

**NCDOR**

NORTH  
CAROLINA  
DEPARTMENT  
OF REVENUE

# **2019 TAX LAW CHANGES**



**OFFICE OF THE ASSISTANT SECRETARY  
FOR TAX ADMINISTRATION**

**PO Box 871**

**Raleigh, NC 27602-0871**



## PREFACE

The 2019 legislative session brought many changes to the revenue laws and the North Carolina Department of Revenue. The 2019 Tax Law Changes publication is designed for use by the North Carolina Department of Revenue personnel and is available to others as a resource document. It provides a brief summary of legislative tax changes made by prior General Assemblies that take effect for tax year 2019 as well as changes made by the 2019 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.

Anthony Edwards  
Assistant Secretary of Revenue  
Tax Administration



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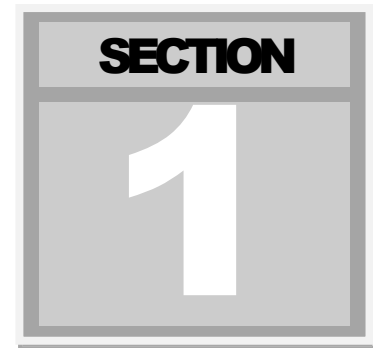
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### **NORTH CAROLINA EMERGENCY MANAGEMENT ACT – CHAPTER 166A,**

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# PERSONAL TAXES



## INDIVIDUAL INCOME TAX – ARTICLE 4, PART 2

**G.S. 105-153.2 – Purpose:** This section was rewritten as part of the disaster relief provisions contained in Article 1A of Chapter 166A of the North Carolina General Statutes to help facilitate and expedite the State’s recovery after a natural disaster.

Prior to the enactment of S.L. 2019-187, every nonresident individual who derived income from a business, trade, profession, or occupation carried on in North Carolina was subject to North Carolina individual income tax.

After the enactment of S.L. 2019-187, the provisions of G.S. 105-153.2 do not apply to a nonresident business or to a nonresident employee if the nonresident business or nonresident employee derives income in North Carolina solely from performing disaster-related work during a disaster response period at the request of a critical infrastructure company. For the purposes of this section, the definitions of nonresident business, nonresident employee, disaster-related work, disaster response period, and critical infrastructure company are contained in G.S. 166A-19.70A.

For more information on North Carolina disaster relief, including definitions and related legislation, see Appendix A of this publication.

*(Effective August 1, 2019, and applies to disaster declarations on or after that date; SB 498, s. 1.(j), S.L. 2019-187.)*

**G.S. 105-153.5(a) – Deduction Amount:** Section 38.1.(j) of Session Law 2018-5 was amended to clarify that the change to G.S. 105-153.5(a) in section 38.1.(c) of Session Law 2018-5 was effective for taxable years beginning on or after January 1, 2018.

*(Effective March 20, 2019; SB 56, s. 3.1, S.L. 2019-6.)*

**G.S. 105-153.5(a)(1) – Standard Deduction Amount:** This subdivision was amended twice, once by the 2017 General Assembly and again by the 2019 General Assembly. The first amendment increased the amount of the North Carolina standard deduction for

each filing status for taxable years beginning on or after January 1, 2019 to the following:

<b>Filing Status</b>	<b>Standard Deduction</b>
Married, filing jointly/surviving spouse	\$20,000
Head of Household	\$15,000
Single	\$10,000
Married, filing separately	\$10,000

The second amendment further increased the amount of the North Carolina standard deduction for each filing status for taxable years beginning on or after January 1, 2020 to the following:

<b>Filing Status</b>	<b>Standard Deduction</b>
Married, filing jointly/surviving spouse	\$21,500
Head of Household	\$16,125
Single	\$10,750
Married, filing separately	\$10,750

*(The 2017 General Assembly amendment effective for taxable years beginning on or after January 1, 2019; SB 257, s. 38.2.(a), S.L. 2017-57. The 2019 General Assembly amendment effective for taxable years beginning on or after January 1, 2020; SB 557, s. 1.(a), S.L. 2019-246.)*

**G.S. 105-153.5(a)(2)a. – Charitable Contribution:** This sub-subdivision was amended as part of a pair of conforming changes made to conform North Carolina law to federal income tax provisions that exclude from federal gross income a qualified charitable distribution (“QCD”) from an individual retirement plan by a person who has attained the age 70 ½ or older.

For tax years 2014 through 2018, North Carolina did not adopt the federal income exclusion for QCDs. Instead, G.S. 105-153.5(c2)(3) required a taxpayer to add to federal adjusted gross income the amount of QCD excluded from the taxpayer’s federal gross income. Similarly, for tax years 2014 through 2018, G.S. 105-153.5(a)(2)a allowed a taxpayer to include the amount of QCD added to a taxpayer’s federal adjusted gross income as a North Carolina itemized deduction.

For taxable years beginning on or after January 1, 2019, the General Assembly adopted the federal income exclusion for QCDs. Consequently, G.S. 105-153.5(a)(2)a, which allowed a taxpayer to claim the QCD added to federal adjusted gross income as a North Carolina itemized deduction, was amended to limit its application to tax years 2014 through 2018.

*(Effective November 1, 2019; HB 399, s. 1.(a), S.L. 2019-237.)*

**G.S. 105-153.5(a1) – Child Deduction Amount:** This subsection was amended to replace the term “dependent child” with the term “qualifying child.” This amendment was made to conform North Carolina law to section 24 of the Internal Revenue Code (“IRC”).

*(Effective March 20, 2019; SB 56, s. 3.2, S.L. 2019-6.)*

**G.S. 105-153.5(b)(14) – Other Deductions:** G.S. 105-153.5(b) was amended to add new subdivision (14) to make the necessary adjustments to decouple North Carolina from the federal provisions included in IRC section 118 that make certain grant proceeds from governmental entities taxable upon receipt as gross income.

Prior to the enactment of the federal Tax Cuts and Jobs Act (“Act”) in 2017, IRC section 118 excluded from gross income “any contribution to the capital of the taxpayer.” Under the Act, IRC section 118 was amended to expressly provide that the term “contribution to the capital of the taxpayer” does not include “any contribution by any governmental entity or civic group (other than a contribution made by a shareholder as such).”

New subdivision (14) allows a taxpayer to subtract from federal adjusted gross income the amount of economic incentive received by the taxpayer pursuant to G.S. 143B-437.012 or Part 2G or Part 2H of Article 10 of Chapter 143B of the North Carolina General Statutes to the extent the income was included in the taxpayer’s adjusted gross income.

*(Effective for taxable years beginning on or after January 1, 2019, and applies to amounts received on or after that date; HB 399, s. 2.(b), S.L. 2019-237.)*

**G.S. 105-153.5(c2)(3) – Decoupling Adjustments:** This subdivision was amended as part of a pair of conforming changes made to conform North Carolina law to federal income tax provisions that exclude from federal gross income a qualified charitable distribution (“QCD”) from an individual retirement plan by a person who has attained the age 70 ½ or older.

For tax years 2014 through 2018, North Carolina did not adopt the federal income exclusion for QCDs. Instead, G.S. 105-153.5(c2)(3) required a taxpayer to add to federal adjusted gross income the amount of QCD excluded from the taxpayer’s federal gross income. Similarly, for tax years 2014 through 2018, G.S. 105-153.5(a)(2)a allowed a taxpayer to include the amount of QCD added to taxpayer’s federal adjusted gross income as a North Carolina itemized deduction.

For taxable years beginning on or after January 1, 2019, the General Assembly adopted the federal income exclusion for QCDs. Consequently, G.S. 105-153.5(c2)(3), which required an addition to federal adjusted gross income for the amount of the QCD, was amended to limit its application to tax years 2014 through 2018.

*(Effective November 1, 2019; HB 399, s. 1.(b), S.L. 2019-237.)*



**G.S. 105-153.5(c2)(5) – Decoupling Adjustments:** This subdivision was amended to change a statutory reference from IRC section 1400Z-2(b) to IRC section 1400Z-2(a).

*(Effective March 20, 2019; SB 56, s. 3.3, S.L. 2019-6.)*

**G.S. 105-153.5(c2)(6) – Decoupling Adjustments:** This subdivision was amended to replace the term “adjusted gross income” with the term “North Carolina taxable income.”

In 2018, the North Carolina General Assembly decoupled from federal law which allows a taxpayer to defer gains from investments in Opportunity Zones. Under G.S. 105-153.5(c2)(5), a taxpayer is required to add to federal adjusted gross income any gain deferred or excluded from the taxpayer’s adjusted gross income pursuant to the provisions of IRC section 1400Z-2. To prevent double taxation, G.S. 105-153.5(c2)(6) allows the taxpayer to deduct from federal adjusted gross income the amount of gain previously required to be included in the calculation of North Carolina taxable income.

Prior to the enactment of this legislation, the statute referred to gain that was included in the taxpayer’s federal adjusted gross income. G.S. 105-153.5(c2)(6) was rewritten to correct the terms to conform with the intent of the 2018 legislation.

*(Effective March 20, 2019; SB 56, s. 3.3, S.L. 2019-6.)*

**G.S. 105-153.7(a) – Individual Income Tax Imposed:** This subsection was amended by the 2017 General Assembly to decrease the income tax rate imposed on an individual’s North Carolina taxable income for taxable years beginning on or after January 1, 2019 from 5.499% to 5.25%.

*(Effective for taxable years beginning on or after January 1, 2019; SB 257, s. 38.1.(a), S.L. 2017-57.)*

**G.S. 105-153.8(a)(2)a. – Who Must File; Nonresidents:** This sub-subdivision was rewritten as part of the disaster relief provisions contained in Article 1A of Chapter 166A of the North Carolina General Statutes to help facilitate and expedite the State’s recovery after a natural disaster.

Prior to the enactment of S.L. 2019-187, every nonresident individual who derived income from a business, trade, profession, or occupation carried on in North Carolina, and had total gross income from all sources both inside and outside of North Carolina that exceeded the amount of the individual’s North Carolina standard deduction as provided in G.S. 105-153.5(a)(1) was required to file a North Carolina individual income tax return with the Department.

After the enactment of S.L. 2019-187, the provisions of G.S. 105-153.8(a)(2)a do not apply to a nonresident business or to a nonresident employee if the nonresident business or nonresident employee derives income in North Carolina solely from performing disaster-related work during a disaster response period at the request of a

critical infrastructure company. For the purposes of this sub-subdivision, the definitions of nonresident business, nonresident employee, disaster-related work, disaster response period, and critical infrastructure company are contained in G.S. 166A-19.70A.

For more information on North Carolina disaster relief, including definitions and related legislation, see Appendix A of this publication.

*(Effective August 1, 2019, and applies to disaster declarations on or after that date; SB 498, s. 1.(k), S.L. 2019-187.)*

**G.S. 105-153.8(e) – Joint Returns:** This subsection was amended to expand the innocent spouse relief provisions provided under North Carolina law to mirror the federal innocent spouse relief provisions under IRC section 6015. As amended, a taxpayer may qualify for State tax relief with respect to both an underpayment of tax and an understatement of tax. Under prior law, the Department did not extend state tax relief to underpayments of tax.

*(Effective for taxable years beginning on or after January 1, 2018; SB 523, s. 2.1.(a), S.L. 2019-169.)*

**G.S. 105-154(c) – Information Returns of Partnerships:** This subsection was rewritten as part of the disaster relief provisions contained in Article 1A of Chapter 166A of the North Carolina General Statutes to help facilitate and expedite the State's recovery after a natural disaster.

Subsection (c) of G.S. 105-154 requires every partnership doing business in North Carolina that is required to file a federal partnership return to file an informational return with the Secretary. This subsection was amended to provide that a partnership that is not doing business in North Carolina because it is a nonresident business performing disaster-related work during a disaster response period at the request of a critical infrastructure company is not required to file an information return with the Secretary. Importantly, the partnership must still provide to its partners any information necessary for the partners to properly file a State income tax return. For the purposes of this subsection, the definitions of nonresident business, disaster-related work, disaster response period, and critical infrastructure company are contained in G.S. 166A-19.70A.

For more information on North Carolina disaster relief, including definitions and related legislation, see Appendix A of this publication.

*(Effective August 1, 2019, and applies to disaster declarations on or after that date; SB 498, s. 1.(i), S.L. 2019-187.)*

**G.S. 105-154(d) – Payment of Tax on Behalf of Nonresident Owner or Partner:** This subsection provides that when a business conducted in North Carolina is owned by a nonresident individual or by a partnership having one or more nonresident

members, the manager of the business is responsible for reporting the share of the income of each nonresident owner or partner and is required to compute and pay the tax due on behalf of those partners on a tax return.

Under prior law, if the manager of the business determined that the business made an error or omitted something from the tax return that resulted in an overpayment, both the manager of the business and the nonresident owner or partner could request a refund of the overpayment made on behalf of the nonresident owner or partner within the provisions of G.S. 105-241.7(b).

As amended, regardless of the provisions in G.S. 105-241.7(b), the manager of the business may not request a refund of an overpayment made on behalf of the nonresident owner or partner if the manager of the business has previously filed a tax return and paid the tax due. Importantly, the nonresident owner or partner may, on its own income tax return, request a refund of an overpayment made on its behalf by the manager of the business within the provisions of G.S. 105-241.6.

*(Effective for taxable years beginning on or after January 1, 2019, and applies to a request for refund filed on or after that date; SB 523, s. 1.1.(a), S.L. 2019-169.)*

**G.S. 105-159(a) – Federal Determination:** This subsection was amended to replace the phrase “or other officer of the United States,” with a specific reference to “an agreement of the U.S. competent authority.” As amended and specifically stated, if a taxpayer’s adjusted gross income, filing status, personal exemptions, standard deduction, itemized deductions, or federal tax credit are changed or corrected by the Commissioner of Internal Revenue or an agreement of the U.S. competent authority, and the change or correction affects the amount of State tax payable, the taxpayer must file an income tax return reflecting each change or correction from a federal determination (as the term is defined in G.S. 105-228.90) within six months after being notified of the change or correction.

*(Effective July 26, 2019, and applies to a federal determination on or after that date; SB 523, s. 6.3.(c), S.L. 2019-169.)*

## **S CORPORATION INCOME TAX – ARTICLE 4, PART 1A**

**G.S. 105-131.7 – Returns; Shareholder Agreements; Mandatory Withholding:** This section was rewritten as part of the disaster relief provisions contained in Article 1A of Chapter 166A of the North Carolina General Statutes to help facilitate and expedite the State’s recovery after a natural disaster.

Subsection (a) of G.S. 105-131.7 requires every S Corporation incorporated or doing business in North Carolina to file a return with the Secretary. New subsection (f) was added to G.S. 105-131.7 to provide that an S Corporation that is not doing business in this State because it is a nonresident business performing disaster-related work during

a disaster response period at the request of a critical infrastructure company is not required to file an information return with the Secretary. Importantly, an S Corporation must still provide to its shareholders any information necessary for the shareholders to properly file a State income tax return. For the purposes of this subsection, the definitions of nonresident business, disaster-related work, disaster response period, and critical infrastructure company are contained in G.S. 166A-19.70A.

For more information on North Carolina disaster relief, including definitions and related legislation, see Appendix A of this publication.

*(Effective August 1, 2019, and applies to disaster declarations on or after that date; SB 498, s. 1.(h), S.L. 2019-187.)*

## **WITHHOLDING TAX – ARTICLE 4A**

**G.S. 105-163.1 – Definitions:** There were two laws enacted by the 2019 General Assembly that impact this section. First, this section was amended to clarify several of the definitions that apply to Article 4A by defining new terms and by simplifying existing terms. Second, this section was rewritten as part of the disaster relief provisions contained in Article 1A of Chapter 166A of the North Carolina General Statutes to help facilitate and expedite the State’s recovery after a natural disaster.

### Amendment One:

Subsection (1) was amended to define “compensation” as “consideration a payer pays a payee.”

New subsection (6a) was added to define “Individual Taxpayer Identification Number (ITIN)” as “a taxpayer identification number issued by the Internal Revenue Service to an individual who is required to have a U.S. taxpayer identification number but who does not have, or is not eligible to obtain, a Social Security number (SSN) from the Social Security Administration.”

Previous subsection (6a) was renumbered to subsection (6b) and defines “ITIN contractor” as “an ITIN holder who performs services [in North Carolina] for compensation other than wages.”

Previous subsection (6b) was renumbered to subsection (6c) and was amended to define “ITIN holder” as “a person whose taxpayer identification number is an Individual Taxpayer Identification Number (ITIN), including applied for and expired numbers.”

New subsection (9a) was added to define “payee” as “any of the following:

- a. A nonresident contractor.
- b. An ITIN contractor.

- c. A person who performs services in [North Carolina] for compensation that fails to provide the payer a taxpayer identification number.
- d. A person who performs services in [North Carolina] for compensation that fails to provide the payer a valid taxpayer identification number. The Secretary must notify a payer that a taxpayer identification number is not valid.”

Subsection (10) was amended to define “payer” as “a person who, in the course of a trade or business, pays compensation.”

New subsection (12a) was added to define “Taxpayer Identification Number (TIN)” as “an identification number issued by the Social Security Administration or the Internal Revenue Service excluding Taxpayer Identification Number for Pending U.S. Adoptions (ATIN) and Preparer Taxpayer Identification Number (PTIN).”

#### Amendment Two:

Subsection (13) was amended to define “wages” as having “the same meaning as in section 3401 of the [Internal Revenue] Code, except the term does not include amounts paid to a ‘nonresident employee’ for a business, trade, profession, or occupation carried on in [North Carolina] to perform ‘disaster-related work’ during a ‘disaster response period’ at the request of a ‘critical infrastructure company’.” For the purposes of this subsection, the definitions of nonresident employee, disaster-related work, disaster response period, and critical infrastructure company are contained in G.S. 166A-19.70A.

*(Amendment one to this section effective January 1, 2020; SB 523, s. 6.4.(a), S.L. 2019-169. Amendment two to this section effective August 1, 2019 and applies to disaster declarations on or after that date; SB 498, s. 1.(l), S.L. 2019-187.)*

**G.S. 105-163.3(a) – Certain Payers Must Withhold Taxes; Requirement:** This subsection was amended to require every payer who pays more than \$1,500 in compensation to a payee to withhold State income tax from the compensation paid to the payee at a rate of 4%. For purposes of this subsection, the definitions of payer, compensation, and payee are defined in G.S. 105-163.1, as amended by section 6.4.(a) of Session Law 2019-169.

*(Effective January 1, 2020; SB 523, s. 6.4.(b), S.L. 2019-169.)*

**G.S. 105-163.3(b)(5) – Certain Payers Must Withhold Taxes; Exemptions:** This subdivision was rewritten as part of the disaster relief provisions contained in Article 1A of Chapter 166A of the North Carolina General Statutes to help facilitate and expedite the State’s recovery after a natural disaster.

Subsection (b) of G.S. 105-163.3 provides a specific list of exemptions whereby a payer is exempt from the requirement to withhold state income tax from compensation paid to a payee. New subdivision (5) was added to provide an exemption for certain

ITIN contractors who are nonresident individuals that receive compensation from a nonresident business or a critical infrastructure company.

As amended and specifically stated in G.S. 105-163.3(b)(5), the withholding requirement [found under G.S. 105-163.3] does not apply to compensation paid by a nonresident business or a critical infrastructure company to an ITIN contractor who is a nonresident individual for a business, trade, profession, or occupation carried on in [North Carolina] to perform disaster-related work during a disaster response period at the request of a critical infrastructure company. For the purposes of this subdivision, the definitions of nonresident business, nonresident individual, disaster-related work, disaster response period, and critical infrastructure company are contained in G.S. 166A-19.70A.

*(Effective August 1, 2019, and applies to disaster declarations on or after that date; SB 498, s. 1.(m), S.L. 2019-187.)*

**G.S. 105-163.3(d) – Certain Payers Must Withhold Taxes; Annual Statement and Report:** This subsection was amended to incorporate the term “payee” as defined in G.S. 105-163.1, as amended by Section 6.4.(a) of Session Law 2019-169.

As amended and specifically stated in G.S. 105-163.3(d), a payer required to deduct and withhold from a payee's compensation under [G.S. 105-163.3] must file a return, pay the withheld taxes, and report the amount withheld in the time and manner required under G.S. 105-163.6 and G.S. 105-163.7 as if the compensation were wages.

*(Effective January 1, 2020; SB 523, s. 6.4.(b), S.L. 2019-169.)*

**G.S. 105-163.3(f) – Certain Payers Must Withhold Taxes; Payer May Repay Amount Withheld Improperly:** This subsection was amended to incorporate the term “payee” as the term is defined in G.S. 105-163.1, as amended by Section 6.4.(a) of Session Law 2019-169.

As amended and specifically stated in G.S. 105-163.3(f), a payer may refund to any person any amount the payer withheld improperly from the person under G.S. 105-163.3, if the refund is made before the end of the calendar year and before the payer furnishes the person the annual statement required by G.S. 105-163(d). An amount is withheld improperly if it is withheld from a payment to a person who is not a payee, if it is withheld from a payment that is not compensation, or if it is in excess of the amount required to be withheld under G.S. 105-163.3.

*(Effective January 1, 2020; SB 523, s. 6.4.(b), S.L. 2019-169.)*

**G.S. 105-163.7(b) – Informational Returns to Secretary:** This subsection was rewritten as part of the disaster relief provisions contained in Article 1A of Chapter 166A of the North Carolina General Statutes to help facilitate and expedite the State's recovery after a natural disaster.

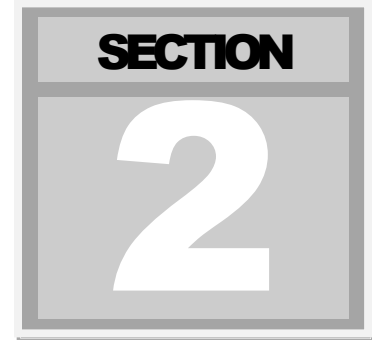
Subsection (b) of G.S. 105-163.7 requires every employer and payer that is either required to withhold or voluntarily withholds North Carolina income taxes to electronically file an annual withholding reconciliation return with the Secretary (Form NC-3). New language was added to exempt certain employers from filing Form NC-3 if the employer meets the criteria established in Session Law 2019-187.

As amended and specifically stated in G.S. 105-163.7(b), an employer that is not doing business in this State because it is a nonresident business performing disaster-related work during a disaster response period at the request of a critical infrastructure company is not required to file an information return with the Secretary. Importantly, the employer must still provide to an employee, upon request, any information necessary for the employee to properly file a State income tax return. For the purposes of this subsection, the definitions of nonresident business, disaster-related work, disaster response period, and critical infrastructure company are contained in G.S. 166A-19.70A.

For more information on this amendment, including definitions and related legislation, see Appendix A of this publication.

*(Effective August 1, 2019, and applies to disaster declarations on or after that date; SB 498, s. 1.(n), S.L. 2019-187.)*

## CORPORATE TAXES



### FRANCHISE TAX – ARTICLE 3

**G.S. 105-114(b)(2) – Definition of Corporation:** This subdivision was amended by the 2018 General Assembly to change the definition of a “corporation” for purposes of franchise tax. The annual franchise tax is imposed on corporations doing business in this State. Previously, the definition included limited liability companies that elect to be taxed as corporations but did not include partnerships that elect to be taxed as corporations. This change includes partnerships that elect to be taxed as corporations in the definition of “corporation” and makes consistent the treatment of all business entities that either are corporations or choose to be taxed as corporations. This also makes franchise tax treatment consistent with income tax treatment.

*(Effective for taxable years beginning on or after January 1, 2019, and applies to the calculation of franchise tax reported on the 2018 and later corporate income tax returns; SB 99, s. 38.2.(a), S.L. 2018-5.)*

**G.S. 105-114 – Nature of Taxes; Definitions:** This section was rewritten as part of the disaster relief provisions contained in Article 1A of Chapter 166A of the North Carolina General Statutes to help facilitate and expedite the State’s recovery after a natural disaster.

Prior to the enactment of S.L. 2019-187, every corporation organized under the laws of North Carolina or doing business in North Carolina was subject to North Carolina franchise tax.

After the enactment of S.L. 2019-187, subsection (d) was added to provide that G.S. 105-114 does not apply to a nonresident business if the nonresident business derives income in North Carolina solely from performing disaster-related work during a disaster response period at the request of a critical infrastructure company. For the purposes of this subsection, the definitions of nonresident business, disaster-related work, disaster response period, and critical infrastructure company are contained in G.S. 166A-19.70A.

For more information on this amendment, including definitions and related legislation, see Appendix A of this publication.

*(Effective August 1, 2019, and applies to disaster declarations made on or after that date; SB 498, s. 1.(e), S.L. 2019-187.)*



**G.S. 105-120.2(c)(3) – Franchise or Privilege Tax on Holding Companies:** This new subdivision was added to expand the definition of a holding company. This subdivision includes a corporation that owns copyrights, patents, or trademarks that represent more than eighty percent (80%) of its total assets or receives more than eighty percent (80%) of its gross income from royalties and license fees. In addition, it must be one who is one hundred percent (100%) directly owned by a corporation that is a manufacturer as defined by NAICS codes 31 through 33; must generate more than five billion dollars (\$5,000,000,000) in revenue for income tax purposes from goods it manufactures; and must include an investment in the holding company in its net worth franchise tax base.

*(Effective for taxable years beginning on or after January 1, 2020, and is applicable to the calculation of franchise tax reported on the 2019 and later corporate income tax returns; SB 557, s. 2.(a), S.L. 2019-246.)*

**G.S. 105-122(b) – Determination of Net Worth:** This subsection was amended to eliminate some language, add new subdivision (1b) and delete subdivision (3).

Vague language was eliminated to make clear that if a corporation does not maintain its books and records in accordance with generally accepted accounting principles (GAAP), then its net worth is computed in accordance with the method the corporation uses for federal tax purposes.

Subdivision (1b) was added so that if a corporation uses an accounting method other than GAAP for federal tax purposes, then new subdivision (1b) requires that asset valuation, depreciation, depletion, and amortization be calculated for franchise tax purposes using the same method used for federal income tax purposes.

Subdivision (3) was deleted to prevent a double deduction of treasury stock that is already captured in the current franchise tax calculation.

*(Effective for taxable years beginning on or after January 1, 2019, and applies to the calculation of franchise tax reported on the 2018 and later corporate income tax returns; SB 99, s. 38.2.(b), S.L. 2018-5.)*

**G.S. 105-122(c1) – Apportionment of Franchise or Privilege Tax on Domestic and Foreign Corporations:** This subsection was amended to require a corporate taxpayer that has made a state net loss apportionment election under G.S. 105-130.4(t3) to use the statutory apportionment method under subdivision (1) of this subsection as if the election had not been made, unless they have been authorized to use a different apportionment method under subdivision (2) of this subsection.

*(Effective for taxable years beginning on or after January 1, 2020; SB 557, s. 3.(d), S.L. 2019-246.)*

**G.S. 105-122(c1)(1) – Apportionment of Franchise or Privilege Tax on Domestic and Foreign Corporations: Statutory:** This subdivision was amended to prohibit the apportionment factor for a wholesale content distributor from being less than two percent (2%).

*(Effective for taxable years beginning on or after January 1, 2020; SB 557, s. 3.(d), S.L. 2019-246.)*

**G.S. 105-122(d)(3) – Computation of Investment in Tangible Property Base:** This subdivision from the reorganization of G.S. 105-122 was amended to reinstate a deduction for any indebtedness specifically incurred and existing solely for and as the result of the purchase of any real estate and any improvements made on the real estate. The deduction was previously eliminated in the 2015 General Assembly franchise tax simplification changes. With the reinstatement of the deduction, the term “specifically” was added into the phrase “indebtedness incurred” to emphasize the connection of the debt incurred specifically to the real estate purchased or improved.

*(Effective for taxable years beginning on or after January 1, 2020, and applies to the calculation of franchise tax reported on the 2019 and later corporate income tax returns; SB 628, s. 1.3.(b), S.L. 2017-204.)*

**G.S. 105-122(d2) – S-Corporation Tax Rate:** This subsection from the reorganization of G.S. 105-122 was further amended to provide a reduction in the franchise tax rate for S-Corporations. It provides that the franchise tax rate for an S-Corporation as defined in G.S. 105-130.2 is \$200 for the first one million dollars (\$1,000,000) of the corporation’s tax base and \$1.50 per \$1,000 of its tax base that exceeds one million dollars (\$1,000,000). This rate reduction is for taxable years beginning on or after January 1, 2019 and will apply to the franchise tax reported on the 2018 and later corporate income tax returns.

*(Effective for taxable years beginning on or after January 1, 2019, and applies to the calculation of franchise tax reported on the 2018 and later corporate income tax returns; SB 257, s. 38.6.(a), S.L. 2017-57 and SB 628, s. 1.3.(c), S.L. 2017-204.)*

**G.S. 105-128 – Power of Attorney:** This statute authorizes the Secretary to require a power of attorney of each agent for any taxpayer. The section was recodified as 105-258.3 under Article 9 (general administration) from Article 3 (franchise tax) because the authority is not limited to franchise tax.

*(Effective July 26, 2019; SB 523, s. 6.6.(a), S.L. 2019-169.)*

## **MILL REHABILITATION TAX CREDITS – ARTICLE 3H**

**G.S. 105-129.71(a1) – Credit for Income–Producing Rehabilitation Mill Property:** This subsection was added to reenact the Mill Rehabilitation Tax Credit for an eligible railroad station that is allowed a credit under section 47 of the Code. The Mill

Rehabilitation Tax Credit was established in 2006 and expired on January 1, 2015 for rehabilitation projects for which an application for eligibility certification had not already been submitted.

To qualify under this new subsection, the taxpayer must incur qualified rehabilitation expenses of at least ten million dollars (\$10,000,000) for a certified rehabilitation of an eligible railroad station. To be eligible for the credit, the taxpayer must provide a copy of the eligibility certification and the cost certification to the Secretary.

An eligible railroad station is a site that is located in this State and meets all of the following conditions:

1. Was used as a manufacturing facility and was used as a railroad station or is located adjacent to a site that is or was used as a railroad station.
2. Is a certified historic structure or State-certified historic structure.
3. Has been at least eighty percent (80%) vacant for at least two years immediately preceding the eligibility certification date.
4. Is a designated local landmark certified by a city on or before June 30, 2019.
5. Is located in a tier one or tier two development area, determined as of the eligibility certification date.
6. Is located in a designated qualified opportunity zone under sections 1400Z-1 and 1400Z-2 of the Code, determined as of the eligibility certification date.
7. Is issued a certificate of occupancy on or before December 31, 2021.

Taxpayers with income-producing mill rehabilitation projects that meet the required conditions would be allowed a credit equal to forty percent (40%) of the rehabilitation expenses that qualify for the federal credit. The credit, as reenacted, cannot be claimed for a taxable year prior to January 1, 2021 and must be taken in two equal installments on the 2021 and 2022 tax returns.

*(Effective November 1, 2019; HB 399, s. 3.(b), S.L. 2019-237.)*

**G.S. 105-129.74 – Coordination with Historic Rehabilitation Tax Credit:** This section was amended to add reference to Article 3L in addition to previously referencing Article 3D. It states that a taxpayer who claims a tax credit under Article 3D or 3L may not also claim a tax credit under Article 3H for the same activity.

The amendment also added a reference to G.S. 105-129.107 to state that the rules and fee schedule adopted under Article 3L applies to tax credits claimed under Article 3H. Previously, only G.S. 105-129.36A was referenced, which provides the rules and fee schedule for tax credits under Article 3D.

*(Effective November 1, 2019; HB 399, s. 3.(c), S.L. 2019-237.)*

**G.S. 105-129.75 – Sunset and Applicable Expenditures:** This section was amended to allow for a delayed sunset for credits allowed under newly added G.S. 105-129.71(a1) and set forth that qualified rehabilitation expenses must be incurred on or after January 1, 2019 and before January 1, 2022. The credit expires for any projects not completed and placed in service by January 1, 2022.

*(Effective November 1, 2019; HB 399, s. 3.(d), S.L. 2019-237.)*

## **HISTORIC REHABILITATION TAX CREDITS – ARTICLE 3L**

**G.S. 105-129.110 – Sunset:** This section was amended to extend the sunset of the existing historic preservation tax credit from January 1, 2020 to January 1, 2024. Qualified rehabilitation expenditures and rehabilitation expenses must be incurred before January 1, 2024 to qualify for the tax credit under this Article. The credit expires for property not placed in service by January 1, 2032.

*(Effective November 1, 2019; HB 399, s. 3.(a), S.L. 2019-237.)*

## **CORPORATION INCOME TAX – ARTICLE 4, PART 1**

**G.S. 105-130.1 – Purpose:** This section was rewritten as part of the disaster relief provisions contained in Article 1A of Chapter 166A of the North Carolina General Statutes to help facilitate and expedite the State’s recovery after a natural disaster.

Prior to the enactment of S.L. 2019-187, every corporation doing business in North Carolina was subject to North Carolina corporate income tax.

After the enactment of S.L. 2019-187, subsection (b) was added to provide that G.S. 105-130.1 does not apply to a nonresident business if the nonresident business derives income in North Carolina solely from performing disaster-related work during a disaster response period at the request of a critical infrastructure company. For the purposes of this subsection, the definitions of nonresident business, disaster-related work, disaster response period, and critical infrastructure company are contained in G.S. 166A-19.70A.

For more information on this amendment, including definitions and related legislation, see Appendix A of this publication.

*(Effective August 1, 2019, and applies to disaster declarations made on or after that date; SB 498, s. 1.(f), S.L. 2019-187.)*

**G.S. 105-130.3 – Corporate Income Tax Rate Reduction:** Effective for tax years beginning on or after January 1, 2019, the tax rate for C-Corporations is decreased from three percent (3%) to two and a half percent (2.5%).

*(Effective for taxable years beginning on or after January 1, 2019; SB 257, s. 38.5.(b), S.L. 2017-57.)*

**G.S. 105-130.4(I) – Allocation and Apportionment of Income Using Market-Based Sourcing for Multistate Corporations: Sales Factor:** The 2019 General Assembly enacted legislation to implement market-based sourcing for multistate income tax apportionment. As part of this legislation, the sales factor was amended to establish that receipts are in this State if the taxpayer's market for the receipts is in this State. It provides for reasonable approximation if the market for a receipt cannot be determined, and if that method is not possible, the receipts are excluded from the denominator of a taxpayer's sales factor.

As amended, changes were made to the parameters regarding a taxpayer's market for receipts in this State to include the following subdivisions:

1. The sale, rental, lease, or license of real property, if and to the extent the property is located in this State.
2. The rental, lease, or license of tangible personal property, if and to the extent the property is located in this State.
3. The sale of tangible personal property, if and to the extent the property is received in this State by the purchaser. For delivery of goods by common carrier or by other means of transportation, including transportation by the purchaser, the place where the goods are ultimately received after all transportation has been completed is considered the place the goods are received by the purchaser. Direct delivery into this State by the taxpayer to a person or firm designated by a purchaser from inside or outside the State constitutes delivery to the purchaser in this State.
4. For a sale of a service, if and to the extent the service is delivered to a location in this State.
5. For intangible property that is rented, leased, or licensed, if and to the extent the property is used in this State. Intangible property utilized in marketing a good or service to a consumer is "used in this State" if that good or service is purchased by a consumer who is in this State.
6. For intangible property that is sold, if and to the extent the property is used in this State. A contract right, government license, or similar intangible property that authorized the holder to conduct a business activity in a specific geographic area is "used in this State" if the geographic area includes all or part of this State. Receipts from a sale of intangible property that is contingent on the productivity, use, or disposition of the intangible property is treated as receipts from the rental, lease, or licensing of the intangible property as provided under subdivision (5) of this subsection (see above). All other receipts from a sale of intangible property shall be excluded from the numerator and denominator of the sales factor.

*(Effective for taxable years beginning on or after January 1, 2020; SB 557, s. 3.(a), S.L. 2019-246.)*

**G.S. 105-130.4(i1) – Allocation and Apportionment of Income for Corporations: Wholesale Content Distributors:** The 2019 General Assembly enacted legislation to implement market-based sourcing for multistate income tax apportionment. As part of this legislation, subsection (i1) was added to refer to newly added G.S. 105-130.4A for the provisions of market-based sourcing for a “wholesale content distributor.”

This new subsection also provides that a wholesale content distributor’s apportionment of income to this State to be no less than the amount determined by multiplying two percent (2%) by the total domestic gross receipts of the wholesale content distributor from advertising and licensing activities. For purposes of this subsection, the term “wholesale content distributor” is defined in G.S. 105-130.4A, discussed below.

*(Effective for taxable years beginning on or after January 1, 2020; SB 557, s. 3.(a), S.L. 2019-246.)*

**G.S. 105-130.4(i2) – Allocation and Apportionment of Income for Corporations: Banks:** The 2019 General Assembly enacted legislation to implement market-based sourcing for multistate income tax apportionment. As part of this legislation, subsection (i2) was added to refer to newly added G.S. 105-130.4B for the provisions of market-based sourcing for a “bank.” For purposes of this subsection, the term “bank” is defined in G.S. 105-130.4B, discussed later in this document.

*(Effective for taxable years beginning on or after January 1, 2020; SB 557, s. 3.(a), S.L. 2019-246.)*

**G.S. 105-130.4(s2) – Allocation and Apportionment of Income for Corporations: Pipeline Company:** This subsection was amended to provide that, for companies subject to rate regulation by the Federal Energy Regulatory Commission, receipts from the transportation or transmission of petroleum-based liquids or natural gas are to be apportioned using traffic units, defined as barrel miles or cubic foot miles, in this State during the tax year. This was previously limited to petroleum-based liquids pipeline companies with income apportioned by barrel miles. The definition of a barrel mile is one barrel of liquid property transported one mile. A cubic foot mile is defined as one cubic foot of gaseous property transported one mile.

*(Effective for taxable years beginning on or after January 1, 2020; SB 557, s. 3.(a), S.L. 2019-246.)*

**G.S. 105-130.4(s3) – Allocation and Apportionment of Income for Corporations: Electric Power Company:** This subsection was added to define and provide special apportionment rules for an electric power company.

An electric power company is defined as a company, including any of its wholly owned noncorporate limited liability companies, primarily engaged in the business of supplying

electricity for light, heat, current, or power to persons in this State that is subject to control of the N.C. Utilities Commission or the Federal Energy Regulatory Commission.

The numerator of its apportionment factor is the average value of real and tangible personal property owned or rented and used in this State by the electric power company during the taxable year and the denominator is the average value of all real and tangible personal property owned or rented and used during the taxable year.

The average value of real and tangible personal property owned or rented by an electric power company is determined by the following:

1. The average value of property is determined by averaging the values at the beginning and end of the taxable year. The Secretary may require averaging of monthly or other periodic values during the taxable year if reasonably required to reflect properly the average value of the corporation's property.
2. If an electric power company ceases its operations in this State before the end of its taxable year because it intends to dissolve or relinquish its certificate of authority, or because of a merger, conversion, or consolidation, or for any other reason, it must use the real estate and tangible personal property values as of the first day of the taxable year and the last day of its operations in this State to determine the average value of the property. The Secretary may require averaging of monthly or other periodic values during the taxable year if reasonably required to reflect properly the average value of the electric power company's property.
3. Property owned by an electric power company is valued at its original cost.
4. Property rented by an electric power company is valued at eight times the net annual rental rate.
5. The net annual rental rate is the annual rental rate paid by an electric power company less any annual rental rate received by the electric power company from sub-rentals except that sub-rentals are not deducted when they constitute apportionable income.
6. Any property under construction and any property whose income constitutes nonapportionable income is excluded from the computation of the average value of an electric power company's real and tangible personal property.

*(Effective for taxable years beginning on or after January 1, 2020; SB 557, s. 3.(a), S.L. 2019-246.)*

**G.S. 105-130.4(t3) – Allocation and Apportionment of Income for Corporations: State Net Loss Apportionment Election:** This subsection was added to allow a corporate taxpayer with a State net loss balance as of the end of its 2019 taxable year, as computed under GS 105-130.8A, to elect to apportion receipts from services based on the percentage of its income-producing activities performed in this State. The election must be made on the 2020 tax return and in the form prescribed by the Secretary with any supporting documentation required. The election is binding and irrevocable until the earlier of the tax year in which the existing State net loss balance is fully utilized or has expired.

It also defines State net loss balance as the total amount of State net losses computed under G.S. 105-130.8A for taxable years beginning before January 1, 2020, and available to carry forward to taxable years beginning on or after January 1, 2020. A State net loss balance does not include a loss created in a taxable year beginning on or after January 1, 2020. If created on or after January 1, 2020, the State net loss must be determined using the apportionment for market-based sourcing as set forth in G.S. 105-130.4(l).

*(Effective for taxable years beginning on or after January 1, 2020; SB 557, s. 3.(a), S.L. 2019-246.)*

**G.S. 105-130.4A – Market-Based Sourcing for Wholesale Content Distributors:** The 2019 General Assembly enacted legislation to implement market-based sourcing for multistate income tax apportionment. As part of this legislation, this section was added to set forth provisions concerning market-based sourcing for wholesale content distributors.

Subsection (a) defines terms applicable to the statute which include the following:

1. Customer – A person who has a direct contractual relationship with a wholesale content distributor from whom the wholesale content distributor derives gross receipts, including a business customer such as an advertiser or licensee, and an individual customer that directly subscribes with the wholesale content distributor for access to film programming.
2. Gross receipts – The same meaning as the term "sales" in G.S. 105-130.4.
3. Wholesale content distributor – A broadcast television network, a cable program network, or any television distribution company owned by, affiliated with, or under common ownership with any such network and does not mean or include a multichannel video programming distributor or a distributor of subscription-based internet programming services.

Subsection (b) establishes the fraction for a wholesale content distributor's receipts factor. The numerator of its receipts factor is the sum of the wholesale content distributor's gross receipts from transactions and activity in the regular course of its trade or business within this State and the denominator is the sum of the wholesale content distributor's gross receipts from transactions and activity in the regular course of its trade or business everywhere. Receipts from transactions and activities in the regular course of business, including advertising, licensing, and distribution activities; but excluding receipts from the sale of real or tangible personal property, are in this State if received from a business customer who is commercially domiciled in this State. Receipts from an individual customer are from sources within this State if the individual's billing address listed in the broadcaster's books and records is in this State.

*(Effective for taxable years beginning on or after January 1, 2020; SB 557, s. 3.(b), S.L. 2019-246.)*



**G.S. 105-130.4B – Market-Based Sourcing for Banks:** The 2019 General Assembly enacted legislation to implement market-based sourcing for multistate income tax apportionment. As part of this legislation, this section was added to set forth provisions concerning market-based sourcing for banks.

Subsection (a) provides the following definitions applicable to this statute:

1. Bank – Defined in G.S. 105-130.7B.
2. Billing address – The location indicated in the books and records of the taxpayer on the first day of the taxable year, or on the date in the taxable year when the customer relationship began, as the address where any notice, statement, or billing relating to the customer's account is mailed.
3. Borrower, cardholder, or payor located in this State – A borrower, credit cardholder, or payor whose billing address is in this State.
4. Card issuer's reimbursement fee – The fee a taxpayer receives from a merchant's bank because one of the persons to whom the taxpayer has issued a credit, debit, or similar type of card has charged merchandise or services to the card.
5. Credit card – A card, or other means of providing information, that entitles the holder to charge the cost of purchases, or a cash advance, against a line of credit.
6. Debit card – A card, or other means of providing information, that enables the holder to charge the cost of purchases, or a cash withdrawal, against the holder's bank account or a remaining balance on the card.
7. Loan – Any extension of credit resulting from direct negotiations between the taxpayer and its customer, and/or the purchase, in whole or in part, of such an extension of credit from another. The term includes participations, syndications, and leases treated as loans for federal income tax purposes.
8. Loan secured by real property – A loan or other obligation of which fifty percent (50%) or more of the aggregate value of the collateral used to secure the loan or other obligation, when valued at fair market value as of the time the original loan or obligation was incurred, was real property.
9. Merchant discount – The fee, or negotiated discount, charged to a merchant by the taxpayer for the privilege of participating in a program whereby a credit, debit, or similar type of card is accepted in payment for merchandise or services sold to the cardholder, net of any cardholder chargeback and unreduced by any interchange transaction or issuer reimbursement fee paid to another for charges or purchases made by its cardholder.
10. Participation – An extension of credit in which an undivided ownership interest is held on a prorated basis in a single loan or pool of loans and related collateral. In a loan participation, the credit originator initially makes the loan and then subsequently resells all or a portion of it to other lenders. The participation may or may not be known to the borrower.
11. Payor – The person who is legally responsible for making payment to the taxpayer.

12. Real property owned – Real property (i) on which the taxpayer may claim depreciation for federal income tax purposes or (ii) to which the taxpayer holds legal title and on which no other person may claim depreciation for federal income tax purposes or could claim depreciation if subject to federal income tax. Real property does not include coin, currency, or property acquired in lieu of or pursuant to a foreclosure.
13. Syndication – An extension of credit in which two or more persons fund and each person is at risk only up to a specified percentage of the total extension of credit or up to a specified dollar amount.
14. Tangible personal property owned – Tangible personal property (i) on which the taxpayer may claim depreciation for federal income tax purposes or (ii) to which the taxpayer holds legal title and on which no other person may claim depreciation for federal income tax purposes could claim depreciation if subject to federal income tax. Tangible personal property does not include coin, currency, or property acquired in lieu of or pursuant to a foreclosure.
15. Transportation property – Vehicles and vessels capable of moving under their own power as well as any equipment or containers attached to such property. Examples of transportation property include aircraft, trains, water vessels, motor vehicles, rolling stock, barges, and trailers.

As added, subsection (b) establishes a general receipts factor fraction for a bank and includes only the receipts described under the statute as apportionable income for the taxable year. The numerator is the total receipts of the taxpayer in this State during the taxable year, and the denominator is the total receipts of the taxpayer everywhere during the taxable year. The taxpayer would use the same method in calculating receipts for the denominator as the numerator. The following are excluded from the receipts factor:

1. Receipts from a casual sale of property;
2. Receipts exempt from taxation;
3. The portion of receipts realized from the sale or maturity of securities or other obligations that represent a return of principal;
4. Receipts in the nature of dividends subtracted under G.S. 105-130.5(b)(3a) and (3b) and dividends excluded for federal tax purposes.
5. The portion of receipts from financial swaps and other similar financial derivatives that represent the notional principal amount that generate the cash flow traded in the swap agreement.

Subsection (c) provides for the treatment of receipts from the sale, lease, or rental of real property in calculating the apportionment factor. Such receipts are included in the numerator of the apportionment factor if it is owned by the taxpayer and located in this State or receipts from the sublease of real property if the property is located in this State.

Subsection (d) provides for the treatment of receipts from the sale, lease, or rental of tangible personal property in calculating the apportionment factor as below:

1. Unless it is transportation property, the numerator of the apportionment factor includes receipts from the sale, lease, or rental of tangible personal property owned by the taxpayer if the property is located in this State when it is first placed in service by the lessee.
2. If the tangible personal property is transportation property owned by the taxpayer, receipts from its lease or rental are included in the numerator to the extent that the property is used in this State. Aircraft will be considered used in this State and receipts included in the numerator as determined by the multiplication of all receipts from the lease or rental of the aircraft by a fraction, the numerator of which is the number of landings of the aircraft in this State and the denominator of which is the total number of landings of the aircraft. If the extent of use of any transportation property in this State cannot be determined, then the property will be considered to be used wholly in the state where it has its principal base of operations. A motor vehicle will be considered wholly used in the state in which it is registered.

Subsection (e) provides for the treatment of receipts from interest, fees, and penalties from loans secured by real property in calculating the apportionment factor. The numerator of the apportionment factor includes interest, fees, and penalties from loans secured by the real property if the borrower is located in this State. If the property is both located in this State and one or more other states, such receipts are included in the numerator if more than 50% of the fair market value of the real property is located in this State. If more than 50% of the fair market value is not located within any one state, then such receipts are included in the numerator of the receipts factor if the borrower is located in this State. The determination of if the real property securing a loan is located in this State is made as of the time the original agreement was made and any and all subsequent substitutions of collateral are disregarded.

Subsection (f) provides for the treatment of receipts from interest, fees, and penalties from loans not secured by real property in calculating the apportionment factor. The numerator of the apportionment factor includes interest, fees, and penalties from loans not secured by real property if the borrower is located in this State.

Subsection (g) provides for the treatment of receipts from net gains from the sale of loans in calculating the apportionment factor. The numerator of the apportionment factor includes net gains from the sale of loans. Such net gains include income recorded under the coupon stripping rules of section 1286 of the Code. The amount of net gains from the sale of loans included in the numerator is determined as follows:

1. Secured by real property – The amount of net gains, not less than zero, from the sale of loans secured by real property is determined by multiplying the net gains by a fraction, the numerator of which is the amount included in the numerator of the receipts factor pursuant to the special rule for “interest, fees, and penalties from loans secured by real property” (see above), and the denominator of which

is the total amount of interest, fees, and penalties from loans secured by real property. The amount of net gains cannot be less than zero.

2. Not secured by real property – The amount of net gains, not less than zero, from the sale of loans not secured by real property is determined by multiplying the net gains by a fraction, the numerator of which is the amount included in the numerator of the receipts factor pursuant to the special rule for “interest, fees, and penalties from loans not secured by real property” (see above), and the denominator of which is the total amount of interest, fees, and penalties from loans not secured by real property.

Subsection (h) provides for the treatment of receipts from interest, fees, and penalties from cardholders in calculating the apportionment factor. The numerator of the apportionment factor includes interest, fees, and penalties charged to credit, debit, or similar cardholders, including annual fees and overdraft fees, if the cardholder is located in this State.

Subsection (i) provides for the treatment of receipts from ATM fees in calculating the apportionment factor. The numerator of the apportionment factor includes receipts from fees from the use of an ATM owned or rented by the taxpayer, if the ATM is located in this State. The receipts factor includes all ATM fees not forwarded directly to another bank. Receipts from ATM fees not sourced under the special rule for “receipts from ATM fees” are sourced as “all other receipts” (see below).

Subsection (j) provides for the treatment of receipts from net gains from the sale of credit card receivables in calculating the apportionment factor. The numerator of the apportionment factor includes net gains, not less than zero, from the sale of credit card receivables multiplied by a fraction, the numerator of which is the amount included in the numerator of the receipts factor pursuant to the subsection (h) for “receipts from interest, fees, and penalties from cardholders,” and the denominator of which is the taxpayer's total amount of interest, fees, and penalties charged to cardholders.

Subsection (k) provides for the treatment of miscellaneous receipts in calculating the apportionment factor. The numerator of the apportionment factor includes all of the following:

1. Card issuer's reimbursement fees – Receipts from card issuer's reimbursement fees if the payor is located in this State.
2. Receipts from merchant's discount – Receipts from a merchant discount if the payor is located in this State.
3. Loan servicing fees – Receipts from loan servicing fees if the payor is located in this State.
4. Receipts from services – Receipts from services not otherwise apportioned under this section if the payor is located in this State.
5. Receipts from investment assets and activity and trading assets and activity include receipts from one or more of the following:
  - a. Interest and dividends from investment assets and activities and trading assets and activities if the payor is located in this State.

- b. Net gains and other income, not less than zero, from investment assets and activities and trading assets and activities multiplied by a fraction, the numerator of which is the amount included in the numerator of the receipts factor of interest and dividends from investment assets and activities and trading assets and activities if the payor is located in this State, and the denominator of which is the taxpayer's total amount of interest and dividends from investment assets and activities and trading assets and activities.

Subsection (l) provides for the treatment of all other receipts in calculating the apportionment factor. Any other receipts not specifically addressed by a special rule are included in the numerator if the payor is located in this State.

*(Effective for taxable years beginning on or after January 1, 2020; s. 3.(c), S.L. 2019-246.)*

**G.S. 105-130.5(a)(26) – Addition to Federal Taxable Income for Deferral of Gains Reinvested into a Qualified Opportunity Fund:** This subdivision was amended to change a statutory reference from IRC section 1400Z-2(b) to IRC section 1400Z-2(a).

*(Effective March 20, 2019; SB 56, s. 2.1, S.L. 2019-6.)*

**G.S. 105-130.5(a)(30) – Addition to Federal Taxable Income for Deductions Associated with Payments made to Affiliates or Subsidiaries Not Subject to Tax due to the Critical Infrastructure Disaster Relief Exception:** This section was added as part of the disaster relief provisions contained in Article 1A of Chapter 166A of the North Carolina General Statutes to help facilitate and expedite the State's recovery after a natural disaster.

As added, an addition to federal taxable income is required in determining State net income for payments made to an affiliate or subsidiary that is not subject to corporate income tax pursuant to the exceptions for critical infrastructure disaster relief provided under G.S. 166A-19.70A, to the extent the payments are deducted in determining federal taxable income. For more information on this amendment, including definitions and related legislation, see Appendix A of this publication.

*(Effective August 1, 2019, and applies to disaster declarations made on or after that date; SB 498, s. 1.(g), S.L. 2019-187.)*

**G.S. 105-130.5(b)(30) – Deduction from Federal Taxable Income for the Amount of Gain Included in Taxpayer's Federal Taxable Income Under Section 1400Z-2(a) of the Code:** This subdivision was amended to replace the term "federal taxable income" with the term "State net income."

In 2018, the North Carolina General Assembly decoupled from federal law which allows a taxpayer to defer gains from investments in Opportunity Zones. Under G.S. 105-130.5(a)(26), a taxpayer is required to include in State net income any gain deferred or excluded from the taxpayer's federal taxable income pursuant to the

provisions of section 1400Z-2 of the Internal Revenue Code. To prevent double taxation, G.S. 105-130.5(b)(30) allows the taxpayer to deduct from federal taxable income the amount of gain previously required to be included in the calculation of State net income.

Prior to the enactment of this legislation, the statute referred to gain that was included in the taxpayer's federal taxable income. G.S. 105-130.5(b)(30) was rewritten to correct the terms to conform with the intent of the 2018 legislation.

*(Effective March 20, 2019; SB 56, s. 2.2, S.L. 2019-6.)*

**G.S. 105-130.5(b)(31) – Deduction from Federal Taxable Income for Amounts Received as Economic Incentives:** This subdivision was added to create a corporate income tax deduction for amounts received by a taxpayer as an economic incentive under the Job Maintenance and Capital Development Fund (JMAC), the Jobs Development Investment Grant Program (JDIG), or the One North Carolina Fund.

Prior to 2017, IRC §118 excluded from gross income "any contribution to the capital of the taxpayer." Under the Tax Cuts and Jobs Act, enacted by Congress in 2017, IRC §118 was amended to expressly provide that the term "contribution to the capital of the taxpayer" does not include "any contribution by any governmental entity or civic group (other than a contribution made by a shareholder as such)." Accordingly, contributions of money or property to a corporation by a governmental entity made on or after December 22, 2017, were includible in gross income. Because the General Assembly did not specifically address this provision when it enacted its IRC Update legislation in 2018, the updated Code date resulted in North Carolina conforming to the provision, thereby making those cash grants included in taxable income. As amended, this law change decouples from the 2017 federal tax law change.

*(Effective for taxable years beginning on or after January 1, 2019, and applies to amounts received by a taxpayer on or after that date; HB 399, s. 2.(a), S.L. 2019-237.)*

**G.S. 105-130.20(a) – Federal Determination:** This subsection was amended to replace the phrase "or other officer of the United States," with a specific reference to "an agreement of the U.S. competent authority." As amended and specifically stated, if a taxpayer's federal taxable income or a federal tax credit is changed or corrected by the Commissioner of Internal Revenue or an agreement of the U.S. competent authority, and the change or correction affects the amount of State tax payable, the taxpayer must file an income tax return reflecting each change or correction from a federal determination (as the term is defined in G.S. 105-228.90) within six months after being notified of the change or correction.

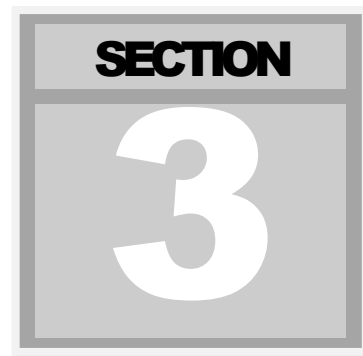
*(Effective July 26, 2019, and applies to a federal determination on or after that date; SB 523, s. 6.3.(b), S.L. 2019-169.)*

## **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 six and one-half percent (6.5%) for the 2019 and 2020 calendar year. This charge is a percentage of gross premiums tax liability.

*(Effective November 1, 2019; HB 399, s. 7, S.L. 2019-237.)*

## EXCISE TAX



### TOBACCO PRODUCTS TAX – ARTICLE 2A

**G.S. 105-113.4 – Definitions:** This section was amended by adding the following four definitions to implement the collection of taxes on tobacco products sold through indirect means or where the consumer of the tobacco product is not in the physical presence of the seller:

(1n) Consumer. – An individual who purchases, receives, or possesses tobacco products for personal consumption and not for resale.

...

(2d) Delivery sale. – A sale of tobacco products to a consumer in this State in which either of the following apply:

- a. The consumer submits the order for the sale by telephone, mail, the Internet or other online service or application, or when the seller is otherwise not in the physical presence of the consumer when the consumer submits the order.
- b. The tobacco products are delivered via mail or a delivery service.

(2e) Delivery seller. – A person that makes a delivery sale.

(2f) Delivery service. – A person engaged in the commercial delivery of letters, packages, or other containers.

*(Effective October 1, 2019; SB 523, s. 4.7.(a), S.L. 2019-169)*

**Expiration of all licenses issued under Article 2A of Chapter 105:** Session Law 2019-169 provided that all licenses under Article 2A of Chapter 105, issued on or before January 1, 2020, **expire** on June 30, 2020.

Licensees who are still engaged in business that require a license under Article 2A **must renew** the license by filing an application with the Secretary, in accordance with G.S. 105-113.4A, before June 30, 2020. The Department of Revenue will notify all licensees about the expiration of these licenses.

*(Effective July 26, 2019; SB 523, s. 4.2.(e), S.L. 2019-169)*

**G.S. 105-113.4A – Licenses:** Subsections (a) and (c) were amended allowing a licensee to “renew” a license or the Secretary to refuse to “renew” a license. This



language was added to provide consistent language for renewable licenses under G.S. 105-113.12 and G.S. 105-113.36 as amended by S.L. 2019-169, § 4.2(c)-(d).

*(Effective January 01, 2020; SB 523, s. 4.2.(a), S.L. 2019-169)*

**G.S. 105-113.4A(c)(8) – Licenses: Denial:** This subdivision was amended to allow the Secretary to refuse to issue or renew a license if a licensee fails to meet the requirements set out in G.S. 105-113.4A(b).

*(Effective January 01, 2020; SB 523, s. 4.2.(a), S.L. 2019-169)*

**G.S. 105-113.4A(d) – Licenses: Refund:** This subsection was amended by replacing “surrender” with “cancel.” This synchronizes the word choice between G.S. 105-113.4A and G.S. 105-113.4B where G.S. 105-113.4B provides that a license can be cancelled by the licensee or revoked by the Secretary.

*(Effective July 26, 2019; SB 523, s. 4.1.(a), S.L. 2019-169)*

**G.S. 105-113.4A(h) – Licenses: Lists:** This subsection was amended modifying what licensee information is available to licensed manufacturers. As amended, the information is limited to records maintained by the Secretary under G.S. 105-113.4A(g)(3). This subdivision requires that, upon request by a licensed manufacturer, the Secretary provide the licensed manufacturer a list of “[p]ersons that hold a current license issued under this Article, by license category.”

*(Effective July 26, 2019; SB 523, s. 4.1.(a), S.L. 2019-169)*

**G.S. 105-113.4B(a) – Cancellation or revocation of license: Reasons:** This subsection was amended requiring that a licensee requesting cancellation of the license must immediately return the license to the Secretary. Only a written request by the licensee was previously required.

*(Effective July 26, 2019; SB 523, s. 4.1.(b), S.L. 2019-169)*

**G.S. 105-113.4B(a)(10) – Licenses: Reasons:** This subdivision was amended to allow the Secretary to revoke a license if a licensee fails to meet or maintain the requirements set out in G.S. 105-113.4A(b).

*(Effective January 01, 2020; SB 523, s. 4.2.(b), S.L. 2019-169)*

**G.S. 105-113.4B(b) – Cancellation or revocation of license: Procedure:** This subsection was amended by changing the method of sending certain documents for license revocations. As amended, the Secretary must send notices for summary license revocations and notices of hearing using “certified mail” instead of “registered mail”.

*(Effective July 26, 2019; SB 523, s. 4.1.(b), S.L. 2019-169)*

**G.S. 105-113.4F – Delivery sales of certain tobacco products; age verification:** In conjunction with the new definitions in G.S. 105-113.4, this new section was added requiring a delivery seller, regardless of where the delivery seller is located, to:

1. Obtain a license from the Secretary pursuant to the requirements of Article 2A before accepting an order;
2. Comply with the age verification requirements in G.S. 14-313(b2); and
3. Report, collect, and remit to the Secretary all taxes levied on tobacco products as set out in Article 2A and Article 5 of Chapter 105.

This section also requires that a delivery seller who makes a delivery sale to file with the Secretary a memorandum or a copy of the invoice for every sale no later than the tenth day of each month for the previous month's delivery sales. The memorandum or invoice shall include the following information:

1. The name, address, telephone number, and e-mail address of the consumer;
2. The type and the brands of tobacco products subject to the delivery sale; and
3. The quantity of tobacco products subject to the delivery sale.

To the extent that the delivery seller complies with the reporting requirements under 15 U.S.C. § 376, the delivery seller does not have to file any additional information with the Secretary.

A person who violates this section is subject to a penalty of one thousand dollars (\$1,000) for the first offense. For any subsequent offenses, a person is subject to a penalty not to exceed five thousand (\$5,000) as determined by the Secretary.

G.S. 105-113.4F does not apply to cigars or sales of tobacco products by retail dealers who purchased tobacco products from licensed distributors or licensed wholesale dealers.

*(Effective October 1, 2019; SB 523, s. 4.7.(b), S.L. 2019-169)*

**G.S. 105-113.5 – Tax on cigarettes:** This section was rewritten by creating subsection (a) from the existing language of the statute and adding subsection (b). Subsection (b) clarifies the point of taxation for imported cigarettes. The licensed distributor “who first acquires or otherwise handles cigarettes” in North Carolina is liable for the tax under this section. The liability for the tax includes distributors who bring into North Carolina cigarettes made outside of North Carolina and licensed distributors who are the original consignee of cigarettes shipped into North Carolina.

*(Effective July 26, 2019; SB 523, s. 4.1.(e), S.L. 2019-169)*

**G.S. 105-113.6 – Use tax levied:** This section was amended to clarify that the use tax on cigarettes applies to persons other than *licensed* distributors who bring non-tax-paid cigarettes into North Carolina.

*(Effective March 20, 2019; SB 56, s. 4.1, S.L. 2019-6)*

**G.S. 105-113.9 – Out-of-state shipments:** This section was amended clarifying that setting aside cigarettes for interstate business without paying tax applies only to licensed distributors. “Licensed” was added before “distributor” throughout the section.

Subsection (1) was also amended by striking “and” from the statute in its definition of interstate business. This made clear that interstate business could be either:

1. The sale of cigarettes to a nonresident where the cigarettes are delivered by the licensed distributor to the business location of the nonresident purchaser in another state; or
2. The sale of cigarettes to a nonresident purchaser who has no place of business in North Carolina and who purchases the cigarettes for the purposes of resale not within this State and where the cigarettes are delivered to the purchaser at the business location in North Carolina of the licensed distributor who is also licensed as a distributor under the laws of the state of the nonresident purchaser.

*(Effective March 20, 2019; SB 56, s. 4.2, S.L. 2019-6)*

**G.S. 105-113.10(a) – Manufacturers exempt from paying tax: Shipping to Other Licensed Distributors:** This subsection was amended by clarifying that only licensed manufacturers shipping to licensed distributors may request a tax exemption under G.S. 105-113.10. “Licensed” was added before “Distributors” in the catchline and “licensed” was added before “manufacturer” in the subsection.

This subsection was further amended by clarifying that if the manufacturer was relieved of paying the tax under this subsection, the manufacturer is still required to file reports pursuant to G.S. 105-113.18, which include the reporting of cigarettes sold, shipped, delivered, or otherwise disposed in North Carolina.

*(Effective July 26, 2019; SB 523, s. 4.1.(d), S.L. 2019-169)*

**G.S. 105-113.10(a1) – Shipping to Retailers:** This subsection was created, without substantive modification, by removing a sentence from subsection (a) and placing it under this new subsection creating organizational consistency within the section. The catchline “Shipping to Retailers” was also added.

*(Effective July 26, 2019; SB 523, s. 4.1.(d), S.L. 2019-169)*

**G.S. 105-113.10(b) – Manufacturers exempt from paying tax: Shipping for Affiliated Manufacturer:** This subsection was amended clarifying that if the manufacturer was relieved of paying the tax under this subsection, the manufacturer is still required to file reports pursuant to G.S. 105-113.18, which include the reporting of cigarettes sold, shipped, delivered, or otherwise disposed in North Carolina.

*(Effective July 26, 2019; SB 523, s. 4.1.(d), S.L. 2019-169)*

**G.S. 105-113.12(a) – Distributor must obtain license:** This subsection was amended ending perpetual licenses for cigarette distributors. These licenses must now be renewed. Any licenses issued on or after January 2, 2020, are in effect until June 30 of the year following the second calendar year after the date of issuance or renewal. A license for each place of business is renewable upon signed application with no renewal license tax, unless applied for after the June 30 expiration date.

*(Effective January 01, 2020; SB 523, s. 4.2.(c), S.L. 2019-169)*

**G.S. 105-113.12(c) – Distributor must obtain license:** This subsection was amended requiring that any out-of-state distributors obtaining a distributor's license must comply with G.S. 105-113.4A.

*(Effective January 01, 2020; SB 523, s. 4.2.(c), S.L. 2019-169)*

**G.S. 105-113.13(b) – Secretary may require a bond or irrevocable letter of credit:** This section was amended clarifying that the Secretary may require a bond or an irrevocable letter only from licensed distributors.

*(Effective March 20, 2019; SB 56, s. 4.3, S.L. 2019-6)*

**G.S. 105-113.18(1) – Payment of tax; reports: Distributor's Report:** This subsection was amended to clarify what information a licensed distributor is required to include in its monthly report to the Secretary. Specifically, the distributor's report must:

1. Include cigarettes sold, shipped, delivered, or otherwise disposed of in this State;
2. Include the quantity of all cigarettes transported or caused to be transported into North Carolina by the licensed distributor or licensed manufacturer in the State for sales in this State;
3. State the amount of tax due; and
4. Identify any transactions to which the tax does not apply.

*(Effective July 26, 2019; SB 523, s. 4.3.(a), S.L. 2019-169)*

**G.S. 105-113.18(1a) – Payment of tax; reports: Report of Free Cigarettes:** This subsection was stricken in its entirety. Any activities required to be reported relating to free cigarettes are now otherwise covered by G.S. 105-113.18(1).

*(Effective July 26, 2019; SB 523, s. 4.3.(a), S.L. 2019-169)*

**G.S. 105-113.21 – Discount; refund:** This section was amended clarifying that only licensed distributors are eligible for discounts or refunds under G.S. 105-113.21.

*(Effective July 26, 2019; SB 523, s. 4.1.(c), S.L. 2019-169)*

**G.S. 105-113.26 – Records to be kept:** This section was amended clarifying what records needed be kept for cigarettes and other tobacco products pursuant to Article 2A, Chapter 105. Previously, the language provided that records needed to include sales and “other information as required” by Article 2A. The amendment expanded the language to include “purchases, inventories, shipments, and deliveries . . . .”

The section was also amended requiring that these records be open at all times for inspection by the Secretary or the Secretary’s authorized representative.

*(Effective July 26, 2019; SB 523, s. 4.4.(a), S.L. 2019-169)*

**G.S. 105-113.29 – Unlicensed place of business:** This section was amended clarifying that “possession with the intent to sell cigarettes or other tobacco products” is unlawful unless a person first obtains a license. Previously, the statute was limited to prohibiting the act of selling or offering for sale cigarettes or other tobacco products.

This section was also amended improving readability, without substantive change, by replacing “such” with “the.”

*(Effective December 1, 2020, and applies to offenses committed on or after that date; SB 523, s. 4.14.(a)-(b), S.L. 2019-169)*

**G.S. 105-113.35(a2)(3) – Tax on tobacco products other than cigarettes: Limitation:** This subdivision was rewritten to be consistent with 21 C.F.R. § 1140.16(d)(2) and its limitations on distribution of samples of tobacco. This amendment exempts from tax “[a] sample tobacco product, other than cigarettes, distributed without charge [if the distribution is] in a ‘qualified adult-only facility’ as that term is defined in 21 C.F.R. § 1140.16(d)(2).”

*(Effective July 26, 2019; SB 523, s. 4.5., S.L. 2019-169)*

**G.S. 105-113.35(d) – Tax on tobacco products other than cigarettes: Manufacturer’s Option:** This subsection was amended clarifying that for a manufacturer to be eligible to be relieved of paying tax under G.S. 105-113.35, in addition to the other requirements under this section, it cannot be a retail dealer of either tobacco products or vapor products.

Subsection (d) was further amended to clarify that if the manufacturer was relieved of paying the tax under this section, the manufacturer is still required to file reports pursuant to G.S. 105-113.37.

*(Effective July 26, 2019; SB 523, s. 4.5., S.L. 2019-169)*

**G.S. 105-113.35(d1) – Tax on tobacco products other than cigarettes: Limitation:**

This subsection was amended by clarifying that unless allowed by subsection (d) of this section, a

licensed wholesale dealer [cannot] sell, borrow, loan, or exchange non-tax-paid tobacco products other than cigarettes to, from, or with another licensed wholesale dealer, and an integrated wholesale dealers dealer may not sell, borrow, loan, or exchange non-tax-paid tobacco products other than cigarettes to, from, or with other another integrated wholesale dealers.

*(Effective July 26, 2019; SB 523, s. 4.5., S.L. 2019-169)*

**G.S. 105-113.35A – Use tax levied:** This new section instituted a use tax on tobacco products other than cigarettes to mirror the use tax on cigarettes under G.S. 105-113.6. In conjunction with G.S. 105-113.6, a use tax is now levied against all tobacco products as defined by G.S. 105-113.4(11a).

*(Effective retroactive to January 1, 2019; SB 523, s. 4.6.(a)-(b), S.L. 2019-169)*

**G.S. 105-113.36(a) – Wholesale dealer and retail dealer must obtain license:**

**Required Licenses:** This subsection was created by rearranging existing language from G.S. 105-113.36 and placing it under this new subsection. No substantive changes were made to the existing language other than removing references to a “continuing” license.

*(Effective January 01, 2020; SB 523, s. 4.2.(d), S.L. 2019-169)*

**G.S. 105-113.36(b) – Wholesale dealer and retail dealer must obtain license: Term of License:**

This subsection was created ending continuing licenses for wholesale dealers and retail dealers for tobacco other than cigarettes. These licenses must now be renewed. Any license issued on or after January 2, 2020, are

in effect until June 30 of the year following the second calendar year after the date of issuance or renewal . . . [a] license for each place of business is renewable upon signed application with no renewal license tax, unless applied for after the June 30 expiration date.

*Effective January 01, 2020; SB 523, s. 4.2.(d), S.L. 2019-169)*

**G.S. 105-113.36(c) – Wholesale dealer and retail dealer must obtain license: Out-of-State Wholesale Dealers:**

This subsection was created adding a provision allowing for out-of-state wholesale dealers to obtain a license for tobacco products other than

cigarettes upon compliance with G.S. 105-113.4A and payment of a tax of twenty-five dollars (\$25.00).

*(Effective January 01, 2020; SB 523, s. 4.2.(d), S.L. 2019-169)*

**G.S. 105-113.37(a) – Payment of tax: Monthly Report:** This subsection was amended clarifying what information a wholesale dealer or retailer dealer is required to include in its monthly report to the Secretary. Specifically, the report must account for all “tobacco products sold, shipped, delivered, or otherwise disposed of in this State.”

*(Effective July 26, 2019; SB 523, s. 4.3.(b), S.L. 2019-169)*

**G.S. 105-113.37(b) – Payment of tax: Designation of Exempt Sale:** This subsection was stricken in its entirety. As amended, the wholesaler’s responsibilities regarding exempt sales are otherwise covered by the monthly reporting requirements under G.S. 105-113.37(a).

*(Effective July 26, 2019; SB 523, s. 4.3.(b), S.L. 2019-169)*

**G.S. 105-113.40 – Records of sales, inventories, and purchases to be kept:** This section was amended to mirror G.S. 105-113.26. Specifically, it requires:

*person[s] required to be licensed under this Article shall keep complete and accurate records of . . . purchases, inventories, and sales, shipments, and deliveries of products, and any other information as required under this Article. These records shall be in the form prescribed by the Secretary, open at all times for inspection by the Secretary or an authorized representative of the Secretary, and safely preserved for a period of three years in a manner to ensure their security and accessibility for inspection by the Department (emphasis added noting additional language added to the statute).*

*(Effective July 26, 2019; SB 523, s. 4.4.(b), S.L. 2019-169)*

## **ALCOHOLIC BEVERAGE LICENSE AND EXCISE TAXES – ARTICLE 2C**

**G.S. 105-113.68(a)(13) – Definitions; scope: Definitions:** This subdivision was rewritten to clarify who is a wholesaler and importer for the purposes of reporting and paying tax under Article 2C of Chapter 105. The term now includes:

a resident winery and a wine producer that sells its wines, or wine produced for the permittee under contract, at wholesale to a retailer or at retail and a resident brewery that sells its malt beverages, or malt

beverages produced for the permittee under contract, at wholesale to a retailer or at retail.

This subdivision was further amended to clarify that persons who hold any of the following permits issued by the ABC Commission are considered a wholesaler or an importer:

- a. Unfortified winery permit under G.S. 18B-1101.
- b. Fortified winery permit under G.S. 18B-1102.
- c. Brewery permit under G.S. 18B-1104.
- d. Wine importer permit under G.S. 18B-1106.
- e. Wine wholesaler permit under G.S. 18B-1107.
- f. Malt beverages importer permit under G.S. 18B-1108.
- g. Malt beverages wholesaler permit under G.S. 18B-1109.
- h. Wine producer permit under G.S. 18B-1114.3.

Previously, the subdivision excluded resident breweries who produced fewer than 25,000 barrels of malt beverages per year. As amended, this subdivision applies regardless of the amount of malt beverages produced.

*(Effective July 26, 2019; SB 523, s. 4.8, S.L. 2019-6)*

**G.S. 105-113.77 – City malt beverage and wine retail licenses:** The catchline was rewritten replacing “beer” with “malt beverage.” All changes from beer with malt beverage in this document are consistent with how malt beverage is defined under G.S. 105-113.68 and G.S. 18B-101; a beer is a type of malt beverage.

*(Effective March 20, 2019; SB 56, s. 4.4, S.L. 2019-6)*

**G.S. 105-113.78 – County malt beverage and wine retail licenses:** The catchline was rewritten replacing “beer” with “malt beverage.”

*(Effective March 20, 2019; SB 56, s. 4.5, S.L. 2019-6)*

**G.S. 105-113.80 – Excise taxes on malt beverage, wine, and liquor:** The catchline was rewritten replacing “beer” with “malt beverage.”

*(Effective March 20, 2019; SB 56, s. 4.7, S.L. 2019-6)*

**G.S. 105-113.80(a) – Excise taxes on beer, wine, and liquor: Malt Beverage:** The catchline for this subsection was rewritten replacing “beer” with “Malt Beverage.”

*(Effective March 20, 2019; SB 56, s. 4.7, S.L. 2019-6)*

**G.S. 105-113.80(c) – Excise taxes on beer, wine, and liquor: Liquor:** The subsection added “unless otherwise specified by law” clarifying that the tax on the sale of spirituous liquor is different when spirituous liquor is sold at distilleries. Generally the tax levied under this subsection is the sum of: (1) the distiller’s price; (2) the freight and



bailment charges of the State ABC warehouse; and (3) a markup for the local ABC boards. However, in accordance with the G.S. 18B-804(b1), if a distillery permittee sells spirituous liquor distilled at the distillery pursuant to G.S. 18B-1105(a)(4), only the distiller's price is subject to tax under this subsection.

*(Effective March 20, 2019; SB 56, s. 4.7, S.L. 2019-6)*

**G.S. 105-113.82 – Distribution of part of malt beverage and wine taxes:** The catchline for this section was rewritten replacing “beer” with “malt beverage.”

*(Effective March 20, 2019; SB 56, s. 4.6, S.L. 2019-6)*

**G.S. 105-113.83(b) – Payment of excise taxes: Malt Beverage and Wine:** The catchline for this subsection was rewritten replacing “beer” with “Malt Beverage.”

This subsection was also amended clarifying filing and tax payment requirements for wine shipper permittees. When wine shipper permittees ship wine directly to consumers in North Carolina pursuant to G.S. 18B-1001.1, and the shipment is taxable under G.S. 105-113.80(b), wine shipper permittees must pay the tax and “submit verified reports once a year on forms provided by the Secretary detailing sales records for the year the taxes are paid.” The “report is due on or before the fifteenth day of the first month of the following calendar year.”

*(Effective March 20, 2019; SB 56, s. 4.8, S.L. 2019-6)*

**G.S. 105-113.84 – Report of resident brewery, resident winery, resident wine producer, nonresident vendor, or wine shipper permittee:** The catchline for this section was amended by adding “resident wine producer.”

*(Effective July 26, 2019; SB 523, s. 4.9, S.L. 2019-6)*

**G.S. 105-113.84(a) – Report of resident brewery, resident winery, resident wine producer, nonresident vendor, or wine shipper permittee:** This subsection was amended requiring resident wine producers to file monthly reports with the Secretary. This subsection was further amended by clarifying that the reports filed with the Secretary are informational reports, which include non-tax paid sales.

*(Effective July 26, 2019; SB 523, s. 4.9, S.L. 2019-6)*

**G.S. 105-113.84(c) – Report of resident brewery, resident winery, resident wine producer, nonresident vendor, or wine shipper permittee:** This subsection was amended clarifying that resident breweries, resident wineries, resident wine producers, and nonresident vendors must file monthly information reports. These reports must list “the amount of beverages sold, delivered, or shipped to North Carolina wholesalers, importers, and purchasers under G.S. 18B-1001.1 during the period covered by the report.”

*(Effective July 26, 2019; SB 523, s. 4.9, S.L. 2019-6)*

## **TAX ON MOTOR CARRIERS - ARTICLE 36B**

**G.S. 105-449.47A(7) – Denial of license application and decal issuance:** This subsection was added providing an additional reason that the Secretary may refuse to issue a license and decal, or revoke a license or decal: “[f]ailure to maintain motor vehicle registration on the qualified motor vehicle.”

*(Effective June 26, 2019; SB 523, s. 4.10), S.L. 2019-169)*

## **GASOLINE, DIESEL, AND BLENDS – ARTICLE 36C**

**G.S. 105-449.60 – Definitions:** Subsection (8) was amended to align the subsection catchline “Bulk end-user” by adding “bulk” to the definition. The word “facilities” was also struck to encompass all types of bulk storage.

As amended through subsections (33), (48), (48a), and (55), tank wagons for hire are now motor fuel transporters who are subject to licensure and monthly reporting requirements as set out in G.S. §§ 105-449.65 and 105-449.101. Tank wagons, where the motor fuel is owned by the transporter, are not subject to monthly reporting requirements as set out in G.S. §§ 105-449.65 and 105-449.101.

Subsection (51) was also amended to clarify that the definition of terminal applies regardless of whether the terminal has an IRS terminal control number.

*(Effective July 26, 2019; SB 523, s. 4.11, S.L. 2019-169)*

**G.S. 105-449.69A – Temporary license during disaster response period:** This section was added and allows (through subsection (a)) the Secretary to issue a temporary license for an applicant to import, export, distribute, or transport motor fuel in response to a disaster declaration as defined in G.S. 166A-19.3. The temporary license expires when the disaster declaration expires.

Subsection (b) provides that an applicant must file the application with the Secretary on a form prescribed by the Secretary within seven calendar days from the date of the disaster declaration. It must include all of the following:

1. The legal name of the business and the trade name, if applicable, under which the person will transact business within the State.
2. The federal identification number of the business or, if such number is unavailable, the Social Security number of the owner.
3. The location, with a street number address, of the principal office or place of business and the location where records will be made available for inspection.
4. Any other information required by the Secretary.

Subsection (c) provides that the Secretary may issue the temporary license without: (1) a bond or a letter of credit otherwise required by G.S. 105-449.72; or (2) the applicant being registered to transact business in North Carolina through the Secretary of State. *(Effective August 1, 2019 and applying to disaster declarations on or after August 1, 2019; SB 498, s. 2, S.L. 2019-187)*

**G.S. 105-449.76(a) – Cancellation or revocation of license: Reasons:** This subsection was amended requiring that a licensee requesting cancellation of the license must immediately return the license to the Secretary. Only a written request by the licensee was previously required.

*(Effective March 20, 2019; SB 56, s. 4.11, S.L. 2019-6)*

**G.S. 105-449.76(b) – Cancellation or revocation of license: Procedure:** This subsection was amended by changing the method of sending certain documents for license revocations. As amended, the Secretary must send notices for summary license revocations and notices of hearing using certified mail instead of “registered mail”.

*(Effective March 20, 2019; SB 56, s. 4.11, S.L. 2019-6)*

**G.S. 105-449.90(e) – When tax return and payment are due: Monthly Filers on 3rd:** This subsection was amended clarifying that “[a]n occasional importer is not required to file a return if all the motor fuel imported by the importer in a reporting period was removed at a terminal located in another state and the supplier of the fuel is an elective supplier or a permissive supplier.”

*(Effective March 20, 2019; SB 56, s. 4.12, S.L. 2019-6)*

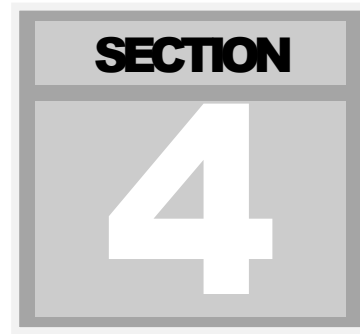
**G.S. 105-449.115(a) – Issuance:** This subsection was amended requiring that biodiesel providers “give a shipping document to the person who operates a railroad tank car or a transport truck into which motor fuel is loaded at the terminal rack or bulk plant rack.” Refiners, terminal operators, and fuel alcohol providers are already required to give shipping documents under this subsection.

*(Effective July 26, 2019; SB 523, s. 4.12, S.L. 2019-169)*

**G.S. 105-449.115A(a)(5) – Shipping document required to transport motor fuel by railroad tank car or transport truck: Issuance:** This subdivision was amended adding requirements for certain persons who operate tank wagons. Where motor fuel is loaded into a tank wagon from a source other than a terminal, the operator of the tank wagon must have an invoice, bill of sale, or shipping document that includes “[t]he destination state of the fuel.”

*(Effective July 26, 2019; SB 523, s. 4.13, S.L. 2019-169)*

# SALES AND USE TAX



## SALES AND USE TAX – ARTICLE 5

### DEFINITIONS

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. All definitions in G.S. 105-164.3 are renumbered.

**G.S. 105-164.3 – Definitions:** The 2018 and 2019 General Assembly added new defined terms and amended multiple definitions for existing defined terms. Definitions already within G.S. 105-164.3 that were only renumbered are not included below. New definitions, amended definitions, and definitions from other sections of the statutes are defined below.

The definitions included in Senate Bill 557, Session Law 2019-246, that are not yet included by the Revisor of Statutes in G.S. 105-164.3, are marked with an asterisk (\*) and included in alphabetical order within the other definitions included below and numbered as ( ) since the actual number assigned is not yet known. The changes and their effective dates are as follows:

**Accommodation – (\*)**. The definition of the term was previously codified as G.S. 105-164.4F(a)(1) and continues to be defined as “[a] hotel room, a motel room, a residence, a cottage, or a similar lodging facility for occupancy by an individual.”

*(Effective February 1, 2020, and applies to sales occurring on or after that date; SB 557, s. 4.(d), S.L. 2019-246.)*

**Accommodation Facilitator – (\*)**. The definition of the term is added and defined as “[a] person that contracts, either directly or indirectly, with a provider of an accommodation to perform, either directly or indirectly, one or more of the activities listed in this subdivision. The term includes a real estate broker as defined in G.S. 93A-2. The activities are:

- a. Market the accommodation and accept payment or collect credit card or other payment information for the rental of the accommodation.
- b. List the accommodation for rental on a forum, platform, or other application for a fee or other consideration.”

The “accommodation facilitator” definition is intended to replace the definition of the terms “facilitator” in G.S. 105-164.4F(a)(2) and “rental agent” in G.S. 105-164.4F(a)(3) that are repealed.

*(Effective February 1, 2020, and applies to sales occurring on or after that date; SB 557, s. 4.(d), S.L. 2019-246.)*

**Admission Charge – (\*)**. The definition of the term was previously codified as G.S. 105-164.4G(a)(1) and continues to be defined as “[g]ross receipts derived for the right to attend an entertainment activity. The term includes a charge for a single ticket, a multi-occasion ticket, a seasonal pass, and an annual pass; a membership fee that provides for admission; a cover charge; a surcharge; a convenience fee, a processing fee, a facility charge, a facilitation fee, or similar charge; or any other charges included in gross receipts derived from admission.”

*(Effective February 1, 2020, and applies to sales occurring on or after that date; SB 557, s. 4.(h), S.L. 2019-246.)*

**Admission Facilitator – (\*)**. The definition of the term is added and defined as “[a] person who accepts payment of an admission charge to an entertainment activity and who is not the operator of the venue where the entertainment activity occurs.”

The “admission facilitator” definition is intended to replace the definition of the term “facilitator” in G.S. 105-164.4G(a)(4) that is repealed.

*(Effective February 1, 2020, and applies to sales occurring on or after that date; SB 557, s. 4.(h), S.L. 2019-246.)*

**Advertising and Promotional Direct Mail – (1)**. The definition of the term is amended by replacing the term “product” with the term “item,” as defined in G.S. 105-164.3(91). The definition of the term is amended and provides “[p]rinted material that meets the definition of ‘direct mail’ and the primary purpose of which is to attract public attention to *an item*, person, business, or organization, or to attempt to sell, popularize, or secure financial support for *an item*, person, business, or organization.” [Emphasis added.]

*(Effective July 26, 2019; SB 523, s. 3.1.(a), S.L. 2019-169.)*

**Affiliate – (\*)**. The definition of the term is added and provides that the term is “[d]efined in G.S. 105-130.2.”

*(Effective February 1, 2020, and applies to sales occurring on or after that date; SB 557, s. 4.(m), S.L. 2019-246.)*

**Amenity – (\*)**. The definition of the term was previously codified as G.S. 105-164.4G(a)(2) and continues to be defined as “[a] feature that increases the value or attractiveness of an entertainment activity that allows a person access to items that are

not subject to tax under . . . Article [5 of Chapter 105 of the North Carolina General Statutes] and that are not available with the purchase of admission to the same event without the feature. The term includes parking privileges, special entrances, access to areas other than general admission, mascot visits, and merchandise discounts. The term does not include any charge for food, prepared food, and alcoholic beverages subject to tax under . . . Article [5 of Chapter 105 of the North Carolina General Statutes].”

*(Effective February 1, 2020, and applies to sales occurring on or after that date; SB 557, s. 4.(h), S.L. 2019-246.)*

**Bundled Transaction – (13).** The definition of the term is amended to update language to conform to the Streamlined Sales and Use Tax Agreement and to replace the term “product” or “products” with the term “item” as defined in G.S. 105-164.3(91) or “items.” The definition of the term is amended and provides “[a] retail sale of two or more distinct and identifiable *items*, at least one of which is taxable and one of which is *nontaxable*, for one nonitemized price. The term does not apply to real property or services to real property. *Items* are not sold for one nonitemized price if an invoice or another sales document made available to the purchaser separately identifies the price of each *item*. A bundled transaction does not include the retail sale of any of the following:

- a. *An item* and any packaging that accompanies the *item* and is exempt under G.S. 105-164.13(23).
- b. A sale of two or more *items* whose combined price varies, or is negotiable, depending on the *items* the purchaser selects.
- c. A sale of *an item* accompanied by a transfer of another *item* with no additional consideration.
- d. *An item* and the delivery or installation of the *item*.
- e. *An item* and any service necessary to complete the sale.” [Emphasis added.]

*(Effective July 26, 2019; SB 523, s. 3.1.(a), S.L. 2019-169.)*

**Capital Improvement – (21).** The definition of the term is amended and provides that a capital improvement includes “[o]ne or more of the following:

- c. Installation of a *transmission, distribution, or other network asset* on land owned by a *service provider* or on a *right-of-way or easement* in favor of a *service provider*, notwithstanding that *any separately stated charges billed to a customer for repair, maintenance, and installation services or a contribution in aid of construction* are included in the gross receipts derived from services subject to the combined general rate under G.S. 105-164.4. *For purposes of this sub-subdivision, the term ‘service provider’ means a person, including a governmental entity, who provides any of the services listed in this sub-subdivision, and the term ‘governmental entity’ means a State agency, the federal government, or a governmental entity listed in G.S. 105-164.14(c). The services are:*
  1. *Telecommunications service or ancillary service.*

2. *Video programming.*
3. *Electricity or piped natural gas.*
4. *Water or sewer service.*

...” [Emphasis added.]

*(Effective July 26, 2019; SB 523, s. 3.4.(b), S.L. 2019-169.)*

**Capital Improvement – (21).** The definition of the term is amended and provides that a capital improvement includes “[o]ne or more of the following:

“ . . .

- k. [a]n addition or alteration to real property that is permanently affixed or installed to real property and is not an activity listed in subdivision (191) of this section as repair, maintenance, and installation services. [Emphasis added.]

...”

*(Effective February 1, 2020, and applies to sales occurring on or after that date; SB 557, s. 4.(m), S.L. 2019-246.)*

**Certain Digital Property – (23).** The definition of the term is added and defined as “[a]n item listed in this subdivision that is delivered or accessed electronically is not considered tangible personal property and would be taxable under . . . Article [5 of Chapter 105 of the North Carolina General Statutes] if sold in a tangible medium. The term does not include an information service. The items are:

- a. An audio work.
- b. An audiovisual work.
- c. A book, magazine, a newspaper, a newsletter, a report, or another publication.
- d. A photograph or a greeting card.”

*(Effective July 26, 2019; SB 523, s. 3.1.(a), S.L. 2019-169.)*

**Certain Digital Property – (23).** The definition of the term is amended and provides “[a]n item listed in this subdivision that is delivered or accessed electronically *and that* is not considered tangible personal property. The term does not include an information service. The items are:

- a. An audio work.
- b. An audiovisual work.
- c. A book, magazine, a newspaper, a newsletter, a report, or another publication.
- d. A photograph or a greeting card.” [Emphasis added.]

This amendment removes the requirement that certain digital property have a taxable, tangible corollary.

*(Effective October 1, 2019, and applies to sales occurring on or after that date; SB 523, s. 3.1.(b), S.L. 2019-169.)*

**Consumer – (33).** The definition of the term is amended and provides “[a] person who stores, uses, or otherwise consumes in this State *an item* purchased or received from a retailer or supplier either within or without this State.” [Emphasis added.]

(Effective July 26, 2019; SB 523, s. 3.1.(a), S.L. 2019-169.)

**Delivery Charges – (39).** The definition of the term is amended and provides “[c]harges imposed by the retailer for preparation and delivery of *an item* to a location designated by the consumer.” [Emphasis added.]

(Effective July 26, 2019; SB 523, s. 3.1.(a), S.L. 2019-169.)

**Diaper – (43).** The definition of the term is added and defined as “[a]n absorbent garment worn by humans who are incapable of, or have difficulty, controlling their bladder or bowel movements.”

(Effective October 1, 2019, and applies to sales occurring on or after that date; SB 523, s. 3.13.(a), S.L. 2019-169.)

**Engaged in Business – (65).** The definition of the term is amended and provides “[a]ny of the following:

- “a. Maintaining, occupying, or using permanently or temporarily, directly or indirectly, or through a subsidiary or agent, by whatever name called, any office, place of distribution, sales or sample room, warehouse or storage place, or other place of business in this State, or permanently or temporarily, directly or through a subsidiary, having any representative, agent, sales representative, or solicitor operating in this State. The fact that any corporate retailer, agent, or subsidiary engaged in business in this State may not be legally domesticated or qualified to do business in this State is immaterial.
  - b. Maintaining in this State, either permanently or temporarily, directly or through a subsidiary, tangible personal property or *certain* digital property for the purpose of lease or rental.
- ...” [Emphasis added.]

(Effective July 26, 2019; SB 523, s. 3.1.(a), S.L. 2019-169.)

**Engaged in Business – (65).** The definition of the term is further amended and defined as “[a]ny of the following:

- “a. Maintaining, occupying, or using permanently or temporarily, directly or indirectly, or through a subsidiary or agent, by whatever name called, any office, place of distribution, sales or sample room, warehouse or storage place, or other place of business in this State, or permanently or temporarily, directly or through a subsidiary, having any representative, agent, sales representative, *marketplace facilitator subject to the requirements of G.S. 105-164.4J*, or solicitor operating or *transacting business by mobile phone application or other applications* in this State. The fact that any corporate retailer, agent, or subsidiary engaged in business in this State may not be legally domesticated or qualified to do business in this State is immaterial.



- ...
- e. *Making marketplace-facilitated sales subject to the requirements of G.S. 105-164.4J.* [Emphasis added.]

*(Effective February 1, 2020, and applies to sales occurring on or after that date; SB 557, s. 4.(m), S.L. 2019-246.)*

**Entertainment Activity – (\*)**. The definition of the term was previously codified as G.S. 105-164.4G(a)(3) and continues to be defined as “[a]n activity listed in this subdivision:

- a. A live performance or other live event of any kind, the purpose of which is for entertainment.
- b. A movie, motion picture, or film.
- c. A museum, a cultural site, a garden, an exhibit, a show, or a similar attraction.
- d. A guided tour at any of the activities listed in sub-subdivision c. of this subdivision.”

*(Effective February 1, 2020, and applies to sales occurring on or after that date; SB 557, s. 4.(h), S.L. 2019-246.)*

**Facilitator – (\*)**. The definition of the term is added and defined as “[a]n accommodation facilitator, an admission facilitator, or a service contract facilitator.”

*(Effective February 1, 2020, and applies to sales occurring on or after that date; SB 557, s. 4.(m), S.L. 2019-246.)*

**Gross Sales – (73)**. The definition of the term is amended and provides “[t]he sum total of the sales price of all sales of *items*.” [Emphasis added.]

*(Effective July 26, 2019; SB 523, s. 3.1.(a), S.L. 2019-169.)*

**Gross Sales – (73)**. The definition of the term is further amended and defined as “[t]he sum total of the sales price of all sales of tangible personal property, digital property, and services.”

*(Effective November 1, 2019; HB 399, s. 8.1.(b), S.L. 2019-237; definition duplicated in SB 557, s.8., S.L. 2019-246.)*

**Incontinence Underpad – (79)**. The definition of the term is added and defined as “[a]n absorbent product, not worn on the body, designed to protect furniture or other tangible personal property from soiling or damage due to human incontinence.”

*(Effective October 1, 2019, and applies to sales occurring on or after that date; SB 523, s. 3.13.(a), S.L. 2019-169.)*

**Item – (91)**. The definition of the term is added and defined as “[t]angible personal property, certain digital property, or a service, unless the context requires otherwise.”

Item, as defined, has been replaced throughout Article 5 of Chapter 105 of the North Carolina General Statutes as appropriate.

*(Effective July 26, 2019; SB 523, s. 3.1.(a), S.L. 2019-169.)*

**Item – (91.)** The definition of the term is further amended and defined as “[t]angible personal property, digital property, or a service, unless the context requires otherwise.”

Item, as defined, has been replaced throughout Article 5 of Chapter 105 of the North Carolina General Statutes as appropriate.

*(Effective November 1, 2019; HB 399, s. 8.1.(b), S.L. 2019-237.)*

**Landscaping – (95).** The definition of the term is amended and provides “[a] service that modifies the living elements of an area of land. Examples include the installation of trees, shrubs, or flowers on land; tree trimming; mowing; and the application of seed, mulch, pine straw, or fertilizer to an area of land. The term does not include services to trees, shrubs, flowers, or similar *tangible personal property* in pots or in buildings.” [Emphasis added.]

*(Effective July 26, 2019; SB 523, s. 3.1.(a), S.L. 2019-169.)*

**Marketplace – (\*).** The definition of the term is added and defined as “[a] physical or electronic place, forum, platform, application, or other method by which a marketplace seller sells or offers to sell items, the delivery of or first use of which is sourced to this State.”

*(Effective February 1, 2020, and applies to sales occurring on or after that date; SB 557, s. 4.(a), S.L. 2019-246.)*

**Marketplace-Facilitated Sale – (\*).** The definition of the term is added and defined as “[t]he sale of an item by a marketplace facilitator on behalf of a marketplace seller that occurs through a marketplace.”

*(Effective February 1, 2020, and applies to sales occurring on or after that date; SB 557, s. 4.(a), S.L. 2019-246.)*

**Marketplace Facilitator – (\*).** The definition of the term is added and defined as “[a] person that, directly or indirectly and whether through one or more affiliates, does both of the following:

- a. Lists or otherwise makes available for sale a marketplace seller's items through a marketplace owned or operated by the marketplace facilitator.
- b. Does one or more of the following:
  1. Collects the sales price or purchase price of a marketplace seller's items or otherwise processes payment.
  2. Makes payment processing services available to purchasers for the sale of a marketplace seller's items.”

*(Effective February 1, 2020, and applies to sales occurring on or after that date; SB 557, s. 4.(a), S.L. 2019-246.)*

**Marketplace Seller – (\*)**. The definition of the term is added and defined as “[a] person that sells or offers to sell items through a marketplace regardless of any of the following:

- a. Whether the person has a physical presence in this State.
- b. Whether the person is registered as a retailer in this State.
- c. Whether the person would have been required to collect and remit sales and use tax had the sales not been made through a marketplace.
- d. Whether the person would not have been required to collect and remit sales and use tax had the sales not been made through a marketplace.”

*(Effective February 1, 2020, and applies to sales occurring on or after that date; SB 557, s. 4.(a), S.L. 2019-246.)*

**Nonresident Retail or Wholesale Merchant – (127)**. The definition of the term is amended and provides “[a] person who does not have a place of business in this State, is registered for sales and use tax purposes in a taxing jurisdiction outside the State, and is engaged in the business of acquiring, by purchase, consignment, or otherwise, tangible personal property or *certain* digital property and selling the property outside the State or in the business of providing a service.” [Emphasis added.]

*(Effective July 26, 2019; SB 523, s. 3.1.(a), S.L. 2019-169.)*

**Property Management Contract – (157)**. The definition of the term is added and defined as “[a] written contract to manage one or more of the activities listed in this subdivision that are related to real property used for business, educational, commercial, or income-producing purposes. The activity may include the lease or rental of the property on behalf of the owner, other than the lease or rental of an accommodation taxable under G.S. 105-164.4(a)(3). The term does not include a contract for repair, maintenance, and installation services for real property. The activities that may be performed under a property management contract are as follows:

- a. Hiring and supervising employees for the property.
- b. Providing a person to manage the property.
- c. Receiving and applying revenues received from tenants of the property.
- d. Arranging for services from third parties in order to comply with the landlord's obligations under a lease or rental agreement or to comply with facility-related needs of the property's occupants. The activity may include supplemental repair, maintenance, and installation services to complement taxable services provided by third-party vendors if no additional fee is imposed under the contract for that supplemental service.
- e. Incurring and paying expenses derived from the operation of the real property.
- f. Handling administrative affairs for the real property.”

*(Effective January 1, 2020; S.B. 99, s. 38.5.(x), S.L. 2018-5.)*

**Property Management Contract – (157).** The definition of the term is repealed effective July 26, 2019 prior to the effective date of January 1, 2020. A new definition of the term is subsequently added and is defined as “[a] written contract obligating a person to provide five or more real property management services.”

*(Effective July 26, 2019; SB 523, s. 3.9.(a) and (b), S.L. 2019-169; Effective July 26, 2019, SB 523, s. 3.9.(c), S.L. 2019-169. The provisions of G.S. 105-164.15A apply to the implementation of this change as if it is a decrease in the tax rate; SB 557, s. 7.(a), S.L. 2019-246. Originally, the effective date referenced the date a real property management contract was entered into, however, this provision was eliminated in subsequent legislation; SB 557, s. 7.(a), S.L. 2019-246.)*

**Prosthetic Device – (159).** The definition of the term is amended and provides “[a] replacement, corrective, or supporting device worn on or in the body that meets one of the conditions of this subdivision. The term includes repair and replacement parts for the device. *The conditions are as follows:*

- a. Artificially replaces a missing portion of the body.
- b. Prevents or corrects a physical deformity or malfunction.
- c. Supports a weak or deformed portion of the body.” [Emphasis added.]

*(Effective July 26, 2019; HB 264, s. 9.(b), S.L. 2019-177.)*

**Real Property Management Services – (177).** The term is added and defined as “[a]ny of the following activities:

- a. Hiring and supervising employees for the real property.
- b. Providing a person to manage the real property.
- c. Receiving and applying revenues received from property owners or tenants of the real property.
- d. Providing repair, maintenance, and installation services to comply with obligations of a homeowners' association or a landlord under a lease, rental, or management agreement.
- e. Arranging for a third party to provide repair, maintenance, and installation services.
- f. Incurring and paying expenses for the management, repair, and maintenance of the real property.
- g. Handling administrative affairs for the real property.”

*(Effective July 26, 2019, SB 523, s. 3.9.(c), S.L. 2019-169. The provisions of G.S. 105-164.15A apply to the implementation of this change as if it is a decrease in the tax rate; SB 557, s. 7.(a), S.L. 2019-246. Originally, the effective date referenced the date a real property management contract was entered into, however, this provision was eliminated in subsequent legislation; SB 557, s. 7.(a), S.L. 2019-246.)*

**Real Property Manager – (179).** The term is added and defined as “[a] person that provides real property management services pursuant to a property management contract.”

(Effective July 26, 2019, SB 523, s. 3.9.(c), S.L. 2019-169. The provisions of G.S. 105-164.15A apply to the implementation of this change as if it is a decrease in the tax rate; SB 557, s. 7.(a), S.L. 2019-246. Originally, the effective date referenced the date a real property management contract was entered into, however, this provision was eliminated in subsequent legislation; SB 557, s. 7.(a), S.L. 2019-246.)

**Remote Sale – (187).** The definition of the term is amended and provides “[a] sale of an *item* ordered by mail, telephone, Internet, *mobile phone application*, or another *method* by a retailer who receives the order in another state and delivers the *item* or makes it accessible to a person in this State or causes the *item* to be delivered or made accessible to a person in this State or performs a service sourced to this State. It is presumed that a resident of this State who makes an order was in this State at the time the order was made. [Emphasis added.]

(Effective July 26, 2019; SB 523, s. 3.1.(a), S.L. 2019-169; definition duplicated in SB 557, s. 4.(m), S.L. 2019-246.)

**Repair, Maintenance, and Installation Services – (191).** The definition of the term is amended to include the defined term “certain digital property.” The definition as amended is “[t]he term includes the activities listed in this subdivision and applies to tangible personal property, motor vehicles, *certain* digital property, and real property. The term does not include a service used to fulfill a real property contract taxed in accordance with G.S. 105-164.4H. *The included activities are:*

...

- d. To install, apply, connect, adjust, or set into position tangible personal property or *certain* digital property. The term includes floor refinishing and the installation of carpet, flooring, floor coverings, windows, doors, cabinets, countertops, and other installations where the item being installed may replace a similar existing item. The replacement of more than one of a like-kind item, such as replacing one or more windows, is repair, maintenance, and installation services. The term does not include an installation defined as a capital improvement under subdivision (2c)d. of this section and substantiated as a capital improvement under G.S. 105-164.4H(a1).
- e. To inspect or monitor property or install, apply, or connect tangible personal property or *certain* digital property on a motor vehicle or adjust a motor vehicle.” [Emphasis added.]

(Effective July 26, 2019; SB 523, s. 3.1.(a), S.L. 2019-169.)

**Retailer – (195).** The definition of the term is amended by adding the terms “item” defined in G.S. 105-164.3(91) and “certain digital property” defined in G.S. 105-164.3(23). The definition of the term, as amended in part, is “[a]ny of the following persons:

- a. A person engaged in business of making sales at retail, offering to make sales at retail, or soliciting sales at retail of *items* sourced to this State. When the Secretary finds it necessary for the efficient administration of ... [Article 5 of Chapter 105 of 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 ‘retailers’ for the purpose of . . . Article [5 of Chapter 105 of North Carolina General Statutes].

- b. A person, other than a real property contractor, engaged in business of delivering, erecting, installing, or applying tangible personal property or *certain* digital property for use in this State.

. . .” [Emphasis added.]

(Effective July 26, 2019; SB 523, s. 3.1.(a), S.L. 2019-169.)

**Retailer – (195).** The definition of the term is amended and provides “[a]ny of the following persons:

- a. A person engaged in business of making sales at retail, offering to make sales at retail, or soliciting sales at retail of *items* sourced to this State. When the Secretary finds it necessary for the efficient administration of . . . Article [5 of Chapter 105] 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 as “retailers” for the purpose of . . . Article [5 of Chapter 105 of the North Carolina General Statutes].

. . .

- d. A *person* required to collect the State tax levied under . . . Article [5 of Chapter 105] or the local taxes levied under Subchapter VIII of [Chapter 105 of the North Carolina General Statutes] and under Chapter 1096 of the 1967 Session Laws.
- e. A *marketplace facilitator that is subject to the requirements of G.S. 105-164.4J or a facilitator that is required to collect and remit the tax under . . . Article [5 of Chapter 105 of the North Carolina General Statutes].* [Emphasis added.]

(Effective February 1, 2020, and applies to sales occurring on or after that date; SB 557, s. 4.(m), S.L. 2019-246.)

**Sale or Selling – (201).** The definition of the term is amended and provides “[t]he transfer for consideration of title, license to use or consume, or possession of tangible personal property or *certain* digital property or the performance for consideration of a service. The transfer or performance may be conditional or in any manner or by any means. The term applies to the following:

- ...
- a. A transaction in which the possession of the *tangible personal property or certain digital property* is transferred but the seller retains title or security for the payment of the consideration.” [Emphasis added.]

(Effective July 26, 2019; SB 523, s. 3.1.(a), S.L. 2019-169.)

**Sales Price – (203).** The definition of the term is amended and provides “[t]he total amount or consideration for which *an item is sold, leased, or rented*. The consideration may be in the form of cash, credit, property, or services. The sales price must be valued in money, regardless of whether it is received in money.

- a. The term includes all of the following:
  1. The retailer's cost of the *item sold*.

...” [Emphasis added.]

(Effective July 26, 2019; SB 523, s. 3.1.(a), S.L. 2019-169.)

**Secondary Metals Recycler – (207).** The definition of the term is amended and provides “[a] person that gathers and obtains ferrous metals, nonferrous metals, and *products* that have served their original economic purpose and that converts them by processes, including sorting, cutting, classifying, cleaning, baling, wrapping, shredding, or shearing into a new or different product for sale consisting of prepared grades.” [Emphasis added.]

(Effective July 26, 2019; SB 523, s. 3.1.(a), S.L. 2019-169.)

**Service Contract – (211).** The definition of the term is amended to include the term “certain digital property” as defined in G.S. 105-164.3(23). The definition of the term is amended and provides “[a] contract where the obligor under the contract agrees to maintain, monitor, inspect, repair, or provide another service included in the definition of repair, maintenance, and installation services to *certain* digital property, tangible personal property, or real property for a period of time or some other defined measure. The term does not include a single service included in repair, maintenance, or installation services, but does include a contract where the obligor may provide a service included in the definition of repair, maintenance, and installation services as a condition of the contract. The term includes a service contract for a pool, fish tank, or similar aquatic feature and a home warranty. Examples include a warranty agreement other than a manufacturer's warranty or dealer's warranty provided at no charge to the purchaser, an extended warranty agreement, a maintenance agreement, a repair agreement, or a similar agreement or contract.” [Emphasis added.]

(Effective July 26, 2019; SB 523, s. 3.1.(a), S.L. 2019-169.)

**Service Contract Facilitator – (\*).** The definition of the term is added and defined as “[a] person who contracts with the obligor of a service contract to market the service contract and accepts payment from the purchaser for the service contract.”

The “service contract facilitator” definition is intended to replace the definition of the term “facilitator” in G.S. 105-164.4I(e) that is repealed.

*(Effective February 1, 2020, and applies to sales occurring on or after that date; SB 557, s. 4.(j), S.L. 2019-246.)*

**Storage – (219).** The definition of the term is amended and provides “[t]he keeping or retention in this State for any purpose, except sale in the regular course of business, of tangible personal property or *certain* digital property for any period of time purchased from a person in business.” [Emphasis added.]

*(Effective July 26, 2019; SB 523, s. 3.1.(a), S.L. 2019-169.)*

**Streamlined Agreement – (221).** The reference date to the Streamlined Agreement is updated to the most recent version. As amended, the definition of the term is “[t]he Streamlined Sales and Use Tax Agreement as amended as of *December 14, 2018*.” [Emphasis added.]

*(Effective July 26, 2019; SB 523, s. 3.1.(a), S.L. 2019-169.)*

**Taxing Area – (225).** The definition of the term is added and defined as “[a]ny of the following specific geographic areas:

- a. A street address.
- b. The area within a nine-digit zip code.
- c. The area within a five-digit zip code.”

*(Effective July 26, 2019; SB 523, s. 3.5.(a), S.L. 2019-169.)*

**Taxing District – (227).** The definition of the term is added and defined as “[a] county or any other district, by or for which ad valorem taxes or sales taxes are levied, excluding the State.”

*(Effective July 26, 2019; SB 523, s. 3.5.(a), S.L. 2019-169.)*

**Telecommunications Service – (231).** The definition of the term is amended and provides “[t]he electronic transmission, conveyance, or routing of voice, data, audio, video, or any other information or signals to a point, or between or among points. The term includes any transmission, conveyance, or routing in which a computer processing application is used to act on the form, code, or protocol of the content for purposes of the transmission, conveyance, or routing, regardless of whether it is referred to as voice-over Internet protocol or the Federal Communications Commission classifies it as enhanced or value added. The term does not include the following:

- ...
- h. *Certain digital property.*” [Emphasis added.]

*(Effective July 26, 2019; SB 523, s. 3.1.(a), S.L. 2019-169.)*



**Use – (233).** The definition of the term is amended and provides “[t]he exercise of any right, power, or dominion whatsoever over *an item* by the purchaser of the *item*. The term includes withdrawal from storage, distribution, installation, affixation to real or personal property, and exhaustion or consumption of the *item* by the owner or purchaser. The term does not include the sale of *an item* in the regular course of business.” [Emphasis added.]

(Effective July 26, 2019; SB 523, s. 3.1.(a), S.L. 2019-169.)

**Wholesale Merchant – (239).** The definition of the term is amended and provides “[a] person engaged in the business of any of the following:

- a. Making wholesale sales.
- b. Buying or manufacturing *items* and selling *them* to a registered *person* or nonresident retail or wholesale merchant for resale.
- c. Manufacturing, producing, processing, or blending any articles of commerce and maintaining a store, warehouse, or any other place that is separate and apart from the place of manufacture or production for the sale or distribution of the articles, other than bakery products, to another for the purpose of resale.” [Emphasis added.]

(Effective July 26, 2019; SB 523, s. 3.1.(a), S.L. 2019-169.)

**Wholesale Sale – (241).** The definition of the term is amended and provides “[a] sale of *an item* for the purpose of resale. The term includes a sale of *certain* digital property for reproduction into *certain* digital *property* or tangible personal property offered for sale. The term does not include a sale to a user or consumer not for resale or, in the case of *certain* digital property, not for reproduction and sale of the reproduced property.” [Emphasis added.]

(Effective July 26, 2019; SB 523, s. 3.1.(a), S.L. 2019-169.)

## **SALES AND USE TAX IMPOSITIONS**

**G.S. 105-164.4(a)(1). – Sales Tax Imposed at the General State Rate on Items Sold at Retail:** This subdivision is amended and provides “[t]he general rate of tax applies to the *following items sold at retail*:

- a. *The sales price of each article of tangible personal property that is not subject to tax under another subdivision in this section. A sale of a freestanding appliance is a retail sale of tangible personal property.*
- b. *The sales price of certain digital property. The tax applies regardless of whether the purchaser of the property has a right to use it permanently or to use it without making continued payments.*
- c. *The sales price of or gross receipts derived from repair, maintenance, and installation services to tangible personal property or certain digital property, regardless of whether the tangible personal property or certain digital property is taxed under another subdivision in this section or is subject to a maximum tax under another subdivision in this section. Repair, maintenance, and installation*

*services generally include any tangible personal property or certain digital property that becomes a part of or is applied to a purchaser's property. The use tax exemption in G.S. 105-164.27A(a3) may apply to these services. Repair, maintenance, and installation services for real property are taxable under subdivision (16) of this subsection.” [Emphasis added.]*

*(Effective July 26, 2019; SB 523, s. 3.2., S.L. 2019-169.)*

**G.S. 105-164.4(a)(1a). – Sales Tax Imposed at the General Rate on a Manufactured Home, a Modular Home, an Aircraft, or a Qualified Jet Engine at Retail:**

This subdivision is amended and provides “[t]he general rate applies to the sales price of each of the following items sold at retail, including all accessories attached to the item when it is delivered to the purchaser:

- a. A manufactured home.
- b. A modular home. The sale of a modular home to a modular homebuilder is considered a retail sale, no matter that the modular home may be used to fulfill a real property contract. A person who sells a modular home at retail is allowed a credit against the tax imposed by this subdivision for sales or use tax paid to another state on tangible personal property incorporated in the modular home. The retail sale of a modular home occurs when a modular home manufacturer sells a modular home to a modular homebuilder or directly to the end user of the modular home.
- c. An aircraft. The maximum tax is two thousand five hundred dollars (\$2,500) per article.
- d. A qualified jet engine.”

The result of the amendment clarifies that all repair, maintenance, and installation services are taxed at the general rate in G.S. 105-164.4(a)(1) regardless of whether the underlying item is subject to a different rate of tax or to a maximum tax.

*(Effective July 26, 2019; SB 523, s. 3.2., S.L. 2019-169.)*

**G.S. 105-164(a)(1b) – Sales Tax Imposed at the Rate of Three Percent (3%) on a Boat at Retail:**

This subdivision is amended and provides “[t]he rate of three percent (3%) applies to the sales price of each boat sold at retail, including all accessories attached to the boat when it is delivered to the purchaser. The maximum tax is one thousand five hundred dollars (\$1,500) per article.”

The result of the amendment clarifies that all repair, maintenance, and installation services are taxed at the general rate in G.S. 105-164.4(a)(1) regardless of whether the underlying item is subject to a different rate of tax or to a maximum tax.

*(Effective July 26, 2019; SB 523, s. 3.2., S.L. 2019-169.)*

**G.S. 105-164.4(a)(4c) – Sales Tax Imposed at the Combined General Rate on Telecommunications Service and Ancillary Service:**

This subdivision is amended to clarify that “[t]he combined general rate applies to the gross receipts derived from

providing telecommunications service and ancillary service, *including any separately stated charges billed to a customer for repair, maintenance, and installation services or a contribution in aid of construction.* A person who provides telecommunications service or ancillary service is considered a retailer under . . . Article [5 of Chapter 105 of the North Carolina General Statutes]. These services are taxed in accordance with G.S. 105-164.4C.” [Emphasis added.]

*(Effective July 26, 2019; SB 523, s. 3.4.(a), S.L. 2019-169.)*

**G.S. 105-164.4(a)(6) – Sales Tax Imposed at the Combined General Rate on Video Programming:** This subdivision is amended to clarify that “[t]he combined general rate applies to the gross receipts derived from providing video programming to a subscriber in this State, *including any separately stated charges billed to a customer for repair, maintenance, and installation services or a contribution in aid of construction.* A cable service provider, a direct-to-home satellite service provider, and any other person engaged in the business of providing video programming is considered a retailer under . . . Article [5 of Chapter 105 of the North Carolina General Statutes].” [Emphasis added.]

*(Effective July 26, 2019; SB 523, s. 3.4.(a), S.L. 2019-169.)*

**G.S. 105-164.4(a)(6b) – Sales Tax Imposed at the General Rate on Digital Property at Retail:** This subdivision is repealed. Refer to G.S. 105-164.4(a)(1)b. for sales tax imposed on certain digital property.

*(Effective July 26, 2019; SB 523, s. 3.2., S.L. 2019-169.)*

**G.S. 105-164.4(a)(9) – Sales Tax Imposed at the Combined General Rate on Sales of Electricity and Piped Natural Gas:** This subdivision is amended to clarify that “[t]he combined general rate applies to the gross receipts derived from sales of electricity and piped natural gas, *including any separately stated charges billed to a customer for repair, maintenance, and installation services or a contribution in aid of construction.*” [Emphasis added.]

*(Effective July 26, 2019; SB 523, s. 3.4.(a), S.L. 2019-169.)*

**G.S. 105-164.4(a)(16) – Sales Tax Imposed on Repair, Maintenance, and Installation Services for Real Property:** This subdivision is amended and provides “[t]he general rate applies to the sales price of or the gross receipts derived from repair, maintenance, and installation services for real property and generally includes any tangible personal property or *certain* digital property that becomes a part of or is applied to a purchaser's property. A mixed transaction contract and a real property contract are taxed in accordance with G.S. 105-164.4H.” [Emphasis added.]

*(Effective July 26, 2019; SB 523, s. 3.2., S.L. 2019-169.)*

**G.S. 105-164.4(a)(16) – Sales Tax Imposed on Repair, Maintenance, and Installation Services for Real Property:** This subdivision is further amended and provides “[t]he general rate applies to the sales price of or the gross receipts derived from repair, maintenance, and installation services for real property and generally includes any tangible personal property or certain digital property that becomes a part of or is applied to a purchaser's property. A mixed transaction contract and a real property contract are taxed in accordance with G.S. 105-164.4H. *A property management contract is taxable in accordance with G.S. 105-164.4K.*” [Emphasis added.]

*(Effective July 26, 2019, SB 523, s. 3.9.(d), S.L. 2019-169. The provisions of G.S. 105-164.15A apply to the implementation of this change as if it is a decrease in the tax rate; SB 557, s. 7.(a), S.L. 2019-246. Originally, the effective date referenced the date a real property management contract was entered into, however, this provision was eliminated in subsequent legislation; SB 557, s. 7.(a), S.L. 2019-246.)*

**G.S. 105-164.4F – Accommodation Rentals:** The subsection G.S. 105-164.4F(a) is repealed. The definition of the term “accommodation” is codified in G.S. 105-164.3. The definition of the terms “facilitator” and “rental agent” in G.S. 105-164.4F(a) are repealed. The definition of the term “accommodation facilitator” is added in G.S. 105-164.3.

These subsections are amended and provides the following:

“(b) Tax. – The gross receipts derived from the rental of an accommodation are taxed at the general rate set in G.S. 105-164.4. Gross receipts derived from the rental of an accommodation include the sales price of the rental of the accommodation. The sales price of the rental of an accommodation is determined as if the rental were a rental of tangible personal property. The sales price of the rental of an accommodation *made by an accommodation facilitator includes any charges or fees, by whatever name called, charged by the accommodation facilitator to the purchaser of the accommodation that are necessary to complete the rental. The tax is due and payable by the retailer in accordance with G.S. 105-164.16.*

(b1) *Retailer. – Except as otherwise provided in subsection (c) of this section, the retailer of the rental of an accommodation is one or more of the persons listed below that collects the payment, or a portion of the payment, for the rental of the accommodation. In the event the person who collects the payment cannot be determined or is a third party that is not listed in this subsection, and subsection (c) of this section does not apply, the provider of the accommodation shall be considered the retailer of the transaction. The retailer is liable for reporting and remitting the tax due on the portion of the gross receipts derived from the rental of the accommodation that the retailer collects. The retailer may be one or more of the following:*

*(1) The provider of the accommodation.*

*(2) An accommodation facilitator.*

(c) *Certain Accommodation Facilitator Transactions. – This subsection applies only to an accommodation facilitator that is operated by or on behalf of a hotel or a*

*hotel corporation, that facilitates the rental of hotel accommodations solely for the hotel or the hotel corporation's owned or managed hotels and franchisees, and that collects payment, or a portion of the payment, for the rental of an accommodation. An accommodation facilitator subject to this subsection is not considered the retailer of the rental of the accommodation. The accommodation facilitator must send the retailer the tax due on the sales price, or the portion of the sales price, the accommodation facilitator collected no later than 10 days after the end of each calendar month. An accommodation facilitator that does not send the retailer the tax due on the sales price, or the portion of the sales price the accommodation facilitator collected, is liable for the amount of tax the accommodation facilitator fails to send. An accommodation facilitator is not liable for tax sent to a retailer but not remitted by the retailer to the Secretary. Tax payments received by a retailer from an accommodation facilitator are held in trust by the retailer for remittance to the Secretary. A retailer that receives a tax payment from an accommodation facilitator must remit the amount received to the Secretary. A retailer is not liable for tax due but not received from an accommodation facilitator.*

*(c1) Accommodation Facilitator Report. – An accommodation facilitator must file with the Secretary an annual report by March 31 of each year for the prior calendar year for accommodation rentals it makes. The annual report must be provided in electronic format and include the property owner's name, the property owner's mailing address, the physical location of the accommodation, and gross receipts information for the rentals. The report may only be used by the Secretary, and any person receiving the report, pursuant to G.S. 105-259, for tax compliance purposes.*

- (e) Exemptions. – The tax imposed by this section does not apply to the following:
- (1) A private residence, cottage, or similar accommodation that is rented for fewer than 15 days in a calendar year *unless the rental of the accommodation is made by an accommodation facilitator.*
  - (2) An accommodation supplied to the same person for a period of 90 or more continuous days.
  - (3) An accommodation arranged or provided to a person by a school, camp, or similar entity where a tuition or fee is charged to the person for enrollment in the school, camp, or similar entity." [Emphasis added.]

G.S. 105-160A-215(c) references a city occupancy tax and is amended to conform to the accommodation rental amendments.

G.S. 105-153A-155(c) references a county occupancy tax and is amended to conform to the accommodation rental amendments.

*(Effective February 1, 2020, and applies to sales occurring on or after that date; SB 557, s. 4.(e), 4.(f), 4.(g), S.L. 2019-246. There is no obligation to collect the sales and use tax required by this section retroactively. If any provision of this section, or the application of any provision to a person or circumstance, is held to be invalid or unconstitutional, then the remainder of this section, and the application of the provisions to any person or circumstance, shall not be affected thereby.)*

**G.S. 105-164.4G – Entertainment Activity:** The subsection G.S. 105-164.4G(a) is repealed. The definition of the term “admission charge” is codified in G.S. 105-164.3. The definition of the term “admission facilitator” is added in G.S. 105-164.3. The definition of the term “amenity” is codified in G.S. 105-164.3. The definition of the term “entertainment activity” is codified in G.S. 105-164.3. The definition of the term “facilitator” in G.S. 105-164.4G(a) is repealed.

These subsections are amended and provides the following:

- “(b) Tax. – The gross receipts derived from an admission charge to an entertainment activity are taxed at the general rate set in G.S. 105-164.4. The tax is due and payable by the retailer in accordance with G.S. 105-164.16. For purposes of the tax imposed by this section, the retailer is the applicable person listed below:
- (1) The operator of the venue where the entertainment activity occurs, unless the retailer and the *admission* facilitator have a contract between them allowing for dual remittance, as provided in subsection (d) of this section.
  - (2) The person that provides the entertainment and that receives admission charges directly from a purchaser.
  - (3) A person other than a person listed in subdivision (1) or (2) of this subsection that receives gross receipts derived from an admission charge sold at retail.
- (c) *Admission* Facilitator. – *An admission* facilitator must report to the retailer with whom it has a contract the admission charge a consumer pays to the *admission* facilitator for an entertainment activity. The *admission* facilitator must send the retailer the portion of the gross receipts the *admission* facilitator owes the retailer and the tax due on the gross receipts derived from an admission charge no later than 10 days after the end of each calendar month. *An admission* facilitator that does not send the retailer the tax due on the gross receipts derived from an admission charge is liable for the amount of tax the *admission* facilitator fails to send to the retailer. *An admission* facilitator is not liable for tax sent to a retailer but not remitted by the retailer to the Secretary. Tax payments received by a retailer from *an admission* facilitator are held in trust by the retailer for remittance to the Secretary. A retailer that receives a tax payment from *an admission* facilitator must remit the amount received to the Secretary. A retailer is not liable for tax due but not received from *an admission* facilitator. The requirements imposed by this subsection on a retailer and *an admission* facilitator are considered terms of the contract between the retailer and the *admission* facilitator.
- (d) Dual Remittance. – The tax due on the gross receipts derived from an admission charge may be partially reported and remitted to the operator of the venue for remittance to the Department and partially reported and remitted by the *admission* facilitator directly to the Department. The portion of the tax not reported and remitted to the operator of the venue must be reported and remitted directly by the *admission* facilitator to the Department. *An admission* facilitator that elects to remit tax under the dual remittance option is required to obtain a certificate of registration in accordance with G.S. 105-164.29. *An*

*admission* facilitator is subject to the provisions of Article 9 of . . . Chapter [105 of the North Carolina General Statutes.” [Emphasis added.]

(Effective February 1, 2020, and applies to sales occurring on or after that date; SB 557, s. 4.(i), S.L. 2019-246.)

**G.S. 105-164.4H – Real Property Contract:** These subsections are amended and provides the following:

“(a) Applicability. – A real property contractor is the consumer of the tangible personal property or *certain* digital property that the real property contractor purchases, installs, or applies for others to fulfill a real property contract and that becomes part of real property or used to fulfill the contract. A retailer engaged in business in the State shall collect tax on the sales price of *an item* sold at retail to a real property contractor unless a statutory exemption in G.S. 105-164.13 or G.S. 105-164.13E applies. Where a real property contractor purchases tangible personal property or *certain* digital property for storage, use, or consumption in this State, or a service sourced to this State, and the tax due is not paid at the time of purchase, the provisions of G.S. 105-164.6 apply except as provided in subsection (b) of this section.

...

(b) Retailer-Contractor. – This section applies to a retailer-contractor as follows:

(1) Acting as a real property contractor. – A retailer-contractor acts as a real property contractor when it contracts to perform a real property contract. A retailer-contractor that purchases tangible personal property or *certain* digital property to be installed or applied to real property to fulfill the contract may purchase those items exempt from tax under a certificate of exemption pursuant to G.S. 105-164.28 provided the retailer-contractor also purchases inventory or services from the seller for resale. When the property is withdrawn from inventory and installed or applied to real property, use tax must be accrued and paid on the retailer-contractor's purchase price of the property. Property that the retailer-contractor withdraws from inventory for use that does not become part of real property is also subject to the tax imposed by . . . Article [5 of Chapter 105 of North Carolina General Statutes].

(2) Acting as a retailer. – A retailer-contractor is acting as a retailer when it makes a sale at retail.

...

(d) Mixed Transaction Contract. – A mixed transaction contract is taxable as follows.

(1) If the allocated sales price of the taxable repair, maintenance, and installation services included in the contract is less than or equal to twenty-five percent (25%) of the contract price, then the repair, maintenance, and installation services portion of the contract, and the *items* used to perform those services, are taxable as a real property contract in accordance with this section.

2. If the allocated sales price of the taxable repair, maintenance, and installation services included in the contract is greater than twenty-five percent (25%) of the contract price, then sales and use tax applies to the sales price of or the gross receipts derived from the taxable repair, maintenance, and installation services in the contract based on a reasonable allocation of revenue that is supported by the person's business records kept in the ordinary course of business. Any purchase of tangible personal property or *certain* digital property to fulfill the real property contract is taxed in accordance with this section." [Emphasis added.]

(Effective July 26, 2019; SB 523, s. 3.3.(d), S.L. 2019-169.)

**G.S. 105-164.4I(a) – Service Contracts:** This subsection is amended to include the defined term “service contract facilitator” and provides the following:

“(a) Tax. – The sales price of or the gross receipts derived from a service contract or the renewal of a service contract sold at retail is subject to the general rate of tax set in G.S. 105-164.4 and is sourced in accordance with the sourcing principles in G.S. 105-164.4B. The retailer of a service contract is required to collect the tax due at the time of the retail sale of the contract and is liable for payment of the tax. The tax is due and payable in accordance with G.S. 105-164.16. The retailer of a service contract is the applicable person listed below:

- (1) When a service contract is sold at retail to a purchaser by the obligor under the contract, the obligor is the retailer.
- (2) When a service contract is sold at retail to a purchaser by a *service contract* facilitator on behalf of the obligor under the contract, the *service contract* facilitator is the retailer unless the provisions of subdivision (3) of this subsection apply.
- (3) When a service contract is sold at retail to a purchaser by a *service contract* facilitator on behalf of the obligor under the contract and there is an agreement between the *service contract* facilitator and the obligor that states the obligor will be liable for the payment of the tax, the obligor is the retailer. The *service contract* facilitator must send the retailer the tax due on the sales price of or gross receipts derived from the service contract no later than 10 days after the end of each calendar month. A *service contract* facilitator that does not send the retailer the tax due on the sales price or gross receipts is liable for the amount of tax the *service contract* facilitator fails to send. A *service contract* facilitator is not liable for tax sent to a retailer but not remitted by the retailer to the Secretary. Tax payments received by a retailer from a *service contract* facilitator are held in trust by the retailer for remittance to the Secretary. A retailer that receives a tax payment from a *service contract* facilitator must remit the amount received to the Secretary. A retailer is not liable for tax due but not received from a *service contract* facilitator. The requirements imposed by this subdivision on a retailer and a *service contract* facilitator are considered terms of the agreement between the retailer and the *service contract* facilitator.”



*(Effective February 1, 2020, and applies to sales occurring on or after that date; SB 557, s. 4.(k), S.L. 2019-246. There is no obligation to collect the sales and use tax required by this section retroactively. If any provision of this section, or the application of any provision to a person or circumstance, is held to be invalid or unconstitutional, then the remainder of this section, and the application of the provisions to any person or circumstance, shall not be affected thereby.)*

**G.S. 105-164.4I(e) – Service Contracts:** This subsection is repealed. The definition of the term “service contract facilitator” is codified in G.S. 105-164.3.

*(Effective February 1, 2020, and applies to sales occurring on or after that date; SB 557, s. 4.(k), S.L. 2019-246.)*

**G.S. 105-164.4J – Marketplace Facilitated Sales:** This section is added and provides the following:

“(a) Scope. – This section applies to a marketplace facilitator that makes sales, including all marketplace-facilitated sales for all marketplace sellers, sourced to this State for the previous or the current calendar year that meet either of the following:

- (1) Gross sales in excess of one hundred thousand dollars (\$100,000).
- (2) Two hundred or more separate transactions.

(b) Payment of Tax. – A marketplace facilitator that meets the threshold in subsection (a) of this section is considered the retailer of each marketplace-facilitated sale it makes and is liable for collecting and remitting the sales and use tax on all such sales. A marketplace facilitator is required to comply with the same requirements and procedures as all other retailers registered or who are required to be registered to collect and remit sales and use tax in this State. A marketplace facilitator is required to collect and remit sales tax as required by this section regardless of whether a marketplace seller for whom it makes a marketplace-facilitated sale meets any of the following conditions:

- (1) Has a physical presence in this State.
- (2) Is required to be registered to collect and remit sales and use tax in this State.
- (3) Would have been required to collect and remit sales and use tax in this State had the sale not been made through a marketplace.
- (4) Would not have been required to collect and remit sales and use tax in this State had the sale not been made through a marketplace.

Report. – A marketplace facilitator must provide or make available to each marketplace seller the information listed in this subsection with respect to marketplace-facilitated sales that are made on behalf of the marketplace seller

(c) and that are sourced to this State. The information may be provided in any format and shall be provided or made available no later than 10 days after the end of each calendar month. The required information to be provided or made available to each marketplace seller is as follows:

- (1) Gross sales.
- (2) The number of separate transactions.

- (d) **Liability Relief.** – The Department shall not assess a marketplace facilitator for failure to collect the correct amount of tax due if the marketplace facilitator can demonstrate to the Secretary's satisfaction that all of the circumstances listed in this subsection apply. This subsection does not apply with regard to a marketplace-facilitated sale for which the marketplace facilitator is the marketplace seller or if the marketplace facilitator and the marketplace seller are affiliates. If a marketplace facilitator is not assessed for tax due under this section, the marketplace seller is liable for the tax due under this section provided the marketplace seller is engaged in business in this State. The circumstances that a marketplace facilitator must demonstrate are as follows:
- (1) The failure to collect the correct amount of tax was due to incorrect information given to the marketplace facilitator by the marketplace seller.
  - (2) The marketplace facilitator did not receive specific written advice from the Secretary for the transaction at issue.
- (e) **Refund of Tax.** – If a purchaser receives a refund on any portion of the sales price from a marketplace facilitator who collected and remitted the tax on the retail sale, the provisions of G.S. 105-164.11A(a) apply.
- (f) **Class Actions.** – No class action may be brought against a marketplace facilitator in any court of this State on behalf of customers arising from or in any way related to an overpayment of sales or use tax collected on facilitated sales by a marketplace facilitator, regardless of whether that claim is characterized as a tax refund claim. Nothing in this subsection affects a customer's right to seek a refund as provided under G.S. 105-164.11.
- (g) **Agreements.** – Nothing in this section shall be construed to interfere with the ability of a marketplace facilitator and a marketplace seller to enter into an agreement with each other regarding the fulfillment of the requirements of . . . Article [5 of Chapter 105 of the North Carolina General Statutes], except that an agreement may not require a marketplace seller to collect and remit sales and use tax on marketplace-facilitated sales.
- (h) **Use Tax Obligation.** – Nothing in this section affects the obligation of any purchaser to remit use tax for any taxable transaction for which a marketplace facilitator does not collect and remit sales or use tax.
- (i) **Limitation.** – This section does not apply to an accommodation facilitator, an admission facilitator, or a service contract facilitator whose collection and remittance requirements are set out in G.S. 105-164.4F, 105-164.4G, and 105-164.4I, respectively."

*(Effective February 1, 2020, and applies to sales occurring on or after that date; SB 557, s. 4.(c), S.L. 2019-246. There is no obligation to collect the sales and use tax required by this section retroactively. If any provision of this section, or the application of any provision to a person or circumstance, is held to be invalid or unconstitutional, then the remainder of this section, and the application of the provisions to any person or circumstance, shall not be affected thereby.)*

**G.S. 105-164.4K – Property Management Contracts:** This section is added and provides the following:

- “(a) Taxability of Services under a Property Management Contract. – Repair, maintenance, and installation services taxable under . . . Article [5 of Chapter 105 of the North Carolina General Statutes] and provided by a real property manager under a property management contract are subject to sales and use tax in the following circumstances:
- (1) Repair, maintenance, installation services provided by the real property manager for an additional charge.
  - (2) The real property manager arranges for a third party to provide the repair, maintenance, and installation services and the real property manager imposes an additional contract amount or charge for the arranging of these services.
  - (3) More than twenty-five percent (25%) of the time spent managing the real property for a billing or invoice period is attributable to repair, maintenance, and installation services taxable under . . . Article [5 of Chapter 105 of the North Carolina General Statutes] and not excluded by subsection (b) of this section. The tax applies to the sales price of or the gross receipts derived from the taxable repair, maintenance, and installation services portion of the property management contract. The real property manager must determine an allocated sales price for the repair, maintenance, and installation services portion of the property management contract based on a reasonable allocation of revenue that is supported by the person's business records kept in the ordinary course of business. The charges for the taxable repair, maintenance, and installation services must be separately stated on the invoice or similar billing document given to the customer at the time of the sale.
- (b) Exclusions. – The tax imposed by . . . Article [5 of Chapter 105 of the North Carolina General Statutes] does not apply to the following repair, maintenance, and installation services if the services are provided by the real property manager pursuant to a property management contract:
- (1) To troubleshoot, identify, or attempt to identify the source of a problem for the purpose of determining what is needed to restore the real property to working order or good condition.
  - (2) To inspect or monitor the real property, including the normal operation of all systems that are part of the real property.
- (c) Substantiation. – Generally, repair, maintenance, and installation services are subject to tax in accordance with G.S. 105-164.4(a)(16), unless a person substantiates that the services are not taxable as real property management services provided under a property management contract in accordance with subsection (a)(3) of this section, excluded from tax in accordance with subsection (b) of this section, or not subject to tax. A real property manager may substantiate that no more than twenty-five percent (25%) of the time spent managing the real property for a billing or invoice period is attributable to repair, maintenance, and installation services taxable under . . . Article [5 of Chapter 105 of the North Carolina General Statutes] and not excluded by subsection (b) of this section. The substantiation must be based on a reasonable approximation of the real property management services provided and

supported by the person's business records kept in the ordinary course of business. The substantiation must be contemporaneously provided for each billing or invoice period and maintained in the business records.

- (d) Real Property Management Services. – This subsection applies when repair, maintenance, and installation services otherwise taxable under . . . Article [5 of Chapter 105 of the North Carolina General Statutes] are not subject to sales and use tax. A real property manager is the consumer of the items that the real property manager purchases, installs, applies, or otherwise uses to fulfill a property management contract. A retailer engaged in business in the State shall collect tax on the sales price of an item sold at retail to a real property manager unless a statutory exemption in G.S. 105-164.13 applies.
- (e) Real Property Manager Acting as Retailer. – This subsection applies when repair, maintenance, and installation services provided by a real property manager are subject to sales and use tax under this section. A real property manager acts as a retailer and makes a sale at retail when it provides repair, maintenance, and installation services taxable under this section unless a statutory exemption in G.S. 105-164.13 applies.
- (f) Grace Period. – The Department shall take no action to assess any tax due for a filing period beginning on or after January 1, 2019, and ending prior to January 1, 2021, if the retailer failed to collect sales tax on repair, maintenance, and installation services taxable under this section. This subsection does not apply if the retailer received specific written advice from the Secretary for the transactions at issue for the laws in effect for the applicable period. The limitations in G.S. 105-244.3 apply to this subsection."

*(Effective July 26, 2019, SB 523, s. 3.9(e), S.L. 2019-169. The provisions of G.S. 105-164.15A apply to the implementation of this change as if it is a decrease in the tax rate; SB 557, s. 7.(a), S.L. 2019-246. Originally, the effective date referenced the date a real property management contract was entered into, however, this provision was eliminated in subsequent legislation; SB 557, s. 7.(a), S.L. 2019-246.)*

## MISCELLANEOUS ITEMS

**G.S. 105-164.4B – Sourcing Principles:** This section is amended and provides the following:

- “(a) General Principles. – The following principles apply in determining where to source the sale of *an item* for the seller's purpose and do not alter the application of the tax imposed under G.S. 105-164.6. Except as otherwise provided in . . . [G.S. 105-164.4B(a)], a service is sourced where the purchaser can potentially first make use of the service. These principles apply regardless of the nature of the *item*, except as otherwise noted in this section [G.S. 105-164.4B]:
  - (1) When a purchaser receives *an item* at a business location of the seller, the sale is sourced to that business location.

- (2) When a purchaser or purchaser's donee receives an item at a location specified by the purchaser and the location is not a business location of the seller, the sale is sourced to the location where the purchaser or the purchaser's donee receives the *item*.

...

- (f) *Certain Digital Property*. – A purchaser receives *certain* digital property when the purchaser takes possession of the property or makes first use of the property, whichever comes first.” [Emphasis added.]

(Effective July 26, 2019; SB 523, s. 3.3.(a), S.L. 2019-169.)

**G.S. 105-164.4D(a) – Tax Application of Bundled Transactions:** This subsection is amended and provides “[t]ax applies to the sales price of a bundled transaction unless one of the following applies:

- (1) Fifty percent (50%) test. – All of the *items* in the bundle are tangible personal property, the bundle includes one or more of the exempt *items* listed in this subdivision, and the price of the taxable *items* in the bundle does not exceed fifty percent (50%) of the price of the bundle:
  - a. Food exempt under G.S. 105-164.13B.
  - b. A drug exempt under G.S. 105-164.13(13).
  - c. Medical devices, equipment, or supplies exempt under G.S. 105-164.13(12).
- (2) Allocation. – The bundle includes a service, and the retailer determines an allocated price for each *item* in the bundle based on a reasonable allocation of revenue that is supported by the retailer's business records kept in the ordinary course of business. In this circumstance, tax applies to the allocated price of each taxable *item* in the bundle.
- (3) Ten percent (10%) test. – The price of the taxable *items* in the bundle does not exceed ten percent (10%) of the price of the bundle, and no other subdivision in this subsection applies.

...” [Emphasis added.]

(Effective July 26, 2019; SB 523, s. 3.3.(b), S.L. 2019-169.)

**G.S. 105-164.6 – Complementary Use Tax:** This section is amended to update the language and provides the following:

- “(a) Tax. – An excise tax at the applicable rate *and maximum tax, if any*, set in G.S. 105-164.4 is imposed on the *following items if the item is subject to tax under G.S. 105-164.4*:

Tangible personal property *purchased, leased, or rented* inside or outside this State for storage, use, or consumption in this State. This subdivision

- (1) includes *tangible personal* property that becomes part of a building or another structure.
- (2) *Certain* digital property *purchased* inside or outside this State for storage, use, or consumption in this State.
- (3) Services sourced to this State.

(b) Liability. – The tax imposed by this section is payable by the person who purchases, leases, or rents *the items listed in subdivision (a) of [G.S. 105-164.6]*. If an *item* purchased becomes a part of real property in the State, the real property contractor, the retailer-contractor, the subcontractor, the lessee, and the owner are jointly and severally liable for the tax, except as provided in G.S. 105-164.4H(a1) regarding receipt of an affidavit of capital improvement. The liability of a real property contractor, a retailer-contractor, a subcontractor, a lessee, or an owner who did not purchase the *item* is satisfied by receipt of an affidavit from the purchaser certifying that the tax has been paid.

...  
(f) Registration. – A person must obtain a certificate of registration in accordance with G.S. 105-164.29 under any of the following circumstances:

(1) Before the person engages in business in this State selling or delivering *items* for storage, use, or consumption in this State.

(2) If the person is a facilitator that is liable for tax under . . . Article [5 of Chapter 105 of the North Carolina General Statutes].” [Emphasis added.]

(Effective July 26, 2019; SB 523, s. 3.3.(e), S.L. 2019-169.)

**G.S. 105-164.6A(a) – Voluntary Collection Agreements:** This subsection is amended and provides “[t]he Secretary may enter into agreements with sellers pursuant to which the seller agrees to collect and remit on behalf of its customers State and local use taxes due on items the seller sells. For the purpose of this section, a seller is a person who is engaged in the business of selling *items* for use in this State and who does not have sufficient nexus with this State to be required to collect use tax on the sales.” [Emphasis added.]

(Effective July 26, 2019; SB 523, s. 3.3.(f), S.L. 2019-169.)

**G.S. 105-164.7 – Retailer or Facilitator to Collect Sales Tax from Purchaser as Trustee for State:** This section is amended to remove unnecessary language and provides “[t]he sales tax imposed by . . . Article [5 of the Chapter 105 of the North Carolina General Statutes] is intended to be passed on to the purchaser of a taxable item and borne by the purchaser instead of by the retailer. A retailer must collect the tax due on an item when sold at retail. The requirements of this section apply to facilitators liable for tax under . . . Article [5 of Chapter 105 of the North Carolina General Statutes]. The tax is a debt from the purchaser to the retailer until paid and is recoverable at law by the retailer in the same manner as other debts. A retailer is considered to act as a trustee on behalf of the State when it collects tax from the purchaser on a taxable sale. The tax must be stated and charged separately on the invoices or other documents of the retailer given to the purchaser at the time of the sale except for either of the following:

(1) Vending machine sales.

(2) Where a retailer displays a statement indicating the sales price includes the tax.”

(Effective July 26, 2019; SB 523, s. 3.3.(g), S.L. 2019-169.)

**G.S. 105-164.8(a)(2) – Retailer’s Obligation to Collect Tax:** This subdivision is amended and provides “[t]hat the purchaser’s order or the contract of sale is made or closed by acceptance or approval outside this State, or before any tangible personal property or *certain* digital property that is part of the order or contract enters this State.” [Emphasis added.]

*(Effective July 26, 2019; SB 523, s. 3.3.(h), S.L. 2019-169.)*

**G.S. 105-164.8(b)(3) – Remote Sales by Retailer that Solicits or Transacts Business in this State by Representatives:** This subdivision is amended and provides “[a] retailer who makes a remote sale is engaged in business in this State and is subject to tax levied under . . . Article [5 of Chapter 105 of the North Carolina General Statutes] if at least one of the following conditions is met:

- ...  
(3) The retailer solicits or transacts business in this State by employees, independent contractors, agents, or other representatives, whether the remote sales subject to taxation by this State result from or are related in any other way to the solicitation or transaction of business. A retailer is presumed to be soliciting or transacting business by an independent contractor, agent, or other representative if the retailer enters into an agreement with a *person* of this State under which the *person*, for a commission or other consideration, directly or indirectly refers potential customers, whether by a link on an Internet Web site or otherwise, to the retailer. This presumption applies only if the cumulative gross receipts from sales by the retailer to purchasers in this State who are referred to the retailer by all *persons* with this type of agreement with the retailer is in excess of ten thousand dollars (\$10,000) during the preceding four quarterly periods. This presumption may be rebutted by proof that the *person* with whom the retailer has an agreement did not engage in any solicitation in the State on behalf of the seller that would satisfy the nexus requirement of the United States Constitution during the four quarterly periods in question.” [Emphasis added.]

*(Effective February 1, 2020, and applies to sales occurring on or after that date; SB 557, s. 4.(b), S.L. 2019-246.)*

**G.S. 105-164.8(b)(9) – Remote Sales into North Carolina:** This subdivision is added and provides “[t]he retailer, with respect to remote sales into North Carolina for the previous or current calendar year, had one or more of the following:

- a. Gross sales in excess of one hundred thousand dollars (\$100,000).
- b. Two hundred or more separate transactions.”

This addition codifies SD-18-6, Sales and Use Tax Collections on Remote Sales, published by the Department on August 7, 2018, following *South Dakota v. Wayfair, Inc., et al.*

*(Effective March 20, 2019; SB 56, s. 5.2., S.L. 2019-6.)*

**G.S. 105-164.8(b)(9) – Remote Sales into North Carolina:** This subdivision is amended further and provides “[t]he retailer *makes remote sales sourced to this State, including sales as a marketplace seller, for the previous or the current calendar year that meet either of the following:*

- a. Gross sales in excess of one hundred thousand dollars (\$100,000).
- b. Two hundred or more separate transactions.” [Emphasis added.]

*(Effective February 1, 2020, and applies to sales occurring on or after that date; SB 557, s. 4.(b), S.L. 2019-246.)*

**G.S. 105-164.8(b)(10) – Marketplace Facilitator is a Retailer:** This subdivision is added and provides “[t]he retailer is a marketplace facilitator that makes sales, including all marketplace-facilitated sales for all marketplace sellers, sourced to this State for the previous or the current calendar year that meet either of the following:

- a. Gross sales in excess of one hundred thousand dollars (\$100,000).
- b. Two hundred or more separate transactions.”

*(Effective February 1, 2020, and applies to sales occurring on or after that date; SB 557, s. 4.(b), S.L. 2019-246. There is no obligation to collect the sales and use tax required by this section retroactively. If any provision of this section, or the application of any provision to a person or circumstance, is held to be invalid or unconstitutional, then the remainder of this section, and the application of the provisions to any person or circumstance, shall not be affected thereby.)*

**G.S. 105-164.11B – Recover Sales Tax Paid:** This section is amended and provides “[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 section. A retailer entitled to recover tax under this section 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 section is not an overpayment of tax and, where such recovery is taken, a refund of the tax originally paid may not be requested from the seller pursuant to the authority under G.S. 105-164.11. Any amount for tax recovered under this section 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 section 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 July 26, 2019; SB 523, s. 3.3.(j), S.L. 2019-169.)*

**G.S. 105-164.12C – Items Given Away by Merchants:** This section is amended and provides “[i]f a retailer engaged in the business of selling prepared food *or* drink for immediate or on-premises consumption also gives prepared food *or* drink to its patrons or employees free of charge, for the purpose of . . . Article [5 of Chapter 105 of the



North Carolina General Statutes], the *food or drink* given away is considered sold along with the *food or drink* sold. If a retailer gives an item of inventory to a customer free of charge on the condition that the customer purchase a similar or related *item*, the item given away is considered sold along with the item sold. In all other cases, *items* given away or used by any retailer or wholesale merchant *are* not considered sold, whether or not the retailer or wholesale merchant recovers its cost of the *items* from sales of other *items*." [Emphasis added.]

(Effective July 26, 2019; SB 523, s. 3.3.(j), S.L. 2019-169.)

## EXEMPTIONS AND EXCLUSIONS

### **G.S. 105-164.4G(e) – Exceptions to an Entertainment Activity:**

The following exceptions were amended as noted below:

**Entertainment Activity Exception – Charges for Educational Purposes.** This subsection is amended and provides “[t]he tax imposed by this section does not apply to the following:

- ...
- (2) Tuition, registration fees, or charges to attend instructional seminars, conferences, or workshops for educational *purposes, notwithstanding that entertainment activity may be offered as an ancillary purpose of an event listed in [G.S. 105-164.4G].*
- ...
- (6) An amount paid for the right to participate, other than to be a spectator, in the following activities:
    - a. Rock climbing, skating, skiing, snowboarding, sledding, zip lining, or other similar activities.
    - b. Instruction classes related to the *activities* included in sub-subdivision a. of this subdivision.
    - c. Riding on a carriage, boat, train, plane, horse, chairlift, or other similar rides.
    - d. Amusement rides, including a waterslide." [Emphasis added.]

(Effective July 26, 2019; SB 523, s. 3.3.(c), S.L. 2019-169.)

**G.S. 105-164.13 – Exemptions and Exclusions:** The 2017, 2018, and 2019 General Assembly repealed, added, amended, and enacted clarifying changes to the exemptions from sales and use tax. The changes and their effective dates are as follows:

**G.S. 105-164.13 – Retail Sales and Use Tax:** This section is amended and provides an exemption from sales and use tax for “[t]he sale at retail and the use, storage, or consumption in this State of the following *items* are specifically exempted from the tax

imposed by . . . Article [5 of Chapter 105 of the North Carolina General Statutes].” [Emphasis added.]

*(Effective July 26, 2019; SB 523, s. 3.3.(k), S.L. 2019-169.)*

**Items for a farmer . . . – (2b).** This subdivision is amended and provides “[i]tems for a farmer may be exempt as provided in G.S. 105-164.13E.” [Emphasis added.]

*(Effective July 26, 2019; SB 523, s. 3.3.(k), S.L. 2019-169.)*

**Sales of qualifying mill machinery . . . – (5e).** This subdivision is amended and provides an exemption from sales and use tax for “[s]ales of mill machinery or mill machinery parts or accessories to any of the persons listed in this subdivision. For purposes of this subdivision, the term “accessories” does not include electricity. The persons are:

- a. A manufacturing industry or plant. A manufacturing industry or plant does not include (i) a delicatessen, cafe, cafeteria, restaurant, or another similar retailer that is principally engaged in the retail sale of *food* prepared by it or consumption on or off its premises or (ii) a production company.

. . .” [Emphasis added.]

*(Effective July 1, 2018, as enacted by Section 38.8(c) of S.L. 2017-57 and amended by subsection (j) of this section; SB 56, s. 5.1., S.L. 2019-6. Effective July 26, 2019; SB 523, s. 3.3.(k), S.L. 2019-169.)*

**Sales to a company primarily engaged in . . . providing made-to-order countertops, walls, or tubs. – (5p).** This subdivision is added and provides an exemption from sales and use tax for “[s]ales of equipment, or an attachment or repair part for equipment, which is used in cutting, shaping, polishing, and finishing rough cut slabs and blocks of natural and engineered stone and stone-like products and sold to a company primarily engaged in the business of providing made-to-order countertops, walls, or tubs.”

*(Effective October 1, 2019, and applies to sales made on or after that date; SB 523, s. 3.12.(a), S.L. 2019-169.)*

**Motor fuel . . . – (11).** This subdivision is amended to update a statutory reference and provides an exemption from sales and use tax for “[a]ny of the following fuel:

- a. Motor fuel, as taxed in Article 36C of . . . Chapter [105 of the North Carolina General Statutes], except motor fuel for which a refund of the per gallon excise tax is allowed under G.S. 105-449.106(c) or G.S. 105-449.107.
- b. Alternative fuel taxed under Article 36D of . . . Chapter [105 of the North Carolina General Statutes], unless a refund of that tax is allowed under G.S. 105-449.107.” [Emphasis added.]

*(Effective March 20, 2019; SB 56, s. 4.9., S.L. 2019-6.)*

**Motor fuel . . . – (11).** This subdivision is further amended to add another statutory reference and provides an exemption from sales and use tax for “[a]ny of the following fuel:

- a. Motor fuel, as taxed in Article 36C of . . . Chapter [105 of the North Carolina General Statutes], except motor fuel for which a refund of the per gallon excise tax is allowed under G.S. 105-449.105A, G.S. 105-449.106(c) or G.S. 105-449.107.
- b. Alternative fuel taxed under Article 36D of . . . Chapter [105 of the North Carolina General Statutes], unless a refund of that tax is allowed under G.S. 105-449.107.” [Emphasis added.]
- c.

*(Effective July 26, 2019; SB 523, s. 3.10., S.L. 2019-169.)*

**Sales of aviation gasoline and jet fuel . . . – (11b).** This subdivision is amended to extend the expiration date of the exemption from sales and use tax until January 1, 2024. This subdivision provides an exemption from sales and use tax for “[s]ales of aviation gasoline and jet fuel to an interstate air business for use in a commercial aircraft. For purposes of this subdivision, the term ‘commercial aircraft’ has the same meaning as defined in subdivision (45a) of . . . [G.S. 105-164.13]. This exemption also applies to aviation gasoline and jet fuel purchased for use in a commercial aircraft in interstate or foreign commerce by a person whose primary business is scheduled passenger air transportation. This subdivision expires *January 1, 2024.*” [Emphasis added.]

*(Effective November 1, 2019; HB 399, s. 4.(a), S.L. 2019-237.)*

**Sales of . . . medical equipment . . . – (12).** This subdivision is amended and provides an exemption from sales and use tax for “[s]ales of any of the *following*:

- a. Prosthetic devices for human use.
- b. Mobility enhancing equipment sold on a prescription.
- c. Durable medical equipment sold on prescription.
- d. Durable medical supplies sold on prescription.
- e. Human blood, including whole, plasma, and derivatives.
- f. Human tissue, eyes, DNA, or an organ.” [Emphasis added.]

*(Effective July 26, 2019; SB 523, s. 3.3.(k), S.L. 2019-169.)*

**Sales of diapers or incontinence underpads on prescription . . . – (13d).** This subdivision is added and provides an exemption from sales and use tax for “[s]ales of diapers or incontinence underpads on prescription by an enrolled State Medicaid/Health Choice provider for use by beneficiaries of the State Medicaid program when the provider is reimbursed by the State Medicaid program or a Medicaid managed care organization, as defined in 42 U.S.C. § 1396b(m).”

*(Effective October 1, 2019, and applies to sales occurring on or after that date; SB 523, s.3.13.(b), S.L. 2019-169.)*

**Sales of . . . packaging . . . – (23).** This subdivision is amended and provides an exemption from sales and use tax for “[s]ales of the following *packaging*:

- a. Wrapping paper, labels, wrapping twine, paper, cloth, plastic bags, cartons, packages and containers, cores, cones or spools, wooden boxes, baskets, coops and barrels, including paper cups, napkins and drinking straws and like articles sold to manufacturers, producers and retailers, when such materials are used for packaging, shipment or delivery of tangible personal property which is sold either at wholesale or retail and when such articles constitute a part of the sale of such tangible personal property and are delivered with it to the customer.
- b. A container that is used as packaging by the owner of the container or another person to enclose tangible personal property for delivery to a purchaser of the property and is required to be returned to its owner for reuse.” [Emphasis added.]

(Effective July 26, 2019; SB 523, s. 3.3.(k), S.L. 2019-169.)

**Sales of fuel and other tangible personal property for use or consumption by or on an ocean-going vessel . . . – (24).** This subdivision is amended to remove unnecessary language and provides an exemption from sales and use for “[s]ales of fuel and other tangible personal property for use or consumption by or on ocean-going vessels which ply the high seas in interstate or foreign commerce in the transport of freight and/or passengers for hire exclusively, when delivered to an officer or agent of such vessel for the use of such vessel; provided, however, that sales of fuel and other tangible personal property made to officers, agents, members of the crew or passengers of such vessels for their personal use shall not be exempted from payment of the sales tax.”

(Effective July 26, 2019; SB 523, s. 3.3.(k), S.L. 2019-169.)

**Food, prepared food, soft drinks, candy, and other tangible personal property sold not-for-profit . . . – (26b).** This subdivision is amended to remove unnecessary language and provides an exemption from sales and use tax for “[f]ood, prepared food, soft drinks, candy, and other tangible personal property sold not for profit for or at an event that is sponsored by an elementary or secondary school when the net proceeds of the sales will be given or contributed to the school or to a nonprofit charitable organization, one of whose purposes is to serve as a conduit through which the net proceeds will flow to the school. For purposes of this exemption, the term ‘school’ is an entity regulated under Chapter 115C of the General Statutes.”

(Effective July 26, 2019; SB 523, s. 3.3.(k), S.L. 2019-169.)

**Supplemental Nutrition Assistance Program . . . – (38).** This subdivision is amended to update language. This subdivision is further amended by replacing the term “items” with the term “products” and provides an exemption from sales and use tax for “[f]ood and other *products* lawfully purchased under the *Supplemental Nutrition Assistance Program*, 7 U.S.C. § 2011, and supplemental foods lawfully purchased with a food instrument issued under the Special Supplemental Nutrition Program, 42 U.S.C.

§ 1786, and supplemental foods purchased for direct distribution by the Special Supplemental Nutrition Program.” [Emphasis added.]

*(Effective March 20, 2019; SB 56, s. 5.3., S.L. 2019-6. Effective July 26, 2019; SB 523, s. 3.3.(k), S.L. 2019-169.)*

**Computer software or certain digital property that becomes . . . – (43b).** This subdivision is amended to update the language to include the defined term “certain digital property” and provides an exemption from sales and use tax for “[c]omputer software or *certain* digital property that becomes a component part of other computer software or *certain* digital property that is offered for sale or of a service that is offered for sale.” [Emphasis added.]

*(Effective July 26, 2019; SB 523, s. 3.3.(k), S.L. 2019-169.)*

**Repair, maintenance, and installation services . . . – (61a).** This subdivision is expanded by adding the following to the exemption: “[t]he sales price of or the gross receipts derived from the repair, maintenance, and installation services and service contracts listed in this subdivision are exempt from tax. Except as otherwise provided in this subdivision, property and services used to fulfill either a repair, maintenance, or installation service or a service contract exempt from tax under this subdivision are taxable. The list of repair, maintenance, and installation services and service contracts exempt from tax under this subdivision is as follows:

• • •

- m. Any of the following:
  - 1. A qualified aircraft.
  - 2. A qualified jet engine.
  - 3. An aircraft with a gross take-off weight of more than 2,000 pounds.”

*(Effective July 1, 2019, and applies to sales made on or after that date; SB 628, s. 2.12.(a), S.L. 2017-204.)*

**Repair, maintenance, and installation services . . . – (61a).** This subdivision is further expanded by adding the following to the exemption: “[t]he sales price of or the gross receipts derived from the repair, maintenance, and installation services and service contracts listed in this subdivision are exempt from tax. Except as otherwise provided in this subdivision, property and services used to fulfill either a repair, maintenance, or installation service or a service contract exempt from tax under this subdivision are taxable. The list of repair, maintenance, and installation services and service contracts exempt from tax under this subdivision is as follows:

• • •

- r. A property management contract.”

This sub-subdivision is repealed before this exemption became effective.

*(Effective January 1, 2020; S.B. 99, s. 38.5.(y), S.L. 2018-5, Effective July 26, 2019; SB 523, s. 3.9.(a) and (b), S.L. 2019-169; The provisions of G.S. 105-164.15A apply to the implementation*

of this change as if it is a decrease in the tax rate; SB 557, s. 7.(a), S.L. 2019-246. Originally, the effective date referenced the date a real property management contract was entered into, however, this provision was eliminated in subsequent legislation; SB 557, s. 7.(a), S.L. 2019-246.)

**Repair, maintenance, and installation services . . . (61a)** The subdivision is further amended and provides, in part, “[t]he sales price of or the gross receipts derived from the repair, maintenance, and installation services and service contracts listed in this subdivision are exempt from tax. Except as otherwise provided in this subdivision, *an item* used to fulfill either repair, maintenance, *and* installation services or service contracts exempt from tax under this subdivision *is* taxable. The list of repair, maintenance, and installation services and service contracts exempt from tax under this subdivision is as follows:

a. A service and a service contract for an item exempt from tax under . . . Article [5 of Chapter 105 of the North Carolina General Statutes], except as otherwise provided in this subdivision. *Items* used to fulfill a service or service contract exempt under this sub-subdivision are exempt from tax under . . . Article [5 of Chapter 105 of the North Carolina General Statutes]. This exemption does not apply to water for a pool, fish tank, or similar aquatic feature or to a motor vehicle, except as provided under subdivision (62a) of this section and fees under sub-subdivision b. of this subdivision.

...

c. A service performed for a person by a related member.

...

e. A service on roads, driveways, parking lots, and sidewalks.

f. Removal of waste, trash, debris, grease, snow, and other similar *tangible personal property* from property, other than a motor vehicle. The exemption applies to a household *or* a commercial trash collection and removal service. The exemption applies to the removal of septage from property, including motor vehicles, but does not include removal of septage from portable toilets.

...

i. Pest control service. For purposes of this exemption, the term "pest control service" means the application of pesticides to real property.

j. Moving service. For purposes of this exemption, the term "moving service" means a service for hire to transport or relocate a person's existing belongings to or from any destination.

k. Self-service car wash or vacuum.

...

n. Funeral-related service, including a service for the burial of remains. This exemption does not apply to the sale of tangible personal property, such as caskets, headstones, and monuments.

o. A service performed on an animal, such as hoof shoeing and microchipping a pet.

p. A security or similar monitoring contract for real property. The exemption provided in this subdivision does not apply to charges for repair, maintenance, and installation services to repair security, alarm, and other similar monitoring systems for real property.

...” [Emphasis added.]

(Effective July 26, 2019; SB 523, s. 3.3.(k), S.L. 2019-169.)

**Repair, maintenance, and installation services . . . (61a)**. The subdivision is further amended and provides, in part, “[t]he sales price of or the gross receipts derived from the repair, maintenance, and installation services and service contracts listed in this subdivision are exempt from tax. Except as otherwise provided in this subdivision, an item used to fulfill either repair, maintenance, and installation services or service contracts exempt from tax under this subdivision is taxable. The list of repair, maintenance, and installation services and service contracts exempt from tax under this subdivision is as follows:

...

- l. Services performed on a transmission, distribution, or other network asset on land owned by a service provider or on a right-of-way or an easement in favor of a service provider. This exemption does not apply to charges billed to a customer for repair, maintenance, and installation services or a contribution in aid of construction and are included in the gross receipts derived from items subject to the combined general rate under G.S. 105-164.4. The terms ‘service provider’ and ‘governmental entity’ have the same meaning as defined in G.S. 105-164.3(2c)c.*

...” [Emphasis added.]

(Effective July 26, 2019; SB 523, s. 3.4.(c), S.L. 2019-169.)

**Repair, maintenance, and installation services . . . (61a)**. The subdivision is further amended and provides, in part, “[t]he sales price of or the gross receipts derived from the repair, maintenance, and installation services and service contracts listed in this subdivision are exempt from tax. Except as otherwise provided in this subdivision, an item used to fulfill either repair, maintenance, and installation services or service contracts exempt from tax under this subdivision is taxable. The list of repair, maintenance, and installation services and service contracts exempt from tax under this subdivision is as follows:

...

- k. Self-service car wash or vacuum and limited-service vehicle wash. For purposes of this sub-subdivision, the following definitions apply:
  - 1. Limited-service vehicle wash. – The cleaning of a vehicle by mechanical means where the only activities performed by an employee include one or more of the following: (i) receiving payment for the transaction, (ii) guiding the vehicle into the entrance or exit of a conveyor, (iii) applying low-pressure spray of chemicals to the vehicle prior to the cleaning of the vehicle, or (iv) placing protective tape or covers on the vehicle prior to cleaning. The term does not include any activity whereby an employee physically touches the vehicle for the purpose of cleaning or restoring the vehicle, enters or cleans any part of the interior of the vehicle, or performs an activity on the vehicle other than one of those listed in this sub-sub-subdivision.**

2. *Self-service vehicle wash or vacuum.* – *The cleaning of a vehicle by a customer without any cleaning or restoring activity performed by an employee.* [Emphasis added.]

(Effective October 1, 2019, and applies to sales made on or after that date; SB 523, s. 3.11.(a), S.L. 2019-169.)

**Repair, maintenance, and installation services . . . (61a)**. The subdivision is further amended and provides, in part, “[t]he sales price of or the gross receipts derived from the repair, maintenance, and installation services and service contracts listed in this subdivision are exempt from tax. Except as otherwise provided in this subdivision, an item used to fulfill either repair, maintenance, and installation services or service contracts exempt from tax under this subdivision is taxable. The list of repair, maintenance, and installation services and service contracts exempt from tax under this subdivision is as follows:

...

- k. Self-service *vehicle wash or vacuum* and limited-service vehicle wash. For purposes of this sub-subdivision, the following definitions apply:
  1. Limited-service vehicle wash. – The cleaning of a vehicle by mechanical means where the only activities performed by an employee include one or more of the following: (i) receiving payment for the transaction, (ii) guiding the vehicle into the entrance or exit of a conveyor, (iii) applying low-pressure spray of chemicals to the vehicle prior to the cleaning of the vehicle, or (iv) placing protective tape or covers on the vehicle prior to cleaning. The term does not include any activity whereby an employee physically touches the vehicle for the purpose of cleaning or restoring the vehicle, enters or cleans any part of the interior of the vehicle, or performs an activity on the vehicle other than one of those listed in this sub-sub-division.
  2. Self-service vehicle wash or vacuum. – The cleaning of a vehicle by a customer without any cleaning or restoring activity performed by an employee.” [Emphasis added.]

(Effective November 1, 2019; HB 399, s. 8.1.(a), S.L. 2019-237; exemption duplicated in SB 557, s. 6., S.L. 2019-246.)

**Items purchased for resale . . . – (61b)**. The subdivision is amended and provides an exemption for “[i]tems purchased for resale under an exemption certificate in accordance with G.S. 105-164.28 or under a direct pay certificate in accordance with G.S. 105-164.27A.” [Emphasis added.]

(Effective July 26, 2019; SB 523, s. 3.3.(k), S.L. 2019-169.)

**An item . . . purchased or used to fulfill a service contract . . . – (62)**. This subdivision is amended and provides an exemption for “[a]n item, *including* repair, maintenance, and installation *services*, purchased or used to fulfill a service contract taxable under . . . Article [5 of Chapter 105 of the North Carolina General Statutes] if



the purchaser of the contract is not charged for the *item*. This exemption does not apply to the purchase of tangible personal property or *certain* digital property used to fulfill a service contract for real property where the charge being covered would otherwise be subject to tax as a real property contract. For purposes of this exemption, the term ‘item’ does not include a tool, equipment, supply, or similar tangible personal property that is not deemed to be a component or repair part of the tangible personal property, real property, or *certain* digital property for which a service contract is sold to a purchaser.”

(Effective July 26, 2019; SB 523, s. 3.3.(k), S.L. 2019-169.)

**Food and prepared food . . . provided . . . under a prepaid meal plan . . . – (63).**

This subdivision is amended to remove unnecessary language and provides an exemption for “[f]ood and prepared food to be provided to a person entitled to the food and prepared food under a prepaid meal plan subject to tax under G.S. 105-164.4(a)(12). This exemption applies to packaging including wrapping paper, labels, plastic bags, cartons, packages and containers, paper cups, napkins and drinking straws, and like articles that meet all of the following requirements:

- a. Used for packaging, shipment, or delivery of the food and prepared food.
- b. Constitute a part of the sale of the food and prepared food.
- c. Delivered with the food and prepared food.”

(Effective July 26, 2019; SB 523, s. 3.3.(k), S.L. 2019-169.)

**Professional motorsports racing team . . . – (65).** This subdivision is amended by replacing the term “other item” with the term “tangible personal property.” This subdivision expires January 1, 2020 and provides an exemption for “[s]ales of the following to a professional motorsports racing team or a related member of a team for use in competition in a sanctioned race series:

- a. The sale, lease, or rental of an engine.
- b. The sales price of or gross receipts derived from a service contract on, or repair, maintenance, and installation services for, a transmission, an engine, rear-end gears, and any *tangible personal property* that is purchased, leased, or rented and that is exempt from tax under this subdivision or that is allowed a sales tax refund under G.S. 105-164.14A(a)(5).
- c. The gross receipts derived from an agreement to provide an engine to a professional motorsports racing team or related member of a team for use in competition in a sanctioned race series, where such agreement does not meet the definition of a ‘service contract’ as defined in G.S. 105-164.3 but may meet the definition of the term ‘lease or rental’ as defined in G.S. 105-164.3.” [Emphasis added.]

(Effective July 26, 2019; SB 523, s. 3.3.(k), S.L. 2019-169.)

**Professional motorsports racing team . . . – (65).** This subdivision is further amended and extends the expiration date of the exemption until January 1, 2024.

(Effective November 1, 2019; HB 399, s. 5.(a), S.L. 2019-237.)

**Sales of an engine or a part to build or rebuild an engine . . . to a professional motorsports racing team . . . – (65a).** This subdivision is amended and provides an exemption for “[a]n engine or a part to build or rebuild an engine for the purpose of providing an engine under an agreement to a professional motorsports racing team or a related member of a team for use in competition in a sanctioned race series. The subdivision expires *January 1, 2024.*”

(Effective November 1, 2019; HB 399, s. 5.(a), S.L. 2019-237.)

**North Carolina Life and Health Insurance Guaranty Association . . . – (71).** This subdivision is added and provides an exemption for “[s]ales of items to the North Carolina Life and Health Insurance Guaranty Association.”

(Effective July 26, 2019; SB 523, s. 3.3.(k), S.L. 2019-169.)

**G.S. 105-164.13E – Exemptions for Farmers:** The following section and subdivision are amended as follows:

**G.S. 105-164.13E –** This section is amended and provides the following:

“(a) Exemption. – A qualifying farmer is a person who has an annual income from farming operations for the preceding taxable year of ten thousand dollars (\$10,000) or more or who has an average annual income from farming operations for the three preceding taxable years of ten thousand dollars (\$10,000) or more. For purposes of this section, the term ‘income from farming operations’ means sales plus any other amounts treated as gross income under the Code from farming operations. A qualifying farmer includes a dairy operator, a poultry farmer, an egg producer, and a livestock farmer, a farmer of crops, a farmer of an aquatic species, as defined in G.S. 106-758, and a person who boards horses. A qualifying farmer may apply to the Secretary for an exemption certificate number under G.S. 105-164.28A. The exemption certificate expires when a person fails to meet the income threshold for three consecutive taxable years or ceases to engage in farming operations, whichever comes first.

Except as otherwise provided in this section, the items exempt under this section must be purchased by a qualifying farmer *or conditional farmer* and used by the *qualifying or conditional farmer primarily* in farming operations. For purposes of this section, an item is used by a farmer for farming operations if it is used for the planting, cultivating, harvesting, or curing of farm *crops*, in the production of dairy products, eggs, or animals, *or by a person who boards horses*. The following tangible personal property and services that may be exempt from sales and use tax under this section are as follows:

. . .

(c1) Services for Farmer. – A qualifying item listed in subdivision (6) of subsection (a) of this section purchased to fulfill a service for a person who holds a qualifying farmer exemption certificate or a conditional farmer exemption certificate issued

under G.S. 105-164.28A is exempt from sales and use tax to the same extent as if purchased directly by the person who holds the exemption certificate. A person that purchases one of the items allowed an exemption under this subsection must provide an exemption certificate to the retailer that includes the name of the *qualifying farmer or conditional farmer* and *the* exemption number issued to the *qualifying farmer or conditional farmer* by the Department pursuant to G.S. 105-164.28A. A person that purchases an item exempt from tax pursuant to this subsection must maintain records to substantiate that an item is used to provide a service for a person who holds a qualifying farmer exemption certificate or a conditional farmer exemption certificate.” [Emphasis added.]

(Effective March 20, 2019; SB 56, s. 5.4., S.L. 2019-6.)

**G.S. 105-164.13E** – This section is further amended and provides the following:

“(a) Exemption. – A qualifying farmer is a person who has an annual income from farming operations for the preceding taxable year of ten thousand dollars (\$10,000) or more or who has an average annual income from farming operations for the three preceding taxable years of ten thousand dollars (\$10,000) or more. For purposes of this section, the term ‘income from farming operations’ means sales plus any other amounts treated as gross income under the Code from farming operations. A qualifying farmer includes a dairy operator, a poultry farmer, an egg producer, and a livestock farmer, a farmer of crops, a farmer of an aquatic species, as defined in G.S. 106-758, and a person who boards horses. A qualifying farmer may apply to the Secretary for an exemption certificate number under G.S. 105-164.28A. The exemption certificate expires when a person fails to meet the income threshold for three consecutive taxable years or ceases to engage in farming operations, whichever comes first.

Except as otherwise provided in this section, the items exempt under this section must be purchased by a qualifying farmer or conditional farmer and used by the qualifying or conditional farmer primarily in farming operations. For purposes of this section, an item is used by a farmer for farming operations if it is used for the planting, cultivating, harvesting, or curing of farm crops, in the production of dairy products, eggs, or animals, or by a person who boards horses. The *items* that may be exempt from sales and use tax under this section are:

...

- (6) Any of the following substances when purchased for use on animals or plants, as appropriate, held or produced for commercial purposes:
  - a. Remedies, vaccines, medications, litter materials, and feeds for animals.
  - b. Rodenticides, insecticides, herbicides, fungicides, and pesticides.
  - c. Defoliants for use on cotton or other crops.
  - d. Plant growth inhibitors, regulators, or stimulators, including systemic and contact or other sucker control agents for tobacco and other crops.
  - e. Semen.” [Emphasis added.]

(Effective July 26, 2019; SB 523, s. 3.3.(l), S.L. 2019-169.)

**G.S. 105-164.13E(b)(3)a** – This sub-subdivision is amended and provides “[d]ocuments showing that, but for the disaster, the person would have earned ten thousand *dollars* (\$10,000) or more in gross sales for the year in which the disaster occurred.” [Emphasis added.]

(Effective July 26, 2019; SB 523, s. 3.3.(m), S.L. 2019-169.)

## REFUNDS AUTHORIZED FOR CERTAIN PERSONS

**G.S. 105-164.14(a) – Interstate Carriers:** This subsection is amended and provides the following:

“(a) Interstate Carriers. – An interstate carrier is allowed a refund, in accordance with this section, of part of the sales and use taxes paid by it on the purchase in this State of railway cars and locomotives, and fuel, lubricants, repair parts, accessories, service contracts, and repair, maintenance, and installation services for a motor vehicle, railroad car, locomotive, or airplane the carrier operates. An ‘interstate carrier’ is a person who is engaged in transporting persons or property in interstate commerce for compensation. The Secretary shall prescribe the periods of time, whether monthly, quarterly, semiannually, or otherwise, with respect to which refunds may be claimed, and shall prescribe the time within which, following these periods, an application for refund may be made.

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

...

(2) The purchase price of the taxable *tangible personal property and services* listed in subdivision (1) of this subsection. For purposes of this subdivision, the term ‘taxable’ is based on the imposition of tax on the *tangible personal property and services* in the State.

...

For each applicant, the Secretary shall compute the amount to be refunded as follows. First, the Secretary shall determine the mileage ratio. The numerator of the mileage ratio is the number of miles the applicant operated all motor vehicles, railroad cars, locomotives, and airplanes in this State during the refund period. The denominator of the mileage ratio is the number of miles the applicant operated all motor vehicles, railroad cars, locomotives, and airplanes both inside and outside this State during the refund period. Second, the Secretary shall determine the applicant's proportional liability for the refund period by multiplying this mileage ratio by the purchase price of the *tangible personal property and services* identified in subdivision (1) of this subsection and then multiplying the resulting product by the tax rate that would have applied to the items if they had all been purchased in this State. Third, the

Secretary shall refund to each applicant the excess of the amount of sales and use taxes the applicant paid in this State during the refund period on these items over the applicant's proportional liability for the refund period." [Emphasis added.]

*(Effective July 26, 2019; SB 523, s. 3.3.(n), S.L. 2019-169.)*

**G.S. 105-164.14A(a)(4) – Motorsports Team or Sanctioning Body:** This subdivision is amended to extend the expiration date to receive a refund until January 1, 2024.

*(Effective November 1, 2019; HB 399, s. 5.(b), S.L. 2019-237.)*

**G.S. 105-164.14A(a)(5) – Professional Motorsports Team:** This subdivision is amended to extend the expiration date to receive a refund until January 1, 2024.

*(Effective November 1, 2019; HB 399, s. 5.(b), S.L. 2019-237.)*

## OTHER PROVISIONS

**G.S. 105-164.15A(a) – General Rate Items:** This subsection is amended and provides “[t]he effective date of a tax change for *items* taxable under . . . Article [5 of the North Carolina General Statutes] is administered as follows:

- (1) For a taxable item that is provided and billed on a monthly or other periodic basis:
  - a. A new tax or a tax rate increase applies to the first billing period that is at least 30 days after enactment and that starts on or after the effective date.
  - b. A tax repeal or a tax rate decrease applies to bills rendered on or after the effective date.

. . .” [Emphasis added.]

*(Effective July 26, 2019; SB 523, s. 3.3.(o), S.L. 2019-169.)*

**G.S. 105-164.16 – Returns and Payments of Taxes:** This section is amended to update the language and provides the following:

- “(a) General. – Sales and use taxes are payable when a return is due. A return is due quarterly or monthly as specified in this section. A return must be filed with the Secretary on a form prescribed by the Secretary and in the manner required by the Secretary. A return must be signed by the taxpayer or the taxpayer's agent.

A sales tax return must state the taxpayer's gross sales for the reporting period, the amount and type of sales made in the period that are exempt from tax under G.S. 105-164.13 or are elsewhere excluded from tax, the amount of tax due, and any other information required by the Secretary. A use tax return must

state the purchase price of *items* that were purchased or received during the reporting period and are subject to tax under G.S. 105-164.6, the amount of tax due, and any other information required by the Secretary. Returns that do not contain the required information will not be accepted. When an unacceptable return is submitted, the Secretary will require a corrected return to be filed.

- (d) Use Tax on Out-of-State Purchases. – Use tax payable by an individual who purchases *an item, other than a boat or aircraft*, outside the State for a nonbusiness purpose is due on an annual basis. For an individual who is not required to file an individual income tax return under Part 2 of Article 4 of . . . Chapter [105 of the North Carolina General Statutes], the annual reporting period ends on the last day of the calendar year and a use tax return is due by the following April 15. For an individual who is required to file an individual income tax return, the annual reporting period ends on the last day of the individual's income tax year, and the use tax must be paid on the income tax return as provided in G.S. 105-269.14.” [Emphasis added.]

(Effective July 26, 2019; SB 523, s. 3.3.(p), S.L. 2019-169.)

**G.S. 105-164.22 – Record-Keeping Requirements, Inspection Authority, and Effect of Failure to Keep Records:** This section is amended and provides the following:

- (a) *“(a) Record Keeping Generally.* – Retailers, wholesale merchants, *facilitators, real property contractors*, and consumers must keep records that establish their tax liability under . . . Article [5 of Chapter 105 of the North Carolina General Statutes]. The Secretary or a person designated by the Secretary may inspect these records at any reasonable time during the day.
- (b) *Retailers.* – A retailer's records must include records of the retailer's gross income, gross sales, net taxable sales, all items purchased for *resale, and any reports or records related to transactions with a facilitator with whom it has a contract as provided in . . . Article* [5 of Chapter 105 of the North Carolina General Statutes]. Failure of a retailer to keep records that establish a sale is exempt under . . . Article [5 of Chapter 105 of the North Carolina General Statutes] subjects the retailer to liability for tax on the sale.
- (c) *Wholesale Merchants.* – A wholesale merchant's records must include a bill of sale for each customer that contains the name and address of the purchaser, the date of the purchase, the item purchased, and the *sales price of the item. A wholesale merchant must also keep records that establish a sale is exempt from tax and any reports or records related to transactions with a facilitator with whom it has a contract as provided in . . . Article* [5 of Chapter 105 of the North Carolina General Statutes]. Failure of a wholesale merchant to keep records *that establish a sale is exempt from tax under . . . Article* [5 of Chapter 105 of the North Carolina General Statutes] subjects the wholesale merchant to liability for tax at the rate that applies to the retail sale of the item.
- (d) *Facilitators.* – A *facilitator's records must include records of the facilitator's gross income, gross sales, net taxable sales, all items purchased for resale, any reports or records related to transactions with a retailer with whom it has a*

*contract as provided in . . . Article [5 of Chapter 105 of the North Carolina General Statutes], and any other records that establish its tax liability. Failure of a facilitator to keep records that establish a sale is exempt from tax under . . . Article [5 of Chapter 105 of the North Carolina General Statutes] subjects the facilitator to liability for tax on the sale.*

(e) *Real Property Contractors.* – A real property contractor's records must include substantiation that a transaction is a real property contract or a mixed transaction contract pursuant to G.S. 105-164.4H(a1). Failure of a real property contractor to keep records that establish a real property contract under . . . Article [5 of Chapter 105 of the North Carolina General Statutes] subjects the real property contractor to liability for tax on the sale.

(f) *Consumers.* – A consumer's records must include an invoice or other statement of the purchase price of an item the consumer purchased from inside or outside the State and any sales and use tax paid thereon. Failure of the consumer to keep these records subjects the consumer to liability for tax on the purchase price of the item, as determined by the Secretary." [Emphasis added.]

*(Effective February 1, 2020, and applies to sales occurring on or after that date; SB 557, s. 4.(l), S.L. 2019-246.)*

**G.S. 105-164.26 – Presumption that Sales are Taxable:** This section is updated to include the defined term “certain digital property” per G.S. 105-164.3(23) and provides “[f]or the purpose of the proper administration of Article [5 of Chapter 105 of the North Carolina General Statutes] and to prevent evasion of the retail sales tax, the following presumptions apply:

. . .  
(4) That *certain* digital property sold for delivery or access in this State is sold for storage, use, or consumption in this State.  
. . .” [Emphasis added.]

*(Effective July 26, 2019; SB 523, s. 3.3.(q), S.L. 2019-169.)*

**G.S. 105-164.27A – Direct Pay Permit:** These subsections are amended by replacing the terms “tangible personal property”, “digital property”, and “service” with the term “items”. Subsection (a3) was further amended to update a statutory reference. The amended section provides the following:

“(a) General. – A general pay permit authorizes its holder to purchase certain *items* without paying tax to the seller and authorizes the seller to not collect any tax on a sale to the permit holder. A general direct pay permit may not be used for purposes identified in subsections (a1), (a2), (a3), or (b) of this section. A person who purchases an item under a direct pay permit issued under this subsection is liable for use tax due on the purchase. The tax is payable when the property is placed in use or the service is received. A direct pay permit issued under this subsection does not apply to taxes imposed under G.S. 105-164.4 on sales of electricity, piped natural gas, video programming, spirituous liquor, or the gross receipts derived from rentals of accommodations.

A person who purchases an item for storage, use, or consumption in this State whose tax status cannot be determined at the time of the purchase because one of the reasons listed below may apply to the Secretary for a general direct pay permit:

- (1) The place of business where the item will be stored, used, or consumed in the State is not known at the time of the purchase and a different tax consequence applies depending on where the item is used in the State.
- (2) The manner in which the item will be stored, used, or consumed in the State is not known at the time of the purchase and one or more of the potential uses is taxable but others are not taxable in the State.

...

- (a3) Boat and Aircraft. – A direct pay permit issued under this subsection authorizes its holder to purchase tangible personal property, *certain* digital property, or repair, maintenance, and installation services for a boat, an aircraft, or a qualified jet engine without paying tax to the seller and authorizes the seller to not collect any tax on the *purchased items* from the permit holder. A person who purchases the *tangible personal property, certain digital property, or repair, maintenance, and installation services* under a direct pay permit must file a return and pay the tax due to the Secretary in accordance with *G.S. 105-164.16*. A permit holder is allowed a use tax exemption on one or more of the following: (i) the installation charges that are a part of the sales price of tangible personal property or *certain* digital property purchased by the permit holder for a boat, an aircraft, or a qualified jet engine, provided the installation charges are separately stated and identified as such on the invoice or other documentation given to the permit holder at the time of the sale and (ii) the sales price of or gross receipts derived from repair, maintenance, and installation services provided for a *boat or an aircraft*.

In lieu of purchasing under a direct pay permit pursuant to this subsection, a purchaser may elect to have the seller collect and remit the tax due on behalf of the purchaser. Where the purchaser elects for the seller to collect and remit the tax, an invoice given to the purchaser bearing the proper amount of tax on a retail transaction extinguishes the purchaser's liability for the tax on the transaction. Where a seller cannot or does not separately state installation charges that are a part of the sales price of tangible personal property or *certain* digital property for a boat, an aircraft, or a qualified jet engine on the invoice or other documentation given to the purchaser at the time of the sale, tax is due on the total purchase price.

The amount of the use tax exemption is the amount of the installation charges and *the* sales price of or gross receipts derived from the repair, maintenance, and installation services that exceed twenty-five thousand dollars (\$25,000).” [Emphasis added.]

(Effective March 20, 2019; SB 56, s. 5.5., S.L. 2019-6. Effective July 26, 2019; SB 523, s. 3.3.(r), S.L. 2019-169.)



**G.S. 105-164.28A(a) – Authorization:** This subsection is amended to remove unnecessary language and provides “[t]he Secretary may require a person who purchases an item that is exempt from tax to obtain an exemption certificate from the Department to receive the *exemption*. The Department must issue a use-based exemption number to a person who qualifies for the *exemption*. A person who no longer qualifies for a use-based exemption number must notify the Secretary within 30 days to cancel the number.

An exemption certificate issued by the purchaser authorizes a retailer to sell an item to the holder of the certificate and not collect tax on the sale. A person who no longer qualifies for an exemption certificate must give notice to each seller that may rely on the exemption certificate on or before the next purchase. A person who purchases an item under an exemption certificate is liable for any tax due on the purchase if the Department determines that the person is not eligible for the exemption certificate or if the person purchased items that do not qualify for an exemption under the exemption certificate. The liability is relieved when the seller obtains the purchaser's name, address, type of business, reason for exemption, and exemption number in lieu of obtaining an exemption certificate."

*(Effective March 20, 2019; SB 56, s. 5.6., S.L. 2019-6.)*

**G.S. 105-164.42I(c) – Liability:** This subsection is amended and provides “[a] seller may contract with a certified service provider to collect and remit sales and use taxes payable to the State on sales made by the seller. A certified service provider with whom a seller contracts is the agent of the seller. As the seller’s agent, the certified service provider, rather than the seller, is liable for sales and use taxes due this State on all sales transactions the certified service provider processes for the seller unless the seller misrepresents the type of *items* it sells or commits fraud. A seller that misrepresents the type of *items* it sells or commits fraud is liable for taxes not collected as a result of the misrepresentation or fraud.” [Emphasis added.]

*(Effective July 26, 2019; SB 523, s. 3.3(s), S.L. 2019-169.)*

**G.S. 105-164.42L – Liability Relief for Erroneous Information or Insufficient Notice by Department:** This section is amended and provides the following:

“(a) *Boundary and Rate Databases.* – The Secretary may develop databases that provide information on the boundaries of taxing *districts* and the tax rates applicable to those taxing *districts*. *The databases may assign the proper tax rate and taxing district to each taxing area within the State. If more than one tax rate applies within a specific taxing area, the Secretary shall assign the lowest combined tax rate imposed within the specific taxing area. If the Secretary cannot determine the appropriate tax rate for a street address, the Secretary shall assign the lowest combined tax rate imposed within the street address's nine-digit zip code. But, if the Secretary cannot determine the appropriate tax rate for a street address's nine-digit zip code, the Secretary shall assign the lowest combined tax rate imposed within the street address's five-digit zip code.*

A person who relies on the information provided in these databases is not liable for underpayments of tax attributable to erroneous information provided by the Secretary in those databases until 10 business days after the date of notification by the Secretary.

- (b) *Taxability Matrix.* – The Secretary may develop a taxability matrix that provides information on the taxability of certain items or certain tax administration practices. A person who relies on the information provided in the taxability matrix is not liable for underpayments of tax attributable to erroneous information provided by the Secretary in the taxability matrix until 10 business days after the date of notification by the Secretary.
- (c) *Rate Changes.* – A retailer is not liable for an underpayment of tax attributable to a rate change when the State fails to provide for at least 30 days between the enactment of the rate change and the effective date of the rate change if the conditions of this subsection are satisfied. However, if the State establishes the retailer fraudulently failed to collect tax at the new rate or solicited customers based on the immediately preceding effective rate, this liability relief does not apply. Both of the following conditions must be satisfied for liability relief:
  - (1) The retailer collected tax at the immediately preceding rate.
  - (2) The retailer's failure to collect at the newly effective rate does not extend beyond 30 days after the date of enactment of the new rate or the effective date applicable under G.S. 105-164.15A." [Emphasis added.]

*(Effective July 26, 2019; SB 523, s. 3.5.(b), S.L. 2019-169.)*

**G.S. 105-164.44E(b) – Transfer to the Dry-Cleaning Solvent Cleanup Fund:** This subsection is amended to extend the expiration date and provides the following:

“(b) Sunset. – This section is repealed effective *July 1, 2030.*” [Emphasis added.]

*(Effective November 1, 2019; HB 399, s. 6.(b), S.L. 2019-237.)*

## **SPECIAL PROVISIONS**

**G.S. 105-237.1(a) – Authority:** This subsection is added and provides “[t]he Secretary may compromise a taxpayer’s liability for a tax that is collectible under G.S. 105-241.22 when the Secretary determines that the compromise is in the best interest of the State and makes one or more of the following findings:

...

- (8) The assessment is for sales tax the taxpayer failed to collect or use tax the taxpayer failed to pay on repair, maintenance, and installation services provided by a real property manager under a property management contract. The Secretary must determine that the taxpayer made a good-faith effort to comply with the sales and use tax laws. Absent fraud or other egregious activities, a taxpayer that substantiated the time spent managing real property for a billing or

invoice period as provided under G.S. 105-164.4K(c) will be determined to have made a good-faith effort to comply with the sales and use tax laws."

*(Effective July 26, 2019, SB 523, s. 3.9.(f), S.L. 2019-169. The provisions of G.S. 105-164.15A apply to the implementation of this change as if it is a decrease in the tax rate; SB 557, s. 7.(a), S.L. 2019-246. Originally, the effective date referenced the date a real property management contract was entered into, however, this provision was eliminated in subsequent legislation; SB 557, s. 7.(a), S.L. 2019-246.)*

**G.S. 105-244.3 – Sales Tax Expansion Protection Act:** This section is amended to update the language. The following explains the protections provided by the Act:

“(a) Grace Period. – The Department shall take no action to assess any tax due for a filing period beginning on or after March 1, 2016, and ending prior to January 1, 2019, if one or more of the conditions of this subsection apply and the retailer did not receive specific written advice from the Secretary for the transactions at issue for the laws in effect for the applicable periods. Except as otherwise provided, this subsection also applies to use tax liability imposed on a purchaser under G.S. 105-164.6. The conditions are as follows:

...

(8) A person failed to collect sales tax on the taxable portion of a mixed service contract that exceeds ten percent (10%) for a transaction on or after January 1, 2017, and prior to January 1, 2019. This subdivision does not prohibit the Secretary from assessing use tax on purchases used to fulfill a mixed *service* contract.

...

(8b) A person failed to collect sales tax on the taxable portion of a bundled transaction that included a contract for two or more services, one of which was subject to tax and one of which was not subject to tax, for a transaction on or after March 1, 2016, and prior to January 1, 2017.

...” [Emphasis added.]

*(Effective March 20, 2019; SB 56, s. 5.8., S.L. 2019-6.)*

**G.S. 105-244.3 – Sales Tax Expansion Protection Act:** This section is further amended to update the language to include the defined term “certain digital property” and to remove unnecessary language. The following explains the protections provided by the Act.

“(a) Grace Period. – The Department shall take no action to assess any tax due for a filing period beginning on or after March 1, 2016, and ending prior to January 1, 2019, if one or more of the conditions of this subsection apply and the retailer did not receive specific written advice from the Secretary for the transactions at issue for the laws in effect for the applicable periods. Except as otherwise provided, this subsection also applies to use tax liability imposed on a purchaser under G.S. 105-164.6. The conditions are as follows:

(1) A retailer failed to charge sales tax due on separately stated installation charges that are part of the sales price of tangible personal property or *certain* digital property sold at retail.

...

- (10) A person failed to collect sales tax on repair, maintenance, and installation services for tangible personal property, motor vehicles, or *certain* digital property.
- (b) Limitations. – This section does not prohibit the following assessments.
- (1) The assessment of tax collected by a person and not remitted to the Department.
  - (2) The assessment of tax due on an amount included in the definition of sales price where a retailer failed to charge or remit the tax, except as allowed under subsection (a) of this section.” [Emphasis added.]

(Effective July 26, 2019; SB 523, s. 3.6., S.L. 2019-169)

**G.S. 105-244.4(a) – Reduction of Certain Sales Tax Assessments:** This subsection is amended and provides the following:

- “(a) Reduction – The Secretary may reduce an assessment against a taxpayer who requests relief for State and local sales and use taxes in the amount as provided in this section and waive any penalties imposed as part of the assessment when the assessment is the result of an audit of the taxpayer by the Department and all of the following apply:
- (1) The taxpayer remitted to the Department *during the period under audit* all of the sales and use taxes it collected during *that period*.
  - (2) The taxpayer had not been informed by the Department in a prior audit to collect sales and use taxes in the circumstance that is the basis of the assessment, as reflected in the written audit comments of the prior audit.
  - (3) The taxpayer had not requested and received from the Department a private letter ruling advising to collect sales and use taxes in the circumstance that is the basis of the assessment.
  - (4) The assessment is based on the incorrect application of one or both of the following areas of the sales and use tax statutes:
    - a. The failure to collect sales tax on separately stated linen charges where the linens are furnished by a facilitator, rental agent, or other person and the charges are part of the gross receipts derived from the rental of the accommodation taxed in accordance with G.S. 105-164.4F.
    - b. The failure to pay sales or use tax *to the lessor* on the rental of *the* linens used by a facilitator, rental agent, or other person in providing the rental of an accommodation taxed in accordance with G.S. 105-164.4F where the facilitator, rental agent, or other person issued a certificate of exemption or the required data elements per G.S. 105-164.28 to the lessor.” [Emphasis added.]

(Effective July 26, 2019; SB 523, s. 3.7., S.L. 2019-169.)

## LOCAL SALES AND USE TAX

**G.S. 105-467(b) – Scope of Sales Tax:** The subsection is amended and provides the following:

“(b) Exemptions and Refunds. – The State exemptions and exclusions contained in Article 5 of Subchapter I of this Chapter, except for the exemption for food in G.S. 105-164.13B, apply to the local sales and use tax authorized to be levied and imposed under... Article [39 of Chapter 105 of the North Carolina General Statutes]. The State refund provisions contained in G.S. 105-164.14 and G.S. 105-164.14A apply to the local sales and use tax authorized to be levied and imposed under ... Article [5 of Chapter 105 of the North Carolina General Statutes]. A refund of an excessive or erroneous State sales tax collection allowed under G.S. 105-164.11 and a refund of State sales tax paid on a rescinded sale or cancelled service contract under G.S. 105-164.11A apply to the local sales and use tax authorized to be levied and imposed under ... Article [5 of Chapter 105 of the North Carolina General Statutes]. The aggregate annual local refund amount allowed an entity under G.S. 105-164.14(b) for the State's fiscal year may not exceed thirteen million three hundred thousand dollars (\$13,300,000).

Except as provided in this subsection, a taxing county may not allow an exemption, exclusion, or refund that is not allowed under the State sales and use tax. A local school administrative unit and a joint agency created by interlocal agreement among local school administrative units pursuant to G.S. 160A-462 to jointly purchase food service-related materials, supplies, and equipment on their behalf is allowed an annual refund of sales and use taxes paid by it under ... Article [39 of Chapter 105 of the North Carolina General Statutes] on direct purchases of *items*. Sales and use tax liability indirectly incurred by the entity as part of a real property contract for real property that is owned or leased by the entity and is a capital improvement for use by the entity is considered a sales or use tax liability incurred on direct purchases by the entity for the purpose of this subsection. The refund allowed under this subsection does not apply to purchases of electricity, telecommunications service, ancillary service, piped natural gas, video programming, or a prepaid meal plan. A request for a refund is due in the same time and manner as provided in G.S. 105-164.14(c). Refunds applied for more than three years after the due date are barred.” [Emphasis added.]

*(Effective July 26, 2019; SB 523, s. 3.3.(t), S.L. 2019-169.)*

**G.S. 105-468.1 – Certain Building Materials Exempt from Sales and Use Taxes:** This section is amended and provides that “[t]he provisions of [Article 39 of Chapter 105 of the North Carolina General Statutes] shall not be applicable with respect to any *items* purchased for the purpose of fulfilling a real property contract for a capital improvement entered into or awarded, or entered into or awarded pursuant to any bid made, before the effective date of the tax imposed by a taxing county when, absent the

provisions of this section, the *items* would otherwise be subject to tax under the provisions of . . . Article [39 of Chapter 105 of the North Carolina General Statutes]." [Emphasis added.]

*(Effective July 26, 2019; SB 523, s. 3.3.(u), S.L. 2019-169.)*

**G.S. 105-537(b) – Vote:** This subsection is amended and provides the following:

"(b) Vote. – The board of county commissioners may direct the county board of elections to conduct an advisory referendum on the question of whether to levy a local sales and use tax in the county as provided in . . . Article [46 of Chapter 105 of the North Carolina General Statutes]. The election shall be held in accordance with the procedures of G.S. 163A-1592, *except that the election shall not be held within one year from the date of the last preceding election under this section.*" [Emphasis added.]

*(Effective July 26, 2019, and applies to elections held on or after July 1, 2019; SB 523, s. 3.8.(a), S.L. 2019-169.)*

**G.S. 105-550 – Definitions:** The 2019 General Assembly amended the following definition:

**Short-Term Lease or Rental – (6).** This definition of the term is amended and provides "[d]efined in G.S. 105-187.1." [Emphasis added.]

*(Effective October 1, 2019, and applies to vehicle subscription agreements entered into on or after that date; HB 537, s. 4., S.L. 2019-69.)*

## HIGHWAY USE TAX

### SECTION

# 5

## HIGHWAY USE TAX – ARTICLE 5A

**G.S. 105-187.1(a) – Definitions:** The 2019 General Assembly added new defined terms and amended multiple definitions for existing defined terms. The changes and their effective dates are as follows:

**Long-Term Lease or Rental – (3).** The definition of the term is amended and provides “[a] lease or rental made under a written agreement to lease or rent *one or more vehicles* to the same person for a period of at least 365 continuous days *and that is not a vehicle subscription.*” [Emphasis added.]

*(Effective October 1, 2019, and applies to vehicle subscription agreements entered into on or after that date; HB 537, s. 1., S.L. 2019-69.)*

**Limited Possession Commitment – (3c).** The definition of the term is added and defined as a “[l]ong-term lease or rental, short-term lease or rental, and vehicle subscriptions.”

*(Effective October 1, 2019, and applies to vehicle subscription agreements entered into on or after that date; HB 537, s. 1., S.L. 2019-69.)*

**Retailer – (6).** The definition of the term is amended and provides “[a] retailer as defined in G.S. 105-164.3 who is engaged in the business of selling, leasing, renting, or offering vehicle subscriptions for motor vehicles.” [Emphasis added.]

*(Effective October 1, 2019, and applies to vehicle subscription agreements entered into on or after that date; HB 537, s. 1., S.L. 2019-69.)*

**Short-Term Lease or Rental – (7).** The definition of the term is amended and provides “[a] lease or rental *of a motor vehicle or motor vehicles, including a vehicle sharing service* that is not a long-term lease or rental *or a vehicle subscription.*” [Emphasis added.]

*(Effective October 1, 2019, and applies to vehicle subscription agreements entered into on or after that date; HB 537, s. 1., S.L. 2019-69.)*

**Vehicle Sharing Service – (8).** The definition of the term is added and defined as “[a] service for which a person pays a membership fee for the right to use a motor vehicle or motor vehicles upon payment of an additional time-based or mileage-based fee.”

*(Effective October 1, 2019, and applies to vehicle subscription agreements entered into on or after that date; HB 537, s. 1., S.L. 2019-69.)*

**Vehicle Subscription – (9).** The definition of the term is added and defined as “[a] written agreement that grants a person the right to use and exchange motor vehicles owned, directly or indirectly, by the person offering the agreement upon payment of a subscription fee, but it does not include a vehicle sharing service. The subscription fee must provide a person exclusive use of an agreed-upon number of motor vehicles at any given time during the full term of the subscription.”

*(Effective October 1, 2019, and applies to vehicle subscription agreements entered into on or after that date; HB 537, s. 1., S.L. 2019-69.)*

**G.S. 105-187.1(b) – Definitions:** This subsection was added to clarify that “[t]his section does not apply to Chapter 20 of the General Statutes, including the licensing requirements, restrictions, limitations, and prohibitions on unfair methods of competition contained in Article 12 of that Chapter.”

*(Effective October 1, 2019, and applies to vehicle subscription agreements entered into on or after that date; HB 537, s. 1., S.L. 2019-69.)*

**G.S. 105-187.5 – Alternative Tax for a Limited Possession Commitment:** This section is amended to include the defined term “limited possession commitment” and provides the following:

- (a) Election. – A retailer may elect not to pay the tax imposed by . . . Article [5A of Chapter 105 of the North Carolina General Statutes] at the rate set in G.S. 105-187.3 when applying for a certificate of title for a motor vehicle purchased by the retailer for a *limited possession commitment*. A retailer who makes this election shall pay a tax on the gross receipts of the *limited possession commitment* of the vehicle. The portion of *limited possession commitment* billing or payment that represents any amount applicable to the sales price of a service contract as defined in G.S. 105-164.3 should not be included in the gross receipts subject to the tax imposed by . . . Article [5A of Chapter 105 of the North Carolina General Statutes]. The charge must be separately stated on documentation given to the purchaser at the time the *limited possession commitment* goes into effect, or on the monthly billing statement or other documentation given to the purchaser. When a *limited possession commitment* is sold to another retailer, the seller of the *limited possession commitment* should provide to the purchaser of the *limited possession commitment* the documentation showing that the service contract and applicable sales taxes were separately stated at the time the *limited possession commitment* went into effect and the new retailer must retain the information to support an allocation for tax computed on the gross receipts



subject to highway use tax. Like the tax imposed by G.S. 105-187.3, this alternate tax is a tax on the privilege of using the highways of this State. The tax is imposed on a retailer, but is to be added to the *limited possession commitment* of a motor vehicle and thereby be paid by the person who *enters into a limited possession commitment with a retailer.*" [Emphasis added.]

- (b) Rate. – The *applicable tax rates* on the gross receipts from a *limited possession commitment* are as listed in this subsection. Gross receipts does not include the amount of any allowance given for a motor vehicle taken in trade as a partial payment on the *limited possession commitment*. The maximum tax in G.S. 105-187.3(a1) on certain motor vehicles applies to a continuous *limited possession commitment* of such a motor vehicle to the same person. *The applicable tax rates are as follows:*

<u><b>Type of Limited Possession Commitment</b></u>	<u><b>Tax Rate</b></u>
<i>Short-term lease or rental</i>	8%
<i>Vehicle subscription</i>	5%
<i>Long-term lease or rental</i>	3%"

- (c) Method. – A retailer who elects to pay tax on the gross receipts of the *limited possession commitment* of a motor vehicle shall make this election when applying for a certificate of title for the vehicle. To make the election, the retailer shall complete a form provided by the Division giving information needed to collect the alternate tax based on gross receipts. Once made, an election is irrevocable." [Emphasis added.]

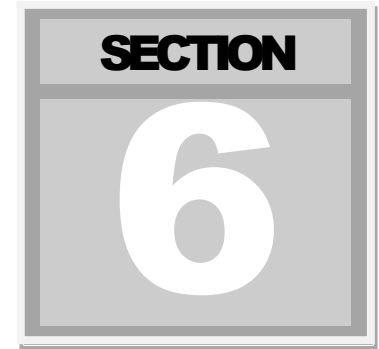
- (d) Administration. – The Division shall notify the Secretary of Revenue of a retailer who makes the election under this section. A retailer who makes this election shall report and remit to the Secretary the tax on the gross receipts of the *limited possession commitment* of the motor vehicle. The Secretary shall administer the tax imposed by this section on gross receipts in the same manner as the tax levied under G.S. 105-164.4(a)(2). The administrative provisions and powers of the Secretary that apply to the tax levied under G.S. 105-164.4(a)(2) apply to the tax imposed by this section. In addition, the Division may request the Secretary to audit a retailer who elects to pay tax on gross receipts under this section. When the Secretary conducts an audit at the request of the Division, the Division shall reimburse the Secretary for the cost of the audit, as determined by the Secretary. In conducting an audit of a retailer under this section, the Secretary may audit any sales of motor vehicles made by the retailer." [Emphasis added.]

*(Effective October 1, 2019, and applies to vehicle subscription agreements entered into on or after that date; HB 537, s. 2., S.L. 2019-69.)*

**G.S. 105-187.9(a) – Disposition of Tax Proceeds:** This subsection is amended and provides “[o]f the taxes collected under [Article 5A of Chapter 105 of the North Carolina General Statutes] at the rate of five percent (5%) and eight percent (8%), the sum of ten million dollars (\$10,000,000) shall be credited annually to the Highway Fund, and the remainder shall be credited to the General Fund. Taxes collected under . . . Article [5A of Chapter 105 of the North Carolina General Statutes] at the rate of three percent (3%) shall be credited to the North Carolina Highway Trust Fund.” [Emphasis added.]

*(Effective October 1, 2019, and applies to vehicle subscription agreements entered into on or after that date; HB 537, s. 3., S.L. 2019-69.)*

## DRY- CLEANING SOLVENT TAX

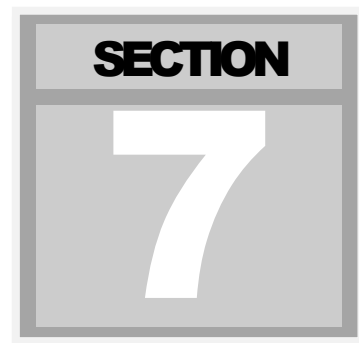


### DRY- CLEANING SOLVENT TAX – ARTICLE 5D

**G.S. 105-187.35 – Sunset:** This section is amended to extend the expiration date and provides that “. . . Article [5D of Chapter 105 of the North Carolina General Statutes] is repealed effective January 1, 2030.”

*(Effective November 1, 2019; HB 399, s.6.(c), S.L. 2019- 237.)*

## LOCAL GOVERNMENT



## LOCAL GOVERNMENT

### **G.S. 105-277.02 – Certain real property held for sale classified for taxation at reduced valuation:**

105-277.02(c) – Changed application requirement for participation in this program from an annual application to a single application.

*(Effective July 1, 2019; HB 492; s. 2, S.L. 2019-123)*

### **G.S. 105-282.1 – Applications for property tax exemption or exclusion...:**

105-282.1(a)(2)(c) – Added the program provided by G.S.105-277.02 to the list of programs requiring a single application.

*(Effective July 1, 2019; HB 492; s. 1, S.L. 2019-123)*

105-282.1(a)(2) – Insignificant editing to remove brackets in original text.

*(Effective July 26, 2019; HB 264; s. 9.(c), S.L. 2019-177)*

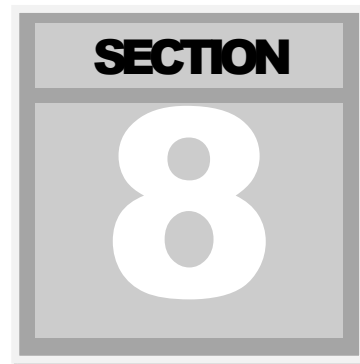
### **G.S. 105-375 – In rem method of foreclosure:**

105-375(b) – Added statutory reference for fees assessed for docketing and indexing a certificate of taxes. The fee of \$300.00 is assessed pursuant to G.S. 7A-308(a)(11).

105-375(b)(i1) – Added a new subsection directing that the assessed fees be made payable to the clerk of superior court out of the sale proceeds at the time the property is sold.

*(Effective December 1, 2019; HB470; s. 12.(b), S.L. 2019-243)*

## GENERAL ADMINISTRATION



### GENERAL ADMINISTRATION – ARTICLE 9

**G.S. 105-228.90(b)(1b) – Scope and Definitions: Definitions: Code:** This subdivision was amended to update the reference to the Internal Revenue Code from February 9, 2018 to January 1, 2019. Any amendments to the Internal Revenue Code enacted after February 9, 2018 that increase North Carolina taxable income for the 2018 taxable year become effective for tax year 2019.

*(Effective March 20, 2019; SB 56, s. 1.1, S.L. 2019-6.)*

**G.S. 105-228.90(b)(3a) – Scope and Definitions: Definitions: Federal Determination:** This subdivision was amended to make several clarifying changes to the definition of the term “federal determination.” Additional language was also added to make it clear that a taxpayer must report a federal determination to the Secretary when the federal determination is “final.” A federal determination is final when the determination is not subject to administrative or judicial review. Additionally, audit findings made by the Internal Revenue Service are final in the following circumstances:

1. The taxpayer has received audit findings from the Internal Revenue Service for the tax period and the taxpayer does not timely file an administrative appeal with the Internal Revenue Service.
2. The taxpayer consented to any of the audit findings for the tax period through a form or other written agreement with the Internal Revenue Service.

*(Effective July 26, 2019, and applies to a federal determination on or after that date; SB 523, s. 6.3.(a), S.L. 2019-169.)*

**G.S. 105-236(a)(10) – Penalties Regarding Informational Returns:** This subdivision was amended to add three additional Articles to which a penalty for failure to file an informational return timely and a penalty for failure to file an informational return in the format prescribed by the Secretary apply.

Under prior law, the penalty for failure to file an informational return timely and the penalty for failure to file an informational return in the format prescribed by the Secretary applied to the following Articles:

- Article 4A, Withholding Tax
- Article 5, Sales and Use Tax
- Article 9, General Administration; Penalties and Remedies
- Article 36C, Gasoline, Diesel, and Blends
- Article 36D, Alternative Fuel

As amended, the penalty for failure to file an informational return timely and the penalty for failure to file an informational return in the format prescribed by the Secretary apply to the following Articles:

- Article 2A, Tobacco Products Tax
- Article 2C, Alcoholic Beverage License and Excise Tax
- Article 4, Income Tax
- Article 4A, Withholding Tax
- Article 5, Sales and Use Tax
- Article 9, General Administration; Penalties and Remedies
- Article 36C, Gasoline, Diesel, and Blends
- Article 36D, Alternative Fuel

*(Effective January 1, 2020, and applies to informational returns due to be filed on or after that date; SB 523, s. 5.2.(a), S.L. 2019-169.)*

**G.S. 105-236(b) – Penalties: Situs of Violations: Penalties Disposition:** This subsection was amended to restore the venue provision of criminal tax law violations to the Office of the Secretary in Raleigh, which was the law prior to December 1, 2018. As rewritten, the new law provides that, “[a] violation of tax law is considered an act committed in part at the office of the Secretary in Raleigh.”

*(Effective December 1, 2018, and applies to offenses committed on or after that date; SB 523, s. 6.8.(a), S.L. 2019-169.)*

**G.S. 105-237.1(a)(8) – Authority:** This subdivision was added and provides the Secretary may compromise the liability of a taxpayer for certain sales tax it failed to collect or use tax it failed to pay on repair, maintenance, and installation services provided by a real property manager under a property management contract. A complete explanation is located under Special Provisions of the Sales and Use Tax section of this document.

*(Effective July 26, 2019, SB 523, s. 3.9.(f), S.L. 2019-169. The provisions of G.S. 105-164.15A apply to the implementation of this change as if it is a decrease in the tax rate; SB 557, s. 7.(a), S.L. 2019-246. Originally, the effective date referenced the date a real property management contract was entered into, however, this provision was eliminated in subsequent legislation; SB 557, s. 7.(a), S.L. 2019-246.)*

**G.S. 105-241.6(b)(5) – Contingent Event:** This subdivision was amended to simplify the language used to explain the contingent event exception to the general statute of limitations for obtaining a refund. Additionally, the law was expanded to allow a taxpayer to use the contingent event exception to request a refund of an overpayment if the taxpayer files written notice with the Secretary prior to the expiration of the general statute of limitations or any exception provided under G.S. 105-241.6. Under prior law, a taxpayer could only use the contingent event exception if the taxpayer filed a written notice with the Secretary before expiration of the general statute of limitations.

*(Effective July 26, 2019 and applies to a request for a refund of an overpayment filed on or after that date; SB 523, s. 6.1.(a), S.L 2019-169.)*

**G.S. 105-241.8(b)(1a) – Federal Amended Return:** This subdivision was amended to add language to specify that the date a taxpayer files an amended return with the Internal Revenue Service (“IRS”) is presumed to be the date the return was recorded by the IRS. This provision clarifies the calculation of the statute of limitations for the Department to propose an assessment of additional tax when a taxpayer files a federal amended return but does not timely file a State amended return.

*(Effective July 26, 2019, and applies to an assessment proposed on or after that date; SB 523, s. 6.2.(a), S.L. 2019-169.)*

**G.S. 105-241.14(b) – Assessment:** This subsection was amended to clarify that an assessment remains a proposed assessment until a final determination is sent to the taxpayer.

*(Effective March 20, 2019; SB 56, s. 5.7, S.L. 2019-6.)*

**G.S. 105-241.20(a)(1) – Delivery of Notice to the Taxpayer: Scope:** This subdivision was amended to add a “notice of denial of refund” to the list of notices that the Department is required to deliver to taxpayers either in person or by United States mail to the taxpayers’ last known address.

*(Effective July 26, 2019; SB 523, s. 6.5, S.L 2019-169.)*

**G.S. 105-241.22(6) – Collection of Tax:** This subsection was amended to expand the circumstances under which the Department may collect a tax related to the dismissal of a contested case at the Office of Administrative Hearings. As amended, the Department may collect a tax when a petition for a contested case at the Office of Administrative Hearings is dismissed and the period for timely filing a petition has expired. Under prior law, the tax became collectible when the Office of Administrative Hearings dismissed a petition for a contested case for lack of jurisdiction because the sole issue was the constitutionality of a statute and not the application of a statute.

*(Effective July 26, 2019; SB 523, s. 6.7, S.L 2019-169.)*

**G.S. 105-243.1(d) – Fee:** This subsection was amended to allow the Department to impose a collection assistance fee 60 days after a tax debt is deemed collectible under G.S. 105-241.22. Under prior law, the collection assistance fee was assessed 90 days after the debt was deemed collectible. Additionally, the requirement that the Department mail a separate collection fee notice to the taxpayer earlier than 60 days after the debt becomes collectible has been removed.

*(Effective January 1, 2020, and applies to tax debts that become collectible on or after that date; SB 523, s. 5.1.(a), S.L. 2019-169.)*

**G.S. 105-244.3 – Sales Tax Base Expansion Protection Act:** This section was amended and provides certain relief from sales and use taxes due to the expansion of the sales tax base. A complete explanation is located under Special Provisions of the Sales and Use Tax section of this document.

*(Effective March 20, 2019; SB 56, s. 5.8, S.L. 2019-6; and effective July 26, 2019; SB 523, s. 3.6, S.L. 2019-169.)*

**G.S. 105-244.4(a) – Reduction of Certain Tax Assessments:** This subsection was amended to clarify the conditions under which a taxpayer may obtain relief from sales and use taxes on certain audits. A complete explanation is located under Special Provisions of the Sales and Use Tax section of this document.

*(Effective July 26, 2019; SB 523, s. 3.7, S.L. 2019-169.)*

**G.S. 105-258.3 – Power of Attorney:** G.S. 105-128, the statute authorizing the Secretary to require a power of attorney of each agent for any taxpayer under Article 3, was recodified to Article 9, the General Administration Article.

*(Effective July 26, 2019; SB 523, s. 6.6.(a),(b), S.L. 2019-169.)*

**G.S. 105-259(b)(15) – Disclosure Prohibited:** This subdivision was amended to remove the word “Branch” and was substituted it with the word “Division.” The statute was revised to conform to other changes made in Session Law 2019-203.

*(Effective October 1, 2019; HB 99, s. 9.(a), S.L. 2019-203.)*

**G.S. 105-259(b)(15) – Disclosure Prohibited:** This subdivision was amended by adding new sub-subdivision (c1) to permit the disclosure of tax information associated with Articles 2A, 2C, or 2D to the Alcohol and Tobacco Tax and Trade Bureau of the United States Department of the Treasury.

*(Effective March 20, 2019; SB 56, s. 4.10, S.L. 2019-6.)*



**G.S. 105-263 – Timely Filing of Mailed Documents and Requests for Extensions:**

The 2018 General Assembly modified this section to provide a method by which a taxpayer that is granted an automatic extension to file a federal income tax return is granted an automatic extension to file a State income or franchise tax return.

Under prior law, the Department required all taxpayers to timely submit a State extension application form to receive an extension of time to file a State income or franchise tax return. The Department did not accept a federal extension form in lieu of the North Carolina extension.

As amended, a person who is granted an automatic extension to file a federal income tax return, including a return of partnership income, is granted an automatic extension to file the corresponding State income tax return or franchise tax return. The person must certify on the North Carolina return that the person was granted a federal extension.

*(Effective for taxable years beginning on or after January 1, 2019; SB 99, s. 38.4.(a), S.L. 2018-5.)*

**G.S. 105-269.14(b) – Payment of Use Tax with Individual Income Tax:**

**Distribution:** As amended, this subsection consolidates the sales and use tax distribution language for the consumer use tax collected on Form D-400, the individual income tax return.

*(Effective March 20, 2019; SB 56, s. 5.9, S.L. 2019-6.)*

## APPENDIX A: DISASTER RELIEF



### NORTH CAROLINA EMERGENCY MANAGEMENT ACT – CHAPTER 166A, ARTICLE 1A

**G.S. 166A-19.70A – Facilitate Critical Infrastructure Disaster Relief:** Part 8 of Article 1A of Chapter 166A was amended to add a new section to provide State tax and regulatory relief to out-of-state businesses that come into North Carolina immediately after a disaster solely to help with critical infrastructure repair at the request of a critical infrastructure company. New section G.S. 166A-19.70A consists of subsections (a) through (e).

**G.S. 166A-19.70A(a) – Purpose:** This subsection sets out the legislative findings for why the relief in G.S. 166A-19.70A is warranted.

Under the new law, the State finds that it is appropriate to exclude nonresident businesses and nonresident employees who temporarily come into North Carolina at the request of a critical infrastructure company solely to perform disaster-related work during a disaster response period from the following tax and regulatory requirements:

1. Corporate and individual income tax, as provided under G.S. 105-130.1 and G.S. 105-153.2.
2. Franchise tax, as provided under G.S. 105-114.
3. Unemployment tax, as provided under G.S. 96-1(b)(12).
4. Certificate of Authority from the Secretary of State to transact business in this State, as provided under G.S. 55-15-01(d) and G.S. 57D-1-24(d).

**G.S. 166A-19.70A(b) – Definitions:** This subsection sets out the definitions that apply to G.S. 166A-19.70A.

Subdivision (1) defines “corporation” by cross-reference to the definition of that term in G.S. 105-130.2.

Subdivision (2) defines “critical infrastructure” as “property and equipment owned or used by a critical infrastructure company for utility or communications transmission

services provided to the public in the State. Examples of critical infrastructure include communications networks, electric generation, transmission and distribution systems, natural gas transmission and distribution systems, water pipelines, and related support facilities. Related support facilities may include buildings, offices, lines, poles, pipes, structures, and equipment.”

Subdivision (3) defines a “critical infrastructure company” as “one of the following:

- a. A registered public communications provider.
- b. A registered public utility.”

Subdivision (4) defines “disaster-related work” as “repairing, renovating, installing, building, or performing services on critical infrastructure that has been damaged, impaired, or destroyed as a result of a disaster or emergency in an area covered by the disaster declaration.”

Subdivision (5) defines “disaster response period” as “a period that begins 10 days prior to the first day of a disaster declaration and expires on the earlier of the following:

- a. Sixty days following the expiration of the disaster declaration, as provided under G.S. 166A-19.21(c).
- b. One hundred eighty days following the issuance of the disaster declaration.”

Subdivision (6) defines “employee” by cross-reference to the definition of that term in G.S. 105-163.1.

Subdivision (7) defines “nonresident business” as “an entity that has not been required to file an income or franchise tax return with the State for three years prior to the disaster response period, other than those arising from the performance of disaster-related work during a tax year prior to the enactment of this section, and that meets one or more of the following conditions:

- a. Is a nonresident entity.
- b. Is a nonresident individual who owns an unincorporated business as a sole proprietor.”

Subdivision (8) defines “nonresident employee” as “a nonresident individual who is one of the following:

- a. An employee of a nonresident business.
- b. An employee of a critical infrastructure company who is temporarily in this State to perform disaster-related work during a disaster response period.”

Subdivision (9) defines “nonresident entity” by cross-reference to the definition of that term in G.S. 105-163.1.

Subdivision (10) defines “nonresident individual” by cross-reference to the definition of that term in G.S. 105-153.3.

Subdivision (11) defines “registered public communications provider” as “a corporation doing business in this State prior to the disaster declaration that provides the transmission to the public of one or more of the following:

- a. Broadband.
- b. Mobile telecommunications.
- c. Telecommunications.
- d. Wireless internet access.”

Subdivision (12) defines “registered public utility” as “a corporation doing business in this State prior to the disaster declaration that is subject to the control of one or more of the following entities:

- a. North Carolina Utilities Commission.
- b. North Carolina Rural Electrification Authority.
- c. Federal Communications Commission.
- d. Federal Energy Regulatory Commission.”

**G.S. 166A-19.70A(c) – Critical Infrastructure Company Notification:** This subsection requires a critical infrastructure company to provide notification to the Department of Revenue within 90 days of the expiration of the disaster response period. The notification must be in the form and manner required by the Department and must include the following:

1. A list of all nonresident businesses who performed disaster-related work in this State during a disaster response period at the request of the critical infrastructure company.
2. A list of nonresident employees who performed disaster-related work in this State for the critical infrastructure company during a disaster response period. The notification must include the amount of compensation paid to the nonresident employee performing disaster-related work in this State.

**G.S. 166A-19.70A(d) – Nonresident Business Notification:** This subsection requires a nonresident business to provide notification to the Department of Revenue within 90 days of the date the nonresident business concludes its disaster-related work in the State. The notification must be in the form and manner required by the Department and must include the following:

1. A list of nonresident employees who perform disaster-related work in this State during a disaster response period.
2. The amount of compensation paid to the nonresident employee performing disaster-related work in this State.

Importantly, if a nonresident business fails to timely submit the nonresident business notification to the Department, the nonresident business forfeits the tax relief provided under G.S. 166A-19.70A.

**G.S. 166A-19.70A(e) – Limitation:** This subsection makes it clear that the tax and regulatory relief provided under G.S. 166A-19.70A applies only to nonresident businesses and nonresident employees who would not otherwise be subject to North Carolina’s tax and regulatory requirements if the nonresident business or nonresident employee had not performed disaster-related work during a disaster response period.

Under the new law, the relief does not apply to a tax year that is part of a disaster response period if:

1. The nonresident business or nonresident employee continues to perform disaster-related work following the end of the disaster response period.
2. The nonresident business or nonresident employee is required to file an income tax return for that tax year with the Department for reasons other than the performance of disaster-related work.

*(Effective August 1, 2019 and applies to disaster declarations on or after that date; SB 498, s. 1.(a), S.L. 2019-187.)*