



2023 TAX LAW CHANGES



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FOR TAX ADMINISTRATION**

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PREFACE

The 2023 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 sessions of the General Assembly that take effect for tax year 2023 as well as changes made in 2023 by the 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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Assistant Secretary of Revenue
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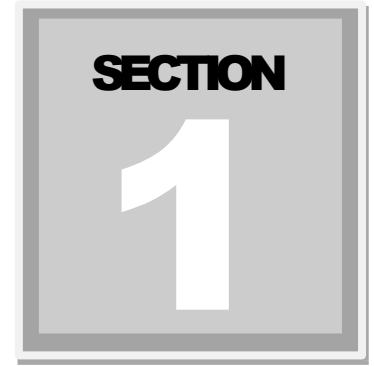
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SECTION 1 – PERSONAL TAXES



INDIVIDUAL INCOME TAX – ARTICLE 4, PART 2

G.S. 105-153.4(d1) – Sole Proprietorships: This subsection was added to clarify that the statutory method used by S Corporations and partnerships to divide income between North Carolina and other states also applies to sole proprietorships. Pursuant to G.S. 105-153.4(d), S Corporations and partnerships must use the allocation and apportionment provisions set forth in G.S. 105-130.4 to determine income attributable to North Carolina.

(Effective for taxable years beginning on or after January 1, 2022; SB 174, s. 1.3., S.L. 2023- 12.)

G.S. 105-153.5(b)(14a) – Other Deductions: This subdivision was amended to change the date an individual who receives proceeds from the Business Recovery Grant Program is allowed to deduct the proceeds from federal adjusted gross income. Under prior law, the deduction was effective January 1, 2021, and applied to proceeds received on or after that date. As amended, the deduction is effective January 1, 2020, and applies to proceeds received on or after that date.

(Effective for taxable years beginning on or after January 1, 2020; and applies to amounts received by a taxpayer on or after that date; HB 103, s. 18.(a)., S.L. 2023-46.)

G.S. 105-153.5(c3) – Taxed Pass-Through Entities: The 2022 General Assembly added or revised several statutes within Article 4 of Chapter 105 to allow S Corporations and certain partnerships and pass-through entities (“PTEs”) to elect to pay North Carolina income tax at the entity level (a “Taxed S Corporation,” a “Taxed Partnership,” or collectively a “Taxed PTE”). The 2022 legislation is collectively referred to throughout this document as the “North Carolina SALT Workaround.” The 2023 General Assembly revised the North Carolina SALT Workaround. The 2023 revisions are collectively referred to as the “2023 SALT Workaround Update.”

The 2023 SALT Workaround Update made significant changes to G.S. 105-153.5(c3) as explained below.

The North Carolina SALT Workaround added G.S.105-153.5(c3)(1) to allow a deduction from adjusted gross income (“AGI”) to a taxpayer who is a shareholder in 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.

The 2023 SALT Workaround Update amended subdivision (1) to limit the deduction to only the amount of taxpayer's pro rata share of income attributable to North Carolina from the Taxed S Corporation to the extent the income attributable to North Carolina (1) was included in the Taxed S Corporation's North Carolina taxable income and (2) was included in the taxpayer's AGI modified by North Carolina law.

The 2023 SALT Workaround Update added subdivision (1a) to allow a new deduction from AGI to a resident taxpayer who is a shareholder in an S Corporation for the amount of the taxpayer's pro rata share of income not attributable to North Carolina from the S Corporation to the extent the income (1) was included in the S Corporation's taxable income in another state or the District of Columbia, (2) was subject to an entity-level tax levied on the aggregate pro rata share of the S Corporation's income allocable to one or more of its shareholders, and (3) was included in the taxpayer's AGI modified by North Carolina law. An S Corporation is taxable in another state or the District of Columbia if the S Corporation's business activity in that state or the District of Columbia subjects the S Corporation to a net income tax, or a tax measured by net income.

The North Carolina SALT Workaround added G.S. 105-153.5(c3)(2) to require an addition to AGI to a taxpayer who 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.

The 2023 SALT Workaround Update amended subdivision (2) to limit the addition to only the amount of taxpayer's pro rata share of net taxable loss attributable to North Carolina from the Taxed S Corporation to the extent the net taxable loss (1) was included in the Taxed S Corporation's North Carolina taxable income and (2) was included in the taxpayer's AGI modified by North Carolina law.

The North Carolina SALT Workaround added G.S. 105-153.5(c3)(3) to allow a deduction from AGI to a taxpayer who is a partner in 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.

The 2023 SALT Workaround Update amended subdivision (3) to limit the deduction to only the amount of taxpayer's share of distributive income attributable to North Carolina from the Taxed Partnership to the extent the share of distributive income attributable to North Carolina (1) was included in the Taxed Partnership's North Carolina taxable income and (2) was included in the taxpayer's AGI modified by North Carolina law.

The 2023 SALT Workaround Update added subdivision (3a) to allow a new deduction from AGI to a resident taxpayer who is a partner in a partnership for the amount of the taxpayer's share of distributive income not attributable to North Carolina from the partnership to the extent the income (1) was included in the partnership's taxable income in another state or the District of Columbia, (2) was subject to an entity-level tax levied on the aggregate distributive share of the partnership's income allocable to one or more of its partners, and (3) was included in the taxpayer's AGI modified by North Carolina law. A partnership is taxable in another state or the District of Columbia if the partnership's business activity in that state or the District of Columbia subjects the partnership to a net income tax or a tax measured by net income.

The North Carolina SALT Workaround added G.S. 105-153.5(c3)(4) to require an addition to AGI to a taxpayer who 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.

The 2023 SALT Workaround Update amended subdivision (4) to limit the addition to only the amount of taxpayer's share of distributive taxable loss attributable to North Carolina from the Taxed Partnership to the extent the loss (1) was included in the Taxed Partnership's North Carolina taxable income and (2) was included in the taxpayer's AGI, subject to the adjustments modified by North Carolina law.

(Effective for taxable years beginning on or after January 1, 2023; SB 174, s. 1.6(c)., S.L. 2023- 12.)

G.S. 105-153.7(a) – Individual Income Tax Imposed: This subsection was amended to decrease the income tax rate imposed on an individual's North Carolina taxable income for each of the following taxable years:

Taxable Years Beginning	Tax
In 2024	4.5%
In 2025	4.25%
After 2025	3.99%

(Effective October 3, 2023; HB 259, s. 42.1.(a), S.L. 2023-134.)

G.S. 105-153.7(a)(a1) – Individual Income Tax Imposed: This subdivision was added to create a rate reduction trigger for individual income tax. If the State's total General Fund revenue for a specified year exceeds the trigger amount indicated for that year, then the applicable individual income tax rate for the indicated and subsequent tax years will equal the greater of (i) the prior taxable year's individual income tax rate decreased by one-half percentage point (0.50%) or (ii) two and forty-nine hundredths percent (2.49%). The trigger amounts are as follows:

Fiscal Year	Trigger Amount	Taxable Year Beginning
FY 2025-2026	\$33,042,000,000	In 2027
FY 2026-2027	\$34,100,000,000	In 2028
FY 2027-2028	\$34,760,000,000	In 2029
FY 2028-2029	\$35,750,000,000	In 2030
FY 2029-2030	\$36,510,000,000	In 2031
FY 2030-2031	\$38,000,000,000	In 2032
FY 2031-2032	\$38,500,000,000	In 2033
FY 2032-2033	\$39,000,000,000	In 2034

(Effective October 3, 2023; HB 259, s. 42.1.(a), S.L. 2023-134.)

G.S. 105-153.9(a)(4) – Tax Credits for Income Taxes Paid to Other States by Individuals:

This subdivision was repealed as a part of 2023 SALT Workaround Update. In lieu of the tax credit, a resident taxpayer who is a shareholder of an S Corporation is allowed a deduction for the amount of the taxpayer’s pro rata share of income not attributable to North Carolina from the S Corporation subject to the provisions of G.S. 105-153.5(c3)(1a).

(Effective for taxable years beginning on or after January 1, 2023; SB 174, s. 1.6.(a), S.L. 2023- 12.)

G.S. 105-153.9(a)(5) – Tax Credits for Income Taxes Paid to other States by Individuals:

This subdivision was repealed as a part of 2023 SALT Workaround Update. In lieu of the tax credit, a resident taxpayer who is a partner of a partnership is allowed a deduction for the amount of the taxpayer’s share of distributive income not attributable to North Carolina from the partnership subject to the provisions of G.S. 105- 153.5(c3)(3a).

(Effective for taxable years beginning on or after January 1, 2023; SB 174, s. 1.6.(a), S.L. 2023- 12.)

G.S. 105-153.9(c) – Tax Credits for Income Taxes Paid to other States by Individuals: This subsection was added as a part of the 2023 SALT Workaround Update. New G.S. 105-153.9(c) was added to clarify that the tax credit for income taxes paid to other states by individuals is not refundable.

(Effective April 3, 2023; SB 174, s. 1.4., S.L. 2023-12.)

G.S. 105-153.9(d) – Tax Credits for Income Taxes Paid to Other States by Individuals:

This subsection was added as part of the 2023 SALT Workaround Update. New G.S. 105-153.9(d) allows a resident partner in a partnership that pays entity-level income tax in another state or the District of Columbia but does not elect to be Taxed Partnership to include the partner’s distributive share of entity-level income taxes paid by the partnership to the other state or the District of Columbia when computing the tax credit for income taxes paid to other states. In addition, a cross-reference to G.S. 105- 153.9(a)(5) was removed because that statute was repealed effective January 1, 2023.

(The first amendment was effective for taxable years beginning on or after January 1, 2022; SB 174, s. 1.5.(d), S.L. 2023-12.). The second amendment is effective for taxable years beginning on or after January 1, 2023; SB 174, s. 1.6.(d), S.L. 2023-12.)

G.S. 105-153.9(e) – Tax Credits for Income Taxes Paid to Other States by Individuals:

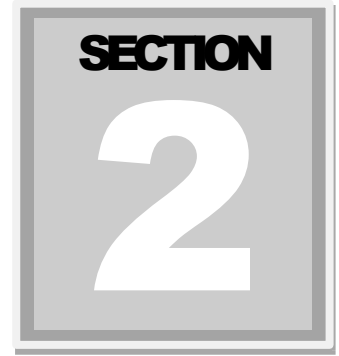
This subsection was added as part of the 2023 SALT Workaround Update. New G.S. 105-153.9(e) allows a resident shareholder in an S Corporation that pays entity-level income tax in another state or the District of Columbia but does not elect to be Taxed S Corporation to include the shareholder’s pro rata share of entity-level income taxes paid by the S Corporation to the other state or the District of Columbia when computing the tax credit for income taxes paid to other states. In addition, a cross-reference to G.S. 105-153.9(a)(4) was removed because that statute was repealed effective January 1, 2023.

(The first amendment was effective for taxable years beginning on or after January 1, 2022; SB 174, s. 1.5.(d), S.L. 2023-12. The second amendment is effective for taxable years beginning on or after January 1, 2023; SB 174, s. 1.6.(d), S.L. 2023-12.)

G.S. 105-153.9(f) – Tax Credits for Income Taxes Paid to Other States by Individuals: This subsection was added as part of the 2023 SALT Workaround Update. New G.S. 105-153.9(f) prohibits an individual from claiming a tax credit for income taxes paid to another state or the District of Columbia on income eligible for the deduction provided in G.S. 105-153.5(c3).

(Effective for taxable years beginning on or after January 1, 2023; SB 174, s. 1.6.(d), S.L. 2023- 12.)

SECTION 2 – TAXED S CORPORATIONS AND TAXED PARTNERSHIPS



TAXED S CORPORATIONS AND TAXED PARTNERSHIPS

G.S. 105-131.1A(a) – Taxed S Corporation Election: This subsection was amended as part of the 2023 SALT Workaround Update. Under prior law, an S Corporation was not allowed to make or revoke the election to be a Taxed S Corporation after the due date of the return, including extensions.

As amended, an S Corporation cannot make or revoke the election to be a Taxed S Corporation after the North Carolina S Corporation tax return is filed for the taxable year.

(Effective for taxable years beginning on or after January 1, 2023; SB 174, s. 1.6.(b), S.L. 2023- 12.)

G.S. 105-131.1A(b)(1)b – Taxable Income of Taxed S Corporation: This sub-subdivision was repealed as part of the 2023 SALT Workaround Update. Prior to its repeal, G.S. 105-131.1A(b)(1)b required a Taxed S Corporation to include each resident shareholder’s pro rata share of the Taxed S Corporation’s income or loss not attributable to North Carolina in the computation of North Carolina taxable income. Beginning with the 2023 tax year, a Taxed S Corporation is only required to include each shareholder’s pro rata share of the Taxed S Corporation’s income or loss attributable to North Carolina in its computation of North Carolina taxable income.

(Effective for taxable years beginning on or after January 1, 2023; SB 174, s. 1.6.(a), S.L. 2023- 12.)

G.S. 105-131.1A(d) – Tax Credit for Income Taxes Paid to Other States: This subsection was repealed as part of the 2023 SALT Workaround Update. For taxable years beginning January 1, 2023, the North Carolina taxable income of a Taxed S Corporation no longer includes a resident shareholder’s pro rata share of the Taxed S Corporation’s income or loss not attributable to North Carolina. As such, the tax credit is no longer needed.

(Effective for taxable years beginning on or after January 1, 2023; SB 174, s. 1.6.(a), S.L. 2023- 12.)

G.S. 105-154(d) – Payment of Tax on Behalf of Nonresident Owner or Partner: This subsection was amended as part of the 2023 SALT Workaround Update. Under prior law, G.S. 105-154(d) did not apply to a Taxed Partnership.

As amended, G.S. 105-154(d) applies to a Taxed Partnership if the Taxed Partnership is owned by one or more nonresident partners described in G.S. 105-154.1(a)(5). In such cases, the provisions of G.S. 105-154(d) apply to those partners.

(Effective for taxable years beginning on or after January 1, 2022; SB 174, s. 1.5.(a), S.L. 2023- 12.)

G.S. 105-154.1(a) – Taxed Partnership Election: This subsection was amended as part of the 2023 SALT Workaround Update. Under prior law, a partnership was not allowed to make or revoke the election to be a Taxed Partnership after the due date of the return, including extensions.

As amended, a partnership cannot make or revoke the election to be a Taxed Partnership after the North Carolina partnership income tax return is filed for the taxable year.

(Effective for taxable years beginning on or after January 1, 2023; SB 174, s. 1.6.(e), S.L. 2023- 12.)

G.S. 105-154.1(a) – Taxed Partnership Election: This subdivision was amended as part of the 2023 SALT Workaround Update to expand the list of permissible partners of a partnership allowed to make the election to be a Taxed Partnership.

Under prior law, a partnership could not make the election to be a Taxed Partnership if the partnership was owned by a partner who was not one of the following:

- (1) An individual.
- (2) An estate.
- (3) A trust described in Internal Revenue Code (“IRC”) section 1361(c)(2).
- (4) An organization described in IRC section 1361(c)(6).

As amended, a partnership cannot make the election to be a Taxed Partnership if the partnership is owned by a partner who is not one of the following:

- (1) An individual.
- (2) An estate.
- (3) A trust described in Internal Revenue Code (“IRC”) section 1361(c)(2).
- (4) A trust if such trust does not have a beneficiary any person other than an individual, an estate, a trust, or an organization described in IRC section 1361(c)(6).
- (5) An organization described in IRC section 1361(c)(6).
- (6) A partnership, including an entity that is classified as a partnership for federal income tax purposes.
- (7) An entity that is classified as a corporation for federal income tax purposes.

(Effective for taxable years beginning on or after January 1, 2022; SB 174, s. 1.5.(b), S.L. 2023-12. Amended by HB 259, s. 42.21.(a), S.L. 2023-134.)

G.S. 105-154.1(a1) – Extension of Time to Make Election for 2022: This subsection was added as part of the 2023 SALT Workaround Update. New G.S. 105-154.1(a1) allows a partnership that could not make the election to be a Taxed Partnership on a timely filed North Carolina partnership income tax return for tax year 2022 to make the election by filing an amended return for tax year 2022 on or before October 15, 2023.

(Effective for taxable years beginning on or after January 1, 2022; HB 259, s. 42.21.(b). S.L. 2023-134.)

G.S. 105-154.1(b)(1) – Taxable Income of Taxed Partnership: This subdivision was amended as part of the 2023 SALT Workaround Update to remove the following partners from the computation of North Carolina taxable income of a Taxed Partnership:

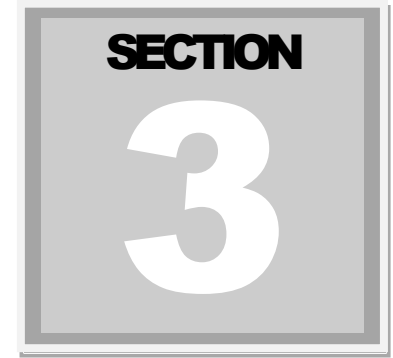
- (1) A partnership, including an entity that is classified as a partnership for federal income tax purposes.
- (2) An entity that is classified as a corporation for federal income tax purposes.

(Effective for taxable years beginning on or after January 1, 2022; SB 174, s. 1.5.(c), S.L. 2023- 12.)

G.S. 105-154.1(b)(1)b – Taxable Income of Taxed Partnership: This sub-subdivision was repealed as part of the 2023 SALT Workaround Update. Prior to its repeal, G.S. 105-154.1(b)(1)b required a Taxed Partnership to include each resident partner's distributive share of the Taxed Partnership's income or loss not attributable to North Carolina in its computation of North Carolina taxable income. Beginning with the 2023 tax year, a Taxed Partnership is only required to include each partner's distributive share of the Taxed Partnership's income or loss attributable to North Carolina in its computation of North Carolina taxable income.

(Effective for taxable years beginning on or after January 1, 2023; SB 174, s. 1.6.(a), S.L. 2023- 12.)

SECTION 3 – 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.)

The 2023 General Assembly further amended this subsection by setting a cap on the franchise tax for a holding company at five hundred dollars (\$500) for the first one million dollars (\$1,000,000) of its franchise tax base. As amended, the franchise tax rate is now five hundred dollars (\$500) for the first one million dollars (\$1,000,000) of the corporation's tax base as determined under G.S. 105-120.2(a) and one dollar and fifty cents (\$1.50) per one thousand dollars (\$1,000) of its tax base that exceeds one million dollars (\$1,000,000).

(Effective for taxable years beginning on or after January 1, 2025, and is applicable to the calculation of franchise tax reported on the 2024 and later corporate income tax returns; HB 259, s. 42.6A.(b), S.L. 2023-134.)

G.S. 105-122(b) – Franchise or Privilege Tax on Domestic and Foreign Corporations: Determination of Net Worth: Subdivision (2) was amended by the 2023 General Assembly to correct a statutory cross-reference defining qualified interest expense. As amended, the statute now specifically references the sub-subdivisions contained in G.S. 105-130.7B(b)(4)(a) through G.S. 105-130.7B(b)(4)(d). Previously, the statutory reference was G.S. 105-130.7B(b)(4).

(Effective April 3, 2023; SB 174, s. 1.2., S.L. 2023-12.)

New subdivision (2b) was added by the 2022 General Assembly to clarify that the net worth of a foreign entity that is filing a federal income tax return is based on the value of the assets in the United States.

The federal Tax Cut and Jobs Act enacted in 2017 changed the way foreign income is sourced for federal purposes which led to a potential inconsistency in the way foreign income was taxed for State franchise tax purposes. Prior to adding this clarification, the taxpayer's net worth base for franchise tax potentially included foreign attributes while the statutory apportionment requirement only permits the inclusion of domestic attributes. The statute now specifically states that only United States assets are included in the net worth base of a foreign entity.

(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; HB 83, s.1.1.(a), S.L. 2022-13.)

G.S. 105-122(d) – Franchise or Privilege Tax on Domestic and Foreign Corporations: Tax Base: The 2021 General Assembly amended this subsection 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.)

G.S. 105-122(d2) – Franchise or Privilege Tax on Domestic and Foreign Corporations: Tax Rate: The 2023 General Assembly amended this subsection by setting a cap on the franchise tax for a C Corporation at five hundred dollars (\$500) for the first one million dollars (\$1,000,000) of its franchise tax base. As amended, the franchise tax rate is now five hundred dollars (\$500) for the first one million dollars (\$1,000,000) of the corporation's tax base as determined under G.S. 105-120.2(a) and one dollar and fifty cents (\$1.50) per one thousand dollars (\$1,000) of its tax base that exceeds one million dollars (\$1,000,000).

(Effective for taxable years beginning on or after January 1, 2025, and is applicable to the calculation of franchise tax reported on the 2024 and later corporate income tax return; HB 259, s. 42.6A.(a), S.L. 2023-134.)

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: Neither an S Corporation nor a Taxed S Corporation are 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)(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, the 2021 General Assembly passed an amendment to conform North Carolina 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 Amounts Received Under Specified Grant Programs: This subdivision was amended to change the date a corporation that receives proceeds from the Business Recovery Grant Program is allowed to deduct the proceeds from federal taxable income. Under prior law, the deduction was effective January 1, 2021, and applied to proceeds received on or after that date. As amended, the deduction is effective January 1, 2020, and applies to proceeds received on or after that date.

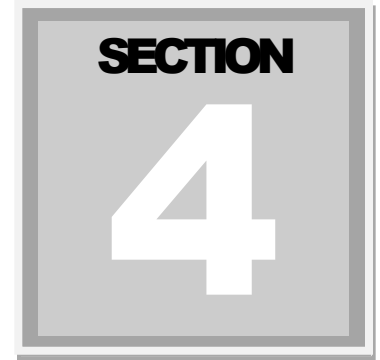
(Effective June 16, 2023; HB 103, s. 18.(a), S.L. 2023-46.)

INSURANCE GROSS PREMIUMS TAX – ARTICLE 8B

G.S. 58-6-25 – Insurance Regulatory Charge: The percentage rate to be used in calculating the insurance regulatory charge under this statute is two percent (2%) for the 2024 calendar year and the 2025 calendar year. This charge is a percentage of premiums tax liability.

(Effective October 3, 2023; HB 259, s. 30.1.(a), S.L. 2023-134.)

SECTION 4 – EXCISE TAX



PRIVILEGE TAXES – ARTICLE 2

G.S. 105-41 – Attorneys-At-Law and Other Professionals: This section was repealed.

(Effective July 1, 2024, and applies for taxes imposed for taxable years beginning on or after that date; HB 259, s. 42.7.(a), S.L. 2023-134)

G.S. 105-88(b) – Loan Agencies: This subsection was amended in conjunction with the repeal of privilege taxes on professionals that was previously imposed by G.S. 105-41. The amendment removes reference to “real estate as described G.S. 105-41.” As amended, G.S. 105-88 does not apply to, in part, “the business of negotiating loans on real estate.”

(Effective July 1, 2024; HB 259, s. 42.7.(c), S.L. 2023-134)

TOBACCO PRODUCTS TAX – ARTICLE 2A

G.S. 105-113.4 – Definitions: This section was amended modifying the definition of cost price and clarifying the definition of vapor product. This section was also amended implementing weight-based taxation for snuff and adding alternative nicotine products as a taxable product under Article 2A.

Cost Price and Vapor Products

Subsection (2) was amended modifying the definition of cost price in two respects. First, mirroring language that was in place prior to its amendment in 2022, cost price is determined “before any discount, rebate, or allowance.” Second, the definition removed reference to calculating the cost price based on “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.” This method of determining cost price was moved to G.S. 105-113.36A(f)(2), which allows, pending additional amendments effective July 1, 2025, the Department to determine the value of tobacco products based on either the cost price of comparable items or by the method removed under this subsection.

Subsection (13a) was amended clarifying that vapor products include, for example, synthetic nicotine. Specifically, vapor products are products that can be used to produce vapor from nicotine, *however derived*, in a solution.

(Effective April 3, 2023; SB 174, s. 3.1.-3.2.(a), S.L. 2023-12)

Weight-Based Taxation for Snuff and Taxation of Alternative Nicotine Products

The definition of cigar was renumbered from subsection (1b) to subsection (1c).

The definition of cigarette was renumbered from subsection (1c) to a new subsection: (1d).

Subsection (1b) was amended adding a definition for alternative nicotine products. An alternative nicotine product is a

noncombustible product that contains nicotine, whether natural or synthetic, but does not contain tobacco and is intended for human consumption, whether chewed, absorbed, dissolved, ingested, or by other means. This term does not include a vapor product or any product regulated by the United States Food and Drug Administration under Chapter V of the federal Food, Drug, and Cosmetic Act.

Subsection (10d) was added to define snuff. Snuff is “[a] tobacco product consisting of finely cut, ground, or powdered tobacco that is not intended to be smoked.”

Subsection (11a) amended the definition of tobacco product. As amended, a tobacco product is a “cigarette, a cigar, a vapor product, an alternative nicotine product, or any other product that contains tobacco and is intended for inhalation or oral use.”

(Effective July 1, 2025, and applies to sales or purchases occurring on or after that date; HB 259, s. 42.18.(a), S.L. 2023-134)

G.S. 105-113.4A(e) – Licenses: This subsection was amended by removing the requirement that the Department state on a license whether it was a duplicate or an amended license.

(Effective April 3, 2023; SB 174, s. 3.3., S.L. 2023-12)

G.S. 105-113.4D – Tax with Respect to Inventory on Effective Date of Tax Increase: This section was amended as a part of implementing the new taxation methodology for snuff and the new tax on alternative nicotine products.

This section was amended by clarifying that, for the purposes of this section, “tax increase” includes a new tax or a change to the methodology for calculating a tax that results in additional tax being due.”

(Effective July 1, 2025, and applies to sales or purchases occurring on or after that date; HB 259, s. 42.18.(a), S.L. 2023-134)

G.S. 105-113.4F(c) – Delivery Sales of Certain Tobacco Products; Age Verification: Filing Requirement: This subsection was amended limiting when a delivery seller is required to file documentation regarding a delivery sale. As amended, a delivery seller is only required to file a memorandum or a copy of the invoice for a delivery sale if there is tax due under Article 2A.

(Effective April 3, 2023, and applies to filings due on or after that date for sales made during the previous month; SB 174, s. 3.4.(a), S.L. 2023-12)

G.S. 105-113.4G – Records to be Kept: This section was amended clarifying the records that must be maintained and changing the record retention period for those records. This section was also subdivided into subsections.

The newly created subsection (a) clarifies that persons required to be licensed under Article 2A must keep complete and accurate records of all purchases, inventories, sales, shipments, and deliveries of tobacco products, *and any other information required by the Secretary.*

The newly created subsection (b) requires records be maintained for the applicable period of statute of limitations as set forth in Article 9. If the records apply to a transaction not required to be reported in a return, the records shall be kept for three years from the date of the transaction.

(Effective April 3, 2023, and applies to records for transactions occurring on or after that date; SB 174, s. 3.5.(a), S.L. 2023-12)

G.S. 105-113.12(a) – Distributor Must Obtain License: This section was amended removing licensing requirements for certain distributors who are delivery sellers. Previously, a distributor who is a delivery seller was required to obtain a license for each location from which the distributor ships delivery sales. As amended, a distributor who is a delivery seller must only obtain a license for each location that the distributor receives or stores *non-tax-paid cigarettes.*

(Effective April 3, 2023; SB 174, s. 3.6., S.L. 2023-12)

G.S. 105-113.36A – Tax Rates; Liability for Tax: This section was amended changing the taxation methodology for snuff and imposing a new tax on alternative nicotine products. It also made conforming changes to what may be used to determine the value of tobacco products when the taxpayer fails to produce satisfactory documentation to the Secretary.

Subdivision (a)(3) was amended taxing snuff at the rate of forty cents (40¢) per ounce and a proportionate rate on all fractional parts of an ounce. The tax must be computed based on the net weight as listed by the manufacturer on the package in accordance with federal law.

Subdivision (a)(4) was added imposing a tax on alternative nicotine products at the rate of ten cents (10¢) per container containing up to 20 units, and at the rate of one-half cent (1/2¢) per unit for any amount in a container containing over 20 units.

Subdivision (a)(5) was added containing the language previously in subsection (3), which imposes a tax on all other tobacco products at the rate of twelve and eight-tenths percent (12.8%) of the cost price.

Subsection (f) clarifies that if a person liable for the tax imposed by Part 3 of Article 2A cannot produce satisfactory documentation, the Secretary may determine a value based on the cost price, weight, count, or volume of comparable items.

(Effective July 1, 2025, and applies to sales or purchases occurring on or after that date; HB 259, s. 42.18.(b), S.L. 2023-134)

G.S. 105-113.36A(f) – Tax Rates; Liability for Tax: Documentation: This subsection was amended to allow additional discretion to the Secretary in determining the cost price of tobacco products when a taxpayer cannot produce satisfactory documentation. Previously, the Secretary could use the cost price of comparable items. As amended, the Secretary may use either: (1) the cost price of comparable items; or (2) the average of the actual price paid by the person liable for the tax for the item over the 12 calendar months before January 1 of the year in which the sale occurs.

(Effective April 3, 2023; SB 174, s. 3.2.(b), S.L. 2023-12)

G.S. 105-113.38B – Records: This section was amended narrowing the remote sellers who must maintain records under this section. This section was also amended as a part of implementing the new taxation methodology for snuff and the new tax on alternative nicotine products.

Narrowing Remote Sellers Required to Maintain Records

This section was amended requiring only remote sellers required to be licensed to maintain records under this section.

(Effective April 3, 2023; SB 174, s. 3.8.(a), S.L. 2023-12)

Weight-Based Taxation for Snuff and Taxation of Alternative Nicotine Products

Subsection (1) was amended limiting the record keeping requirements for remote sellers. As amended, only as to cigars, must a remote seller maintain “a list, updated annually, showing the cost price paid by the remote seller for each stock keeping unit” Previously, this was required for all other tobacco products.

Subsection (3) was amended requiring remote sellers to maintain records documenting “the cost price, weight, or count based on the applicable tax imposed of purchases of all tobacco products sold to consumers in this State.”

(Effective July 1, 2025, and applies to sales or purchases occurring on or after that date; HB 259, s. 42.18.(c), S.L. 2023-134)

G.S. 105-113.39A(a) – License Required: This subsection was amended narrowing license requirements for retail dealers. This subsection was also amended requiring an Other Tobacco Products License and Vapor License for applicable wholesale dealers and retail dealers. Previously, only one license was required for all tobacco products except for cigarettes.

Narrowing License Requirements for Certain Remote Sellers

This subsection was amended removing licensing requirements for certain retail dealers who are delivery sellers or remote sellers. Previously, a retail dealer who is a delivery seller or remote seller was required to obtain a license for each location from which the retailer dealer ships delivery sales or remote sales. As amended, a retail dealer who is a delivery seller or remote seller must only obtain a license for each location that the retail dealer receives or stores *non-tax-paid other tobacco products*.

(Effective April 3, 2023; SB 174, s. 3.8.(a), S.L. 2023-12)

Creation of New Licenses for Tobacco Products Subject to Part 3 of Article 2A

This subsection was amended requiring an Other Tobacco Products License and Vapor License for applicable wholesale dealers and retail dealers. Previously, only one license was required for all tobacco products except for cigarettes.

A wholesaler or retailer must obtain an Other Tobacco Products License for all the following locations:

1. Each location where a wholesale dealer makes tobacco products other than vapor products.
2. Each location where a wholesale dealer or a retail dealer receives or stores non-tax-paid tobacco products other than vapor products.
3. Each location from where a retail dealer that is a delivery seller or remote seller receives or stores non-tax-paid tobacco products for delivery sales or remote sales of tobacco products other than vapor products.

A wholesaler or retailer must obtain a Vapor Products License for all the following locations:

1. Each location where a wholesale dealer makes vapor products.
2. Each location where a wholesale dealer or a retail dealer receives or stores non-tax-paid vapor products.
3. Each location from where a retail dealer that is a delivery seller receives or stores non-tax-paid vapor products for delivery sales.

(Effective July 1, 2024; SB 174, s. 3.8.(b), S.L. 2023-12)

G.S. 105-113.39D – Use of Tax Proceeds: This section was repealed. Session Law 2023-11 further provided that the Department treat any portion of other tobacco product tax collections pursuant to this section, including transfers made to the University Cancer Research Fund by the Department of Revenue from July 2022 through December 31, 2022, as properly dispersed.

(Effective July 1, 2022, and applies retroactively to distributions for collections on or after that date; HB 2, s. 1.1, S.L. 2023-11)

ALCOHOLIC BEVERAGE LICENSE AND EXCISE TAXES – ARTICLE 2C

G.S. 105-113.88 – Record-Keeping Requirements: This section was amended clarifying the records that must be maintained and changing the record retention period for those records. This section was also amended clarifying the Secretary’s authority to inspect records.

Specifically, this section was amended clarifying a person required to file a report or return under this Article must keep a record of all documents used to determine information the person provides in a report or return *and any other information required by the Secretary* to determine the person's alcoholic beverage transactions.

This section was also amended clarifying that the Secretary or his or her designee has the right at any reasonable time to inspect records.

Finally, this section was amended requiring records be maintained for the applicable period of statute of limitations as set forth in Article 9. If the records apply to a transaction not required to be reported in a return, the records shall be kept for three years from the date of the transaction.

(Effective April 3, 2023, and applies to documents required to be kept for transactions occurring on or after that date; SB 174, s. 3.9.(a), S.L. 2023-12)

TAX ON INTERACTIVE SPORTS WAGERING OPERATORS – ARTICLE 2E

G.S. 105-113.125 – Credit for Payment of Motor Fuel Tax: This section was added as a part of the new tax on interactive sports wagering operators. This section incorporates the definitions from G.S. 18C-901 into Article 2E.

(Effective January 8, 2024, and applies to gross wagering revenue received on or after that date; HB 347, s. 5., S.L. 2023-42)

G.S. 105-113.126 – Tax on Interactive Sports Wagering Operators: This section was added as a part of the new tax on interactive sports wagering operators.

Subsection (a) imposes a tax at the rate of eighteen percent (18%) to the gross wagering revenue of the interactive sports wagering operator.

Subsection (b) allows an interactive sports wagering operator to carry forward a negative gross wagering revenue to the return filed for the subsequent month. However, no amount may be carried forward more than 12 months after the month in which the amount carried forward was originally due.

Subsection (c) provides that taxes levied by Article 2E are due when a return is required to be filed. A return is required to be filed monthly and is due by the “twentieth day of the month following the calendar month covered by the return.” It must be in the form prescribed by the Secretary.

Subsection (d) requires a person who is required to file a return under this Article to maintain a record of “all documents used to determine information the person provides in a return” and

that the records be open for inspection by the Secretary or an authorized representative of the Secretary. The records must be maintained for the applicable period of statute of limitations as set forth under Article 9.

Subsection (e) allows an interactive sports wagering operator to receive a refund of the tax paid on sports wagers that have been refunded. The interactive sports wagering operator may receive the refund through a credit on a subsequent monthly return.

(Effective January 8, 2024, and applies to gross wagering revenue received on or after that date; HB 347, s. 5., S.L. 2023-42)

G.S. 105-113.126A – Registration and Discontinuance Requirements: This section was added as a part of the new tax on interactive sports wagering operators.

Subsection (a) requires interactive sports wagering operators to register with the Secretary.

Subsection (b) provides that the registration “must be in a form required by the Secretary and include all information requested. If an interactive sports wagering operator fails to register, the Secretary must notify the Lottery Commission of the violation.”

Subsection (c) requires an interactive sports wagering operator to notify the Secretary in writing if the operator changes ownership or stops engaging in the licensed activities authorized under Article 9 of Chapter 18C.

(Effective January 8, 2024, and applies to gross wagering revenue received on or after that date; HB 347, s. 5., S.L. 2023-42)

G.S. 105-113.127 – Bond or Irrevocable Letter of Credit: This section was added as a part of the new tax on interactive sports wagering operators.

This section allows the Secretary to require a bond or irrevocable letter of credit from an interactive sports wagering operator. The amount of the bond or irrevocable letter of credit must be two times the interactive sports wagering operator's expected monthly tax liability under Article 2E. However, the bond may not be less than fifty thousand dollars (\$50,000) and may not be more than two million dollars (\$2,000,000).

(Effective January 8, 2024, and applies to gross wagering revenue received on or after that date; HB 347, s. 5., S.L. 2023-42)

G.S. 105-113.128 – Use of Tax Proceeds: This section was added as a part of the new tax on interactive sports wagering operators.

This section provides how revenue collected under Article 2E must be distributed. Specifically,

[t]he Secretary may retain the cost of administering this Article, not to exceed five hundred thousand dollars (\$500,000) a year, as reimbursement to the Department. The Lottery Commission shall, no later than 20 days after the end of the month, notify the Department of its unreimbursed expenses from administering the provisions of Article 9 of Chapter 18C of the General Statutes from the previous month. The Department shall reimburse the Lottery

Commission from the tax revenues collected under this Article no later than the end of the month in which the Department was notified.

The remainder of the net proceeds of the tax collected must be credited in accordance with subsections (1) through (5).

(Effective January 8, 2024, and applies to gross wagering revenue received on or after that date; HB 347, s. 5., S.L. 2023-42)

TAX ON MOTOR CARRIERS – ARTICLE 36B

G.S. 105-449.39 – Credit for Payment of Motor Fuel Tax: This section was amended clarifying when a motor carrier is entitled to credit on tax-paid motor fuel or tax-paid alternative fuel.

Specifically, the section was amended by removing reference to a motor carrier being entitled to credit on its quarterly return. Where an intrastate motor carriers do not file quarterly returns, this was removed clarifying that this section is applicable to both intrastate and interstate motor carriers.

This section was also amended clarifying that credit is based *not* on the date the fuel is purchased but on the date the fuel is *placed into the qualified motor vehicle*. This, for example, clarifies that to obtain credit for the tax, a motor carrier maintaining bulk storage of tax-paid motor fuel or alternative fuel must substantiate withdrawals into qualified motor vehicles. See 17 NCAC 12A .0202.

(Effective April 3, 2023; SB 174, s. 3.10., S.L. 2023-12)

G.S. 105-449.42 – Payment of Tax: This section was amended clarifying the due date of returns and when tax is due from motor carriers exempt from filing a return.

Specifically, the section was amended clarifying that tax levied by Article 36B is not due when a motor carrier files a return but due when a quarterly return is due under G.S. 105-449.45.

The section was also amended clarifying that for a motor carrier who is exempt from filing a return under G.S. 105-449.45(b)(2), the tax levied by Article 36B is due when the tax becomes collectible under G.S. 105-241.22.

(Effective April 3, 2023; SB 174, s. 3.11., S.L. 2023-12)

G.S. 105-449.45 – Return of Carriers: This section was amended clarifying the due date for a quarterly return and clarifying the exemption from filing requirements for intrastate motor carriers.

Subsection (a) was amended clarifying that a quarterly return covers a calendar quarter and is due by the last day of the month following the quarter.

Subdivision (b)(2) of this section was amended clarifying that for a motor carrier to be exempt from filing a return required by this section the motor carrier must be an intrastate motor carrier and operate exclusively in North Carolina.

(Effective April 3, 2023; SB 174, s. 3.12., S.L. 2023-12)

G.S. 105-449.46 – Record-Keeping Requirements; Inspection Authority: This section was amended clarifying both the records that must be maintained and the record retention period for those records. This section was also subdivided into subsections.

Subsection (a) was added clarifying that interstate motor carriers must maintain records in accordance with the International Fuel Tax Agreement and any other information required by the Secretary. Further, intrastate motor carriers must maintain records to determine the person's motor fuel or alternative fuel transactions and any other information as required by the Secretary. Intrastate motor carriers must maintain their records for four years after the date of the transaction.

Subsection (b) was created from the original language and removes a gender specific reference to the Secretary.

The catchline was also updated to reflect that the statute includes record-keeping requirements.

(Effective April 3, 2023 and applies to records for transactions occurring on or after that date; SB 174, s. 3.13.(a), S.L. 2023-12)

G.S. 105-449.47 – Licensure of Vehicles: This section was amended extending the grace period to display decals and carry a copy of a motor carrier license to intrastate motor carriers. Previously, this grace period only applied to interstate motor carriers subject to the International Fuel Tax Agreement.

Subsection (a2) was created from existing language from subsection (a1). It was also amended providing that unless provided unless operating under a temporary permit under G.S. 105-449.49 or operating under the grace period in accordance with subsection (a3) of this section, the motor carrier must carry a copy of its current calendar year license and display current calendar year decal on each side of the vehicle at all times.

Subsection (a3) was added and sets forth the eligibility requirements for the grace period. To be eligible for the grace period, the motor carrier must do all of the following:

1. Hold an active motor carrier license as of December 31 of the preceding calendar year issued by the Department or issued by another jurisdiction pursuant to the International Fuel Tax Agreement.
2. Submit an application for licensure to the Department on or before December 31 of the preceding year.
3. Display the previous calendar year's decal issued by the Department or issued by another jurisdiction pursuant to the International Fuel Tax Agreement.
4. Carry a copy of the previous calendar year's license in the qualified motor vehicle issued by the Department or issued by another jurisdiction.

(Effective April 3, 2023; SB 174, s. 3.14., S.L. 2023-12)

GASOLINE, DIESEL, AND BLENDS – ARTICLE 36C

G.S. 105-449.61(a) – Tax Restrictions; Administration: No Local Tax: This subsection was amended making conforming changes to the motor fuel refunds that may be subject to a county or city tax. The statute authorizing refund claims for off-highway use of motor fuel was moved from G.S. 105-449.107(a) to G.S. 105-449.106(d). The statutory references were updated to reflect this change.

(Effective April 3, 2023; SB 174, s. 3.15., S.L. 2023-12)

G.S. 105-449.80(a) – Tax rate: This subsection was amended clarifying the data sources used in calculating the motor fuel excise tax rate.

Subdivision (1) was amended clarifying that the Department use the percentage change in population for the *prior* calendar year for which the tax applies.

Subdivision (2) was amended clarifying the applicable Consumer Price Index for All Urban Consumers. As amended, the Department must use the “United States city average for energy index contained in the detailed report released in the *November* prior to the applicable calendar year by the Bureau of Labor Statistics of the United States Department of Labor” [Emphasis added.]

(Effective retroactively to January 1, 2017; HB 259, s. 42.22.(a), S.L. 2023-134)

G.S. 105-449.81 – Excise Tax on Motor Fuel: This section was amended clarifying the taxation on fuel grade ethanol or biodiesel and clarifying when tax applies for motor fuel transferred within the terminal transfer system without a license.

Subdivision (3b)d. was added imposing the excise tax on fuel grade ethanol or biodiesel if it is removed from the terminal transfer system and is not subject to the federal excise tax imposed by § 4081 of the Internal Revenue Code.

Subsection (5) was amended clarifying that the excise tax is imposed on transfers within the terminal transfer if: (1) it is subject to, upon transfer, to the federal excise tax imposed by section § 4081 of the Internal Revenue Code; or (2) the motor fuel is transferred *at a terminal* to a person not licensed under Article 36B.

(Effective April 3, 2023; SB 174, s. 3.21., S.L. 2023-12)

G.S. 105-449.88(12) – Exemptions from the Excise Tax: This subsection was added creating an additional exemption from the excise tax. As amended, the excise tax on motor fuel does not apply to fuel grade ethanol or biodiesel transferred between terminals within North Carolina, if the fuel grade ethanol or biodiesel is owned by the same licensed supplier.

(Effective April 3, 2023, and applies to transfers occurring on or after that date; SB 174, s. 3.22.(a), S.L. 2023-12)

G.S. 105-449.97(e) – Deductions and Discounts Allowed a Supplier when Filing a Return: Subsection (e) was added clarifying that when filing a return, a licensed supplier who is the position holder may take a credit for tax-paid motor fuel in the terminal system.

(Effective April 3, 2023; SB 174, s. 3.16., S.L. 2023-12)

G.S. 105-449.106(a) – Quarterly Refunds for Nonprofit Organizations, Special Mobile Equipment, and Off-Highway Use: This subsection was amended removing the requirement that a nonprofit organization must have the refund claim signed by the chief executive officer or another officer designated in its charter or bylaws. The person filing on behalf of the nonprofit organization must otherwise be authorized by the organization to file the refund claim.

(Effective April 3, 2023; SB 174, s. 3.17., S.L. 2023-12)

G.S. 105-449.121 – Deductions and Discounts Allowed a Supplier when Filing a Return: This section was amended changing the record retention period for records to be maintained and clarifying the Secretary’s inspection authority for records.

Subsection (a) was amending requiring records be maintained for the applicable period of statute of limitations as set forth in Article 9. If the records apply to a transaction not required to be reported in a return, the records shall be kept for three years from the date of the transaction.

Subsection (b) was amended clarifying that the Secretary shall have the right at any reasonable time to inspect the records.

(Effective April 3, 2023, and applies to documents required to be kept for transactions occurring on or after that date; SB 174, s. 3.18.(a), S.L. 2023-12)

ALTERNATIVE FUEL – ARTICLE 36D

G.S. 105-449.139(a) – Miscellaneous Provisions: This subsection was amended changing the record retention period for records required to be maintained and clarifying the Secretary’s inspection authority for records.

Specifically, this section was amended requiring records be maintained for the applicable period of statute of limitations as set forth in Article 9. If the records apply to a transaction not required to be reported in a return, the records shall be kept for three years from the date of the transaction.

This section was also amended by clarifying that the Secretary or a person designated by the Secretary shall have the right at any reasonable time to inspect the records.

(Effective April 3, 2023, and applies to documents required to be kept for transactions occurring on or after that date; SB 174, s. 3.19.(a), S.L. 2023-12)

GASOLINE AND OIL INSPECTION AND REGULATION

CHAPTER 119 – ARTICLE 3

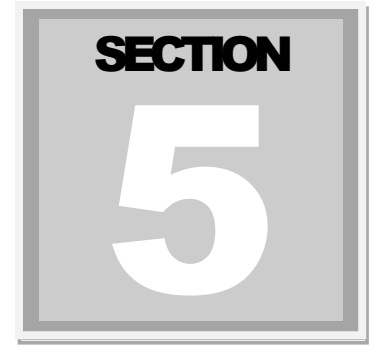
G.S. 119-18 – Inspection Tax and Distribution of the Tax Proceeds: This subsection was amended changing the record retention period and clarifying the Secretary’s authority to require returns contain certain information and be in a certain form. It also clarified the Secretary’s inspection authority for records.

Specifically, this section was amended requiring that returns be in the form prescribed by, and contain information required by, the Secretary. This section also clarified that the Secretary or a person designated by the Secretary shall have the right at any reasonable time to inspect the records.

This section was also amended requiring records be maintained for the applicable period of statute of limitations as set forth in Article 9.

(Effective April 3, 2023, and applies to documents required to be kept for transactions occurring on or after that date; SB 174, s. 3.20.(a), S.L. 2023-12)

SECTION 5 – SALES AND USE TAX



SALES AND USE TAX – ARTICLE 5

DEFINITIONS

G.S. 105-164.3 – Definitions: The 2023 General Assembly added new defined terms and amended definitions for existing defined terms. The changes and their effective dates are as follows:

Breast Pump: The definition of the term was added to be used in a new exemption and is defined as “[a]n electrically or manually controlled pump device designed or marketed to be used to express milk from a human breast during lactation. The term includes the electrically or manually controlled pump device and any battery, AC adapter, or other power supply unit packaged and sold with the pump device at the time of sale to power the pump device.”

(Effective November 1, 2023, and applies to sales occurring on or after that date; HB 259, s. 42.16.(a), S.L. 2023-134.)

Breast Pump Collection and Storage Supplies: The definition of the term was added to be used in a new exemption and is defined as “[i]tems of tangible personal property designed or marketed to be used in conjunction with a breast pump to collect milk expressed from a human breast and to store collected milk until it is ready for consumption. The term includes breast shields and breast shield connectors, breast pump tubes and tubing adapters, breast pump valves and membranes, backflow protectors and backflow protector adapters, bottles and bottle caps specific to the operation of the breast pump, breast milk storage bags, and other items that may be useful to initiate, support, or sustain breast-feeding using a breast pump during lactation that may be sold separately, but are generally sold as part of a breast pump kit. The term does not include (i) bottles and bottle caps not specific to the operation of the breast pump, (ii) breast pump travel bags and other similar carrying accessories, including ice packs, labels, and other similar products, (iii) breast pump cleaning supplies, (iv) nursing bras, bra pads, breast shells, and other similar products, and (v) creams, ointments, and other similar products that relieve breastfeeding-related symptoms or conditions of the breasts or nipples, unless sold as part of a breast pump kit pre-packaged by the breast pump manufacturer or distributor.”

(Effective November 1, 2023, and applies to sales occurring on or after that date; HB 259, s. 42.16.(a), S.L. 2023-134.)

Breast Pump Kit: The definition of the term was added to be used in a new exemption and is defined as “[a] kit that contains a breast pump and one or more of the following items: breast pump collection and storage supplies and other taxable items of tangible personal property that

may be useful to initiate, support, or sustain breast-feeding using a breast pump during lactation, so long as the other taxable items of tangible personal property sold with the breast pump kit at the time of sale are less than ten percent (10%) of the total sales price of the breast pump kit.”

(Effective November 1, 2023, and applies to sales occurring on or after that date; HB 259, s. 42.16.(a), S.L. 2023-134.)

Prepared Food: The definition of the term was amended and recodified in N.C. Gen. Stat. § 105-164.4L.

(Effective April 3, 2023; SB 174, s. 2.1.(a), S.L. 2023-12.)

Qualified Aircraft: The definition of the term was amended to expand qualifying aircraft and is now defined as “[a]n aircraft with a maximum take-off weight of 2,000 pounds and above.” [Emphasis added.]

(Effective November 1, 2023, and applies to sales occurring on or after that date; HB 259, s. 42.12.(a), S.L. 2023-134.)

Streamlined Agreement: The definition of the term was amended to update the date and is now defined as “[t]he Streamlined Sales and Use Tax Agreement as amended as of *December 22, 2022.*”

(Effective April 3, 2023; SB 174, s. 2.5., S.L. 2023-12.)

Note: The Revisor of Statutes is authorized to renumber the subdivisions of G.S. 105-164.3 to ensure that the subdivisions are listed in alphabetical order and in a manner that reduces the current use of alphanumeric designations, to make conforming changes, and to reserve sufficient space to accommodate future additions to the statutory section.

SALES AND USE TAX IMPOSITIONS

G.S. 105-164.4J(k) – Efficient Administration of the Sales Tax Imposed on Marketplace-Facilitated Sales: This subsection was added to provide the following: “[w]hen the Secretary finds it necessary for the efficient administration of [Article 5 of Chapter 105 of the North Carolina General Statutes] to regard any sales representatives, solicitors, representatives, consignees, peddlers, or truckers as agents of the dealers, distributors, consignors, supervisors, employers, or persons under whom they operate or from whom they obtain the items sold by them regardless of whether they are making sales on their own behalf or on behalf of these dealers, distributors, consignors, supervisors, employers, or persons, the Secretary may so regard them and may regard the dealers, distributors, consignors, supervisors, employers, or persons as ‘marketplace facilitators’ for the purpose of [Article 5 of Chapter 105 of the North Carolina General Statutes] and may treat the sales they make as ‘marketplace-facilitated sales’ and the sellers as ‘marketplace sellers.’”

(Effective April 3, 2023; SB 174, s. 2.2., S.L. 2023-12.)

G.S. 105-164.4L – Sales Tax Imposed at the General Rate on Prepared Food: This section was added to codify administrative interpretations related to the taxation of prepared food and to consolidate the definitions and imposition statutes. The section provides the following:

- “(a) Prepared Food Definition. – The term ‘prepared food’ means food that meets at least one of the following conditions:
- (1) It is sold in a heated state, or it is heated by the retailer.
 - (2) It consists of two or more foods mixed or combined by the retailer for sale as a single item. This does not include:
 - a. Food containing raw eggs, fish, meat, or poultry that requires cooking by the consumer as recommended by the Food and Drug Administration in chapter 3, part 401.11 of its Food Code so as to prevent foodborne illnesses.
 - b. Food that is only sliced, repackaged, or pasteurized by the retailer.
 - (3) It is sold with eating utensils provided by the retailer, such as plates, knives, forks, spoons, glasses, cups, napkins, and straws. A plate does not include a container or packaging used to transport the food. An eating utensil placed in a package with the food items by a person other than the retailer, if that other person’s NAICS classification code is that of a manufacturer, sector 311, is not treated as an eating utensil provided by the retailer. For a packager with any other NAICS classification code, the retailer is considered to have provided the eating utensil.
- (b) Utensils Provided by the Retailer. – Based on a retailer’s prepared food sales percentage, determined in accordance with subsection (c) of this section, the phrase ‘provided by the retailer,’ as described in subdivision (3) of subsection (a) of this section, has the following meanings:
- (1) Sales percentage of greater than seventy-five percent (75%). – If a retailer has a prepared food sales percentage of greater than seventy-five percent (75%), ‘provided by the retailer’ means the retailer makes eating utensils available to purchasers, except that an item sold by the retailer containing four or more servings packaged as one item and sold for a single price does not become prepared food because the retailer makes utensils available to the purchaser of the item, but is prepared food if the retailer physically gives or hands utensils to the purchaser of the item. Serving sizes are determined based on the label of an item sold. If no label is available, a retailer must reasonably determine the number of servings in an item.
 - (2) Sales percentage of seventy-five percent (75%) or less. – If a retailer has a prepared food sales percentage of seventy-five percent (75%) or less, ‘provided by the retailer’ means the retailer’s business practice is to physically give or hand eating utensils to purchasers, except that plates, bowls, glasses, and cups necessary for the purchaser to receive the food need only be made available to purchasers.
- (c) Prepared Food Sales Percentage. –
- (1) Definition. – A percentage determined by dividing the following described numerator by the following described denominator:
 - a. The numerator is the retailer’s annual sales of prepared food described in subdivisions (1) and (2) of subsection (a) of this section and food sold when plates, bowls, glasses, or cups are necessary to receive the food. The numerator shall not include alcoholic beverages or food excluded from prepared food.
 - b. The denominator is the retailer’s total annual sales of all food and prepared food, excluding alcoholic beverages.
 - (2) Administration of definition. –
 - a. A retailer must calculate the prepared food sales percentage for each tax

year or business fiscal year based on the retailer's data from the prior tax year or business fiscal year, as soon as possible after accounting records are available, but not later than 90 days after the beginning of the retailer's tax year or business fiscal year.

- b. A single prepared food sales percentage shall be determined annually for all of the retailer's establishments in this State.
- c. A new retailer shall make a good-faith estimate of its prepared food sales percentage for its first year in business. The new retailer must adjust its good-faith estimate prospectively after the first three months of its business operation if actual prepared food sales percentages materially affect the seventy-five percent (75%) threshold described in subsection (b) of this section."

(Effective April 3, 2023; SB 174, s. 2.1.(b), S.L. 2023-12.)

MISCELLANEOUS ITEMS

G.S. 105-164.11B – Recover Sales Tax Paid: This section was amended to provide sales tax recovery to marketplace facilitators and provides:

“(a) Retailers. – A retailer who pays sales and use tax on an item that is separately stated on an invoice or similar billing document given to the retailer at the time of sale and subsequently resells the item at retail, without the item being used by the retailer, may recover the sales or use tax originally paid to a seller as provided in this subsection. A retailer entitled to recover tax under this subsection may reduce taxable receipts by the taxable amount of the purchase price of the item resold for the period in which the retail sale occurs. A recovery of tax allowed under this subsection is not an overpayment of tax and, where the recovery is taken, a refund of the tax originally paid may not be requested from the seller pursuant to the authority under [N.C. Gen. Stat. §] 105-164.11. Any amount for tax recovered under this subsection in excess of tax due for a reporting period under [Article 5 of Chapter 105 of the North Carolina General Statutes] is not subject to refund. Any tax recovered under this subsection may be carried forward to a subsequent reporting period and taken as an adjustment to taxable receipts. The records of the retailer must clearly reflect and support the adjustment to taxable receipts for the period in which the adjustment is made.

(b) Marketplace Facilitators. – A marketplace facilitator may recover the sales or use tax originally paid to a marketplace seller as provided in this subsection when the marketplace facilitator pays sales and use tax to a marketplace seller on a marketplace-facilitated sale for which the marketplace facilitator is considered the retailer pursuant to [N.C. Gen. Stat. §] 105-164.4J(b), and the tax is separately stated on an invoice or similar billing document given to the marketplace facilitator at the time of sale. A marketplace facilitator entitled to recover tax under this subsection may reduce taxable receipts by the taxable amount of the marketplace-facilitated sale that is taxed by the marketplace seller for the period in which the retail sale occurs. A recovery of tax allowed under this subsection is not an overpayment of tax and, where the recovery is taken, a refund of the tax originally paid may not be requested from the seller pursuant to the authority under [N.C. Gen. Stat. §] 105-164.11. Any amount for tax recovered under this subsection in excess of tax due for a reporting period under [Article 5 of Chapter 105 of the North Carolina General Statutes] is not subject to refund. Any tax

recovered under this subsection may be carried forward to a subsequent reporting period and taken as an adjustment to taxable receipts. The records of the retailer must clearly reflect and support the adjustment to taxable receipts for the period in which the adjustment is made.” [Emphasis added.]

(Effective April 3, 2023; SB 174, s. 2.3., S.L. 2023-12.)

EXEMPTIONS AND EXCLUSIONS

G.S. 105-164.13 – Exemptions and Exclusions: The 2023 General Assembly added and enacted clarifying and substantive changes to the exemptions from sales and use tax. The changes and their effective dates are as follows:

(11)b. – Exemption for Sales of Alternative Fuel Tax in Article 36D: This sub-subdivision was amended in conjunction with changes to the frequency that a taxpayer may file a claim for refund of the tax imposed in Article 36D on alternative fuel. The subdivision as amended provides an exemption for “[a]lternative fuel taxed under Article 36D of this Chapter, unless a refund of that tax is allowed under [N.C. Gen. Stat. §] 105- 449.106(d) or [N.C. Gen. Stat. §] 105-449.107.” [Emphasis added.]

(Effective retroactively to January 1, 2023, and applies to applications of refunds submitted on or after that date; SB 174, s. 2.4.(a), S.L. 2023-12.)

(11b) – Exemption on Certain Sales of Aviation Gasoline and Jet Fuel for Use in Commercial Aircraft: This subdivision was amended to extend the expiration date of the exemption to January 1, 2029.

(Effective October 3, 2023; HB 259, s. 42.13.(a), S.L. 2023-134.)

(24) – Exemption for Fuel and Consumables Used by Boats Transporting Freight on Inland and Intracoastal Waterways: This subdivision was amended to broaden the exemption to include boats transporting freight on inland and intracoastal waterways in intrastate commerce. The exemption now provides an exemption from sales and use tax on “[s]ales of fuel and other tangible personal property for use or consumption by or on a watergoing vessel when delivered to an officer or agent of the vessel for the use of the vessel engaged in either of the activities listed in this subdivision. Sales of fuel and other tangible personal property made to officers, agents, members of the crew, or passengers of these vessels for their personal use are not exempt from payment of the sales tax. The activities are:

- a. The transport of freight in intrastate, interstate, or foreign commerce, whether on the high seas, intracoastal waterways, sounds, or rivers.
- b. The transport of passengers for hire exclusively on the high seas.”

(Effective November 1, 2023, and applies to sales occurring on or after that date; HB 259, s. 42.14.(a), S.L. 2023-134.)

(35) – Exemption on Sales by a Nonprofit Civic, Charitable, Educational, Scientific, Literary, or Fraternal Organization: This subdivision was amended to clarify that a qualifying nonprofit may have more than one annual sales period as long as all of the conditions in the statute are met. The subsection provides an exemption from sales and use

tax on “[s]ales by a nonprofit civic, charitable, educational, scientific, literary, or fraternal organization when all of the conditions listed in this subdivision are met. This exemption does not apply to gross receipts derived from an admission charge to an entertainment activity. *The conditions are:*

- a. The sales are conducted only upon an annual basis for the purpose of raising funds for the organization's activities.
- b. The proceeds of the sale are actually used for the organization's activities.
- c. The products sold are delivered to the purchaser within 60 days after the first solicitation of any sale made during the organization's annual sales period.
- d. *Each annual sales period occurs at least 60 days after the beginning of the prior annual sales period.*
- e. *Each annual sales period funds a distinct and different program from the other annual sales periods occurring during the year.*
- f. *Each annual sales period sells products that are distinct and different from the products sold during the other annual sales periods occurring during the year.”*

[Emphasis added.]

(Effective April 3, 2023; SB 174, s. 2.4.(b), S.L. 2023-12.)

(61a)m. – Exemption for Repair, Maintenance, and Installation Services on a Qualified Aircraft or a Qualified Jet Engine: This sub-subdivision was amended in conjunction with the expanded definition of a qualified aircraft. The exemption now provides an exemption from sales and use tax on the sales price of or the gross receipts derived from the repair, maintenance, and installation services on “[a]ny of the following:

1. A qualified aircraft.
2. A qualified jet engine.”

(Effective November 1, 2023, and applies to sales occurring on or after that date; HB 259, s. 42.12.(b), S.L. 2023-134.)

(65) & (65a) – Exemption for Certain Purchases by a Professional Motorsports Racing Team: These subdivisions were amended to extend the expiration date on the exemptions until January 1, 2028.

(Effective November 1, 2023, and applies to sales occurring on or after that date; HB 259, s. 42.11.(a), S.L. 2023-134.)

(74) – Exemption for Continuing Care Retirement Communities: This subdivision was added and provides an exemption from sales and use tax on “[s]ales of items by a provider of continuing care to its residents, other than sales of alcoholic beverages. A provider of continuing care must pay sales and use tax on the purchase price of an item that is exempt from tax under this subdivision as if the provider is the user of the item. As a result, the provider of continuing care is not required to pay sales or use tax if the purchase would be exempt if purchased for use, not resale, by the provider. The terms ‘provider,’ ‘continuing care,’ and ‘resident’ have the same meanings as defined in [N.C. Gen. Stat. §] 58-64-1. The term ‘alcoholic beverage’ has the same meaning as defined in [N.C. Gen. Stat. §] 18B-101.”

(Effective November 1, 2023, and applies to sales occurring on or after that date; HB 259, s. 42.10.(a), S.L. 2023-134.)

(74) – Exemption on Sales of Breast Pumps: This subdivision was added and provides an exemption from sales and use tax on “[s]ales of breast pumps, including repair and replacement parts, breast pump kits, and breast pump collection and storage supplies.”

(Effective November 1, 2023, and applies to sales occurring on or after that date; HB 259, s. 42.16.(b), S.L. 2023-134.)

G.S. 105-164.13E – Exemption for Farmers: The 2023 General Assembly amended G.S. 105-164.13E. The change and its effective date are as follows:

(a)(2) – Exemption for Compost: This sub-subdivision was amended to expand the items a qualifying or conditional farmer may purchase for use in farming operations. The sub-subdivision now provides an exemption from sales and use tax on the following purchases by a qualified farmer or conditional farmer if used primarily in farming operations:

...

“(2) Commercial fertilizer, lime, land plaster, plastic mulch, plant bed covers, potting soil, baler twine, *compost*, and seeds.” [Emphasis added.]

(Effective October 1, 2023; SB 582, s. 1.4.(a), S.L. 2023-63.)

REFUNDS

G.S. 105-164.14A – Economic Incentive Refunds: The 2023 General Assembly extended the expiration date for certain refunds. The changes and their effective date are as follows:

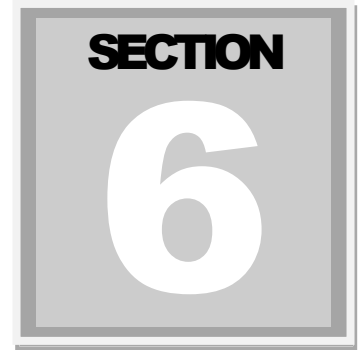
(a)(4) – Refund for Certain Purchases of Aviation Gasoline or Jet Fuel by a Professional Motorsports Team or Sanctioning Body: This sub-subdivision was amended to extend the expiration date of the refund until January 1, 2029. The refund now applies to purchases made on or before January 1, 2029.

(Effective October 3, 2023; HB 259, s. 42.11.(b), S.L. 2023-134.)

(a)(5) – Refund for Certain Purchases by a Professional Motorsports Team: This sub-subdivision was amended to extend the expiration date of the refund until January 1, 2028. The refund now applies to purchases made on or before January 1, 2028.

(Effective October 3, 2023; HB 259, s. 42.11.(b), S.L. 2023-134.)

SECTION 6 – TRANSPORTATION COMMERCE TAX



TRANSPORTATION COMMERCE TAX – ARTICLE 5J

The 2023 General Assembly amended Subchapter I of Chapter 105 of the General Statutes to add Article 5J – Transportation Commerce Tax. This new tax is effective July 1, 2025, and applies to for-hire ground transport services occurring on or after that date. The new article provides the following:

G.S. 105-187.90 – Definitions:

The following definitions apply to this Article:

- (1) Reserved for future codification purposes.
- (2) Reserved for future codification purposes.
- (3) Exclusive-ride service. – A for-hire ground transport service requested by a passenger who requests exclusive use of the vehicle.
- (4) Reserved for future codification purposes.
- (5) For-hire ground transport service. – Ground transportation in a passenger vehicle provided by a for-hire ground transport service provider for which a passenger is charged a fee.
- (6) For-hire ground transport service provider. – A transportation network company as defined in [N.C. Gen. Stat. §] 20-280.1 or a taxi service regulated under [N.C. Gen. Stat. §] 160A-304.
- (7) Reserved for future codification purposes.
- (8) Reserved for future codification purposes.
- (9) Shared for-hire ground transport service. – A for-hire ground transport service for which an individual has been matched with another individual by a for-hire ground transport service provider.
- (10) Reserved for future codification purposes.

G.S. 105-187.91 – Tax Imposed:

- (a) Levy and Rates. – An excise tax at the rates listed in this subsection is imposed on the gross receipts derived from each for-hire ground transport service if the passenger boards the vehicle in this State and regardless of whether the service is completed. The rates are:
 - (1) For an exclusive-ride service, one and one-half percent (1.5%).
 - (2) For a shared-ride service, one percent (1%).
- (b) Trust Tax. – The tax imposed by this Article is intended to be passed on to and borne by the purchaser of the for-hire ground transport service. The for-hire ground transport service provider, and not the vehicle driver, must collect the tax due. The tax is a debt from the purchaser to the for-hire ground transport service provider until paid and is recoverable at law by the for-hire ground transport service provider in the same manner as other debts. A for-hire ground transport service provider is considered to act as a

trustee on behalf of the State when it collects tax from the purchaser on a taxable transaction. The tax must be stated and charged separately on any documentation provided to the purchaser by the for-hire ground transport service provider at the time of the transaction.

G.S. 105-187.92 – Registration:

- (a) Requirement and Application. – A for-hire ground transport service provider that is not otherwise registered with the Department pursuant to [N.C. Gen. Stat. §] 105-164.29 must register with the Department.
- (b) Issuance. – A certificate of registration is not assignable and is valid only for the person in whose name it is issued. A copy of the certificate of registration must be displayed at each place of business.
- (c) Term. – A certificate of registration is valid unless it is revoked for failure to comply with the provisions of this Article or becomes void. A certificate issued to a person who makes taxable sales or a person liable for tax under this Article becomes void if, for a period of 18 months, the person files no returns or files returns showing no sales.
- (d) Revocation. – The failure of a retailer to comply with this Article is grounds for revocation of the person's certificate of registration. Before the Secretary revokes a person's certificate of registration, the Secretary must notify the person that the Secretary proposes to revoke the certificate of registration and that the proposed revocation will become final unless the person objects to the proposed revocation and files a request for a Departmental review within the time set in [N.C. Gen. Stat. §]105-241.11 for requesting a Departmental review of a proposed assessment. The notice must be sent in accordance with the methods authorized in [N.C. Gen. Stat. §]105-241.20. The procedures in Article 9 of [Chapter 105 of the North Carolina General Statutes] for review of a proposed assessment apply to the review of a proposed revocation.

G.S. 105-187.93 – Administration: Except as otherwise provided in this Article, the tax imposed by this Article shall be collected and administered in the same manner as the State sales and use taxes imposed by Article 5 of [Chapter 105 of the North Carolina General Statutes]. The provisions of Article 9 of [Chapter 105 of the North Carolina General Statutes] that are not inconsistent with this Article, including administration, auditing, making returns, promulgation of rules and regulations by the Secretary, additional taxes, assessments and assessment procedure, imposition and collection of taxes and the lien thereof, and penalties, are made a part of this Article and shall be applicable thereto.

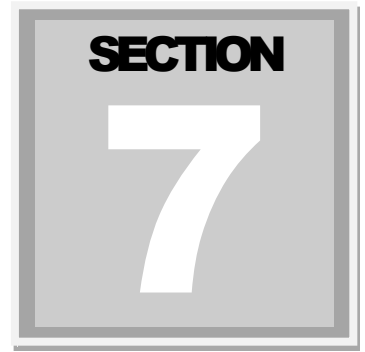
G.S. 105-187.94 – Exemptions and Refunds: The exemptions and refunds allowed in Article 5 of [Chapter 105 of the North Carolina General Statutes] do not apply to sales that the State cannot constitutionally tax.

G.S. 105-187.95 – Use of Tax Proceeds:

Each quarter, the Secretary shall credit the net tax proceeds of the taxes collected under this Article to the Highway Fund. The Secretary may retain the cost of administering this Article as reimbursement to the Department.

(Effective July 1, 2025, and applies to for-hire ground transport services occurring on or after that date; HB 259, s. 42.19, S.L. 2023-134.)

SECTION 7 – 911 SERVICE CHARGE

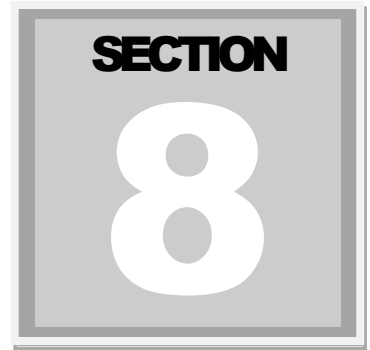


911 SERVICE CHARGE FOR PREPAID WIRELESS TELECOMMUNICATIONS SERVICE – ARTICLE 5H

G.S. 143B-1414(c) – Service Charge for Prepaid Wireless Telecommunications Service; Seller Collects 911 Service Charge on Each Retail Transaction Occurring in this State; Remittances to Department of Revenue and Transfer to 911 Fund: This subsection was amended to increase the amount of funds the Secretary of Revenue may retain from the remittance received by the Department. The subsection now provides, in part, “[t]he Secretary of Revenue may retain the costs of collection from the remittances received under subsection (b) of this section, *in the amount of seven hundred fifty thousand dollars (\$750,000)* a year of the total 911 service charges for prepaid wireless telecommunications service remitted to the Department. . . .”
[Emphasis added]

(Effective July 1, 2023; HB 259, s. 34.3, S.L. 2023-134.)

SECTION 8 – LOCAL GOVERNMENT



G.S. 105-275 – Property Classified and Excluded from the Tax Base: Provides a new subdivision (50) that creates an exclusion for fifty percent (50%) of the appraised value of real and personal property located at a qualifying airport that is customarily used for aviation purposes at the airport or for commercial activities typically located at and associated with airport activities.

(Effective for taxable years beginning on or after July 1, 2024; HB 259, s. 42.23.(a), S.L. 2023-134.)

G.S. 105-277.3(a)(1) – Agricultural Land: Provides that income from the sale of honey is included within the meaning of gross income, for purposes of meeting the income requirement for participation in the Present-Use Value Program.

(Effective for taxable years beginning on or after July 1, 2023; SB 582, s. 1(a), S.L. 2023-63.)

G.S. 105-277.9 – Taxation of Property Inside Certain Roadway Corridors: (Repealed). Removes special classification for real property lying within a transportation corridor marked on an official map filed under Article 2E of Chapter 136 of the General Statutes.

(Effective April 3, 2023; SB 174, s. 4.1, S.L. 2023-12.)

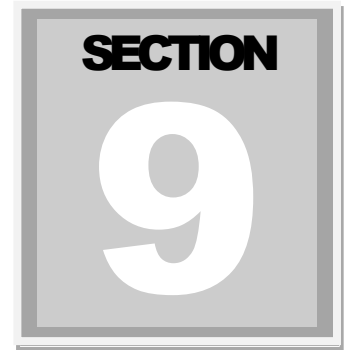
G.S. 105-345 – Right of Appeal: Updates language in statute providing for appeal of Property Tax Commission decisions to the North Carolina Court of Appeals, in order to make the language conform to the North Carolina Rules of Appellate Procedure.

(Effective June 23, 2023; SB 327, s.11, S.L. 2023-54.)

G.S. 105-345.2 – Record on Appeal; Extent of Review: Updates language in statute providing for the review on appeal, by the North Carolina Court of Appeals, of Property Tax Commission decisions, in order to make the language conform to the North Carolina Rules of Appellate Procedure.

(Effective June 23, 2023; SB 327, s.12, S.L. 2023-54.)

SECTION 9 – 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 April 1, 2021, to January 1, 2023. Any amendments to the Internal Revenue Code enacted after April 1, 2021, that increase North Carolina taxable income for the 2021 or 2022 taxable year become effective for tax year 2023.

(Effective April 3, 2023; SB 174, s. 1.1., S.L. 2023-12.)

G.S. 105-236(a)(1) – Penalties; Situs of Violations; Penalty Disposition: Penalties: Penalty for Bad Checks: Subdivision (a)(1) requires the Department to assess a penalty for bad electronic funds transfer when a taxpayer does not have enough money in a bank account to cover the payment of tax made by a taxpayer for a tax debt and the financial institution dishonors and returns an electronic payment and declares the amount unpaid.

This subdivision was amended to clarify that the penalty for bad checks applies to the drawer of the check. For purposes of this subdivision, in the case of a garnishment payment, the term “drawer” would refer to the garnishee.

(Effective April 3, 2023; SB 174, s. 5.1.(a), S.L. 2023-12.)

G.S. 105-236(a)(1a) – Penalties; Situs of Violations; Penalty Disposition: Penalties: Penalty for Bad Electronic Funds Transfer: Subdivision (a)(1) requires the Department to assess a penalty for bad electronic funds transfer when a taxpayer does not have enough money in a bank account to cover the payment of tax made by a taxpayer for a tax debt and the financial institution dishonors and returns an electronic payment and declares the amount unpaid.

This subdivision was amended to clarify that the penalty for bad electronic funds transfer applies to the transferor. For purposes of this subdivision, in the case of a garnishment payment, the term “transferor” would refer to the garnishee.

(Effective April 3, 2023; SB 174, s. 5.1.(a), S.L. 2023-12.)

G.S. 105-236(a)(4) – Failure to Pay Tax When Due: In general, subdivision (4) requires the Department to assess a penalty for failure to pay tax when due if the tax shown due on a return is not paid by the due date of the return. The 2021 General Assembly enacted legislation to change the calculation of the penalty from a flat rate of ten percent (10%) to a graduated rate (two percent, 2%, for the first month the tax is not paid, increased by two percent, 2%, for each succeeding month, not to exceed ten percent, 10%.) The change was to be effective for taxes assessed on or after July 1, 2022. The 2022 General Assembly amended this subdivision to:

- (1) Continue the current penalty rate of ten percent (10%) through December 2022;
- (2) Temporarily reduce the penalty rate to five percent (5%) from January 2023 to June 2024; and
- (3) Reintroduce the graduated penalty rate in July 2024.

(Effective June 30, 2022; HB 83, s. 5.6.(a), S.L. 2022-13. Effective January 1, 2023, and applies to tax assessed on or after that date; H83, s. 5.6.(b), S.L. 2022-13. Effective July 1, 2024, and applies to tax assessed on or after that date; H83 s. 5.6.(c), S.L. 2022-13.)

G.S. 105-236.1(a),(a1),(a2) – Enforcement of Revenue Laws by Revenue Law Enforcement Agents: Subsections (a), (a1), and (a2) of this section were amended to allow the Secretary to assign employees of any division of the Department to serve as revenue law enforcement officers. Previously, the statute provided that revenue law enforcement officers could only be assigned from the Unauthorized Substances Tax, Motor Fuels Investigations, and Criminal Investigations Sections of the Tax Enforcement Division.

(Effective July 1, 2023; HB 259, s. 34.2., S.L. 2023-134.)

G.S. 105-241.11(a) – Requesting Review of a Proposed Denial of a Refund or a Proposed Assessment: Procedure: This subsection was amended to allow the Department to accept a written statement that clearly indicates that the taxpayer requests Departmental review of a proposed denial of a refund or a proposed assessment of tax. This amendment codifies the Department’s practice.

(Effective April 3, 2023; SB 174, s. 5.2., S.L. 2023-12.)

G.S. 105-241.24 – Statute of Limitations on Collections: This new section was added to create a new 10-year statute of limitations on collections. As enacted, when a tax becomes collectible under G.S. 105-241.22, the Department generally has 10 years to collect the tax. If the tax is not collected in 10 years, the remaining tax liability is abated.

Note: The 10-year statute of limitations may toll for the reasons specified in G.S. 105-242(c).

(Effective April 3, 2023; SB 174, s. 5.3.(a), S.L. 2023-12.)

G.S. 105-242(c) – Certificate of Tax Liability: This subsection was amended to state that the period a certificate of tax liability is enforceable may not extend beyond the 10-year statute of limitations provided for in G.S. 105-241.24. This subsection was also amended to make other conforming changes to the new 10-year statute of limitations for collecting a tax provided for in G.S. 105-241.24. Previously, a certificate of tax liability was generally enforceable for a period of 10 years from the date it was docketed.

(Effective April 3, 2023; SB 174, s. 5.3.(b), S.L. 2023-12.)

G.S. 105-242.1(b) – Procedure for Attachment and Garnishment: Action: This subsection was amended to clarify that a garnishee is subject to any penalties imposed in Article 9 of Chapter 105 of the North Carolina General Statutes. Further, if the garnishee does not file a response to a notice of garnishment within the time set in this subsection and fails to comply with the notice, the garnishee is subject to the penalties imposed under Article 9 and such penalties would be included on a notice of proposed assessment sent to a garnishee, in accordance with G.S. 105-241.9.

(Effective April 3, 2023; SB 174, s. 5.1(b), S.L. 2023-12.)

G.S. 105-249.2(b) – Due Date Extended and Penalties Waived for Certain Military Personnel or Persons Affected by a Presidentially Declared Disaster: Disaster: This subsection was amended to add the informational return penalty imposed by G.S. 105-236(a)(10)(c) to the list of penalties the Secretary is not allowed to assess for any period in which the time for filing a federal return or report or for paying a federal tax is extended under IRC section 7508A because of a presidentially declared disaster.

(Effective April 3, 2023, and applies to presidentially declared disasters occurring on or after that date; SB 174, s. 1.7.(a), S.L. 2023-12.)

G.S. 105-259(b)(33) – Secrecy Required of Officials; Penalty for Violation: Disclosure Prohibited: This subdivision was amended as part of the new tax on interactive sports wagering operators. The amendment allows the Department to share additional tax information with the North Carolina State Lottery Commission.

In accordance with the newly enacted G.S. 18C-114(c), the North Carolina State Lottery Commission and the Department “may agree to exchange any data necessary to enforce and administer Articles 9 and 10 of [Chapter 18C] and Article 2E of Chapter 105”

As amended, this subdivision provides that the Department, in addition to sharing information in accordance with G.S. 18C-141, may disclose tax information to the North Carolina State Lottery Commission that has been “agreed upon under G.S. 18C-114(c).”

(Effective January 8, 2024; HB 347, s. 4.(d), S.L. 2023-42.)