LEGISLATIVE

RESEARCH COMMISSION

REVENUE LAWS

REPORT TO THE
1993 GENERAL ASSEMBLY
OF NORTH CAROLINA
1994 REGULAR SESSION

TABLE OF CONTENTS

Appendices

STATE OF NORTH CAROLINA

LEGISLATIVE RESEARCH COMMISSION

STATE LEGISLATIVE BUILDING

RALEIGH 27603

May 23, 1994

TO THE MEMBERS OF THE 1993 GENERAL ASSEMBLY (REGULAR SESSION 1994):

The Legislative Research Commission herewith submits to you for your consideration its interim report on revenue laws. The report was prepared by the Legislative Research Commission's Committee on Revenue Laws pursuant to G.S. 120-30.17(1).

Respectfully submitted,

Daniel T. Blue, Jr.
Speaker of the House

Marc Basnight
President Pro Tempore

Cochairs
Legislative Research Commission

1993 - 1994

LEGISLATIVE RESEARCH COMMISSION

MEMBERSHIP

President Pro Tempore of the Senate Marc Basnight, Cochair	Speaker of the House of Representatives Daniel T. Blue, Jr., Cochair
Senator Austin Allran	Rep. Harold J. Brubaker
Senator Frank W. Ballance, Jr.	Rep. Marie W. Colton
Senator R. L. Martin	Rep. W. Pete Cunningham
Senator J. K. Sherron, Jr.	Rep. Bertha M. Holt
Senator Lura S. Tally	Rep. Vernon G. James

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 cochaired 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)).

The Legislative Research Commission has undertaken studies of numerous subjects, to be carried out during the period between the adjournment of the 1993 Regular Session of the 1993 General Assembly and the convening of the 1995 General Assembly. These studies were grouped into broad categories and each member of the Commission was given responsibility for one category of study. The Cochairs 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. Cochairs, one from each house of the General Assembly, were designated for each committee.

The study of the revenue laws would have been authorized by Sections 2.1(9) and 2.1(88) of House Bill 1319 (2nd Edition), which passed both the House of Representatives and the Senate in 1993 but was not ratified because of a procedural problem. That bill states that the Commission may consider House Joint Resolution 123 and Senate Joint Resolution 1167 in determining the nature, scope, and aspects of the study. House Joint Resolution 123, introduced by Representative Mary L. Jarrell in the 1993 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." Senate Joint Resolution 1167, introduced by Senator Frank W. Ballance, Jr. in the 1993 Session, provides for the study of the current system for allocation of the clear proceeds of fines and forfeitures. The relevant portions of House Bill 1319, House Joint Resolution 123, and Senate Joint Resolution 1167 are included in Appendix A.

The Legislative Research Commission authorized the study of the revenue laws pursuant to its authority under G.S. 120-30.17(1) and grouped the study in its Budget and Revenue area under the direction of Senator R.L. Martin. The Committee is chaired by Senator Dennis J. Winner and Representative Mary L. Jarrell. The full membership of the Committee and the staff assigned to the Committee are listed in Appendix B of this report.

COMMITTEE PROCEEDINGS

The Legislative Research Commission's Revenue Laws Study Committee met two times before the 1994 Regular Session of the 1993 General Assembly. The Committee focused primarily on issues that needed to be resolved before the convening of the 1995 General Assembly.

The Committee first reviewed the tax law changes enacted in 1993 and evaluated the fate of the 1992 Revenue Laws Study Committee's twenty-five recommendations to the 1993 Session. Fifteen of these recommendations were enacted in whole or in part in 1993; the remaining ten are pending and may be eligible for consideration in the 1994 Regular Session. Appendix C contains a summary of tax law changes enacted in 1993; Appendix D lists the 1992 Committee's recommendations and the action taken on them during the 1993 Session.

The Committee periodically reviewed the status and potential impact of pending lawsuits against the State concerning the taxation of retirement benefits and the taxation of intangible personal property. The North Carolina Supreme Court ruled earlier this year in Swanson v. Powers that the federal retirees who did not contest the payment of the income tax on their pension income within 30 days after its payment are procedurally barred from recovering the refunds sought because they did not comply with the State's statutory postpayment refund demand procedure. In June 1993, the North Carolina Court of Appeals in Fulton Corp. v. Justus held unconstitutional the part of the State intangibles tax that grants an exemption for corporate stock in proportion to how much of the corporation's income is attributable to North Carolina for income tax purposes. The elimination of the exemption should result in a gain to the General Fund of approximately $55 to $75 million annually. The North Carolina Supreme Court heard oral arguments in the Fulton case on February 2, 1994, but has not yet issued an opinion. Appendices E and F summarize these two cases in more detail.

As in the past, the Committee proved to be an excellent forum for taxpayers and tax administrators to propose changes in the revenue laws. A number of taxpayers wrote to or appeared before the Committee to discuss tax problems they felt need to be resolved. The Committee's Legislative Proposal I addresses an issue raised by taxpayers: the conflict between the individual income tax law that allows a three-year carryback of net operating losses and the statute of limitations that prohibits the issuance of a refund after three years.

The Committee studied numerous proposals for technical and administrative changes to the revenue laws raised by the Department of Revenue and by legislative staff. Legislative Proposal 1 contains, in addition to the net operating loss carryback provision, the Committee's annual recommendation that references in State tax statutes to the Internal Revenue Code be updated to include federal amendments made during the past calendar year. Legislative Proposals 2 and 3 carry out two of the Committee's recommendations to make the law simpler and more uniform; the first relates to collection of withholding taxes, the second to motor vehicle dealer license plates. Legislative Proposal 4 contains the Committee's suggestions for technical, clarifying, and conforming changes to the laws.

Finally, Legislative Proposal 5 reflects the Committee's interest in improving the enforcement of the per gallon motor fuel taxes. That proposal is the first step in this effort. It enables the Department of Revenue to track cross-border shipments of motor fuel by requiring shipping documents to include the "destination state" of the fuel and by requiring those who transport motor fuel in bulk across state lines to file monthly reports concerning the motor fuel.

The Committee expresses its appreciation for the assistance of Ms. Janice H. Faulkner, Secretary of Revenue, Mr. Jack L. Harper, Assistant Secretary of Tax Administration, and the staff of the Department of Revenue. The Committee's task is made easier by the informed comments and suggestions of these individuals.

COMMITTEE RECOMMENDATIONS AND LEGISLATIVE PROPOSALS

The Revenue Laws Study Committee recommends the following legislation to the 1994 Regular Session of the 1993 General Assembly. The Committee's legislative proposals consist of five bills. Each proposal is followed by an explanation and a fiscal note indicating any anticipated revenue gain or loss resulting from the proposal.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1993

S D

PROPOSAL 1 (93-LCX-247(1.1)Z)
(THIS IS A DRAFT AND NOT READY FOR INTRODUCTION)

Short Title: Update IRC Reference/Conformity. (Public)

Sponsors: Senators Winner of Buncombe, Cochrane, Hoyle, Kerr, and Marshall.

Referred to:

A BILL TO BE ENTITLED

AN ACT TO UPDATE THE REFERENCE TO THE INTERNAL REVENUE CODE USED IN DETERMINING CERTAIN TAXABLE INCOME AND TAX EXEMPTIONS AND TO RESOLVE AN UNINTENDED CONFLICT BETWEEN THE STATUTE OF LIMITATIONS FOR CERTAIN TAX REFUNDS AND THE LAW ALLOWING DEDUCTIONS FOR CARRYBACKS, BAD DEBTS, AND WORTHLESS SECURITIES.

The General Assembly of North Carolina enacts:

Section 1. G.S. 105-228.90(b)(1) reads as rewritten:

"(1) Code. -- The Internal Revenue Code as enacted as of January 1, ~~1993,~~ 1994, including any provisions enacted as of that date which become effective either before or after that date."

Sec. 2. G.S. 105-266(c) reads as rewritten:

"(c) Statute of Limitations. -- The period in which a refund must be demanded or discovered under this section is determined as follows:

(1) General Rule. -- No overpayment shall be refunded, whether upon discovery or receipt of written demand, if the discovery is not made or the demand is not received within three years after the date set by the statute for the filing of the return or within six months after the payment of the tax alleged to be an overpayment, whichever is later.

(2) Worthless Debts or Securities. -- Section 6511(d)(1) of the Code applies to an overpayment of the tax levied in Division II or III of Article 4 of this Chapter to the extent the overpayment is attributable to either of the following:

a. The deductibility by the taxpayer under section 166 of the Code of a debt that becomes worthless, or under section 165(g) of the Code of a loss from a security that becomes worthless.

b. The effect of the deductibility of a debt or loss described in subpart a. of this subdivision on the application of a carryover to the taxpayer.

(3) Capital Loss and Net Operating Loss Carrybacks. -- Section 6511(d)(2) of the Code applies to an overpayment of the tax levied in Division II or III of Article 4 of this Chapter to the extent the overpayment is attributable to a capital loss carryback under section 1212(c) of the Code or to a net operating loss carryback under section 172 of the Code."

Sec. 3. In order to receive a refund that would be barred if not for the provisions of Section 2 of this act, the taxpayer must make or renew a demand for the refund on or after the date this act is ratified. For the purpose of determining the interest on a refund demanded on or after the date this act is ratified, G.S. 105-266(b), as rewritten by Chapter 315 of the 1993 Session Laws, is effective retroactively for taxable years beginning on or after January 1, 1989.

Sec. 4. Section 1 of this act is effective for taxable years beginning on or after January 1, 1994. The remainder of this act is effective retroactively for taxable years beginning on or after January 1, 1989.

Explanation of Proposal 1

Legislative Proposal 1 rewrites the definition of the Internal Revenue Code used in State tax statutes to change the reference date from January 1, 1993, to January 1, 1994, and revises the tax refund statute of limitations to eliminate an unintended conflict between that statute and the law allowing deductions for carrybacks, worthless debts, and worthless securities. Updating the Internal Revenue Code reference makes recent amendments to the Code applicable to the State to the extent that State tax law previously tracked federal law. This update has the greatest effect on State corporate and individual income taxes because these taxes are based on federal taxable income and are therefore closely tied to federal law. The franchise tax, gift tax, highway use tax, inheritance tax, insurance company premiums tax, and intangibles tax also determine some exemptions based on the provisions of the Code.

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."

Each year, in deciding whether the Internal Revenue Code reference should be updated, the Revenue Laws Study Committee considers the changes that have been made to the Code in the past year. The Revenue Laws Study Committee learned this year that the federal Omnibus Budget Reconciliation Act of 1993 enacted a number of different changes that affect individual and corporate income tax. Those changes are summarized in Appendix G of this report in a chart prepared by Ruth Sappie of the Fiscal Research Division. The Committee determined that it would be appropriate to conform the State income tax law to these federal changes. The following are among the most important of the federal changes that affect the State:

1. Changes in the moving expense deduction.
2. Valuation of securities dealers' inventory at fair market value; securities not in inventory considered sold at fair market value.
3. Reduction of the amount of qualifying business meals and entertainment expenses that may be deducted, from 80% to 50%.
4. Repeal of the deduction for certain club dues.
5. Expansion of the rules for amortization of certain intangible business assets, including goodwill.
6. Elimination of passive loss restrictions for certain real estate professionals.
7. Retroactive extension of the health insurance deduction for self-employed individuals.
8. Increase in the recovery period for depreciation of non-residential property, from 31.5 years to 39 years.
9. Deduction for wages of CEO and four highest paid officers of public corporation limited to $1 million each.
10. Repeal of deduction for lobbying expenses.

Sections 2 and 3 of this act eliminate an inconsistency in the tax law. Since 1989, the State individual income tax law has conformed to the federal law that allows a taxpayer to carry net operating losses and certain capital losses back to the three previous tax years and then forward for fifteen years. Under the new law, the first tax year to which a loss could be carried back is 1989, which means that carrybacks were allowed beginning with losses incurred in 1992. To deduct the loss carryback for the

1989 tax year, the taxpayer must file an amended return for that year. The taxpayer will first learn of the loss in preparing the tax return for the 1992 tax year, which is due April 15, 1993, for calendar year taxpayers. Under federal law, the taxpayer has three years from the due date of the 1992 return to claim the loss carryback on an amended return for 1989. Under North Carolina law, however, the normal statute of limitations applies: the loss must be claimed within three years after the due date of the 1989 return. Thus, in most cases, the taxpayer would have to file the amended return within days or weeks of learning the deduction was available.

This discrepancy in the law occurred because, at the time the law was changed to allow loss carryback deductions, no conforming change was made to the statute of limitations to allow time to file for the deductions. Section 2 of Legislative Proposal I makes this conforming change so that the usual three-year period for claiming refunds will run, in the case of loss carryback deductions, from the due date of the return for the year the loss occurs rather than the year to which the deduction is carried back.

Section 2 also conforms the State individual income tax law to the federal law that allows a seven-year period for claiming a refund due to a deduction for a worthless debt or a worthless security. This longer period is considered equitable because of the complexity under federal law of determining when a debt or security became worthless and, consequently, which year is the appropriate year for taking the deduction. A security becomes worthless for federal tax purposes not when it loses value but when the taxpayer has no reasonable expectation that it will become valuable at some future time. A debt becomes worthless for federal tax purposes when there are identifiable events that have caused the taxpayer to reasonably abandon hope of ever recovering any payment. In many cases, a taxpayer may take the deduction for the wrong year and learn much later that the deduction should have been taken for a different year. Without the longer statute of limitations, the taxpayer could not then file an amended return to take the deduction and claim a refund for the appropriate year.

Sections 3 and 4 of the bill provide that these conforming changes to the statute of limitations are retroactive to the 1989 tax year, the year in which the changes were first needed. Interest on refunds due to loss carrybacks will run, however, only from the filing date of the return for the year in which the loss occurred rather than from the year to which the loss is carried back. For example, interest on a refund for a loss carried back from 1992 to 1989 will run only from April 15, 1993, if the taxpayer is a calendar year taxpayer.

NORTH CAROLINA GENERAL ASSEMBLY
LEGISLATIVE FISCAL NOTE

BILL NUMBER: Legislative Proposal #1
SHORT TITLE: Update IRC Reference/Conformity
SPONSOR(S): Senators Winner of Buncombe; Cochrane, Hoyle, Kerr, and Marshall

FISCAL IMPACT: Expenditures: Increase ( ) Decrease ( )
Revenues: Increase (X) Decrease ( )
No Impact ( )
No Estimate Available ( )

FUND AFFECTED: General Fund (X) Highway Fund ( ) Local Govt. ( )
Other Funds ( )

BILL SUMMARY: Section 1 rewrites the definition of the Internal Revenue Code used in State tax statutes to change the reference date from January 1, 1993, to January 1, 1994. An update to the Internal Revenue Code is brought to the legislature annually as both a policy decision and a response to a legal restraint. The policy reason for specifying a particular date is that, in light of continuous changes made to federal tax law, the State may not want to automatically adopt federal changes, particularly when they result in large revenue losses. The legal restraint involves Article V, § 2(1) of the North Carolina State Constitution which states in pertinent part that the "power of taxation... shall never be surrendered, suspended, or contracted away." A 1977 memorandum from the State Attorney General's Office to the Tax Research Division of the Department of Revenue concluded that a "statute which adopts by reference future amendments to the Internal Revenue Code would... be invalidated as an unconstitutional delegation of legislative power."

Section 2 revises the tax refund statute of limitations to eliminate an unintended conflict between that statute and another section of state tax law allowing carryback deductions for business losses and worthless debts or securities. Since 1989, the State individual income tax law has conformed to the federal law that allows a taxpayer to carry net operating losses and certain capital losses back to the three previous tax years and then forward for fifteen years. The first tax year which could include a carryback was 1992. Under federal law, the taxpayer has three years from the due date of the <u>1992</u> return to claim the loss carryback on an amended return for <u>1989</u>. Under North Carolina law, however, the general statute of limitations applies here because there is no specific exception in our law that addresses this carryback situation. The general rule is that refunds must be claimed within three years after filing a tax return or within six months of payment of the tax, whichever is later. Many North Carolina taxpayers found themselves in the position of having discovered an allowable federal and state tax deduction carryback to 1989 when they prepared their 1992 tax returns, but since the state statute of limitations ran out April 15, 1993, they could not claim the state tax deduction. This occurred among many taxpayers who had filed for extensions for filing their taxes.

Section 2 revises G.S. 105-266, the general statute of limitations, so that the usual three-year period for claiming refunds will run, in the case of carryback deductions, from the due date of the return for the year the loss occurs.

EFFECTIVE DATE: Section 1 is effective for taxable years beginning on or after January 1, 1994. Section 2 is effective retroactively for taxable years beginning on or after January 1, 1989.

PRINCIPAL DEPARTMENT(S)/PROGRAM(S) AFFECTED: Department of Revenue

FISCAL IMPACT

	FY94	FY95	FY96	FY97	FY98
REVENUES					
GENERAL FUND					
IRC Conformity		$5 mil.	$5.3 mil.	$5.6 mil.	$6.0 mil.
NOL Carryback		($3.4 mil.)			
Net impact		$1.6 mil.	$5.3 mil.	$5.6 mil.	$6.0 mil.
HIGHWAY FUND					
HIGHWAY TRUST FUND					
LOCAL					

EXPENDITURES None

POSITIONS: None

ASSUMPTIONS AND METHODOLOGY: The Department of Revenue has estimated the revenue impact from the IRC conformity change at $5 million in FY1994-95. That figure has been increased for future years by 6%, the expected state income tax growth rate. Data used to make the estimate was obtained from the U.S. Department of the Treasury, the agency that prepares revenue estimates for federal legislation. To those national estimates of the impact of the Revenue Reconciliation Act of 1993, the Department applied reasonable allocation factors to get estimates of the impact on North Carolina state revenues.

The Department of Revenue also estimated the revenue impact of conforming the net operating loss provisions to federal statutes. In this case, there was no available data captured by the Department with which to make an estimate. The North Carolina Association of CPA's (NCACAP) conducted a survey of their members to assist the Revenue Laws Study Committee in determining the fiscal impact. From the 1495 questionaires sent out, NCACPA received a 20% response rate. Non-CPA tax filers could not be identified and were not included in the survey.

Using the results of this survey, the Department of Revenue has determined the fiscal impact from NOL carryback conformity would be a one-time revenue loss of $3.4 million in FY1994-95.

SOURCES OF DATA: North Carolina Department of Revenue
TECHNICAL CONSIDERATIONS:
FISCAL RESEARCH DIVISION 733-4910
PREPARED BY: Ruth Sappie
APPROVED BY:
DATE: April 14, 1994

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1993

S D

PROPOSAL 2 (93-LJXZ-32V3)
(THIS IS A DRAFT AND IS NOT READY FOR INTRODUCTION)

Short Title: Tax Withholding Penalty & Information. (Public)

Sponsors: Senators Winner of Buncombe, Cochrane, Hoyle, Kerr, and Marshall.

Referred to:

A BILL TO BE ENTITLED

AN ACT TO CONFORM THE THRESHOLD FOR DETERMINING IF A PENALTY APPLIES TO AN UNDERPAYMENT OF WITHHELD STATE INCOME TAXES TO THAT USED UNDER THE INTERNAL REVENUE CODE FOR DETERMINING IF A PENALTY APPLIES TO AN UNDERPAYMENT OF WITHHELD FEDERAL INCOME TAXES, AND TO CLARIFY THE TYPE OF INFORMATION A TAXPAYER MUST PROVIDE TO THE SECRETARY OF REVENUE.

The General Assembly of North Carolina enacts:

Section 1. G.S. 105-163.6 reads as rewritten:

"**§ 105-163.6. When employer must file returns and pay withheld taxes.**

(a) General. -- A return is due quarterly or monthly as specified in this section. A return shall be filed with the Secretary on a form prepared by the Secretary, shall report any payments of withheld taxes made during the period covered by the return, and shall contain any other information required by the Secretary.

Withheld taxes are payable quarterly, monthly, or ~~within three banking days,~~ <u>semi-weekly,</u> as specified in this section. If the Secretary finds that collection of the amount of taxes this Article requires an employer to withhold is in jeopardy, the Secretary may require the employer to file a return or pay withheld taxes at a time other than that specified in this section.

(b) Quarterly. -- An employer who withholds an average of less than five hundred dollars ($500.00) of State income taxes from wages each month shall file a return and pay the withheld taxes on a quarterly basis. A quarterly return covers a calendar quarter and is due by the last day of the month following the end of the quarter.

(c) Monthly. -- An employer who withholds an average of at least five hundred dollars ($500.00) but less than two thousand dollars ($2,000) from wages each month shall file a return and pay the withheld taxes on a monthly basis. A return for the months of January through November is due by the 15th day of the month following the end of the month covered by the return. A return for the month of December is due the following January 31.

(d) ~~Three Banking Days.~~ Semi-weekly. -- An employer who withholds an average of at least two thousand dollars ($2,000) of State income taxes from wages each month shall file a return by the date set under the Code for filing a return for federal ~~income~~ employment taxes ~~withheld from~~ attributable to the same wages and shall pay the withheld State taxes by the date set under the Code for depositing or paying federal ~~income~~ employment taxes ~~withheld from~~ attributable to the same wages. The date set by the Code for depositing or paying federal ~~income~~ employment taxes ~~withheld from wages~~ shall be determined without regard to § 6302(g) of the Code.

An extension of time granted to file a return for federal ~~income~~ employment taxes ~~withheld from~~ attributable to wages is an automatic extension of time for filing a return for State income taxes withheld from the same wages, and an extension of time granted to pay federal ~~income~~ employment taxes ~~withheld from~~ attributable to wages is an automatic extension of time for paying State income taxes withheld from the same wages. An employer who pays withheld State income taxes under this subsection is not subject to interest on or penalties for ~~an underpayment of an~~ a shortfall in the amount due if the ~~employer timely pays at least ninety-five percent (95%) of the amount due and includes the underpayment with the next return the employer files.~~ employer would not be subject to a failure-to-deposit penalty had the shortfall occurred in a deposit of federal employment taxes attributable to the same wages and the employer pays the shortfall by the date the employer would have to deposit a shortfall in the federal employment taxes.

(e) Category. -- The Secretary shall monitor the amount of taxes withheld by an employer or estimate the amount of taxes to be withheld by a new employer and shall direct each employer to pay withheld taxes in accordance with the appropriate schedule. An employer shall file a return and pay withheld taxes in accordance with the Secretary's direction until notified in writing to file and pay under a different schedule."

Sec. 2. G.S. 105-251 reads as rewritten:

"**§ 105-251.** ~~**Information**~~ Type of information a taxpayer **must** ~~**be furnished.**~~ provide.

~~Each company, firm, corporation, person, association, copartnership, or public utility shall furnish the Secretary of Revenue in the form of returns prescribed by him, all information required by law and all other facts and information in addition to the facts and information in this act specifically required to be given, which the Secretary of Revenue may require to enable him to carry into effect the provisions of the laws which the said Secretary is required to administer, and shall make specific answers to all questions submitted by the Secretary of Revenue.~~

A taxpayer must give information to the Secretary when the Secretary requests the information. The Secretary may request a taxpayer to provide only the following kinds of information on a return, a report, or otherwise:

(1) Information that identifies the taxpayer.

(2) Information needed to determine the liability of the taxpayer for a tax.

(3) Information needed to determine whether an item is subject to a tax.

(4) Information that enables the Secretary to collect a tax.

(5) Other information the law requires a taxpayer to provide or the Secretary needs to perform a duty a law requires the Secretary to perform."

Sec. 3. Section 1 of this act becomes effective January 1, 1995, and applies to payments of withheld income taxes made on or after that date. The remaining sections of this act are effective upon ratification.

Explanation of Proposal 2

This proposal makes one substantive change to the State law concerning payment to the Department of Revenue of withheld State income taxes plus two technical changes to this law and a clarifying change concerning the kinds of information the Secretary of Revenue can ask a a person who is required to file any tax return or report to provide. Section 1 of the proposal makes the State withholding tax changes and Section 2 makes the clarifying change concerning tax information. The State withholding tax changes become effective January 1, 1995, and apply to payments of withheld State income taxes made on or after that date. The clarifying change concerning tax information is effective upon ratification.

The substantive change to the State withholding tax laws ties the State penalty provisions concerning payments by employers of withheld State individual income taxes to the federal penalty provisions that apply to payments to the Internal Revenue Service of federal employment taxes attributable to the same wages. The immediate effect of this is twofold. First, it changes the amount of a shortfall in the remittance of withheld State income taxes that triggers the imposition of interest and penalties from the current State amount to the current federal amount. Second, it changes the time by which a shortfall must be remitted in order to avoid the imposition of penalties and interest. The continuing effect of the change is to adjust the State provisions for determining when an employer is subject to interest and penalties on a shortfall in withheld State income taxes automatically in accordance with changes in the corresponding federal provisions.

Under current State law, an employer who does not remit the full amount of State income taxes withheld from wages by the date they are due is not liable for interest or penalties on the shortfall if the amount of the shortfall is less than 5% of the amount due and the employer includes the amount of the shortfall in the next withholding tax return the employer files. A return is due quarterly by the last day of the month following the end of the quarter.

Under current federal law, an employer who does not remit the full amount of federal employment taxes attributable to wages by the date they are due is not liable for interest or penalties on the shortfall if the amount of the shortfall does not exceed the greater of 2% of the amount due or $100 and the employer remits the shortfall by the shortfall make-up date. The shortfall make-up date for an employer who remits monthly is the due date of the quarterly return. The shortfall make-up date for an employer who remits on a semi-weekly basis is the first Wednesday or Friday that falls on or after the 15th day of the month following the month in which the remittance was required to be made. Federal employment taxes attributable to wages are withheld federal income taxes, withheld employee old age, survivor, and disability insurance taxes and hospital taxes, the employer's corresponding old age, survivor, and disability insurance taxes and hospital taxes, and certain amounts withheld under the backup withholding requirements.

Thus, the immediate effect of the proposal is to substitute the current 5% test for a test that is the greater of 2% or $100 and to require employers who remit on a semi-weekly basis to remit a shortfall by approximately the 15th of the month following the month in which it occurred instead of at the time the employer files the next quarterly return. The result is that the penalty test and due date of a shortfall will be the same for federal and State law and that, to avoid interest or a penalty on a shortfall of withheld State income taxes, an employer must remit more of the total amount payable by the due date and remit any shortfall within a shorter amount of time than is required under current State law.

In addition to the substantive change, the proposal makes two technical changes to the State withholding tax laws. First, it changes the phrase "federal income taxes withheld from the same wages" to "federal employment taxes attributable to the same wages" because this latter phrase is more accurate. As noted above, federal income tax withheld from wages is only one of the kinds of taxes that are included under federal law in applying the test for determining when interest and penalties apply.

Second, it changes the phrase "within three banking days" to "semi-weekly" for the same reason; the former phrase is no longer accurate. Effective January 1, 1993, the Internal Revenue Service changed the designation of employers who are required to remit more frequently than on a monthly basis from a "within three-banking-day" employer to a "semi-weekly" employer to reflect changes in the payment schedule for employers. The Internal Revenue Service abandoned the eighth-monthly periods in favor of semi-weekly periods. Under the former law, an employer who accumulated $3,000 or more in employment taxes in any eighth-monthly period had to remit the taxes within three banking days of the end of that eighth-monthly period. Under the revised regulations, employers who paid at least $50,000 of employment taxes in the previous 12-month period ending June 30 must remit whatever amount of employment taxes they accumulate in a semi-weekly period.

One semi-weekly period consists of Wednesday, Thursday, and Friday; employment taxes attributable to wages paid in this period are due on or before the following Wednesday. The other semi-weekly period consists of Saturday, Sunday, Monday, and Tuesday; employment taxes attributable to wages paid in this period are due on or before the following Friday.

The State withholding tax changes made by this proposal keep the penalty provisions concerning payments of withheld State income taxes consistent with the intent of the 1990 act of the General Assembly that revised the laws concerning payment of these taxes. Chapter 945 of the 1989 Session Laws (Reg. Sess. 1990) revised the withholding tax provisions to require payment of the taxes on a faster basis. It did so by putting payment of the taxes by larger employers on the same schedule that applied under federal law. As part of the changes, that act set the penalty provisions to mirror the federal ones. The federal law changed in 1993, however, and a corresponding change was not made to State law.

Section 2 of the bill makes the clarifying change concerning information provided by taxpayers. It updates the law that requires various entities to complete tax returns and answer questions submitted to them by the Secretary by incorporating the definitions of "person," "Secretary," and "taxpayer" that now apply to this law and by referring specifically to reports as well as returns. It also clarifies the type of information the Secretary can require a taxpayer to provide by enumerating the permissible kinds of information.

The changes concerning tax information are included in this proposal because, in reviewing the State withholding tax changes, the Revenue Laws Study Committee became concerned about the scope of information the Secretary can request. The State withholding tax law requires a person who is required to file a withholding tax return to provide any information requested by the Secretary. The Committee wanted to ensure that all information requested relate to a determination of tax liability.

The requirement that a person provide any information requested by the Secretary appears throughout Chapter 105 of the General Statutes. To provide a uniform policy on tax information, the Committee therefore decided to amend the appropriate statute in Article 9 of Chapter 105 rather than make a change that applies only to information about withholding taxes. Article 9 of Chapter 105 contains the administrative provisions that apply to all taxes administered by the Secretary under that Chapter.

NORTH CAROLINA GENERAL ASSEMBLY
LEGISLATIVE FISCAL NOTE

BILL NUMBER: Legislative Proposal #2
SHORT TITLE: Conform Withholding Penalty Threshold
SPONSOR(S): Senators Winner of Buncombe; Cochrane, Hoyle, Kerr, and Marshall

FISCAL IMPACT: Expenditures: Increase ( ) Decrease ( )
Revenues: Increase ( ) Decrease ( )
No Impact ( )
No Estimate Available (X)

FUND AFFECTED: General Fund (X) Highway Fund ( ) Local Govt. ( )
Other Funds ( )

BILL SUMMARY: The proposal ties the State penalty provisions concerning payments of withheld State individual income taxes to the federal penalty provisions that apply to federal withholding taxes attributable to the same wages.

Under current State law, an employer who does not remit the full amount of State withholding taxes by the date due is not liable for interest or penalties if the shortfall is less than 5% of the amount due as long as the employer includes that amount in the next withholding remittance. These returns are due by the last day of the month following the end of a quarter.

Under current federal law, an employer who does not remit the full amount of withholding taxes by the date due is not liable for interest or penalties if the amount of the shortfall does not exceed 2% of the amount due or $100 and the employer remits the shortfall by the shortfall make-up date. This date for an employer who remits monthly is the due date of the quarterly return. For an employer who remits semi-weekly, the make-up date is the first Wednesday of the Friday that falls on or after the 15th day of the month following the month in which the full withholding payment was due.

In summary, the proposal substitutes the current 5% threshold before assessment of penalties and interest on State withholding payments to a 2% or $100 threshold, and it requires employers who remit on a semi-weekly basis to remit a shortfall by the 15th of the month following the month in which the shortfall occurred instead of when the next quarterly return is filed.

EFFECTIVE DATE: Applies to payments of withheld State income taxes made on or after January 1, 1995

PRINCIPAL DEPARTMENT(S)/PROGRAM(S) AFFECTED: Department of Revenue

FISCAL IMPACT

	FY94	FY95	FY96	FY97	FY98
REVENUES					
GENERAL FUND					
HIGHWAY FUND					
HIGHWAY TRUST FUND					
LOCAL					
EXPENDITURES None					

POSITIONS: None
ASSUMPTIONS AND METHODOLOGY:

SOURCES OF DATA: North Carolina Department of Revenue
TECHNICAL CONSIDERATIONS:
FISCAL RESEARCH DIVISION 733-4910
PREPARED BY: Ruth Sappie
APPROVED BY:
DATE: April 14, 1994

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1993

H D

Proposal 3 (93-LJZ-34)
(THIS IS A DRAFT AND IS NOT READY FOR INTRODUCTION)

Short Title: Make Dealer Plate Law Consistent. (Public)

Sponsors: Representatives Luebke, Arnold, Braswell, Gamble, Brad Miller, Ramsey, Spears, and Tallent.

Referred to:

A BILL TO BE ENTITLED

AN ACT TO RESOLVE A CONFLICT IN THE DEALER LICENSE PLATE LAW CONCERNING THE USE OF DEALER LICENSE PLATES ON VEHICLES USED BY A DEALER IN A BUSINESS THAT IS SEPARATE FROM THE BUSINESS OF SELLING MOTOR VEHICLES.

The General Assembly of North Carolina enacts:

Section 1. G.S. 20-79(d), as amended by Section 169.4 of Chapter 321 of the 1993 Session Laws and by Section 2 of Chapter 440 of the 1993 Session Laws, reads as rewritten:

"(d) Restrictions on Use. -- A dealer license plate may be displayed only on a motor vehicle that meets all of the following requirements:

(1) Is part of the inventory of the dealer.

(2) Is not consigned to the dealer.

(3) Is covered by liability insurance that meets the requirements of Article 9A of this Chapter.

(4) Is not used by the dealer in another business in which the dealer is engaged.

(5) Is driven on a highway by a person who meets the following requirements and who carries a copy of the registration card for the dealer plate displayed on the motor vehicle and any

demonstration permit issued to that person while driving the motor vehicle:

a. Is an officer of the dealer, an employee of the dealer, or a person to whom the dealer has issued a demonstration permit.

b. Is at least 18 years old unless the person is test-driving the vehicle and has a demonstration permit or is an employee of the dealer and regularly works for the dealer at least 15 hours a week.

A dealer may issue a demonstration permit for a motor vehicle to a person licensed to drive that type of motor vehicle. A demonstration permit authorizes each person named in the permit to drive the motor vehicle described in the permit for up to 96 hours after the time the permit is issued. A dealer may, for good cause, renew a demonstration permit for one additional 96-hour period.

A dealer may not lend, rent, lease, or otherwise place a dealer license plate at the disposal of a person except as authorized by this subsection.

~~A dealer who sells, trades, or services farm tractors may use a dealer license plate on a vehicle that is owned by the dealer and is used to haul farm tractors or any other farm-related equipment sold, traded, or serviced by the dealer.~~"

Sec. 2. This act becomes effective July 1, 1994.

Explanation of Proposal 3

This proposal establishes a uniform policy on the display of dealer license plates on motor vehicles that are used in a business that is separate from a dealer's business of selling motor vehicles. It does this by repealing the one exception to the general prohibition on this type of use, effective July 1, 1994.

With one exception, the dealer license plate laws prohibit a dealer from putting a dealer license plate on a motor vehicle that is used by the dealer in a business that is separate from the business of selling motor vehicles. The one exception is for a motor vehicle dealer who also sells, trades, or services farm tractors or other farm-related equipment. The law allows these dealers to put a dealer license plate on a motor vehicle that is used to haul the farm tractors or other farm-related equipment.

This one exception to the general prohibition is the result of two conflicting provisions concerning dealer license plates that were enacted in the 1993 Session. Section 169.4 of Chapter 321 of the 1993 Session Laws, the Current Operations Appropriations Act, amended the dealer license plate laws by inserting the exception to the general prohibition. Chapter 321 was ratified on July 9, 1993; the exception was effective July 1, 1993. On July 12, 1993, the General Assembly enacted Chapter 440 of the 1993 Session Laws. Chapter 440 rewrote the dealer license plate laws to restrict the number of plates that can be issued to a dealer and to set out clearly the existing restrictions on the use of dealer plates. That act, which was recommended by the Revenue Laws Study Committee, became effective October 1, 1993.

Chapter 440 continued to prohibit the display of a dealer license plate on a motor vehicle that is used in a business that is separate from a dealer's business of selling motor vehicles with no exceptions. The exception created by Chapter 321 remained, however, even though the exception was contrary to the intent of Chapter 440.

The result is that the current law allows a dealer who sells tractors or other farm-related equipment to put a dealer plate on a vehicle used in a business that is separate from the business of selling motor vehicles and prohibits all other dealers from a similar use of dealer plates. A dealer's business of selling motor vehicles includes only the sale of motor vehicles that must have a license plate to be driven on a highway. Consequently, if a dealer both sells and services motor vehicles, the dealer cannot put a dealer plate on a motor vehicle the dealer loans to a car owner whose vehicle is being repaired by the dealer. That dealer also cannot put a dealer license plate on a motor vehicle the dealer uses to pick up parts for the vehicles the dealer services.

Dealers have been and are now generally restricted from using dealer license plates on motor vehicles that are used in a separate business of the dealer because this use is contrary to the purpose of dealer license plates and is difficult to reconcile with the requirement that a motor vehicle displaying a dealer license plate be part of the inventory of the dealer. The purpose of a dealer license plate is to allow a customer of the dealer to test-drive a motor vehicle offered for sale by the dealer and to allow the dealer to pick up a motor vehicle from its point of purchase by the dealer and to have the vehicle prepared for sale. Furthermore, a motor vehicle used regularly by the dealer for property-hauling purposes or any other purpose is not in fact part of the dealer's inventory.

The Revenue Laws Study Committee is concerned about the improper use of dealer plates because of the effect of the improper use on State and local revenues. A motor vehicle that is improperly driven with a dealer license plate escapes local property taxes, escapes State motor vehicle title and registration fees, and receives an unfair advantage on automobile insurance. It escapes property taxes because it is supposedly part of the inventory of the dealer and is, therefore, exempted from property tax by the exemption of inventory. It escapes motor vehicle title and registration fees because the title to the vehicle has not been transferred to the person who uses the vehicle. It enjoys an unfair advantage on insurance because it is insured through the dealer's blanket liability insurance policy rather than through a policy that is specific to the vehicle.

NORTH CAROLINA GENERAL ASSEMBLY
LEGISLATIVE FISCAL NOTE

BILL NUMBER: Legislative Proposal #3
SHORT TITLE: Make Dealer Plate Law Consistent
SPONSOR(S): Representatives Luebke; Jarrell, Arnold, Braswell, Gamble, Miller, Spears, and Tallent

FISCAL IMPACT: Expenditures: Increase ( ) Decrease ( )
Revenues: Increase (X) Decrease ( )
No Impact ( )
No Estimate Available ( )

FUND AFFECTED: General Fund ( ) Highway Fund (X) Local Govt. ( )
Other Funds (X) Highway Trust Fund

BILL SUMMARY: The proposal establishes a uniform policy on the display of dealer plates on motor vehicles that are used in a business that is separate from a dealer's business of selling motor vehicles. It does this by repealing the one exception to the general statutory prohibition on this type of use.

The exception is for a motor vehicle dealer who also sells, trades, or services farm tractors or other farm-related equipment. Current law allows these dealers to put a dealer license plate on a motor vehicle that is used to haul the farm tractors and other farm-related equipment.

Dealers have been and are now generally restricted from using dealer license plates on motor vehicles that are used in a separate business of the dealer because this is contrary to the intended purposes of dealer plates. The purposes are to allow a customer to test-drive a vehicle offered for sale, to allow the dealer to pick up a motor vehicle from its point of purchase, and to move the vehicle if necessary to prepare it for sale.

Under current law, vehicles owned by farm equipment dealers used to haul farm tractors or other farm-related equipment are exempt from registration and title fees that are Highway Fund revenue sources. Additionally, any vehicles purchased by farm equipment dealers are exempt from the highway use tax, a Highway Trust Fund revenue source.

EFFECTIVE DATE: July 1, 1994

PRINCIPAL DEPARTMENT(S)/PROGRAM(S) AFFECTED: Division of Motor Vehicles, Department of Transportation

FISCAL IMPACT

	FY94	FY95	FY96	FY97	FY98
REVENUES					
GENERAL FUND					
HIGHWAY FUND		$150,000	$150,000	$150,000	$150,000
HIGHWAY TRUST FUND		$ 35,000	$ 35,000	$35,000	$35,000
LOCAL					

EXPENDITURES
POSITIONS: None

ASSUMPTIONS AND METHODOLOGY: A representative of a statewide trade association of farm equipment dealers estimates the number of these dealers in the state is approximately 160.

A comparison of annual registration fees owed on property-hauling vehicles under current law as compared to the fees owed under this proposal is shown here by size of truck. These truck weights are typical of those generally owned by farm equipment dealers.

Vehicle Size	Dealer Plate Fee	Registration by Weight
Tractor-trailer	$20	$963
33,000 lb. truck	$20	$399
12,000 lb. truck	$20	$96.50

The current exception to dealer plate law allowing the use of dealer plates on farm equipment hauling vehicles could save a large dealer $1,398.50 in annual registration fees. Assuming that one-half of the 160 farm equipment dealers own at a minimum the three trucks listed above and the other half own at a minimum a 33,000 lb. and a 12,000 lb. truck, the loss to the Highway Fund in annual registration fees would be $148,320. The Highway Fund would also lose a small amount ($140) in lost title fees. These two revenue impacts are rounded up to $150,000.

For each new vehicle purchased by farm equipment dealers in excess of $33,000 in value, the Trust Fund loses $1000. If a ten-year replacement cycle is assumed on these three vehicles, the Trust Fund loses $33,600 in highway use tax revenues. Additionally, the Trust Fund loses $31.50 per vehicle in title fees, which amounts to $1,260. These two revenue impacts are rounded up to $35,000.

SOURCES OF DATA: Division of Motor Vehicles, Department of Transportation

TECHNICAL CONSIDERATIONS:

FISCAL RESEARCH DIVISION 733-4910
PREPARED BY: Ruth Sappie
APPROVED BY:
DATE: April 14, 1994

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1993

H D

PROPOSAL 4 (93-LCX-245(1.2)Z)
(THIS IS A DRAFT AND NOT READY FOR INTRODUCTION)
17-MAY-94

Short Title: Revenue Laws Technical Changes. (Public)

Sponsors: Representatives Jarrell, Arnold, Braswell, Gamble, Luebke, Brad Miller, Ramsey, Spears, and Tallent.

Referred to:

A BILL TO BE ENTITLED

AN ACT TO MAKE TECHNICAL AND CONFORMING CHANGES TO THE REVENUE LAWS AND RELATED STATUTES.

The General Assembly of North Carolina enacts:

Section 1. Section 4 of Chapter 543 of the 1993 Session Laws is repealed.

Sec. 2. G.S. 105-113.18(3) reads as rewritten:

"(3) <u>Shipping Report. --</u> Any person, except a licensed distributor, who transports cigarettes upon the public highways, roads, or streets of this State, upon notice from the Secretary, shall file a report in the form prescribed by the Secretary and containing the information required by the Secretary."

Sec. 3. G.S. 105-113.45 reads as rewritten:

"§ 105-113.45. Excise taxes on soft drinks and base products.

(a) Bottled Soft Drinks. -- An excise tax of one cent (1¢) is levied on each bottled soft drink.

(b) Repealed by Session Laws 1991, c. 689, s. 276.

(c) Liquid Base Products. -- An excise tax <u>at the rate</u> of one dollar ($1.00) a ~~gallon, or four-fifths of a cent (4/5¢) an ounce or a fraction of an ounce,~~ <u>gallon</u> is levied on <u>each individual</u>

container of a liquid base product. The tax applies regardless whether the liquid base product is diverted to and used for a purpose other than making a soft drink.

(d) Dry Base Products. -- An excise tax is levied on each individual container of a dry base product at the rate:

(1) Of one cent (1¢) an ounce ~~or a fraction of an ounce~~ if the dry base product is not converted into a syrup or other liquid base product before it is used to make a soft drink.

(2) That would apply under subsection (c) to the resulting liquid base product if the dry base product is converted into a liquid base product before it is used to make a soft drink.

(e) Repealed by Session Laws 1991, c. 689, s. 276."

Sec. 4. G.S. 105-130.5(a)(12) is reenacted and reads as rewritten:

"(12) The amount allowed under the Code for depreciation or as an expense in lieu of depreciation for a utility plant acquired by a natural gas local distribution company, to the extent the plant is included in the company's rate base at zero cost in accordance with G.S. 62-158."

Sec. 5. G. S. 105-130.5(b)(11) reads as rewritten:

"(11) ~~The amount by which~~ If a deduction for an ordinary and necessary business expense was required to be reduced or was not allowed under the Code ~~for federal tax purposes or the amount of such a deduction that was not allowed under the Code~~ because the corporation claimed a federal tax credit against its federal income tax liability for the income year in lieu of a ~~deduction.~~ deduction, the amount by which the deduction was reduced and the amount of the deduction that was disallowed."

Sec. 6. G. S. 105-130.37(b)(3) reads as rewritten:

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

Sec. 7. G.S. 105-134.6(b) is amended by adding a new subdivision to read:

"(10) The amount by which the basis of property under this Article exceeds the basis of the property under the Code, in the year the taxpayer disposes of the property."

Sec. 8. G.S. 105-163.012(d) reads as rewritten:

"(d) ~~For purposes of this Article,~~ Unless the taxpayer is required to add the amount of allowable credit to federal taxable income under G.S. 105-130.5(a)(10), the taxpayer's basis in the equity securities or subordinated debt acquired as a result of an investment in a North Carolina Enterprise Corporation, qualified business venture, or qualified grantee business shall be reduced for the purposes of this Article by the amount of allowable credit. 'Allowable credit' means the amount of credit allowed under G.S. 105-163.011 reduced as provided in subsection (c) of this section."

Sec. 9. G.S. 105-163.013(d) reads as rewritten:

"(d) Application Forms; Rules; Fees. Applications for registration, renewal of registration, and reinstatement of registration under this section shall be in the form required by the Secretary of State. The Secretary of State may, by rule, require applicants to furnish supporting information in addition to the information required by subsections ~~(a), (b),~~ (b) and (c) of this section. The Secretary of State may adopt rules in accordance with Chapter 150B of the General Statutes that are needed to carry out the Secretary's responsibilities under this Division. The Secretary of State shall prepare blank forms for the applications and shall distribute them throughout the State and furnish them on request. Each application shall be signed by the owners of the business or, in the case of a corporation, by its president, vice-president, treasurer, or secretary. There shall be annexed to the application the affirmation of the person making the application in the following form: 'Under penalties prescribed by law, I certify and affirm that to the best of my knowledge and belief this application is true and complete.' A person who submits a false application is guilty of a misdemeanor and is punishable as provided in G.S. 14-3.

The fee for filing an application for registration under this section ~~shall be~~ is one hundred dollars ($100.00). The fee for filing an application for renewal of registration under this section ~~shall be~~ is fifty dollars ($50.00). The fee for filing an application for reinstatement of registration under this section ~~shall be~~ is fifty dollars ($50.00).

An application for renewal of registration under this section shall indicate whether the applicant is a minority business, as defined in G.S. 143-128, and shall include a report of the number of jobs the business created during the preceding year that are attributable to investments that qualify under this section for a tax credit and the average wages paid by each job. An application that does not contain this information is incomplete and the applicant's registration may not be renewed until the information is provided."

Sec. 10. G.S. 105-163.013(g) reads as rewritten:

"(g) ~~[Report by Secretary of State].~~ Report by Secretary of State. -- The Secretary of State shall report to the Legislative Research Commission by October 1 of each odd-numbered year and by February 1 of each even-numbered year all of the businesses that have registered with the Secretary of State as qualified business ventures and qualified grantee businesses. The report shall include the name and address of each business, a detailed description of the types of business in which it engages, whether the business is a minority business as defined in G.S. 143-128, the number of jobs created by the business during the period covered by the report, and the average wages paid by these jobs."

Sec. 11. Effective July 1, 1995, G.S. 105-213(b), as amended by Section 26(a) of Chapter 321 of the 1993 Session Laws, reads as rewritten:

"(b) Allocation of Distribution. -- The amount of revenue to be distributed under subsection (a) shall be allocated among the counties in proportion to the net amount of taxes collected under this Article in each county during the preceding fiscal year. The net amount of taxes collected in a county is the amount collected less the amount of refunds made of taxes previously collected. The Secretary shall keep a separate record by counties of the taxes collected under this Article. The Secretary shall allocate the amount of revenue to be distributed under subsection (a) to the counties in accordance with the tax records. The amounts so allocated to each county shall in turn be allocated between the county and the municipalities in the county in proportion to the total amount of ad valorem taxes levied by each during the fiscal year preceding the distribution. In dividing these amounts between each county and its municipalities, the Secretary shall treat taxes levied by a merged school administrative unit described in G.S. 115C-513 in a part of the unit located in a county as taxes levied by the county in which that part is located. After making these allocations, the Secretary shall certify to the State Controller and to the State Treasurer the amount to be distributed to each county and municipality in the State. The State Controller shall then issue a warrant on the State Treasurer to each county and municipality in the amount certified.

For the purpose of computing the ~~distribution of the intangibles tax~~ allocation of the tax under this subsection to any county and the municipalities located in the county for any quarter 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 county and the municipalities in the county, the Department shall use the last property valuation of the public service company that has been certified.

The chair of each board of county commissioners and the mayor of each municipality shall report to the Secretary information requested by the Secretary to enable the Secretary to allocate the amount distributed by this subsection. If a county or municipality fails to make a requested report within the time allowed, the Secretary may disregard the county or municipality in allocating the amount distributed by this subsection."

Sec. 12. G.S. 105-228.4(a) reads as rewritten:

"(a) As a condition precedent to doing business in this State, an insurance company must apply for and obtain a certificate of registration from the Commissioner of Insurance by March 1 of each year. The certificate shall become effective the following July 1 and shall remain in effect for one year. Except as provided in subsections (b) and (c) of this section, the insurance company shall pay an annual fee for the certificate as follows: ~~Each insurance company shall, as a condition precedent for doing business in this State, on or before the first day of March of each year apply for and obtain from the Commissioner of Insurance a certificate of registration, or license, effective the first day of July, and shall pay for such certificate the following annual fees except as hereinafter provided in subsections (b) and (c):~~

For each domestic farmer's mutual assessment fire insurance company ~~each~~	$ 25.00
For each fraternal order	100.00
For each of all other insurance companies, except mutual burial associations taxed under G.S. 105-121.1	500.00

The fees levied ~~above~~ in this subsection shall be in addition to those specified in G.S. 58-6-5."

Sec. 13. G.S. 105-228.90 reads as rewritten:

"§ 105-228.90. Scope and definitions.

(a) Scope. -- This Article applies to Subchapters I, V, and VIII of this Chapter and to inspection ~~fees~~ taxes levied under Article 3 of Chapter 119 of the General Statutes.

(b) Definitions. -- The following definitions apply in this Article:

(1) Code. -- The Internal Revenue Code as enacted as of January 1, 1993, including any provisions enacted as of that date which become effective either before or after that date.

(2) Reserved.

(3) Electronic Funds Transfer. -- A transfer of funds initiated by using an electronic terminal, a telephone, a computer, or magnetic tape to instruct or authorize a financial institution or its agent to credit or debit an account.

(4) Reserved.

(5) Person. -- An individual, a fiduciary, a firm, an association, a partnership, a limited liability company, a corporation, a unit of government, or another group acting as a unit. The term includes an officer or employee of a corporation, a member, a manager, or an employee of a limited liability company, and a member or employee of a partnership who, as officer, employee, member, or manager, is under a duty to perform an act in meeting the requirements of Subchapter I, V, or VIII of this Chapter or of Article 3 of Chapter 119 of the General Statutes.

(6) Secretary. -- The Secretary of Revenue.

(7) Tax. -- A tax levied under Subchapter I, V, or VIII of this Chapter or an inspection ~~fee~~ tax levied under Article 3 of Chapter 119 of the General Statutes. Unless the context clearly requires otherwise, the terms 'tax' and 'additional tax' include penalties and interest as well as the principal amount.

(8) Taxpayer. -- A person subject to the tax or reporting requirements of Subchapter I, V, or VIII of this Chapter or of Article 3 of Chapter 119 of the General Statutes."

Sec. 14. G.S. 105-241.1(e) reads as rewritten:

"(e) ~~Where~~ Statute of Limitations. -- If a proper application for a license or a return has been filed and in the absence of fraud, the Secretary ~~of Revenue~~ shall assess any tax or additional tax due from a taxpayer within three years after the date upon which ~~such~~ the application or return ~~is~~ was filed or within three years after the date upon which ~~such~~ the application or return was required by law to be filed, whichever is ~~the~~ later. If a taxpayer forfeits a tax credit pursuant to G.S. 105-163.014, the Secretary shall assess any tax or additional tax due as a result of the forfeiture within three years after the date of the forfeiture. Any tax or additional tax due from the taxpayer may be assessed at any time if (i) no proper application for a license or no return has been filed, (ii) a false or fraudulent application or return has been filed, or (iii) there has been an attempt in any manner to fraudulently defeat or evade tax.

~~Provided, the~~ The taxpayer may make a written waiver of any of the limitations of time set out in this section, for either a definite or an indefinite ~~time, and if such waiver is accepted by the Secretary he~~ time. If the Secretary accepts the waiver, the Secretary may institute assessment procedures at any time within the time extended by ~~such~~ the waiver. ~~This proviso shall apply to assessments made or undertaken under any provision of all schedules of the Revenue Act, and to assessments under Subchapter V of Chapter 105 and Chapter 18 of the General Statutes.~~"

Sec. 15. G.S. 105-241.2(b) reads as rewritten:

"(b) Secretary to Provide Records. -- Upon receipt by the Secretary of the taxpayer's petition, the Secretary shall transmit to the Tax Review Board all of the records, data, evidence, and other materials in the Secretary's possession pertaining to the matters the Tax Review Board is being requested by the taxpayer to review. The Secretary shall also transmit to the Board a copy of the decision of the ~~Board~~ Secretary on the matters."

Sec. 16. G.S. 105-241.2(e) reads as rewritten:

"(e) Jeopardy ~~Assessments.~~ Levies. -- At any time the Secretary may, if in the Secretary's opinion, such action is necessary for the protection of the interest of the State, proceed at once to levy the assessment for the amount of the tax against the property of the taxpayer seeking the administrative review. In levying the assessment the Secretary shall make a certificate verifying the essential parts relating to the tax, including the amount thereof asserted to be due, the date when same is asserted to have become due and payable, the person, firm, or corporation chargeable therewith, and the nature of the tax. The Secretary shall transmit this certificate to the clerk of the superior court of any county in which the taxpayer resides or has property; whereupon, it shall be the duty of the clerk of the superior court of the county to docket the certificate and to index it on the cross index of judgments. When so docketed and indexed, the certificate of tax liability shall constitute a lien upon the property of the taxpayer to the same extent as that provided for by G.S. 105-241. No execution shall issue on the certificate before final determination of the administrative review by the Tax Review Board; provided, however, if the Secretary determines that the collection of the tax would be jeopardized by delay, the Secretary may cause execution to be issued, as provided in this Chapter, immediately against the personal property of the taxpayer unless the taxpayer files with the Secretary a bond in the amount of the asserted liability for tax, penalty and interest. If upon final administrative determination the tax asserted or any part thereof is sustained, execution may issue on the certificate at the request of the Secretary and the sheriff shall proceed to advertise and sell the property of the taxpayer.

Within five days after a jeopardy levy is made under this subsection that is not the result of a criminal investigation or of a liability for a tax imposed under Article 2D of this Chapter, the Secretary must provide the taxpayer with a written statement of the information upon which the Secretary relied in making the levy. Within 30 days after receipt of this statement or, if no statement was received, within 30 days after the statement was due, the taxpayer may request the Secretary to review the action taken. After receipt of this request, the Secretary shall determine whether the levy was reasonable under the circumstances. The Secretary shall give the taxpayer written notice of this determination within 30 days after the request. The taxpayer may seek judicial review of this determination as provided in G.S. 105-241.5."

Sec. 17. G.S. 105-248 reads as rewritten:

"§ 105-248. ~~State taxes; purposes.~~ Purpose of State taxes.

The taxes levied in this Subchapter are for the expenses of the State government, the appropriations to its educational, charitable, and penal institutions, ~~pensions for Confederate soldiers and widows,~~ the interest on the debt of the State, ~~for~~ the public schools, and other specific appropriations made by law, and shall be collected and paid into the ~~general fund of the State Treasurer.~~ General Fund.

~~Whenever in any law or act of incorporation, granted either under the general law or by special act, there is any limitation or exemption of taxation, the same is hereby repealed, and all the property and effects of all such corporations, other than the bonds of this State and of the United States government, shall be liable to taxation, except property belonging to the United~~

~~States and to municipal corporations, and property of churches, religious societies, charitable, educational, literary, or benevolent institutions or orders, and also cemeteries: Provided, that no property whatever, held or used for investment, speculation, or rent, shall be exempt, other than bonds of this State and of the United States government, unless said rent or the interest on or income from such investment shall be used exclusively for religious, charitable, educational, or benevolent purposes, or the interest upon the bonded indebtedness of said religious, charitable, or benevolent institutions.~~"

Sec. 18. G.S. 105-258.1(e) reads as rewritten:

"(e) Suspension of Interview. -- The Department shall suspend an interview relating to the determination of a tax ~~if,~~ if the taxpayer is not accompanied by a representative and, at any time during the interview, ~~the taxpayer~~ expresses the desire to consult with ~~a person permitted to represent the taxpayer before the Department.~~ another person."

Sec. 19. The catchline of G.S. 105-269.3 reads as rewritten:

"**§ 105-269.3. Enforcement of Subchapter V and fuel inspection ~~fee.~~ tax.**"

Sec. 20. G.S. 105-446 reads as rewritten:

"**§ 105-446. Refund for tax on motor fuel used other than to ~~propel~~ operate a motor vehicle.**

A person who purchases and uses motor fuel for a purpose other than to operate a licensed motor vehicle may receive an annual refund for the tax the person paid on fuel used during the preceding calendar year at a rate equal to the amount of the flat cents-per-gallon rate in effect during the year for which the refund is claimed plus the average of the two variable cents-per-gallon rates in effect during that year, less one cent (1¢) per gallon. An application for a refund allowed under this section shall be made in accordance with G.S. 105-440."

Sec. 21. G.S. 105-449.16(a) reads as rewritten:

"(a) A tax is imposed upon all of the following fuel:

(1) Fuel sold or delivered by a supplier to a licensed user-seller.

(2) Fuel used by a supplier in a motor vehicle owned, leased, or operated by the supplier.

(3) Fuel delivered by a supplier directly into the fuel supply tank of a motor vehicle.

(4) Fuel imported by a user-seller into this State, by a means other than carrying the fuel in a fuel

supply tank of a motor vehicle, for resale or to ~~propel~~ operate a motor vehicle.

(5) Fuel acquired tax free by a user-seller or user in this State for resale or to ~~propel~~ operate a motor vehicle.

The tax on liquid fuel is at the rate established under G.S. 105-434. The tax on non-liquid fuel is at a rate equivalent to the rate of tax on liquid fuel, as determined by the Secretary. A supplier who consigns fuel to a reseller may elect to report and pay the tax due on the fuel when the reseller sells or dispenses the fuel instead of when the supplier delivers the fuel to the reseller.

The primary purposes of this levy and this Article are to provide a more efficient and effective method of collecting the tax now imposed and collected pursuant to G.S. 105-435, by providing for the collection of the tax from the supplier instead of the user. The tax levied by this Article is in lieu of rather than in addition to the tax levied by G.S. 105-435; payment of the tax levied by this Article constitutes compliance with G.S. 105-435."

Sec. 22. G.S. 105-449.17 reads as rewritten:

"**§ 105-449.17. Exemption for fuel sold for nonhighway use.**

The tax imposed by this Article does not apply to fuel sold or delivered by a supplier to a user or user-seller when all of the following apply:

(1) The fuel is for a purpose other than to ~~propel~~ operate a motor vehicle.

(2) The supplier dispenses the fuel into a storage facility that is not required to be marked or is marked as follows with the phrase 'For Nonhighway Use' or a similar phrase that clearly indicates the fuel is not to be used to ~~propel~~ operate a motor vehicle:

a. The storage tank of the storage facility must be marked if the storage tank is visible.

b. The fillcap or spill containment box of the storage facility must be marked.

c. The dispensing device that serves the storage facility must be marked.

A storage facility must be marked unless it contains fuel used only in heating, drying crops, or a manufacturing process and is installed in a manner that makes use of the fuel for any other purpose improbable.

(3) The supplier does not know or have reason to know the fuel is to be used to ~~propel~~ operate a motor vehicle.

A supplier is liable for the tax due on fuel dispensed into a storage facility of a user or user-seller that is required to be marked but is not marked to indicate the fuel is to be used for a purpose other than to ~~propel~~ operate a motor vehicle. A user or user-seller is liable for the tax due on fuel dispensed by a supplier into a storage facility that is marked for nonhighway use and is subsequently used or sold for use to ~~propel~~ operate a motor vehicle."

Sec. 23. G.S. 105-449.18 reads as rewritten:

"**§ 105-449.18. Liability for tax on non-tax-paid fuel sold or delivered to unlicensed persons.**

A person who, knowing or having reason to know that the fuel is to be sold or used to ~~propel~~ operate a motor vehicle, sells or delivers to a person who is not licensed under this Article fuel on which the tax due under this Article has not been paid is liable for the tax imposed on the fuel by this Article. "

Sec. 24. G.S. 105-449.19 reads as rewritten:

"**§ 105-449.19. Time when supplier must file return and pay any tax due.**

(a) Return. -- A supplier of fuel who acquires, sells, delivers, or uses part or all of the fuel to ~~propel~~ operate a motor vehicle must file a monthly return. A supplier of fuel who sells, delivers, or uses fuel only for a purpose other than to ~~propel~~ operate a motor vehicle must file a quarterly return. A return must be filed with the Secretary on a form provided by the Secretary. A monthly return covers a calendar month and is due within 25 days after the end of each month. A quarterly return covers a calendar quarter and is due within 30 days after the end of each quarter. Tax owed by a supplier on fuel acquired, sold, delivered, or used by the supplier during a reporting period is due when the return for that period is due.

(b) Information. -- A return filed by a supplier must contain all of the following information:

(1) The amount of fuel the supplier had on hand on the first and last days of the reporting period.

(2) The amount of fuel the supplier received during the reporting period.

(3) The amount of fuel the supplier used during the reporting period to ~~propel~~ operate a motor vehicle and the amount of fuel the supplier used during the

reporting period for a purpose other than to ~~propel~~ operate a motor vehicle, stated separately.

(4) The amount of fuel the supplier sold or delivered to a licensed bulk-user, a licensed reseller, a licensed user, or other persons, stated separately."

Sec. 25. G.S. 105-449.20 reads as rewritten:

"**§ 105-449.20. When Secretary may estimate tax liability of supplier or user-seller.**

Whenever a supplier or a user-seller fails to file a report under G.S. 105-449.19 or 105-449.21 or files a false report under one of those statutes, the Secretary shall determine, from any information obtainable, the number of gallons of fuel with respect to which the supplier or user-seller owes tax under this Article. When a user-seller sells or uses more fuel than the user-seller reports to the Secretary as having been purchased from a supplier, the user-seller is presumed to have acquired the unreported fuel tax-free to ~~propel~~ operate a motor vehicle. When a user-seller sells or uses more fuel to ~~propel~~ operate a motor vehicle than the user-seller reports to the Secretary as having been purchased from a supplier to ~~propel~~ operate a motor vehicle, the user-seller is presumed to have acquired tax-free to ~~propel~~ operate a motor vehicle all fuel not reported as having been acquired to ~~propel~~ operate a motor vehicle. "

Sec. 26. G.S. 105-449.26 reads as rewritten:

"**§ 105-449.26. User-sellers and certain suppliers must give receipts for and keep records of fuel sold at retail.**

(a) Receipts and Records. -- When required by this section, a user-seller and a supplier who is also a reseller but is licensed only as a supplier must give a receipt for and keep a record of certain fuel sold at retail from any of the following locations:

(1) A retail service station or other retail establishment operated by the user-seller or supplier.

(2) A bulk storage facility of the user-seller or supplier to which the buyer came to buy the fuel.

(3) Any other location at which the user-seller or supplier dispenses fuel into a motor vehicle.

If the fuel is sold to ~~propel~~ operate a motor vehicle, the user-seller or supplier must give the buyer a receipt only when the buyer asks for a receipt and must keep a record of any receipt given. If the fuel is diesel and is sold for a purpose other than to ~~propel~~ operate a motor vehicle, the user-seller or supplier must give the buyer a receipt only when the buyer asks for a receipt but must always keep a record of the sale unless subsection (c) exempts the user-seller or supplier from the requirement of keeping a record.

If the Secretary determines that a user-seller or a supplier has sold nontaxpaid fuel at retail to ~~propel~~ operate a motor vehicle, the Secretary may require the user-seller or supplier to keep a record of all fuel sold at retail to ~~propel~~ operate a motor vehicle. A user-seller or supplier who is required to keep a record of diesel sold at retail for a purpose other than to ~~propel~~ operate a motor vehicle is liable for the excise tax and the inspection ~~fee~~ tax on the diesel if the user-seller or supplier does not keep a record of the sale.

(b) Content. -- A record of a sale and a receipt for a sale shall include all of the following information:

(1) The name and address of the user-seller or supplier.
(2) The name and address of the person buying the fuel.
(3) The date the fuel was sold.
(4) The amount of fuel sold.
(5) The type of fuel sold.
(6) The total sales price of the fuel.
(7) Either of the following:
   a. The company name and company unit number of the motor vehicle into which the fuel was dispensed.
   b. The license plate number of the motor vehicle into which the fuel was dispensed and the state that issued the license plate.
(8) If the fuel is diesel and is sold for a purpose other than to ~~propel~~ operate a motor vehicle, the type of container or equipment into which the fuel was dispensed.

(c) Exception. -- A user-seller or supplier who sells diesel at a marina from a storage facility whose location makes it improbable that the diesel could be dispensed for a purpose other than to ~~propel~~ operate a watercraft must keep a record of a sale only if the user-seller or supplier gives the buyer a receipt for the sale."

Sec. 27. G.S. 105-449.32 is repealed.

Sec. 28. G.S. 18B-902(e) reads as rewritten:

"(e) Fee for Combined Applications. -- If application is made at the same time for retail malt beverage, unfortified wine and fortified wine permits for a single business location, the total fee for those applications shall be two hundred dollars

($200.00). If application is made at the same time for brown-bagging and special occasion permits for a single business location, the total fee for those applications shall be three hundred dollars ($300.00). If application is made at the same time for wine and malt beverage importer permits, the total fee for those applications shall be one hundred fifty dollars ($150.00). If application is made at the same time for wine and malt beverage wholesaler permits, the total fee for those applications shall be one hundred fifty dollars ($150.00). If application is made in the same year for vendor representative permits to represent more than one vendor, only one fee shall be paid. If application is made at the same time for nonresident malt beverage vendor and nonresident wine vendor permits, the total fee for those applications shall be ~~twenty-five dollars ($25.00).~~ fifty dollars ($50.00)."

Sec. 29. G.S. 119-16.2 reads as rewritten:

"**§ 119-16.2. Application for license.**

~~Any person, firm or corporation having in his possession kerosene on which the inspection fee has not been paid, and who is not required to be licensed under the provisions of G.S. 105-433, shall, prior to the commencement of doing business, file a duly acknowledged application for a license with the Secretary of Revenue on a form prescribed by the Secretary setting forth the name under which such distributor transacts or intends to transact business within this State, the address of each place of business and a designation of the principal place of business. If such distributor is a firm or association, the application shall set forth the name and address of each person constituting the firm or association, and if a corporation, the names and addresses of the principal officers and such other information as the Secretary of Revenue may require. Each distributor shall at the same time file a bond in such amount, not exceeding twenty thousand dollars ($20,000) in such form and with such surety or sureties as may be required by the Secretary of Revenue, conditioned upon the rendition of the reports and the payment of the tax hereinafter provided for. Upon approval of the application and bond, the Secretary of Revenue shall issue to the distributor a nonassignable license with a duplicate copy of each place of business of said distributor in this State, a copy of which shall be displayed conspicuously at each such place of business and shall continue in force until surrendered or cancelled. No distributor shall sell, offer for sale, or use any kerosene within this State, until such license has been issued. Any distributor failing to comply with or violating any of the~~

~~provisions of this section shall be~~ A person may not engage in business as a kerosene distributor unless the person has either a license issued under G.S. 105-433 or a kerosene license issued under this section. To obtain a license under this section, an applicant must file an application with the Secretary of Revenue on a form provided by the Secretary and file with the Secretary a bond in the amount required by the Secretary, not to exceed twenty thousand dollars ($20,000). An applicant must give the Secretary the same information the applicant would be required to give under G.S. 105-433 if the applicant were applying for a license under that section. A bond filed under this section must be conditioned on compliance with this Article, be payable to the State, and be in the form required by the Secretary. A license issued under this section remains in effect until surrendered or canceled, must be displayed in the same manner as a license issued under G.S. 105-433, and is subject to the same restrictions as a license issued under that section. A person who fails to comply with this section is guilty of a Class 1 misdemeanor."

Sec. 30. G.S. 158-37(b)(3) reads as rewritten:

"(3) Except as otherwise provided in this Article, to exercise the powers granted to a local government for development by G.S. ~~158-7.1 and the powers granted to certain local governments for development in G.S. 158-7.1(d1),~~ 158-7.1, except the power to levy a property tax."

Sec. 31. Except as otherwise provided in this act, this act is effective upon ratification.

Explanation of Proposal 4

This proposal makes numerous technical and clarifying changes to the revenue laws and related statutes. The following table provides a section-by-section analysis of the proposed changes.

Section	Explanation
1	Repeals a Session Law that duplicates another Session Law, Section 18 of Chapter 485 of the 1993 Session Laws.
2	Adds a missing catchline to a subdivision.
3	Conforms statute to existing administrative practice that soft drink base products are taxed on a per container basis. If a container contains less than the unit measure (a gallon for liquid products and an ounce for dry products), the tax is reduced proportionally.
4	Reenacts a provision that may not have been rollcalled when originally enacted and corrects a grammatical error.
5	Clarifies that the deduction described in this subdivision is based on two forms of the same federal adjustment. This change was requested by the Department of Revenue.
6	Removes an unnecessary cross-reference and a reference to a repealed statute and substitutes a reference to the Code.
7	Provides an individual income tax deduction to prevent double taxation in cases in which the basis of property for State tax purposes exceeds the basis of property under the Code. For example, individual taxpayers who claim certain federal income tax credits may be required to make a reduction in the basis of their property; if there is no corresponding State tax credit, the basis for State tax purposes will be higher.
8	Clarifies that the reduction in basis required when a taxpayer takes a tax credit for a qualified business investment applies only if the taxpayer was not required to make a corresponding adjustment under the State corporate income tax.
9	Deletes a reference to a repealed subsection and clarifies that certain references to "the Secretary" mean the Secretary of State.
10	Adds a missing catchline.

Section	Explanation
11	Makes a language change that was in the 1993 Session Laws but did not go into effect due to a redlining error.
12	Deletes a word that was inadvertently retained due to a redlining error and modernizes and clarifies language.
13	Makes conforming changes to reflect the fact that the gasoline and oil inspection fee has been renamed the gasoline and oil inspection tax.
14	Removes a redundant sentence, adds a catchline, and modernizes and clarifies language.
15	Corrects an incorrect word.
16	Corrects an incorrect term.
17	Removes an obsolete reference to pensions for Confederate soldiers and widows and deletes redundant provisions.
18	Removes language that gives the incorrect impression that there are restrictions on whom a taxpayer is permitted to consult with and clarifies that an interview will not be suspended if the taxpayer is already accompanied by a representative.
19	Makes a conforming change to reflect the fact that the gasoline and oil inspection fee has been renamed the gasoline and oil inspection tax.
20 - 25	Changes the word "propel" to "operate" to clarify that fuel used to operate a motor vehicle on the highways is equally taxable whether the vehicle is moving or idling.
26	Makes a conforming change to reflect the fact that the gasoline and oil inspection fee has been renamed the gasoline and oil inspection tax and changes the word "propel" to "operate" to clarify that fuel used to operate a motor vehicle on the highways is equally taxable whether the vehicle is moving or idling.
27	Repeals a redundant statute. The substance of this statute is contained in Article 9 of Chapter 105 of the General Statutes, which governs the administration of taxes collected by the Department of Revenue.
28	In 1993, the fees for nonresident malt beverage permits and nonresident wine vendor permits were raised from $25.00 to $50.00. The 1993 legislation failed to make a conforming increase from $25.00 to $50.00 in the fee for a combined nonresident malt beverage and nonresident wine vendor permit. This section makes the conforming increase in the combined permit fee.

Section	Explanation
29	Makes a conforming change to reflect the fact that the gasoline and oil inspection fee has been renamed the gasoline and oil inspection tax. Also clarifies and modernizes the language of the statute.
30	Deletes a reference to a repealed subsection.
31	Provides that the act is effective upon ratification.

NORTH CAROLINA GENERAL ASSEMBLY
LEGISLATIVE FISCAL NOTE

BILL NUMBER: Legislative Proposal #4
SHORT TITLE: Revenue Laws Technical Changes
SPONSOR(S): Representatives Jarrell; Arnold, Braswell, Gamble, Luebke, Miller, Spears, and Tallent

FISCAL IMPACT: Expenditures: Increase ( ) Decrease ( )
Revenues: Increase ( ) Decrease ( )
No Impact (X)
No Estimate Available ( )

FUND AFFECTED: General Fund (X) Highway Fund ( ) Local Govt. ( )
Other Funds ( )

BILL SUMMARY: The proposal makes numerous technical and clarifying changes to the revenue laws and related statutes. The preceding table provides a section-by-section analysis of the proposed changes.

EFFECTIVE DATE: Upon ratification

PRINCIPAL DEPARTMENT(S)/PROGRAM(S) AFFECTED: Department of Revenue

FISCAL IMPACT

	FY94	FY95	FY96	FY97	FY98
REVENUES					
GENERAL FUND					
HIGHWAY FUND					
HIGHWAY TRUST FUND					
LOCAL					
EXPENDITURES None					

POSITIONS: None
ASSUMPTIONS AND METHODOLOGY:
SOURCES OF DATA: North Carolina Department of Revenue
TECHNICAL CONSIDERATIONS:
FISCAL RESEARCH DIVISION 733-4910
PREPARED BY: Ruth Sappie
APPROVED BY:
DATE: April 14, 1994

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1993

S D

93-LJZ-31C(1.4)
(THIS IS A DRAFT AND IS NOT READY FOR INTRODUCTION)

Short Title: Improve Tracking of Fuel Shipments. (Public)

Sponsors: Senators Kerr, Cochrane, Hoyle, Marshall, and Winner of Buncombe.

Referred to:

A BILL TO BE ENTITLED

AN ACT TO ADDRESS MOTOR FUEL TAX EVASION IN CROSS-BORDER SHIPMENTS OF FUEL BY REQUIRING SHIPPING DOCUMENTS ISSUED BY THE SELLER OF THE FUEL TO THE TRANSPORTER OF THE FUEL TO INCLUDE THE DESTINATION STATE FOR THE FUEL, AND TO OTHERWISE IMPROVE THE STATE'S ABILITY TO TRACK SHIPMENTS OF MOTOR FUEL.

The General Assembly of North Carolina enacts:

Section 1. G.S. 105-430 reads as rewritten:

"**§ 105-430. Definitions.**

The following definitions apply in this Article:

(01) Bulk plant. -- A motor fuel storage and distribution facility that is not a terminal and from which motor fuel may be removed at a rack.

(02) Reserved.

(03) Destination state. -- The state, territory, or foreign country to which motor fuel is directed for delivery into a storage facility, a receptacle, a container, or a type of transportation equipment for the purpose of resale or use.

(1) Distributor. -- A person who possesses motor fuel in this State for sale, use, or other distribution in this State or another state.

(2) Export. -- To obtain motor fuel in this State for sale or other distribution in another state. In applying this definition, motor fuel delivered out-of-state by or for the seller constitutes an export by the seller and motor fuel delivered out-of-state by or for the purchaser constitutes an export by the purchaser.

(3) Import. -- To do either of the following:

a. Bring motor fuel into this State by ~~pipeline, marine vessel, railroad tank car, or transport truck.~~ any means of conveyance other than in the fuel supply tank of a motor vehicle.

b. Exchange motor fuel located at a pipeline terminal or a seaport terminal in this State for motor fuel located inside or outside the State.

In applying this definition, motor fuel delivered into this State from out-of-state by or for the seller constitutes an import by the seller, and motor fuel delivered into this State from out-of-state by or for the purchaser constitutes an import by the purchaser.

(4) Motor fuel. -- Any of the following:

a. All products commonly or commercially known or sold as gasoline (including casinghead and absorption or natural gasoline) regardless of their classification or uses.

b. Any liquid prepared, advertised, offered for sale or sold for use as or commonly and commercially used as a fuel in internal combustion engines, which when subjected to distillation in accordance with the standard method of test for distillation of gasoline, naphtha, kerosene and similar petroleum products (American Society for Testing Materials Designation D-86) shows not less than ten per centum (10%) distilled (recovered) below three hundred forty-seven degrees (347°) Fahrenheit (one hundred seventy-five degrees (175°) Centigrade) and not less than ninety-five per centum (95%) distilled (recovered) below four hundred sixty-four degrees (464°) Fahrenheit (two hundred forty degrees (240°) Centigrade); with the exception that the term "motor fuel" shall not include commercial solvents which distill, by American Society for Testing Materials Method D-86, not more than nine per centum (9%) at 176° F. and which have a distillation range of 125° F. or less, of liquefied gases which would not exist as liquids at a temperature of 60° Fahrenheit and a pressure of 14.7 pounds per square inch absolute.

(5) Person. -- Defined in G.S. 105-228.90.

(5a) Reserved.

(5b) Rack. -- A mechanism for delivering motor fuel from a refinery, a terminal, or a bulk plant into a railroad tank car, a transport truck, or another means of nonbulk transfer.

(6) Secretary. -- The Secretary of Revenue.

(7) Terminal. -- A motor fuel storage and distribution facility that is supplied by pipeline or marine vessel and from which motor fuel may be removed at a rack.

(8) Terminal operator. -- A person who owns, operates, or otherwise controls a terminal.

(9) Transport truck. -- A semitrailer combination rig designed or used to transport motor fuel over the highways, usually in loads of at least 4,200 gallons."

Sec. 2. Article 36 of Chapter 105 of the General Statutes is amended by adding a new section to read:

"**§ 105-432.1. Application for registration as terminal operator.**

A person may not engage in business in this State as a terminal operator unless the person is licensed under this Article as a distributor, is licensed under Article 36A of this Chapter as a supplier, or is registered as a terminal operator with the Secretary. To register as a terminal operator, a person must complete an application for registration provided by the Secretary and provide the information that would be required if the person filed an application for a license as a distributor.

A terminal operator must display a copy of a registration issued under this section in a conspicuous place at each place of business of the terminal operator. A terminal operator's registration is not transferable and remains in effect until surrendered or cancelled."

Sec. 3. G.S. 105-433(d) reads as rewritten:

"(d) Export Exception. -- A distributor ~~whose sale or other distribution of fuel consists only of exporting fuel~~ who meets the following restrictions is not required to be incorporated or formed in this State, authorized to transact business in this State, or have a designated agent for service of process in this ~~State.~~ State:

(1) The distributor's sale or other distribution of motor fuel consists only of exporting the motor fuel.

(2) The distributor is licensed for motor fuel tax purposes in each state to which the distributor exports motor fuel."

Sec. 4. Article 36 of Chapter 105 of the General Statutes is amended by adding a new section to read:

"**§ 105-438.1. Shipping document required to transport motor fuel by railroad tank car or transport truck.**

(a) Issuance. -- A person may not transport motor fuel by railroad tank car or transport truck unless the person has a shipping document for its transportation that complies with this section. A terminal operator and the operator of a bulk plant must give a shipping document to the person who operates a railroad tank car or a transport truck into which motor fuel is loaded at the terminal rack or bulk plant rack.

(b) Content. -- A shipping document issued by a terminal operator or the operator of a bulk plant must be machine-printed and must contain the following information and any other information required by the Secretary:

(1) Identification, including address, of the terminal or bulk plant from which the motor fuel was received.

(2) The date the motor fuel was loaded.

(3) The gross volume, and the net volume temperature-corrected to 60° Farenheit, of motor fuel loaded.

(4) The destination state of the motor fuel, as represented by the purchaser of the motor fuel or the purchaser's agent.

(c) Reliance. -- A terminal operator or bulk plant operator may rely on the representation made by the purchaser of motor fuel or the purchaser's agent concerning the destination state of the motor fuel. A purchaser is liable for any tax due as a result of the purchaser's diversion of fuel from the represented destination state.

(d) Duties of Transporter. -- A person to whom a shipping document was issued must do all of the following:

(1) Carry the shipping document in the conveyance for which it was issued when transporting the motor fuel described in it.

(2) Show the shipping document to a law enforcement officer upon request when transporting the motor fuel described in it.

(3) Deliver motor fuel described in the shipping document to the destination state printed on it unless the person does all of the following:

a. Notifies the Secretary before transporting the motor fuel into a state other than the printed destination state that the person has received instructions since the shipping document was issued to deliver the motor fuel to a different destination state.

b. Receives from the Secretary a confirmation number authorizing the diversion.

c. Writes on the shipping document the change in destination state and the confirmation number for the diversion.

(4) Give a copy of the shipping document to the distributor or other person to whom the motor fuel is delivered.

(e) Duties of Person Receiving Shipment. -- A person to whom motor fuel is delivered by railroad tank car or transport truck may not accept delivery of the motor fuel if the destination state shown on the shipping document for the motor fuel is a state other than North Carolina. To determine if the shipping document shows North Carolina as the destination state, the person to whom the fuel is delivered must examine the shipping document and must keep a copy of the shipping document. The person must keep a copy at the place of business where the motor fuel was delivered for 30 days from the date of delivery and must keep it at that place or another place for at least three years from the date of delivery.

(f) Sanctions. -- The following acts are grounds for a civil penalty payable to the Department of Transportation, Division of Motor Vehicles, or the Department of Revenue:

(1) Transporting motor fuel in a railroad tank car or transport truck without a shipping document or with a false or an incomplete shipping document.

(2) Delivering motor fuel to a destination state other than that shown on the shipping document.

The amount of the penalty depends on the amount of fuel improperly transported or diverted. The penalty is twenty dollars ($20.00) for each 100 gallons of fuel.

Sec. 5. G.S. 105-441(a) reads as rewritten:

" (a) Acts. -- Any ~~distributor~~ person who commits one or more of the following acts is guilty of a Class 1 misdemeanor:

(1) Fails to obtain a license required by this Article.

(2) Willfully fails to make a report required by this Article.

(3) Willfully fails to pay a tax when due under this Article.

(4) Makes a false statement in an application, a report, or a statement required under this Article.

(5) Fails to keep records as required under this Article.

(6) Refuses to allow the Secretary ~~of Revenue~~ or a representative of the Secretary ~~of Revenue~~ to examine the ~~distributor's~~ person's books and records concerning motor fuel.

(7) Fails to disclose the correct amount of motor fuel sold or used in this State.

(8) Fails to file a replacement bond or an additional bond as required under this Article.

(9) Fails to give a shipping document as required under this Article."

Sec. 6. G.S. 105-447 reads as rewritten:

"§ 105-447. Reports and records of ~~carriers.~~ movements of motor fuel.

~~Every person, firm or corporation engaged in the business of, or transporting motor fuel, whether common carrier or otherwise, and whether by rail, water, pipeline or over public highways, either in interstate or in intrastate commerce, to points within the State of North Carolina, and every person, firm or corporation transporting motor fuel by whatever manner to a point in the State of North Carolina from any point outside of said State shall be required to keep for a period of two years from the date of each delivery records on forms prescribed by, or satisfactory to, the Secretary of Revenue of all receipts and deliveries of motor fuel so received or delivered to points within the State of North Carolina, including duplicate original copies of delivery tickets or invoices covering such receipts and deliveries, showing the date of the receipt or delivery, the name and address of the party to whom each delivery is made, and the amount of each delivery; and shall report, under oath, to the~~

~~Secretary of Revenue, on forms prescribed by said Secretary of Revenue, all deliveries of motor fuel so made to points within the State of North Carolina. Such reports shall cover monthly periods, shall be submitted within the first 10 days of each month covering all shipments transported and delivered for the previous month, shall show the name and address of the person to whom the deliveries of motor fuel have actually and in fact been made, the name and address of the originally named consignee if motor fuel has been delivered to any other than the originally named consignee, the point of origin, the point of delivery, the date of delivery, and the number and initials of each tank car, and the number of gallons contained therein if shipped by rail; the name of the boat, barge or vessel, and the number of gallons contained therein, and the consignor and consignee if shipped by water; the license number of each tank truck and the number of gallons contained therein, and the consignor and consignee if transported by motor truck; if delivered by other means the manner in which such delivery is made; and such other additional information relative to shipments of motor fuel as the Secretary of Revenue may require: Provided, that the Secretary of Revenue may modify or suspend the provisions of this section with regard to reports of interstate or intrastate shipments or deliveries upon application of any licensed distributor: Provided, also, that the Secretary of Revenue shall have full power to require any distributor to make additional reports and to produce for examination duplicate originals of delivery tickets or invoices covering both receipts and deliveries of products as herein provided. The reports herein provided for shall cover specifically gasoline, kerosene, benzine, naphtha, crude oil, or any distillates from crude petroleum. Any person, firm or corporation refusing, failing or neglecting to make such report shall be guilty of a Class 1 misdemeanor.~~

(a) Report. -- A person who transports, by pipeline, marine vessel, railroad tank car, or transport truck, motor fuel that is being imported into this State or exported from this State must make a monthly report to the Secretary of motor fuel received or delivered for import or export by the transporter during the month. The report is due by the 25th day of the month following the month covered by the report and must contain the following information and any other information required by the Secretary:

(1) The name and address of each person from whom the transporter received motor fuel outside the State for delivery in the State, the amount of motor fuel received, and the date the motor fuel was received.

(2) The name and address of each person to whom the transporter delivered motor fuel from a location inside the State to a location outside the State, the amount of motor fuel delivered, and the date the motor fuel was delivered.

(b) Records. -- A person who is required to submit a report under subsection (a) must keep a record of all shipping documents or other documents used to determine the information provided in the report. The records must be kept for three years from the due date of the report to which the records apply."

Sec. 7. G.S. 105-449.27 reads as rewritten:

"§ 105-449.27. ~~Article 9 of Revenue Act made applicable.~~ Shipping document requirements and transporter report requirements that apply to motor fuel also apply to fuel.

~~All the provisions of Article 9 of Chapter 105 of the General Statutes, relating to general administration, penalties and remedies pursuant to the State Revenue Act, shall insofar as practicable, and except when in a direct conflict with the provisions of this Article, be applicable with respect to this Article.~~ The requirements set by G.S. 105-438.1 concerning a shipping document apply to fuel. The requirements set by G.S. 105-447 concerning reports and records of movements of motor fuel apply to movements of fuel."

Sec. 8. G.S. 105-449.34(a) reads as rewritten:

"(a) ~~General~~ Class 1 Misdemeanors. -- A person who commits one or more of the following acts is guilty of a Class 1 ~~misdemeanor and is punishable as provided in G.S. 14-3:~~ misdemeanor:

(1) Fails to obtain a license required by this Article.

(2) Willfully fails to make a report required by this Article.

(3) Willfully fails to pay a tax when due under this Article.

(4) Makes a false statement in an application, a report, or a statement required under this Article.

(5) Fails to keep records as required under this Article.

(6) Refuses to allow the Secretary or a representative of the Secretary to examine the licensee's books and records concerning fuel.

(7) Fails to disclose the correct amount of fuel sold or used in this State.

(8) Fails to file a replacement bond or an additional bond as required under this Article.

(9) Fails to give a shipping document as required under this Article."

Sec. 9. This act becomes effective January 1, 1995.

Explanation of Proposal 5

This proposal addresses a potential area of motor fuel tax evasion. The potential area is cross-border movements of fuel. A cross-border movement of fuel is a movement of fuel across state borders. To avoid fuel taxes in a state with a high fuel tax rate, a person can buy fuel in one state, pay that state's tax on the fuel, bring the fuel to a state with a higher fuel tax, and then sell the fuel in that higher fuel tax state without paying the higher rate of tax. North Carolina is particularly vulnerable to tax evasion by cross-border movements of fuel because its motor fuel tax rate is 22¢ a gallon compared to 16¢ a gallon in South Carolina and 7.5¢ a gallon in Georgia.

The proposal combats this problem through improved documentation and reporting requirements for interstate movements of fuel. The changes made by the proposal become effective January 1, 1995.

Most importantly, the proposal requires a shipping paper issued by a terminal operator for fuel to be delivered by transport truck or railroad tank car to state the "destination state" of the fuel, requires the driver of the truck or the rail carrier to deliver the fuel in accordance with the listed destination state, and prohibits the buyer of the fuel from accepting delivery if the destination state on the shipping document is not correct. Section 4 of the proposal contains these requirements along with sanctions for failure to comply with the requirements.

Two of our neighboring states, Virginia and Georgia, have already enacted destination state legislation. The Uniformity Committee of the Motor Fuel Tax Section of the Federation of Tax Administrators is strongly encouraging all states to enact similar legislation.

In addition to the destination state requirement, the proposal modifies the kind of information that those who receive or deliver fuel by pipeline, marine vessel, railroad tank truck, or transport truck must report to the Secretary. Section 6 of the proposal requires these transporters of motor fuel to report all fuel imported into or exported from the State.

Current law requires these transporters to report all fuel imported into the State and all fuel transported from one place in the State to another place in the State. It does not require the transporters to report fuel exported from the State and it does not limit reports of tank truck movements to movements of fuel by trucks that carry at least 4,200 gallons. The current law is not enforced, however.

Section 5 therefore changes the current reporting requirements by deleting both the requirement that intrastate movements be reported and the requirement that trucks carrying fewer than 4,200 gallons file reports and by expanding the law to include reports of exports. The section also changes the date a report is due from the 10th of each month to the 25th. This later date corresponds better to the tax reports of motor fuel, which are due either on the 20th or the 25th of each month.

The other sections of the bill make conforming changes needed to implement the destination state requirement or the modified reporting requirements. Section 1 adds definitions of "bulk plant," "destination state," "rack," "terminal," "terminal operator," and "transport truck," and clarify the definitions of "import" and "export." All of the added or modified definitions, except that of "transport truck," reflect definitions used by the Internal Revenue Service or recommended for use by the Uniformity Committee of the Motor Fuel Tax Section of the Federation of Tax Administrators. The definition of "transport truck" is used to distinguish the large transport trucks that typically carry between 8,000 and 9,000 gallons of motor fuel from the small "tank wagons" used to carry less than 4,200 gallons.

Section 2 requires terminal operators who are not already licensed as distributors of gasoline or suppliers of diesel fuel to register with the Secretary of Revenue. There are only a few of these in the State. The registration requirement is needed to enable the Department of Revenue to enforce the requirement that terminal operators print the destination state on shipping documents and to make reports to the Secretary.

Section 3 modifies the requirements that apply to persons whose only connection with motor fuel in this State is to buy it for export to another state. Under current law, these persons can buy the fuel tax free because it is exported to another state, and they do not have to show that they are licensed for motor fuel tax purposes with the state to which the fuel is exported. This section requires these buyers of motor fuel to establish that they are registered with another state for the payment of fuel taxes to that state before they can buy tax-free fuel in this State.

Section 5 makes a conforming change to the list of Class 1 misdemeanor gasoline tax violations to include failure to give a shipping document when required by Section 4 of the proposal. Section 5 changes the word "distributor" in G.S. 105-441(a) to "person" so that the prohibited acts apply to terminal operators as well as licensed distributors and adds as a prohibited act the failure to give a shipping document as required.

Sections 7 and 8 make conforming changes to the diesel fuel tax laws. Section 7 makes the destination state requirement applicable to shipments of diesel fuel. It rewrites a statute that duplicates G.S. 105-228.90 to impose the destination state requirement on diesel fuel. Section 8 conforms the list of Class 1 diesel fuel tax violations to the list of gasoline tax violations by adding to the list failure to give a shipping document when required.

NORTH CAROLINA GENERAL ASSEMBLY
LEGISLATIVE FISCAL NOTE

BILL NUMBER: Legislative Proposal #5
SHORT TITLE: Improve Tracking of Motor Fuel
SPONSOR(S): Senators Kerr; Winner of Buncombe, Cochrane, Hoyle, and Marshall

FISCAL IMPACT: Expenditures: Increase ( ) Decrease ( )
Revenues: Increase ( ) Decrease (X)
No Impact ( )
No Estimate Available (X)

FUND AFFECTED: General Fund ( ) Highway Fund (X) Local Govt. ( )
Other Funds (X) Highway Trust Fund

BILL SUMMARY: This proposal addresses a potential area of motor fuel tax evasion of cross-border movements of fuel, or movements of fuel across state borders. To avoid taxes in a state with a high fuel tax, a supplier could buy fuel in one state, pay that state's tax on the fuel, bring the fuel to a state with a higher fuel tax, and then sell the fuel at a higher market price in that state, thus pocketing the difference per gallon between the two states' fuel tax rates.

The proposal addresses this problem through improved documentation techniques. The new requirements include:

1. Issuance of a shipping paper issued by a terminal operator for fuel to be delivered by transport truck or railroad tank car to state the "destination state" of the fuel,
2. Prohibition of fuel delivery to any other state except destination state listed on shipping document, and
3. Prohbition of acceptance of delivery by buyer if destination state on shipping document is not correct.

In addition to the destination state requirement, the proposal clarifies the kind of information that those who receive or deliver fuel by pipeline, marine vessel, railroad tank truck, or transport truck must report to the Secretary of Revenue through the Motor Fuels Tax Division.

EFFECTIVE DATE: January 1, 1995

PRINCIPAL DEPARTMENT(S)/PROGRAM(S) AFFECTED: Department of Revenue; Motor Fuels Tax Division

FISCAL IMPACT

	FY94	FY95	FY96	FY97	FY98
REVENUES					
GENERAL FUND					
HIGHWAY FUND					
HIGHWAY TRUST FUND					
LOCAL					

EXPENDITURES None
POSITIONS: None
ASSUMPTIONS AND METHODOLOGY:

SOURCES OF DATA: North Carolina Department of Revenue
TECHNICAL CONSIDERATIONS:
FISCAL RESEARCH DIVISION 733-4910
PREPARED BY: Ruth Sappie
APPROVED BY:
DATE: May 15, 1994

APPENDIX A

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1993

H 2

House Bill 1319
Committee Substitute Favorable 7/24/93

Short Title: The Studies Act of 1993. (Public)

Sponsors:

Referred to:

June 1, 1993

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE STUDIES BY THE LEGISLATIVE RESEARCH COMMISSION, TO CREATE AND CONTINUE VARIOUS COMMITTEES AND COMMISSIONS, AND TO DIRECT VARIOUS STATE AGENCIES TO STUDY SPECIFIED ISSUES.

The General Assembly of North Carolina enacts:

PART I.-----TITLE

Section 1. This act shall be known as "The Studies Act of 1993".

PART II.-----LEGISLATIVE RESEARCH COMMISSION

Sec. 2.1. The Legislative Research Commission may study the topics listed below. Listed with each topic is the 1993 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) Education Support Services (H.B. 11 - Fussell, S.B. 13 - Martin of Guilford),

(2) Water Issues-Surface Water and Groundwater -- study continued (H.J.R. 52 - Fussell, S.J.R. 67 - Tally),

(3) Alternative Approaches to Deal with Discrimination in Employment -- study continued (H.B. 54 - Kennedy),

(4) Solid Waste Management -- study continued (H.J.R. 69 - R. Thompson, S.J.R. 56 - Odom).
(5) Emergency Management Issues -- study continued (H.B. 88 - Hightower, S.B. 75 - Parnell),
(6) State Real Property Transfers -- study continued and expanded, (H.B. 92 - Bowman, S.B. 756 - Sherron).
(7) Ways to Promote Energy Conservation and the Use of Renewable Sources of Energy in North Carolina -- study continued (H.J.R. 104 and H.J.R. 150 - Bowman, S.B. 337 - Plexico),
(8) Mountain Area Study (H.B. 117 - Crawford, S.B. 85 - Hyde),
(9) Revenue Laws -- study continued (H.J.R. 123 - Jarrell),
(10) Criminal Case Disposition (H.B. 127 - Michaux, S.B. 250 - Soles).
(11) State Parks and Recreation Areas (H.B. 149 - DeVane),
(12) Information Technology (H.B. 172 - Bowman, S.B. 741 - Sherron),
(13) Fire and Occupational Safety Issues -- study continued (H.J.R. 191 - Fitch, S.J.R. 107 - Plyler),
(14) State Personnel (H.B. 196 - Fitch, S.B. 119 - Johnson),
(15) Child Care Issues (H.B. 213 - Rogers, S.B. 89 - Walker),
(16) Need to Establish a College of Chiropractic in North Carolina (H.B. 224 - Black, S.B. 223 - Conder),
(17) Immunity from Liability Resulting from Negligent Acts (H.B. 242 - Nye and Jeffus),
(18) Fiscal Trends and Reform (H.B. 267 - Diamont, S.B. 194 - Perdue),
(19) Child Support (H.B. 272 - Diamont, S.B. 314 - Martin of Guilford),
(20) Public Health Programs Organization (H.B. 289 - Blue, S.B. 298 - Martin of Guilford),
(21) Reducing the Legal Limit of Blood Alcohol from 0.10 to 0.02 for 18 to 20 Year Olds While Driving a Motor Vehicle (H.B. 366 - Easterling),
(22) Model Employment Termination Act (H.B. 384 - Beall),
(23) Recycling and Composting Poultry Mortalities (H.B. 421 - James),
(24) Unfunded Mandates to Counties and Cities (H.B. 433 - Joye),
(25) Ways to Improve Guardianship Services (H.B. 451 - Gottovi),
(26) Law Regulating Mortgage Bankers and Mortgage Brokers (H.B. 464 - Smith and Brubaker),
(27) Development of a Lead Hazard Management Program in the State (H.B. 623 - Moore),
(28) Family Law Reform (H.J.R. 705 - R. Thompson),
(29) Health and Fitness Club Issues (H.J.R. 714 - G. Thompson),
(30) Bid Laws and Reciprocity (H.B. 716 - Daughtry),
(31) Voter Registration (H.B. 778 - Michaux),
(32) Rental Vehicle Insurance (H.B. 798 - Stamey),
(33) Emergency Cardiac Care (H.J.R. 805 - Green),

(34) Need for a Property Owners' Association Act (H.B. 919 - R. Thompson),

(35) Tobacco Warehouse (H.B. 889 - Bowen),

(36) All-Terrain Vehicles Licensing and Regulation (H.B. 1006 - Smith),

(37) Public Assistance Direct Deposit (H.B. 1022 - Spears),

(38) Residential Property Disclosure Act (H.B. 1032 - Hensley),

(39) Professional Firefighters Early Retirement Incentives (H.B. 1033 - Hensley,

(40) Restitution Policy as a Part of Criminal Justice System (H.B. 1035 - Michaux),

(41) Farmland Preservation Enabling Act, including Dairy Farmer Economic Issues (H.J.R. 1060 - Colton),

(42) Alcoholic Beverage Control Laws (H.B. 1093 - Hensley),

(43) Literacy (H.B. 1131 - Gottovi),

(44) Business Tax Credits for Purchases of Recycled Products (H.B. 1132 - Gottovi),

(45) Divorce Education Program for Couples with Children (H.B. 1148 - Alexander),

(46) Recreational Hook-and-Line Fishing License in Coastal Fishing Waters and Use of Commercial Nets (H.B. 1156 - Bowman),

(47) Insurance Coverage for Biologically Based Brain Diseases (H.B. 1161 - Alexander),

(48) Bingo (H.B. 1190 - Flaherty),

(49) Liabilities of Registers of Deeds under the Torrens Land Registration System (H.J.R. 1194 - Redwine),

(50) Public Transportation and Railroads (H.J.R. 1225 - Luebke),

(51) Effect of the Use of Commercial Nets on Fish and Shellfish Stocks and their Estuarine Habitats (H.J.R. 1282 - Richardson),

(52) Disaster Relief Volunteer Protection (H.B. 1283 - Redwine, S.B. 1192 - Doyle),

(53) Representation of Extraterritorially Zoned Areas (H.J.R. 1284 - Ellis),

(54) Consumer Protection Issues (H.J.R. 1303 - Spears; H.B. 1453 Easterling),

(55) Application of Chiropractic Care for the Cost-Effective Delivery of Health Care (H.J.R. 1309 - Stamey, S.J.R. 1156 - Odom),

(56) Issues Relating to Pilot Programs (H.J.R. 1319 - Ramsey),

(57) Cemetery Commission and the Regulation of Cemeteries in the State (H.B. 1320 - Hill),

(58) Advisability of Protecting Purchasers of Used Motor Vehicles and of Extending Warranties to the Sale or Lease of Used Motor Vehicles (H.J.R. 1324 - Beall),

(59) Temporary Employment in the State (H.B. 1351 - Holt),

(60) Tort Reform (H.J.R. 1378 - Gamble),
(61) East Carolina University School of Medicine's Potential Scope and Focus for the Next Decade (H.J.R. 1389 - Gamble),
(62) Alternate Election Systems (H.J.R. 1397 - Luebke),
(63) Health Care Insurance Coverage for Chemical Dependency (H.J.R. 1411 - Alexander),
(64) Medicaid (H.J.R. 1412 - Alexander),
(65) Exactions (H.B. 1413 - Richardson, S.B. 1181 - Conder),
(66) Historic Preservation Crafts Training in North Carolina (H.J.R. 1426 - Colton),
(67) Juvenile Code (H.J.R. 1429 - Hensley),
(68) Recovery Care Centers and Their Role in Developing a System of Affordable, Quality Health Care (H.J.R. 1434 - Richardson, S.J.R. 1172 - Parnell),
(69) Disposition of Public Historic Structures (H.J.R. 1447 - Colton),
(70) Equitable Distribution (H.J.R. 1452 - Easterling),
(71) Consumer Protection Issues (H.B. 1453 - Easterling),
(72) Long-Term Care Issues (H.J.R. 1456 - Gardner),
(73) Constitutional Review (S.B. 21 - Lee),
(74 Barrier to Meeting Human Services Needs Because of Confidentiality Requirements Set Out in State and Federal Laws and Regulations (S.J.R. 22 - Martin of Guilford),
(75) Comprehensive Transportation Funding (S.B. 165 and S.B. 166 - Martin of Guilford),
(76) UNC Board of Governors Appointment Process (S.J.R. 390 - Martin of Guilford),
(77) Legislative Compliance Review (S.B. 395 - Perdue),
(78) Physical Fitness Among Youth (S.B. 443 - Warren),
(79) Fletcher-Jeralds Omnibus Health Reform Act of 1993 (S.B. 554 - Daniel),
(80) Workers' Compensation (S.B. 587 - Simpson),
(81) Law Officer Conduct Review System (S.B. 683 - Richardson of Mecklenburg),
(82) Partnership for Quality Growth (S.B. 736 and S.B. 737 - Sherron),
(83) Certificates of Participation (S.B. 739 - Sherron),
(84) Development of Markets for Animal Residues (S.B. 956 - Albertson),
(85) Family Law Reform (S.J.R. 993 - Perdue),
(86) Legal Research (S.B. 1092 - Martin of Guilford),
(87) Medical Malpractice Compensation (S.J.R. 1159 - Ballance),
(88) Forfeitures and Fines Clear Proceeds Allocation (S.J.R. 1167 - Ballance),
(89) State Purchasing (S.B. 1178 - Sherron),
(90) Alternative Schools (S.B. 1200 - Gunter),

(91) Minority Males (S.B. 1236 - Martin of Guilford),
(92) Medicaid Eligibility Requirements (S.B. 1251 - Marshall),
(93) Economic Impact of Rules (S.B. 1261 - Sherron),
(94) African-American Cultural Center (S.B. 1262 - Jordan),
(95) Early Retirement Penalty Reduction for Members of the Teachers' and State Employees' Retirement System (S.B. 1264 - Harris),
(96) Fire Fighter Benefits (S.B. 1266 - Sherron),
(97) Alternative Revenue Sources for State Government (S.B. 1268 - Kaplan),
(98) Regional Government and Economic Development Zones (S.B. 1269 - Kaplan),
(99) North American Free Trade Agreement Impact on North Carolina (S.B. 1271 - Kaplan),
(100) Health Care Reform (S.B. 1293 - Daniel), and
(101) Wastewater Discharge Requirements at Public Schools (S.B. 1295 - Daniel).

Sec. 2.2. Committee Membership. For each Legislative Research Commission Committee created during the 1993-94 biennium, the cochairs of the Commission shall appoint the Committee membership.

Sec. 2.3. 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 1994 Regular Session of the 1993 General Assembly or the 1995 General Assembly, or both.

Sec. 2.4. 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.

Sec. 2.5. Funding. From the funds available to the General Assembly, the Legislative Services Commission may allocate additional monies to fund the work of the Legislative Research Commission.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1993

H 1

HOUSE JOINT RESOLUTION 123

Sponsors: Representatives Jarrell, Gamble, Justus, Luebke, and Tallent.

Referred to: Rules, Calendar, and Operations of the House.

February 10, 1993

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

Whereas, the Legislative Research Commission has been authorized by the 1977, 1979, 1981, 1983, 1985, 1987, 1989, and 1991 General Assemblies to conduct a study of the revenue laws of North Carolina; and

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

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

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

Section 1. The Legislative Research Commission is authorized to study the revenue laws of North Carolina and the administration of these laws. 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. When the recommendations of the Commission, if enacted, would result in an increase or decrease in State tax revenues, the report of the Commission shall include an estimate of the amount of the increase or decrease.

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

Sec. 3. The Commission shall make a final report of its recommendations for improvement of the revenue laws to the 1995 General Assembly and may make an interim report to the 1994 Session of the 1993 General Assembly.

Sec. 4. This resolution is effective upon ratification.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1993

S 1

SENATE JOINT RESOLUTION 1167

Sponsors: Senator Ballance.

Referred to: Rules and Operation of the Senate.

May 17, 1993

A JOINT RESOLUTION AUTHORIZING THE LEGISLATIVE RESEARCH COMMISSION TO STUDY THE CURRENT SYSTEM FOR ALLOCATION OF THE CLEAR PROCEEDS OF FINES AND FORFEITURES.

Be it resolved by the Senate, the House of Representatives concurring:

Section 1. The Legislative Research Commission may study the current system for allocation of the clear proceeds of fines and forfeitures. In the course of its study, the Commission shall:

(1) Consider Article IX of Section 7 of the Constitution, which provides that the clear proceeds of all penalties and forfeitures and of all fines collected for any breach of the penal laws of the State shall go to the counties and be used exclusively for establishing and maintaining a uniform system of free public schools.

(2) Examine current statutory law and current practices and policies throughout the State to determine whether they are consistent with Article IX of Section 7 of the Constitution;

(3) Consider the impact of federal law, practices, and procedures on the ability of North Carolina to carry out the intent of Article IX, Section 7, of the Constitution.

The Commission may make an interim report to the 1993 General Assembly, 1994 Regular Session and a final report to the 1995 General Assembly.

Sec. 2. This resolution is effective upon ratification.

APPENDIX B

REVENUE LAWS STUDY COMMITTEE

1993 - 1994

Sen. Dennis J. Winner, Cochair
81-B Central Avenue
Asheville, North Carolina

Sen. Betsy Cochrane
1007 Bermuda Run
Advance, North Carolina

Mr. Joseph G. Deneke
P.O. Box 779
Kill Devil Hills, North Carolina

Sen. David Hoyle
P.O. Box 2494
Gastonia, North Carolina

Sen. John H. Kerr, III
P.O. Box 1616
Goldsboro, North Carolina

Sen. Elaine Marshall
P.O. Box 1660
Lillington, North Carolina

Mr. Robert B. Spivey
306 Sutton Drive
Windsor, North Carolina

LRC MEMBER
Sen. Robert L. Martin

STAFF:
Martha H. Harris, Bill Drafting
Sabra J. Faires, Fiscal Research
Ruth Sappie, Fiscal Research
Cindy Avrette, General Research
Carolyn M. Gooden, Clerk

Rep. Mary Jarrell, Cochair
1010 Wickliff Avenue
High Point, North Carolina

Rep. Gene G. Arnold
1225 Cheshire Lane
Rocky Mount, North Carolina

Rep. Jerry Braswell
P.O. Box 253
Goldsboro, North Carolina

Rep. John R. Gamble, Jr.
P.O. Box 250
Lincolnton, North Carolina

Mr. Leonard W. Jones
300 N. 35th Street
Morehead City, North Carolina

Rep. Paul Luebke
1311 Alabama Avenue
Durham, North Carolina

Rep. Bradley Miller
4006 Barrett Drive
Raleigh, North Carolina

Rep. Liston Ramsey
Box 337, Walnut Creek Road
Marshall, North Carolina

Rep. Kenneth O. Spears, Jr.
Rt. 1, Box 420A
Fayetteville, North Carolina

Rep. Timothy N. Tallent
Box 3126
Concord, North Carolina

APPENDIX C

1993 Tax Law Changes

Prepared by Cynthia Avrette, Sabra J. Faires, and Martha H. Harris

Chapter 12 (House Bill 81, Rep. Gamble)

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

This act rewrites the definition of the Internal Revenue Code used in various State tax statutes to change the reference date from January 1, 1992, to January 1, 1993, and it corrects an incomplete cross reference to a section of the Internal Revenue Code. Sections 1 through 7 and Sections 9 through 11 change the definition of Code, and Section 8 makes the technical correction. The act is effective for taxable years beginning on or after January 1, 1993.

Updating the reference to the Internal Revenue Code makes recent amendments to the Internal Revenue Code applicable to the State to the extent that State tax law previously tracked federal law. This update has the greatest effect on State corporate and individual income taxes because these taxes are based on federal taxable income and are therefore closely tied to federal law. The franchise tax, gift tax, highway use tax, inheritance tax, insurance company gross premiums tax, and intangibles tax also determine some exemptions based on the provisions of the Code.

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 periodic updates. 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."

Each year, in deciding whether the Internal Revenue Code reference should be updated, the General Assembly considers the changes that have been made to the Code in the past year. No changes were made in the Code in 1992 that affect a tax other than the individual income tax, and the changes that affect the individual income tax are minor and are not expected to have a significant revenue impact on the State.

The minor changes to the Code were made in the federal Unemployment Compensation Amendments of 1992 and the federal Comprehensive National Energy

Policy Act of 1992; no major federal revenue bill was enacted in 1992. Among other changes, these acts extended from December 31, 1995, to December 31, 1996, the date when the federal phaseout of personal exemptions for certain high-income taxpayers was to expire, allow the tax-free roll-over of certain partial distributions from qualified pension plans or qualified annuity plans, modified the monthly amount of employer-provided transportation benefits that is excludable from gross income, and simplified the payment by employers of withheld income taxes.

Recommended by the Revenue Laws Study Committee.

Chapter 45 (House Bill 654, Rep. Baddour)

AN ACT TO EXPAND THE NUMBER OF COUNTIES IN WHICH THE TAX CREDIT FOR CREATING JOBS IS AVAILABLE.

This act makes the following changes in the law:

(1) It expands the existing income tax credit for creating jobs in severely distressed counties by increasing from 33 to 50 the number of counties that are considered severely distressed.

(2) It increases from 33 to 50 the number of counties that can use program income, as well as the number of counties whose cities can use program income, from certain federal block grants to establish revolving loan funds (G.S. 153A-376(f) and G.S. 160A-456(e1)).

The first of these changes is set out in the act. The second change occurs automatically when the class of "severely distressed counties" changes for purposes of the tax credit because the cited statutes are tied to that class. The act is effective for taxable years beginning on or after January 1, 1993.

This act also broadens the number of counties in which local governments are eligible for funds from the Industrial Development Fund, G.S. 143B-437A, to be used for utilities for new or proposed industrial buildings. Any county that is designated as depressed or distressed under the Industrial Development Fund is eligible for funds for utilities for existing industrial buildings; to be eligible for funds for utilities for new or proposed industrial buildings, the county must also be designated as distressed for the purpose of the tax credit. A county that is experiencing major economic dislocation, however, is eligible for funds for utilities for existing, new, or proposed industrial buildings even if it has not been designated as depressed or distressed under either the Industrial Development Fund or the tax credit.

The tax credit is available to businesses that create full-time manufacturing or industrial jobs in a severely distressed county. The credit is $2,800 for each new job. The credit must be taken in four equal installments beginning the year after the new job was created. If the new job does not continue for this four-year period, the part of the credit not yet taken is forfeited. The credit may not exceed 50% of the tax due for a year; the part of a credit that cannot be used because of this limitation can be carried forward for five years.

The fiscal impact of this act will be phased in over four years because the credit is taken in four installments. The Department of Revenue has estimated the annual loss to the General Fund to be as follows:

Fiscal Year	General Fund Loss
1994-95	$0.5 to 1 million
1995-96	$1 to 2 million
1996-97	$1.5 to 3 million
1997-98 & later:	$2 to 4 million

When the tax credit was first enacted in 1987, the number of severely distressed counties was limited to 20. That number was increased in 1989 to 25 and was increased again in 1991 to the present 33.

Because the list of severely distressed counties the Secretary of Commerce gave the Secretary of Revenue for 1993 included only 33 counties, the act directs the Secretary of Commerce to give the Secretary of Revenue by July 15, 1993, a list of the additional 17 counties that will qualify under this act and to determine those counties based on the criteria available when the 33 counties were determined.

As more and more counties qualify for the designation "severely distressed," the name of the designation describes the broader category less accurately. Also, as the credit is expanded to more and more counties, the public purpose of the credit becomes more tenuous.

Chapter 85 (House Bill 920, Rep. Redwine)

AN ACT TO REDUCE THE STATE UNEMPLOYMENT INSURANCE TAX RATE UNDER CERTAIN CIRCUMSTANCES.

This act provides employers who have a credit balance in their unemployment insurance tax account with a 30% reduction in their contribution rate for the remainder of the 1993 calendar year. It also provides these employers with a 30% reduction in their contribution rate for any calendar year in which the balance in the Unemployment Insurance Fund equals or exceeds $800,000,000 as of the preceding August 1. Roughly 80% of the more than 144,000 employers in North Carolina have a credit balance in their account.

The contributions paid by employers go into the Unemployment Insurance Fund. After deducting any refunds payable from the Fund pursuant to G.S. 96-10, the money is deposited with the secretary of the treasury of the United States to the credit of this State's account in the Unemployment Trust Fund. As the money is needed to pay benefits, it is transferred to the State and credited to the benefits account of the State's Unemployment Insurance Fund to be used to pay benefits to people who lose their job through no fault of their own.

North Carolina's account is one of the most solvent accounts of any state in the country. In 1992, the General Assembly was able to suspend the additional unemployment tax collected from employers and credited to the Employment Security Commission Reserve Fund. This Reserve Fund bolsters the Unemployment Insurance Fund. This act goes a step further by lowering the unemployment contribution tax rate for employers with a credit balance in their unemployment insurance tax account.

Chapter 140 (Senate Bill 159, Sen. Kerr)

AN ACT TO PROHIBIT DELIVERY OF NON-TAX-PAID SPECIAL FUEL INTO THE SUPPLY TANK OF A MOTOR VEHICLE AND ACQUISITION OF NON-TAX-PAID SPECIAL FUEL FOR USE IN A MOTOR VEHICLE.

This act creates two related misdemeanor offenses involving the purchase of nontaxpaid special fuel. Special fuel is diesel fuel and other kinds of motor fuel except gasoline. Nontaxpaid special fuel is special fuel on which the per gallon excise tax has not been paid. The two new offenses are knowingly dispensing nontaxpaid special fuel into a motor vehicle and knowingly allowing someone to dispense nontaxpaid special fuel into a vehicle. Both offenses are punishable by imprisonment for up to six months, a fine of up to five hundred dollars, or both. The act becomes effective December 1, 1993.

In addition to creating two misdemeanor offenses, the act makes two technical changes. First, it deletes the word "penalties" in the catchline to G.S. 105-449.34 because the statute contains no penalties other than misdemeanors. Second, it deletes the words "of Revenue" following "Secretary" in two places to apply the definition of Secretary in G.S. 105-449.2. That definition was added in 1991 and a conforming change was not made to this statute.

The misdemeanor offenses created by the act apply only to special fuel rather than to both special fuel and gasoline because of the difference in the application of the per gallon excise tax to these fuels. The per gallon excise tax on special fuel applies to the first sale of the fuel in this State for a highway use; the per gallon excise tax on gasoline applies to the first sale of the gasoline in this State for any use. This difference reflects the difference in the uses of these fuels. Over half of all special fuel sold in this State is used for a purpose other than to propel a motor vehicle, but almost all gasoline sold is used to propel a motor vehicle. The result of these differences is that much special fuel is sold without the per gallon excise tax being collected on the sale. The availability of this nontaxpaid special fuel creates opportunities for tax evasion, a prime example of which is the purchase of nontaxpaid special fuel from nonhighway pumps at service stations.

This act is designed to address the problem of persons buying special fuel from service station pumps marked "Nonhighway Use Only," either with or without the complicity of the service station attendant. The Department discovered this problem during the course of a "sting" operation it conducted in which many retail service stations were caught allowing customers to dispense diesel fuel into motor vehicles from pumps marked "Nonhighway Use Only." In attempting to prosecute those caught, the Department found that although those caught could be assessed a civil penalty under G.S. 105-449.24 or be charged with felony tax evasion, they could not be charged with any misdemeanor offenses. The Department felt that the civil penalty alone was not a sufficient deterrent and that the chance of obtaining felony convictions in these circumstances was unlikely. The Department therefore recommended the creation of these misdemeanor offenses.

Recommended by the Revenue Laws Study Committee.

Chapter 230 (House Bill 936, Rep. Richardson)

AN ACT TO EXPAND THE PROPERTY TAX EXEMPTION FOR NONPROFIT ORGANIZATIONS PROVIDING LOW- AND MODERATE-INCOME HOUSING TO INCLUDE REAL PROPERTY HELD AS A SITE FOR FUTURE LOW- AND MODERATE-INCOME HOUSING.

G.S. 105-278.6 exempts from local property taxes real and personal property belonging to nonprofit organizations that provide housing for people with low or moderate incomes, as long as the property is used exclusively for charitable purposes. This act expands the exemption beginning with the 1994-95 tax year to provide that property belonging to such an organization is considered to be held for a charitable purpose if it is held for no more than five years as a future site for housing for people with low or moderate incomes.

The act provides that the taxes that would otherwise be due on this property become a lien on the property and are deferred. If housing for people with low or moderate incomes is not built on the property within five years after the tax year the exemption is first claimed, the deferred taxes become due, along with interest. The act does not affect State revenues; any revenue loss would be of local government property taxes.

Chapter 255 (House Bill 136, Rep. Barnes)

AN ACT TO EXTEND FOR AN ADDITIONAL FIVE YEARS THE REQUIREMENT THAT COUNTIES USE PART OF THE TWO HALF-CENT LOCAL SALES TAX PROCEEDS ONLY FOR PUBLIC SCHOOL BUILDINGS AND TO CLARIFY THE PROCEDURE BY WHICH A LOCAL GOVERNMENT MAY USE THE TAX PROCEEDS FOR OTHER LAWFUL PURPOSES IF IT CAN PROVIDE FOR ITS PUBLIC SCHOOL

AND WATER AND SEWAGE CAPITAL NEEDS WITHOUT RESTRICTING THE TAX PROCEEDS.

There are three Articles of the Revenue Act that authorize counties to levy local sales and use taxes. Article 39 authorizes a one-cent tax. Article 40 authorizes a half-cent tax, and Article 42 authorizes an additional half-cent tax. Article 40, enacted in 1983, and Article 42, enacted in 1986, each provided that for the first ten fiscal years in which the tax was in effect in a county, the county was required to use a percentage of the tax revenue for public school capital outlay purposes (including retirement of outstanding debt). The first ten fiscal years under Article 40 would have ended for most counties in July 1993. This act extends the ten-year periods under both Article 40 and Article 42 for an additional five years. For these five additional years, counties will be required to use 30% of the tax revenue from the first half-cent local sales tax (Article 40) and 60% of the tax revenue from the second half-cent local sales tax (Article 42) only for public school capital outlay purposes. The amount of tax revenue affected by the extension of this requirement is $52.7 million a year. Any local legislation that had already been enacted exempting a county from the restrictions of Article 40 or 42 will remain in effect during the additional five-year period. An example of this type of legislation is Chapter 326 of the 1985 Session Laws, which applies to Burke County.

Articles 40 and 42 also require municipalities to use a percentage of the tax revenue they receive under those Articles for water and sewer purposes. A county or a municipality can, however, petition the Local Government Commission for a waiver of the applicable use restrictions. The Local Government Commission may waive part or all of the restrictions if the county or city demonstrates that its public school capital needs or water and sewer needs, respectively, can be met without the use of the restricted sales tax revenue. This act clarifies the procedure for obtaining a waiver, effective July 1, 1993. First, the petition for a waiver must be in the form of a resolution adopted by the governing body of the county or city. Second, in evaluating the petition, the Local Government Commission is authorized to consider not only the county's public school capital needs or the city's water and sewer needs, but also the other capital needs of the county or city. The act apparently intends to allow the Local Government Commission to weigh these competing needs and possibly grant a waiver if the other needs are greater than the county's school needs or the city's water and sewer needs. On the other hand, the law still requires the county or city to demonstrate that its school needs or water and sewer needs, respectively, can be provided for without restricting the local sales tax revenue for those purposes.

Chapter 314 (House Bill 57, Rep. Gamble)

AN ACT TO REQUIRE PARTNERSHIPS TO FURNISH EACH PARTNER A COPY OF THE STATE "K-1" TAX FORM.

This act requires a partnership that is doing business in North Carolina to send to each partner enough information about that partner's share of partnership income or loss to enable the partner to file a North Carolina income tax return. The requirement is effective for taxable years beginning on or after January 1, 1993.

Current law requires a partnership that is doing business in North Carolina and is required to file an information return with the Internal Revenue Service to file an information return with the Department of Revenue. Section 6031 of the Internal Revenue Code requires all partnerships except certain nonprofits and partnerships that have gross annual receipts of less than $5,000 to file federal information returns. In addition to requiring an information return, federal law requires a partnership that is required to file an information return to send a statement, known as a K-1, to each partner. The statement sets out the partner's share of the partnership's income or loss.

Current State law does not require a partnership to send each partner a similar statement. This act imposes that requirement.

Because each partner gets a federal K-1, the effect of this act is to help nonresident partners file a North Carolina income tax return. A resident partner's partnership income would be included in the partner's federal taxable income that is used as the starting point for computing State taxable income. A nonresident partner, however, who would not normally file a North Carolina income tax return, may not realize that a North Carolina return is required because of the partnership income. Receiving a State K-1 will alert the nonresident partner to the tax liability in this State.

Chapter 315 (House Bill 173, Rep. Luebke)

AN ACT TO PROVIDE THAT THE STATE SHALL PAY INTEREST ON INCOME TAX REFUNDS NOT REFUNDED TO THE TAXPAYER WITHIN FORTY-FIVE DAYS AFTER THE RETURN WAS FILED OR DUE TO BE FILED, WHICHEVER IS LATER.

This act establishes a new rule for determining when the State will pay interest on an overpayment of either corporate or individual income tax and reorganizes and clarifies G.S. 105-266, which governs refunds of all tax overpayments. The new rule became effective upon ratification, July 9, 1993, and applies to overpayments reflected in final returns filed on or after that date. By making this change, the act accomplishes three goals: it establishes the same rule for all overpayments of individual income tax, it establishes the same rule for both corporate and individual income tax, and it makes the State rule for overpayments of income tax the same as the federal rule.

The general rule under G.S. 105-266 that applies to overpayments of any State tax is that interest accrues starting 90 days after the date of an overpayment until a refund is made. Under prior law, two different interest rules applied to overpayments of individual income tax. Overpayments of individual income tax that were not the result of advance payments, made through amounts withheld from wages or from estimated payments, followed the general 90-day rule. Overpayments of individual income tax that were the result of advance payments accrued interest from six months after the later of the date the final return was due or the date the final return was filed. Under prior law, overpayments of corporate income tax followed the general 90-day rule, which makes no distinction between advance payments and other payments for purposes of determining when interest begins to accrue. Therefore, overpayments of corporate income tax made through quarterly estimated payments accrued interest for a large part of the year. This resulted in substantial interest payments each year from the State to corporations that overpaid their estimated income tax.

Under the new rule, interest is payable by the State on an overpayment of corporate or individual income tax 45 days after the latest of the following:

(1) The date the final income tax return was filed.
(2) The date the final income tax return was due.
(3) The date the income tax overpayment was made.

Thus, for overpayments that are the result of advance payments of individual income tax, the bill shortens from 6 months to 45 days the period of time that must elapse before interest begins to accrue. For corporate overpayments made through estimated taxes, the act reduces the length of time that interest will accrue. For excess payments of individual and corporate income tax made with a final return, the act shortens from 90 days to 45 days the period that must elapse before interest begins to accrue.

The federal rule for the accrual of interest on income tax overpayments is the same as the rule established by this act for overpayments of State income tax. Several special rules account for the inevitable delay in processing millions of refunds, for returns that are not processible, and for retroactive application of deductions that create an overpayment for an earlier tax year. Federal law provides that if an overpayment is created by retroactive application of a deduction, the overpayment is considered to have been made on the filing date of the tax year the deduction was created. Federal law also provides that a return is not considered filed until it is in processible form. The State rule established by this act incorporates these special rules.

Recommended by the Revenue Laws Study Committee.

Section 26 of Chapter 321 (House Bill 134. Rep. Nesbitt. and Senate Bill 48. Sen. Perdue)

LOCAL FINANCIAL SECURITY.

Section 26 makes significant changes concerning the distribution of State tax revenue to local governmental units. Most importantly. it converts the distribution to local units of State-shared tax revenue from an annual appropriation to an earmarking of current tax collections and removes the current "growth-freeze" on State-shared tax revenue. It also changes the timing of the distribution of State-shared intangibles tax revenue and beer and wine tax revenue, changes the timing of the State reimbursements to local units for the repeal of local property taxes on inventories and on poultry and livestock, and changes the source of funds for the State reimbursement to local units for the repeal of the intangibles tax on money on deposit and the modification of the intangibles tax on accounts receivable. The change in the source of funds for the intangibles tax reimbursement became effective July 9. 1993. The remaining changes become effective July 1, 1995.

State-shared tax revenue is tax revenue distributed by the State to local units based on collections of the State tax on intangible personal property. the State excise taxes on beer and wine. and the State corporate franchise tax on electric power companies. natural gas companies. and telephone companies. These revenues are sometimes referred to by local units as "State-collected local revenues" even though they are a part of State tax revenues because the State has traditionally shared its revenues from the intangibles tax, the beer and wine taxes, and the utility franchise tax with local units.

State-shared tax revenue is sometimes confused with State reimbursements to local units. but the two are distinct. State reimbursements are amounts distributed to local units to compensate them for revenue lost as a result of the removal by the General Assembly of property from the local sales and use tax base. the local property tax base. or the intangibles tax base. State reimbursements consist of reimbursements for the repeal of the property tax on inventories, the repeal of the intangibles tax on money on deposit. the modification of the intangibles tax on accounts receivable. the repeal of the property tax on poultry and livestock. the "homestead exemption" from property tax. and the repeal of local sales and use taxes on food purchased with food stamps. This act changes the timing and source of two of the reimbursements but does not restore growth in any State reimbursement or otherwise change the amount of any State reimbursement.

Earmarking of State-shared Revenue

Before fiscal year 1989-90. State-shared tax revenue was earmarked rather than appropriated annually. Earmarking refers to the accrual method of accounting for the amount of State-shared tax revenue to be distributed. by which the amount is put in a liability reserve account of the State and then automatically disbursed on the specified date. In 1990. the General Assembly changed the accounting treatment of State-shared tax revenue from an earmarking. which is an accrual accounting method. to an annual appropriation. which is a cash accounting method. The reason for the change was to balance the 1989-90 State budget on a financial basis by removing approximately $140 million from liability reserves. Consequently. the State appropriation act for fiscal year

1990-91 and each subsequent year has included an appropriation to local units of the State-shared tax revenue.

Effective with the 1995-96 fiscal year, paragraphs (a). (g). (h). and (i) of section 26 restore the earmarking method of accounting for distributions of State-shared tax revenue. once again making the distribution an automatic "off-budget" transfer. As an "off-budget" transfer, the distribution will not appear in the appropriations act for fiscal year 1995-96 and subsequent years and is thereby removed from annual legislative scrutiny during the budget process and from the possibility of reduction by the Governor, acting under Article III. § 5(3) of the North Carolina Constitution, to prevent a deficit for a fiscal year.

Removal of Growth Freeze in State-shared Revenue

In addition to restoring the prior accounting method used for State-shared tax revenue. Section 26 also restores the prior method for determining how much revenue is to be shared, with one important difference. That difference is a deduction for the growth freeze in this revenue in effect for distributions made from July 1, 1991, up to July 1, 1995.

Under Section 26, the State-shared tax revenue base consists of the following: (i) the amount of intangibles tax collected, less the four-year growth freeze for the tax and the State's cost in collecting the tax, in hearing property tax appeals, in providing a few property-tax related courses at the Institute of Government in Chapel Hill, and in operating the Local Government Commission; (ii) 23 3/4% of the State excise tax on beer; (iii) 62% of the State excise tax on unfortified wine; (iv) 22% of the State excise tax on fortified wine; and (v) the amount of the State franchise tax on electric power companies, natural gas companies, and telephone companies that equals 3.09% of the taxable gross receipts derived by these companies from sales of electricity, natural gas, and telephone service within cities, less the four-year growth freeze for the tax. Except for the growth-freeze deduction, this base is almost identical to the pre-growth freeze base. That previous base, however, did not deduct the cost of the Local Government Commission from intangibles tax collections; this deduction was first made in fiscal year 1991-92.

As did the pre-growth freeze State-shared revenue base, the base in Section 26 will vary from year to year as total collections of the specified taxes change. Consequently, if total collections of the specified taxes increase, the amount distributed to local units will increase and if total collections decrease, the amount distributed to local units will decrease.

Under current law, State shared-tax revenue is a fixed $237 million. This amount is based on fiscal year 1989-90 intangibles tax collections, collections of beer and wine taxes from October 1, 1989, through September 30, 1990, and collections of the utility franchise tax from April 1, 1990, through March 31, 1991. Although the benchmark period for each tax differs, the result is that all distributions of these taxes made in fiscal years 1991-92 through 1994-95 are frozen and distributions of taxes made in other fiscal years are not frozen.

The General Assembly froze the amount of State-shared tax revenue to be distributed to local units beginning in fiscal year 1991-92. For that year and subsequent fiscal years, the frozen amount was $237 million. This amount was the same amount of State-shared tax revenue the General Assembly appropriated to local units in fiscal year 1990-91, which was the first year State-shared revenue was appropriated rather than earmarked, and included the growth in the revenue. Local units received 6.2% less in fiscal year 1990-91 than the General Assembly appropriated, however, because the Governor reduced the appropriation as part of the effort to balance the State budget for that year. For the 1991-93 fiscal biennium, the total growth freeze was $35.2 million.

By the time the growth freeze ends on July 1, 1995, the total growth freeze amount is expected to grow to between $55 and $60 million.

Effective for the 1995-96 fiscal year, paragraphs (a), (g), (h), and (i) of Section 26 remove the growth freeze but require distributions of intangibles tax collections and utility franchise tax collections to be reduced by the growth freeze amount for these taxes. The section does not require a growth freeze deduction from the distribution based on beer and wine tax collections because those collections have not grown significantly since the freeze went into effect.

The growth freeze amount for the intangibles tax is the difference between the amount of intangibles tax collected during the 1993-94 fiscal year and the 1989-90 fiscal year. State-shared intangibles tax is distributed to local units once a year. Therefore, the growth freeze amount for this tax will be deducted annually from intangibles tax collections in calculating the amount to be distributed to local units.

The growth freeze amount for the utility franchise tax is the difference between the amount of utility franchise tax collected for the period April 1, 1994, to March 31, 1995, and the period April 1, 1990, to March 31, 1991. State-shared utility franchise tax is distributed to local units in four quarterly payments. Therefore, one-fourth of the annual growth freeze amount for this tax will be deducted from utility franchise tax collections in calculating the quarterly amount to be distributed to local units.

The amount of State-shared tax revenue estimated to be distributed to local units in fiscal year 1995-96 is $255 million. The growth freeze deduction for that year is expected to be between $55 and $60 million.

Timing Changes in Distributions of State-shared Revenue and Reimbursements

When the switch from appropriating State-shared revenue to earmarking it becomes effective in fiscal year 1995-96, the State will once again put the revenue in a liability reserve account as it is collected and hold it for subsequent distribution to local units. The amount put in a reserve account will no longer be available for appropriation and will be a liability on the State's balance sheet rather than an asset. Therefore, to the extent State-shared tax revenue is collected in one fiscal year for distribution in the next fiscal year, the State must carry the reserve over from one fiscal year to the next.

To avoid having to suddenly reserve over $120 million in the 1994-95 fiscal year to make the distribution of State-shared intangibles tax revenue in August of the 1995-96 fiscal year, which would put the State's balance sheet for fiscal year 1994-95 out of balance, paragraph (a) of the section changes the timing of the intangibles tax distribution from August of one calendar year to June 25 of the following calendar year and changes the collection period used for making the distribution from the previous fiscal year to July 1 through April 30 of the same fiscal year. This change in distribution date and collection period puts the collection and distribution of the intangibles tax within the same fiscal year and means that the June 25 distribution of State-shared intangibles tax revenue will be made from intangibles tax revenue collected in the same fiscal year the distribution is made. To ensure that local units receive an amount equivalent to what they would receive if the collection period were 12 months instead of 10 months, paragraph (a) sets the starting amount to be used in calculating the distribution at 103% of collections rather than 100%.

The distribution date and collection period established by paragraph (a) for State-shared intangibles tax revenue differs from the distribution date and collection period used for the tax before fiscal year 1990-91, when the tax was also earmarked rather than appropriated. In the pre-1990-91 system, intangibles tax revenue collected in one fiscal year, largely in April of each year, was put in a reserve and distributed in August or September of the next fiscal year.

Paragraph (g) of this section makes a similar change to the distribution date and collection period for State-shared beer and wine tax revenue. It changes the distribution date from within 60 days after September 30 of one calendar year to within 60 days after March 31 of the next calendar year, and changes the collection period on which the distribution is based from the 12-month period ending September 30 to the 12-month period ending March 31. This change reduces the amount of beer and wine taxes the State must reserve from one fiscal year to the next and delays the distribution to local units.

Delaying the distribution date for State-shared intangibles tax revenue delays the receipt of these funds by local units by almost 10 months, and delaying the distribution date for State-shared beer and wine taxes delays the receipt of these funds by local units by 6 months. To mitigate the cash-flow impact on local units from these delays, paragraphs (b) through (f) of this section move the distribution of 60% of the reimbursement for the repeal of property taxes on inventories and on poultry and livestock from April of one calendar year to August of the preceding calendar year. There is no accounting impact from splitting this reimbursement distribution into two distributions because the reimbursements are currently earmarked out of current-year revenues and both reimbursements stay within the same fiscal year. Under current law, local units receive 100% of the inventory tax reimbursement and of the poultry and livestock reimbursement in April of each year. Beginning in fiscal year 1995-96, local units will receive 60% of the money in August of a fiscal year and the remaining 40% in April of the same fiscal year.

Source of Funds For Reimbursement For Modification and Partial Repeal of Intangibles Tax

Paragraph (k) of Section 26 changes the source of tax revenue used to reimburse local units for the repeal of the intangibles tax on money on deposit and the revision of the intangibles tax on accounts receivable. The source is changed from corporate income tax collections to individual income tax collections. The change was made at the request of the Office of State Controller. That Office requested the change because this reimbursement distribution is made in August and during that month the State typically has enough individual income tax collections to cover the distribution but does not have enough corporate income tax collections to cover the distribution.

Recommended by the Joint Select Fiscal Trends and Reform Study Commission.

Chapter 360 (House Bill 105, Rep. R. Smith)

AN ACT TO INCREASE THE PROPERTY TAX HOMESTEAD EXEMPTION AMOUNT FROM TWELVE THOUSAND DOLLARS TO FIFTEEN THOUSAND DOLLARS AND TO MAKE TECHNICAL CHANGES TO THE HOMESTEAD EXEMPTION STATUTES.

This act increases the homestead exemption amount from $12,000 to $15,000 and makes numerous technical changes to the homestead exemption statutes. The act becomes effective for taxable years beginning on or after July 1, 1994.

The homestead exemption is a partial exemption from property taxes for the residence of a person who has an income of less than $11,000 and is either age 65 or older or totally disabled. The current exemption amount is $12,000. The exemption was last increased in 1987, when it was increased from $10,000 to $12,000. The technical changes made in the act are as follows:

(1) Changes the statutory citation in the definition of income because the statute cited in the current law was repealed in 1989.
(2) Adds a definition of Internal Revenue Code to the list of defined terms.
(3) Puts the definitions in alphabetical order.
(4) Makes the statutes gender neutral.
(5) Changes the reference from mobile homes to manufactured homes.

(6) Removes substantive provisions from the definition section and places them in the appropriate places.
(7) Conforms the use of the terms "permanent residence" and "exclusion" so that they are used consistently throughout the statutes.
(8) Changes the property tax information sheet and the abstract to reflect the changes to the homestead exemption amount.

The revenue loss associated with this act will be a loss to the general funds of local governments. Prior to 1991, the State reimbursed counties and cities for 50% of their losses from the homestead exemption. In 1991, the General Assembly froze the amount of reimbursements made to local governments at the amount each city and county was entitled to receive in fiscal year 1990-91.

Chapter 362 (House Bill 509, Rep. Griffin)

AN ACT TO RAISE THE INHERITANCE TAX FILING THRESHOLD.

This act provides that an inheritance tax return does not need to be filed for an estate whose beneficiaries are all Class A beneficiaries, the surviving spouse, or both, if the gross value of the estate is less than $450,000. The act applies to estates of decedents dying on or after July 1, 1993. Under prior law, a return had to be filed in these circumstances if the gross value of the estate was $250,000 or more. This act is not expected to have any impact on State revenues.

Property passing to a surviving spouse is exempt from inheritance tax. Property passing to Class A beneficiaries (lineal ancestors and descendents) is entitled to an inheritance tax credit of $26,150; this credit amount effectively exempts approximately $500,000 in value of an estate that passes to Class A beneficiaries. Under former law, an estate that passed to the spouse, Class A beneficiaries, or both was required to file an inheritance tax return with the Secretary of Revenue if the value of the estate was $250,000 or more, even though no tax would be required if the value of the estate was under $500,000. This act will relieve more beneficiaries from this filing requirement by increasing the threshold to $450,000. The filing threshold remains below $500,000, however, to allow the Department of Revenue to review inheritance tax returns of larger estates to determine whether the value placed on the estate's assets is understated.

Chapter 364 (House Bill 1274, Rep. Gamble)

AN ACT TO PROVIDE THAT THE EXEMPTION FROM THE SCRAP TIRE TAX FOR TIRES SOLD FOR PLACEMENT ON NEWLY MANUFACTURED VEHICLES SHALL APPLY UNIFORMLY REGARDLESS WHEN THE TIRES WERE SOLD.

This act grants a retroactive scrap tire tax exemption to new tires placed on newly manufactured vehicles, gives anyone who paid tax on tires that are exempted by the act additional time to claim a refund for the tax paid, and restricts the amount of interest payable by the State on a refund. The act became effective July 16, 1993.

The exemption granted by the act applies to the period beginning January 1, 1990, and ending July 15, 1992. This is the period from the effective date of the tax to the date these tires were exempted from the tax by Chapter 867 of the 1991 Session Laws (Reg. Sess. 1992).

A refund for taxes paid during this period may be claimed at any time before July 1, 1994. Interest payable on a refund accrues at the rate of 5% a year instead of at the rates that would otherwise apply. The rates that would otherwise apply are 9% for calendar years 1990 and 1991, 8% for calendar year 1992, and 7% for calendar year 1993 and subsequent calendar years. Interest accrues on a refund of the scrap tire tax starting 90 days after an overpayment of the tax until the refund is made.

Proponents of this act argued that the scrap tire tax was never intended to apply to new tires placed on newly manufactured vehicles. Whether or not this was the intent, however, the tax by its terms did apply to new tires purchased for placement on newly manufactured vehicles from its effective date of January 1, 1990, until the exemption became effective on July 15, 1992.

Currently, the scrap tire disposal tax is a 1% tax on the price of certain tires. Effective October 1, 1993, the tax rate will increase to 2% on tires having a bead diameter of less than 20 inches and will remain at 1% for all other tires. Most of the revenue from the tax is used to pay for the disposal of scrap tires or the abatement of a nuisance caused by storing scrap tires.

The scrap tire tax was first enacted in 1989 and was revised by Chapter 221 of the 1991 Session Laws. When first enacted, the tax applied to new motor vehicle tires sold at retail and the regular exemptions from sales tax did not apply to sales of the tires. Thus, the exemption for items that are component parts of a manufactured product did not apply and tires purchased for placement on newly manufactured vehicles were subject to the tax. The 1991 revision did not change the taxation of new tires placed on newly manufactured vehicles.

After the 1991 Session, several manufacturers of vehicles, including Freightliner and Caterpillar, asked the Revenue Laws Study Committee to study the issue of the taxation of new tires purchased for placement on newly manufactured vehicles. The Committee concluded that taxation of these tires was contrary to the intent of the tax and placed North Carolina-made vehicles at a competitive disadvantage to vehicles made in other states. The Committee therefore recommended that new tires placed on newly manufactured vehicles be exempted from the tax and that the exemption apply retroactively.

In its 1992 regular session, the General Assembly enacted the recommendation of the Revenue Laws Study Committee to exempt from the scrap tire tax new tires placed on newly manufactured vehicles. It did not enact that Committee's recommendation to make the exemption retroactive. This act, however, makes the exemption retroactive.

The Revenue Laws Study Committee found that the intent of the scrap tire disposal tax is to tax a tire that replaces a tire that is removed from a vehicle and is therefore in need of disposal. Obviously, when a new tire is placed on a newly manufactured vehicle, no tire is being replaced and no tire is in need of disposal.

Chapter 371 (Senate Bill 158, Sen. Kerr)

AN ACT TO PROVIDE THAT THE PENALTY FOR FAILURE TO FILE AN INHERITANCE TAX RETURN WILL BE ASSESSED AND COLLECTED IN THE SAME MANNER AS THE PENALTY FOR FAILURE TO PAY INHERITANCE TAXES.

This act makes the procedure for collecting the existing penalty for failure to file an inheritance tax return the same as the procedure for collecting the penalty for failure to pay inheritance taxes or other taxes, specifies that the penalty for failure to file does not apply if there is no inheritance tax due on the estate, and makes several technical changes to the affected statute. The act is effective for the estates of decedents dying on or after October 1, 1993. The act is expected to result in a minimal increase in General Fund revenues.

The penalty for failure to file an inheritance tax return is $500. The penalty is payable by the personal representative. This act changes the collection procedure for this penalty by deleting the sentence in former law that required the penalty to be collected by filing a suit in the Wake County Superior Court. By deleting this sentence, the penalty will become subject to the general administrative provisions of Article 9 of the Revenue Act and become collectible in accordance with those provisions. Under Article 9, penalties are collectible in the same manner as taxes: the

Department of Revenue proposes an assessment and the taxpayer has the right to contest the assessment through standard administrative procedures before appealing to the court system.

The requirement that the inheritance tax penalty be recovered in an action brought in the superior court of Wake County is unique to that penalty and is an historical anachronism. The general collection provisions in Article 9 were enacted in 1949 but the inheritance tax law was enacted before that date. The procedure for collecting the inheritance tax penalty was not changed to conform to the general provisions in 1949.

This act also makes several technical changes. It substitutes the general term "personal representative" for the terms "administrator" and "executor" that appear in G.S. 105-23. It deletes an incorrect cross-reference to G.S. 105-2(a)(3), and it deletes obsolete provisions. One of the obsolete provisions deleted is the requirement that the inheritance tax return state the ages of any minor children of the decedent. That requirement dates back to the time exemptions were allowed against the taxable estate; some of the exemptions were based upon the ages of any beneficiaries who were children of the decedent. This exemption provision was replaced with the current inheritance tax credit in 1977.

Recommended by the Revenue Laws Study Committee.

Chapter 372 (Senate Bill 183, Sen. Kerr)

AN ACT TO PROVIDE THAT A SALES TAX LICENSE IS VOID IF THE RETAILER REPORTS NO SALES FOR EIGHTEEN MONTHS.

This act provides that a sales tax license becomes void if the licensed retailer reports no sales for a period of 18 months. The act became effective August 1, 1993.

All sales of tangible personal property are presumed to be taxable (G.S. 105-164.26). A sale is not taxable if the buyer intends to resell the property. A person who sells property in a wholesale sale can negate the presumption that the sale is taxable by checking the buyer's certificate of resale. A certificate of resale states that the property bought is for resale, states the buyer's sales tax license number, and indicates the type of property the buyer sells in the regular course of business.

In 1992, the Revenue Laws Study Committee received complaints from taxpayers about individuals who acquire a sales tax license and then fraudulently give a certificate of resale when purchasing property they have no intention of reselling. The Committee found no hard data indicating the extent to which this type of tax evasion occurs. The Committee felt that tax evaders would be deterred by a new penalty enacted in 1992 upon the recommendation of the Revenue Laws Study Committee. Chapter 914 of the 1991 Session Laws (1992 Session) added an additional penalty of $250 to be assessed by the Secretary of Revenue against a buyer who misuses a certificate of resale, effective July 10, 1992.

A sales tax license is required of every person who engages in the retail or wholesale business. The license costs $15 and, once issued, remains valid unless the license holder remains continuously out of business for five years. The Committee noted that increasing the $15 license fee or requiring periodic renewal of licenses would place a burden on the many legitimate small retailers and have only a small impact on potential tax evaders. The Committee decided that the State could limit the number of non-retailers who obtain licenses for fraudulent purposes by providing that a license becomes void if the license holder makes no sales for an 18-month period. The Committee felt that all legitimate merchants would make at least some sales every 18 months. This act implements the Committee's recommendation. The act provides an exception for wholesalers and for license holders who make only exempt sales. The latter group includes civic organizations and other nonprofit associations who occasionally sell items to raise funds; these license holders may go for long periods between fund-raising sales.

Recommended by the Revenue Laws Study Committee.

Chapter 400 (House Bill 681. Rep. DeVane)

AN ACT TO IMPLEMENT THE REQUIREMENTS OF THE 1990 AMENDMENTS TO THE FEDERAL CLEAN AIR ACT, TO REPEAL THE EXPIRATION OF A PORTION OF THE PER GALLON FUEL TAX, TO DEDICATE A PORTION OF THE PROCEEDS OF THE TAX TO THE ADMINISTRATION OF THE AIR QUALITY PROGRAM, TO DEDICATE A PORTION OF THE PROCEEDS OF THE TAX TO THE CLEANUP OF LEAKING PETROLEUM UNDERGROUND STORAGE TANKS, AND TO REPEAL THE EXPIRATION OF THE LEAKING PETROLEUM UNDERGROUND STORAGE TANK CLEANUP ACT OF 1988.

This act changes various procedures concerning the issuance and enforcement of air quality permits to conform State law on this subject to the 1990 amendments to the federal Clean Air Act. repeals the 1995 scheduled reduction in and the 1999 repeal of the additional 1/2¢ a gallon motor fuel tax that became effective January 1. 1992. and changes the distribution of this additional 1/2¢ motor fuel tax. The conforming air quality permit changes and the repeal of the scheduled reduction in and the repeal of the additional 1/2¢ motor fuel tax became effective July 19. 1993. The change in the distribution of the additional 1/2¢ a gallon motor fuel tax becomes effective January 1. 1995.

The 1991 General Assembly increased the motor fuel per gallon excise tax by 1/2¢ a gallon effective January 1. 1992. The increase applies to the tax on gasoline imposed by Article 36 of Chapter 105 of the General Statutes. to the tax on diesel fuel and other special motor fuel imposed by Article 36A of that Chapter. and to the road tax imposed by Article 36B of that Chapter on motor carriers who purchase fuel outside the State for use inside the State.

The purpose of the additional 1/2¢ a gallon tax increase was to provide funds to clean up the environmental damage caused by leaking underground petroleum storage tanks. One-half of the revenue from this additional tax is therefore credited to the Commercial Leaking Underground Petroleum Storage Tank Cleanup Fund. established under G.S. 143-219.94B. and the remaining half is credited to the Groundwater Protection Loan Fund. established under G.S. 143-215.94P.

In the act that imposed the additional 1/2¢ a gallon tax. the 1991 General Assembly reduced the tax to an additional 1/4¢ tax effective January 1, 1995. directed how the reduced tax was to be distributed. and then repealed the reduced tax effective January 1. 1999. All of the proceeds of the reduced January 1. 1995. tax were to be credited to the Commercial Leaking Underground Petroleum Storage Tank Cleanup Fund. Sections 11 and 12 of this act repeal the scheduled 1995 reduction in and the scheduled 1999 repeal of the additional 1/2¢ tax, thereby making the 1992 increase a permanent increase.

Section 13 of this act changes the distribution of the now permanent additional 1/2¢ a gallon motor fuel tax. Effective January 1. 1995. the proceeds of the additional tax will be distributed as follows: 19/32 to the Commercial Leaking Petroleum Underground Storage Tank Cleanup Fund. 3/32 to the Noncommercial Leaking Petroleum Underground Storage Tank Cleanup Fund. and 5/16 to the Water and Air Quality Account within the Department of Environment. Health. and Natural Resources. Thus. the Commercial Leaking Petroleum Underground Storage Tank Cleanup Fund will receive slightly more of the 1/2¢ tax than it is currently receiving. the Groundwater Protection Loan Fund will receive no revenue from the additional tax. and the Noncommercial Leaking Petroleum Underground Storage Tank Cleanup Fund and the Air and Water Quality Account will begin to receive revenue from the additional tax.

The proceeds credited to the Water and Air Quality Account must be used for the air quality program. This restriction ensures that the additional tax proceeds will continue to be used for environmental programs that address problems created by the use of motor fuels. Air quality programs are related to problems created by the use of motor fuels because motor vehicle emissions contribute significantly to air pollution.

Chapter 424 (Senate Bill 787, Sen. Kerr)

AN ACT TO IMPOSE A PENALTY FOR FAILURE TO COMPLY WITH ESC TAX REPORTING REQUIREMENTS.

This act imposes two new penalties for failure to comply with certain reporting requirements of the Employment Security Commission. It imposes a penalty on an employer with 250 or more employees who does not file on magnetic tapes or diskettes that portion of the "Employer's Quarterly Tax and Wage Report" that contains the name, social security number, and gross wages of the employees. The penalty will be $25. It also imposes a penalty on an agent of employers who does not file the required information on magnetic tape or diskette if the agent files the report for 250 or more employees of one or more employers. In this case, the penalty will not be monetary. Instead, the law will prohibit that agent from reporting wages and filing reports with the Employment Security Commission on behalf of the subject employees for a period of one year. The Commission may reduce or waive a penalty against either an employer or an agent for good cause shown. The act becomes effective September 30, 1995, and applies to Employer's Quarterly Tax and Wage Reports required to be filed on or after the quarter ending September 30, 1995.

The Commission began requiring the filing of this report on magnetic tape or diskette in 1992 because of an act passed by the General Assembly in 1991. The large employers subject to this requirement are currently required to file this information on tape with the federal government. The purpose of the requirement is to speed up reporting and make it more efficient. Current law does not contain an appropriate penalty for an employer or an agent who does not file the report in the correct manner. At the present time, the Commission considers a report that is not filed correctly as not being filed. The penalty for failure to file is 5% of the tax for each month that the report is not filed, not to exceed 25% of the aggregate or $5 per month, whichever is greater. The majority of the more than 152,000 employers subject to this requirement have complied. In the approximately 400 cases where the requirement has not been met, the Commission has waived the failure to file penalty that it believes it could impose.

Chapter 432 (House Bill 720, Rep. G. Miller)

AN ACT TO INCREASE THE INCOME TAX CREDIT FOR CHILD AND DEPENDENT CARE EXPENSE FOR FAMILIES WITH INCOME BELOW FORTY THOUSAND DOLLARS A YEAR.

This act increases the income tax credit for child and dependent care expenses for families with income below $40,000 a year. Under current law, the credit is based on a flat percentage of the child and dependent care expenses claimed on the taxpayer's federal tax return. Effective for taxable years beginning on or after January 1, 1994, the credit will be based upon income and filing status. The act will lower General Fund revenues by $3.7 million in fiscal year 1994-95 and by $4 million in fiscal year 1995-96.

Under current law, a taxpayer may claim a tax credit equal to 7% of the federal employment-related expenses for dependents who are seven years old or older and 10% for dependents who are either under the age of seven or are physically or mentally incapable of caring for themselves. Under this act, the applicable percentages will range from 7% to 9% for dependents who are seven years old or older and 10% to 13% for dependents who are either under the age of seven or are physically or mentally incapable of caring for themselves. The act also equalizes the value of the credit among the taxpayers with a different filing status.

The act does not increase the maximum credit amount allowed. The credit may not exceed $2,400 if the taxpayer's household includes one qualifying individual and it may not exceed $4,800 if the taxpayer's household includes more than one qualifying individual.

The actual percentages allowed under this act are as follows:

Filing Status	**Adjusted Gross Income**	**Dependents age 7 or older, not disabled**	**Other dependents**
Head of Household	Up to $20,000	9%	13%
	Over $20,000 up to $32,000	8%	11.5%
	Over $32,000	7%	10%
Surviving Spouse or Joint Return	Up to $25,000	9%	13%
	Over $25,000 up to $40,000	8%	11.5%
	Over $40,000	7%	10%
Single	Up to $15,000	9%	13%
	Over $15,000 up to $24,000	8%	11.5%
	Over $24,000	7%	10%
Married Filing Separately	Up to $12,500	9%	13%
	Over $12,500 up to $20,000	8%	11.5%
	Over $20,000	7%	10%

Chapter 433 (House Bill 843, Rep. Gamble)

AN ACT TO REQUIRE THE DEPARTMENT OF REVENUE TO INCLUDE IN ITS BIENNIAL TAX EXPENDITURE REPORT ESTIMATES OF THE AMOUNT BY WHICH EACH TAX

EXPENDITURE REDUCES STATE REVENUES AND TO SEND A COPY OF THE REPORT TO EACH LEGISLATOR.

This act requires the Secretary of Revenue to include in the biennial tax expenditure report prepared by the Department of Revenue an estimate of the amount by which revenue is reduced by each tax expenditure. A tax expenditure is an exemption, an exclusion, a deduction, an allowance, a credit, a refund, a preferential tax rate, or another device that reduces the amount of tax revenue that would otherwise be available to the State. Under prior law, an estimate of the revenue loss was not required if making the estimate would impair other duties of the Secretary or the Department. The availability of the actual tax costs of the tax expenditures will better enable the General Assembly to scrutinize and evaluate the costs and benefits of these expenditures. The act also requires the Secretary to give each member of the General Assembly a copy of the tax expenditure report. Under prior law, members received copies of the report only upon request.

The Department of State Treasurer has suggested that, for the tax expenditure report to be an effective tool, "it needs to be carried further, and upgraded to include the actual tax costs of the many preferences; and it needs both legislative and public scrutiny." This act seeks to enhance the effectiveness of the biennial tax expenditure report by making it more complete and by making it more accessible to the members of the General Assembly.

Chapter 440 (Senate Bill 162, Sen. Kerr)

AN ACT TO LIMIT THE NUMBER OF MOTOR VEHICLE DEALER LICENSE PLATES THAT CAN BE ISSUED TO THE SAME DEALER, TO MODIFY THE SANCTIONS FOR MISUSE OF A DEALER LICENSE PLATE, TO EXPAND THE USE OF TRANSPORTER PLATES, TO ESTABLISH A SPECIAL SPORTS EVENT TEMPORARY PLATE, AND TO CHANGE THE FEES FOR DEALER PLATES AND TRANSPORTER PLATES.

This act makes the changes described in its title and also makes numerous administrative and technical changes. The dealer plate changes and the authorization for the new special sports event temporary plate become effective October 1, 1993. The transporter plate changes become effective January 1, 1994. Sections 2, 3, and 7 through 12 make the dealer plate changes. Sections 4 through 6 make the transporter plate changes. Section 13 authorizes the new sports event temporary plate, and Section 1 makes an unrelated technical change.

The purpose of the act is to prevent the misuse of motor vehicle dealer license plates. The act does this by restricting the number of dealer license plates that can be issued to the same dealer, expanding the allowable uses of transporter plates so that fewer dealer plates are needed, and creating a new sports event temporary plate that can be used by dealers who provide vehicles for athletic events.

The misuse of a dealer license plate occurs when a dealer in new or used motor vehicles allows a dealer license plate to be used on a motor vehicle that is not, for all practical purposes, part of the inventory of the dealer. The General Assembly is concerned about this problem because a motor vehicle that is improperly driven with a dealer license plate escapes property taxes, escapes motor vehicle title and registration fees, and receives an unfair advantage on automobile insurance. It escapes property taxes because it is supposedly part of the inventory of the dealer and is, therefore, exempted from property tax by the exemption for inventory. It escapes motor vehicle title and registration fees because the title to the vehicle has not been transferred to the person who uses the vehicle. It enjoys an unfair advantage on insurance because it is insured through the dealer's blanket liability insurance policy rather than through a policy that is specific to the vehicle.

Dealer Plate Changes

The most important change the act makes is to limit the number of dealer plates that can be issued to the same motor vehicle dealer. Until October 1, 1993, a dealer can obtain an unlimited number of dealer plates by submitting an application to the Division and paying the $10 fee for each plate. After October 1, 1993, a dealer can obtain no more than the maximum number of plates authorized by a schedule that is based on a combination of the number of motor vehicles the dealer sold during the relevant twelve-month period and the average number of qualifying sales representatives employed by the dealer during that period. The number of plates the schedule authorizes is as follows:

Vehicles Sold In Relevant 12-Month Period	Maximum Number of Plates
Fewer than 12	1
At least 12 but less than 25	4
At least 25 but less than 37	5
At least 37 but less than 49	6
49 or more	At least 6, but no more than 4 times the average number of qualifying sales representatives employed by the dealer during the relevant 12-month period

The relevant 12-month period is the most recent 12-month period ending April 30. A "qualifying sales representative" is a sales representative who works for the dealer at least 25 hours a week on a regular basis and is compensated by the dealer for this work.

The act makes special allowances for new dealers as well as for established dealers who, for the first time, sell at least 49 vehicles in a year. A new dealer who was not in business for part or all of the relevant 12-month period may obtain the number of plates that equals four times the number of qualifying sales representatives employed by the dealer on the date the dealer files the application for dealer plates. An established dealer who was in business during the relevant 12-month period, who sold fewer than 49 vehicles during that period, but who has sold at least 49 vehicles since May 1 may apply for additional plates and may receive the number of plates that equals four times the average number of qualifying sales representatives employed by the dealer during the relevant 12-month period.

Although the act limits the number of dealer plates a dealer can obtain, the act preserves the open-ended use of the plates by officers and employees of the dealer, with one new restriction. The act prohibits an employee of the dealer who is less than 18 years old from driving a vehicle bearing a dealer plate unless that employee regularly works for the dealer at least 15 hours a week. Otherwise, as under prior law, an officer or an employee of the dealer can drive a motor vehicle bearing a dealer plate for any purpose and a person who is not an officer or an employee of the dealer can drive a motor vehicle bearing a dealer plate only if that person is test-driving the vehicle and has a demonstration permit.

To encourage compliance with the law concerning the use of dealer plates, the act changes the penalties for the unauthorized use of these plates and specifically prohibits a dealer from lending, renting, leasing, or otherwise placing a dealer plate at the disposal of a person who is not authorized to drive a vehicle with dealer plates. Under prior law, a dealer's license to engage in business as a motor vehicle dealer could be revoked for the misuse of dealer plates and a dealer who allowed the unauthorized use of dealer plates could arguably have been charged with a misdemeanor offense. In practice, no dealer's license was revoked for this reason and, because the law was vague, no dealer was ever charged with a misdemeanor violation for the misuse of dealer plates.

The act deletes these ineffective sanctions and substitutes three new sanctions. It declares that a violation of any of the restrictions on the use of dealer license plates is an infraction committed by the individual driving the car. is grounds for a civil penalty payable by the dealer of $200. and is grounds for the rescission by the Division of Motor Vehicles of all dealer plates issued to the dealer.

In addition to imposing new restrictions on the use of dealer plates and new penalties for their misuse. the act changes the fees for dealer plates. Under prior law. the fee for each dealer plate was $10. The act increases the fee for the first five dealer plates issued to the same dealer from $10 each to $20 each. but leaves the fee for the sixth and subsequent plates issued to the same dealer at $10 each.

Finally. the act makes administrative and technical changes to the dealer plate laws. One administrative change clarifies that all dealer plates must be turned in when a dealer's license is surrendered. Another administrative change deletes the requirement that a copy of a title or a manufacturer's certificate of origin be carried in a vehicle driven with dealer plates and substitutes a requirement that a registration card be carried.

The technical changes primarily sort motor vehicle dealer plate provisions and motor vehicle dealer licensing provisions. group the former into rewritten G.S. 20-79. and insert the latter into the appropriate statute in Article 12 of Chapter 20 of the General Statutes. the Motor Vehicle Dealers and Manufacturers Licensing Law. For example. Section 3 moves the requirement that an application for a motor vehicle dealer's license be accompanied by an application for dealer license plates from G.S. 20-79 to G.S. 20-288(a) because it is a requirement for licensure. and Sections 8 and 11 move from G.S. 20-110 to G.S. 20-294(11) and (12) in Article 12 two grounds for revocation of a dealer's license.

In sorting the provisions. the act repeals obsolete or redundant provisions. For example. in Article 12. G.S. 20-287 requires motor vehicle dealers and manufacturers to be licensed and G.S. 20-308 makes it a general misdemeanor to fail to get a dealer's license or for a person who is not a dealer to get dealer plates. The act therefore deletes provisions similar to these from G.S. 20-79. Similarly. because rewritten G.S. 20-79 makes it clear that only a dealer can obtain dealer plates. Section 10 of the act repeals G.S. 20-293. which states the same restriction.

In addition to the technical changes that sort dealer plate and dealer licensing provisions. the act makes conforming changes to various statutes to reflect the changes in rewritten G.S. 20-79. For example. Section 9 deletes a reference in G.S. 20-111(1) to exemptions in G.S. 20-79 because G.S. 20-79 no longer contains any exemptions. Similarly. Section 12 deletes unnecessary references to the use of dealer plates from the statute governing the transfer of a vehicle to a dealer or an insurance company.

Transporter Plate Changes

The act expands the allowable uses of transporter plates. primarily to provide dealers with plates that can be used in lieu of dealer plates. and changes the fee for a transporter plate. In contrast to a dealer plate. a transporter plate can be used only for a limited purpose. It is therefore easier to detect an unauthorized use of a transporter plate than of a dealer plate.

The act adds the following four uses for transporter plates: to pick up for repair. road-test. and then deliver to the dealer a vehicle that is offered for sale by a dealer. to drive a motor vehicle to or from a motor vehicle auction. to drive a vehicle that is at least 25 years old in a parade or other public event. and to drive a motor vehicle that is part of the inventory of a dealer to a motor vehicle trade show. These new uses are contained in rewritten G.S. 20-79.2(a)(4) and new G.S. 20-79.2(a)(5). (8). and (9).

The act changes the fee for a transporter plate to bring it closer to the fee for a dealer plate. The act sets the fee for a transporter plate at $10. Under current law. the fee for a transporter plate is $19 for the first plate issued to the same person and is $6 for each additional plate issued to the same person. Like dealer plates, transporter plates are issued on a yearly basis and are not specific to a vehicle. They can therefore be switched from one vehicle to another as long as the use of each vehicle remains within the allowable uses.

In expanding the allowable uses of transporter plates, the act makes technical changes to the transporter plate provisions. It incorporates all the allowable uses of transporter plates into subsection (a) of G.S. 20-79.2 and makes conforming changes required because of this new arrangement. Section 4 deletes G.S. 20-79.2(b) but moves its content to new G.S. 20-79.2(a)(8). Similarly, Section 5 repeals the statute that currently authorizes the use of transporter plates for house trailers and mobile homes because the authorization is moved to new G.S. 20-79.2(a)(7) in Section 4. Section 6 makes a conforming change to remove a reference to repealed G.S. 20-79.3, which was incorporated into G.S. 20-79.2(a)(7).

Special Sports Event Temporary Plate

The act authorizes a new type of plate for use by motor vehicle dealers. The new plate is called a special sports event temporary plate. It can be obtained only by a dealer and used only on a vehicle that is in the dealer's inventory and is loaned by the dealer to another for use at a special sports event. A "special sports event" is a sports event that is held no more than once a year and is open to the public. The Greater Greensboro Open Golf Tournament is an example of a special sports event. The fee for a special sports event temporary plate is $5.00 for each plate.

A special sports event plate is valid for up to 45 days. When obtaining a special sports event plate, a dealer may specify a shorter period of time during which the plate is valid. When the plate expires, the dealer to whom it is issued must destroy it. The plate will be a cardboard plate similar to the 30-day cardboard plate issuable to the buyer of a motor vehicle for use until the Division issues the regular plate for the vehicle.

Unrelated Technical Changes

Sections 1 and 11 make technical changes that are unrelated to the substantive changes discussed above. Section 1 removes the 6-month limit on how often a person can apply for a motor vehicle dealer's license and makes a technical change to eliminate an incorrect reference to an established place of business. The limitation is removed because it appears to serve no purpose. Among other changes, Section 11 eliminates an incorrect reference to an established place of business. G.S. 20-288(d) requires a wholesaler to have an established office and a motor vehicle dealer to have an established salesroom. The correct term, therefore, is either established office or established salesroom, not established place of business.

Chapter 442 (Senate Bill 1025, Sen. Kerr)

AN ACT TO PROVIDE FOR PAYMENT OF THE CIGARETTE TAX BY REPORTING RATHER THAN BY TAX STAMPS.

This act changes the method of collecting the State excise tax on cigarettes from a stamp method to a reporting method and reduces the discount allowed when paying the tax from 7/24¢ per stamp to 4% of the amount of tax payable. The per stamp discount amounts to $1.75 for each case of 60 cartons of cigarettes, which is approximately 6.28%. The changes become effective January 1, 1994. The changes are expected to increase General Fund revenue by $1.1 million each fiscal year. This increase is the result of a cost savings of $200,000 from no longer having to print the tax stamps and a reduction of $900,000 in the annual amount of cigarette tax discounts allowed.

Under current law, the State cigarette excise tax is paid through the use of tax stamps that are bought from the Department of Revenue by the distributor of the cigarettes and placed on each pack of cigarettes. The stamp indicates that the State excise tax has been paid. Effective January 1, 1994, the tax will be submitted with a monthly return filed with the Department of Revenue.

With the change in collection method, North Carolina becomes the fifth state that does not require tax stamps on cigarettes. The other four states are Alaska, Hawaii, Michigan, and North Dakota. This change also make collection of the State cigarette excise tax like collection of the State excise taxes on other tobacco products, soft drinks, and alcoholic beverages. All of these other excise taxes are paid by means of a monthly report and those who file the reports are allowed a 4% discount. The current per stamp discount is allowed as compensation for the expense of handling the stamps. Similarly, the 4% discount will be allowed as compensation for the expense of preparing the records and reports associated with payment of the cigarette excise tax and for the expense of furnishing a bond to the State. Unlike the other excise tax discounts, however, the 4% cigarette excise tax discount is not intended to cover the expense of paying the tax on products that subsequently cannot be sold because they become stale or otherwise become unsuitable for sale. Distributors of cigarettes will be allowed a refund of tax paid on packages of unsalable cigarettes that are returned to the manufacturer of the cigarettes. A refund of tax paid on these cigarettes, less the discount allowed, can be obtained by filing a refund claim with the Department of Revenue.

North Carolina levies an excise tax on cigarettes at the rate of 2 1/2 mills per individual cigarette. This translates to 5¢ per pack of cigarettes. The tax does not apply to free samples of cigarettes either given in packages of five or fewer cigarettes or given to cigarette factory workers.

Under current law, only licensed distributors may obtain unstamped cigarettes. If a person other than a distributor comes into possession of cigarettes upon which the excise tax has not been paid, that person must pay a use tax at the same rate as the excise tax. Similarly, under the act, only licensed distributors may obtain non-tax-paid cigarettes and anyone else who comes into possession of non-tax-paid cigarettes is liable for the use tax on the cigarettes.

Under current law, it is unlawful to transport, sell, or offer to sell unstamped cigarettes, except that tourists and others travelling to this State may possess up to 600 unstamped cigarettes (three cartons) for personal use. Possession of more than 600 unstamped cigarettes by anyone other than a licensed distributor is prima facie evidence that the cigarettes are possessed in violation of the tax law. Unstamped cigarettes, their container, and any vehicle or vessel in which they may be transported are contraband goods subject to seizure and confiscation.

Effective January 1, 1994, it will still be unlawful to transport, sell, or offer to sell non-tax-paid cigarettes, and non-tax-paid cigarettes, their container, and any vehicle or vessel in which they were transported will still be contraband goods. Unless the cigarettes bear the stamp of another state or country, however, law enforcement officers will not know by looking at them whether the North Carolina tax has been paid and, consequently, whether or not they are non-tax-paid cigarettes.

Chapter 443 (Senate Bill 1141, Sen. Kerr)

AN ACT TO EXPAND THE TAX CREDITS FOR QUALIFIED BUSINESS INVESTMENTS AND TO PROVIDE THAT THE TAX CREDITS SHALL SUNSET FOR INVESTMENTS MADE ON OR AFTER JANUARY 1, 1999.

I. INTRODUCTION

Chapter 443 of the 1993 Session Laws makes a number of changes to the Qualified Business Investments Tax Credits, effective beginning with the 1994 tax year. Some of the changes, such as allowing partnerships to qualify for the credits and allowing investors to participate in the businesses, are designed to expand the credit. Other changes, such as reducing the maximum annual investment for individuals and prohibiting certain types of businesses from qualifying for the credit, narrow the credit. Other changes are designed to clarify the law and make it easier to administer. It is not known what effect these changes will have on General Fund revenues. The law as in effect until 1994 is summarized below as "former law." The changes made by the act are outlined following the summary of former law.

II. FORMER LAW

Division V of Article 4 of Chapter 105 of the General Statutes, Tax Credits for Qualified Business Investments, was enacted in 1987 to allow tax credits to individuals and corporations that invest in qualified North Carolina businesses or the North Carolina Enterprise Corporation. For individuals, the credit is allowed against individual income taxes. For corporations, the credit is allowed against corporate income taxes, franchise taxes, and insurance premiums taxes.

Until the 1994 effective date of Chapter 443, the amount of the credit allowed is 25% of the amount invested, up to a maximum credit of $100,000 for individuals and $750,000 for corporations. If the allowable credit exceeds the taxpayer's tax liability, the excess may be carried forward for up to five years. The total amount of tax credits that can be granted to individuals or corporations in any tax year is capped at $12 million. The investors apply for the credit through an application filed with the Department of Revenue by April 15; the Department then determines whether the $12 million cap has been exceeded and, if so, proportionally reduces the amount of each credit applied for.

Until the 1994 tax year, individuals are allowed credits for investments in the equity securities or subordinated debt of the North Carolina Enterprise Corporation and of three types of qualified businesses: qualified business ventures, qualified grantee businesses, and qualified investment organizations. Corporations are allowed credits only for investments in the equity securities of the North Carolina Enterprise Corporation and of one type of qualified business: qualified investment organizations.

A qualified business venture is a company that is headquartered and has most of its operations in North Carolina, had less than $5 million in sales in the prior year, and engages primarily in manufacturing, processing, warehousing, wholesaling, research and development, or a service-related industry. A qualified business venture may not engage primarily in construction, contracting, retailing, or investing.

A qualified grantee business is a company that is headquartered and has most of its operations in North Carolina and has received funding during the past three years from the North Carolina Biotechnology Center, the North Carolina Microelectronics Center, the Technological Development Authority, or the federal Small Business Innovation Research program.

A qualified investment organization is a firm engaged primarily in the business of investing in qualified business ventures and qualified grantee businesses. Since the enactment of the qualified business investment tax credits, no tax credits have been claimed for investments made in qualified investment organizations.

The North Carolina Enterprise Corporation is an entity formed under Article 3 of Chapter 53A of the General Statutes to make investments in small North Carolina businesses. The Corporation focuses on investments that have significant potential to create jobs and diversify and stabilize the economy of rural areas of the State.

Qualified businesses must register with the Secretary of State and renew their registrations annually. There is a $100.00 fee for registration and a $50.00 fee for renewal. Since 1988, the Secretary of State has registered 121 qualified business ventures and qualified grantee businesses but no qualified investment organizations. Individuals and corporations have applied for approximately $14 million in tax credits, which represents $56 million in investment in small North Carolina companies.

Under the law in effect until 1994, an investor in a qualified business venture or a qualified grantee business forfeits the tax credit if one of the following occurs within three years after the investment was made:

(1) The investor or the investor's family participates in the operation of the business.

(2) The business fails to renew its registration, other than solely because its revenues have grown above $5 million per year.

(3) The business has its registration revoked by the Secretary of State.

III. CHANGES MADE BY CHAPTER 443

Only Direct Investments Qualify

The act provides that the tax credit applies only to investments made in securities purchased directly from the qualified business. Under former law, a credit would potentially be available to both the original purchaser of the securities from the business and a person to whom the original purchaser sold the securities.

Pass-through Entities May Take Credit

The act provides that a pass-through entity may qualify for the credit and pass it on to the entity's owners. Under former law, only corporations and individuals could qualify for the credit. A pass-through entity is an entity, such as a partnership or a Subchapter S corporation, that is treated as owned by individuals or other entities under federal tax law and whose income, losses, and credits are reported by the owners on their State income tax returns. The pass-through entity may qualify for up to $750,000 of the credit per year. Investments in the equity securities or subordinated debt of any type of qualified business may be passed through to individuals; only investments in the equity securities of the North Carolina Enterprise Corporation may be passed through to corporations. This treatment parallels the types of investments for which credits are available to individuals and corporations.

Limit on Individuals' Credits Reduced

The act reduces from $100,000 to $50,000 the amount of credit an individual may claim each tax year for investments in qualified businesses.

Types of Qualified Business Ventures Restricted

The act provides that a business formed for the primary purpose of acquiring one or more other businesses does not qualify for the tax credit. In response to concerns that the credit was being used for inappropriate businesses such as law firms and golf courses, the act also provides that the credit does not apply to firms engaged primarily in the following types of businesses:

(1) A real estate-related business. A real estate-related business is a business involved in or related to the brokerage, selling, purchasing, leasing, operating, or managing of hotels, motels, nursing homes or other lodging facilities, sports or social clubs, restaurants, storage facilities, or commercial or residential lots or buildings.

(2) Providing a professional service. This category includes accountants, architects, attorneys, medical professionals, psychologists, occupational therapists, geologists, and foresters.
(3) Providing personal grooming or cosmetics services.
(4) Offering any form of entertainment, amusement, recreation, or athletic or fitness activity for which an admission or membership is charged.

Rules for Investor Participation in Business Modified

Under former law, an investor would forfeit the tax credit if the investor or the investor's family participates in the business. This act will allow investors and their families to participate actively in the business as long as they receive no financial compensation for their services aside from reimbursement for expenses and/or participation in a stock option or stock bonus plan. The act also adds siblings to the types of family members who may not participate in the business for compensation.

Monitoring of Businesses Required

This act requires an application for renewal of registration as a qualified business to indicate whether the business is a minority business and to report the number of jobs created in the previous year that are attributable to the tax credit as well as the average wages paid by each job. In addition, it requires the Secretary of State to report to the Legislative Research Commission annually the following information about each qualified business registered for the investment tax credit: name and address, types of business in which it engages, whether it is a minority- or women-owned business, the number of jobs created by the business, and the average wages paid by these jobs.

Five-Year Sunset Placed on Tax Credit

Section 7 of this act repeals the entire tax credit for qualified business tax credits effective for investments made on or after January 1, 1999. This repeal will not affect carryforwards and credits for investments made before January 1, 1999.

Forfeiture Required for Transfer or Redemption of Securities

This act provides that an investor forfeits the tax credit for an investment in the North Carolina Enterprise Corporation or in a qualified business in the following cases:

(1) Within one year after making the investment, the investor transfers the securities, other than as a result of an individual investor's death, a corporate investor's liquidation, or a corporate investor's merger or consolidation approved by the North Carolina Enterprise Corporation or the qualified business.
(2) Within five years after the investment, the North Carolina Enterprise Corporation or the qualified business redeems the securities.

Limitations Period Extended for Assessments Based on Forfeitures

The statute of limitations for assessing taxes is, in most cases, three years after the tax return was filed or was required to be filed, whichever is later. Because forfeitures of qualified business investment tax credits may occur years after the credit was allowed, Section 6 of this act provides that the Department of Revenue may assess the tax due as a result of a forfeiture within three years after the date of the forfeiture.

No Forfeiture Required for Failure to Renew Registration

The act provides that an investor does not forfeit the tax credit if the qualified business fails to renew its registration with the Secretary of State, unless the business was unable to renew its registration because it has moved out of North Carolina or failed to relocate into North Carolina. If a qualified business venture fails to renew its registration, its registration is revoked, but it may apply to have its registration reinstated upon payment of a late filing penalty of $1,000. Under former law, an investor in a qualified business venture forfeited the credit for the investment if, within three years, the business failed to renew its registration, unless the failure to renew was solely because the business' revenues had grown beyond $5 million per year.

Restrictions on Registration Effective Date and Transfer Clarified

The act provides that the effective date of a qualified business's registration is the date the application is filed, rather than the date the application is approved. This provision allows investors a credit for investments made in a qualified business while waiting for its application to be approved. If the application is not approved, however, the investments will not qualify for the credit. The act also provides that registration as a qualified business may not be transferred from one business to another; however, if a qualified business is involved in a merger or consolidation and the surviving company qualifies for the registration, the surviving company may retain the registration.

Other Changes

This act makes the following additional changes:

(1) Repeals the provisions of the former law allowing tax credits for investments in qualified investment organizations. Because no tax credits have ever been claimed for these investments, it appears that this part of the law is serving no purpose.

(2) Clarifies the definition of "selling or leasing at retail."

(3) Allows the Department of Revenue to extend until September 15 the April 15 deadline for applying for the tax credit.

(4) Clarifies that the $50,000 and $750,000 annual limits on tax credits for individuals and corporations, respectively, do not apply to amounts carried forward from a previous tax year.

(5) Provides that the investor's basis in the securities representing the investment for which a credit is allowable will be reduced by the amount of the allowable credit, and adds a conforming change to the individual income tax law to allow taxation of the resulting gain when the securities are disposed of.

(6) Provides that if an investment is paid for other than in money, the taxpayer must include with the application for the credit a certified appraisal of the property used to pay for the investment.

(7) Clarifies that the Secretary of State will not revoke the registration of a qualified business solely because the business has ceased business operations.

(8) Provides that a person who submits a false application for registration as a qualified business is guilty of a general misdemeanor.

Chapter 450 (House Bill 174, Rep. Luebke)

AN ACT TO AUTHORIZE THE DEPARTMENT OF REVENUE TO ALLOW OR REQUIRE PAYMENT OF TAXES BY ELECTRONIC FUNDS TRANSFER.

This act authorizes the Department of Revenue to require a taxpayer who owes an average of $20,000 a month of a type of tax to pay that tax by electronic funds transfer. An electronic funds transfer is a transfer of funds that is initiated through an electronic terminal, a telephone, or a computer to authorize a financial institution to debit or credit a taxpayer's account. The processing of certain tax payments electronically will enable the State Treasurer to invest tax receipts sooner due to the reduced float time in receiving mail through the postal service and clearing checks through the banking system. The Department of Revenue estimates that the increased earnings on this decreased float will be approximately $1 million in fiscal year 1993-94 and $2 million in fiscal year 1994-95. The General Assembly appropriated $400.000 in fiscal year 1993-94 and $310.000 in fiscal year 1994-95 to the Department of Revenue in the expansion budget to enable the Department to implement an electronic funds transfer program.

The act became effective August 1, 1993. However, because of the time needed by the Department of Revenue to implement the program, the earliest date that electronic payments could actually be required is January 1, 1994. The act prohibited the Department from requiring the payment of motor fuels taxes or inspection fees by electronic funds transfer earlier than July 1, 1995. The Department of Revenue plans to phase the electronic funds transfer program in over several years. As planned, the program will be limited to the largest taxpayers and to taxes that are paid quarterly or more frequently. The first phase of the program, planned to begin January 1, 1994, involves withholding tax and corporate income tax. Later in 1994, utilities sales tax, utilities franchise tax, alcoholic beverages excise tax, and sales and use tax will be added. Initially, taxpayers with average payments of a single tax of $100.000 a month will be required to pay electronically. This threshold will be lowered as the program is developed, with full implementation for all targeted business taxes expected by the end of 1996.

The act enables the Department of Revenue to implement tax payments by electronic funds transfer by eliminating provisions in the former law that prohibit these payments. Some of these provisions require a tax to be paid at an office of the Department of Revenue and some require a tax to be paid by cash or check. This act deletes these conflicting provisions and substitutes a requirement that a tax be paid at the place and in the form required by the Secretary.

The monthly threshold applies separately to each tax. The Secretary will notify taxpayers who must pay taxes electronically and will educate them about the procedures to be followed. After the Secretary requires a taxpayer to pay a tax by electronic funds transfer, the Secretary must review the taxpayer's average payments at least annually. If the average amount of the payments falls below the $20.000 threshold, the Secretary must suspend the electronic funds payment requirement and so notify the taxpayer.

The act adds two new tax penalties related to electronic funds transfers. The first is a penalty for making an electronic funds transfer that is not honored due to insufficient funds or nonexistence of an account. Like the penalty for a bad check, this penalty is equal to 10% of the amount of the payment, with a maximum of $1.000. Like all other penalties except the bad check penalty, this penalty may be compromised or forgiven by the Secretary of Revenue for good cause. The second is a penalty for paying a tax in a form other than the form required by the Secretary. The penalty is equal to 5% of the amount of the tax, with a maximum of $1.000. This penalty will provide an incentive for taxpayers to comply with the electronic funds transfer requirements imposed by the Secretary.

Recommended by the Revenue Laws Study Committee.

Chapter 459 (Senate Bill 658, Sen. Kaplan)

AN ACT TO EXPAND THE PROPERTY TAX EXEMPTION FOR COMPUTER SOFTWARE.

This act is the result of a compromise between the North Carolina Association of County Commissioners and a taxpayer group called the North Carolina Software Coalition. It replaces the current property tax exemption for certain computer software used by manufacturers, wholesalers, and retailers with an across-the-board property tax exemption for all computer software, and its related documentation, other than embedded software and software that the taxpayer buys or licenses from an unrelated seller and that is required by generally accepted accounting principles to be treated as a capital asset. The new exemption is effective for property taxes imposed for taxable years beginning on or after July 1, 1994.

The original purpose of the Software Coalition was to expand the current property tax exemption for certain computer software to include all computer software. As introduced, therefore, this legislation exempted all computer software from property taxes. The North Carolina Association of County Commissioners pointed out that a blanket exemption for computer software would seriously erode the local property tax base and, as as result, would reduce local property tax revenues by over $10 million each year. To reduce the Association's opposition to the proposal, the Coalition agreed to the compromise reflected in this act.

The act first "undoes" the 1992 computer software exemption. That exemption, which was enacted at the request of some of the members of the Software Coalition, distorted the definition of inventories and thereby exempted certain computer software from property tax as part of the exemption for inventories. The 1992 exemption applied only to the following three kinds of software that were held by a manufacturer, a wholesaler, or a retailer and were not treated as a capital asset:

(1) Software developed or modified by the taxpayer for the taxpayer's own use.

(2) Software developed or modified by someone other than the taxpayer to the special order of or to meet the particular needs of the taxpayer.

(3) Software developed, acquired, or used to develop or enhance programs the taxpayer intended to sell to others.

The 1992 exemption was effective for two years only. It became effective for the 1992-93 tax year and is repealed by this act effective with the 1994-95 tax year. Thus, it applied only in 1992-93 and 1993-94.

After "undoing" the 1992 computer software exemption, the act establishes a new exemption for computer software effective for the 1994-95 tax year. It provides that software is exempt unless it is either embedded software or is treated as a capital asset. Thus, the new exemption applies uniformly to all taxpayers, abandons the requirement that the software be specially made to suit the taxpayer or be used by the taxpayer to develop other software, and preserves the requirement that to be exempt the software must not be considered a capital asset.

Software is another name for a computer program or computer instructions. Embedded software is software that is stored on a microchip or circuit board, is an integral part of a piece of equipment such as a dishwasher, a cash register, or an automobile, and is the reason the equipment can perform the functions it can. A seller is unrelated to a taxpayer if the seller and the taxpayer are not subject to any common ownership, either directly or indirectly, and neither the seller nor the taxpayer has a direct or an indirect ownership interest in the other.

By exempting certain computer software from the property tax, this act reduces the local property tax base. The resulting annual revenue loss to local governments is unknown.

Chapter 467 (Senate Bill 128, Sen. D. Winner)

AN ACT TO EXEMPT CERTAIN TRANSFERS OF VEHICLES FROM THE HIGHWAY USE TAX, TO REIMBURSE THE HIGHWAY TRUST FUND FOR REVENUE THAT WOULD OTHERWISE BE LOST AS A RESULT OF THE EXEMPTIONS, TO INCREASE REVENUES TO PROVIDE FUNDS TO MAKE THE REIMBURSEMENT, TO LOWER THE MAXIMUM HIGHWAY USE TAX ON CERTAIN COMMERCIAL VEHICLES, TO INCREASE THE ANNUAL REGISTRATION FEES FOR CERTAIN PROPERTY-HAULING VEHICLES, AND TO CREDIT THE INCREASED REVENUE FROM THE REGISTRATION FEES TO THE HIGHWAY TRUST FUND.

During the legislative process. this act grew from a one-section proposal concerning highway use tax exemptions to its current conglomeration of highway use tax changes and off-setting revenue increases. It changes the highway use tax by exempting three kinds of transfers from the tax. by modifying the exemption for transfers between certain family members. by reducing from $1.500 to $1.000 the maximum highway use tax payable on the transfer of a Class A or Class B commercial motor vehicle. and by allowing those who paid more than $1.000 on the transfer of one of these commercial motor vehicles to obtain a refund of the excess amount paid. Sections 1. 3. and 6 of the act make these changes; they became effective August 1. 1993.

The other changes the act makes are designed to provide revenue to off-set the revenue lost to the Highway Trust Fund as a result of the changes made to the highway use tax. The act authorizes the Division of Motor Vehicles of the Department of Transportation to use registration stickers to renew the registration of vehicles registered under the International Registration Plan. increases by 5¢ per hundred pounds the annual registration fee paid by certain property-hauling vehicles. and transfers revenue that is raised by the act in the Highway Fund to the Highway Trust Fund. Sections 2. 4. and 5 of the act make these "off-setting" changes. The authorization concerning the use of registration renewal stickers became effective August 1. 1993. The remaining off-setting changes become effective October 1. 1993.

In addition to these substantive changes the act makes numerous technical changes to the affected statutes. For example. it deletes several obsolete and inaccurate provisions in G.S. 20-66 concerning the annual renewal of motor vehicle registrations. and it changes the property-hauling vehicle registration weight categories. set out in G.S. 20-88(b). to conform to those that are used by the Division of Motor Vehicles.

Highway Use Tax Changes

The highway use tax is the tax that was enacted in 1989 to replace the sales tax on motor vehicles and provide a source of revenue for the Highway Trust Fund. The tax is 3% of the retail value of a motor vehicle. subject to a minimum tax of $40.00 and a maximum tax of either $1,000 or $1,500. Before July 1. 1993. the maximum tax for all vehicles was $1.000. Unlike the former sales tax on motor vehicles. which was payable only when a motor vehicle was sold. the highway use tax is payable every time a certificate of title is issued for a motor vehicle. A title is issued every time a motor vehicle is transferred to a new owner or the owner changes names. regardless of whether any cash changes hands in the transfer or how many times the vehicle has previously been transferred.

The three transfers the act exempts are gifts between stepparents and stepchildren. transfers of handicapped vans from the Department of Human Resources to the handicapped. and transfers to local boards of education of driver education vehicles that are either "on loan" from a dealer or are owned by another local board of education. Before August 1. 1993. the effective date of these exemptions. these three types of transfers were subject to highway use tax at the full 3%. $1.500 maximum rate.

The exemption for vehicles transferred as the result of a gift between stepparents and stepchildren is a logical extension of the current exemption for transfers between parents and children and a clarification of that exemption. When the General Assembly exempted transfers between parents and children in 1991. it assumed that stepparents and stepchildren were included in the exemption. After the exemption became effective. however. the Attorney General's Office issued an opinion stating that the exemption for parents and children did not include stepparents and stepchildren. This act corrects this problem by specifically including transfers between stepparents and stepchildren in the list of exemptions.

The other two transfers the act exempts apply only in limited circumstances. One applies to vehicles that are transferred to a handicapped person from the Department of

Human Resources after the Department has equipped the vehicle for use by the handicapped. The other applies to certain driver education vehicles.

The purpose of the exemption for vehicles transferred to the handicapped by the Department of Human Resources is to prevent two payments of highway use tax on the same vehicle within a short period of time. The Department of Human Resources pays highway use tax when it acquires a vehicle to be equipped for use by the handicapped. Before this exemption became effective. the handicapped person to whom the Department of Human Resources transferred the vehicle also paid highway use tax on the vehicle upon the transfer. This exemption eliminates the second payment of highway use tax in this circumstance by exempting the transfer to the handicapped person from the tax.

The purpose of the driver education exemption is to avoid increasing the cost of the driver education program in the public schools. This goal is accomplished by exempting from the tax the transfer of driver education vehicles that either are "on loan" from a motor vehicle dealer or were transferred between local boards of education. A vehicle is considered to be "on loan" from a dealer when it is transferred by the dealer to a local board of education and the dealer and the local board agree that the local board will transfer the vehicle back to the dealer within 300 days.

The act further changes the highway use tax exemptions by limiting the exemption for transfers between husbands and wives or parents and children to transfers that are the result of gifts. This same limitation applies to the new exemption for transfers between stepparents and stepchildren. Under prior law, all sales and other transfers of motor vehicles between spouses or between parents and children were exempt from the tax.

In addition to changing the highway use tax exemptions. the act lowers from $1.500 to $1.000 the maximum highway use tax payable on the transfer of a Class A or Class B commercial motor vehicle and allows a person who paid more than this new maximum on one of these vehicles to obtain a refund of the excess amount paid. It does not change the maximum tax on a non-commercial motor vehicle.

A Class A or Class B commercial motor vehicle is a vehicle that weighs at least 26.001 pounds, either alone or in combination with a towed unit that weighs at least 10.001 pounds. In general. these vehicles are truck tractors and large trucks and. to drive them. a person must have the appropriate class of commercial drivers license. The fact that a vehicle is used commercially or has a registration plate bearing the word "commercial" does not determine whether the vehicle is a Class A or Class B commercial motor vehicle. Many vehicles that are used in a business and that have commercial plates are not Class A or Class B commercial motor vehicles because they do not meet the statutory definition of those vehicles.

For the period July 1, 1993, until August 1, 1993. the maximum tax on Class A and Class B commercial motor vehicles was $1,500 instead of $1.000. This is because the maximum tax increased from $1.000 to $1.500 effective July 1. 1993. and the reduction made by this act did not become effective until August 1. 1993. This act therefore allows a person to whom a Class A or Class B commercial motor vehicle was transferred during the month of July and who paid more than $1.000 tax on the transfer to obtain a refund for the amount that exceeds $1.000. To obtain a refund. the person must submit a claim to the Division of Motor Vehicles by January 1. 1994.

The changes in the highway use tax exemptions are expected to result in an annual loss of revenue to the Highway Trust Fund of $300.000. The reduction in the maximum highway use tax payable on the transfer of a Class A or Class B commercial motor vehicle is expected to result in an annual loss of revenue to the Highway Trust Fund of $2.2 million. The act transfers to the Highway Trust Fund revenue generated in the Highway Fund by the offsetting changes described below. The result is that the neither the Highway Trust Fund nor the Highway Fund loses money as the result of the changes.

Offsetting Revenue Changes

The act increases revenue in the Highway Fund by increasing certain annual vehicle registration fees and by authorizing the Division of Motor Vehicles to renew by means of a renewal sticker the registration of a vehicle that is registered under the International Registration Plan. Raising the annual registration fee generates most of the $2.5 million annual increase in Highway Fund revenue expected to occur as a result of the changes. The change in the renewal method results in a reduction in costs rather than an increase in a stream of revenue.

The act increases by 5¢ per hundred pounds the annual vehicle registration fee payable by property-hauling vehicles that are registered for 5.000 pounds or more and are in the private hauler, contract carrier, flat rate common carrier, and exempt for-hire carrier category. It therefore does not increase the annual registration fee for the average pick-up truck because most pick-up trucks are registered at 4.000 pounds, nor does it increase the annual vehicle registration fee for vehicles in the farmer category.

The act increases the annual registration fee on certain property-hauling vehicles rather than raise other fees because some of the property-hauling vehicles whose annual registration fee is increased are in the group of commercial motor vehicles that will benefit from the reduction in the maximum highway use tax. To some extent, therefore, the same people who benefit from the tax reduction will provide revenue through the increased fees to cover the loss. The group whose fees are increased, however, is much larger than the group that will enjoy the reduction in the maximum highway use tax because the fee increases start at 5.000 pounds rather than 26.000 pounds.

The new property-hauling registration fee structure also abandons the historical relationship between the rate for the farmer category and the other category. Traditionally, the farmer rate has been one-half the regular rate. With the increase made by this act, the farm rate will be less than one-half the regular rate for every weight category except 4.000 pounds.

The other way the act increases revenue in the Highway Fund is by authorizing the Division of Motor Vehicles to renew the registration of vehicles registered under the International Registration Plan by means of a sticker. That Division currently renews the registration of these vehicles by issuing a new plate each year. The new plates are all issued on a calendar year basis.

Before this act changed the law on this subject, the Division could not renew these plates by means of a sticker. Switching to renewal by sticker will allow the Division to stagger the renewals and to avoid the cost of the new plates. This change was recommended by an audit of the Division of Motor Vehicles performed by the State Auditor.

After it increases revenue in the Highway Fund, the act transfers revenue from the Highway Fund to the Highway Trust Fund. The transfer compensates the Highway Trust Fund for revenue that is lost to it by the highway use tax changes the act makes. The transfer is made by putting into the Highway Trust Fund part of the title fee that currently goes to the Highway Fund. Effective October 1, 1993, the Highway Trust Fund will receive $31.50 of every $35 title fee instead of $30 of every $35 title fee.

Section 1 of this act was recommended by the Revenue Laws Study Committee.

Chapter 471 (Senate Bill 60, Sen. Odom)

AN ACT TO IMPOSE AN ADVANCE DISPOSAL TAX ON NEW WHITE GOODS, TO REQUIRE EACH COUNTY TO PROVIDE FOR THE MANAGEMENT OF DISCARDED WHITE GOODS, AND TO PROVIDE

FOR THE REMOVAL OF CHLOROFLUOROCARBON REFRIGERANTS FROM WHITE GOODS.

This act imposes a temporary tax on white goods and provides for the removal of chlorofluorocarbon refrigerants from discarded white goods. The tax becomes effective January 1, 1994, and expires July 1, 1998. A white good is a domestic or commercial large appliance, such as a refrigerator, a water heater, an air conditioner unit, or a dishwasher. Chlorofluorocarbon refrigerant is a type of gas that must be removed from a white good under federal law. Chlorofluorocarbon refrigerants are currently being phased out and will be banned as of January 1, 1996, by the Environmental Protection Agency (EPA). The EPA contends that chlorofluorocarbon refrigerants, if improperly removed, may pose a serious threat to the environment. The cost to properly remove the gas is between $5 and $17 per white good.

The act imposes a flat rate tax on each new white good sold in this State of $5 if the new white good does not contain chlorofluorocarbon refrigerants and $10 if the new white good does contain chlorofluorocarbon refrigerants. The tax is collected and administered, to the extent practical, as if it were an additional State sales tax. A person who buys 50 new white goods of any kind may obtain a refund of 60% of the amount of tax imposed when all of the white goods purchased are to be placed in new or remodeled dwelling units that are located in the State and do not already contain the kind of white good purchased. Neither a local government unit nor a contracting party can charge a person an additional fee for the disposal of white goods until July 1, 1998, which is the date the white goods disposal tax expires.

The tax is expected to generate a little over $2 million in fiscal year 1993-94 and approximately $4.5 million annually in fiscal years 1994-95 through 1997-98. For the first year of the tax, the Department of Revenue may deduct its cost of collection, not to exceed $225,000, from the proceeds of the tax. Each quarter the Secretary shall distribute the proceeds of the tax as follows:

(1) 5% to the Solid Waste Management Trust Fund. The money in this Fund is used to fund activities of the Department of Environment, Health, and Natural Resources (DEHNR) to promote waste reduction and recycling, to fund research on the solid waste stream in North Carolina, to fund activities related to the development of secondary materials markets, to fund demonstration projects, and to fund research by in-State colleges and universities.

(2) 20% to the White Goods Management Account. The money in this Account will be used to make grants to local governmental units to assist them in managing discarded white goods.

(3) 75% to the 100 counties on a per capita basis to be used only for the management of discarded white goods.

Each county must provide at least one site for the collection of discarded white goods. The act also requires each county to provide for the disposal of discarded white goods and for the removal of chlorofluorocarbon refrigerants from white goods. A county may contract with another unit of local government or with a private entity for the management of discarded white goods or for the removal of chlorofluorocarbon refrigerants from white goods. A county must establish written procedures for the management of white goods and must include these procedures in any solid waste management plan required by DEHNR.

If a county's costs of managing white goods for a six-month period exceeds the amount the unit receives from the per capita distribution of the white goods disposal tax, the county is eligible to apply for a grant from the White Goods Management Account. A grant to a unit may not exceed the unit's unreimbursed cost of managing white goods for the six-month period. The grant program will be administered by the DEHNR and will remain in effect until July 1, 1999.

Under the act, DEHNR may assess a civil penalty of not more than $100 against a person who, knowing it is unlawful, disposes of a discarded white good in a landfill, an incinerator, or a waste-to-energy facility. The Department may also assess a civil penalty of up to $100 against a person who, knowing it is required, fails to remove chlorofluorocarbon refrigerants from a discarded white good. These penalties may be assessed for each day the violation occurs. The civil penalties collected will be credited to the General Fund as nontax revenue.

Chapter 484 (Senate Bill 154, Sen. Seymour)

AN ACT TO MAKE MOBILE CLASSROOMS AND MOBILE OFFICES SUBJECT TO SALES TAX RATHER THAN HIGHWAY USE TAX AND TO EXEMPT CERTAIN MOBILE CLASSROOMS FROM SALES TAX.

This act makes two changes in the law concerning the taxation of mobile offices and mobile classrooms. First, it makes mobile offices and mobile classrooms subject to sales tax rather than highway use tax. Second, it exempts from sales tax mobile classrooms sold to a local board of education or a local board of trustees of a community college. The changes become effective October 1, 1993. The changes are expected to increase General Fund sales and use tax revenue by $150,000 each year and to reduce highway use tax revenue by $30,000 each year. The net fiscal effect therefore is a gain of $120,000 each year.

The act makes the first change to avoid the potential revenue loss that occurs when mobile offices and mobile classrooms are not titled. Mobile offices and mobile classrooms are currently subject to highway use tax rather than sales tax because they are considered to be motor vehicles. Motor vehicles are subject to highway use tax and are not subject to sales tax. The highway use tax is collected only when a vehicle is titled. Although the law requires mobile classrooms and mobile offices to be titled, many are not. Consequently, no highway use tax is being collected on many mobile classrooms and mobile offices.

The act makes the second change to avoid imposing an additional tax burden on local boards of education and local boards of trustees of community colleges. Without the exemption, the act would impose an additional tax burden on these local boards when they purchase mobile classrooms because even though they are required to title mobile classrooms, they frequently do not and therefore frequently do not pay the highway use tax due on the mobile classrooms.

The act does not change the rate of tax that applies to mobile offices and mobile classrooms. Its practical effect, therefore, is to collect the same amount of tax when a mobile office or a non-exempt mobile classroom is sold instead of when it is titled.

Section 1 of the act removes mobile offices and mobile classrooms from the definition of "motor vehicle" that is used for sales tax purposes so that they will be subject to sales tax rather than highway use tax. Section 2 sets the sales tax rate that will apply to mobile offices and mobile classrooms: the rate set is the same as the current highway use tax rate. The highway use tax rate for mobile offices and mobile classrooms is 3% of the retail value of the vehicle, subject to a maximum tax of $1,500. As with manufactured homes, each segment of a double-wide mobile office or mobile classroom will be considered a separate item and the maximum tax will apply to each of the segments. Section 3 contains the exemption for mobile classrooms sold to local boards of education or local boards of trustees of community colleges.

Before the enactment of the highway use tax in 1989, manufactured homes, mobile offices, and mobile classrooms were all subject to sales tax at the rate of 2% with a $300 cap on each segment. The highway use tax legislation distinguished between manufactured homes, mobile offices, and mobile classrooms, leaving the first of these three subject to sales tax and making the last two of these subject to highway use tax. This act once again makes all three of these items subject to sales tax.

Recommended by the Revenue Laws Study Committee.

Chapter 485 (Senate Bill 155. Sen. Plexico)

AN ACT TO MAKE TECHNICAL AND CONFORMING CHANGES TO THE REVENUE LAWS AND TO CLARIFY AND MODIFY THE TAX SECRECY PROVISION.

Sections 1 through 30 of this act makes numerous technical and clarifying changes to the revenue laws and related statutes. The remaining sections of this act clarify. reorganize. and modify the statutes governing secrecy of government tax records. These sections were introduced by Representative Gamble in House Bill 74. The act became effective upon ratification. July 23. 1993.

TECHNICAL CHANGES

The following table provides an analysis of the technical changes made by the first 30 sections of the act:

Section	**Explanation**
1	Repeals a Session Law that is ineffective because the language it amended had already been deleted by an earlier Session Law.
2	Makes a conforming change to reflect the fact that official population estimates that were formerly certified by the State Budget Officer are now certified by the State Planning Officer.
3	Removes stray language from a statute: the language resulted because the changes made to a statute by two different acts enacted in 1993 were in conflicting forms. This is not a substantive change (see the summaries for Chapters 362 and 371. above).
4	Removes inaccurate provisions regarding the scope of G.S. 105-122 contained in the franchise tax exemptions statute and reorganizes and clarifies the language of the statute. The removed provisions are corrected and placed in the appropriate statute in Section 5.
5	Corrects inaccurate provisions regarding the scope of G.S. 105-122 and places the provisions in the appropriate introductory statute applicable to franchise taxes.
6	G.S. 55-14-05(c) of the Business Corporation Act provides that a corporation that dissolves does not owe franchise tax unless it engages in business activities during the tax year. This section adds the same provision to the franchise tax law. The Department of Revenue is currently administering the law in accordance with this provision. This change was requested by the Department of Revenue.
7	Makes a conforming change to reflect the fact that official population estimates that were formerly certified by the State Budget Officer are now certified by the State Planning Officer.
8	Makes a conforming change to a cross-reference to G.S. 105-134.6. which is rewritten by Section 9 of this act.
9	The federal courts have held that North Carolina cannot tax income earned by a member of a federally recognized Indian tribe from activities on the reservation. This section adds to the individual income tax statutes a provision explicitly recognizing that rule of law. This change was requested by the Department of Revenue. This section also makes technical changes in the wording of the individual income tax adjustments and in the location in the statutes of some of these adjustments. as follows: it changes the word "gross" to "taxable" in a few places because some items that are to be added to or subtracted from

federal taxable income are not specifically identifiable under the Code as deductions subtracted from gross income. It also creates a new subsection (d) in G.S. 105-134.6 to provide for deduction of amounts that are not specifically identified as income items included in gross income under the Code.

10 Clarifies ambiguous language in accordance with the correct interpretation by the Department of Revenue.

11 Makes a conforming change to reflect the fact that official population estimates that were formerly certified by the State Budget Officer are now certified by the State Planning Officer.

12 Substitutes the correct term "minority business" for "minority business enterprise" in the statutes requiring a business to provide background information when renewing its registration as a qualified business. Tax credits are allowed for investments in certain businesses that have registered as qualified businesses. For more information, see the summary of Chapter 443, above.

13 Makes a conforming change to reflect the fact that official population estimates that were formerly certified by the State Budget Officer are now certified by the State Planning Officer.

14 Corrects an incorrect cross-reference and simplifies some awkward statutory language. This change was requested by the Department of Revenue.

15 Removes redundant language regarding the scope of Article 9 of Chapter 105 of the General Statutes. The scope of Article 9 is set out in G.S. 105-228.90.

16 Makes a conforming change to reflect the fact that official population estimates that were formerly certified by the State Budget Officer are now certified by the State Planning Officer.

17 Deletes a reference to a repealed subsection.

18 Excludes short term rental vehicles from the new system for collecting property taxes on motor vehicles. The old system of taxation, in which the vehicles will be listed by the company, is more appropriate for these vehicles. This change was requested by the Department of Revenue and the Association of County Commissioners.

19 Removes incorrect and unnecessary cross-references.

20 - 21 Clarify that the penalty for failure to file an additional bond for motor fuel tax purposes also applies to failure to file a replacement bond. This change was requested by the Department of Revenue.

22 Removes a reference to a provision, repealed in Section 23, allowing counties to collect their own local sales and use taxes.

23 Repeals a provision allowing counties to collect their own local sales and use taxes.

24 Makes a conforming change to reflect the fact that official population estimates that were formerly certified by the State Budget Officer are now certified by the State Planning Officer. Simplifies and clarifies awkward statutory language.

25 - 27 Remove references to a provision, repealed in Section 23, allowing counties to collect their own local sales and use taxes.

28 Deletes a reference to a repealed statute and substitutes the applicable provisions of that statute.

29 Conforms the catchline of G.S. 105-449.15 to reflect its true content. The exemption from the special fuels tax for nonanhydrous ethanol expired on January 1, 1993.

30 Repeals the exemption for nonanhydrous ethanol from the gasoline tax statute so that it conforms with the special fuels tax statute. The exemption in the special fuels tax statute expired on January 1, 1993. The expiration language for the exemption was inadvertently omitted from the gasoline tax statute when it was revised in 1985. To the knowledge of the Department of Revenue, this exemption has never been used. (Nonanhydrous ethanol is not used to make gasohol; it has a water content and, by its nature, cannot be mixed with gasoline.)

TAX SECRECY CHANGES

Sections 31 through 40 of this act reorganize and make both clarifying and substantive changes to the statutes governing confidentiality of government tax records. The substantive changes delete the authority of the Governor and of members of the General Assembly to have access to confidential tax information, expand two existing exceptions to the prohibition against disclosing information (G.S. 105-259(b)(11) and (12)), add six narrow exceptions to the list of information that can be disclosed (G.S. 105-259(b)(13) through (18)), and remove information that is contained on a master application form submitted to the Business License Information Office of the Secretary of State from the definition of confidential tax information. The changes are described in more detail below.

Governor and General Assembly Members

This act deletes the authority of the Governor to have access to confidential tax information and deletes any right of access the members of the General Assembly may have to confidential tax information. Both former Governor Jim Martin and current Governor Jim Hunt concur with the change in the Governor's access.

Under former law, it was not clear whether members of the General Assembly had access to confidential tax information. G.S. 120-19, enacted in 1937, required all State agencies to furnish the General Assembly upon request "all information and data within their possession." The Revenue Act's secrecy provision, however, which was enacted in 1939, made no exception for members of the General Assembly. This act resolves this conflict by making it clear that members of the General Assembly do not have access to confidential tax information. The act therefore puts members of the General Assembly in the same position concerning this matter as the Governor.

Expanded Exceptions

The act expands the former exceptions to the prohibition against disclosure found in G.S. 105-259(b)(11) and (12). It expands the authorization to give one spouse information about the other spouse's income taxes when the spouses file a joint income tax return to include any joint return the couple files. In addition to filing joint income tax returns, spouses frequently file joint intangibles tax returns. Under former law, the Department could not give a copy of the intangibles tax return to a spouse who signed the return but did not have a copy of the return because the return discloses information about the other spouse.

The act expands the current exception for a financial institution to receive payments of withheld individual income taxes to include the transmittal of payments by electronic funds transfer. Chapter 450 of the 1993 Session Laws, summarized above, authorizes the Department of Revenue to initiate an electronic funds transfer payment program. That program cannot be initiated without this exception to the secrecy law.

New Exceptions

This act adds to the exceptions to the tax secrecy provisions the limited disclosures listed in G.S. 105-259(b)(13) through (18). Those disclosures are as follows:

(b)(13): Fiscal Research: Authorizes the Department of Revenue to give to the Fiscal Research Division of the General Assembly a sample of returns from which taxpayer identifying information has been removed so that the Division can prepare estimates of the effects of proposed changes in the law and conduct other research.

(b)(14): Department of Agriculture: Authorizes the Department of Revenue to share motor fuel tax information with the Department of Agriculture; the two agencies work together in administering motor fuel taxes and the Gasoline and Oil Inspection Act.

(b)(15): Excise Tax Information: Authorizes the Department of Revenue to exchange information on tobacco, soft drink, alcoholic beverage, or controlled substance excise taxes with the North Carolina Alcoholic Beverage Control Commission, the Alcohol Law Enforcement Division of the Department of Crime Control and Public Safety, and the federal Bureau of Alcohol, Tobacco, and Firearms. Under former law, the Department of Revenue could not exchange information, other than lists of licensees, with these agencies.

(b)(16): Corporate Existence: Authorizes the Department of Revenue to give the Secretary of State names and identifying information of corporations to enable the Secretary of State to locate a corporation and notify the corporation that it is required to file an annual report.

(b)(17): License Application Status: Authorizes the Department of Revenue to give to the Business License Information Office of the Secretary of State information on the status of a license application for which the applicant has asked the License Office for assistance in coordinating. The License Office has the duty to assist and coordinate license applications but former law prohibited the Department of Revenue from disclosing information the Office needed to carry out this duty.

(b)(18): Vendor Location: Authorizes the Department of Revenue to give the State Controller names and identifying information of taxpayers to enable the State Controller to locate vendors who do business with the State and to track debtors of the State.

Master Business License Application Information

The act excludes information submitted to the Business License Information Office on a master application form from the definition of tax information. This change makes the information submitted on a master application form accessible to the various agencies that need to see the form to be able to process the applications included on the form and makes the information available to the public.

Clarifying Changes

In addition to making the substantive changes described above, the act makes several clarifying changes. It clarifies that local tax records containing information relating to a taxpayer's income or receipts are confidential and that other tax records, such as property tax records, are not confidential. It also makes conforming changes to various statutes and moves provisions that are unrelated to the disclosure of tax information from G.S. 105-259 (the secrecy provision of the Revenue Act) to more appropriate statutes.

Recommended by the Revenue Laws Study Committee.

Chapter 494 (Senate Bill 1018, Sen. Ward)

AN ACT TO CLARIFY THAT REAL ESTATE MORTGAGE INVESTMENT CONDUITS WILL BE TREATED AS PASS-THROUGH

ENTITIES FOR STATE TAX PURPOSES TO THE SAME EXTENT AS UNDER THE FEDERAL TAX LAW.

This act brings the State law into conformity with the federal tax law by exempting real estate mortgage investment conduits (REMICs) from corporate income taxes, franchise taxes, and the intangibles tax. A REMIC is an entity, usually a trust, that holds a pool of real estate mortgages for the benefit of investors who have invested in the entity. In concept, it is similar to a mutual fund that holds securities for the benefit of its investors. Current law already exempts similar entities, regulated investment companies (RICs) and real estate investment trusts (REITs), from these taxes.

Federal law authorizes the creation of REMICs in order to facilitate investment in real estate mortgages. Since 1986, federal tax law has provided that a REMIC is not subject to federal income tax as an entity; instead, income from its mortgages is taxed directly as income of the investors. This makes a REMIC a pass-through entity: the income is "passed through" to the individual investors, rather than being taxed to the entity. A partnership, a mutual fund, a REIT, and a Subchapter S corporation are other types of pass-through entities.

North Carolina law does not specifically recognize REMICs as pass-through entities, although it does recognize other pass-through entities. The Department of Revenue interprets the current income tax law as allowing pass-through status for REMICs. It is not clear, however, whether the franchise tax law and the intangibles tax law would be interpreted in the same way. This act establishes with certainty the tax treatment of REMICs in North Carolina. This act becomes effective beginning with the 1993 tax year.

Chapter 495 (Senate Bill 1111, Sen. Hoyle)

AN ACT TO ALLOW EACH OF THE MEMBERS OF THE FARMERS MUTUAL FIRE INSURANCE ASSOCIATION OF NORTH CAROLINA TO BE INDEPENDENTLY CHARTERED.

This act abolishes the Farmers Mutual Fire Insurance Association of North Carolina, which was established by an act of the General Assembly in 1893, and enables all the current branches of that association to convert to independently chartered mutual insurance companies. The act becomes effective January 1, 1994.

A current branch of the Farmers Mutual Fire Insurance Association that converts to an independently chartered mutual insurance company will be subject to the same taxes and fees as under current law. Thus, the bill makes no substantive change in the taxation of these companies. It makes one technical change, however, concerning the taxation of these companies. It deletes a reference in the insurance tax statutes to branches of the farmer's mutual assessment fire insurance company because, effective January 1, 1994, these companies will be independent companies and not branches of the same company.

Chapter 497 (Senate Bill 1157, Sen. D. Winner)

AN ACT TO AMEND THE CONSTITUTION TO PERMIT CITIES AND COUNTIES TO ISSUE BONDS TO FINANCE THE PUBLIC PORTION OF ECONOMIC DEVELOPMENT PROJECTS AND TO AUTHORIZE COUNTIES AND CITIES TO ACCEPT AS CONSIDERATION FOR A CONVEYANCE OR LEASE OF PROPERTY TO A PRIVATE PARTY THE AMOUNT OF INCREASED TAX REVENUE EXPECTED TO BE GENERATED BY THE IMPROVEMENTS TO BE CONSTRUCTED ON THE PROPERTY.

This act gives counties and cities two different tools to enhance their ability to recruit and retain economic development. The first part of the act permits voters to vote on a constitutional amendment that will allow the General Assembly to enact general laws authorizing counties and cities to borrow money, without voter approval, to finance public activities associated with private economic development projects within a defined territorial area. This development tool, known as economic development financing, will allow local governments to set aside the additional property taxes that are generated by a new investment to pay for public facilities that support that new investment. The second part of the act authorizes counties and cities to accept as consideration for a conveyance or lease of property to a private party the amount of increased tax revenue expected to be generated by the improvements to be constructed on the property. This part of the act became effective upon ratification, July 23, 1993.

The economic development financing bonds issue will be placed before the voters on Tuesday, November 2, 1993. The issue has been defeated by the voters once, on November 2, 1982. The Constitution needs to be changed to allow this because under the Constitution as it now reads the General Assembly does not have the power to authorize any unit of local government to issue bonds secured by its property tax revenue without a vote of the people.

If the amendment is approved, counties and cities may create a development financing district and adopt a development financing plan for that district. The total land area of the district may not exceed 5% of the total land area of the unit creating the district. The development financing plan describes the projects the unit of local government desires to finance and how the tax proceeds from the economic development financing bonds will be used. The plan must also include a description of how the proposed development, both public and private, will benefit the residents and business owners of the district in terms of jobs, affordable housing, and services. The plan must pass an environmental review and it must contain a requirement that initial users of a new manufacturing facility located in the district pay employees of the facility an average weekly manufacturing wage that is either above the average weekly manufacturing wage paid in the county where the district is located or is at least 10% above the average weekly manufacturing wage paid in the State. A plan may be exempt from the wage requirement if the Secretary of Commerce finds that unemployment in the county in which the district is located is especially severe.

If a county or city wants to issue economic development financing bonds to finance public activities associated with private economic development projects within a development financing district, it must have the approval of the Local Government Commission. The Commission cannot approve an application until the development financing district is created and the development financing plan is adopted. The bonds may be issued to finance parking facilities, sewer systems, solid waste disposal systems, storm sewers and flood control facilities, water systems, public transportation facilities, land development for industrial or commercial purposes, and redevelopment. Redevelopment includes purchasing and improving property to help local redevelopment commissions. Before approving the bond issuance, the Commission must find, among other things, that the proposed economic development financing bond issue is necessary to secure significant new economic development for a development financing district and that the private development forecast in the development financing plan would not be likely to occur without the public projects to be financed by the bonds.

To secure the bonds, the county or city issuing the bonds must establish a separate fund to account for the proceeds paid to it from taxes levied on the incremental valuation of the development financing district. The incremental valuation is the excess of the assessed value of taxable property in the district at the time the taxes are levied over the assessed value of property in the district at the time it was created. The Local Government Commission must find that the taxes on the incremental valuation, together with any proceeds that may be realized from the sale of property in the district and any revenues that may be realized from a public facility in the district, will be sufficient to service the economic development financing bonds. The district may remain in effect for 30 years or until the bonds are retired. The bonds must be retired within 30 years or within the useful life of the projects financed, whichever is shorter. After that, all taxes are paid into the local general fund.

To provide additional security for the bonds, the county or city issuing the bonds may pledge the proceeds from the sale of property in the development financing district and the net revenues from public facilities in the development financing district constructed or improved under the development financing plan. The city or county may also pledge any other available sources of revenue as long as the agreement to use the sources to make payment does not constitute a pledge of the county's or city's taxing power. Other available sources of revenues that do not constitute a pledge of a county's or city's taxing power include taxes levied by the State that are transferred to a county or city, such as beer and wine tax revenues, utilities franchise tax revenues, and intangibles tax revenues.

The second part of the act authorizes counties and cities to estimate the amount of increased tax revenue that would accrue during the succeeding 10 years from economic development of a piece of property by the purchaser of the property and to accept the estimated amount as consideration for a conveyance of the property from the county or city to a purchaser that will bring the anticipated economic development. This same provision is contained in House Bill 1109, ratified as Chapter 536 of the 1993 Session Laws. Several cities and counties currently have this authority under local acts ratified over the past several years.

The county or city must determine that the conveyance of the property will result in the creation of a substantial number of jobs in the county or city that pay at or above the median average wage in the county or, for a city, in the county where the city is located. In accepting the consideration, the governing board of the county or city must contractually bind the purchaser of the property to construct, within five years, improvements on the property that will generate the tax revenue taken into account in arriving at the consideration. Upon failure to construct the improvements specified in the contract, the purchaser must reconvey the property back to the county or city.

Chapter 507 (Senate Bill 659, Sen. Kaplan)

AN ACT TO PROVIDE THAT DEPOSITS ON RETURNABLE AERONAUTIC REPLACEMENT PARTS WILL BE TREATED THE SAME WAY AS DEPOSITS ON RETURNABLE AUTOMOTIVE, INDUSTRIAL, MARINE, AND FARM REPLACEMENT PARTS FOR SALES TAX PURPOSES.

State and local sales taxes are calculated as a percentage of the sales price of an item sold at retail. G.S. 105-164.3(16) defines sales price as the total amount for which an item is sold, with certain exceptions. Subpart e. of G.S. 105-164.3(16) provides that the sales price does not include refundable deposits paid by buyers on automotive, industrial, marine, and farm replacement parts that can be returned to the seller for rebuilding. Replacement parts do not include tires and batteries.

Effective August 1, 1993, this act extends this exception to provide that the sales price for sales tax purposes will not include refundable deposits paid by buyers on aeronautic replacement parts that can be returned to the seller for rebuilding. The anticipated loss to the General Fund is approximately $91,000 annually.

Chapter 527 (House Bill 1359, Rep. Colton)

AN ACT TO ALLOW AN INCOME TAX CREDIT FOR EXPENDITURES TO REHABILITATE A CERTIFIED HISTORIC STRUCTURE.

This act allows a corporate and an individual income tax credit for qualifying rehabilitation expenditures. as defined under section 47 of the Internal Revenue Code. with respect to a certified historic structure located in North Carolina. The amount of the credit is equal to one-fourth of the federal income tax credit for qualifying rehabilitation expenditures. The federal credit is 20% of the qualifying rehabilitation expenditures. Therefore. for State tax purposes. the credit would equal 5% of the qualifying rehabilitation expenditures. However. the amount of the State tax credit cannot exceed the amount of tax due and any excess credit cannot be carried forward. The credit will be available for taxable years beginning on or after January 1. 1994.

A certified historic structure is a building that is listed in the National Register or that is located in a registered historic district and is certified by the Secretary of the Interior as being of historic significance to the district. A qualifying expenditure is one that can be chargeable to a capital account and for which a straight line depreciation is allowable. The expenditure must be in connection with the rehabilitation of a building and it must be consistent with the historic character of the property or the district in which the property is located. Qualifying expenditures do not include the cost of buying a structure or any expenditure attributable to the enlargement of an existing structure.

Chapter 532 (Senate Bill 832. Sen. D. Winner)

AN ACT TO PROVIDE A TIMETABLE WITHIN WHICH THE DEPARTMENT OF REVENUE AND THE TAX REVIEW BOARD MUST HOLD ADMINISTRATIVE HEARINGS AND RENDER DECISIONS AND TO PROVIDE FOR STATE TAXPAYERS' RIGHTS.

This act makes numerous substantive and technical changes relating to administrative review in tax disputes and other tax enforcement and administration matters. Many of the changes were introduced by Representative Hackney in House Bill 1028. AN ACT TO PROVIDE FOR STATE TAXPAYERS' RIGHTS. The act is not expected to have any impact on State revenues. The act becomes effective January 1. 1994.

Timetable for Administrative Hearings

Sections 2. 3. and 10 through 12 of this act establish the timetable for administrative hearings by the Secretary of Revenue and the Tax Review Board on proposed and final tax assessments. requests for refunds. and allocation and apportionment of corporate income to this State for franchise tax and income tax purposes. If a taxpayer makes a timely. written request for a hearing, the Secretary or the Tax Review Board must schedule the hearing for a date within 90 days after the request and must notify the taxpayer within 60 days after the request and at least 10 days before the hearing. The hearing may be postponed at least once for up to 90 days. and longer upon the mutual agreement of the parties. The Secretary or the Tax Review Board is required to notify the taxpayer of the decision on the hearing within 90 days after the hearing. Under current law. there are no time limits within which a requested hearing must be scheduled or. after it is held. within which a decision must be made.

Notice of Final Assessment

Section 2 of this act requires the Secretary of Revenue to notify a taxpayer when a proposed assessment becomes final. The notice must include a statement outlining the procedure for levy on and sale of the taxpayer's property. administrative appeals and other options that are available to the taxpayer. and procedures to redeem the property and obtain release of a lien on the property. Under current law. a notice of a proposed assessment is required but. unless the taxpayer disputes the proposed assessment. there is no additional notice required when the assessment becomes final.

Jeopardy Actions

Sections 2, 3, and 4 of this act provide for special administrative and judicial review of jeopardy assessments and jeopardy levies. A jeopardy assessment is an immediate assessment of tax without the otherwise required 30 days' advance notice and opportunity for a pre-assessment hearing. The Secretary of Revenue is authorized to make a jeopardy assessment only if the Secretary finds that collection of the tax is in jeopardy and immediate assessment is necessary to protect the interest of the State. A jeopardy levy is an immediate filing of a lien against a taxpayer's property or an immediate execution against a taxpayer's personal property for an assessed tax without the required 30 days' advance notice and opportunity for a pre-levy hearing. After a taxpayer has requested a pre-levy hearing, the Secretary of Revenue is authorized to file a jeopardy lien upon determining that immediate action is necessary to protect the interest of the State and is authorized to cause a jeopardy execution against the taxpayer's personal property upon Secretary determining that collection of the tax would be jeopardized by delay. The taxpayer may prevent the execution by filing a bond for the amount of the assessed tax.

Sections 2 and 3 of this act provide that within five days after a jeopardy assessment or levy has been made, the Secretary of Revenue must provide the taxpayer a written statement of the information upon which the Secretary relied in making the assessment or levy. This statement is not required, however, if the jeopardy assessment or levy is of the controlled substances excise tax or is the result of a criminal investigation. These sections also provide that, upon request of a taxpayer against whom a jeopardy assessment or levy has been made, the Secretary must review the assessment or levy within 30 days to determine whether it was reasonable under all the circumstances. Section 4 of this act adds a new G.S. 105-241.5 to provide for special judicial review of jeopardy assessments and jeopardy levies made by the Department of Revenue. The taxpayer may bring an action in superior court, either in Wake County or in the county in which the taxpayer resides, for review of the reasonableness of the assessment or the levy. The court must make a determination within 20 days and may order appropriate relief.

Tax Collection Mechanisms

Section 5 of this act makes several changes to G.S. 105-242, which governs the collection of taxes by levy against and attachment and garnishment of taxpayers' property. First, this section provides that if the Department of Revenue has seized tangible property, the owner of the property may request the Secretary to sell the property within 60 or more days. Unless the Secretary determines that the requested sale would not be in the best interest of the State, the Secretary must authorize the sale. The Department of Revenue will retain the administrative expenses of selling property at the request of the property's owner.

Second, Section 5 requires the Secretary of Revenue to release a State tax lien if the liability for which the lien attached has been satisfied. Third, Section 5 authorizes the Secretary to release a State tax lien if (i) the underlying liability is unenforceable due to lapse of time, (ii) the lien is creating an economic hardship due to the taxpayer's financial condition, (iii) release of the lien on the value of property that exceeds the value of the underlying liability would not hinder collection of that liability, or (iv) release of the lien would probably facilitate, expedite, or enhance the State's chances of collecting a tax. Fourth, Section 5 exempts from levy, attachment, and garnishment the taxpayer's principal residence (unless the Secretary approves the levy in writing or finds that collection of the tax is in jeopardy) and the taxpayer's personal property that is exempt from levy under the federal tax code. It does not change the existing exemption for 90% of a taxpayer's monthly pay.

Fifth. Section 5 prohibits the Secretary of Revenue from levying against property if the Secretary estimates that the cost of the levy would exceed the fair market value of the property. Finally, Section 5 requires the Secretary to review a tax lien if the taxpayer alleges that it was filed in error.

Installment Payments

Section 1 of this act authorizes the Secretary of Revenue to enter into an agreement with a taxpayer for payment in installments of a tax that has been assessed. The Secretary may enter into the agreement if the Secretary determines that the agreement will facilitate collection of the tax. As part of the agreement, the Secretary may waive tax penalties but may not waive any tax or interest due. The Secretary is authorized to modify or terminate the agreement if circumstances change or if the taxpayer has not provided accurate or complete information. Although current law does not speak to installment agreements, the Department Revenue already uses installment agreements under its general authority to facilitate tax collection.

Taxpayer Interviews

Section 7 of this act establishes the following rules governing taxpayer interviews with Department of Revenue personnel, other than interviews concerning a criminal investigation, the controlled substance excise tax, or a jeopardy assessment or levy. The taxpayer and the Department have the right to record an interview. If the Department records an interview, it must provide the taxpayer a transcript upon the taxpayer's request. The Department must provide the taxpayer, at or before the initial audit or collection interview, a written explanation of the audit process or the collection process, as appropriate, and of the taxpayer's rights during the process. The taxpayer may authorize another person to represent the taxpayer during the interview process by executing a power of attorney; the representative may appear instead of the taxpayer at the interview unless the Department has summoned the taxpayer. If, during an interview, the taxpayer wishes to consult with a representative, the Department must suspend the interview. Current law is silent on taxpayer interviews.

Taxpayer Bill of Rights

Section 6 of this act requires the Secretary of Revenue to publish annually and make available to taxpayers a statement of the taxpayer's bill of rights. This statement must set forth (i) the confidentiality of tax information; (ii) rights and obligations during an audit; (iii) procedures for appealing an adverse decision of the Department at each level, for claiming a refund, for requesting information, assistance, and interpretations, and for making complaints; (iv) penalties and interest that may apply and the basis for requesting waiver of a penalty; and (v) procedures the State may use to collect a tax, including assessment, jeopardy assessment, liens, and garnishment and attachment.

Evaluation of Tax Personnel

Section 8 of this act prohibits the Department of Revenue from using records of tax enforcement results, or production goals based on these records, as the sole criteria in evaluating Department personnel. Section 8 also requires the Department to consider records of taxpayer complaints naming a Department employee when evaluating that employee.

Reliance Upon Department's Tax Advice

Section 9 of this act provides that if a taxpayer requests in writing specific advice and receives from the Department erroneous written advice, the taxpayer is not liable for any penalty or additional tax assessment attributable to the taxpayer's reasonable reliance on the erroneous advice. This provision does not apply to the extent the penalty or additional tax assessment resulted from the taxpayer's failure to supply the Department adequate or accurate information. Under current law. taxpayers are entitled to rely upon interpretations and rules issued by the Department and currently in effect.

Annual Reporting on Taxpayer Services

Section 13 of this act requires the Department of Revenue to report annually to the Joint Legislative Commission on Governmental Operations regarding the quality of services provided to taxpayers.

Chapter 536 (House Bill 1109. Rep. Baddour)

AN ACT TO AUTHORIZE COUNTIES AND CITIES TO ENGAGE IN ADDITIONAL LOCAL ECONOMIC DEVELOPMENT ACTIVITIES.

This act makes several changes in the law concerning local economic development. It authorizes counties and cities to spend public money for "site preparation" for industrial properties and facilities that are privately owned and to extend or finance the extension of water and sewer lines to industrial properties and facilities that are privately owned. It also authorizes counties and cities to estimate the amount of increased tax revenue that would accrue during the succeeding 10 years from improvements made to a piece of property and to accept the estimated amount as consideration for a conveyance of the property from the county or city to a business that will bring the anticipated economic development. Several local bills making these changes have been enacted since 1987 for individual cities and counties. This act makes the changes for all counties and cities in the State effective January 1. 1994.

Before a county or city may accept anticipated tax revenues as consideration for a conveyance of property. it must determine that the conveyance of the property will result in the creation of a substantial number of jobs in the county or city that pay at or above the median average wage in the county or. for a city. in the county where the city is located. In accepting the consideration. the governing board of the county or city must contractually bind the purchaser of the property to construct. within five years. improvements on the property that will generate the tax revenue taken into account in arriving at the consideration. Upon failure to construct the improvements specified in the contract. the purchaser must reconvey the property back to the county or city.

The change this act makes to the local economic development law was also made by Senate Bill 1157. ratified as Chapter 497 of the 1993 Session Laws. The change in Chapter 497 became effective upon ratification.

Chapter 542 (Senate Bill 14. Sen. Perdue)

AN ACT TO AUTHORIZE THE ISSUANCE OF GENERAL OBLIGATION BONDS OF THE STATE, SUBJECT TO A VOTE OF THE QUALIFIED VOTERS OF THE STATE. TO PROVIDE FUNDS FOR (1) CAPITAL IMPROVEMENTS FOR THE UNIVERSITY OF NORTH CAROLINA, (2) GRANTS TO COMMUNITY COLLEGES FOR CAPITAL IMPROVEMENTS. (3) GRANTS. LOANS. AND REVOLVING LOANS TO LOCAL GOVERNMENT UNITS FOR WATER SUPPLY SYSTEMS, WASTEWATER COLLECTION SYSTEMS. WASTEWATER TREATMENT WORKS, AND WATER CONSERVATION PROJECTS. AND (4) CAPITAL IMPROVEMENTS AND LAND ACQUISITION FOR NEW AND EXISTING STATE PARKS AND RECREATION AREAS.

This act authorizes the issuance of $740 million in general obligation bonds of the State. if approved by the voters in a referendum to be held on Tuesday. November 2. 1993. The bonds are:

$310	million	--	University of North Carolina Improvements
$250	million	--	Community Colleges Improvements
$ 45	million	--	Deposit in Clean Water Revolving Fund
$100	million	--	Local Government Loans for Water and Sewer
$ 35	million	--	State Parks
$740	million	--	Total

The net cost to the General Fund of annual debt service on the above bonds should be about $59 million: this amount is lower than one might expect because the repayments of the $100 million in Water and Sewer loans can be applied toward debt service on the bonds.

The list of projects for the University of North Carolina provides at least one project for each constituent institution. The list is the same as that requested by the Board of Governors, with three exceptions: (i) the project for Fayetteville State University has been changed from a fine arts building to residence hall renovations at the request of the chancellor; (ii) the building for the N.C. School of the Arts Filmmaking School is specified as a production facility; and (iii) one of the projects for UNC-Asheville has been changed from Ramsey Library renovations to a conference center. The act also provides an additional $12 million for "other critical needs" of the University system, as determined by the Board of Governors.

If approved by the voters, the University Improvement bonds can be issued for the specified projects without further action by the General Assembly. If a project or an allocation later needs to be changed, due to a change of circumstances or another reason, the General Assembly has the power to make the change.

The Community Colleges Bond proceeds would be distributed in the form of grants to individual community colleges for building projects plus any related equipment and land acquisition. Like other appropriations to community colleges for capital projects, these grants would have to be matched with local funds on a dollar-for-dollar basis. Many of the colleges are "overmatched" to some extent, however; these colleges could use the overmatch to meet the matching requirement.

The act lists $226.1 million in specific projects for individual colleges and satellite campuses. Each community college has at least one project on the list. If approved by the voters, this part of the Community College bonds can be issued for the specified projects without further action by the General Assembly. If a project or an allocation later needs to be changed, due to a change of circumstances or another reason, the General Assembly has the power to make the change.

The act provides that the remaining $23.9 million in Community College bonds will be used for grants to be specified by the General Assembly in 1994 or later. This part of the bonds cannot be issued until the General Assembly allocates the funds for specific projects. It is intended that the allocations will be based on the recommendations of the Legislative Study Commission on Community College Capital Needs created in Section 11(a) of the act.

The Legislative Study Commission on Community College Capital Needs will consist of 10 voting members: 5 appointed by the Speaker of the House of Representatives and 5 appointed by the President Pro Tempore of the Senate. In addition, the President of the Community College System and the Chair of the State Board of Community Colleges will serve as ex officio, nonvoting members. The Study Commission is to study the issue of present and future capital needs of the Community College System and report its findings and recommendations to the General Assembly by April 1, 1994.

Of the $145 million Clean Water Bonds, $45 million is allocated to the existing Clean Water Revolving Loan and Grant Fund and $100 million is allocated for nonrevolving loans. This allocation is similar to that recommended to the 1993 General Assembly by the Legislative Research Commission's Water Issues Study Committee. If approved by the voters, the Clean Water bonds can be issued without further action by the General Assembly.

The $45 million will be used in the same way as funds in the Clean Water Revolving Loan and Grant Fund are used: to match federal funds for the 1993-95 biennium and to provide grants and low-interest loans. The sum of $45 million should be sufficient to provide the match for two years and to capitalize the revolving fund.

The act amends the Clean Water Revolving Loan and Grant Fund to increase the percentages of funds that will be used for grants to local governments without resources to repay loans, and to increase from $500,000 to $1,000,000 the maximum annual amount of a grant that can be made. Both of these changes are designed to help smaller, poorer communities obtain funding.

The other $100 million would all go out in loans to local government units for water supply systems, water conservation projects, wastewater collection systems, and wastewater treatment works. The funds would be allocated 69% for wastewater projects and 31% for water supply systems and water conservation projects. These percentages are based on the allocations in the existing revolving fund.

Local government units that may apply for loans include counties, cities, towns, sanitary districts, and water and sewer districts, as well as two or more of these units acting jointly. Priorities for the loans would be determined by the Department of Environment, Health, and Natural Resources, based on the priority factors for the existing revolving fund and on the need to create efficient regional systems. In addition, to qualify for a loan, a unit must have a water supply facility plan or a wastewater facility plan, as appropriate. The plan must be approved by the Department of Environment, Health, and Natural Resources.

The Department of Environment, Health, and Natural Resources will administer the making of loans, and the State Treasurer will determine the interest rate and maturity of the loans. The interest rates must reflect the self-supporting nature of the loan program: repayments must be sufficient to cover the State's debt service and costs of issuing and administering the bonds. The Department of Environment, Health, and Natural Resources is required to report annually in detail on this loan program to the Joint Legislative Commission on Governmental Operations.

Section 10 of the act provides the details of how the loan program will be administered. Local government units may submit applications on a semiannual basis but, before submitting an application, the unit must hold a public hearing. The Department of Environment, Health, and Natural Resources may hold additional public hearing and, if requested by affected members of the public, a referendum must be held on whether the unit will apply for a loan.

To be eligible for a loan, a local government unit must demonstrate that it has the financial capacity to repay the loan. In addition, in its loan agreement, the unit must authorize the State Treasurer to intercept any of its State funds distributions if it fails to make timely payments on a loan. This intercept provision will protect the State against default by a local government unit.

The act provides that $35 million of bonds would be used for the State Parks System for repairs, renovations, new construction, and land acquisition. However, no more than 30% of the bond proceeds may be used for land acquisition. If approved by the voters, the bonds could not be issued immediately: further action by the General Assembly is required in 1993 or later. It is intended that the General Assembly would appropriate the proceeds of the bonds in 1994 for specific projects based on a plan developed by the Department of Environment, Health, and Natural Resources. Section 11(b) of the act requires the Department of Environment, Health, and Natural Resources to develop a State parks capital improvement and land acquisition plan.

which will include a priority list of needed land acquisitions and a priority list of needed repairs, renovations, and new construction. The priority lists are to be based on objective criteria. The Department of Environment, Health, and Natural Resources is to report this plan to the General Assembly by the first day of the 1994 Session.

Section 13 of the act modifies the law regarding refunding obligations. The former law, G.S. 142-29.5, authorized the State Treasurer, with the consent of the Council of State, to issue obligations to refund outstanding obligations. The law restricted the principal amount of the refunding obligations to the principal amount of the obligations being refunded. Section 13 provides an exception to this limitation: the principal amount of the refunding obligations may exceed the principal amount of the obligations being refunded if the refunding results in an aggregate debt service savings and the increase in the principal amount does not create cash-in-hand available for new capital improvements. This change will enable the State Treasurer to save money for the State through refinancing of outstanding debt.

Section 14 of the act states that the minority business participation goals set in G.S. 143-128 apply to projects undertaken with bond proceeds. The affected State agencies are required to monitor compliance and report annually to the General Assembly on the participation by minority businesses in the bond projects.

Chapter 543 (Senate Bill 161, Sen. Kerr)

AN ACT TO ALLOW ALL TRAILERS TO OBTAIN MULTIYEAR LICENSE PLATES, TO INCREASE THE TYPES OF SPECIAL LICENSE PLATES, TO SPECIFY HOW FEES FROM THE NEW SPECIAL LICENSE PLATES ARE TO BE USED, TO MODIFY THE APPEARANCE OF THE SPECIAL LICENSE PLATE ISSUED TO MEMBERS OF THE NORTH CAROLINA GENERAL ASSEMBLY, AND TO MAKE TECHNICAL AND ADMINISTRATIVE CHANGES TO THE LAWS CONCERNING SPECIAL LICENSE PLATES.

This act makes technical changes and changes that conform the statutes to administrative practice in the laws governing multiyear trailer plates and special license plates. It also authorizes several new special license plates, sets the fees for the new plates, and directs how the fees are to be distributed.

The act authorizes all trailers to obtain multiyear plates. It does not change the multiyear plate fee, which is $75, or the annual plate fee, which is $10. Although this change appears substantive, the Division of Motor Vehicles is currently allowing all trailers to obtain multiyear plates even though the law states that a multiyear plate can be obtained only for a semitrailer. Thus, this change conforms the statute to the administrative practice.

The act also makes a conforming change to the statute that specifies which motor vehicles are to be listed with the county tax assessor for purposes of local property taxes and which are not. It adds trailers that receive multiyear plates to the list of vehicles that must be listed annually with the local assessor. These vehicles must be listed annually because the multiyear plate takes them out of the annual vehicle registration renewal process. It is this annual vehicle registration that triggers payment of property taxes for those vehicles that are subject to the new system for collecting property taxes on motor vehicles and thus do not have to be listed locally.

The act authorizes several new special license plates. Special license plates are optional license plates that can be obtained in lieu of the regular license plates. The most popular of these plates are collegiate plates and personalized plates.

All of the new plates authorized by this act are subject to the same $10 additional fee that applies to practically all other special plates. That $10 additional fee is credited to the Special Registration Plate Account. Some of the new plates authorized are designed as a fund-raiser and are subject to a higher additional fee. Except for new plates authorized for groups that do not and never will include 300 members. the act requires at least 300 applications for each new plate before the plate can be issued. The two plates added that cannot and likely never will include 300 members are the Legion of Valor plate and the Register of Deeds plate. The new plates authorized by the act are listed below:

(1) American Legion. -- Issuable to a member or supporter of that organization.

(2) Civic Club. -- Issuable to a member of a nationally recognized civic organization whose member clubs in North Carolina are exempt from State corporate income tax under G.S. 105-130.11(a)(5).

(3) County Commissioner. -- Issuable to a county commissioner.

(4) Future Farmer of America. -- Issuable to a member or supporter of that organization.

(5) Legion of Valor. -- Issuable to a recipient of one of the following military decorations: the Congressional Medal of Honor. the Distinguished Service Cross. the Navy Cross, or the Air Force Cross. The plate for the Congressional Medal of Honor has been authorized for some time as a free plate. Although this act does not change this. it does impose the standard special plate fees on the other Legion of Valor plates. This is in keeping with the policy set by the 1991 General Assembly when it established standard provisions for special license plates. The special license plate statutes were rewritten in 1991 and standard fees were applied to all but a few plates that had historically been free of charge.

(6) Register of Deeds. -- Issuable to a register of deeds.

(7) Special Olympics. -- Issuable to any vehicle owner. This plate is designed as a fund-raiser. The fee for the special plate is an additional $25. Fifteen dollars of the additional $25 fee goes to the North Carolina Special Olympics.

(8) State Attraction. -- Issuable to any vehicle owner. The State Attraction plates authorized by this act are The North Carolina Arboretum and The North Carolina Zoological Society. These plates are designed as a fund-raiser. The fee for these special plates is an additional $30. Twenty dollars of the additional $30 fee derived from The North Carolina Arboretum special plate goes to The North Carolina Arboretum Society. Twenty dollars of the additional $30 fee derived from The North Carolina Zoological Society special plate goes to The North Carolina Zoological Society.

(9) Veterans of Foreign Wars. -- Issuable to a member or supporter of the organization.

(10) Wildlife Resources. -- Issuable to any vehicle owner. This plate is designed as a fund-raiser. The fee for this special plate is an additional $20. Ten dollars of the additional $20 fee goes to the Wildlife Conservation Fund.

The act makes several changes to the statutes concerning special license plates. These changes are listed below:

(1) Limits the "Horseless Carriage" special license plate to a vehicle that is a model year 1943 or older. However. the owner of a vehicle that is a model year 1943 or older may elect to have the special plate bear the phrase "Antique". The statute retains the definition of an "Antique" vehicle as a vehicle that is at least 35 years old from the date of manufacture.

(2) Deletes the requirement that a person be licensed by the Federal Communications Commission (FCC) as a Class D Citizen's Radio Station Operator to be eligible for the Class D Citizen's Radio Station Operator special plate because the FCC has not issued licenses for these operators since April 27. 1983. The form of the plate is also changed to reflect the fact that some operators do not have official call letters.

(3) Corrects the spelling of the word "Consular".

(4) Requires that "The Great Seal of the State of North Carolina" be displayed on the plates issuable to members of the North Carolina General Assembly. This change applies beginning with plates issued to legislators serving in the 1995 General Assembly.

(5) Changes the form of the retired military plate to reduce the number of words the plate must display and to require the plate to display the appropriate insignia. It also requires at least 300 people to apply for a retired military plate before the plate can be issued. As of January 1. 1993. the Division had received only one request for this plate.

(6) Allows the surviving spouse of a person who had a prisoner of war plate to keep the plate until that spouse remarries or does not renew the plate. This authorization was deleted from the law in 1991. but the Division has continued to allow the surviving spouses of prisoners of war to keep these plates.

(7) Requires at least 300 people to apply for a street rod plate before the plate can be issued. During calendar year 1992. the Division received fewer than 20 applications for these plates.

Chapter 544 (Senate Bill 853. Sen. Kerr)

AN ACT TO AUTHORIZE CERTAIN COUNTIES THAT WILL DERIVE ECONOMIC BENEFITS FROM THE NORTH CAROLINA GLOBAL TRANSPARK TO FORM A GLOBAL TRANSPARK DEVELOPMENT ZONE TO PROMOTE ECONOMIC DEVELOPMENT OF, AND TO ENCOURAGE INFRASTRUCTURE CONSTRUCTION IN, THE COUNTIES OF THE ZONE.

This act authorizes the following counties that would derive economic benefits from the North Carolina Global TransPark to join together to create an economic development district: Carteret. Craven. Duplin. Edgecombe. Greene. Jones. Lenoir. Nash. New Hanover. Onslow. Pamlico. Pitt. Wayne. and Wilson. The district will be known as the Global TransPark Development Zone. The North Carolina Global TransPark is a large industrial area planned to surround an air cargo and air transportation complex in Lenoir County. to be called the North Carolina Global TransPark Complex.

A minimum of three counties are required to create the Zone. To create the Zone. the counties that wish to participate must. after July 24. 1993. but before October 2. 1993. adopt resolutions stating their intent to create the Zone. Each participating county must hold a public hearing before adopting the resolution. The resolutions must be forwarded to the Secretary of State by October 15. 1993: the Secretary of State will then issue a certificate of incorporation that will constitute the Zone as a public body.

The governing body of the Zone will be the Global TransPark Development Commission. with the following membership:

-- Each county that creates the Zone will appoint three voting members. at least one of whom must be a woman or a member of a racial minority and one of whom may be a member of the board of commissioners of the county.

-- The Global TransPark Authority will appoint between three and seven voting members. the minimum number necessary to assure that the voting membership of the Commission includes at least seven women and seven members of a racial minority.

-- Four additional nonvoting members will be appointed. one by the chancellor of East Carolina University. one by the presidents of the community colleges in the Zone. one by the State Ports Authority. and one by the Global TransPark Foundation. Inc.

The Zone is authorized to levy a temporary $5.00 registration tax on motor vehicles with a situs within the Zone. The Zone must hold a public hearing before adopting a resolution levying the tax. The tax may not become effective before July 1. 1994. and expires five years after the effective date of the first tax levied by the Zone. The amount of revenue generated by the tax depends on how many counties join the Zone. but is not expected to exceed $3.7 million a year in any case.

The proceeds of the tax. and any other funds of the Zone. would be used to carry out the Zone's purpose:

> To promote the development of the North Carolina Global TransPark and to promote and encourage economic development within the territorial jurisdiction of the Zone by fostering or sponsoring development projects to provide land. buildings. facilities. programs. information and data systems. and infrastructure requirements for business and industry in the North Carolina Global TransPark outside of the Global TransPark Complex. or elsewhere in the Zone.

The funds could not be used for projects carried out within the actual four to six thousand acre site of the Global TransPark Complex. Eighty-five percent of the tax proceeds must be kept in a trust account of which the participating counties are the beneficial owners. The principal of the account may be used only for loans. If the Zone is terminated or is otherwise unable to expend the tax proceeds. the tax proceeds and the other assets of the Zone will go back to the participating counties in proportion to the amount of tax collected in each county. except that any funds attributable to a State appropriation will revert to the State.

The Zone's powers to carry out its purpose include the following local development powers currently granted local governments in G.S. 158-7.1 (except that the Zone may not levy a property tax):

(1) To make appropriations to aid and encourage the location of manufacturing enterprises.
(2) To acquire and develop land for an industrial park.
(3) To acquire and hold for resale property suitable for industrial or commercial use.
(4) To extend utility services to an industrial facility.
(5) To acquire property and convey or lease it to private interests for fair market value. which value would be determined after taking into account future potential revenue gains from the development.

The Zone also has the power:

(1) To make loans and grants to carry out its economic development activities.
(2) To acquire or support public infrastructure systems or facilities.
(3) To provide employee training programs.
(4) To maintain a clearinghouse of economic data and business information.
(5) To prepare site studies and provide businesses opportunities to examine sites.

Chapter 561 of the 1993 Session Laws. the Capital Improvements Appropriations Act of 1993. appropriates $7.5 million to the Global TransPark Development Zone to be used in the same way as the proceeds of the motor vehicle registration tax: for economic development projects and infrastructure construction projects within the Zone. Section 72 of that act places a number of restrictions on these funds. First. the appropriation will be placed in the same interest-bearing trust account as 85% of the tax and will be subject to the same restrictions. Second. the funds must be matched with non-State funds or property contributed, on or after July 1, 1993, to the Global TransPark Foundation, Inc. Third, the funds may not be distributed until after the effective date of the motor vehicle registration tax. Thus, the Zone must be created and the tax must be levied and become effective before the appropriation can be distributed. Finally, if the Zone terminates, the funds will revert to the General Fund.

Chapter 548 (House Bill 83, Rep. DeVane)

AN ACT TO TEMPORARILY INCREASE THE SCRAP TIRE DISPOSAL TAX, TO PROVIDE FOR THE DISTRIBUTION OF THE ADDITIONAL TAX PROCEEDS, TO TEMPORARILY REVOKE THE GENERAL AUTHORITY OF A UNIT OF LOCAL GOVERNMENT OR A CONTRACTING PARTY TO IMPOSE A SEPARATE SCRAP TIRE DISPOSAL FEE, AND TO AUTHORIZE THE DEPARTMENT OF ENVIRONMENT, HEALTH, AND NATURAL RESOURCES TO DEVELOP AND IMPLEMENT ALTERNATIVE, MARKET-BASED PILOT PROGRAMS FOR SCRAP TIRE COLLECTION AND RECYCLING.

This act makes several changes to the scrap tire tax and the distribution of the proceeds of that tax. It temporarily increases the scrap tire tax from 1% to 2% for tires that have a bead width of less than 20 inches, temporarily changes the distribution of the scrap tire tax proceeds, temporarily prohibits local governments from charging an additional fee for processing scrap tires, and permanently limits the amount of scrap tire tax proceeds the Department of Revenue can retain for its administrative expenses in collecting and distributing the tax. The restriction on local scrap tire fees becomes effective January 1, 1994. The other changes become effective October 1, 1993. The temporary changes expire June 30, 1997.

From October 1, 1993, through June 30, 1997, the act increases the scrap tire tax from 1% to 2% for tires that have a bead width of less than 20 inches. The tax remains at 1% for tires that have a bead width of at least 20 inches. Bead width is the width of the inside opening of the tire. Tires for cars, vans, and pick-up trucks have a bead width of less than 20 inches. The tax increase is expected to increase scrap tire tax proceeds by approximately $3.3 million each year it is in effect.

From October 1, through June 30, 1997, the act also changes the distribution of the scrap tire tax. Under current law, 10% of the proceeds goes to the Solid Waste Management Trust Fund and 90% goes to the counties on the basis of population. Effective October 1, 1993, the act reduces from 10% to 5% the amount of the proceeds that go to the Solid Waste Management Trust Fund, reduces from 90% to 68% the amount of the proceeds that go the counties, and puts the remaining 27% of the proceeds in the newly created Scrap Tire Disposal Account.

The Department of Environment, Health, and Natural Resources will administer the Scrap Tire Disposal Account. The Department may use up to $500,000 of the revenue in the Account during the 1993-95 biennium to conduct a pilot program on alternative, market-based approaches to scrap tire collection and recycling, may use up to 25% of the revenue in the Account for the duration of the temporary tax to make grants to eligible local governments for the disposal of scrap tires, and must use the remainder to clean up nuisance tire collection sites. The Department must report quarterly to the Environmental Review Commission on the use of revenue in the Account.

A local government is eligible for a grant if its cost for scrap tire disposal for the most recent 6-month period exceeds the amount it received for that period from the 68% of the proceeds that are distributed on the basis of population. To obtain a grant, an eligible local government must apply for a grant and be selected by the Department based on criteria established by the Department. The criteria, however, must include the local government's financial ability to provide for scrap tire disposal, the severity of the local government's scrap tire disposal problem. and the effort made by the local government to provide for scrap tire disposal within the resources available to it.

Until June 30. 1997. the act prohibits a local government from charging a fee for the disposal of scrap tires except for two kinds of scrap tires. They are new tires that are defective and therefore cannot be sold and tires that are brought from another state to a disposal site in North Carolina.

The act permanently caps at $225.000 the annual amount of scrap tire tax proceeds the Department of Revenue can retain to cover the cost of collecting and administering the tax. Current law allows the Department to retain its costs and does not cap the amount allowed.

Recommended by the Solid Waste Control and Disposal Issues Study Committee.

APPENDIX D

North Carolina General Assembly
Legislative Services Office
Legislative Office Building
300 N. Salisbury Street, Raleigh, N. C. 27603-5925

GEORGE R. HALL, JR., Legislative Administrative Offic
(919) 733-7044

M. GLENN NEWKIRK, Director
Automated Systems Division
Suite 400, (919) 733-6834

GERRY F. COHEN, Director
Bill Drafting Division
Suite 100, (919) 733-6660

THOMAS L. COVINGTON, Director
Fiscal Research Division
Suite 619, (919) 733-4910

TERRENCE D SULLIVAN, Directo
Research Division
Suite 545, (919) 733-2578

February 2, 1994

MEMORANDUM

TO: Revenue Laws Study Committee

FROM: Myra M. Torain and Martha H. Harris

SUBJECT: Bills Recommended to the 1993 Session by the Revenue Laws Study Committee

The following is a summary of the disposition of bills that were recommended by the Revenue Laws Study Committee to the 1993 General Assembly. The majority of the committee's recommendations became law. Of the 25 proposals, 15 were enacted in whole or in part. The remaining 10 are pending and eligible for consideration in the 1994 Regular Session.

Legislative Proposal 1: Pending.

Senate Bill 129, AN ACT TO LOWER THE MINIMUM HIGHWAY USE TAX, was introduced by Senator Winner of Buncombe and was referred to the Senate Finance Committee.

Legislative Proposal 2: Enacted.

Senate Bill 128, AN ACT TO EXEMPT CERTAIN TRANSFERS OF VEHICLES FROM THE HIGHWAY USE TAX, was introduced by Senator Winner of Buncombe and was ratified as Chapter 467 of the 1993 Session Laws. Before the bill was enacted, provisions were added to lower the maximum use tax on commercial vehicles weighing over 26,000 pounds, to allow certain vehicle registrations to be renewed by means of a sticker, and to raise the annual registration fee for certain property-hauling vehicles.

Legislative Proposal 3: Enacted.

Senate Bill 154, AN ACT TO MAKE MOBILE CLASSROOMS AND MOBILE OFFICES SUBJECT TO SALES TAX RATHER THAN HIGHWAY USE TAX AND TO EXEMPT CERTAIN MOBILE CLASSROOMS FROM SALES TAX, was introduced by

Senator Seymour. The bill was amended to change the effective date from July 1 to October 1, 1993. and was ratified as Chapter 484 of the 1993 Session Laws.

Legislative Proposal 4: Enacted.

House Bill 174, AN ACT TO AUTHORIZE THE DEPARTMENT OF REVENUE TO ALLOW OR REQUIRE PAYMENT OF TAXES BY ELECTRONIC FUNDS TRANSFER, was introduced by Representative Luebke and after some modifications was ratified as Chapter 450 of the 1993 Session Laws.

Legislative Proposal 5: Pending.

Senate Bill 157, AN ACT AUTHORIZING NONRESIDENT TAXPAYERS TO CLAIM THE TAX CREDIT FOR CHILD CARE AND CERTAIN EMPLOYMENT-RELATED EXPENSES, was introduced by Senator Kerr. The bill received a favorable report from the Senate Children and Human Resources Committee and was re-referred to the Senate Finance Committee.

Legislative Proposal 6: Pending.

Senate Bill 160, AN ACT TO ALLOW A NONRESIDENT COUPLE TO FILE A JOINT INCOME TAX RETURN IF ONLY ONE SPOUSE HAS INCOME FROM NORTH CAROLINA SOURCES, was introduced by Senator Kerr and was referred to the Senate Finance Committee.

Legislative Proposal 7: Enacted.

House Bill 81, AN ACT TO UPDATE THE REFERENCE TO THE INTERNAL REVENUE CODE USED TO DETERMINE CERTAIN TAXABLE INCOME AND TAX EXEMPTIONS, was introduced by Representative Gamble and was ratified as Chapter 12 of the 1993 Session Laws.

Legislative Proposal 8: Pending.

House Bill 80, AN ACT TO REINSTATE AN INADVERTENTLY DELETED PROVISION RELATING TO ASSESSMENTS FOR EMPLOYER WITHHOLDING BASED ON FEDERAL DETERMINATIONS AND TO CLARIFY THE ASSESSMENT STATUTES, was introduced by Representative Gamble. The bill passed both the House and the Senate with some modifications by both houses. The House added a provision to reduce the time allowed the Department of Revenue to make assessments of taxes following a federal determination and changed the bill's title from that stated here accordingly. The Senate deleted the clarifying changes because they had been incorporated in Senate Bill 832, which was ratified as Chapter 532 of the 1993 Session Laws. House Bill 80 is in the House Finance Committee for a recommendation on concurrence in the Senate changes.

Legislative Proposal 9: Pending; part enacted in Senate Bill 155.

House Bill 77, AN ACT TO MAKE CONFORMING CHANGES TO THE LAW PROVIDING FOR INDIVIDUAL INCOME TAX ADJUSTMENTS AND TO PROVIDE THAT EXPENSES PAID IN CONNECTION WITH INTEREST EARNED ON OBLIGATIONS ARE DEDUCTIBLE FROM AN INDIVIDUAL'S TAXABLE INCOME TO THE EXTENT THE INTEREST IS TAXABLE, was introduced by Representative Gamble. The bill passed the House and was referred to the Senate Finance Committee. A motion in the Senate Finance Committee for a favorable report failed on July 6, 1993, and the bill remains in that committee. The conforming changes included in the bill were enacted as part of Legislative Proposal 16, discussed below.

Legislative Proposal 10: Pending.

House Bill 78, AN ACT TO RESTORE THE STATUTORY AUTHORITY TO TAX THE NORTH CAROLINA INCOME OF NONRESIDENT ALIENS, was introduced by Representative Gamble and was referred to the House Finance Committee. That committee discussed the bill and passed a motion to refer it to a subcommittee. A subcommittee on this bill has not yet been appointed.

Legislative Proposal 11: Enacted.

House Bill 173, AN ACT TO PROVIDE THAT THE STATE SHALL PAY INTEREST ON INCOME TAX REFUNDS NOT REFUNDED TO THE TAXPAYER WITHIN FORTY-FIVE DAYS AFTER THE RETURN WAS FILED OR DUE TO BE FILED, WHICHEVER IS LATER, was introduced by Representative Luebke and after several modifications was ratified as Chapter 315 of the 1993 Session Laws.

Legislative Proposal 12: Enacted as part of Senate Bill 1141.

House Bill 79, AN ACT TO PROMOTE ECONOMIC DEVELOPMENT BY EXTENDING THE EXISTING TAX CREDIT FOR QUALIFIED BUSINESS INVESTMENTS TO APPLY TO INVESTMENTS BY PARTNERSHIPS, was introduced by Representative Gamble. The substance of the bill was incorporated into Chapter 443 of the 1993 Session Laws (Senate Bill 1141), AN ACT TO EXPAND THE TAX CREDITS FOR QUALIFIED BUSINESS INVESTMENTS AND TO PROVIDE THAT THE TAX CREDITS SHALL SUNSET FOR INVESTMENTS MADE ON OR AFTER JANUARY 1, 1999.

Legislative Proposal 13: Pending.

House Bill 75, AN ACT TO MAKE THE RULES FOR AN INTANGIBLES TAX FILING EXTENSION THE SAME AS FOR AN INDIVIDUAL INCOME TAX FILING EXTENSION, was introduced by Representative Gamble and passed the House. The Senate Finance Committee voted to postpone the bill indefinitely on March 24, 1993, but did not report this action to the Senate Floor. The bill therefore remains in the Senate Finance Committee.

Legislative Proposal 14: Enacted.

Senate Bill 158. AN ACT TO PROVIDE THAT THE PENALTY FOR FAILURE TO FILE AN INHERITANCE TAX RETURN WILL BE ASSESSED AND COLLECTED IN THE SAME MANNER AS THE PENALTY FOR FAILURE TO PAY INHERITANCE TAXES, was introduced by by Senator Kerr and after several technical corrections was ratified as Chapter 371 of the 1993 Session Laws.

Legislative Proposal 15: Enacted.

House Bill 124. AN ACT TO ESTABLISH A STATEWIDE PROGRAM TO IMPROVE THE COLLECTION OF ACCOUNTS RECEIVABLE BY THE STATE, was introduced by Representative Jarrell and after a number of minor modifications was ratified as Chapter 512 of the 1993 Session Laws.

Legislative Proposal 16: Enacted.

Senate Bill 155. AN ACT TO MAKE TECHNICAL AND CONFORMING CHANGES TO THE REVENUE LAWS AND RELATED STATUTES, was introduced by Senator Plexico. The bill was combined with Legislative Proposal 19, Tax Secrecy Changes, and was ratified as Chapter 485 of the 1993 Session Laws. The title of the ratified act is AN ACT TO MAKE TECHNICAL AND CONFORMING CHANGES TO THE REVENUE LAWS AND TO CLARIFY AND MODIFY THE TAX SECRECY PROVISION.

Legislative Proposal 17: Enacted.

Senate Bill 183. AN ACT TO PROVIDE THAT A SALES TAX LICENSE IS VOID IF THE RETAILER REPORTS NO SALES FOR EIGHTEEN MONTHS, was introduced by Senator Kerr and was ratified as Chapter 372 of the 1993 Session Laws.

Legislative Proposal 18: Pending.

Senate Bill 153. AN ACT TO ALLOW A PERCENTAGE DISCOUNT TO MERCHANTS FOR COLLECTING STATE SALES AND USE TAXES, was introduced by Senator Seymour and was referred to the Senate Finance Committee. An identical bill, House Bill 645, was introduced by Representative Hill and referred to House Finance.

Legislative Proposal 19: Enacted as part of Senate Bill 155.

House Bill 74. AN ACT TO CLARIFY THE PROHIBITION AGAINST DISCLOSING TAX INFORMATION, TO MODIFY THE PROHIBITION TO PERMIT THE EXCHANGE OF CERTAIN INFORMATION BETWEEN DESIGNATED AGENCIES, AND TO EXCLUDE INFORMATION SUBMITTED ON A MASTER TAX APPLICATION FROM THE PROHIBITION, was introduced by Representative Gamble and, after a few clarifying changes, was combined with Senate Bill 155 and ratified as Chapter 485 of the 1993 Session Laws.

Legislative Proposal 20: Pending.

House Bill 122, AN ACT TO REGULATE PROPERTY TAX REPRESENTATIVES AND CONSULTANTS, was introduced by Representative Jarrell and was referred to the House Finance Committee.

Legislative Proposal 21: Pending.

House Bill 76, AN ACT TO REQUIRE A FILING FEE ON APPEALS TO THE PROPERTY TAX COMMISSION, was introduced by Representative Gamble and was referred to the House Finance Committee. That committee discussed the bill and then referred it to a subcommittee consisting of Reps. Gamble, Hunter, Moore, and Wilson. The subcommittee met but did not make a report to the full committee.

Legislative Proposal 22: Enacted.

Senate Bill 159, AN ACT TO PROHIBIT DELIVERY OF NON-TAX-PAID SPECIAL FUEL INTO THE SUPPLY TANK OF A MOTOR VEHICLE AND ACQUISITION OF NON-TAX-PAID SPECIAL FUEL FOR USE IN A MOTOR VEHICLE, was introduced by Senator Kerr and was ratified as Chapter 140 of the 1993 Session Laws.

Legislative Proposal 23: Enacted.

Senate Bill 162, AN ACT TO MODIFY THE REQUIREMENTS FOR LICENSURE AS A MOTOR VEHICLE WHOLESALER OR DEALER, TO LIMIT THE NUMBER OF MOTOR VEHICLE DEALER LICENSE PLATES THAT CAN BE ISSUED TO THE SAME DEALER, TO EXPAND THE USE OF TRANSPORTER PLATES, AND TO CHANGE THE FEE FOR TRANSPORTER PLATES, was introduced by Senator Kerr. The provisions of the bill modifying the requirements for licensure as a motor vehicle wholesaler or dealer were deleted in committee. In addition, the bill was amended to modify the sanctions for misuse of a dealer license plate, to change the fees for dealer license plates, and to establish a special sports event temporary plate. The bill was ratified as Chapter 440 of the 1993 Session Laws.

Legislative Proposal 24: Enacted.

Senate Bill 161, AN ACT TO ALLOW ALL TRAILERS TO OBTAIN MULTIYEAR LICENSE PLATES, TO ALLOW OWNERS OF HORSELESS CARRIAGES TO OBTAIN MULTIYEAR LICENSE PLATES, TO CLARIFY THE DEFINITION OF SEMITRAILERS, AND TO MAKE TECHNICAL AND ADMINISTRATIVE CHANGES TO THE LAWS CONCERNING SPECIAL LICENSE PLATES, was introduced by Senator Kerr. In committee, the bill was amended to delete the provisions concerning horseless carriages and the definition of "semitrailers," and new provisions were added to increase the types of special license plates, to specify how the fees from the new plates are to be used, and to modify the appearance of the General Assembly special license plate. The bill was ratified as Chapter 543 of the 1993 Session Laws.

Legislative Proposal 25: Enacted.

House Bill 123, A **JOINT RESOLUTION AUTHORIZING THE LEGISLATIVE RESEARCH COMMISSION TO CONTINUE TO THE STUDY THE REVENUE LAWS OF NORTH CAROLINA,** was introduced by Representative Jarrell and incorporated into the studies bill, Chapter 560 of the 1993 Session Laws, which was passed by both houses but was not signed.

RL-1

APPENDIX E

THE FEDERAL RETIREE TAX CASE: Swanson v. Powers

Many federal retirees have asked why North Carolina has not followed the example of many other states that have worked out a monetary settlement with federal retirees on back taxes. The primary reason why settlements have taken place in other states is that their laws and court decisions concerning how to protest the payment of a tax believed to be unconstitutional are different than North Carolina's. On March 4. 1994. the North Carolina Supreme Court ruled that the federal retirees who did not contest the payment of the tax within 30 days after its payment are procedurally barred from recovering the refunds sought because they did not comply with the State's statutory postpayment refund demand procedure. The federal retirees who requested a refund pursuant to the 30-day rule have received a refund.

History

This issue began in 1989. when the Supreme Court held in Michigan v. Davis. 489 U.S. 803. 103 L. ED. 2d 891 (1989). that states could not grant state and local retirees larger tax exemptions than those allowed federal retirees. At the time of the Davis decision. 23 states exempted retired state employees from payment of income tax on pension benefits. North Carolina modified its retirement tax system for 1989 and future years in response to the Court decision by substituting the federal retiree exclusion of $4.000 for the full exemption previously allowed State and local retirees. It also authorized federal retirees to claim a tax credit on their 1990. 1991. and 1992 income taxes for taxes paid in 1989 on their federal pensions received in tax year 1988.

The Davis decision did not address the issue of refunds of taxes paid pursuant to the unconstitutional tax for prior years. The federal retirees in North Carolina brought a class action suit against the State asking for a refund of the taxes paid pursuant to the unconstitutional tax for tax years 1985 through 1988. In that case. Swanson v. Powers. the N.C. Supreme Court ruled that the Davis decision did not apply retroactively. The federal retirees appealed the decision to the United States Supreme Court.

In the spring of 1993. the United States Supreme Court ruled in Harper v. Virginia. 509 U.S. --. 125 L. Ed. 2d 74 (1993). that the Davis decision was to be applied retroactively. It noted that retroactive application did not necessarily entitle the petitioners to a refund. Instead. it entitled the petitioners to relief consistent with due process. Due process requires that a taxpayer have a meaningful opportunity to contest the validity of a tax and. if the tax is found to be unconstitutional. be given a clear and certain remedy. On June 28. 1993. the Supreme Court remanded the Swanson case back to the North Carolina Supreme Court for further consideration in light of its holding in Harper.

One of the issues in the case on remand was whether North Carolina provided federal retirees with a mechanism to protest the tax that satisfies due process. G.S. 105-267 is the only procedure a taxpayer may use to challenge the legality of a tax. Under this statute. a taxpayer must pay the tax and demand a refund of it in writing within 30 days after payment. If the Secretary of Revenue does not refund the tax paid within 90 days. the taxpayer has 3 years to sue the State for a refund. This refund provision is known as the "30-day rule".

The N.C. Supreme Court heard the two sides re-argue the 30-day rule before it in November of 1993. The lawyers for the retirees argued that the 30-day rule does not offer a sufficient opportunity for taxpayers to protest a tax. The Attorney General's office argued that the 30-day rule does provide sufficient due process and that the N.C. Supreme Court upheld the 30-day rule in Bailey v. North Carolina. 330 N.C. 227. 412 S.E.2d 295 (1991). In Bailey. the court denied refunds to State and local retirees contesting the 1989 tax law change because the retirees went to court instead of first filing a tax protest. The Attorney General's office also noted in its arguments before the N.C. Supreme Court that the 30-day rule has been upheld on many other occasions as well.

Current Status

The Court issued a decision in the Swanson case on Friday. March 4. 1994. The Court held that the 30-day rule is free from any constitutional infirmity and that it may effectively bar actions for refunds in the tax years for which the procedure is not followed. Thus. it concluded. the federal retirees who did not comply with the State's statutory postpayment refund demand procedure are procedurally barred from recovering refunds for taxes paid pursuant to the unconstitutional tax.

The ruling will likely be appealed to the U.S. Supreme Court. If the case is appealed and the U.S. Supreme Court agrees to hear the appeal. the Court could hold that the 30-day rule provided sufficient due process. and accordingly. that the federal retirees are not entitled to a refund. However. should the U.S. Supreme Court hold that the 30-day rule does not afford due process. the State would have to begin the process of determining the amount of tax relief due the retirees.

In the Harper decision. the Court allowed states considerable latitude in fashioning the relief. For example. states can grant retirees tax credits in future years. The most obvious option is a lump-sum payment. The Fiscal Research Division of the General Assembly estimates that the payout to retirees could be between $200 and $300 million. depending on the interest provisions.

Summary

In summary. the present and future state income tax treatment of retired federal employees is the same as that for retired State and local employees: a $4.000 exclusion of government retirement benefits. The possibility of a state income tax refund to federal retirees who did not contest the income tax paid on pension income when it was paid prior to 1989 will take several months to resolve in the court system.

APPENDIX F

THE INTANGIBLES TAX CASE: Fulton Corp. v. Justus

In Fulton Corp. v. Justus, 110 N.C.App. 493, 430 S.E.2d 494 (1993), the North Carolina Court of Appeals held unconstitutional that part of the State intangibles tax that grants an exemption for corporate stock in proportion to how much of the corporation's income is attributable to North Carolina for income tax purposes. The court voided the exemption, effective beginning with the 1994 tax year, because it discriminates against interstate commerce in violation of the Commerce Clause of the United States Constitution. The elimination of the exemption should result in a gain to the General Fund of approximately $55 to $75 million annually.

The court of appeals denied the plaintiff, Fulton Corp.'s, petition for a rehearing on August 4, 1993. The North Carolina Supreme Court heard the case on appeal by both parties on February 2, 1994. The Supreme Court has not yet issued an opinion in the case.

The State of North Carolina argued on appeal that the court of appeals erred in concluding that the taxable percentage provision of the intangibles tax violates the Commerce Clause of the federal constitution. The plaintiff argued on appeal that the federal constitution entitles plaintiff to a refund of intangibles taxes. This argument is based on the theory that the entire tax, not just the taxable percentage deduction, is unconstitutional and should have been struck down. The plaintiff argued further that the U.S. Supreme Court case Harper et al. v. Virginia, 113 S.Ct. 41, 61 USLW 4664 (U.S.S.C., June 18, 1993), requires the court to give retroactive relief rather than just voiding the exemption beginning in 1994. The questions on which the Supreme Court granted discretionary review requested by the plaintiff are whether G.S. 105-267 entitles the plaintiff to a refund of intangibles taxes, whether the court applied the severability clause properly when it severed the deduction rather than striking down the tax, and whether the court of appeals should have awarded attorneys fees.

The key to the appeals is that the plaintiff asserts that the tax is unconstitutional and that the court of appeals held it unconstitutional while the State asserts that only the deduction was held unconstitutional.

It is not possible to predict with any certainty what the results of this appeal will be. Once the decision is rendered, either party could request review by the United States Supreme Court. If the United States Supreme Court accepted the case, at least a year would probably pass before it rendered a decision. Here are some possible outcomes followed by an estimate of the General Fund impact of each outcome.

1. State wins -- tax and exemption upheld. No fiscal impact.
2. Fulton affirmed -- exemption repealed as of 1994. $55 to $75 million gain beginning in 94-95 fiscal year.
3. Change effective date of exemption repeal from 1994 to 1993. $55 to $75 million gain beginning in 93-94 fiscal year.
4. Declare the entire tax on stock unconstitutional beginning in 1993 or 1994 and require refunds for anyone who paid under protest in the past three years. Approximately $90 million loss annually.

APPENDIX G

PROVISIONS	PREVIOUS FEDERAL LAW	REVENUE RECONCILIATION 1993	EFFECTIVE DATE	IMPACT ON STATE REVENUES
Moving Expenses	Itemized deduction claimed if move connected with job change. New job must be at least 35 miles farther from old residence than old job. Allowable expenses included: (1) Meals, lodging and transportation of people, pets and household goods to new residence; (2) Pre-move house hunting and temporary living expenses; (3) Settlement costs of unexpired lease; and, (4) Certain expenses related to sale of old residence and purchase of new residence. Maximum deduction was $3,000 with further limitation of $1,500 on pre-move house hunting and temporary living expenses.	Itemized deduction changed to deduction for AGI. Distance test increased from 35 to 50 miles. Expenses for meals, pre-move house hunting, temporary living quarters, lease settlements, and sale or purchase of residence no longer deductible.	1-1-94	Deduction reduction increases taxable income. Number of taxpayers eligible to claim deduction increases. Reduction in AGI will increase amounts claimed for medical deduction, employee business expenses, and dependent care credit.

PROVISIONS	PREVIOUS FEDERAL LAW	REVENUE RECONCILIATION 1993	EFFECTIVE DATE	IMPACT ON STATE REVENUES
Deduction Limitation for Higher Income Taxpayers Extended	Personal exemptions reduced by 2% for each $2,500 AGI exceeded threshold amount (based on filing status). 1997 expiration date. Itemized deductions reduced by 3% of amount AGI exceeds threshold amounts. Reduction cannot exceed 80% of total itemized deduction. 1996 expiration date.	Phaseout of personal exemptions and reduction in itemized deductions made permanent.	1-1-93	No immediate impact.
Disaster Loss Relief	General involuntary conversion rules applied to gain recognized for disaster loss.	Modifies involuntary conversion rules for principal residences of victims in federal disaster areas.	1-1-91	No immediate impact.
Employer-Provided Educational Assistance Income Exclusion	Employees could exclude from income up to $5,250 of employer-provided educational assistance that met certain requirements prior to July 31, 1992.	Exclusion extended retroactively from July 1, 1992 through December 31, 1994.	7-1-92	Negative.

PROVISIONS	PREVIOUS FEDERAL LAW	REVENUE RECONCILIATION 1993	EFFECTIVE DATE	IMPACT ON STATE REVENUES
Business Meals and Entertainment Expenses	Employees could deduct 80% of qualifying business meals and entertainment expenses if they itemized and expenses exceeded 2% of AGI threshold.	Deduction reduced from 80% to 50%.	1-1-94	Positive.
Deduction for Club Dues	Itemized deduction allowed for club dues if primary use of club was business related. No deduction for initiation or similar fee payable upon joining a club.	Deduction eliminated for club dues of any kind.	1-1-94	Positive.
Deduction for Spousal Travel	Deduction allowed for spousal or dependent travel accompanying taxpayer on business trip if presence of spouse or dependent had bonafide business purpose.	Restricts deduction to situations when all of following conditions are met: (1) Spouse or dependent is employee of taxpayer; (2) Travel is for a bonafide business purpose; and, (3) Expenses of spouse or dependent would otherwise be deductible as an employee business expense.	1-1-94	Positive.

PROVISIONS	PREVIOUS FEDERAL LAW	REVENUE RECONCILIATION 1993	EFFECTIVE DATE	IMPACT ON STATE REVENUES
Amortization of Intangible Assets	Depreciation or amortization deduction allowed for cost or other basis of intangible property used in a trade or business if property has limited useful life that can be determined with reasonable accuracy. No deduction allowed for goodwill.	Now section 197 intangible property can be amortized ratably over 15 yrs. Sec. 197 property includes goodwill, going-concern value, work force in place, information bases, know-how, franchises, trademarks and trade names, licenses, permits and other rights granted by government units, and covenants not to compete tangibles.	For property placed in service after 8-10-93, but can elect to apply to goodwill and intangibles acquired after 7-25-91.	Negative.

PROVISIONS	PREVIOUS FEDERAL LAW	REVENUE RECONCILIATION 1993	EFFECTIVE DATE	IMPACT ON STATE REVENUES
Passive Loss Rules for Certain Real Estate Professionals	Rental activities were subject to passive loss rules regardless of the level of taxpayer participation. A $25,000 deduction was allowed for taxpayers with AGI of $100,000 or less, phasing out at $150,000.	Individuals who materially participate in rental real estate activities are no longer subject to passive loss rules if they meet the following requirements: (1) More than 50% of individual's personal services must be performed in real property businesses, and, (2) Individual must perform more than 750 hours of service in real property businesses.	1-1-94	Negative.
Health Insurance Deduction for Self-Employed Individuals	Deduction of 25% of health insurance premiums allowed to self-employed individuals covering spouse and dependents prior to July	Deduction extended retroactively from July 1, 1992 through December 31, 1993. Removal of deduction occurs only for any	7-1-92	Negative.

PROVISIONS	PREVIOUS FEDERAL LAW	REVENUE RECONCILIATION 1993	EFFECTIVE DATE	IMPACT ON STATE REVENUES
	1, 1992. Deduction denied if taxpayer or spouse eligible for employer-paid health benefits during any part of tax year.	calendar month in which taxpayer or spouse is eligible for employer-paid health benefits.		
Capital Gains Exclusion for Small Business Stock	Gain from the sale or exchange of stock held for more than one year generally treated as long-term capital gain.	Investors who purchase and hold qualified small business stock for more than five years can exclude up to 50% of the gain realized on its disposition. Eligible gain is limited to the greater of ten times the investor's basis or $10 million. The small business must be a C corporation, have less than $50 million of aggregate capital when stock is issued, and use at least 80% of the value of its assets in active conduct of one or more businesses.	8-10-93	No initial impact.

PROVISIONS	PREVIOUS FEDERAL LAW	REVENUE RECONCILIATION 1993	EFFECTIVE DATE	IMPACT ON STATE REVENUES
Depreciation of Non-Residential Property	31.5 year recovery period for depreciation of non-residential real property.	Recovery period increased to 39 years.	For property placed in service on or after May 13, 1993.	Positive.
Payments Made in Liquidation of Partnership Interests	A special rule treated liquidation payment paid for goodwill and unrealized receivables to a retiring partner as not made in exchange for an interest in partnership property, resulting in a deduction to the partnership.	Special treatment of liquidation payments to retiring partners , for goodwill and unrealized receivables. repealed. Payments treated as made in exchange the partner's interest in partnership property. Gain will be realized to extent payment exceeds retiring partner's adjusted basis in partnership income.	1-5-93, but does not apply to general partners in a service partnership.	Positive.

PROVISIONS	PREVIOUS FEDERAL LAW	REVENUE RECONCILIATION 1993	EFFECTIVE DATE	IMPACT ON STATE REVENUES
Inventory Valuation Methods for Securities Dealers	Securities inventories could be valued based on one of three methods: (1) cost; (2) cost or market value, or (3) market value of the securities. First two methods generated unrealized gains and losses not accounted for for tax purposes.	New "mark-to-market" provisions: (1) Securities held in inventory must be priced at fair market value, (2) Any security not in inventory at end of tax year will be considered sold at fair market value and gain or loss must be used in determination of gross income.	1-1-94	Positive.
Modification of Definition of Unrelated Business Taxable Income (UBTI) for Pension Funds and Tax-Exempt Organizations	(1) Income derived from debt-financed property generally treated as UBTI with some exceptions. (2)Distributed shares of gross income from publicly traded partnership treated as UBTI.	(1) List of exceptions to UBTI on debt-financed property broadened. (2) Distributed shares of publicly traded partnerships considered investment income exempt	1-1-94 (All UBTI changes)	Negative.

PROVISIONS	PREVIOUS FEDERAL LAW	REVENUE RECONCILIATION 1993	EFFECTIVE DATE	IMPACT ON STATE REVENUES
	(3) Tax-exempt title-holding companies lose tax exempt status if they receive UBTI from real property. (4) Gains or losses from disposition of property held for sale to customers subject to UBTI ("dealer UBTI rule"). (5) Previous law unclear whether premiums from unexercised options on real estate and loan commitment fees are UBTI.	from UBTI. (3) Tax-exempt title-holding company permitted to receive UBTI up to 10% of gross income, provided income is incidentally derived from real property (parking fees, vending machines are examples). (4) Gains and losses from disposition of real property acquired from financial institutions in receivership exempt from UBTI. (5) Gains and losses from unexercised options and loan fee forfeitures excluded from UBTI.		

PROVISIONS	PREVIOUS FEDERAL LAW	REVENUE RECONCILIATION 1993	EFFECTIVE DATE	IMPACT ON STATE REVENUES
Deduction for Executive Compensation	Deduction allowed for reasonable salaries and other compensation paid to employees.	Deduction for wages paid to a "covered employee" of a publicly-held corporation limited to $1 million. "Covered employees" include the CEO and the four highest compensated officers of the corporation.	1-1-94	Positive.
Discharge of Real Property Indebtedness	C corporations could exclude from income the amount realized from the discharge of real property business indebtedness.	Income exclusion extended to individuals, partnerships, and S corporations.	1-1-93	Negative.
Roll-over of Gain of Publicly-traded Securities	Capital gain or loss generally recognized on disposition of property.	Capital gain may be deferred on the sale of publicly traded securities if proceeds used within 60 days to purchase common stock or partnership interest in a specialized small business investment company (SSBIC). Deferred gain is limited to the lesser of (1) $50,000 or (2) $500,000 reduced by any previously deferred gains.	8-10-93	Minimal negative.

PROVISIONS	PREVIOUS FEDERAL LAW	REVENUE RECONCILIATION 1993	EFFECTIVE DATE	IMPACT ON STATE REVENUES
Lobbying Expenses	Deduction allowed for direct lobbying expenses related to conduct of a trade or business. No deduction allowed for participation in political campaigns or in connection with attempts to influence the general public ("grass roots lobbying").	No deduction allowed for expenses paid to influence federal or state legislation or in communication with certain federal Executive branch officials in an attempt to influence their official actions.	1/1/94	Positive
Section 179 Expense Deduction	Taxpayer could elect to deduct as a current expense, instead of depreciating, the cost of certain business property up to a maximum of $10,000 per item.	Maximum expsense increased to $17,500. Additional $20,000 deduction allowed for Sec. 179 property purchased by an enterprise zone business.	For property placed in service after December 31, 1992.	Negative (In short term)