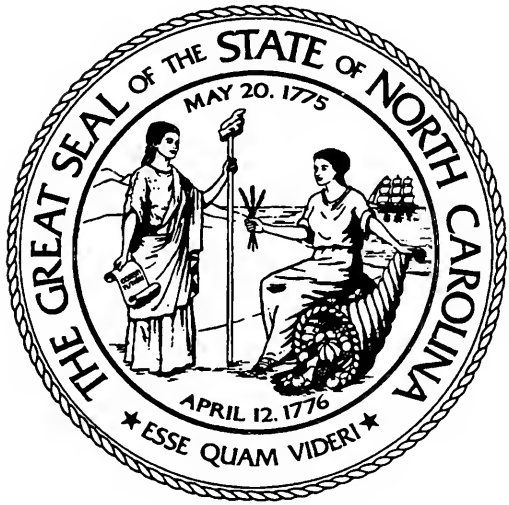
RESTRICTED

CIRCULATION

REVENUE LAWS STUDY COMMITTEE



REPORT TO THE 1997 GENERAL ASSEMBLY OF NORTH CAROLINA 1998 REGULAR SESSION

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Revenue Laws Study Committee
State Legislative Building
Raleigh, North Carolina 27603

May 1, 1998

TO THE MEMBERS OF THE 1997 GENERAL ASSEMBLY (REGULAR SESSION 1998):

The Revenue Laws Study Committee submits to you for your consideration its report pursuant to G.S. 120-70.106.

Respectfully Submitted,

Rep. Lyons Gray, Co-chair

Sen. John Kerr, Co-chair

1995-1996

REVENUE LAWS STUDY COMMITTEE

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Richard Bostic, Fiscal Analyst
Warren Plonk, Fiscal Analyst

PREFACE

The Revenue Laws Study Committee was established by Part XIV of S.L. 1997-483 as Article 12L of Chapter 120 of the General Statutes, to serve as a permanent legislative commission to review issues relating to taxation and finance. The Committee consists of sixteen members, eight appointed by the President Pro Tempore of the Senate and eight appointed by the Speaker of the House of Representatives. Committee members may be legislators or citizens. Each of the appointing authorities designates one member to serve as co-chair. The co-chairs for 1997-99 are Senator John Kerr and Representative Lyons Gray.

G.S. 120-70.106 gives the Revenue Law Study Committee's study of the revenue laws a very broad scope, stating that the Committee "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." A copy of Part XIV of S.L. 1997-483 is included in Appendix A. A committee notebook containing the committee minutes and all information presented to the committee is filed in the Legislative Library.

Before it was created as a permanent legislative commission, the Revenue Laws Study Committee was a subcommittee of the Legislative Research Commission. It has studied the revenue laws every year since 1977.

COMMITTEE PROCEEDINGS

The Revenue Laws Study Committee met five times before the 1998 Regular Session of the 1997 General Assembly. It first reviewed the tax law changes enacted during the 1997 Session and the fate of the Committee's recommendations to the 1997 General Assembly. Fourteen of its seventeen proposals were enacted in whole or in part in 1997. Appendix B contains a summary of all tax legislation enacted in 1997 and Appendix C lists the Committee's recommendations and the action taken on them in 1997.

The Revenue Laws Study Committee was inundated with requests from legislators, taxpayers, the Department of Revenue, and interest groups to study numerous issues of tax policy and tax administration. The Committee considered many issues but was unable to take up all of the issues suggested to it.

The Committee continued to consider all proposed tax changes in light of general principles of tax policy and as part of an examination of the existing tax structure as a whole. The tax policies identified by the Committee were fairness, uniformity, application of low rates to a broad base, stability and responsiveness as a source of revenue, administrative efficiency, simplicity, and ease of compliance.

Based on its consideration of these policies, the Committee investigated and adopted several proposals addressing specific policy issues. These recommendations are reflected in Legislative Proposals 2, 5, and 9. Legislative Proposal 2 would remove restrictions on two individual income tax credits that limit them to residents only. The proposal promotes the policy of protecting taxpayers' constitutional rights by repealing restrictions that are probably unconstitutional in light of a recent United States Supreme Court case out of New York. Legislative Proposal 5 sets the gross receipts tax on movies at 1%, in light of the tax policies of fairness and uniformity. The Committee determined that a complete exemption for movies, although apparently intended by legislation enacted in 1996, would be unfair in light of the fact that most other amusements and entertainments are taxed at 3%. Legislative Proposal 9 repeals a local act that gave Cabarrus County and the City of Concord the power to initiate

binding referenda on any subject. The Committee determined that such authority was inconsistent with established policies and laws limiting local governments' authority to tax or to enact laws not specifically authorized by the General Assembly.

The Committee recognized that a sound tax structure is one that is simple and easy for taxpayers to comply with. The first step to simplicity is to conform the tax structure as much as possible to federal tax laws that taxpayers must already comply with. Legislative Proposal 1 enhances federal conformity in two ways. First, it contains 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 year. Updating the references provides that to the extent State law already piggybacks federal law, it will be consistent with recent federal law changes. Because of extensive changes to the Code enacted by Congress in 1997, this proposal will have a more significant impact on taxpayers and on the General Fund than in recent years. Appendix D lists the federal tax law changes that will affect State taxable income if this proposal is adopted. Legislative Proposal 1 also conforms to a recent federal law that allows taxpayers to avoid gift tax on large contributions to qualified tuition plans. Without this change, taxpayers who conformed to federal requirements might still face State gift tax liability.

The second step to simplicity and ease of compliance for taxpayers is to adopt consistent administrative provisions that apply across various state and local taxes, rather than having different rules for each tax. Legislative Proposal 14 promotes this policy by eliminating complex and various tax penalty provisions that apply to specific taxes in favor of uniform penalties that will apply to all taxes.

Legislative Proposals 4, 6, 7, 10, and 12 promote the policy of tax simplicity by eliminating unnecessary procedures and paperwork. Proposal 4 eliminates inheritance tax waivers currently required before a decedent's bank account or property can be released. Proposal 10 simplifies the procedure for inventorying a decedent's lock box before it can be emptied. Proposals 6 and 12 eliminate numerous redundant and unnecessary tax licenses

required for privilege taxes, ABC permits, and sales taxes. Legislative Proposal 12 also allows less frequent sales tax filing for taxpayers with less liability. Proposal 7 replaces an unnecessary refund procedure for off-highway racing fuel with a tax exemption, makes certain motor carrier refunds automatic, and makes other changes to conform with federal tax treatment of kerosene.

The Committee recognized a strong policy of enforcing taxes consistently and fairly to deter taxpayers from failing to pay the taxes they owe. When some taxpayers do not pay their taxes, the difference must be made up by raising taxes on those who comply with the law. Legislative Proposal 13 would increase the criminal penalties that apply in the most egregious cases of intentional tax evasion, in order to provide an appropriate punishment and to deter others from criminal activity. In addition to the simplification changes described above, Legislative Proposal 7 would promote compliance by imposing a new motor fuel tax penalty on licensed distributors and licensed importers who deduct an exempt sale when paying the excise tax to a supplier and then fail to report the exempt sale when filing a reconciling return.

As in the past, the Committee proved to be an excellent forum for taxpayers, local government officials, and State 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. As a result of input from taxpayers and tax administrators, the Committee recommends the following proposals: Legislative Proposal 3, which limits the nonresident withholding requirement enacted last year to apply only to payments made to athletes and entertainers; Legislative Proposal 11, which clarifies that taxpayers may choose a nonattorney to represent them before a local board of equalization and review; and Legislative Proposal 15, which modifies the formula for distributing franchise taxes to municipalities.

Finally, the Committee studied numerous proposals for technical corrections to the revenue laws raised by the Department of Revenue, taxpayers, and legislative staff. These recommendations are combined into Legislative Proposal 8, an omnibus bill providing technical, clarifying, and conforming changes to the revenue laws and related statutes.

The Revenue Laws Study Committee recommends the following fifteen bills to the 1998 Regular Session of the 1997 General Assembly. Each proposal is followed by an explanation and, if it has a fiscal impact, a fiscal note indicating any anticipated revenue gain or loss resulting from the proposal.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H D

Legislative Proposal 1
98-LCX-238A(1.1)(Z)
(THIS IS A DRAFT AND IS NOT READY FOR INTRODUCTION)

Short Title: Update IRC Reference/Conform Gift Tax. (Public)

Sponsors: Representatives Gray, C. Wilson (Cosponsors), Brawley, Cansler, Capps, Hill, Neely, and Ramsey.

Referred to:

A BILL TO BE ENTITLED

AN ACT TO UPDATE THE REFERENCE TO THE INTERNAL REVENUE CODE USED IN DEFINING AND DETERMINING CERTAIN STATE TAX PROVISIONS AND TO CONFORM TO FEDERAL GIFT TAX TREATMENT OF CONTRIBUTIONS TO QUALIFIED TUITION PROGRAMS.

The General Assembly of North Carolina enacts:

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

"(1a) Code. -- The Internal Revenue Code as enacted as of ~~January 1, 1997,~~ June 1, 1998, including any provisions enacted as of that date which become effective either before or after that date."

Section 2. G.S. 105-134.6(b)(12) is repealed.

Section 3. G.S. 105-134.6(b)(13) reads as rewritten:

"(13) The amount that is distributed to a beneficiary of the Parental Savings Trust Fund of the State Education Assistance Authority ~~if the earnings on the amount are excluded from income under subdivision (12) of this subsection or section 529 of the Code.~~ unless the distribution is a refund of earnings described in section 529 of the Code."

Section 4. G.S. 105-188 is amended by adding a new subsection to read:

"(k) Qualified Tuition Programs. -- The provisions of section 529(c)(2) and (5) of the Code apply to this Article. If a donor elects to take a contribution into account ratably over a five-year period as provided in section 529(c)(2) of the Code, that election applies for the purposes of this Article."

Section 5. Notwithstanding Section 1 of this act, to the extent an amendment to the Internal Revenue Code enacted after January 1, 1997, would increase North Carolina taxable income for a taxpayer's tax year beginning before January 1, 1998, the amendment does not apply to the taxpayer for that tax year.

Section 6. Section 4 of this act becomes effective for taxable years beginning on or after January 1, 1998. The remainder of this act is effective when it becomes law.

EXPLANATION OF LEGISLATIVE PROPOSAL 1:
Update IRC Reference/Conform Gift Tax

TO: Revenue Laws Study Committee
FROM: Martha H. Harris, Committee Co-Counsel
DATE: May 15, 1998
SPONSOR:

Legislative Proposal 1 makes two changes to simplify the tax law by conforming to federal tax provisions:

1. It rewrites the definition of the Internal Revenue Code used in State tax statutes to change the reference date from January 1, 1997, to June 1, 1998.
2. It conforms to federal gift tax treatment of qualified tuition programs.

Update Code Reference. 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. Congress made numerous, significant changes to the Code last year that will affect federal taxable income. Because the State corporate and individual income tax is based upon federal taxable income, these changes, if adopted, will affect State policies and revenues. The fiscal note and Appendix D of this report list and summarize the significant changes made by the federal Taxpayer Relief Act of 1997. Several of these changes had technical problems, which Congress has proposed to correct in H.R. 2645, the Tax Technical Corrections Act of 1997, expected to be enacted by June 1 1998.

One of the federal tax changes enacted last year was an income tax exemption for the annual earnings on amounts contributed to qualified tuition programs, such as North Carolina's Parental Savings Trust Fund, for the future payment of room or board at an institution of higher education. North Carolina law has a provision exempting these earnings to the extent they are taxed under federal law. Because they are no longer taxed under federal law, Section 2 of the bill repeals the North Carolina exemption. Section 3 amends a related North Carolina provision to clarify that it exempts distributions from tax only if they are used for qualified higher education expenses.

The bill provides that the federal tax law changes that could increase a taxpayer's North Carolina taxable income for the 1997 tax year will not become effective until January 1, 1998. Under Article 1, Section 16 of the North Carolina Constitution, the legislature cannot pass a law that will increase a tax retroactively. There are a number of provisions in the federal Taxpayer Relief

Act of 1997 that could increase taxable income for the 1997 tax year. Because this bill cannot be acted upon until the 1998 Session of the General Assembly, these changes must be given a delayed effective date.

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 on a particular date instead of referring to the Code and any future amendments to it, thereby eliminating the necessity of bills like this one. 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 from year to year, the State may not want to adopt automatically all federal changes. 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. Section 2(1) of Article V 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."

The Committee explored the possibility of a bill to automatically adopt federal changes to the Code with legislative review and approval in the next legislative session. It was hoped that this approach would avoid the practical difficulties that occur when Code changes go into effect many months before the General Assembly has a chance to pass legislation adopting the changes. The Attorney General's Office reviewed the relevant case law in this State and other states before concluding that this approach would be unlikely to withstand a constitutional challenge.

Qualified Tuition Plan Gift Tax. Section 4 of Legislative Proposal 1 adopts for North Carolina gift tax purposes the following provisions of federal law. Conforming to federal law will relieve taxpayers from unexpected gift tax liability and will simplify tax compliance and administration.

1. A distribution from a qualified tuition program is not a taxable gift, unless a new beneficiary, who is a generation below the original

beneficiary, is named to the account or receives the account in a rollover.

2. A contribution to a qualified tuition program is a gift to the designated beneficiary, but not a gift of a future interest. If the contribution were considered a gift of a future interest, a gift tax return would have to be filed even if the amount were under the $10,000 annual exclusion amount.
3. A contribution to a qualified tuition program is not a direct payment of tuition. If it were, it would be exempt from gift tax.
4. If a contribution exceeds the $10,000 annual gift tax exclusion amount, the donor may elect to avoid gift tax by treating the contribution as if it had been made over a five-year period. For example, a $25,000 contribution would not be taxable because it would be considered a gift of $5,000 a year over five years and thus would be below the $10,000 annual exclusion amount.

These provisions would apply to any qualified state tuition program under section 529 of the Internal Revenue Code. North Carolina has such a program, known as the Parental Savings Trust Fund. This Fund is part of the State Education Assistance Authority. The Fund is authorized by G.S. 116-209.25, which the General Assembly enacted in 1996. A person can contribute amounts into the Parental Savings Trust Fund for a child who is less than 16 years old. The amount contributed in the account, along with its interest and investment earnings, can be used to pay the expenses of the beneficiary at any accredited public or private college or community college. Either the child or the person making the contributions must be a resident of this State. The Authority plans to open the Fund in the summer of 1998.

Section 529 of the Code excludes the amounts earned on contributions to a qualified state tuition program from federal income tax and, therefore, from North Carolina tax as well. Under federal law, the earnings are exempt if the contributions are for the payment of qualified higher education expenses: tuition, room and board, fees, books, supplies, and equipment. Also under federal law, the amount distributed to a beneficiary of the Parental Savings Trust Fund for qualified higher education expenses is taxable to the extent it exceeds the amount contributed. Thus, under federal law, the tax on the investment earnings is simply deferred until a distribution is made, at which time the earnings are taxable to the beneficiary rather than the contributor. Under North Carolina law, however, the entire distribution is not taxable if it is used for qualified higher education expenses. Under both federal and North Carolina law, earnings distributed for purposes other than qualified higher education expenses are taxable and are also subject to a penalty imposed by the state operating the program.

FISCAL ANALYSIS MEMORANDUM

DATE: May 1, 1998

TO: Revenue Laws Study Committee

FROM: Richard Bostic and Warren Plonk
Fiscal Research Division

RE: Update I.R.C. Reference/Conform Gift Tax

FISCAL IMPACT
$ Millions

Yes (X) **No ( )** **No Estimate Available ( )**

	FY 1998-99	FY 1999-00	FY 2000-01	FY 2001-02	FY 2002-03
REVENUES	See fiscal impact summary pages 14 through 18				

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: State Individual Income Tax Returns, Gift Tax Returns, and Corporate Income Tax Returns

EFFECTIVE DATE: 1998 tax year

BILL SUMMARY: Legislative Proposal 1 makes two changes to simplify the tax law by conforming to federal tax provisions:

1. It rewrites the definition of the Internal Revenue Code used in State tax statutes to change the reference date from January 1, 1997, to June 1, 1998.
2. It conforms to federal gift tax treatment of qualified tuition programs.

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. Congress made numerous, significant changes to the Code last year that will affect federal taxable income. Since the State corporate and individual income tax is based upon federal taxable income, these changes, if adopted, will affect State policies and revenues. The fiscal impact summary which follows, and Appendix D of this report, list and summarize the significant changes made by the federal Taxpayer Relief Act of 1997.

Section 4 of Legislative Proposal 1 adopts for North Carolina gift tax purposes several provisions of federal law. Conforming to federal law will relieve taxpayers from unexpected gift tax liability and will simplify tax compliance and administration.

BACKGROUND: An up-date to the Internal Revenue Code is brought to the General Assembly 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 the 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, Section 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 powers".

ASSUMPTIONS AND METHODOLOGY: North Carolina estimates on updating the Internal Revenue Code reference are based on a percentage of the federal estimate calculated by the Congressional Joint committee on Taxation. The percentages used is North Carolina's actual tax collections divided by national tax collections. (Individuals = .723% and Corporate = .542%)

The current national average cost of a four year college education at a private institution is $21,424 a year. The current inflation factor for a private education is 6%. If two parents (class A donors) established a fund for a child eight years before they enter college the projected cost of the four year education is $111,813. The parents would have to deposit approximately $1,165 a month, over the eight year period, to meet the future annual education expense of $111,813. In this case, the donors will make annual payments of $13,977 to the account. If both parents agree, the maximum annual "gift" exclusion allowed is $20,000. In this example, no tax is due on an annual gift of $13,977.

If a fund is established four years before a child is to enter the same private college, essentially doubling the annual payments, the annual amount that exceeds $20,000 may not be subject to tax. If the parents have not exceeded a lifetime exemption of $100,000, the amount that exceeds $20,000 annually is credited against the $100,000 lifetime exemption.

If a single parent of a child makes the same annual payment of $13,977 and he or she has exhausted their $100,000 lifetime exemption the gift tax would be levied against the amount that exceeds $10,000. In this case $3,977 would be subject to a 1% tax rate and the tax due would be $39.77.

Internal Revenue Code Update

STATE IMPACT

	Effective Date	($Millions) 98-99	99-00	00-01	01-02	02-03
Affects Individual Income Tax Only						
Exclude capital gain from sale of residence	5/6/97	-3.62	-3.62	-3.62	-4.34	-4.34
Expand deduction for self-employed individuals' health insurance	2000	-	-0.28	-0.87	-1.62	-4.37
Establish Roth IRAs/Expand existing IRAs	1/1/98	-2.49	0.62	-2.50	-6.22	-13.23
Establish education IRAs	1/1/98	-4.66	-6.59	-7.66	-8.14	-10.47
Add room and board as qualifying expenses for Prepaid Tuition Programs	8/21/96	No impact - NC already exempts these expenses				
Reenact employer-provided educational assistance	1/1/97	-2.67	-1.81	-	-	-
Allow deduction of interest paid on qualified higher education loans	1/1/98	-0.50	-0.88	-1.47	-2.00	-2.23
Restrict penalty for underpayment of estimated income tax	12/31/97	-0.12	-0.13	-0.14	-0.14	-0.15
Increase standard deduction for individuals claimed as dependent by another	1/1/98	-0.27	-0.25	-0.25	-0.25	-0.25
Change net operating loss carryback and forward periods	1/1/98	0.22	0.26	0.19	0.13	0.10
Increase charitable mileage rate from 12 cents to 14 cents	1/1/98	-0.40	-0.42	-0.44	-0.46	-0.49
Extend deduction for FMV of stock contributed to private foundation	6/1/97	-0.07	-0.03	-	-	-
Expand rules on home office as principal place of business	1/1/99	-0.86	-1.76	-1.83	-1.90	-1.98
Exclude capital gain from sale of qualified small business stock	8/1/97	-0.36	-0.36	-0.36	-0.36	-0.36
Increase maximum amount of self-employed 401(k) contributions	1/1/98	No estimate available				
Modify tax treatment of Employee Stock Ownership Plans (ESOP) in S corporations	12/31/97	-0.17	-0.25	-0.30	-0.32	-0.33
Change tax treatment of rural mail carriers' reimbursed mileage	1/1/98	-0.01	-0.01	-0.01	-0.01	-0.01
Defer gain from sale of livestock due to drought, flood or other weather related event	1/1/97	-0.01	-0.01	-0.01	-0.01	-0.01
Expand business meals/entertainment deduction for air transportation employees, truck drivers, railroad employees, and merchant marines	1/1/98	-0.12	-0.20	-0.27	-0.35	-0.45
Clarify exclusion of the value of employer-provided parking	1/1/98	0.06	0.08	0.09	0.09	0.09
Increase exclusion of income earned by US citizens residing in foreign countries	1/1/98	-0.22	-0.36	-0.48	-0.59	-0.70
Exclude from income the disability payments to former police officers and fire fighters retroactive to 1989, 1990, and 1991		-	-	-	-	-
Exclude from income government survivor annuities to slain public safety officers	1/1/97	-0.01	-0.01	-0.01	-0.01	-0.01
Deny nonrecognition of gain of involuntarily converted property	6/8/97	0.03	0.04	0.06	0.08	0.09
Provide an above the line deduction for state and local officials' expenses	1/1/87	-0.03	-0.03	-0.03	-0.04	-0.04
Affects Individual Income Tax Only						

Internal Revenue Code Update

	Effective Date	($Millions) 98-99	99-00	00-01	01-02	02-03
Change basis recovery method for pension plan payments modified	12/31/97	0.02	0.04	0.07	0.08	0.11
Simplify treatment of personal transactions in foreign currency	12/31/97	-0.01	-0.01	-0.01	-0.01	-0.01
Increase full funding limit with 20 year amortization for pensions	12/31/98	-0.03	-0.09	-0.10	-0.13	-0.14
Affects Partnerships (Individual Income Tax)						
Classify sale or exchange of inventory in partnership as ordinary income	8/5/97	No impact - NC already taxes as ordinary income				
Change formula for allocation of basis among distributed assets of partnership	8/5/97	0.38	0.40	0.41	0.43	0.44
Extend period from 5 to 7 years for recognition of precontribution gains	6/8/97	-	-	-	0.01	0.07
Affects both Individual and Corporate Income Tax						
Extend R&D tax credit retroactive to 6/1/97	6/1/97	Costs included in the Bill Lee act				
Restrict income forecast method of depreciation	8/6/97	0.30	0.45	0.56	0.27	0.20
Eliminate short against the box transaction for stock	6/8/97	0.87	0.49	0.53	0.57	0.61
Require immediate accrual of interest on pool of debt instruments	8/5/97	1.99	2.59	2.31	2.05	0.72
Allow expensing of certain environmental remediation costs for brownfields	8/5/97	-0.95	-1.19	-0.46	0.00	0.01
Allow inventory adjustment for estimated shrinkage	8/5/97	-0.15	-0.17	-0.18	-0.20	-0.21
Change gain recognition rules under sections 1233 and 1234A of the Internal Revenue Code	8/5/97	0.20	0.18	0.18	0.18	0.18
Include income from notional principal contracts and stock lending transactions in gross income of U.S. shareholders	8/5/97	0.14	0.15	0.15	0.15	0.15
Restrict like-kind exchanges involving foreign personal property	6/8/97	0.06	0.08	0.09	0.11	0.12
Limit treaty benefits for payments to hybrid entities	8/5/97	0.01	0.01	0.01	0.01	0.01
Exempt certain securities positions from U.S. property definition under subpart F	12/31/97	-0.01	-0.01	-0.01	-0.01	-0.01
Exempt active financing income from subpart F	1998	-0.49	-0.02	0.00	0.00	0.00
Modify look-back method for long term contracts	8/5/97	-0.01	-0.02	-0.03	-0.03	-0.03
Affects Corporate Income Tax Only						
Recognize gain from exchange of property for preferred stock treated as boot	6/8/97	0.20	0.21	0.22	0.23	0.05
Expand charitable deduction for corporate contributions of computer						

Internal Revenue Code Update

	Effective Date	($Millions) 98-99	99-00	00-01	01-02	02-03
software and equipment	1/1/98	-0.26	-0.42	-0.27	-0.03	-0.01
Repeal income deferral when farms change from cash method to accrual method	7/1/96	0.18	0.19	0.20	0.20	0.21
Allow Subchapter S subsidiaries to be treated as separate corporations	1/1/97	No estimate available				
Clarify that software qualifies as export property	1/1/98	-0.23	-0.79	-0.94	-0.98	-1.04
Restrict corporate deductions relating to to life insurance	8/6/98	0.29	0.50	0.76	1.05	1.34
Require recognition of gain from extraordinary dividend and other changes	9/13/95	-0.50	-0.29	-0.05	0.24	0.42
Repeal law allowing manufacturers to use installment method to report sales to their dealers	8/6/98	0.24	0.53	0.57	0.57	0.35
Require gain recognition on certain distributions of controlled corporation stock and change tax treatment of redemptions involving related corporations	6/8/97	1.37	1.20	1.04	0.88	0.73
Deny interest deduction on convertible debt	6/8/97	0.09	0.16	0.23	0.30	0.34
Defer gain allowed on sales of stock of certain corporations engaged in refining or processing agricultural products to farmer cooperatives engaged in marketing agricultural products	12/31/97	-0.37	-0.03	-0.03	-0.02	-0.02
Modify control test and include attribution rules to determine unrelated business income tax consequences of certain payments from subsidiaries of tax-exempt organizations	12/31/98	0.00	0.00	0.02	0.03	0.03
Repeal 30% gross income limitation for regulated investment companies	8/5/97	-0.12	-0.15	-0.18	-0.21	-0.24
Affect Other NC Taxes						
Extend generation-skipping transfer tax exemption to grandnieces and grand nephews	1/1/98	-0.03	-0.03	-0.03	-0.03	-0.03
Total - IRC Update		-13.13	-12.03	-14.85	-20.73	-34.77
Gift Tax						
Treat contributions in excess of $10,000 to state pre-paid tuition plans as being made ratably over a five year period	1/1/98	Loss of .25 to 1.0 million per year				
Technical/Minor Impact						

Internal Revenue Code Update

	Effective Date	($Millions) 98-99	99-00	00-01	01-02	02-03
Clarify that self-employed individual is eligible to deduct long term care insurance even if employer provides health insurance			No estimate available			
Recapture all depreciation on section 1250 property			No estimate available			
Clarify that medical savings account withdrawals are for individual who was eligible in the month the expenses were incurred			No estimate available			
Treat estate and its beneficiaries as related parties for purpose of disallowing loss deduction for sales of assets	8/5/97		Negligible revenue effect			
Relax luxury auto depreciation limits for clean burning fuel vehicles and electric vehicles	8/5/97	-0.01	0.00	0.00	0.00	0.00
Allow employer deduction for contributions to SIMPLE 401(k) with no 15% cap	1/1/97		No estimate available			
Allow securities traders and commodity traders and dealers to elect mark to market accounting rules	8/5/97		No estimate available			
Exclude from unrelated business tax income certain corporate sponsorship payments	12/31/97		Negligible revenue effect			
Change treatment of travel expenses of certain federal employees engaged in criminal investigations	8/6/97	0.00	0.00	0.00	0.00	0.00
Close partnership taxable year with respect to deceased partner	12/31/97	0.00	0.00	0.00	0.00	0.00
Deduct contributions made by ministers to retirement plans	12/31/97		Negligible revenue effect			
Clarify tax-free employer-provided employee meals	1/1/97		No revenue impact			
Authorize MedicarePlus Choice Medical Savings Accounts pilot program	1/1/99		No estimate available			
Reduce carryback period for general business credits, but increase carry forward	1/1/98		Negligible revenue effect			
Repeal 30% gross income requirement for real estate investment trusts	8/5/97		Negligible revenue effect			

NOTES:

1) North Carolina estimates are based on a percentage of the federal estimate calculated by the Congressional Joint Committee on Taxation. The percentage used is N.C. actual tax collections divided by national tax collections. (Individual = .723% Corporate = .542%)

2) The North Carolina constitution prohibits enacting a retroactive tax increase, so this bill cannot adopt federal revenue increasing items for the 1997 tax year. This chart assumes that half of the revenue gained from tax increases in 1997 will be received by the Department in Tax Year 1998.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H D

Legislative Proposal 2
98-LC-268(2.25)(Z)
(THIS IS A DRAFT AND IS NOT READY FOR INTRODUCTION)

Short Title: Make Credits Constitutional. (Public)

Sponsors: Representatives C. Wilson, Brawley, Cansler, Capps, Gray, Hill, Neely, and Ramsey.

Referred to:

A BILL TO BE ENTITLED

AN ACT TO REMOVE UNCONSTITUTIONAL RESTRICTIONS ON INDIVIDUAL INCOME TAX CREDITS FOR CHILD CARE AND FOR CONSTRUCTING DWELLINGS FOR THE HANDICAPPED.

The General Assembly of North Carolina enacts:

Section 1. G.S. 105-151.1 reads as rewritten:

"**§ 105-151.1. ~~Tax credit~~ Credit for construction of dwelling units for handicapped persons.**

~~There is allowed to resident owners~~ An owner of multifamily rental units located in this State ~~as~~ is allowed a credit against the tax imposed by this Division ~~an amount~~ equal to five hundred fifty dollars ($550.00) for each dwelling unit constructed by the ~~resident~~ owner that conforms to Volume I-C of the North Carolina Building Code for the taxable year within which the construction of the dwelling unit is completed. The credit is allowed only for dwelling units completed during the taxable year that were required to be built in compliance with Volume I-C of the North Carolina Building Code. If the credit allowed by this section exceeds the tax imposed by this Division reduced by all other credits allowed, the excess may be carried forward for the next

succeeding year. In order to claim the credit allowed by this section, the taxpayer ~~shall file with its~~ must file with the income tax return a copy of the occupancy permit on the face of which is recorded by the building inspector the number of units completed during the taxable year that conform to Volume I-C of the North Carolina Building Code. After recording the number of these units on the face of the occupancy permit, the building inspector shall promptly forward a copy of the permit to the Building Accessibility Section of the Department of Insurance."

Section 2. G.S. 105-151.11(c) reads as rewritten:

"(c) Limitations. -- A nonresident or part-year resident who claims the credit allowed by this section shall reduce the amount of the credit by multiplying it by the fraction calculated under G.S. 105-134.5(b) or (c), as appropriate. No credit shall be allowed under this section for amounts deducted from gross income in calculating taxable income under the Code. The credit allowed by this section may not exceed the amount of tax imposed by this Division for the taxable year reduced by the sum of all credits allowable under this Division, except for payments of tax made by or on behalf of the taxpayer. ~~No credit shall be allowed under this section with respect to employment-related expenses paid by a nonresident of this State.~~"

Section 3. This act is effective for taxable years beginning on or after January 1, 1998.

EXPLANATION OF LEGISLATIVE PROPOSAL 2:
Make Credits Constitutional

TO: Revenue Laws Study Committee
FROM: Martha H. Harris, Staff Attorney
DATE: May 15, 1998
SPONSOR:

Legislative proposal 2 would amend two individual income tax credits to remove restrictions that prevent nonresidents from taking the credits. These restrictions are probably unconstitutional in light of a recent United States Supreme Court case. The bill is effective for taxable years beginning on or after January 1, 1998.

On January 21, 1998, the United States Supreme Court held in Lunding v. New York that a state's tax laws must treat nonresidents on terms of `substantial equality' with residents. The Court found that New York's individual income tax could not deny the alimony deduction to nonresidents while granting it to residents. The Court concluded that while the Privileges and Immunities Clause[1] of the United States Constitution affords states considerable discretion in formulating their income tax laws, there must be a substantial reason for the difference in treatment of residents and nonresidents within a tax structure.

North Carolina has two individual income tax credits that only residents may claim: the credit for construction of dwelling units for handicapped persons and the credit for child care and certain employment-related expenses. As discussed below, there does not appear to be any reason, much less a substantial one, for prohibiting nonresidents from taking either credit. It appears, therefore, that the part of each credit limiting it to residents would likely be ruled unconstitutional if challenged. The bill removes the restriction of the construction credit to residents, and modifies the child care credit so that a nonresident may take a proportional amount of the credit based on the percentage of his or her income that is taxable to North Carolina.

G.S. 105-151.1 grants an individual income tax credit to those residents who construct multi-family rental units that conform with mandatory building code requirements related to accessibility by the handicapped. The dwelling units must be located in North Carolina. The residence of the owner bears no relation to the benefit to this State of having handicapped-accessible dwellings constructed. Furthermore, the same credit is allowed under the corporate

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[1] Section 2 of Article IV of the United States Constitution.

income tax law, but without any restriction based on the residence or domicile of the taxpayer that constructs the dwelling units.

G.S. 105-151.11 grants an individual income tax credit for child care or similar expenses incurred so the taxpayer may be gainfully employed. For nonresidents employed in North Carolina, the expenses would be directly related to the taxpayer's North Carolina income and thus there seems to be a substantial reason that the credit should be allowed rather than disallowed. In any case, legislative history of this credit shows that the provision preventing nonresidents from claiming the credit was retained in the law due to an oversight in 1981, when it should have been repealed.

The tax credit for child care expenses was formerly a deduction. On July 9, 1981, the General Assembly repealed the deduction and replaced it with a credit. At that time, nonresidents were not allowed to take income tax deductions that were not directly connected to their North Carolina income. Thus, in changing the deduction to a credit, the General Assembly retained the rule that nonresidents could not take advantage of the tax benefit. A few months later, however, the General Assembly abandoned its policy of disallowing nonresidents' deductions for expenses unrelated to North Carolina income and enacted a new law allowing a nonresident to take a proportional amount of these deductions. Through an oversight, the restriction that had been carried forward from the child care deduction to the child care credit was not similarly modified. Because this restriction remains in the law only because of an oversight, a court would be unlikely to find the required substantial reason for it to be upheld in a constitutional challenge.

FISCAL ANALYSIS MEMORANDUM

DATE: March 17, 1998

TO: Revenue Laws Study Committee

FROM: Richard Bostic
Fiscal Research Division

RE: Make Credits Constitutional

FISCAL IMPACT

Yes (X) **No ( )** **No Estimate Available ( )**

	FY 1998-99	FY 1999-00	FY 2000-01	FY 2001-02	FY 2002-03
REVENUES					
General Fund					
Child Care Credit		**($400,000) to ($600,000) each year**			
Handicapped Credit		**Minimal Impact**			

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

EFFECTIVE DATE: Effective for taxable years beginning on or after January 1, 1998.

BILL SUMMARY: The act removes unconstitutional restrictions on individual income tax credits for child care and for constructing dwellings for the handicapped.

ASSUMPTIONS AND METHODOLOGY:

Child Care Credit

The Tax Research Division of the Department of Revenue estimates that allowing nonresidents to claim a prorated child care credit will produce a General Fund revenue loss of $400,000 to $600,000 per year. Tax Research used a 1991 individual income tax database to derive this estimate.

Handicapped Dwellings Credit

The Tax Research Division in the Department of Revenue could not identify in its income tax database any potential credits for nonresidents who build handicapped dwellings. According to data compiled by the Building Accessibility Section in the Department of Insurance, there have been 63 handicapped accessible units built by nonresident companies since 1991 (none in 1996 and 1997). At $550 per unit, this equates to $34,650 or $4950 per tax year. Based on this experience in the 1990's, expanding the credit to nonresidents should have little or no impact on the General Fund.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H D

Legislative Proposal 3
98-LC-251C(1.15)(Z)
(THIS IS A DRAFT AND IS NOT READY FOR INTRODUCTION)

Short Title: Limit Nonresident Withholding. (Public)

Sponsors: Representative Neely, Brawley, Cansler, Capps, Gray, Hill, Ramsey, and C. Wilson.

Referred to:

A BILL TO BE ENTITLED

AN ACT TO LIMIT THE NONRESIDENT WITHHOLDING REQUIREMENT TO ATHLETES AND ENTERTAINERS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 105-163.1(2) reads as rewritten:

"(2) Contractor. -- Either of the following:

a. A nonresident individual who performs ~~personal services~~ in this State for compensation other than ~~wages.~~ wages any personal services in connection with a performance, an entertainment, an athletic event, or the creation of a film or television program.

b. A nonresident entity that provides for the performance ~~of the following personal services~~ in this State for ~~compensation: services~~ compensation of any personal services in connection with a performance, an entertainment, an athletic event, or the creation of a film or television ~~program, or the construction or repair of a building or highway.~~ program."

Section 2. Section 4 of S.L. 1997-109 is repealed.

Section 3. This act is effective retroactively as of January 1, 1998. Notwithstanding Sections 1 and 2 of this act, any tax withheld under G.S. 105-163.3 may be repaid to the person from whom the tax was withheld only as provided in G.S. 105-163.3(f).

EXPLANATION OF LEGISLATIVE PROPOSAL 3:
Limit Nonresident Withholding

TO: Revenue Laws Study Committee
FROM: Martha H. Harris, Staff Attorney
DATE: May 15, 1998
SPONSOR:

Legislative Proposal 3 would limit the withholding requirement for payments to nonresident contractors, so that it would apply only to payments to contractors doing business as athletes and entertainers. It would be effective retroactively as of January 1, 1998.

The 1997 General Assembly enacted S.L. 1997-109 to require withholding from compensation paid to nonresident individuals and nonresident entities for personal services performed in North Carolina. The nonresident withholding requirement was suggested by the Department of Revenue and recommended to the 1997 General Assembly by the Revenue Laws Study Committee. The withholding requirement was phased in as follows. Beginning January 1, 1998, it applied to payments to individuals for any personal services and payments to entities for services relating to entertainment, athletic events, and construction. The withholding requirement is to be expanded to payments to entities for all personal services effective January 1, 1999.

After S.L. 1997-109 became law, legislators, staff, and the Department of Revenue were contacted by businesses that were required to withhold from their payments for personal services. These businesses stated that the withholding requirement would create an expensive, time-consuming burden on them. They would have to reprogram their accounting software, examine invoices manually, and make difficult judgment calls regarding where services were performed. Large, multistate corporations in particular claimed that the new law would be burdensome. In response to these concerns, this proposal would repeal nearly the entire withholding requirement. The only part that would be retained is the requirement to withhold from payments for services relating to entertainment and athletic events.

The rollback of the withholding requirement would become effective retroactively as of January 1, 1998. Anyone who had been complying with the law by withholding for services other than those performed by athletes and entertainers could choose to refund the withheld taxes only if the taxes had not yet been paid into the Department of Revenue. All taxpayers who had taxes withheld from their payments will receive a credit for the withheld taxes when they file their income tax return.

The rationale for limiting the withholding requirement to athletes and entertainers is that athletic and entertainment events can be easily identified by those required to withhold, the entire performance is clearly taxable to the state where it occurs, and, because of the large sums often involved, the administrative burden of withholding is small compared to the benefit the State receives. For other personal services performed by nonresidents, the burden of compliance outweighs the benefit because the services are less easily identified and may be performed partly in this state and partly in another state. For those, such as large, multistate corporations, who deal with a myriad of contractors for goods and services throughout the nation, the burden can be significant.

Many nonresidents who derive income from North Carolina do not pay the North Carolina tax due on this income. This problem is particularly troublesome with respect to single event performers such as athletes or entertainers who may be paid large amounts for their work in North Carolina. It is difficult, expensive, and inefficient for the Department of Revenue to trace and pursue these nonresidents who do not pay the tax they owe. The 1997 act imposed the withholding requirement to address this problem.

The 1997 act requires a person or entity who, in the course of a trade or business, pays a nonresident more than $600 for personal services in this State to withhold 4% of the payment and deposit the withheld taxes with the Department of Revenue. The withholding agent must register with the Department of Revenue. The withheld taxes are due by the last day of the first month after the end of the calendar quarter in which the withholding agent paid the nonresident. As is the case with employers who withhold from employees' wages, the withholding agent is required to give each nonresident a statement similar to a W-2 form in January and to provide a compilation of these statements to the Department of Revenue. Filing these documents relieves the agent of the existing information reporting requirement of G.S. 105-154.

The withheld taxes are credited to the nonresident individual or entity from which they were withheld. If the entity is a pass-through entity such as a partnership, Subchapter S corporation, or limited liability company, the credit will pass through to the partners or other owners of the entity. The nonresident receives credit for the withheld taxes by filing a North Carolina income tax return; any excess will be refunded to the taxpayer.

FISCAL ANALYSIS MEMORANDUM

DATE: April 7, 1998

TO: Revenue Laws Study Committee

FROM: Richard Bostic
Fiscal Research Division

RE: Limit Nonresident Withholding

FISCAL IMPACT

Yes (X) **No ( )** **No Estimate Available ( )**

	FY 1998-99	FY 1999-00	FY 2000-01	FY 2001-02	FY 2002-03
REVENUES	($7 million)	($7 million)	($7 million)	($7 million)	($7 million)

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

EFFECTIVE DATE: This act is effective retroactively as of January 1, 1998.

BILL SUMMARY: This bill will limit the withholding requirement for payments to nonresident contractors to apply only to athletes and entertainers.

ASSUMPTIONS AND METHODOLOGY:

The fiscal note for HB 57 (S. L. 1997-109) attributed most of the estimated revenue gain from nonresident withholding to collections from out of state contractors. In that note it was reported that the North Carolina Licensing Board for General Contractors had 1,765 out of state companies licensed to work in the state in 1995. These firms sought licensing to work on projects greater than $30,000 on buildings, highways, public utilities, grading, and improvement of structures. The majority of these firms are from southeastern states such as South Carolina (426), Georgia (205), Virginia (174), Tennessee (155), and Florida (152). However, the Licensing Board stated that other contractors work in the state without a license because of the contract size (< $30,000) or because they are doing federal jobs.

From 1993 to 1996, 48 out-of-state firms, representing both design and construction, did business with the State Construction Office. The Department of Revenue was asked to check on whether these firms filed income tax returns in North Carolina. Of the 48 firms, only 58.3% or 28 filed returns. If firms working directly for the state are filing only 58.3% of the time, one may assume those contractors working for private customers file at lower rates or not at all.

If it is assumed that each licensed nonresident contractor earned $100,000 in North Carolina in 1995, what would the state have earned from the proposed withholding law? Assuming these 1,765 firms paid no income tax to the state that year, the 4% withholding on the $100,000 contract payments would have yielded $7.06 million in 1995. Passage of this bill will negate the collection of this revenue.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S D

Legislative Proposal 4
98-LA-013(3.1)(Z)
(THIS IS A DRAFT AND IS NOT READY FOR INTRODUCTION)

Short Title: Abolish Inheritance Tax Waivers. (Public)

Sponsors: Senators Kerr, Cochrane, Dalton, Hartsell, Hoyle, and Webster.

Referred to:

A BILL TO BE ENTITLED

AN ACT TO ABOLISH TAX WAIVERS FOR THE TRANSFER OR DELIVERANCE OF A DECEDENT'S PROPERTY.

The General Assembly of North Carolina enacts:

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

"**§ 105-2.1.** ~~Internal Revenue Code definition.~~ Definitions.

~~As used in this Article, the term "Code" has the same meaning as in G.S. 105-228.90.~~ The following definitions apply in this Article:

(1) Code. -- Defined in G.S. 105-228.90.

(2) Collector. -- Defined in G.S. 28A-1-1.

(3) Personal representative. -- Defined in G.S. 28A-1-1."

Section 2. G.S. 105-11 is repealed.

Section 3. G.S. 105-11.1 is repealed.

Section 4. G.S. 105-12 is repealed.

Section 5. Article 1 of Chapter 105 of the General Statutes is amended by adding a new section to read:

"**§ 105-13.1. Notices to Secretary of certain payments.**

(a) Life Insurance Policy. -- When a company pays the proceeds of a life insurance policy as a result of the death of an

individual who owned the policy and was the named insured under the policy, the company must notify the Secretary of the payment on a form approved by the Secretary unless one of the following applies:

(1) The payment is to the surviving spouse.

(2) The payment is to a Class A beneficiary, as described in G.S. 105-4(a), and the proceeds of the policy do not exceed one hundred thousand dollars ($100,000).

(b) Annuity and IRA. -- When a company pays the initial payment of an annuity or the initial distribution of an IRA as a result of the death of the annuitant or owner of the IRA, the company must notify the Secretary of the payment or distribution on a form approved by the Secretary unless one of the following applies:

(1) The payment or distribution is to the surviving spouse.

(2) The payment or distribution is to a Class A beneficiary, as described in G.S. 105-4(a), and the total amount to be paid under the annuity or distributed under the IRA does not exceed one hundred thousand dollars ($100,000)."

Section 6. G.S. 105-20 reads as rewritten:

"**§ 105-20.** ~~Legacy charged upon real estate, heir or devisee to deduct and pay tax; limitation; Inheritance or Estate Tax Waiver.~~ Taxes are a lien on real property in an estate.

~~Whenever such legacy shall be charged upon or payable out of real estate, the heir or devisee of such real estate, before paying the same to such legatee, shall deduct the tax therefrom at the rates aforesaid, and pay the amount so deducted to the executor or administrator or the Secretary of Revenue, and the same shall remain a charge upon such real estate until paid, and in default thereof the same shall be enforced by the decrees of the court in the same manner as the payment of such legacy may be enforced: Provided, that all taxes imposed by this Article shall be a lien upon the real and personal property of the estate on which the tax is imposed or upon the proceeds arising from the sale of such property from the time said tax is due and payable, and shall continue a lien until said tax is paid and receipted for by the proper officer of the State: Provided further, that no lien for inheritance or estate taxes shall attach or affect the land after 10 years from the date of death of the decedent: Provided further, that no taxes imposed by this Article shall be a lien upon real property that is released by an Inheritance or~~

~~Estate Tax Waiver issued by the Secretary of Revenue. An Inheritance or Estate Tax Waiver issued by the Secretary of Revenue and bearing the signature or official facsimile signature of the Secretary of Revenue covering real property may be registered in the office of the Register of Deeds of the county or counties where the real estate described in the waiver is located. No formalities as to acknowledgement, probate, or approval by any officer shall be required as a condition to such registration. An Inheritance or Estate Tax Waiver so registered shall be conclusive evidence that the real property described in such waiver is not subject to the lien of any taxes imposed by this Article.~~

The taxes imposed by this Article on the transfer of real or personal property are a lien on the real property in an estate and on the proceeds arising from the sale of real property. The lien is created at the date of death of the decedent and continues until the tax is paid, 10 years have elapsed since the date of the decedent's death, or the lien is released. A lien is released when the Secretary issues a tax waiver for the lien, the Secretary issues an inheritance tax certificate, or the personal representative files a tax certification with the clerk of superior court. A tax waiver may be filed in the office of the register of deeds of each county where the property is located. No formalities as to acknowledgment, probate, or approval by any officer are required as a condition to filing. The filing of a tax waiver is conclusive evidence that the real property described in the waiver is not subject to a lien for taxes imposed by this Article."

Section 7. G.S. 105-24 reads as rewritten:

"**§ 105-24.** ~~**Tax waiver required for transfer of decedents' property in some cases; inventory of lock boxes; withdrawal of bank deposits, etc., payable to either husband or wife or survivor.**~~ Inventory of safe-deposit boxes.

~~(a) No safe deposit company, trust company, corporation, bank, or other institution, person or persons having in possession or control or custody, in whole or in part, securities, deposits, assets, or property belonging to or standing in the name of a decedent, or belonging to or standing in the joint names of decedent and one or more persons, shall deliver or transfer the same to any person whatsoever, whether in a representative capacity or not, or to the survivor or to the survivors when held in the joint names of a decedent and one or more persons, without retaining a sufficient portion or amount thereof to pay taxes or interest assessed under this Article on property transferred by~~

~~the decedent; but the Secretary of Revenue may consent in writing to such delivery or transfer, and such consent shall relieve said safe deposit company, trust company, corporation, bank or other institution, person or persons from the obligation herein imposed. Securities whose declaration date is after the decedent's death, or interest that accrues after the decedent's death on money on deposit at a bank, savings and loan association, credit union, or other corporation, however, may be transferred or delivered without retaining a portion of the property for the payment of taxes or interest and without obtaining the written consent of the Secretary to the delivery or transfer. Provided: The clerk of superior court of the resident county of a decedent may authorize in writing one or more banks, safe deposit companies, trust companies or any other institutions to transfer to the properly qualified representative of the estate any funds on deposit in the name of the decedent or the decedent and one or more persons when the aggregate amount of all such deposits in all such institutions is two thousand dollars ($2,000) or less, and when such deposit or deposits compose the total cash assets of the estate. Such authorization shall have the same force and effect as when issued in writing by the Secretary of Revenue.~~

(b) Except as provided in subsection (c) of this section, every safe deposit company, trust company, corporation, bank or other institution, person, or persons engaged in the business of renting ~~lock~~ safe-deposit boxes for the safekeeping of valuable papers and personal effects, or having in their possession or supervision in such ~~lock~~ safe-deposit boxes such valuable papers or personal effects shall, upon the death of any person using or having access to such ~~lock~~ safe-deposit box, as a condition precedent to the opening of such ~~lock~~ safe-deposit box by the ~~executor, administrator,~~ personal ~~representative lessee~~ representative, collector, lessee, or cotenant of such deceased person, require the presence of the clerk of the superior court of the county in which ~~such lock~~ the box is located. It shall be the duty of the clerk of the superior court, or his representative, in the presence of ~~an officer or~~ a representative of the safe deposit company, trust company, corporation, bank, or other institution, person or persons, to make an inventory of the contents of ~~such lock~~ the box and to furnish a copy of such inventory ~~to the Secretary of Revenue,~~ to the ~~executor, administrator,~~ personal representative, collector, lessee, or cotenant of the decedent, and a copy to the safe deposit company, trust company, corporation, bank, or other institution, person,

or persons having possession of ~~such lock~~ the safe-deposit box; provided, that for ~~lock~~ boxes to which decedent merely had access the inventory shall include only assets in which the decedent has or had an interest. ~~Immediately after~~ After the clerk of superior court has made an inventory of the contents of the ~~lock~~ safe-deposit box, the safe deposit company, trust company, corporation, bank or other institution, or person shall, upon request, release to the ~~lessee~~ personal representative, collector, lessee, or cotenant of the ~~lock~~ box ~~any life insurance policy stored in the lock box for delivery to the beneficiary named in the policy. No other contents of the lock box may be released except Notwithstanding any of the provisions of this section any life insurance company may pay the proceeds of any policy upon the life of a decedent to the person entitled thereto as soon as it shall have mailed to the Secretary of Revenue a notice, in such form as the Secretary of Revenue may prescribe, setting forth the fact of such payment; but if such notice be not mailed, all of the provisions of this section shall apply.~~ the contents of the box.

(c) Notwithstanding the provisions of subsection (b) of this section, if the ~~properly qualified personal representative of an estate~~ personal representative, collector, lessee, or cotenant believes upon reliable information that a ~~lock~~ safe-deposit box to which the decedent had access is empty, ~~the personal representative~~ that person may so certify to the clerk of superior court of the county in which the ~~lock~~ box is located. Upon receipt of this certificate, the clerk may authorize in writing the personal ~~representative or the personal representative's named agent~~ representative, collector, lessee, or cotenant to open the ~~lock~~ box outside of the clerk's presence. The ~~personal representative or the personal representative's agent~~ authorized person shall open the ~~lock~~ box in the presence of ~~an officer or~~ a representative of the institution having control or custody of the ~~lock~~ box, and ~~the personal representative or the personal representative's agent~~ shall certify to the clerk whether the ~~lock~~ box is or is not empty. The certificate shall include the name of the ~~officer or~~ representative of the institution who was present at the time the ~~lock~~ box was opened and shall be signed by the ~~officer or~~ representative to indicate that ~~he or she~~ the representative was present. ~~If the lock box is empty, no tax waiver will be required from, and no notice given to, the Secretary of Revenue.~~ If the ~~lock~~ safe-deposit box is not empty, the ~~officer or~~ representative of the institution shall close the ~~lock~~ box at once and the ~~lock~~

box may be reopened only in accordance with subsection (b) of this section.

~~(d) Notwithstanding any of the provisions of this section, in any case where a bank deposit has been heretofore made or is hereafter made, or where savings and loan stock has heretofore been issued or is hereafter issued, in the names of two or more persons and payable to either or the survivor or survivors of them, such bank or savings and loan association may, upon the death of either of such persons, allow the person or persons entitled thereto to withdraw as much as fifty percent (50%) of such deposit or stock, and the balance thereof shall be retained by the bank or savings and loan association to cover any taxes that may thereafter be assessed under this Article. When it is ascertained that there is no liability of such deposit or stock for taxes under this Article, the Secretary of Revenue shall furnish the bank or savings and loan association his written consent for the payment of the retained percentage to the person or persons entitled thereto by law; and the Secretary of Revenue may furnish such written consent to the bank or savings and loan association upon the qualification of a personal representative of the deceased. If the person entitled to funds in an account is the surviving spouse and the account is a joint account of the surviving spouse and the decedent with right of survivorship, no tax waiver is required from the Secretary of Revenue to release the funds in the account.~~

(e) Failure to comply with the provisions of this section shall render such safe deposit company, trust company, corporation, bank or other institution, person or persons liable for the amount of the taxes and interest due under this Article on property transferred by the decedent. In any action brought under this provision it shall be a sufficient defense that the delivery or transfer of securities, deposits, assets, or property was made in good faith without knowledge of the death of the decedent and without knowledge of circumstances sufficient to place the defendant on inquiry."

Section 8. G.S. 105-30 is repealed.

Section 9. G.S. 105-31 reads as rewritten:

"§ 105-31. ~~Additional remedies for enforcement of tax.~~ Action to collect tax due.

~~In addition to all other remedies which may now exist under the law, or may hereafter be established, for the collection of the taxes imposed by the preceding sections of this Article, the tax so imposed shall be a lien upon all of the property and upon all of the estate, with respect to which the taxes are levied, as~~

~~well as collectible out of any other property, resort to which may be had for their payment; and the said taxes shall constitute a debt, which may be recovered in an action brought by the Secretary of Revenue in any court of competent jurisdiction in this State, and/or in any court having jurisdiction of actions of debt in any state of the United States, and/or in any court of the United States against an administrator, executor, trustee, or personal representative, and/or any person, corporation, or concern having in hand any property, funds, or assets of any nature, with respect to which such tax has been imposed. No title or interest to such estate, funds, assets, or property shall pass, and no disposition thereof shall be made by any person claiming an interest therein until said taxes have been fully paid or until the Secretary of Revenue has released such property by the issuance of an Inheritance or Estate Tax Waiver.~~ Taxes payable under this Article are a debt that may be recovered in an action brought by the Secretary against the personal representative or against any other person having in hand any property with respect to which the taxes have been imposed."

Section 10. G.S. 25-4-405(c) reads as rewritten:

"(c) A transaction, although subject to this Article, is also subject to G.S. ~~105-24,~~ 41-2.1, 53-146.1, 54-109.58, and 54B-129, and in case of conflict between the provisions of this section and either of those sections, the provisions of those sections control."

Section 11. G.S. 41-2.1(f) reads as rewritten:

"(f) ~~Nothing herein contained shall be construed to~~ This section does not repeal or modify any ~~of the provisions of G.S. 105-24 relating to the administration of the inheritance laws or any other~~ provisions of the law relating to inheritance taxes."

Section 12. G.S. 41-2.2(d) reads as rewritten:

"(d) ~~Nothing herein contained shall be construed to~~ This section does not repeal or modify any ~~of the provisions of G.S. 105-2, 105-11, and 105-24, relating to the administration of the inheritance tax laws, or any other~~ provisions of the law relating to inheritance taxes."

Section 13. G.S. 53-146.1(b) reads as rewritten:

"(b) ~~Nothing herein contained shall be construed to~~ This section does not repeal or modify any ~~of the provisions of G.S. 105-24, relating to the administration of the estate tax laws of this State, or~~ provisions of laws relating to estate ~~taxes; the provisions herein shall regulate, govern and protect~~ taxes. This section regulates and protects the bank in its relationship with

~~such~~ joint owners of deposit ~~accounts as herein provided.~~ accounts."

Section 14. G.S. 53-146.2(d) reads as rewritten:

"(d) ~~Nothing herein contained shall be construed to~~ This section does not repeal or modify any ~~of the provisions of G.S. 105-24, relating to the administration of the estate tax laws of this State, or~~ provisions of laws relating to estate taxes."

Section 15. G.S. 54-109.58(b) reads as rewritten:

"(b) ~~Nothing herein contained shall be construed to~~ This section does not repeal or modify any ~~of the provisions of G.S. 105-24, relating to the administration of the estate tax laws of this State, or~~ provisions of laws relating to estate ~~taxes; the provisions herein shall regulate, govern and protect~~ taxes. This section regulates and protects the credit union in its relationship with ~~such~~ joint owners of ~~accounts as herein provided.~~ accounts."

Section 16. G.S. 54B-129(b) reads as rewritten:

"(b) ~~Nothing herein contained shall be construed to~~ This section does not repeal or modify any ~~of the provisions of G.S. 105-24, relating to the administration of the estate tax laws of this State, or~~ provisions of law relating to estate ~~taxes; the provisions herein shall regulate, govern and protect~~ taxes. This section regulates and protects the association in its relationships with ~~such~~ joint owners of deposit ~~accounts as herein provided.~~ accounts."

Section 17. G.S. 54B-130(d) reads as rewritten:

"(d) ~~Nothing herein contained shall be construed to~~ This section does not repeal or modify any ~~of the provisions of G.S. 105-24, relating to the administration of the estate tax laws of this State, or~~ provisions of laws relating to estate taxes."

Section 18. G.S. 54C-165(b) reads as rewritten:

"(b) ~~Nothing in this section is construed to~~ This section does not repeal or modify any ~~provision of G.S. 105-24 relating to the administration of the estate tax laws of this State or any other~~ law relating to estate taxes. This section ~~shall regulate, govern, and protect~~ regulates and protects the savings bank in its relationships with the joint owners of deposit accounts."

Section 19. G.S. 54C-166(d) reads as rewritten:

"(d) ~~Nothing in this section is construed to~~ This section does not repeal or modify any ~~provision of G.S. 105-24 relating to the administration of estate tax laws of this State or any other~~ law relating to estate taxes."

Section 20. This act becomes effective October 1, 1998, and applies to estates of decedents who die on or after that date.

EXPLANATION OF LEGISLATIVE PROPOSAL 4:
Abolish Inheritance Tax Waivers

TO: Revenue Laws Study Committee
FROM: Martha Walston, Staff Attorney
DATE: April 30, 1998
SPONSOR:

Current Law

G.S. 105-24 currently requires that when a person dies, the Department of Revenue must be notified of any accounts, stocks, and bonds in the name of the decedent and of the contents in decedent's safe-deposit box. The Department then issues inheritance tax waivers authorizing the bank or financial institution in possession of the decedent's property to transfer or release the property. Accounts held by the decedent and spouse with right of survivorship do not require a waiver before transfer.

Proposal

The proposal deletes all language in G.S. 105-24 requiring the inheritance tax waivers, and repeals sections of the Inheritance Tax Article regarding penalties for failure to obtain waivers and forms required for the waivers. The proposal retains the requirement that the Secretary of Revenue must be notified of payments of proceeds of a life insurance policy when the payments are the result of the death of the individual who owned the policy and was the named insured under the policy. Notification is also required of the initial payment of an annuity or initial distribution of an IRA when the payment or distribution is the result of the death of the annuitant or owner of the IRA. However, notification is not required in the following instances:

1. When the payment or distribution is to a surviving spouse.
2. When the payment or distribution is to a class A beneficiary and the proceeds of the policy or the total amount paid under the annuity or distributed under the IRA do not exceed $100,000.

The proposal clarifies that inheritance taxes are a lien on real property in the decedent's estate and makes technical changes to the Inheritance Tax Article.

The Department of Revenue supports the abolishment of inheritance tax waivers, because the lien on the decedent's property is adequate security for payment of inheritance taxes. Also, most estates do not have to pay inheritance taxes. The abolishment of tax waivers also relieves the burden on the public to apply for and receive tax waivers when administering a decedent's estate. The Department feels that the tax waiver requirement creates a burden to the public that is much greater than any benefit derived.

FISCAL ANALYSIS MEMORANDUM

DATE: April 8, 1998

TO: Revenue Laws Study Commission

FROM: H. Warren Plonk
Fiscal Research Division

RE: Eliminate Inheritance Tax Waivers

FISCAL IMPACT

Yes ( ) No (X) No Estimate Available ( )

	FY 1998-99	FY 1999-00	FY 2000-01	FY 2001-02	FY 2002-03
REVENUES:	**No expected GF revenue impact**				

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Inheritance and estate tax returns

EFFECTIVE DATE: October 1, 1998

BILL SUMMARY:
The proposed act repeals the requirement that inheritance tax waivers be secured from the Department of Revenue before the ownership of a decedent's accounts, stocks, bonds, and the contents their safety deposit box can be transferred.

ASSUMPTIONS AND METHODOLOGY:
A revenue impact is not expected from the enactment of this act.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H D

Legislative Proposal 5
98-LAX-004 (3.1)(Z)
(THIS IS A DRAFT AND IS NOT READY FOR INTRODUCTION)

Short Title: Tax on Movies. (Public)

Sponsors: Representatives Cansler, Brawley, Capps, Gray, Hill, Neely, Ramsey, and C. Wilson.

Referred to:

A BILL TO BE ENTITLED

AN ACT TO REDUCE THE STATE PRIVILEGE TAX ON GROSS RECEIPTS FROM MOTION PICTURE SHOWS.

The General Assembly of North Carolina enacts:

Section 1. Article 2 of Chapter 105 of the General Statutes is amended by adding a new section to read:

"**§ 105-38.1. Amusements - Motion picture shows.**

(a) Tax. -- A privilege tax at the rate of one percent (1%) is imposed on the gross receipts of a person who is engaged in the business of operating a motion picture show for which an admission is charged. The tax is due when a return is due. A return is due by the 10th day after the end of each month and covers the gross receipts received during the previous month. If a person offers an entertainment or amusement that includes both a motion picture taxable under this section and an entertainment or amusement taxable under G.S. 105-37.1 or G.S. 105-38, the tax in G.S. 105-37.1 or G.S. 105-38, as appropriate, applies to the entire gross receipts and the tax levied in this section does not apply.

(b) Exemption. -- Gross receipts from a motion picture show promoted and managed by a qualifying corporation that operates a center for the performing and visual arts is exempt from the tax

imposed under this section if the motion picture is shown at the center and if the showing of motion pictures is not the primary purpose of the center. As used in this subsection, 'qualifying corporation' and 'center for the performing and visual arts' have the same meaning as in G.S. 105-37.1(a)."

Section 2. This act becomes effective October 1, 1998.

EXPLANATION OF LEGISLATIVE PROPOSAL 5:
Tax on Movies

TO: Revenue Laws Study Committee
FROM: Martha Walston, Staff Attorney
DATE: May 15, 1998
SPONSOR:

Legislative Proposal 5 reduces the current 3% gross receipts tax on motion pictures to 1%, effective October 1, 1998. The proposal also clarifies that if a taxpayer offers an entertainment or amusement that includes both a motion picture and an entertainment or amusement that is subject to the 3% gross receipts tax, then the higher rate applies. The October 1, 1998, effective date would give the Department of Revenue time to print the forms and identify taxpayers. A sales tax would continue to be assessed on the food and drink sold at motion picture shows.

The proposal also clarifies the exemption of motion pictures that are shown at a center for the performing and visual arts that is promoted and managed by an organization organized for religious, charitable, scientific, literary, or educational purposes. The showing of the motion picture show may not be the primary purpose of the center. This exemption was set out in the privilege license statute on movies that was repealed , effective July 1, 1997.

The gross receipts tax on motion picture shows was first codified in 1939. The rate of this tax was the same as the sales tax rate. There was also an annual license tax assessed against motion picture shows, and this license tax was applied as a credit upon or advance payment of the gross receipts tax.

In 1943, the General Assembly repealed the gross receipts tax on motion picture shows, and assessed the gross receipts tax only on other forms of entertainment not otherwise taxed or specifically exempted. The annual license tax continued to be imposed. In 1949, the General Assembly enacted a new statute, G.S. 105-37.1, that assessed an annual license tax and a gross receipts tax on amusements not otherwise taxed or specifically exempted. Since motion picture shows were paying a license tax, they were not subject to G.S. 105-37.1. In 1949, the General Assembly first taxed operating outdoor and drive-in motion picture shows. The tax was based upon population of the town and car capacity. In 1989, the General Assembly amended the privilege license tax on drive-ins by doing away with the tax rate based upon population and car capacity and, instead, assessing a $100 privilege license tax.

During the Second Extra Session of the 1996 Session, a number of State privilege license taxes were repealed, including the privilege taxes on motion

picture shows. The Revenue Laws Study Committee had recommended to the 1995 General Assembly that most of the State privilege license taxes imposed under Article 2 of Chapter 105 of the General Statutes be repealed, effective July 1, 1997. The State privilege license taxes on motion picture shows that were repealed were the following:

- G.S. 105-36 - This statute required persons or entities engaged in the business of manufacturing, selling, leasing, furnishing and/or distributing films which an admission fee was charged to apply for a privilege license and pay a tax thereon of $625 a year.
- G.S. 105-36.1 - This statute required persons or entities engaged in the business of operating an outdoor or drive-in moving picture show for compensation to apply for a privilege license and a pay a tax thereon of $100 a year.
- G.S. 105-37 - This statute required persons or entities engaged in the business of operating a moving picture show for compensation to apply for a license and pay a $200 tax for each room, hall, or tent used. Only half the tax was required if the motion picture show operated three days or less each week.

When the foregoing statutes were repealed, effective July 1, 1997, motion picture shows fell into the category of amusements not otherwise taxed as set out in G.S. 105-37.1 and, therefore, subject to the 3% gross receipts tax and the $50.00 annual license tax assessed in that statute. However, the Department of Revenue did not begin assessing motion picture shows a gross receipts tax when the privilege license taxes were repealed. It was the Department's belief that when the General Assembly repealed these license taxes, it did not intend to assess any tax on motion picture shows. During the 1996 Session, there appears to have been no discussion of a gross receipts tax on theaters, if the privilege tax was repealed.

In a review of the Commerce Clearing House State Tax Guide, it was found that 27 states tax movie admissions in one fashion or another. (see attached map). Twenty-one states simply apply their sales tax to theater admissions. Alabama and Arkansas have a specific gross receipts tax on movie admissions, while Connecticut and South Carolina have a general admissions tax. Arizona has a transaction privilege tax on theaters and Indiana has a gross income tax on theaters. Twenty-five of these twenty-seven states have movie taxes higher than North Carolina's 3% gross receipts tax. Eleven of the states that tax movie admissions are members of the Southern Legislative Conference.

Staff has also researched the question raised concerning whether other states tax concessions in movie theaters. No exemptions for movie theater concessions were found. If a state taxes food and soft drinks, then it taxes these products in the movies just as North Carolina does. Therefore, North Carolina's policy of taxing movie concessions is consistent with other states and the District of Columbia.

FISCAL ANALYSIS MEMORANDUM

DATE: March 18, 1998

TO: Revenue Laws Study Committee

FROM: Richard Bostic
Fiscal Research Division

RE: Gross Receipts Tax on Movies

FISCAL IMPACT

Yes (X) **No ( )** **No Estimate Available ( )**

	FY 1998-99	FY 1999-00	FY 2000-01	FY 2001-02	FY 2002-03
REVENUES					
General Fund	$1,525,657	$2,118,498	$2,225,021	$2,336,521	$2,452,998

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

EFFECTIVE DATE: October 1, 1998

BILL SUMMARY: The bill imposes a one percent gross receipts tax on motion picture shows.

ASSUMPTIONS AND METHODOLOGY:

A 1% gross receipts tax on movie admissions would generate approximately $2 million in General Fund revenue in FY 1998-99 if enacted on July 1, 1998. The estimate of gross receipts generated by North Carolina movie theaters in 1996 is based on data from the Motion Pictures Association of America. Nationwide, the box office gross was $5.9 billion on 1.3 billion tickets sold. The average admission price at the 29,690 movie screens across the country was $4.42. The average gross revenue per screen in 1996 was $199,107. The National Association of Theater Owners reported 897 movie screens in North Carolina in 1996. Assuming NC theater gross revenues equal the national average, the 897 Tarheel screens produced $178.6 million in

revenues in 1996. If a 1% gross receipts tax were applied, the state would have earned $1.78 million in taxes in 1996.

The number of NC screens has grown 5% a year since 1992, but gross revenue per screen has risen and fallen over the last five years. For estimating purposes, it is assumed that the number of movie screens will increase 5% a year, but there will be no increase in gross revenue per screen.

	NC Screens	Gross per screen	Gross revenue	1% tax
1996	897	$199,107	$ 178,598,979	$ 1,785,990
1997	942	$199,107	$ 187,558,794	$ 1,875,588
1998	989	$199,107	$ 196,916,823	$ 1,969,168
1999	1,038	$199,107	$ 206,673,066	$ 2,066,731
2000	1,090	$199,107	$ 217,026,630	$ 2,170,266
2001	1,145	$199,107	$ 227,977,515	$ 2,279,775
2002	1,202	$199,107	$ 239,326,614	$ 2,393,266
2003	1,262	$199,107	$ 251,273,034	$ 2,512,730

Assuming an October 1, 1998 effective date and adjusting for fiscal years, the potential revenues are as follows:

Fiscal Year	Revenue
1998-99	$ 1,525,657
1999-00	$ 2,118,498
2000-01	$ 2,225,021
2001-02	$ 2,336,521
2002-03	$ 2,452,998

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

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Legislative Proposal 6
98-LAX-001B (1.1)(Z)
(THIS IS A DRAFT AND IS NOT READY FOR INTRODUCTION)

Short Title: Simplify Privilege License Tax. (Public)

Sponsors: Senators Hoyle, Cochrane, Kerr, and Hartsell.

Referred to:

A BILL TO BE ENTITLED

AN ACT TO SIMPLIFY AND MODIFY PRIVILEGE LICENSE AND EXCISE TAXES AND RELATED PERMIT FEES.

The General Assembly of North Carolina enacts:

Section 1. The title of Article 2 of Chapter 105 of the General Statutes reads as rewritten:

"ARTICLE 2

"~~Schedule B.~~ ~~License~~ Privilege Taxes."

Section 2. G.S. 105-33 reads as rewritten:

"§ 105-33. Taxes under this Article.

(a) General. -- Taxes in this Article ~~or schedule shall be~~ are imposed ~~as State license taxes~~ for the privilege of carrying on the business, exercising the privilege, or doing the act ~~named,~~ named. ~~and nothing in this Article shall be construed to relieve any person, firm, or corporation from the payment of the tax prescribed in this Article or schedule: Provided, the obtaining of a license required by this Article shall not of itself authorize the practice of a profession, business, or trade for which a State qualification license is required.~~

(b) ~~If the business made taxable or the privilege to be exercised under this Article is carried on at two or more separate places, a separate State license for each place is required.~~ License Taxes. -- A license tax imposed by this Article

is an annual tax. The tax is due by July 1 of each year. The tax is imposed for the privilege of engaging in a specified activity during the fiscal year that begins on the July 1 due date of the tax. The full amount of a license tax applies to a person who, during a fiscal year, begins to engage in an activity for which this Article requires a license. Before a person engages in an activity for which this Article requires a license, the person must obtain the required license.

(c) ~~Every State license issued under this Article or schedule shall be for 12 months, shall expire on the thirtieth day of June of each year, and shall be for the full amount of tax prescribed; provided, that where the tax is levied on an annual basis and the licensee begins such business or exercises such privilege after the first day of January and prior to the thirtieth day of June of each year, then such licensee shall be required to pay one half of the tax prescribed other than the tax prescribed to be computed and levied upon a gross receipts and/or percentage basis for the conducting of such business or the exercising of such privilege to and including the thirtieth day of June, next following. Every county, city and town license issued under this Article or schedule shall be for 12 months, and shall expire on the thirty-first day of May or thirtieth day of June of each year as the governing body of such county, city or town may determine: Provided, that where the licensee begins such business or exercises such privilege after the expiration of seven months of the current license year of such municipality, then such licensee shall be required to pay one half of the tax prescribed other than the tax prescribed to be computed upon a gross receipts and/or percentage basis.~~ Other Taxes. -- The taxes imposed by this Article on a percentage basis or another basis are due as specified in this Article.

(d) ~~The State license issued under G.S. 105-41 is a personal privilege to conduct the profession or business named in the State license, is not transferable to any other person, and does not limit the person named in the license to conducting the profession or business and exercising the privilege named in the State license to the county and/or city and location specified in the State license, unless otherwise provided in this Article. Other licenses issued for a tax year for the conduct of a business at a specified location shall upon a sale or transfer of the business be deemed a sufficient license for the succeeding purchaser for the conduct of the business specified at that location for the balance of the tax year. If the holder of a license under this Article moves the business for which a license~~

~~tax has been paid to another location, a new license may be issued to the licensee at a new location for the balance of the license year, upon surrender of the original license for cancellation and the payment of a fee of five dollars ($5.00) for each license certificate reissued.~~

(e) Repealed by Session Laws 1989, c. 584, s. 1.

~~(f) All State taxes imposed by this Article shall be paid to the Secretary of Revenue, or to one of his deputies; shall be due and payable on or before the first day of July of each year, and after such date shall be deemed delinquent, and subject to all the remedies available and the penalties imposed for the payment of delinquent State license and privilege taxes; provided, that if a person, firm, or corporation begins any business or the exercise of any privilege requiring a license under this Article or schedule after the thirtieth day of June and prior to the thirtieth day of the following June of any year, then such person, firm, or corporation shall apply for and obtain a State license for conducting such business or exercising any such privilege in advance, and before the beginning of such business or the exercise of such privilege; and a failure to so apply and to obtain such State license shall be and constitute a delinquent payment of the State license tax due, and such person, firm, or corporation shall be subject to the remedies available and penalties imposed for the payment of such delinquent taxes.~~

~~(g) The taxes imposed and the rates specified in this Article or schedule shall apply to the subjects taxed on and after the first day of June, 1939, and prior to said date the taxes imposed and the rates specified in the Revenue Act of 1937 shall apply.~~

(h) Liability Upon Transfer. -- ~~It shall be the duty of a~~ A grantee, transferee, or purchaser of any business or property subject to the State ~~license~~ taxes imposed in this Article ~~to~~ must make diligent inquiry as to whether the State ~~license~~ tax has been ~~paid, but when such~~ paid. If the business or property has been granted, sold, transferred, or conveyed to an innocent purchaser for value and without notice that the vendor owed or is liable for any of the State ~~license~~ taxes imposed under this Article, ~~such~~ the property, while in the possession of ~~such~~ the innocent purchaser, ~~shall not be~~ is not subject to any lien for ~~such State license~~ the taxes.

~~(i) The tax collector of a county or city shall issue licenses required under this Article by the governing body of the county or city and shall collect the taxes due for these licenses.~~

~~(j) Any person, firm, or corporation who shall wilfully make any false statement in an application for a license under any~~

~~section of this Article or schedule shall be guilty of a Class 1 misdemeanor, which may include a fine which shall not be less than the amount of tax specified under such section, and shall be in addition to the amount of such tax.~~

(k) Repealed by Session Laws 1987, c. 190."

Section 3. G.S. 105-33.1 reads as rewritten:

"**§ 105-33.1. Definitions.**The following definitions apply in this Article:

(1) City. -- Defined in G.S. 105-228.90.

~~(1)~~ (1a) Code. -- Defined in G.S. 105-228.90.

~~(2) Municipality. -- A municipal corporation organized under the laws of this State.~~

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

(4) Secretary. -- ~~The Secretary of Revenue.~~ Defined in G.S. 105-228.90."

Section 4. G.S.105-37.1 reads as rewritten:

"**§ 105-37.1. Amusements -- Forms of amusement not otherwise taxed.**

(a) Every ~~person, firm, or corporation~~ person engaged in the business of giving, ~~offering~~ offering, or managing any form of entertainment or amusement not otherwise taxed ~~or specifically exempted in this Article,~~ for which an admission is charged, shall pay ~~an annual license tax of fifty dollars ($50.00) for each room, hall, tent or other place where such admission charges are made.~~

~~In addition to the license tax levied above, such person, firm, or corporation shall pay an additional~~ a tax upon the gross receipts of ~~such~~ the business at the rate of three percent (3%). Reports shall be made to the Secretary ~~of Revenue, in such form as he may prescribe,~~ within the first 10 days of each month covering all ~~such~~ the gross receipts for the previous month, and the ~~additional~~ tax ~~herein levied~~ shall be paid monthly at the time ~~such~~ the reports are made. ~~The annual license tax herein levied shall be treated as an advance payment of the tax upon gross receipts herein levied, and the annual license tax shall be applied as a credit upon or advance payment of the gross receipts tax.~~

Every ~~person, firm, or corporation~~ person giving, offering, or managing any dance or athletic contest of any kind, except high school and elementary school athletic contests, for which an admission fee in excess of fifty cents (50¢) is charged, shall pay ~~an annual license tax of fifty dollars ($50.00) for each location where such charges are made, and, in addition,~~ a tax upon the gross receipts derived from admission charges at the

rate of three percent (3%). The ~~additional~~ tax upon gross receipts shall be levied and collected ~~in accordance with such regulations as may be made by the Secretary of Revenue.~~ as prescribed by the Secretary. ~~No tax shall be levied on admission fees for high school and elementary school contests.~~

~~Dances and other amusements actually promoted and managed by civic organizations and private and public secondary schools, shall not be subject to the license tax imposed by this section and the first one thousand dollars ($1,000) of gross receipts derived from such events shall be exempt from the gross receipts tax herein levied when the entire proceeds of such dances or other amusements are used exclusively for the school or civic and charitable purposes of such organizations and not to defray the expenses of the organization conducting such dance or amusement. The mere sponsorship of dance or other amusement by such a school, civic, or fraternal organization shall not be deemed to exempt such dance or other amusement as provided in this paragraph, but the exemption shall apply only when the dance or amusement is actually managed and conducted by the school, civic, or fraternal organization and the proceeds are used as herein before required.~~

~~Dances and other amusements promoted and managed by a qualifying corporation that operates a center for the performing and visual arts are exempt from the license tax and the gross receipts tax imposed under this section if the dance or other amusement is held at the center. "Qualifying corporation" means a corporation that is exempt from income tax under G.S. 105-130.11(a)(3). "Center for the performing and visual arts" means a facility, having a fixed location, that provides space for dramatic performances, studios, classrooms and similar accommodations to organized arts groups and individual artists. This exemption shall not apply to athletic events.~~

~~The license and gross receipts taxes imposed by this section do not apply to a person, firm, or corporation that is exempt from income tax under Article 4 of this Chapter and is engaged in the business of operating a teen center. A "teen center" is a fixed facility whose primary purpose is to provide recreational activities, dramatic performances, dances, and other amusements exclusively for teenagers.~~

(b) Counties shall not levy any license tax on the business taxed under this section, but cities ~~and towns~~ may levy a license tax not in excess of ~~one half the base tax levied herein.~~ twenty-five dollars ($25.00).

~~(c) No tax shall be collected pursuant to this section with respect to entertainments or amusements offered or given on the Cherokee Indian reservation when the person, firm or corporation giving, offering or managing such entertainment or amusement is authorized to do business on the reservation and pays the tribal gross receipts levy to the tribal council.~~

~~(d) It is not the purpose of this Article to discourage agricultural fairs in the State, and to further this cause, no carnival company taxable under this section may play a "still date" in any county where there is a regularly advertised agricultural fair, 30 days prior to the dates of the fair. This subsection does not restrict the date on which a fair or tobacco festival may be held if (i) it is held by a veteran's organization or post chartered by Congress or organized and operated on a statewide or nationwide basis and (ii) the organization or post has held the fair or festival annually since before July 1, 1988.~~"

Section 5. G.S. 105-38 reads as rewritten:

"**§ 105-38. Amusements -- ~~Circuses, menageries, wild west, dog and/or pony shows, etc.~~** Circuses and other traveling amusements.

(a) Every ~~person, firm, or corporation~~ person engaged in the business of exhibiting performances, such as a circus, menagerie, wild west show, dog and/or pony show, or any other similar show, ~~exhibition~~ exhibition, or ~~performance similar thereto,~~ performance not taxed in other sections of this Article, shall ~~apply for and obtain a State license from the Secretary of Revenue for the privilege of engaging in such business, and pay for such license a tax of fifty dollars ($50.00) for each day or part of a day for each place in the State where exhibitions or performances are to be given.~~ pay a tax upon the gross receipts of the business at the rate of three percent (3%).

(b) Every ~~person, firm, or corporation~~ person by whom any show or exhibition taxed under this section is owned or controlled shall file with the ~~Secretary of Revenue,~~ Secretary, not less than five days before entering this State for the purpose of ~~such~~ the exhibitions or performances therein, a statement, under oath, setting out in detail the dates, times, and places for the exhibitions or performances. ~~such information as may be required by the Secretary of Revenue covering the places in the State where exhibitions or performances are to be given, the character of the exhibitions, and such other and further information as may be required. Upon receipt of such statement, the Secretary of Revenue shall fix and determine the amount of State license tax with which such person, firm, or corporation is chargeable, shall~~

~~endorse his findings upon such statement, and shall transmit a copy of such statement and findings to each such person, firm, or corporation to be charged, to the sheriff or tax collector of each county in which exhibitions or performances are to be given, and to the division deputy of the Secretary of Revenue, with full and particular instructions as to the State license tax to be paid. Before giving any of the exhibitions or performances provided for in such statement, the person, firm, or corporation making such statement shall pay the Secretary of Revenue the tax so fixed and determined. If one or more of such exhibitions or performances included in such statement and for which the tax has been paid shall be canceled, the Secretary of Revenue may, upon proper application made to him, refund the tax for such canceled exhibitions or performances. Every such person, firm, or corporation shall give to the Secretary of Revenue a notice of not less than five days before giving any of such exhibitions or performances in each county.~~

~~(c) The sheriff of each county in which such exhibitions or performances are advertised to be exhibited shall promptly communicate such information to the Secretary of Revenue; and if the statement required in this section has not been filed as provided herein, or not filed in time for certified copies thereof, with proper instructions, to be transmitted to the sheriffs of the several counties and the division deputy, the Secretary of Revenue shall cause his division deputy to attend at one or more points in the State where such exhibitions or performances are advertised or expected to exhibit, for the purpose of securing such statement prescribed in this section, of fixing and determining the amount of State license tax with which such person, firm, or corporation is taxable, and to collect such tax or give instructions for the collection of such tax.~~

~~(d) Every such person, firm, or corporation by whom or which any such exhibition or performance described in this section is given in any county, city or town, or within five miles thereof, wherein is held an annual agricultural fair, during the week of such annual agricultural fair, shall pay a State license of one thousand dollars ($1,000) for each exhibition or performance in addition to the license tax first levied in this section, to be assessed and collected by the Secretary of Revenue or his duly authorized deputy.~~

~~(e) The provisions of this section, or any other section of this Article, shall not be construed to allow without the payment of the tax imposed in this section, any exhibition or performance described in this section for charitable, benevolent,~~

~~educational, or any other purpose whatsoever, by any person, firm, or corporation who is engaged in giving such exhibitions or performances, no matter what terms of contract may be entered into or under what auspices such exhibitions or performances are given. It being the intent and purpose of this section that every person, firm, or corporation who or which is engaged in the business of giving such exhibitions or performances, whether a part or all of the proceeds are for charitable, benevolent, educational, or other purposes or not, shall pay the State license tax imposed in this section.~~

~~(f) Upon all performances taxable under this section there is levied, in addition to the license tax levied in this section, a tax upon the gross receipts of such business at the rate of three percent (3%). The license tax herein levied shall be treated as an advance payment of the tax upon gross receipts herein levied, and the license tax shall be applied as a credit upon or advance payment of the gross receipts tax. The Secretary of Revenue may adopt such regulations as may be necessary to effectuate the provisions of this section and shall prescribe the form and character of reports to be made, and shall have such authority of supervision as may be necessary to effectuate the purpose of this Subchapter.~~

(g) Repealed.

(h) ~~Counties, cities, and towns~~ Counties and cities may levy a license tax on the business taxed under this section not in excess of ~~one half of the license tax levied by the State, but shall not levy a parade tax or a tax under subsection (g) of this section.~~ twenty-five dollars ($25.00) for each day or part of a day for each place where exhibitions or performances are to be given."

Section 6. G.S. 105-40 reads as rewritten:

"**§ 105-40. Amusements ~~-- Certain exhibitions, performances, and entertainments~~ exempt from ~~license~~ tax.**

The following forms of amusement are exempt from the taxes imposed under this Article:

(1) All exhibitions, performances, and entertainments, except as in this Article expressly mentioned as not exempt, produced by local talent exclusively, ~~and~~ for the benefit of religious, charitable, benevolent or educational purposes, ~~and where~~ as long as no compensation is paid to ~~such local talent shall be exempt from the State license tax.~~ the local talent.

(2) The North Carolina Symphony Society, Incorporated, as specified in G.S. 140-10.1.

(3) All exhibits, shows, attractions, and amusements operated by a society or association organized under the provisions of Chapter 106 of the North Carolina General Statutes where the society or association has obtained a permit from the Secretary to operate without the payment of taxes under this Article.

(4) All outdoor historical dramas, as specified in Article 19C of Chapter 143 of the North Carolina General Statutes.

(5) All high school and elementary school athletic contests.

(6) The first one thousand dollars ($1,000) of gross receipts derived from dances and other amusements actually promoted and managed by civic organizations and private and public secondary schools when the entire proceeds of the dances or other amusements are used exclusively for the school or civic and charitable purposes of the organizations and not to defray the expenses of the organization conducting the dance or amusement. The mere sponsorship of a dance or another amusement by a school, civic, or fraternal organization does not exempt the dance or other amusement, because the exemption applies only when the dance or amusement is actually managed and conducted by the school, civic, or fraternal organization.

(7) All dances and other amusements promoted and managed by a qualifying corporation that operates a center for the performing and visual arts if the dance or other amusement is held at the center. 'Qualifying corporation' means a corporation that is exempt from income tax under G.S. 105-130.11(a)(3). 'Center for the performing and visual arts' means a facility, having a fixed location, that provides space for dramatic performances, studios, classrooms, and similar accommodations to organized arts groups and individual artists. This exemption does not apply to athletic events.

(8) A person that is exempt from income tax under Article 4 of this Chapter and is engaged in the business of operating a teen center. A 'teen center' is a fixed facility whose primary purpose is to provide recreational activities, dramatic performances, dances, and other amusements exclusively for teenagers.

(9) All entertainments or amusements offered or given on the Cherokee Indian reservation when the person giving, offering, or managing the entertainment or amusement is authorized to do business on the reservation and pays the tribal gross receipts levy to the tribal council."

Section 7. G.S. 105-41 reads as rewritten:

"**§ 105-41. Attorneys-at-law and other professionals.**

(a) Every individual in this State who practices a profession or engages in a business and is included in the list below must obtain from the Secretary a statewide license for the privilege of practicing the profession or engaging in the business. A license required by this section is not transferable to another person. The tax for each license is fifty dollars ~~($50.00); the tax does not apply to an individual who is at least 75 years old.~~ ($50.00).

(1) An attorney-at-law.

(2) A physician, a veterinarian, a surgeon, an osteopath, a chiropractor, a chiropodist, a dentist, an ophthalmologist, an optician, an optometrist, or another person who practices a professional art of healing.

(3) A professional engineer, as defined in G.S. 89C-3.

(4) A registered land surveyor, as defined in G.S. 89C-3.

(5) An architect.

(6) A landscape architect.

(7) A photographer, a canvasser for any photographer, or an agent of a photographer in transmitting photographs to be copied, enlarged, or colored.

(8) A real estate broker or a real estate salesman, as defined in G.S. 93A-2. A real estate broker or a real estate salesman who is also a real estate appraiser is required to obtain only one license under this section to cover both activities.

(9) A real estate appraiser, as defined in G.S. 93E-1-4. A real estate appraiser who is also a real

estate broker or a real estate salesman is required to obtain only one license under this section to cover both activities.

(10) A person who solicits or negotiates loans on real estate as agent for another for a commission, brokerage, or other compensation.

(11) A mortician or embalmer licensed under G.S. 90-210.25.

(b) ~~Persons practicing the professional art of healing for a fee or reward shall be exempt from the payment of the license tax levied in the preceding paragraph of this section, if such persons are adherents of established churches or religious organizations and confine their healing practice to prayer or spiritual means.~~ The following persons are exempt from the tax:

(1) A person who is at least 75 years old.

(2) A person practicing the professional art of healing for a fee or reward, if the person is an adherent of an established church or religious organization and confines the healing practice to prayer or spiritual means.

(3) A blind person engaging in a trade or profession as a sole proprietor. A 'blind person' means any person who is totally blind or whose central visual acuity does not exceed 20/200 in the better eye with correcting lenses, or where the widest diameter of visual field subtends an angle no greater than 20 degrees. This exemption shall not extend to any sole proprietor who permits more than one person other than the proprietor to work regularly in connection with the trade or profession for remuneration or recompense of any kind, unless the other person in excess of one so remunerated is a blind person."

(c) Every person engaged in the public practice of accounting as a principal, or as a manager of the business of public accountant, shall pay for such license fifty dollars ($50.00), and in addition shall pay a license of twelve dollars and fifty cents ($12.50) for each person employed who is engaged in the capacity of supervising or handling the work of auditing, devising or installing systems of accounts.

~~(d) Every licensed mortician or embalmer shall in like manner apply for and obtain from the Secretary of Revenue a statewide license for practicing his profession, whether for himself or in~~

~~the employ of another, and pay for such license a tax of fifty dollars ($50.00).~~

(e) Licenses issued under this section are issued as personal privilege licenses and shall not be issued in the name of a firm or ~~corporation: Provided, that a~~ corporation. A licensed photographer having a located place of business in this ~~State, shall be~~ State is liable for a license tax on each agent or ~~solicitor,~~ solicitor employed by ~~him~~ the photographer for soliciting business. If any person engages in more than one of the activities for which a privilege tax is levied by this section, ~~such~~ the person ~~shall be~~ is liable for a privilege tax with respect to each activity engaged in.

(f) Repealed by Session Laws 1981, c. 17.

~~(g) License Revocable for Failure To Pay Tax. Whenever it shall be made to appear to any judge of the superior court that any person practicing any profession for which the payment of a license tax is required by this section has failed, or fails, to pay the professional tax levied in this section, and execution has been issued for the same by the Secretary of Revenue and returned by the proper officer "no property to be found," or returned for other cause without payment of the tax, it shall be the duty of the judge presiding in the superior court of the county in which such person resides, upon presentation therefor, to cause the clerk of said court to issue a rule requiring such person to show cause by the next session of court why such person should not be deprived of license to practice such profession for failure to pay such professional tax. Such rule shall be served by the sheriff upon said person 20 days before the next session of the court, and if at the return term of court such person fails to show sufficient cause, the said judge may enter a judgment suspending the professional license of such person until all such tax as may be due shall have been paid, and such order of suspension shall be binding upon all courts, boards and commission having authority of law in this State with respect to the granting or continuing of license to practice any such profession.~~

(h) ~~Counties, cities, or towns shall~~ Cities may not levy any license tax on the business or professions taxed under this ~~section;~~ section. ~~and the statewide license herein provided for shall privilege the licensee to engage in such business or profession in every county, city, or town in this State.~~

(i) Obtaining a license required by this Article does not of itself authorize the practice of a profession, business, or trade for which a State qualification license is required."

Section 8. Chapter 93B of the General Statutes is amended by adding the following new section to read:

"§ 93B-15. Members of armed forces and merchant marine exempt from license fees.

Any person entering into the armed forces of the United States or in the merchant marine shall be during the period of service exempt from paying any license fees to any licensing board or commission or to the State of North Carolina in which the payment of the license fees is by law required as a condition to the continuance of the privilege to engage in any trade or profession. The person upon being discharged from service shall have all the rights and privileges to engage in that person's profession upon payment of any fees that become due."

Section 9. G.S. 105-83 reads as rewritten:

"§ 105-83. Installment paper dealers.

(a) Every person engaged in the business of dealing in, buying, or discounting installment paper, notes, bonds, contracts, or evidences of ~~debt, where~~ debt for which, at the time of or in connection with the execution of ~~said~~ the instruments, a lien is reserved or taken upon personal property located in this State to secure the payment of ~~such~~ the obligations, ~~shall apply for and obtain from the Secretary a State license for the privilege of engaging in such business or for the purchasing of such obligations in this State, and shall pay for such license an annual tax of one hundred dollars ($100.00).~~

~~(b) In addition to obtaining a State license from the Secretary, each person subject to the tax levied in subsection (a)~~ shall submit to the Secretary quarterly no later than the twentieth day of January, April, July, and October of each year, upon forms prescribed by the Secretary, a full, accurate, and complete statement, verified by the officer, agent, or person making the statement, of the total face value of the ~~installment paper, notes, bonds, contracts, and evidences of debt~~ obligations dealt in, bought, or discounted within the preceding three calendar months and, at the same time, shall pay a tax of two hundred and seventy-five thousandths of one percent (.275%) of the face value of these obligations.

(c) If any person deals in, buys, or discounts any obligations described in this section without ~~obtaining the license required by this section or~~ paying a tax imposed by this section, the person may not bring an action in a State court to enforce collection of an obligation dealt in, bought, or discounted during the period of noncompliance with this section until the

person ~~obtains the license and~~ pays the amount of tax, penalties, and interest due.

(d) This section does not apply to corporations liable for the tax levied under G.S. 105-102.3.

(e) ~~Counties, cities, and towns~~ Cities shall not levy any license tax on the business taxed under this section."

Section 10. G.S. 105-102.3 reads as rewritten:

"§ 105-102.3. Banks.

There is ~~hereby~~ imposed upon every bank or banking association, including each national banking association, that is operating in this State as a commercial bank, an industrial bank, a savings bank created other than under Chapter 54B of the General Statutes or the Home Owners' Loan Act of 1933 (12 U.S.C. §§ 1461-68), a trust company, or any combination of such facilities or services, and whether such bank or banking association, hereinafter to be referred to as a bank or banks, ~~be~~ is organized, under the laws of the United States or the laws of North Carolina, in the corporate form or in some other form of business organization, an annual privilege ~~tax~~ tax. A report and the privilege tax are due by the first day of July of each year on forms provided by the Secretary. The tax rate is ~~in the amount of~~ thirty dollars ($30.00) for each one million dollars ($1,000,000) or fractional part thereof of total assets held as ~~hereinafter provided.~~ provided in this section. The assets upon which the tax is levied shall be determined by averaging the total assets shown in the four quarterly call reports of condition (consolidating domestic subsidiaries) for the preceding calendar year as required by bank regulatory ~~authorities; provided,~~ authorities. If a bank has been in operation less than a calendar year, then the assets upon which the tax is levied shall be determined by multiplying the average of the total assets by a fraction, the denominator of which is 365 and the numerator of which is the number of days of operation. ~~however, where a new bank commences operations within the State there shall be levied and paid an annual privilege tax of one hundred dollars ($100.00) until such bank shall have made four quarterly call reports of condition (consolidating domestic subsidiaries) for a single calendar year; provided further, however, where~~ If a bank operates an international banking facility, as defined in G.S. 105-130.5(b)(13), the assets upon which the tax is levied shall be reduced by the average amount for the taxable year of all assets of the international banking facility which are employed outside the United States, as computed pursuant to G.S. 105-130.5(b)(13)c. For an out-of-state bank with one or more branches in this State, or for an in-state

bank with one or more branches outside this State, the assets of the out-of-state bank or of the in-state bank upon which the tax is levied shall be reduced by the average amount for the taxable year of all assets of the out-of-state bank or of the in-state bank which are employed outside this State. The tax imposed ~~hereunder~~ in this section shall be for the privilege of carrying on the businesses herein defined on a statewide basis regardless of the number of places or locations of business within the State. ~~Counties, cities and towns shall~~ Cities may not levy a license or privilege tax on the businesses taxed under this section, nor on the business of an international banking facility as defined in subsection (b)(13) of G.S. 105-130.5."

Section 11. G.S. 105-102.6(d) reads as rewritten:

"(d) Tax. -- Every publisher shall apply for and obtain from the Secretary a newsprint publisher tax reporting number and shall file an annual report with the Secretary by January 31 of each year. The report shall include the following information for the preceding calendar year:

(1) Tonnage of virgin newsprint consumed.
(2) Tonnage of nonvirgin newsprint consumed.
(3) Gross tonnage of newsprint consumed.
(4) Itemized percentages of recycled postconsumer recovered paper contained in tonnage of nonvirgin newsprint consumed.
(5) Recycled content tonnage.
(6) Recycled content percentage.
(7) Recycling tonnage.

In addition, each publisher whose recycled content percentage for a calendar year is less than the applicable minimum recycled content percentage provided in subsection (c) shall pay a tax of fifteen dollars ($15.00) on each ton by which the publisher's recycled content tonnage falls short of the tonnage of recycled postconsumer recovered paper needed to achieve the applicable minimum recycled content percentage provided in subsection (c). This tax is due when the report is filed. No ~~county or municipality~~ city may impose a license tax on the business taxed under this section."

Section 12. G.S. 105-107 is repealed.

Section 13. G.S. 105-109(a) is repealed.

Section 14. G.S. 105-113.68(a)(6) reads as rewritten:

"(6) 'License' means a certificate, issued pursuant to this Article ~~by the Secretary or~~ by a city or county, that authorizes a person to engage in a phase of the alcoholic beverage industry."

Section 15. G.S. 105-113.69 reads as rewritten:

"**§ 105-113.69. License tax; effect of license.**

The taxes imposed in ~~Parts 2 and 3~~ Part 3 of this Article are license taxes on the privilege of engaging in the activity authorized by the license. Licenses issued ~~by the State or a local government~~ under this Article authorize the licensee to engage in only those activities that are authorized by the corresponding ABC permit. The activities authorized by each retail ABC permit are described in Article 10 of Chapter ~~18B,~~ 18B of the General Statutes and the activities authorized by each commercial ABC permit are described in Article 11 of that Chapter."

Section 16. G.S. 105-113.70 reads as rewritten:

"**§ 105-113.70. Issuance, duration, transfer of license.**

(a) Issuance, Qualifications. -- Each person who receives an ABC permit shall obtain the corresponding local license, if any, under this Article. ~~All State licenses are issued by the Secretary.~~ All local licenses are issued by the city or county where the establishment for which the license is sought is located. The information required to be provided and the qualifications for a ~~State or~~ local license are the same as the information and qualifications required for the corresponding ABC permit. Upon proper application and payment of the prescribed tax, issuance of a ~~State or~~ local license is mandatory if the applicant holds the corresponding ABC permit. No local license may be issued under this Article until the applicant has received from the ABC Commission the applicable permit for that activity, and no county license may be issued for an establishment located in a city in that county until the applicant has received from the city the applicable license for that activity.

(b) Duration. -- All licenses issued under this section are annual licenses for the period from May 1 to April 30.

(c) Transfer. -- A license may not be transferred from one person to another or from one location to another.

(d) License Exclusive. -- ~~Neither the State nor a~~ A local government may not require a license for activities related to the manufacture or sale of alcoholic beverages other than the licenses stated in this Article."

Section 17. G.S. 105-113.72 is repealed.

Section 18. G.S. 105-113.74 is repealed.

Section 19. G.S. 105-113.75 is repealed.

Section 20. G.S. 105-113.76 is repealed.

Section 21. G.S. 105-113.79 reads as rewritten:

"**§ 105-113.79. City wholesaler license.**

A city may require city malt beverage and wine wholesaler licenses for businesses located inside the city, but may not require a license for a business located outside the city, regardless whether that business sells or delivers malt beverages or wine inside the city. The city may charge an annual tax of not more than ~~twenty-five percent (25%) of the annual tax for the equivalent State license as set by G.S. 105-113.74.~~ thirty-seven dollars and fifty cents ($37.50) for a city malt beverage wholesaler or a city wine wholesaler license."

Section 22. G.S. 105-113.80(a) reads as rewritten:

"(a) Beer. -- An excise tax of fifty-three and one hundred seventy-seven one thousandths cents (53.177¢) per gallon is levied on the sale of malt ~~beverages at the rate of:~~ beverages.

~~(1) Forty-eight and three hundred eighty-seven one thousandths cents (48.387¢) per gallon on malt beverages in barrels holding at least seven and three-fourths gallons; and~~

~~(2) Fifty-three and three hundred seventy-six one thousandths cents (53.376¢) per gallon on malt beverages in cans, bottles, barrels, or other containers holding less than seven and three-fourths gallons.~~"

Section 23. G.S. 105-113.83(c) reads as rewritten:

"(c) Railroad ~~Sales License.~~ Sales. -- ~~This section does not affect the duty of a holder of a State railroad sales license to remit excise taxes on alcoholic beverages sold by that licensee in this State, as provided in G.S. 105-113.76~~ Each person operating a railroad train in this State on which alcoholic beverages are sold must submit monthly reports of the amount of alcoholic beverages sold in this State and must remit the applicable excise tax due on the sale of these beverages when the report is submitted. The report is due on or before the 15th day of the month following the month in which the beverages are sold. The report must be made on a form prescribed by the Secretary."

Section 24. G.S. 105-113.84 reads as rewritten:

"**§ 105-113.84. Invoices; report of resident brewery, resident winery, or nonresident vendor.**

(a) Invoice. -- ~~When a~~ A resident brewery, resident winery, or nonresident vendor that sells or delivers wine or malt beverages to a North Carolina wholesaler or importer, ~~he~~ shall give that wholesaler or importer two copies of the sales ~~invoice. He~~ invoice and shall also file one copy with the Secretary. The invoice shall ~~state:~~ state all of the following:

(1) The name and address of the ~~licensee~~ permit holder making the sale or ~~delivery;~~ delivery.
(2) The name, address, and ~~license~~ permit number of the wholesaler or importer receiving the ~~beverages;~~ beverages.
(3) The kind of beverage sold or ~~delivered; and~~ delivered, including the number of cases.
(4) The exact quantities of beverages sold or delivered, specified by size and type of ~~container.~~ containers.
(5) The total gallons of malt beverages, the total liters of unfortified wine, and the total liters of fortified wine.

(b) Monthly Report. -- Each resident brewery, resident winery, or nonresident vendor that sells or delivers wine or malt beverages in North Carolina shall prepare and file with the Secretary a monthly report, on a form provided by the Secretary, stating the exact quantities of those beverages sold to North Carolina wholesalers or importers during the previous month. ~~The report shall specify the size and type of containers sold.~~ The report shall be filed on or before the 15th day of the month following the month in which the beverages are sold or delivered."

Section 25. G.S. 105-113.86 reads as rewritten:

"**§105-113.86. Bonds.**

(a) Wholesalers and Importers. -- ~~Each holder of a malt beverage~~ A wholesaler ~~license, a wine wholesaler license, or an~~ or importer ~~license~~ shall furnish a bond in an amount of not less than five thousand dollars ($5,000) nor more than fifty thousand dollars ~~($50,000) to cover his tax liability.~~ ($50,000). The bond shall be conditioned on compliance with this Article, shall be payable to the State, shall be in a form acceptable to the Secretary, and shall be secured by a corporate surety or by a pledge of obligations of the federal government, the State, or a political subdivision of the State. The Secretary shall proportion the bond amount to the anticipated tax liability of the wholesaler or importer. The Secretary shall periodically review the sufficiency of bonds furnished by wholesalers and importers, and shall increase the amount of a bond required of a wholesaler or importer when the amount of the bond furnished no longer covers the wholesaler's or importer's anticipated tax liability.

(b) Nonresident Vendors. -- The Secretary may require the holder of a nonresident vendor ~~license~~ ABC permit to furnish a

bond in an amount not to exceed two thousand dollars ($2,000). The bond shall be conditioned on compliance with this Article, shall be payable to the State, shall be in a form acceptable to the Secretary, and shall be secured by a corporate surety or by a pledge of obligations of the federal government, the State, or a political subdivision of the State."

Section 26. G.S. 105-113.89 reads as rewritten:

"**§105-113.89. Other applicable administrative provisions.**

The administrative provisions of Article 9 of this Chapter apply to this Article. ~~In addition, the following administrative provisions of Schedule B of this Chapter apply to the license taxes levied under this Article: G.S. 105-103, 105-104, 105-105, 105-108, 105-109, 105-110, and 105-112. In applying the provisions of Schedule B to this Article, the month "May" shall be substituted for the month "July."~~"

Section 27. G.S. 105-249 is repealed.

Section 28. G.S. 105-249.1 is repealed.

Section 29. G.S. 18B-902 reads as rewritten:

"**§ 18B-902. Application for permit; fees.**

(a) Form. -- An application for an ABC permit shall be on a form prescribed by the Commission and shall be notarized. The application shall be signed and sworn to by each person required to qualify under G.S. 18B-900(c).

(b) Investigation. -- Before issuing a new permit, the Commission, with the assistance of the ALE Division, shall investigate the applicant and the premises for which the permit is requested. The Commission may request the assistance of local ABC officers in investigating applications. An applicant shall cooperate fully with the investigation.

(c) False Information. -- Knowingly making a false statement in an application for an ABC permit shall be grounds for denying, suspending, revoking or taking other action against the permit as provided in G.S. 18B-104 and shall also be unlawful.

(d) Fees. -- An application for an ABC permit shall be accompanied by payment of the following application fee:

(1) On-premises malt beverage permit -- ~~$200.00.~~ $400.00.

(2) Off-premises malt beverage permit -- ~~$200.00.~~ $400.00.

(3) On-premises unfortified wine permit -- ~~$200.00.~~ $400.00.

(4) Off-premises unfortified wine permit -- ~~$200.00.~~ $400.00.

(5) On-premises fortified wine permit -- ~~$200.00.~~ $400.00.
(6) Off-premises fortified wine permit -- ~~$200.00.~~ $400.00.
(7) Brown-bagging permit -- ~~$200.00,~~ $400.00, unless the application is for a restaurant seating less than 50, in which case the fee shall be ~~$100.00.~~ $200.00.
(8) Special occasion permit -- ~~$200.00.~~ $400.00.
(9) Limited special occasion permit -- ~~$25.00.~~ $50.00.
(10) Mixed beverages permit -- ~~$750.00.~~ $1,000.
(11) Culinary permit -- ~~$100.00.~~ $200.00.
(12) Unfortified winery permit -- ~~$150.00.~~ $300.00.
(13) Fortified winery permit -- ~~$150.00.~~ $300.00.
(14) Limited winery permit -- ~~$150.00.~~ $300.00.
(15) Brewery permit -- ~~$150.00.~~ $300.00.
(16) Distillery permit -- ~~$150.00.~~ $300.00.
(17) Fuel alcohol permit -- ~~$50.00.~~ $100.00.
(18) Wine importer permit -- ~~$150.00.~~ $300.00.
(19) Wine wholesaler permit -- ~~$150.00.~~ $300.00.
(20) Malt beverage importer permit -- ~~$150.00.~~ $300.00.
(21) Malt beverage wholesaler permit -- ~~$150.00.~~ $300.00.
(22) Bottler permit -- ~~$150.00.~~ $300.00.
(23) Salesman permit -- ~~$25.00.~~ $100.00.
(24) Vendor representative permit -- ~~$25.00.~~ $50.00.
(25) Nonresident malt beverage vendor permit -- ~~$50.00.~~ $100.00.
(26) Nonresident wine vendor permit -- ~~$50.00.~~ $100.00.
(27) Any special one-time permit under G.S. 18B-1002 -- ~~$25.00.~~ $50.00.
(28) Winery special event permit -- ~~$100.00.~~ $200.00.
(29) Mixed beverages catering permit -- ~~$100.00.~~ $200.00.
(30) Guest room cabinet permit -- ~~$750.00.~~ $1,000.
(31) Liquor importer/bottler permit -- ~~$250.00.~~ $500.00.
(32) Cider and vinegar manufacturer permit -- ~~$100.00~~ $200.00.
(33) Brew on premises permit -- ~~$200.00.~~ $400.00.

~~(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 at the same time for nonresident malt beverage vendor and nonresident wine vendor permits, the total fee for those applications shall be fifty dollars ($50.00).~~

(f) Fee Not Refundable. -- The fee required by subsection (d) shall not be refunded.

(g) Fees to Treasurer. -- All fees collected by the Commission under this or any other section of this Chapter shall be remitted to the State Treasurer for the General Fund."

Section 30. G.S. 18B-903(b) reads as rewritten:

"(b) Renewal. -- Application for renewal of an ABC permit shall be on a form provided by the Commission. An application for renewal shall be accompanied by an application fee of twenty-five percent (25%) of the original application fee set in G.S. 18B-902, except that the renewal application fee for each mixed beverages permit and each guest room cabinet permit shall be ~~five~~ seven hundred fifty dollars ~~($500.00).~~ ($750.00)." A renewal fee shall not be refundable."

Section 31. Sections 1 through 13, 27, and 28 of this act become effective July 1, 1999. The remaining sections of this act become effective May 1, 1999.

EXPLANATION OF LEGISLATIVE PROPOSAL 6:
Simplify Privilege License Tax

TO: Revenue Laws Study Committee
FROM: Martha Walston, Staff Attorney
DATE: May 15, 1998
SPONSOR:

Legislative Proposal 6 makes numerous changes to simplify and reduce the State privilege license taxes on amusements, professionals, installment paper dealers, banks, and alcoholic beverages. The proposal also increases ABC permit fees. The changes to the taxes and fees on alcoholic beverages would become effective May 1, 1999. All other changes would become effective July 1, 1999.

Amusements. The current law imposes an annual $50.00 State privilege license tax and a 3% gross receipts tax on any form of entertainment not otherwise taxed or specifically exempted under Article 2 of Chapter 105 of the General Statutes. The license tax is due July 1 of each year and the tax on gross receipts is due monthly. Taxable forms of entertainment include athletic contests, sporting events, concerts, plays, musicals, night clubs, comedy clubs, amusement parks, carnivals, and festivals. Antique shows, craft shows, and auto shows, when a band is provided or a celebrity signs autographs, are also subject to the tax. Other taxable amusements are fashion shows, beauty pageants, air shows, mud slings, and tractor pulls. Current law also imposes a $50 privilege license tax and gross receipts tax on amusements such as a circus, menagerie, wild west show, a dog and/or pony show, or any other similar amusement not taxed in Article 2. The privilege tax on these amusements is assessed for each day or part of a day that the circus or similar amusement is held. Exempt amusements set out in Article 2 are high school and elementary school athletic contests, teen centers, dances and amusements promoted and managed by a corporation that operates a center for the performing and visual arts when the dance or amusement is held at the center, and amusements on the Cherokee Indian reservation where the entity providing the amusement is authorized to do business on the reservation and pays the tribal gross receipts levy to the tribal council.

The State privilege license tax on amusements is treated as an advance payment of the corresponding gross receipts tax, and the license tax is applied as a credit upon the gross receipts tax. Sections 4 and 5 of Legislative Proposal 6 would repeal the State privilege license taxes on amusements. This repeal would simplify the taxes assessed on amusements and would be revenue neutral since the license tax is a credit upon the gross receipts tax. Amusements will continue to pay a 3% gross receipts tax and any existing local license tax.

Section 6 of the proposal reorganizes the exemptions for certain amusements, so that a list of all exempt amusements will appear in one place in the statutes. The list includes those amusements that are currently exempted in Article 2, amusements that are listed as exempt in other sections of the General Statutes, and amusements that are described in other sections of the General Statutes and that are not currently taxed.

Professionals. G.S. 105-41 imposes a statewide privilege license on persons practicing certain professions or engaging in certain businesses. Section 7 of this proposal makes various clarifying and technical changes to the statute and reorganizes existing exemptions found throughout the statutes so that all exemptions will appear in G.S. 105-41. Currently the statute exempts persons age 75 and over and certain persons practicing the professional art of healing. The bill adds to this list blind persons engaging in a trade or profession as a sole proprietor. The exemption for blind persons is currently set out in another section of Chapter 105, which this bill repeals. Section 8 of the bill moves from Chapter 105 to Chapter 93B, Occupational Licensing Boards, a provision that exempts any person serving in the armed forces or in the merchant marine from paying license fees to a licensing board or commission or to the State. This exemption belongs in the Occupational Licensing Chapter because it relates to occupational licensing, not to taxes.

The proposal does not change the current law regarding the privilege license tax for accountants. G.S. 105-41(c) provides that every person engaged in the public practice of accounting as principal or manager of the business of public accountant pays an annual $50.00 license tax. That person also pays a $12.50 license tax for each employee who supervises or handles the work of auditing, devising, or installing systems of accounts. The Committee considered an earlier version of the proposal that would have repealed the $12.50 license for these employees and would have required all certified public accountants and accountants as defined in Chapter 93 of the General Statutes (Certified Public Accountants) to pay an annual license tax of $50.00.[1] The Committee was not able to agree on a workable alternative to the current tax on accountants.

Installment Paper Dealers. Installment paper dealers are persons engaged in the business of dealing in, buying, or discounting installment paper, notes, bonds, contracts, or evidences of debt, when at the time or in connection with the

[1] Chapter 93 defines a person engaged in the "public practice of accountancy" as one who holds himself or herself out to the public as a certified public accountant or an accountant and in consideration of compensation received or to be received offers to perform or does perform, for other persons, services which involve the auditing or verification of financial transactions, books, accounts, or records, or the preparation, verification or certification of financial, accounting and related statements intended for publication or renders professional services or assistance in or about any and all matters of principle or detail relating to accounting procedure and systems, or the recording, presentation or certification and the interpretation of such service through statements and reports.

execution of these instruments, a lien is reserved or taken on personal property located in the State to secure the payment of the obligations. Under current law, these dealers pay an annual $100 license tax and a quarterly tax of .275% of the total face value of the obligations within the preceding quarterly calendar months. Section 9 of this bill would repeal the $100 license tax. Dealers will continue to pay the quarterly tax.

Banks. Under current law, banks are issued a privilege license each year and pay a tax at the rate of $30.00 for each $1,000,000 or fractional part of total assets held. These assets are determined by averaging the total assets shown in the four quarterly call reports of condition (consolidation domestic subsidiaries) for the preceding calendar year as required by bank regulatory authorities. Section 10 of the bill eliminates the license and requires the banks to submit instead an annual report to the Department of Revenue showing the average of their total assets. The privilege tax must be paid with the report by July1. The submission of a report in lieu of issuing an annual license will relieve the Department of having to issue licenses that vary yearly for each bank. The Department's current computer system has had difficulty issuing licenses that vary each year, and this problem will become even more difficult with the year 2000 changeover. Also, a report will assist the Department in auditing banks. The bill also repeals the $100 annual privilege tax for banks that have been in operation for less than a year. New banks will be required instead to pay a tax on the average of the total assets determined by the number of days in operation.

Alcoholic Beverages. Legislative Proposal 6 would repeal annual privilege licenses on ABC permittees, raise the ABC permit fees by the corresponding amount, and simplify the tax rate on malt beverages. In order to engage in a business involving alcoholic beverages, a person must obtain both a permit issued by the ABC Commission and a corresponding annual State license issued by the Department of Revenue. The person must obtain the ABC permit before applying for the license. Upon payment of the State license tax, issuance of the license is mandatory if the applicant has the corresponding ABC permit. The information and qualifications required for the annual State license are the same as the information and qualifications required for the corresponding one-time ABC permit. The additional State license serves no purpose other than to raise revenue. The bill would repeal these privilege licenses in order to eliminate the duplicate requirement of applying for a State privilege license and a corresponding ABC permit. The approximately $3.1 million revenue loss from the repeal of these privilege licenses would be offset by an increase in the ABC permit fees set out in G.S. 18B-902(d), by repeal of the reduced fees for combined permits in G.S. 18B-902(e), and by an increase in the annual renewal fees for mixed beverage and guest room cabinet permits in G.S. 18B-903(b).

The bill will also simplify the filing requirements for malt beverage taxpayers by setting a single rate of excise tax on malt beverages. Under current

law, an excise tax of 48.387 cents per gallon is assessed against malt beverages in barrels holding at least 7¾ gallons and an excise tax of 53.376 cents per gallon is assessed against malt beverages in cans, bottles, barrels, or other containers holding less than 7¾ gallons. The bill would impose an excise tax of 53.177 cents per gallon on the sale of any malt beverage, regardless of the container. Thus, the bill simplifies the filing and reporting requirements for malt beverages, unfortified wine, and fortified wine by eliminating the requirement that vendors of these products specify the size and type of containers sold in their monthly reports to the Secretary. This information will now be shown on the invoice.

Other changes. Sections 1, 2, 3, and 5 of the proposal make conforming changes throughout Article 2 to clarify that the Article now deals more with privilege taxes, such as a tax on a business' gross receipts, rather than with license taxes. The only State license taxes that will remain in Article 2 if this proposal is enacted are attorneys-at-law and other professionals ($50.00) (G.S. 105-41) and loan agencies or brokers ($750.00) (G.S. 105-88). These sections of the proposal also eliminate the half-rate license tax for professionals and loan agencies that begin business more than halfway through the year.

FISCAL ANALYSIS MEMORANDUM

DATE: February 26, 1998

TO: Revenue Laws Study Commission

FROM: Richard Bostic and Warren Plonk
Fiscal Research Division

RE: Simplify License and Excise Taxes

FISCAL IMPACT

Yes (X) **No ( )** **No Estimate Available ( )**

	FY 1998-99	FY 1999-00	FY 2000-01	FY 2001-02	FY 2002-03
REVENUES					
General Fund					
No Half Year License		$14,375	$14,375	$14,375	$14,375
Amusements		**No Impact**			
Banks		1,400	1,400	1,400	1,400
Installment Paper Dealers		(123,800)	(123,800)	(123,800)	(123,800)
ABC Licenses & Permits		**Revenue Neutral**			
Beer Excise Tax		**Revenue Neutral**			
Net Change - G.F. Revenue		**($108,025)**	**($108,025)**	**($108,025)**	**($108,025)**
EXPENDITURES					
General Fund (savings)		**$68,877**	**$71,042**	**$73,346**	**$75,799**

POSITIONS: Abolish 3 positions in the Department of Revenue

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Department of Revenue, Alcoholic Beverage Commission

EFFECTIVE DATE: Sections 1 through 12 (privilege licenses) become effective July 1,1999 and remaining sections (ABC licenses and permits) become effective May 1, 1999.

BILL SUMMARY: The act repeals the state privilege license taxes for amusements, installment paper dealers, and alcoholic beverages. It changes the privilege tax on new banks and eliminates the proration of license fees for loan agencies and professionals. It creates a uniform malt beverage tax, raises the fee on ABC permits, and simplifies the filing and reporting requirements for alcoholic beverages.

ASSUMPTIONS AND METHODOLOGY:

Section 2

Part (c) of section 2 of the bill ends the practice of charging half the privilege license tax to an individual who applies after the midpoint of the fiscal year. Upon passage of this bill, only professionals and loan agencies remain subject to annual license fees. For example, a new loan agency applying for a privilege license after January 1, 1999 will pay the full $750 license fee, then pay $750 to renew the license in June. Except for accountants, Revenue does not have data on the number of licenses that were paid for half year. 675 accountants paid $25 for a half year license in FY 1996-97and 472 bought a half year license in FY 1995-96. Averaging the two years, this note assumes 575 accountants needing a partial year license will pay the full $50 in FY 1999-00. This will generate a gain to the General Fund of $14,375.

Sections 4 & 5

In FY 1996-97, there were 323 privilege licenses issued to amusements, circuses, dances, and rodeos generating $17,737 in General Fund income. For this group the license fee serves as advance payment toward the 3% gross receipts tax collected on their performances. Except for the small amount of interest that the Department may earn on license revenue, there is no fiscal impact from eliminating the annual license fee.

Section 8

Section 8 eliminates the $100 license fee for installment paper dealers who engage in the business of "dealing in, buying, or discounting installment paper, notes, bonds, contracts, or evidences of debt". These dealers also pay a tax of .275% of the face value of the financial instruments they handle. Unlike the amusements license, the $100 paid by installment paper dealers is not an advance payment for the tax they pay. Based on FY 1996-97 collections, this bill will produce a loss of $123,800 annually beginning in FY 1999-00.

Section 9

Banks pay an annual privilege tax equal to $30 for each million dollars of assets they hold. However, a new bank pays a $100 privilege tax until it has been in operation for a year. This $100 fee is eliminated in section 9 and replaced with a requirement for new banks to pay the regular tax prorated by the number of days it operated during the fiscal year.

According to Ray Grace of the North Carolina Banking Commission, the establishment of new banks is cyclical and influenced both by the economy and by actions of the mega-banks. There were no new banks in 1993 and 1994. There were 2 in 1995 and 3 in 1996. In 1997, there were 10 new banks plus the conversion of a thrift to a bank. Mr. Grace anticipates 6 new banks in 1998.

This note assumes three new banks are established each year and uses FY 1996-97 as a model. The chart below shows the date each bank was chartered by the Banking Commission in 1996 and the average assets for the three banks in the four quarters of 1996-97. Under this bill, instead of paying $100 in their first year, the banks would pay $30 for each million dollars in assets with an adjustment for the number of days in operation. For example, Bank A would pay $30 x 13.239 x (344/365) = $374.13

	Established	Avg. Assets	Est. Tax	Current Tax	
Bank A	7/22/96	$13,239,250	$374.13	$100	
Bank B	11/18/96	$30,036,333	$555.06	$100	
Bank C	7/31/96	$28,317,750	$779.00	$100	
			$1,708.19	$300	Difference = $1,408.19

In summary, this note assumes additional revenue of $1,400 per year due to the change in section 9.

Sections 14 - 20; 22 - 29

Under current law, a business that sells beer, wine, and/or spirituous liquor is required to secure the appropriate permits from the State ABC Commission and the appropriate commercial and retail licenses from the Department of Revenue. Sections 17 & 18 repeal the Department of Revenue's annual commercial and retail licensing requirements. New businesses filing permit applications with the ABC Commission will no longer have to file a license application with the Department of Revenue. The Department collected an estimated $3.1 million from 40,000 licensees in FY 1996-97. This note assumes the revenue from ABC licenses in FY 1998-99 and beyond would have been $3.3 million per year.

To offset the annual $3.3 million revenue loss, the fees for ABC permits are increased in sections 28 and 29 of the bill. This revenue increase is based on collections data from ABC permits issued in fiscal year 1996-97. ABC permit fees were increased so the product of the number of permits issued for that period, multiplied by the new fees, yields an increase of $3.3 million in General Fund revenues.

Since ABC permits are business specific (malt beverage, fortified wine, etc.), some businesses may be required to hold more than one permit. All ABC permits are continuing except for the brown bagging and the special occasions permits. This means as long as the permittee meets the qualifications of a permit, it does not have to renew annually. Under the proposed act, all businesses that currently hold licenses and permits prior to May 1, 1999 will not be affected by this act as long as they continue to meet the qualifications of their ABC permit. If an existing business fails to qualify, then they will have to reapply for new ABC permits and pay the higher fees.

By eliminating the processing of 40,000 ABC licenses each year, the Department of Revenue could reduce its clerical staff by up to three Grade 57 clerical employees in the Business License & Returns Section of the Office Examination Division. The savings from these positions is

$68,877 in FY 1999-00. This amount is adjusted in future years based on the projected growth estimated for Average Hourly Earnings in Manufacturing.

Section 21

The excise tax rates on beer are combined into a single rate in section 21. Beer sold in barrels is currently taxed at 48.387 cents per gallon and beer sold in bottles and cans is currently taxed at 53.376 cents per gallon. The combined rate of 53.177 cents per gallon preserves the General Fund revenue expected to be collected from both rates. Although the proposal is revenue neutral, those selling beer in bottles and cans will pay a little less tax and those selling beer in barrels will pay a little more. For example, in 1996-97 producers of beer in bottles and cans would have paid $302,252 less in excise tax while producers of beer by the barrel would have paid $302,252 more in excise tax.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S D

Legislative Proposal 7
98-LAX-003B(3.1)(X)(Z)
(THIS IS A DRAFT AND IS NOT READY FOR INTRODUCTION)

Short Title: Motor Fuel Tax Changes. (Public)

Sponsors: Senators Kerr, Cochrane, Dalton, Hartsell, and Hoyle.

Referred to:

A BILL TO BE ENTITLED

AN ACT TO EXEMPT RACING GASOLINE FROM THE PER GALLON EXCISE TAX, TO CLARIFY THE TAXATION OF KEROSENE, AND TO MAKE OTHER CHANGES IN THE MOTOR FUEL TAX LAWS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 105-449.39 reads as rewritten:

"**§ 105-449.39. Credit for payment of motor fuel tax.**

Every motor carrier subject to the tax levied by this Article is entitled to a credit for tax paid by the carrier on fuel purchased in the State. A motor carrier who files a quarterly report is entitled to a credit at a rate equal to the flat cents-per-gallon rate plus the variable cents-per-gallon rate of tax in effect during the quarter for which the credit is claimed. A motor carrier who files an annual report is entitled to a credit at a rate equal to the flat cents-per-gallon rate plus the average of the two variable cents-per-gallon rates of tax in effect during the year for which the credit is claimed. To obtain a credit, the motor carrier must furnish evidence satisfactory to the Secretary that the tax for which the credit is claimed has been paid.

If the amount of a credit to which a motor carrier is entitled for a reporting period exceeds the motor carrier's liability for that reporting period, ~~the excess may, in accordance with rules~~

~~adopted by the Secretary, be refunded to the motor carrier or carried forward and applied to the motor carrier's tax liability for another reporting period. Before the Secretary allows a motor carrier a refund, the Secretary may audit the motor carrier's records or require the motor carrier to furnish a bond under G.S. 105-449.40.~~ the Secretary must refund the excess to the motor carrier."

Section 2. G.S. 105-449.52(b) reads as rewritten:

"(b) Hearing. -- Any person denying liability for a penalty imposed under this section ~~may~~ must pay the penalty under protest and apply to the Department of Revenue for a hearing. Upon receiving a request for a hearing, the Secretary shall schedule a hearing before a duly designated employee or agent of the Department within 30 days after receipt of the request. If after the hearing the Department determines that the person was not liable for the penalty, the amount collected shall be refunded. If after the hearing the Department determines that the person was liable for the penalty, the person paying the penalty may bring an action in the Superior Court of Wake County against the Secretary of Revenue for refund of the penalty. No restraining order or injunction shall issue from any court of the State to restrain or enjoin the collection of the penalty or to permit the operation of the vehicle without payment of the penalty."

Section 3. G.S. 105-449.60 reads as rewritten:

"**§ 105-449.60. Definitions.**

The following definitions apply in this Article:

(1) Antiknock Index Number. -- The arithmetic average of the American Society for Testing and Materials (ASTM) Research octane number (RON) and the ASTM Motor octane number (MON), that is (RON + MON)/2.

~~(1)~~ (1a) Blended fuel. -- A mixture composed of gasoline or diesel fuel and another liquid, other than a de minimus amount of a product such as carburetor detergent or oxidation inhibitor, that can be used as a fuel in a highway vehicle.

(2) Blender. -- A person who produces blended fuel outside the terminal transfer system.

(3) Bulk-end user. -- A person who maintains storage facilities for motor fuel and uses part or all of the stored fuel to operate a highway vehicle.

(4) 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.

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

(6) 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.

(7) Diesel fuel. -- Any liquid, other than gasoline, that is suitable for use as a fuel in a diesel-powered highway vehicle. The term includes kerosene. The term does not include jet fuel sold to a buyer who is certified to purchase jet fuel under the Code.

(8) Distributor. -- A person who acquires motor fuel from a supplier or from another distributor for subsequent sale.

(9) Dyed diesel fuel. -- Diesel fuel that meets the dyeing and marking requirements of § 4082 of the Code.

(10) Elective supplier. -- A supplier that is required to be licensed in this State and that elects to collect the excise tax due this State on motor fuel that is removed by the supplier at a terminal located in another state and has this State as its destination state.

(11) 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.

(12) Fuel alcohol. -- Methanol or fuel grade ethanol.

(13) Fuel alcohol provider. -- A person who does any of the following:

a. Produces fuel alcohol.

b. Imports fuel alcohol outside the terminal transfer system by means of a marine vessel, a transport truck, or a railroad tank car.

(14) Gasohol. -- A blended fuel composed of gasoline and fuel grade ethanol.

(15) Gasoline. -- Any of the following:

a. All products that are commonly or commercially known or sold as gasoline and are suitable for use as a fuel in a highway vehicle, other than products that ~~have an American Society for~~

~~Testing Materials octane number of less than 75 as determined by the motor method.~~ meet any of the following descriptions:

1. Have an Antiknock Index Number of less than 80,
2. Have an Antiknock Index Number of more than 100, contain more than 0.05 grams per gallon of lead, and have a 90 percent (90%) evaporation at a maximum of 290 degrees Fahrenheit as determined by the American Society for Testing and Materials Test Method D 86,
3. Have an Antiknock Index Number of more than 100, contain more than 2.8 weight percent oxygen, and have a 90 percent (90%) evaporation at a maximum temperature of 290 degrees Fahrenheit as determined by the American Society for Testing and Materials Test Method D 86.

b. A petroleum product component of gasoline, such as naptha, reformate, or toluene.

c. Gasohol.

d. Fuel grade ethanol.

The term does not include aviation gasoline sold for use in an aircraft motor. 'Aviation gasoline' is gasoline that is designed for use in an aircraft motor and is not adapted for use in an ordinary highway vehicle.

(16) Gross gallons. -- The total amount of motor fuel measured in gallons, exclusive of any temperature, pressure, or other adjustments.

(17) Highway. -- Defined in G.S. 20-4.01(13).

(18) Highway vehicle. -- A self-propelled vehicle that is designed for use on a highway.

(19) Import. -- To bring motor fuel into this State by any means of conveyance other than in the fuel supply tank of a highway vehicle. 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.

(19a) In-State-only supplier. -- Either of the following:

a. A supplier that is required to have a license and elects not to collect the excise tax due this State on motor fuel that is removed by the supplier at a terminal located in another state and has this State as its destination state.

b. A supplier that does business only in this State.

(20) Motor fuel. -- Gasoline, diesel fuel, and blended fuel.

(21) Motor fuel rate. -- The rate of tax set in G.S. 105-449.80.

(22) Motor fuel transporter. -- A person who transports motor fuel outside the terminal transfer system by means of a transport truck, a railroad tank car, or a marine vessel.

(23) Net gallons. -- The amount of motor fuel measured in gallons when corrected to a temperature of 60 degrees Fahrenheit and a pressure of 14 7/10 pounds per square inch.

(24) Permissive supplier. -- An out-of-state supplier that elects, but is not required, to have a supplier's license under this Article.

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

(26) Position holder. -- The person who holds the inventory position in motor fuel in a terminal, as reflected on the records of the terminal operator. A person holds the inventory position in motor fuel when that person has a contract with the terminal operator for the use of storage facilities and terminaling services for fuel at the terminal. The term includes a terminal operator who owns fuel in the terminal.

(27) Rack. -- A mechanism for delivering motor fuel from a refinery, a terminal, or a bulk plant into a transport truck, a railroad tank car, or another means of transfer that is outside the terminal transfer system.

(28) Removal. -- A physical transfer other than by evaporation, loss, or destruction. A physical transfer to a transport truck or another means of conveyance outside the terminal transfer system is complete upon delivery into the means of conveyance.

(29) Retailer. -- A person who maintains storage facilities for motor fuel and who sells the fuel at retail or dispenses the fuel at a retail location.
(30) Secretary. -- Defined in G.S. 105-228.90.
(31) Supplier. -- Any of the following:
a. A position holder or a person who receives motor fuel pursuant to a two-party ~~exchange.~~ transaction.
b. A fuel alcohol provider.
(32) System transfer. -- Either of the following:
a. A transfer of motor fuel within the terminal transfer system.
b. A transfer, by transport truck or railroad tank car, of fuel grade ethanol.
(33) Tank wagon. -- A truck that is not a transport truck and has multiple compartments designed or used to carry motor fuel.
(33a) Tax. -- An inspection or other excise tax on motor fuel and any other fee or charge imposed on motor fuel on a per-gallon basis.
(34) Terminal. -- A motor fuel storage and distribution facility that has been assigned a terminal control number by the Internal Revenue Service, is supplied by pipeline or marine vessel, and from which motor fuel may be removed at a rack.
(35) Terminal operator. -- A person who owns, operates, or otherwise controls a terminal.
(36) Terminal transfer system. -- The motor fuel distribution system consisting of refineries, pipelines, marine vessels, and terminals. The term has the same meaning as 'bulk transfer/terminal system' under 26 C.F.R. § 48.4081-1.
(37) Transmix. -- Either of the following:
a. The buffer or interface between two different products in a pipeline shipment.
b. A mix of two different products within a refinery or terminal that results in an off-grade mixture.
(38) Transport truck. -- A semitrailer combination rig designed or used to transport loads of motor fuel over a highway.
(39) Trustee. -- A person who is licensed as a supplier, an elective supplier, or a permissive supplier and

who receives tax payments from and on behalf of a licensed distributor.

(40) Two-party ~~exchange.~~ transaction. -- A transaction in which motor fuel is transferred from one licensed supplier to another licensed supplier pursuant to an exchange agreement or a sale whereby the supplier that is the position holder agrees to deliver motor fuel to the other supplier or the other supplier's customer at the rack of the terminal at which the delivering supplier is the position holder.

(41) User. -- A person who owns or operates a licensed highway vehicle and does not maintain storage facilities for motor fuel."

Section 4. G.S. 105-449.72 is amended by adding the following new subsection to read:

"(d) Replacements. -- When a license holder files a bond or an irrevocable letter of credit as a replacement for a previously filed bond or letter of credit and the license holder has paid all taxes and penalties due under this Article, the Secretary must take one of the following actions:

(1) Return the previously filed bond or letter of credit.

(2) Notify the person liable on the previously filed bond and the license holder that the person is released from liability on the bond."

Section 5. G.S. 105-449.87(b) reads as rewritten:

"(b) Liability. -- The operator of a highway vehicle that uses motor fuel that is taxable under this section is liable for the tax. If the highway vehicle that uses the fuel is owned by or leased to a motor carrier, the motor carrier is jointly and severally liable for the tax. If the end seller of motor fuel taxable under this section knew or had reason to know that the motor fuel would be used for a purpose that is taxable under this section, the end seller is jointly and severally liable for the tax. If the Secretary determines that a bulk-end user or retailer used or sold untaxed dyed diesel fuel to operate a highway vehicle when the fuel is dispensed from a storage facility or through a meter marked for nonhighway use, all fuel delivered into that storage facility is presumed to have been used to operate a highway vehicle."

Section 6. G.S. 105-449.88 reads as rewritten:

"**§ 105-449.88. Exemptions from the excise tax.**

The excise tax on motor fuel does not apply to the following:

(1) Motor fuel removed, by transport truck or another means of transfer outside the terminal transfer system, from a terminal for export, if the supplier of the motor fuel collects tax on it at the rate of the motor fuel's destination state.
(2) Motor fuel sold to the federal government.
(3) Motor fuel sold to the State for its use.
(4) Motor fuel sold to a local board of education for use in the public school system.
(5) Diesel that is kerosene and is sold to an airport."

Section 7. G.S. 105-449.94 is amended by adding the following new subsection to read:

"(e) Liability. -- A licensed distributor or a licensed importer that deducts an exempt sale when paying tax to a supplier and does not report the sale by filing the return required by this section is liable for a penalty. The penalty is the amount of tax that would have been payable on the sale of the fuel if the distributor or importer had not claimed the sale as an exempt sale."

Section 8. Part 5 of Article 36C of Chapter 105 of the General Statutes is amended by adding a new section to read:

"**§ 105-449.105A. Monthly refunds for kerosene.**

A distributor who sells kerosene to any of the following may obtain a refund for the excise tax the distributor paid on the kerosene during the preceding month, less the amount of any discount allowed on the kerosene under G.S. 105-449.93:

(1) The end user of the kerosene, if the distributor dispenses the kerosene into a storage facility of the end user that contains fuel used only for heating.
(2) A retailer of kerosene, if the distributor dispenses the kerosene into a storage facility that is marked for nonhighway use in accordance with the requirements in G.S. 105-449.123(a)(1) through (a)(3) and has a dispensing device that is not suitable for use in fueling a highway vehicle."

Section 9. G.S. 105-164.13(11)a. reads as rewritten:

"a. Motor fuel, as defined in G.S. 105-449.60, except motor fuel for which a refund of the per gallon excise tax is allowed under G.S. 105-449.105(c) or ~~(d)~~ (d), under G.S. 105-449.105A, or under G.S. 105-449.107."

Section 10. G.S. 105-449.108 reads as rewritten:

"**§ 105-449.108. When an application for a refund is due.**

(a) ~~Annual Refunds. -- An application for an annual refund of excise tax is due by April 15 following the end of the calendar year for which the refund is claimed. The application must state whether or not the applicant has filed a North Carolina income tax return for the preceding taxable year, and must state that the applicant has paid for the fuel for which a refund is claimed or that payment for the fuel has been secured to the seller's satisfaction.~~ Due Dates. -- The due dates of applications for refunds are as follows:

Refund Period	Due Date
Annual	April 15 after the end of the year
Quarterly	Last day of the month after the end of the quarter
Monthly	22nd day after the end of the month
Upon Application	Last day of month after month in which tax was paid or the event occurred that is the basis of the refund.

(b) ~~Quarterly Refunds. -- An application for a quarterly refund of excise tax is due by the last day of the month following the end of the calendar quarter for which the refund is claimed. The application must state that the applicant has paid for the fuel for which a refund is claimed or that payment for the fuel has been secured to the seller's satisfaction.~~ Requirements. -- An application for an annual refund must state whether or not the applicant has filed a North Carolina income tax return for the preceding taxable year. An application for a refund allowed under this Part must state that the applicant has paid for the fuel for which a refund is claimed or that payment for the fuel has been secured to the seller's satisfaction.

~~(c) Upon Application. -- An application for a refund of excise tax upon application under G.S. 105-449.105 is due by the last day of the month that follows the payment of tax or other event that is the basis of the refund.~~"

Section 11. G.S. 105-449.132 reads as rewritten:

"**§** 105-449.132. How to apply for a license.

To obtain a license, an applicant must file an application with the Secretary on a form provided by the Secretary. An application must include the applicant's name, address, federal employer identification number, and any other information required by the Secretary. An applicant must meet the requirements for obtaining a license set out in G.S. 105-449.69(b)."

Section 12. The following persons who have kerosene that is on hand or in their possession as of 12:01 a.m. on July

1, 1998, and is not in the terminal transfer system must inventory the kerosene, report the results of the inventory to the Secretary of Revenue, and pay tax on the kerosene at the motor fuel rate:

(1) Retailers who maintain storage facilities for kerosene of at least 2,000 gallons.
(2) Distributors.
(3) Importers.
(4) Suppliers.

The amount of kerosene in dead storage is not considered to be part of inventory and shall not be included in the report. "Dead storage" is the amount of kerosene in a storage tank that will not be pumped out of the tank because the kerosene is below the mouth of the draw pipe. For a storage tank with a capacity of less than 2,000 gallons, the amount of kerosene in dead storage is considered to be 200 gallons. For a storage tank with a capacity of 2,000 gallons or more, the amount of kerosene in dead storage is considered to be 400 gallons. The report of inventory must be made on a form provided by the Secretary. The report is due by July 15, 1998.

Section 13. The change made in Section 1 of this act applies to credits generated from reports filed by motor carriers for the reporting period beginning July 1, 1998. The changes made in Sections 3, 5, 6, 8, 9, and 10 become effective July 1, 1998. The remaining sections of this act are effective when they become law.

EXPLANATION OF LEGISLATIVE PROPOSAL 7:
Motor Fuel Tax Changes

TO: Revenue Laws Study Committee
FROM: Martha Walston, Staff Attorney
DATE: May 15, 1998
SPONSOR:

Legislative Proposal 7 would exempt racing fuel from the per gallon excise tax on motor fuel, clarify the taxation of kerosene, and make other clarifying and conforming changes to the motor fuel tax laws.

Racing Fuel

Under current law the excise tax on racing fuel is refunded, because racing fuel is used for off highway purposes. The proposal would exempt racing fuel from the motor fuels tax by exempting it from the definition of gasoline. The exemption for racing fuel would include any product that meets one of the following three descriptions:

- A product with an Antiknock Index Number of less than 80.
- A product with an Antiknock Index Number of more than 100, containing more than 0.05 grams per gallon of lead, and having a 90% evaporation at a maximum of 290 degrees Fahrenheit.
- A product with an Antiknock Index Number of more than 100, containing more than 2.8 weight percent oxygen, and having a 90% evaporation at a maximum temperature of 209 degrees Fahrenheit.

The proposal would relieve the taxpayer of the burden of applying for a refund and the Department of Revenue from having to distribute the refund. The proposal would also solve current inconsistencies among taxpayers who use racing fuel, and would result in the correct amount of tax being collected with less paper work. The proposed changes regarding racing fuel become effective July 1, 1998.

Kerosene

The proposal clarifies that kerosene is a form of diesel fuel by stating that the term diesel fuel includes kerosene. This is to conform to the Federal Government, who will begin taxing kerosene unless it is dyed effective July 1, 1998. The proposal adds diesel fuel that is kerosene and that is sold to an airport to the list of fuel exempt from the motor fuels tax. The proposal also adds a new section to the part of the motor fuels law dealing with refunds, so that a distributor will be allowed to obtain a refund on the sale of kerosene in the

following instances: (1) when the distributor sells kerosene to an end user and the distributor dispenses the kerosene into the end user's storage facility that contains fuel used only for heating, or (2) when the distributor sells kerosene to a retailer and the kerosene is dispensed into a storage facility marked for non-highway use and that has a dispensing device that is not suitable to fuel highway vehicles. These proposed changes become effective July 1, 1998.

The proposal provides that persons possessing kerosene as of July 1, 1998, that is not in the terminal transfer system, must inventory the kerosene, report the inventory to the Secretary, and pay tax on the kerosene. This provision applies to retailers who maintain storage facilities for kerosene of at least 2,000 gallons, distributors, importers, and suppliers. This is a transitional provision and is necessary, because kerosene will be taxed at the rack beginning July 1, 1998. This provision in the proposal is effective when it becomes law.

Other Changes to the Motor Fuel Tax Laws

Section 1 of the proposal provides for an automatic refund to a motor carrier whose credit exceeds his tax liability. A carrier operating in this State is taxed on the amount of motor fuel the carrier used in the State. The carrier is also entitled to a credit for tax paid by the carrier on any fuel purchased in the State. This section applies to credits generated from reports filed by motor carriers for the reporting period beginning July 1, 1998.

Section 2 of the proposal is a conforming change requiring a carrier, who denies liability for a penalty, to pay the penalty under protest and then apply to the Department for a hearing. This section is effective when it becomes law.

Section 4 gives the Secretary of Revenue the authority to send a letter of release instead of returning a bond when a license holder files a bond or irrevocable letter of credit as a replacement for a previously filed bond or letter of credit and the license holder has paid all taxes and penalties due. The Secretary already has this authority under G.S. 105-449.76, when a license is canceled. This section is effective when it becomes law.

Section 5 provides that if the Secretary determines that a bulk-end user or retailer used or sold untaxed dyed diesel fuel to operate a highway vehicle when the fuel was dispensed from a storage facility marked for non-highway use, then all fuel delivered to that storage facility is presumed to have been used for highway use and is taxable. This presumption currently applies to alternative fuels in G.S. 105-449.138(b). This section becomes effective July 1, 1998.

Section 7 imposes a penalty on a licensed distributor or licensed importer when they deduct an exempt sale when paying the excise tax to a supplier and then fail to report the exempt sale when filing a reconciling return showing the exempt sales. The penalty for failing to report is the amount of tax that would have been payable if the distributor or importer had not claimed the sale as an exempt sale. This section is effective when it becomes law.

Section 9 amends G.S. 105-164.13, the statute that sets out exemptions and exclusions from the sales and use tax. This statute lists motor fuel as exempt from the sales and use tax unless a refund of the motor fuel tax is allowed. The proposal adds a distributor, who receives a motor fuel tax refund on kerosene sold, to those taxpayers who must pay sales tax on motor fuel.

Section 10 clarifies when applications for refunds of the motor fuel tax are due. This section becomes effective July 1, 1998.

Section 11 requires an applicant for a license as a provider of alternative fuel, a bulk-end user of alternative fuel, or a retailer of alternative fuel to meet the requirements for licensing set out in G.S. 105-449.69(b). This section is effective when it becomes law.

FISCAL ANALYSIS MEMORANDUM

DATE: March 18, 1998

TO: Revenue Laws Study Committee

FROM: Richard Bostic
Fiscal Research Division

RE: Motor Fuel Tax Changes

FISCAL IMPACT

Yes (X) **No ( )** **No Estimate Available ( )**

	FY 1998-99	FY 1999-00	FY 2000-01	FY 2001-02	FY 2002-03
REVENUES					
Highway Fund					
Racing Fuel	($8,154)	($8,154)	($8,154)	($8,154)	($8,154)
Kerosene Inventory	$1,271,100				
Motor Carrier Refunds	($240,000)	($240,000)	($240,000)	($240,000)	($240,000)
	$1,022,946	($248,154)	($248,154)	($248,154)	($248,154)
Highway Trust Fund	$423,700				
General Fund	$73,429	$73,429	$73,429	$73,429	$73,429
Local Funds	$36,714	$36,714	$36,714	$36,714	$36,714

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Department of Revenue - Motor Fuels Tax Division

EFFECTIVE DATE: Sections 3, 5, 6, 8, 9, and 10 of the bill are effective on July 1, 1998. The remaining sections are effective when the bill becomes law.

BILL SUMMARY: The bill exempts racing fuel from the motor fuels tax, provides automatic refunds of motor fuel taxes to motor carriers each quarter, clarifies the taxation of kerosene, and makes other changes in the motor fuel tax laws.

ASSUMPTIONS AND METHODOLOGY:

Section 1

A motor carrier operating in North Carolina is taxed on the amount of motor fuel it uses in the state and is entitled to a credit for the motor fuels tax it paid on purchases made in the state. A carrier has two years to request a refund when its tax credits exceed its tax liability. If the motor carrier fails to request a refund within two years of tax payment, then the Department of Revenue keeps the overpayment. From 1990 to 1996, the Department of Revenue earned $6 million or approximately $83,300 per quarter from lapsed refunds. Since the complete implementation of the International Fuel Tax Agreement (IFTA) in 1996, motor carriers have been more aggressive in seeking refunds owed to them. Based on a review of the second quarter of 1997, the amount of lapsed refunds was down to $60,000. Under this bill, carriers would automatically receive refunds and the Highway Fund would no longer receive $240,000 in unanticipated revenues from lapsed refunds each year.

Section 3

This section exempts racing fuel from the motor fuels tax and subjects the retail price of this fuel to the 6% state and local sales tax. Purchasers of racing fuel now receive a refund of the excise tax minus an administrative and inspection fee equal to 1.25 cents per gallon. Beginning in January 1998, sales tax was imposed on racing fuel based on the average wholesale price of regular motor fuel for the prior 12 months. Based on data supplied by the Department of Revenue, 652,347 gallons of racing fuel were purchased in the North Carolina in 1996. Assuming 1996 racing fuel purchases as the standard, the fiscal impact of this tax change is as follows:

Highway Fund = By exempting racing fuel, the Highway Fund would lose $8,154 from the administrative and inspection fee. (652,347 gallons X $.0125)

General Fund = Racing fuel is now subject to the average wholesale price of regular motor fuel. This price was 68.59 cents per gallon in 1997. The average retail price of racing fuel is $3.50 per gallon. This bill will tax motor fuel at the actual retail price.

652,347 gallons X $3.50	= $136,993	Retail price
652,347 gallons X $ .6859	= $ 26,850	Wholesale price
Net Change	$110,143	

The General Fund would receive $73,429 of this increase and local governments would receive $36,714.

Section 7

This section imposes a new penalty on licensed distributors or licensed importers who deduct an exempt sale when paying the excise tax to a supplier and then fail to report the exempt sale when filing a reconciling return. The Department anticipates a revenue gain from this penalty, but cannot estimate the amount.

Section 12

As of July 1,1998, any kerosene in the inventory of retailers, suppliers, distributors, and importers will be taxed at the motor fuel rate. When a similar inventory was taken in 1995, there were 7.6 million gallons of kerosene reported to the Department of Revenue. Assuming the 1998 inventory will mirror 1995, then 7.6 million gallons of kerosene will be taxed at 22.3 cents per gallon to yield a one-time revenue gain of $1,694,800. This gain will be divided 75% to the Highway Fund ($1,271,100) and 25% to the Highway Trust Fund ($423,700).

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S D

Legislative Proposal 8
98-LCX-246F(1.1)(Z)
(THIS IS A DRAFT AND IS NOT READY FOR INTRODUCTION)

Short Title: Revenue Laws Technical Changes. (Public)

Sponsors: Senators Cochrane, Dalton, Kerr, Hartsell, Hoyle, and Webster.

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:

PART I. GENERAL TECHNICAL CHANGES.

Section 1(a). Article 8D of Chapter 105 of the General Statutes is repealed.

Section 1(b). G.S. 105-130.11(a)(2) reads as rewritten:

"(2) ~~Building and loan associations and savings and loan associations subject to tax under Article 8D of this Chapter; cooperative~~ Cooperative banks without capital stock organized and operated for mutual purposes and without profit; and electric and telephone membership corporations organized under Chapter 117 of the General Statutes."

Section 1(c). G.S. 105-130.5(c) is amended by adding a new subdivision to read:

"(5) A savings and loan association may deduct interest earned on deposits at the Federal Home Loan Bank of Atlanta, or its successor, to the extent included in federal taxable income."

Section 1(d). G.S. 105-228.24A is recodified as G.S. 105-130.43.

Section 1(e). G.S. 105-130.43, as recodified by this section, reads as rewritten:

"**§ 105-130.43.** ~~Income tax credit for~~ Credit for savings and loan supervisory fees.

Every savings and loan association is allowed a credit against the ~~income tax imposed on it under Article 4 of this Chapter~~ tax imposed by this Part for a taxable year equal to the amount of supervisory fees, paid by the association during the taxable year, that were assessed by the Administrator of the Savings Institutions Division of the Department of Commerce for the State fiscal year beginning ~~on or~~ during that taxable year. This credit may not exceed the amount of ~~income~~ tax ~~payable by the association~~ imposed by this Part for the taxable ~~year for which the credit is claimed,~~ year, reduced by the sum of all ~~income tax~~ credits allowed against the tax, except tax payments made by or on behalf of the ~~association. The supervisory fees shall not be an allowable deduction in determining taxable income for any association claiming the credit allowed under this section.~~ taxpayer. A taxpayer that claims the credit allowed under this section may not deduct the supervisory fees in determining taxable income."

Section 1(f). This section repeals any law that would otherwise exempt savings and loan associations, as defined in G.S. 54B-4, from the franchise tax imposed in Article 3 of Chapter 105 of the General Statutes.

Section 1(g) This section becomes effective for taxable years beginning on or after January 1, 1999.

Section 2. G.S. 105-17 is repealed.

Section 3. G.S. 105-25 is repealed.

Section 4. G.S. 105-130.5(a)(10) reads as rewritten:

"(10) The total amounts allowed under this ~~Article~~ Chapter during the taxable year as a credit against the taxpayer's income tax. A corporation that apportions part of its income to this State shall make the addition required by this subdivision after it determines the amount of its income that is apportioned and allocated to this State and shall not apply to a credit taken under this ~~Article~~ Chapter the apportionment factor used by it in determining the amount of its apportioned income."

Section 5. G.S. 105-131.1(b) reads as rewritten:

"(b) Each shareholder's pro rata share of an S Corporation's income attributable to the State and each resident shareholder's pro rata share of income not attributable to the State, shall be taken into account by the shareholder in the manner and subject to the adjustments provided in ~~Division II~~ Parts 2 and 3 of this Article and section 1366 of the Code and shall be subject to the tax levied under ~~Division II~~ Parts 2 and 3 of this Article."

Section 6. G.S. 105-131.6 reads as rewritten:

"**§ 105-131.6. Distributions.**

(a) Subject to the provisions of subsection (c) of this section, a distribution made by an S Corporation with respect to its stock to a resident shareholder ~~shall be~~ is taxable to the shareholder as provided in ~~Division II~~ Parts 2 and 3 of this Article to the extent that the distribution is characterized as a dividend or as gain from the sale or exchange of property pursuant to section 1368 of the Code.

(b) Subject to the provisions of subsection (c) of this section, any distribution of money made by a corporation with respect to its stock to a resident shareholder during a post-termination transition period ~~shall not be~~ is not taxable to the shareholder as provided in ~~Division II~~ Parts 2 and 3 of this Article to the extent the distribution is applied against and reduces the adjusted basis of the stock of the shareholder in accordance with section 1371(e) of the Code.

(c) In applying sections 1368 and 1371(e) of the Code to any distribution referred to in this section:

(1) The term "adjusted basis of the stock" means the adjusted basis of the shareholder's stock as determined under G.S. ~~105-131.3; and~~ 105-131.3.

(2) The accumulated adjustments account maintained for each resident shareholder ~~shall~~ must be equal to, and ~~shall be~~ adjusted in the same manner as, the corporation's accumulated adjustments account defined in section 1368(e)(1)(A) of the Code, except that:

a. The accumulated adjustments account shall be modified in the manner provided in G.S. ~~105-131.3(b)(1); and~~ 105-131.3(b)(1).

b. The amount of the ~~Corporation's~~ corporation's federal accumulated adjustments account that existed on the day this State began to measure the S Corporation shareholders' income by reference to the income of the S Corporation ~~shall be~~ is ignored and ~~shall be~~ is treated

for purposes of ~~Divisions I and II of~~ this Article as additional accumulated earnings and profits of the corporation. "

Section 7. G.S. 105-131.7(e) reads as rewritten:

"(e) Amounts paid to the Department on account of the corporation's shareholders under subsections (b) and (c) ~~shall~~ constitute payments on their behalf of the income tax imposed on them under ~~Division II~~ Parts 2 and 3 of this Article for the taxable period."

Section 8. G.S. 105-131.8 reads as rewritten:

"**§ 105-131.8. Tax credits.**

(a) For purposes of G.S. ~~105-151,~~ 105-151 and G.S. 105-160.4, each resident shareholder ~~shall be~~ is considered to have paid a tax imposed on the shareholder in an amount equal to the shareholder's pro rata share of any net income tax paid by the S Corporation to a state ~~which~~ that does not measure the income of S Corporation shareholders by the income of the S Corporation. For purposes of the preceding sentence, the term "net income tax" means any tax imposed on or measured by a corporation's net income.

(b) ~~Each~~ Except as otherwise provided in G.S. 105-160.3, each shareholder of an S Corporation is allowed as a credit against the tax imposed by ~~Division II~~ Parts 2 and 3 of this Article an amount equal to the shareholder's pro rata share of the tax credits for which the S Corporation is eligible. "

Section 9. G.S. 105-134.1(7b) is repealed.

Section 10. G.S. 105-160.3(b) reads as rewritten:

"(b) The following credits are not allowed to an estate or trust:

(1) G.S. 105-151. Tax credits for income taxes paid to other states by individuals.

(2) G.S. 105-151.11. Credit for child care and certain employment-related expenses.

(3) G.S. 105-151.18. Credit for the disabled.

(4) G.S. 105-151.24. Credit for children.

(5) G.S. 105-151.26. Credit for charitable contributions by nonitemizers."

Section 11. G.S. 105-163.3(a) reads as rewritten:

"(a) Requirement. -- Every payer who pays a contractor more than six hundred dollars ($600.00) during a calendar year shall deduct and withhold from compensation paid to ~~a~~ the contractor the State income taxes payable by the contractor on the compensation as provided in this section. The amount of taxes to be withheld is four percent (4%) of the compensation paid to the

contractor. The taxes a payer withholds are held in trust for the Secretary."

Section 12. G.S. 105-163.3(b) reads as rewritten:

"(b) Exemptions. -- The withholding requirement does not apply to the following:

(1) Compensation that is subject to the withholding requirement of G.S. 105-163.2.

(2) Compensation paid to an ordained or licensed member of the clergy.

(3) Compensation paid to an entity exempt from tax under G.S. 105-130.11."

Section 13. G.S. 105-163.3(e) reads as rewritten:

"(e) Records. -- If a payer does not withhold from payments to a nonresident entity because the entity is exempt from tax under G.S. 105-130.11, the payer shall obtain from the entity documentation proving its exemption from tax. If a payer does not withhold from payments to a nonresident corporation or a nonresident limited liability company because the entity has obtained a certificate of authority from the Secretary of State, the payer shall obtain from the entity its corporate identification number issued by the Secretary of State. If a payer does not withhold from payments to an individual because the individual is a resident, the payer shall obtain the individual's address and social security number. If a payer does not withhold from a partnership because the partnership has a permanent place of business in this State, the payer shall obtain the partnership's address and taxpayer identification number. The payer shall retain this information with its records."

Section 14. G.S. 105-164.13(11) reads as rewritten:

"(11) Any of the following fuel:

a. Motor fuel, as defined in G.S. 105-449.60, except motor fuel for which a refund of the per gallon excise tax is allowed under ~~G.S. 105-449.105(c) or (d) or under~~ G.S. 105-449.107.

b. Alternative fuel taxed under Article 36D of this Chapter, unless a refund of that tax is allowed under G.S. 105-449.107."

Section 15. G.S. 105-164.14(a) reads as rewritten:

"(a) Interstate Carriers. -- An interstate carrier is allowed a refund, in accordance with this section, of part of the sales and use taxes paid by it on lubricants, repair parts, and accessories purchased in this State for a motor vehicle, railroad car, locomotive, or airplane the carrier operates. An "interstate

carrier" is a person who is engaged in transporting persons or property in interstate commerce for ~~compensation, is subject to regulation by, and to the jurisdiction of, the Interstate Commerce Commission or the United States Department of Transportation, and is required by either federal agency to keep records according to generally accepted accounting principles (GAAP) or, in the case of a small certificated air carrier, to make reports of financial and operating statistics.~~ compensation. The Secretary shall prescribe the periods of time, whether monthly, quarterly, semiannually, or otherwise, with respect to which refunds may be claimed, and shall prescribe the time within which, following these periods, an application for refund may be made.

An applicant for refund shall furnish the following information and any proof of the information required by the Secretary:

(1) A list identifying the lubricants, repair parts, and accessories purchased by the applicant inside or outside this State during the refund period.

(2) The purchase price of the items listed in subdivision (1) of this subsection.

(3) The sales and use taxes paid in this State on the listed items.

(4) The number of miles the applicant's motor vehicles, railroad cars, locomotives, and airplanes were operated both inside and outside this State during the refund period.

(5) Any other information required by the Secretary.

For each applicant, the Secretary shall compute the amount to be refunded as follows. First, the Secretary shall determine the ratio of the number of miles the applicant operated its motor vehicles, railroad cars, locomotives, and airplanes in this State during the refund period to the number of miles it operated them both inside and outside this State during the refund period. Second, the Secretary shall determine the applicant's proportional liability for the refund period by multiplying this mileage ratio by the purchase price of the items identified in subdivision (1) of this subsection and then multiplying the resulting product by the tax rate that would have applied to the items if they had all been purchased in this State. Third, the Secretary shall refund to each applicant the excess of the amount of sales and use taxes the applicant paid in this State during the refund period on these items over the applicant's proportional liability for the refund period."

Section 16. G.S. 105-197 reads as rewritten:

"§ 105-197. When return required; due date of tax and return.

(a) When Return Required. -- Anyone who, during the calendar year, gives to a donee a gift of a future interest or one or more ~~gifts~~ taxable gifts whose total value exceeds the amount of the annual exclusion set in G.S. 105-188(d) must file a gift tax return, under oath or affirmation, with the Secretary on a form prescribed by the Secretary. For the purpose of this section, a taxable gift is a gift that is not exempt under G.S. 105-188(h) or (i).

(b) Due Date. -- The tax is due on April 15th following the end of the calendar year. A return must be filed on or before the due date of the tax. A taxpayer may ask the Secretary of Revenue for an extension of time for filing a return under G.S. 105-263."

Section 17. G.S. 105-228.5(d) reads as rewritten:

"(d) Tax Rates; Disposition. --

(1) Workers Compensation. -- The tax rate to be applied to gross premiums, or the equivalent thereof in the case of self-insurers, ~~collected~~ on contracts applicable to liabilities under the Workers' Compensation Act shall be two and five-tenths percent (2.5%). The net proceeds shall be credited to the General Fund.

(2) Other Insurance Contracts. -- The tax rate to be applied to gross premiums ~~collected~~ on all other insurance contracts issued by insurers shall be one and nine-tenths percent (1.9%). The net proceeds shall be credited to the General Fund.

(3) Additional Statewide Fire and Lightning Rate. -- An additional tax shall be applied to ~~amounts collected~~ gross premiums on contracts of insurance applicable to fire and lightning coverage, except in the case of marine and automobile policies, at the rate of one and thirty-three hundredths percent (1.33%). Twenty-five percent (25%) of the net proceeds of this additional tax shall be deposited in the Volunteer Fire Department Fund established in Article 87 of Chapter 58 of the General Statutes. The remaining net proceeds shall be credited to the General Fund.

(4) Additional Local Fire and Lightning Rate. -- An additional tax shall be applied to ~~amounts collected~~ gross premiums on contracts of insurance applicable to fire and lightning coverage within fire districts at the rate of one-half of one

percent (1/2 of 1%). The net proceeds shall be credited to the Department of Insurance for disbursement pursuant to G.S. 58-84-25.

(5) Article 65 Corporations. -- The tax rate to be applied to gross premiums and/or gross collections from membership dues, exclusive of receipts from cost plus plans, received by Article 65 corporations shall be one-half of one percent (1/2 of 1%). The net proceeds shall be credited to the General Fund."

Section 18. G.S. 105-228.10 reads as rewritten:

"**§ 105-228.10. No additional local taxes.**

~~No county, city, or town shall be allowed to impose any additional tax, license, or fee, other than ad valorem taxes, upon any insurance company or association paying the fees and taxes~~ No city or county may levy on a person subject to the tax levied in this ~~Article.~~ Article a privilege tax or a tax computed on the basis of gross premiums."

Section 19. G.S. 105-249.3 is repealed.

Section 20. G.S. 105-259(b)(3) reads as rewritten:

"(b) Disclosure Prohibited. -- An officer, an employee, or an agent of the State who has access to tax information in the course of service to or employment by the State may not disclose the information to any other person unless the disclosure is made for one of the following purposes:

(3) Review by a tax official of another ~~state or the Internal Revenue Commissioner of the United States~~ jurisdiction to aid the ~~state or the Commissioner~~ jurisdiction in collecting a tax imposed by this ~~State, the other state, or the United States~~ State or the other jurisdiction if the laws of the other ~~state or the United States allow the state or the United States~~ jurisdiction allow it to provide similar tax information to a representative of this State."

Section 21. G.S. 105-264 reads as rewritten:

"**§ 105-264. Effect of Secretary's interpretation of revenue laws.**

It ~~shall be~~ is the duty of the Secretary to interpret all laws administered by the Secretary. The Secretary's interpretation of these laws shall be consistent with the applicable rules.

An interpretation by the Secretary is **prima facie** correct. When the Secretary interprets a law by adopting a rule or publishing a bulletin or directive on the law, the interpretation

is a protection to the officers and taxpayers affected by the interpretation, and taxpayers are entitled to rely upon the interpretation. If the Secretary changes ~~a rule or a bulletin,~~ an interpretation, a taxpayer who relied ~~upon the rule or bulletin~~ on it before it was changed is not liable for any penalty or additional assessment on any tax that accrued before the ~~rule or bulletin~~ interpretation was changed and was not paid by reason of reliance upon the ~~rule or bulletin.~~ interpretation. If a taxpayer requests in writing specific advice from the Department and receives in response erroneous written advice, the taxpayer is not liable for any penalty or additional assessment attributable to the erroneous advice furnished by the Department to the extent the advice was reasonably relied upon by the taxpayer and the penalty or additional assessment did not result from the taxpayer's failure to provide adequate or accurate information.

This section does not prevent the Secretary from changing an interpretation and it does not prevent a change in an interpretation from applying on and after the effective date of the change."

Section 22. G.S. 105-277.3 reads as rewritten:

"**§ 105-277.3. Agricultural, horticultural, and forestland -- Classifications.**

(a) Classes Defined. -- The following classes of property are ~~hereby~~ designated special classes of property under authority of ~~Article V, Sec. 2(2)~~ Section 2(2) of Article V of the North Carolina Constitution and shall be appraised, ~~assessed and taxed as hereinafter provided:~~ assessed, and taxed as provided in G.S. 105-277.2 through G.S. 105-277.7.

(1) Agricultural Land. -- Individually owned agricultural land consisting of one or more tracts, one of which consists of at least 10 acres that are in actual production and that, for the three years preceding January 1 of the year for which the benefit of this section is claimed, have produced an average gross income of at least one thousand dollars ($1,000). Gross income includes income from the sale of the agricultural products produced from the land and any payments received under a governmental soil conservation or land retirement program. Land in actual production includes land under improvements used in the commercial production or growing of crops, plants, or animals.

(2) Horticultural Land. -- Individually owned horticultural land consisting of one or more tracts, one of which consists of at least five acres that are in actual production and that, for the three years preceding January 1 of the year for which the benefit of this section is claimed, have ~~either:~~ met the applicable minimum gross income requirement. Land in actual production includes land under improvements used in the commercial production or growing of fruits or vegetables or nursery or floral products. Land that has been

~~a.~~ ~~Been~~ used to produce evergreens intended for use as Christmas trees ~~and~~ must have met the ~~qualifying or~~ minimum gross income requirements established by the Department of Revenue for the ~~land; or~~

~~b.~~ ~~Produced~~ land. All other horticultural land must have produced an average gross income of at least one thousand dollars ($1,000). Gross income includes income from the sale of the horticultural products produced from the land and any payments received under a governmental soil conservation or land retirement program. ~~Land in actual production includes land under improvements used in the commercial production or growing of fruits or vegetables or nursery or floral products.~~

(3) Forestland. -- Individually owned forestland consisting of one or more tracts, one of which consists of at least 20 acres that are in actual production and are not included in a farm unit.

(b) Natural Person Ownership Requirements. -- In order to come within a classification described in ~~subdivision (a)(1), (2) or (3), above, the property must,~~ subsection (a) of this section, the land must, if owned by ~~natural persons,~~ a natural person, also satisfy one of the following conditions:

(1) It is the owner's place of residence.

(2) It has been owned by the current owner or a relative of the current owner for the four years preceding January 1 of the year for which the benefit of this section is claimed.

(3) At the time of transfer to the current owner, it qualified for classification in the hands of a business entity or trust ~~which~~ that transferred the ~~property~~ land to the current owner who was a member

of the business entity or a beneficiary of the trust, as appropriate.

(b1) Entity Ownership Requirements. -- ~~If~~ In order to come within a classification described in subsection (a) of this section, the land must, if owned by a business entity or trust, ~~the property must~~ have been owned by the business entity or trust or by one or more of its ~~members, or by one or more of its creators in the case of a trust,~~ members or creators, respectively, for the four years immediately preceding January 1 of the year for which the benefit of this section is claimed. ~~Notwithstanding the provisions of G.S. 105-277.2(4)b, a business entity qualifying for a classification described in G.S. 105-277.3 shall not lose the benefit of the classification by reason of the death of one of its members if the decedent's ownership passes to and remains in a relative of the decedent.~~

(b2) Exception to Ownership Requirements. -- ~~Property loses its eligibility for the classifications described in subsection (a) of this section if ownership of the property passes to anyone other than a relative of the owner or passes to or from a business entity or trust from or to anyone other than its members or its creators or beneficiaries, respectively, except that property does not lose its eligibility if both of the following conditions are met: (i) it~~ G.S. 105-277.4(c) provides that deferred taxes are payable if land fails to meet any condition or requirement for classification. Accordingly, if land fails to meet an ownership requirement due to a change of ownership, G.S. 105-277.4(c) applies. Despite this failure and the resulting liability for taxes under G.S. 105-277.4(c), the land may qualify for classification in the hands of the new owner if both of the following conditions are met, even if the new owner does not meet all of the ownership requirements of subsections (b) and (b1) of this section with respect to the land:

(1) The land was appraised at its present use value or was eligible for appraisal at its present use value ~~pursuant to that subsection~~ at the time title to the ~~property~~ land passed to the ~~present owner, and~~ ~~(ii) at~~ new owner.

(2) At the time title to the ~~property~~ land passed to the ~~present~~ new owner, the owner owned other ~~property~~ land classified under subsection (a).

~~The fact that property may retain its eligibility because the preceding two conditions were met does not affect any liability for deferred taxes under G.S. 105-277.4(c) if those taxes were otherwise due at the time title passed to the present owner.~~

(c) Repealed by Session Laws 1995, c. 454, s. 2.

(d) Exception for Conservation Reserve Program. -- ~~Enrollment~~ Land enrolled in the federal Conservation Reserve Program authorized by ~~Title XII of the Food Security Act of 1985 (Pub. L. 99-198), as amended, shall not preclude eligibility of land for present use value treatment solely on the grounds that the land is no longer~~ 16 U.S.C. § 1381 is considered to be in actual production, and income derived from participation in the federal Conservation Reserve Program may be used in meeting the minimum gross income requirements of this section either separately or in combination with income from actual production. Land enrolled in the federal Conservation Reserve Program shall be assessed as agricultural land if it is planted in vegetation other than trees, or as ~~forest land~~ forestland if it is planted in trees.

(e) Exception for Turkey Disease. -- ~~Notwithstanding the provisions of subsection (a) of this section, agricultural~~ Agricultural land that meets all of the following conditions ~~does not lose its eligibility for present use value treatment solely on the grounds that it is no longer in actual production, it no longer meets the minimum income requirements, or both:~~ is considered to be in actual production and to meet the minimum gross income requirements:

(1) The land was in actual production in turkey growing within the preceding two years and qualified for present use value treatment while it was in actual production.

(2) The land was taken out of actual production in turkey growing solely for health and safety considerations due to the presence of Poult Enteritis Mortality Syndrome among turkeys in the same county or a neighboring county.

(3) The land is otherwise eligible for present use value treatment."

Section 23. G.S. 105-277.4(c) reads as rewritten:

"(c) Deferred Taxes. -- ~~Property~~ Land meeting the conditions for classification under G.S. 105-277.3 shall be taxed on the basis of the value of the ~~property~~ land for its present use. The difference between the taxes due on the present-use basis and the taxes ~~which~~ that would have been payable in the absence of this classification, together with any interest, penalties, or costs that may accrue thereon, ~~shall be~~ are a lien on the real property of the taxpayer as provided in G.S. 105-355(a). The difference in taxes shall be carried forward in the records of the taxing unit or units as deferred ~~taxes, but shall not be payable, unless and~~

~~until the property loses its eligibility for the benefit of this classification.~~ taxes. The taxes become due and payable when the land fails to meet any condition or requirement for classification. The tax for the fiscal year that opens in the calendar year in which ~~a disqualification occurs shall be~~ deferred taxes become due is computed as if the ~~property~~ land had not been classified for that year, and taxes for the preceding three fiscal years ~~which~~ that have been deferred ~~shall immediately be~~ are immediately payable, together with interest ~~thereon~~ as provided in G.S. 105-360 for unpaid ~~taxes which shall accrue~~ taxes. Interest accrues on the deferred taxes due as if they had been payable on the dates on which they originally became due. If only a part of the qualifying tract of land ~~loses its eligibility,~~ fails to meet a condition or requirement for classification, a determination shall be made of the amount of deferred taxes applicable to that part and that amount ~~shall become~~ becomes payable with interest as provided above. Upon the payment of any taxes deferred in accordance with this section for the three years immediately preceding a disqualification, all liens arising under this subsection ~~shall be~~ are extinguished."

Section 24. G.S. 105-277.2(4)b. reads as rewritten:

"b. A business entity having as its principal business one of the activities described in subdivisions (1), (2), and (3) and whose members ~~are all either a natural person~~ are all natural persons who meet one or more of the following conditions:

1. The member is actively engaged in the business of the ~~entity or a~~ entity.
2. The member is a relative of a member who is actively engaged in the business of the entity.
3. The member is a relative of, and inherited the membership interest from, a decedent who met one or both of the preceding conditions after the land qualified for classification in the hands of the business entity."

Section 25. G.S. 105-333(14) reads as rewritten:

"(14) Public service company. -- A railroad company, a pipeline company, a gas company, an electric power company, an electric membership corporation, a telephone company, a telegraph company, a bus line company, an airline company, or a motor freight

carrier company. ~~any other~~ The term also includes any company performing a public service that is regulated by the ~~Interstate Commerce Commission, the Federal Power Commission,~~ United States Department of Energy, the United States Department of Transportation, the Federal Communications Commission, the Federal Aviation Agency, or the North Carolina Utilities Commission, except that the term does not include a water company, a radio common carrier company as defined in G.S. 62-119(3), a cable television company, or a radio or television broadcasting company. ~~The term also includes a motor freight carrier company. For purposes of appraisal under this Article, the term also includes a pipeline company whether or not it performs a public service and whether or not it is regulated by one of the regulatory agencies named in this subdivision.~~"

Section 26. G.S. 105-378(e) is repealed.

Section 27. G.S. 105-395(b) is repealed.

Section 28. G.S. 105-449.88(2) reads as rewritten:

"(2) Motor fuel sold to the federal ~~government.~~ government for its use."

Section 29. G.S. 105-449.105(d) is repealed.

Section 30 G.S. 105-449.110(b) reads as rewritten:

"(b) Interest. -- The rate of interest payable on a refund is the rate set in ~~G.S. 105-242.1(i).~~ G.S. 105-241.1(i). Interest accrues on a refund from the date that is 90 days after the later of the following:

(1) The date the application for refund was filed.

(2) The date the application for refund was due."

Section 31. G.S. 105-487 reads as rewritten:

"**§ 105-487. Use of additional tax revenue by ~~counties and municipalities.~~ counties.**

(a) Except as provided in subsection (c), forty percent (40%) of the revenue received by a county from additional one-half percent (1/2%) sales and use taxes levied under this Article during the first five fiscal years in which the additional taxes are in effect in the county and thirty percent (30%) of the revenue received by a county from these taxes in the next 10 fiscal years in which the taxes are in effect in the county may be used by the county only for public school capital outlay purposes or to retire any indebtedness incurred by the county for these purposes.

~~(b) Except as provided in subsection (c), forty percent (40%) of the revenue received by a municipality from additional one-half percent (1/2%) sales and use taxes levied under this Article during the first five fiscal years in which the additional taxes are in effect in the municipality and thirty percent (30%) of the revenue received by a municipality from these taxes in the second five fiscal years in which the taxes are in effect in the municipality may be used by the municipality only for water and sewage capital outlay purposes or to retire any indebtedness incurred by the municipality for these purposes.~~

(c) The Local Government Commission may, upon petition by a ~~county or municipality, authorize a county or municipality~~ county, authorize the county to use part or all its tax revenue, otherwise required by subsection (a) ~~or (b)~~ of this section to be used for public ~~schools or water and sewage~~ school capital needs, for any lawful purpose. The petition shall be in the form of a resolution adopted by the ~~City Council or~~ Board of County Commissioners and transmitted to the Local Government Commission. The petition shall demonstrate that the county ~~or municipality~~ can provide for its public school ~~or water and sewage~~ capital needs without restricting the use of part or all of the designated amount of the additional one-half percent (1/2%) sales and use tax revenue for ~~these purposes.~~ that purpose.

In making its decision, the Local Government Commission shall consider information contained in the petition concerning not only the public school ~~or water and sewage~~ capital needs, but also the other capital needs of the petitioning ~~county or municipality.~~ county. The Commission may also consider information from sources other than the petition. The Commission shall issue a written decision on each petition stating the findings of the Commission concerning the public school ~~or water and sewage~~ capital needs of the petitioning county ~~or municipality~~ and the percentage of revenue otherwise restricted by subsection (a) ~~or (b)~~ of this section that may be used by the petitioning county ~~or municipality~~ for any lawful purpose.

Decisions of the Commission allowing counties ~~or municipalities~~ to use a percentage of their tax revenue that would otherwise be restricted under subsection (a) ~~or (b)~~ of this section for any lawful purpose are final and shall continue in effect until the restrictions imposed by ~~those subsections~~ that subsection expire. A county ~~or municipality~~ whose petition is denied, in whole or in part, by the Commission may subsequently submit a new petition to the Commission.

(d) For purposes of determining the number of fiscal years in which one-half percent (1/2%) sales and use taxes levied under this Article have been in effect in a ~~county or municipality,~~ county, these taxes are considered to be in effect only from the effective date of the levy of these taxes and are considered to be in effect for a full fiscal year during the first year in which these taxes were in effect, regardless of the number of months in that year in which the taxes were actually in effect.

(e) A county ~~or municipality~~ may expend part or all of the revenue restricted for public school ~~or water and sewage~~ capital needs pursuant to ~~subsections (a) and (b)~~ subsection (a) of this section in the fiscal year in which the revenue is received, or the county ~~or municipality~~ may place part or all of this revenue in a capital reserve fund and shall specifically identify this revenue in accordance with Chapter 159 of the General Statutes."

Section 32. G.S. 105-504 is repealed.

Section 33. G.S. 105-550 reads as rewritten:

"**§ 105-550. Definitions.**

The definitions in G.S. 105-164.3 and the following definitions apply in this Article:

(1) Authority. -- A regional public transportation authority or a regional transportation authority created pursuant to Article 26 or Article 27 of Chapter 160A of the General Statutes.

(2) Long-term lease or rental. -- Defined in G.S. 105-187.1.

(3) Motorcycle. -- Defined in G.S. 20-4.01.

~~(4) Private passenger vehicle. -- Defined in G.S. 20-4.01.~~

(5) Public transportation system. -- Any combination of real and personal property established for purposes of public transportation. The systems may include one or more of the following: structures, improvements, buildings, equipment, vehicle parking or passenger transfer facilities, railroads and railroad rights-of-way, rights-of-way, bus services, shared-ride services, high-occupancy vehicle facilities, carpool and vanpool programs, voucher programs, telecommunications and information systems, integrated fare systems, bus lanes, and busways. The term does not include, however, streets, roads, or highways except to the extent they are dedicated to public transportation vehicles or to

the extent they are necessary for access to vehicle parking or passenger transfer facilities.

(6) Short-term lease or rental. -- A lease or rental that is not a long-term lease or rental.

(7) U-drive-it passenger vehicle. -- Defined in G.S. 20-4.01."

Section 34. G.S. 105-551(a) reads as rewritten:

"(a) Tax. -- The board of trustees of an Authority may levy a privilege tax on a retailer who is engaged in the business of leasing or renting ~~private~~ U-drive-it passenger vehicles or motorcycles based on the gross receipts derived by the retailer from the short-term lease or rental of these vehicles. The tax rate must be a percentage and may not exceed five percent (5%). A tax levied under this section applies to short-term leases or rentals made by a retailer whose place of business or inventory is located within the territorial jurisdiction of the Authority. This tax is in addition to all other taxes."

Section 35. G.S. 105-552(b) reads as rewritten:

"(b) Collection. -- A tax levied by an Authority under this Article shall be collected by the Authority but shall otherwise be administered in the same manner as the optional gross receipts tax levied by G.S. 105-187.5. Like the optional gross receipts tax, a tax levied under this Article is to be added to the lease or rental price of a ~~private~~ U-drive-it passenger vehicle or motorcycle and thereby be paid by the person to whom it is leased or rented.

A tax levied under this Article applies regardless of whether the retailer who leases or rents the ~~private~~ U-drive-it passenger vehicle or motorcycle has elected to pay the optional gross receipts tax on the lease or rental receipts from the vehicle. A tax levied under this Article must be paid to the Authority that levied the tax by the date an optional gross receipts tax would be payable to the Secretary of Revenue under G.S. 105-187.5 if the retailer who leases or rents the ~~private~~ U-drive-it passenger vehicle or motorcycle had elected to pay the optional gross receipts tax."

Section 36. S.L. 1997-139 is reenacted.

Section 37. Article 3 of Chapter 66 of the General Statutes is repealed.

Section 38(a). G.S. 105A-2(2)e. reads as rewritten:

"e. A sum owed as a result of having obtained public assistance payments under any of the following programs through an intentional false statement, intentional

misrepresentation, intentional failure to disclose a material fact, or inadvertent household error:

1. The ~~Aid to Families with Dependent Children~~ Work First Program ~~or the Aid to Families with Dependent Children -- Emergency Assistance Program, enabled by~~ provided in Article 2 of Chapter ~~108A, Article 2, Part 2.~~ 108A of the General Statutes.
2. The ~~Work First Cash Assistance~~ State-County Special Assistance for Adults Program ~~established pursuant to federal waivers received by the Department of Health and Human Services on February 5, 1996.~~ enabled by Part 3 of Article 2 of Chapter 108A of the General Statutes.
3. ~~The State-County Special Assistance for Adults Program, enabled by Chapter 108A, Article 2, Part 3.~~ A successor program of one of these programs.
4. ~~A successor program of one of these programs.~~

~~of the General Statutes or~~"

Section 38(b). This section becomes effective January 1, 2000.

Section 39. G.S. 120-70.105 reads as rewritten:

"**§ 120-70.105. Creation and membership of the Revenue Laws Study Committee.**

(a) Membership. -- The Revenue Laws Study Committee is established. The Committee consists of 16 members as follows:

(1) Eight members appointed by the President Pro Tempore of the Senate; the persons appointed may be members of the Senate or public members.

(2) Eight members appointed by the Speaker of the House of Representatives; the persons appointed may be members of the House of Representatives or public members.

(b) Terms. -- Terms on the Committee are for two years and begin on January 15 of each odd-numbered year, except the terms of the initial members, which begin on appointment. Legislative members may complete a term of service on the Committee even if they do not seek reelection or are not reelected to the General

Assembly, but resignation or removal from service in the General Assembly constitutes resignation or removal from service on the Committee.

A member continues to serve until ~~his~~ a successor is appointed. A vacancy shall be filled within 30 days by the officer who made the original appointment."

Section 40. Article 8 of Chapter 136 of the General Statutes is repealed.

PART II. CONFORM STATUTORY NOMENCLATURE.

Section 41. The designation of G.S. 105-103 through G.S. 105-113 as Division I of Article 2 of Chapter 105 of the General Statutes is eliminated, so that Article 2 contains G.S. 105-33 through G.S. 105-113 without any subdivision into parts.

Section 42. Division I of Article 4 of Chapter 105 of the General Statutes is redesignated Part 1.

Section 43. Division IS of Article 4 of Chapter 105 of the General Statutes is redesignated Part 1A.

Section 44. Division II of Article 4 of Chapter 105 of the General Statutes is redesignated Part 2.

Section 45. Division III of Article 4 of Chapter 105 of the General Statutes is redesignated Part 3.

Section 46. Division V of Article 4 of Chapter 105 of the General Statutes is redesignated Part 5.

Section 47. Division I of Article 5 of Chapter 105 of the General Statutes is redesignated Part 1.

Section 48(a). G.S. 105-164.4 through 105-164.12A are merged into Division II of Article 5 of Chapter 105 of the General Statutes without subdivision into Parts, and the designations for Parts 1 through 4 of that Division are eliminated.

Section 48(b). Division II of Article 5 of Chapter 105 of the General Statutes is redesignated Part 2.

Section 49. Division III of Article 5 of Chapter 105 of the General Statutes is redesignated Part 3.

Section 50. Division IV of Article 5 of Chapter 105 of the General Statutes is redesignated Part 4.

Section 51. Division V of Article 5 of Chapter 105 of the General Statutes is redesignated Part 5.

Section 52. Division VI of Article 5 of Chapter 105 of the General Statutes is redesignated Part 6.

Section 53. Division VII of Article 5 of Chapter 105 of the General Statutes is redesignated Part 7.

Section 54. Division VIII of Article 5 of Chapter 105 of the General Statutes is redesignated Part 8.

Section 55. The title of Article 1 of Chapter 105 of the General Statutes reads as rewritten:

"ARTICLE 1.

~~Schedule A.~~ Inheritance Tax."

Section 56. The title of Article 2A of Chapter 105 of the General Statutes reads as rewritten:

"ARTICLE 2A.

~~Schedule B-A.~~ Tobacco Products Tax."

Section 57. The title of Article 2B of Chapter 105 of the General Statutes reads as rewritten:

"ARTICLE 2B.

~~Schedule B-B.~~ Soft Drink Tax."

Section 58. The title of Article 2C of Chapter 105 of the General Statutes reads as rewritten:

"ARTICLE 2C.

~~Schedule B-C.~~ Alcoholic Beverage License and Excise Taxes."

Section 59. The title of Article 2D of Chapter 105 of the General Statutes reads as rewritten:

"ARTICLE 2D.

~~Schedule B-D.~~ Unauthorized Substances Taxes."

Section 60. The title of Article 3 of Chapter 105 of the General Statutes reads as rewritten:

"ARTICLE 3.

~~Schedule C.~~ Franchise Tax."

Section 61. The title of Article 4 of Chapter 105 of the General Statutes reads as rewritten:

"ARTICLE 4.

~~Schedule D.~~ Income Tax."

Section 62. The title of Article 5 of Chapter 105 of the General Statutes reads as rewritten:

"ARTICLE 5.

~~Schedule E.~~ Sales and Use Tax."

Section 63. The title of Article 6 of Chapter 105 of the General Statutes reads as rewritten:

"ARTICLE 6.

~~Schedule G.~~ Gift Taxes."

Section 64. The title of Article 8A of Chapter 105 of the General Statutes reads as rewritten:

"ARTICLE 8A.

~~Schedule I-A.~~ Gross Earnings Taxes <u>on Freight Line Companies</u> in Lieu of Ad Valorem Taxes."

Section 65. The title of Article 8B of Chapter 105 of the General Statutes reads as rewritten:

"ARTICLE 8B.

~~Schedule I-B.~~ Taxes upon Insurance Companies."

Section 66. The title of Article 8D of Chapter 105 of the General Statutes reads as rewritten:

"ARTICLE 8D.

~~Schedule I-D.~~ Taxation of Savings and Loan Associations."

Section 67. The title of Article 9 of Chapter 105 of the General Statutes reads as rewritten:

"ARTICLE 9.

~~Schedule J.~~ General Administration; Penalties and Remedies."

Section 68. The following sections of the General Statutes are amended by deleting the phrase "This Division" each time it occurs and substituting "This Part":

G.S. 105-130
G.S. 105-131(a)
G.S. 105-131.1(b)
G.S. 105-133
G.S. 105-160

Section 69. The following sections of the General Statutes are amended by deleting the phrase "this Division" or "this division" each time it occurs and substituting "this Part":

G.S. 105-130.1
G.S. 105-130.2
G.S. 105-130.4(l)(1)
G.S. 105-130.4(m)
G.S. 105-130.5(a)(2)
G.S. 105-130.5(c)
G.S. 105-130.6
G.S. 105-130.8
G.S. 105-130.11
G.S. 105-130.12
G.S. 105-130.15
G.S. 105-130.16
G.S. 105-130.18
G.S. 105-130.22
G.S. 105-130.23
G.S. 105-130.25
G.S. 105-130.34
G.S. 105-130.41
G.S. 105-130.42

G.S. 105-131(b) & (c)
G.S. 105-134
G.S. 105-134.1
G.S. 105-134.3
G.S. 105-134.6
G.S. 105-151.1
G.S. 105-151.2
G.S. 105-151.11(a)
G.S. 105-151.12
G.S. 105-151.18(a) & (b)
G.S. 105-151.20
G.S. 105-151.22
G.S. 105-151.23
G.S. 105-151.24
G.S. 105-151.26
G.S. 105-152(a) through (d)
G.S. 105-154
G.S. 105-156
G.S. 105-158
G.S. 105-160.1
G.S. 105-160.2
G.S. 105-160.4(a)
G.S. 105-160.5
G.S. 105-160.8
G.S. 105-163.010
G.S. 105-163.013
G.S. 105-163.014

Section 70. The following sections of the General Statutes are amended by deleting the phrase "Division I" each time it occurs and substituting the phrase "Part 1":

G.S. 105-131(b)(2)
G.S. 105-164.44C
G.S. 105-275.1(e)
G.S. 105-277.001(f)
G.S. 105-277.1A(f)

Section 71. The following sections of the General Statutes are amended by deleting the phrase "Division II" each time it occurs and substituting the phrase "Part 2":

G.S. 105-160.1
G.S. 105-160.4(e)
G.S. 105-163.011(b) & (b1)
G.S. 105-163.012
G.S. 105-163.15
G.S. 105-269.6

G.S. 105-275.2

Section 72. The following sections of the General Statutes are amended by deleting the phrase "Division V" each time it occurs and substituting the phrase "Part 5":

G.S. 105-116(a)

G.S. 105-120(a)

G.S. 105-120.2(f)

G.S. 105-122(d)

Section 73. G.S. 105-7 reads as rewritten:

"**§ 105-7. Estate tax.**

(a) A tax in addition to the inheritance tax imposed by this ~~schedule is hereby~~ Article is imposed upon the transfer of the net estate of every decedent, whether a resident or nonresident of the State, where the inheritance tax imposed by this ~~schedule~~ Article is less than the maximum state death tax credit allowed by the Federal Estate Tax Act as contained in the Code because of ~~said tax herein imposed.~~ the tax imposed by this Article. In such a case, the inheritance tax ~~provided for by this schedule~~ imposed by this Article shall be increased by an estate tax on the net estate so that the aggregate amount of tax due this State ~~shall be~~ equals the maximum amount of credit allowed under ~~said~~ the Federal Estate Tax Act. ~~Said~~ This additional tax shall be paid out of the same funds as any other tax against the estate.

(b) ~~Where~~ If no tax is imposed by this ~~schedule~~ Article because of ~~the~~ exemptions ~~herein~~ or otherwise, and a tax is due the United States under the Federal Estate Tax Act, then a tax ~~shall be~~ is due this State equal to the maximum amount of the credit allowed under ~~said~~ the Federal Estate Tax Act.

(c) The administrative provisions of this ~~schedule,~~ Article, wherever applicable, shall apply to the collection of the tax imposed by this section. The amount of the tax as imposed by subsection (a) of this section shall be computed in full accordance with the Federal Estate Tax Act as contained in the Code."

Section 74. G.S. 105-8 reads as rewritten:

"**§ 105-8. Treatment allowed for gift tax paid.**

~~In case a tax has been imposed under Schedule C of the Revenue Act of 1937, or under subsequent acts,~~ If a tax has been imposed under Article 6 of this Chapter upon any gift, and thereafter upon the death of the donor, the amount ~~thereof~~ of the gift is required by ~~any provision of~~ this Article to be included in the gross estate of the decedent, then there shall be credited against and applied in reduction of the tax, which would otherwise be chargeable against the beneficiaries of the estate

under ~~the provisions of~~ this Article, an amount equal to the tax paid with respect to ~~such~~ the gift. Any additional tax found to be due because of the inclusion of gifts in the gross estate of the ~~decedent, as provided herein,~~ decedent shall be a tax against the estate and shall be paid out of the same funds as any other tax against the estate."

Section 75. The introductory language of G.S. 105-9 reads as rewritten:

"**§ 105-9. Deductions.**

In determining the clear market value of property taxed under this Article, ~~or schedule,~~ the following deductions, and no others, shall be allowed:

Section 76. G.S. 105-114(a)(2) reads as rewritten:

"(2) Corporations not organized under the laws of this State for doing business in this State and for the benefit and protection which ~~such~~ these corporations receive from the government and laws of this State in doing business in this State.

If the corporation is organized under the laws of this State, the payment of the taxes levied by this Article shall be a condition precedent to the right to continue in ~~such~~ the corporate form of organization; and if the corporation is not organized under the laws of this State, payment of these taxes shall be a condition precedent to the right to continue to engage in doing business in this State. The taxes levied in this Article ~~or schedule shall be~~ are for the fiscal year of the State in which the taxes become due; except that the taxes levied in G.S. 105-122 ~~shall be~~ are for the income year of the corporation in which the taxes become due.

G.S. 105-122 does not apply to street transportation systems taxed under G.S. 105-120.1 or holding companies taxed under G.S. 105-120.2. G.S. 105-122 applies to a corporation taxed under another section of this Article only to the extent the taxes levied on the corporation in G.S. 105-122 exceed the taxes levied on the corporation in other sections of this Article."

Section 77. G.S. 105-122(a) reads as rewritten:

"(a) Every corporation, domestic and foreign, incorporated, or, by an act, domesticated under the laws of this State or doing business in this State, except as otherwise provided in this

~~Article or schedule,~~ Article, shall, on or before the fifteenth day of the third month following the end of its income year, ~~annually,~~ annually make and deliver to the Secretary ~~of Revenue in such form as he may prescribe~~ in the form prescribed by the Secretary a full, ~~accurate~~ accurate, and complete report and statement signed by either its president, vice-president, treasurer, assistant treasurer, secretary or assistant secretary, containing ~~such~~ the facts and information ~~as may be~~ required by the Secretary ~~of Revenue~~ as shown by the books and records of the corporation at the close of ~~such~~ the income year.

There shall be annexed to the return required by this subsection the affirmation of the officer signing the return in the following form: "Under penalties prescribed by law, I hereby affirm that to the best of my knowledge and belief this return, including any accompanying schedules and statements, is true and complete. If prepared by a person other than taxpayer, ~~his~~ this affirmation is based on all information of which ~~he~~ the preparer has any knowledge."

Section 78. G.S. 105-127(b) is repealed.

Section 79. G.S. 105-130.26 reads as rewritten:

"**§ 105-130.26. Credit ~~against corporate income tax~~ for conversion of industrial boiler to wood fuel.**

~~Any corporation which~~ A corporation that modifies or replaces an oil or gas-fired boiler or kiln and the associated fuel and residue handling equipment used in the manufacturing process of a manufacturing business located in this State with one ~~which~~ that is capable of burning wood ~~shall be~~ is allowed as a credit against the tax imposed by this ~~Division,~~ Part an amount equal to fifteen percent (15%) of the installation and equipment cost of ~~such conversion; provided, that in order to secure~~ the conversion paid during the taxable year. In order to claim the credit allowed by this section, the taxpayer must own or control the business in which ~~such~~ the boiler or kiln is used at the time of ~~such conversion and payment in part or in whole for such installation and equipment must be made by the taxpayer during the tax year for which the credit is claimed; and the amount of credit allowed for any one income year shall be limited to fifteen percent (15%) of such costs paid during the year; and the~~ the conversion. The credit allowed by this section ~~shall~~ may not exceed the amount of the tax imposed by this ~~Division~~ Part for the taxable year reduced by the sum of all credits ~~allowable under this Division,~~ allowable, except for payments of tax made by or on behalf of the taxpayer. If a credit is granted under this section to a taxpayer engaged in the business of poultry

production and that credit exceeds the tax imposed under this ~~Division,~~ Part, the excess may be carried forward ~~and applied to the tax imposed under this Division~~ for the succeeding five years."

Section 80. G.S. 105-130.27(a) reads as rewritten:

"(a) Credit Allowed. -- ~~Any corporation which~~ A corporation that constructs in North Carolina a distillery to make ethanol from agricultural or forestry products for qualified uses ~~shall be~~ is allowed a credit against the tax imposed by this ~~Division.~~ Part. Subject to the limitation provided in subsection (d) of this section, the amount of the credit shall be equal to twenty percent (20%) of the installation and construction costs of the ~~distillery,~~ distillery paid during the year preceding the taxable year, and an additional ten percent (10%) of those costs if the distillery is to be powered by use of an alternative fuel source. No credit is allowed, however, for the costs of purchasing the land or site work, which includes rock, paving, and excavation. In order to secure the credit allowed by this section, the taxpayer must own or control the facility at the time of ~~construction, and payment for the installation and construction must be made by the taxpayer during the year preceding the year for which the credit is claimed. The amount of the credit allowed for any one taxable year shall be limited to twenty percent (20%) of the installation and construction costs paid during such year, or thirty percent (30%) if the distillery is to be powered by an alternative fuel source.~~ construction. Invoices or receipts shall be furnished to substantiate a claim or a credit under this section if requested by the ~~Secretary of Revenue.~~ Secretary. The credit allowed by this section ~~shall~~ may not exceed the amount of the tax imposed by this ~~Division~~ Part for the taxable year reduced by the sum of all credits ~~allowable under this Division,~~ allowable, except for payments of tax made by or on behalf of the taxpayer."

Section 81. G.S. 105-130.27A reads as rewritten:

"**§ 105-130.27A. Credit ~~against corporate income tax~~ for construction of a peat facility.**

(a) ~~Any corporation which~~ A corporation that constructs in North Carolina a facility ~~which~~ that uses peat as the feedstock for the production of a commercially manufactured energy source to replace petroleum, natural ~~gas or other~~ gas, or another nonrenewable energy ~~sources shall be~~ source is allowed a credit against the tax imposed by this ~~Division~~ Part equal to twenty percent (20%) of the installation and equipment costs of ~~construction; provided, that the credit shall not be allowed~~

construction paid during the taxable year. No credit is allowed, however, to the extent that any of the cost of the system was provided by federal, State, or local grants. In order to secure the credit allowed by this section, the taxpayer must own or control ~~such~~ the facility at the time of ~~construction, and the credit allowed by this section shall not exceed~~ construction. The credit allowed by this section may not exceed the amount of ~~the~~ tax imposed by this ~~Division~~ Part for the taxable year reduced by the sum of all credits ~~allowable under this Division,~~ allowable, except for payments of tax made by or on behalf of the taxpayer.

(b) The amount of unused credit allowed under this section may be carried over for the next succeeding five years. "

Section 82. G.S. 105-130.28(a) reads as rewritten:

"(a) Any corporation that constructs in North Carolina a facility for the production of photovoltaic equipment is allowed a credit against the tax imposed by this ~~Division~~ Part equal to twenty-five percent (25%) of the installation and equipment costs of ~~construction. This credit shall not be allowed~~ construction paid during the taxable year. No credit is allowed, however, to the extent that any of the costs of the equipment were provided by federal, State, or local grants. To secure the credit allowed by this section, the taxpayer must own or control the facility at the time of construction. The credit allowed by this section may not exceed the amount of the tax imposed by this ~~Division~~ Part for the taxable year reduced by the sum of all credits ~~allowable under this Division,~~ allowable, except payments of tax made by or on behalf of the taxpayer."

Section 83. G.S. 105-130.29 reads as rewritten:

"**§ 105-130.29. Credit ~~against corporate income tax~~ for construction of an olivine brick facility.**

(a) Any corporation that constructs in North Carolina a facility for the production of olivine bricks for thermal storage ~~shall be~~ is allowed a credit against the tax imposed by this ~~Division~~ Part equal to twenty percent (20%) of the installation and equipment costs of ~~construction. This credit shall not be allowed~~ construction paid during the taxable year. No credit is allowed, however, to the extent that any of the costs of the system were provided by federal, State, or local grants. To secure the credit allowed by this section, the taxpayer must own or control the facility at the time of construction. The credit allowed by this section may not exceed the amount of the tax imposed by this ~~Division~~ Part for the taxable year reduced by the

sum of all credits ~~allowable under this Division,~~ allowable, except payments of tax made by or on behalf of the taxpayer.

(b) The amount of credit allowed under this section may be carried over for the next succeeding five years. "

Section 84. G.S. 105-130.30 reads as rewritten:

"**§ 105-130.30. Credit ~~against corporate income tax~~ for construction of a methane gas facility.**

(a) Any corporation that constructs in North Carolina a facility for the production of methane gas from renewable biomass resources ~~shall be~~ is allowed a credit against the tax imposed by this ~~Division~~ Part equal to ten percent (10%) of the installation and equipment costs of ~~construction.~~ construction paid during the taxable year. The credit allowed under this section may not exceed two thousand five hundred dollars ($2,500) for any single installation. ~~This credit shall not be allowed~~ No credit is allowed, however, to the extent that any of the costs of the system were provided by federal, State, or local grants. To secure the credit allowed by this section, the taxpayer must own or control the facility at the time of construction. The credit allowed by this section may not exceed the amount of the tax imposed by this ~~Division~~ Part for the taxable year reduced by the sum of all credits ~~allowable under this Division,~~ allowable, except payments of tax made by or on behalf of the taxpayer.

(b) As used in this section, "renewable biomass resources" means organic matter produced by terrestrial and aquatic plants and animals such as standing vegetation, aquatic crops, forestry and agricultural ~~residues~~ residues, and animal wastes that can be used for the production of energy."

Section 85. G.S. 105-130.31 reads as rewritten:

"**§ 105-130.31. Credit ~~against corporate income tax~~ for installation of a wind energy device.**

(a) Any corporation that constructs or installs a wind energy device for the production of electricity at a site located in this State ~~shall be~~ is allowed a credit against the tax imposed by this ~~Division~~ Part equal to ten percent (10%) of the installation and equipment costs of the wind energy ~~device.~~ device paid during the taxable year. The credit allowed under this section may not exceed one thousand dollars ($1,000) for any single installation. ~~This credit shall not be allowed~~ No credit is allowed, however, to the extent that any of the costs of the system were provided by federal, State, or local grants. To secure the credit allowed by this section, the taxpayer must own or control the site at the time the wind energy device is installed. The credit allowed by this section may not exceed the

amount of the tax imposed by this ~~Division~~ Part for the taxable year reduced by the sum of all credits ~~allowable under this Division,~~ allowable, except payments of tax made by or on behalf of the taxpayer.

(b) As used in this section, "wind energy device" means equipment (and parts solely related to the functioning of the equipment) that, when installed on a site, transmits or uses wind energy to generate electricity."

Section 86. G.S. 105-130.32 reads as rewritten:

"**§ 105-130.32. Credit ~~against corporate income tax~~ for installation of solar energy equipment for the production of heat or electricity in certain processes.**

(a) Any corporation that constructs or installs solar energy equipment for the production of heat or electricity in the manufacturing or service processes of its business located in this State is allowed a credit against the tax imposed by this ~~Division~~ Part equal to thirty-five percent (35%) of the installation and equipment costs of the solar energy ~~equipment.~~ equipment paid during the taxable year. The credit allowed under this section may not exceed twenty-five thousand dollars ($25,000) for any single installation. ~~This credit shall not be allowed~~ No credit is allowed, however to the extent that any of the costs of the equipment were provided by federal, State, or local grants. To secure the credit allowed by this section, the taxpayer must own or control the business at the time the solar energy equipment is installed. The credit allowed by this section may not exceed the amount of the tax imposed by this ~~Division~~ Part for the taxable year reduced by the sum of all credits ~~allowable under this Division,~~ allowable, except payments of tax made by or on behalf of the taxpayer.

(b) As used in this section, "solar energy equipment" means equipment and materials designed to collect, store, transport, or control energy derived directly from the sun. "

Section 87. G.S. 105-130.33(a) reads as rewritten:

"(a) Any corporation that constructs or installs a hydroelectric generator with a capacity of at least three kilowatts (3KW) at an existing dam or free flowing stream located in this State shall be allowed a credit against the tax imposed by this ~~Division~~ Part equal to ten percent (10%) of the installation and equipment costs of the hydroelectric ~~generator.~~ paid during the taxable year. The credit allowed under this section may not exceed five thousand dollars ($5,000) for any single installation. ~~This credit shall not be allowed~~ No credit is allowed, however, to the extent that any of the costs of the

system were provided by federal, State, or local grants. To secure the credit allowed by this section, the taxpayer must own or control the site at the time the hydroelectric generator is installed. The credit allowed by this section may not exceed the amount of the tax imposed by this ~~Division~~ Part for the taxable year reduced by the sum of all credits allowable under this ~~Division,~~ Part, except payments of tax made by or on behalf of the taxpayer."

Section 88. G.S. 105-130.36(a) reads as rewritten:

"(a) Any corporation that purchases conservation tillage equipment for use in a farming business, including tree farming, shall be allowed a credit against the tax imposed by this ~~Division~~ Part equal to twenty-five percent (25%) of the cost of the ~~equipment.~~ equipment paid during the taxable year. This credit may not exceed two thousand five hundred dollars ($2,500) for any ~~income~~ taxable year for any taxpayer. The credit may ~~only~~ be claimed only by the first purchaser of the equipment and may not be claimed by a corporation that purchases the equipment for resale or for use outside this State. This credit may not exceed the amount of tax imposed by this ~~Division~~ Part for the taxable year reduced by the sum of all credits ~~allowable under this Division,~~ allowable, except tax payments made by or on behalf of the taxpayer. If the credit allowed by this section exceeds the tax imposed under this ~~Division,~~ Part, the excess may be carried forward ~~and applied to the tax imposed under this Division~~ for the succeeding five years. The basis in any equipment for which a credit is allowed under this section shall be reduced by the amount of credit allowable."

Section 89. G.S. 105-130.37(a) reads as rewritten:

"(a) Any corporation that grows a crop and permits the gleaning of the crop during the taxable year is ~~shall be~~ allowed a credit against the tax imposed by this ~~Division~~ Part equal to ten percent (10%) of the market price of the quantity of the gleaned crop. This credit may not exceed the amount of tax imposed by this ~~Division~~ Part for the taxable year reduced by the sum of all credits ~~allowable under this Division,~~ allowable, except tax payments made by or on behalf of the taxpayer. No deduction is allowed under G.S. 105-130.5(b)(5) for the items for which a credit is claimed under this section. Any unused portion of the credit may be carried forward for the succeeding five years."

Section 90. G.S. 105-130.39 reads as rewritten:

"**§ 105-130.39. Credit for certain telephone subscriber line charges.**

(a) A corporation that provides local telephone service to low-income residential consumers at reduced rates pursuant to an order of the North Carolina Utilities Commission is allowed a credit against the tax imposed by this ~~Division~~ Part equal to the difference ~~between:~~ between the following:

(1) The amount of receipts the corporation would have received during the taxable year from those low-income customers had the customers been charged the regular rates for local telephone service and ~~fees; and~~ fees.

(2) The amount billed those low-income customers for local telephone service during the taxable year.

(b) This credit is allowed only for a reduction in local telephone service rates and fees and is not allowed for any reduction in interstate subscriber line charges. This credit may not exceed the amount of tax imposed by this ~~Division~~ Part for the taxable year reduced by the sum of all credits ~~allowed under this Division,~~ allowable, except tax payments made by or on behalf of the corporation."

Section 91. G.S. 105-134.7(a)(7) reads as rewritten:

"(7) The transitional adjustments provided in ~~Division I-S~~ Part 1A of this Article shall be made with respect to a shareholder's pro rata share of S Corporation income."

Section 92. G.S. 105-151 reads as rewritten:

"**§ 105-151. Tax credits for income taxes paid to other states by individuals.**

(a) An individual who is a resident of this State is allowed a credit against the taxes imposed by this ~~Division~~ Part for income taxes imposed by and paid to another state or country on income taxed under this ~~Division,~~ Part, subject to the following conditions:

(1) The credit ~~shall be~~ is allowed only for taxes paid to another state or country on income derived from sources within that state or country that is taxed under its laws irrespective of the residence or domicile of the ~~recipient; provided,~~ recipient, except that whenever a taxpayer who is deemed to be a resident of this State under the provisions of this ~~Division~~ Part is deemed also to be a resident of another state or country under the laws of that state or country, the Secretary ~~may, in his discretion,~~ may allow a credit against the taxes imposed by this ~~Division~~ Part for taxes

imposed by and paid to the other state or country on income taxed under this ~~Division.~~ Part.

(2) The fraction of the gross income, as calculated under the Code and adjusted as provided in G.S. 105-134.6 and G.S. 105-134.7, that is subject to income tax in another state or country shall be ascertained, and the North Carolina net income tax before credit under this section shall be multiplied by that fraction. The credit allowed ~~shall be~~ is either the product thus calculated or the income tax actually paid the other state or country, whichever is smaller.

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

(b) If any taxes paid to another state or country for which a taxpayer has been allowed a credit under this section are at any time credited or refunded to the taxpayer, a tax equal to that portion of the credit allowed for the taxes so credited or refunded ~~shall be~~ is due and payable from the taxpayer and ~~shall be~~ is subject to the penalties and interest provided in Subchapter I of this Chapter."

Section 93. G.S 105-151.5 reads as rewritten:

§ 105-151.5. Credit for conversion of industrial boiler to wood fuel.

A ~~person~~ taxpayer who modifies or replaces an oil or gas-fired boiler or kiln and the associated fuel and residue handling equipment used in the manufacturing process of a manufacturing business located in this State with one that is capable of burning wood ~~shall be~~ is allowed as a credit against the tax imposed by this ~~Division~~ Part an amount equal to fifteen percent (15%) of the installation and equipment cost of the ~~conversion; provided, that in order to secure~~ conversion paid during the taxable year. In order to claim the credit allowed by this section, the taxpayer must own or control the business in which the boiler or kiln is used at the time of the ~~conversion and payment in part or in whole for the installation and equipment~~

~~must be made by the taxpayer during the taxable year for which the credit is claimed. The amount of credit allowed for any one taxable year may not exceed fifteen percent (15%) of the costs paid during the year.~~ conversion. The credit allowed by this section may not exceed the amount of the tax imposed by this ~~Division~~ Part for the taxable year reduced by the sum of all credits ~~allowable under this Division,~~ allowable, except for payments of tax made by or on behalf of the taxpayer. If a credit is granted under this section to a taxpayer engaged in the business of poultry production and that credit exceeds the tax imposed under this ~~Division,~~ Part, the excess may be carried forward ~~and applied to the tax imposed under this Division~~ for the succeeding five years."

Section 94. G.S. 105-151.6(a) reads as rewritten:

"(a) Credit Allowed. -- Any person who constructs in North Carolina a distillery to make ethanol from agricultural or forestry products for qualified uses ~~shall be~~ is allowed a credit against the tax imposed by this ~~Division.~~ Part. Subject to the limitation provided in subsection (d) of this section, the amount of the credit ~~shall be equal to~~ is twenty percent (20%) of the installation and construction costs of the ~~distillery,~~ distillery paid during the year preceding the taxable year, and an additional ten percent (10%) of those costs if the distillery is to be powered by use of an alternative fuel source. No credit is allowed, however, for the costs of purchasing the land or site work, which includes rock, paving, and excavation. In order to secure the credit allowed by this section, the taxpayer must own or control the facility at the time of ~~construction, and payment for the installation and construction must be made by the taxpayer during the year preceding the year for which the credit is claimed. The amount of the credit allowed for any one taxable year shall be limited to twenty percent (20%) of the installation and construction costs paid during such year, or thirty percent (30%) if the distillery is to be powered by an alternative fuel source.~~ construction. Invoices or receipts shall be furnished to substantiate a claim or a credit under this section if requested by the ~~Secretary of Revenue.~~ Secretary. The credit allowed by this section ~~shall~~ may not exceed the amount of the tax imposed by this ~~Division~~ Part for the taxable year reduced by the sum of all credits ~~allowable under this Division,~~ allowable, except for payments of tax made by or on behalf of the taxpayer."

Section 95. G.S. 105-151.7(a) reads as rewritten:

"**§ 105-151.7. Credit for installation of a hydroelectric generator.**

(a) A person who constructs or installs a hydroelectric generator with a capacity of at least three kilowatts (3KW) at an existing dam or free flowing stream located in this State ~~shall be~~ is allowed as a credit against the tax imposed by this ~~Division~~ Part an amount equal to ten percent (10%) of the installation and equipment costs of the hydroelectric ~~generator.~~ generator paid during the taxable year. The credit allowed under this section may not exceed five thousand dollars ($5,000) for any single installation. ~~This credit shall not be allowed~~ No credit is allowed, however, to the extent that any of the costs of the system were provided by federal, State, or local grants. To secure the credit allowed by this section, the taxpayer must own or control the site at the time the hydroelectric generator is installed. The credit allowed by this section may not exceed the amount of the tax imposed by this ~~Division~~ Part for the taxable year reduced by the sum of all credits ~~allowable under this Division,~~ allowable, except payments of tax made by or on behalf of the taxpayer."

Section 96. G.S. 105-151.8(a) reads as rewritten:

"(a) A person who constructs or installs solar energy equipment for the production of heat or electricity in the manufacturing or service processes of the person's business located in this State is allowed a credit against the tax imposed by this ~~Division~~ Part equal to thirty-five percent (35%) of the installation and equipment costs of the solar energy ~~equipment.~~ equipment paid during the taxable year. The credit allowed under this section may not exceed twenty-five thousand dollars ($25,000) for any single installation. ~~This credit shall not be allowed~~ No credit is allowed, however, to the extent that any of the costs of the equipment were provided by federal, State, or local grants. To secure the credit allowed by this section, the taxpayer must own or control the business at the time the solar energy equipment is installed. The credit allowed by this section may not exceed the amount of tax imposed by this ~~Division~~ Part for the taxable year reduced by the sum of all credits ~~allowable under this Division,~~ allowable, except payments of tax made by or on behalf of the taxpayer. In no case ~~shall a tax credit be~~ is a credit allowed under both this section and G.S. 105-151.2."

Section 97. G.S. 105-151.9(a) reads as rewritten:

"(a) A person who constructs or installs a wind energy device for the production of electricity at a site located in this State ~~shall be~~ is allowed as a credit against the tax imposed by this ~~Division~~ Part an amount equal to ten percent (10%) of the installation and equipment costs of the wind energy ~~device.~~

device paid during the taxable year. The credit allowed under this section may not exceed one thousand dollars ($1,000) for any single installation. ~~This credit shall not be allowed~~ No credit is allowed, however, to the extent that any of the costs of the system were provided by federal, State, or local grants. To secure the credit allowed by this section, the taxpayer must own or control the site at the time the wind energy device is installed. The credit allowed by this section may not exceed the amount of the tax imposed by this ~~Division~~ Part for the taxable year reduced by the sum of all credits ~~allowable under this Division,~~ allowable, except payments of tax made by or on behalf of the taxpayer."

Section 98. G.S. 105-151.10(a) reads as rewritten:

"(a) A ~~person~~ taxpayer who constructs in North Carolina a facility for the production of methane gas from renewable biomass resources shall be allowed as a credit against the tax imposed by this ~~Division~~ Part an amount equal to ten percent (10%) of the installation and equipment costs of ~~construction.~~ construction paid during the taxable year. The credit allowed under this section may not exceed two thousand five hundred dollars ($2,500) for any single installation. ~~This credit shall not be allowed~~ No credit is allowed, however, to the extent that any of the costs of the system were provided by federal, State, or local grants. To secure the credit allowed by this section, the taxpayer must own or control the facility at the time of construction. The credit allowed by this section may not exceed the amount of the tax imposed by this ~~Division~~ Part for the taxable year reduced by the sum of all credits ~~allowable under this Division,~~ allowable, except payments of tax made by or on behalf of the taxpayer."

Section 99. G.S. 105-151.11(c) reads as rewritten:

"(c) Limitations. -- No credit shall be allowed under this section for amounts deducted from gross income in calculating taxable income under the Code. The credit allowed by this section may not exceed the amount of tax imposed by this ~~Division~~ Part for the taxable year reduced by the sum of all credits ~~allowable under this Division,~~ allowable, except for payments of tax made by or on behalf of the taxpayer. No credit shall be allowed under this section with respect to employment-related expenses paid by a nonresident of this State."

Section 100. G.S. 105-151.13(a) reads as rewritten:

"(a) A ~~person~~ taxpayer who purchases conservation tillage equipment for use in a farming business, including tree farming, shall be allowed as a credit against the tax imposed by this ~~Division~~ Part an amount equal to twenty-five percent (25%) of the

cost of the ~~equipment.~~ equipment paid during the taxable year. This credit may not exceed two thousand five hundred dollars ($2,500) for any taxable year. The credit may be claimed only by the first purchaser of the equipment and may not be claimed by a person who purchases the equipment for resale or for use outside this State. This credit may not exceed the amount of tax imposed by this ~~Division~~ Part for the taxable year reduced by the sum of all credits ~~allowable under this Division,~~ allowable, except tax payments made by or on behalf of the taxpayer. If the credit allowed by this section exceeds the tax imposed under this ~~Division,~~ Part, the excess may be carried forward ~~and applied to the tax imposed under this Division~~ for the next succeeding five years. The basis in any equipment for which a credit is allowed under this section shall be reduced by the amount of the credit allowable."

Section 101. G.S. 105-151.14(a) reads as rewritten:

"(a) A ~~person~~ taxpayer who grows a crop and permits the gleaning of the crop during the taxable year shall be allowed as a credit against the tax imposed by this ~~Division~~ Part an amount equal to ten percent (10%) of the market price of the quantity of the gleaned crop. This credit may not exceed the amount of tax imposed by this ~~Division~~ Part for the taxable year reduced by the sum of all credits ~~allowable under this Division,~~ allowable, except tax payments made by or on behalf of the taxpayer. In order to claim the credit allowed under this section, the taxpayer must add the market price of the gleaned crop to taxable income as provided in G.S. 105-134.6(c). Any unused portion of the credit may be carried forward for the next succeeding five years."

Section 102. G.S. 105-151.18(d) reads as rewritten:

"(d) Limitations. -- A nonresident or part-year resident who claims the credit allowed by this section shall reduce the amount of the credit by multiplying it by the fraction calculated under G.S. 105-134.5(b) or (c), as appropriate. The credit allowed under this section may not exceed the amount of tax imposed by this ~~Division~~ Part for the taxable year reduced by the sum of all credits ~~allowed under this Division,~~ allowable, except payments of tax made by or on behalf of the taxpayer."

Section 103. G.S. 105-151.21(a) reads as rewritten:

"(a) Credit. -- An individual engaged in the business of farming is allowed a credit against the tax imposed by this ~~Division~~ Part equal to the amount of property taxes the individual paid at par during the taxable year on farm machinery and on attachments and repair parts for farm machinery. In

addition, an individual shareholder of an S Corporation engaged in the business of farming is allowed a credit against the tax imposed by this ~~Division~~ Part equal to the shareholder's pro rata share of the amount of property taxes the S Corporation paid at par during the taxable year on farm machinery and on attachments and repair parts for farm machinery. The total credit allowed under this section may not exceed one thousand dollars ($1,000) for the taxable year and may not exceed the amount of tax imposed by this ~~Division~~ Part for the taxable year reduced by the sum of all credits ~~allowed under this Division,~~ allowable, except payments of tax made by or on behalf of the taxpayer. To claim the credit, the taxpayer shall attach to the return a copy of the tax receipt for the property taxes for which credit is claimed. The receipt must indicate that the taxes have been paid and the amount and date of the payment."

Section 104. G.S. 105-152(e) reads as rewritten:

"(e) Joint Returns. -- A husband and wife shall file a single income tax return jointly if (i) their federal taxable income is determined on a joint federal return and (ii) both spouses are residents of this State or both spouses have North Carolina taxable income. Except as otherwise provided in this ~~Division,~~ Part, a wife and husband filing jointly are treated as one taxpayer for the purpose of determining the tax imposed by this ~~Division.~~ Part. A husband and wife filing jointly are jointly and severally liable for the tax imposed by this ~~Division~~ Part reduced by the sum of all credits ~~allowable under this Division~~ allowable including tax payments made by or on behalf of the husband and wife. However, if a spouse has been relieved of liability for federal tax attributable to a substantial understatement by the other spouse pursuant to section 6013 of the Code, that spouse is not liable for the corresponding tax imposed by this ~~Division~~ Part attributable to the same substantial understatement by the other spouse. A wife and husband filing jointly have expressly agreed that if the amount of the payments made by them with respect to the taxes for which they are liable, including withheld and estimated taxes, exceeds the total of the taxes due, refund of the excess may be made payable to both spouses jointly or, if either is deceased, to the survivor alone."

Section 105. G.S. 105-160.3(a) reads as rewritten:

"(a) Except as otherwise provided in this section, the credits allowed to an individual against the tax imposed by ~~Division II~~ Part 2 of this Article shall be allowed to the same extent to an estate or a trust against the tax imposed by this ~~Division.~~ Part.

Any credit computed as a percentage of income received shall be apportioned between the estate or trust and the beneficiaries based on the distributions made during the taxable year. No credit may exceed the amount of the tax imposed by this ~~Division~~ Part for the taxable year reduced by the sum of all credits ~~allowable under this Division,~~ allowable, except for payments of tax made by or on behalf of the estate or trust."

Section 106. G.S. 105-164.3(22) reads as rewritten:

"(22) "Use tax" means ~~and includes~~ the tax imposed by Part ~~3 in Division II~~ 2 of this Article."

Section 107. G.S. 105-164.13(5) reads as rewritten:

"(5) Manufactured products produced and sold by manufacturers or producers to other manufacturers, producers, or registered ~~wholesale or retail~~ retailers or wholesale merchants, for the purpose of resale except as modified by ~~Division I, G.S. 105-164.3, subdivision (23). Provided, however, this exemption shall~~ G.S. 105-164.3(23). This exemption does not extend to or include retail sales to users or consumers not for resale."

Section 108. G.S. 105-164.26 reads as rewritten:

"**§ 105-164.26. Presumption that sales are taxable.**

For the purpose of the proper administration of ~~this division of~~ this Article and to prevent evasion of the retail sales tax, it shall be presumed that all gross receipts of wholesale merchants and retailers are subject to the retail sales tax until the contrary is established by proper records as required ~~herein.~~ in this Article. It shall be prima facie presumed that tangible personal property sold by any person for delivery in this State, however made, and by carrier or otherwise, is sold for storage, ~~use~~ use, or other consumption in this State, and a like presumption shall apply to tangible personal property delivered ~~without~~ outside this State and brought to this State by the ~~purchaser thereof.~~ purchaser. "

Section 109. G.S. 105-228.1 reads as rewritten:

"**§ 105-228.1. Defining taxes levied and assessed in this Article.**

The purpose of this Article is to levy a fair and equal tax under authority of ~~Article V, Sec. 3 of the Constitution of North Carolina~~ Section 2(2) of Article V of the North Carolina Constitution and to provide a practical means for ascertaining and collecting it. The taxes levied and assessed in this ~~schedule shall be upon the gross earnings~~ Article are on gross earnings, as defined in the Article, and ~~shall be~~ are in lieu of ad valorem

taxes upon the properties of ~~individuals, firms, or corporations so taxed herein.~~ persons taxed in this Article."

Section 110. 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~~ Part 2 or 3 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~~ Part 2 or 3 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.

(4) Federal Determination. -- When a taxpayer files with the Secretary a return that reflects a federal determination and the return is filed within the required time, the period in which a refund must be demanded or discovered is one year after the return reflecting the federal determination is filed or three years after the

original return was filed or due to be filed, whichever is later."

Section 111. G.S. 105-309(d) reads as rewritten:

"(d) Personal property shall be listed to indicate the township and municipality, if any, in which it is taxable and shall be itemized by the taxpayer in such detail as may be prescribed by an abstract form approved by the Department of Revenue. Personal property shall also be listed to indicate which property, if any, is subject to a tax credit under ~~Division IV of Article 4 of this Chapter.~~ G.S. 105-151.21.

(1) If the assessor considers it necessary to obtain a complete listing of personal property, ~~he~~ the assessor may require a taxpayer to submit additional information, inventories, or itemized lists of personal property.

(2) At the request of the assessor, the taxpayer shall furnish any information ~~he may have~~ the taxpayer has with respect to the true value of the personal property ~~he~~ the taxpayer is required to list. "

Section 112. G.S. 105-366(b)(5) reads as rewritten:

(5) The stock of goods or fixtures of a wholesale ~~or retail merchant (as defined in Schedule E of the Revenue Act)~~ merchant or retailer, as defined in G.S. 105-164.3, in the hands of a purchaser or transferee thereof, or any other personal property of the purchaser or transferee of ~~such~~ the property, if the taxes on the goods or fixtures remain unpaid 30 days after the date of the sale or ~~transfer, but in such a case the~~ transfer. In the case of other personal property of the purchaser or transferee, the levy or attachment must be made within six months of the sale or transfer."

Section 113. G.S. 105-366(d) reads as rewritten:

"(d) Remedies against Sellers and Purchasers of Stocks of Goods or Fixtures of Wholesale ~~or Retail Merchants.~~ Merchants or Retailers. --

(1) Any wholesale ~~or retail merchant (as defined in Schedule E of the Revenue Act)~~ merchant or retailer, as defined in G.S. 105-164.3, who sells or transfers the major part of ~~his~~ its stock of goods, materials, supplies, or fixtures, other than in the ordinary course of ~~business or who~~

~~goes out of business, shall:~~ business, or who goes out of business, must take the following actions:

a. At least 48 hours prior to the date of the pending sale, transfer, or termination of business, give notice ~~thereof~~ to the assessors and tax collectors of the taxing units in which ~~his~~ the business is ~~located; and~~ located.

b. Within 30 days of the sale, transfer, or termination of business, pay all taxes due or to become due on the transferred property on the first day of September of the current calendar year.

(2) Any person to whom the major part of the stock of goods, materials, supplies, or fixtures of a wholesale ~~or retail merchant (as defined in Schedule E of the Revenue Act)~~ merchant or retailer is sold or transferred, other than in the ordinary course of business, or who becomes the successor in business of a wholesale ~~or retail merchant~~ merchant or retailer shall withhold from the purchase money paid to the merchant an amount sufficient to pay the taxes due or to become due on the transferred property on the first day of September of the current calendar year until the former owner or seller produces either a receipt from the tax collector showing that the taxes have been paid or a certificate that no taxes are due. If the purchaser or successor in business fails to withhold a sufficient amount of the purchase money to pay the taxes as required by this subsection ~~(d)~~ and the taxes remain unpaid after the 30-day period allowed, ~~he shall be~~ the purchaser or successor is personally liable for the amount of the taxes ~~unpaid, and his~~ unpaid. This liability may be enforced by means of a civil action brought in the name of the taxing unit against ~~him~~ the purchaser or successor in an appropriate trial division of the General Court of Justice in the county in which the taxing unit is located.

(3) Whenever any wholesale ~~or retail merchant (as defined in Schedule E of the Revenue Act)~~ merchant or retailer sells or transfers the major part of ~~his~~ its stock of goods, materials, supplies, or

fixtures, other than in the ordinary course of business, or goes out of ~~business,~~ business and the taxes due or to become due on the transferred property on the first day of September of the current calendar year are unpaid, the tax collector, to enforce collection of the unpaid taxes, ~~may:~~ may do any of the following:

a. Levy on or attach any personal property of the ~~seller; or~~ seller.

b. If the taxes remain unpaid 30 days after the date of the transfer or termination of business, levy on or attach any of the property transferred in the hands of the transferee or successor in business, or any other personal property of the transferee or successor in business, but in either case the levy or attachment must be made within six months of the transfer or termination of business.

(4) In using the remedies provided in this ~~subsection (d),~~ subsection, the amount of taxes not yet determined shall be computed in accordance with G.S. 105-359, and any applicable discount shall be allowed."

PART III. EFFECTIVE DATE.

Section 114. Except as otherwise provided in this act, this act is effective when it becomes law.

EXPLANATION OF PROPOSAL 8:
Revenue Laws Technical Changes

TO: Revenue Laws Study Committee
FROM: Martha H. Harris, Committee Co-Counsel
DATE: May 15, 1998
SPONSOR:

Legislative Proposal 8 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.

PART I. GENERAL TECHNICAL CHANGES

Section	Explanation
1	Recodifies the corporate income and franchise taxes on savings institutions. These entities currently pay tax under Article 8D of Chapter 105. The taxes are identical to the income and franchise taxes paid by other corporations, with two adjustments. This section moves the taxation of savings institutions from Article 8D to the regular corporate income and franchise taxes in Articles 3 and 4. The two adjustments are retained. This technical change has been reviewed and approved by the Bankers Association, which represents savings institutions.
2 - 3	Repeals obsolete provisions of the inheritance tax.
4	Conforms cross-reference to corporate tax credits to reflect that some credits are in other Articles of the Revenue Act.
5 - 8	Makes conforming changes to Subchapter S Corporation law to reflect the fact that trusts may now be shareholders.
9	Repeals an individual income tax definition for a term that is no longer used in the individual income tax law.
10	Adds cross-reference to two individual income tax credits that do not apply to estates and trusts.
11	Corrects grammar.
12 - 13	Clarifies that withholding is not required on payments to tax-exempt entities.
14	Removes references to sales tax applying to two types of motor fuel for which motor fuel tax refunds are allowed, because refunds are not made on these types of motor fuel (accidental mixes and fuel sold to marinas).
15	Modifies the definition of interstate carrier for purposes of sales tax refunds to reflect the deregulation of the industry.
16	Provides that a gift tax return is not required for gifts that are exempt

Section	Explanation
	from tax: gifts to charity and gifts between spouses. The 1997 federal tax act made a similar change to the federal gift tax, which formerly required returns for gifts to charity above $10,000.
17	Removes incorrect language describing the calculation of the gross premiums tax.
18	Clarifies insurance company tax exemption language. G.S. 105-228.10 was enacted in 1945 to provide that local governments may not levy additional taxes on insurers and other entities subject to the gross premiums tax. This section rewrites the statute to state that cities and counties are prohibited from levying a privilege license tax or a gross premiums tax on entities subject to gross premiums tax. The vague language of the statute is rewritten to clarify that insurance companies are not exempt from local sales taxes, local meals taxes, and other similar taxes that the General Assembly has authorized for local governments since this statute was enacted in 1945. Insurance companies currently pay these taxes and the terms of the tax statutes make it clear that they are not exempt.
19	Deletes an individual income tax exemption that is no longer needed because federal law exempts the same income and our law piggybacks the federal law.
20	Provides that tax information may be shared on a reciprocal basis with tax officials from jurisdictions outside the United States, as required by the International Fuel Tax Agreement.
21	Clarifies that taxpayers may rely upon directives published by the Department of Revenue to the same extent as provided under current law for bulletins published and rules adopted by the Department of Revenue.
22 - 24	Remove ambiguities in the use value property tax law that were created unintentionally when these statutes were rewritten and reorganized in 1995. The rewrite created potential, although strained, interpretations that deferred taxes were no longer required to be paid in some or in many cases where the law has always intended for them to be paid. These sections clarify that the law with respect to "rollback" of deferred taxes was not restricted by the 1995 rewrite. They also make further clarifying changes to the language.
25	Revises definition of public service company to reflect deregulation of carriers and to conform to Institute of Government interpretation that regulation requirement applies only to catch-all category of "any other company performing a public service."
26 - 27	Repeal two property tax provisions that have expired.
28	Clarifies that motor fuel sold to the federal government is exempt only if sold for use by the federal government.
29	Repeals a provision allowing refunds for motor fuel tax paid by marinas. Federal law no longer requires marinas to pay tax on motor fuel they

Section	Explanation
	purchase, so refunds are no longer necessary.
30	Corrects an incorrect cross-reference.
31 - 32	Deletes provisions that have expired.
33 - 35	Corrects incorrect term describing short-term rental vehicles.
36	Reenacts a law modifying historic rehabilitation tax credits. The law was not roll called. Although the law expands the credits, in certain instances it could postpone part of the tax benefit allowed under prior law.
37	Repeals an obsolete tax on consigned candy products.
38	Amends the Setoff Debt Collection Act to reflect the new names given to public assistance programs by the 1997 welfare reform legislation, and to remove excess verbiage that resulted from a redlining error.
39	Conforms the structure of the Revenue Laws Study Committee statute to fit the requirements of the General Assembly's new computer system, and corrects gender-specific language.
40	Repeals list of cross-references to Highway Bond Acts. The list is incomplete and serves no purpose.

PART II. CONFORM STATUTORY NOMENCLATURE

Section	Explanation
41 - 54	Change from "Division" to "Part" the name of the subdivisions within Articles of Chapter 105 of the General Statutes, in order to be consistent with all other General Statutes. The new computer statutory database software will function better with consistent nomenclature.
55 - 67	Eliminate the term "Schedule" used as an additional name for Articles in Chapter 105 of the General Statutes, in order to be consistent with all other General Statutes. The new computer statutory database software will function better with consistent nomenclature.
68 - 113	Change cross-references to "Divisions" and "Schedules" to "Parts" and "Articles," respectively.

PART III. EFFECTIVE DATE

Section	Explanation
114	Provides that the act is effective when it becomes law.

NORTH CAROLINA GENERAL ASSEMBLY

LEGISLATIVE FISCAL REPORT

BILL NUMBER: Legislative Proposal 8

SHORT TITLE: Revenue Laws Technical Changes

SPONSOR(S): Revenue Laws Study Committee

FISCAL IMPACT

Yes (X) **No** ( ) **No Estimate Available** ( )

	FY 1997-98	FY 1998-99	FY 1999-00	FY 2000-01	FY 2001-02
REVENUES					
General Fund			($90,000)	($95,000)	($100,000)
Public School Building Capital Fund			$90,000	$95,000	$100,000

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

EFFECTIVE DATE: Taxable years beginning on or after January 1, 1999.

BILL SUMMARY: Section 1 of this bill recodifies the corporate income and franchise taxes on savings institutions. These entities currently pay tax under Article 8D of Chapter 105. The taxes are identical to the income and franchise taxes paid by other corporations, with two adjustments. This section moves the taxation of savings institutions from Article 8D to the regular corporate income and franchise taxes in Articles 3 and 4. The two adjustments are retained.

ASSUMPTIONS AND METHODOLOGY: Under G.S. 115C-546.1, a portion of the corporate income tax is earmarked for the Public School Capital Building Fund. Monies in the fund are distributed to counties on a per average daily membership basis to be used for public school capital outlay projects. Because Savings and Loans pay income tax under a separate Article, no part of their income tax goes to the Public School Building Capital Fund. When they begin to pay the identical tax under the general corporate income tax, rather than a separate Article, part of their income tax that would otherwise go to the General Fund will go to the Public School Building Capital Fund.

FISCAL RESEARCH DIVISION (733-4910)
PREPARED BY: **Dave Crotts**
DATE: **April 14, 1998**

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H D

Legislative Proposal 9
98-LC-243(1.1)(Z)
(THIS IS A DRAFT AND IS NOT READY FOR INTRODUCTION)

Short Title: Repeal Cabarrus Initiative Law. (Local)

Sponsors: Representatives Capps, Brawley, Cansler, Gray, Hill, Neely, Ramsey, and C. Wilson.

Referred to:

A BILL TO BE ENTITLED

AN ACT TO REPEAL THE INITIATIVE AND REFERENDUM AUTHORITY OF CABARRUS COUNTY AND THE CITY OF CONCORD.

The General Assembly of North Carolina enacts:

Section 1. Sections 3 and 4 of S.L. 1997-452 are repealed.

Section 2. This act is effective on and after March 1, 1998.

EXPLANATION OF LEGISLATIVE PROPOSAL 9:
Repeal Cabarrus Initiative Law

TO: Revenue Laws Study Committee
FROM: Martha H. Harris, Staff Attorney
DATE: May 15, 1998
SPONSOR:

Legislative Proposal 9 would repeal S.L. 1997-452 (House Bill 786), effective March 1, 1998. S.L. 1997-452 is a local act authorizing Cabarrus County and the City of Concord to hold binding public referenda on "any question of public interest." Based on this local act, Cabarrus County held a referendum February 24, 1998, to approve levying an additional local sales tax and land transfer tax. The voters turned down the sales tax 63% to 37% and the land transfer tax 65% to 35%.

The Revenue Laws Study Committee found that the act raised a number of legal questions and policy questions that would likely result in litigation if the voters approved a tax increase. Other counties had expressed interest in having similar legislation enacted on their behalf in order to raise taxes. For this reason, the Committee determined that the act had statewide consequences. Because of the potential problems with this type of initiative and referendum law, which applies to any issue, can be initiated by the local government as well as by citizens, and is binding, the Committee recommended that it be repealed.

Several issues arose regarding the constitutionality of the county's effort to raise taxes. The Attorney General had issued an opinion that the county could not levy or increase taxes under the act because the act was not passed by rollcall vote on three separate days in each house, as required by Section 23 of Article II of the North Carolina Constitution.[1] The county argued that its authority to raise taxes came not from the act but from Section 8 of Article I of the North Carolina Constitution, which protects citizens from taxation without representation.[2] Before the voters defeated the proposed taxes in Cabarrus County, a lawsuit had been filed challenging their legality.

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[1] Section 23 provides in pertinent part: "No laws shall be enacted to...impose any tax upon the people of the State, or to allow the counties, cities, or towns to do so, unless the bill for the purpose shall have been read three several times in each house of the General Assembly and passed three several readings, which readings shall have been on three different days...."

[2] Article I, Section 8 reads: "Representation and taxation. The people of this State shall not be taxed or made subject to the payment of any impost or duty without the consent of themselves or their representatives in the General Assembly, freely given."

The local act also left some policy questions unanswered. The act states that any question of public interest approved by the voters becomes law. This language is extremely broad and, if interpreted literally, would appear to authorize any measure whatsoever, even measures that existing Statewide law prohibits the city or county from acting on. The only measures that could not become effective under the language of the act would be those that violate the State or federal constitution. The rules of statutory construction state that in interpreting the laws, the judicial branch is required to follow the language of the statute. A court has no power or right to strike out clear and unambiguous words or construe them away. If the law were interpreted literally, the local governments could act on issues such as the following, about which general law otherwise restricts local governments' legislative authority: environmental regulation, welfare, public schools, gun control, smoking restrictions, budgets and fiscal control, criminal laws, hunting and fishing, gambling, and alcoholic beverages.

On the other hand, scholars at the Institute of Government of the University of North Carolina at Chapel Hill raised the argument that the act may in fact grant only the authority to hold referenda and no other authority beyond that already provided in current law. This argument is based on the fact that North Carolina is not a home rule state and, because the act represents a dramatic departure from the traditional relationship between the State and its local governments, a court might well hold that it does not grant any authority beyond what is already specifically provided by law. These competing interpretations of the law can be resolved only by the judicial branch.

S.L. 1997-452 is unique. Under current law, the Town of Spindale[3] is the only local government that has a broad referendum procedure that can be initiated either by a petition of the voters or by the governing body of the town, but its referenda are nonbinding. Ten other municipalities[4] have a binding initiative procedure, but the procedure is limited to ordinances. The procedure can be initiated only by petition of the voters, not by the governing body of the town. There are no counties that have either of these two types of initiative procedures.

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[3] Chapter 378 of the 1975 Session Laws.

[4] City of Asheville, Chapter 121 of the 1931 Session Laws and Chapter 30 of the 1935 Session Laws; City of Greensboro, Chapter 1137 of the 1959 Session Laws and Chapter 4 of the 1991 Session Laws; Town of Lewisville, Chapter 116 of the 1991 Session Laws; City of Lumberton, Chapter 115 of the 1963 Session Laws; City of Morganton, Chapter 180 of the 1975 Session Laws; City of Raleigh, Chapter 1184 of the 1949 Session Laws and Chapter 970 of the 1957 Session Laws; Town of River Bend, Chapter 636 of the 1995 Session Laws; City of Wilmington, Chapter 495 of the 1977 Session Laws and Chapter 367 of the 1983 Session Laws; City of Winston-Salem, Chapter 13 of the 1965 Session Laws and G.S. 160-334 (repealed): Town of Wrightsville Beach, Chapter 611 of the 1989 Session Laws.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H D

Legislative Proposal 10
98-LA-014(2.1)(Z)
(THIS IS A DRAFT AND IS NOT READY FOR INTRODUCTION)

Short Title: Decedent's Safe-deposit Box. (Public)

Sponsors: Representatives Brawley, Cansler, Capps, Gray, Hill, Neely, Ramsey, and C. Wilson.

Referred to:

A BILL TO BE ENTITLED

AN ACT TO PROVIDE THAT THE CLERK OF SUPERIOR COURT DOES NOT HAVE TO INVENTORY A DECEDENT'S SAFE-DEPOSIT BOX IF A QUALIFIED PERSON IS PRESENT AT THE OPENING OF THE BOX.

The General Assembly of North Carolina enacts:

Section 1. Article 15 of Chapter 28A of the General Statutes is amended by adding a new section to read:

"**§ 28A-15-13. Opening and inventory of decedent's safe-deposit box.**

(a) Definitions. -- The following definitions apply to this section:

(1) Institution. -- Any entity or person having supervision or possession of a safe-deposit box to which a decedent had access.

(2) Letter of authority. -- Letters of administration, letters testamentary, an affidavit of collection of personal property, an order of summary administration, or a letter directed to the institution designating a person entitled to receive the contents of a safe-deposit box to which the decedent had access. The letter of authority

must be signed by the clerk of superior court or by the clerk's representative.

(3) Qualified person. -- A person possessing a letter of authority or a person named as a lessee or cotenant of the safe-deposit box to which the decedent had access.

(b) Presence of Clerk Required. -- Any safe-deposit box to which a decedent had access shall be sealed by the institution having supervision or possession of the box. Except as provided in subsection (c), the presence of the clerk of superior court of the county where the safe-deposit box is located or the presence of the clerk's representative is required before the box may be opened. The clerk or the clerk's representative shall open the safe-deposit box in the presence of the person possessing a key to the box and a representative of the institution having supervision or possession of the box. The clerk shall make an inventory of the contents of the box and furnish a copy to the institution and to the person possessing a key to the box.

(c) An Inventory and the Presence of Clerk Not Required. -- Neither an inventory nor the presence of the clerk of superior court or the clerk's representative is required when the person requesting the opening of the decedent's safe-deposit box is a qualified person.

(d) Testamentary Instrument in Box. -- If the safe-deposit box contains any writing that appears to be a will, codicil, or any other instrument of a testamentary nature, then the clerk of superior court or the qualified person shall file the instrument in the office of the clerk of superior court.

(e) Release of Contents. -- Except as provided in subsection (d) for testamentary instruments, the institution shall not release any contents of the safe-deposit box to anyone other than a qualified person.

(f) No Tax Waiver Required. -- Notwithstanding the provisions in G.S. 105-24(a), no tax waiver is required for the release of the contents of the decedent's safe-deposit box."

Section 2. G.S. 105-24(b), (c), and (e) are repealed.

Section 3. This act becomes effective October 1, 1998, and applies to estates of decedents who die on or after that date.

EXPLANATION OF LEGISLATIVE PROPOSAL 10:
Decedent's Safe-deposit Box

TO: Revenue Laws Study Committee
FROM: Martha Walston, Staff Attorney
DATE: April 30, 1998
SPONSOR:

This proposal abolishes the requirement of the presence of the clerk of superior court when a request is made to open a decedent's safe deposit box, if the person making the request is a person who possesses letters of authority signed by the clerk of superior court or if the person is a lessee or cotenant of the safe-deposit box. In such situations no inventory and tax waiver would be required before the contents of the box are released to a person possessing the letter of authority or who is a lessee or cotenant of the box.

Current Law

When a person dies and that person had access to a safe-deposit box, the box is sealed and may not be opened by the institution renting the box except in the presence of all three of the following:

(a) personal representative, family member, or cotenant of the box.
(b) representative of the institution renting the safe-deposit box.
(c) the clerk of superior court of the county where the box is located.

The clerk must inventory the contents of the safe-deposit box and send a copy of the inventory to the Department of Revenue and to the personal representative of the estate. The clerk will also retain a copy of the inventory for the estate file in the Clerk's office. When the Department of Revenue receives its copy of the inventory, the Department will send a release to the bank so that the contents of the box may be removed by the personal representative. If the safe deposit box contains assets that do not belong to the decedent, then the Clerk will inventory these assets showing that they are in the name of others or that they are marked belonging to another. The only items that may be removed from the box at the time of the inventory are the decedent's will and any life insurance policies on the decedent's life. The Clerk must file the will in the Clerk's office.

Proposal

The proposal repeals the subsections in G.S. 105-24 regarding the opening of a decedent's safe-deposit box and the inventory and release of its contents. The proposal also clarifies that no tax waiver is required before the contents are

released to a qualified person. The proposal then creates a new statute in Chapter 28A, Administration of Decedents' Estates. This new statute no longer requires the presence of the clerk and an inventory of the contents of a decedent's safe-deposit box when the person requesting that the box be opened is a qualified person. A qualified person is one who possesses letters of authority signed by the clerk of superior court or who is a lessee or cotenant of the safe-deposit box. A letter of authority is defined as the following:

(1) letters of administration - this names an administrator to administer the estate of a person who died without a will.
(2) letters testamentary - this names an executor to administer the estate of a person who died with a will.
(3) an affidavit of collection of personal property - this affidavit is issued to an heir or creditor of a decedent when the estate is a small estate (personal property not exceeding $10,000). If the surviving spouse is the sole beneficiary, then the estate may contain personal property not exceeding $20,000.
(4) order of summary administration - this order is issued when a surviving spouse is the sole devisee or heir of the decedent
(5) letter signed by the clerk designating a person to receive the decedent's contents of the safe-deposit box.

The proposal requires that a qualified person or the clerk, if the person requesting that the safe-deposit box be opened is not a qualified person, file any testamentary instrument found in the box with the Clerk's office. The contents of the box may only be released to a qualified person, except that the will may be released to either the clerk or a qualified person.

The clerks of superior court support this proposal because they do not have sufficient staff to carry out the inventory of decedents' safe-deposit boxes in a timely manner. In some of the larger counties, heirs are having to wait weeks before a clerk can inventory the decedent's boxes. The Department of Revenue also supports the abolishment of tax waivers for safe-deposit boxes.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H D

LEGISLATIVE PROPOSAL 11
98-RBZ-32 (3.1)
(THIS IS A DRAFT AND IS NOT READY FOR INTRODUCTION)
18-MAY-98 16:36:32

Short Title: Property Tax Matters. (Public)

Sponsors: Representatives Neely, Brawley, Cansler, Capps, Gray, Hill, Ramsey, and C. Wilson.

Referred to:

A BILL TO BE ENTITLED

AN ACT TO CLARIFY WHO CAN REPRESENT A TAXPAYER BEFORE THE COUNTY BOARD OF EQUALIZATION, TO CLARIFY THAT A HEARING BEFORE THE PROPERTY TAX COMMISSION IS DE NOVO, AND TO ALLOW A COUNTY TO PRORATE PROPERTY TAXES ON A MOTOR VEHICLE WHEN THE OWNER SURRENDERS THE VEHICLE'S LICENSE PLATE.

The General Assembly of North Carolina enacts:

Section 1. G.S. 105-322 is amended by adding a new section to read:

"(h) Representation. -- Notwithstanding G.S. 84-2.1, a person may represent a taxpayer before the board of equalization and review if the taxpayer gives the person written authorization to act on the taxpayer's behalf in the matter being heard by the board. The board of county commissioners may adopt a resolution that uniformly sets forth the form the written authorization must take."

Section 2. G.S. 105-290(a) reads as rewritten:

"(a) Duty to Hear Appeals. -- In its capacity as the State board of equalization and review, the Property Tax Commission shall hear and adjudicate appeals from boards of county

commissioners and from county boards of equalization and review as provided in this section. Appeals heard and adjudicated by the Commission are hearings de novo. Failure of a taxpayer to present factual or legal arguments to a board of equalization and review shall not prejudice the taxpayer in subsequent proceedings before the Commission."

Section 3. G.S. 105-330.6(c) reads as rewritten:

"(c) If the owner of a classified motor vehicle listed pursuant to G.S. 105-330.3(a)(1) either transfers the motor vehicle to a new owner or moves out of state and registers the vehicle in another jurisdiction, and the owner surrenders the registration plates from the listed vehicle to the Division of Motor ~~Vehicles and at the date of surrender one or more full calendar months remains in the listed vehicle's tax year,~~ Vehicles, then the owner may apply for a release or refund of taxes on the vehicle for ~~the~~ any full calendar months remaining ~~after surrender.~~ in the vehicle's tax year after the date of surrender. To apply for a release or refund, the owner must present to the county tax collector within 120 days after surrendering the plates the receipt received from the Division of Motor Vehicles accepting surrender of the registration plates. The county tax collector shall then multiply the amount of the taxes for the tax year on the vehicle by a fraction, the denominator of which is 12 and the numerator of which is the number of full calendar months remaining in the vehicle's tax year after the date of surrender of the registration plates. The product of the multiplication is the amount of taxes to be released or refunded. If the taxes have not been paid at the date of application, the county tax collector shall make a release of the prorated taxes and credit the owner's tax notice with the amount of the release. If the taxes have been paid at the date of application, the county tax collector shall direct an order for a refund of the prorated taxes to the county finance officer, and the finance officer shall issue a refund to the vehicle owner."

Section 4. This act is effective when it becomes law.

EXPLANATION OF LEGISLATIVE PROPOSAL 11:
PROPERTY TAX MATTERS

TO: Revenue Laws Study Committee
FROM: Cindy Avrette, Committee Counsel
DATE: May 18, 1998
SPONSOR:

Legislative Proposal 11 contains the Committee's recommendations on a couple of different property tax matters. It clarifies two issues concerning property tax appeals that have long been assumed and it amends the property tax law concerning the taxation of motor vehicles:

- Section 1 provides that a taxpayer may authorize any person the taxpayer chooses to represent the taxpayer at property tax appeals before the county board of equalization and review. In response to concerns voiced at the last meeting, the proposal gives boards of county commissioners the ability to specify the form the authorization must take.
- Section 2 provides that appeals heard and adjudicated by the Property Tax Commission are considered "hearings de novo", meaning that the hearing is not limited to the record of the county board of equalization and review.
- Section 3 allows counties to prorate taxes on motor vehicles when the owner surrenders the registration plates to the Division of Motor Vehicles because the owner has moved to a different state and registered the vehicle in another jurisdiction.

The Department of Revenue has asked the Revenue Laws Study Committee to clarify the issue of who may represent a taxpayer before the board of equalization and review because there is some question as to whether or not a board of equalization and review is a quasi-judicial body. If the board is a quasi-judicial body, then only attorneys may represent taxpayers before it.

The county board of equalization and review is the first body to which a taxpayer may appeal local property tax listings and appraisals. The board of equalization and review is composed of the members of the board of county commissioners unless the board of commissioners appoints a special board of equalization and review by resolution. The board of equalization and review has the following duties:

- To list, appraise, and assess any property that has been omitted from the tax lists.
- To correct all errors in the names of persons and in the description of properties subject to taxation.
- To increase or decrease the appraised value of property that has been listed and appraised at a figure that is below or above the appraisal conducted by the county.
- To hear taxpayer appeals concerning a property's valuation or taxation and to adopt an order reducing, increasing, or confirming the appraisal appealed or listing or removing from the tax lists the property whose omission or listing has been appealed.

A decision of a board of equalization and review may be appealed to the Property Tax Commission. Only the taxpayer or an attorney representing the taxpayer may appear before the Property Tax Commission because of a law change made in 1995. In 1995, the General Assembly expanded the "practice of law" to include "...the preparation and filing of petitions for use in any court, including administrative tribunals and other judicial or quasi-judicial bodies, ...". Under the law, it is unlawful for any person, other than an active member of the Bar of the State of North Carolina, to practice law in North Carolina. In 1996, the State Bar issued an advisory opinion to the Property Tax Commission in which it determined that the Commission was a quasi-judicial body. Therefore, only licensed attorneys can represent taxpayers before the Commission.

The Property Tax Commission asked the State Bar whether a professional representative not licensed to practice law in North Carolina could appear before a county board of equalization and review concerning property valuation appeals. The State Bar concluded that if a county board of equalization and review is considered a quasi-judicial body, then such conduct would constitute the practice of law and could only be undertaken by a licensed attorney. Because a board of equalization and review does make findings of fact, some would argue that it is a quasi-judicial body.

Traditionally, this level of appeal has been less formal than appeals made to the Property Tax Commission. The Department would like to maintain this atmosphere of informality and cooperation because appeals resolved at the local level are far less costly in both money and time than appeals brought to the Property Tax Commission. Rather than debate the issue as to whether or not the board of equalization and review is a quasi-judicial body, this proposal seeks to retain the current practice: a taxpayer may give authorize anyone the taxpayer

chooses to represent the taxpayer before the local board of equalization and review.

To protect the taxpayer, the legislation provides that the authorization the taxpayer gives to the person who will represent the taxpayer must be in writing. Some counties have experienced multiple appeals brought forth by tax consultants on behalf of taxpayers without the taxpayers' knowledge. It further provides that the failure of a taxpayer to present factual or legal arguments to a board of equalization and review does not prevent the taxpayer from raising those issues to the Property Tax Commission.

In 1993, counties began taxing motor vehicles that are registered with the Division of Motor Vehicles on a revolving, year-round basis. Under this system, the taxpayer receives a tax notice a couple of months after the registration is obtained or renewed and the taxes are due within four months after the registration was obtained or renewed. If the taxes remain unpaid for more than four months after they become due, the county places a block of the vehicle's registration with DMV. DMV will then refuse to renew the vehicle's registration the following year unless the taxpayer obtains a receipt showing that the previous year's taxes have been paid.

In some cases, taxpayers move out of state during this time period. Therefore, the "block" on the vehicle's registration does not impact them. In most instances, the taxpayer is willing to pay the taxes on the part of the tax year that the vehicle was registered in North Carolina. In order to obtain part of the tax liability, some counties prorate the amount of taxes due. This proposal gives counties the specific authority to release or refund the taxes on a motor vehicle when the taxpayer surrenders the vehicle's registration plate to the DMV because the taxpayer has moved out of state and registered the vehicle in another jurisdiction. The taxpayer may apply for a release or refund of taxes on the vehicle for any full calendar months remaining in the vehicle's tax year after the date of surrender.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

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LEGISLATIVE PROPOSAL 12
98-RB-21 (3.1)(Z)
(THIS IS A DRAFT AND IS NOT READY FOR INTRODUCTION)

Short Title: Sales Tax Changes. (Public)

Sponsors: Representatives Hill, Brawley, Cansler, Capps, Gray, Neely, Ramsey, and C. Wilson.

Referred to:

A BILL TO BE ENTITLED

AN ACT TO RAISE THE SALES TAX QUARTERLY THRESHOLD AND TO REPEAL THE ANNUAL WHOLESALE SALES TAX LICENSE.

The General Assembly of North Carolina enacts:

Section 1. G.S. 105-164.16(b) reads as rewritten:

"(b) General Reporting Periods. -- Returns of taxpayers who are required by this subsection to report on a monthly or quarterly basis are due within 15 days after the end of each monthly or quarterly period. Returns of taxpayers who are required to report on a semimonthly basis are due within 10 days after the end of each semimonthly period.

A taxpayer who is consistently liable for less than ~~fifty dollars ($50.00)~~ one hundred dollars ($100.00) a month in State and local sales and use taxes may, with the approval of the Secretary, file a return on a quarterly basis. A taxpayer who is consistently liable for at least twenty thousand dollars ($20,000) a month in State and local sales and use taxes shall, when directed to do so by the Secretary, file a return on a semimonthly basis. All other taxpayers shall file a return on a monthly basis. Quarterly reporting periods end on the last day of March, June, September, and December; monthly reporting periods

end on the last day of the month; and semimonthly reporting periods end on the 15th of each month and the last day of each month.

The Secretary shall monitor the amount of tax remitted by a taxpayer and shall direct a taxpayer who consistently remits at least twenty thousand dollars ($20,000) each month to file a return on a semimonthly basis. In determining the amount of tax due from a taxpayer for a reporting period the Secretary shall consider the total amount due from all places of business owned or operated by the same person as the amount due from that person.

A taxpayer who is directed to remit sales and use taxes on a semimonthly basis but who is unable to gather the information required to submit a complete return for either the first reporting period or both the first and second semimonthly reporting periods may, upon written authorization by the Secretary, file an estimated return for that first reporting period or both periods on the basis prescribed by the Secretary. Once a taxpayer is authorized to file an estimated return for the first period or both periods, the taxpayer may continue to file an estimated return for the first or both periods until the Secretary, by written notification, revokes the taxpayer's authorization to do so. When filing a return for the second semimonthly reporting period, a taxpayer who files an estimated return for the first period but not both periods shall remit the amount of tax due for both the first and second reporting periods, less the amount ~~he~~ the taxpayer remitted with ~~his~~ the estimated return.

A taxpayer who files an estimated return for both periods is considered to have been granted an extension for both the first and second reporting periods. Notwithstanding G.S. 105-164.19, if a taxpayer who files an estimated return for both periods files a reconciling return for those periods within ten days of the due date of the return for the second period and any underpayment of estimated taxes remitted with the reconciling return is less than ten percent (10%) of the amount of taxes due for both the first and second reporting periods, no interest shall be charged. Otherwise, a taxpayer who files an estimated return for both periods shall be charged interest at the statutory rate from the due date of the return for the first reporting period to the date the reconciling return is filed."

Section 2. Part 2 of Division II of Article 5 of Chapter 105 of the General Statutes is repealed.

Section 3. G.S. 105-164.4(c) reads as rewritten:

"(c) Certificate of Registration. --~~Any person who engages in any business for which a privilege tax is imposed by this Article shall apply for and obtain from the Secretary upon payment of fifteen dollars ($15.00) a license to engage in and conduct the business upon the condition that the person shall pay the tax accruing to the State under this Article; the person shall thereby be duly licensed and registered to engage in the business.~~

~~A license issued under this subsection shall be a continuing license until it becomes void or is revoked for failure to comply with the provisions of this Article. A license issued under this subsection to a person, other than a person who makes only wholesale sales or only exempt sales, becomes void if, for a period of eighteen months, the license holder files no return or files returns showing no sales.~~

~~A retailer who sells tangible personal property at a flea market shall conspicuously display the retailer's sales tax license when making sales at the flea market.~~

Before a person may engage in business as a retailer or a wholesale merchant, the person must obtain a certificate of registration from the Department. To obtain a certificate of registration, a person must register with the Department and pay fifteen dollars ($15.00).

A certificate of registration is valid unless it is revoked for failure to comply with the provisions of this Article or becomes void. A certificate issued to a retailer becomes void if, for a period of eighteen months, the retailer files no returns or files returns showing no sales."

Section 4. G.S. 105-164.6(f) reads as rewritten:

"(f) ~~Every retailer engaged in business in this State selling or delivering tangible personal property for storage, use, or consumption in this State shall apply for and obtain from the Secretary upon payment of fifteen dollars ($15.00) a license to engage in and conduct the business upon the condition that the person shall pay the tax accruing to the State under this Article; the person shall thereby be duly licensed and registered to engage in the business. A license issued under this subsection shall be a continuing license until it becomes void or is revoked for failure to comply with the provisions of this Article. A license issued under this subsection to a person, other than a person who makes only wholesale sales or only exempt sales, becomes void if, for a period of 18 months, the license holder files no return or files returns showing no sales.~~

Before a person may engage in business in this State selling or delivering tangible personal property for storage, use, or consumption in this State, the person must obtain a certificate of registration from the Department. To obtain a certificate of registration, a person must register with the Department and pay fifteen dollars ($15.00).

A certificate of registration is valid unless it is revoked for failure to comply with the provisions of this Article or becomes void. A certificate issued to a retailer becomes void if, for a period of eighteen months, the retailer files no returns or files returns showing no sales."

Section 5. G.S. 105-164.4(a)(4b) reads as rewritten:

"(4b) A person who sells tangible personal property at a ~~flea~~ specialty market, other than the person's own household personal property, is considered a retailer under this Article. A tax at the general rate of tax is levied on the sales price of each article sold by the retailer at the ~~flea~~ specialty market. ~~A person who leases or rents space to others at a flea market may not lease or rent this space unless the retailer requesting to rent or lease the space shows the license or a copy of the license required by this Article or other evidence of compliance. A person who leases or rents space at a flea market shall keep records of retailers who have leased or rented space at the flea market. As used in this subdivision, the term "flea market" means a place where space is rented to a person for the purpose of selling tangible personal property.~~ The term "specialty market" has the same meaning as defined in G.S. 66-250."

Section 6. G.S. 66-252 reads as rewritten:

"**§** 66-252. Display and possession of ~~retail sales tax license.~~ certificate of registration.

(a) When Required. -- A person who sells tangible personal property at a specialty market, other than the person's own household personal property, is considered a retailer under G.S. 105-164.4 and must obtain a certificate of registration from the Department of Revenue before the person may engage in business. An itinerant merchant must keep the merchant's ~~retail sales tax license~~ certificate of registration conspicuously and prominently displayed, so as to be visible for inspection by patrons of the

itinerant merchant at the places or locations at which the goods are to be sold or offered for sale. A peddler must carry the peddler's ~~retail sales tax license~~ certificate of registration when the peddler offers goods for sale and must produce the ~~license~~ certificate upon the request of any customer, State or local revenue agent, or law enforcement agent. A specialty market vendor must keep the ~~retail sales tax license~~ certificate of registration conspicuously and prominently displayed, so as to be visible for inspection by patrons of the specialty market vendor at the places or locations at which the goods are to be sold or offered for sale. A specialty market operator must have its ~~retail sales tax license,~~ certificate of registration, if any, available for inspection during all times that the specialty market is open and must produce it upon the request of any customer, State or local revenue agent, or law enforcement agent.

(b) Compliance. -- The requirement that a ~~retail sales tax license~~ certificate of registration be displayed is satisfied if the vendor displays either of the following:

(1) A copy of the ~~license.~~ certificate.

(2) Evidence that the ~~license~~ certificate has been applied for and the applicable ~~license~~ registration fee has been paid within 30 days before the date the ~~license~~ certificate was required to be displayed."

Section 7. G.S. 66-255 reads as rewritten:

"**§ 66-255. Specialty market registration list.**

A specialty market operator must maintain a daily registration list of all specialty market vendors selling or offering goods for sale at the specialty market. The registration list must clearly and legibly show each specialty market vendor's name, permanent address, and ~~retail sales and use tax registration~~ certificate of registration number. The specialty market operator must require each specialty market vendor to exhibit a valid ~~retail sales tax license~~ certificate of registration for visual inspection by the specialty market operator at the time of registration, and must require each specialty market vendor to keep the ~~retail sales tax license~~ certificate of registration conspicuously and prominently displayed, so as to be visible for inspection by patrons of the specialty market vendor at the places or locations at which the goods are offered for sale. Each daily registration list maintained pursuant to this section must be retained by the specialty market operator for no less than two years and must at any time be made available upon request to any law enforcement officer."

Section 8. G.S. 66-257 reads as rewritten:

"§ 66-257. Misdemeanor violations.

(a) Class 1 Misdemeanors. -- A person who does any of the following commits a Class 1 misdemeanor:

(1) Fails to keep a record of new merchandise and fails to produce a record or an affidavit pursuant to G.S. 66-254.

(2) Falsifies a record of new merchandise required by G.S. 66-254.

(b) Class 2 Misdemeanors. -- A person who does any of the following commits a Class 2 misdemeanor:

(1) If the person is an itinerant merchant or a specialty market vendor, fails to display the ~~retail sales tax license~~ certificate of registration as required by G.S. 66-252.

(2) If the person is a specialty market operator, fails to maintain the daily registration list as required by G.S. 66-255.

(c) Class 3 Misdemeanors. -- A person who does any of the following commits a Class 3 misdemeanor:

(1) If the person is a peddler or an itinerant merchant, fails to obtain the permission of the property owner as required by G.S. 66-251.

(2) If the person is a peddler or a specialty market operator, fails to produce the ~~retail sales tax license~~ certificate of registration as required by G.S. 66-252.

(3) Fails to provide name, address, or identification upon request as required by G.S. 66-253 or provides false information in response to the request.

(4) Knowingly gives false information when registering pursuant to G.S. 66-255.

(d) Defense. -- Whenever satisfactory evidence is presented in any court of the fact that permission to use property was not displayed as required by G.S. 66-251 or that a ~~retail sales tax license~~ certificate of registration was not displayed or produced as required by G.S. 66-252, the person charged may not be found guilty of that violation if the person produces in court a valid permission or a valid ~~retail sales tax license,~~ certificate of registration, respectively, that had been issued prior to the time the person was charged."

Section 9. Section 1 of this act becomes effective January 1, 1999. Sections 2 through 8 of this act become

effective July 1, 1998. The remainder of this act is effective when it becomes law.

EXPLANATION OF BILL LEGISLATIVE PROPOSAL 12:
Sales Tax Changes

TO: Revenue Laws Study Committee
FROM: Cindy Avrette, Committee Counsel
DATE: May 18, 1998
SPONSOR:

The Department of Revenue requested that the Revenue Laws Study Committee consider this proposal. It makes three changes to the sales tax statutes:

- It raises the sales tax quarterly threshold from $50 to $100.
- It repeals the annual wholesale sales tax license.
- It changes the name of the retail sales tax license to certificate of registration.

Under current law, taxpayers that are liable for less than $50.00 a month in State and local sales and use taxes may file returns and remit the sales and use taxes owed on a quarterly basis. Taxpayers that are consistently liable for at least $20,000 a month in State and local sales and use taxes must file returns and remit taxes on a semi-monthly basis. All other taxpayers must file returns and remit taxes on a monthly basis.

Section 1 of the proposal increases the sales tax quarterly threshold from $50 to $100. This change means that approximately 10,000 taxpayers that are now filing monthly sales and use tax returns will be able to file quarterly returns. The change will reduce the number of returns currently being filed by one-third. The threshold was last increased in 1991 from $25 to $50. This section becomes effective January 1, 1999. This change in the law will mean that approximately $2 million that would have been collected in fiscal year 1998-99 will not be collected until fiscal year 1999-00 because two months of collections are shifted into the 1999-00 fiscal year.

Under current law, a wholesale merchant must obtain both a wholesale sales tax license and a certificate of registration, referred to in the statute as a retail sales tax license. The information necessary to obtain both of these licenses is the same. The wholesale sales tax license is an annual license that costs $25. The certificate of registration needs to be acquired only once and it costs $15.

Section 2 of the proposal repeals the wholesale sales tax license. Part 2 of Division II of Article 5 of Chapter 105 of the General Statutes contains one statute and that statute imposes an annual privilege license tax of $25 on wholesale merchants. The Department does not need the information from this license because the wholesale merchant has already provided the Department with the information it needs on the certificate of registration. The tax is also expensive to collect and document and it is a nuisance tax for wholesale businesses to report and pay.

The statute being repealed contains a couple of other provisions that are also duplicated by other statutes in the Sales and Use Tax Article. G.S. 105-164.25 requires wholesale merchants to retain a duplicate copy of each bill of sale for a period of at least three years. G.S. 105-164.26 establishes the presumption that all gross receipts of a wholesale merchant are considered taxable unless the merchant obtains a certificate of resale from the purchaser. If the merchant does not obtain a certificate of resale from the purchaser, then the purchase is taxable at the rate established by the Sales and Use Tax Article.

Section 3 rewrites the law to clarify that both wholesale merchants and retailers must obtain a certificate of registration before beginning business. Although the statute refers to the certificate as a "retail sales tax license", it must be obtained by both wholesale merchants and retailers because a privilege tax is imposed on both of them under the sales and use tax article.

The section also changes the name of the license to a "certificate of registration" because that more accurately reflects the nature of the document. It also corresponds to the name it is most commonly known as in the business community: a "Merchant's Certificate of Registration". Unlike the annual wholesale sales tax license, the certificate of registration needs to be obtained only once. It is valid unless it is revoked because the retailer or wholesale merchant fails to comply with the sales and use tax law. In the case of a retailer, the certificate becomes void if the retailer does not make any sales for a period of 18 months. If the certificate is revoked or becomes void, the retailer or wholesale merchant must register with the Department and obtain a new certificate of registration before engaging in business.

Sections 4 through 8 of the bill make conforming changes in the sales and use tax statutes and in the Article 32 of Chapter 66 of the General Statutes, which governs peddlers, itinerant merchants, and specialty markets. The changes made in sections 2 through 8 of the proposal become effective July 1, 1998.

FISCAL ANALYSIS MEMORANDUM

DATE: January 22, 1998

TO: Revenue Laws Study Commission

FROM: Richard Bostic
Fiscal Research Division

RE: Sales Tax Changes

FISCAL IMPACT

Yes (X) **No ( )** **No Estimate Available ( )**

	FY 1998-99	FY 1999-00	FY 2000-01	FY 2001-02	FY 2002-03
REVENUES					
General Fund					
Wholesale License	($1,250,000)	($1,250,000)	($1,250,000)	($1,250,000)	($1,250,000)
Threshold	(2,000,000)				
Net Change	**($3,250,000)**	**($1,250,000)**	**($1,250,000)**	**($1,250,000)**	**($1,250,000)**

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

EFFECTIVE DATE: Section 1 (Wholesale License) and Sections 2 and 3 (Certificate of Registration) are effective July 1, 1998. Section 4 (Sales Tax Threshold) is effective January 1, 1999.

BILL SUMMARY: This act repeals the $25 wholesale license tax. The bill also increases the quarterly filing threshold for sales tax from $50 to $100.

ASSUMPTIONS AND METHODOLOGY:

Wholesale License

Section 1 of the bill repeals the annual $25 wholesale license. The Department of Revenue reports $1.25 million in revenue from this tax each year. Since the Director of the Sales Tax Division projects little or no growth in wholesale license revenues, this memo assumes a flat growth rate for this license.

Filing Threshold

Taxpayers that are liable for less than $50 in sales and use tax remit this tax to the Department of Revenue on a quarterly basis. Section 3 of this bill raises the filing threshold from $50 to $100 beginning January 1, 1999. After analyzing sales and use tax collections and the number of accounts by tax bracket, the Department of Revenue's Tax Research Division estimates that this will affect 10,000 taxpayers and will shift $2 million in collections from FY 1998-99 to 1999-00. There is no actual loss of income, but on a cash flow basis there will be $2 million less to spend on the FY 1998-99 budget.

TECHNICAL CONSIDERATIONS:

For discussion purposes, if the sales tax filing threshold were increased to $250, the one-time cash flow loss would be $6 million. For a $500 filing threshold, the one-time loss would be $16 million.

When asked if the Department could reduce clerical staff due to a reduction in the number of wholesale forms processed, the answer was no. The Director of the Sales Tax Division responded that the staff would be reassigned to other tasks. The Appropriations Committee may want to review staffing needs if this bill is approved.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

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LEGISLATIVE PROPOSAL 13
98-RBXZ-33(3.31)
(THIS IS A DRAFT AND IS NOT READY FOR INTRODUCTION)
18-MAY-98 11:04:32

Short Title: Criminal Provisions for Tax Violations. (Public)

Sponsors: Senators Dalton, Cochrane, Kerr, Hartsell, Hoyle, and Webster.

Referred to:

A BILL TO BE ENTITLED

AN ACT TO ENHANCE THE CRIMINAL PROVISIONS FOR TAX VIOLATIONS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 105-236(7) reads as rewritten:

"(7) Attempt to Evade or Defeat Tax. -- Any person who willfully attempts, or any person who aids or abets any person to attempt in any manner to evade or defeat a tax or its payment, shall, in addition to other penalties provided by law, be guilty of a ~~Class I felony which may include a fine up to twenty-five thousand dollars ($25,000).~~ Class H felony."

Section 2. G.S. 105-236(9a) reads as rewritten:

"(9a) Aid or Assistance. -- Any person, pursuant to or in connection with the revenue laws, who willfully aids, assists in, procures, counsels, or advises the preparation, presentation, or filing of a return, affidavit, claim, or any other document that the person knows is fraudulent or false as to any material matter, whether or not the

falsity or fraud is with the knowledge or consent of the person authorized or required to present or file the return, affidavit, claim, or other document, shall be guilty of a ~~Class I felony which may include a fine up to ten thousand dollars ($10,000).~~ Class H felony."

Section 3. This act becomes effective November 1, 1998.

EXPLANATION OF LEGISLATIVE PROPOSAL 13:
Criminal Provisions for Tax Violations

TO: Revenue Laws Study Committee
FROM: Cindy Avrette, Committee Counsel
DATE: May 18, 1998
SPONSOR:

Prior to 1995, a person who willfully attempted to evade paying the amount of tax due, or who willfully helped another taxpayer attempt to evade paying the amount of tax due, could be punished by an active prison sentence, a monetary fine, or both. Effective January 1, 1995, however, a person who commits these crimes may only be punished by a monetary fine. In some cases, the amount of tax money due is quite large. In others, the deception is egregious. Some of the people charged with these crimes are charged with them repeatedly.

The Criminal Investigations Division of the Department of Revenue does not believe the current level of punishment is sufficient to deter many would-be tax evaders. For this reason, the Division asked the Committee to consider changing the classification of these two crimes from a Class I felony to a Class H felony so that a sentencing judge would have the discretion to sentence defendants to active time if the circumstances justify such a punishment. Sections 1 and 2 of the proposal change the nature of the offense for attempting to evade a tax and for attempting to help another evade a tax from a Class I felony to a Class H felony. As Class I felonies, a sentencing judge is limited to imposing a fine for these violations unless the person has been convicted of the crime several times. As Class H felonies, a sentencing judge may not only impose a fine for these offenses, but also an active sentence for first time offenders if it is justified. Unless otherwise stated, the amount of the fine is left to the discretion of the court. In order to give a sentencing judge more latitude, the proposal also deletes the monetary constraint placed on a sentencing judge by the tax statutes.

FISCAL ANALYSIS MEMORANDUM

DATE: April 20, 1998

TO: Revenue Laws Study Committee

FROM: Jim Mills
Fiscal Research Division

RE: Criminal Provisions for Tax Violations

FISCAL IMPACT

Yes ( ) No (X) No Estimate Available ( )

No fiscal impact – increase penalty to evade or defeat tax or assist with evasion

	FY 1998-99	FY 1999-00	FY 2000-01	FY 2001-02	FY 2002-03
REVENUES					
EXPENDITURES					
POSITIONS:					

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Department of Revenue; Department of Correction; Judicial Department

EFFECTIVE DATE: November 1, 1998

BILL SUMMARY: This bill increases the penalty for attempting to evade or defeat tax from a Class I felony to Class H (G.S. 105-236(7) and 9(a)).

ASSUMPTIONS AND METHODOLOGY:

Department of Correction

According to the Sentencing and Policy Advisory Commission, in 1996-97 there were only two convictions for attempting to evade or defeat a tax and one conviction for aid or assistance in doing so. Therefore it is estimated there would be no fiscal impact on the prison population. For example, if there were ten convictions it is estimated that only 3 inmates would be added to the system.

Judicial Department

Increases in criminal penalty bills or new crimes can increase court time and personnel costs. For example in this bill, an increase in punishment for attempting to evade or defeat a tax could make some defendants more likely to request a jury trial, thus increasing court time and costs. However, the number of offenses and convictions for the current Class I felonies are so few that any fiscal impact on the court system is unlikely.

TECHNICAL CONSIDERATIONS: None

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

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LEGISLATIVE PROPOSAL 14
98-RBXZ-31(1.1)
(THIS IS A DRAFT AND IS NOT READY FOR INTRODUCTION)

Short Title: Amendments to the Revenue Laws. (Public)

Sponsors: Senators Hoyle, Cochrane, Dalton, Kerr, Hartsell, and Webster.

Referred to:

A BILL TO BE ENTITLED

AN ACT TO MAKE THE REVENUE ACT PENALTIES UNIFORM, TO DELETE OBSOLETE AND INEFFECTIVE PENALTIES, AND TO GIVE NONPROFIT ENTITIES THREE YEARS TO FILE APPLICATIONS FOR REFUND OF TAXES PAID.

The General Assembly of North Carolina enacts:

Section 1. G.S. 105-16 reads as rewritten:

"§ 105-16. ~~Interest and penalty.~~ When tax must be paid.

~~All taxes~~ Taxes imposed by this Article are due within nine months after the death of the decedent. ~~shall be due and payable at the death of the testator, intestate, grantor, donor or vendor; if not paid within nine months from date of death of the testator, intestate, grantor, donor or vendor, such tax shall bear interest at the rate established pursuant to G.S. 105-241.1(i), to be computed from the expiration of nine months from the date of the death of such testator, intestate, grantor, donor or vendor until paid: Provided, that if the taxes herein levied shall not be paid in full within nine months from the later of the date of death of the testator, intestate, grantor, donor or vendor, or from the qualification of the executor or administrator, then and in such case a penalty of ten per centum (10%) upon the amount of taxes remaining due and unpaid shall be~~

~~added: Provided further, that the penalty of ten per centum (10%) herein imposed may be remitted by the Secretary of Revenue in case of unavoidable delay in settlement of estate or of pending litigation, and the Secretary of Revenue is further authorized, in case of protracted litigation or other delay in settlement not attributable to laches of the party liable for the tax, to remit all or any portion of the interest charges accruing under this schedule, with respect to so much of the estate as was involved in such litigation or other unavoidable cause of delay. Provided, that the time for payment and collection of such tax may be extended by the Secretary of Revenue for reasonable cause shown.~~"

Section 2. G.S. 105-22 reads as rewritten:

"**§105-22. Duties of clerks of superior court.**

~~It shall be the duty of the~~ The clerk of the superior court ~~to~~ must obtain from ~~any~~ an executor or administrator, at the time of the qualification of ~~such~~ the executor or administrator, the address of the personal representative qualifying, the names and addresses of the heirs-at-law, legatees, distributees, devisees, etc., as far as practical, the approximate value and character of the property or estate, both real and personal, the relationship of the heirs-at-law, legatees, devisees, etc., to the decedents, and forward the same to the Secretary of Revenue on or before the tenth day of each month. The clerk shall make no report of a death if no inheritance tax return is required to be filed for the decedent's estate under G.S. 105-23 because the estate meets the requirements of subsection (b) of that section. ~~Any clerk of the superior court who shall fail, neglect, or refuse to file such monthly reports as required by this section shall be liable to a penalty in the sum of one hundred dollars ($100.00) to be recovered by the Secretary of Revenue in an action to be brought by the Secretary of Revenue.~~"

Section 3. G.S. 105-29 reads as rewritten:

"**§ 105-29. Uniform valuation.**

When filing an inheritance tax return, the personal representative of an estate must report as the value of the estate the value that is reported on an estate tax return filed for the estate under the Code. If the federal government does not correct or otherwise determine the value of an estate reported on an estate tax return, the Secretary may determine the value based on evidence of any kind that becomes available to the Secretary from any source.

If the federal government corrects or otherwise determines the value of an estate reported on an estate tax return, the personal

representative must, within two years after being notified of the correction or final determination by the federal government, file an inheritance tax return with the Secretary reflecting the corrected or determined value. The Secretary must adopt the value as corrected or determined by the federal government for federal estate tax purposes. The Secretary shall assess and collect any additional tax due on the transfer of property in the estate as provided in Article 9 of this Chapter and shall refund any overpayment of tax as provided in Article 9 of this Chapter. A personal representative who fails to report a federal correction or determination ~~is subject to the penalties in G.S. 105-236 and~~ forfeits the right of the estate to any refund due by reason of the determination."

Section 4. G.S. 105-109 reads as rewritten:

"**§ 105-109.** ~~Engaging in business without a license.~~ Obtaining license and paying tax.

(a) When Tax Due. -- All State license taxes under this Article or schedule, unless otherwise provided for, shall be due and payable annually on or before the first day of July of each year, or at the date of engaging in such business, trade, employment and/or profession, or doing the act.

(b) License Required. -- Before a person may engage in a business, trade, or profession for which a license is required under this Article, the person must be licensed by the Department pursuant to G.S. 105-104. A license must be displayed conspicuously at the location of the licensed business, trade, or profession. ~~If any person, firm, or corporation shall continue the business, trade, employment, or profession, or to do the act, after the expiration of a license previously issued, without obtaining a new license, he or it shall be guilty of a Class 1 misdemeanor, which may include a fine which shall not be less than twenty percent (20%) of the tax in addition to the tax and the costs; and if such failure to apply for and obtain a new license be continued, such person, firm, or corporation shall pay additional tax of five per centum (5%) of the amount of the State license tax which was due and payable on the first day of July of the current year, in addition to the State license tax imposed by this Article, for each and every 30 days, or fraction thereof, that such State license tax remains unpaid from the date that same was due and payable, and such additional tax shall be assessed by the Secretary of Revenue and paid with the State license tax, and shall become a part of the State license tax. The penalties for delayed payment hereinbefore provided shall not~~

~~impair the obligation to procure a license in advance or modify any of the pains and penalties for failure to do so.~~

~~The provisions of this section shall apply to taxes levied by the counties of the State under authority of this Article in the same manner and to the same extent as they apply to taxes levied by the State.~~

(c) ~~If any person, firm, or corporation shall commence to exercise any privilege or to promote any business, trade, employment, or profession, or to do any act requiring a State license under this Article without such State license, he or it shall be guilty of a Class 1 misdemeanor; and if such failure, neglect, or refusal to apply for and obtain such State license be continued, such person, firm, or corporation shall pay an additional tax of five per centum (5%) of the amount of such State license tax which was due and payable at the commencement of the business, trade, employment or profession, or doing the act, in addition to the State license tax imposed by this Article, for each and every 30 days, or fraction thereof, that such State license tax remains unpaid from the date that same was due and payable, and such additional tax shall be assessed by the Secretary of Revenue and paid with the State license tax and shall become a part of the State license tax.~~

(d) Penalties. -- The penalties in G.S. 105-236 apply to this Article. The Secretary may collect a tax due under this Article in any manner allowed under Article 9 of this Chapter. ~~If any person, firm, or corporation shall fail, refuse, or neglect to make immediate payment of any taxes due and payable under this Article, additional taxes, and/or any penalties imposed pursuant thereto, upon demand, the Secretary of Revenue shall certify the same to the sheriff of the county in which such delinquent lives or has his place of business, and such sheriff shall have the power and shall levy upon any personal or real property owned by such delinquent person, firm, or corporation, and sell the same for the payment of the said tax or taxes, penalty and costs, in the same manner as provided by law for the levy and sale of property for the collection of other taxes, and if sufficient property is not found, the said sheriff or deputy commissioner shall swear out a warrant for the violation of the provisions of this Article and as provided in this Article.~~

(e) Local License Taxes. -- The penalty and collection provisions of this section apply to taxes levied by counties of the State under the authority of this Article in the same manner and to the same extent as they apply to taxes levied by the State. The provisions of this section for the collection of

delinquent license taxes ~~shall~~ apply to license taxes levied by the cities and towns of this State under authority of this Article, or any other provision of law, in the same manner and to the same extent as they apply to taxes levied by the ~~State and counties of this State: Provided, the municipal officer charged with the duty of collecting municipal taxes may exercise the powers vested in the sheriff by this section.~~ State."

Section 5. G.S. 105-110 is repealed.

Section 6. G.S. 105-112 is repealed.

Section 7. G.S. 105-113.3(b) reads as rewritten:

"(b) Administration. -- ~~Except as provided in this section,~~ Article 9 of this Chapter applies to this Article. ~~If a person fails or refuses to pay a tax due under this Article, a penalty shall be added to the tax due in an amount equal to fifty percent (50%) of the tax due.~~"

Section 8. G.S. 105-113.87 reads as rewritten:

"**§ 105-113.87. Refund for excise tax paid on sacramental wine.**

(a) Refund Allowed. -- A person who purchases wine for the purpose stated in G.S. 18B-103(8) may obtain a refund from the Secretary for the amount of the excise tax levied under this Article. The Secretary shall make refunds annually.

(b) Application. -- An applicant for a refund authorized by this section shall file a written request with the Secretary for the refund due for the prior calendar year on or before April 15. The Secretary may by rule prescribe what information and records shall be supplied by the applicant to qualify for the refund. No refund may be made if the application is filed more than three years after the date it is due.

~~(c) Late Application. -- An application for a refund filed later than required in subsection (b) shall be accepted by the Secretary but shall be subject to the following late penalties: an application filed by May 15, twenty-five percent (25%); an application filed after May 15 but no later than October 15, fifty percent (50%). No refund may be made if the application is filed after October 15.~~"

Section 9. G.S. 105-130.6 reads as rewritten:

"**§105-130.6. Subsidiary and affiliated corporations.**

The net income of a corporation doing business in this State ~~which~~ that is a parent, ~~subsidiary~~ subsidiary, or affiliate of another corporation shall be determined by eliminating all payments to or charges by ~~a~~ the parent, ~~subsidiary~~ subsidiary, or affiliated corporation in excess of fair compensation in all intercompany transactions of any kind whatsoever. If the Secretary ~~of Revenue shall find~~ finds as a fact that a report by

~~such~~ a corporation does not disclose the true earnings of ~~such~~ the corporation on its business carried on in this State, the Secretary may require ~~that such~~ the corporation to file a consolidated return of the entire operations of the parent corporation and of its subsidiaries and affiliates, including its own operations and ~~income, and shall~~ income. The Secretary shall determine the true amount of net income earned by ~~such~~ the corporation in this ~~State as provided herein.~~ State. The combined net income of ~~such~~ the corporation and of its parent, ~~subsidiaries~~ subsidiaries, and affiliates shall be apportioned to this State by use of the applicable apportionment formula required to be used by ~~such~~ the corporation under G.S. 105-130.4. ~~In such cases there shall be included~~ The return shall include in the apportionment formula the property, ~~payrolls~~ payrolls, and sales of all corporations for which the return is made. For the purposes of this section, a corporation ~~shall be deemed~~ is considered a subsidiary of another corporation ~~hereby designated the parent corporation,~~ when, directly or indirectly, it is subject to control by ~~such~~ the other corporation by stock ownership, interlocking directors, or by any other means whatsoever exercised by the same or associated financial interests, whether ~~such~~ the control is direct or through one or more subsidiary, affiliated, or controlled ~~corporations, and a~~ corporations. A corporation ~~shall be deemed~~ is considered an affiliate of another corporation when both are directly or indirectly controlled by the same parent corporation or by the same or associated financial interests by stock ownership, interlocking directors, or by any other means whatsoever, whether ~~such~~ the control be direct or through one or more subsidiary, ~~affiliated~~ affiliated, or controlled corporations. ~~Upon such a finding by the Secretary of Revenue,~~ The Secretary may require a ~~the~~ consolidated return ~~authorized by~~ under this section ~~may be required~~ regardless of whether the parent or controlling corporation or interests or its subsidiaries or affiliates, other than the taxpayer, are or are not doing business in this State.

If ~~such~~ a consolidated return ~~is~~ required ~~and~~ by this section is not filed within 60 days after ~~demand,~~ it is demanded, ~~said parent, subsidiary or affiliated corporation shall be subject to the penalty provided in this act for failure to file return provisions of G.S. 105-236 and, in addition, shall be subject to the penalty provided in G.S. 105-230, and in such event the provisions of G.S. 105-236 shall apply.~~ then the corporation is subject to the penalties provided in G.S. 105-230 and G.S. 105-236.

~~Such~~ The parent, ~~subsidiary~~ subsidiary, or affiliated corporation ~~shall~~ must incorporate in its return required under this section ~~such information as the Secretary of Revenue may reasonably require for the determination of~~ information needed to determine the net income taxable under this ~~Division,~~ Part, and ~~shall~~ must furnish ~~such~~ any additional information ~~as~~ the Secretary ~~may reasonably require.~~ requires. If the return does not contain the information ~~therein~~ required or ~~such~~ the additional information requested is not furnished within 30 days after ~~demand,~~ it is demanded, the corporation ~~shall be subject to a penalty of one hundred dollars ($100.00) for each day's omission, in addition~~ is subject to the ~~penalty~~ penalties provided in ~~G.S. 105-230.~~ G.S. 105-230 and G.S. 105-236.

If the Secretary finds that the determination of the income of a parent, ~~subsidiary~~ subsidiary, or affiliated corporation under a consolidated return ~~as herein provided~~ will produce a greater or lesser figure than the amount of income earned in this State, ~~he~~ the Secretary may readjust the determination by reasonable methods of computation to make it conform to the amount of income earned in this ~~State; and if~~ State. If the corporation contends the figure produced is greater than the earnings in this State, it ~~shall~~ must file with the Secretary within 30 days after notice of ~~such determination, file with the Secretary~~ the determination a statement of its objections and of an alternative method of ~~determination with such detail and proof as the Secretary may require, and the~~ determination. The Secretary ~~shall~~ must consider the ~~same~~ statement in determining the income earned in this State. ~~In making such determination, the~~ The findings and conclusions of the Secretary shall be presumed to be correct and shall not be set aside unless shown to be plainly wrong."

Section 10. G.S. 105-163.8 reads as rewritten:

"**§ 105-163.8. Liability of withholding ~~agents and others.~~ agents.**

~~(a) Withholding Agents. --~~ A withholding agent who withholds the proper amount of income taxes under this Article and pays the withheld amount to the Secretary is not liable to any person for the amount paid. A withholding agent who fails to withhold the proper amount of income taxes or pay the amount withheld to the Secretary is liable for the amount of tax not withheld or not paid. A withholding agent who fails to withhold the amount of income taxes required by this Article or who fails to pay withheld taxes by the due date for paying the taxes is subject to the penalties provided in Article 9 of this Chapter.

~~(b) Others. -- A person who has a duty to deduct, account for, or pay taxes required to be withheld under this Article and who fails to do so is liable for the amount of tax not deducted, not accounted for, or not paid.~~"

Section 11. G.S. 105-163.15(a) reads as rewritten:

"(a) In the case of any underpayment of the estimated tax by an individual, ~~there shall be added to the tax imposed under Article 4 for the taxable year~~ the Secretary shall assess a penalty in an amount determined by applying the applicable annual rate established under G.S. 105-241.1(i) to the amount of the underpayment for the period of the underpayment."

Section 12. G.S. 105-164.14(d) reads as rewritten:

"(d) ~~Penalties for~~ Late Applications. -- ~~Refunds made pursuant to applications filed after the dates specified in subsections (b) and (c) above are subject to the following penalties for late filing: applications filed within 30 days after the due date, twenty-five percent (25%); applications filed after 30 days but within three years after the due date, fifty percent (50%).~~ Refunds applied for more than three years after the due date are barred."

Section 13. G.S. 105-228.2(i) reads as rewritten:

"(i) ~~If any such freight line company or railroad company shall fail to pay the tax levied herein when due a penalty of ten percent (10%) thereof shall immediately accrue and thereafter one percent (1%) per month shall be added to such tax and penalty while such tax remains unpaid. All provisions of laws for enforcing payment of taxes levied in this Article shall be applicable to the gross earnings taxes of freight line companies. Any freight line company against which a tax is assessed under the provisions of this Article may appear and defend in any action brought for the collection of such tax.~~ The provisions of Article 9 of this Chapter apply to this Article."

Section 14. G.S. 105-230 reads as rewritten:

"**§ 105-230. Charter suspended for failure to report.**

If a corporation or a limited liability company fails to file any report or return or to pay any tax or fee required by this Subchapter for 90 days after it is due, the Secretary shall inform the Secretary of State of this failure. The Secretary of State shall suspend the articles of incorporation, articles of organization, or certificate of authority, as appropriate, of the corporation or limited liability company. The Secretary of State shall immediately notify by mail every domestic or foreign corporation or limited liability company of the suspension. The powers, privileges, and franchises conferred upon the corporation

or limited liability company by the articles of incorporation, the articles of organization, or the certificate of authority terminate upon suspension. Any act performed or attempted to be performed during the period of suspension is invalid and of no effect. ~~The Secretary of State shall immediately notify by mail every domestic or foreign corporation or limited liability company of the suspension.~~"

Section 15. G.S. 105-231 is repealed.

Section 16. G.S. 105-236 reads as rewritten:

"**§ 105-236. Penalties.**

Penalties assessed by the Secretary under this Subchapter are assessed as an additional tax. Except as otherwise provided by law, and subject to the provisions of G.S. 105-237, the following penalties shall be applicable:

(1) Penalty for Bad Checks. -- When the bank upon which any uncertified check tendered to the Department of Revenue in payment of any obligation due to the Department returns the check because of insufficient funds or the nonexistence of an account of the drawer, the Secretary shall assess ~~an additional tax~~ a penalty equal to ten percent (10%) of the check shall be imposed, subject to a minimum of one dollar ($1.00) and a maximum of one thousand dollars ($1,000). This penalty does not apply if the Secretary finds that, when the check was presented for payment, the drawer of the check had sufficient funds in an account at a financial institution in this State to pay the check and, by inadvertence, the drawer of the check failed to draw the check on the account that had sufficient funds. The ~~additional tax~~ penalty imposed may not be waived or diminished by the Secretary.

(1a) Penalty for Bad Electronic Funds Transfer. -- When an electronic funds transfer cannot be completed due to insufficient funds or the nonexistence of an account of the transferor, the Secretary shall assess a penalty equal to ten percent (10%) of the amount of the transfer, subject to a minimum of one dollar ($1.00) and a maximum of one thousand dollars ($1,000). This penalty may be waived by the Secretary in accordance with G.S. 105-237.

(1b) Making Payment in Wrong Form. -- For making a payment of tax in a form other than the form required by the Secretary pursuant to G.S. 105-

241(a), the Secretary shall assess a penalty equal to five percent (5%) of the amount of the tax, subject to a minimum of one dollar ($1.00) and a maximum of one thousand dollars ($1,000). This penalty may be waived by the Secretary in accordance with G.S. 105-237.

(2) Failure to Obtain a License. -- For failure to obtain a license before engaging in a business, trade or profession for which a license is required, ~~there shall be assessed an additional tax~~ the Secretary shall assess a penalty equal to five percent (5%) of the amount prescribed for the license per month or fraction thereof until paid, ~~which additional tax shall not~~ not to exceed twenty-five percent (25%) of the amount so prescribed, but in any event shall not be less than five dollars ($5.00).

(3) Failure to File Return. -- In case of failure to file any return on the date ~~prescribed therefor (determined~~ it is due, determined with regard to any extension of time for ~~filing), unless it is shown that the failure is due to reasonable cause,~~ filing, there shall be added to the amount required to be shown as tax on the return, as a penalty, five percent (5%) of the amount of the tax if the failure is for not more than one month, with an additional five percent (5%) for each additional month, or fraction thereof, during which the failure continues, not exceeding twenty-five percent (25%) in the aggregate, or five dollars ($5.00), whichever is the greater.

(4) Failure to Pay Tax When Due. -- In the case of failure to pay any tax when due, without intent to evade the tax, ~~there shall be an additional tax, as a penalty, of~~ the Secretary shall assess a penalty equal to ten percent (10%) of the tax; provided, that ~~such~~ the penalty shall in no event be less than five dollars ($5.00). This penalty does not apply in any of the following circumstances:

a. When the amount of tax shown as due on an amended return is paid when the return is filed.

b. When a tax due but not shown on a return is assessed by the Secretary and is paid within

30 days after the date of the proposed notice of assessment of the tax.

(5) Negligence. --

a. ~~Most cases.~~ Finding of Negligence. -- For negligent failure to comply with any of the provisions to which this Article applies, or rules issued pursuant thereto, without intent to defraud, ~~there shall be assessed, as a penalty, an additional tax of~~ the Secretary shall assess a penalty equal to ten percent (10%) of the deficiency due to the negligence.

b. Large ~~income tax deficiency.~~ Deficiency. -- ~~In the case of income tax, if~~ If a taxpayer understates ~~gross income, overstates deductions from gross income, other than personal exemptions, makes erroneous adjustments to federal taxable income, or does any combination of these, and the combined errors equal or exceed~~ tax liability by twenty-five percent (25%) or more, ~~of gross income, the penalty assessed shall be~~ the Secretary shall assess a penalty equal to twenty-five percent (25%) of the deficiency. ~~For purposes of this subdivision, "gross income" means gross income as defined in section 61 of the Code and "deductions" means deductions allowed in arriving at federal taxable income.~~

~~c. Large sales tax deficiency. -- In the case of sales and use taxes, if a taxpayer understates total tax liability by twenty-five percent (25%) or more as a result of one or more of the following reasons, the penalty assessed shall be twenty-five percent (25%) of the total deficiency:~~

~~1. Omission or understatement of gross sales, gross receipts, or gross purchases.~~

~~2. Overstatement of exemptions or deductions.~~

~~3. Incorrect application of a lesser rate of tax.~~

d. No ~~double penalty.~~ Double Penalty. -- ~~[If~~ If a penalty is assessed under subdivision (6) of

this section, no additional penalty for negligence shall be assessed with respect to the same ~~deficiency.]~~ deficiency.

e. Inheritance and Gift Tax Deficiencies. -- This subdivision does not apply to inheritance and gift tax deficiencies that are the result of valuation understatements.

(5a) Misuse of Certificate of Resale. -- For misuse of a certificate of resale by a purchaser, the Secretary shall assess ~~an additional tax, as~~ a ~~penalty, of~~ penalty equal to two hundred fifty dollars ($250.00).

(5b) Road Tax Understatement. -- If a motor carrier understates its liability for the road tax imposed by Article 36B of this Chapter by twenty-five percent (25%) or more, the Secretary shall assess the motor carrier a penalty in an amount equal to two times the amount of the deficiency.

(6) Fraud. -- If there is a deficiency or delinquency in payment of any tax because of fraud with intent to evade the tax, ~~there shall be assessed, as a penalty, an additional tax~~ the Secretary shall assess a penalty equal to fifty percent (50%) of the total deficiency.

(7) Attempt to Evade or Defeat Tax. -- Any person who willfully attempts, or any person who aids or abets any person to attempt in any manner to evade or defeat a tax or its payment, shall, in addition to other penalties provided by law, be guilty of a Class I felony which may include a fine up to twenty-five thousand dollars ($25,000).

(8) Willful Failure to Collect, Withhold, or Pay Over Tax. -- Any person required to collect, withhold, account for, and pay over any tax who willfully fails to collect or truthfully account for and pay over the tax shall, in addition to other penalties provided by law, be guilty of a Class 1 misdemeanor. Notwithstanding any other provision of law, no prosecution for a violation brought under this subdivision shall be barred before the expiration of three years after the date of the violation.

(9) Willful Failure to File Return, Supply Information, or Pay Tax. -- Any person required to pay any tax,

to make a return, to keep any records, or to supply any information, who willfully fails to pay the tax, make the return, keep the records, or supply the information, at the time or times required by law, or rules issued pursuant thereto, shall, in addition to other penalties provided by law, be guilty of a Class 1 misdemeanor. Notwithstanding any other provision of law, no prosecution for a violation brought under this subdivision shall be barred before the expiration of three years after the date of the violation.

(9a) Aid or Assistance. -- Any person, pursuant to or in connection with the revenue laws, who willfully aids, assists in, procures, counsels, or advises the preparation, presentation, or filing of a return, affidavit, claim, or any other document that the person knows is fraudulent or false as to any material matter, whether or not the falsity or fraud is with the knowledge or consent of the person authorized or required to present or file the return, affidavit, claim, or other document, shall be guilty of a Class I felony which may include a fine up to ten thousand dollars ($10,000).

(10) Failure to File Informational Returns. --

a. ~~For failure to file a partnership or a fiduciary informational return when the return is due to be filed, there shall be assessed as a tax against the delinquent five dollars ($5.00) per month or fraction thereof of the delinquency, this penalty, however, in the aggregate not to exceed twenty-five dollars ($25.00). When assessed against a fiduciary, the penalty shall be paid by the fiduciary and shall not be passed on to the trust or estate. No tax may be assessed against the delinquent when it is a partnership as defined under Section 6231(a)(1)(B) of the Code and no penalty could be assessed as provided by Rev. Proc. 84-35, except that for the purpose of Section 3.01 of that procedure "the Department of Revenue" is substituted for "the Internal Revenue Service".~~

b. ~~For failure to file timely statements of payments to another person with respect to wages, dividends, rents, or interest paid to that person, there shall be assessed as a tax a penalty of one dollar ($1.00) for each statement not filed on time, the aggregate of the penalties for each tax year not to exceed one hundred dollars ($100.00), and in addition thereto, if the Secretary requests the payer to file the statements and sets a date by which the statements must be filed, and~~ The Secretary may request a person who fails to file timely statements of payment to another person with respect to wages, dividends, rents, or interest paid to that person to file the statements by a certain date. If the payer fails to file the statements ~~within this time,~~ by that date, the amounts claimed on payer's income tax return as deductions for salaries and wages, or rents or interest shall be disallowed to the extent that the payer failed to comply with the Secretary's request with respect to the statements.

c. For failure to file an informational return required by Article 36C or 36D of this Chapter by the date the return is due, there shall be assessed ~~as a tax~~ a penalty of fifty dollars ($50.00).

(11) Any violation of Subchapter I, V, or VIII of this Chapter or of Article 3 of Chapter 119 of the General Statutes is considered an act committed in part at the office of the Secretary in Raleigh. The certificate of the Secretary that a tax has not been paid, a return has not been filed, or information has not been supplied, as required by law, is prima facie evidence that the tax has not been paid, the return has not been filed, or the information has not been supplied.

(12) Repealed by Session Laws 1991, c. 45, s. 27, effective April 22, 1991."

Section 17. G.S. 105-241.2(c) reads as rewritten:

"(c) Frivolous Petitions. -- Upon receipt of a petition requesting administrative review as provided in the preceding subsection, the Tax Review Board shall examine the petition and

the records and other data transmitted by the Secretary pertaining to the matter for which review is sought, and if it ~~should appear~~ appears from ~~such~~ the records and data that the petition is frivolous or filed for the purpose of delay, the Tax Review Board shall dismiss the petition for ~~review and, in addition, is authorized, in its discretion, to impose a penalty not to exceed one hundred dollars ($100.00), which penalty shall be in addition to the tax, penalties, interests, and costs, and shall be collected in the same manner as the principal tax liability.~~ review."

Section 18. G.S. 105-244 is repealed.

Section 19. G.S. 105-253 reads as rewritten:

"**§ 105-253.** Personal liability ~~of officers, trustees, or receivers.~~ when certain taxes not remitted.

(a) Any officer, trustee, or receiver of any corporation required to file a report with the Secretary ~~of Revenue~~ who has custody of funds of the corporation and who allows the funds to be paid out or distributed to the stockholders of the corporation without having remitted to the Secretary ~~of Revenue~~ any State taxes that are due ~~shall be~~ is personally liable for the payment of the ~~tax, and shall be subject to an additional penalty equal to the amount of tax due.~~ tax.

(b) Each responsible ~~corporate~~ officer is personally and individually liable for all of the following:

(1) All sales and use taxes collected by a corporation or a limited liability company upon its taxable ~~transactions of the corporation.~~ transactions.

(2) All sales and use taxes due upon taxable transactions of ~~the~~ a corporation or a limited liability company but upon which ~~the corporation~~ it failed to collect the tax, but only if the ~~responsible officer~~ person knew, or in the exercise of reasonable care should have known, that the tax was not being collected.

(3) All taxes due from ~~the~~ a corporation or a limited liability company pursuant to the provisions of Articles 36C and 36D of Subchapter V of this Chapter and all taxes payable under those Articles by ~~the corporation~~ it to a supplier for remittance to this State or another state.

(4) All income taxes required to be withheld from the wages of employees of a corporation or a limited liability company.

The liability of the responsible ~~corporate~~ officer is satisfied upon timely remittance of the tax by the ~~corporation.~~ corporation or the limited liability company. If the tax remains unpaid ~~by the corporation~~ after it is due and payable, the Secretary may assess the tax ~~against,~~ against and collect the tax ~~from,~~ from any responsible ~~corporate~~ officer in accordance with the procedures in this Article for assessing and collecting tax from a taxpayer. As used in this section, the term "responsible ~~corporate~~ officer" ~~includes~~ means the president and the treasurer of ~~the corporation~~ a corporation, the manager of a limited liability company, and any ~~other officers assigned the duty of filing tax returns and remitting taxes on behalf of the corporation.~~ officer of a corporation or member of a limited liability company who has a duty to deduct, account for, or pay taxes listed in this subsection. Any penalties that may be imposed under G.S. 105-236 and that apply to a deficiency ~~shall~~ also apply to ~~any~~ an assessment made under this section. The provisions of this Article apply to an assessment made under this section to the extent they are not inconsistent with this section.

The period of limitations for assessing a responsible ~~corporate~~ officer for unpaid taxes under this section ~~shall expire~~ expires one year after the expiration of the period of limitations for assessment against the ~~corporation.~~ corporation or limited liability company.

(c) Repealed by Session Laws 1991 (Regular Session, 1992), c. 1007, s. 15."

Section 20. G.S. 105-449.45(d) reads as rewritten:

"(d) Penalties. -- A motor carrier that fails to file a report under this section by the required date is subject to a penalty of ~~up to fifty dollars ($50.00) for the first failure and of up to one hundred dollars ($100.00) for a subsequent failure.~~ fifty dollars ($50.00)."

Section 21. G.S. 105-449.108 is amended by adding a new subsection to read:

"(d) Late Application. -- A refund applied for more than three years after the date the refund is due is barred."

Section 22. G.S. 105-449.109 is repealed.

Section 23. This act becomes effective July 1, 1998.

EXPLANATION OF BILL LEGISLATIVE PROPOSAL 14:
Amendments to the Revenue Laws

TO: Revenue Laws Study Committee
FROM: Cindy Avrette, Committee Counsel
DATE: May 18, 1998
SPONSOR:

G.S. 105-237 gives the Secretary the authority to waive or reduce all penalties imposed under the tax laws, except the penalty for bad checks. In practice, the authority to waive or reduce penalties is delegated to approximately 55 individuals who are in the collection field offices and the audit department located in Raleigh. The Department of Revenue has a penalty policy that these employees must follow to ensure consistent treatment among taxpayers. The Department of Revenue is currently revising its penalty guidelines. As part of the review process, the Department looked at all of the penalty provisions in Chapter 105. Based upon its review of the penalty provisions, the Department of Revenue requests that the Revenue Laws Study Committee consider the changes made by this proposal. A section by section analysis follows:

Section	Explanation
1	Modernizes the statute that determines when inheritance taxes are due. It conforms the penalties for late payment with the general penalty provisions in G.S. 105-236: 5% failure to file penalty and a 10% failure to pay penalty. It also conforms the waiver provision in the inheritance tax statutes with the general rule of G.S. 105-237: the Secretary may waive penalties, but not interest.
2	Removes the $100 penalty that may be assessed against a superior court clerk who fails to file the required monthly reports of death. The penalty is enforceable by a court action. The Department does not enforce this penalty. If a clerk does not perform the necessary duties, the Department contacts the Administrative Office of the Courts.

Section	Explanation
3	This statute applies to a personal representative who fails to report federal changes in the value of an estate. This section removes the reference to 105-236 because there is not an appropriate penalty in that section. Besides, the estate is already subject to failure to file return and failure to pay tax when due penalties.
4	Modernizes and streamlines the statute by removing redundant provisions. Incorporates the provisions of G.S. 105-112 so that all of the provisions concerning the need to obtain a privilege license are in one statute. It also conforms the penalty provisions with G.S. 105-236. By conforming to the penalty provisions of G.S. 105-236, it removes the Class 1 misdemeanor criminal penalty for operating without a license.
5	Repeals a statute relating to the criminal provision that is deleted in Section 4 of the bill.
6	Removes the penalty for failing to display the privilege license in a conspicuous place. The remaining provisions have been incorporated into G.S. 105-109.
7	This statute addresses the failure to pay tobacco products tax when due. The statute conforms the penalty with Article 9. The current failure to pay tobacco products tax when due penalty is 50% of the amount of tax due. By conforming with Article 9, the penalty amount will be 10% of the amount of tax due.
8	Provides that a refund of the excise tax paid on sacramental wine is barred if filed more than 3 years after the due date. The current law provides a reduction of the amount refunded for late applications and that the refund is barred after 6 months.
9	This statute concerns the penalties that may be assessed against a corporation that fails to file a consolidated return when applicable. This section deletes a reference to a penalty provided "in this act" because one does not exist. It clarifies that Article 9 penalties, as well as dissolution under G.S. 105-230, are the appropriate remedies.
10	This section removes a provision that is moved to G.S. 105-253, contained in section 18 of the proposal. The provision is moved so that all of the penalty provisions are contained in one statute.
11	Specifies that the additional tax is imposed as a penalty. The Secretary has the ability to waive penalties under G.S. 105-237.

Section	Explanation
12	Provides that a refund of sales tax paid is barred if filed more than 3 years after its due date.
13	Provides that Article 9 penalties will apply.
14	This statute provides that a corporation or a LLC's article of incorporation or certificate of authority may be suspended if the taxpayer does not pay a tax due or file a report when due. This section adds a provision currently contained in G.S. 105-231 because most of G.S. 105-231 is repealed in section 14 of the proposal.
15	Repeals the statute and moves the relevant provisions to G.S. 105-230, in section 13 of this proposal. This statute provides a penalty for exercising functions after the suspension of a corporation's articles of incorporation or a LLC's certificate of authority. The penalty of $100 to $1,000 is recoverable in an action brought in Superior Court. The Department does not enforce this penalty. The suspension or the articles or certificate is severe by itself.
16	This statute is the statute that contains most of the revenue law penalties. This section includes a statement that clarifies that penalties assessed by the Secretary are assessed as additional taxes. This language conforms with the definition of "tax" contained in G.S. 105-228.90: "[T]he term "tax" and "additional tax" include penalties and interest as well as the principal amount." In some statutes, the term "additional tax" is used instead of the term "penalty". This statement clarifies that the additional tax is a penalty, and as such may be waived by the Secretary under G.S. 105-237. Although this does not allow the taxpayer to deduct the penalty on the federal income tax return, it does ensure the taxpayer that the full administrative and judicial remedies applicable to tax assessments are applicable to assessments of tax penalties. This section also makes several substantive changes: • Provides a uniform penalty for all tax deficiencies that exceed 25% of the tax liability. The general 10% negligence penalty applies to all taxes. The large tax deficiency language specifies that it does not apply to inheritance and gift tax deficiencies that are the result of valuation understatements.

Section	Explanation
16	• It deletes the penalty for failing to file partnership and fiduciary informational returns for two reasons: the Department does not assess penalties against these fiduciaries and second, the Department does not generally assess a penalty that is less than $30 because it costs more to assess than it is worth. • It deletes the penalty for failing to file timely statements of payments to another person with respect to wages, dividends, rents, or interest paid because the penalty amount is an ineffective deterrent and the Revenue Laws Study Committee voted to repeal the penalty rather than increase it.
17	Deletes the $100 penalty that the Tax Review Board may impose for frivolous petitions because it is not used. The dismissal of the petition appears to be sufficient "punishment".
18	Repeals the statute that allows the Secretary of Revenue to ask the Attorney General's office to bring a court action for an injunction restraining a corporation or public utility from doing business until its return is filed and the tax is paid. The Department uses the grant of authority under G.S. 105-230 when necessary; it does not use the provisions of this statute.
19	Expands the statute concerning the personal liability of corporate officers who fail to remit certain taxes when due to include the manager and managing members of a LLC. The taxes addressed by this statute are sales and use taxes, motor fuel taxes, and income tax withholding taxes.
19	Provides that a motor carrier that fails to file a timely report is subject to a $50 penalty. This section deletes the words "up to" and the higher penalty for subsequent failures. This change reflects current Department practice since it imposes a flat penalty $50.
20	Provides that an application for a motor fuel tax refund is barred if submitted more than 3 years after it is due.
21	Repeals the statute concerning a reduction or denial of a late motor fuel tax refund application. The provision is incorporated into G.S. 105-449.108 in Section 20 of this bill.
22	Provides that this act becomes effective July 1, 1998.

FISCAL ANALYSIS MEMORANDUM

DATE: February 24, 1998

TO: Revenue Laws Study Committee

FROM: Richard Bostic
Fiscal Research Division

RE: Make Revenue Act Penalties Uniform

FISCAL IMPACT

Yes ( ) **No ( )** **No Estimate Available (X)**

	FY 1998-99	FY 1999-00	FY 2000-01	FY 2001-02	FY 2002-03
REVENUES					

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

EFFECTIVE DATE: This act becomes effective July 1, 1998.

BILL SUMMARY: The bill gives uniformity and simplicity to a number of penalties imposed by the Department of Revenue.

ASSUMPTIONS AND METHODOLOGY: This bill uses GS 105 - 236 as the standard for penalties charged by the Department of Revenue. A number of technical or clarifying changes are made in the bill to bring uniformity to a list of penalties imposed by the Department. Some penalties are deleted because they are not used by the Department of Revenue, such as the penalty on the clerks of Superior Court in Section 5. However, in the attempt for uniformity, some sections of the bill may create a small revenue impact. Sections 7 and 11 have higher penalties than the previous statute and may create a revenue gain. Section 9 lowers the penalty on the tobacco products tax and thus should produce a decrease in revenue. Unfortunately, no estimate can be made because the Department does not collect data on these penalties.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S D

LEGISLATIVE PROPOSAL 15
98-RBZ-15.0 (3.1)
THIS IS A DRAFT AND IS NOT READY FOR INTRODUCTION
15:12:04 18-MAY-98

Short Title: Readjust Cities Receipts Tax Share. (Public)

Sponsors: Senators Cochrane, Dalton, Kerr, Hartsell, Hoyle, and Webster.

Referred to:

A BILL TO BE ENTITLED

AN ACT TO FURTHER ADJUST THE SHARE CERTAIN CITIES RECEIVE FROM THE STATE GROSS RECEIPTS TAX.

The General Assembly of North Carolina enacts:

Section 1. G.S. 105-116.1 reads as rewritten:

"**§ 105-116.1. Distribution of gross receipts taxes to cities.**

(a) Definitions. -- The following definitions apply in this section:

(1) Freeze deduction. -- The amount by which the percentage distribution amount of a city was required to be reduced in fiscal year 1995-96 in determining the amount to distribute to the city.

(2) Percentage distribution amount. -- Three and nine hundredths percent (3.09%) of the gross receipts derived by an electric power company, a natural gas company, a regional natural gas district, and a telephone company from sales within a city that are taxable under G.S. 105-116 or G.S. 105-120.

(b) Distribution. -- The Secretary must distribute to the cities part of the taxes collected under this Article on electric

power companies, natural gas companies, regional natural gas districts, and telephone companies. Each city's share for a calendar quarter is the percentage distribution amount for that city for that quarter minus one-fourth of the city's hold-back amount and one-fourth of the city's proportionate share of the annual cost to the Department of administering the distribution. The Secretary must make the distribution within 75 days after the end of each calendar quarter.

(c) Limited Hold-Harmless Adjustment. -- The hold-back amount for a city that, in the 1995-96 fiscal year, received from gross receipts taxes less than ninety-five percent (95%) of the amount it received in the 1990-91 fiscal year but at least sixty percent (60%) of the amount it received in the 1990-91 fiscal year is the amount determined by the following calculation:

(1) Adjust the city's 1995-96 distribution by adding the city's freeze deduction to the amount distributed to the city for that year.

(2) Compare the adjusted 1995-96 amount with the city's 1990-91 distribution.

(3) If the adjusted 1995-96 amount is less than or equal to the city's 1990-91 distribution, the hold-back amount for the city is zero.

(4) If the adjusted 1995-96 amount is more than the city's 1990-91 distribution, the hold-back amount for the city is the city's freeze deduction minus the difference between the city's 1990-91 distribution and the city's 1995-96 distribution.

(c1) Additional Limited Hold-Harmless Adjustment. -- The hold-back amount for a city that, in the 1995-96 fiscal year, received from gross receipts taxes less than sixty percent (60%) of the amount it received in the 1990-91 fiscal year is the amount determined by the following calculation:

(1) Adjust the city's 1997-98 distribution by adding the city's freeze deduction to the amount distributed to the city for that year.

(2) Compare the adjusted 1997-98 amount with the city's 1990-91 distribution.

(3) If the adjusted 1997-98 amount is less than or equal to the city's 1990-91 distribution, the hold-back amount for the city is zero.

(4) If the adjusted 1997-98 amount is more than the city's 1990-91 distribution, the hold-back amount for the city is the city's freeze deduction minus

the difference between the city's 1990-91 distribution and the city's 1997-98 distribution.

(d) Allocation of Hold-Harmless Adjustment. -- The hold-back amount for a city that, in the 1995-96 fiscal year, received from gross receipts taxes at least ninety-five percent (95%) of the amount it received in the 1990-91 fiscal year is the amount determined by the following calculation:

(1) Determine the amount by which the freeze deduction is reduced for all cities whose hold-back amount is determined under ~~subsection (c)~~ subsections (c) and (d) of this section. This amount is the total hold-harmless adjustment.

(2) Determine the amount of gross receipts taxes that would be distributed for the quarter to cities whose hold-back amount is determined under this subsection if these cities received their percentage distribution amount minus one-fourth of their freeze deduction.

(3) For each city included in the calculation in subdivision (2) of this subsection, determine that city's percentage share of the amount determined under that subdivision.

(4) Add to the city's freeze deduction an amount equal to the city's percentage share under subdivision (3) of this subsection multiplied by the total hold-harmless adjustment."

Section 2. If a city's hold-back amount calculated under G.S. 105-116.1(d), as enacted by this act, is less than the amount deducted from the city's 1995-96 franchise tax distribution, the Secretary must distribute three times the amount of the difference, less any distributions made to the city under Section 5 of S.L. 1997-118, to the city by July 15, 1998. This distribution is made to adjust retroactively the city's 1995-96, 1996-97, and 1997-98 franchise tax distributions. The amount needed to make the distribution required by this section shall be drawn from the amount of gross receipts taxes distributed to the cities that do not receive a distribution under this section in proportion to the amount received.

Section 3. This act is effective when it becomes law.

EXPLANATION OF LEGISLATIVE PROPOSAL 15:
Readjust Cities Receipts Tax Share

TO: Revenue Laws Study Committee
FROM: Cindy Avrette, Committee Counsel
DATE: May 18, 1998
SPONSOR:

Legislative Proposal 15 makes a further adjustment to the franchise tax distribution formula for cities. Last session, the General Assembly increased the amount of State franchise tax that is distributed to 40 cities. The cities whose distributions were increased were those whose 1995-96 distributions were less than 95% of their 1990-91 distributions. The act increased the distributions for these cities by reducing the "hold-back amount" that is deducted from a city's share. The 1997 act applied to distributions made for fiscal year 1995-96 and subsequent years. The act increased the annual distribution to the affected cities by a total of $194,841. The annual distribution to the other 500 cities was reduced by the same amount, so that the State share of the franchise tax was not reduced.

The State distributes part of the State franchise tax imposed on utilities to the cities. The franchise taxes that are distributed are the taxes on electricity, piped natural gas, and telephone service. The State imposes a franchise tax on these utilities at the rate of 3.22%. The State distributes to cities the amount of tax collected from service provided inside the cities that equals a tax of 3.09%. Thus, the cities receive the majority of these taxes.

The amount to be distributed to a city is reduced by that city's "hold-back" amount. The "hold-back" amount is the amount by which the city's distribution of these franchise taxes increased from fiscal year 1990-91 to fiscal year 1994-95. During this period, the total amount distributed was frozen but the relative share of each city changed based on the proportion of that city's receipts compared to the total of all cities' receipts. When the freeze was lifted in 1995-96, a requirement was imposed to calculate and deduct a "hold-back" amount. The effect of the deduction of a hold-back amount from the cities' distribution is the retention by the State of the growth that occurred in the franchise tax base during the freeze years. The hold-back amount is considered the cities' contribution to the State budget crisis in the early 1990s.

The "hold-back" amount reduced the amount distributed in fiscal year 1995-96 to some cities below the amount that was distributed to them in 1990-91. This occurred to cities that experienced a temporary franchise tax base growth in

the freeze years (1990-91 through 1994-95) and then a reduction of the base in 1995-96. The hold-back deduction requires these cities to deduct taxes attributable to growth that is no longer in their tax base.

The purpose of the 1997 act was to adjust for this loss of tax base growth by reducing the hold-back amount. The amount distributed to a city in 1995-96 is compared to the amount distributed in 1990-91. If the 1995-96 amount is less than 95% of the 1990-91 amount, the hold-back amount is reduced in accordance with the formula in the act to the greater of zero or the amount that would have caused the city's 1995-96 distribution to equal the 1990-91 amount.

The 1997 adjustment has worked for nearly all of the affected cities. However, in at least one instance, the adjustment using the 1995-96 data was not sufficient to hold a city's loss to a level that does not go below its 1990-91 distribution. The only city known to be impacted by this proposal at this time is the Town of Denton. The reason the adjustment formula enacted last session did not fully compensate the Town of Denton is because the manufacturing facility that was the basis of the holdback had not fully closed. This proposal would allow the adjustment formula for a city that received from gross receipts tax less than 60% of the amount it received in the 1990-91 fiscal year to be based upon the 1997-98 fiscal year instead of the 1995-96 fiscal year.

NORTH CAROLINA GENERAL ASSEMBLY
LEGISLATIVE FISCAL ESTIMATE

BILL NUMBER: Proposal #15
SHORT TITLE: Readjust Cities Receipts Tax Share
SPONSOR(S): Revenue Laws Study Committee

FISCAL IMPACT: The enactment of the bill would not affect state General Fund revenues or expenditures and would not affect total statewide local revenues. The impact of the bill would cause a shift in franchise tax revenues between cities that receive the revenue.

BILL SUMMARY: The 1997 General Assembly enacted legislation that would make an adjustment to the distribution to cities of the state-collected utility franchise taxes from users within municipal limits. The adjustment was made to the State "holdback" that is deducted annually from the earmarked revenues that go to cities. The holdback for each city is based on the amount of growth in franchise tax collections for each city between the 1990-91 and 1994-95 fiscal year. During the 1991-95 period this growth went to the State as part of the solution to the $1.2 billion state budget crisis for 1991. Thus, when growth was restored to the distribution base beginning with 1995-96, the growth amount was converted to a state holdback to ensure that the State would keep this portion of the state tax (and thus cities would receive all of the future growth).

The purpose of the 1997 adjustment was to account for the fact that in a small number of small cities a substantial portion of the growth holdback came from annexations or manufacturing plant expansions that took place during the holdback period but have since disappeared or been sharply reduced. The classic example of this situation is the Town of Denton. During the 1991-94 period the town annexed a Burlington Industries plant that subsequently was shutdown. Thus, under the old formula Denton was being penalized for a State holdback from a manufacturing facility that no longer existed.

The 1997 remedy was to reduce the State holdback sufficiently to ensure that such cities would in future years receive at least as much franchise tax distribution as in 1990-91 (prior to the growth freeze). This adjustment, which is based on a formula applied to the 1995-96 fiscal year distribution, has worked for nearly all of the affected cities. However, for Denton and possibly one other city the adjustment using 1995-96 data was not sufficient because the manufacturing facility that was the basis of the holdback had not fully closed.

The proposal would fine-tune the 1997 change by determining which cities received in 1995-96 less than 60% of the 1990-91 (pre-freeze) amount. For these cities the adjustment formula incorporated into the 1997 change would be made on the 1997-98 fiscal year instead of 1995-96. This change would fully account for the plant closure.

In addition, the bill contains a provision that make the change retroactive back to the 1995-96, 1996-97, and 1997-98 fiscal years. The retroactive provision would require that any prior retroactive relief be netted out of the new calculation.

ASSUMPTIONS AND METHODOLOGY: Data supplied by the Department of Revenue on franchise tax distributions to all cities for the fiscal years 1989-90 though 1996-97 was used to test formula adjustments.

FISCAL RESEARCH DIVISION (733-4910)
PREPARED BY: Dave Crotts
DATE: April 29, 1998.

Appendix A

GENERAL ASSEMBLY OF NORTH CAROLINA
1997 SESSION

SESSION LAW 1997-483
SENATE BILL 32

AN ACT TO AUTHORIZE STUDIES BY THE LEGISLATIVE RESEARCH COMMISSION, TO CREATE VARIOUS COMMISSIONS, TO CONTINUE A COUNCIL, TO DIRECT STATE AGENCIES AND LEGISLATIVE OVERSIGHT COMMITTEES AND COMMISSIONS TO STUDY SPECIFIED ISSUES, AND TO IMPOSE A MORATORIUM ON SERVICE CORPORATION CONVERSIONS.

The General Assembly of North Carolina enacts:

PART I.-----TITLE

Section 1. This act shall be known as "The Studies Act of 1997".

****PART XIV.-----REVENUE LAWS STUDY COMMITTEE (S.B. 35 - Kerr; Cansler)

Section 14.1. Chapter 120 of the General Statutes is amended by adding a new Article to read:

"ARTICLE 12L.

"Revenue Laws Study Committee.

"**§ 120-70.105. Creation and membership of the Revenue Laws Study Committee.**

The Revenue Laws Study Committee is established. The Committee consists of 16 members as follows:

(1) Eight members appointed by the President Pro Tempore of the Senate; the persons appointed may be members of the Senate or public members.

(2) Eight members appointed by the Speaker of the House of Representatives; the persons appointed may be members of the House of Representatives or public members.

Terms on the Committee are for two years and begin on January 15 of each odd-numbered year, except the terms of the initial members, which begin on appointment. Legislative members may complete a term of service on the Committee even if they do not seek reelection or are not reelected to the General Assembly, but resignation or removal from service in the General Assembly constitutes resignation or removal from service on the Committee.

A member continues to serve until his successor is appointed. A vacancy shall be filled within 30 days by the officer who made the original appointment.

"**§ 120-70.106. Purpose and powers of Committee.**

(a) The Revenue Laws Study Committee may:

(1) Study the revenue laws of North Carolina and the administration of those laws.

(2) 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.

(3) Call upon the Department of Revenue to cooperate with it in the study of the revenue laws.

(4) Report to the General Assembly at the beginning of each regular session concerning its determinations of needed changes in the State's revenue laws.

These powers, which are enumerated by way of illustration, shall be liberally construed to provide for the maximum review by the Committee of all revenue law matters in this State.

(b) The Committee may make interim reports to the General Assembly on matters for which it may report to a regular session of the General Assembly. A report to the General Assembly may contain any legislation needed to implement a recommendation of the Committee. When a recommendation of the Committee, if enacted, would result in an increase or decrease in State revenues, the report of the Committee must include an estimate of the amount of the increase or decrease.

"**§ 120-70.107. Organization of Committee.**

(a) The President Pro Tempore of the Senate and the Speaker of the House of Representatives shall each designate a cochair of the Revenue Laws Study Committee. The Committee shall meet upon the joint call of the cochairs.

(b) A quorum of the Committee is nine members. No action may be taken except by a majority vote at a meeting at which a quorum is present. While in the discharge of its official duties, the Committee has the powers of a joint committee under G.S. 120-19 and G.S. 120-19.1 through G.S. 120-19.4.

(c) The Committee shall be funded by the Legislative Services Commission from appropriations made to the General Assembly for that purpose. Members of the Committee receive subsistence and travel expenses as provided in G.S. 120-3.1 and G.S. 138-5. The Committee may contract for consultants or hire employees in accordance with G.S. 120-32.02. Upon approval of the Legislative Services Commission, the Legislative Services Officer shall assign professional staff to assist the Committee in its work. Upon the direction of the Legislative Services Commission, the Supervisors of Clerks of the Senate and of the House of Representatives shall assign clerical staff to the Committee. The expenses for clerical employees shall be borne by the Committee."

Section 14.2. The Revenue Laws Study Committee shall study the following matters:

(1) The structure of the franchise tax and the feasibility of removing its inventory component;

(2) Income tax deductions for health insurance costs of self-employed individuals (S.B. 971 - Reeves);

(3) Whether tax credits and other forms of economic development incentives achieve the desired effects and reflect the State's priorities;

(4) Property tax issues including the assessment and collection of ad valorem taxes under the Machinery Act (H.B. 514 - McMahan; S.B. 365 - Rucho); and

(5) Effectiveness of long-term care tax credit (H.B. 74 - Cansler).

Section 14.3. From appropriations to the General Assembly, the Legislative Services Commission may allocate funds for the expenses of the Revenue Laws Study Committee under this Part.

Appendix B

1997 Tax Law Changes

Prepared by Cindy Avrette, Martha H. Harris, and Martha Walston

S.L. 1997-6 (Senate Bill 33, Senator Cochrane)

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

This act makes numerous technical and clarifying changes to the revenue laws and related statutes. These changes were recommended to the 1997 General Assembly by the Revenue Laws Study Committee. The following table provides a section-by-section analysis of the proposed changes.

Section	Explanation
1	Repeals an obsolete statute that requires gun owners to list their guns for property taxes. This statute is not needed because nonbusiness personal property is exempt from property taxes and the listing requirements for business personal property are contained in the Machinery Act.
2	Increases the inheritance tax return filing threshold for Class A beneficiaries from $450,000 to $600,000 to conform to the increased credit enacted in 1996. This change became effective January 1, 1997, and applies to estates of decedents dying on or after that date.
3 - 4	Correct incorrect cross-references to the North Carolina Building Code and Building Accessibility Section of the Department of Insurance and modernize language.
5	Places definitions in alphabetical order and renumbers them. The definition of "security" was out of order and could not be included in the correct order without renumbering the list of definitions.
6	Deletes the definition of "fiduciary" from the with-holding tax Article because the term is not used in the Article.
7	Removes improper quotation marks.
8	Restores language that was inadvertently deleted in 1996 due to a redlining error.
9	Corrects a grammatical error.
10	Restores the missing word "the".
11	Restores the missing word "or".
12 - 15	Make it clear that the per gallon motor fuel tax refunds do not apply to the inspection tax.
16	Repeals three obsolete subsections concerning taxes payable by electric membership corporations for 1965 and 1966.
17 - 18	Make it clear that a motor fuel supplier that sells kerosene is not required to have a separate license as a kerosene supplier.
19	Makes a conforming change to a cross-reference to a subdivision and modernizes language.
20	Deletes an improper comma and modernizes language.

21 Provides a savings clause.
22 Provides that the act became effective when it became law, March 21, 1997.

S.L. 1997-17 (Senate Bill 388, Senator Hoyle)

AN ACT TO PROHIBIT THE ASSESSMENT OF INTANGIBLES TAX FROM TAXPAYERS WHO BENEFITED FROM THE TAXABLE PERCENTAGE DEDUCTION IN THE FORMER INTANGIBLES TAX STATUTE.

On February 10, 1997, the North Carolina Supreme Court held that the taxable percentage deduction in the North Carolina intangible tax on stock violated the commerce clause by discriminating against out-of-state companies. The deduction reduced a taxpayer's liability for the tax in proportion to the amount of business the corporation did in North Carolina. The court did not order refunds. Instead, it allowed the possibility of curing the past discrimination by the assessment of intangibles tax on those who did not pay in reliance on the unconstitutional taxable percentage deduction. Upon the advice of the Attorney General's Office, the Secretary of Revenue began preparing to assess the intangibles tax on those who did not pay the tax in reliance on the unconstitutional taxable percentage deduction.

In response to the Secretary's preparations, the General Assembly ratified this act. This act directs the Secretary of Revenue to take no action to collect or assess back intangibles tax for tax years 1990 through 1994. In effect, this act foreclosed the possibility of assessments on those who relied on the taxable percentage deduction. The passage of this act made the State liable for refunds to those intangibles taxpayers who paid tax on shares of stock and who protested the payment of the tax within 30 days of payment. The General Assembly enacted House Bill 96, S.L. 1997-318, on July 21, 1997. S.L. 1997-318 directs the Secretary of Revenue to make refunds of the intangibles tax to taxpayers who filed a timely protest.

The General Assembly repealed the intangibles tax in 1995. The potential for the Department of Revenue to assess and collect the intangibles tax on those taxpayers who did not pay intangibles tax prior to 1995 in reliance on the unconstitutional taxable percentage deduction resulted from the North Carolina Supreme Court's decision in the Fulton case. In 1995, the Department estimated that eliminating the taxable deduction in the North Carolina intangibles tax on stock would generate $55 to $75 million dollars. As a practical matter, however, it would be difficult for the Department to discover and value taxable shares in those North Carolina corporations that are not publicly traded because there is no public information on these holdings.

S.L. 1997-23 (House Bill 295, Representative Cansler)

AN ACT TO EXEMPT MOST INTANGIBLE PERSONAL PROPERTY FROM PROPERTY TAX.

This act exempts from local property taxes all intangible property except leasehold interests in exempted real property. The act became effective July 1, 1997, and applies to taxable years beginning on or after that date. The act is not expected to result in a significant decrease in local government property tax revenues.

Intangible personal property has been subject to property taxes for over 100 years. The property is taxable unless specifically excluded. Although cash and bank deposits have been excluded from property tax since 1985, it was not until 1995 that the General Assembly

excluded other forms of financial intangibles, such as stocks, bonds, accounts receivable, and beneficial interest in trusts, from property tax. These financial intangibles were taxed by the State and the revenues generated by the tax were distributed to local government units. The intangibles tax repeal in 1995 repealed the tax on intangible property that was levied by the State; it did not affect the local governments' power to tax intangible property that had not been taxed by the State and was not otherwise excluded from local property taxation.

This act exempts most of the remaining forms of intangible personal property, such as franchise rights, patents, copyrights, trademarks, and goodwill, from property taxation. The tax situs of a business intangible is generally the location of the company's headquarters. Most counties have never taxed this type of property even though it was clearly subject to tax. Two recent developments raised county tax assessors' awareness of this potential revenue source. First, the Uniform State Abstract for listing business personal property, prepared by the Department of Revenue, was revised for use beginning in tax year 1997 to include a specific schedule D for intangible property. The memorandum accompanying the new abstract advised that the appraisal of intangible property would be a first time endeavor for many appraisers across the State. At the beginning of the 1997 tax year, 23 counties asked taxpayers to list intangible assets, such as patents, copyrights, secret processes, formulae, goodwill, trademarks, trade brands, and franchises, on their 1997 business personal property tax form. Before 1997, only a few counties were listing this type of property. Second, a recent case before the North Carolina Court of Appeals, Edward Valves, Inc., highlighted both the potential and the difficulties of taxing intangible personal property. In that case, Wake County levied a property tax on a set of exclusive engineering drawings. The drawings were valued at more than $12 million. The court found that the county's methodology for taxing self-created intangible property was unconstitutional and that it violated the statutory requirement that property taxes be levied uniformly.

The act also clarifies that the exclusion of intangible property from property tax does not affect the appraisal of real property or tangible personal property. One of the most commonly used methods of valuing commercial property is the income approach to value. Under the income approach, the contribution of intangible assets to a business' income is an inherent part of the valuation process. The act will allow counties and cities to continue considering intangible personal property, such as trademarks and goodwill, when they assess other real property and tangible personal property.

The act discourages counties and cities from discovering prior years' taxes on intangible personal property excluded by this act on or after January 1, 1997. It does so by reducing the annual State reimbursement to a county or municipality for the repeal of the intangibles tax on money, accounts receivable, bonds, stock, and beneficial trust interests by the amount of taxes collected in that year on intangible property for a year prior to the 1997 tax year. This part of the act is repealed effective September 1, 2002, because the five-year discovery period will have expired then.

Lastly, the act seeks to preserve the legislature's authority to classify property for taxation by providing a non-severability clause in the current software property tax exemption. If any part of the exemption is ever ruled unconstitutional, then the entire exemption will be defeated. Consequently, all computer software will be subject to property tax unless the General Assembly acts to re-classify it for exemption. In 1994, the General Assembly carefully crafted an across-the-board property tax exemption for all computer

software other than embedded software and software that is required by generally accepted accounting principles to be treated as a capital asset. This exemption was the result of a compromise between the North Carolina Association of County Commissioners and a taxpayer group called the North Carolina Software Coalition.

S.L. 1997-55 (House Bill 59, Representative Neely)

AN ACT TO UPDATE THE REFERENCE TO THE INTERNAL REVENUE CODE USED IN DEFINING AND DETERMINING CERTAIN STATE TAX PROVISIONS.

This act rewrites the definition of the Internal Revenue Code used in State tax statutes to change the reference date from March 20, 1996, to January 1, 1997. It was recommended by the Revenue Laws Study Committee. 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 generally 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, and insurance company premiums tax also determine some exemptions based on the provisions of the Code.

Congress made significant changes to the Code in 1996 that will affect federal taxable income. Because federal taxable income is the starting point for calculating State corporate and individual income taxes, these federal changes adopted by this act will affect State policies and revenues. The act is expected to reduce General Fund revenues by approximately $8.5 million in 1997-98, $16.8 million in 1998-99, $11.5 million in 1999-2000, $13 million in 2000-01, and $17 million in 2001-02.

The federal Small Business Job Protection Act made two tax changes that will affect the General Fund proportionally more than the other tax changes: the amount of property that may be expensed under Code section 179 is increased from $17,500 to $25,000 over a period of 5 years and the amount a self-employed person may deduct for health insurance costs is increased from 30% to 80% over a period of 10 years. The Small Business Job Protection Act made major changes to the S Corporation rules, introduced a new type of retirement plan (SIMPLE), and narrowed the exclusion for punitive damages received on account of personal injury or sickness. It also created a new adoption credit and exclusion and increased the amount a nonworking spouse could contribute to an IRA.

The federal Health Insurance Portability and Accountability Act created a pilot test program for tax-favored medical savings accounts (MSAs) and added two new exceptions to the 10% penalty for premature withdrawals from IRAs. It provided that costs of long-term care services and some long-term care insurance premiums will be considered medical expenses for itemized deduction purposes. The Health Insurance Portability and Accountability Act also allowed an income tax exclusion for long-term care benefits to chronically ill insureds and extended the income tax exclusion for life insurance death benefits to benefits paid during life to the terminally ill.

This act provides that the federal tax law changes that could increase an individual's or corporation's North Carolina taxable income for the 1996 tax year will not become effective for 1996 tax years but will instead apply only to taxable years beginning on or after January 1, 1997. Under Section 16 of Article 1 of the North Carolina Constitution, the legislature cannot

pass a law that will retroactively increase the tax liability of any taxpayer. There are a few provisions in the federal tax law changes that could increase taxable income for the 1996 tax year. Because this act could not be ratified until after the 1997 General Assembly convened, theses changes were given a delayed effective date.

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 on a particular date instead of referring to the Code and any future amendments to it, thereby eliminating the necessity of bills like this one. 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 from year to year, the State may not want to adopt automatically federal changes, particularly when these changes result in large revenue increases or decreases. 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. Section 2(1) of Article V of the Constitution provides in pertinent part that the "power of taxation ... shall never be surrendered, suspended, or contracted away." Relying on this provision, on the North Carolina court decisions on delegation of legislative power to administrative agencies, and on 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."

S.L. 1997-60 (Senate Bill 98, Senator Kerr)

AN ACT TO IMPROVE THE ADMINISTRATION OF THE MOTOR FUEL TAX LAWS.

This act makes changes to the method of collecting motor fuel taxes commonly referred to as "tax at the rack", that was enacted by the General Assembly in the 1995 Session and became effective January 1, 1996. The method bears this name because it imposes the per gallon excise tax when motor fuel is delivered to a transport truck or railroad tank car by means of a "rack" at a refinery, terminal, or bulk plant. This act changes the licensing requirements for exporters and makes several conforming changes as described below.

Section 1 of the act ensures that the State's motor fuel tax will be considered a "pass-through" tax, by expressly stating that the tax is collected from the supplier or importer of the fuel but that the tax becomes part of the cost of the fuel and is consequently paid by the consumer. This statutory language was added in order to protect the State from a challenge to its motor fuel tax laws similar to that in the U.S. Supreme Court case of Oklahoma Tax Commission v. Chickasaw Nation (decided June 14, 1995). There the Oklahoma gas tax was held not to apply to Native American retailers because of tribal sovereign immunity, even though the tax was collected by the fuel distributor and passed through the chain of distribution on to the ultimate consumer. The Court emphasized that the Oklahoma statute imposing this tax did not expressly identify the party that bears the burden of the tax, and

more importantly, did not contain a pass-through provision requiring distributors and retailers to pass the tax on to consumers.

Sections 2 and 4 of the act require exporters to be licensed. Under prior law, an exporter could have been but was not required to be licensed. A licensed exporter paid tax at the destination state rate, while an unlicensed exporter had to pay tax at the North Carolina rate. This difference in treatment resulted in the unlicensed exporter paying both the North Carolina tax and the tax of the destination state and then having to apply to North Carolina for a refund. The requirement under this act, that all exporters be licensed, parallels the existing requirement that all importers be licensed.

Section 3 of the act makes the following changes to the importer licensing provisions for a bulk-end user, such as a trucking company:

1. Allows bulk-end users to be bonded importers and thereby buy fuel at an out-of state terminal that does not precollect the North Carolina motor fuel tax. Prior law prohibited a bulk-end user from obtaining a bonded importer license.
2. Relieves bulk-end users of the importer licensing requirement if they buy all their imported fuel at an out-of-state terminal that precollects the North Carolina tax. Prior law required an occasional importer license in this circumstance. This change parallels the existing treatment of distributors, i.e., a distributor that imports only from a terminal that precollects the North Carolina tax is not required to have an importer license.

Section 5 of the act deletes the requirement that an exporter file a bond. This change was made because the act requires all exporters to be licensed. The purpose of licensing is primarily to track cross-border shipments of fuel, and the bonding requirement is not necessary for this purpose. Prior law required an exporter who chose to be licensed to pay a bond or provide an irrevocable letter of credit in an amount not less than $2,000 or more than $250,000.

Section 6 of the act deletes all references to unlicensed exporters, since sections 2 and 4 of the act require all exporters to be licensed.

Section 7 of the act imposes potential liability on an unlicensed exporter for the North Carolina tax on the fuel exported. If an unlicensed exporter buys fuel, the Department of Revenue can assess tax on the fuel purchased at the North Carolina rate.

Sections 8 and 22 of the act reduce the marking requirements for dyed diesel storage tanks so that they only apply to a person who is a retailer of dyed diesel fuel or who stores both dyed fuel and undyed diesel fuel for use by that person or another person. Prior law required all dyed diesel storage tanks to be labeled "For Nonhighway Use" unless the fuel in the tank was for home heating, drying crops, or manufacturing and the tank was installed so that use of the fuel for any other purpose was made improbable.

Section 9 of the act clarifies the tax liability concerning the use of exempt cards and exempt access codes. A supplier is not liable for any tax due on fuel sold to a distributor or importer who represented that the fuel would be resold to an exempt governmental entity but who did not resell the fuel to a tax-exempt entity. Distributors and importers make this representation by using a card or access code issued by the supplier when getting the fuel at the terminal, and this card or code allows the distributor or importer to buy the fuel tax-free. If a distributor or importer in this circumstance sells tax-free fuel to a person who is not exempt, the distributor or importer is liable for any tax due on the fuel. The act also makes

clear that a supplier that issues a card or code, enabling a person to buy fuel at retail without being charged the tax already paid on the fuel, has a duty to determine if the person is actually tax-exempt. A supplier is responsible for any tax due if the person to whom the supplier issued the card is not an exempt entity.

Section 10 of the act requires an out-of-state bulk-end user that buys fuel at a North Carolina terminal, as opposed to a bulk plant, to be licensed as a distributor or exporter. This change accompanies the changes made by Sections 2 and 4 of the act that require all exporters to be licensed. Unless the bulk-end user falls within the grandfather group of users that can get distributor licenses, the user will need to be licensed as an exporter.

Section 11 of the act changes the due date of a tax return of an occasional importer from the first of each month to the third of each month. This change was made at the request of sellers of racing gasoline who pointed out that if they buy fuel on the last day of a month it is difficult to prepare the return and send it in the next day. G.S. 105-449.66 defines an "occasional importer" as any of the following that imports motor fuel by any means outside the terminal transfer system:

1. A distributor that imports motor fuel on an average basis of no more than once a month during a calendar year.
2. A bulk-end user that is not a distributor.
3. A distributor that imports motor fuel for use in a race car.

Section 12 of the act deletes references to unlicensed exporters.

Section 13 of the act deletes references to an exporter.

Section 14 of the act adds imports to the categories of information contained on a supplier's return. It does this by replacing references to specific license holders in some places with the generic reference to "person receiving the fuel" and by adding references to "importer" in others.

Section 15 of the act allows a supplier to take a deduction on the supplier's return for taxes paid by the supplier on fuel that was subsequently sold at retail to a person who is exempt from tax and who used a card issued by the supplier to indicate his or her tax-exempt status when buying the fuel.

Section 16 of the act adds importers to the groups of license holders that must receive certain information from suppliers and about whom the suppliers must notify the Department of Revenue.

Section 17 of the act clarifies that anyone who pays tax on fuel that is exempt from tax can apply for a refund of the tax paid.

Section 18 of the act adds a civil penalty for failure to get an importer confirmation number. The penalty is the same as the penalty for transporting motor fuel without a shipping document or with a false or incomplete document or for delivering motor fuel to a destination state other than as shown on the document. Prior law contained no penalty.

Section 19 of the act clarifies that the penalty for using dyed diesel or other non-tax-paid fuel in a highway vehicle applies to all fuel used in the vehicle. Prior law applied the penalty to fuel used "for highway use". This language could have been construed to mean that a vehicle that is parked at a rest area or the parking lot of a business and that had dyed diesel in its tanks was not subject to the penalty, because the fuel was not at that moment being used for a highway use.

Section 20 of the act clarifies that failure to pay a tax under the prior motor fuel tax laws

is to be treated the same as a failure to pay under the revised laws. When tax at the rack was implemented, the existing motor fuel tax laws were repealed and replaced by the new provisions. Many assessments for taxes owed under the prior laws have not been paid.

Section 23 of the act requires a retailer or bulk user of alternative fuel that will be the taxpayer for the fuel to file a bond or irrevocable letter of credit with the Secretary of Revenue.

Section 24 of the act changes when the liability for tax on certain alternative fuel accrues. The section allows those retailers and users that use the same storage tank for highway and nonhighway alternative fuel to pay tax on the highway alternative fuel when it is metered from the tank. Prior law required taxes on alternative fuel to be paid when the fuel was delivered to the retailer of the fuel or the bulk user of the fuel. This created a problem when alternative fuel was used for a dual purpose, since the provider of the fuel did not know how much fuel would be used for a highway purpose when the fuel was delivered to the retailer or user.

Section 25 of the act allows retailers and bulk-end users of alternative fuel to store the fuel in a tank that holds both highway and nonhighway alternative fuel if the tank has separate metering devices to measure the fuel that is used for a highway use and fuel that is used for some other purpose.

All sections of the act, except three clarifying changes, became effective October 1, 1997. The clarifying changes became effective when the act became law (May 16, 1997).

S.L. 1997-77 (House Bill 36, Representative Capps)

AN ACT TO RELIEVE CONSUMERS OF THE REQUIREMENT OF FILING MONTHLY USE TAX RETURNS.

This act was a recommendation of the Revenue Laws Study Committee. It establishes an annual filing period for the payment of use taxes owed by consumers on mail-order purchases. The annual filing period relieves consumers of the need to file either monthly or quarterly returns. The act became effective May 15, 1997, and applies to purchases made on or after January 1, 1997.

In 1991, the Department of Revenue began including an annual use tax return (Form E-554) on the individual income tax booklets. Under the State sales and use tax law, a person is responsible for paying use tax on their out-of-state purchases. Prior law specified only two reporting periods - a quarterly period if the tax owed was less than $50.00, and a monthly period if the tax owed was more. Arguably, therefore, North Carolina customers of mail-order catalog companies should have been filing either monthly or quarterly returns.

The act improves the collection of the use tax by minimizing the compliance burden. Individuals who owe use tax on goods purchased out-of-state for a non-business purpose are now able to file an annual return. The return and the tax are due at the same time as the individual income tax return. In theory, residents who are subject to use tax for out-of-state purchases are more likely to comply if the reporting and payment procedure is not unduly burdensome.

The use tax complements the sales tax by taxing transactions that are not subject to the sales tax because of movement in interstate commerce. Like the sales tax, the use tax is imposed on the purchaser. Unlike the sales tax, the responsibility for remitting the tax to the Department is also on the purchaser. In the 1980s, states around the country became increasingly aware of the revenue loss from taxpayer avoidance of the use tax. The

Department estimated in 1995 that the potential increase in State and local revenue for North Carolina, if full taxpayer compliance were achieved, would be $71.1 million.

The most cost-effective manner to collect the tax, from a state's point-of-view, is to require the out-of-state retailers to collect and remit the use tax. However, in 1967, the U.S. Supreme Court ruled in Bellas Hess that a state cannot require an out-of-state retailer to collect its use tax unless the retailer has enough contacts with the state to subject it to the state's taxing jurisdiction. The Supreme Court reaffirmed this decision in 1992 in Quill Company v. North Dakota.

The Direct Marketers Association, the Federation of Tax Administrators, the Multi-state Tax Commission, and the National Governors' Association have been negotiating a possible agreement under which more direct marketers would voluntarily collect use tax on behalf of customers in states in which the marketers do not have nexus. The group is likely to have a final agreement by July 1, 1998. If a final proposed agreement is reached, it will then be up to the states and the marketers to enter into the agreement.

In an effort to collect a larger percentage of this tax, North Carolina has entered a cooperative agreement with other southeastern states called the Southeastern States Exchange Agreement. The member states to this agreement exchange information gained through tax audits of businesses, such as the names and addresses of North Carolina customers to whom untaxed sales were made. The Department of Revenue may then contact these customers for the collection of the use tax, plus penalties and interest.

S.L. 1997-109 (House Bill 57, Representative Neely)

AN ACT TO REQUIRE WITHHOLDING FROM CERTAIN PAYMENTS TO NONRESIDENTS IN ORDER TO PREVENT NONRESIDENTS FROM AVOIDING NORTH CAROLINA INCOME TAXES, TO MODIFY THE DEFINITION OF EMPLOYMENT WITH RESPECT TO AGRICULTURAL LABOR, AND TO CONFORM TO FEDERAL RULES ON WAGE WITHHOLDING BY FARMERS.

This act makes two changes concerning the collection of taxes owed to North Carolina. First, it requires withholding from compensation paid to nonresident individuals and nonresident entities for personal services performed in North Carolina. Second, it conforms State law to the federal law regarding agricultural employees' wages (both withholding from the wages and unemployment insurance tax on the wages).

The changes made by the act become effective at different times. The requirement to withhold from compensation paid to nonresident individuals and from compensation for athletic, entertainment, and construction services paid to nonresident partnerships, corporations, or limited liability companies becomes effective January 1, 1998. The requirement to withhold from all other compensation paid to these nonresident entities for personal services becomes effective January 1, 1999. This phase in of the withholding requirement was requested by North Carolina Citizens for Business and Industry. The nonresident withholding provisions of the act were suggested by the Department of Revenue and recommended by the Revenue Laws Study Committee. It is anticipated that the collection of income taxes owed by nonresident companies and individuals to the State will increase by $8 to $10 million a year as a result of these provisions.

The requirement to withhold from agricultural wages to the same extent as is required under federal law becomes effective January 1, 1998. Conformity to the federal unemployment

tax exemption for certain aliens performing agricultural labor, as requested by the Farm Bureau, becomes effective immediately.

North Carolina taxes the income of its residents and also that income derived by nonresidents from businesses, trades, and occupations carried on in this State. Most other states that have an income tax apply the tax to nonresidents' income in this way. Like North Carolina, these states generally give their residents a credit for income tax paid to other states on income derived from those states.

Many nonresidents who derive income from North Carolina do not pay the North Carolina tax due on this income. This problem is particularly troublesome with respect to single event performers such as athletes or entertainers who may be paid large amounts for their work in North Carolina. It is difficult, expensive, and inefficient for the Department of Revenue to trace and pursue these nonresidents who do not pay the tax they owe.

This act imposes a withholding requirement on payments made to nonresidents for services performed in this state. This requirement is similar to the existing law which requires employers to withhold taxes from wages paid their employees. The new requirement will not apply to wages, which are already covered under the existing law; the new requirement applies to payments to independent contractors.

Examples of nonresidents targeted by the new withholding requirement are musicians, actors, and individual athletes. Because these individuals may be paid through a partnership, limited liability company, or corporation that does not have ties to this State, the withholding requirement applies to payments to these entities as well. If the entity is registered in this State or maintains a permanent office in this State, payments to it are not subject to withholding. Payments it makes to nonresidents for their services will, however, be subject to withholding, under either the new requirement for contract payments or the existing requirement for wages.

Under this act, a person or entity who, in the course of a trade or business, pays a nonresident more than $600 for personal services in this State will be required to withhold 4% of the payment and deposit the withheld taxes with the Department of Revenue. The withholding agent must register with the Department of Revenue. The withheld taxes are due by the last day of the first month after the end of the calendar quarter in which the withholding agent paid the nonresident. As is the case with employers who withhold from employees' wages, the withholding agent will be required to give each nonresident a statement similar to a W-2 form in January and to provide a compilation of these statements to the Department of Revenue. Filing these documents relieves the agent of the existing information reporting requirement of G.S. 105-154.

The withheld taxes will be credited to the nonresident individual or entity from which they were withheld. If the entity is a pass-through entity such as a partnership, Subchapter S corporation, or limited liability company, the credit will pass through to the partners or other owners of the entity. The nonresident will receive credit for the withheld taxes by filing a North Carolina income tax return; any excess will be refunded to the taxpayer.

A number of other states have instituted withholding programs and special audit programs to close the loophole that allows nonresidents to avoid paying state income taxes they owe. California, Connecticut, Minnesota, New Jersey, and South Carolina have withholding requirements. Michigan, Missouri, and New York have special audit programs.

S.L. 1997-111 (House Bill 474, Representative Sutton)

AN ACT TO CLARIFY WHICH PREINDUCEMENT EXPENDITURES MAY BE FINANCED WITH INDUSTRIAL REVENUE BONDS.

This act clarifies the Department of Commerce's current policy of what costs may be reimbursed with Industrial Revenue Bond proceeds. The policy is derived from federal tax law. Under federal law, two types of expenditures may be reimbursed from bond proceeds:

1. An expenditure that is incurred or paid within 60 days of the date the Financing Authority took some action indicating its intent that the expenditure would be financed or reimbursed from bond proceeds.
2. Incidental expenditures that are incurred prior to the commencement of the acquisition, construction, or rehabilitation of a project. Examples of this type of expenditure include architectural costs, engineering costs, surveying costs, soil testing costs, and bond issuance costs.

Industrial Revenue Bonds offer manufacturing companies long-term debt financing at interest rates substantially below the current prime rate. Under the program, a local Financing Authority may enter into a financing agreement with a company to provide revenue bond proceeds to the company to be used to finance capital expenditures, such as fixed assets, land, buildings, new equipment, existing equipment, etc. The amounts payable by the company to the authority under the financing agreement must be sufficient to pay all of the principal and interest on the bonds.

Bond proceeds cannot be used to refinance existing debt or as venture capital. Current law does not define the term "refinance." Under federal law, bond proceeds may be used to reimburse certain expenses the company incurs prior to any action of the authority indicating its intent that the expenditure would be financed or reimbursed from bond proceeds. This act allows North Carolina the full flexibility available under federal law to reimburse certain preinducement expenditures.

S.L. 1997-118 (Senate Bill 34, Senator Cochrane)

AN ACT TO ADJUST THE SHARE THE CITIES RECEIVE FROM THE STATE GROSS RECEIPTS TAX TO MAKE THE DISTRIBUTION MORE EQUITABLE AND TO ALLOW THE DEPARTMENT OF REVENUE TO GIVE CITY FINANCE OFFICIALS INFORMATION NEEDED TO VERIFY THE ACCURACY OF A CITY'S DISTRIBUTION.

This act increases the amount of State franchise tax that is distributed to 40 cities. The cities whose distributions are increased are those whose 1995-96 distributions were less than 95% of their 1990-91 distributions. The act increases the distributions for these cities by reducing the "hold-back amount" that is deducted from a city's share. The act applies to distributions made for fiscal year 1995-96 and subsequent years. The act increases the annual distribution to the affected cities by a total of $194,841. The annual distribution to the other 500 cities is reduced by the same amount, so that the State share of the franchise tax is not reduced under this act. This act was recommended by the Revenue Laws Study Committee.

The State distributes part of the State franchise tax imposed on utilities to the cities. The franchise taxes that are distributed are the taxes on electricity, piped natural gas, and telephone service. The State imposes a franchise tax on these utilities at the rate of 3.22%. The State distributes to cities the amount of tax collected from service provided inside the cities

that equals a tax of 3.09%. Thus, the cities receive the majority of these taxes.

The amount to be distributed to a city is reduced by that city's "hold-back" amount. The "hold-back" amount is the amount by which the city's distribution of these franchise taxes increased from fiscal year 1990-91 to fiscal year 1994-95. During this period, the total amount distributed was frozen but the relative share of each city changed based on the proportion of that city's receipts compared to the total of all cities' receipts. When the freeze was lifted in 1995-96, a requirement was imposed to calculate and deduct a "hold-back" amount. The effect of the deduction of a hold-back amount from the cities' distribution is the retention by the State of the growth that occurred in the franchise tax base during the freeze years. The hold-back amount is considered the cities' contribution to the State budget crisis in the early 1990s.

The "hold-back" amount reduced the amount distributed in fiscal year 1995-96 to some cities below the amount that was distributed to them in 1990-91. This occurred to cities that experienced a temporary franchise tax base growth in the freeze years (1990-91 through 1994-95) and then a reduction of the base in 1995-96. The hold-back deduction requires these cities to deduct taxes attributable to growth that is no longer in their tax base.

The act adjusts for this loss of tax base growth by reducing the hold-back amount. The amount distributed to a city in 1995-96 is compared to the amount distributed in 1990-91. If the 1995-96 amount is less than 95% of the 1990-91 amount, the hold-back amount is reduced in accordance with the formula in the act to the greater of zero or the amount that would have caused the city's 1995-96 distribution to equal the 1990-91 amount.

In the course of developing this proposal, a number of reporting errors from utilities were discovered. To address this concern, the act amends the tax secrecy provisions to allow the Department of Revenue to give finance officials of a city a list of the utility taxable gross receipts that were derived from sales within the city and used to determine the franchise tax distribution to the city. This provision will allow cities to verify the data that determines their share of the State franchise tax distribution.

S.L. 1997-121 (Senate Bill 106, Senator Cooper)

AN ACT TO ALLOW REGIONAL SALES OF PERSONAL PROPERTY SEIZED FOR UNPAID TAXES TO BE HELD IN ANY COUNTY.

This act gives the Department of Revenue the ability to sell in any county in this State personal property the Department has seized for payment of delinquent State taxes. Current law requires this property to be sold in Wake County or the county in which the property was seized. It was recommended to the 1997 General Assembly by the Revenue Laws Study Committee.

G.S. 105-242(a)(2) authorizes the Secretary of Revenue to levy on a taxpayer's personal property to collect delinquent unpaid taxes and to sell the property either in Wake County or in the county in which it was seized. This statute is used almost exclusively by the Controlled Substance Tax Division, which collects the tax on illegal drugs. The 1997 General Assembly expanded the tax on illegal drugs to include a tax on illegal liquor. Vehicles and other property are often seized for these taxes pursuant to G.S. 105-113.111 and sold at auction. Seventy-five percent of the proceeds of these sales are distributed among the law enforcement agencies whose investigation led to the assessment and the remaining 25% is credited to the General Fund.

The current practice of the Department is to store and sell all seized property in Wake County. The Department does this because it is too costly to store and sell property in all 100 counties. The Department contracts to have seized property hauled from the counties in which it is seized to Wake County where it is stored until an auction site is available. Rental of auction sites in Wake County is expensive and, because of delays due to waiting for a site, the Department incurs extra costs for storing the property.

The Department plans to implement this act by establishing regional sites in Eastern, Central, and Western North Carolina for the sale of seized property. Expanding the permissible locations for sales will reduce costs because the property will not have to be hauled as far and there will be less storage time waiting for an auction site to become available. In addition, more companies will be able to compete for the transportation, storage, and sale business because they will no longer have to have Statewide operations in order to qualify, and this increase in competition could yield a lower contract price. The Department estimates that it will be able to reduce expenses incurred in selling seized property by at least $39,000 a year.

S.L. 1997-139 (Senate Bill 323, Senator Horton)

AN ACT TO ALLOW AN INCOME TAX CREDIT FOR EXPENDITURES TO REHABILITATE HISTORIC STRUCTURES.

This act expands the current State income tax credit for rehabilitating an income-producing historic structure, effective beginning in the 1998 tax year. It is expected to reduce General Fund revenues by approximately $56,000 in 1998-99, $965,000 in 1999-2000, $2 million in 2000-01, and $3.5 million in 2001-02.

The act increases the credit for rehabilitating income-producing structures from 5% to 20% of the rehabilitating expenditures and allows a new 30% credit for rehabilitating non-income producing structures. The 20% credit will yield a combined federal and State credit equal to 40% of the rehabilitating expenditures for income-producing historic structures. A taxpayer is allowed the 30% State tax credit for rehabilitating non-income producing historic residential structures only if the taxpayer does not qualify for the federal tax credit for income-producing historic structures.

The act also provides that the credits may not be taken in one year but must be spread out in installments over five years after the historic structure is placed in service. Any unused portion of a credit may be carried forward for a five-year period.

Federal law provides a federal income tax credit equal to 20% of qualified rehabilitation expenditures for certified historic structures that are used in connection with a trade or business or held for the production of income. This credit is available for both residential rental buildings and nonresidential buildings that are listed in the National Register or that are located in a registered historic district and certified as being of historic significance. Former State tax law provided an individual and corporate income tax credit for rehabilitating a certified historic structure for which the taxpayer was allowed a credit under federal law if the historic structure was located in North Carolina. Federal tax law does not provide an income tax credit for rehabilitating an historic structure that is used as the owner's residence and thus is not income-producing. This act expands the existing State credit to include certified historic structures that are not otherwise eligible for the federal tax credit because they are not income-producing. To be eligible for the credit for rehabilitating a non-income producing

historic structure, a taxpayer must attach a copy of the certification received from the State Historic Preservation Office verifying that the improvements made are consistent with the Secretary of the Interior's Standards for Rehabilitation. In addition, the costs of the improvements must exceed $25,000 over a 24-month period.

S.L. 1997-205 (Senate Bill 1064, Senator Hoyle)

AN ACT TO ALLOW A TAXPAYER WHO PREVAILS IN A PROPERTY TAX APPEAL TO RECEIVE INTEREST ON ANY OVERPAYMENT OF TAX AND TO AUTHORIZE THE LEGISLATIVE RESEARCH COMMISSION TO STUDY VARIOUS PROPERTY TAX ISSUES.

This act allows a taxpayer who has prevailed in a property tax appeal to receive interest on the overpayment of property taxes, effective for appeals made to the Property Tax Commission on or after July 1, 1997. The Property Tax Commission hears and decides appeals from decisions concerning the listing, appraisal, or assessment of property made by county boards of equalization and review and boards of county commissioners. Any property owner who is dissatisfied with the decisions of these county boards may appeal to the Commission. Under prior law, if the Property Tax Commission determined that a taxpayer's property had been overvalued and that the taxpayer had therefore paid more tax than was owed on the property, there was no payment of interest on the overpayment. The act provides that the overpayment will bear interest at the rate borne by all other assessments of tax. Under current law this rate is determined in accordance with G.S. 105-241.1(i). The statute permits the Secretary of Revenue to set interest paid on State taxes semiannually after giving due consideration to current market conditions and to the rate that will be in effect on that date pursuant to the Internal Revenue Code.

The act authorizes the Legislative Research Commission to study methods used by counties to develop the schedules of value for a general reappraisal of real property, the process for appealing the value or listing of property, and the octennial revaluation schedule. In conducting this study, the Commission may determine whether the procedures used in developing schedules of value produce unrealistic values on nonresidential real property, whether representatives of the Department of Revenue should be given more authority in resolving taxpayer appeals, and whether the Property Tax Commission should be replaced with a State Tax Court. The Commission may assign these property tax issues to a tax study committee or create a separate study committee to study these issues. The Commission may make an interim report of its findings to the 1998 Regular Session of the 1997 General Assembly and a final report to the 1999 General Assembly.

S.L. 1997-209 (Senate Bill 153, Senator Odom)

AN ACT TO EXTEND THE SCRAP TIRE DISPOSAL TAX AT ITS CURRENT RATE FOR FIVE MORE YEARS, TO AMEND THE SCRAP TIRE DISPOSAL ACT TO DISCOURAGE THE DISPOSAL OF SCRAP TIRES FROM OUTSIDE THE STATE, AND TO COMPLETE THE CLEANUP OF NUISANCE TIRE COLLECTION SITES, AS RECOMMENDED BY THE ENVIRONMENTAL REVIEW COMMISSION.

This act makes a number of changes to the scrap tire tax and the use of the tax proceeds. It was recommended by the Environmental Review Commission. The scrap tire disposal tax was enacted in 1989 and applies to tires sold at retail and tires sold for placement on vehicles

to be sold or leased at retail. The tax generates almost $10 million a year in revenue.

The act moves the sunset date on the 1993 increase in the tax from June 30, 1997, to June 30, 2002. Therefore, the 1993 tax increase will expire five years later than it would have if this act had not been enacted. Effective October 1, 1993, the tax rate was increased from 1% to 2% for tires with a bead diameter of less than 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. When the tax increase sunsets, the tax on these tires will revert back to 1%.

The scrap tire tax proceeds are distributed as follows: 27% to the Scrap Tire Disposal Account, 5% to the Solid Waste Management Trust Fund, and 68% to the counties on a per capita basis. This act repeals a provision that, effective June 30, 1997, would have sunset the Scrap Tire Disposal Account and discontinued the 27% earmarking to the Account, increased from 5% to 10% the earmarking to the Solid Waste Management Trust Fund, and increased from 68% to 90% the percentage distributed to counties.

The act increases from 25% to 50% the maximum amount in the Scrap Tire Disposal Account that may be used for grants to local governments to assist in the disposal of scrap tires, and allows up to 40% of the amount in the Account to be used for grants to encourage the use of processed scrap tire materials. The remaining funds in the Account will continue to be used to clean up nuisance scrap tire collection sites. Under prior law, the Department of Environment and Natural Resources (DENR) could use up to 25% of the funds in this Account to make grants to counties for scrap tire disposal and was required to use the remaining funds in the Account to clean up nuisance scrap tire collection sites.

The act adds a factor for DENR to consider when making grants to local units from the Scrap Tire Disposal Account to assist them in disposing of scrap tires. That factor is the effort made by the local unit to prevent out-of-state tires from being disposed of for free. G.S. 130A-309.58(e) prohibits counties from charging a fee for scrap tire disposal unless the tires are defective new tires or tires that have a certificate indicating they came from outside the State and therefore were not replacements for tires on which the scrap tire tax was paid. Despite the certificate requirement, many out-of-state tires are being disposed of for free in this State's disposal sites.

S.L. 1997-213 (House Bill 15, Representative Cansler)

AN ACT TO CONFORM TO FEDERAL TAX TREATMENT OF INCOME RESTORED UNDER A CLAIM OF RIGHT.

This act conforms North Carolina's income tax law to the Internal Revenue Code with respect to the tax treatment of "restored income." Restored income is $3,000 or more of income that a taxpayer receives from a person in one year but then has to pay back in a later year. It was recommended by the Revenue Laws Study Committee. The act applies retroactively to the 1995 tax year to address a specific situation that was brought to the attention of the Revenue Laws Study Committee.

A taxpayer may receive a substantial amount of income in year one and pay tax on the income for that year. Then, in year two, for example, the taxpayer may be required to pay back some of the income that was received in year one and taxed. If this occurs and the amount given back is at least $3,000, the taxpayer may deduct in year two the amount of income that was paid back. The deduction in year two of the "restored" income offsets the inclusion of the income in year one if the taxpayer's income in year two is large enough to be

able to take the deduction.

If the taxpayer's income in year two is smaller than the amount to be deducted, the taxpayer is in the position of having paid taxes on income that, as it turns out, did not belong to the taxpayer. Even with individual net loss deductions, the taxpayer may never have enough income to deduct the amount the taxpayer had to pay back. The taxpayer is not allowed to file an amended return for year one to subtract the restored income because the taxpayer did in fact receive the income in year one. If the taxpayer had restored the income in year one rather than year two, however, the two events would have offset one another and there would have been no tax consequence.

For federal purposes, the Internal Revenue Code provides relief in these cases if the amount restored is at least $3,000 and there is insufficient income in the later year to offset the deduction and thus reduce the taxpayer's tax by the amount it was increased in year one because of the inclusion of the restored amount. Section 1341 of the Code gives the taxpayer, in effect, instead of a deduction in year two, a credit for the amount by which the taxpayer's tax would have been reduced in year one if the restored amount had not been included in taxable income for that year. The credit is treated as a payment of tax made by the taxpayer, which can then be refunded.

North Carolina's individual and corporate income taxes piggyback the federal Code to a large extent but, under prior law, did not conform to section 1341 because that section is structured as an alternative tax rather than as a reduction in taxable income. Because there was no corresponding provision in the North Carolina income tax law, a taxpayer would end up paying North Carolina income tax on income the taxpayer later had to repay to another. This act conforms the North Carolina law to the federal on this issue by allowing the excess tax paid to be refunded.

The circumstances addressed by this act are rare and its fiscal impact is minimal. The situation sometimes occurs with taxpayers who receive employer disability payments while an application for federal disability payments is pending. A federal disability application may take a year or two to process and, if federal benefits are approved retroactively, the taxpayer is usually required to pay back to the employer the amount of employer disability payments received while the federal case was pending.

The case that was brought to the attention of the Revenue Laws Study Committee involved an individual who invented a formula for producing a chemical product and sold the formula to a manufacturer for nearly $2 million in 1994. The inventor's former employer sued the inventor claiming that the employer had licensing rights to the formula. The inventor settled the suit by paying the employer more than $400,000 of the $2 million sales proceeds in 1995. The inventor paid tax on the full $2 million in 1994; in 1995, the inventor had little income to offset the $400,000 deduction for the amount restored to the employer. Thus, without this act, the inventor would have forfeited the more than $25,000 in North Carolina income tax paid on the remainder of the $400,000 in 1994.

S.L. 1997-226 (House Bill 260, Representative Gray)

AN ACT TO INCREASE THE CAP ON THE INCOME TAX CREDIT FOR REAL PROPERTY DONATED FOR CONSERVATION PURPOSES, TO ENSURE THAT CONSERVATION AND PRESERVATION AGREEMENTS ARE CONSIDERED IN DETERMINING THE APPRAISED VALUE OF LAND AND

IMPROVEMENTS, AND TO ESTABLISH THE CONSERVATION GRANT FUND.

This act directs the Department of Environment and Natural Resources (DENR) to develop a program to encourage a Statewide network of protected natural areas, riparian buffers, and greenways. The success of the program lies in the voluntary donation by property owners of conservation easements in land that is important to the ecological system of the State. A conservation easement is a written agreement between a landowner and a qualifying conservation organization or public agency. The landowner agrees to keep the property covered by the easement in its natural condition, without extensive disturbance. The organization or agency is granted the right to enforce the covenants of the easement and to monitor the property.

The act provides two different methods of carrying out its purpose. First, it increases the tax credit for certain real property donations where the land is useful for land conservation purposes. Second, it creates a Conservation Grant Fund to stimulate the use of conservation easements, to improve the capacity of private nonprofit land trusts to successfully accomplish conservation projects, to better equip real estate related professionals to pursue opportunities for conservation, to increase citizen participation in land and water conservation, and to provide an opportunity to leverage private and other public monies for conservation easements. The fiscal impact of the act from the increase in tax credits is estimated to be a loss of $3.2 million a year. The increase in tax credits was effective beginning on or after January 1, 1997. The Conservation Easements Fund became effective July 1, 1997.

Under prior law, a taxpayer could receive a tax credit equal to 25% of the fair market value of a property interest donated to the State, a unit of local government, or a body organized to receive and administer lands for conservation purposes. The act increases the $25,000 cap on this credit to $100,000 for individual income taxes and $250,000 for corporate income taxes.

The act also makes a conforming change to ensure that a taxpayer who chooses to claim the State credit does not also claim and receive a deduction for federal income tax purposes. This is necessary since federal taxable income is the starting point for calculating State taxable income.

The act further provides that county property tax assessors shall take into account changes in the property's value resulting from conservation or preservation agreements.

The act directs DENR to develop a nonregulatory program, known as the Conservation Easements Program, that uses conservation tax credits as a prominent tool to accomplish conservation purposes and that creates the Conservation Grant Fund to be administered by DENR. Grants from the Fund may be used only to pay for one or more of the following costs and may not be used to pay the purchase price for any interest in land:

1. Reimbursement for all or part of the transaction costs associated with a donation of property.
2. Management support.
3. Monitoring compliance with conservation easements, the related use of riparian buffers, natural areas, and greenways, and the presence of ecological integrity.
4. Educational materials that will encourage conservation purposes.
5. Stewardship of land.
6. Transaction costs, including legal expenses, closing and title costs, and unusual direct costs, such as overnight travel.

7. Administrative costs for short-term growth or for building capacity.

The grant money under the Conservation Grant Fund is available for land that possesses or has a high potential to possess ecological value, is reasonably restorable, and qualifies for the conservation tax credits. A private nonprofit land trust organization is eligible for grant money if it qualifies for the conservation tax credits and is certified under section 501(c)(3) of the Internal Revenue Code.

The Conservation Grant Fund consists of any monies appropriated from the General Fund and any monies received from public or private sources. Any unspent General Fund money appropriated to the Fund reverts at the end of the fiscal year unless the General Assembly provides otherwise. Unexpended monies in the Fund from other sources do not revert at the end of the fiscal year. No money was appropriated to the Fund by this act, nor was any money appropriated in the 1997 General Assembly's budget bill.

S.L. 1997-272 (Senate Bill 508, Senator Plyler)

AN ACT TO PROVIDE THAT A TURKEY GROWER SHALL NOT BE DISQUALIFIED FROM USE VALUE TAXATION FOR A TWO-YEAR PERIOD IF THE GROWER'S LAND IS TAKEN OUT OF PRODUCTION SOLELY BECAUSE OF THE PRESENCE OF TURKEY DISEASE IN THE AREA.

This act allows agricultural land used in the production of turkey growing within the preceding two years to continue to qualify for present-use value for property tax purposes, even if the property has been taken out production because of an infectious, transmissible disease known as Poult Enteritis-Mortality Syndrome. This disease is characterized by growth depression and high mortality among turkeys. To eradicate the disease, turkey farmers must suspend their production of turkeys. The act is effective for taxes imposed for taxable years beginning on or after July 1, 1997.

Many turkey farmers participate in the use value deferment program. Under this program, agricultural land, forestland, and horticultural land are valued for property tax purposes based upon their present use value rather than fair market value. The difference between the taxes due on the property's use value and its fair market value is deferred until the property loses its eligibility for the program. At that time, taxes for the preceding three fiscal years which have been deferred, together with interest which accrues on the deferred taxes as if they had been payable on the dates on which they originally became due, become immediately due and payable.

To qualify for use value treatment, property must meet certain ownership, use, and income requirements. Besides being individually owned, agricultural land must be in actual production and it must have produced an average gross income of at least $1,000 for the three years preceding January 1 of the year for which the tax benefit is claimed. When turkey farmers must suspend their production of turkeys in an effort to eradicate the disease, they may lose their eligibility for the use value deferment program because the land is no longer in actual production or because the agricultural income is reduced below the $1,000 threshold. This act provides that these farmers will not lose their eligibility for the program solely on the grounds that the land is being held out of production for the purposes of eradicating the disease of Poult Enteritis-Mortality Syndrome. This exception, however, lasts for only two years. The two-year period should allow farmers to remain in the use value deferment program until they recover.

S.L. 1997-277 (Senate Bill 316, Senator Kerr)

AN ACT TO AMEND THE WILLIAM S. LEE QUALITY JOBS AND BUSINESS EXPANSION ACT.

This act began as an agency bill requested by the North Carolina Department of Commerce. It amends several of the business tax credits that were expanded or enacted by the 1996 General Assembly. As part of the 1996 William S. Lee Quality Jobs and Business Expansion Act, the General Assembly extended the jobs tax credit to all 100 counties, enacted a new tax credit for worker training expenses, enacted a new tax credit for increasing research activities, and enacted two new tax credits for investing in machinery and equipment. To be eligible for the jobs credit, the worker training expense credit, the credit for research activities, and one of the investment credits, the taxpayer had to be engaged in manufacturing or processing, warehousing or distributing, or data processing and the wages of the jobs affected had to be at least 10% above the average weekly wage in the county where the job was created or the business claiming the credit was located, as appropriate.

This act expands the types of businesses eligible for the credits to include air courier services, effective January 1, 1998. Air courier services are businesses primarily engaged in furnishing over-night delivery of individually addressed letters, parcels, and packages. Examples of air courier services include UPS and Federal Express.

This act expands the types of businesses eligible for the credits to include central administrative offices, effective October 1, 1997. Central administrative offices are businesses engaged in providing management and general administrative functions for other businesses of the same enterprise. They may perform such services as general management, accounting, computing, tabulating, or data processing, purchasing, engineering and systems planning, advertising, public relations or lobbying, and legal, financial, or related managerial functions. For a business to qualify for these credits as a central administrative office, it must create at least 40 new full time jobs (not including jobs transferred from elsewhere in the State).

The act also creates a new tax credit for taxpayers who purchase or lease real property to be used as central administrative office property, effective October 1, 1997. The amount of the credit is equal to 7% of the eligible investment amount. The eligible investment is the lesser of: (1) the cost of the property or (2) the cost of the taxpayer's total North Carolina property used as central administrative offices on the last day of the taxable year minus the cost of the taxpayer's total North Carolina property used as central administrative offices on the last day of the base year. The base year is that year, of the three immediately preceding taxable years, in which the taxpayer was using the most property as central administrative offices in this State. This calculation prevents a taxpayer from receiving a credit for an office moved from one part of the State to another. For leased property, the cost of the property equals the lease payments over a seven-year period, plus any expenditures made by the taxpayer to improve the property before it is used as the taxpayer's central administrative office if the expenditures are not reimbursed or credited by the lessor. The tax credit for investing in central administrative office property may not exceed $500,000, and is taken in seven equal installments over the seven years following the taxable year in which the property is first used as a central administrative office. If the property ceases to be used as a central administrative office during the seven-year period, then the credit expires and the taxpayer may not take any

remaining installment of the credit. The credit also expires if the total number of the taxpayer's employees at all of its central administrative offices drops by 40 or more.

The act expands the credit for investing in machinery and equipment and the business property credit to include leased personal property. This change is effective for taxable years beginning on or after January 1, 1997.

The act changes the formula for determining a county's ranking and tier designation for several of the tax credits in two ways. First, it changes the factors in the formula. Under prior law, the Secretary of Commerce assigned an enterprise factor to each county each year based on the county's rank in a ranking of counties by unemployment (from lowest to highest), by per capita income (from highest to lowest), and by population growth (from highest to lowest). The act changes the unemployment and per capita income components from a one-year standing to a standing based on the average of the most recent three years. Second, the act guarantees that a county that obtains Tier 1 status cannot lose that status for two years regardless of what the annual rankings would otherwise require. The first of these changes is effective when the act becomes law and applies to designations for the 1998 and later calendar years. The guarantee of at least a two-year Tier 1 status applies retroactively to 1997 and subsequent years.

The act changes the wage standard that applies to all but one of the investment credits in two ways. The prior wage standard was 110% of the average weekly wage in the county. The wage standard for Tier 1 counties now equals the lower of three figures: the average private sector weekly wage in the county; the average private sector weekly wage in the State; and the average private sector weekly wage in the county multiplied by the "county income/ratio wage adjustment" factor. The "county income/wage adjustment" determines a single county's ratio per capita income to its annualized private sector wages, and compares this ratio to the same measure for the State as a whole. The act also replaces the prior wage standard for the other tier areas with a standard 10% above the lower of the three figures described above. These changes are effective for the 1997 tax year and later years. The purpose of these changes is to provide an appropriate standard for counties that have unusual situations, such as a single, large employer.

The act allows a taxpayer to specify the tax (income or franchise) against which the credit is claimed when filing a tax return rather than when applying for the credit with the Department of Commerce. This change is effective retroactively to the 1996 tax year and applies to all future years. This change was needed because, when initially applying for the credit, the company may not yet know which tax it will claim the credit against.

The act amends the credit for investing in machinery and equipment by providing that a taxpayer that signs a letter of commitment to place specific machinery and equipment in service in an area within two years after the date the letter is signed, and in fact does so, may calculate the credit based upon the tier the county was in when the taxpayer signed the letter. This same provision is already allowed for purposes of the jobs tax credit. This change, which allows companies to plan major investments without risking a possible tier redesignation for the location of the planned investment, becomes effective for taxable years beginning on or after January 1, 1998.

The act directs the Department of Commerce to study tax incentives for new and expanding businesses enacted in 1996, including their effects on tax equity, their distribution across new and existing businesses, the patterns of business development before and after

their enactment, and their costs and benefits, and to study the use of tax incentives by other states. The Department of Commerce must report the results of its study to the General Assembly by April 1, 1999.

The fiscal impact of the act is estimated to be a loss to General Fund revenues beginning at $ .2 to $ .5 million for fiscal year 1997-98, and growing to a maximum of $14.5 million for fiscal year 2001-02.

S.L. 1997-292 (House Bill 754, Representative Dickson)

AN ACT TO LEVY AN EXCISE TAX ON ILLICIT SPIRITUOUS LIQUOR, AN EXCISE TAX ON MASH, AND AN EXCISE TAX ON ILLICIT MIXED BEVERAGES.

This act expands the excise tax on controlled substances to include a tax on illicit spirituous liquor, mash, and illicit mixed beverages, effective October 1, 1997. Mash is a fermentable starchy mixture from which spirituous liquor can be distilled. Illicit spirituous liquor and illicit mixed beverages are primarily non-tax-paid liquor and mixed beverages that contain non-tax-paid liquor. The new tax is expected to generate between $300,000 and $500,000 annually, of which approximately 75% will be distributed to State and local law enforcement agencies and 25% will be credited to the General Fund.

The tax rate on illicit spirituous liquor is $31.70 for each gallon or fraction thereof sold by the drink and $12.30 for each gallon or fraction thereof not sold by the drink. The tax rate on mash is $1.28 for each gallon or fraction thereof. The tax rate on illicit mixed beverages is $20.00 on each four liters and a proportional sum on lesser quantities. These tax rates are equivalent to the mixed beverage taxes that would be due on the liquor or mixed drinks or on liquor made from the mash. Failure to pay the tax due triggers a penalty equal to 50% of the tax due, the same as the tobacco tax.

The General Assembly enacted the excise tax on controlled substances in 1989 as a means of generating revenue for State and local law enforcement agencies and for the General Fund. Under the law, a person who acquires illegal drugs is required to pay tax on them within 48 hours of acquiring possession if the tax has not already been paid as evidenced by a tax stamp. A person paying the tax is not required to disclose his or her identity and any information obtained in assessing the tax is confidential and cannot be used in a criminal prosecution other than a prosecution for failure to comply with the tax statute itself. Seventy-five percent of the revenue generated by assessments of the tax is distributed to the law enforcement agencies whose investigation led to the assessment. The remainder of the revenue is credited to the General Fund. The excise tax on illicit liquor, mash, and illicit mixed beverages will be administered and distributed in the same manner as the excise tax on controlled substances.

The North Carolina Court of Appeals upheld the constitutionality of the State's excise tax on controlled substances in 1996 and the North Carolina Supreme court affirmed March 7, 1997. The case, State v. Ballenger, was based on the United States Supreme Court's 1995 opinion holding Montana's illegal drug tax unconstitutional because it was a second punishment, not a true tax, and thus violated the double jeopardy clause of the Fifth Amendment. The United States Supreme Court decision was based on two key aspects of Montana's tax: it was at an unusually high rate when applied to certain low-value drugs and it did not apply until a person was arrested for a drug violation. Our Attorney General's office reviewed the Montana case and concluded that our drug tax is not unconstitutional because it applies whether or not a person is arrested for a drug violation. The General Assembly

enacted several changes to the law in 1995 to further clarify that the tax is not a punishment, but is in fact a true tax designed to raise revenue.

S.L. 1997-300 (Senate Bill 784, Senator Webster)

AN ACT TO PROVIDE TAX RELIEF AND SIMPLIFICATION BY CONFORMING STATE TAX LAW TO THE FEDERAL RULE THAT GRANTS A FILING EXTENSION EVEN IF THE REQUEST IS NOT ACCOMPANIED BY PAYMENT.

This act conforms the State tax law on filing extensions for certain taxes with federal law by authorizing an extension for filing a return whether or not the tax is paid. The filing extension is not an extension of time for paying the tax, however. The act becomes effective for returns due on or after January 1, 1998.

Under current State law, to obtain an extension of time for filing an income tax return, a corporate franchise tax return, or a gift tax return, the taxpayer must pay the amount expected to be due. If the taxpayer does not pay the tax, the filing extension is not granted and the taxpayer faces penalties for both late filing and late payment. This law was enacted in 1990 to bring State law in conformity with federal law. The federal law has since changed, however. The Internal Revenue Service recently adopted a rule granting a filing extension whether or not the tax is paid. The filing extension is not an extension of time to pay the tax, however. If the tax is not paid by the original due date, a taxpayer who pays when filing the return on the extended date still faces a late payment penalty but not a late filing penalty.

The purpose of granting a filing extension whether or not the tax is paid is to obtain a record of the taxpayer. A taxpayer who could not pay the tax by the due date and thus could not obtain a filing extension under prior law had no incentive to file a request for an extension or to file a return by the extended date. In fact, the accumulated filing penalties could have made the taxpayer less likely to file at all. If a taxpayer does not request an extension or file a return, the Department of Revenue might have no record of the taxpayer and thus might not be able to pursue the unpaid taxes. If the taxpayer requests an extension but does not pay the tax, the Department can contact the taxpayer and try to collect the unpaid taxes, perhaps through an installment agreement.

Conforming the State law to the federal law will simplify tax compliance for taxpayers, who will not have to track separate State and federal rules for obtaining a filing extension. The proposed change will result in some nonrecurring computer programming costs for the Department of Revenue. The Department is authorized to draw these one-time costs from 1997-98 fiscal year income tax collections.

S.L. 1997-307 (Senate Bill 249, Senator Carpenter)

AN ACT TO CLARIFY WHAT FUNDS MAY BE USED TO REPAY SPECIAL OBLIGATION BONDS AND TO MAKE OTHER CHANGES IN THE LAWS CONCERNING THESE BONDS.

This act changes the law on special obligation bonds issued by a unit of local government for a solid waste project, such as a landfill or an incinerator, in the following ways:

1. It allows a local unit that has issued a solid waste special obligation bond to pledge additional nontax revenue in payment of the bond after the bond has been issued.

2. It applies the terms and conditions that apply under G.S. 160A-20 to security interests granted in installment financing agreements to security interests in property to be financed by a local solid waste special obligation bond. Applying these criteria makes it clear that the security interest may extend to land already owned as well as the building to be financed, requires the local government to hold a public hearing before granting the security interest, and requires approval by the Local Government Commission before granting the security interest.
3. It clarifies that local solid waste special obligation bonds are secured by the nontax funds that are pledged for their payment but can be paid from other funds.

In 1989, the General Assembly authorized local governments to issue special obligation bonds to finance solid waste management projects. A special obligation bond does not require a vote of the people. A solid waste special obligation bond must be secured by a pledge of designated nontax revenues. The nontax revenues can be fees or can be taxes that are levied by another unit of government and shared with the local government that proposes to issue the special obligation bonds. For example, a city can pledge its share of local sales and use taxes because the county levies those taxes. A county can pledge landfill fees or State-shared tax revenue, such as franchise tax revenue.

S.L. 1997-318 (House Bill 96, Representative Dickson)

AN ACT TO DIRECT THE SECRETARY OF REVENUE TO (1) MAKE REFUNDS OF THE INTANGIBLES TAX TO TAXPAYERS WHO PRESERVED THEIR RIGHT TO A REFUND BY PROTESTING PAYMENT WITHIN THE TIME LIMITS SET BY G.S. 105-267 AND (2) NOTIFY AFFECTED INTANGIBLES TAXPAYERS BY MAIL AS SOON AS POSSIBLE OF THE COURT NOTICE IN THE CLASS ACTION LAWSUIT REGARDING REFUNDS.

This act provides a refund of the intangibles tax on stock, with interest, to taxpayers who made a timely protest for the 1990 through 1994 tax years. The State obligated itself to pay protesters their refunds when the General Assembly enacted S.L. 1997-17. In that act, the General Assembly directed the Secretary of Revenue to take no action to collect or assess back intangibles tax for tax years 1990 through 1994 from those taxpayers who did not pay the intangibles tax on North Carolina stock in reliance on the unconstitutional taxable percentage deduction.

On February 10, 1997, in Fulton Corp. v. Faulkner, the North Carolina Supreme Court held that the taxable percentage deduction in the North Carolina intangible tax on stock violated the commerce clause by discriminating against out-of-state companies. The deduction reduced a taxpayer's liability for the tax in proportion to the amount of business the corporation did in North Carolina. The court did not order refunds. Instead, it allowed the possibility of curing the past discrimination by the assessment of intangibles tax on those who did not pay in reliance on the unconstitutional taxable percentage deduction. The General Assembly prohibited the assessment of the tax from taxpayers who benefited from the taxable percentage deduction in S.L. 1997-17.

This act does not provide relief to nonprotesters. The Attorney General's office issued an opinion in April 1997 that it would be unconstitutional for the General Assembly to refund intangible taxes not filed under protest. Because the State has no legal obligation to these taxpayers, any payments would be an exclusive emolument prohibited by Article I, Section 32

of the North Carolina Constitution. The exclusive emoluments provision of the State Constitution prohibits the legislature from extending special privileges to a select group of individuals except in consideration of public services.

Prior to the ratification of this act, the Wake County Superior Court certified Smith v. State as a class action case representing all taxpayers who paid intangibles tax under timely protest. On June 11, 1997, the court entered judgment in favor of the protesters, awarding them full refunds with interest. The attorneys for the protesters requested attorneys fees equal to 16% of the total amount to be paid to protesters. Any such award will be deducted from the interest paid on refunds to the protesters who are members of the class.

In late June and early July of 1997, the court published a notice of the lawsuit and the possibility of opting out in the classified section of the newspapers. The deadline for opting out was July 28, 1997. By opting out, a taxpayer could avoid having attorneys fees deducted from the taxpayer's intangibles tax refund. A taxpayer who opted out will still receive a refund for any of the tax years from 1992 through 1994 for which the taxpayer was a timely protester. Most taxpayers who protested did so only for 1993, 1994, or both. If a taxpayer paid under protest for 1991 but did not "preserve" the protest by filing suit, the taxpayer will not receive a refund for that year unless the taxpayer remained in the class. Most taxpayers did not pay under protest for the 1991 tax year, however.

The Department of Revenue and the State of North Carolina are opposing any award of attorneys fees on the grounds that the Department of Revenue would pay all protesters for the 1992 through 1994 tax years anyway, whether or not there is a court order. To ensure that as many affected taxpayers as possible received actual, complete information before the deadline set by the court for taxpayers to make a decision regarding the class action lawsuit, the General Assembly directed the Secretary of Revenue to mail a copy of the court's notice to as many affected taxpayers as possible.

S.L. 1997-328 (Senate Bill 466, Senator Hartsell)

AN ACT TO EXEMPT FROM STATE INCOME TAX ALL OF THE ANNUAL INVESTMENT INCOME EARNED BY CONTRIBUTORS ON DEPOSITS IN THE PARENTAL SAVINGS TRUST FUND AS WELL AS THE DISTRIBUTIONS TO BENEFICIARIES OF THAT FUND.

This act excludes two types of income from State individual income tax. The items excluded are the annual earnings on amounts contributed to the Parental Savings Trust Fund for the future payment of room or board at an institution of higher education and the earnings distributed to a beneficiary of the Fund that are used to pay for higher education expenses. The act is effective for taxable years beginning on or after January 1, 1998. The revenue loss to the General Fund is expected to be a little over $3,000 in fiscal year 1998-99. The revenue loss will increase to as much as $819,000 by the year 2007.

The Parental Savings Trust Fund is part of the State Education Assistance Authority. The Fund is authorized by G.S. 116-209.25, which was enacted by the 1996 General Assembly. A person can contribute amounts into the Parental Savings Trust Fund for a child who is less than 16 years old. The amount contributed in the account, along with its interest and investment earnings, can be used to pay the expenses of the beneficiary at any accredited public or private college or community college. Either the child or the person making the contributions must be a resident of this State. The Authority plans to begin the Fund in the fall

of 1997. The Parental Savings Trust Fund is a kind of qualified state tuition program under section 529 of the Internal Revenue Code.

Section 529 of the Code excludes some of the amounts earned by contributors to a qualified state tuition program from federal tax and, therefore, North Carolina tax as well. Under federal law, earnings on amounts contributed for the payment of tuition, fees, books, supplies, and equipment at an institution of higher education are excluded from tax but not the earnings on amounts contributed for room and board. Earnings on amounts contributed for room and board are taxable. The taxation of amounts contributed for room and board is consistent with section 117 of the Code concerning the taxation of scholarships. Under that section, an amount received as a scholarship is excluded from taxable income to the extent the amount is for tuition, fees, books, supplies, and equipment required for courses of instruction. The amount of a scholarship that is intended for living expenses (room and board) is subject to tax.

Also under federal law, the amount distributed to a beneficiary of the Parental Savings Trust Fund for tuition, fees, books, supplies, and equipment that exceeds the amount contributed is taxable. Thus, under federal law, the tax on the investment earnings is simply deferred until a distribution is made, at which time the earnings are taxable to the beneficiary rather than the contributor.

The two exclusions allowed by the act will result in a lack of conformity with federal income tax law on these items and with the State and federal law on the subject of income received for the payment of room and board at an educational institution. Because federal taxable income is the starting point for determining State taxable income and the two exclusions in the act differ from federal law, the new exclusions will require new deduction calculations to be made on the State income tax return and necessitate the revision of the form.

S.L. 1997-340 (House Bill 1044, Representative Rogers)

AN ACT TO AUTHORIZE COUNTIES TO DESIGNATE AN OFFICIAL TO RECEIVE SALES TAX REFUND INFORMATION.

The act authorizes a board of county commissioners, in a resolution adopted by the board, to designate a county official to receive certain sales tax refund information from the Secretary of Revenue. Prior law provided for only the chair of the board of county commissioners to receive this information. If the board does not adopt a resolution, then the Secretary will continue to send the requested information to the chair of the board of county commissioners.

In 1995, the General Assembly gave counties access to information regarding local sales tax refunds paid to certain nonprofit entities and governmental entities. Under G.S. 105-164.14, these entities may seek a refund of State and local sales taxes they pay on their purchases by filing a written request for refund with the Department of Revenue and naming the counties where the purchases were made. The Secretary of Revenue then deducts the claimed refunds of local sales taxes from tax revenue distributed to the counties. Prior to 1995, counties did not have access to information regarding local sales tax refunds because the local sales tax is collected by the State and the tax secrecy statute, G.S. 105-259, prevented the Department of Revenue from disclosing information about individual taxpayers. Without this information, counties were not able to audit claims for refunds against them. The counties had to rely on the Department of Revenue to audit the claims, but the Department did not have

enough resources to provide the level of audit some counties wished to provide for themselves.

To obtain information concerning local sale tax refunds, a county must request the information in writing from the Secretary of Revenue. The Secretary has 30 days to provide the designated county official with a list of each nonprofit entity or governmental entity that received a refund of at least $1,000 of that county's local taxes within the last 12 months. The county uses the list it receives from the Department of Revenue to identify entities whose refund claims the county may wish to audit. Upon the written request of the county, the entity that has received a refund must provide the county with a copy of the request for refund, along with supporting documentation requested by the county in order to verify the request. If an entity determines that a refund it has received has been charged to the wrong county, it must file an amended return for the refund. The amended return enables the Department to make the appropriate adjustments in the subsequent quarterly distribution of local sales tax revenue.

The act makes a conforming change to the local sales tax exception to the tax secrecy statute, set out in G.S. 105-259(b)(6a), by providing that a list of claimants that have received a refund may be furnished to a designated county official.

S.L. 1997-355 (House Bill 1158, Representative R. Hunter)

AN ACT TO PROVIDE THAT ANTIQUE AIRPLANES SHALL BE VALUED AT NO MORE THAN FIVE THOUSAND DOLLARS FOR PROPERTY TAX PURPOSES.

This act grants property tax relief to owners of antique airplanes similar to the relief that the 1995 General Assembly gave to owners of antique automobiles. The act provides that antique airplanes that are not used for the production of income will be assessed at the lower of their true value or $5,000, effective for taxable years beginning on or after July 1, 1998. The act is expected to reduce local government property tax revenues by less than $100,000 a year.

An airplane qualifies for this property tax reduction if it meets all of the following conditions:

- It is registered with the Federal Aviation Administration.
- It is a model year 1954 or older.
- It is maintained primarily for use in exhibitions, club activities, air shows, and other public interest functions.
- It is used only occasionally for other purposes.
- It is used by the owner for a purpose other than the production of income.

Non-business property has been exempt from property taxes since 1987. Non-business property means personal property that is used by the owner of the property for a purpose other than the production of income and that is not used in connection with a business. Non-business personal property includes household furnishings, clothing, pets, and lawn equipment. The term includes collectibles such as antique furniture, coins, and paintings. However, the term does not include aircraft. In 1995, the General Assembly granted property tax relief to owners of antique automobiles. Like the non-business personal property tax exemption, the antique automobile tax relief applied only to individuals, not other entities, and applied only if the automobile is not used in connection with a business. This act is not limited to non-business aircraft; it reduces property taxes on antique airplanes even if they are

owned by a corporation or other entity and even if they are used in connection with a business.

S.L. 1997-369 (Senate Bill 374, Senator Odom)

AN ACT TO EXEMPT FROM SALES AND USE TAX NUTRITIONAL SUPPLEMENTS SOLD BY CHIROPRACTORS.

This act creates a new State and local sales and use tax exemption. The new exemption is for "nutritional supplements sold by a chiropractic physician at a chiropractic office to a patient as part of the patient's plan of treatment." The exemption became effective October 1, 1997; it will not result in a significant loss of revenue to either the State or the local governments.

The act does not define a nutritional supplement. The federal Dietary Supplement Health and Education Act of 1994 defines a dietary supplement as a product that meets the following three criteria: (i) is intended to supplement the diet and contains a vitamin, mineral, herb, or other botanical, amino acid, or other dietary substance (or a concentrate, metabolite, constituent, extract, or combination of any such ingredient); (ii) is intended for ingestion in tablet, capsule, powder, softgel, gelcap, or liquid form; or if not in such form, is not represented as conventional food or as the sole item of a meal or of the diet; and (iii) is labeled as a dietary supplement.

There are no laws that require any dietary supplements to be sold only by health care providers. The dispensing of dietary supplements does not require a prescription. As a marketing tool, vendors of dietary supplements sell some of their products only to health care providers.

S.L. 1997-370 (House Bill 14, Representative Cansler)

AN ACT TO MODIFY THE SALES TAX DEFINITION OF CUSTOM COMPUTER SOFTWARE.

This act modifies the sales tax definition of custom computer software to make a clear distinction between software that is subject to State and local sales and use taxes and software that is not subject to these taxes. The act is based on a recommendation of the Revenue Laws Study Committee and reflects an agreement between the Department of Revenue and the North Carolina Electronic & Information Technologies Association on the definition of custom computer software. It becomes effective October 1, 1997, and is expected to cause a General Fund revenue gain of approximately $700,000 a year. Local governments will experience a local sales tax revenue gain of approximately $350,000 a year.

Canned software is subject to sales and use taxes and custom software is not subject to these taxes. The North Carolina sales and use tax law excludes custom computer software from tax to implement the policy that computer services are not subject to sales and use taxes. The cost for custom computer programs is attributable to the programming services provided rather than the cost of producing a tangible form of the program on a cd rom or tape. The definition of custom software in the prior law was very broad, however, and could include off-the-shelf "shrink-wrap" programs and programs that had been modified only slightly by the vendor. Under that definition, custom computer software included all software recommended to the purchaser by the seller after performing an analysis of the purchaser's needs. Thus, under prior law, a common product such as Microsoft's Word program became

exempt from sales and use tax if the seller of the program analyzed the customer's needs and decided that Word was better for the customer than WordPerfect or another competing product. This act deletes an analysis of a customer's needs as a determining factor in whether a program is custom (exempt) or canned (taxable).

The definition of custom software in the prior law also included all programs adapted by the seller of the program to be used in a particular computer and its associated input/output devices such as printers. This type of adaptation can be slight, such as the completion of a "fill-in-the-blank" series in which the particular hardware to be used with the program is designated, or it can include extensive changes to the lines of source code in the software. Under the prior law definition, any slight adaptation of a program made the entire program exempt from State and local sales and use taxes. This act changes the law by providing that custom software does not include prewritten software that can be installed and executed with no changes to the software's source code other than changes made to configure hardware or software.

S.L. 1997-388 (House Bill 611, Representative Hackney)

AN ACT TO INCREASE THE COMPENSATION PROVIDED TO PERSONS ERRONEOUSLY CONVICTED OF FELONIES WHO HAVE RECEIVED PARDONS OF INNOCENCE, TO EXEMPT THE COMPENSATION FROM STATE INCOME TAX, AND TO PROVIDE FOR THE INDUSTRIAL COMMISSION TO HANDLE THE CLAIMS OF THOSE PERSONS.

This act makes several changes to the law that allows the State to compensate people who have been erroneously convicted and imprisoned of a felony:

- It increases the amount a person may be awarded.
- It changes the agency that determines the award from the Department of Correction to the Industrial Commission.
- It provides that the petition must be presented to the Industrial Commission within five years after the pardon was granted.
- It repeals the requirement that the claimant must have sustained pecuniary loss through the erroneous conviction and imprisonment.
- It allows the Industrial Commission to make the award, rather than the Governor upon the approval of the Council of State.
- It clarifies that the amount awarded to the claimant is exempt from State income tax.

Under prior law, a person who had been granted a pardon of innocence for the erroneous conviction and imprisonment of a felony could petition the State for compensation for the financial loss sustained by the person through the erroneous conviction and imprisonment. The petition was presented to the Department of Correction and the Parole Commission would conduct a hearing. To support an award, the Parole Commission had to find that the person was erroneously convicted and imprisoned and that the person sustained a financial loss as a result. The Parole Commission would then report its conclusions and recommendations to the Governor. The Governor, upon the approval of the Council of State, was authorized to award the claimant the amount recommended by the Parole Commission. The Governor could not make an award that exceeded $500 for each year imprisoned or a total of $5,000.

Under this act, a person would have five years from the granting of the pardon to present a petition to the Industrial Commission for compensation from the State for the financial loss the person suffered because of an erroneous conviction and imprisonment. Upon finding that the person was granted a pardon of innocence, the Commission must determine the amount the claimant is entitled to be paid and must enter an award for that amount. A claimant will be entitled to an amount equal to $10,000 for each year or the pro rata amount for the portion of each year of the imprisonment. The compensation may not exceed a total of $150,000. The Commission must give written notice of its decision to all parties concerned. Its determination is subject to judicial review.

Section 4 of the act clarifies that the amount awarded to a claimant is not subject to State income tax. Under existing law, it is unclear whether the amount awarded to a claimant is exempt from federal income tax. Prior to 1996, section 104 of the Internal Revenue Code exempted amounts received as damages on account of personal injuries and sickness. In 1996, Congress amended this section to say that gross income does not include "the amount of damages received on account of personal physical injuries or physical sickness." Because of the 1996 federal tax law change, it is questionable whether the compensation would be exempt under federal law. To the extent the income is subject to federal income tax, it would automatically be subject to State income tax. Section 4 provides that to the extent the compensation is included in federal taxable income, it may be deducted for State income tax purposes.

The act is effective when it becomes law and applies to persons pardoned on or after July 1, 1995. The income tax clarification becomes effective for taxable years beginning on or after January 1, 1997.

S.L. 1997-392 (House Bill 225, Representative Weatherly)

AN ACT TO PROVIDE FOR CLEANUP OF DRY-CLEANING SOLVENT CONTAMINATION IN NORTH CAROLINA, AS RECOMMENDED BY THE ENVIRONMENTAL REVIEW COMMISSION.

This act requires owners and operators of dry-cleaning facilities to maintain financial responsibility for liability arising from dry-cleaning solvent pollution and creates a Dry-Cleaning Solvent Cleanup Fund to be used to reimburse persons who clean up sites polluted by dry-cleaning solvents that have contaminated the water or surface or subsurface soils of the State. The Fund will be administered by the Department of Environment and Natural Resources. No more than 20% of the amount of revenue in the Fund may be used by the Department for the costs of administering the Fund. The act is a recommendation of the Environmental Review Commission.

The major source of revenue for the Fund is the imposition of a dry-cleaning solvent tax on in-State retailers that sell solvent to dry-cleaning facilities and on dry-cleaning facilities that purchase solvent outside the State. The solvent tax is a per gallon privilege tax equal to $5.85 per gallon of chlorine-based solvents and 80¢ per gallon of hydrocarbon-based solvents. The tax is effective October 1, 1997, and expires January 1, 2010. The Department of Revenue will collect the tax in the same manner as a sales tax. The Secretary of Revenue may retain the Department's cost of collection, not to exceed $125,000 a year. After subtracting these costs and the Department of Environment and Natural Resources administration costs, the tax is expected to generate about $1 million a year for the Dry-Cleaning Solvent Cleanup Fund.

If the amount of claims exceeds the amount of revenue in the Fund, the claims with the highest priority will be paid first. The Department of Environment and Natural Resources must adopt rules to implement the act, including rules for the prioritization of sites and scheduling of funding for assessment and remedial response activities. A petitioner for money from the Fund must meet certain requirements and make a financial contribution. The amount a petitioner may receive from the Fund is capped at $200,000 a year unless the contamination poses an immediate threat to human health or a serious risk of irreparable damage to the environment, in which case a cap of $400,000 applies.

S.L. 1997-397 (Senate Bill 847, Senator Odom)

AN ACT TO EXEMPT FROM SALES AND USE TAX REUSABLE INDUSTRIAL CONTAINERS USED AS PACKAGING FOR TANGIBLE PERSONAL PROPERTY.

This act provides a sales and use tax exemption for containers that are used as packaging to enclose property delivered to a purchaser and must then be returned to the owner. Under prior law, packaging items were exempt from sales tax only if they constituted part of the property being sold and were delivered with the property to the customer. The act becomes effective October 1, 1997. It is not known how much the act will reduce General Fund revenues and local government sales tax revenues.

The act applies to barrels used to transport chemicals and tanks used to transport gases, such as oxygen, acetylene, and propane. In a typical situation, barrels are leased by the barrel company to the chemical company, which fills them with chemicals that are then sold to the customer. The customer returns the barrel, which can then be reused. Under prior law, the chemical company (lessee) was required to pay sales tax to the barrel company (lessor) on the lease price of the barrel. If the barrels had been purchased by the chemical company and sold to the customer, however, they would have been tax exempt. The prior law was, therefore, a disincentive for recycling. The customer would likely discard a purchased barrel and buy a new one when buying more chemicals.

The act does not apply to railroad tank cars or to truck trailers because motor vehicles are not packaging. The act does not apply to railroad palettes because they do not enclose the property being delivered.

S.L. 1997-417 (House Bill 1231, Representative Miner)

AN ACT TO AUTHORIZE SUPPLEMENTAL SOURCES OF REVENUE FOR LOCAL GOVERNMENT TRANSIT FINANCING.

This act has four parts that provide local governments with revenue options to finance local public transportation systems, as follows:

I. It authorizes Mecklenburg county to levy a ½ cent local sales tax if approved by the voters of the county.

II. It authorizes most cities that have public transportation systems to levy an additional $5 motor vehicle tax.

III. It authorizes regional public transportation authorities to levy a gross receipts tax of up to 5% on short-term motor vehicle rentals.

IV. It authorizes the new Triad regional transportation authority to levy the same $5 vehicle registration tax that the existing Triangle regional public transportation

authority levies. It also authorizes public transportation authorities organized under existing law and comprised of two or more counties to levy this same $5 vehicle registration tax.

Part I of the act authorizes Mecklenburg County to levy a ½ cent sales tax only if the tax is approved by the voters of the county. The tax does not apply to food. In other respects, it will be administered in the same way as the existing local sales and use taxes.

The proceeds of the tax must be used to finance, construct, operate, and maintain local public transportation systems. A public transportation system is defined broadly in the act to include any combination of real and personal property established for purposes of public transportation. It does not include, however, streets, roads, and highways not dedicated to public transportation or related parking.

Mecklenburg County may not levy the sales tax authorized by Part I of this act unless it has developed a financial plan for equitable allocation of the proceeds it receives based on the identified needs of local public transportation systems in the county and planned expansion of public transportation to unserved areas. The sales tax authorized for Mecklenburg County will be distributed between the county and other local government units in the county that operate local public transportation systems, on a per capita basis. The county must allocate the tax proceeds it receives based on its financial plan.

Part II of the act authorizes most municipalities that operate public transportation systems to levy an additional $5 motor vehicle tax, to be used only to finance, construct, operate, and maintain local public transportation systems. Current law already authorizes municipalities to levy a $5 annual motor vehicle tax that may be used for any public purpose. Many municipalities already have local legislation authorizing them to levy an increased amount. This act adds an extra authorization for $5 more. If that $5 would cause the municipality's total local motor vehicle tax to exceed $30, however, the additional $5 tax may not be levied. The City of Charlotte and the Town of Matthews are authorized by local act to levy annual motor vehicle taxes of $30. These local units are the only ones that would currently be affected by the $30 limitation. The City of Durham and the cities and towns in Gaston County are specifically prohibited from levying this additional $5 for local transportation authorities.

Part III of the act authorizes a regional public transportation authority to levy a gross receipts tax of up to 5% on retailers within the region engaged in the business of renting private passenger motor vehicles and motorcycles. The tax applies only to short-term rentals, i.e., rentals for a period of less than one year. The tax will be collected by the authority but is otherwise administered in the same way as the optional highway use tax on gross receipts from vehicle rentals. This optional highway use tax is 8% on short-term rentals, so the combined tax within the jurisdiction of the authority would be 13%. Each authority may use the proceeds of the tax for its public transportation purposes. Before levying or increasing the tax, the authority must obtain approval from each county in the region.

A regional transportation authority is an entity created under either Article 26 or Article 27 of Chapter 160A of the General Statutes to provide a public transportation system for the region it represents. The authority created under Article 26, the Triangle Transit Authority for Wake, Durham, and Orange Counties, is governed by a board of trustees appointed by the counties creating the authority and larger cities within the counties. The 1997 General

Assembly authorized the creation of a second regional transportation authority for the Triad region, in S.L. 1997-393. The Triad Transit Authority may be created by the four largest cities of the five counties served by the Authority in order to promote the development of sound transportation systems in the area served by the Authority. The Authority would be governed by a board of trustees consisting of the mayors of the four largest cities and the chair of each Metropolitan Planning Organization in the area. The counties served by the Authority would be Forsyth, Guilford, Randolph, Davidson, and Alamance. The four major cities involved in the creation of the Authority are Greensboro, High Point, Winston-Salem, and Burlington.

Part IV of the act authorize the proposed Triad regional transportation authority and any multi-county public transportation authorities organized under current law to levy a $5 vehicle registration tax identical to the tax already authorized for, and levied by, the existing Triangle Transit Authority. A public transportation authority is an entity created by one or more local government entities under Article 25 of Chapter 160A of the General Statutes to provide public transportation. There are three multi-county public transportation authorities. The Choanoke Public Transportation Authority consists of Bertie, Halifax, Hertford, and Northampton Counties. The Kerr Area Transportation Authority consists of Franklin, Granville, Person, Vance, and Warren Counties. The Inter-County Public Transportation Authority consists of Camden, Chowan, Currituck, Pasquotank, and Perquimans Counties.

An authority must obtain the approval of each county within its jurisdiction before it can levy the $5 vehicle registration tax. The Division of Motor Vehicles will collect the tax in counties that are entirely located within the authority's jurisdiction. If the authority's jurisdiction includes just a part of one or more counties, the authority will collect the registration tax in those parts of counties. The authority may contract with local governments to collect this tax. Authorization for authorities to levy this tax is organized into a new Article in Chapter 105 of the General Statutes; accordingly, the Triangle Transit Authority's tax is recodified from Chapter 160A to the new Article in Chapter 105.

S.L. 1997-423 (House Bill 35, Representative Capps)

AN ACT TO EXTEND THE TIME ALLOWED FOR CLAIMING SALES TAX REFUNDS, MOTOR FUEL TAX REFUNDS, AND ALTERNATIVE FUEL TAX REFUNDS, AND TO PROVIDE THAT A MOTOR FUEL TAX REFUND IS NET OF THE SALES TAX DUE ON THE FUEL.

This act extends the time for claiming sales tax refunds for certain nonprofit entities, certain governmental entities, and drugs purchased by hospitals. A late application for a sales tax refund may now be filed with the Department of Revenue after 30 days but within three years after the due date, subject to a 50% penalty. The penalty for a late filing within 30 days after the due date is 25%. The Secretary of Revenue has the authority to waive penalties for good cause, but once a refund is barred the Secretary may not revive it. Prior law required that the application for a refund filed after 30 days be filed within six months after the due date in order to receive a refund subject to the 50% penalty. The due date for nonprofit entities and certain hospitals is October 15 following the first six months of a calendar year and April 15 following the second six months. The due date for governmental entities is six months after the end of each fiscal year. The Department of Revenue had suggested to the Revenue Laws Study Committee that the statute of limitations for late filings of applications for sales tax refunds for these nonprofit entities, governmental entities, and hospitals be extended from six

months to three years in order to bring them in line with the due date for applications for tax refunds for all other taxes, except those on property, as set out in G.S. 105-266 and G.S. 105-266.1. In past years, bills have been introduced for refunds for nonprofit entities and State agencies whose refunds have been barred because their applications were filed six months after the due date. The Department of Revenue informed the Revenue Laws Study Committee that by increasing the filing deadline to three years, most of the refund legislation could be eliminated. The extension of sales tax refunds for these nonprofit entities, governmental entities and hospitals is effective January 1, 1998. However, notwithstanding the three-year extension, the act provides that an application for a refund of sales taxes paid by a nonprofit entity or hospital is timely filed if it is filed within four years after the due date and before July 1, 1998. This one-time provision is effective immediately, but the Department of Revenue will not issue a sales tax refund for these nonprofit entities or hospitals until July 1, 1998.

The act also extends the time for filing an application for a refund on motor fuel taxes and alternative fuel taxes from six months to three years. The act further amends the tax laws affecting motor fuel and alternative fuel by assessing sales and use tax on (1) motor fuel for which a refund of the motor fuel tax is allowed because the motor fuel is accidentally mixed with some other type of fuel or the motor fuel is used in a boat, and (2) alternative fuel and motor fuel for which a refund of the fuel tax is allowed for fuel used for other than to operate a licensed highway vehicle or for fuel used in certain vehicles with power attachments. Prior law exempted motor fuel and alternative fuel from sales tax, regardless of whether the fuel was taxed or a refund of the tax paid was allowed.

The act provides that any sales and use tax due on motor fuel used other than to operate a licensed highway vehicle or used in certain vehicles with power attachments, is to be subtracted from any refund a taxpayer receives on motor fuel tax paid on that fuel. Prior law allowed a refund on motor fuel tax paid on fuel used for off-highway purposes or in certain vehicles with power attachments and no sales tax was deducted or payable. This refund was for the flat cents per gallon rate less one cent. The one cent was retained to liquidate highway bonds. The act sets out a formula for determining the sales and use tax to be deducted from the motor fuel tax refund. This formula provides that the price of motor fuel subject to sales tax is the average of the wholesale prices used to determine the fuel tax rates in effect for the two six-month periods of the year for which the refund is claimed. The one cent holdback is eliminated by the act, because the highway bonds have been paid off. The changes to the tax laws effecting motor fuel and alternative fuel taxes become effective January 1, 1998, and apply to taxes paid on or after that date.

The maximum loss to the General Fund from extending the refund period from six months to three years is not expected to exceed $200,000 annually. The gain in General Fund revenues from changes made to the sales tax on motor fuels is estimated to be $797,525 annually. The net revenue loss to the Highway Fund from the elimination of the one-cent holdback is $200,000 annually.

S.L. 1997-443 (Senate Bill 352, Senator Plyler)

AN ACT TO MAKE BASE BUDGET APPROPRIATIONS FOR CURRENT OPERATIONS OF STATE DEPARTMENTS, INSTITUTIONS, AND AGENCIES, AND FOR OTHER PURPOSES.

The Current Operations and Capital Improvements Appropriations Act of 1997 contains one tax law change. The act extends the sunset of the State ports income tax credit from February 28, 1998, to February 28, 2001, and increases the maximum cumulative credit from $1 million to $2 million per taxpayer. This increase is effective for taxable years beginning on or after January 1, 1998. The act is expected to reduce General Fund revenues by $500,000 in 1998-99. The amount of the tax credit allowed is equal to the amount of charges paid to the North Carolina Ports Authority in the taxable year that exceeds the average amount of charges paid to the Authority for the past three years. The credit is limited to 50% of the tax imposed on the taxpayer for the taxable year. Any excess credit may be carried forward and applied to the taxpayer's income tax liability for the next five years.

The 1992 General Assembly enacted the State ports income tax credit to encourage exporters to use the two State-owned port terminals at Wilmington and Morehead City. When enacted, the credit applied to amounts paid by a taxpayer on cargo exported at either port. In 1994, the General Assembly expanded the credit to include all amounts assessed on exported cargo, regardless of who paid the shipping costs. In 1995, the General Assembly expanded the credit to include imports and allowed a credit for break-bulk cargo and container cargo imported at either Wilmington or Morehead City and for bulk cargo imported at Morehead City. It did not allow a credit for bulk cargo imported at Wilmington. The credit for bulk exports was also limited to bulk exports at the Morehead City terminal. The 1996 General Assembly expanded the State ports income tax credit to include the importing and exporting of forest products at the Wilmington terminal. Forest products are a type of bulk cargo.

Bulk cargo is a type of commodity that is loose and usually stock-piled. Examples of this type of commodity include coal, grain, salt, and wood chips. Break-bulk cargo and container cargo are different methods used to ship the same type of commodity. Commodities that are packaged in a metal trailer box that can be locked onto a tractor-trailer chassis and then detached and put on a ship without any other handling are considered "container cargo". Commodities that are packaged and stored on pallets or in cases that must be handled and stacked onto a ship by hand, crane, etc., are considered break-bulk cargo. Break-bulk cargo also includes machinery.

S.L. 1997-475 (Senate Bill 727, Senator Miller)

AN ACT TO REDUCE THE STATE SALES TAX ON FOOD BY AN ADDITIONAL ONE CENT EFFECTIVE JULY 1, 1998, TO ESTABLISH THE PERCENTAGE RATES FOR THE INSURANCE REGULATORY CHARGE AND THE PUBLIC UTILITY REGULATORY FEE, TO CLARIFY THE BASIS OF THE PREMIUM TAX LIABILITY ON WHICH THE INSURANCE REGULATORY CHARGE IS LEVIED, TO INCREASE COURT FEES IN CRIMINAL CASES, TO INCREASE THE FEES FOR FILING CERTAIN DOCUMENTS, AND TO PROVIDE THAT ANNUAL REPORTS OF MOST BUSINESS CORPORATIONS SHALL BE FILED WITH THE DEPARTMENT OF REVENUE RATHER THAN THE SECRETARY OF STATE.

This act reduces the State sales tax on food, sets the insurance regulatory charge and the public utility regulatory fee, clarifies the basis for calculating the insurance regulatory charge, provides that most corporate annual reports will be filed with the Department of Revenue rather than the Secretary of State, and makes other changes not related to the tax law.

Part I of the act reduces the State sales tax on food from 3% to 2%, effective July 1, 1998,

and is expected to reduce General Fund revenues by about $90 million a year. In 1996, the General Assembly reduced the State sales tax on food from 4% to 3%, effective January 1, 1997. This act does not repeal or reduce the local 2% sales tax on food. The reduced State sales tax rate applies to food that may be purchased with food stamps. Federal law determines what can be purchased with food stamps and, therefore, what food is subject to the reduced State sales tax.

Examples of food items that are subject to the reduced State sales tax rate are fruits, vegetables, bread, meat, fish, milk, snack foods such as candy, gum, soft drinks, and chips, distilled water, ice, tomato plants, fruit trees, and cold prepared food for home consumption. Items that are not considered food items under federal law and therefore remain subject to the 4% State sales tax include alcoholic beverages, tobacco products, pet food, prepared foods that are hot at the point of sale and are therefore ready for immediate consumption, such as a broiled chicken kept in a heated display case, and food, such as a hamburger, a pastry, or soup, that is marketed to be heated on the premises of the retailer in a microwave oven or other heating device.

Part II of the act increases the insurance regulatory charge from 7.25% to 8.75% for the 1997 tax year and is expected to generate an additional $3 million in revenue. The insurance regulatory charge was first imposed in 1991 in order to make the Department of Insurance receipt-supported and thereby eliminate General Fund support of the Department. The regulatory charge is imposed on insurance companies that pay the gross premiums tax, other than service corporations such as Blue Cross/Blue Shield and Delta Dental Corporation. Health maintenance organizations do not pay the regulatory charge because they do not pay the gross premiums tax. The charge is a percentage of the insurance company's premiums tax liability.

In 1995, the General Assembly eliminated the insurance audit and examination fees for insurance companies, HMOs, medical corporations, and guaranty associations. The revenue generated by these audit fees was an estimated $4.5 million annually. Consequently, the costs of the audits is now paid for by the insurance regulatory charge as part of the costs of regulating the insurance industry. The increase in the regulatory charge proposed by this act will not fully compensate the General Fund for the 1995 change in the audit fee provisions. The regulatory charge will need to be increased another 0.35% to 9.10% in 1998-99 to fully fund the action taken by the General Assembly in 1995.

Part II of this act also clarifies that the premiums tax liability upon which the charge is levied is not reduced by any tax credits allowed a taxpayer for guaranty or solvency fund assessments. It also makes two technical changes. It deletes the reference to insurance companies regulated under Article 66 of Chapter 58 because no insurance company is regulated under that Article. That Article is the Hospital, Medical and Dental Service Corporation Readable Insurance Certificates Act. It also deletes references to tax paid under G.S. 97-100. Self-insurers pay premiums tax under Article 8B of Chapter 105 of the General Statutes.

Part III of this act decreases the public utility regulatory fee levied in G.S. 62-302 from 0.10% to 0.09% for the 1997 tax year and is expected to reduce the fee revenue by $870,000. The utility regulatory fee was imposed in 1989 in order to defray the State's cost in regulating public utilities. This act reduces the fee because the lower rate, combined with other available revenues, will generate sufficient funds for the estimated costs of operating the North Carolina

Utilities Commission and the Public Staff. The regulatory fee is imposed on all utilities that are subject to regulation by the Utilities Commission. The fee is a percentage of the utility's North Carolina jurisdictional revenue. In general, jurisdictional revenue is revenue derived from providing utility service in North Carolina.

Parts IV and V of this act make changes that are not related to the tax law. Part VI of this act provides that most business corporations will file their corporate annual report with the Department of Revenue at the same time that they file their corporate income and franchise tax returns, and raises the annual report filing fee from $10.00 to $20.00. Increasing the fee will generate an additional $1.25 million in revenue each year and transferring the corporate report filing to the Department of Revenue will increase the Department's operating costs by about $112,000 a year. Under prior law, the corporate annual reports were filed with the Secretary of State on the anniversary of the business' incorporation. This Part becomes effective January 1, 1998, but reports filed with either the Department of Revenue or the Secretary of State during the 1998 calendar year will be considered filed with the correct agency.

This Part of the act is one of the recommendations of the General Statutes Commission. The change is designed to make filing annual reports easier for corporations, to set the due date for the annual report at the due date for filing tax returns (which is a more familiar deadline than the current due date), to allow corporations the benefit of making a single filing with one agency rather than multiple filings with different agencies, and to reduce inadvertent failures to file the annual report. Any amendments to annual reports will continue to be filed with the Secretary of State.

Insurance companies will continue to file their annual reports with the Secretary of State, but on a day set with reference to tax filing dates rather than on the anniversary of their incorporation. The Secretary of State and the Secretary of Revenue are required to prescribe a form jointly for annual reports. The contents of the annual report are being changed to delete the requirement that the names of directors be included in the report because this information is considered not useful to the public. This Part also authorizes a corporation to certify that there are no changes from the previous annual report in order to eliminate the burden of filling out repetitious reports.

S.L. 1997-490 (Senate Bill 39, Senator Larry Shaw)

AN ACT TO REVISE THE SETOFF DEBT COLLECTION ACT.

This act modifies the Setoff Debt Collection Act, Chapter 105A of the General Statutes. Under that Act, the Department of Revenue sends the income tax refund of an individual who owes money to a State agency to that agency in payment of the debt rather than to the individual. The individual's income tax refund is therefore set off against the debt the individual owes the State agency .

The Revenue Laws Study Committee recommended this act to the 1997 General Assembly. The modifications made to the Setoff Debt Collection Act apply to tax refunds determined on or after January 1, 2000. The act expands and streamlines the setoff program as follows:

1. It requires all State agencies not given a waiver by the State Controller to use the setoff program to collect debts owed the agency. Under existing law, the State agencies that are included in a list in the statute must use the setoff program to collect debts and those that are not listed cannot use the setoff program.

2. It extends the setoff program to local units of government and their agencies and establishes the procedures local units and their agencies must follow to use the setoff program. The act allows, but does not require, local entities to use the setoff program.
3. It streamlines the setoff program by eliminating several unnecessary notices between the Department of Revenue and the claimant agencies. It accomplishes this by allowing the Department to place refunds of debtors of State agencies in escrow while the State agency finalizes the setoff.
4. It shifts the cost of the program from the agencies whose debts are collected to the debtors who owe the debts, sets a $15.00 cap on the fee imposed for collection through setoff, and shifts the cost of collecting child support debts from all the State agencies that use the setoff program to an earmarking of income tax collections.
5. It clarifies and reorganizes some of the provisions in the Setoff Debt Collection Act.

Expansion to All State Agencies: The Setoff Debt Collection Act currently requires certain named State agencies to participate. Other State agencies may not participate, even on a voluntary basis. The act extends the mandatory State program to all State agencies, as recommended by the State Controller's Office, which administers the Statewide accounts receivable program pursuant to G.S. 147-86.22. If a State agency's use of the program would not be practical or cost effective in certain cases, the State Controller could waive the requirement.

Expansion to Local Governments: The idea to expand the setoff program to local entities originated with Senate Bill 761 of the 1995 Session, introduced by Senator Conder. The act authorizes local governments to submit their debts for collection by setoff only after providing the debtor with notice, an opportunity to be heard before the local government, and an appeal process pursuant to the Administrative Procedure Act. After completing this process, the agency can submit the debt through the League of Municipalities, the Association of County Commissioners, or another clearinghouse. Funneling the debts through a clearinghouse rather than having each local government submit its own debts will avoid placing an undue administrative burden on the Department of Revenue.

Streamlining of Program: Under existing law, the setoff process requires three notices to the Department by the claimant agency, two notices by the Department to the agency, and two notices to the taxpayer. The act eliminates two of the notices to the Department by claimant agencies and one of the notices by the Department to claimant agencies.

Before the effective date of this act, the procedure is as follows: A State agency notifies the Department of a debt. The Department checks to see if the debtor will be receiving a tax refund. If so, the Department notifies the agency that the debtor is entitled to a refund. The agency then sends the Department and the debtor a notice of intent to apply the refund to the debt. After any hearing requested by the debtor, the agency sends the Department a notice of certification of the debt. The Department then applies the tax refund to the debt and notifies the taxpayer and the agency of the setoff. If the debt is less than the refund, the Department sends the balance of the refund at the same time.

Under the act, a claimant agency sends the Department notice of the debt and the Department immediately sets off the debt against the refund and notifies the taxpayer and the claimant agency. A local agency cannot notify the Department of a debt until after the debt has been established through notice to the debtor and a hearing, if requested. A State agency

can notify the Department of a debt, have the refund placed in an escrow for the agency, notify the debtor and hold any hearing requested, and then disburse the escrowed amount accordingly.

The act gives a debtor the same procedural and substantive rights as under existing law, including the right to interest on any part of the refund found not to be a valid debt. Under existing law, a debtor is notified of a potential setoff and the right to contest the setoff. The debtor receives the same notifications under this act. Also, under the act, if an agency fails to give the debtor the required notice, the agency must return the entire refund to the debtor even though a debt is owed.

Collection Assistance Fee Changes: Before the effective date of this act, the cost of administering the setoff debt collection program was paid by the State agencies whose debts were collected by setoff. Under both existing law and this act, each year, the Department of Revenue determines its costs of running the program and recovers these costs by charging a collection assistance fee as a percentage of each debt collected. The act caps this fee at no more than $15.00 per debt. The actual fee is expected to be less.

The act shifts the burden of paying the administrative costs of most setoffs from participating State agencies to the debtors. Under existing law, except in the case of child support debts, the Department of Revenue retained the collection assistance fee from each setoff and reduced the amount paid to the agency by the amount of the fee. The agency therefore absorbed the cost of collecting the debt by receiving less than the full amount of the debt. Under the act, the Department of Revenue still retains the collection assistance fee but the fee is added to the debt and paid by the debtor from the refund rather than subtracted from the amount payable to the agency. As a result, the debtor will pay the fee out of the tax refund that was set off. This change shifts approximately $270,000, which is the cost of collecting about 39,000 debts, from State agencies' budgets to debtors.

Under existing law, the Department of Human Resources and their county counterparts use the debt setoff program to collect child support arrearages pursuant to the federal Child Support Enforcement Program. Since January 1, 1996, rather than deducting its administrative costs from amounts collected for child support arrearages, the Department of Revenue has been required to spread among other State agencies the portion of the Department's administrative costs attributable to child support collections. That change shifted child support setoff administrative costs from child support collections to other setoff collections, resulting in an increase in the percentage deducted from those other collections. The act directs the administrative costs of collecting child support arrearages to be drawn from income tax collections rather than deducted from the amounts collected on behalf of other State agencies. The General Fund bears the cost in either case, but under the act the cost does not come from amounts appropriated to State agencies for other purposes.

S.L. 1997-499 (House Bill 537, Representative Grady)

AN ACT TO PROVIDE RELIEF FOR FEDERAL RETIREES AND THE SURVIVING SPOUSES OF FEDERAL RETIREES.

This act provides the following additional relief to federal retirees who paid unconstitutional North Carolina income tax on their federal retirement benefits in 1985, 1986, 1987, and 1988, but did not protest or request a refund within 30 days as required by law:

1. It allows federal retirees to carry forward for two years the unused portion of their

tax credit for payment of these unconstitutional taxes if they cannot claim the entire credit because the credit exceeds their tax liability.

2. It allows the surviving spouse of a deceased federal retiree to claim the decedent's tax credit, including the two-year carryforward. If there is no surviving spouse, the decedent's estate may take the credit, but not the two-year carryforward.

The act is effective retroactively to the 1996 tax year. It requires the Secretary of Revenue to reimburse the General Fund for the costs of the additional tax relief by transferring $8 million of excess funds in a reserve account created in 1996.

In 1996, the General Assembly enacted legislation giving federal retirees income tax credits and partial refunds for the North Carolina income taxes they paid on their federal retirement benefits in 1985, 1986, 1987, and 1988. If a federal retiree paid these 1985-88 pension taxes under timely protest, the retiree already received a refund as required by existing law. The 1996 legislation, estimated to cost the General Fund $117 million over three years, provided relief to nonprotesters, who were not legally entitled to a refund or credit.

The 1996 legislation allowed partial refunds and credits as follows: federal retirees who did not make a timely protest and who would owe North Carolina income tax were authorized to take a State income tax credit equal to the amount of pension taxes they paid. The tax credit was allowed in three equal, annual installments, one for the 1996 tax year, one for the 1997 tax year, and one for the 1998 tax year. For a taxpayer whose 1996 tax liability was less than 5% of the pension taxes the taxpayer paid during 1985-88, a one-time refund equal to 85% of the pension taxes was allowed in lieu of the credit. The taxpayer was required to claim this refund by April 1, 1997. The 1996 legislation provided that if a federal retiree who would otherwise be eligible for a credit or refund had died, the retiree's estate could claim the credit or refund.

After the 1996 legislation was enacted, legislators began receiving complaints that this legislation did not provide sufficient relief for surviving spouses or for retirees who did not have enough current tax liability to claim the entire credit. If a retiree eligible for the first installment of the credit for the 1996 tax year died in 1996 or thereafter, the surviving spouse could not claim any of the remaining installments of the credit. The 1996 legislation authorized the estate to claim the credit, but estates often have little or no tax liability against which a credit could be claimed. This act addresses this complaint by allowing surviving spouses to claim the credit. The other complaint received was from taxpayers who were ineligible for the 85% refund because their tax liability equaled 5% or more of the amount of pension taxes they paid for 1985-88. Those taxpayers might receive a credit equal to anywhere from 15% to 100% of the pension taxes, depending upon whether they had enough tax liability against which to claim the credit. The credit allowed is nonrefundable, i.e., to the extent it exceeds the taxpayer's tax liability, it is lost. Taxpayers with lower liability would receive credit for less than 100% of their pension taxes. This act addresses this complaint by allowing taxpayers to carry the unused portion of the credit forward to the following two tax years: 1999 and 2000.

The legislative history of the 1996 legislation indicates that the General Assembly intended that some taxpayers would not receive 100% credit, either because they died in 1996 or later or because their potential credit exceeded their tax liability against which it could be claimed. In the 1996 Second Extra Session, the Senate and the House of Representatives had different approaches to granting relief to nonprotesters for the taxes they paid on their federal

pensions from 1985 through 1988. The House passed House Bill 30 (Rep. Grady), which would have provided a full refund of all taxes paid, through a refundable credit payable over four years. If the retiree died, the surviving spouse or estate was entitled to the refund. The estimated cost of the proposal was a total of $142.8 million. In contrast, the Senate passed a Senate Committee Substitute for House Bill 30 that provided only partial relief for an estimated total cost of $117.7 million. This version of the bill provided only nonrefundable credits and did not provide relief for surviving spouses of deceased retirees. The matter went to conference and the Senate plan prevailed. The two limitations now complained of are the reason the Senate plan cost less than the House plan in 1996.

S.L. 1997-503 (Senate Bill 853, Senator Conder)

AN ACT AUTHORIZING THE SECRETARY OF THE DEPARTMENT OF REVENUE TO APPOINT EMPLOYEES OF THE DEPARTMENT AS REVENUE LAW ENFORCEMENT AGENTS TO ENFORCE THE EXCISE TAXES ON UNAUTHORIZED SUBSTANCES AND THE CRIMINAL PROVISIONS OF THE REVENUE LAWS.

This act authorizes the Secretary of Revenue to appoint employees of the Criminal Investigations Division and the Unauthorized Substances Tax Division as revenue law enforcement officers. An employee must be certified as a criminal justice officer under the N.C. Criminal Justice Education and Training Standards Commission to serve as a revenue law enforcement officer.

The Unauthorized Substances Tax Division officers will have subject-matter jurisdiction to enforce the excise tax on unauthorized substances. The Criminal Investigations Division officers will have subject-matter jurisdiction to enforce the felony tax violations in G.S. 105-236 and to enforce any of the following criminal offenses when they involve a tax imposed under Chapter 105 of the General Statutes: embezzlement of State property, embezzlement of funds, obtaining property by false pretenses, forgery, and uttering forged paper. A revenue law enforcement officer has Statewide jurisdiction within the officer's subject-matter jurisdiction. The officer may serve and execute notices, orders, warrants, or demands issued by the Secretary of Revenue or the courts, and may use the powers of arrest in executing these papers.

As law enforcement officers, these Department of Revenue employees will be entitled to increased pension benefits such as a 5% contribution to a 401(k) plan, early retirement, enhanced compensation for work-related disability, and a separation allowance that increases benefits for an officer who retires before becoming eligible for social security (the allowance ends when the officer begins receiving social security). The act requires the Department of Revenue to use $67,503 of its operating appropriations for the 1997-98 fiscal year to pay for the increased costs.

S.L. 1997-521 (House Bill 1057, Representative Grady)

AN ACT TO EXEMPT FROM SALES TAX AUDIOVISUAL MASTER TAPES USED IN THE MOTION PICTURE, TELEVISION, AND AUDIO PRODUCTION INDUSTRIES.

This act creates a new State and local sales and use tax exemption, effective October 1, 1997. The new exemption is for audiovisual masters. An audiovisual master is the film, tape,

or other storage device that is made or used by a production company to make more copies of the film or tape. The act will reduce State sales tax revenues by approximately $1 million in fiscal year 1997-98 and by approximately $1.59 million in fiscal year 1998-99. The act will reduce local sales tax revenues by approximately $500,000 in fiscal year 1997-98 and by approximately $800,000 in fiscal year 1998-99.

Because it is levied on the retail price, the tax at issue in this act applies to the value of all production and post-production work that goes into creating a film, video, or commercial. Assume, for example, that a politician contracts with an advertising agency to have a political commercial made. The agency then films or contracts with others to film the politician in action. When the filming is completed, the agency contracts with a company to edit the film and put it in a finished form with sound and any narration. When the finished product (the audiovisual master) is delivered by the agency to the politician, a sales tax applies to the sale of that finished product. The tax is computed on the value of all the services that went into the finished product, such as acting fees or other charges.

According to the North Carolina Film Office, most post-production work on films is done in California or New York but the post-production work on commercials and videos is done in many other places. South Carolina and Virginia do not tax audiovisual masters, so a lot of production companies choose to do post-production work on commercials and videos is done in those states. The exemption provided by this act should remove a disincentive for production companies to work in North Carolina.

S.L. 1997-525 (Senate Bill 1065, Senator Hoyle)

AN ACT TO EXPAND THE INCOME TAX EXCLUSION FOR SEVERANCE PAY TO INCLUDE SEVERANCE PAY DUE TO AN EMPLOYEE'S INVOLUNTARY TERMINATION THROUGH NO FAULT OF THE EMPLOYEE.

This act expands the income tax exclusion for severance pay received due to the closing of a manufacturing plant and modifies the cap on the exclusion, effective beginning with the 1998 tax year. It is expected to reduce General Fund revenues by a little more than $2 million in fiscal year 1998-99.

In 1996, the General Assembly enacted an income tax exemption for severance pay a taxpayer receives due to the permanent closure of a manufacturing or processing plant, not to exceed a maximum of $35,000 for the taxable year. The exemption was expected to reduce General Fund revenues by approximately $4 million a year. This act expands the tax exemption to include severance pay received due to any involuntary termination through no fault of the employee. The expanded exemption would include being fired without cause, being laid off due to a reduction in force, as well as being terminated due to a plant closure. It would not include voluntary early retirement or being fired for cause. The act also expands the tax exemption to cover any type of job in the private or public sector, not just a job at a manufacturing plant.

Some taxpayers were able to avoid the $35,000 cap by arranging to receive part of the severance pay in December and the rest in January. The act closes this loophole by clarifying that the $35,000 cap applies to the total amount paid to an employee by an employer for the same termination, regardless of when the taxpayer receives the money.

Appendix C

Revenue Laws Study Committee
Recommendations to 1997 General Assembly

1997 Proposals		Bill Number	Revenue Laws Bills Sponsor	Status
Proposal 01:	Withholding Nonresident Performers	H057	Neely	SL 97-109
Proposal 02:	Update Internal Revenue Code	H059	Neely	SL 97-55
Proposal 03:	Conform Tax on Restored Income	H015	Cansler	SL 97-213
Proposal 04:	Index Personal Exemption	H148	Shubert	H Finance
Proposal 05:	Modify Setoff Debt Collections	S039	Shaw	Ratified
Proposal 06:	Interstate Auditors/Regulatory Fund	S097	Kerr	In Budget
Proposal 07:	Sale of Property for Unpaid Taxes	S106	Cooper	SL 97-121
Proposal 08:	Annual Sales Tax Filing by Customers	H036	Capps	SL 97-77
Proposal 09:	Update Custom Computer Software	H014	Cansler	SL 97-370
Proposal 10:	Conform Sales Tax Refund Period	H035	Capps	SL 97-423
Proposal 11:	Uniform Tax on Piped Natural Gas	S036	Kerr	S Finance
Proposal 12:	Adjust City Receipts Tax Share	S034	Cochrane	SL 97-118
Proposal 13:	Simplify and Reduce Inheritance Tax	H013	Cansler	H Rules
Proposal 14:	Accounting for 911 Surcharges	H149	Shubert	SL 97-8
Proposal 15:	Tax At Rack Improvements	S098	Kerr	SL 97-60
Proposal 16:	Revenue Laws Technical Changes	S033	Cochrane	SL 97-6
Proposal 17:	Permanent Revenue Laws Study Committee	H058	Neely	In S32
Proposal 17:	Permanent Revenue Laws Study Committee	S035	Kerr	In S32

Appendix D

1997 Federal Tax Law Changes

General

The federal Taxpayer Relief Act of 1997 creates 285 new sections in the Internal Revenue Code and amends 824 existing sections. Errors in the act are expected to be corrected in 1998 in the federal Tax Technical Correction Act. The following list summarizes some of the significant provisions of the 1997 legislation.

Affects N.C. Individual Income Tax Only

1. Allows exclusion of $250,000 ($500,000 for joint filers) of capital gain from **sales of residence** occupied by taxpayer as principal residence for two of previous five years. Former rules on rollover and former one-time exclusion are repealed. Effective for sales after 5/6/97. This is a tax increase for those who have more than $250,000/$500,000 in gain, so to that extent it cannot be retroactive. (§ 121)
2. Expands business expense deduction for percentage of **self-employed individuals' health insurance**: effective in 2000, the percentage is increased to 50%, then phased up reaching 100% in 2007. (§ 16(a)(1)(B))
3. Establishes **Roth IRAs** effective for tax years beginning on or after 1/1/98, which allow nondeductible contributions of up to $2,000 of compensation (limited for those with adjusted gross income above a certain amount). Distributions tax free if contributions made more than five years ago and one of the following applies: (i) taxpayer is over 59 ½ or is dead, (ii) distribution made because of disability, (iii) distribution is for qualifying first-time homebuyer expenses. Existing IRA may be rolled over to Roth IRA, subjecting rolled over amount to tax. If the IRA is rolled over to a Roth IRA in 1998, the tax due may be spread over four years. (§ 408(a))
4. Expands **existing IRAs** by increasing income limits and allowing IRA for spouse of disqualified active participant, effective for taxable years beginning on or after 1/1/98. (§219(g))
5. Establishes **Education IRAs** effective for tax years beginning on or after 1/1/98, which allow nondeductible cash contributions of up to $500 a year per child under 18 (contributions limited for those with adjusted gross income above a certain amount). Annual earnings of IRA are tax-exempt and distributions are exempt to the extent spent on qualified higher education expenses. (§ 530)
6. Expands **Prepaid Tuition Programs** to include room and board as qualifying expenses, effective retroactively to August 21, 1996. N.C. already exempts these expenses. The act also expands definitions of eligible educational institution and family member, effective 1/1/98 (§ 529(c), (e)).
7. Reenacts exclusion for up to $5,250 of **employer-provided educational assistance**, effective for tax years beginning on or after 1/1/97 and for courses beginning before 6/1/2000. Does not apply to graduate level courses. (§127(d))
8. Allows above the line deduction for up to $1,000 a year of **interest paid on qualified higher education loans**, effective for interest due and paid on or after 1/1/98. The $1,000 annual limit is phased up by $500 a year until it reaches

$2,500 for 2001 and thereafter. Limited to five years of payments, and further limited for taxpayers with AGI above a certain amount. (§ 221)

9. Restricts **penalty for underpayment of estimated income tax**, so that it does not apply if total tax liability less pre-payments is less than $1,000. (N.C. piggybacks this because 105-163.15(f) references section 6654(e) of the Code.) Effective for tax years beginning on or after 1/1/98
10. Makes a small increase in **standard deduction** of individuals who can be claimed as a dependent by another (indexing not adopted), effective for tax years beginning on or after 1/1/98
11. Changes **net operating loss carryback and forward** periods from back 3 years and forward 15 years to back 2 years and forward 20 years, except for individual casualty losses and for farm and small business losses in a disaster area. Effective for tax years beginning on or after August 6, 1997. (Note, we cannot make this effective until tax years beginning on or after 1/1/98, because it is a tax increase.) Although the federal change affects both corporate and individual income tax, in NC corporate does not piggyback net operating loss treatment, so there is no effect on NC corporate income taxes.
12. Increases **charitable mileage rate** from 12¢ to 14¢, effective for tax years beginning on or after 1/1/98
13. Extends expired deduction for fair market value of **stock contributed to private foundation**, effective 5/31/97 (date of expiration) (§ 170(e)(5))
14. Expands rules governing when a **home office** qualifies as the principal place of business, effective for tax years beginning on or after 1/1/99. Note, however, that use of part of residence as home office may restrict availability of capital gain exclusion for residence.
15. Provides that capital gain from sale of certain **qualified small business stock** is not recognized to the extent the proceeds are rolled over into more qualified small business stock within 60 days, effective for sales on or after August 1, 1997.
16. Expands maximum amount of **self-employed 401(k)** contributions that may be made in certain circumstances, effective for taxable years beginning on or after 1/1/98. (§ 402, 408)
17. Provides that if an employee stock ownership plan **(ESOP)** is a shareholder in an S corporation, items of income or loss of the S corporation will not be treated as unrelated business taxable income, contrary to former law.
18. Changes tax treatment of **rural mail carriers' reimbursed mileage**, effective for tax years beginning on or after 1/1/98
19. Expands deferment of **gain from sale of livestock due to drought**, to include flood or other weather-related conditions. Effective for sales and exchanges on or after 1/1/97. (§ 451, 1033)
20. Expands **business meals/entertainment deduction for air transportation employees**, interstate truck and bus drivers, rail road employees, and merchant mariners. Increased from 50% to 55% effective for tax years beginning on or after 1/1/98. Thereafter, phased up 5% every two years to 80% in 2008.
21. Clarifies exclusion for value of **employer-provided parking**, effective for tax years beginning on or after 1/1/98.

22. Increases amount of foreign earned income that can be excluded by **US citizens residing in foreign countries**, effective for tax years beginning on or after 1/1/98, and phased up thereafter.
23. Retroactively excludes from income certain states' **disability payments to former police officers and fire fighters** in 1989, 1990, and 1991. Note: this provision applies only to certain states. If it applies to N.C., the statute of limitations will prevent refunds.
24. Excludes from income government survivor annuities for **slain public safety officers**, effective for tax years beginning on or after 1/1/97
25. Denies nonrecognition of gain when involuntarily converted property is replaced by property acquired from a related party, unless the taxpayer's aggregate gain is $100,000 or less, effective for involuntary conversions after 6/8/97. (§ 1033)
27. Changes from below the line to above the line the deduction for **State and local government official business expenses** relating to service as official, if official is compensated in whole or part on a fee basis. Effective retroactively beginning with 1987 tax year, but does not waive the three-year statute of limitations. (§62(a)(2)(c)).
28. Changes basis recovery method for pension plan payments, 1/1/98. (§72(d)).
29. Simplifies treatment of personal transactions in **foreign currency**, effective 1/1/98.
30. Increases pension full funding limit with 20-year amortization, effective 1/1/99.

Affects Partnerships (N.C. Individual Income Tax)

1. Treats as ordinary income gain attributable to inventory on sale or exchange of partnership interest and in certain partnership distributions, effective 8/5/97. (no impact)
2. Changes formula for allocation of basis among distributed assets of partnership, effective 8/5/97.
3. Extends from 5 to 7 years the period in which a partner may recognize "pre-contribution gain" with respect to contributed property when it is distributed to another partner, or when other property is distributed to the contributing partner, effective for contributions after 6/8/97.

Affects both N.C. Individual and Corporate Income Tax

1. Retroactively extends federal **R&D tax credit**, which had expired 6/1/97. N.C. law piggybacks this credit in G.S. 105-129.10.
2. Restricts types of property eligible for the more generous **income forecast method of depreciation**, effective for property placed in service on or after August 6, 1997. This method will now be allowed only for film, video tapes, sound recordings, copyrights, books, and patents.
3. Eliminates **short against the box** and similar transactions. A taxpayer must recognize gain upon entering into a constructive sale of any appreciated position in stock, etc. A constructive sale occurs if two offsetting positions are acquired in substantial identical property with the intent of reducing the taxpayer's risk

associated with the appreciated property. Gain recognized as if position sold at fair market value and repurchased on date of constructive sale. Effective 6/8/97, with transitional rules. (§ 1259).

4. Requires immediate accrual of interest or original issue discount on **pool of debt instruments** on which the principal can be paid without interest as of a certain date (e.g., credit card receivables) Effective for taxable years beginning on or after 8/5/97. (§1272)
5. Allows expensing of certain environmental remediation costs (**brownfields**) that would otherwise be chargeable to capital account. Effective for expenditures after 8/5/97 and before 2001. (§ 198)
8. Allows **inventory adjustment for estimated shrinkage** if business (1) usually makes a periodic physical count and (2) will later revise the adjustment for discrepancy between estimated shrinkage and actual shrinkage. Effective for tax years ending after 8/5/97. (§471)
9. If taxpayer enters into **short sale of property that becomes substantially worthless**, gain is recognized as if short sale closed when property became worthless. §1233(h). In addition, extends capital treatment of gains and losses under §1234A to interests in real property and nonactively traded personal property.
10. Includes income from **notional principal contracts and stock lending transactions** under Subpart F in gross income of U.S. shareholders, effective 8/5/97. (§ 951)
11. Further restricts like-kind exchanges involving foreign personal property, effective 6/8/97. (§ 1031).
12. Limits treaty benefits for payments to hybrid entities, effective 8/5/97. (§ 894).
13. Creates exception from U.S. property definition under Subpart F for certain securities positions, effective 1/1/98.
14. Exempts active financing income from Subpart F, effective during 1998 only.
15. Modifies look back method for long term contracts, effective 8/5/97.

Affects N.C. Corporate Income Tax Only

1. Recognizes gain when taxpayer exchanges property for certain preferred stock formerly not treated as "**boot**". Sections 351, 354, 355, 356, and 1036 of the Code. Effective transactions after 6/8/97.
2. Certain **corporate contributions of computer** software and equipment to schools qualify for charitable deduction in excess of otherwise applicable limit (basis of the donated property), effective for taxable years beginning on or after 1/1/98 and before 1/1/2001.
3. Repeals income deferral formerly allowed when **family farms** required to change from cash method to accrual method because gross receipts exceed $25 million. Effective for taxable years beginning on or after 7/1/96, with transitional rules.
4. Allows **Subchapter S subsidiaries** (allowed by Small Business Job Protection Act of 1996) to be treated in certain instances as separate corporations for the

purpose of applying Code provisions that benefit a certain type of entity (e.g., banks), that the subsidiary is but the parent is not. Effective 1/1/97

5. Clarifies that **software qualifies as export property** eligible for foreign sales corporation benefits, effective 1/1/98. Piggybacked by 105-130.5(a)(15)
6. Repeals deduction for premiums paid on life insurance policy or annuity in which taxpayer had an interest. Repeals deduction for **interest paid to incur life insurance coverage** where taxpayer is beneficiary and restricts deduction for taxpayer's interest expense allocable to certain cash surrender values. Also, provides pro rata disallowance of interest expense attributable to life insurance on individuals who are not officers, employees, or former employees. Effective 6/8/97.
7. Requires recognition of gain in year of extraordinary dividend if the nontaxed portion of the dividend exceeds the stock basis, and other changes. Depending on the type of extraordinary dividend, new rules effective for distributions after 5/3/95 or 9/13/95, with transition rules. .
8. Repeals law allowing manufacturers to use installment method to report income from sales to their dealers, effective for taxable years beginning on or after 8/6/98.
9. Expands circumstances in which gain is recognized upon acquisition or distribution of stock of the controlled corporation or distributing corporation, effective for transactions occurring after April 16, 1997. This change substantially restricts the availability of tax-free spinoffs. Also, effective for transfers after 6/8/97, gain recognition on transfers to investment companies expanded by expanding definition of investment company.
10. Denies **interest deduction on convertible debt** and similar debt, effective for instruments issued on or after 6/8/97. (§163(l))
11. Allows deferral of gain on sales of stock of certain corporations engaged in refining or processing agricultural products to farmers' cooperatives engaged in marketing agricultural products, effective 1/1/98. .
12. Modifies control test and include attribution rules to determine unrelated business income tax consequences of certain payments from subsidiaries of tax-exempt organizations, effective 1/1/99.
13. Repeals 30% gross income limitation for regulated investment companies, effective 8/5/97.

Affects Other NC Taxes

1. Extends **generation-skipping transfer tax** exemption to transfers to grandnieces and nephews where parent of transferee is deceased and transferor has no living lineal descendants at time of transfer, effective 1/1/98. (§ 2651, 2612) (We piggyback in G.S. 105-7.1.)

No Effect on N.C.

1. Allows $500 **child tax credit** ($400 in 1998). Phased out if AGI above $110,000 joint or $75,000 single/head of household

2. **Allows Education tax credits.** (1) Hope credit for portion of qualified undergraduate education tuition and fees for two years, phased out for taxpayers with AGI over certain amounts. Effective 1/1/98. (2) Lifetime learning credit for 20% of qualified undergraduate or graduate tuition, subject to cap, phased out for taxpayers with AGI over certain amounts. (§25A, 6050S)
3. **Lowers individual tax rate on capital gains.** Rate reduced from 28% to 20%. For taxpayers in 15% bracket, it is 10%. Holding period for LTCG expanded from one year to 18 months.
4. **Work opportunity tax credit** extended and expanded. New welfare to work tax credit for part of employers' wages paid to AFDC recipients, effective 1/1/98. (§ 51A)
5. Allows penalty-free (but not tax free) withdrawals from IRAs for qualified higher education expenses and first time home purchase.
6. Three-year **income averaging for farmers**, effective for 1998, 1999, and 2000 tax years. (§1301)
7. Increases **estate and gift tax unified credit** to $625,000 in 1998, $650,000 in 1999, $675,000 in 2000-01, $700,000 in 2002-03, $850,000 in 2004, $950,000 in 2005, and $1 million in 2006+
8. Reduces estate tax for land subject to permanent conservation easement, effective 1/1/98.
9. Allows **estate tax exclusion for qualified family owned business**, effective 1/1/98. This is very complex and can be narrow in its application.
10. Alternative minimum tax repealed for small corporations.
11. Alternative minimum tax depreciation adjustment eliminated for property placed in service on or after 1/1/99.
12. Farmers may use installment method of accounting for purposes of alternative minimum tax.
13. Taxpayer who fraudulently claims **earned income tax credit** is ineligible thereafter for 10 years. Also, change in definition of AGI for purpose of phasing out the EITC, effective 1/1/98.
14. Changes safe harbor test applicable to upper income individuals for purposes of penalty for underpayment of estimated taxes. We do not piggyback this. (§6654)
15. Tightens holding period rules for corporate dividends received deduction.
16. Those offering tax shelters must register with the IRS.
17. Orphan drug tax credit made permanent.

Technical/Minor – Probably Tiny Impact if Any

1. Clarifies that self-employed individual is eligible to deduct long term care insurance even if employer provides health insurance, as long as the employer does not provide long term health insurance.
2. Recaptures all depreciation (not just excess over straight line) on § 1250 property (buildings).
3. Clarifies that medical savings account withdrawals must be for an individual who was eligible (not covered by low deductible health plan) in the month the expenses were incurred.

4. Estate and its beneficiary treated as related parties for purpose of disallowing loss deduction for sales of assets to related parties and disallowing capital gains treatment for sales of depreciable property to related parties. Effective for taxable years beginning after 8/5/97. (§ 267, 1239)
5. Luxury auto depreciation limits relaxed for clean-burning fuel vehicles and electric vehicles, effective for property placed in service between 8/5/97 and 1/1/05. (§280F).
6. Employer may deduct contributions to SIMPLE 401(k) with no 15% limit, effective for taxable years beginning on or after 1/1/97. (§404(a)(3)(A))
7. Securities traders and commodity traders and dealers may elect mark to market accounting rules (previously applied only to securities dealers), effective for taxable years beginning after 8/5/97
8. Exclude from corporate unrelated business income tax income from certain corporate sponsorship payments .
9. Change treatment of travel expenses of certain federal employees engaged in criminal investigations, effective 8/5/97.
10. Changes rule for closing partnership taxable year with respect to a deceased partner, effective 1/1/98.
11. Allows deduction for contributions by ministers to retirement plans, effective 1/1/98.
12. Clarifies that **employer-provided employee meals** that are tax-free to the employee because they are for the convenience of the employer are fully deductible by employers and treated as de minimum fringe benefits effective for taxable years beginning on or after 1/1/97.
13. MedicarePlus Choice Medical Savings Accounts authorized as pilot program for individuals on Medicare, effective for taxable years beginning on or after 1/1/99. (§138, 220(b), 4973(d)).
14. Reduces **carryback period for general business credits** (such as R&D and low-income housing credits) from 3 years to 1 year, with carryforward period extended from 15 years to 20 years, effective for credits for which the taxpayer first becomes eligible in taxable years beginning on or after 1/1/98. Our R&D credit piggybacks the federal credit, and also some addbacks are allowed under our law if the taxpayer was disallowed a federal deduction for a credit for which we have no corresponding credit. (§ 39)
15. Repeals 30% gross income requirement for **real estate investment trusts**.

Appendix E

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Reply to: Revenue Section
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--MEMORANDUM--

TO: Martha H. Harris
Bill Drafting Division
N.C. General Assembly

FROM: Marilyn R. Mudge
Assistant Attorney General

SUBJECT: State legislation incorporating future amendments to federal law

DATE: April 17, 1998

Andy Vanore asked that I reply to your February 26, 1998, memorandum concerning a proposed bill now under consideration by the Revenue Laws Study Committee. The bill amends N.C. Gen. Stat. § 105-228.90 to automatically incorporate future amendments to the Internal Revenue Code ("IRC") into the North Carolina Revenue Laws as they are enacted by Congress. It also establishes an annual review procedure whereby the General Assembly can accept or reject each amendment after its incorporation into state law. You ask whether the proposal would withstand constitutional scrutiny if it were enacted and challenged as an impermissible delegation of state legislative power.

As you know, the question of incorporating future amendments arose in 1977, when the State was considering revamping its self-contained individual income tax statutes to piggyback on the federal Code. At that time this office advised Hudson Stansbury, Director of the Tax Research Division of the Department of Revenue, that a North Carolina statute adopting by reference future amendments to the Internal Revenue Code would likely be held void as an unconstitutional delegation of legislative power. That advice was based on the general rule, rooted in the doctrine of separation of powers, that the power and discretion to make law, being vested exclusively in the state legislature, must be exercised by that body alone and cannot be delegated to any other entity without express or clearly implied constitutional authority. *See*, generally, 16 C.J.S. Constitutional Law §§ 135 *et seq.*; 16 Am. Jur. 2d Constitutional Law §§ 335 *et seq.* The

memorandum to Mr. Stansbury discussed cases from other jurisdictions that had considered the adoption of future federal law and noted that most had reached the same conclusion as the Georgia Supreme Court did in *Featherstone v. Norman*, 170 Ga. 370, 394, 153 S.E.2d 58, 70 (1931):

> When a statute adopts a part of all of another statute, domestic or foreign, general or local, by specific and descriptive reference thereto, the adoption takes the statute as it exists at that time. The subsequent amendment or repeal of the adopted statute or any part thereof has no effect upon the adopting statute.

The memo also noted two exceptions, *Alaska Steamship Co. V. Mullaney*, 12 Alaska 594, 180 F.2d 805 (CA9 1950), and *Anderson v.Tiemann*, 182 Neb. 393, 155 N.W.2d 322 (1967), in which statutes adopting future federal changes were upheld on the theory that the state legislature had established a policy of state-federal uniformity and was therefore exercising rather than abdicating its law-making power when it enacted state legislation incorporating future federal amendments. Additionally, since there were no North Carolina cases dealing with the adoption of future federal law, the memo discussed the analysis employed by the North Carolina courts in cases involving the delegation of legislative power to administrative agencies. These cases held that the General Assembly may authorize such agencies to exercise discretion as to administrative details within legislatively defined guidelines but may not delegate to them its exclusive discretion to declare what the law of this state is to be.

I have updated the research done for the 1977 memorandum and have found that the recent cases dealing with the adoption of future federal law are, as before, from other jurisdictions. These opinions continue to state the general rule that the legislature may not delegate its law-making power to any other body. *See*, e.g., *Diversified Investment Partnership v. Department of Social and Health Services*, 113 Wash. 19, 775 P.2d 947 (1989) (stating legislature prohibited from delegating power to enact laws and declare general public policy; statutes must be complete when they leave the legislature; state statute attempting to incorporate future federal law is incomplete because it transfers to Congress power to decide substantive issues); *State v. Boatright*, 184 W.Va. 27, 399 S.E.2d 59 (1990) (stating it is unlawful delegation of legislative power to attempt to adopt future laws of another jurisdiction); *Accord, State v. Christie*, 70 Haw. 158, 766 P.2d 1198 (1988), cert. den. 490 U.S. 1067, 109 S.Ct. 2068, 104 L.Ed. 2d 633 (1989).

Some of the cases have also discussed the policy underlying the rule. In *Willmus v. Commissioner of Revenue*, 371 N.W.2d 210 (1985), for example, the Minnesota Supreme Court recognized that one sovereign's citizens do not necessarily benefit from legislation adopting the law of another, particularly in tax matters:

> The same political and social considerations which are of significance to the Federal tax

are not necessarily of significance to the state's tax collection scheme.

* * *

> Changes in the foreign legislation may not fit the policy of the incorporating legislature and the person subjected to the changed law would be denied the benefit of the considered judgment of his legislature on the matter.

In at least one recent case the general rule has been applied to invalidate a statute challenged on grounds of unconstitutional delegation. *City of Oklahoma City v. Oklahoma Department of Labor*, 918 P.2d 26 (1996) (state statute incorporating minimum wage rates to be set by the U.S. Department of Labor). And in a number of other cases courts have applied the rule to avoid invalidating state statutes by construing them to incorporate only those provisions of the relevant federal law that had already been enacted when the state law was passed. *Independent Community Bankers Assn.. v. State,* 346 N.W.2d 737 (1984) (statute adopting IRC definition of "bank holding company" not intended to include future amendments and therefore not improper delegation of power to Congress); *State v. Gill*, 63 Ohio St. 3d 53, 584 N.E.2d 1200 (1992) (state statute adopting federal Food Stamp Act of 1977 "as amended" held not to include future amendments); *Rodriquez v. Bennett*, 305 So. 2d 157 (1978) (construing state food stamp law to include existing but not future provisions of federal act)

One jurisdiction has reached a contrary result. In *McFaddin v. Jackson*, 738 S.W.2d 176 (1987), the Supreme Court of Tennessee upheld a state inheritance tax statute incorporating future IRC amendments by reasoning as follows: (1) a state statute cannot be valid unless it speaks the sovereign will and leaves the hands of the legislature complete, (2) a statute is not incomplete because it suspends its obligatory force until the arrival of a future time or the happening of a future event if the time or event is one selected by the legislature itself, and (3) the statute in question was valid because the legislature chose as the triggering event the possibility that Congress would later amend the Code.

The only relevant North Carolina decisions are, once again, those involving delegation to administrative agencies. They continue to apply the general rule as they did prior to 1977.

In *Adams v. Department of Natural and Economic Resources*, 295 N.C. 683, 249 S.E.2d 402 (1978), the Supreme Court upheld the Coastal Area Management Act of 1974, which delegated to the Coastal Resources Commission the power to establish standards for coastal land use. The court reached its decision after finding that the Act set out adequate guidelines to govern the exercise of this power by the Commission. The opinion reviewed the general rule as applied to administrative agencies and observed that the appropriate analysis involves reconciling the legislature's need to delegate adjudicative and rule-making authority with the constitutional mandate that the General Assembly alone exercise its supreme legislative power. Likewise, in

Bowens v. Board of Law Examiners, 57 N.C. App. 78, 291 S.E.2d 170 (1982), the Court of Appeals concluded that the statutes authorizing the Board to conduct the bar exam included sufficient legislative guidance and did not permit the Board to manage public affairs or make policy choices that could have been made by the General Assembly.

In two other cases, the North Carolina courts struck down statutes challenged on grounds of unconstitutional delegation. In *Heritage Village Church v. State*, 40 N.C. App. 429, aff'd. 299 N.C. 399 (1980), the Court of Appeals reiterated that the state constitutional provisions providing for separation of powers and vesting legislative power in the General Assembly combine to delineate the extent to which delegation is permissible:

> Here we pause to note the distinction generally recognized between a delegation of the power to make a law, which necessarily includes a discretion as to what it shall be, and the conferring of authority or discretion as to its execution. The first may not be done, whereas the latter, if adequate guiding standards are laid down, is permissible under certain circumstances.

40 N.C. App. 429, 443-44, quoting *Coastal Highway v. Turnpike Authority*, 237 N.C. 52, 60, 74 S.E.2d 310, 316 (1953), citing 11 Am. Jur. 2d, Constitutional Law, § 234. Based on this statement of the rule, the court invalidated certain provisions of the charitable solicitation statutes after finding that they delegated to the Secretary of Human Resources the "absolute discretion" to determine when to issue, suspend, or revoke licenses to solicit funds. 40 N.C. App. 429, 444.

In *Northampton Drainage District v. Bailey*, 326 N.C. 742, 748, 392 S.E.2d 352, 357 (1990), the Supreme Court overturned a statute authorizing clerks of superior court to determine whether drainage district commissioners should be elected or appointed:

> We cannot hold that the decision as to how a governing board of a drainage district is chosen is a ministerial act. The purpose of the act to have commissioners selected can be attained without the General Assembly's relinquishment of this legislative power. We hold it is an unconstitutional delegation of legislative power.

These cases illustrate that the courts in North Carolina and elsewhere are continuing to apply the rule prohibiting the delegation of legislative power as they did before 1977 and, with few exceptions, are sustaining state statutes in the face of constitutional attacks only when satisfied that there is no transfer of the discretion to declare what the home state's law shall be.

There can be little doubt that the bill being considered by the Committee effects a transfer of law-making power. It causes the North Carolina Revenue Laws to be amended, with no

involvement whatever by the General Assembly, to include any change Congress sees fit to make to the Internal Revenue Code. In my opinion, this automatic incorporation of future federal law renders the bill invalid as an unconstitutional delegation of legislative power.

I do not believe the State could successfully defend the statute by arguing, as was done in *McFaddin, supra,* that it is an act of legislative will to select future Congressional action as the event to trigger a substantive change in state law. The reasoning is entirely circular. What it says, in essence, is that it can be the will of the General Assembly to permit the Congress to determine the will of the General Assembly. The argument has meaning only where the state law-making body itself enacts a law change but delays its effectiveness until a specified event occurs. Such is not the case here because there is no substantive policy decision at the state level. If the draft bill were to become law it would immediately surrender not only the General Assembly's power to declare when a law is to become effective but also its power to declare what the law is to be. Such abdication of power is the very thing the nondelegation rule was intended to prevent.

Further, it is doubtful that the provision for legislative review is sufficient to preserve the bill. As soon as it becomes law, Congress will be empowered to determine the substance and effectiveness of North Carolina's tax statutes. Thus, by definition, an impermissible delegation of legislative power will already have taken place when the review is conducted. Reviewing IRC amendments when they have already been incorporated into state law is the legislative equivalent of closing the barn door after the horse has left. And, while acceptance or rejection of a particular Code amendment can adopt or reverse the effects of a federal Code amendment, at least for tax years not yet ended, it cannot undo the delegation of legislative power

Finally, it is unlikely the State could prevail by arguing that the delegation to Congress is in furtherance of a legislative policy decision to promote state-federal uniformity in tax matters. Certainly, a stronger case could be made now than in 1977 because of the 1989 restructuring of the state income tax laws to piggyback on the Internal Revenue Code. However, the terms of the bill itself suggest that the defense would not be successful. It includes no language indicating that the General Assembly intends to bring about substantive conformity between the state and federal tax laws. The more likely purpose of the bill (which bears the short title "Update IRC Reference") is to keep Code cites current and not to bring about a wholesale adoption of Code amendments. The fact that new federal amendments can be rejected during the review process also indicates that uniformity was not the bill's objective, since the rejection of amendments defeats the uniformity achieved by the automatic adoption of federal law changes.

To summarize, it appears from their handling of the administrative agency cases discussed above that the North Carolina courts would, if called upon to decide the constitutionality of the proposed bill, join the majority of jurisdictions holding that the adoption of future federal law constitutes an impermissible delegation of state legislative power. It also appears unlikely that

the bill could be upheld either on grounds it promotes a state policy of state-federal tax uniformity or on grounds the legislative review process cures the delegation problem.

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