoned Railroad Rights of Way or Easements by the State of N.C.,
- (47C) Child Support Enforcement,
- (47D) Watershed Protection (H.B. 1203-Fussell),
- (47E) Automobile Insurance (H.B. 2159-Beard),
- (47F) Interstate Banking (H.B. 1924-Diamont),
- (48) Ferries (S.B. 1174-Basnigh), and
- (49) Oregon Inlet Navigation, Dredging and Stabilization (S.B. 1176-Basnigh).

Sec. 2.2. Farm Issues (H.B. 1055-Locks). The Legislative Research Commission is authorized to study issues related to the preservation of farmers and farming, including the following issues:

- (1) Whether there should be a mechanism for the mediation of farm debts;
- (2) Whether the owner of agricultural land that has been sold pursuant to execution or foreclosure should have a right of first refusal in the sale or lease of the land;
- (3) Whether the owner of agricultural land that has been sold pursuant to execution or foreclosure should have a right to partially redeem the land;
- (4) Whether there should be additional State regulation to limit health hazards facing farmers;
- (5) Whether there should be further legal protection for contract farmers;
- (6) How additional public support can be generated for alternatives to traditional farm enterprises such as producing tobacco, corn, and soybeans;
- (7) Which of the following approaches will lead to the preservation of farmland:
 - (a) Existing and proposed national, state, and local programs,
 - (b) Voluntary agricultural districting,
 - (c) Purchase and transfer of development rights,
 - (d) Conservancy work, and
 - (e) County planning;
- (8) The fiscal impact of public capital investments on farm and county finances.

Sec. 2.3. Veterans Preference in State Employment (H.B. 1133-Cunningham). The Legislative Research Commission may study the advisability of strengthening the preference to be accorded veterans in State employment.

Sec. 2.4. Gerontology (H.B. 384-Nye). The Legislative Research Commission may study the issue of gerontology as it relates to economics, health-related matters, independent living, and long-term care.

Sec. 2.5. Leaking Underground Storage Tanks (H.B. 1304-Wicker). The Legislative Research Commission may study issues relating to underground storage tanks, including liability and compensation for environmental damage resulting from leaking tanks.

Sec. 2.5A. Parental Leave (H.B. 965 - Kennedy). The Legislative Research Commission may study all aspects of granting parental leave in employment.

Sec. 2.6. Reporting Dates. For each of the topics the Legislative Research Commission decides to study under this act or pursuant to G.S.

120-30.17(1), the Commission may report its findings, together with any recommended legislation to the 1989 General Assembly.

Sec. 2.7. Bills and Resolution References. The listing of the original bill or resolution in this Part is for reference purposes only and shall not be deemed to have incorporated by reference any of the substantive provisions contained in the original bill or resolution.

. . .

-----EFFECTIVE DATE

Sec. 31. This act is effective on July 1, 1987.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1987

H

1

HOUSE JOINT RESOLUTION 13

Sponsors: Representatives Lilley; Hasty, Blue, Wright, Brubaker.

Referred to: Rules and Operation of the House.

February 11, 1987

1 A JOINT RESOLUTION AUTHORIZING THE LEGISLATIVE RESEARCH
2 COMMISSION TO CONTINUE TO STUDY THE REVENUE LAWS OF
3 NORTH CAROLINA.

4 Whereas, the Legislative Research Commission has been authorized by
5 the 1977, 1979, 1981, 1983, and 1985 General Assemblies to conduct a study of the
6 revenue laws of North Carolina; and

7 Whereas, since 1977 the committee appointed by the Legislative Research
8 Commission to study the revenue laws has recommended many changes in the
9 revenue laws in the committee's attempt to improve these laws; and

10 Whereas, the Revenue Laws Study Committee has proved to be an
11 excellent forum for both taxpayers and tax administrators to present their complaints
12 with existing law and may make suggestions to improve the law;

13 Now, therefore, be it resolved by the House of Representatives, the Senate
14 concurring:

15 Section 1. The Legislative Research Commission is authorized to study
16 the revenue laws of North Carolina and the administration of these laws. The
17 Commission may review the State's revenue laws to determine which laws need
18 clarification, technical amendment, repeal, or other change to make the laws concise,
19 intelligible, easy to administer, and equitable. When the recommendations of the
20 Commission, if enacted, would result in an increase or decrease in State tax revenues,

1 the report of the Commission shall include an estimate of the amount of the increase
2 or decrease.

3 Sec. 2. The Commission may call upon the Department of Revenue to
4 cooperate with it in its study of the revenue laws. The Secretary of Revenue shall
5 ensure that the Department's staff cooperates fully with the Commission.

6 Sec. 3. The Commission shall make a final report of its recommendations
7 for improvement of the revenue laws to the 1989 General Assembly and may make
8 an interim report to the 1987 General Assembly, Regular Session 1988.

9 Sec. 4. This resolution is effective upon ratification.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1987

H

2

HOUSE BILL 999
Committee Substitute Favorable 8/4/87

Short Title: Corporate Income Tax Study. (Public)

Sponsors:

Referred to: Finance.

April 29, 1987

1 A BILL TO BE ENTITLED
2 AN ACT TO AUTHORIZE THE LEGISLATIVE RESEARCH COMMISSION TO
3 STUDY WHETHER TO PERMIT CORPORATE TAXPAYERS TO FILE
4 CONSOLIDATED INCOME TAX RETURNS, WHETHER TO PROVIDE FOR
5 SPECIAL TAX TREATMENT OF SUBCHAPTER S CORPORATIONS, AND
6 OTHER RELATED ISSUES.

7 The General Assembly of North Carolina enacts:

8 Section 1. The Legislative Research Commission may study whether to
9 permit corporate taxpayers to file consolidated income tax returns and whether to
10 provide for special tax treatment of Subchapter S corporations. The Commission
11 may consider the following issues:

12 (1) The methods by which corporations may file consolidated income tax
13 returns or combined income tax returns.

14 (2) The effect of a consolidated tax return upon a corporation's affiliates
15 within and without this State.

16 (3) Whether to allow special tax treatment for corporations electing to
17 be taxed under Subchapter S of Chapter 1 of the Internal Revenue Code.

18 (4) The revenue gain or loss to the State that would result from these tax
19 changes.

1 (5) Whether other states permit consolidated returns and Subchapter S
2 treatment.

3 The Commission may consider any other issues that it deems pertinent to
4 this study. The Commission shall report its findings and recommendations to the
5 1988 Session of the 1987 General Assembly. The report shall include any proposed
6 legislation necessary to implement the Commission's recommendations.

7 Sec. 2. This act shall become effective September 1, 1987.

GENERAL ASSEMBLY OF NORTH CAROLINA
1987 SESSION
RATIFIED BILL

CHAPTER 832
SENATE BILL 944

AN ACT TO INCREASE THE EXCISE TAX ON SPIRITUOUS LIQUOR AND TO PROVIDE THAT LOCAL SALES TAXES SHALL BE LEVIED BY THE COUNTY IN WHICH THE RETAILER IS LOCATED WHEN THE PROPERTY SOLD IS DELIVERED TO THE PURCHASER IN ANOTHER COUNTY.

Whereas, the 1985 General Assembly during its 1986 Session enacted additional law enforcement retirement benefits which costs may have exceeded available financial resources across the State requiring that additional revenue be expended; and

Whereas, it is the intent of the General Assembly that the additional revenue that will accrue to local governments as a result of this act be used to the extent necessary to fund the additional law enforcement retirement benefits; Now, therefore,

The General Assembly of North Carolina enacts:

Section 1. G.S. 18B-208(b) reads as rewritten:

"(b) Special Fund. A special fund in the office of the State Treasurer, the ABC Commission Fund, is created. On and after November 1, 1982, all moneys derived from the collection of bailment charges and bailment surcharges shall be deposited in the ABC Commission Fund for the purpose of carrying out the provisions of this Chapter. The ABC Commission Fund shall be subject to the provisions of the Executive Budget Act except that no unexpended surplus of this fund shall revert to the General Fund. The Commission shall fix the level of the bailment surcharges at an amount calculated to cover operating expenses of the Commission ~~and the ALE Division~~ and the retirement of bonds issued for construction of a Commission warehouse and offices. The Commission may impose a bailment surcharge only when revenue bonds issued under this section are outstanding.

All moneys credited to the ABC Commission Fund shall be used to carry out the intent and purposes of the ABC law in accordance with plans approved by the North Carolina ABC Commission and the Director of the Budget, and all these funds are appropriated, reserved, set aside, and made available until expended for the administration of the ABC law."

Sec. 2. G.S. 105-113.80(c) is rewritten to read:

"(c) Liquor. An excise tax of twenty-eight percent (28%) is levied on liquor sold in ABC stores. Pursuant to G.S. 18B-804(b), the price of liquor on which this tax is computed is the distiller's price plus (i) the State ABC warehouse freight and bailment charges, and (ii) a markup for local ABC boards. This tax is in lieu of sales and use taxes; accordingly, liquor is exempt from those taxes as provided in G.S. 105-164.13(37)."

Sec. 3. Operating expenses for the ALE Division shall be paid from the budget of the Department of Crime Control and Public Safety.

Sec. 4. The last paragraph of G.S. 105-467 reads as rewritten:

"The local sales tax authorized to be imposed and levied under the provisions of this Article shall be applicable to such retail sales, leases, rentals, rendering of services, furnishing of rooms, lodgings or accommodations and other taxable transactions which are made, furnished or rendered by retailers whose place of business is located within the taxing county. The tax imposed shall apply to the furnishing of rooms, lodging or other accommodations within the county which are rented to transients. ~~However no tax shall be imposed where the tangible personal property sold is delivered to the purchaser at a point outside the taxing county by the retailer or his agent, or by a common carrier.~~ For the purpose of this Article, the situs of a transaction is the location of the retailer's place of business."

Sec. 5. Section 4 of Chapter 1096 of the 1967 Session Laws, as amended, is further amended by deleting the sentence at the end of that section that begins "No tax shall" and substituting the following:

"For the purpose of this act, the situs of a transaction is the location of the retailer's place of business."

Sec. 6. G.S. 105-486 reads as rewritten:

"§ **105-486. Distribution of additional taxes.** (a) County Allocation. The Secretary shall, on a quarterly basis, ~~distribute~~ allocate the net proceeds of the additional one-half percent (1/2%) sales and use taxes levied under this Article to the taxing counties on a per capita basis according to the most recent annual population estimates certified to the Secretary by the State Budget Officer.

(b) Adjustment. The Secretary shall then adjust the amount allocated to each county under subsection (a) by multiplying the amount by the appropriate adjustment factor set out in the table below:

<u>County</u>	<u>Adjustment Factor</u>
<u>Dare</u>	<u>1.49</u>
<u>Brunswick</u>	<u>1.17</u>
<u>Orange</u>	<u>1.15</u>
<u>Carteret and Durham</u>	<u>1.14</u>
<u>Avery</u>	<u>1.12</u>
<u>Moore</u>	<u>1.11</u>
<u>Transylvania</u>	<u>1.10</u>
<u>Chowan, McDowell, and Richmond</u>	<u>1.09</u>
<u>Pitt and New Hanover</u>	<u>1.07</u>
<u>Beaufort, Perquimans, Buncombe, and Watauga</u>	<u>1.06</u>
<u>Cabarrus, Jackson, and Surry</u>	<u>1.05</u>
<u>Alleghany, Bladen, Robeson,</u> <u>Washington, Craven, Henderson,</u> <u>Onslow, and Vance</u>	<u>1.04</u>
<u>Gaston, Granville, and Martin</u>	<u>1.03</u>
<u>Alamance, Burke, Caldwell, Chatham,</u> <u>Duplin, Edgecombe, Haywood,</u> <u>Swain, and Wilkes</u>	<u>1.02</u>
<u>Hertford, Union, Stokes, Yancey,</u> <u>Halifax, Rockingham, and Cleveland</u>	<u>1.01</u>
<u>Alexander, Anson, Johnston,</u> <u>Northampton, Pasquotank,</u> <u>Person, Polk, and Yadkin</u>	<u>1.00</u>
<u>Catawba, Harnett, Iredell, Pamlico,</u> <u>Pender, Randolph, Stanly, and Tyrrell</u>	<u>0.99</u>
<u>Cherokee, Cumberland, Davidson, Graham,</u> <u>Hyde, Macon, Rutherford,</u>	

<u>Scotland, and Wilson</u>	<u>0.98</u>
<u>Ashe, Bertie, Franklin, Hoke,</u>	
<u>Lincoln, Montgomery, and Warren</u>	<u>0.97</u>
<u>Wayne, Clay, Madison, Sampson,</u>	
<u>Wake, Lee, and Forsyth</u>	<u>0.96</u>
<u>Caswell, Gates, Mitchell, and Greene</u>	<u>0.95</u>
<u>Currituck and Guilford</u>	<u>0.94</u>
<u>Davie and Nash</u>	<u>0.93</u>
<u>Rowan and Camden</u>	<u>0.92</u>
<u>Jones</u>	<u>0.90</u>
<u>Mecklenburg</u>	<u>0.89</u>
<u>Lenoir</u>	<u>0.88</u>
<u>Columbus</u>	<u>0.81</u>

(c) Distribution Between Counties and Cities. The amount ~~distributed to a~~ allocated to each taxing county shall then be divided among the county and its municipalities in accordance with the method by which the one percent (1%) sales and use taxes levied in that county pursuant to Article 39 of this Chapter or Chapter 1096 of the 1967 Session Laws are distributed. If any taxes levied under this Article by a county have not been collected in that county for a full quarter because of the levy or repeal of the taxes, the Secretary shall distribute a pro rata share to that county for that quarter based on the number of months the taxes were collected in that county during the quarter."

Sec. 7. G.S. 105-493 reads as rewritten:

"§ 105-493. **Distribution of taxes.** The Secretary shall, on a quarterly basis, ~~distribute~~ allocate the net proceeds of any one-half percent (1/2%) sales and use taxes levied under this Article in accordance with G.S. 105-486. For purposes of the ~~distribution~~ allocation under G.S. 105-486, a county that levies one-half percent (1/2%) sales and use taxes under this Article is considered a taxing county under that section. To make the ~~distribution~~ allocation required by G.S. 105-486 and this section, the Secretary shall add the net proceeds of local sales and use taxes levied under Article 40 of this Chapter and under this Article, and shall then ~~distribute~~ allocate this amount to the taxing counties on a per capita basis as provided in G.S. 105-486. The amount ~~distributed~~ allocated to a county that levies one-half percent (1/2%) sales and use taxes under this Article shall be adjusted by multiplying it by the appropriate adjustment factor set out in the table in G.S. 105-486(b) and then divided among the county and its municipalities on either a per capita or an ad valorem tax basis, as designated by the board of county commissioners in a resolution adopted pursuant to G.S. 105-472. If any taxes levied under this Article by a county have not been collected in that county for a full quarter because of the levy or repeal of the taxes, the Secretary shall distribute a pro rata share to that county for that quarter based on the number of months the taxes were collected in that county during the quarter."

Sec. 8. G.S. 105-501 reads as rewritten:

"§ 105-501. **Distribution of additional taxes.** The Secretary shall, on a quarterly basis, ~~distribute~~ allocate the net proceeds of the additional one-half percent (1/2%) sales and use taxes levied under this Article to the taxing counties on a per capita basis according to the most recent annual population estimates certified to the Secretary by the State Budget Officer. The Secretary shall then adjust the amount allocated to each county by multiplying the amount by the appropriate adjustment factor set out in the table in G.S. 105-486(b). The amount ~~distributed to a~~ allocated to each taxing county shall then be divided among the county and the municipalities located in the county in accordance with the method by which the one percent (1%) sales and use taxes levied in that county pursuant to Article 39 of this Chapter or Chapter 1096 of the 1967 Session Laws are distributed.

If any taxes levied under this Article by a county have not been collected in that county for a full quarter because of the levy or repeal of the taxes, the Secretary shall distribute a pro rata share to that county for that quarter based on the number of months the taxes were collected in that county during the quarter."

Sec. 9. The board of commissioners of any county may, by resolution, after 10 days' public notice and a public hearing held pursuant thereto, adopt the expansion of the local sales tax levy provided in this act. Upon adoption of such a resolution, the board of commissioners shall forward a copy of the resolution to the Secretary of Revenue. Pursuant to the provisions of G.S. 105-483, 105-490, and 105-498, adoption of the expansion of the Local Government Sales and Use Act provided in Section 4 of this act constitutes adoption of an equivalent expansion of the local sales taxes levied under Articles 40, 41, and 42 of Chapter 105 of the General Statutes.

Sec. 10. If a county fails to adopt the expansion of the Local Government Sales and Use Tax Act provided in Section 4 of this act on or before February 1, 1988, the sales and use taxes levied by the county pursuant to Articles 39, 40, 41, and 42 are repealed effective March 1, 1988, because they will be inconsistent with the scope of the levies authorized by those Articles as amended effective March 1, 1988. If Mecklenburg County fails to adopt the expansion of Section 4 of Chapter 1096 of the 1967 Session Laws provided in Section 5 of this act on or before February 1, 1988, the sales and use tax levied by Mecklenburg County pursuant to Chapter 1096 of the 1967 Session Laws is repealed effective March 1, 1988, because it will be inconsistent with the scope of the levy authorized by that Chapter as amended effective March 1, 1988, and the sales and use taxes levied by Mecklenburg County pursuant to Articles 40, 41, and 42 are repealed effective March 1, 1988, because those Articles will no longer apply to Mecklenburg County, as provided in G.S. 105-482, 105-489, and 105-497. If the sales and use taxes levied by a county are repealed as provided in this section because the county failed to adopt the expansion of the local sales tax levy, the county may, on or after March 1, 1988, levy local sales and use taxes in accordance with the provisions of Articles 39, 40, 41, and 42 of Chapter 105 of the General Statutes and Chapter 1096 of the 1967 Session Laws, as applicable.

Sec. 11. This act does not affect the rights or liabilities of the State, a taxpayer, or other person arising under a statute amended or repealed by this act before its amendment or repeal; nor does it affect the right to any refund or credit of a tax that would otherwise have been available under the amended or repealed statute before its amendment or repeal.

Sec. 12. It is the intent of the General Assembly that a Select Committee composed of members of the General Assembly shall be appointed to study the impact on local sales and use tax revenue and the administrative cost savings to the State of consolidating the local sales and use taxes levied under Articles 39, 40, 41, and 42 of Chapter 105 of the General Statutes and under Chapter 1096 of the 1967 Session Laws, as amended, with the State sales and use tax levied under Article 5 of Chapter 105 of the General Statutes. It is further intended that the Select Committee shall report to the 1987 General Assembly on the first day of the 1988 Regular Session.

Sec. 13. It is the intent of the General Assembly that if the local sales and use taxes levied under Articles 39, 40, 41, and 42 of Chapter 105 of the General Statutes and under Chapter 1096 of the 1967 Session Laws, as amended, are at a later date consolidated with the State sales and use taxes levied under Article 5 of Chapter 105 of the General Statutes, then the legislation enacting the consolidation shall also change the method of distributing the proceeds of the excise tax on liquor levied under G.S. 105-113.80(c) from the current formulation to a new method that would

distribute one-eighth (1/8) of the total proceeds of that excise tax to local governments in the same manner as the State sales and use tax proceeds that are distributed to local governments under the legislation that consolidates the local sales taxes with the State sales tax.

Sec. 14. Sections 1 through 3 of this act shall become effective October 1, 1987. Sections 4 through 8 of this act shall become effective March 1, 1988, and apply to sales made on or after that date. The remainder of this act is effective upon ratification.

In the General Assembly read three times and ratified this the 14th day of August, 1987.

ROBERT B. JORDAN III

Robert B. Jordan III
President of the Senate

LISTON B. RAMSEY

Liston B. Ramsey
Speaker of the House of Representatives

APPENDIX B

REVENUE LAWS STUDY COMMITTEE

1987 - 1988

Rep. Daniel T. Lilley
Cochairman
P. O. Box 824
Kinston, N. C. 28501

Sen. A. D. Guy
Cochairman
306 Woodland Drive
Jacksonville, N. C. 28540

Rep. Ed Bowen
Route 1, Box 289
Harrells, N. C. 28444

Sen. Paul S. Smith
P. O. Box 916
Salisbury, N. C. 28145

Rep. Mary Long Jarrell
1010 Wickliff Avenue
High Point, N. C. 27262

Sen. R. P. Thomas
714 Heatherwood Drive
Hendersonville, N. C. 28739

Rep. Ivan Mothershead, III
Box 30036
Charlotte, N. C. 28230

Sen. Dennis J. Winner
81B Central Avenue
Asheville, N. C. 28801

Rep. Wendell H. Murphy
P. O. Box 759
Rose Hill, N. C. 28458

Mr. H. Bryan Ives, III
2600 Charlotte Plaza
Charlotte, N. C. 28244

Mr. Dwight Quinn
213 South Main Street
Kannapolis, N. C. 28081

Mr. Earle H. Ward
P. O. Box 670
Shelby, N. C. 28151-0670

LRC member responsible for study: Rep. Josephus L. Mavretic

Staff: Martha H. Harris, Legislative Services Office,
Bill Drafting Division

David Crotts, Legislative Services Office,
Fiscal Research Division

Ruth Sappie, Legislative Services Office,
Fiscal Research Division

Ada B. Edwards, Committee Clerk

APPENDIX C

SPEAKERS AT COMMITTEE MEETINGS

<u>Speaker</u>	<u>Subject of Presentation</u>
Ron Aycock N. C. Association of County Commissioners	Inventory tax reimbursements to local governments
Jim Blackburn N. C. Association of County Commissioners	Consolidating the local sales and use taxes with the State sales and use taxes
Henry C. Clegg, Jr. Carolinas Branch, Associated General Contractors of America	Use tax on construction equipment brought into N. C.
Sandy Cockrell N. C. Association of Certified Public Accountants	HB 999
Michael Crowell Tharrington, Smith & Hargrove	Sales tax on advertising
Harold Day Carolinas Council of Painting and Decorating Contractors of America	Privilege license for painting con- tractors
Elton Edwards Greensboro legislative consultant	Inventory tax reimbursements to local governments
J. D. Foust Local Government Commission	Inventory tax reimbursements to local governments
Ellis Hankins N. C. League of Municipalities	Inventory tax reimbursements to local governments Consolidating the local sales and use taxes with the State sales and use taxes Privilege license tax for flea market vendors
Bill Hiatt Division of Motor Vehicles	Motor carrier registration

<u>Speaker</u>	<u>Subject of Presentation</u>
Leonard Jones N. C. Association of Certified Public Accountants	Suggested changes in tax structure HB 999
Don Laton Attorney General's Office	Interstate motor carriers tax Motor carrier registration
William McDonald Mayor, City of Hickory	Inventory tax reimbursements to local governments
Fran Preston N. C. Retail Merchants Association	Privilege license tax for flea market vendors
Ed Regan N. C. Association of County Commissioners	Inventory tax reimbursements to local governments
Bill Rustin N. C. Retail Merchants Association	Sales tax on insulin Merchants discount
Susan Valauri National Federation of Independent Businesses	Merchants discount
Donald Ward N. C. Oil Jobbers Association	Non-highway use of diesel fuel
T. Jerry Williams N. C. Restaurant Association	Merchants discount
Joan A. Zimmerman Southern Shows, Inc.	Shows, exhibitions and promotions
Paul Zippin State Budget Office	HB 999 Transfer bingo game registration

APPENDIX D

Committee Recommendations Enacted in 1988

Chapter 936 (House Bill 2170, Rep. Lilley)

AN ACT TO EXPAND THE INCOME TAX EXEMPTION FOR DOUBLE LEG AMPUTEES TO INCLUDE BELOW-THE-KNEE AMPUTATION.

Prior law allowed a \$1,100 individual income tax exemption for individuals who have both legs amputated above the knee. Effective for taxable years beginning on or after January 1, 1988, this act extends the exemption to all double leg amputations above the ankle.

Chapter 937 (House Bill 2186, Rep. Lilley)

AN ACT TO EXEMPT INSULIN FROM SALES AND USE TAXES.

Prior law provided a sales and use tax exemption for medicines sold on prescription. Federal law does not require a prescription for the sale of insulin. Effective for sales made on or after August 1, 1988, this act provides that sales of insulin shall be exempt from sales and use taxes. Recommended by Revenue Laws Study Committee.

Chapter 1001 (House Bill 2169, Rep. Lilley)

AN ACT TO CHANGE THE EFFECTIVE DATE OF THE TRANSFER OF RESPONSIBILITY FOR ISSUING BINGO LICENSES FROM THE DEPARTMENT OF REVENUE TO THE DEPARTMENT OF HUMAN RESOURCES.

Chapter 866 of the 1987 Session Laws transferred the responsibility for issuing bingo license and establishing audit procedures for bingo accounts from the Department of Revenue to the Department of Human Resources. The act never became effective because it was conditioned on an appropriation that was never made. This act makes the transfer effective September 1, 1988.

Chapter 1015 (Senate Bill 1612, Senator Guy)

AN ACT TO UPDATE THE REFERENCE TO THE INTERNAL REVENUE CODE USED TO DETERMINE CERTAIN TAXABLE INCOME AND TAX EXEMPTIONS.

This bill rewrites the definition of the Internal Revenue Code used in State tax statutes to change the reference date from January 1, 1987, to January 1, 1988. Updating the reference makes recent amendments to the Internal Revenue Code applicable to the State to the extent State tax law previously tracked federal law. This update has the greatest effect on State corporate income taxes because these taxes are a percentage of federal taxable income and are therefore closely tied to federal law. Individual income taxes are not tied to federal law in the same way, but many individual income tax deductions are based on federal tax deductions.

Chapter 1041 (Senate Bill 1645, Sen. Winner)

AN ACT TO MODIFY THE FORMULA FOR REIMBURSING LOCAL GOVERNMENTS FOR REVENUE LOST DUE TO THE REPEAL OF PROPERTY TAXES ON INVENTORIES AND TO MAKE TECHNICAL CHANGES.

This act exempts from property taxes livestock and poultry that is not already exempt as inventory and modifies the reimbursement statutes enacted by the School Facilities Finance Act of 1987 to reimburse local governments for their losses due to the repeal of the property tax on inventories. It provides a method for counties and cities to share reimbursement funds with their special districts, replaces the "county area hold harmless" formula with an "individual county and city hold harmless"

formula to eliminate losses that would have occurred under the prior law, provides for correction of errors in calculating the reimbursements, provides that reimbursements will be made for poultry and livestock beginning in 1990, and makes a technical change regarding the source of the funds to pay for the reimbursements provided.

Section 1 of this act rewrites parts of G.S. 105-275.1, the manufacturers' inventory reimbursement statute. The changes in the first part of subsection (a) provide that livestock and poultry and other similar products will be counted in calculating the amount of the inventory tax loss; reimbursement for these items will be made beginning in 1990. The changes at the end of subsection (a) and in subsection (b) provide a method for counties and cities to share funds received with their special districts: each county and city will calculate the inventory tax loss for each district and divide the funds attributable to special districts among them in proportion to their losses. The Local Government Commission is authorized to adopt rules to resolve any disputes that may arise, to correct any errors, and to provide for cases where a special district is dissolved or merged. The Local Government Commission is also directed to report to the 1990 General Assembly any inaccuracies it discovers in the information furnished by local governments to the Department of Revenue regarding the amount of their losses. Section 1 also adds a new subsection (f) at the end of G.S. 105-275.1. This new subsection provides that if the Secretary of Revenue discovers any errors in the amount or value of inventories or other items listed by a city or county, she may adjust the amount of the reimbursement to correct the error.

Sections 1.1, 1.2, and 1.3 provide that poultry and livestock and feed used in their production, if not already exempt as inventory, shall be exempt from property taxes effective for taxable years beginning on or after January 1, 1989.

Section 2 of the act rewrites G.S. 105-277A, the wholesalers' and retailers' inventory reimbursement statute. The changes convert the formula for the 80% exemption enacted in 1987 from a two-step process that first made a per capita calculation and then a county-area hold harmless calculation to a new formula. Under the new formula, each county will receive a per capita distribution that will be shared with the cities on an ad valorem basis. Then, the Secretary will calculate whether any city or county suffered a loss under this formula. If so, it will receive additional funds to make sure the amount of the reimbursement was sufficient to cover its losses due to the inventory tax repeal. Further, if the amount of the county or city's loss calculated by the Secretary (based on an average of inventory taxes over the last eight years) is below 90% of the actual inventory levy for 1987, the Secretary will distribute to the county or city an additional amount to bring its reimbursement up to 90% of its 1987 inventory levy.

This statute is also amended to provide for distribution to special districts in the same manner as under the manufacturers' inventory reimbursement discussed above, and to provide that the Secretary may correct any errors in the amount or value of inventories listed by a county or city. Finally, the statute is amended to change the source of the funds for the reimbursements from income tax collections to sales tax collections. Most of the provisions of this act were recommended by the Revenue Laws Study Committee.

Chapter 1044 (House Bill 2171, Rep. Lilley)

AN ACT TO MAKE TECHNICAL AMENDMENTS TO THE REVENUE LAWS.

Sections 1 through 12 of this act correct typographical errors, update obsolete references, make conforming changes, and clarify various provisions of the Revenue Act. Section 13 adds a notice requirement that was inadvertently deleted from the Machinery Act in 1987. Sections 13.1 and 13.2 provide that land enrolled in the federal Conservation Reserve Program shall not be disqualified from present use value treatment on the grounds that it is not in actual production. If the land is disqualified based on a change in income due to placement in the program, no deferred taxes shall be owed. Section 13.3 provides that the Committee to Elect Julian Pierce, Superior Court Judge may expend its funds for charitable purposes. Sections 1-13 of this act were recommended by the Revenue Laws Study Committee.

GENERAL ASSEMBLY OF NORTH CAROLINA
1987 SESSION
RATIFIED BILL

CHAPTER 936
HOUSE BILL 2170

AN ACT TO EXPAND THE INCOME TAX EXEMPTION FOR DOUBLE LEG
AMPUTEES TO INCLUDE BELOW-THE-KNEE AMPUTATION.

The General Assembly of North Carolina enacts:

- "(8d) Section 1. G.S. 105-149(a)(8d) reads as rewritten:
An exemption of one thousand one hundred dollars (\$1,100) for an individual who has one of the following conditions or whose dependent has one of these conditions:
- a. Paraplegia;
 - b. Amputation of both legs above the ~~knee~~; ankle; or
 - c. A disability that requires the person to use a wheelchair to move about and to function effectively.

This exemption is in addition to all other exemptions allowed by this subsection. To claim this exemption, a taxpayer must attach to his tax return on which he claims the exemption a statement from a physician certifying that the individual or dependent for whom the exemption is claimed has one of the conditions listed above."

Sec. 2. This act is effective for taxable years beginning on or after January 1, 1988.

In the General Assembly read three times and ratified this the 23rd day of June, 1988.

ROBERT B. JORDAN III

Robert B. Jordan III
President of the Senate

JOHN J. HUNT

~~Erston B. Ramsey~~ JOHN J. HUNT
Speaker of the House of Representatives (~~ARD-TEM~~)

GENERAL ASSEMBLY OF NORTH CAROLINA
1987 SESSION
RATIFIED BILL

CHAPTER 937
HOUSE BILL 2186

AN ACT TO EXEMPT INSULIN FROM SALES AND USE TAXES.

The General Assembly of North Carolina enacts:

Section 1. G.S. 105-164.13(13) reads as rewritten:

"(13) Medicines sold on prescription of physicians, dentists, or ~~veterinarians.~~
veterinarians; insulin whether or not sold on prescription."

Sec. 2. This act shall become effective August 1, 1988, and applies to sales made on or after that date.

In the General Assembly read three times and ratified this the 23rd day of June, 1988.

ROBERT B. JORDAN III

Robert B. Jordan III
President of the Senate

JOHN J. HUNT

Liston B. Ramsey JOHN J. HUNT
Speaker of the House of Representatives (PRO-Tem)

GENERAL ASSEMBLY OF NORTH CAROLINA
1987 SESSION
RATIFIED BILL

CHAPTER 1001
HOUSE BILL 2169

AN ACT TO CHANGE THE EFFECTIVE DATE OF THE TRANSFER OF RESPONSIBILITY FOR ISSUING BINGO LICENSES FROM THE DEPARTMENT OF REVENUE TO THE DEPARTMENT OF HUMAN RESOURCES.

The General Assembly of North Carolina enacts:

Section 1. Section 4 of Chapter 866 of the 1987 Session Laws reads as rewritten:

"Sec. 4. This act shall become effective ~~September 1, 1987, provided that the Current Operations Appropriations Act for fiscal years 1987-89 includes funding for personnel and other administrative expenses to implement the provisions of this act.~~ September 1, 1988, and shall apply to applications to renew a bingo license or obtain a new license made on or after ~~the effective~~ that date."

Sec. 2. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 28th day of June, 1988.

ROBERT B. JORDAN III

Robert B. Jordan III
President of the Senate

LISTON B. RAMSEY

Liston B. Ramsey
Speaker of the House of Representatives

GENERAL ASSEMBLY OF NORTH CAROLINA
1987 SESSION
RATIFIED BILL

CHAPTER 1015
SENATE BILL 1612

AN ACT TO UPDATE THE REFERENCE TO THE INTERNAL REVENUE
CODE USED TO DETERMINE CERTAIN TAXABLE INCOME AND TAX
EXEMPTIONS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 105-2.1 reads as rewritten:

"§ 105-2.1. **Internal Revenue Code definition.**--As used in this Article, the term 'Code' means the Internal Revenue Code as enacted as of ~~January 1, 1987~~, January 1, 1988, and includes any provisions enacted as of that date which become effective either before or after that date."

Sec. 2. G.S. 105-114 reads as rewritten:

"§ 105-114. **Nature of taxes; definitions.**--The taxes levied in this Article upon persons and partnerships are for the privilege of engaging in business or doing the act named. The taxes levied in this Article upon corporations are privilege or excise taxes levied upon:

- (1) Corporations organized under the laws of this State for the existence of the corporate rights and privileges granted by their charters, and the enjoyment, under the protection of the laws of this State, of the powers, rights, privileges and immunities derived from the State by the form of such existence; and
- (2) Corporations not organized under the laws of this State for doing business in this State and for the benefit and protection which such corporations receive from the government and laws of this State in doing business in this State.

As used in this Article, the term 'Code' means the Internal Revenue Code as enacted as of ~~January 1, 1987~~, January 1, 1988, and includes any provisions enacted as of that date which become effective either before or after that date.

The term 'corporation' as used in this Article shall, unless the context clearly requires another interpretation, mean and include not only corporations but also associations or joint-stock companies and every other form of organization for pecuniary gain, having capital stock represented by shares, whether with or without par value, and having privileges not possessed by individuals or partnerships; and whether organized under, or without, statutory authority. The term 'corporation' as used in this Article shall also mean and include any electric membership corporation organized under Chapter 117, and any electric membership corporation, whether or not organized under the laws of this State, doing business within the State.

When the term 'doing business' is used in this Article, it shall mean and include each and every act, power or privilege exercised or enjoyed in this State, as an incident to, or by virtue of the powers and privileges acquired by the nature of such

organizations whether the form of existence be corporate, associate, joint-stock company or common-law trust.

If the corporation is organized under the laws of this State, the payment of the taxes levied by this Article shall be a condition precedent to the right to continue in such form of organization; and if the corporation is not organized under the laws of this State, payment of said taxes shall be a condition precedent to the right to continue to engage in doing business in this State. The taxes levied in this Article or schedule shall be for the fiscal year of the State in which said taxes become due; except, that the taxes levied in G.S. 105-122 and 105-123 shall be for the income year of the corporation in which such taxes become due. For purposes of this Article, the words 'income year' shall mean an income year as defined in G.S. 105-130.2(5)."

Sec. 3. G.S. 105-130.2(1) reads as rewritten:

"(1) 'Code' means the Internal Revenue Code as enacted as of ~~January 1, 1987,~~ January 1, 1988, and includes any provisions enacted as of that date which become effective either before or after that date."

Sec. 4. G.S. 105-135(15) reads as rewritten:

"(15) The word 'Code' means the Internal Revenue Code as enacted as of ~~January 1, 1987,~~ January 1, 1988, and includes any provisions enacted as of that date which become effective either before or after that date."

Sec. 5. G.S. 105-163.1(11) reads as rewritten:

"(11) 'Code' means the Internal Revenue Code as enacted as of ~~January 1, 1987,~~ January 1, 1988, and includes any provisions enacted as of that date which become effective either before or after that date."

Sec. 6. G.S. 105-212 reads as rewritten:

"§ 105-212. Institution exempted; conditional and other exemptions.--None of the taxes levied in this Article or schedule shall apply to religious, educational, charitable or benevolent organizations not conducted for profit, nor to trusts established for religious, educational, charitable or benevolent purposes where none of the property or the income from the property owned by such trust may inure to the benefit of any individual or any organization conducted for profit, nor to any funds, evidences of debt, or securities held irrevocably in a charitable remainder trust meeting the requirements of section 664 of the Code or in a pooled income fund meeting the requirements of section 642(e)(5) of the Code, nor to any funds held irrevocably in trust exclusively for the maintenance and care of places of burial; nor to any funds, evidences of debt, or securities held irrevocably in pension, profit-sharing, stock bonus, or annuity trusts, or combinations thereof, established by employers for the purpose of distributing both the principal and income thereof exclusively to eligible employees, or the beneficiaries of such employees, if such trusts qualify for exemption from income tax under the provisions of G.S. 105-161(f)(1)a; nor to any funds, evidences of debt or securities held irrevocably in a pension, profit-sharing, stock bonus or annuity plan established by an employer for the benefit of his employees or for himself and his employees if such plan qualifies for exemption from income tax under the provisions of G.S. 105-141(b)(19); nor to any funds, evidences of debt, or securities held in an individual retirement account described in section 408(a) of the Code, or an individual retirement annuity described in section 408(b) of the Code, if such individual retirement account or individual retirement annuity is exempt from income tax under the provisions of G.S. 105-161(f)(1)c or 105-141(b)(19). Insurance companies reporting premiums to the Commissioner of Insurance of this State and paying a tax thereon under the provisions of Article 8B. Schedule I-B shall not be subject to the provisions of G.S. 105-201, 105-202 and 105-203, building and loan associations and savings and loan associations paying a tax under the provisions of Article 8D of Chapter 105 of the General Statutes shall not be subject to the

provisions of G.S. 105-201, 105-202 and 105-203; State credit unions organized pursuant to the provisions of Subchapter III, Chapter 54, paying the supervisory fees required by law, shall not be subject to any of the taxes levied in this Article or schedule; banks, banking associations and trust companies shall not be subject to the tax levied in this Article or schedule on evidences of debt held by them when said evidences of debt represent investment of funds on deposit with such banks, banking associations and trust companies; Provided, that each such institution must, upon request by the Secretary of Revenue, establish in writing its claim for exemption as herein provided. The exemption in this section shall apply only to those institutions, and only to the extent, specifically mentioned, and no other.

Any corporation or trust doing business in North Carolina which in the opinion of the Secretary of Revenue of North Carolina qualifies as a 'regulated investment company' under section 851 of the Code or as a 'real estate investment trust' under the provisions of section 856 of the Code and which files with the North Carolina Department of Revenue its election to be treated as a 'regulated investment company' or 'real estate investment trust,' shall not be subject to any of the taxes levied in this Article or schedule.

If any intangible personal property held or controlled by a fiduciary domiciled in this State is so held or controlled for the benefit of a nonresident or nonresidents, or for the benefit of any organization exempt under this section for the tax imposed by this Article, such intangible personal property shall be partially or wholly exempt from taxation and under the provisions of this Article in the ratio which the net income distributed or distributable to such nonresident, nonresidents or organization, derived from such intangible personal property during the calendar year for which the taxes levied by this Article are imposed, bears to the entire net income derived from such intangible personal property during such calendar year. 'Net income' shall be deemed to have the same meaning that it has in the income tax article. Where the intangible personal property for which this exemption is claimed is held or controlled with other property as a unit, allocation of appropriate deductions from gross income shall be made to that part of the entire gross income which is derived from the intangible personal property by direct method to the extent practicable; and otherwise by such other method as the Secretary of Revenue shall find to be reasonable; Provided, that each fiduciary claiming the exemption provided in this paragraph shall, upon the request of the Secretary of Revenue, establish in writing its claim to such exemption. No provisions of law shall be construed as exempting trust funds or trust property from the taxes levied by this Article except in the specific cases covered by this section.

As used in this section, the term 'Code' means the Internal Revenue Code as enacted as of ~~January 1, 1987~~, January 1, 1988, and includes any provisions enacted as of that date which become effective either before or after that date."

Sec. 7. This act is effective upon ratification.
In the General Assembly read three times and ratified this the 29th day of
June, 1988.

ROBERT B. JORDAN III

Robert B. Jordan III
President of the Senate

LISTON B. RAMSEY

Liston B. Ramsey
Speaker of the House of Representatives

GENERAL ASSEMBLY OF NORTH CAROLINA
1987 SESSION
RATIFIED BILL

CHAPTER 1041
SENATE BILL 1645

AN ACT TO MODIFY THE FORMULA FOR REIMBURSING LOCAL GOVERNMENTS FOR REVENUE LOST DUE TO THE REPEAL OF PROPERTY TAXES ON INVENTORIES AND TO MAKE TECHNICAL CHANGES.

The General Assembly of North Carolina enacts:

Section 1. Effective January 1, 1989, G.S. 105-275.1, as enacted by Chapter 622 of the 1987 Session Laws and rewritten by Chapter 813 of the 1987 Session Laws, reads as rewritten:

"§ 105-275.1. **Reimbursement for exclusion of manufacturers' inventories, inventories and poultry and livestock.**--(a) Initial Distribution. On or before January 15, 1989, the governing body of each county and each city shall furnish to the Secretary a list of (i) all the inventories owned by manufacturers that were required to be listed and assessed as of January 1, 1987, and were listed on or before September 1, 1987, in the county or city under this ~~Subchapter~~ Subchapter, (ii) all livestock and poultry and feed used in the production of livestock and poultry that was required to be listed and assessed as of January 1, 1987, and was listed on or before September 1, 1987, in the county or city under this Subchapter; and (iii) all the crops and other agricultural or horticultural products held for sale, whether in process or ready for sale, owned by taxpayers regularly engaged in the growth, breeding, raising, or other production of new products for sale, that were not included under subdivision (ii) above and that were required to be listed and assessed as of January 1, 1987, and were listed on or before September 1, 1987, in the county or city under this Subchapter. The list shall contain the value of the inventories and other items as well as the property tax rates in effect in the county or city for the eight years from 1980 through 1987. The list shall also contain the property tax rates in effect for those years in each special district for which the county or city collected taxes in 1987 but whose tax rates were not included in the rates listed for the county or city, and the value of the inventories owned by manufacturers and other items described in subdivisions (ii) and (iii) above that were required to be listed and assessed as of January 1, 1987, and were listed on or before September 1, 1987, in that district. The list shall be accompanied by an affidavit attesting to the accuracy of the list and shall be on a form prescribed by the Secretary.

On or before March 20, 1989, the Secretary shall pay to each county and city that submitted a list under this subsection an amount equal to the county or city average rate, as provided below, multiplied by the value of the inventories owned by manufacturers that were required to be listed and assessed as of January 1, 1987, and were listed on or before September 1, 1987, in the county or city, plus or minus the percentage of this product that equals the percentage by which State personal income

has increased or decreased during the most recent 12-month period for which State personal income data has been compiled by the Bureau of Economic Analysis of the United States Department of Commerce.

On or before March 20, 1989, the Secretary shall also pay to each county and city that submitted a list under this subsection an amount equal to the average rate, as provided below, for each special district for which the county or city collected taxes in 1987, but whose tax rates were not included in the county or city's rates, multiplied by the value of the inventories owned by manufacturers that were required to be listed and assessed as of January 1, 1987, and were listed on or before September 1, 1987, in the district, plus or minus the percentage of this product that equals the percentage by which State personal income has increased or decreased during the most recent 12-month period for which State personal income data has been compiled by the Bureau of Economic Analysis of the United States Department of Commerce.

The Secretary shall calculate an average rate for each county and city, and for each special district whose tax rates were not included in the tax rates of a county or city, as the arithmetic mean of the property tax rates in effect in the county, city, or district for the eight years from 1980 through 1987. If a county, city, or district did not have tax rates in effect for the entire eight-year period, the average rate shall be the arithmetic mean of the property rates in effect for the years during the eight-year period that it did have rates in effect.

Of the funds received by each county and city pursuant to this subsection, the portion that was received because the county or city was collecting taxes for a special district (either because the district's tax rate was included in the city or county's rate or because the Secretary paid the county or city the product of the district's average rate and the value of the inventories in the district) shall be distributed among the districts in the county or city ~~in accordance with regulations issued by the Local Government Commission. This distribution shall be made as soon as practicable after the city or county receives funds under this subsection. The county or city shall distribute to each special district in the county or city an amount equal to the average rate for the district multiplied by the value of the inventories owned by manufacturers that were required to be listed and assessed as of January 1, 1987, and were listed on or before September 1, 1987, in the district, plus or minus the percentage of this product that equals the percentage by which State personal income has increased or decreased during the most recent 12-month period for which State personal income data has been compiled by the Bureau of Economic Analysis of the United States Department of Commerce. The Local Government Commission may adopt rules for the resolution of disputes and correction of errors in the distribution among special districts provided in this paragraph. The Local Government Commission shall report to the 1990 General Assembly any errors it discovers in the information furnished by local governments to the Secretary as required in this subsection.~~

(b) Subsequent Distributions. As soon as practicable after January 1, 1990, the Secretary shall pay to each county and city the amount it received under subsection (a) in 1989 plus an amount equal to the county or city average rate multiplied by the value of the items described in subdivisions (ii) and (iii) of subsection (a) that were required to be listed and assessed as of January 1, 1987, and were listed on or before September 1, 1987, in the county or city, plus or minus the percentage of this product that equals the percentage by which State personal income has increased or decreased during the most recent 12-month period for which State personal income data has been compiled by the Bureau of Economic Analysis of the United States Department of Commerce. As soon as practicable after January 1, 1990, the

Secretary shall also pay to each county and city an amount equal to the average rate for each special district for which the county or city collected taxes in 1987, but whose tax rates were not included in the county or city's rates, multiplied by the value of the items described in subdivisions (ii) and (iii) of subsection (a) that were required to be listed and assessed as of January 1, 1987, and were listed on or before September 1, 1987, in the district, plus or minus the percentage of this product that equals the percentage by which State personal income has increased or decreased during the most recent 12-month period for which State personal income data has been compiled by the Bureau of Economic Analysis of the United States Department of Commerce. Thereafter, except as provided in subsection (f), as soon as practicable after January 1 of each year, the Secretary shall distribute to each county and city the amount it received under this section the preceding year.

Of the funds received by each county and city pursuant to this subsection in 1990, the portion that was received because the county or city was collecting taxes for a special district (either because the district's tax rate was included in the city or county's rate or because the Secretary paid the county or city the product of the district's average rate and the value of the inventories and other items in the district) shall be distributed among the districts in the county or city as soon as practicable after the city or county receives the funds. The county or city shall distribute to each special district in the county or city the amount it distributed to the district in 1989 plus an amount equal to the average rate for the district multiplied by the value of the items, other than inventory, described in subdivisions (ii) and (iii) of subsection (a) that were required to be listed and assessed as of January 1, 1987, and were listed on or before September 1, 1987, in the district, plus or minus the percentage of this product that equals the percentage by which State personal income has increased or decreased during the most recent 12-month period for which State personal income data has been compiled by the Bureau of Economic Analysis of the United States Department of Commerce.

~~As~~ Each year thereafter, as soon as practicable after receiving funds under this subsection, every county and city shall distribute among the special districts for which the county or city collects tax an amount equal to the amount it distributed among such districts the previous year. The Local Government Commission may adopt rules for the resolution of disputes and correction of errors in the distribution among special districts provided in this subsection. In addition, the Local Government Commission may adopt rules for the reallocation of funds when a special district is dissolved, merged, or consolidated, or when a special district ceases to levy tax, either temporarily or permanently.

(c) Use. Funds received by a county, city, or special district under this section may be used for any lawful purpose.

(d) 'City' Defined. As used in this section, the term 'city' has the same meaning as in G.S. 153A-1(1).

(e) Source of Funds. To pay for the distribution required by this section and the cost to the Department of Revenue of making the distribution, the Secretary of Revenue shall charge the collections received by the Department under Division I of Article 4 of Chapter 105 with an amount equal to the amount distributed and the cost of making the distribution.

(f) Correction of Errors. If the Secretary discovers that the amount or value of any inventories or other items listed by a county or city pursuant to subsection (a) of this section was overstated or understated, the Secretary shall adjust the amount to be distributed under subsection (b) as follows. For the distribution to be made in the year following discovery of the overstatement or understatement, the Secretary shall distribute to the county or city the amount it would have received under subsection

(b) in 1990 if it had not overstated or understated the amount or value of any inventories or other items, plus the total amount it failed to receive in 1989 and subsequent years due to understatement of the amount or value of the inventories or other items, or minus the total amount it received in 1989 and subsequent years due to overstatement of the amount or value of the inventories or other items. Thereafter, each year the Secretary shall distribute to the county or city the amount it would have received under subsection (b) in 1990 if it had not overstated or understated the amount or value of any inventories or other items."

Sec. 1.1. G.S. 105-275 is amended by adding at the end a new subdivision to read:

"(37) Poultry and livestock and feed used in the production of poultry and livestock."

Sec. 1.2. G.S. 105-320(a)(15) is repealed.

Sec. 1.3. G.S. 105-320(b) reads as rewritten:

"(b) Instead of being shown on the tax receipt, the information required in ~~subdivision (15) and subdivision~~ (16) of subsection (a) may be shown on a separate sheet furnished to the affected taxpayers."

Sec. 2. Effective January 1, 1989, G.S. 105-277A, as rewritten by Chapters 622 and 813 of the 1987 Session Laws, reads as rewritten:

"§ 105-277A. Reimbursement for exclusion of retailers' and wholesalers' inventories.--(a) Submission of Claims. On or before January 15, 1989, the governing body of each county and city shall furnish to the Secretary a list of all the inventories owned by retailers and wholesalers that were required to be listed and assessed as of January 1, 1987, and were listed on or before September 1, 1987, in the county or city under this Subchapter. The list shall contain the value of the inventories as well as the property tax rates in effect in the county or city for the eight years from 1980 through 1987. The list shall also contain the property tax rates in effect for those years in each special district for which the county or city collected taxes in 1987 but whose tax rates were not included in the rates listed for the county or city, and the value of the inventories owned by retailers and wholesalers that were required to be listed and assessed as of January 1, 1987, and were listed on or before September 1, 1987, in that district. The list shall be accompanied by an affidavit attesting to the accuracy of the list and shall be on a form prescribed by the Secretary.

The Secretary shall calculate an average rate for each county and city, and for each special district whose tax rates were not included in the tax rates of a county or city, as the arithmetic mean of the property tax rates in effect in the county, city, or district for the eight years from 1980 through 1987. If a county, city, or district did not have tax rates in effect for the entire eight-year period, the average rate shall be the arithmetic mean of the property rates in effect for the years during the eight-year period that it did have rates in effect.

(b) First Per Capita Distribution. As soon as practicable after January 1 of 1989, the Secretary shall distribute to each taxing unit the unit's per capita share of the sum of fifteen million seven hundred forty-five thousand dollars (\$15,745,000). Thereafter, as soon as practicable after January 1 of each year the Secretary shall distribute to each taxing unit the unit's per capita share of an amount equal to the sum distributed to all taxing units the previous year under this subsection plus or minus the product of the sum distributed the previous year and the percentage by which State personal income has increased or decreased during the most recent 12-month period for which State personal income data has been compiled by the Bureau of Economic Analysis of the United States Department of Commerce.

To make the per capita distributions required by this subsection, the Secretary shall first allocate the sum to be distributed among the counties on a per capita basis. The Secretary shall then compute a per capita distributable amount for each county by dividing the amount allocated to a county by the total population of the county, plus the population of any incorporated towns and cities located in the county. Each taxing unit in a county, including the county itself, shall receive the product of the population of the taxing unit and the per capita distributable amount for that county.

A city or county that receives funds under this subsection and that collects taxes for another taxing unit shall distribute part of the taxes received by it to the taxing unit for which it collects tax. The distribution shall be made on the basis of the proportionate amount of ad valorem taxes levied, for the most recent fiscal year beginning July 1, by the city or county and by all the taxing units for which the city or county collects tax. This distribution shall be made as soon as practicable after a city or county receives funds from the State under this section.

(c) ~~Claims-based~~ Second Per Capita Distribution. On or before March 20, 1989, the Secretary shall allocate to each county ~~an amount equal to the greater of the following:~~

(1) ~~The~~ the county's per capita share of the sum of thirty-nine million dollars ~~(\$39,000,000); or (\$39,000,000).~~

(2) ~~The total of the county average rate multiplied by eighty percent (80%) of the value of the inventories reported to the Secretary under subsection (a) of this section by the county, plus the city average rate for each city in the county multiplied by eighty percent (80%) of the value of the inventories reported to the Secretary under subsection (a) of this section by the city, plus the average rate for each special district for which the county or a city in the county collected taxes in 1987, but whose tax rates were not included in the county or city's rates, multiplied by eighty percent (80%) of the value of the inventories reported to the Secretary under subsection (a) of this section in behalf of the district, plus or minus the percentage of this sum that equals the percentage by which State personal income has increased or decreased during the most recent 12-month period for which State personal income data has been compiled by the Bureau of Economic Analysis of the United States Department of Commerce, minus three and four-tenths percent (3.4%) of the total distribution received by the county and the cities located in the county under G.S. 105-472, 105-486, 105-493, 105-501, and Chapter 1096 of the 1967 Session Laws between January 1, 1988, and December 31, 1988.~~

Each year thereafter, as soon as practicable after January 1, the Secretary of Revenue shall allocate to each county the amount it received the previous year under this subsection.

Amounts allocated to a county under this subsection shall in turn be divided and distributed between the county and the cities located in the county in proportion to the total amount of ad valorem taxes levied by each during the fiscal year preceding the distribution. For the purposes of this section, the amount of the ad valorem taxes levied by a county or city shall include any ad valorem taxes collected by the county or city in behalf of a special district. For the purpose of computing the distribution for any year with respect to which the property valuation of a public service company is the subject of an appeal and the Department of Revenue is restrained by law from certifying the valuation to the appropriate counties and cities, the Department shall

use the latest property valuation of that public service company that has been certified.

The governing body of each county and city shall report to the Secretary of Revenue such information as he may request in order to make the distribution under this subsection. If a county or city fails to make a requested report within the time prescribed, the Secretary may disregard that county or city and the other taxing units in the county or city in making the distribution.

~~Of the funds received by each county and city pursuant to this subsection, the portion that was received because the county or city was collecting taxes for a special district shall be distributed among the districts in the county or city in accordance with regulations issued by the Local Government Commission. This distribution shall be as soon as practicable after the city or county receives funds under this subsection.~~

(c1) Claims-based Distribution. On or before March 20, 1989, the Secretary shall distribute to each county and city an amount equal to the amount by which the county or city's inventory loss, as defined in subsection (d) of this section, exceeds the amount of the reimbursement received by the county or city under subsection (c) of this subsection.

Except as provided in subsection (g) of this section, each year thereafter, as soon as practicable after January 1, the Secretary shall distribute to each county and city the amount it received the previous year under this subsection.

(c2) Supplemental Distribution. On or before March 20, 1989, the Secretary shall determine, with respect to each county and city, whether the sum of (i) the amount the county or city received under subsection (c), plus (ii) the amount the county or city received under subsection (c1), plus (iii) three and four-tenths percent (3.4%) of the total distribution received by the county or city under G.S. 105-472, 105-486, 105-493, 105-501, and Chapter 1096 of the 1967 Session Laws between January 1, 1988, and December 31, 1988, is less than ninety percent (90%) of the amount of taxes the county or city actually levied on inventories owned by retailers and wholesalers for the 1987-88 tax year. If that sum is less than ninety percent (90%) of the amount of taxes the county or city actually levied on those inventories for the 1987-88 tax year, the Secretary shall distribute to that county or city a supplemental amount equal to the amount by which ninety percent (90%) of the taxes it actually levied on inventories owned by retailers and wholesalers for the 1987-88 tax year exceeds the total of subdivisions (i), (ii), and (iii).

Except as provided in subsection (g) of this section, each year thereafter, as soon as practicable after January 1, the Secretary shall distribute to each county and city the amount it received the previous year under this subsection.

(c3) Distribution to Special Districts. Of the funds received by each county and city pursuant to subsections (c), (c1), and (c2) of this section, the portion that was received because the county or city was collecting taxes for a special district shall be distributed among the districts in the county or city in proportion to the amount of each special district's inventory levy, as defined in subsection (d) of this section, as soon as practicable after the city or county receives funds under this subsection. The Local Government Commission may adopt rules for the resolution of disputes and correction of errors in the distribution among special districts provided in this paragraph. In addition, the Local Government Commission may adopt rules for the reallocation of funds when a special district is dissolved, merged, or consolidated, or when a special district ceases to levy tax, either temporarily or permanently. The Local Government Commission shall report to the 1990 General Assembly any errors it discovers in the information furnished by local governments to the Secretary as required in subsection (a) of this section.

(d) Definitions. As used in this section, the term

(1) 'City' has the same meaning as in G.S. 153A-1(1);

(2) 'City's inventory loss' means the city's average rate multiplied by eighty percent (80%) of the value of the inventories reported to the Secretary under subsection (a) of this section by the city, plus the average rate for each special district for which the city collected taxes in 1987, but whose tax rates were not included in the city's rates, multiplied by eighty percent (80%) of the value of the inventories reported to the Secretary under subsection (a) of this section in behalf of the district, plus or minus the percentage of this amount that equals the lesser of five percent (5%) or the percentage by which State personal income has increased or decreased during the most recent 12-month period for which State personal income data has been compiled by the Bureau of Economic Analysis of the United States Department of Commerce, minus three and four-tenths percent (3.4%) of the total distribution received by the city under G.S. 105-472, 105-486, 105-493, 105-501, and Chapter 1096 of the 1967 Session Laws between January 1, 1988, and December 31, 1988;

(3) 'County's inventory loss' means the county's average rate multiplied by eighty percent (80%) of the value of the inventories reported to the Secretary under subsection (a) of this section by the county, plus the average rate for each special district for which the county collected taxes in 1987, but whose tax rates were not included in the county's rates, multiplied by eighty percent (80%) of the value of the inventories reported to the Secretary under subsection (a) of this section in behalf of the district, plus or minus the percentage of this amount that equals the lesser of five percent (5%) or the percentage by which State personal income has increased or decreased during the most recent 12-month period for which State personal income data has been compiled by the Bureau of Economic Analysis of the United States Department of Commerce, minus three and four-tenths percent (3.4%) of the total distribution received by the county under G.S. 105-472, 105-486, 105-493, 105-501, and Chapter 1096 of the 1967 Session Laws between January 1, 1988, and December 31, 1988;

(4) 'Special district's inventory levy' means the special district's average rate multiplied by eighty percent (80%) of the value of the inventories reported to the Secretary under subsection (a) of this section in behalf of the district;

(5) 'Taxing unit' means a unit that levied a property tax or for which another unit collected a property tax for the fiscal year beginning July 1 of the year preceding the date a distribution is made under this section. As used in this section, the term 'city' has the same meaning as in G.S. 153A-1(1).

(e) Population Estimates. In making the per capita calculations under this section, the Secretary shall use the most recent annual population estimates certified by the State Budget Officer.

(f) Source of Funds. The Secretary of Revenue shall pay for the distribution required by this section and the cost of making the distribution as follows:

(1) For the distribution made in 1989, the Secretary shall draw an amount equal to the amount distributed and the cost of making the

distribution first from the Inventory Tax Reimbursement Fund created in Section 15.1 of the School Facilities Finance Act of 1987, until it is exhausted, and then the remainder of that amount from collections received by the Department under Division I of Article 4 of this Chapter.

- (2) For distributions made in subsequent years, the Secretary shall charge the collections received by the Department under ~~Division I of Article 4~~ Article 5 of this Chapter with an amount equal to the amount distributed and the cost of making the distribution.

(g) Correction of Errors. If the Secretary discovers that the amount or value of any inventories listed by a county or city pursuant to subsection (a) of this section was overstated or understated, the Secretary shall adjust the amount to be distributed under subsections (c1) and (c2) as follows. For the distribution to be made in the year following discovery of the overstatement or understatement, the Secretary shall distribute to the county or city the amount it would have received under subsections (c1) and (c2) in 1989 if it had not overstated or understated the amount or value of any inventories, plus the total amount it failed to receive in 1989 and subsequent years due to understatement of the amount or value of the inventories, or minus the total amount it received in 1989 and subsequent years due to overstatement of the amount or value of the inventories. Thereafter, each year the Secretary shall distribute to the county or city the amount it would have received under subsections (c1) and (c2) in 1989 if it had not overstated or understated the amount or value of any inventories."

Sec. 3. Sections 1.1, 1.2, and 1.3 of this act are effective for taxable years beginning on or after January 1, 1989. The remainder of this act is effective upon ratification.

In the General Assembly read three times and ratified this the 5th day of July, 1988.

ROBERT B. JORDAN III

Robert B. Jordan III
President of the Senate

LISTON B. RAMSEY

Liston B. Ramsey
Speaker of the House of Representatives

GENERAL ASSEMBLY OF NORTH CAROLINA
1987 SESSION
RATIFIED BILL

CHAPTER 1044
HOUSE BILL 2171

AN ACT TO MAKE TECHNICAL AMENDMENTS TO THE REVENUE LAWS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 105-258 reads as rewritten:

"§ 105-258. **Powers of Secretary of Revenue; who may sign and verify pleadings, legal documents, etc.**--The Secretary of Revenue, for the purpose of ascertaining the correctness of any return, making a return where none has been made, or determining the liability of any person for any tax imposed by this Subchapter, or collecting any such tax, shall have the power to examine, personally, or by an agent designated by him, any books, papers, records, or other data which may be relevant or material to such inquiry, and the Secretary may summon the person liable for the tax or required to perform the act, or any officer or employee of such person, or any person having possession, custody, care or control of books of account containing entries relevant or material to the income and expenditures of the person liable for the tax or required to perform the act, or any other person having knowledge in the premises, to appear before the Secretary, or his agent, at a time and place named in the summons, and to produce such books, papers, records or other data, and to give such testimony under oath as may be relevant or material to such inquiry, and the Secretary or his agent may administer oaths to such person or persons. If any person so summoned refuses to obey such summons or to give testimony when summoned, the Secretary may apply to the Superior Court of Wake County for an order requiring such person or persons to comply with the summons of the Secretary, and the failure to comply with such court order shall be punished as for contempt.

In any action, proceeding, or matter of any kind, to which the Secretary of Revenue is a party or in which he may have an interest, all pleadings, legal notices, proofs of claim, warrants for collection, certificates of tax liability, executions, and other legal documents may be signed and verified on behalf of the Secretary by ~~the assistant commissioner~~ a Deputy or Assistant Secretary or by any director or assistant director of any division of the Department of Revenue or by any other agent or employee of the Department so authorized by the Secretary of Revenue."

Sec. 2. G.S. 105-102.4(b) reads as rewritten:

"(b) A retail variety store privilege license replaces the licenses imposed in the following sections and relieves the licensee of liability for the taxes imposed in these sections: G.S. 105-49, 105-51, 105-65.2, ~~105-80(b), 105-82~~ 105-82, and 105-89(a)."

Sec. 3. G.S. 105-164.3(20)b. reads as rewritten:

"b. 'Computer program' means the complete plan for the solution of a problem, such as the complete sequence of automatic data-processing equipment instructions necessary to solve a problem, and includes both systems and application programs

and subdivisions, such as assemblers, ~~compilers~~ compilers, routines, generators, and utility programs."

Sec. 4. G.S. 105-164.4(1)d. reads as rewritten:

"d. Sales of fuel, other than electricity or piped natural gas, to manufacturing industries and manufacturing plants for use in connection with the operation of such industries and plants other than sales of fuels to be used for residential heating purposes. The quantity of fuel purchased or used at any one time shall not in any manner be a determinative factor as to whether any sale or use of fuel is or is not subject to the one percent (1%) rate of tax imposed herein."

Sec. 5. G.S. 105-164.14(b) reads as rewritten:

"(b) The Secretary of Revenue shall make refunds semiannually to hospitals not operated for profit (including hospitals and medical accommodations operated by an authority created under the Hospital Authorities Law, ~~Article 12 of Chapter 131~~, Article 2 of Chapter 131E), educational institutions not operated for profit, churches, orphanages and other charitable or religious institutions and organizations not operated for profit of sales and use taxes paid under this Article, except under G.S. 105-164.4(4a), by such institutions and organizations on direct purchases of tangible personal property for use in carrying on the work of such institutions or organizations. Sales and use tax liability indirectly incurred by such institutions and organizations on building materials, supplies, fixtures and equipment which shall become a part of or annexed to any building or structure being erected, altered or repaired for such institutions and organizations for carrying on their nonprofit activities shall be construed as sales or use tax liability incurred on direct purchases by such institutions and organizations, and such institutions and organizations may obtain refunds of such taxes indirectly paid. The Secretary of Revenue shall also make refunds semiannually to all other hospitals (not specifically excluded herein) of sales and use tax paid by them on medicines and drugs purchased for use in carrying out the work of such hospitals. This subsection does not apply to organizations, corporations, and institutions that are owned and controlled by the United States, the State, or a unit of local government, except hospital facilities created under ~~Article 12 of Chapter 131~~ Article 2 of Chapter 131E of the General Statutes and nonprofit hospitals owned and controlled by a unit of local government that elect to receive semiannual refunds under this subsection instead of annual refunds under subsection (c). In order to receive the refunds herein provided for, such institutions and organizations shall file a written request for refund covering the first six months of the calendar year on or before the fifteenth day of October next following the close of said period, and shall file a written request for refund covering the second six months of the calendar year on or before the fifteenth day of April next following the close of that period. Such requests for refund shall be substantiated by such proof as the Secretary of Revenue may require, and no refund shall be made on applications not filed within the time allowed by this section and in such manner as the Secretary may require."

Sec. 6. G.S. 105-164.12 reads as rewritten:

"§ **105-164.12. Freight or delivery transportation charges.**--~~Freight~~ Freight, delivery, or other like transportation charges connected with the sale of tangible personal property are subject to the sales and use tax if title to the tangible personal property being transported passes to the purchaser at the destination point. Where title to the tangible personal property being transported passes to the purchaser at the point of origin, the freight or other transportation charges are not subject to the sales tax. For the purposes of this section it is immaterial whether the retailer or purchaser actually pays for any charges made for transportation, whether the charges were actually paid by one for the other, or whether a credit or allowance is made or given

for such charges. Nothing in this section shall operate to exclude from the use tax any ~~freight~~ freight, delivery or other like transportation charges. Such charges shall be included as a portion of the cost price and subject to the use tax."

Sec. 7. G.S. 105-141(a)(20) reads as rewritten:

"(20) Subject to the provisions of G.S. 105-141(b)(4), amounts received or made available from:

- a. Individual retirement accounts described in section 408(a) of the Code; and
- b. Individual retirement annuities described in section 408(b) of the ~~Code; and~~ Code.
- ~~c. Retirement bonds described in section 409 of the Code to the extent such amounts are includable in the recipient's gross income under the internal revenue laws of the United States."~~

Sec. 8. G.S. 105-142(d) reads as rewritten:

"(d) The amount actually distributed to any employee or the beneficiary of an employee by an employees' trust, which qualifies under subsection (f)(1)a of G.S. 105-161 as an exempt organization, or qualified plan which meets the requirements of section 401(a) of the Code shall be taxable to the employee or his beneficiary in the year in which distributed except to the extent such distribution is a rollover amount which is not includable in federal gross income under section 402(a) of the Code; provided, that if such employee has made contributions to such trust or such qualified plan, and the benefits are received as periodic payments, the amounts annually received shall be taxed as an annuity as provided in G.S. 105-141.1. The amount actually received by the employee or his beneficiary which consists of corporate shares or other securities shall be taken into account in determining the amount distributed at their fair market value, except that the net unrealized appreciation in the corporation shares or other securities of the employer corporation shall not be included in determining such amount distributed for purposes of this subsection.

The amount paid or distributed out of an individual retirement account described in section 408(a) of the Code, or individual retirement annuity described in section 408(b) of the Code, shall be includable in the gross income of the payee or distributee to the extent such amounts are includable in the payee's or distributee's gross income for federal income tax purposes.

~~Subject to the provisions of G.S. 105-141(b)(4) the amount received from a retirement bond described in section 409 of the Code, shall be included in the gross income of the payee or distributee to the extent such amounts are includable in the payee's or distributee's gross income for federal income tax purposes.~~

In the case of a pension, profit-sharing, or stock bonus plan or trust established by an employer for the benefit of his employees which does not meet the requirements of G.S. 105-161(f)(1)a or section 401(a) of the Code, any contributions to such plan or trust made by an employer during a taxable year shall be reportable as income in such taxable year by employees in whose names such contributions are credited only to the extent that such employees shall have acquired a nonforfeitable right to such contributions in such taxable year."

Sec. 9. G.S. 105-147(20) reads as rewritten:

"(20) Reasonable amounts paid by employers to trusts which qualify for exemption under subsection (f)(1)a of G.S. 105-161 and plans established by employers for the benefit of their employees which meet the requirements of section 401(a) of the Code; deductible employee contributions as described in subsection 72(o)(5) of the Code; reasonable amounts paid by a self-employed individual or owner-employee to a retirement program pursuant to a plan adopted by such individual and approved by the Internal Revenue Service, to the extent allowed under the Code; reasonable amounts paid by or on behalf of an individual for his benefit or for the benefit of

himself and his spouse to an individual retirement account described in section 408(a) of the Code, for an individual retirement annuity described in section 408(b) of the Code; Code, or for a retirement bond described in section 409 of the Code (but only if the bond is not redeemed within 12 months of the date of its issuance); and reasonable amounts paid by employers to nonqualified plans or trusts established by employers for the benefit of their employees, but only to the extent that such amounts contributed by such employers shall be required under the provisions of this Division to be included in the gross income of such employees. The deductions allowed by this subsection shall be allowed to the extent allowable under the Code unless contrary to the context and intent of this Division."

Sec. 10. G.S. 105-251.1(c)(2) reads as rewritten:

"(2) The reporting requirements set out in subsection (1) above may be fulfilled by providing to the Department a true and exact copy of all reports of currency transactions in excess of ten thousand dollars (\$10,000) reported to the Commissioner of the Internal Revenue Service pursuant to ~~31 U.S.C. § 1081~~ 31 U.S.C. § 5313(a) and ~~31 C.F.R. § 103~~, 31 C.F.R. § 103.22(a)(1), as those various statutes and regulations were in effect on ~~January 1, 1983~~, January 1, 1988."

Sec. 12. G.S. 105-141(b)(5) reads as rewritten:

"(5) Any amounts received as compensation for personal injuries or sickness (i) through accident or health insurance, (ii) through health or accident plans financed by profit-sharing trusts or pension trusts, (iii) under ~~workmen's~~ workers' compensation acts or similar ~~acts~~ acts, ~~(which have been judicially declared to provide benefits in the nature of workmen's compensation benefits, by whatever name called)~~, and (iv) for damages (whether by suit or agreement); and any amounts received through self-funded reimbursement plans adopted by an employer for the benefit of his employees, reimbursing them for expenses incurred for their medical care or for the medical care of their spouses or their dependents; provided, that any amounts received from sources mentioned in this subdivision as reimbursement for medical care expenses incurred and claimed as a deduction in a prior year or in prior years shall be excluded only to the extent that such amounts exceed the deduction claimed under subdivision (11) of G.S. 105-147, except that nothing in this subdivision shall be construed as preventing a taxpayer from filing an amended return for a taxable year in which a medical deduction was claimed and allowed for the purpose of reducing the amount of the medical expense deduction claimed in such year by any reimbursement for such medical expenses received in a later year when a change in the prior year is not barred by the provisions of this Division."

Sec. 13. G.S. 105-296 is amended by adding after subsection (h) a new subsection (i) to read:

"(i) Prior to the first meeting of the board of equalization and review, the assessor may, for good cause, change the appraisal of any property subject to assessment for the current year. Written notice of a change in assessment shall be given to the taxpayer at his last known address prior to the first meeting of the board of equalization and review."

Sec. 13.1. G.S. 105-277.3 is amended by adding a new subsection (d) to read:

"(d) Enrollment in the federal Conservation Reserve Program authorized by Title XII of the Food Security Act of 1985 (Pub. L. 99-198), as amended, shall not preclude eligibility of land for present use value treatment solely on the grounds that the land is no longer in actual production, and income derived from participation in the federal Conservation Reserve Program may be used in meeting the minimum income requirements of this section either separately or in combination with income from actual production. Land enrolled in the federal Conservation Reserve Program shall

be assessed as agricultural land if it is planted in vegetation other than trees, or as forest land if it is planted in trees."

Sec. 13.2. G.S. 105-277.4 is amended by adding a new subsection (d) to read:

"(d) Notwithstanding the provisions of subsection (c), if a farm unit loses eligibility for present use value treatment solely due to a change in income caused by enrollment of land in the federal Conservation Reserve Program authorized by Title XII of the Food Security Act of 1985 (Pub. L. 99-198), as amended, no deferred taxes shall be owed and all present use value tax liens shall be extinguished.

Sec. 13.3. Notwithstanding any other provision of law, the Committee to Elect Julian Pierce, Superior Court Judge may expend any of its funds for a purpose allowed by Section 527(d)(2) of the Internal Revenue Code of 1986; provided that expenditure must be reported as if it were an expenditure as defined by G.S. 163-278.6(9).

Sec. 14. Sections 7, 8, 9, and 12 of this act are effective for taxable years beginning on or after January 1, 1988; Sections 13.1 and 13.2 are effective for taxable years beginning on or after January 1, 1986; the remainder of this act is effective upon ratification.

In the General Assembly read three times and ratified this the 5th day of July, 1988.

ROBERT B. JORDAN III

Robert B. Jordan III
President of the Senate

LISTON B. RAMSEY

Liston B. Ramsey
Speaker of the House of Representatives

ECKMAN
DERY INC.



MAY 89

N. MANCHESTER,
INDIANA 46962

