



2021 TAX LAW CHANGES



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PREFACE

The 2021 legislative session brought many changes to the revenue laws and the North Carolina Department of Revenue. The 2021 Tax Law Changes publication is designed for use by the North Carolina Department of Revenue personnel and is available to others as a resource document. It provides a brief summary of legislative tax changes made by prior General Assemblies that take effect for tax year 2021 as well as changes made by the 2021 General Assembly, regardless of effective date. This document includes changes to the tax law only and does not include other legislation that impacts the Department of Revenue.

For further information on a specific tax law change, refer to the governing legislation. Administrative rules, bulletins, directives, and other instructions issued by the Department, as well as opinions issued by the Attorney General's Office, may provide additional information on the application of tax law changes. I hope you find this information of value as you work with North Carolina's tax laws.

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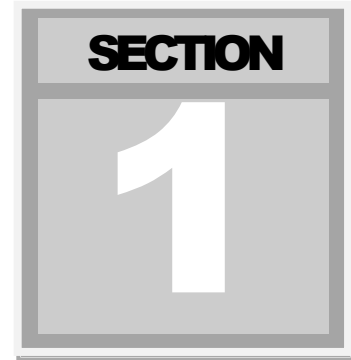
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SECTION 1 – PERSONAL TAXES



INDIVIDUAL INCOME TAX – ARTICLE 4, PART 2

G.S. 105-153.3. – Definitions: Several statutes within Article 4 of Chapter 105 were added or revised to reduce the impact of the federal limitation on the individual state and local tax (“SALT”) deduction by allowing pass-through entities (“PTE”) to elect to pay North Carolina tax at the entity level. The PTE is allowed to deduct the full amount of its SALT payments as a business expense on its federal income tax return. This legislation will be referred to collectively as “North Carolina’s SALT Workaround for PTEs.” As part of this legislation, G.S. 105-153.3 was amended to add the following definitions:

- (18a) Taxed partnership. – A partnership for which a valid election under G.S. 105-154.1 is in effect.
- (18b) Taxed pass-through entity. – A taxed S Corporation or a taxed partnership.
- (18c) Taxed S Corporation. – Defined in G.S. 105-131(b).

(Effective for taxable years beginning on or after January 1, 2022; SB 105, s. 42.5.(f), S.L. 2021-180.)

G.S. 105-153.5(a)(1) – Standard Deduction Amount: This subdivision was amended by the General Assembly to increase the North Carolina standard deduction amount for each filing status for taxable years beginning on or after January 1, 2022. The new deduction amount for each filing status is as follows:

Filing Status	Standard Deduction
Married, filing jointly/surviving spouse	\$25,500
Head of Household	\$19,125
Single	\$12,750
Married, filing separately	\$12,750

(Effective for taxable years beginning on or after January 1, 2022; SB 105, s. 42.1.(b), S.L. 2021-180.)

G.S. 105-153.7(a) – Individual Income Tax Imposed: This subsection was amended by the General Assembly to decrease the rate imposed on an individual’s North Carolina taxable income. The new rate for each tax year is as follows:

Taxable Years Beginning	Tax
In 2022	4.99%
In 2023	4.75%
In 2024	4.6%
In 2025	4.5%
In 2026	4.25%
After 2026	3.99%

(Effective for taxable years beginning on or after January 1, 2022; SB 105, s. 42.1.(a), S.L. 2021-180.)

G.S. 105-153.5(a1) – Child Deduction Amount: This subsection was amended to increase the deduction amount for each dependent child for whom the taxpayer is allowed a federal child tax credit under section 24 of the Internal Revenue Code (“Code”). The increased deduction is equal to the amount listed in the table below based on the taxpayer’s federal adjusted gross income (“AGI”), as calculated under the Code:

Filing Status	AGI	Deduction Amount
Married, filing jointly/Surviving spouse	Up to \$40,000	\$3,000.00
	Over \$40,000 Up to \$60,000	\$2,500.00
	Over \$60,000 Up to \$80,000	\$2,000.00
	Over \$80,000 Up to \$100,000	\$1,500.00
	Over \$100,000 Up to \$120,000	\$1,000.00
	Over \$120,000 Up to \$140,000	\$500.00
	Over \$140,000	\$0.00
	Head of Household	Up to \$30,000
Over \$30,000 Up to \$45,000		\$2,500.00
Over \$45,000 Up to \$60,000		\$2,000.00
Over \$60,000 Up to \$75,000		\$1,500.00
Over \$75,000 Up to \$90,000		\$1,000.00
Over \$90,000 Up to \$105,000		\$500.00
Over \$105,000		\$0.00

	Over \$105,000	\$0.00
Single/Married, filing separately	Up to \$20,000	\$3,000.00
	Over \$20,000 Up to \$30,000	\$2,500.00
	Over \$30,000 Up to \$40,000	\$2,000.00
	Over \$40,000 Up to \$50,000	\$1,500.00
	Over \$50,000 Up to \$60,000	\$1,000.00
	Over \$60,000 Up to \$70,000	\$500.00
	Over \$70,000	\$0.00

(Effective for taxable years beginning on or after January 1, 2022; SB 105, s. 42.1.(c), S.L. 2021-180.)

G.S. 105-153.5(a)(2)a. – Charitable Contribution: The Consolidated Appropriations Act, 2021, enacted by Congress in December 2020, extended through tax year 2021 the federal provision that temporarily increased the charitable contribution deduction limit for qualified charitable contributions from 60% of an individual’s federal adjusted gross income (“AGI”) to 100% of an individual’s AGI. The 2020 General Assembly amended G.S. 105-153.5(a)(2a) to refer to the Internal Revenue Code (“Code”) as of January 1, 2020, which excludes the temporary increase to the charitable deduction limitation. As such, an individual who claimed North Carolina itemized deductions for tax year 2020 could only deduct qualified charitable contributions up to 60% of the individual’s AGI.

The General Assembly amended this sub-subdivision for two purposes: first, to clarify the State’s decoupling provisions as they relate to the deduction of charitable contributions for State income tax purposes, and second, to extend the State’s reference to the Code as of January 1, 2020, through tax year 2021. As such, an individual who claims North Carolina itemized deductions for tax year 2021 may only deduct qualified charitable contributions up to 60% of the individual’s AGI.

(Effective November 18, 2021; SB 105, s. 42.4.(b), S.L. 2021-180.)

G.S. 105-153.5(a)(2)b. – Mortgage Expense and Property Tax: The Consolidated Appropriations Act, 2021, enacted by Congress in December 2020, extended through tax year 2021 the federal provision that allows an individual an itemized deduction for mortgage insurance premiums paid or accrued by treating those premiums as qualified residence interest. North Carolina has decoupled from this federal provision since 2014. The General Assembly amended this sub-subdivision to extend the State’s decoupling provision through tax year 2021.

(Effective November 18, 2021; SB 105, s. 42.4.(b), S.L. 2021-180.)

G.S. 105-153.5(b) – Other Deductions: This subsection was amended to add new subdivision (5a) to allow a taxpayer a deduction for specific payments received from the United States government. As amended, subdivision (5a) provides a deduction for the following:

- a. Retirement pay for service in the Armed Forces of the United States to a retired member that meets either of the following:
 1. Served at least 20 years.
 2. Medically retired under 10 U.S.C. Chapter 61. Importantly, this deduction does not apply to severance pay received by a retired member due to separation from the member's armed forces.
- b. Payments of a Plan defined in 10 U.S.C. § 1447 to a beneficiary of a retired member eligible to deduct retirement pay under sub-subdivision a.

(Effective for taxable years beginning on or after January 1, 2021; SB 105, s. 42.1A.(a), S.L. 2021-180.)

G.S. 105-153.5(b) – Other Deductions: In 2020, the General Assembly created the Extra Credit Grant program (“Program”), which provided a one-time grant payment of \$335 to eligible individuals. Under the provisions of the Program, for tax year 2020, an individual could deduct the grant payment when computing State taxable income to the extent it was included in the individual’s federal adjusted gross income.

In 2021, the General Assembly amended this subsection twice: first, to extend the deduction through tax year 2021 and second, to correct a statutory reference. The correct reference for the deduction is (b)(15).

(Effective November 18, 2021; SB 105, s. 42.13A.(a), S.L. 2021-180.)

G.S. 105-153.5(b) – Other Deductions: This subsection was amended as part of the legislation that created a separate State net operating loss for individual income tax purposes. New subdivision (16) was added to allow a taxpayer to deduct the amount of State net operating loss allowed under the provisions of G.S. 105-153.5A.

(Effective for taxable years beginning on or after January 1, 2022; SB 105, s. 42.6.(a), S.L. 2021-180.)

G.S. 105-153.5(c) – Additions: This subsection was amended as part of the legislation that created a separate State net operating loss for individual income tax purposes. Subdivision (6) was amended to require an addition to an individual’s federal adjusted gross income (“AGI”) for the amount of federal net operating loss allowed as a deduction under the Internal Revenue Code.

(Effective for taxable years beginning on or after January 1, 2022; SB 105, s. 42.6.(a), S.L. 2021-180.)

G.S. 105-153.5(c2) – Decoupling Adjustments: This subsection was amended multiple times to decouple North Carolina from certain provisions included in the

Coronavirus Aid, Relief, and Economic Security Act (“CARES Act”), the Consolidated Appropriations Act, 2021, and the American Rescue Plan Act of 2021 (“ARPA”). These amendments are as follows:

Cancellation of Qualified Principal Residence Indebtedness

Subdivision (1) was amended to extend through 2025 the requirement to add to a taxpayer’s federal adjusted gross income (“AGI”) the amount of qualified principal residence debt discharged during the tax year excluded from federal gross income under section 108 of the Internal Revenue Code (“Code”).

Employer Payments of Student Loans

Subdivision (18) was amended to extend through 2025 the requirement to add to a taxpayer’s AGI the amount of payment excluded from gross income for payment by an employer, whether paid to the taxpayer or to a lender, of principal or interest on any qualified education loan, as defined in section 221(d)(1) of the Code, incurred by the taxpayer for education of the taxpayer.

Paycheck Protection Program Loan Forgiveness and Expenses

Subdivision (20) was re-written to require an addition to AGI for the amount of any expense deducted under the Code to the extent the expense is allocable to income that is either wholly excluded from gross income or wholly exempt from the taxes imposed by this Part.

Note: The addition is only required for expenses deducted in taxable years beginning on or after January 1, 2023.

Under prior law, subdivision (20) required an addition for the amount of any expense deducted under the Code to the extent the payment of the expense resulted in forgiveness of a covered loan pursuant to section 1106(b) of the CARES Act (a “PPP Loan”), and the income associated with the PPP Loan was not included in gross income. The addition to AGI for forgiven PPP Loan expenses was effective for taxable years beginning on or after January 1, 2020. Because the General Assembly chose to suspend the State’s PPP addback until tax year 2023, North Carolina conforms to the federal treatment of expenses paid by PPP loans for tax years 2020 through 2022.

Business-Related Expenses for Food and Beverages

Subdivision (21) was added to require an addition to AGI for the amount by which the taxpayer’s deduction under section 274(n) of the Code for business-related expenses of food and beverages provided by a restaurant exceeds the deduction that would have been allowed under the Code as enacted as of May 1, 2020. As such, for tax years 2021 and 2022, an individual who fully deducts business-related expenses of food or beverages provided by a restaurant for federal tax purposes must add 50% of that deduction to AGI when calculating State taxable income.

Discharge of Student Loans

Subdivision (22) was added to require an addition to AGI for the amount excluded from the taxpayer's gross income for the discharge of a student loan under section 108(f)(5) of the Code. As such, for tax years 2021 through 2025, an individual who does not include in gross income any amount of discharged student loan debt that would have been included in gross income but for the special provision included in ARPA must add the amount excluded when calculating State taxable income.

Unemployment Compensation

Subdivision (23) was added to require an addition to AGI for the amount excluded from the taxpayer's gross income for unemployment compensation received by the taxpayer under section 85(c) of the Code. As such, for tax year 2020, an individual who did not include in gross income the first \$10,200 in unemployment compensation because of a special provision included in ARPA must add the amount excluded in calculating State taxable income.

(Effective November 18, 2021; SB 105, s. 42.4.(c), S.L. 2021-180.)

G.S. 105-153.5(c2) – Decoupling Adjustments: The 2020 General Assembly added subdivision (17) to require an addition to federal adjusted gross income (“AGI”) for an amount equal to the amount by which the taxpayer's interest expense deduction under section 163(j) of the Internal Revenue Code (“Code”) exceeded the interest expense deduction that would have been allowed under the Code as enacted as of January 1, 2020, for tax years 2019 and 2020.

The General Assembly amended subdivision (17) to clarify that the addition is not required to the extent the amount is required to be added to the taxpayer's AGI under another provision of North Carolina individual income tax law.

(Effective November 18, 2021; SB 105, s. 42.13A.(b), S.L. 2021-180.)

G.S. 105-153.5(c2) – Decoupling Adjustments: This subsection was amended to add subdivision (17a) to allow a deduction for twenty percent (20%) of the amount added to the taxpayer's federal adjusted gross income pursuant to the provisions of G.S. 105-153.5(c2)(17) in each of the first five taxable years beginning with tax year 2021.

(Effective November 18, 2021; SB 105, s. 42.13A.(b), S.L. 2021-180.)

G.S. 105-153.5 – Taxed Pass-Through Entities: This section was amended as part of the legislation that created North Carolina's SALT Workaround for PTEs.

As part of these revisions, G.S. 105-153.5 was amended to add subsection (c3), which provides the following adjustments to a taxpayer's federal adjusted gross income (“AGI”):

Subdivision (1) was added to allow a deduction from AGI to a taxpayer that is a shareholder of a taxed S Corporation for the amount of the taxpayer's pro rata share of income from the taxed S Corporation to the extent the income was included in the taxed S Corporation's North Carolina taxable income and the taxpayer's AGI.

Subdivision (2) was added to require an addition to AGI to a taxpayer that is a shareholder of a taxed S Corporation for the amount of the taxpayer's pro rata share of loss from the taxed S Corporation to the extent the loss was included in the taxed S Corporation's North Carolina taxable income and the taxpayer's AGI.

Subdivision (3) was added to allow a deduction from AGI to a taxpayer that is a partner of a taxed partnership for the amount of the taxpayer's distributive share of income from the taxed partnership to the extent the income was included in the taxed partnership's North Carolina taxable income and the taxpayer's AGI.

Subdivision (4) was added to require an addition to AGI to a taxpayer that is a partner of a taxed partnership for the amount of the taxpayer's distributive share of loss from the taxed partnership to the extent the loss was included in the taxed partnership's North Carolina taxable income and the taxpayer's AGI.

(Effective for taxable years beginning on or after January 1, 2022; SB 105, s. 42.5(i), S.L. 2021-180.)

G.S. 105-153.5A – Net Operating Loss Provisions: This section was added as part of the legislation that created a separate State net operating loss for individual income tax purposes.

New subsection (a) defines a “State Net Operating Loss” as the amount by which business deductions for the year exceed gross income for the year as determined under the Internal Revenue Code (“Code”), adjusted as provided in G.S. 105-153.5 and G.S. 105-153.6. The amount of a taxpayer's State net operating loss must also be determined in accordance with the following modifications:

- (1) No State net operating loss deduction is allowed.
- (2) The amount deductible because of losses from sales or exchanges of capital assets cannot exceed the amount includable on account of gains from sales or exchanges of capital assets.
- (3) The exclusion provided by Code section 1202 is not allowed.
- (4) The North Carolina child deduction provided by G.S. 105-153.5(a1) is not allowed.
- (5) Deductions, which are not attributable to a taxpayer's trade or business, are allowed only to the extent of the amount of the gross income not derived from such trade or business.
- (6) Any deduction under Code section 199A is not allowed.

New subsection (b) allows a deduction for the State net operating loss a taxpayer incurred in a prior taxable year and carried forward to the current taxable year, subject to the following limitations:

- (1) The loss was incurred in one of the preceding 15 taxable years.
- (2) Any loss carried forward is applied to the next succeeding taxable year before any portion of it is carried forward and applied to a subsequent taxable year.
- (3) The taxpayer's State net operating loss deduction may not exceed the amount of the taxpayer's North Carolina taxable income determined without deducting the taxpayer's State net operating loss.
- (4) The portion of the State net operating loss attributable to the carryforward allowed under subsection (f) of G.S. 105-153.5A is only allowed to the extent described in subsection (f).

New subsection (c) provides that in the case of a taxpayer that is a nonresident in the year of the loss, the State net operating loss only includes income and deductions derived from a business carried on in this State in the year of the loss. In the case of a taxpayer that is a nonresident in the year of the deduction, the State net operating loss must be included in the numerator of the fraction used to calculate taxable income as defined in G.S. 105-153.4(b).

New subsection (d) provides that in the case of a taxpayer that is a part-year resident in the year of the loss, the State net operating loss includes income and deductions derived from a business carried on in this State while the taxpayer was a nonresident and includes business income and deductions derived from all sources during the period the taxpayer was a resident. In the case of a taxpayer that is a part-year resident in the year of the deduction, the State net operating loss must be included in the numerator of the fraction used to calculate taxable income as defined in G.S. 105-153.4(c).

New subsection (e) provides that a taxpayer claiming a State net operating loss must maintain and make available for inspection by the Secretary all records necessary to determine and verify the amount of the deduction. The Secretary or the taxpayer may redetermine a State net operating loss originating in a taxable year that is closed under the statute of limitations for the purpose of determining the amount of loss that can be carried forward to a taxable year that remains open under the statute of limitations.

New subsection (f) provides that the portion of a taxpayer's federal net operating loss carryforward that was not absorbed in tax years beginning prior to January 1, 2022, may be included in the amount of a taxpayer's State net operating loss in taxable years beginning on or after January 1, 2022. The federal net operating loss carryforward is only allowed as a State net operating loss in tax years beginning after January 1, 2022, to the extent that it meets all of the following conditions:

- (1) The loss would have been allowed in that taxable year under section 172 of the Code as enacted on April 1, 2021.

- (2) The provisions of G.S. 105-153.5(c2)(8), (9), (10), (13), and (14) do not apply to the federal net operating loss carryforward.
- (3) The loss was incurred in one of the preceding 15 taxable years.

(Effective for taxable years beginning on or after January 1, 2022; SB 105, s. 42.6.(b), S.L. 2021-180.)

G.S. 105-153.9(a)(2). – Tax Credits for Income Taxes Paid to Other States by Individuals: This subdivision was amended to remove an obsolete reference to G.S. 105-134.6A. G.S. 105-134.6A was repealed effective for taxable years beginning on or after January 1, 2014.

(Effective November 18, 2021; SB 105, s. 42.13A.(c), S.L. 2021-180.)

G.S. 105-153.9(a) – Tax Credits for Income Taxes Paid to Other States by Individuals: This subsection was amended as part of the legislation that created North Carolina’s SALT Workaround for PTEs.

Subdivision (4) was added to address tax credits for taxes paid to another state or country in the context of North Carolina’s SALT Workaround for S Corporations. For taxed S Corporations paying taxes at the entity level in another state or country, G.S. 105-153.9(a)(4) prohibits the shareholders from claiming a North Carolina tax credit for taxes paid by the taxed S Corporation to another state or country. G.S. 105-131.1A(d) allows the taxed S Corporation to claim a credit against its North Carolina tax for such taxes paid to another state or country.

If a taxed S Corporation is not taxed at the entity level in another state or country and the tax due on the income is paid to the other state or country by its shareholders, the North Carolina resident shareholders may qualify to claim a tax credit under the provisions of G.S. 105-153.9(a)(4). In general, a taxpayer must have income taxed under Part 2 of Article 4 and tax imposed by Part 2 of Article 4 to calculate the amount of a tax credit under G.S. 105-153.9(a). Because both the State income and resulting State tax due are calculated and paid at the entity level, shareholders of taxed S Corporations do not meet this requirement.

Subdivision (4) provides clarification for calculating a shareholder’s credit in these circumstances. Specifically, a shareholder’s pro rata share of the income of the taxed S Corporation is treated as income taxed to the shareholder under Part 2 of Article 4, and a shareholder’s pro rata share of the tax imposed on the taxed S Corporation under G.S. 105-131.1A is treated as tax imposed on the shareholder under Part 2 of Article 4. Subdivision (5) was added to address tax credits for taxes paid to another state or country in the context of North Carolina’s SALT Workaround for partnerships. For partnerships paying taxes at the entity level in another state or country, G.S. 105-153.9(a)(5) prohibits the partners from claiming a North Carolina tax credit for taxes paid by the taxed partnership to another state or country. The taxed partnership is entitled to a credit under G.S. 105-153.9(a) for all such taxes paid.

If a taxed partnership is not taxed at the entity level in another state or country and the tax due on the income is paid to the other state or country by its partners, the North Carolina resident partners may qualify to claim a tax credit under the provisions of G.S. 105-153.9(a)(5). In general, a taxpayer must have income taxed under Part 2 of Article 4 and tax imposed by Part 2 of Article 4 to calculate the amount of a tax credit under G.S. 105-153.9(a). Because both the State income and resulting State tax due are calculated and paid at the entity level, partners of taxed partnerships do not meet this requirement. Subdivision (5) provides clarification for calculating a partner's credit in these circumstances. Specifically, a partner's distributive share of the income of the taxed partnership is treated as income taxed to the partner under Part 2 of Article 4 and a partner's distributive share of the tax imposed on the taxed partnership under G.S. 105-154.1 is treated as tax imposed on the partner under Part 2 of Article 4.

(Effective for taxable years beginning on or after January 1, 2022; SB 105, s. 42.5.(j), S.L. 2021-180.)

G.S. 105-154(d). – Payment of Tax on Behalf of Nonresident Owner or Partner:

This subsection was amended as part of the legislation that created North Carolina's SALT Workaround for PTEs. New language was added to clarify that the provisions of subsection (d) do not apply to a taxed partnership.

(Effective for taxable years beginning on or after January 1, 2022; SB 105, s. 42.5.(g), S.L. 2021-180.)

G.S. 105-154.1. – Taxation of Partnership as a Taxed Pass-through Entity: This section was added as part of the legislation that created North Carolina's SALT Workaround for PTEs.

New G.S. 105-154.1(a) allows a partnership to elect to have the income tax under Article 4 of Chapter 105 imposed on the partnership. The partnership must make the election on its timely filed annual return and may not revoke the election after the due date of the return (including extensions). The election cannot be made by a publicly traded partnership or by a partnership that has, at any time during the taxable year, a partner who is not one of the following:

- (1) An individual;
- (2) An estate;
- (3) A trust described in section 1361(c)(2) of the Internal Revenue Code ("Code");
or
- (4) An organization described in section 1361(c)(6) of the Code.

New G.S. 105-154.1(b) imposes an income tax on the taxable income of a taxed partnership. The tax is levied, collected, and paid annually. The tax is imposed on the North Carolina taxable income of the taxed partnership at the rate levied in G.S. 105-153.7. The North Carolina taxable income of a taxed partnership is determined as follows:

- (1) North Carolina taxable income of a taxed partnership is equal to the sum of the following:
 - a. Each partner's distributive share of the taxed partnership's income or loss, subject to the adjustments provided in G.S. 105-153.5 and G.S. 105-153.6, attributable to North Carolina, and
 - b. Each resident partner's distributive share of the taxed partnership's income or loss, subject to the adjustments provided in G.S. 105-153.5 and G.S. 105-153.6, not attributable to North Carolina.
- (2) Separately stated items of deduction are not included when calculating each partner's distributive share of the taxed partnership's taxable income. **Note:** Separately stated items are those items described in section 702 of the Code and the regulations adopted under it.
- (3) The adjustments required by G.S. 105-153.5(c3) are not included in the calculation of the taxed partnership's taxable income.

New G.S. 105-154.1(c) allows a taxed partnership that qualifies for a tax credit to apply each partner's distributive share of the taxed partnership's credits against the partner's distributive share of the taxed partnership's income tax. A partnership must pass through to its partners any credit required to be taken in installments pursuant to the provisions of Chapter 105 if the first installment was taken in a taxable period that the election was not in effect.

A partnership cannot pass through to its partners any of the following:

- (1) Any credit allowed under Chapter 105 for any taxable period the partnership makes the taxed partnership election and the carryforward of the unused portion of such credit;
- (2) Any subsequent installment of such credit required to be taken in installments by this Chapter after the partnership makes the taxed partnership election and the carryforward of any unused portion of such installment.

New G.S. 105-154.1(d) allows a deduction for partners of a taxed partnership as specified in G.S. 105-153.5(c3)(3). This deduction is only allowed if the taxed partnership complies with the provisions of G.S. 105-154.1(f).

New G.S. 105-154.1(e) requires partners of a taxed partnership to make an addition as provided in G.S. 105-153.5(c3)(4).

New G.S. 105-154.1(f) requires the full amount of the tax payable as shown on the taxed partnership return to be paid to the Department within the time allowed for filing the return. In the case of any overpayment by a taxed partnership of the tax imposed under this section, only the taxed partnership may request a refund of the overpayment.

If the taxed partnership files a return showing an amount due with the return and does not pay the amount shown due, the Department may collect the tax from the taxed partnership pursuant to G.S. 105-241.22(1). The Department must issue a notice of collection for the amount of tax debt to the taxed partnership. If the tax debt is not paid to the Department within 60 days of the date the notice of collection is mailed to the taxed partnership, the partners of the partnership are not allowed the deduction provided in G.S. 105-153.5(c3)(3).

New G.S. 105-154.1(g) provides the basis of both resident and nonresident partners of a taxed partnership shall be determined as if the taxed partnership election has not been made and each of the partners of the taxed partnership had properly taken into account each partner's distributive share of the taxed partnership's items of income, loss, and deduction in the manner required with respect to a partnership for which no such election is in effect.

(Effective for taxable years beginning on or after January 1, 2022; SB 105, s. 42.5.(h), S.L. 2021-180.)

G.S. 105-160.4 – Tax Credits for Income Taxes Paid to Other States by Estates and Trusts: This section was amended as part of the legislation that created North Carolina's SALT Workaround for PTEs.

Subsection (f) was added to prohibit fiduciaries and beneficiaries of estates and trusts who are shareholders of a taxed S Corporation from claiming a tax credit for income tax paid to other states and countries paid by the estates and trusts or by the taxed S Corporation to another state or country on income that is taxed to the taxed S Corporation. The taxed S Corporation may, however, claim a tax credit under G.S. 105-153.9(a)(4) for all such taxes paid.

Subsection (g) was added to prohibit fiduciaries and beneficiaries of estates and trusts who are partners of a taxed partnership from claiming a tax credit for income tax paid to other states and countries paid by the estates and trusts or by the by the estates and trusts or by the taxed partnership to another state or country on income that is taxed to the taxed partnership. The taxed partnership may, however, claim a tax credit under G.S. 105-153.9(a)(5) for all such taxes paid.

(Effective for taxable years beginning on or after January 1, 2022; SB 105, s. 42.5.(k), S.L. 2021-180.)

WITHHOLDING TAX – ARTICLE 4A

G.S. 105-163.7(b) – Statement to Employees; Informational Return to Secretary: This subsection was amended to change the informational return filing requirements for an employer that terminates its business before the close of the calendar year. As amended, if an employer terminates its business, the informational return must be filed on or before the last day of the month following the end of the calendar quarter in which

the employer terminates its business, but no later than January 31 of the succeeding year.

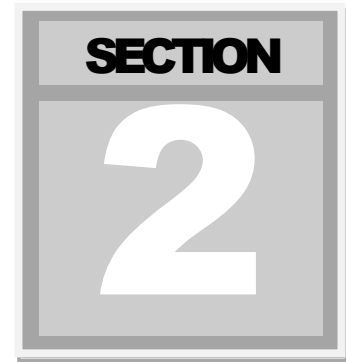
Note: The requirement to file an informational return with the Secretary within 30 days of the last payment of remuneration is no longer applicable.

(Effective November 18, 2021; SB 105, s. 42.13A.(d), S.L. 2021-180.)

G.S. 105-163.8. – Liability of Withholding Agents: This section was amended to add subsection (c), which provides that if a withholding agent fails to file a return and pay the tax due under Article 4A or files a grossly incorrect or false or fraudulent return, the Secretary has the authority to estimate the tax due and assess the withholding agent based on the estimate.

(Effective November 18, 2021; SB 105, s. 42.13A.(e), S.L. 2021-180.)

SECTION – CORPORATE TAXES



FRANCHISE TAX – ARTICLE 3

G.S. 105-114.1(b) – Limited Liability Companies: Controlled Companies: The 2021 General Assembly amended G.S. 105-122(d) to simplify how franchise tax is calculated by eliminating the fifty-five percent (55%) of appraised value of North Carolina property tax base and the investment in North Carolina property tax base. As part of this change, this subsection was amended to make conforming changes that a corporation or an affiliated group of corporations that owns more than fifty percent (50%) of the capital interests in a noncorporate limited liability company must include, pursuant to G.S. 105-122, the same percentage of only the net worth base, instead of three tax bases. This change was needed to update the statute to the new language found in G.S. 105-122(d).

(Effective for taxable years beginning on or after January 1, 2023, and is applicable to the calculation of franchise tax reported on the 2022 and later corporate income tax returns; SB 105, s. 42.3(b), S.L. 2021-180.)

G.S. 105-120.2(b) – Franchise or Privilege Tax on Holding Companies: Tax Rate: The 2021 General Assembly amended G.S. 105-122(d) to simplify how franchise tax is calculated by eliminating the fifty-five percent (55%) of appraised value of North Carolina property tax base and the investment in North Carolina property tax base. As part of this change, this subsection was amended to eliminate the fifty-five percent (55%) of appraised value of North Carolina property tax base and the investment in North Carolina property tax base for each corporation identified as a holding company. This change was needed to update the statute to the new language found in G.S. 105-122(d).

(Effective for taxable years beginning on or after January 1, 2023, and is applicable to the calculation of franchise tax reported on the 2022 and later corporate income tax returns; SB 105, s. 42.3(c), S.L. 2021-180.)

G.S. 105-122(d) – Franchise or Privilege Tax on Domestic and Foreign Corporations: Tax Base: This subsection was amended to simplify how franchise tax is calculated by eliminating the fifty-five percent (55%) of appraised value of North Carolina property tax base and the investment in North Carolina property tax base. The elimination of the two tax bases using property values may reduce the franchise tax liability of corporations that have significant real and personal property investments in North Carolina by making a corporation's tax base only its net worth base as set out in G.S. 105-122.

(Effective for taxable years beginning on or after January 1, 2023, and is applicable to the calculation of franchise tax reported on the 2022 and later corporate income tax returns; SB 105, s. 42.3(a), S.L. 2021-180.)

MILL REHABILITATION TAX CREDIT – ARTICLE 3H

Article 3H – Reenact and Extend Mill Rehabilitation Tax Credit: Article 3H was reenacted as it existed immediately before its repeal for new rehabilitation projects for which an application for an eligibility certification was submitted on or after January 1, 2015.

Note: The reenactment and extension of Article 3H tax credits does not require a taxpayer that obtained an eligibility certificate prior to January 1, 2015, for a rehabilitation project under this Article to reapply for an eligibility certification for the same project.

As part of this legislation, several sections within the Article were re-written as follows:

G.S. 105-129.71 – Credit for Income Producing Rehabilitated Mill Property: Several amendments were made to subsection (a1) of G.S. 105-129.71.

The first amendment specifies that qualifying rehabilitation expenditures must be incurred on or after January 1, 2019. The second amendment provides that if the eligible site is placed in service in two or more phases in different years, the amount of tax credit that may be claimed in a year is the amount based on the qualified rehabilitation expenditures associated with the phase placed into service during that same year. Finally, subdivisions (4) and (7) of subsection (a1) were rewritten to update the conditions by which an “eligible railroad station” must satisfy.

Subdivision (4) requires the site to be in a designated local landmark as certified by a city on or before June 30, 2027. Under prior law, the site designation was required on or before June 30, 2019.

Subdivision (7) requires the site to be issued a certificate of occupancy on or before December 31, 2029. Under prior law, the certificate of occupancy was required to be issued on or before December 31, 2019.

(Effective November 18, 2021; SB 105, s. 42.7.(a), S.L. 2021-180.)

G.S. 105-129.75 – Sunset and Applicable Expenditures: Two amendments were made to subsections (a) and (b) of G.S. 105-129.75.

Subsection (a) was amended to effectively extend the sunset of Article 3H. Under prior law, except for the tax credits allowed under G.S. 105-129.71(a1), Article 3H expired January 1, 2015, for rehabilitation projects for which an application for an eligibility certification was submitted on or after January 1, 2015. Now, except for the tax credits allowed under G.S. 105-129.71(a), Article 3H expires and a tax credit allowed under

G.S. 105-129.71(a) may not be claimed, for rehabilitation projects not completed and placed in service prior to January 1, 2030.

Subsection (b) was amended to extend the sunset provision for the tax credit allowed under G.S. 105-129.71(a1). Under prior law, the tax credit expired for rehabilitation projects not placed in service prior to January 1, 2022, for rehabilitation expenditures made after January 1, 2019, and before January 1, 2022. Now, the credit expires for rehabilitation projects not placed in service prior to January 1, 2030, for rehabilitation expenditures made after January 1, 2019, and before January 1, 2030.

(Effective November 18, 2021; SB 105, s. 42.7.(a), S.L. 2021-180.)

HISTORIC REHABILITATION TAX CREDITS INVESTMENT PROGRAM— ARTICLE 3L

G.S. 105-129.105 – Credit for Rehabilitating Income-Producing Historic Structure: Two amendments were made to subsections (a) and (c) of G.S. 105-129.105.

Subsection (a) was amended to add new subdivision (4), which provides an enhanced “education bonus” to taxpayers that make qualifying rehabilitation expenditures for a certified historic structure that was originally used for an educational purpose, is used for an educational purpose following the rehabilitation, and remains used for an educational purpose for each year in which the credit, or a carryforward of the credit, is claimed.

Under the new law, an “education bonus” is an amount equal to five percent (5%) of qualified rehabilitation expenditures not to exceed twenty million dollars (\$20,000,000). In addition, if the certified historic structure is used for multiple purposes, then the education bonus must be proportionate to the area of the certified historic structure used for an educational purpose.

Subsection (c) was amended to define the term “educational purpose.” Under the new law, an “educational purpose” is “a purpose that has as its objective the education or instruction of human beings; it comprehends the transmission of information and the training or development of the knowledge or skills of individual persons.”

(Effective for taxable years beginning on or after January 1, 2021; SB 105, s. 42.7A.(a), S.L. 2021-180.)

G.S. 105-129.110 – Sunset: This section was amended to effectively extend the sunset of Article 3L. Under prior law, the Article was set to expire for qualified rehabilitation expenditures and rehabilitation expenses incurred on or after January 1, 2024, for projects not placed in service by January 1, 2032. Now, the Article is set to expire for qualified rehabilitation expenditures and rehabilitation expenses incurred on or after January 1, 2030, for projects not placed in service by January 1, 2032.

(Effective November 18, 2021; SB 105, s. 42.7A.(b), S.L. 2021-180.)

CORPORATION INCOME TAX – ARTICLE 4, PART 1

G.S. 105-130.3 – Corporations: This section was amended by the 2021 General Assembly to phase out the corporate income tax imposed on C Corporations doing business in North Carolina beginning with the 2025 tax year. As amended, the tax is a percentage of the taxpayer's State net income computed as follows:

<u>Taxable Years Beginning</u>	<u>Tax Rate</u>
In 2025	2.25%
In 2026	2%
In 2028	1%
After 2029	0%

Note: An S Corporation is not subject to the tax levied in this section.

(Effective for taxable years beginning on or after January 1, 2025; SB 105, s. 42.2.(a), S.L. 2021-180.)

G.S. 105-130.5(a)(31) – Addition to Federal Taxable Income for the Amount of Interest Deducted in Excess of the Amount Allowed Under the Code: The 2020 General Assembly added subdivision (31) to require an addition to federal taxable income for an amount equal to the amount by which the taxpayer's interest expense deduction under section 163(j) of the Internal Revenue Code ("Code") exceeded the interest expense deduction that would have been allowed under the Code as enacted as of January 1, 2020, for tax years 2019 and 2020.

The 2021 General Assembly amended subdivision (31) to clarify that the addition is not required to the extent the amount is required to be added to the taxpayer's federal taxable income under another provision of North Carolina corporate income tax law.

(Effective November 18, 2021; SB 105, s. 42.13B.(b), S.L. 2021-180)

G.S. 105-130.5(a)(32) – Addition to Federal Taxable Income for Any Expense Deducted Under the Code from Excluded or Exempt Income: The 2021 General Assembly retroactively amended this subdivision to provide that, for taxable years beginning on or after January 1, 2023, a taxpayer must add back the amount of any expense deducted under the Code to the extent the expense is allocable to income that is either wholly excluded from gross income or wholly exempt from the taxes imposed by this Part.

This subdivision was re-written to require an addition to federal taxable income for the amount of any expense deducted under the Code to the extent the expense is allocable to income that is either wholly excluded from gross income or wholly exempt from the taxes imposed by this Part.

Note: The addition is only required for expenses deducted in taxable years beginning on or after January 1, 2023.

Under prior law, this subdivision required an addition for the amount of any expense deducted under the Code to the extent the payment of the expense resulted in forgiveness of a covered loan pursuant to section 1106(b) of the CARES Act (a “PPP Loan”), and the income associated with the PPP Loan was not included in gross income. The addition to federal taxable income for forgiven PPP Loan expenses was effective for taxable years beginning on or after January 1, 2020. Because the General Assembly chose to suspend the State’s PPP addback until tax year 2023, North Carolina conforms to the federal treatment of expenses paid by PPP loans for tax years 2020 through 2022.

(Effective November 18, 2021; SB 105, s. 42.4.(d), S.L. 2021-180.)

G.S. 105-130.5(b)(31a) – Deduction from Federal Taxable Income for the Amount Received Under the Business Recovery Grant Program: This subdivision was added to provide for a deduction from federal taxable income for the amount received by a taxpayer under the Business Recovery Grant Program to the extent it is included in federal taxable income.

(Effective for taxable years beginning on or after January 1, 2021, and applies to amounts received by a taxpayer on or after that date; SB 105, s. 34.3B.(a), S.L. 2021-180.)

G.S. 105-130.5(b)(32) – Deduction from Federal Taxable Income for the Amount of Interest Added Back in Excess of the Amount Allowed Under the Code: This subdivision was added to allow a deduction for twenty percent (20%) of the amount added to the taxpayer’s federal taxable income not otherwise disallowed by G.S. 105-130.7B and pursuant to the provisions of G.S. 105-130.5(a)(31) in each of the first five taxable years beginning with tax year 2021.

(Effective November 18, 2021; SB 105, s. 42.13B.(c), S.L. 2021-180.)

G.S. 105-130.7B(b)(4) – Limitation on Qualified Interest for Certain Indebtedness: Definitions: Qualified Interest Expense: This subdivision was amended to add sub-subdivision (e) that exempts a corporation from applying the qualified interest expense deduction limitation if the proportionate amount of interest paid or accrued to a related member has already been disallowed by the application of section 163(j) of the Code.

Sub-subdivision (e) was added to prevent a double denial of nondeductible interest expenses. Because both North Carolina and federal tax law limit the deduction amount allowed for net business interest expenses, a partial limitation may be imposed on the intercompany interest under section 163(j) of the Code and if so, that deduction will need to be recognized under G.S. 105-130.7B. If it is not recognized under G.S. 105-130.7B, then the taxpayer may add back more interest than was actually incurred in total.

(Effective November 18, 2021 and applies retroactively for taxable years beginning on or after January 1, 2018; SB 105, s. 42.13B.(d), S.L. 2021-180.)

G.S. 105-130.8A(c) – Net Loss Provisions: Mergers and Acquisitions: This subsection was amended to clarify that for net economic losses for mergers and acquisitions occurring prior to January 1, 2015, the Secretary must apply the previous standards under G.S. 105-130.8 for taxable years beginning before January 1, 2015, and must apply the standards under Code sections 381 and 382 for net operating losses for taxable years beginning in 2015 and after.

(Effective November 18, 2021; SB 105, s. 42.13B.(e), S.L. 2021-180.)

S CORPORATION INCOME TAX – ARTICLE 4, PART 1A

G.S. 105-131(b) – Title; Definitions; Interpretation: This subsection was amended to add new subdivision (11) to define the term “taxed S Corporation.” As amended, a taxed S Corporation is an S Corporation for which a valid election under G.S. 105-131.1A(a) is in effect.

(Effective for taxable years beginning on or after January 1, 2022; SB 105, s. 42.5.(a), S.L. 2021-180.)

G.S. 105-131.1 – Taxation of an S Corporation and its Shareholders: This section was amended twice. First, subsection (a) was amended to provide that a taxed S Corporation is subject to tax under G.S. 105-131.1A, and second, subsection (b) was amended to clarify that the provisions of subsection (b) do not apply to taxed S Corporations.

(Effective for taxable years beginning on or after January 1, 2022; SB 105, s. 42.5.(b), S.L. 2021-180.)

G.S. 105-131.1A – Taxation of S Corporation as a Taxed Pass-Through Entity: This section was added as part of the legislation that created North Carolina’s SALT Workaround for PTEs.

New G.S. 105-131.1A(a) allows an S Corporation to elect to have the income tax under Article 4 of Chapter 105 imposed on the S Corporation. The S Corporation must make the election on its timely filed annual return and may not revoke the election after the due date of the return (including extensions).

New G.S. 105-131.1A(b) imposes an income tax on the taxable income of a taxed S Corporation. The tax is levied, collected, and paid annually. The tax is imposed on the North Carolina taxable income of the taxed S Corporation at the rate levied in G.S. 105-153.7. The North Carolina taxable income of a taxed S Corporation is determined as follows:

- (1) North Carolina taxable income of a taxed S Corporation is equal to the sum of the following:

- a. Each shareholder's pro rata share of the taxed S Corporation's income or loss, subject to the adjustments provided in G.S. 105-153.5 and G.S. 105-153.6, attributable to North Carolina, and
 - b. Each resident shareholder's pro rata share of the taxed S Corporation's income or loss, subject to the adjustments provided in G.S. 105-153.5 and G.S. 105-153.6, not attributable to North Carolina.
- (2) Separately stated items of deduction are not included when calculating each shareholder's pro rata share of the taxed S Corporation's taxable income. **Note:** Separately stated items are those items described in section 1366 of the Internal Revenue Code ("Code") and the regulations adopted under it.
 - (3) The adjustments required by G.S. 105-153.5(c3) are not included in the calculation of the taxed S Corporation's taxable income.

New G.S. 105-131.1A(c) allows a taxed S Corporation that qualifies for a tax credit to apply each shareholder's pro rata share of the taxed S Corporation's credits against the shareholder's pro rata share of the taxed S Corporation's income tax. An S Corporation must pass through to its shareholders any credit required to be taken in installments pursuant to the provisions of Chapter 105 if the first installment was taken in a taxable period that the election was not in effect.

An S Corporation cannot pass through to its shareholders any of the following:

- (1) Any credit allowed under Chapter 105 for any taxable period the S Corporation makes the taxed S Corporation election and the carryforward of the unused portion of such credit.
- (2) Any subsequent installment of such credit required to be taken in installments by this Chapter after the S Corporation makes the taxed S Corporation election and the carryforward of any unused portion of such installment.

With respect to resident shareholders, new G.S. 105-131.1A(d) provides that a taxed S Corporation is allowed a credit against the taxes imposed by this section for income taxes imposed by and paid to another state or country on income taxed under this section. The credit allowed by this subsection is administered in accordance with the provisions of G.S. 105-153.9.

New G.S. 105-131.1A(e) allows a deduction for shareholders of a taxed S Corporation as specified in G.S. 105-153.5(c3)(1). This deduction is only allowed if the taxed S Corporation complies with the provisions of G.S. 105-131.1A(g).

New G.S. 105-131.1A(f) requires shareholders of a taxed S Corporation to make an addition as provided in G.S. 105-153.5(c3)(2).

New G.S. 105-131.1A(g) requires the full amount of the tax payable as shown on the taxed S Corporation return to be paid to the Department within the time allowed for filing the return. In the case of any overpayment by a taxed S Corporation of the tax imposed under this section, only the taxed S Corporation may request a refund of the overpayment.

If the taxed S Corporation files a return showing an amount due with the return and does not pay the amount shown due, the Department may collect the tax from the taxed S Corporation pursuant to G.S. 105-241.22(1). The Department must issue a notice of collection for the amount of tax debt to the taxed S Corporation. If the tax debt is not paid to the Department within 60 days of the date the notice of collection is mailed to the taxed S Corporation, the shareholders of the S Corporation are not allowed the deduction provided in G.S. 105-153.5(c3)(1).

New G.S. 105-131.1A(h) provides the basis of both resident and nonresident shareholders of a taxed S Corporation shall be determined as if the taxed S Corporation election has not been made and each of the shareholders of the taxed S Corporation had properly taken into account each shareholder's pro rata share of the taxed S Corporation's items of income, loss, and deduction in the manner required with respect to an S Corporation for which no such election is in effect.

(Effective for taxable years beginning on or after January 1, 2022; SB 105, s. 42.5(c), S.L. 2021-180.)

G.S. 105-131.7 – Returns; Shareholder Agreements; Mandatory Withholding: This section was amended as part of the legislation that created North Carolina's SALT Workaround for PTEs. Specifically, new language was added to clarify that the provisions of subsections (b) through (f) do not apply to a taxed S Corporation.

(Effective for taxable years beginning on or after January 1, 2022; SB 105, s. 42.5(d), S.L. 2021-180.)

G.S. 105-131.8 – Tax Credits: This section was amended as part of the legislation that created North Carolina's SALT Workaround for PTEs. The amendment limits the application of this subsection with respect to a taxed S Corporation.

(Effective for taxable years beginning on or after January 1, 2022; SB 105, s. 42.5(e), S.L. 2021-180.)

FILING OF DECLARATIONS OF ESTIMATED INCOME TAX AND INSTALLMENT PAYMENTS OF ESTIMATED INCOME TAX BY CORPORATIONS – ARTICLE 4C

G.S. 105-163.38. – Definitions: This section was amended as part of the legislation that created North Carolina’s SALT Workaround for PTEs. Subdivision (6) was added to define a taxed pass-through entity by cross-reference to G.S. 105-153.3.

(Effective for taxable years beginning on or after January 1, 2022; SB 105, s. 42.5.(l), S.L. 2021-180.)

G.S. 105-163.39 – Declarations of Estimated Income Tax Required: This section was amended as part of the legislation that created North Carolina’s SALT Workaround for PTEs.

Subsection (d) was added to require taxed pass-through entities to make estimated tax payments in the same manner as a corporation subject to North Carolina income tax.

Note: G.S. 105-163.41(d)(5), the large corporation exception, does not apply with respect to a taxable year of a taxed pass-through entity if the entity was not a taxed pass-through entity during the preceding tax year.

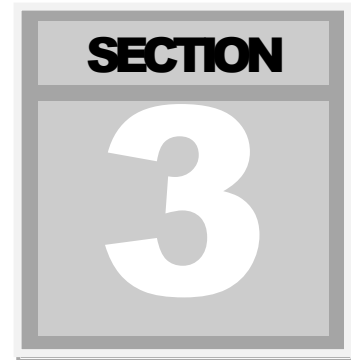
(Effective for taxable years beginning on or after January 1, 2022; SB 105, s. 42.5.(m), S.L. 2021-180.)

INSURANCE GROSS PREMIUMS TAX – ARTICLE 8B

G.S. 105-228.5(b1) – Taxes Measured by Gross Premiums: Calculation of Tax Base: This subsection was amended to make a substantive change limiting the gross premiums tax base for insurers of bail bonds to the amount paid by the surety bondsman to the insurer of the bail bonds. As amended, subdivision (b1) states that an insurer of bail bonds gross premiums tax is measured by amounts received by an insurer from a surety bondsman during the calendar year for bail bonds written on behalf of the insurer.

(Effective for taxable years beginning on or after January 1, 2022; SB 105, s. 42.8.(a), S.L. 2021-180.)

SECTION 3 - EXCISE TAX



PRIVILEGE TAXES – ARTICLE 2

G.S. 105-83(d) – Installment Paper Dealers: This subsection was amended to clarify the persons exempt from the tax on installment paper. This subsection previously provided that corporations were exempt from the installment paper tax if the corporation was liable for the privilege tax levied on certain banks and banking associations under G.S. 105-102.3. Session Law 2015-141 repealed the tax levied under G.S. 105-102.3 but did not make a conforming change to this statute. The law clarifies that these entities are not liable for the tax under this section. Specifically, banks as defined under G.S. 105-130.7B(b), and savings and loan associations are exempt from the installment paper tax.

(Effective retroactively to purchases made on or after July 1, 2020; SB 105, s. 42.13B.(a), S.L. 2021-180)

TOBACCO PRODUCTS TAX – ARTICLE 2A

G.S. 105-113.4(2) – Definitions: “Cost price” under subsection (2) was amended to clarify that the cost price of a tobacco product is calculated from a tobacco product’s unique code or identifier. Further, to clarify the cost price for persons remitting tax on the sales of tobacco products, “if the cost price is unavailable for an item, the cost price is the average of the actual price paid for the item over the 12 calendar months before January 1 of the year in which the sale occurs.”

(Effective July 1, 2022; SB 105, s. 42.9.(a), S.L. 2021-180)

G.S. 105-113.4 – Definitions: Session Law 2021-180 amended or enacted seven subsections extracting certain tobacco products into a new category of sales: remote sales. Prior to the amendment, the definition of delivery sales applied to all tobacco products. Effective July 1, 2022, delivery sales apply to cigarettes, smokeless tobacco, and vapor products. Remote sales apply to all other tobacco products.

“Delivery sale” under subsection (2d) was amended limiting the applicability of remote sales to cigarettes, smokeless tobacco, and vapor products.

“Delivery seller” under subsection (2e) was amended clarifying that a delivery seller can be located within or outside this state.

“Distributor” under subsection (3) was amended clarifying that a distributor includes a delivery seller of cigarettes.

“Remote sale” was added as a new term under subsection (8a), and is similar to the definition of delivery sales. A remote sale is a sale of tobacco products other than cigarettes, smokeless tobacco, and vapor products to consumers in this State in which either of the following applies:

1. The consumer submits the order for the sale by telephone, mail, the internet, or other online service or application, or when the seller is otherwise not in the physical presence of the consumer when the consumer submits the order.
2. The tobacco products other than cigarettes, smokeless tobacco, or vapor products are delivered via mail or a delivery service.

“Remote seller” was added as a new term under subsection (8b). A remote seller is a person located within or outside this State who makes a remote sale.

“Retail dealer” under subsection (9) was amended to clarify the term retail dealer includes a remote seller and a delivery seller.

“Smokeless tobacco” was added as a new term under subsection (10b). Smokeless tobacco is “[a]ny finely cut, ground, powdered, or leaf tobacco, or other product containing tobacco, that is intended to be placed in the oral or nasal cavity or otherwise consumed without being combusted.”

(Effective July 1, 2022; SB 105, s. 42.9.(a), S.L. 2021-180)

G.S. 105-113.4B – Cancellation or Revocation of License: This section was re-written to streamline the license revocation and hearing processes providing consistency for all license revocations initiated by the Department. This includes license revocations under Article 2A (Tobacco Products), Article 2C (Alcoholic Beverages), Article 36B (Motor Carrier), Article 36C (Motor Fuel), Article 36D (Alternative Fuel), and Chapter 119 (Gasoline and Oil Inspection).

Previously, the Department was required to hold a hearing to determine whether a tobacco licensee committed an act that would authorize the Department to permanently revoke the license.

As amended, for a summary revocation, the Secretary must notify the licensee of the revocation and hold a hearing within 10 days. The licensee may request to continue the hearing if the licensee notifies the Department before the day of the hearing. A hearing will be conducted as prescribed by the Secretary, and the Secretary must issue a final decision within 10 days of the hearing. When the Secretary summarily revokes the license, the revocation remains in effect pending the hearing decision.

As amended, for a non-summary revocation, the Department must send the licensee a notice of proposed revocation and provide the licensee an opportunity to request a hearing to contest the revocation. The licensee must file a written hearing request within 45 days of the date the notice of proposed revocation. If the licensee does not file a timely hearing request, the license will be revoked as provided in the proposed revocation and the revocation is not subject to further review. If the licensee files a timely hearing request, the licensee will be provided 20 days' written notice of the hearing, and the hearing will be conducted as prescribed by the Secretary.

If the Department revokes the license, the former licensee must return all licenses issued to the licensee within 10 days of the issuance of the Department's final decision. If a license is unable to be returned, the former licensee must include a written statement of the reasons, satisfactory to the Secretary, why the license cannot be returned.

This section has also been amended to change the means of communications regarding revocations and hearings. All notices may now be delivered in accordance with G.S. 105-241.20(b) (i.e., United States mail). The licensee may also consent to receive notices via electronic means such as electronic mail.

(Effective January 1, 2022; SB 105, s. 42.13D.(a), S.L. 2021-180)

G.S. 105-113.4F – Delivery Sales of Certain Tobacco Products; Age Verification: This section was amended limiting the scope of delivery sales and providing other clarifying and stylistic changes.

Subsection (a) and subsection (b) were amended to limit the applicability of delivery sales to sales of cigarettes, smokeless tobacco, and vapor products.

Subsection (e) was repealed to clarify that this section applies to all delivery sales regardless of how the licensee came into possession of the tobacco product.

Subsection (f) was amended to clarify that delivery sellers who meet the definition of retailer under Article 5 of Chapter 105 are subject to all State laws that apply to retailers in this State.

(Effective July 1, 2022; SB 105, s. 42.9.(b), S.L. 2021-180)

G.S. 105-113.5(b) – Tax on Cigarettes: Primary Liability: This subsection was amended to clarify the points of taxation for cigarettes. The clarification also incorporates the statutory calculus under Article 5 of Chapter 105 to determine whether a substantial nexus exists between a distributor who is a delivery seller and North Carolina. *See generally South Dakota v. Wayfair, Inc., et al.*, 585 U. S. ____ (2018). If the delivery seller would otherwise have to remit sales and use tax to North Carolina under Article 5, the delivery seller must collect and remit the excise tax on cigarettes.

As clarified, a distributor who meets any of the following conditions is liable for the cigarette tax:

1. The distributor is the first person to possess or acquire cigarettes in this State.
2. The distributor is the first person to bring into this State cigarettes made outside the State.
3. The distributor is the original consignee of cigarettes made outside the State that are shipped into the State.
4. The distributor makes a delivery sale of cigarettes for which the delivery seller is required to collect sales and use tax under Article 5 of this Chapter.

(Effective July 1, 2022; SB 105, s. 42.9.(c), S.L. 2021-180)

G.S. 105-113.8 [G.S. 105-113.4H] – Federal Constitution and Statutes: This section was recodified as G.S. 105-113.4H. This section is applicable to the entire Article but was misplaced within the structure of Article 2A. As recodified, this section is within “Part 1. General Provisions” of Article 2A.

(Effective November 18, 2021; SB 105, s. 42.13E.(a), S.L. 2021-180)

G.S. 105-113.11 [G.S. 105-113.4] – Licenses Required: This section was recodified as G.S. 105-113.4I with stylistic and clarifying changes. Although Article 2A clearly establishes the activity that requires licensure, this statute only explicitly prohibited a person without a license from engaging in activity as a distributor. As amended, this section prohibits a person without a license from engaging in activity as a distributor, wholesale dealer, or retail dealer.

Where the statute now applies to all licenses issued under this Article, it was recodified within “Part 1. General Provisions” of Article 2A.

(Effective November 18, 2021; SB 105, s. 42.13E.(b)-(c), S.L. 2021-180)

G.S. 105-113.12(a)-(b) – License Required: section catchline was amended with stylistic changes. Subsections (a) and (b) were amended clarifying the locations that require a distributor’s license.

Subsection (b) was stricken, re-written, and placed as its own subdivision under subsection (a). Subsection (a) clarifies the locations requiring a distributor’s license. As amended, a distributor must obtain a license for: (1) each location where a distributor receives or stores non-tax-paid cigarettes in this State; and (2) for a distributor that a delivery seller, if the location is different, each location from which the distributor ships delivery sales of cigarettes.

(Effective July 1, 2022; SB 105, s. 42.9.(d), S.L. 2021-180)

G.S. 105-113.12(c) – License Required: This subsection was amended to maintain the distinction between an out-of-state distributor authorized under G.S. 105-113.24 and an out-of-state delivery seller. An out-of-state distributor may obtain a license in accordance with G.S. 105-113.24. An out-of-state delivery seller must become licensed before making a sale as required by G.S. 105-113.4F.

(Effective July 1, 2022; SB 105, s. 42.9.(d), S.L. 2021-180)

G.S. 105-113.18(1) – Payment of Tax; Reports: Distributor’s Report: This subsection was amended to clarify that a distributor who is a delivery seller must comply with the filing requirements set forth under both this subsection and G.S. 105-113.4F.

(Effective July 1, 2022; SB 105, s. 42.9.(e), S.L. 2021-180)

G.S. 105-113.18(2) – Payment of Tax; Reports: Use Tax Report: This subsection was amended to clarify that a person who is not a licensed distributor must submit a use tax report if the person acquired non-tax-paid cigarettes for sale, use, or consumption subject to the excise tax. This tax applies, for example, to persons receiving non-tax-paid cigarettes from a delivery seller who did not remit the tax to the Department.

(Effective July 1, 2022; SB 105, s. 42.9.(e), S.L. 2021-180)

G.S. 105-113.18(3) – Payment of Tax; Reports: Shipping Report: This subsection was amended to clarify that the Department may require a shipping report from both a person who transports cigarettes or who causes to transport cigarettes upon the public highways, roads, or streets of this State. Other stylistic changes were made to this subsection.

(Effective July 1, 2022; SB 105, s. 42.9.(e), S.L. 2021-180)

G.S. 105-113.29 [G.S. 105.113.4J] – Unlicensed Place of Business: This section was recodified as G.S. 105-113.4J with stylistic changes. This section is applicable to the entire Article but was misplaced within the structure of Article 2A. As recodified, this section is within “Part 1. General Provisions” of Article 2A.

(Effective January 1, 2022; SB 105, s. 42.13E.(d)-(e), S.L. 2021-180)

G.S. 105-113.33 [G.S. 105-113.4K] – Criminal Penalties: This section was recodified as G.S. 105-113.4K. This section is applicable to the entire Article but was misplaced within the structure of Article 2A. As recodified, this section is within “Part 1. General Provisions” of Article 2A.

(Effective January 1, 2022; SB 105, s. 42.13E.(f), S.L. 2021-180)

Part 3 of Article 2A of Chapter 105

As a part of Session Law 2021-180, all statutes within Part 3 of Article 2A were repealed and rewritten. This document will note when the new statute is substantially similar to a statute that was repealed. References made in this document to “other tobacco products” is a reference to all tobacco products except for cigarettes.

The following statutes are repealed effective July 1, 2022:

1. G.S. 105-113.35
2. G.S. 105-113.35A
3. G.S. 105-113.36
4. G.S. 105-113.37
5. G.S. 105-113.38
6. G.S. 105-113.39
7. G.S. 105-113.40A.

(Effective July 1, 2022; SB 105, s. 42.9.(f), S.L. 2021-180)

The table below identifies the sections or subsections repealed and the sections or subsections with substantially similar language.

Statutes Repealed (Effective July 1, 2022)	Substantially Similar Statutes Enacted (Effective July 1, 2022)
G.S. 105-113.35(a)-(c)	G.S. 105-113.36A
G.S. 105-113.35(d)	G.S. 105-113.37A
G.S. 105-113.35A(d1)	G.S. 105-113.37B
G.S. 105-113.35A	G.S. 105-113.36A(e)
G.S. 105-113.36	G.S. 105-113.39A
G.S. 105-113.37	G.S. 105-113.39B
G.S. 105-113.38	G.S. 105-113.39C
G.S. 105-113.39	G.S. 105-113.37C
G.S. 105-113.40A	G.S. 105-113.39D

(Effective July 1, 2022; SB 105, s. 42.9(f)-(g), S.L. 2021-180)

G.S. 105-113.35B – Applicability: This new section was added to streamline the reference to the applicable tobacco products throughout Part 3. The term “tobacco product” when used in Part 3 means tobacco products other than cigarettes.

(Effective July 1, 2022; SB 105, s. 42.9.(g), S.L. 2021-180)

G.S. 105-113.36A(a) – Tax Rates; Liability for Tax: Tax Imposed: This new subsection imposes the excise tax on other tobacco products. It is substantially similar to G.S. 105-113.35(a)-(a1). However, subdivision (2) of subsection (a) places a cap on the excise tax of thirty cents (30¢) per cigar.

(Effective July 1, 2022; SB 105, s. 42.9.(g), S.L. 2021-180)

G.S. 105-113.36A(b) – Tax Rates; Liability for Tax: Primary Liability for Tax: This new subsection clarifies the points of taxation for other tobacco products. It is substantially similar to G.S. 105-113.35(b). The clarification also incorporates the statutory calculus under Article 5 of Chapter 105 to determine whether a substantial nexus exists between a retailer dealer who make a delivery sale or remote sale and North Carolina. *See generally South Dakota v. Wayfair, Inc., et al., 585 U. S. ____ (2018).* If the delivery seller or remote seller would otherwise have to remit sales and use tax to North Carolina under Article 5, the delivery seller or remote seller must collect and remit the excise tax on cigarettes.

As clarified, a wholesale dealer or retail dealer who meets any of the following conditions is liable for the excise tax:

1. The dealer is the first person to possess or acquire other tobacco products in this State.
2. The dealer is the first person to bring into this State other tobacco products made outside the State.
3. The dealer is the original consignee of other tobacco products made outside the State that are shipped into the State.
4. The dealer makes a delivery sale or remote sale of other tobacco products for which the dealer is required to collect sales and use tax under Article 5 of Chapter 105.

(Effective July 1, 2022; SB 105, s. 42.9.(g), S.L. 2021-180)

G.S. 105-113.36A(c) – Tax Rates; Liability for Tax: Secondary liability: This new subsection imposes liability for the excise tax on a retail dealer who acquires non-excise- tax-paid other tobacco products from a wholesale dealer. It is substantially similar to G.S. 105-113.35(c).

(Effective July 1, 2022; SB 105, s. 42.9.(g), S.L. 2021-180)

G.S. 105-113.6A(d) – Tax Rates; Liability for Tax: Exemptions: This new subsection establishes exemptions for the excise tax. It is substantially similar to G.S. 105-113.35(a2).

(Effective July 1, 2022; SB 105, s. 42.9.(g), S.L. 2021-180)

G.S. 105-113.6A(e) – Tax Rates; Liability for Tax: Use Tax: This new subsection imposes a use tax on non-excise-tax-paid other tobacco products. The use tax is levied on: (1) the sale or possession for sale of other tobacco products by a person other than a licensed wholesale dealer or a licensed retail dealer; and (2) upon the use, consumption, or possession for use or consumption of other tobacco products within this State. It is substantially similar to G.S. 105-113.35A.

(Effective July 1, 2022; SB 105, s. 42.9.(g), S.L. 2021-180)

G.S. 105-113.36A(f) – Tax rates; Liability for Tax: Documentation: This subsection was created to grant the Secretary the ability to determine the cost price of other tobacco products when the taxpayer cannot provide satisfactory documentation. The Secretary may determine a value based on the cost price of comparable items.

(Effective July 1, 2022; SB 105, s. 42.9.(g), S.L. 2021-180)

G.S. 105-113.37A – Manufacturer’s Option: This section establishes the manufacturer’s option to be relieved of paying the excise tax upon application to the Secretary and compliance with requirements prescribed by the Secretary. A manufacturer relieved from paying tax is not relieved from filing reports as required by this Article. This section is substantially similar to G.S. 105-113.35(d).

(Effective July 1, 2022; SB 105, s. 42.9.(g), S.L. 2021-180)

G.S. 105-113.37B – Non-Tax-Paid Products: This section limits the ability to transfer non-excise-tax-paid other tobacco products between wholesale dealers. It also limits the ability to transfer non-tax-paid other tobacco products between integrated wholesale dealers. This section is substantially similar to G.S. 105-113.35(d1).

(Effective July 1, 2022; SB 105, s. 42.9.(g), S.L. 2021-180)

G.S. 105-113.37C(a) – Discount; Refund; Discount: This subsection establishes the discount to wholesale dealers and retail dealers who file a timely report and send timely payment to the Department. The discount does not apply to vapor products. This subsection is substantially similar to G.S. 105-113.39(a).

(Effective July 1, 2022; SB 105, s. 42.9.(g), S.L. 2021-180)

G.S. 105-113.37C(b) – Discount; Refund: Refund: This subsection establishes the required criteria for a wholesale dealer or retail dealer to be refunded excise tax remitted on other tobacco products that have become stale or otherwise unsalable. This subsection is substantially similar to G.S. 105-113.39(b).

(Effective July 1, 2022; SB 105, s. 42.9.(g), S.L. 2021-180)

G.S. 105-113.38A – Remote Seller Requirements: This section establishes the requirements for remote sellers. These requirements are similar to requirements established for delivery sellers. Specifically, remote sellers must:

1. Obtain a license from the Secretary as required by Part 3 of Article 2A of Chapter 105 before accepting an order; and
2. Report, collect, and remit to the Secretary all applicable taxes imposed under Part 3 of Article 2A and Article 5 of Chapter 105.

Also, similar to G.S. 105-113.4F(f), remote sellers who meet the definition of retailer under Article 5 of Chapter 105 are subject to the same State laws.

(Effective July 1, 2022; SB 105, s. 42.9.(g), S.L. 2021-180)

G.S. 105-113.38B – Records: This section establishes the record keeping requirements for remote sellers. Remote sellers, in addition to maintaining records in accordance with G.S. 105-113.4G, must maintain:

1. A list, updated annually, showing the cost price paid by the remote seller for each stock keeping unit of other tobacco products.
2. Invoices documenting remote or delivery sales to consumers in this State.
3. Records necessary to document the cost price of purchases of all other tobacco products sold to consumers in this State.

(Effective July 1, 2022; SB 105, s. 42.9.(g), S.L. 2021-180)

G.S. 105-113.38C – Penalties: This section establishes the penalties for failure to comply with remote seller requirements under G.S. 105-113.38A. A remote seller who fails to comply with G.S. 105-113.38A is subject to the following penalties:

1. For the first violation, a penalty of one thousand dollars (\$1,000).
2. For a subsequent violation, a penalty not to exceed five thousand dollars (\$5,000), as determined by the Secretary.

(Effective July 1, 2022; SB 105, s. 42.9.(g), S.L. 2021-180)

G.S. 105-113.39A – License Required: This section establishes the renewable license requirements for wholesale dealers and retail dealers and the effective dates of a license. It also establishes the ability for an out-of-state wholesale dealer who is not a delivery seller or remote seller to obtain a license upon compliance with subsection (c) of this section.

This statute also clarifies the locations requiring a license. G.S. 105-113.36 did not provide clear guidance on the locations required to be licensed for retail dealers who make a delivery sale. As amended a wholesale dealer and retail dealer must obtain a license for:

1. Each location where a wholesale dealer makes tobacco products;
2. Each location where a wholesale dealer or a retail dealer receives or stores non-excise-tax-paid tobacco products; and
3. Each location from where a retail dealer that is a delivery seller or remote seller ships delivery sales or remote sales if the location is a location other than the location described above.

This section is substantially similar to G.S. 105-113.36.

(Effective July 1, 2022; SB 105, s. 42.9.(g), S.L. 2021-180)

G.S. 105-113.39B – Payment of Tax: This section establishes the filing and payment requirements for wholesale dealers and retail dealers, imposes a new due date for persons subject to the use tax, and provides other clarifications to the previous law.

Subsection (b) establishes the use tax for other tobacco products. The use tax applies to a person without a wholesale dealer license or retail dealer license who acquire non-excise-tax-paid other tobacco products for sale, use, or consumption. Previously, persons subject to the use were required to file a report and remit tax within 20 days after the end of the month covered by the report. However, to mirror requirements for the use tax on cigarettes, the person must pay and remit tax within 96 hours after receipt of the other tobacco products. This tax applies, for example, to persons receiving non-excise-tax-paid other tobacco products from a remote seller or delivery seller who did not remit the tax to the Department.

Subsection (c) clarifies the previous language in G.S. 105-113.37(d). Specifically, the Department may require a shipping report from both a person who transports other tobacco products or who causes to transport other tobacco products upon the public highways, roads, or streets of this State.

This section is substantially similar to G.S. 105-113.37(a) and G.S. 105-113.37(d).

(Effective July 1, 2022; SB 105, s. 42.9.(g), S.L. 2021-180)

G.S. 105-113.39C – Bond or Irrevocable Letter of Credit: This section requires wholesaler dealers and retail dealers to obtain a bond or an irrevocable letter of credit. This section is substantially similar to G.S. 105-113.38.

(Effective July 1, 2022; SB 105, s. 42.9.(g), S.L. 2021-180)

G.S. 105-113.39D – Use of Tax Proceeds: This section provides for the allocation of other tobacco tax receipts. G.S. 105-113.39 previously served this function and provided for the following allocation: (1) 3% of the cost price of other tobacco products to the General Fund; (2) an equivalent amount of revenue generated from the tax on vapor products to the General Fund; and (3) the remaining receipts to the University Cancer Research Fund.

This new section modifies the allocation previously provided in G.S. 105-113.39 to the following for tax receipts of other tobacco products: (1) Six and four-tenths percent (6.4%) to the University Cancer Research Fund; and (2) all remaining funds to the General Fund

According to the Legislative Fiscal Note (Senate Bill 105 (Fourth Edition)), the new allocation was designed “to hold [the University Cancer Research] Fund’s revenue stable” due to the expansion of tax receipts from remote sales of cigars from out of state remote sellers.

(Effective July 1, 2022; SB 105, s. 42.9.(g), S.L. 2021-180)

ALCOHOLIC BEVERAGE LICENSE AND EXCISE TAXES ARTICLE – 2C

G.S. 105-113.70 – Issuance, Qualifications: This section previously required ABC permittees to obtain a local license from the city and county in which the permittee is located for activity authorized by the ABC permit. It further prohibited a county from issuing a county license until the ABC permittee had obtained the permittee’s local license from the city. These requirements were modified by amending subsection (a) to reference the new authority granted in G.S. 105-113.71(c). G.S. 105-113.71(c) created an exception by allowing enumerated municipalities the discretion to not require a local license.

(Effective October 1, 2021; HB 890, s. 4.1, S.L. 2021-150)

G.S. 105-113.71 – Nonissuance of License: Subsection (b)’s catchline was amended to clarify that the exceptions under this subsection are limited to unfortified wine.

Subsection (c) was added allowing enumerated municipalities the discretion to decline to require a city or county license for activity authorized by an ABC permit. At the time subsection (c) was added, the Town of Cary is the only municipality granted this discretion. The section’s catchline “Local government may refuse to issue” was amended to “Nonissuance of license” to capture the broadening of the statutory provisions regarding the ability for a municipality to choose not to issue a local license.

(Effective October 1, 2021; HB 890, s. 4.2, S.L. 2021-150)

G.S. 105-113.77(a) – License and Tax: This subsection was amended to clarify that a person holding an ABC permit listed under this subsection is not required to obtain a license from a city or remit tax due to a city who has elected to decline to require a license pursuant to G.S. 105-113.71(c).

(Effective October 1, 2021; HB 890, s. 4.3, S.L. 2021-150)

G.S. 105-113.83A(a)(12) – Registration and Discontinuance Requirements; Penalties: This subdivision was created to add nonresident spirituous liquor vendors as a permittee who must register with the Secretary.

(Effective October 1, 2021; HB 890, s. 6.2, S.L. 2021-150)

G.S. 105-113.83 – Payment of Excise Taxes: This section was amended to improve readability and allow a wholesaler to remit the excise tax that would have otherwise been due by the brewery or winery.

Under subsection (b) of this section, the language applicable to wine shipper permittees was in two distinct places within the subsection. To improve readability, the language was re-written and placed into its own subsection, subsection (b3).

Subsection (b1) was added to reflect practices within the industry. A brewery or a winery may be relieved of remitting the excise tax if all of the following apply:

1. The brewery or winery holds a permit issued under G.S. 18B-1101, 18B-1102, or 18B-1104.
2. The brewery or winery transfers malt beverages or wine to a wholesaler permitted under G.S. 18B-1107 or G.S. 18B-1109.
3. The wholesaler agrees in writing to be responsible for the tax due on the transferred malt beverages or wine.
4. The brewery or winery files a report when the tax would otherwise be due reporting the transfer of malt beverages or wine to the wholesaler.

Subsection (b2) was added to impose excise tax liability on a wholesaler when a brewery or winery was relieved of remitting tax under subsection (b1) of this section.

(Effective November 18, 2021; SB 105, s. 42.13E.(g), S.L. 2021-180)

G.S. 105-113.86. – Bond or Irrevocable Letter of Credit: This section was amended expanding the authority for the Secretary to require a distillery to obtain bond or an irrevocable letter of credit. This statute also contains clarifying and stylistic changes.

Subsection (a) was subdivided to improve readability. All language originally under subsection (a) regarding periodically review of bonds was moved to a new subsection: (a2). “Periodic Review” was added as the catchline. Consistent with 17 NCAC 04E .0601 in calculating the amount of the bond based on previous tax due, subsection (a) was also amended to remove reference to anticipated tax liability.

Subsection (a1) was added allowing the Secretary to require a distillery to obtain a bond in an amount not to be less than two thousand dollars (\$2,000).

Subsection (c) was amended to allow a distillery to substitute an irrevocable letter of credit for a bond.

(Effective November 18, 2021; SB 105, s. 42.13E.(h), S.L. 2021-180)

TAX ON MOTOR CARRIERS – ARTICLE 36B

G.S. 105-449.45 – Returns of Carriers: This section was amended to clarify penalties under Article 36B for failure to pay tax when due and to clarify the authority for the Secretary to reduce or waive a penalty.

Subsection (d) amended the catchline to clarify that the existing language applies to a failure to file a return.

To more closely align with G.S. 105-449.57, subsection (d1) was added to clarify the authority for the Secretary to assess failure to pay tax due penalty consistent with R1220 of the Articles of Agreement promulgated by International Fuel Tax Association, Inc. It further makes clear that the penalty imposed under this subsection is distinct from the failure to pay tax penalty under G.S. 105-236(a)(4).

Subsection (d2) was added to clarify the authority for the Secretary to reduce or waive the penalty imposed under this subsection. It provides parity with other statutes in Article 36B and Article 36C that cite to this authority.

(Effective November 18, 2021; SB 105, s. 42.13E.(j), S.L. 2021-180)

G.S. 105-449.47B – Revocation of License: This section was added to streamline the license revocation and hearing processes providing consistency for all license revocations initiated by the Department. This includes license revocations under Article 2A (Tobacco Products), Article 2C (Alcoholic Beverages), Article 36B (Motor Carrier), Article 36C (Motor Fuel), Article 36D (Alternative Fuel), and Chapter 119 (Gasoline and Oil Inspection).

Previously, consistent with G.S. 105-449.57, the Department administered appeals in accordance with R1400 of the International Fuel Tax Agreement. R1400 provided a licensee an opportunity for a hearing only after the license was revoked. It also only allowed 30 days for the licensee to submit a written hearing request.

As amended, the Department must send the licensee a notice of proposed revocation and provide the licensee an opportunity to request a hearing to contest the revocation. The licensee must file a written hearing request within 45 days of the date the notice of proposed revocation. If the licensee does not file a timely hearing request, the license will be revoked as provided in the proposed revocation and the revocation is not subject to further review. If the licensee files a timely hearing request, the licensee will be provided 20 days' written notice of the hearing, and the hearing will be conducted as prescribed by the Secretary.

If the Department revokes the license, the former licensee must return all licenses issued to the licensee within 10 days of the issuance of the Department's final decision. If the licenses or decals are not returned, the credentials are subject to seizure or

removal from the motor vehicle or defacement. If a license or decal is unable to be returned, the former licensee must include a written statement of the reasons, satisfactory to the Secretary, why the license or decal cannot be returned. This section has also been amended to change the means of communications regarding revocations and hearings. All notices may now be delivered in accordance with G.S. 105-241.20(b) (e.g., United States mail). The licensee may also consent to receive notices via electronic means such as electronic mail.

(Effective January 1, 2022; SB 105, s. 42.13D.(b), S.L. 2021-180)

GASOLINE, DIESEL, AND BLENDS – ARTICLE 36C

G.S. 105-449.60(20a) – Definitions: Fuel Grade Ethanol: This subsection was added to clarify the definition of fuel grade ethanol. Fuel grade ethanol is:

Ethanol meeting the standard for the American Society Testing Materials Specification D 4806, "Standard Specification for Denatured Fuel Ethanol for Blending with Gasolines for Use as Automotive Spark-Ignition Engine Fuel," or ethanol, regardless of how it was produced, denatured in accordance with 27 C.F.R. § 19.746 as of January 1, 2021.

(Effective January 1, 2021; SB 105, s. 42.13E.(k), S.L. 2021-180)

G.S. 105-449.60(21) – Definitions: Gasohol: This subsection was amended to clarify the definition of gasohol. Gasohol, as amended, is a "blended fuel composed of gasoline and fuel alcohol or gasoline and ethanol."

(Effective January 1, 2022; SB 105, s. 42.13E.(k), S.L. 2021-180)

G.S. 105-449.76 – Cancellation of Revocation of License: This section was re-written to streamline the license revocation and hearing processes providing consistency for all license revocations initiated by the Department. This includes license revocations under Article 2A (Tobacco Products), Article 2C (Alcoholic Beverages), Article 36B (Motor Carrier), Article 36C (Motor Fuel), Article 36D (Alternative Fuel), and Chapter 119 (Gasoline and Oil Inspection).

Previously, the Department was required to hold a hearing to determine whether a person licensed under Article 36C or Article 36D committed an act that would authorize the Department to permanently revoke the license.

As amended, for a summary revocation, the Secretary must notify the licensee of the revocation and hold a hearing within 10 days. The licensee may request to continue the hearing if the licensee notifies the Department before the day of the hearing. A hearing will be conducted as prescribed by the Secretary, and the Secretary must issue a final decision within 10 days of the hearing. When the Secretary summarily revokes the license, the revocation remains in effect pending the hearing decision.

As amended, for a non-summary revocation, the Department must send the licensee a notice of proposed revocation and provide the licensee an opportunity to request a hearing to contest the revocation. The licensee must file a written hearing request within 45 days of the date the notice of proposed revocation. If the licensee does not file a timely hearing request, the license will be revoked as provided in the proposed revocation and the revocation is not subject to further review. If the licensee files a timely hearing request, the licensee will be provided 20 days' written notice of the hearing, and the hearing will be conducted as prescribed by the Secretary.

If the Department revokes the license, the former licensee must return all licenses issued to the licensee within 10 days of the issuance of the Department's final decision. If a license is unable to be returned, the former licensee must include a written statement of the reasons, satisfactory to the Secretary, why the license cannot be returned.

This section has also been amended to change the means of communications regarding revocations and hearings. All notices may now be delivered in accordance with G.S. 105-241.20(b) (United States mail). The licensee may also consent to receive notices via electronic means such as electronic mail.

Note that pursuant to G.S. 105-449.134, persons licensed under Article 36D are subject to the same revocation and hearing procedures as provided in Article 36C.

(Effective January 1, 2022; SB 105, s. 42.13D.(c), S.L. 2021-180)

G.S. 105-449.115 – Shipping Document Required to Transport Motor Fuel by Railroad Tank Car or Transport Truck: Subsection (d) and subsection (e) of this section contain clarifying and stylistic changes for diversions of applicable motor fuel by railroad tank car or transport truck.

Subsection (d) sets forth the requirements of persons transporting applicable motor fuel by railroad tank car or transport truck. Subdivision (2a) was added to subsection (d) to clarify that these persons must maintain a copy of the shipping document at a centralized place of business for at least three years from the date of delivery. This matches the record keeping requirements for persons transporting motor fuel by tank wagon.

Subdivision (3) of subsection (d) was amended throughout for clarity. The two most significant clarifications are as follows: (1) the transporter must “[c]ontemporaneously” note on the shipping document the change in destination state and the confirmation number the person received from the Secretary; and (2) the transporter must “[u]pon delivery” provide a copy of the shipping document to the person receiving shipment.

Subsection (e) sets forth the requirements of persons receiving applicable motor fuel delivered by railroad tank car or transport truck. The subsection was amended throughout for clarity. The amended language clarifies that a person receiving motor fuel may only accept the fuel if the destination state is North Carolina or the shipping document has been changed to North Carolina in accordance with subdivision (3) of subsection (d). Specifically, a shipping document where the destination state was changed to North Carolina must contain a diversion number from the Secretary.

(Effective November 18, 2021; SB 105, s. 42.13E.(l), S.L. 2021-180)

G.S. 105-449.115A – Shipping Document Required to Transport Fuel by Tank Wagon: This section was amended to add duties to: (1) tank wagon operators who transport motor fuel; and (2) persons receiving motor fuel from a tank wagon. The duties mirror the requirements under G.S. 105-449.115 (d) and G.S. 105-449.115 (e).

Subsection (b) was amended to require the tank wagon operator to deliver motor fuel to the destination on the shipping document unless the operator does all of the following:

1. Notifies the Secretary before transporting the motor fuel into a state other than the state designated on the shipping document.
2. Receives from the Secretary a confirmation number authorizing the shipment of motor fuel to a state other than the state designated on the shipping document.
3. Contemporaneously writes on the shipping document the change in destination state and the diversion number received from the Secretary.

Subsection (b) was also amended requiring the tank wagon operator upon delivery, provide a copy of the shipping document to the person to whom the motor fuel is delivered.

Subsection (b1) was added and imposes additional duties on persons receiving motor fuel from tank wagons. The person receiving shipment may only accept delivery of the motor fuel if: (1) the destination state on the shipping document is North Carolina; or (2) the destination state on the shipping document was changed to North Carolina and the diversion number was recorded on the shipping document. The person receiving shipment must also maintain a copy of the shipping document for at least three years from the date of delivery and must maintain a copy of the shipping document at the place of business where the motor fuel was delivered for 90 days from the date of delivery.

If a person receiving shipment fails to comply with subsection (b1), the person is jointly and severally liable for any tax due on the fuel.

(Effective November 18, 2021; SB 105, s. 42.13E.(m), S.L. 2021-180)

G.S. 105-449.123 – Marking Requirements for Dyed Fuel Storage Facilities: This section was amended to change the civil penalty structure for a retailer's failure to mark dyed motor fuel storage. A dyed motor fuel retail who stores both dyed and undyed motor fuel must mark the storage facility in accordance with this section. Previously, the civil penalty was calculated on the capacity of the storage tank. As amended, "a person who fails to mark the storage facility as required by subsection (a) of this section is subject to a civil penalty of two hundred fifty dollars (\$250.00). Each inspection that results in a finding of noncompliance constitutes a separate and distinct offense."

(Effective January 1, 2022; SB 105, s. 42.13E.(n), S.L. 2021-180)

GASOLINE AND OIL INSPECTION AND REGULATION

CHAPTER 119 – ARTICLE 3

G.S. 119-19 – Authority of Secretary to Cancel or Revoke a License: This section was re-written to streamline the license revocation and hearing processes providing consistency for all license revocations initiated by the Department. This includes license revocations under Article 2A (Tobacco Products), Article 2C (Alcoholic Beverages), Article 36B (Motor Carrier), Article 36C (Motor Fuel), Article 36D (Alternative Fuel), and Chapter 119 (Gasoline and Oil Inspection).

Previously, the Department was required to hold a hearing to determine whether a person licensed under Article 36C, Article 36D, or Article 3 of Chapter 119 committed an act that would authorize the Department to permanently revoke the license.

As amended, for a summary revocation, the Secretary must notify the licensee of the revocation and hold a hearing within 10 days. The licensee may request to continue the hearing if the licensee notifies the Department before the day of the hearing. A hearing will be conducted as prescribed by the Secretary, and the Secretary must issue a final decision within 10 days of the hearing. When the Secretary summarily revokes the license, the revocation remains in effect pending the hearing decision.

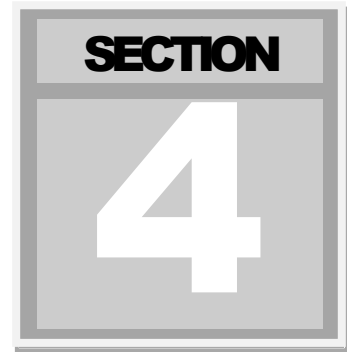
As amended, for a non-summary revocation, the Department must send the licensee a notice of proposed revocation and provide the licensee an opportunity to request a hearing to contest the revocation. The licensee must file a written hearing request within 45 days of the date the notice of proposed revocation. If the licensee does not file a timely hearing request, the license will be revoked as provided in the proposed revocation and the revocation is not subject to further review. If the licensee files a timely hearing request, the licensee will be provided 20 days' written notice of the hearing, and the hearing will be conducted as prescribed by the Secretary.

If the Department revokes the license, the former licensee must return all licenses issued to the licensee within 10 days of the issuance of the Department's final decision. If a license is unable to be returned, the former licensee must include a written statement of the reasons, satisfactory to the Secretary, why the license cannot be returned.

This section has also been amended to change the means of communications regarding revocations and hearings. All notices may now be delivered in accordance with G.S. 105-241.20(b) (e.g., United States mail). The licensee may also consent to receive notices via electronic means such as electronic mail.

(Effective January 1, 2022; SB 105, s. 42.13D.(d), S.L. 2021-180)

SECTION 4 – SALES AND USE TAX



SALES AND USE TAX – ARTICLE 5

EXEMPTIONS AND EXCLUSIONS

G.S. 105-164.13 – Exemptions and Exclusions: The 2021 General Assembly added an exemption from sales and use tax to G.S. 105-164.13. The change and its effective date are as follows:

Alcoholic Beverage Manufacture Sales Tax Exemption – G.S. 105-164.13(5q).

This subdivision is added and provides an exemption from sales and use tax for “[s]ales of machinery, equipment, parts, and accessories to the following permittees for use in the manufacture of the following items and supplies and ingredients used or consumed by the permittee in the manufacturing process:

- a. The holder of an unfortified winery permit for the manufacture of unfortified wine, as authorized in G.S. 18B-1101.
- b. The holder of a fortified winery permit for the manufacture of fortified wine, as authorized in G.S. 18B-1102.
- c. The holder of a brewer permit for the manufacture of malt beverages, as authorized in G.S. 18B-1104.
- d. The holder of a distillery permit for the manufacture of spirituous liquor, as authorized in G.S. 18B-1105.”

(Effective October 1, 2021, and applies to sales made on or after that date; HB 890, s. 25.1., S.L. 2021-150.)

G.S. 105-164.13E – Exemptions for Farmers: The 2021 General Assembly amended G.S. 105-164.13E. The change and its effective date are as follows:

Purchases of Fowl - G.S. 105-164.13E(a)(7) – This subdivision is amended and provides an exemption from sales and use tax on the following items that are purchased by a qualifying farmer or conditional farmer and used by the qualifying or conditional farmer primarily in farming operations:

- “(7) Any of the following animals:
- a. *Fowl.*
 - b. *Livestock.*” [Emphasis added.]

(Effective retroactively to July 1, 2020, and applies to purchases made on or after that date; SB 105, s. 42.13C.(a), S.L. 2021-180.)

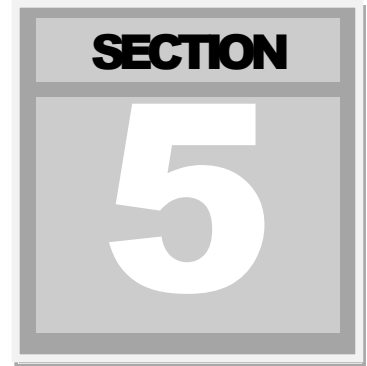
LOCAL SALES AND USE TAX

G.S. 105-472. – Disposition and Distribution of Taxes Collected: The 2021 General Assembly amended G.S. 105-472. The change and its effective date are as follows:

Distribution between Counties and Cities of Taxes Collected - G.S. 105-472(b) – This subsection is amended to provide that “[t]he board of county commissioners in each taxing county shall, by resolution adopted during the month of April of each year, determine which of the two foregoing methods of distribution [Per Capita Method or Ad Valorem Method] shall be in effect in the county during the *fiscal year following the succeeding fiscal year*. In order for the resolution to be effective, a certified copy of it must be delivered to the Secretary in Raleigh within 15 calendar days after its adoption. If the board fails to adopt a resolution choosing a method of distribution not then in effect in the county, or if a certified copy of the resolution is not timely delivered to the Secretary, the method of distribution then in effect in the county shall continue in effect for the following fiscal year. The method of distribution in effect on the first of July of each fiscal year shall apply to every distribution made during that fiscal year.” [Emphasis added.]

(Effective August 30, 2021; SB 314, s. 1., S.L. 2021-124.)

SECTION 5 – HIGHWAY USE TAX



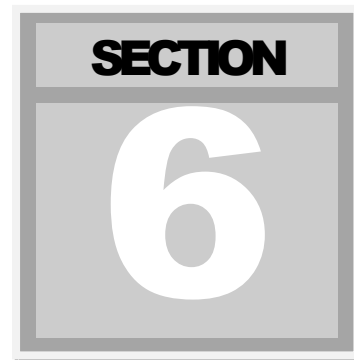
HIGHWAY USE TAX – ARTICLE 5A

G.S. 105-187.9(a) – Credit Short-Term Vehicle Rental Proceeds to Highway Fund:

This subsection is amended and provides “[t]axes collected under [Article 5A of Chapter 105 of the North Carolina General Statutes] at the rate of five percent (5%) and eight percent (8%) shall be credited to the Highway Fund. Taxes collected under [Article 5A of Chapter 105 of the North Carolina General Statutes] at the rate of three percent (3%) shall be credited to the North Carolina Highway Trust Fund.”

(Effective July 1, 2021; SB 105, s. 42.10., S.L. 2021-180.)

SECTION 6 – LOCAL GOVERNMENT



LOCAL GOVERNMENT

G.S. 105-275 – Property Classified and Excluded from the Tax Base: 105-275(8) – amended the statutes by adding a new sub-subdivision to read "a2. Notwithstanding sub-subdivision a. of this subdivision applies to a farm digester system as defined in G.S. 143-213(12a). "

(Effective July 2, 2021; SB 605; s. 11(h), S.L. 2021-78)

105-275(44a) – Creates an exclusion from the tax base for vaccines.

(Effective July 1, 2022; SB 105; s. 42.12(c), S.L. 2021-180)

G.S. 105-277.02(a). – Certain Real Property Held for Sale Classified for Taxation at Reduced Evaluation: 105-277.02(a) – Adds townhouses to “residential real property” that is designated a special class of property under authority of Article V

(Effective July 1, 2022; HB 273; s. 1, S.L. 2021-113)

G.S. 105-277.1(b). – Elderly or Disabled Property Tax Homestead Exclusion: 105-277.1(b) – Adds provision to clarify that income from Extra Credit Grants and COVID-19 Recovery Rebates are not considered income when determining a person’s eligibility under the elderly and disabled property tax homestead exclusion and property tax homestead circuit breaker.

(Effective April 27, 2021; HB 279; s. 1.1, S.L. 2021-16)

G.S. 105-278. – Historic Properties: 105-278(a) – Amends statute to include properties designated as historic landmarks under either G.S. 160D-945 or former G.S. 160A-400.5, the latter of which was previously repealed and replaced by G.S. 160D-945.

(Effective retroactively to June 19, 2020; SB 105; s. 42.13F.(a), S.L. 2021-180)

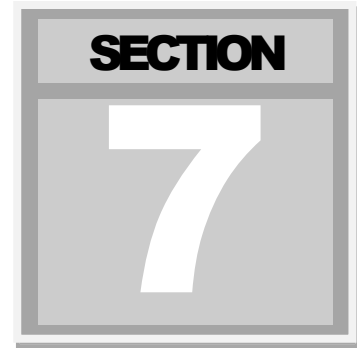
G.S. 105-287.2. – Burial Property: 105-278.2(a) – Creates an exemption for “Real property set apart for burial purposes ...that is owned and held for purposes of (i) sale or rental or (ii) sale of burial rights.” Also categorizes such property as “Commercial Property,” distinguishing it from burial property that is not held for these purposes (now categorized as “Other Property”). A single application is required for the Commercial Property category.

105-278.2(b) – Creates the “Other Property” category of burial property that has previously been, and remains, exempted, with no application or survey required.

105-278.2(c) – Separates terms “real property” and “burial” into a new subdivision. The definitions remain unchanged.

(Effective July 1, 2022; SB 105; s. 42.12.(a), S.L. 2021-180)

SECTION 7 – GENERAL ADMINISTRATION



GENERAL ADMINISTRATION – ARTICLE 9

G.S. 105-228.90(b)(7) – Scope and Definitions: Definitions: Code: State law defines the Internal Revenue Code as the Code enacted as of a certain date. When the General Statutes reference date to the Code is updated, North Carolina conforms to federal law that has been enacted as of that specified date, except for specific adjustments to the Code that are required by State law.

This subdivision was amended to update the reference to the Internal Revenue Code from May 1, 2020 to April 1, 2021. Any amendments to the Internal Revenue Code enacted after May 1, 2020 that increase North Carolina taxable income for the 2020 taxable year become effective for tax year 2021.

(Effective November 18, 2021; SB 105, s. 42.4.(a), S.L. 2021-180.)

G.S. 105-236(a)(2) – Penalties: Failure to Obtain a License: This subdivision was amended to include additional licensees subject to the one thousand dollar (\$1,000) penalty provision. As amended, if a person required to be licensed under Article 2A (the Tobacco Products Tax Act) fails to become licensed after written notification by the Department, the person is subject to a one thousand dollar (\$1,000) penalty.

Note that there is a different penalty structure under Article 2A for delivery sellers and remote sellers who fail to obtain a license before accepting an order. See G.S. 105-113.4F, 105-113.38C.

(Effective January 1, 2022 and applies to penalties assessed on or after that date; SB 105, s. 42.13E.(i), S.L. 2021-180.)

G.S. 105-236(a)(4) – Penalties: Failure to Pay Tax When Due: This subdivision was amended to replace the flat penalty amount assessed for failure to pay a tax when due to a graduated amount. The ten percent (10%) flat penalty is amended to a penalty of two percent (2%) of the tax due for the first month, with an additional two percent (2%) for each succeeding month, or fraction thereof, not to exceed ten percent (10%) in total.

(Effective July 1, 2022 and applies to tax assessed on or after that date; SB 105, s. 42.11.(a), S.L. 2021-180.)

G.S. 105-241.6(b)(5) – Contingent Event: In 2019, the General Assembly amended subdivision (b)(5) to simplify the language used to explain the contingent event exception to the general statute of limitations for obtaining a refund. In 2021, the General Assembly made additional changes to clarify that if the Secretary agrees to a taxpayer’s contingent event request for an “Other Event,” the period to file a request for refund of an overpayment is six months after the event concludes.

(Effective November 18, 2021; SB 105, s. 42.13A.(f), S.L. 2021-180.)

G.S. 105-243.1(e) – Collection of Tax Debts: Use: This subsection was amended to eliminate all the listed applications of the tax collection assistance fee by the Department of Revenue and is now subject to appropriation by the General Assembly. Previously, the statute provided a list of purposes that the collection fee could be used for by the Department. As amended, although the collection fee remains a receipt of the Department, its appropriation is now determined by the General Assembly.

(Effective July 1, 2021; SB 105, s. 34.1., S.L. 2021-180.)

G.S. 105-251(a) – Information Required of Taxpayer and Corrections Based on Information: Scope of Information: This subsection states that a taxpayer must give information to the Secretary of Revenue when the Secretary requests it and lists the kinds of information on a return, report, or otherwise that the Secretary may request from a taxpayer.

As amended, the language under subdivision (5) was renumbered as subdivision (6) and new language was added to subdivision (5) in its place. This new language specifically states that the taxpayer must provide financial or tax documentation required to determine the appropriate adjustment under G.S. 105-130.5A (Secretary’s authority to adjust net income or require a combined return) and if such information is not timely provided as required under G.S. 105-130.5A(a), the Secretary may propose any adjustment allowable under Part 1 of Article 4 (Corporation Income Tax) of this Chapter.

(Effective November 18, 2021; SB 105, s. 42.13B.(f), S.L. 2021-180.)

G.S. 105-252.1 – Use of a TTIN: This section was rewritten to provide the Secretary the authority to determine when a truncated taxpayer identification number may be used on any return, statement, or other document required to be filed with or furnished to the Department. Previously, G.S. 105-252.1 required the authorization to be specifically enacted in Chapter 105.

(Effective November 18, 2021; SB 105, s. 42.13A.(g), S.L. 2021-180.)

G.S. 105-256(a) – Publications Prepared by Secretary of Revenue; Report on Fraud Prevention Progress: Publications: This subsection was amended to make changes to the following subdivisions:

Subdivision (6) requires the Secretary of Revenue to annually prepare and publish a report on the quality of services provided to taxpayers through the Taxpayer Assistance Call Center, walk-in assistance, and taxpayer education. As amended, the Joint Legislative Oversight Committee on General Government was added to the list of who must receive this annual report. Previously, it was only required to be submitted to the Joint Legislative Commission on Governmental Operations.

Subdivision (8) was amended to change the dates on which a semiannual report on the Department of Revenue’s activities listed within this subdivision must be submitted by. The due dates of this report were changed from January 1 and July 1 to February 15 and August 15 of each year. Also as amended, the Joint Legislative Oversight Committee on General Government was added to the list of who must receive this report. Prior to the amendment, it was required to only be submitted to the Joint Legislative Commission on Governmental Operations and the Revenue Laws Study Committee.

(Effective November 18, 2021 and applies to reports submitted on or after that date; SB 105, s. 37.10., S.L. 2021-180.)

G.S. 105-259 – Secrecy Required of Officials; Penalty for Violation: This section was amended to remove all language referring to the “Section of Community Corrections of the Division of Adult Correction and Juvenile Justice of the Department of Public Safety” and replace with “Division of Community Supervision and Reentry of the Department of Adult Correction.” This change was made to refer to the new name of this division.

(Effective January 1, 2023; SB 105, s. 19C.9.(v1), S.L. 2021-180.)

G.S. 105-259(b) – Secrecy Required of Officials; Penalty for Violation: Disclosure Prohibited: This subsection was amended to remove subdivision (5b) which stated tax information may be disclosed for the purpose of furnishing “to the finance officials of a city a list of the utility taxable gross receipts and piped natural gas tax revenues attributable to the city under G.S. 105-116.1 and G.S. 105-187.44 or under former G.S. 105-116 and G.S. 105-120.” This subdivision was removed because it is no longer needed since the statutory references within it have previously been repealed.

(Effective November 18, 2021; SB 105, s. 42.13C.(b), S.L. 2021-180.)