NCDOR NORTH CAROLINA DEPARTMENT OF REVENUE

2020 TAX LAW CHANGES

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PREFACE

The 2020 legislative session brought many changes to the revenue laws and the North Carolina Department of Revenue. The 2020 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 2020 as well as changes made by the 2020 General Assembly, regardless of effective date. This document includes changes to the tax law only and does not include other legislation that impacts the Department of Revenue.

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

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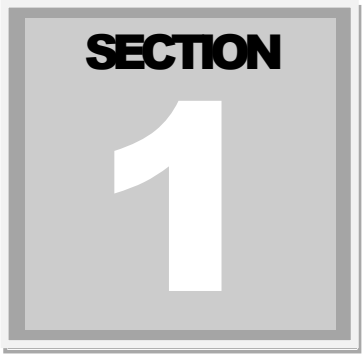
SECTION 1 - PERSONAL TAXES



INDIVIDUAL INCOME TAX – ARTICLE 4, PART 2

G.S. 105-153.5(a)(1) – Standard Deduction Amount: This subdivision was amended by the 2019 General Assembly to increase 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:

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

(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 to decouple North Carolina from the temporary increase in the charitable contribution deduction limit for qualified charitable contributions allowed under section 170 of the Internal Revenue Code ("Code") for tax year 2020.

For tax year 2020, Section 2205 of the Coronavirus Aid, Relief, and Economic Security Act ("CARES Act") amended section 170 of the Code to temporarily increase the charitable deduction limit for qualified contributions from a maximum of 60% of an individual's adjusted gross income ("AGI") to 100% of AGI. For federal income tax purposes, an individual who claims itemized deductions for tax year 2020 may deduct qualified contributions of up to 100% of the individual's AGI.

For purposes of the charitable contribution deduction allowed under G.S. 105-153.5(a)(2), the General Assembly adopted the Code as of January 1, 2020, which excludes the provisions of the CARES Act. Consequently, an individual who claims North Carolina itemized deductions for tax year 2020 may only deduct qualified contributions up to 60% of the individual's AGI.

(Effective June 30, 2020; H1080, s. 1.(d), S.L. 2020-58.)

G.S. 105-153.5(a)(2)b. – Mortgage Expense and Property Tax: The Further Consolidated Appropriations Act ("FCAA"), enacted by Congress in December 2019, extended through tax year 2020, the federal provision that allows an individual an itemized deduction for mortgage insurance premiums paid or accrued by treating those premiums as qualified residence interest. North Carolina has historically decoupled from this provision of the Internal Revenue Code ("Code").

Sub-subdivision b. was amended to extend the provision originally enacted effective for taxable years beginning on or after January 1, 2014, that caused North Carolina to decouple from the Code with respect to mortgage insurance premiums. As amended, an individual is not allowed a North Carolina itemized deduction for mortgage insurance premiums paid or accrued during the year and treated as qualified residence interest under the Code for tax years 2014 through 2020.

(Effective June 30, 2020; H1080, s. 1.(e), S.L. 2020-58.)

G.S. 105-153.5(a)(2)c. – Medical and Dental Expense: The Further Consolidated Appropriations Act ("FCAA"), enacted by Congress in December 2019, reduced the medical and dental expense deduction threshold from 10% of adjusted gross income ("AGI") to 7.5% of AGI for tax years 2019 and 2020.

G.S. 105-153.5(a)(2)(c) provides that an individual is allowed a North Carolina itemized deduction for medical and dental expenses for the amount allowed as a deduction under section 213 of the Internal Revenue Code ("Code") for that taxable year. On June 30, 2020, the 2020 General Assembly updated North Carolina's reference to the Code to include federal tax provisions enacted as of May 1, 2020. As part of that update, the reference to section 213 of the Code was updated from January1, 2019 to May 1, 2020. As enacted, this change allows taxpayers who elect to deduct North Carolina itemized deductions to deduct qualifying medical and dental expenses that exceed 7.5% of AGI for tax years 2019 and 2020.

(Effective June 30, 2020; H1080, s. 1.(a), S.L. 2020-58.)

G.S. 105-153.5(b)(10) – Other Deductions: In 2009, federal law allowed certain taxpayers to elect to defer reporting cancellation of debt income in 2009 and 2010, and instead report the income on the federal return ratably over a five-year period beginning in 2014. The 2009 General Assembly chose not to adopt this provision of federal law. Instead, North Carolina law required an addition to federal taxable income in 2009 and 2010 for any amount of income deferred under Internal Revenue Code section 108(i)(1), and provided for a future deduction from federal taxable income for the amount deferred for federal tax purposes ratably over a five-year period beginning in 2014.

The 2020 General Assembly repealed this subdivision because there is no longer a need for the deduction.

(Effective June 30, 2020; H1080, s. 4.2, S.L. 2020-58.)

G.S. 105-153.5(b) – Other Deductions: The General Assembly enacted S.L. 2020-97, which provided various forms of State tax relief to taxpayers affected by the COVID-19 pandemic. As part of this law, the General Assembly created the Extra Credit Grant program to be administered by the Department of Revenue ("Department"). As enacted, the Department was required to provide a one-time grant of $335 to eligible individuals as determined under Section 4.12(d) of S.L. 2020-97.

In addition, G.S. 105-153.5(b) was amended to add new subdivision (14), which provides an individual with a new North Carolina income tax deduction equal to the amount of the grant received during the tax year to the extent the individual includes the grant amount in the computation of adjusted gross income.

(Effective for taxable years beginning on or after January 1, 2020, and expires for taxable years beginning on or after January 1, 2021; H1105, s. 1.4.(a), S.L. 2020-97.)

G.S. 105-153.5(c2) – Decoupling Adjustments: The Tax Cuts and Jobs Act ("TCJA"), the Further Consolidated Appropriations Act ("FCAA") and the Coronavirus Aid, Relief, and Economic Security Act ("CARES Act") (collectively, "federal tax provisions") made significant changes to the federal individual income tax. To the extent North Carolina follows the Internal Revenue Code ("Code") as enacted as of May 1, 2020, these provisions apply to North Carolina for purposes of calculating an individual's income tax liability.

The General Assembly made extensive changes to subsection (c2) to decouple North Carolina from several federal tax provisions. These changes are as follows:

Cancellation of Qualified Principal Residence Indebtedness

The FCAA retroactively extended through tax year 2020 the exclusion from gross income for the discharge of qualified principal residence indebtedness under section 108 of the Code. The General Assembly chose not to adopt this provision of the Code. Instead, for North Carolina tax purposes, the cancelation of qualified principal residence debt is included in the calculation of North Carolina taxable income for tax years 2014 through 2020.

As enacted, subdivision (1) of subsection (c2) requires an individual, for tax years 2014 through 2020, to add to AGI, the amount of qualified principal residence debt discharged during the tax year excluded from federal gross income under section 108 of the Code.

Qualified Tuition and Related Expenses

The FCAA retroactively extended through tax year 2020 the deduction in arriving at adjusted gross income ("AGI") for qualified tuition and related expenses under section 222 of the Code. The General Assembly chose not to adopt this provision of the Code. Instead, for North Carolina tax purposes, qualified tuition and related expenses are included in the calculation of North Carolina taxable income for tax years 2014 through 2020.

As enacted, subdivision (2) of subsection (c2) requires an individual to add to AGI income for tax year 2014 through 2020, the amount of qualified tuition and related expenses deducted during the tax year in calculating AGI under section 222 of the Code.

NOL Carryback Incurred in Tax Years 2018, 2019, and 2020

The TCJA generally eliminated net operating loss ("NOL") carrybacks and permitted NOLs to be carried forward indefinitely. The CARES Act changed those rules temporarily by permitting NOLs incurred in 2018, 2019, and 2020, to be carried back for five years preceding the tax year of the loss, unless the individual elects to waive the carryback period.

The General Assembly chose not to adopt this provision of the Code. Instead, for North Carolina tax purposes, an NOL incurred in 2018, 2019, and 2020 carried back for federal tax purposes must be added to AGI for tax years 2013 and 2019.

As enacted, subdivision (8) of subsection (c2) requires an individual, for tax years 2013, 2014, 2015, 2016, or 2017, to add to AGI the amount of any 2018 NOL deducted and absorbed on a federal tax return under section 172 of the Code.

As enacted, subdivision (9) of subsection (c2) requires an individual, for taxable years 2014, 2015, 2016, 2017, or 2018, to add to AGI the amount of any 2019 NOL deducted and absorbed on a federal tax return under section 172 of the Code.

As enacted, subdivision (10) of subsection (c2) requires an individual, for taxable years 2015, 2016, 2017, 2018, or 2019, to add to AGI the amount of any 2020 NOL deducted and absorbed on a federal tax return under section 172 of the Code.

As enacted, subdivision (11) of subsection (c2) requires an individual, for taxable years 2013, 2014, 2015, 2016, 2017, 2018, or 2019, to add to AGI the amount of any 2018, 2019, or 2020 NOL carried back and deducted on a federal tax return pursuant to section 2303(b) of the CARES Act, but not absorbed in that year and carried forward to a subsequent year.

As enacted, subdivision (14) of subsection (c2) provides a deduction from AGI for the amount of NOL carryback deduction required to be added to a AGI under G.S. 105-153.5(c2)(8), (9), or (10). An individual may deduct 20% of the amount added to AGI in tax years 2013 through 2019 in each of the first five taxable years beginning on or after January 1, 2021.

Note: The addition under G.S. 105-153.5(c2)(8), (9), or (10) is not required for farming losses carried back by the individual under the provisions` of section 172(b)(1)(B) of the Code. Moreover, the addition under G.S. 105-153.5(c2)(11) is not required if the individual is required to add the unabsorbed NOL to AGI pursuant to G.S. 105-153.5(c)(6).

Excess Business Loss Limitation for Tax Years 2018, 2019, and 2020

The TCJA amended section 461 of the Code to add subsection (l), which eliminated the ability of an individual to deduct trade or business losses greater than $250,000 ($500,000 for individuals filing a joint return) in any year that begins after December 31, 2017. The amount of business loss exceeding the 461(*l*) limitation is referred to as an "Excess Business Loss." The CARES Act retroactively eliminated the excess business loss limitation for tax year 2018 and 2019, and deferred the effective date of the excess business loss limitation to tax years beginning on or after January 1, 2021. Thus for federal income tax purposes, an individual can fully deduct their business losses for tax years 2018 through 2020.

The General Assembly chose not to adopt this provision of the Code. Instead, for North Carolina tax purposes, the excess business loss disallowance rules for individuals as defined in section 461(l) of the Code, pre-Cares Act, continue to apply.

As enacted, subdivision (12) of subsection (c2) requires an individual, for taxable years 2018, 2019, and 2020, to add to AGI an amount equal to the individual's excess business loss, as defined under the provisions of section 461(l) of the Code as enacted as of January 1, 2019.

As enacted, subdivision (15) of subsection (c2) provides a deduction from AGI for the amount of excess business losses required to be added to AGI under G.S. 105-153.5(c2)(12). An individual may deduct 20% of the amount added to an individual's AGI in tax years 2018 through 2020, in each of the first five taxable years beginning on or after January 1, 2021.

Note: The addition under G.S. 105-153.5(c2)(12) is not required to the extent an individual's excess business loss was added to AGI under G.S. 105-153.5(c2)(8), (9), or (10). Moreover, federal law provides Qualified Improvement Property ("QIP") placed in service after 2017 now generally qualifies for 100% bonus depreciation under the CARES Act. North Carolina requires an individual to add back federal bonus depreciation in accordance with G.S. 105-153.6. QIP bonus depreciation should not be included in the calculation of the individual's excess business loss to the extent the QIP bonus deprecation resulted in an addition to AGI pursuant to G.S. 105-153.6(a).

NOL Carryforward Limitation for Tax Years 2018, 2019, and 2020

The TCJA amended section 172 of the Code to impose a new 80% NOL limitation starting with NOLs generated after January 1, 2018. Under the provisions of the TCJA, a taxpayer's NOL carryforward deduction was limited to 80% of federal taxable income without regard to the NOL deduction.

The CARES Act temporarily removed the 80% NOL limitation for tax years 2018, 2019, and 2020, reinstating the limitation for tax years beginning after December 31, 2020. Thus for federal income tax purposes, for tax years 2019 and 2020, an individual can utilize 100% of an NOL carryforward from years 2018 or 2019 to offset federal taxable income.

The General Assembly chose not to adopt this provision of the Code. Instead, for North Carolina tax purposes, an NOL carryforward deduction taken in tax years 2019 or 2020, resulting from an NOL incurred in tax years 2018 or 2019, must be added to AGI to the extent that the federal deduction exceeds the amount allowed under the provisions of section 172 of the Code as enacted as of January 1, 2019 (i.e. pre-CARES Act).

As enacted, subdivision (13) of subsection (c2) requires an individual to add to AGI the amount by which the individual's NOL carryforward deduction for an NOL arising in 2018, 2019, or 2020, exceeds the amount allowed under the provisions of section 172(a)(2)(B) of the Code, as enacted as of January 1, 2019.

As enacted, subdivision (16) of subsection (c2) provides a deduction from AGI for the amount of the 80% NOL carryforward deduction limitation required to be added to AGI under G.S. 105-153.5(c2)(13). An individual may deduct 20% of the amount added to an individual's AGI in tax years 2019 and 2020, in each of the first five taxable years beginning on or after January 1, 2021.

Business Interest Expense Limitation

The TCJA amended section 163(j) of the Code to provide certain limits on the amount of business interest expense an individual could deduct in a taxable year. Under the TCJA, the amount of business interest expenses deductible in a tax year cannot exceed the sum of: (1) the taxpayer's business interest income for the tax year, (2) 30% of the taxpayer's adjusted taxable income ("ATI") for the year, and (3) the taxpayer's floor plan financing interest expense for the year. The CARES Act temporarily increased the limit on the amount of business interest expenses deductible from 30% of a taxpayer's ATI to 50% of a taxpayer's ATI for tax years 2019 and 2020.

The General Assembly chose not to adopt this provision of the Code. Instead, for North Carolina tax purposes, the business interest expense deduction remains at 30% of an individual's ATI, (i.e. pre-CARES Act).

As enacted, subdivision (17) of subsection (c2) requires an individual, for tax years 2019 and 2020, to add to AGI an amount equal to the amount by which the individual's interest expense deduction under section 163(j) of the Code exceeds the interest expense deduction that would have been allowed under section 163(j) of the Code as enacted as of January 1, 2020.

Employer Payments of Student Loans

The CARES Act excluded certain employer payments of student loans under section 127(c) of the Code from gross income for tax year 2020. The General Assembly chose not to adopt this provision of the Code. Instead, employer payments of a student loan under section 127(c) of the Code are included in North Carolina taxable income for tax year 2020.

As enacted, subdivision (18) of subsection (c2) requires an individual to add to AGI the amount excluded from gross income for payment by an employer, whether paid to the taxpayer or to a lender, of principal or interest on any qualified education loan, as defined in section 221(d)(1) of the Code, incurred by the taxpayer for education of the taxpayer.

Above-the-Line Deduction for Qualified Charitable Contributions

The CARES Act allows an eligible individual who does not itemize federal deductions in tax year 2020, to deduct $300 of qualified charitable contributions as an adjustment in determining AGI, (i.e., an "above-the-line" deduction). To qualify for the deduction, the contribution must be: (1) a cash contribution, (2) made to a qualifying organization as determined under the Code, and (3) made during the calendar year 2020.

The General Assembly chose not to adopt this provision of the Code. Instead, the amount of the "above-the-line deduction" taken on the federal return for qualified charitable contributions under the CARES Act must be added back to AGI for tax year 2020.

As enacted, subdivision (19) of subsection (c2) requires an individual to add to AGI the amount of qualified contributions excluded from AGI under section 62(a)(22) of the Code.

Payment Protection Program Loan Forgiveness and Expenses

The CARES Act allows an eligible individual to exclude the amount of a forgiven Payment Protection Program ("PPP") loan from gross income. **The General Assembly adopted this provision of the Code.** Thus, for federal and State income tax purposes, the amount of a forgiven PPP loan is not includable in taxable income.

Importantly, the Internal Revenue Service ("IRS") issued Notice 2020-32 to provide guidance to taxpayers regarding expenses paid using the proceeds of a PPP loan. According to the notice, business expenses that would normally be deductible in computing federal taxable income may not be deductible if the taxpayer uses funds from a forgiven loan to pay such expenses. The General Assembly adopted the position of the IRS by amending subdivision (c2) to require an individual to add to AGI the amount of any expenses that would normally be deductible under the Code that are excluded from AGI to the extent that payment of the expense resulted in forgiveness of a PPP loan.

As enacted, subdivision (20) of subsection (c2) requires an individual to add the amount of any expense deducted under the Code to the extent that payment of the expense results in forgiveness of a covered loan pursuant to section 1106(b) of the CARES Act, and the income associated with the forgiveness is excluded from gross income pursuant to section 1106(i) of the CARES Act. Importantly, the term "covered loan" has the same meaning as defined in section 1106 of the CARES Act, (i.e., a PPP loan).

(Effective June 30, 2020; H1080, s. 1.(f), S.L. 2020-58.)

G.S. 105-154(d) – Payment of Tax on Behalf of Nonresident Owner or Partner: This subsection was amended to codify an existing Department practice. G.S. 105-154(d) allows a nonresident partner that is not an individual to execute a nonresident partner affirmation, Form D-403 NC-NPA, to affirm that the nonresident partner will timely file a North Carolina income tax return and report the partner's share of the partnership income to North Carolina. Form NC-NPA affirms that the nonresident partner will pay any income tax due with its applicable North Carolina tax return.

Under prior law, the statute did not give a due date for Form D-403 NPA to be filed. As amended, Form D-403 NPA must be annually filed by the nonresident partner and attached to the partnership return, Form D-403, when the partnership return is due to be filed. If the affirmation is not timely filed with Form D-403, the manager of the business is required to pay the tax on the nonresident partner's share of partnership income.

(Effective June 30, 2020; H1080, s. 4.3, S.L. 2020-58.)

G.S. 105-163.15 – Failure by Individual to Pay Estimated Income Tax; Interest: If an individual's North Carolina income tax liability after allowable tax credits and North Carolina tax withheld is $1,000 or more, the individual is required to pay estimated income tax as outlined in G.S. 105-163.15. If an individual underpays the amount of estimated tax due for the tax year, the Secretary is required to assess interest on the amount of the underpayment.

In response to the COVID-19 outbreak, the 2020 General Assembly enacted Session Law 2020-3 to provide State tax relief to North Carolinians. As part of this legislation, the Secretary is required to waive the accrual of interest from April 15, 2020, through July 15, 2020, (collectively the "COVID Period") on an underpayment of tax imposed on estimated tax payments due during the COVID Period.

(Effective May 4, 2020; SB 704, s. 1.1.(a), S.L. 2020-3.)

S CORPORATION INCOME TAX – ARTICLE 4, PART 1A

G.S. 105-131.8(a) – Tax credits: This subsection was amended to correct a statutory reference that erroneously referred to G.S. 105-151. The 2013 General Assembly recodified G.S. 105-151 as G.S. 105-153.9, effective for taxable years beginning on or after January 1, 2014.

(Effective June 30, 2020; H1080, s. 4.1, S.L. 2020-58.)

WITHHOLDING TAX – ARTICLE 4A

G.S. 105-163.1 – Definitions: The 2019 General Assembly amended this section by defining new terms and by simplifying existing terms that apply to Article 4A, effective January 1, 2020. The 2020 General Assembly made an additional change to this section by adding subsection (12a) to define an additional term that applies to Article 4. The changes are as follows:

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

Subsection (6a) was added to define an "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 was amended to define an "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 an "ITIN holder" as "a person whose taxpayer identification number is an Individual Taxpayer Identification Number (ITIN), including applied for and expired numbers."

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 a "payer" as "a person who, in the course of a trade or business, pays compensation."

Subsection (12a) was added to define a "Taxpayer Identification Number (TIN)" by cross-reference to G.S. 105-228.90(b)(9).

(Changes made by the 2019 General Assembly effective January 1, 2020; SB 523, s. 6.4.(a), S.L. 2019-169. Changes made by the 2020 General Assembly effective June 30, 2020; H1080, s. 4.4.(c), S.L. 2020-58.)

G.S. 105-163.3(a) – Certain Payers Must Withhold Taxes; Requirement: This subsection was amended by the 2019 General Assembly 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(d) – Certain Payers Must Withhold Taxes; Returns, Annual Statement and Report: The 2019 General Assembly amended this subsection to incorporate the term "payee" as defined in G.S. 105-163.1, effective January 1, 2020.

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.

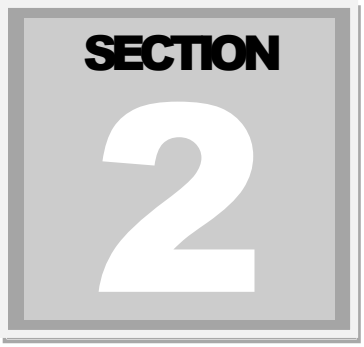
(Effective January 1, 2020; SB 523, s. 6.4.(b), S.L. 2019-169.)

G.S. 105-163.3(f) – Certain Payers Must Withhold Taxes; Payer May Repay Amount Withheld Improperly: The 2019 General Assembly amended this subsection to incorporate the term "payee" as the term is defined in G.S. 105-163.1, effective January 1, 2020.

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.)

SECTION 2- CORPORATE TAXES



FRANCHISE TAX – ARTICLE 3

G.S. 105-120.2(c)(3) – Franchise or Privilege Tax on Holding Companies: This subdivision was added by the 2019 General Assembly 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)(2) – Determination of Net Worth: Addition for Indebtedness: This subdivision was amended to simplify the calculation for the addition of affiliated indebtedness used in calculating the net worth franchise tax base and to make it consistent with the interest deduction computed for income tax purposes. As amended, it states that a corporation's net worth is adjusted by adding the amount of indebtedness owed that creates net interest expense as defined in G.S. 105-130.7B(b)(3), but does not create qualified interest expense as defined in G.S. 105-130.7B(b)(4).

(Effective for taxable years beginning on or after January 1, 2021, and is applicable to the calculation of franchise tax reported on the 2020 and later corporate income tax returns; HB 1080, s. 5.1.(a), S.L. 2020-58.)

G.S. 105-122(c1) – Apportionment of Franchise or Privilege Tax on Domestic and Foreign Corporations: This subsection was amended by the 2019 General Assembly 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 remove previous language that prohibited the apportionment factor for a wholesale content distributor from being less than two percent (2%). The previous language created an apportionment floor that was inconsistent with the apportionment factor calculation for income tax for a wholesale content distributor under G.S. 105-130.4B.

(Effective for taxable years beginning on or after January 1, 2020; HB 1080, s. 5.2.(b), S.L. 2020-58.)

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 by the 2019 General Assembly 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.)

CORPORATION INCOME TAX – ARTICLE 4, PART 1

G.S. 105-130.4(l) – 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(l1) – 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 (l1) 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 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(l1) – Allocation and Apportionment of Income for Corporations: Wholesale Content Distributors: The 2020 General Assembly amended this subsection to correct an error in the wholesale content distributor apportionment language. The amendment replaced the term "income apportioned" with "receipts sourced" in determining a wholesale content distributor's apportionment.

(Effective for taxable years beginning on or after January 1, 2020; HB 1080, s. 5.2.(a), S.L. 2020-58.)

G.S. 105-130.4(l2) – 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 (l2) 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 by the 2019 General Assembly 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 by the 2019 General Assembly 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 by the 2019 General Assembly 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 or could claim deprecation 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)(21) – Addition to Federal Taxable Income for Deferral of Income from the Discharge of Indebtedness: This subdivision was repealed because it is an obsolete income tax adjustment. In 2009, certain taxpayers were allowed under the Code to elect to defer reporting cancellation of debt income in tax years 2009 and 2010, and instead report the income over a five-year period beginning in 2014. North Carolina decoupled from this provision and taxpayers were required to recognize the income in 2009 and 2010, but could deduct the amount recognized as income for federal tax purposes for tax years 2014-2018 to avoid being double taxed on the income for State tax purposes. This addition is no longer needed since 2018 was the last year the amount would have been recognized.

(Effective June 30, 2020; HB 1080, s. 5.3., S.L. 2020-58.)

G.S. 105-130.5(a)(31) – Addition to Federal Taxable Income for the Amount of Interest Deducted in Excess of the Amount Allowed under the Code: This subdivision was added to decouple from the modification of limitation on business interest allowed under section 2306 of the CARES Act. Federal law increased the limit on deductions for business interest expense under IRC section 163(j) from thirty percent (30%) to fifty percent (50%) of a taxpayer's adjusted taxable income for tax years 2019 and 2020. As amended, the limit on deductions for business interest expense under IRC section 163(j) remains at thirty percent (30%) of a taxpayer's adjusted taxable income as calculated on a separate entity basis. This decoupling adjustment requires the taxpayer to add to federal taxable income the amount of interest expense deduction under the IRC section 163(j) that exceeds what would have been allowed under the Code as of January 1, 2020.

(Effective June 30, 2020; HB 1080, s. 1.(c), S.L. 2020-58.)

G.S. 105-130.5(a)(32) – Addition to Federal Taxable Income for the Amount of Expense Deducted that Results in Forgiveness of a Covered Loan: This subdivision was added to require taxpayers to add the amount of any expense deducted under the Code to the extent that such expense payments result in forgiveness of a loan covered under section 1106(b) of the CARES Act and the income associated with the forgiveness is excluded from gross income under section 1106(i) of the CARES Act to be required to be added back. This amendment was made to prevent taxpayers from receiving a double tax benefit by receiving a deduction for expenses paid with tax exempt income.

(Effective June 30, 2020; HB 1080, s. 1.(c), S.L. 2020-58.)

G.S. 105-130.5(b)(25) – Deduction from Federal Taxable Income for the Amount Added as Deferred Income under the Code: This subdivision was repealed because it is an obsolete income tax adjustment. In 2009, certain taxpayers were allowed under the Code to elect to defer reporting cancellation of debt income in tax years 2009 and 2010, and instead report the income over a five-year period beginning in 2014. North Carolina decoupled from this provision and taxpayers were required to recognize the income in 2009 and 2010, but could deduct the amount recognized as income for federal tax purposes for tax years 2014-2018 to avoid being double taxed on the income for State tax purposes. This deduction is no longer needed since 2018 was the last year the amount would have been recognized.

(Effective June 30, 2020; HB 1080, s. 5.3., S.L. 2020-58.)

G.S. 105-130.5A(k) – Secretary's Authority to Adjust Net Income or Require a Combined Return: Proposed Assessment or Refund: This subsection was amended to add that when a refund is determined in whole or in part by a proposed assessment to an affiliated group member, the refund cannot be issued until the proposed assessment to the affiliated group member has become collectable under G.S. 105-241.22. It further states that the amount of the refund shall reflect any adjustments by the Department.

This amendment prevents refunds based on a proposed adjustment for intercompany transactions from being issued prior to the resolution of the corresponding proposed assessment, and the loss of the statute of limitations for the refund to be adjusted consistent with the settlement of the assessment amount.

(Effective June 30, 2020; HB 1080, s. 5.4., S.L. 2020-58.)

G.S. 105-130.11(b)(4) – Conditional and Other Exemptions: Unrelated Business Income: This subdivision was repealed. The federal Tax Cut and Jobs Act of 2017 imposed income tax on unrelated business income from parking facilities provided by nonprofit organizations. North Carolina originally enacted this exclusion to ensure that nonprofit organizations would not be taxed on such income for State purposes, however the Taxpayer Certainty and Disaster Relief Act of 2019 repealed the federal tax provision retroactively. Thus, the provision is no longer needed.

(Effective June 30, 2020; HB 1080, s. 5.5., S.L. 2020-58.)

INSURANCE GROSS PREMIUMS TAX – ARTICLE 8B

G.S. 58-6-25 – Insurance Regulatory Charge: This section was amended by the 2020 General Assembly to set the insurance regulatory charge at six and one half percent (6.5%) statutorily. Language was removed referencing the General Assembly reviewing the rate each year unless it is necessary to change the percentage.

(Effective June 30, 2020; HB 1080, s. 8, S.L. 2020-58.)

G.S. 105-Article 8B – Title: The title of this section was changed from "Taxes Upon Insurance Companies" to "Taxes Upon Insurance Companies and Prepaid Health Plans." This amendment was made to include prepaid health plans in the types of organizations subject to the gross premiums tax and the insurance regulatory charge.

(Effective 30 days after becomes law (June 30, 2020) and applies to capitation payments received by prepaid health plans on or after that date; SB 808, s. 16.(a)., S.L. 2020-88.)

G.S. 105-228.3 – Definitions: Amendments were made to the following subsections of this section:

(2) The term "capitation payment" was added along with its definition to state that a capitation payment is defined as "amounts paid by the Department of Health and Human Services to prepaid health plans under capitated contracts for the delivery of Medicaid and NC Health Choice services in accordance with Article 4 of Chapter 108D of the General Statutes."

(3) The definition of "captive insurance company" was renumbered as (3). It was previously numbered as (1a).

(4) The definition of “foreign captive insurance company” was renumbered as (4). It was previously numbered as (1b).

(5) The definition of “insurer” was renumbered as (5). It was previously numbered as (2).

(6) The term “prepaid health plan” was added and its definition references what is defined in G.S. 108D-1.

(7) The definition of “self-insurer” was renumbered as (7). It was previously numbered as (3).

(Effective 30 days after becomes law (June 30, 2020) and applies to capitation payments received by prepaid health plans on or after that date; SB 808, s. 16.(b)., S.L. 2020-88.)

G.S. 105-228.5(a) – Taxes Measured by Gross Premiums: Tax Levied: This subsection was amended to include prepaid health plans as defined in G.S. 108D-1(30) in the types of organizations subject to gross premiums tax. It also includes prepaid health plans in the types of organizations that if subject to gross premiums tax, are not subject to franchise or corporate income taxes imposed in Articles 3 and 4, respectively of Chapter 105.

(Effective 30 days after becomes law (June 30, 2020) and applies to capitation payments received by prepaid health plans on or after that date; SB 808, s. 16.(c)., S.L. 2020-88.)

G.S. 105-228.5(b)(5) – Taxes Measured by Gross Premiums: Tax Base: Prepaid Health Plans: This subdivision was added to define the gross premiums tax base for prepaid health plans. As amended, subdivision (5) states that a prepaid health plan’s gross premiums tax is measured by the gross capitation payments received by the prepaid health plan from the Department of Health and Human Services for services provided to enrollees in the State Medicaid program or NC Health Choice program in the preceding calendar year.

(Effective 30 days after becomes law (June 30, 2020) and applies to capitation payments received by prepaid health plans on or after that date; SB 808, s. 16.(c)., S.L. 2020-88.)

G.S. 105-228.5(b1) – Taxes Measured by Gross Premiums: Calculation of Tax Base: This subsection was amended to describe the calculation of the tax base for prepaid health plans. As amended, it states that gross premiums from business done in this State by a prepaid health plan is all capitation payments received from the Department of Health and Human Services for the delivery of services to enrollees in the State Medicaid program or NC Health Choice program in the calendar year. It further states that the only allowable deductions are for capitation payments refunded by a prepaid health plan to the State.

(Effective 30 days after becomes law (June 30, 2020) and applies to capitation payments received by prepaid health plans on or after that date; SB 808, s. 16.(c)., S.L. 2020-88.)

G.S. 105-228.5(c)(4) – Taxes Measured by Gross Premiums: Exclusions: This subdivision lists the premiums that are excluded from gross premiums tax to the extent that federal law prevents their taxation under this Article. Amendments were made to the following sub-subdivisions of this subdivision:

(b) Medicaid was removed so that only Medicare premiums are listed in this item.

(c) This item was added to include "Medicaid or NC Health Choice premiums, other than capitation payments, paid by or on behalf of a Medicaid or NC Health Choice beneficiary" to the list of premiums excluded from gross premiums tax to the extent that federal law prevents their taxation under this Article.

(Effective 30 days after becomes law (June 30, 2020) and applies to capitation payments received by prepaid health plans on or after that date; SB 808, s. 16.(c)., S.L. 2020-88.)

G.S. 105-228.5(d)(2a) – Taxes Measured by Gross Premiums: Tax Rates; Disposition: Prepaid Health Plans: This subdivision was added to establish the gross premiums tax rate for prepaid health plans. As amended, subdivision (2a) states that a prepaid health plan's tax rate for gross premiums from capitation payments received is one and nine-tenths percent (1.9%); the same rate applicable to other insurance contracts. It also states that the net proceeds will be credited to the General Fund.

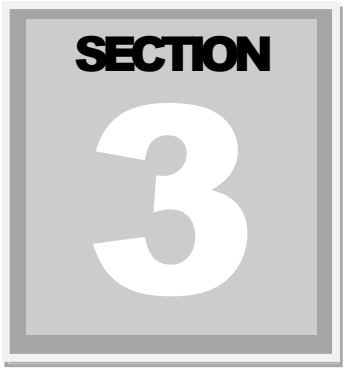
(Effective 30 days after becomes law (June 30, 2020) and applies to capitation payments received by prepaid health plans on or after that date; SB 808, s. 16.(c)., S.L. 2020-88.)

G.S. 105-228.5(f) – Taxes Measured by Gross Premiums: Installment Payments Required: This subsection was amended to replace the term "company" with "taxpayer." The term "taxpayer" was used instead to be inclusive of prepaid health plans, as well as insurance companies. As amended, it states that the taxpayer (now including prepaid health plans) must remit the installment payment balance by March 15th following the taxable year and that an overpayment of tax will be credited to the taxpayer and applied against the taxes imposed on them under this Article.

This subsection was also amended to state that prepaid health plans as well as insurance companies may be permitted by the Secretary to pay less than the required estimated payment when the insurer or prepaid health plan believes that the total estimated payments made for the current year will exceed the total anticipated tax liability for the year. Previously, only insurance companies were referenced.

(Effective 30 days after becomes law (June 30, 2020) and applies to capitation payments received by prepaid health plans on or after that date; SB 808, s. 16.(c)., S.L. 2020-88.)

SECTION 3 - EXCISE TAX



TOBACCO PRODUCTS TAX – ARTICLE 2A

G.S. 105-113.4(10) – Definitions: This subsection was amended by clarifying that the definition of sale under Article 2A includes both the transfer of *possession* of tobacco products and the transfer of *ownership* of tobacco products. Therefore, as amended, sale means "[a] transfer of possession, transfer of ownership, a trade, an exchange, or a barter, in any manner or by any means, with or without consideration."

(Effective June 30, 2020; HB 1080, s. 2.1, S.L. 2020-58)

G.S. 105-113.4A(a) – Licenses: General: This subsection was amended requiring licensees to conspicuously display each license issued under Article 2A.

(Effective June 30, 2020; HB 1080, s. 2.2.(a), S.L. 2020-58)

G.S. 105-113.4A(h) – Licenses: Lists: This subsection was amended allowing the Secretary to "make available" certain information requested by licensed manufacturers. This amendment allows the Secretary flexibility in how to disclose information maintained by the Department.

(Effective June 30, 2020; HB 1080, s. 2.2.(a), S.L. 2020-58)

G.S. 105-113.4B(a) – Cancellation or revocation of license: Cancellation: This subsection was amended to clarify the process for cancelling a license under Article 2A. If a licensee desires to cancel the license, the licensee must: (1) provide a written request to the Secretary to cancel the license, including a proposed effective date of cancellation; and (2) return the license to the Secretary before the effective date of cancellation.

If the licensee does not include a proposed effective date of cancellation, the Secretary will cancel the license 15 days after the Department receives the written request. If the licensee is unable to return the license, the licensee must include written statement explaining why the license cannot be returned. If the reasons are satisfactory to the Secretary, the Secretary will cancel the license and notify the person whose licensed was cancelled.

(Effective June 30, 2020; HB 1080, s. 2.3.(a), S.L. 2020-58)

G.S. 105-113.4B(a)-(a1) – Cancellation or revocation of license: The statutory language providing for how licensees can cancel their license and the language setting forth Secretary's authority to revoke a license were previously combined in subsection (a). To make the statute more clear, the language governing the Secretary's authority to revoke a license was moved from subsection (a) into the newly created subsection: (a1). The catchlines were updated to reflect this change.

(Effective June 30, 2020; HB 1080, s. 2.3.(a), S.L. 2020-58)

G.S. 105-113.4B(b) – Cancellation or revocation of license: Procedure: This subsection was amended to clarify that when a licensee fails to attend a hearing where the license has not been summarily revoked, the license revocation is effective 15 days after the noticed hearing.

(Effective June 30, 2020; HB 1080, s. 2.3.(a), S.L. 2020-58)

G.S. 105-113.4E(c) – Modified risk tobacco products: Substantiation: This subsection was amended to place the responsibility on the manufacturer to substantiate that a product qualifies as a modified risk tobacco product and is subject to a reduced tax rate in accordance with G.S. 105-113.4E.

(Effective June 30, 2020; HB 1080, s. 2.4., S.L. 2020-58)

G.S. 105-113.4E(d) – Modified risk tobacco products: Forfeiture: This subsection was created from an indebted paragraph in G.S. 105-113.4E(c). It separates the provisions on how to substantiate that a tobacco product qualifies as a modified risk tobacco product from the provisions requiring certain actions when a tobacco product no longer qualifies as a modified risk tobacco product.

As amended, this subsection now requires the manufacturer to notify the Department of changes to any tobacco product previously substantiated under G.S. 105-113.4E(c) as a modified risk tobacco product. Specifically, if the order from the United States Food and Drug Administration ("FDA") expires, or the FDA does not renew the order or withdraws the order, the manufacturer must notify the Department within 14 days of the manufacturer's receipt from the FDA.

(Effective June 30, 2020; HB 1080, s. 2.4., S.L. 2020-58)

G.S. 105-113.4G – Records to be kept: This section was created to consolidate two nearly identical statutes within Article 2A requiring persons to maintain records for activities requiring licensure. Accordingly, G.S. 105-113.26 and G.S. 105-113.40 were repealed. This was not a substantive change and was intended to reduce unnecessary, repetitive statutory language and to have one statute govern record keeping requirements for all licensees under Article 2A.

(Effective June 30, 2020; HB 1080, s. 2.5.(a)-(b), S.L. 2020-58)

G.S. 105-113.13(b) – Secretary may require a bond or irrevocable letter of credit: This subsection was amended to clarify that the Department may require a bond or an irrevocable letter of credit from all distributors regardless of whether a distributor has previously failed to pay taxes due.

(Effective June 30, 2020; HB 1080, s. 2.6.(a), S.L. 2020-58)

G.S. 105-113.27(b) – Non-tax-paid cigarettes: This subsection was amended to clarify that, if done in accordance with Article 2A, a person may sell or offer to sell non-tax-paid cigarettes.

(Effective June 30, 2020; HB 1080, s. 2.7., S.L. 2020-58)

G.S. 105-113.38 – Secretary may require a bond or irrevocable letter of credit: This section was amended to clarify that the Department may require a bond or an irrevocable letter of credit from all wholesale dealers and retail dealers regardless of whether a wholesale dealer or retail dealer has previously failed to pay taxes due.

(Effective June 30, 2020; HB 1080, s. 2.6.(b), S.L. 2020-58)

SEVERANCE TAX – ARTICLE 5I

G.S. 105-187.76(2) – Definitions: The definition of "Commission" was updated to reflect previous statutory changes under Part 6A of Chapter 143B. The term "North Carolina Mining and Energy Commission" was replaced with "North Carolina Oil and Gas Commission."

(Effective June 30, 2020; HB 1080, s. 2.8.(a), S.L. 2020-58)

G.S. 105-187.77(d) – Tax on severance of energy minerals: Marginal Gas Rate: The term "Mining and Energy" was stricken. The subsection now refers to the updated definition of Commission.

(Effective June 30, 2020; HB 1080, s. 2.8.(b), S.L. 2020-58)

G.S. 105-187.80(h) – Returns and payment of tax: Commission Determination: The term "Mining and Energy" was stricken. The subsection now refers to the updated definition of Commission.

(Effective June 30, 2020; HB 1080, s. 2.8.(c), S.L. 2020-58)

TAX ON MOTOR CARRIERS – ARTICLE 36B

G.S. 105-449.37(a)(1) – Definitions; tax liability; application: Definitions: This subdivision was amended to incorporate the most recent agreement adopted by the International Fuel Tax Association, Inc.: the International Fuel Tax Agreement as of December 1, 2018.

(Effective June 30, 2020; HB 1080, s. 2.9., S.L. 2020-58)

G.S. 105-449.47(a1) – Licensure of vehicles: License and Decal: This subsection was amended to clarify that if a motor carrier is operating under a temporary permit in accordance with G.S. 105-449.49, a motor carrier is not required to display decals on the motor vehicle.

(Effective June 30, 2020; HB 1080, s. 2.10.(a), S.L. 2020-58)

G.S. 105-449.49(a) – Temporary permits: Permitting Service: This subsection was amended to update the catchline. "Issuance" was replaced with "Permitting Service" to clarify the role of a permitting service. A permitting service may obtain temporary permits from the Secretary for a fee. These permits can be subsequently issued to motor carriers allowing motor carriers to operate for three days without licensing the motor vehicle in accordance with G.S. 105-449.47.

(Effective June 30, 2020; HB 1080, s. 2.10.(b), S.L. 2020-58)

G.S. 105-449.49(c) – Temporary permits: Licensed Motor Carrier: This subsection was added allowing a licensed motor carrier, subject to the International Fuel Tax Agreement, to obtain a temporary permit to operate a qualified motor vehicle in the State for 30 days without a decal.

(Effective June 30, 2020; HB 1080, s. 2.10.(b), S.L. 2020-58)

G.S. 105-449.49(d) – Temporary permits: Permit: This subsection was added clarifying that a motor carrier is required to carry a temporary permit, authorized under this section, in the motor vehicle. A motor carrier may be subject to penalties under G.S. 105-449.52 for failure to carry a temporary permit.

(Effective June 30, 2020; HB 1080, s. 2.10.(b), S.L. 2020-58)

GASOLINE, DIESEL, AND BLENDS – ARTICLE 36C

G.S. 105-449.76(a) – Cancellation or revocation of license: Cancellation: This subsection was amended to clarify the process for cancelling a license under Article 36C. If a licensee desires to cancel the license, the licensee must: (1) provide a written request to the Secretary to cancel the license, including a proposed effective date of cancellation; and (2) return the license to the Secretary before the effective date of cancellation.
If the licensee does not include a proposed effective date of cancellation, the Secretary will cancel the license 15 days after the Department receives the written request. If the licensee is unable to return the license, the licensee must include written statement explaining why the license cannot be returned. If the reasons are satisfactory to the Secretary, the Secretary will cancel the license and notify the person whose licensed was cancelled.

(Effective June 30, 2020; HB 1080, s. 2.3.(b), S.L. 2020-58)

G.S. 105-449.76(a)-(a1) – Cancellation or revocation of license: The statutory language providing for how licensees can cancel their license and the language setting forth Secretary's authority to revoke a license were previously combined in subsection (a). To make the statute more clear, the language governing the Secretary's authority to revoke a license was moved from subsection (a) into the newly created subsection: (a1). The catchlines were updated to reflect this change.

(Effective June 30, 2020; HB 1080, s. 2.3.(b), S.L. 2020-58)

G.S. 105-449.76(b) – Cancellation or revocation of license: Procedure: This subsection was amended to clarify that when a licensee fails to attend a hearing where the license has not been summarily revoked, the license revocation is effective 15 days after the noticed hearing.

(Effective June 30, 2020; HB 1080, s. 2.3.(b), S.L. 2020-58)

G.S. 105-449.69A(a)-(b) – Temporary license during disaster response period: Temporary License: This section was added during a previous legislative session allowing the Department to issue a temporary license to import, export, distribute, or transport motor fuel in this State in response to a disaster declaration.

Subsections (a) and (b) were amended expanding the authority for the Department to issue a temporary license in response to a state of emergency as defined in Chapter 166A. These sections were also amended to restructure how the statute operates, providing additional certainty regarding the effective periods of licensure and expanding the time period for which a person can begin to operate in response to a state of emergency or disaster declaration.

As amended, the person seeking a temporary license must submit an application within seven calendar days of engaging in business in this State. The "temporary license is effective on the date the applicant engages in business in this State and expires 30 days

after that date. Prior to the expiration of the temporary license, the licensee may request . . the license be extended for an additional 30 days, if the state of emergency or disaster declaration remains in effect."

The license will not be renewed or a new temporary license granted if the licensee failed to comply with Article 36C.

(Effective June 30, 2020; HB 1080, s. 2.11., S.L. 2020-58)

G.S. 105-449.77(b) – Records and lists of license applicants and license holders: Lists: This subsection was amended to allow the Secretary flexibility in how to disclose licensee information maintained by the Department. Specifically, the Secretary need only make licensee information available to other persons licensed under Article 36C.

(Effective June 30, 2020; HB 1080, s. 2.2.(c), S.L. 2020-58)

G.S. 105-449.125(b)(1)-(2) – Distribution of tax revenue among various funds and accounts: Distribution of Remaining Revenue: These subdivisions were amended changing excise tax revenue distributions from revenue collected under Article 36C. The allocations between the highway fund and the highway trust fund were modified as follows:

- For excise tax revenue collected by the Department on or after July 1, 2020: Eighty-one percent (81%) to the Highway Fund; Nineteen percent (19%) to the Highway Trust Fund.
- For excise tax revenue collected by the Department on or after July 1, 2021: Eighty percent (80%) to the Highway Fund; Twenty percent (20%) to the Highway Trust Fund.
- For excise tax revenue collected by the Department on or after July 1, 2022: Seventy-five percent (75%) to the Highway Fund; Twenty-five percent (25%) to the Highway Trust Fund.

(Effective July 1, 2020, July 1, 2021, July 1, 2022; HB 77, s. 4.6., S.L. 2020-91)

Motor Fuel Excise Tax Floor: Pursuant to Session Law 2020-91, the motor fuel excise tax rate calculated by G.S. 105-449.80(a) was modified for the 2021 and 2022 calendar years.

For the period beginning January 1, 2021, and ending on December 31, 2021, the motor fuel excise tax rate "shall be the greater of thirty-six and one-tenth cents (36.1¢) per gallon or the rate calculated pursuant to G.S. 105-449.80(a)."

For the period beginning January 1, 2022, and ending on December 31, 2022, the Session Law modifies one variable used in calculating the motor fuel excise tax rate: the preceding year's excise tax rate. Generally, the motor fuel excise tax rate is calculated by using the tax rate from the preceding calendar year, multiplied by a percentage of various factors. However, this is modified for the period beginning January 1, 2022 where the:

motor fuel tax rate shall be calculated pursuant to the formula set out in G.S. 105-449.80(a) using as the amount for the preceding calendar year the amount that the motor fuel tax rate would have been for the period beginning on January 1, 2021, and ending on December 31, 2021, but for the calculation under this section [Section 4.2 of Session Law 2020-91].

(Effective July 1, 2020; HB 77, s. 4.2., S.L. 2020-91)

ALTERNATIVE FUEL– ARTICLE 36D

G.S. 105-449.134 – Denial, revocation, or cancellation of license: This section was amended to clarify that the cancellation procedures provided for in Article 36C also apply to licensees seeking to cancel a license issued under Article 36D.

(Effective June 30, 2020; HB 1080, s. 2.12., S.L. 2020-58)

G.S. 105-449.139(c) – Miscellaneous provisions: Lists: This subsection was amended to allow the Secretary flexibility in how to disclose licensee information maintained by the Department. Specifically, the Secretary need only make available, annually: (1) licensed alternative fuel provider information to licensed bulk end-users and licensed retailers; and (2) licensed bulk end-user and licensed retailer information to licensed alternative fuel providers.

(Effective June 30, 2020; HB 1080, s. 2.2.(d), S.L. 2020-58)

GASOLINE AND OIL INSPECTION AND REGULATION CHAPTER 119 – ARTICLE 3

G.S. 119-19(b) – Authority of Secretary to cancel or revoke a license: This subsection was amended to mirror the revocation procedures in Article 36C of Chapter 105. As amended, the Secretary must send notices for summary license revocations and notices of hearing using “certified mail” instead of “registered mail.”

(Effective June 30, 2020; HB 1080, s. 2.13, S.L. 2020-58)

OTHER ADMINISTRATIVE CHANGES

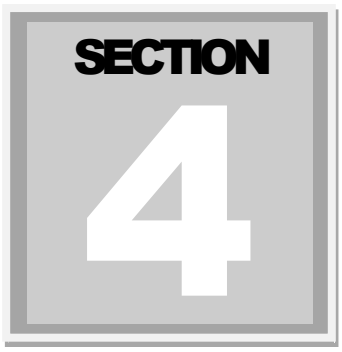
Exemption from the Definition of State Agency Licensing Board: Session Law 2020-58 removed the North Carolina Department of Revenue as a state agency licensing board as defined under G.S. 93B-1(3).

(Effective June 30, 2020; HB 1080, s. 6.5, S.L. 2020-58)

G.S. 105-259(b)(50) – Secrecy required of officials; penalty for violation: Disclosure Prohibited: This subdivision was amended to allow the Secretary flexibility in how to disclose licensee information maintained by the Department and to clarify who can obtain taxpayer information. Specifically, the Secretary need only make licensee information available to other persons licensed under Article 2A.

(Effective June 30, 2020; HB 1080, s. 2.2.(b), S.L. 2020-58)

SECTION 4 - SALES AND USE TAX



SALES AND USE TAX – ARTICLE 5

G.S. 105-164.3 – 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. There are multiple definitions that have not been renumbered, but have been placed in alphabetical order.

The definitions included in Senate Bill 557, Session Law 2019-246, and in House Bill 1079, Session Law 2020-6, 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 2018, 2019, and 2020 General Assembly added new defined terms and amended multiple definitions for existing defined terms. 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.)

Additional Digital Goods – (*). The definition of the term is added and defined as "[a]ll of the following if transferred electronically:

a. A magazine, a newspaper, a newsletter, a report, or another publication.
b. A photograph.
c. A greeting card."

(Effective retroactively to October 1, 2019, and applies to sales occurring on or after that date; HB 1079, s. 3.(a), S.L. 2020-6.)

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.)

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.)

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 amended as "*[s]pecified digital products and additional digital goods*. The term does not include an information *service or an educational service*." [Emphasis added.]

(Effective retroactively to October 1, 2019, and applies to sales occurring on or after that date; HB 1079, s. 3.(a), S.L. 2020-6.)

***Digital* Audio Work – (7).** The definition of the term is amended as "[a] *work that results from the fixation of a* series of musical, spoken, or other sounds, including a *ringtone*, *that is transferred electronically*." [Emphasis added.]

(Effective retroactively to October 1, 2019, and applies to sales occurring on or after that date; HB 1079, s. 3.(a), S.L. 2020-6.)

***Digital* Audiovisual Work – (9).** The definition of the term is amended as "[a] series of related *images*, *that when shown in succession*, impart an impression of *motion, together with accompanying sounds, if any, and that is transferred electronically*." [Emphasis added.]

(Effective retroactively to October 1, 2019, and applies to sales occurring on or after that date; HB 1079, s. 3.(a), S.L. 2020-6.)

Digital Book – (*). The definition of the term is added and defined as "[a] work that is generally recognized in the ordinary and usual sense as a book that is transferred electronically."

(Effective retroactively to October 1, 2019, and applies to sales occurring on or after that date; HB 1079, s. 3.(a), S.L. 2020-6.)

Educational Service – (58). The definition of the term is added and defined as "[t]he delivery of instruction or training, whether provided in real time, on demand, or at another

set time, by or on behalf of a qualifying educational entity where at least one of the following conditions applies:

a. The instruction or training is part of the curriculum for an enrolled student.
b. The instruction or training is encompassed within the institution's accreditation or prepares an enrolled student for gainful employment in a recognized occupation.
c. The participant is evaluated by an instructor. 'Evaluated by an instructor' does not include being graded by, scored by, or evaluated by a computer program or an interactive, automated method.
d. The participant is connected to the presenter or instructor via the Internet or other networks, allowing the participant to provide, receive, or discuss information through live interaction, contemporaneous with the presentation." [Emphasis added.]

(Effective retroactively to October 1, 2019, and applies to sales occurring on or after that date; HB 1079, s. 3.(a), S.L. 2020-6.)

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.)

Livestock – (*). The definition of the term is added and defined as "[c]attle, sheep, goats, swine, horses, or mules."

(Effective July 1, 2020, and applies to sales occurring on or after that date; HB 1079, s. 1.(b), S.L. 2020-6.)

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.)

Qualifying Educational Entity – (170). The definition of the term is added and defined as "[a]n entity listed in this subdivision. For purposes of this definition, references to the United States Code mean the United States Code as enacted as of January 1, 2020. The entities are:

a. An elementary or secondary school, as defined in 20 U.S.C. § 7801.
b. An institution of higher education, as defined in 20 U.S.C. § 1002."

(Effective retroactively to October 1, 2019, and applies to sales occurring on or after that date; HB 1079, s. 3.(a), S.L. 2020-6.)

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 of the North Carolina General Statutes] to regard any sales representatives, solicitors, representatives, consignees, peddlers, or truckers as agents of the dealers, distributors, consignors, supervisors, employers, or persons under whom they operate or from whom they obtain the items sold by them regardless of whether they are making sales on their own behalf or on behalf of these dealers, distributors, consignors, supervisors, employers, or persons 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 of the North Carolina General Statutes] 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.)

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.)

Specified Digital Products – (*). The definition of the term is added and defined as "[d]igital audio works, digital audiovisual works, and digital books."

(Effective retroactively to October 1, 2019, and applies to sales occurring on or after that date; HB 1079, s. 3.(a), S.L. 2020-6.)

Transferred Electronically – (*). The definition of the term is added and defined as "[o]btained by the purchaser by means other than tangible storage media and includes delivered or accessed electronically."

(Effective retroactively to October 1, 2019, and applies to sales occurring on or after that date; HB 1079, s. 3.(a), S.L. 2020-6.)

SALES AND USE TAX IMPOSITIONS

G.S. 105-164.4(a) – Tax Imposed on Retailers and Certain Facilitators: This subsection is amended to add clarity to the sales and use tax imposition on retail sales of and the use, storage, or consumption of digital codes and provides the following:

". . .

(1) The general rate of tax applies to the following items sold at retail:

. . .

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. *The sale at retail or the use, storage, or consumption in this State of a digital code is treated the same as the sale at retail or the use, storage, or consumption in this State of certain digital property for which the digital code relates*." [Emphasis added.]

(Effective June 30, 2020; HB 1080, s. 3.4., S.L. 2020-58.)

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 provide 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.

(d) 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 provide 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. 105-164.4I(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.

(c) 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 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. 105-164.4J – Marketplace Facilitated Sales: This section is amended by adding a new subsection and provides the following:

. . .

"(j) Grace Period. - The Department shall take no action to assess a person for any tax due for a filing period beginning on or after February 1, 2020, and ending prior to October 1, 2020, with respect to any of the circumstances listed in this subsection. This subsection does not apply to (i) a person that received specific written advice from the Secretary for the transactions at issue for the laws in effect for the applicable period, (ii) a person that collected tax and failed to remit it to the Department, or (iii) the retail sale of inventory that was held for resale. The applicable circumstances are:
(1) The person sells tangible personal property on behalf of the owner of the tangible personal property, or the owner's estate, whether by auction or through the pricing of items, and the sale was conducted at the owner's home or farm.
(2) The person sells fixtures and equipment held for use in operating a retail or wholesale business on behalf of a business, whether by auction or through the pricing of items, and the sale is conducted at the business location."

(Effective June 5, 2020; HB 1079, s. 1.(d), S.L. 2020-6.)

G.S. 105-164.4J – Marketplace Facilitated Sales: This section is further amended to update the language and provides the following:

"(a) Scope. – This section applies to a marketplace facilitator *engaged in business in this State.* [The marketplace facilitator thresholds are repealed in this subsection, but the thresholds are still referenced in G.S. 105-164.8(b)(9).]
(b) Payment of Tax. – A marketplace facilitator *subject to* 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:

. . ." [Emphasis added.]

(Effective July 1, 2020, and applies to sales occurring on or after that date; HB 1080, s. 3.3.(a), S.L. 2020-58.)

MISCELLANEOUS ITEMS

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 amended 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.)

EXEMPTIONS AND EXCLUSIONS

G.S. 105-164.13 – Exemptions and Exclusions: The 2019 and 2020 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:

Sales of equipment . . . – (5o). This subdivision is amended and expands an exemption from sales and use tax on "[s]ales of equipment, or an accessory, an attachment, or a repair part for equipment that meets all of the following requirements:

a. Is sold to a large fulfillment *facility or to a contractor or subcontractor if the purchase is for use in the performance of a contract with the large fulfillment facility.*
b. Is used at the facility *for any of the following purposes:*
    1. *In* the distribution process, which includes receiving, inventorying, sorting, repackaging, or distributing finished retail products.
    2. *Baling previously used packaging for resale, sanitizing required by federal law, or material handling.*
c. Is not electricity.

If the level of investment or employment required by G.S. 105-164.3(97)b. is not timely made, achieved, or maintained, then the exemption provided under this subdivision is forfeited. If the exemption is forfeited due to a failure to timely make the required investment or to timely achieve the minimum required employment level, then the exemption provided under this subdivision is forfeited on all purchases. If the exemption is forfeited due to a failure to maintain the minimum required employment level once that level has been achieved, then the exemption provided under this subdivision is forfeited for those purchases occurring on or after the date the taxpayer fails to maintain the minimum required employment level. A taxpayer that forfeits an exemption under this subdivision is liable for all past sales and use taxes avoided as a result of the forfeiture, computed at the applicable State and local rates from the date the taxes would otherwise have been due, plus interest at the rate established under G.S. 105-241.21. Interest is computed from the date the sales or use tax would otherwise have been due. The past taxes and interest are due 30 days after the date of

forfeiture. A taxpayer that fails to pay the past taxes and interest by the due date is subject to the provisions of G.S. 105-236." [Emphasis added.]

(Effective July 1, 2020, and applies to sales occurring on or after that date; HB 1079, s. 2.(a), S.L. 2020-6.)

Note: Refund. – A large fulfillment facility is allowed a refund of all North Carolina State and local sales and use taxes paid by the large fulfillment facility, or paid by a contractor or subcontractor on the large fulfillment facility's behalf, for purchases of items eligible for exemption under G.S. 105-164.13(5o), as amended by this section, if the purchase was made on or after April 1, 2020, but before July 1, 2020. A request for a refund under this section must be in writing and must include any information and documentation required by the Secretary. A request for a refund under this section must be made on or after July 1, 2020, and is due before October 1, 2020. A refund allowed under this section is not an overpayment of tax and does not accrue interest as provided in G.S. 105-241.21.

(Effective June 5, 2020; HB 1079, s. 2.(b), S.L. 2020-6.)

Sales of a digital audio work or digital audiovisual work . . . to the operator of a home school . . . – (72). This subdivision is added and provides an exemption from sales and use tax on "[s]ales of a digital audio work or a digital audiovisual work that is a qualifying education expense under G.S. 115C-595(a)(3) to the operator of a home school as defined in G.S. 115C-563."

(Effective retroactively to October 1, 2019, and applies to sales occurring on or after that date; HB 1079, s. 3.(b), S.L. 2020-6.)

Sales of a digital audio work or digital audiovisual work that consists of nontaxable service content . . . occurring contemporaneously – (73). This subdivision is added and provides an exemption from sales and use tax on "[s]ales of a digital audio work or digital audiovisual work that consists of nontaxable service content when the electronic transfer of the digital audio work or digital audiovisual work occurs contemporaneously with the provision of the nontaxable service in real time."

(Effective retroactively to October 1, 2019, and applies to sales occurring on or after that date; HB 1079, s. 3.(b), S.L. 2020-6.)

G.S. 105-164.13E – Exemptions for Farmers: The following subsection is amended as follows:

G.S. 105-164.13E(a) – This subsection is amended and provides an exemption from sales and use tax on the following purchases by a qualified farmer or conditional farmer if used primarily in farming operations:

. . .

"(7) Any of the following animals:

a. Baby chicks and poults.

b. Livestock."

(Effective July 1, 2020, and applies to sales occurring on or after that date; HB 1079, s. 1.(a), S.L. 2020-6.)

REFUNDS AUTHORIZED FOR CERTAIN PERSONS

G.S. 105-164.14 – Certain Refunds Authorized: This section is amended to replace the terms "tangible personal property" and "services" with the defined term "items" and provides the following:

". . .

(b) Nonprofit Entities and Hospital Drugs. – A nonprofit entity is allowed a semiannual refund of sales and use taxes paid by it under . . . Article [5 of Chapter 105 of the North Carolina General Statutes] on direct purchases of *items* for use in carrying on the work of the nonprofit entity. Sales and use tax liability indirectly incurred by a nonprofit entity through reimbursement to an authorized person of the entity for the purchase of tangible personal property and services for use in carrying on the work of the nonprofit entity is considered a direct purchase by the entity. Sales and use tax liability indirectly incurred by a nonprofit entity on building materials, supplies, fixtures, and equipment that become a part of or annexed to any building or structure that is owned or leased by the nonprofit entity and is being erected, altered, or repaired for use by the nonprofit entity for carrying on its nonprofit activities is considered a sales or use tax liability incurred on direct purchases by the nonprofit entity. 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 must be in writing and must include any information and documentation required by the Secretary. A request for a refund for the first six months of a calendar year is due the following October 15; a request for a refund for the second six months of a calendar year is due the following April 15. The aggregate annual refund amount allowed an entity under this subsection for the State's fiscal year may not exceed thirty-one million seven hundred thousand dollars ($31,700,000).

The refunds allowed under this subsection do not apply to an entity that is owned and controlled by the United States or to an entity that is owned or controlled by the State and is not listed in this subsection. A hospital that is not listed in this subsection is allowed a semiannual refund of sales and use taxes paid by it on over-the-counter drugs purchased for use in carrying out its work. The following nonprofit entities are allowed a refund under this subsection:

…

(c) Certain Governmental Entities. – A governmental entity listed in this subsection is allowed an annual refund of sales and use taxes paid by it. Article [5 of Chapter 105 of the North Carolina General Statutes] on direct purchases of *items*. Sales and use tax liability indirectly incurred by a governmental entity on building materials, supplies, fixtures, and equipment that become a part of or annexed to any building or structure that is owned or leased by the governmental entity and is being

erected, altered, or repaired for use by the governmental entity is considered a sales or use tax liability incurred on direct purchases by the governmental 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 must be in writing and must include any information and documentation required by the Secretary. A request for a refund is due within six months after the end of the governmental entity's fiscal year.

This subsection applies only to the following governmental entities:
. . ." [Emphasis added.]

The effect is that certain digital property is refundable.

(Effective July 1, 2020, and applies to purchases made on or after that date; HB 1080, s. 3.1.(a), S.L. 2020-58.)

OTHER PROVISIONS

G.S. 105-164.16 – Returns and Payment of Taxes: This section is amended to remove unnecessary language and provides the following:

"(d) Use Tax on Purchases. – Use tax payable by an individual who purchases an item, other than a boat or aircraft, 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."

(Effective June 30, 2020; HB 1080, s. 3.2., S.L. 2020-58.)

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) 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.)

SPECIAL PROVISIONS

G.S. 105-237.1(a)(9) – Authority: This subdivision 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:

. . .

(9) The taxpayer is an auctioneer licensed under Chapter 85B of the General Statutes, and the assessment is for sales tax that the taxpayer failed to collect for the sale of

livestock at auction. The Secretary must determine that the taxpayer has made a good-faith effort to comply with the tax laws, including being registered as a retailer on or before July 1, 2020. This subdivision applies to assessments for any tax due for a reporting period ending prior to July 1, 2020. This subdivision does not apply if the person received specific written advice from the Secretary for the transactions at issue for the laws in effect for the applicable period or for tax collected and not remitted to the Department."

(Effective June 5, 2020; HB 1079, s. 1.(c), S.L. 2020-6.)

G.S. 105-244.4A – Grace period from sales and use tax enforcement actions with respect to the sale of certain digital property by certain continuing education and professional development providers: This section is added and provides "'[t]he Department shall take no action to assess a person for any sales and use tax due for a filing period beginning on or after October 1, 2019, and ending prior to August 1, 2020, with respect to the retail sale of digital audio works or digital audiovisual that meet either of the conditions listed in this section. This section does not apply to a person that received specific written advice from the Secretary for the transactions at issue for the laws in effect for the applicable period or to a person that collected tax and failed to remit it to the Department. The conditions are:

(1) The digital audio works or digital audiovisual works consist of continuing education instruction approved by an occupational licensing board.
(2) The digital audio works or digital audiovisual works consist of professional development instruction for school board members, administrators, or staff."

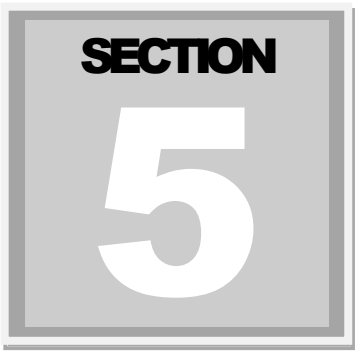
(Effective June 5, 2020; HB 1079, s. 3.(d), S.L. 2020-6.)

G.S. 105-244.4A – Grace period from sales and use tax enforcement actions with respect to the sale of certain digital property by certain continuing education and professional development providers: This section was added and provides that the "[t]he Department shall take no action to assess a person for any sales and use tax due for a filing period beginning on or after October 1, 2019, and ending prior to August 1, 2020, with respect to the retail sale of digital audio works or digital audiovisual *works* that meet either of the conditions listed in this section. This section does not apply to a person that received specific written advice from the Secretary for the transactions at issue for the laws in effect for the applicable period or to a person that collected tax and failed to remit it to the Department. The conditions are:

(1) The digital audio works or digital audiovisual works consist of continuing education instruction approved *or required* by an occupational licensing board.
(2) The digital audio works or digital audiovisual works consist of professional development instruction for school board members, administrators, or staff." [Emphasis added.]

(Effective June 30, 2020; HB 1080, s. 3.6., S.L. 2020-58.)

SECTION 5 - LOCAL GOVERNMENT



LOCAL GOVERNMENT

G.S. 105-277.4. Agricultural, horticultural and forestland – Application; appraisal at use value; notice and appeal; deferred taxes:

105-277.4(b1) – Adds a notice provision to certain disqualification decisions: “If the assessor determines that the property loses its eligibility for present-use value classification for a reason other than failure to file a timely application required due to transfer of the land, the assessor shall provide written notice of the decision as required by G.S. 105-296(i). The notice shall include the property's tax identification number, the specific reason for the disqualification, and the date of the decision.”

Provides that an appeal from such disqualification must be made within 60 days after date of the written notice of the decision of the assessor.

While an appeal from such disqualification is pending, a new appeal is not required for subsequent years. If a property is reinstated in the present-use value classification program pursuant to an appeal, the reinstatement applies retroactively to the date of disqualification.

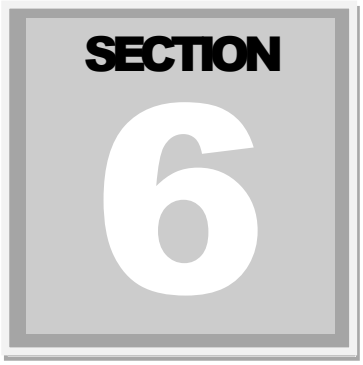
If, while an appeal from such disqualification is pending, the assessor determines that the property loses its eligibility for present-use value classification for an additional, independent reason, “the assessor shall follow the notice and appeal procedure set forth in this subsection with regard to the subsequent disqualification.”

(Effective June 12, 2020; SB 315; s. 8, S.L. 2020-18)

G.S. 105-356 – Priority of Tax Liens: 105-356(a)(1) – Provides that the term "lien for State taxes" includes a lien for Employment Security contributions under G.S. 96-10.

(*Effective May 4, 2020; SB 704; s. 1.4.(b), S.L. 2020-3)*

SECTION 6 - GENERAL ADMINISTRATION



GENERAL ADMINISTRATION – ARTICLE 9

G.S. 105-228.90(b) – Scope and Definitions: Definitions: Subdivision (1b) of this subsection was amended to update the reference to the Internal Revenue Code from January 1, 2019 to May 1, 2020. Any amendments to the Internal Revenue Code enacted after January 1, 2019 that increase North Carolina taxable income for the 2019 taxable year become effective for tax year 2020.

An unnumbered (#) subdivision was also added for the definition of the "CARES Act." As defined, it is the Coronavirus Aid, Relief, and Economic Security Act.

This subsection was further amended to add two new subdivisions as part of a series of changes that require a taxpayer to provide the full taxpayer identification number when tax documents are filed with the Department.

Subdivision (9) was added to define the term "Taxpayer Identification Number (TIN)" as an identification number issued by the Social Security Administration or the Internal Revenue Service, excluding a Taxpayer Identification Number for Pending U.S. Adoptions (ATIN) and a Preparer Taxpayer Identification Number (PTIN).

Subdivision (10) was added to define the term "Truncated Taxpayer Identification Number (TTIN)" by reference to Treasury Regulation section 301.6109-4. In general, a truncated taxpayer identification number is a social security number (SSN) or other identification number whereby the first five digits are omitted (e.g., XXX-XX-1234).

The Revisor of Statutes is authorized to renumber the subdivisions of G.S. 105-228.90(b) 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 subsection. The above amendments may be renumbered by the Revisor of Statutes.

(Effective June 30, 2020; HB 1080, s. 1.(a,b), 4.4(a), S.L. 2020-58.)

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. 105-236.1(a)(3) – Enforcement of Revenue Laws by Revenue Law Enforcement Agents: General: This subdivision was amended to add a new criminal offense to the list of offenses for which the Secretary of Revenue may appoint employees of the Criminal Investigations Division to serve as revenue law enforcement officers. The added criminal offense is for the secrecy of tax information related to G.S. 105-259.

(Effective June 30, 2020; HB 1080, s. 6.1, S.L. 2020-58.)

G.S. 105-237.1(a)(9) – Authority: This subdivision was added and provides that the Secretary may compromise the liability of an auctioneer licensed under Chapter 85B of the General Statutes if the assessment is for sales tax that the taxpayer failed to collect for the sale of livestock at auction if certain conditions are met. A complete explanation is located under Special Provisions of the Sales and Use Tax section of this document.

(Effective June 5, 2020; HB 1079, s. 1.(c), S.L. 2020-6.)

G.S. 105-241.8(b) – Statute of Limitations for Assessments: Exceptions: This statute was amended to add new subdivision (2a) to the list of exceptions to the general statute of limitations for proposing an assessment. As enacted, subdivision (2a) provides a ten-year statute of limitations applicable to a tax assessment for trust taxes collected but not remitted to the State.

As amended and specifically provided in G,S, 105-241.8(b)(2a), if a taxpayer, as a trustee, collects taxes on behalf of the State, but fails to remit all the taxes held in trust when due, the period for proposing as assessment is the later of the following:

a. Ten years from the due date of the return.
b. Ten years after the taxpayer filed the return.

(Effective June 30, 2020 and applies to assessments not barred by the statute of limitations prior to that date; HB 1080, s. 6.2.(a), S.L. 2020-58.)

G.S. 105-241.13 – Action on Request for Review: This section, which addresses the Department's actions on timely requests for Departmental review, was amended to add additional clarifying language and to move a sentence found in subsection (c) to a more appropriate place in subsection (b). Importantly, the substance of the law effectively remains the same.

Under prior law, subsection (c) provided that if a taxpayer fails to attend a scheduled conference on the proposed denial of a refund or a proposed assessment without notifying the Department, the Department and the taxpayer are considered to be unable to resolve the issue.

The additional language inserted into subsection (b) clarifies that the Department and the taxpayer may mutually agree to reschedule the conference. As was with the prior law, subsection (b) now provides that if the taxpayer fails to attend the scheduled conference on the proposed denial of a refund or a proposed assessment, the Department and the taxpayer are considered to be unable to resolve the taxpayer's objection.

(Effective June 30, 2020; HB 1080, s. 4.5, S.L. 2020-58.)

G.S. 105-242.2(f) – Personal Liability When Certain Taxes Not Paid: This subsection was added to state that the scope of section 105-242.2 does not "apply to, or limit the criminal liability of any person." This amendment clarifies that the civil tax liability statute has no applicability to the criminal liability of a person.

(Effective June 30, 2020; HB 1080, s. 6.3, S.L. 2020-58.)

G.S. 105-243.1(a)(1) – Collection of Tax Debts: Definitions: Overdue Tax Debt: This subdivision was amended to update the definition of an overdue tax debt to any part of a tax debt that remains unpaid 60 days or more after it becomes collectible under G.S. 105-241.22. The term does not include tax debt for which the taxpayer enters into an installment agreement within 60 days after the debt becomes collectible. Under prior law, the definition applied to any part of a tax debt that remained unpaid 90 days or more after it became collectible.

(Effective August 1, 2020, and applies to tax debts that become collectible after that date; HB 1080, s. 6.4.(a), S.L. 2020-58.)

G.S. 105-243.1(d) – Collection of Tax Debts: Fee: This subsection was amended by the 2019 General Assembly 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.
The 2020 General Assembly made an amendment to the effective date of the legislation passed for this subsection under S.L. 2019-169. As amended, the effective date was changed from January 1, 2020 to August 1, 2020.

(Effective August 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 and HB 1080, s. 6.4.(b), S.L. 2020-58.)

The 2020 General Assembly further amended this subsection to state that the Department must notify the taxpayer 60 days prior to imposing the collection assistance fee on an overdue tax debt. Language was removed that stated the fee was imposed on an overdue tax debt that remained unpaid for 60 days or more. As amended, the fee is tied to when notice is given to the taxpayer. The amendment also provides that notice of the fee may be included on the collection notice. These changes were made to be consistent with the amendment made to this subsection by the 2019 General Assembly.

(Effective August 1, 2020, and applies to tax debts that become collectible after that date; HB 1080, s. 6.4.(a), S.L. 2020-58.)

G.S. 105-244.4A – Grace Period from Sales and Use Tax Enforcement Actions with Respect to the Sale of Certain Digital Property by Certain Continuing Education and Professional Development Providers: This section was added and provides that the Department shall take no action to assess a person for any sales and use tax due for a filing period beginning on or after October 1, 2019, and ending prior to August 1, 2020, with respect to the retail sale of digital audio works or digital audiovisual works that meet certain conditions. A complete explanation is located under Special Provisions of the Sales and Use Tax section of this document.

(Effective June 5, 2020; HB 1079, s. 3.(d), S.L. 2020-6; Effective June 30, 2020; HB 1080, s. 3.6., S.L. 2020-58.)

G.S. 105-252.1 – Use of a TTIN: To reduce the risk of identity theft, the Internal Revenue Service ("IRS") issued regulations permitting a person to truncate a payee's identification number on a statement the person gives to the payee (i.e., authorizes the use of a Truncated Taxpayer Identification Number (TTIN), as the term is defined by Treasury Regulation section 301.3109-4). Importantly, the regulations do not allow the use of a TTIN on tax documents filed with the IRS.

Article 9 of Chapter 105 was amended to add a new section to specify that a TTIN may not be used on any return, statement, or other document required to be filed with or furnished to the Department unless specifically authorized by law.

(Effective June 30, 2020; HB 1080, s. 4.4.(b), S.L. 2020-58.)

G.S. 105-259(b)(49) – Secrecy Required of Officials; Penalty for Violation: Disclosure Prohibited: This subdivision was amended to allow the Department of Revenue to disclose information regarding Article 8B tax information with the North Carolina Department of Health and Human Services. Previously, information concerning a tax imposed under Article 8B could only be shared with the Department of Insurance. This subdivision also was amended to clarify that the reference to "Department" is for the Department of Revenue.

(Effective August 1, 2020, and applies to capitation payments received by prepaid health plans on or after that date; SB 808, s. 16.(e)., S.L. 2020-88.)

G.S. 105-259(b)(50) – Secrecy Required of Officials; Penalty for Violation: Disclosure Prohibited: This subdivision was amended to allow the Secretary flexibility in how to disclose licensee information maintained by the Department and to clarify who can obtain taxpayer information. Specifically, the Secretary need only make licensee information available to other persons licensed under Article 2A.

(Effective June 30, 2020; HB 1080, s. 2.2.(b), S.L. 2020-58.)

G.S. 105-269.8(c) – Contribution by Individual for Early Detection of Breast and Cervical Cancer: Sunset: The sunset of this contribution was extended. The contribution was scheduled to expire for taxable years beginning on or after January 1, 2021. As rewritten, the contribution now sunsets for taxable years beginning on or after January 1, 2026.

(Effective June 30, 2020; HB 1080, s. 7.1, S.L. 2020-58.)